

IN THE SUPREME COURT OF BELIZE A.D 2010

Claim No. 530

BETWEEN

(MICAH THOMPSON

CLAIMANT

(

(AND

(ATTORNEY GENERAL

1ST DEFENDANT

(COMMISSIONER OF POLICE

2ND DEFENDANT

(ASP DENNIS ARNOLD

3RD DEFENDANT

Claim No. 531

BETWEEN

(SHELTON TILLET

CLAIMANT

(

(AND

(ATTORNEY GENERAL

1ST DEFENDANT

(COMMISSIONER OF POLICE

2ND DEFENDANT

(ASP DENNIS ARNOLD

3RD DEFENDANT

Claim No. 532

BETWEEN

(CHARLES WOODYE

CLAIMANT

(

(AND

(ATTORNEY GENERAL

1ST DEFENDANT

(COMMISSIONER OF POLICE

2ND DEFENDANT

(ASP DENNIS ARNOLD

3RD DEFENDANT

BEFORE: Hon. Madam Justice Minnet Hafiz

Mrs. Agnes Segura-Gillett for the Claimants

Nigel Hawke along with Ms. Iliana Swift for the Defendants

J U D G M E N T

Introduction

1. These are three consolidated claims which arose from the same factual circumstances. The three Claimants, Thompson, Tillett and Woodye claim damages for false arrest and imprisonment. There was also a claim for damages for malicious prosecution but that was not pursued at trial. On 16th February, 2009 the three men were charged jointly with the offences of “conspiracy to commit murder” and “murder” and remanded to the Belize Central Prison until 13th January, 2010, when the charges were withdrawn due to insufficient evidence. The first Defendant is sued as representative of the Government of Belize. The third Defendant, Dennis Arnold is an Inspector of the Belize Police Department under the command of the second Defendant the Commissioner of Police.

Statement of Case

2. Thompson, Tillett and Woodye claim that they were detained and questioned regarding the death of one John Paul Saldivar which occurred in San Pedro. On 16th February, they were charged and later taken to the Belize City Magistrate’s Court where they were arraigned for the offences of “Murder” and “Conspiracy to commit murder” in relation to the death of John Paul Saldivar. They claim that Inspector Arnold caused their false arrest and imprisonment which was done without reasonable cause and suspicion. Further, that they were detained in a prison cell for 11 months.
3. They claim Special Damages and General Damages in respect of their arrest and detention for 11 months. Their claim for damages include

Aggravated and Exemplary damages for injury to their reputation and deprivation of liberty.

4. The third Defendant, Inspector Arnold say that they had reasonable suspicion that the Claimants were involved in the murder of John Paul Saldivar. Further, the Claimants arrest were lawful and their subsequent detention was also within the confines of the law.

Witnesses

5. The three Claimants, Thompson, Tillett and Woodye each filed a witness statement and were cross-examined. The Defendant filed one witness statement from Dennis Arnold.

6. Issues to be determined

(1) Whether there was reasonable suspicion to justify the detention, arrest and charge of the Claimants.

(2) Whether the Claimants are entitled to damages.

Submissions by the Claimant

7. Learned Counsel, Mrs. Agnes Segura-Gillett in written submissions submits that the tort of false imprisonment is established where a Claimant proves that there has been bodily restraint which is not authorized, expressly or impliedly, by law. False is used to mean “erroneous” or “wrong”. Imprisonment “is the restraint of a man’s liberty ...”¹ Learned Counsel also

¹ Winfield and Jolowicz on Tort (17th Edn) (2006) (pg 99-100).

relied on **section 5(1)** of the **Constitution**² which provides that a *person shall not be deprived of his personal liberty save as may be authorized by law* upon a reasonable suspicion of his having committed, or being about to commit, a criminal offence under any law. See also **section 20** of the **Police Act**³ relied on by Mrs. Gillett which provides for the duties of the Police Department.

8. Learned Counsel relying on **Winfield and Jolowicz** submits that the burden of proof of justifying an arrest is upon the person effecting it and if he fails to do so he is liable for false imprisonment. Further, that unless it can be shown that the claimant was guilty of the offence or was about to commit it, the power of arrest depends on reasonable grounds for suspicion and it is necessary to first establish that the arrester actually did suspect the claimant.⁴
9. Learned Counsel further relied on the Privy Council Case of **Hussien v Chong Fook Kam**⁵ where Lord Devlin discussed reasonable suspicion and also **Archbold: Criminal Pleadings, Evidence and Practice**⁶ where the learned Author discusses the meaning of reasonable suspicion.
10. Learned Counsel, Mrs. Gillett after referring to the evidence of ASP Dennis Arnold submits that it would appear that the only reason the Claimants were initially arrested on the bridge in San Pedro is because they were Belize City men known to the Police. That ASP Arnold had nothing more to go on but a “hunch” or a “mere suspicion” that the Claimants were involved in the shooting death of Paul Salidivar because he held them in very poor

² **Constitution of Belize, Chapter 4 of the Laws of Belize, R.E. 2000**

³ **Police Act, Chapter 138**

⁴ **Winfield and Jolowicz on Tort (17th Edn) (2006) (pg 113).**

⁵ **[1979] A.C. 942**

⁶ **43 Edition, 1988 at page 1195**

esteem. As such, Mrs. Gillett contends that this cannot amount to reasonable suspicion.

11. As for the subsequent arrest, charge and imprisonment of the Claimants, Learned Counsel referred to paragraph 9 of the witness statement of ASP Arnold who said that *“a witness gave a statement that he saw the Claimants in this matter around the area at the time of the shooting and after further investigation I instructed Inspector Valdez now ASP to charge Micah Thompson, Shelton Tillett and Charles Woodeye.”* Further, Counsel said that under cross examination, ASP Arnold stated that he had obtained statements from three persons, namely, Brionnie Swift, Alex Soler and Francisco Arceo J.P. but admitted that none of the statements, which he claimed formed part of his investigation, contained any references to the Claimants.
12. Mrs. Gillett further argued that the statement obtained from the Forensic Specialist confirmed that it contained nothing implicating any of the Claimants in the alleged murder of John Paul Saldivar. Learned Counsel also referred to further evidence under cross examination and again in re-examination where ASP Arnold said that there was a statement implicating the Claimants but stated that the statement was on another file and that it did not form part of the investigation in relation to the alleged murder of Saldivar.⁷ Furthermore, Learned Counsel argued that ASP Arnold also confirmed that he gave a statement summarizing his investigation dated June 8th 2009, some four months after the charges had been laid against the Claimants, yet it contains no mention of any statement or evidence implicating the Claimants.

⁷ See page 67 of the Transcript

13. In further submissions, Learned Counsel submits that the Claimants suffered damages as a result of ASP Arnold unlawful actions. Learned Counsel relying on the case of **Gilbert Hyde v A.G. et al – Supreme Court Claim No. 88 of 2009 (unreported) Dec. 22nd 2010** contends that the Claimants' detention was as a direct consequence of the acts of the Defendants and they are therefore liable for the loss.
14. As for the quantum of damages, Learned Counsel, Mrs. Gillett referred to the case of **Thompson v Commissioner of Police**⁸ where Lord Woolf MR stated that *“In a straightforward case of wrongful arrest and imprisonment the starting point is likely to be about £500 for the first hour during which the plaintiff has been deprived of his or her liberty. After the first hours an additional sum is to be awarded, but that sum should be on a reducing scale so as to keep the damages proportionate with those payable in personal injury cases and because the plaintiff is entitled to have a higher rate of compensation for the initial shock of being arrested. As a guideline we consider, for example, that a plaintiff who has been wrongly kept in custody for 24 hours should, for this alone, normally be regarded as entitled to an award of about £3,000.00. For subsequent days the daily rate will be on a progressively reducing scale.”*

In arriving at a quantum of damages for the Claimants, Mrs. Gillett relied on **Gilbert Hyde v A.G. et al** and submits that if one were to use the award in Hyde as a basis for calculation, the Claimants would each be entitled to approximately \$366,000.00 as general damages:

$$11 \text{ months (330 days) / 18 days} = 18.3$$

$$18.3 \times \$20,000.00 = \$366,000.00$$

⁸ (1997) 2 All E R (CA) at page 774

15. However, she further submits that taking into consideration that sums awarded for initial shock are higher than those awarded for extended incarceration, the Claimants should each be awarded the sum of \$200,000.00 as general damages for their detention of some 11 months. For Special Damages, Learned Counsel submits that Attorneys' Fees is \$10,000.00 cumulatively and Charles Woodeye has pleaded and proven his loss of earnings in the sum of \$18,658.10.

Submissions for Defendant

16. The Defendants submit that the arrest of the Claimants were lawful. They relied on **section 42** of the **Police Act** which provides for police officer to apprehend without warrant where he has good cause to suspect that a crime has been committed. Further that the Police Officer must have proper and sufficient ground of suspicion. See the case of **Irish v. Barry**⁹ relied on by Learned Counsel where the learned Chief Justice Wooding quoted Lord Wright who said that the functions of police officers are not judicial, but ministerial, and it may well be that if they hesitate too long when they have a proper and sufficient ground of suspicion against an individual, they may lose an opportunity of arresting him. See also **Herniman v. Smith**¹⁰ relied on by Counsel where it is stated that, *It is not required of any prosecutor that he must have tested every possible relevant fact before he takes action. His duty is not to ascertain whether there is a defence, but to ascertain whether there is reasonable and probable cause for a prosecution.*
17. Learned Counsel, contends that there was reasonable circumstances for suspicion because ASP Arnold received information about a shooting in a place called Rocky Point on the Island of San Pedro and he quickly

⁹ 8 WIR 177 the Trinidad Court of Appeal

¹⁰ 1938] 1 ALL ER 1

gathered some law enforcement officers and headed to the area. It was while he was going there he encountered some men in a boat coming from the direction of that area and when he attempted to stop the boat an individual attempted to escape and was shot as a result. The team then took the injured individual for medical treatment. ASP Arnold and his team whilst heading back into the area where the shooting occurred encountered a group of men well known to the police to be men of ill repute not from San Pedro but Belize City at about 7: 30 pm that evening. Further, given the crime rate and the issue of gang violence in Belize, the men were arrested, three of whom are the Claimants in the case at bar.

18. Learned Counsel for the Defendants further submit that the test whether there was reasonable and probable cause for the arrest is an objective one.¹¹ That an ordinarily prudent and cautious man given the same factual circumstances that ASP Arnold had, would have acted in like manner and arrest the Claimants for questioning in relation to the shooting that occurred at the Rocky Point area. Further, that the Claimants were released on the 31st of January, 2010 within the constitutional period of 48 hours as mandated by **section 5 (3) of the Constitution of Belize**. The Defendants further contend that the police were within their right to stop and detain the Claimants for questioning whom they reasonably suspected may have committed a crime.¹² Further they informed the Claimants the reasons for their arrest which requirements are set out in **Christie v. Leachinsky**.¹³
19. In further written submissions, dated 13th September, 2011, the issue addressed was whether false imprisonment can be attributed to the Judicial Order of remand made by the Magistrate. Learned Counsel, Mr. Hawke submits that the two essential elements for the tort of false

¹¹ See **Dallison v. Coffery [1964] 2 ALL ER 610** relied on by Counsel

¹² See **Rice v. Connolly [1966] 2 ALL ER 649** at page 651 relied on by Counsel.

¹³ **[1947] 1 ALL ER 567**

imprisonment are that the person's liberty must be constrained and this must be done without lawful justification. Further, the element of intention is a substantial feature of the tort of false imprisonment. He further contends that the Magistrate's actions in making the order for remand was independent from the police actions. That this judicial decision breaks the chain of causation and the consequences of the decision would be too remote from the original wrong.

20. Learned Counsel, Mr. Hawke relied on several authorities to bolster his arguments, namely: (1) ***Diamond v Minter***¹⁴ (2) ***Harnett v Bond***¹⁵ (3) ***Lock v Ashton***¹⁶. He submits that that this trite proposition has been echoed in several cases throughout the Commonwealth Jurisdictions such as (1) ***Mkwanda v Attorney General***¹⁷ (2) ***Kamphata v. The Attorney General***¹⁸ (3) ***Pamiri Chakrapani Naidu v. Mathapalli Venkataraju***¹⁹ (4) ***Vuki v Qoro***²⁰ (5) ***Sorzano et al v. Attorney General et al***²¹ (6) ***Nye v State of New South Wales and Ors***²² (7) ***Crosfield v The Attorney General of Jamaica and Hamilton.***²³

21. Also, Learned Counsel, Mr. Hawke referred to the **Gilbert Hyde case**²⁴ and disagreed with the court's findings thereto and submits that the order of the Magistrate cannot be a direct consequence of the actions of the police officers since the learned magistrate was acting independently, judicially and within his own discretion.

¹⁴ (1941) 1 ALL ER 390 at 403

¹⁵ (1925) AC 669

¹⁶ (1848) 12 Q.B. 87

¹⁷ (Civil Cause No. 292 of 2004)

¹⁸ (Civil Cause No. 65 of 2004)

¹⁹ (1937) 1 MLJ 611

²⁰ [2004] FJHC 504

²¹ (H.C.A. S. No. 46 of 1996)

²² [2003] NSW 1212

²³ JM 2009 SC 84.

²⁴ ***Gilbert Hyde v The Attorney General Claim No. 88 of 2009***

22. Mr. Hawke further submits that the Magistrate is immune from any tort when acting judicially and within his jurisdiction. Further that the issue of the Magistrate's immunity was never canvassed or considered in the court's decision in ***Gilbert's case***. Thus, the case at bar can be distinguished from that case on the question of a judicial officer's immunity.
23. Learned Counsel relying on the **Crown Proceedings Act**²⁵ submits that the Magistrate who remanded the Claimants was at all material times acting judicially and within his judicial jurisdiction and as such is immune from this action which seeks to impeach the credibility of the Magistrate court's order. Learned Counsel further relied on several authorities for the principle that Judicial Acts are generally immune from civil suits.²⁶
24. As such, Learned Counsel submits that damages can only be awarded for the period of the time of arrest to the time of remand by Magistrate. That in respect of the Claimant, Shelton Tillett, that would be on the 14th February, 2009 for a period of 1 hour, and in respect of the other two claimants on the 16th February, 2009 for a period of 1 hour.

²⁵ **Section 4(5) of the Crown Proceedings Act, Cap. 167** of the Substantive Laws of Belize, Revised Edition 2001-2003 provides:

4 (5) *No proceedings shall lie against the Crown by virtue of this section in respect of anything done or omitted to be done by any person while discharging or purporting to discharge any responsibilities of a judicial nature vested in him, or any responsibilities which he has in connection with the execution of judicial process.*

²⁶ ***Bachu v The Commissioner of Prisons [2007] FJHC 115; In re McC (A Minor) 1985 AC 528 at 541; Maharaj v The Attorney General of Trinidad and Tobago (No 2) (1978) 30 WIR 310; Sirros v Moore [1974] 3 All ER 776.***

Reply to supplemental submissions

25. Learned Counsel, Mrs. Gillett in reply to the supplemental arguments filed on behalf of the Defendants that any award of damages by the court shall only be in respect of the period of detention prior to the order of remand by the Magistrate, distinguished most of the authorities cited by Learned Counsel, Mr. Hawke for the Defence. See written submissions dated 7th November, 2011.

Determination

Issue 1: *Whether there was reasonable suspicion to justify the detention, arrest and charge of the Claimants.*

The Law

26. The law is correctly stated by both sides that a person can be deprived of his liberty if there is reasonable suspicion that he has committed or about to commit a criminal offence under any law as provided by **section 5** of the **Constitution**. The Police may apprehend and summon before a Magistrate persons found committing or whom they may reasonably suspect of having committed any offence. This authority is given to them under the Police Act.
27. I am in agreement with Mrs. Gillett that the burden of proof of justifying an arrest is upon the person affecting it, failing which he will be liable for false imprisonment. The powers of arrest depends on reasonable grounds of suspicion and both sides have correctly stated the law as to what is reasonable suspicion. See **Hussien v. Chong Fook Kam** *supra* and **Archbold: Criminal Pleadings, Evidence and Practice**. In **Archbold** the learned author described reasonable suspicion as:

Reasonable suspicion does not require certainty. The officer does not have to be satisfied beyond a reasonable doubt. Reasonable suspicion in contrast to mere

suspicion must be founded on fact. There must be some concrete basis for the officer's suspicion related to the individual person concerned, which can be considered and evaluated by an objective third person. Mere suspicion, in contrast, is a hunch or instinct which cannot be explained or justified to an objective observer. Reasonable suspicion may arise from suspicious behavior of the person concerned or those with him. Reasonable suspicion cannot be supported on the basis simply of a higher than average chance that the person has committed or is committing an offence.

Evidence for Claimants

Micah Thompson

28. Micah in his witness statement stated that on January 30th 2009 at about 8:00 p.m. he was in the company of Shelton Tillett, Charles Woodeye and others in the Boca Del Rio area of San Pedro Town, when they were approached by a number of police officers who alighted from a nearby boat. He, Shelton, Charles were thrown to the ground, searched, detained and transported to the San Pedro Police Station. They were all detained for 48 hours. He stated that when he inquired as to the reason for his detention he was told by a Police Officer that they were detained in relation to a kidnapping and shooting that had occurred.
29. Michah stated that after being detained for some 48 hours, Shelton, Charles and himself were released from Police custody and were immediately returned to Belize City.
30. On Saturday February 7th 2009 at about 4:00 p.m., Michah stated that he was in the vicinity of King Street when he was picked up by a Police Unit and he was told that he was wanted for questioning by ASP Dennis Arnold in relation to the murder of John Paul Saldivar. He was taken to the Queen Street Police Station and detained until the afternoon of Monday February

9th 2009 when Police Inspector Martinez informed him that the police officers who picked him up had no warrant for his arrest but since he was there, he would go ahead and question him. Martinez inquired into the purpose of his visit to San Pedro on January 30th 2009 and so he gave him a verbal statement explaining that he was on the island visiting with his friends. Micah stated that thereafter, his attorney Kareem Musa went to the police station and he was released since he had already been detained for 48 hours.

31. Michah further stated that on February 14th 2009 he was informed by a cousin of Shelton Tillett's that he had been charged for murder and conspiracy to commit murder in relation to the death of John Paul Saldivar. He was also told by Shelton's cousin that his name appeared on the charge sheets along with the names of Charles Woodeye, Kyle Patton and another. As such, on Monday February 16th 2009, he and Charles Woodeye went to the Queen Street Police Station at around 8:00 to inquire into the matter and upon arrival there they were finger printed and photographed. Thereafter, they were given two charge sheets. See Exhibit "**MT 1**" and "**MT 2**" for copies of charge sheet.
32. On the said day, February 16, 2009 they were taken to the Magistrate's Court and arraigned for the offences of "Murder" and "Conspiracy to commit murder" in relation to the death of John Paul Saldivar. Thereafter they were remanded to the Kolbe Foundation pending trial.
33. On January 13th 2010, the charges against him were withdrawn by the Department of Public Prosecution due to insufficient evidence. On that same day the Director of Public Prosecutions publicly admitted that from the outset there was no evidence against him and the other two Claimants. See Exhibit "**MT 4**" for a copy of a transcript from Channel 7 news which sets out its interview with the Director of Public Prosecutions.

Shelton Tillett

34. Shelton in his witness statement related similar circumstances as to how they were detained and subsequently charged for the murder of Saldivar. He also stated that on January 30th 2009 at about 8:00 p.m. he was in the company of Micah, Charles and others in the Boca Del Rio area of San Pedro Town, when they were held up by San Pedro Police Officers who alighted from a nearby boat. He stated that Micah, Charles and himself were searched, detained and transported to the San Pedro Police Station where they stayed for forty eight hours and then released late Sunday night.
35. Shelton stated that on February 13th 2010 at about 10:00 a.m. he was taken into police custody and the following day he was handed two charge sheets by Police Inspector Valdez. Upon reading same he noted that Micah, Charles, Kyle Patton and Eric Swan were also charged along with himself for murder and conspiracy to commit murder of John Paul Saldivar. Shelton stated that he was kept in Police Custody for some 2 ½ days.
36. Shelton further stated that on Monday February 16th 2009, Micah, Charles and himself were taken to the Belize City Magistrate's Court where they were arraigned for the offences of "Murder" and "Conspiracy to commit murder" in relation to the death of John Paul Saldivar and remanded to remanded to the Kolbe Foundation.

Charles Woodye

37. The evidence of Charles also confirms the circumstances under which all three Claimants were arrested. He stated that on January 30th 2009 at about 8:00 p.m. he was in the company of Micah Thompson, Shelton Tillett and others in the Boca Del Rio area of San Pedro Town, when all three of them were detained by police officers who alighted from a nearby boat.

They were searched and detained for 48 hours at the San Pedro Police Station and thereafter released.

38. Charles stated that on February 16th 2009, he went to the Queen Street Police Station after learning that his name appears on the charge sheet and there he was finger printed, photographed and handed two charge sheets. That Micah, Shelton and himself were taken to the Belize City Magistrate's Court and were arraigned on the charges of "Murder" and "Conspiracy to commit murder" in relation to the death of John Paul Saldivar.

Evidence for the Defence

39. Dennis Arnold, Assistant Superintendent of Police and the officer in charge of the San Pedro and Caye Caulker Police Stations in Belize stated in his witness statement that as the officer in charge he has direct command of the administration and operations of the San Pedro and Caye Caulker Police Stations. Further, that he has been a member of the Belize Police Department for the past twenty five years.
40. ASP Arnold stated that he has knowledge of the matters concerning the Claimants, Micah, Charles and Shelton. That on the 30th January, 2009 that around 5:45pm he received a phone call that gun shots were heard coming from the Rocky point area situate in San Pedro. This area was about 18 to 20 miles from the San Pedro Police and as a result he mustered some support from the Belize Defence Force and ranks attached to the San Pedro Police Station and proceeded to the Rocky Point area. He arrived there about 6:30pm. He said the only way into the area was by boat.
41. ASP Arnold stated that whilst heading to that area on the river along with the law enforcement party, they encountered a boat coming from the direction of the Rocky point area. He stopped the boat and entered same

along with the party of law enforcement officers. He observed Eric Swan and another person in the boat and Swan attempted to escape and as a result he was shot by the Police. He was taken to the poly clinic for medical attention.

42. ASP Arnold stated that he then proceeded with the party of Policemen and went back into the river. At this time it was about 7:30 pm and whilst heading to the Rocky Point area, he saw Micah, Charles, Shelton and others on the San Pedro Bridge which links the north of San Pedro to the South. The bridge was properly lighted so he was able to identify them. Upon seeing the men his suspicions were aroused as to their existence in San Pedro at around 7:15pm that night. As a result, the men were detained for questioning in relation to gun shots heard in the north of San Pedro. They were all known by the Police from the George Street area in Belize City.
43. ASP Arnold further stated that a search was conducted for drugs, firearms and ammunition which yielded US \$1,800 and BZ \$7,800. He stated that the men explained that they went to buy a vehicle in San Pedro.
44. ASP Arnold stated that thereafter himself and a party of Policemen went back on the river to the Tranquility Bay area where they met with a few witnesses who indicated what they saw and heard. As a result, the Police maintained a presence in the area to see if any more shots would have been fired but they were no more gun shots. So they returned to the San Pedro Police Station where the men detained were questioned.
45. ASP Arnold stated that he gave the Commissioner of Police a debriefing and on the 31st January, 2009 all the Claimants were released on the same day and investigations into the matter continued.

46. ASP Arnold further stated that two reports were made to the Police about shooting in the said area and in one report it was said that Bronnie Swift, Alex Solar, Victor Garnett and John Saldivar were in the Rocky Point Area when they heard shots fired. As a result they ran but lost track of one John Paul Saldivar and a missing person's report was made for him. The body of Saldivar was later discovered in the Rocky Point area.

47. Further, ASP Arnold stated that a witness gave a statement that he saw the Claimants around the area at the time of the shooting and after further investigation he instructed Inspector Valdez now ASP to charge Micah , Shelton, and Charles. That on the 14th February, 2009 Shelton was arrested and charged with the offence of conspiracy to commit murder and murder of John Paul Saldivar. On the 16th February, 2009 Micah and Charles were arrested and charged for the crime of conspiracy to commit murder and murder of Saldivar.

48. In cross-examination, ASP Arnold testified that the US \$1800. was found on Shelton and the BZ \$7,800 was found on James Swan who is not a Claimant in this matter. He then explained the location of the Rocky Point Area which he said is north of the island, about eighteen miles from the police station. He further stated that they detained the Claimants by the San Pedro bridge that links the north to the south and that the bridge is a distance away from the Rocky Point Area. ASP Arnold stated that the Rocky Point area can only be accessed by boat or on foot. That if one is to walk from the bridge, they would have to walk 14 miles. He further stated that he did not see the Claimants in the boat with Eric Swan that was coming from the Rocky Point Area. It was an hour after he saw the boat that he saw the Claimants on the bridge. He also said that the Claimants had no firearm and no drugs.

49. In further cross-examination, ASP Arnold said that he received three reports in this matter, namely from Brionnie Swift, Ivan Tunn and one from Francisco Arceo. He further said that he received another statement from Ivan Tunn but that one is in relation to a double murder. He testified that all the reports are evidence before the court except that of Ivan Tunn which statement is in another file.²⁷ When shown all the statements given by the three persons and asked to identify the evidence which implicates the Claimants, he was unable to do so as there was no evidence which implicates the Claimants to the murder of Saldivar. ASP Arnold further testified that a firearm was found 200 yards away from Saldivar body which was processed but there was no evidence that it belonged to the Claimants. He admitted that the investigation file has no evidence implicating the Claimants.
50. He further testified that he detained about six or seven persons which includes the Claimants who were in the vicinity of the bridge. However, four or five of them were charged for the murder.
51. In re-examination, ASP Dennis Arnold explained that the statement of Ivan Tunn is not on the investigation file because it would do better on the double murder than the single murder.²⁸

Assessment of evidence

52. John Paul Saldivar was shot and killed in the Rocky Point Area in San Pedro on 30th January, 2009. On that day, the Claimants who are from the George Street area in Belize City were in San Pedro and according to their evidence they were there to visit friends and purchase a vehicle. On the said 30th January, 2009 around 8:00 pm. they were all detained for 48 hours by the San Pedro Police and then released. On the 16th February,

²⁷ The parties by consent put all the disclosures into evidence.

²⁸ See page 84 of Transcript

2009 all three Claimants were arrested and charged for the crime of conspiracy to commit murder and murder of Saldivar. On careful consideration of the evidence before me, it is my view that there was no reasonable suspicion for the initial arrest and the subsequent arrest and charge of the Claimants for murder and conspiracy to commit murder of Saldivar.

Location of Claimants

53. The evidence of all the Claimants is that they were in the Boca Del Rio area of San Pedro Town when they were detained for 48 hours on 30th January, 2011. ASP Arnold was more specific as to location as he testified that the Claimants were on the San Pedro Bridge which links the north of San Pedro to the South.

Location of the shooting

54. The evidence of ASP Arnold is that the murder of Saldivar occurred in the Rocky Point Area which is north of the Island. The only access to this area is by boat or foot.

Distance from San Pedro Bridge to Rocky Point Area

55. According to ASP Arnold if one was to walk from the San Pedro Bridge to the Rocky Point Area where the homicide of Saldivar occurred, they would have to walk about 14 miles.

Time of shooting and arrival of Police

56. ASP Arnold received reports sometime around 5:45 pm whilst at the Police Station that gun shots were fired at the Rocky Point Area. This area is about 18 to 20 miles from the San Pedro Police Station. He and his team went to the Rocky Point Area by boat and arrived there about 6:30

p.m. It took the team one hour and twenty five minutes to arrive at the Rocky Point Area.

Encounter on river on way to Rocky Point Area

57. Whilst ASP Arnold and his team were heading to the Rocky Point Area along the river they encountered a boat coming from the Rocky Point area. He stopped the boat and entered same along with members of his team. Eric Swan was in the boat and another person. The other person was not one of the Claimants. Eric Swan attempted to escape and he was shot by police and thereafter taken for medical attention.

Onward journey to Rocky Point Area

58. It was about 7:30 p.m. when ASP Arnold and his team went back into the river and headed to the Rocky Point Area. It was whilst heading there that he saw the Claimants on the San Pedro Bridge which is about 14 miles away from Rocky Point and the only access is by boat or foot. The Claimants were not seen in any boat and they could not have walked from the Rocky Point Area to the San Pedro Bridge without being seen by the Police who went promptly to the area by boat.

The search and detention

59. The Claimants were searched and detained for drugs and ammunition. The police found US\$ 1800.00 on Shelton. There is no link to the money found on Shelton and the murder of Saldivar.

What aroused ASP Arnold's suspicions in the first instance?

60. ASP Arnold said that upon seeing the Claimants on the San Pedro Bridge his suspicions were aroused as to their existence in San Pedro around 7:15 in the night. Further that, they were all known by the Police from the

George Street area in Belize City. In my view, at this point in time all ASP Arnold had was a mere suspicion and nothing else.

Suspicious on further investigations

61. ASP Arnold's evidence is that on further investigations reports were received from three persons, Bronnie Swift, Ivan Tunn and Francisco Arceo. All the reports are before the court except the one from Ivan Tunn which statement is in another file according to ASP Arnold. There is nothing in these statements before the court which implicate the Claimants in Saldivar's murder.
62. ASP Arnold was shown the statements during cross-examination and asked to identify the evidence which implicates the Claimants in the murder of Saldivar but he was unable to do so because there was not one iota of evidence linking them to the murder.
63. ASP Arnold's explanation as to the absence of the Ivan Tunn's statement on the investigation file is totally unacceptable. The Defence had to show to this court reasonable suspicions founded on fact. To say that Tunn's statement is on another investigation file because it will do better on a double murder than single murder of Saldivar is ludicrous. Reasonable suspicion for the arrest and charge of the Claimants has not been proven by the Defendants.

Conclusion

64. When the Claimants were arrested for the first time it was because of their presence in San Pedro at 7:30 at night and they reside in Belize City in the George Street Area. They were seen by ASP Arnold and his team about over three hours after the gun shots were heard. The Claimants were searched for drugs and firearm but none was found on them. US\$ 1800.00 was found on Shelton but there is no evidence linking this money to the

homicide of Saldivar. In fact, there is no evidence at all linking them to the homicide of Saldivar. They were not in the boat with Eric Swan and they were not seen walking from the Rocky Point Area when ASP Arnold and his team were in the boat going to the Rocky Point Area which took them about one hour and twenty five minutes. Eric Swan and the other person with him were the only persons they encountered on the river and it was an hour after seeing them that ASP Arnold saw the Claimants on the San Pedro Bridge. Further, there is no evidence showing any conspiracy by the Claimants to commit the murder of Saldivar.

65. The Claimants were detained for 48 hours for questioning and thereafter released. The only reason for that first detention, as clearly shown by the evidence, was because the Claimants were from the George Street Area in Belize City and seen in San Pedro at 7:15 at night. In my view, this cannot amount to reasonable suspicion. Further, there is no evidence that the Claimants were behaving suspiciously.
66. The reason for the subsequent arrest and charge based on further investigations has not been proven. ASP Arnold failed to prove there was reasonable suspicion that the Claimants were responsible for the murder of Saldivar. The statements he put into evidence did not implicate the Claimants at all. Accordingly, I find that the Defence has failed to establish that there was reasonable suspicion to justify the detention, arrest and charge of the Claimants.

Issue 2: Whether the Claimants are entitled to damages and if so, the quantum of damages.

67. All three Claimants gave evidence on the damage suffered as a result of the detention for eleven months in prison. The evidence of Damages will be dealt with separately for each of the Claimants.

Micah Thompson

68. Micah testified that on their arraignment, Shelton, Charles and himself retained the services of Mr. Kareem Musa to represent them at the preliminary inquiry, and they paid him a total of \$5,000.00 in legal fees. See Exhibit “**MT 3**” for a copy of letter from Kareem Musa acknowledging receipt of said payment. They appeared in court about nine different occasions, all of which resulted in adjournments because the case was still being investigated.
69. Micah’s evidence is that after arraignment he was incarcerated in the super-max section of the Kolbe Foundation. Initially, he slept on a piece of sponge on the ground until Shelton and himself were eventually given a bunk bed to share. He explained that the super-max section of the prison is reserved for convicted murderers and his family members were allowed to visit him by appointment only. Further, he was allowed only two recreational periods per week, each being half hour in length.
70. Micah testified that this experience in super-max was very traumatic for him because he was in the same section of the prison with the man who killed his mother which was a constant reminder of the very painful experience. Further, Micah stated that during the period of the 11 months during which he was incarcerated he saw his son (8 years old) twice and his daughter (three years old) about nine times. Also, that he was unable to provide for his children during these 11 months since he could not work.
71. Micah said that by reason of his false arrest and imprisonment he suffered mental and physical pain, incurred expenses in defending himself and as such suffered loss and damage.

Shelton Tillett

72. Shelton confirmed that he, Micah and Charles jointly retained the services of Mr. Kareem Musa and they paid \$5,000.00 in legal fees. Shelton said he also retained the services of Mr. Ellis Arnold S.C. and paid him \$5,000.00. See Exhibit “ST 4” for a copy of a receipt from Arnold & Co. evidencing said payment. Further, that both Mr. Arnold and Mr. Musa appeared in court on about nine different occasions, all of which resulted in adjournments.
73. Shelton stated that whilst on remand at the Kolbe Foundation, he was not placed in the remand section of the prison as is standard procedure but was in the super-max section of the prison and gave the same evidence as Micah on the conditions at Super-max. Further, that he has three children, ages 11, 8 and 4 years old and at the time of imprisonment he had only been married for about a year. He stated that during his imprisonment his marriage suffered greatly and upon his release from prison, there was little that he could do to save it and so shortly after his release his wife abandoned the matrimonial home and he became the sole provider and caregiver to his three children.

Charles Woodye

74. Charles also testified that Kareem Musa was paid \$5,000.00 in legal fees. Further, that during the time he was arrested he was employed as a Records Clerk with the Department of Housing and Planning and as result he was unable to go to his place of work and employment and so he was summarily terminated. At the time his employment was terminated his earnings were \$384.50 every fortnight. He said that after being released from prison and cleared of the charges of murder and conspiracy to commit murder, he was unable to obtain gainful employment because his arrest and detention had been broadcasted during the evening news on Channel 5

and Channel 7 and no one would hire him. He said that it was not until on or about March 14th 2011 that he was able to obtain employment with the Ministry of Works.

75. According to Shelton, prior to February 16th 2009, he had never spent any time at the Kolbe Foundation or any other prison so this was a very new and horrifying experience for him. Further, that since the date of his arrest, he has not been questioned in relation to the death of Saldivar. Also, he has not been presented with any evidence implicating him in the his death. He said that by reason of his false arrest and imprisonment and malicious prosecution, his reputation has been harmed, he suffered mental anguish, and suffered loss and damage.

Determination

The Law

76. Learned Counsel, Mr. Hawke for the Defendant submits that the Claimants are not entitled to any damages after they were remanded by the Magistrate. He relied on a number of authorities and submits that the **Hyde's case** was wrongly decided because when Mr. Hyde was remanded it was an independent decision by the Magistrate. The authorities cited by Counsel are persuasive only and the court is not convinced that the **Hyde's case** was wrongly decided. Further, I am in agreement with Learned Counsel, Mrs. Gillett's submissions that the authorities are distinguishable from the case at bar. I will briefly address these authorities.
77. I agree with Mrs. Gillett that in ***Diamond v Minter*** that the Magistarte exercised his discretion and denied bail. As such the order of remand had broken the chain of causation since it was an independent act on the part of the Magistrate. In the case at bar, the Magistrate did not have the jurisdiction to consider releasing the Claimants on bail since **section 56 (3)**

of the Indictable Procedures Act, Chapter 96 of the Laws of Belize, provides that “A magistrate shall not admit to bail any person charged with treason, or murder.”

78. In the case of **Harnett v Bond** the facts are substantially different from the case at hand. The physicians who had the Plaintiff in their care, had a duty to properly assess his mental state and had the power to release him if they thought him sane. Both Counsel for Claimant and Counsel for Defendant relied on a passage from the Court of Appeal where it discusses decisions made independently and judicially by a Magistrate. It is stated at page 517 that:

*... there is no doubt that the action of a third party does not necessarily break the chain of causation and make the subsequent damage too remote ...but it appears to me that when there comes in the chain the act of a person who is bound by law to **decide the matter judicially and independently**, the consequences of his decision are too remote from the original wrong which gave him a chance of deciding...”²⁹. (emphasis mine).*

79. Learned Counsel, Mr. Hawke relying on the authority, submits that in the case at hand, the Magistrate acting in his judicial capacity which is an independent judicial act, was obliged to read the charges to the Claimants and those charges being indictable charges the Magistrate quite properly remanded the Claimants. I do agree with Mr. Hawke that the Magistrate had to remand the Claimants since it was an indictable offence for the

²⁹ [1924] 2 K.B. 517. The Court of Appeal decision was affirmed by the House of Lords in **Harnett v Bond (1925) AC 669**

charge of murder. However, this cannot amount to deciding the matter judicially and independently as stated in **Harnett v Bond** where the physicians had to do their own examinations and assessments of the patient and decide if he was sane. It is my considered view that the Magistrate in this case did not exercise its own independent judicial discretion so as to introduce a new cause which relieves the third defendant of liability of further damage. The Magistrate could not even consider bail in this case as the charges were for murder which is not aailable offence. As such, I am in agreement with Learned Counsel, Mrs. Gillett that the incarceration of the Claimants was an act continuing from the third Defendant's arrest and charge and was not an independent judicial act where the Magistrate had to consider and decide.

80. In the case of **Lock v Ashton** the Magistrate heard witnesses and thereafter made a decision independently and judicially to remand the Plaintiff thus distinguishing it from the case at bar where the Magistrate did not have a hearing. In **Pamiri Chakrapani Naidu v. Mathapalli Venkataraju** the Magistrate took statements from both parties and then made an independent and judicial decision. Likewise in the case of **Vuki v Qoro**, the magistrate exercised his discretion when the prosecution opposed bail and it was denied. This is an independent and judicial order made by the magistrate after hearing arguments.

81. In the case of **Mkwanda v Attorney General**, the offences were theft and illegal possession of firearms and here the Magistrate had the power to grant bail unlike the case at bar. The Magistrate did in fact later granted bail in the case. Likewise, in **Crosfield v The Attorney General of Jamaica and Hamilton JM** the offences in that case involved the break-in of a Warehouse. This is aailable offence but when he was taken to Court on 6th May 1996 the Magistrate remanded him. He was eventually granted bail in July 1996. The remand by the Magistrate did break the chain

because an independent decision was made to remand instead of granting bail. In **Kamphata v. The Attorney General**, the Claimant was arrested on allegations of illegal possession of firearms and ammunition. The Plaintiff was not given bail and was remanded from the date he was arrested to the date he was acquitted. This was an independent and judicial Order of the Magistrate.

82. As for the case of **Sorzano et al v. Attorney General et al**, I am not persuaded by the application of the **Diamond v Minter** authority to the facts of that case. As for **Nye v State of New South Wales and Ors** there is not sufficient facts to determine what transpired before the Magistrate before the Plaintiff was remanded.
83. I do not consider it necessary to get into any discussions on judicial immunity since the Magistrate did not have to decide anything, that is to independently make any judicial decision. The Magistrate had no power to release the Claimants since the charge was for murder. There were nine adjournments because the Police were still investigating. Eventually it was the Director of Public Prosecutions who had to step in and drop the charges. Accordingly, I find that the Claimants are entitled to damages for the eleven months they were imprisoned.

Assessment of Damages

Pecuniary loss

84. The Claimants paid fees for representation in the Magistrates court. Their attorneys appeared in court for about nine adjournments. This in my view is recoverable.

85. One of the Claimant's also claim for loss of employment as a result of his incarceration. Loss of employment is recoverable as seen in the case of **Childs v Lewis**³⁰ cited in **McGregor on Damages, Eighteen Edition**³¹. The loss of employment by Woodye flow from his arrest.

Micah Thompson

86. In the case of Micah, he has proven that he and the other two Claimants jointly paid \$5,000.00 for Attorney Fees. He is therefore entitled to \$1,666. as special damages being one third of the legal fees paid to Mr. Musa.

Shelton Tillett

87. Shelton has proven that he is entitled to \$1,666. being one third of the fees paid to Mr. Musa and \$5,000.00 in legal fees paid to Mr. Ellis Arnold S.C. He is therefore entitled to \$6,666.00 in special damages.

Charles Woodye

88. In the case of Woodye he has proven that he is entitled to one third of the legal fees, being \$1,666.00. He has also proven that he lost eleven months earnings because he was summarily terminated as a result of the charge. He was paid \$384.50 per fortnight. For eleven months his loss of earnings to which he is entitled is \$8,459.00.

General Damages

89. The Claimants also claimed General Damages which includes aggravated and exemplary damages. In my view, the Claimants are entitled to damages for injury to their liberty, that is for the 11 months spent in prison and injury to their feelings which includes mental suffering.

³⁰ (1924) 40. T.L.R. 870

³¹ para. 37-015.

90. Learned Counsel, Mrs. Gillett relying on the **Hyde case** submitted that the Claimants in the case at hand are entitled to damages in the amount of \$200,000.00 each which is ten times the amount awarded to Mr. Hyde. While I agree that the principles in that case is applicable to this case there are other circumstances also which must be considered in making an award of damages.
91. The principle stated in the **Hyde case** is that damages for the loss of liberty should reflect the length of the unlawful detention, but should be awarded on a progressively reducing scale since the Claimant is entitled to a higher rate of compensation for the initial shock of being arrested. See the case of **Thompson v Metropolitan Police** *supra*.
92. However, the circumstances of the **Hyde case** is different from the case at hand as Mr. Hyde is a policeman who was doing his duties as a law enforcement officer when he reported what he witnessed and was instead slapped with a charge of conspiracy to commit murder. The Defendants on the other hand, are not law enforcement officers and as such, I do not accept that the award in Hyde case should be compared at all to the case at hand. In my view, an award should not only be dependent on the time factor but must be subject to other circumstances, such as aggravated circumstances and in the case of Hyde, as can be seen by the evidence, he was disgraced by his fellow officers for upholding the law.
93. In the case at hand, the Claimants have proven that they spent 11 months in a super max prison with convicted murderers and they all showed how that affected their lives. In my view, they are entitled to damages that is reasonable, but damages should not be calculated on a daily or hourly rate by applying awards of other cases. Each case must be determined based on its own facts. After careful consideration, it is my view that an award of \$25,000. for each of the Claimants is reasonable for the loss of their liberty.

94. **Conclusion**

I find that the Defendants have failed to establish that there was reasonable suspicion to justify the detention, arrest and charge of the Claimants.

I find that the Claimants are entitled to damages for the eleven months they were imprisoned.

General Damages

I find that each of the Claimants is entitled to \$25,000.00 as general damages for the loss of their liberty.

Special Damages

I find that the Claimants are entitled to Special Damages as follows:

Micah Thompson

Legal fees in the sum of \$1,666.

Shelton Tillett

Legal fees in the sum of \$6,666.00.

Charles Woodye

Legal fees in the sum of \$1,666.00.

Loss of earnings in the sum of \$ 8,459.00.

95. **Interest**

Interest is awarded at the rate of 6% from the date of the claim (29/07/10) to the date of the judgment on the award of damages.

96. **Cost**

Prescribed cost is awarded to Michal Thompson in the sum of \$6,666.50

Prescribed cost is awarded to Shelton Tillett in the sum of \$7,916.50

Prescribed cost is awarded to Charles Woodye in the sum of \$ 8,781.25.

Dated this 15th day of November, 2011

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Minnet Hafiz

Supreme Court Judge