

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Cv. No: 2009-04698

BETWEEN

GERALD RODNEY RAMPERSAD

Claimant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

BEFORE THE HONOURABLE MADAME JUSTICE DEAN-ARMORER

APPEARANCES

Mr. Abdel Mohammed, Attorney-at-Law for the Claimant.

Ms. Mary Davis and Mr. Nairob Smart, Attorneys-at-Law for the Defendant.

JUDGMENT

Introduction

1. The claimant, in these proceedings had been charged with possession of marijuana for the purpose of trafficking contrary to the *Dangerous Drugs Act*.¹ These charges were dismissed by Her Worship Mrs. Caddle on the 14th November, 2006. The claimant by this action alleges that the charges had been laid against him maliciously and without

¹ The Dangerous Drugs Act Ch. 11:25

reasonable and probable cause. He sought an order for damages for malicious prosecution.

2. In the course of this decision, the Court considered the well-established principles which govern the tort of malicious prosecution and the appropriate damages which follow a finding of judgment for the claimant.

The Claim

3. By his Claim Form and Statement of Case the claimant sought the following items of relief:

- i. Damages including aggravated and/or exemplary damages for malicious prosecution.*
- ii. A declaration that the claimant was denied and or refused his constitutional rights pursuant to Section 5 (2) (c) (ii) of the Trinidad and Tobago Constitution, the right to retain and instruct without delay a legal advisor of his choice and hold communication with him, and his right to communicate with a friend and or relative via a telephone call.*
- iii. Damages including vindictory damages for the vindication of the claimant's constitutional rights as aforesaid;*
- iv. Interest at such rate and for the period as the court may deem just;*
- v. Cost..."*

Facts

4. The claimant, Gerald Rodney Rampersad, in February, 2005, lived at Rock Road, Penal and worked as a labourer.
5. On the 2nd February, 2005 between 4:00 p.m. and 5:00 p.m., the claimant was walking along Crawford Trace, Penal. He was on his way home from work.
6. Meanwhile three (3) police officers were on patrol. They were P.C. Ancil Corrie, P.C. Nigel Haynes and P.C. Jitmansingh, and were all attached to the Penal Police Station.
7. It is not disputed that the officers arrested the claimant, took him to the Penal Police Station and charged him with possession of marijuana for the purpose of trafficking.
8. It is also not disputed that the claimant was taken on the following morning to the Siparia Magistrates Court. The claimant was denied bail and spent the following seven (7) days at the Golden Grove Prison.
9. Nine (9) days after the claimant's arrest, P.C. Haynes took a quantity of marijuana to the Forensic Science Centre. P.C. Haynes returned to the Forensic Science Centre on 14th October, 2005 and received the Certificate of Analysis which was dated the 23rd May, 2005 under the hand of analyst, Louis Garraway. Mr. Garraway certified that he examined the exhibit which was found to contain 769.94 grams *cannabis sativa*.
10. Despite the report of the Forensic Science Centre, the charge of trafficking was never dropped against the claimant. P. C. Haynes admitted under cross-examination that the claimant was never charged for simple possession and that he pursued the charge of trafficking knowing that the weight of the substance did not support the charge. On the 14th November, 2006, Magistrate Caddle dismissed charges against the claimant.

11. A dispute arises as to the events which led to the claimant's arrest on the 2nd February, 2005. The claimant alleged that minutes before his arrest, he had spoken to a "*Rasta man*", who was also walking on Crawford Trace.
12. The claimant alleged that one of the police officers, P.C. Jitmansingh, began chasing the "*Rasta man*", while the other two (2) officers spoke to the claimant, asking him the name of the "*Rasta man*". The claimant responded by indicating that he was unaware of the name of the "*Rasta man*". According to the claimant, the officers pushed him against the vehicle, searched him and found nothing illegal.
13. The claimant alleged that the third police officer returned carrying a school bag. The officers examined the contents of the school bag and found a black plastic bag.
14. The claimant alleged that he was placed in the police vehicle, without having been cautioned or informed of the reason for his arrest and that he was taken to the Penal Police Station, placed in a cell and was later interrogated, cuffed and kicked in his chest as he was asked about the "*Rasta man*".
15. It is common ground that the claimant was charged with possession of a dangerous drug, *cannabis sativa* for the purposes of trafficking contrary to Section 5 (4) of the ***Dangerous Drugs Act.***²
16. P.C. Haynes and P.C. Corrie testified on behalf of the defendant. In their witness statements they repeated the allegations which had been pleaded in their defence. The defendant alleged that the three (3) police officers were on patrol when they observed the claimant walking along Crawford Trace and that as he walked he looked into a black plastic bag.

² Ch. 11:25 (Act No. 38 of 1991)

17. The officers alleged that upon observing the vehicle, the claimant ran off, the police officers gave chase and intercepted him in an area surrounded by pea trees. The officers testified further that they found the claimant to be in possession of a black plastic bag, which contained compressed plant material.
18. The defendant alleged that upon being cautioned the claimant said “*officer I just got a wok to drop that off...*” The defendant also alleged that the substance was weighed at the Penal Police Station and found to weigh 1.1 kilograms.
19. The claimant was cross-examined. Under cross-examination, he maintained his story as to the events which led to his arrest.
20. Police Constable Corrie #15030 and Police Constable Haynes #14252 were also cross-examined. Under cross-examination, P.C. Corrie accepted that the information concerning the arrest of the claimant should have been logged in the station diary. P.C. Corrie told the Court that the information was in fact logged, but the station diaries were not produced.
21. P.C. Corrie was also questioned as to the response which the claimant allegedly made that he had got “*a wok*”. P.C. Corrie told the Court that the police officers did not think it necessary to ask where the claimant was going or who had given him the job.
22. P.C. Corrie stated that he was present at the Penal Police Station when the substance was weighed. He testified that the weight of the substance, at that time, was 1.1 kilograms.
23. P.C. Haynes was also cross-examined but was unable to answer many questions asked in cross-examination because of his inability to recall. He could not recall whether the officers were armed or what enquiries they had set out on. He could not recall seeing a

cemetery on Crawford Trace and could not recall the speed at which the vehicle was travelling. He could not remember any houses on Crawford Trace or whether he had arrested anyone on Crawford Trace before. He could not remember the hand in which the claimant held the bag.

24. P.C. Haynes repeated the allegations that the claimant responded by saying that he got a “*wok*”, but did not think it necessary to ask the claimant from whom he got the substance or where he was planning on taking it.
25. The inability of P.C. Haynes to recall many of the events of the day in question rendered his testimony improbable.
26. P.C. Haynes testified though that the exhibit was logged in the station diary. He could not recall who logged it and agreed that the exhibit should have been logged in the Dangerous Drugs Register, but could not remember whether this had been done.
27. The Court considered whether the claimant had proved his version of events which led to his arrest. The Court was of the view that the claimant presented as a credible witness and was unshaken in cross-examination. On the other hand, P.C. Haynes and Corrie because of their inability to recall presented as unreliable witnesses.
28. Both police officers agreed however that the events were logged in a station diary, extracts from which were neither disclosed in these proceedings nor tendered in evidence. The officers admitted that the police standing orders required that information be logged in the station diary. Had this been done and had the station diary extracts been produced, the defendant would have been able to rely, not on the faulty memory of the individual officers, but on a contemporaneous record of events.

29. In like vein, the response which the claimant allegedly made to the officers to the effect that he had got a “wok” was significant in that it could have been regarded as a confession. This too ought to have been recorded in the station diary. No explanation was offered however, for the defendant’s failure to produce this record. From the absence of a record, which ought to have been produced, the Court drew inferences which were adverse to the defendant, and accepted, on a balance of probabilities, that the claimant had no plastic bag and that the black plastic bag and its contents were in the possession of the police, that the police fabricated and concocted the charges against the claimant for possession of marijuana for the purpose of trafficking.

Law

The Dangerous Drugs Act

30. The relevant sections of the ***Dangerous Drugs Acts***³ provides:

- “5. (1) *Subject to subsection (2), a person who has in his possession any dangerous drug is guilty of an offence and is liable*
- (a) upon summary conviction to a fine of twenty five thousand dollars and imprisonment for five years*
- (b) upon conviction on indictment to a fine of fifty thousand dollars and to imprisonment for a term of which shall not exceed ten years but which shall not be less than five years...*
5. (4) *A person who trafficks in any dangerous drug or in any substance represented or held out by him to be a dangerous*

³ Ch. 11:25/ Act No. 38 of 1991

drug or who has in his possession any dangerous drug for the purpose of trafficking is guilty of an offence.

5. (5) *Subject to subsection (7) a person who commits the offence of trafficking in a dangerous drug or of being in possession of a dangerous drug for the purpose of trafficking is liable ... (b) upon conviction on indictment to imprisonment for life.”*

The Tort of Malicious Prosecution

31. Malicious Prosecution has been defined as “*an abuse of the Court’s process by wrongfully setting the law in motion on a criminal charge.*”⁴ The principles governing the tort of malicious prosecution have been authoritatively set out by learned Chief Justice Sharma in *Cecil Kennedy v. Donna Morris and The AG*⁵. To succeed in a claim for damages for malicious prosecution there are five (5) essential elements which a claimant must prove. They are:
- a. the prosecution by the defendant of a criminal charge against the plaintiff...
 - b. that the proceedings complained of terminated in the claimant’s favour;
 - c. that the defendant instituted or carried on the proceedings maliciously;
 - d. that there was an absence of reasonable and probable cause for the proceedings and
 - e. that the claimant has suffered damage⁶
32. The claimant must also prove to the satisfaction of the Court that, at the time when the charge was laid, there was an absence of reasonable and probable cause for the

⁴ Mohammed Amin v. Jogendra Kumar Bannerjee [1947] AC 322 PC. Cited by Sharma JA in CA 87 of 2004 Cecil Kennedy v. Donna Morris & The AG

⁵ CA 87 of 2004 Cecil Kennedy v. Donna Morris & The AG

⁶ Ibid at paragraph 11

prosecution. The burden of proving a lack of reasonable and probable cause is carried by the plaintiff in actions for malicious prosecution.

33. The phrase “*reasonable and probable cause*” was defined by Hawkins J. in *Hicks v. Faulkner*⁷ and has been widely accepted by the courts as:

“An honest belief in the guilt of the accused based on a full conviction founded upon reasonable grounds, of the existence of a state of circumstances, which assuming them to be true, would reasonably lead any ordinary prudent and cautious man, placed in the position of the accuser, to the conclusion that the person charged was probably guilty of the crime imputed.”

34. A prosecuting officer is not required to believe in the actual guilt of the accused, as is required of a jury before they convict. A prosecuting officer is required only to be satisfied that there is a proper case to lay before the Court. See *Glinski v. McIvor* [1962] 2 WLR 832 per Lord Denning at 709. See too Justice Rahim in *Owing Goring v. The AG* Cv. 2011-03769.
35. In this claim there is no dispute as to the first two ingredients. In an action for damages for malicious prosecution the claimant is required to prove malice on the part of the defendant. Malice, according to Lord Delvin in *Glinski v. McIvor*, includes not only spite and ill-will but also any motive other than a desire to bring a criminal to justice⁸.
36. Malice may be inferred from a lack of an honest belief in the guilt of the accused. See HCA 1388 of 1989 *Harold Barcoo v. The AG and Inspector Browne* per Justice Mendonça as he then was.

⁷ (1881) 8 QBD 167 at page 171

⁸ [1962] 1 All ER 696

37. In *Antonio Webster v. The AG*⁹, the claimant sought damages for false imprisonment and sought as well three (3) declarations as to unconstitutionality. Upon Webster's appeal to the Privy Council, their Lordships held that it was wrong for the claimant to include in the common law action, the claims for declarations as to constitutional infringements.¹⁰
38. In these proceedings, the claimant seeks a declaration that his fundamental rights had been infringed. It was my view that pursuant to the Privy Council decision in *Antonio Webster v. The AG* such a declaration ought not to be granted in these proceedings.

Reasoning and Decision

39. In order to succeed in this claim, the claimant is required to prove:
- that criminal proceedings were instituted against him;
 - that the criminal proceedings ended in his favour;
 - that the prosecuting officers lacked reasonable and probable cause for instituting the proceedings;
 - that the prosecuting officers were actuated by malice.¹¹

In these proceedings there is no dispute as to the first two elements.

40. In respect of the third element, it had been my finding earlier in this judgment, that on the 2nd February, 2005, P.C. Haynes, and P.C. Corrie concocted and fabricated the charge which they subsequently laid against the claimant.¹² The claimant was accused of having been in possession of a black bag containing marijuana, when neither the bag nor the prohibited substance had been in his possession, at all.

⁹ [2011] UKPC 22

¹⁰ Ibid at paragraph 20 of the judgment of Lord Wilson

¹¹ See paragraph 31 supra

¹² See paragraph 29 supra

41. From my finding that the relevant charge had been fabricated and concocted, it follows inexorably that the officers lacked any honest belief in the guilt of the accused. Such honest belief is the foundation of the element of a reasonable and probable cause which must be proved to be absent in proceedings for malicious prosecution. Having found that the officers lacked an honest belief in the guilt of the claimant, it is my view that the claimant has succeeded in proving that the officers lacked reasonable and probable cause for laying the charge in question against the claimant.
42. Moreover, it is clear from the admitted facts of this case that from October, 2005, when P.C. Haynes obtained the Certificate of Analysis, the prosecuting officer would have been aware that the charge of trafficking was unsupported by the evidence. P. C. Haynes nonetheless continued the prosecution of the original charge until it was dismissed on 14th November 2006. The continuation of the charge was entirely without reasonable and probable cause or any honest belief in the guilt of the claimant.
43. From the absence of any honest belief in the guilt of the accused, the Court may properly infer that there was no proper motive for laying the charge and that the officers had been actuated by malice. See *Harold Barcoo v. The AG* per Mendonça J., (as he then was).¹³ It is therefore my view that the claimant succeeded in proving all of the elements identified at paragraph 39 *supra*. Accordingly there will be judgment for the claimant.
44. I turn now to consider the issue of damages. Damages in cases of Malicious Prosecution are awarded under three (3) heads:

- damage to fame

¹³ HCA 1388 of 1985 *Harold Barcoo v. The AG*

- endangerment of life, limb and liberty
- damage to property

45. In the case of *Thaddeus Clement v. AG*¹⁴ the claimant brought an action in Malicious Prosecution. The Court of Appeal delivering judgment in 2013, made an award of general damages in the sum of \$160,000.00.

46. I have found many similarities between the instant case and that of *Clement*. In both cases the charges were virtually thrust upon the respective claimants. Clement had been forced to sign a document under threat of violence. In the instant claim, three (3) police officers participated in a plot to fabricate a charge against the claimant for possession of a substance which in fact he did not possess. Moreover, in both claims the respective claimants were accused of heinous crimes. Clement had been accused of robbery, while the claimant in this matter had been accused of possession of a dangerous drug for the purpose of trafficking.

47. In my view, a just award would be that the defendant pay to the claimant damages in the sum of \$160,000.00. An award of exemplary damages of \$5,000.00 is also made to reflect the Court's disapproval of police action in fabricating a charge against the claimant. The claimant is entitled to special damages in the sum of \$12,322.00.

Dated the 21st day of July 2014

M. Dean-Armorer
Judge

¹⁴ Thaddeus Clement v. The AG CA 95 of 2010 Digested in the "Handbook on Awards of Damages for False Imprisonment and Malicious Prosecution" TTSE 1