

The Republic of Trinidad & Tobago

In the High Court of Justice

Claim No. CV2009-01446

BETWEEN

JOEL CROMWELL

CLAIMANT

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

DEFENDANT

Before the Honourable Mr Justice James C. Aboud

Dated: 3 December 2012

Representation:

- Mr Yaseen Ahmed for the claimants
- Ms. Linda Fazia Khan instructed by Ms Renessa Tang Pack of the Chief State Solicitor's Department for the defendant

JUDGMENT

1. This is a case that revolves around an event that gave rise to an unsuccessful criminal prosecution. The claimant says that his version of the event proves that the prosecution was malicious. The Attorney General, who is sued in his official capacity to answer for the actions of Corporal Garnet Manswell, says that the police officer's version proves otherwise. There are three witnesses. It is one man's word against the other. The witness statements, the documentary evidence, and the *viva voce* evidence during cross examination must be thoroughly analysed.

The Pleadings

2. I will first briefly deal with the pleadings. The Statement of Case claims damages for malicious prosecution and false imprisonment for events that are alleged to have occurred

in 1995. The claim for false imprisonment (for a period of several hours in June 1995) was discontinued after the defendant pleaded a limitation defence. What remained was the claim for malicious prosecution. The amended statement of case alleges that the claimant was walking down Frederick Street on 21 June 1995 when he observed policemen in the process of removing street vendors. It contends that Officer Manswell, without cause, spoke roughly to him and he replied to Officer Manswell “in a civil manner”. Thereafter, it contends, he was arrested for using obscene language and resisting arrest, was beaten, and then charged with the two offences. The amended statement of case alleges that, after being charged on 21 June 1995 “the claimant attended the Magistrates Court on several occasions where he pleaded not guilty and on 26 April 2005 the charge was dismissed...due to the non-appearance of the complainant”. It will be noted that the time between the laying of the charge and the acquittal in the Magistrates Court is almost 10 years.

3. The Defence alleges that the police officers, among them Officer Manswell, were in the process of removing vendors from the pavement and roadway in Port of Spain. It alleges that Officer Manswell heard the claimant said in a loud tone of voice “All you [f.....g] police always [f.....g] harassing people”. Upon being approached for the alleged obscenity the claimant is said to have walked away, then pulled his hand away when apprehended, at which point he was arrested and later charged. The Defence thereafter offers an explanation for the protracted prosecution. It contends that on 29 November 1995 (the second time that the matter was called) the claimant did not appear, that a warrant was issued for his arrest, that he was later re-arrested some nine years later but Officer Manswell was not informed of his re-arrest and the resumption of the prosecution. The Notes of Evidence from the Magistrates Court is attached to the statement of case. There is a gap of some nine years in the record of dates of hearing of the charges between 29 November 1995 (when the warrant for arrest was issued for non-appearance) and 5 April 2004 (when hearings resumed). At some point prior to 5 April 2004 the claimant was re-arrested.

4. In the Reply the claimant says that an interaction took place between himself and Officer Manswell. He says that he remarked to his friend “People does get lock up for street vending?” It was at this point that Officer Manswell approached him.

The evidence in chief in support of the claimant’s case

5. The Claimant testified in his witness statement that he was walking down Frederick Street, Port of Spain, and upon reaching Salvatori Building, he noticed uniformed police officers removing vendors from the sidewalk. He also says that it “appeared at first glance that a few persons were also being arrested.” He says that a lot of people were looking on at what was taking place and that as he made his way through the crowd of police men and street vendors, he made a remark to his friend and neighbour, Marcel Rennie: “People does get lock-up for street vending?” He said he made this remark because this was the first time he had witnessed something like this.
6. At this point Special Reserve Police Constable Garnet Manswell is alleged to have approached him in a rough and aggressive manner and shouted “What you say, is you I talking too ... come here boy, you feel you will get away?” The Claimant says that he and his friend were simply strolling along the sidewalk. He said he stopped and responded to officer Manswell by saying “I don’t know what you talking about. I on my way home.” Officer Manswell is then alleged to have grabbed him by his shirt and the waist of his pants and aggressively directed him into a Police bus. He says he was shoved and pushed along the street on to Independence Square, and pushed into “a marked blue bus” that had 20 to 25 seats. There was a man seated at the entrance of the bus in handcuffs.
7. The Claimant alleges that officer Manswell told him to lie down on the floor of the bus and he refused, whereupon he was struck and kicked and forced to lie down. Thereafter other officers began kicking and stomping about his body. He was then taken to the City Police Headquarters on Knox Street. He says that when he arrived at the Police Station one of these unnamed police officers made him undress and squat and thereafter kicked him in the chest. He says he was detained from approximately 10:30 a.m. to

approximately 7:30 p.m. at which time he says that he was charged with using obscene language and signed a bail bond to appear in court the next day.

8. In his witness statement the Claimant offers an explanation to that part of the defence that deals with the non-appearance of officer Manswell in the Magistrates' Court. He says that he went to the Magistrates' Court on 22 June 1995, to answer the charges of using obscene language and resisting arrest. He was unrepresented, pleaded not guilty and the matter was adjourned to 27 November 1995. He says he retained a prominent attorney-at-law who charged him \$3,000.00 to defend the case which he paid but did not get a receipt. He says the attorney-at-law appeared on one occasion in 1995, when he was remanded, and did not appear thereafter. The Claimant says at paragraph 13 of his witness statement, "On many of the occasions I attended court there was no appearance by the complainant. At one of the hearing in 1995, where I have a cross-charge against officer Manswell, I was unaware that the matters would be called simultaneously and after the Judge dealt with the charge of obscene language, I immediately left the court, unaware of the second part of the case."
9. The Claimant says at paragraph 14 of his witness statement "A warrant was issued for my arrest on the 27th November, 1995 and I was arrested on the 4th August, 2004 and was granted bail with a \$5,000.00 surety on the 4th August, 2004 whilst at City Police Headquarters, Port of Spain. I was allowed to sign for my own bail and allowed to leave. I did make enquiries of the matter from time to time during the period 1995 to 2004 from the charging officer Manswell and was under the impression that the matter had been dismissed. Thereafter I ensured my attendance was noted for all subsequent hearings of the matter."
10. The claimant says in his witness statement he attended the Port of Spain Magistrates' Court on six occasions "from 1995 to 2005." Eventually on April 26, 2005 the charges were dismissed due to the non-appearance of officer Manswell. Attached to the witness statement is a copy of the Notes of Evidence from the Magistrates' Court.

11. The claimant called Marcel Rennie as his witness who confirmed in his witness statement that he saw Police Officers involved in an action against street vendors and that the claimant asked him whether the police were locking-up people for vending. He says in his witness statement that officer Manswell asked the claimant what he was saying. The Claimant did not respond and officer Manswell then “grabbed” the claimant and said “Is you I talking to.” At that point he got scared and walked across the road and other policemen came and surrounded the claimant. He says the claimant was then manhandled and taken to a large police bus in which, he says, the claimant received blows to his face and upper body and thereafter he could not see the claimant but saw the officers bending down over him and their hands rising and falling.

The evidence in chief in support of the defendant

12. The sole witness for the defence was officer Manswell. In his witness statement, he said that on 21 June 1995, he was detailed to conduct a police exercise for the removal of illegal vendors from the pavement and roadway. He and his party observed a number of vendors on Independence Square North, in the vicinity of Scotia Bank. He says he was in the process of arresting the vendors and removing the stalls. He says he knew the claimant about two years prior to that date since he had cause to speak to him on several occasions about illegal vending in the same vicinity. He says that when he was about three feet away from the claimant he heard him say in a loud tone of voice “All yah [f.....g] Police always [f.....g] harassing people.” He said he walked towards the claimant, who started to walk quickly in a westerly direction. He then caught up and held him by his left hand, informed him of the offence of using obscene language, and arrested him. He says the Claimant resisted arrest by pulling away his hand and running off, at which point he and some of the police officers gave chase and he caught him by holding on to his pants. Officer Manswell also says that he again informed him of the offence he had committed in his presence and the claimant is alleged to have said “Boss, I wasn’t talking to you.” He says he placed the claimant in a seat at the back of a police jeep and he was taken to City Police Headquarters on Knox Street. He says he charged him at 11:55 a.m.

13. Officer Manswell further says in his witness statement that he honestly believed that the Claimant committed the offences because he had actually heard and seen the offences being committed. At paragraph 9 of his witness statement, officer Manswell says as follows:

On 22nd June, 1995 I attended the Port-of-Spain 3rd Magistrates' Court where the Claimant pleaded not guilty and was granted bail in the sum of \$1,500.00 to cover both charges. On 27th November, 1995 the matter came up again in the court. I arrived at the Port of Spain Magistrates Court and was informed that the Claimant did not appear in court and a warrant was going to be issued for his arrest. I did not attend court on the other occasions from 2004 because by then I was attached to the Court and Process Branch of the Police Service and I had other court matters in which I was a witness and which came up at the same times as the claimant's matter. Also, I was never informed at the time that the claimant was re-arrested and had been appearing in court.

14. The Notes of Evidence that were tendered in evidence confirmed the following facts:-

- 22 June 1995: complainant and accused appear; charges are read; accused pleads not guilty; remanded 13 September 1995.
- 13 September 1995: no appearance complainant; accused appears; his attorney-at-law is absent; remanded 27 November 1995, application on both sides.
- 27 November 1995: no appearance defendant at 9:50 a.m.; information sworn to warrant on arrest, Bail with surety \$5,000.00 to cover both charges.
- 5 August 2004, no appearance complainant; defendant appears; remanded 7 September 2004.

- 7 September 2004 to 26 April 2005 the matter was called on six occasions (on one occasion both parties did not appear, but Officer Manswell did not appear on any of the six occasions) and was eventually dismissed.

Cross-examination of the witnesses

15. During his cross-examination a number of things were put to the claimant. There are four distinct time-periods to be considered. I itemize them below. The issue of whether the arrest took place on Lower Frederick Street or on Independence Square North was called into question, but it seems to the court not as relevant to the determination of the main dispute as it was to the parties. Salvatori building and Scotia bank are buildings on either corner of Frederick Street at its intersection with Independence Square North. The issue to decide is whether the tort of malicious prosecution has been made out. Whether the arrest took place on lower Frederick Street or on Independence Square North (locations that are not far apart) are not directly relevant to whether the tort has been proven.
16. Upon an assessment of the answers that he gave and his demeanour during his cross-examination I came to the conclusion that the claimant was not reliable enough of a witness to prove the tort of malicious prosecution on a balance of probabilities. I should say at the outset of my analysis that the claimant appeared to me to be familiar with court etiquette and even knowledgeable about some of the procedures. When he first entered the witness box I formed the impression that he was not even faintly overwhelmed by the prospect of being cross-examined.

(a) Events on the street

The claimant admitted having previously known Officer Manswell as a police officer, but did not elaborate. He denied the suggestion that the officer had cause in the past to speak to him for street vending. He said that he was never a street vendor. He said he just knew the officer by seeing him. I found his demeanour during this part of his cross-examination to have been somewhat unsatisfactory. He then admitted that he was passing on the pavement in the vicinity of the officers and the vendors, which places him in the thick of the action. In relation to his actual utterance, the claimant

maintained that he made a neutral remark to his friend without any obscenity and that the officer thereafter approached him and said something in a loud tone, whereupon he stopped. He said he didn't walk off, but that Officer Manswell immediately grabbed him by his shirt and pants. This is in conflict with the evidence in chief because it is there alleged that the claimant responded to Officer Manswell's enquiry with the following words "I don't know what you talking about. I on my way home." Having heard his evidence the court has to ask itself why, in the middle of a police activity designed to clear the road and pavement, would Officer Manswell suddenly deviate from his official assignment on the basis of a neutral or harmless remark made by one person to another. If he did deviate from his assignment, then there must have been a reason. The claimant, however, did not say that there was any animosity or past history between them. In fact, on the basis of the claimant's evidence, the relationship between them (both prior to and after the alleged events) could not be described as unfriendly or hostile. If hostility or malice is ruled out, what remains? Was Officer Manswell irrational? Were these obscene words spoken by someone else? There is no suggestion from the claimant or his witness that someone else spoke the obscene words. The claimant's case is that he did not speak the words and he does not suggest that someone else spoke them. It is not a case of mistaken identity. The assessment of Officer Manswell's evidence (which follows below) provided further insights.

(b) Events after the arrest and up to laying the charge

The issue as to what took place on the way to the police vehicle is relevant to the issue of aggravated or exemplary damages and also to the credibility of the witness. A very harrowing, brutal experience is described in the evidence in chief. However in cross examination the court was dissatisfied with the quality of evidence. I was not satisfied that the claimant was beaten by the police officers in the brutal manner described (punches to the face, stomping on the floor of the vehicle and punches to the body, kicks to the chest and cuffs at the police station), although I do accept that he was grabbed by his shirt and waist and pushed down the road. Such alleged brutality in relation to the trivial offence of obscenity ought to have triggered some

type of legal or non-legal response, because the batteries (as described) were exceptionally violent. In light of the fact that the claimant says that he retained counsel to defend himself at the Magistrates Court I find it inexplicable that he would not have been advised or (in light of appearing to be not unfamiliar with court procedures) to have known to obtain a medical certificate and to make a claim (whether by a letter or by a suit) for being attacked in the manner described. While the non-suiting of the police officers for their brutality cannot determine the outcome of this case, it caused the court to ponder about the overall trustworthiness of the claimant's evidence. The claimant was markedly unsatisfactory when he was asked if he sued for assault and battery. He insisted that he did sue, but that the claim was statute barred and had to be dropped in the early stages. When shown the pleadings he reluctantly agreed that no such claim was ever made, and in fact, it was the claim for false imprisonment that was deleted. Of course, a claim for assault and battery, like the one for false imprisonment, would have been statute barred, and the claimant's evidence is not to be downgraded for his attorney's advice as to when causes of action accrue. However, his demeanour during this part of the cross-examination was less than satisfactory. When he was asked why he didn't seek any medical attention on his release he said "I just wanted to go home and cry". I marked parts of his evidence to be somewhat melodramatic or given with a view to create a sympathetic effect. This was one such part. It does not explain why a medical certificate was not sought in the days after his release. If he was so brutally assaulted, one would have expected a better rationale for not seeking medical attention or obtaining a medical report. I say this because, if the claimant is to be believed, he was seriously injured when he entered the court on the day following his arrest. There is no record whatsoever of any complaint for assault and battery.

(c) Events in the Magistrates Court up to 29 November 1995

Tied to the issue of the non-suiting of the officers for a brutal attack is the alleged "cross-charge" that the claimant says he caused to be brought against Officer Manswell. The allegation of a 'cross charge' is not corroborated in the Notes of Evidence and record of proceedings. It was not raised in the Reply. It was raised for

the first time in the claimant's witness statement to answer the defendant's explanation for the non-prosecution of the two charges in the Magistrates Court. The defendant alleged in the Defence that there was a gap in the proceedings brought about by the non-appearance of the claimant to answer the charges on 29 November 1995, causing a warrant for his arrest to be issued, and then the warrant was not executed for some nine years. The cross charge is raised with a view to explaining why the warrant was issued for the claimant's non-appearance. Again, this is a matter that goes to the credibility and trustworthiness of the witness, because whether there is a cross charge or not has nothing to do with the tort of malicious prosecution. The claimant was specifically cross-examined on this point. He said that his first attorney was involved in defending the charge and also bringing the cross charge. Later he suggested that his attorney advised him to bring a 'cross charge' in the Magistrates Court for 'wrongfully arresting me and wrongfully charging me'. A first point to note is that a brutal and unwarranted assault and battery would, it seems to me, be a more likely cause of action to be the subject of an experienced Attorney's advice, rather than a 'cross charge' for the nebulous offence of 'wrongful arrest and wrongful charge'. I did not find his evidence on this point satisfactory. His interpretation of the words "application both sides", in describing the adjournment of the matter on the second time it was called to mean that both sides had 'applications' before the magistrate was somewhat fanciful and appeared, to me, to be contrived. When pressed on the existence of a 'cross charge' he eventually reluctantly conceded "I can't say for sure [if there was a 'cross charge' against Officer Manswell], those were my instructions given to my Attorney and I believed he carried them out." He later said that his Attorney failed to inform him about the hearings of the 'cross-charge'. As stated earlier this was raised to explain how the warrant for the claimant's arrest came to be issued on 29 November 1995. It did not provide a proper explanation, and, in fact, compromised the credibility of the witness. I do not believe that there was any 'cross-charge' against Officer Manswell to which the claimant appeared and then left the court. If so, he would have known that there was still a pending and relatively more serious criminal charge for obscenity and resisting arrest, the process of which already was firmly in train. I cannot see how one could appear once to

pursue one's 'cross charge', obtain an adjournment, and never make any further enquiry about the 'cross charge' or the criminal charge or even appear again in support or denial of either. Neither side sought to explain how the bench warrant came to be unexecuted for nine years or how the claimant walked out of the court and never in nine years re-appeared to answer or prosecute a charge or a 'cross-charge'. The court also noted that the Notes of Evidence contradict the claimant's allegation that his Attorney appeared on one occasion. There is no record of his appearance at any time, although his absence on one day is noted. The Notes were attached to the Statement of Case as part of the claimant's evidence.

(d) Events during the nine-year period after the bench warrant and up to the dismissal of the charges

The claimant contended in his witness statement that during this nine year period (1995 to 2004) he was "under the impression" that the criminal charges had been dismissed [*witness statement Para 14*]. He said he made enquiries from Officer Manswell during this period, but did not say when, in that period, the enquiries were made. In cross-examination, for the first time, he said that he twice met Officer Manswell, firstly at a carnival band launching at Lion's Civic Centre and then later, on Charlotte Street, when Officer Manswell was said to be selling fruit from a van. On both occasions, Officer Manswell is alleged to have told the claimant that the matters "will be dismissed because he doesn't go to court." This evidence was not included in his witness statement. Instead, the witness statement states that he "made enquiries from time to time with the charging officer during the period 1995 to 2004 and was under the impression that the matter *had been dismissed*" (emphasis added). Further, these interactions were not put to Officer Manswell during his own cross-examination - not even the prime allegation (with great ironic potential) that Officer Manswell was himself a street vendor on Charlotte Street. I tend to the view that these conversations did not take place. Even if they did take place it indicates an awareness that the criminal proceedings were still in train, because the dismissal is said in cross examination to be something that will take place in the future. If that is so, then the explanation for the non-appearance due to a mix-up with a nebulous 'cross-charge' is

less viable. If Officer Manswell and the claimant were on speaking terms why didn't he communicate with him and ask him to appear and offer no evidence to the 10-year old charge? It would have saved the claimant the burden of appearing at the Magistrates Court after his re-arrest in 2004. If the conversations are to be believed then there is some element of a ruse by the claimant, because after his re-arrest he dutifully attended court on six occasions knowing that the charges will certainly be dismissed. Later, after its dismissal, he brings this action making serious accusations against the very person complicit in his acquittal. It does not make sense. There are too many contradictions.

Evidence of Marcel Rennie

17. The court would have preferred the evidence of an independent bystander, but ideal witnesses are not always available. Having said that, the court could not place great reliance on Mr Rennie's evidence. There was a material contradiction with the claimant's evidence. The claimant had said that after he made his neutral remark to Mr Rennie, Officer Manswell approached him, enquiring about his alleged obscene remark, and the claimant stopped and said to Officer Manswell: "I don't know what you're talking about. I on my way home". During his cross-examination, Mr Rennie contradicted that version, and insisted that the claimant did not verbally respond to Officer Manswell. Of course, these are events in 1995 and memories might be dimmed. But this answer was given after the witness was asked to leave the court (when an objection was taken to counsel's question) and, it seems to the court, Mr Rennie would have had sufficient time outside the court to deeply ponder on his recollection of these events. He could easily have said that he didn't remember. Instead he emphatically denied that the claimant made any response to the arresting officer's enquiry. I had the impression that Mr Rennie was with the claimant up until he was grabbed by the arresting officer. After he was grabbed, Mr Rennie left and walked over to the other side of the street. While there was some consistency in describing the claimant's walk to the police vehicle, that part of the evidence is also partially consistent with Officer Manswell's evidence, as all three witnesses describe a forced carrying-away of the claimant. There was consistency between this witness and the claimant as to the type of police vehicle he was shoved into, and what occurred inside the vehicle, although Mr Rennie had no recollection of there

being another handcuffed prisoner in the vehicle. Generally speaking, the court was not satisfied with the overall impression of the evidence of this witness. On a balance, the probability of his version was less than Officer Manswell's version. The fact that he was a friend and neighbour played a role, albeit minor, in assessing this witness's evidence.

Evidence of Officer Manswell

18. The memory of this witness was generally good (although, like in the case of all witnesses, 17 years is a long time ago). His demeanour during cross-examination was, on a balance, more convincing than the other two witnesses. Officer Manswell appeared to be a trustworthy witness in explaining the situation on the street, and the manner of his approach to the group of vendors, among whom stood the claimant. The court does not accept that the claimant was singled out from among all the pedestrians and vendors. If so, no proper explanation has been advanced as to why the claimant would be targeted and then man-handled. This goes to the question of malice. There is no proper basis, beyond conjecture, to make a finding of malice, or even to infer it.
19. Officer Manswell's evidence of the post-arrest events was also believable. He could not say what happened to the claimant after he was put into the vehicle or upon arrival at City Police headquarters, but his testimony on events in the Magistrates Court was believable. For example, the court accepts that there was no 'cross charge for wrongful arrest and wrongful charge'. In addition, the court took notice that it was never put to Officer Manswell that he met the claimant at Lion's Civic Centre during a Carnival fete or while he (Officer Manswell) was vending fruit on Charlotte Street sometime between 1995 – 2004, or at any time at all. Officer Manswell's explanation for his own non-appearance to prosecute the charges was reasonable and understandable, and it was believed. The one area where Officer Manswell's evidence was prone to difficulty was in relation to the fact that the other officers with him on the street on that day were not called as witnesses at the civil trial.
20. Officer Manswell recalled some of the names of the officers involved in the police action on the material day. Officer Powder had a stroke, so the court is satisfied that he couldn't

be called as a witness. However, two of the other officers (Primus and Warner) who were involved in the apprehension of the claimant were not called to testify. The court was asked to draw adverse findings in relation to their non-appearance. However, being a case of malicious prosecution, the material issue to decide (on which these officers' evidence is said to be material) is whether the charges were brought without reasonable and probable cause or with malice. The person who initiated the prosecution was Officer Manswell. He at first arrested the claimant, and then, he says, the claimant pulled his hand away and ran, thus resisting arrest. The other officers are material to the events that follow, which are basically peripheral to the tort. The court will agree that if they were present opportunities might have emerged for fruitful cross-examination on events they might have witnessed before the chase and arrest, but the court cannot mark down a litigant who only calls the witness strictly necessary to prove his own case. In this case the tort of malicious prosecution is the cause of action. Officer Manswell said in cross-examination that when the claimant uttered the obscenity it was in the "environs" and "hearing distance" of Constables Warner and Primus, although he cannot say whether they actually heard the obscenity. That raises a possibility that they might or might not have actually heard the obscenity or seen the claimant initially pulling his arm away.

21. The court paid close attention to the relevant strengths and weaknesses of the cases, and also the submissions relating to the failure to call Constables Warner and Primus. The court is of the view that the failure to call them is not fatal to the defence in this alleged tort. Firstly, it is not the duty of the defendant to prove the existence of reasonable and probable cause or malice. The onus is on the claimant to prove that there was none. As stated previously, the court was not satisfied with the quality of the evidence adduced in support of the claim. Secondly, the person who set the prosecution in motion is Officer Manswell, and he is also the person who would be called as the chief witness in the intended criminal prosecution. If he says that he observed a crime being committed, there is no further investigation to be carried out. How can one successfully challenge whether a man has reasonable and probable cause when he says that he is the witness to the crime? Such a challenge requires clear evidence of irrationality or malice or both. Thirdly, the most important witness to the crime of obscene language and the initial

action of resisting arrest is Officer Manswell. Had the Attorney General failed to call him as a witness that failure would have amounted to a potent defect in the defendant's case. The failure to call the other two police officers is a less potent defect, as they are witnesses *ex post facto* in large part. Moreover, their usefulness as witnesses depends on whether they actually heard the claimant utter the obscenity, or saw him pull his arm away from Officer Manswell, which, on the evidence, are matters of conjecture. Fourthly, the court has to bear in mind that the criminal and civil standards of proof are different. The non-appearance of these two officers might have had a more telling effect on the viability of the criminal prosecution in the magistrates court. In the civil court, however, we are concerned with whether Officer Manswell had reasonable and probable cause to initiate the prosecution and acted maliciously in doing so, and, on the basis of Officer Manswell's evidence, and the lower credibility assessment of the claimant and his witness, this court is satisfied that the claimant has not proven either of these elements of the tort of malicious prosecution on a balance of probabilities. In other words, the probability of the claimant's version is not, after balancing the competing versions, more believable or likely than Officer Manswell's version.

22. In the circumstances, the claim is dismissed with costs. Costs are prescribed in the sum of \$14,000, payable by the claimant to the defendant.

James Christopher Aboud
Judge