

**COMMONWEALTH OF THE BAHAMAS  
IN THE SUPREME COURT  
Common Law and Equity Division  
2016/CLE/gen/00025**

**BETWEEN:**

**LATARIO ROLLE**

**Plaintiff**

**AND**

**CORPORAL 2054 MOULTRIE**

**1<sup>st</sup> Defendant**

**THE COMMISSIONER OF POLICE**

**2<sup>nd</sup> Defendant**

**THE ATTORNEY GENERAL**

**3<sup>rd</sup> Defendant**

Before: Assistant Registrar Mr. Renaldo Toote

Appearances: Alton McKenzie for the Plaintiff  
Lynette King for the Defendant.

Hearing Date: 6<sup>th</sup> May, 2021.

***Assessment of damages – police– unlawful conduct – loss of teeth – pain and suffering – assault and battery – detinue – constitutional damages – exemplary damages.***

The Plaintiff commenced this action against the Defendants for (1) assault and battery; (2) loss of six of his teeth; (3) pain and suffering; (4) unlawful arrest and detention; (5) malicious prosecution; (6) false imprisonment; (7) constitutional damages; (8) special damages; and (9) exemplary damages.

The events relating to this matter occurred on Friday 9<sup>th</sup> January, 2015 when the Plaintiff, then 32 years old, was walking along Malaysia Way in the Elizabeth Estates Subdivision. The Plaintiff went to return a PlayStation 3 game to his cousin and intended to return home thereafter. It was at this time that he was stopped by Police Officers on patrol. The Officers approached the Plaintiff searched him and after discovering a photograph of a gun in the Plaintiff's phone, arrested, handcuffed and took him to his home. Upon arrival, the Plaintiff [while still cuffed] was dragged to the backdoor which was forced open by the Police after they received no response at the front door.

Once inside, the Police [who entered without a search warrant] searched and ransacked the Plaintiff's home. Despite the fact that nothing illegal was discovered, the Police charged the Plaintiff with unlawful possession of jewellery, the PlayStation console and games discovered in his home.

Rolle immediately questioned the 1<sup>st</sup> Defendant [Cpl. Moultrie] by asking “how could you just break open my house and arrest me for my own property”. According to the Plaintiff, this is when Cpl. Moultrie charged at him [while still cuffed] and began repeatedly punching him in the face. One of the Plaintiff’s tooth was punched out of his mouth and another became loosed. Despite this, the Plaintiff was denied medical attention while detained in Police custody. A dental report later disclosed that the Plaintiff will eventually lose six (6) teeth in total as a result of the damage.

On the 13<sup>th</sup> January, 2015 the Plaintiff was arraigned in the Magistrate’s Court and granted bail. However, he was unable to satisfy the bail conditions and was remanded to the Department of Corrections until 19<sup>th</sup> January, 2015.

On the 18<sup>th</sup> November, 2015 the Plaintiff was discharged as the Prosecution withdrew charges under section 230 (2) (b) (ii) of the Criminal Procedure Code.

To date, the Defendants have not attempted to reintroduce any charges against the Plaintiff nor was any of his goods returned.

***Held: Damages awarded to the Plaintiff in the global amount of \$163,060.85 as compensation for special damages, unlawful arrest and detention, false imprisonment, assault and battery, malicious prosecution, aggravated and exemplary damages.***

The stability of justice is eroded whenever a person’s liberties are violated by those who are sworn to protect and preserve human rights in a civil society. The fundamental freedoms and liberties afforded by the Constitution are the essential elements to any democratic society to which the doors of justice are hinged, and its door bell is the rule of law which reverberates the equitable maxim ***NEMO EST SUPRA LEGIS: meaning ‘no man is above the law’***. Simply put, the Police are duty bound to act fairly.

If these liberties are found to be violated, the courts ought to compensate the victim with the same even handedness in order to vindicate the constitutional right which has been infringed.

At all times, the Court’s intention will be equality achieved through justice.

#### **Authorities Cited**

**Considered:** *Merson v Cartwright* [2005] UKPC 38; *Jamal Clear v Attorney General* [2003] 1 BHS No. 64; *Alseran and others v Ministry of Defence* [2019] Q.B. 1251; *Anthony Broome v. Cassell* [1972] A.C. 1027; *Rookes v Barnard* [1964] A.C. 1129; *Shawn Scott v Attorney General* [2017] UKPC 15; *Douglas Ngumi v Attorney General and Ors. (Unreported)* 2017/CLE/gen/1167; *Ruddock & Ors. V Taylor* [2003] NSWCA 62; *Douglas Ngumi v Attorney General and Ors. (Unreported)* SCCivApp. No. 6 of 2021.

## **RULING**

### ***Toote, Assistant Registrar***

1. This is the assessment of damages in favour of the Plaintiff's [Rolle] claim against the Defendants for (1) assault and battery; (2) loss of his teeth; (3) pain and suffering; (4) unlawful arrest and detention; (5) malicious prosecution; (6) false imprisonment; (7) constitutional damages; (8) special damages.

### **Background**

2. By Consent Order dated 12<sup>th</sup> December 2017, Winder, J. granted leave for judgment to be entered against the Defendants without admission of liability.
3. The Plaintiff relies on his specially endorsed writ of summons filed 8 January, 2016 which was later amended on 12<sup>th</sup> March, 2021.
4. The facts in the Plaintiff's statement of claim outlines that in 2015, the Plaintiff, a 32 year old resident of the Elizabeth Estates subdivision was walking along Malaysia Way to return a PlayStation game cd to his cousin when Police Officers on patrol pulled alongside him. One of the officers being Cpl. 2054 Moultrie, the 1<sup>st</sup> Defendant named herein.
5. The Officers apparently searched Rolle without probable cause. While searching his cell phone, one of the Officers discovered a photograph of a firearm and questioned Rolle as to its location. Rolle replied that the photo was obtained from the internet and not an actual gun in his possession. Not being satisfied, the Police arrested Rolle and escorted him to his home. It is uncertain as to the reason of his arrest as there was no probable cause.
6. While at his home, Rolle indicated that he did not have his house keys to allow entry and that his grandmother perhaps was not home since there was no response at the front door.
7. Rolle [while still cuffed] was dragged to the backdoor where the Police later forced it open.
8. While inside, the Police [without a search warrant] searched and ransacked the Plaintiff's home. Nothing illegal was reportedly discovered, however the Police charged the Plaintiff with unlawful possession of jewellery, a PlayStation console, and games discovered in his home.
9. Rolle immediately questioned the 1<sup>st</sup> Defendant [Cpl. Moultrie] by asking "how could you just break open my house and arrest me for my own property?" According to the Plaintiff, this is when Cpl. Moultrie charged at him [whilst still

cuffed] and began repeatedly punching him in the face. One of the Plaintiff's tooth flew out of his mouth and another was loosened. Despite this, the Plaintiff was denied medical attention while detained in Police custody. A Dental report later disclosed that the Plaintiff will eventually lose six (6) teeth in total as a result of the damage.

10. On the 13<sup>th</sup> January, 2015 the Plaintiff was arraigned before the Magistrate's Court and granted bail, however he was unable to satisfy the bail conditions and was remanded to the Department of Corrections until 19<sup>th</sup> January, 2015.
11. On the 18<sup>th</sup> November, 2015 the Plaintiff was discharged as the Prosecution withdrew all of the charges under section 230 (2) (b) (ii) of the Criminal Procedure Code.
12. To date, the Defendants have not attempted to reintroduce any charges against the Plaintiff and neither were his goods [PlayStation with game cd's and jewellery] returned. Hence, the claim for detinue.
13. At the commencement of this matter, the Plaintiff relied on his evidence and that of three (3) other witnesses. The Defendants elected not to cross examine any of the Plaintiff's witnesses, neither did they call any witnesses to challenge the Plaintiff's claim. Therefore, the court must accept the version of events by the Plaintiff and deem the factual matrix as the uncontroverted evidence.

## **Issues**

14. By consent order between the parties, the evidence is accepted and the issue becomes what is an appropriate measure of damages to be awarded? And whether or not aggravated, exemplary and/or vindictory damages should be awarded to the Plaintiff?

## **Law**

15. In starting, I refer to **Charles, J. in Gilford Lloyd v Chief Superintendent Cunningham et al**, 2016/CLE/gen/0062 (unreported) wherein she stated **"without liberty, a man is not a man. He has no dignity"**.
16. I would like to add, that **"to erode a man's honour is equally demoralizing"**.
17. The crux of the Plaintiff's claim involves damages for the reprehensible misbehaviour of the Police which resulted in an unwarranted arrest, and inexcusable assault and battery. Further, the Plaintiff was unjustifiably detained from 9<sup>th</sup> January, 2015 until 13<sup>th</sup> January, 2015 and from the 13<sup>th</sup> January, 2015 until the 19<sup>th</sup> January, 2015 (a total of ten (10) days). The first period being the unlawful arrest and detention and the latter being the result of the remand at the Department of Corrections, which his Counsel argues flows from the subsequent arrest and malicious prosecution.

18. The Plaintiff claims that his constitutional rights have been violated and he relies on the seminal case of **Merson v Cartwright & AG** [2005] UKPC 38. In **Merson** (supra), the Judicial Committee of the Privy Council said as follows:

**“An additional award, not necessarily of substantial size, may be needed to reflect the sense of public outrage, emphasise the importance of the constitutional right and the gravity of the breach, and deter further breaches.”**

19. Articles 19 (4) & 28 of The Bahamas’ Constitution provides:

**“19. (1) No person shall be deprived of his personal liberty save as may be authorised by law in any of the following cases —**

**(a) ...**

**(4) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefor from that other person.**

**Article 28 states:**

**28 (1) if any person alleges that any of the provisions of Article 16 to 27 (inclusive) of this Constitution has been, is being or is likely to be contravened in relation to him then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the Supreme Court for redress.**

**(2) The Supreme Court shall have original jurisdiction—**

**(a) To hear and determine any application made by any person in pursuance of paragraph (1) of this Article; and**

**(b) To determine any question arising in the case of any person which is referred to it in pursuance of paragraph (3) of this Article.**

**And make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of the said Articles 16 to 21 (inclusive) to the protection of which the person concerned is entitled:**

**Provided that the Supreme Court shall not exercise its powers under this paragraph if it is satisfied that adequate means of redress are or have been available to the person concerned under any other law.”**

20. It is established, that if there are alternative means of redress which are reasonably adequate, then constitutional reliefs are unwarranted.

21. In the instant case, akin to so many other cases of constitutional breaches, Mr. Rolle was unlawfully arrested without probable cause, and subsequently detained for ten (10) days. What makes his arrest so egregious is the fact that the Police assaulted him with violence and inhumanely treated him by denying the Plaintiff medical treatment after his teeth were punched out of his mouth.

This essentially means that the Plaintiff had to endure the pain with open wounds while kept in an unsanitary cell.

22. As the Defendants accepted liability and failed to challenge any of the witness testimonies, I find that the Plaintiff is entitled to constitutional redress for exemplary and aggravated damages.

23. Counsel for the Plaintiff in his submission urged the court to award the following:

i.	Special Damages	\$2,057.00
ii.	Loss of Teeth	\$15,734.85
iii.	False Imprisonment	\$50,000.00
iv.	Malicious Prosecution	\$100,000.00
v.	Detinue	\$3,927.00
vi.	Future Medical Care	\$6,342.00

**Constitutional Damages**

vii.	Inhumane Treatment	\$100,000.00
viii.	Arbitrary Arrest & Detention	\$150,000.00
ix.	Loss of Privacy of Home	\$50,000.00
x.	Loss of Freedom of Movement	\$100,000.00
xi.	Deprivation of Property	\$50,000.00
xii.	Exemplary Damages	\$100,000.00
xiii.	Aggravated Damages	\$100,000.00

**Total:** **\$828,060.85**

24. When assessing damages, **Lord Scott of Foscote** in **Merson v Cartwright and Another** [2005] UKPC 38 at para 15 indicated that it would be preferable in assessing damages for awards to be made under each head claimed. Therefore, I will do the same.

**False Imprisonment, Assault & Battery & Malicious Prosecution.**

25. The legal authorities as it relates to general damages concerning false imprisonment and assault and battery establishes a broad criteria of what is reasonable. The authorities which support this head of damage vary in comparison to the circumstances of the events. In **Davis v R** 2015/cr/VBI/23/1 (unreported), the Applicant's Counsel submitted to the learned Assistant Registrar (Acting) that the Privy Council in **Shawn Scott v Attorney General** [2017] UKPC 15 demonstrated that there is no exact science to quantification of general damages for constitutional breaches, therefore any quantification of constitutional general damages are mere guesstimates. Thus applying comparable figures can only be a guide.

26. The Court of Appeal in **Jamal Cleare v Attorney General and others** [2013] 1 BHS No. 64 at paragraphs 47-49 the Court stated:

**The measure of and quantum of damages for unlawful detention would, of course, depend on the nature and circumstances of each case. There can hardly be one size fits all formula for the breach of such an important constitutional right as the right to personal freedom. Needless to say, in our view, it would be most invidious to put a price tag or tariff on the deprivation of personal liberty. But it is undoubted that the right to personal liberty is, next to the right to life, an elemental right on which the enjoyment of most, if not all, of the other rights guaranteed in the Constitution is dependent. Personal liberty truly is priceless. It is for these reasons that we are unable to support the quantum of damages of seven hundred and fifty dollars (\$750.00) awarded by the learned judge; nor for that matter do we think the measure of damages of two hundred and fifty dollars (\$250) per day, used to arrive at that quantum, is justified or appropriate. As we have stated, we are convinced and satisfied that Takitota did not intend to lay down a general tariff for the unlawful detention of an individual.**

27. In fact, **Sawyer J** (as she then was) in **Merson v Cartwright** [1994] BHS J No. 54 at 254 held:

**“...that there is in fact no actual yardstick by which they [damages] can be measured”. Emphasis added.**

28. The incommensurability and subjectivity of the intangible losses with which an award for constitutional damages is concerned ensure that perfect compensation cannot be achieved; rather courts can only ensure that a compensation award is fair and reasonable.

29. Having regard to the significant body of recent constitutional case law, it is now time for Bahamian courts to give consideration to standard judicial compensation guidelines as there is much difficulty when considering a reasonable compensation award for breach of constitutional damages, particularly because there are competing authorities on damages. In **Douglas Ngumi v Attorney General and ors.** (unreported) 2017/CLE/gen/1167 **Charles, J.** suggested:

**“...the sanction in Scott becomes even more persuasive for us to develop our jurisprudence in this area of law”.**

30. In **Shawn Scott v Attorney General** *ibid*, (a personal injury case) the Privy Council sanctioned:

**“The Bahamas must likewise be responsive to the enhanced expectations of its citizens as economic conditions, cultural values and societal standards in that country change.... Guidelines from different jurisdictions can provide insight but they cannot substitute for the Bahamian courts’ own estimation of what levels of compensation are appropriate for their own jurisdiction.”**

31. I concur. Over the years, our local jurisprudence has revealed that the disparity in compensation for constitutional damages is patently inconsistent.
32. The circumstances concerning each of the above cases are unique and distinguishable which results in an immeasurable award. For instance, Takitota was unlawfully detained for 9 years and was given a global sum of \$700,000.00, whereas Kevin Collie was awarded \$35,000.00 when unlawfully detained for 32 hours. Tamara Merson was awarded \$280,000.00 in 2002 when she was inhumanely treated and unlawfully arrested and placed in a cell with men who sexually assaulted her. *Aaron Whyllly v Commissioner of Police* [2019] was awarded \$465,000.00 globally when he was brutalized by Police and suffered a collapsed lung.
33. It is anticipated that their respective awards would vastly contrast having regard to its extremity and other aggravating factors. However, it is fair to accept that without some form of compensatory guidance, the awards can become excessive and deemed a 'windfall' for a Plaintiff, particularly if there is an evanescent sense of grievance at the defendant's conduct, which would essentially cause an overvalue in compensation. See **Broome v. Cassell** 1130H (per Lord Diplock).
34. Indeed, the common denominator in each circumstance is the breach of their fundamental rights to which compensation is the only cure for restitution. Thus, the crux of the matter is what is a reasonable award for the Plaintiff's constitutional breaches?
35. Pursuant to Art. 19(4) of the Constitution, an award for constitutional compensation ought to be awarded to a person who has been unlawfully detained. Art. 19(4) holds:

**Any person who is unlawfully . . . detained by any other person shall be entitled to compensation . . ."** [Emphasis Added]

36. In **Rookes v Barnard** [1964] A.C. 1129 @ 1228-1231 Lord Devlin recognized the fact that if damages are really compensatory, then they should be governed by compensatory principles of assessment.

37. However, the starting point for **Lord Devlin's** analysis of aggravated and exemplary awards in *Rookes* was his recognition that where the Plaintiff's loss is non-pecuniary, and particularly where it is intangible, it cannot be precisely quantified or converted into monetary form. Hence other factors, such as the defendant's conduct, can be used as a guide to assessment. **Lord Reid** described the process in **Broome v. Cassell** [1972] A.C. 1027, 1085D-G in the following terms:

**Where the injury is material and has been ascertained it is generally possible to assess damages with some precision. But that is not so where he [i.e. the**

**plaintiff] has been caused mental distress or when his reputation has been attacked - where, to use the traditional phrase, he has been held up to hatred, ridicule or contempt. Not only is it impossible to ascertain how far other people's minds have been affected, it is almost impossible to equate the damage to a sum of money. Any one person trying to fix a sum as compensation will probably find in his mind a wide bracket within which any sum could be regarded by him as not unreasonable - and different people will come to different conclusions. So in the end there will probably be a wide gap between the sum which on an objective view could be regarded as the least and the sum which could be regarded as the most to which the plaintiff is entitled as compensation. It has long been recognised that in determining what sum within that bracket should be awarded, a jury, or other tribunal, is entitled to have regard to the conduct of the defendant. He may have behaved in a highhanded, malicious, insulting or oppressive manner in committing the tort or he or his counsel may at the trial have aggravated the injury by what they there said. That would justify going to the top of the bracket and awarding as damages the largest sum that could fairly be regarded as compensation.**

38. Indeed, it is evident that the conduct of the Police was oppressive with an overture of highhandedness representing a total disregard for the Plaintiff's constitutional rights. However, the Plaintiff failed to explicitly particularize the extent of his mental distress which may have reasonably flowed from this experience. This is reasonably necessary in order for the Court to glean the full extent of damages suffered so as to apply a narrow and direct approach to the assessment.
39. The trauma of **Merson** (supra) was so detailed that the imagery was instantly visualized in the mind of the Court.
40. In the instant case, the court accepts that Rolle while defencelessly restrained with handcuffs was violently attacked by Cpl. Moultrie who repeatedly punched him in the face until one of his teeth flew out of his mouth and others eventually became loose. In total Rolle lost six (6) teeth. There is no evidence to show that Rolle was immediately taken to the hospital. This means that during his pain and suffering he was confined to a cell, subsequently interviewed by Police and charged. It goes without saying that notwithstanding the abuse, the Plaintiff denied the charges, since he was subsequently granted bail. The evidence shows that Rolle was first seen by medical physicians four (4) days later while remanded at the Department of Corrections.
41. It goes beyond comprehension, how the Police would interview a battered and bruised man and expect him not be intimidated and afraid and to further assume that his response to their interview questions were legitimate. Rolle was subsequently charged without there being a virtual complainant accusing him of any of the aforementioned offences.
42. Unsurprisingly, the Prosecution later withdrew the charges against Rolle.

43. The evidence before the court is that Rolle's teeth were not repaired until months after he was discharged.

44. In assessing the police conduct, the matter must be judged by reference to the pressure of the events in the agony of the moment, not by reference to hindsight. It is unfair to sit back in the comparatively calm and leisurely atmosphere of the Courtroom and make minute retrospective criticisms of what an arresting constable might or might not have done or believed in the circumstances. (See **McIntosh v Webster** (1980) 43 FLR 112).

45. Having regard to the aforementioned, I will maintain the position of Charles, J. in **Ngumi** (supra) wherein she referred to principles gleaned from **Alseran and others v Ministry of Defence** [2019] Q.B. 1251 which refers to damages recoverable for false imprisonment and assault and battery which established:

**"It is important that judges should not simply award a sum of money which they think appropriate, but should strive for consistency".**

46. Departing from the Court of Appeal position in **Cleare v Attorney General**, Charles, J. awarded **Ngumi** \$250 daily rate having been detained for 2,316 days. However on appeal, the Court of the Appeal quickly rejected this position.

47. On appeal in **Douglas Ngumi v Attorney General and Ors.** (unreported) SCCivApp. No. 6 of 2021, the Learned President of Appeal **Sir Michael Barnett**, on behalf of the majority referred to the decision of **Guishard** which emanated from the Eastern Caribbean Court of Appeal on 20<sup>th</sup> October, 2020.

48. In **Guishard**, the Court referred to the Privy Council decision in **Takitota** to further substantiate the point that a daily rate should not be slavishly followed by stating:

**Moreover, the Board went on to give the necessary guidance to the Bahamian Court of Appeal when conducting a reassessment of the award of compensatory damages, which includes arriving at a daily rate. At para [17] Of the decision, Lord Carswell helpfully encapsulates the legal principles in these terms:**

**'The court should determine what they consider to be an appropriate figure to reflect compensation for the long period of wrongful detention of the appellant, taking into account any element of aggravation they think proper, reflecting the conditions of his detention and, in their own words, the misery which he endured.**

49. Further, at paragraph 27, Barnett, P. referenced the case of **Ruddock & Ors. v Taylor** [2003] NSWCA 62 @ para. 49 as a useful guidance which holds:

**"Damages for false imprisonment cannot be computed on the basis that there is some kind of applicable daily rate. A substantial portion of the ultimate award must be given for what has been described as "the initial shock of being arrested" (Thompson v**

**Commissioner of Police of Metropolis [1998] QB 498 @ 515). As the term of imprisonment extends the effect upon the person falsely imprisoned does progressively diminish”.**

50. Having regard to the circumstances, I will follow the award as in **Cleare** which was a shorter detention, unlike in **Ngumi** where the detention was nearly 6 ½ years. In **Alseran**, the sum of £3,000 was awarded for 24 hours. When converted equates to \$4,125 BSD. For the false imprisonment, assault and battery and malicious prosecution, I will award Rolle **\$75,000.00**. The breakdown is as follows:

- i. Unlawful arrest and detention: \$10,000.00
- ii. Assault & Battery: \$35,000.00
- iii. False Imprisonment: \$10,000.00
- iv. Malicious Prosecution: \$10,000.00

51. In making the award, I have taken into account the pain and suffering and loss of amenities sustained by Rolle.

#### **Exemplary, Aggravated & Vindictory Damages.**

52. Counsel for the Plaintiff submitted a claim of \$100,000 for exemplary damages and \$100,000 for aggravated damages inclusive of an award for vindictory damages.

53. In **Ngumi v Attorney General & ors.** SCCivApp. No. 6 of 2021, the Court of Appeal addressed whether or not an award of damages can be allowed for both Exemplary and Vindictory damages. Barnett, P. held:

**“The short answer to this ground is that it was improper for the judge to have made an award for both exemplary damages as well vindictory damages for breach of the appellant’s constitutional rights. This point was made clear by the Privy Council in Takitota. The Board said at paragraph 15:**

**“15 Their Lordships consider that it would not be appropriate to make an award both by way of exemplary damages and for breach of constitutional rights. When the vindictory function of the latter head of damages has been discharged, with the element of deterrence that a substantial award carries with it, the purpose of exemplary damages has largely been achieved. To make a further award of exemplary damages, as the appellant’s counsel sought, would be to introduce duplication and contravene the prohibition contained in the proviso to Article 28(1) of the Constitution...”**

54. Exemplary damages are awarded to punish arbitrary, oppressive and unconstitutional behaviour perpetrated by agents of the state.

55. Aggravated damages are awarded when the Defendant’s conduct causes injury to feelings, humiliation or mental suffering occasioned by the Defendant’s conduct. The objective of aggravated damages is to compensate the plaintiff for the wrong or mental distress or injury to his feelings in circumstances where the injury is caused or increased by the manner in which the defendant

committed the wrong. This is reasonably expected, having regard to the fact that the Plaintiff lost six teeth and had to undergo surgery to replace them. I take judicial notice that there was a period when the Plaintiff had to endure public scrutiny without some of his teeth as the evidence disclosed two of them were missing immediately after the index assault and battery.

56. In **Merson** (supra), the Judicial Committee of the Privy Council said as follows:

**“An additional award, not necessarily of substantial size, may be needed to reflect the sense of public outrage, emphasise the importance of the constitutional right and the gravity of the breach, and deter further breaches.”**

57. There is a general expectation by ordinary citizens that the Police would act reasonably fair at all times. However, the conduct in this matter is nothing less than a contemptuous disregard for the Plaintiff's rights.

58. The stability of justice is eroded whenever a person's liberties are violated by those who are sworn to protect and preserve human rights in a civil society. The fundamental freedoms and liberties afforded by the Constitution are the essential elements to any democratic society to which the doors of justice are hinged, and its door bell is the rule of law which reverberates the equitable maxim **NEMO EST SUPRA LEGIS: meaning ‘no man is above the law’**. Simply put, the Police are duty bound to act fairly.

59. If these liberties are found to be violated, the courts ought to compensate the victim with the same even handedness in order to vindicate the constitutional right which has been infringed.

60. Having regard to the circumstances of events, the loss of six teeth, the assault occasioned thereof and the malicious prosecution I will make an award for Exemplary damages in the sum of **\$50,000.00** and the sum of **\$10,000.00** for Aggravated damages.

### **Special Damages**

61. The Plaintiff also claimed detinue which would result in the return of his goods [PlayStation, jewellery]. The Defendants did not defend against this claim therefore the award of \$3,927.00 is conceded. Additionally, the Plaintiff claimed \$6,342.00 for future medical expenses, \$2,057.00 as special damages and \$15,734.85 for loss of teeth. All of the aforementioned heads were proven and unchallenged. Therefore I will award the same.

### **Interest on Special and General Damages**

62. Under the Civil Procedure (Award of Interest) Act 1992, the Plaintiff is entitled to interest not only on special damages but also on general damages.

**Section 2 states:**

**Every judgment debt shall carry interest at such rate as shall be prescribed by rules of court made by the Rules Committee constituted by section 75 of the Supreme Court Act, and such interest may be levied under a writ of execution on such judgment.. (If the judgment has been obtained in the Supreme Court, from the time of entering it up ...)"**

**Section 3 states:**

**In any proceedings tried in any court, whether or not a court of record, for the recovery of any debt or damages, the court may if it thinks fit, order that there shall be included in the sum for which judgment is given interest at such rate as it thinks fit on the whole or any part of the debt or damages for the whole or any part of the period between the date when the cause of action arose and the date of the judgment.**

63. In the instant case, the Plaintiff has pleaded interest for special and general damages. Therefore, the Court awards interest at 3% from the date of the filing of the Writ until judgment and the statutory rate of 6.25% from the date of judgment until payment.

**Cost**

64. Neither Counsel submitted submissions as to cost as per the directions of the Court. Therefore, I will reserve my order as to cost and award cost under separate order.

**Conclusion**

65. For that reasons hereinbefore set out, the assessment is as follows:

1. Special damages:	\$28,060.85
2. False imprisonment, assault, Malicious prosecution:	\$75,000.00
3. Aggravated damages:	\$10,000.00
4. <u>Exemplary damages:</u>	<u>\$50,000.00</u>
<b>Total Damages</b>	<b><u>\$163,060.85</u></b>

**Post Script**

66. Let me say for the record, that the Attorney General's conduct in this matter was rather distasteful and most disheartening as representatives of the State. The matter was attended to with no care or urgency. Crown Counsel failed to call any witnesses, cross examine or even file submissions to defend the allegations. This demonstrates an impenitent disregard towards the Plaintiff.

67. The omission to cross examine or call witnesses in matters where the fundamental rights of a citizen is allegedly abused and molested by those sworn with the obligation to protect and preserve the constitutional dignity, in my estimation does nothing to rebuff such abhorrent conduct.

68.I reiterate, that at all times, the Court's intention will be equality achieved through justice; as there is no adequate amount of money that could be awarded to restore the public's confidence in the Police when it has been eroded by abuse.

**Dated 23<sup>rd</sup> August, 2021**

[Original Signed & Sealed]

**Renaldo Toote**  
**Assistant Registrar**