

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV 2012-00224

Between

CHRISTOPHER LUCKY

Claimant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

**BEFORE THE HONOURABLE MADAM JUSTICE DEAN-ARMORER**

**APPEARANCES:**

Mr. Navindra Ramnanan, Attorney-at-law on behalf of the Claimant

Ms. Cherisse Nixon, instructed by Mr. Alfred Pierre, Attorneys-at-law on behalf of the Defendant

**JUDGMENT**

***Introduction***

1. By these proceedings, the Claimant seeks an order for damages for false imprisonment and for malicious prosecution. There was no dispute that the claimant had been arrested on two (2) occasions. On the first occasion, he was arrested pursuant to the powers of summary arrest, as conferred by Section 24 of *the Domestic Violence Act*<sup>1</sup>. On the second occasion, the Claimant was arrested pursuant to a warrant.

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<sup>1</sup> Domestic Violence Act, Ch. 45:56

2. In the course of this judgment, the Court has explored and sought to apply the well-established principles, which govern actions in false imprisonment and malicious prosecution.

### *Facts*

3. The Claimant, Christopher Lucky had been engaged in a romantic relationship with Natasha Ramrattan. One child, Christa, had been born to them.
4. Following the break-up of their union, Ms. Ramrattan obtain two protection orders against the Claimant. The orders, which had been made by His Worship Magistrate Narinesingh on the 22<sup>nd</sup> April, 2009, prohibited the Claimant from using abusive or threatening language against the Applicant, Natasha Ramrattan or their daughter, Christa.
5. Later that year, on the 24<sup>th</sup> September, 2009, the Claimant travelled to Tobago with six (6) friends. It was their intention to spend the Republic Day weekend in Tobago, and for this purpose, they had obtained accommodation at the Sanctuary Villas.
6. As it transpired, Natasha Ramrattan, had, by that time, been married to Ziyaad Amin. Her contact address, which was given to the Claimant was the Sanctuary Villas. The Claimant was aware that his friends intended to spend their leisure days, at the very location where Natasha lived.
7. The Claimant arrived at the Sanctuary Villas at 3:00 p.m. on the 24<sup>th</sup> September, 2009. Shortly after, the security guard on duty came to his door to indicate that a report had been made by Natasha Ramrattan.
8. Meanwhile, Police Constable Hill and Woman Police Constable Sharon Williams had been attached to the Old Grange Police Station, in Tobago. P.C. Hill had received a telephone call from Natasha Amin. P.C. Hill recorded the report in the telephone message book. The

extract of the telephone message book was annexed to the witness statement of Claude Hills and recorded that Natasha Amin stated that her “*child father*” was outside her gap “*stalking her*”.

9. W.P.C. Sharon Williams reported for duty at 7:00 p.m. She was instructed by Sergeant Moore, the officer in charge, to respond to the report. W.P.C. Williams left the Old Grand Police Station, in the company of P.C. Hills, and arrived at the Sanctuary Villas at 7:30 p.m.
10. It was the evidence of W.P.C. Williams that she first spoke to a female security guard, who had allegedly witnessed an incident earlier that day between Ms. Amin and Mr. Christopher Lucky, where the latter had threatened the former<sup>2</sup>. The security guard, though willing to provide a verbal report, refused to give a written statement to the police.
11. W.P.C. Williams and P.C. Hills interviewed the Amins who showed W.P.C. Williams the location of the two villas: the one occupied by the Amins, the other by the Claimant and friends. The villas were adjacent to each other, and were separated by a hedge.<sup>3</sup> It was the evidence of W.P.C. Williams that Mrs. Amin appeared distraught and showed her the protection order. W.P.C. Williams stated that Mrs. Amin’s story was corroborated by her husband.
12. W.P.C. Williams testified that after having interviewed the Amins, she had formed the view that the Claimant had breached the order.
13. W.P.C. Williams proceeded to the Villa, which was occupied by the Claimant and his friends and she called out to the Claimant. W.P.C. Williams stated that she observed that Mrs. Amin was hysterical, that the Claimant was being aggressive and that there was agitated cross-talk

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<sup>2</sup> Witness Statement of Sharon Williams at paragraph 7

<sup>3</sup> *Ibid* at paragraph 8

between the Amins and the friends of the Claimant. W.P.C. Williams invited the Claimant and his friends to provide statements at the Old Grange Station.

14. The friends of the Claimant refused to accompany W.P.C. Williams on the ground that she was able to take statements at the Villa. They were so advised by attorney-at-law, Hedgewidge Bereaux, Jnr., one of their party that they did not need to visit the Police Station.
15. W.P.C. Williams decided to exercise the power of summary arrest as conferred by *the Domestic Violence Act*<sup>4</sup>. In so doing, W.P.C. Williams explained that she had not thought that the situation was conducive to an investigation and she feared that it might get out of hand.<sup>5</sup>
16. In her witness statement, W.P.C. Williams explained her honest belief that the Claimant had breached the order. Her words are set out below:

*“At the time I arrested the Claimant, I honestly believed that he had breached the protection order that was out against him. I could not dismiss the fact that the Claimant who lived in Trinidad would choose to stay in Tobago, in a compound next door to where his ex-wife lived.*

*Further, the fact that the Court found it necessary to issue two protection orders...caused me to believe that the situation between him and Mrs. Amin was very volatile...”*<sup>6</sup>

17. W.P.C. Williams arrested the Claimant and took him to the Old Grange Police Station. His friends accompanied him. They all supplied W.P.C. Williams with written statements.

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<sup>4</sup> Domestic Violence Act Chap 45:56

<sup>55</sup> See the Witness Statement of W.P.C. Sharon Williams at paragraph 12

<sup>6</sup> See the Witness Statement of W.P.C. Sharon Williams at paragraph 13.

18. W.P.C. Williams allowed the Claimant to leave the Police Station at 11:00 p.m. It was her evidence that she chose not to charge the Claimant because there were conflicting versions of the events.
19. Subsequently, Mrs. Amin brought to W.P.C. Williams, a hand-written statement which was dated the 25<sup>th</sup> September, 2009, and which purported to be that of the female security guard. W.P.C Williams attempted, in vain, to find and to interview the security guard, but was unable to do so, since the latter had since left the employment of the Sanctuary Villas.
20. Nonetheless, W.P.C. Williams decided to act on the statement. She compared the hand-written statements of the Amins with the document purportedly signed by the security guard, and expressed her view that the handwritings were different and felt it was therefore unlikely that the Amins had forged the document and the signature.
21. W.P.C. Williams consulted her Senior Officer and laid a charge against the Claimant for breach of the protection order. In her decision to charge the Claimant, W.P.C Williams highlighted the following, as a factor, which she took into consideration:

*“I could not ignore the fact that he (the Claimant) chose to come to Tobago to stay in a villa which was next door to the one in which his ex-wife lived...”*

22. A warrant was subsequently issued for Mr. Lucky’s arrest. The warrant was executed at the Piarco International Airport on the 8<sup>th</sup> October, 2009.

### ***Issues***

23. The foregoing factual scenarios has given rise to three (3) broad issues:
  - (i) *Whether the Claimant had been falsely imprisoned on the 24<sup>th</sup> September, 2009.*
  - (ii) *Whether the Claimant had been falsely imprisoned on the 8<sup>th</sup> October, 2009.*

(iii) *Whether the Claimant had been maliciously prosecuted by W.P.C. Williams on the charge of having breached active protection orders.*

### ***Discussion***

24. In the paragraphs which follow, I have set out the relevant law in respect of each issue and have essayed an application of the law to the facts, as set out above.

### ***Issues of False Imprisonment***

25. It is convenient to begin by considering the second arrest which was effected on the 8<sup>th</sup> October, 2009, pursuant to a warrant. It is trite law, that the use of a warrant provides an absolute defence to an arresting officer. See *Jeffrey John v The Attorney General of Trinidad and Tobago*<sup>7</sup>. See too the judgment of Edo, J. in *Ramkissoon v. P.C. Ramdath and A.G.* H.C.S.1146/1976. H.C.3085/1976.

26. In respect of the first arrest which was effected on the 24<sup>th</sup> September, 2009, the Defendant relies on Section 24 of the *Domestic Violence Act*<sup>8</sup>. By this Section, a police officer is invested with the power of summary arrest where, a protection order is in force and:

*“...the officer believes on reasonable grounds that a person had committed or is committing a breach of [a protection order in force] ...”*

27. In determining whether the Claimant is entitled to relief on the ground of false imprisonment, the Court is required to consider whether W.P.C. Williams held reasonable grounds for believing that the Claimant had breached the order.

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<sup>7</sup> Jeffrey John v The Attorney General of Trinidad and Tobago Cv. #2009/1536

<sup>8</sup> Domestic Violence Act Chapter 45:56

28. This test is marginally different from the test of reasonable and probable cause, which is applicable to summary arrests pursuant to the *Criminal Law Act*<sup>9</sup>. Nonetheless, it is my view that in assessing whether the arresting officer “*believed on reasonable grounds...*”, the Court is also required to apply both subjective and objective tests. The Court is required to consider what was the subjective belief of the arresting officer and then to consider, objectively, whether that belief was reasonable. In so doing, the Court ought to apply the test of the ordinarily cautious and prudent arresting officer, placed in similar circumstances.
29. I have considered the evidence in respect of the arrest of the Claimant on the 24<sup>th</sup> September, 2009. W.P.C. Williams testified that:
- She received a report of a breach of an order.
  - She was detailed to investigate.
  - She first interviewed the security guard, whose verbal report suggested that the protection order was breached.
  - She interviewed the Amins; Mr. Amin corroborated the report of his wife.
  - W.P.C. Williams witnessed an acrimonious and potentially volatile exchange between the the Amins and the friends of Mr. Lucky.
  - She bore in mind that the Claimant and his friends had chosen to stay on the same compound in the villa which was adjacent to that of the Amins.

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<sup>9</sup> See Section 3 Criminal Law Act Chap 10:04, which provides:

“3. (1) The powers of summary arrest conferred by the following subsections shall apply to capital offences or offences for which a person (not previously convicted) may, under or by virtue of any written law be sentenced to imprisonment for a term of five years, ...

(4) Where a police officer, with reasonable cause, suspects that an arrestable offence has been committed, he may arrest without warrant anyone whom he, with reasonable cause, suspects to be guilty of the offence.”

30. I considered the evidence of the subjective belief of the arresting officer. It was my view that the circumstances of the reports, and the potentially volatile situation which she witnessed, operated to create in her, a belief that Mr. Lucky was probably guilty.
31. In my view, the ordinarily prudent and cautious officer would also have held the same view. The acrimony, which the officer witnessed would have supported the veracity of the reports. Similarly, the ordinarily prudent and cautious officer would be concerned that Mr. Lucky chose to occupy a villa, which was immediately adjacent to that of Mrs. Amin, who held a protection order against him.
32. Accordingly, it is my view that W.P.C. Williams has satisfied both the subjective and the objective tests. I therefore hold that the claim of false imprisonment on the 24<sup>th</sup> September, 2009 must likewise fail.

### ***Malicious Prosecution***

33. I turn now to consider the tort of malicious prosecution. It is now well accepted that there are five (5) elements, which must be proved in a claim of malicious prosecution:
- The law was set in motion against the claimant
  - The criminal proceedings ended in his favour
  - There was an absence of reasonable and probable cause
  - The arresting officer was actuated by malice.
  - The plaintiff suffered damage<sup>10</sup>
34. In these proceedings, there was no dispute that the first two (2) elements have been established.

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<sup>10</sup> See *Wills v. Voisin* [1963] 6 WIR 50 at 57 per Wooding CJ for a statement of the elements of the tort of malicious prosecution



35. The well-known test of reasonable and probable cause was set out by Sharma, JA (as he then was) in *Cecil Kennedy v. Donna Morris*.<sup>11</sup> At page 7 of 13 of his judgment, Sharma JA quoted this passage from paragraph 45(2) *Halsburys Laws of England (4<sup>th</sup> Edition)*<sup>12</sup>:

*“Reasonable and probable cause for a prosecution has been said to be an honest belief in the guilt of the accused based on full conviction founded upon reasonable grounds of the existence of a state of circumstances which assuming there to be true would lead any ordinarily 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...”*

36. In these proceedings, it was common ground that W.P.C Williams was not satisfied that she had grounds to charge on the 24<sup>th</sup> September, 2009. Her clear and forthright evidence was that there were conflicting statements and she was of the view that the case required further investigation.

37. The factor which eventually tilted the balance in favour of charging the Claimant was the handwritten statement which had been delivered by the Amins and which purported to have emanated from the security guard.

38. I considered whether the ordinarily prudent and cautious man, placed in the position of the accuser, would be led to the conclusion that Mr. Lucky was probably guilty of the crime imputed.

39. It is my view, that the ordinarily prudent and cautious officer, would have regarded the statement of the unnamed security guard with great suspicion. The principal cause of suspicion would be that the statement was brought in by the Claimant’s accuser. Additionally, the security guard could not be found for the purpose of verifying that she had

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<sup>11</sup> Civil Appeal No. 87 of 2004

<sup>12</sup> 45(2) *Halsburys Laws of England (4<sup>th</sup> Edition)*

signed the statement. This was also in the context of the earlier refusal of the security guard to give a written statement to a police officer. It remained unexplained why the security officer resiled from her earlier resolve against giving a written statement.

40. It is therefore my view, that the ordinarily prudent and cautious officer would have conducted further investigations and in particular would have taken steps to find the security officer before proceedings to charge.
41. Accordingly, it is my view and I hold that the Claimant has succeeded in proving an absence of reasonable and probable cause.

### ***Malice***

42. I turn now to examine the fourth (4<sup>th</sup>) and fifth (5<sup>th</sup>) elements of the tort of malicious prosecution and to consider whether the Claimant has succeeded in proving that W.P.C. Williams was actuated by malice. As a matter of principle, once a lack of reasonable and probable cause is proved, malice must also be proved in order for an action in malicious prosecution to succeed<sup>13</sup>. Both elements must be present. In the words of Mc Shine, JA, malice and reasonable and probable cause must unite to produce liability<sup>14</sup>.
43. In *Cecil Kennedy v. Donna Morris*<sup>15</sup>, Sharma CJ quoted these words from *Halsbury's Laws of England*:

*“A claimant in claim for damages for malicious prosecution ...has to prove malice in fact indicating that the defendant was actuated either by spite or ill-will against the claimant or by indirect or improper motives. If the defendant had any purpose other than that of bringing a person to justice, that is malice...”*

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<sup>13</sup> Cecil Kennedy v. Donna Morris Civil Appeal No. 87 of 2004 per Sharma CJ at paragraph 27

<sup>14</sup> See Wells v. Voisin (1963) 6 WIR 50 at page 67 C

<sup>15</sup> Ibid at paragraph 27

44. In these proceedings, there was no suggestion of spite or ill will against the Claimant. Both the Claimant and W.P.C Williams admitted that they had not been previously acquainted with each other.
45. It is also my view that there was no allegation of any other motive for instituting the prosecution, other than bringing the Claimant to justice.
46. Accordingly it is my view that there was no direct malice. I therefore considered whether malice could be inferred from the absence of reasonable and probable cause.
47. Malice may be inferred from an absence of reasonable and probable cause. See ***Harold Barcoo v. The Attorney General of Trinidad and Tobago***<sup>16</sup> where Mendonça J (as he then was) had this to say:

*“...malice may be inferred from want of reasonable cause in cases where there was no honest belief in the guilt of the accused.”*

48. The evidence in these proceedings does not support a finding that W.P.C. Williams lacked an honest belief in the guilt of the accused. On the contrary, the evidence indicates that W.P.C. Williams acted carefully in the conduct of her investigations. She was honestly troubled by the decision of the Claimant to occupy a villa adjacent to that of Mrs. Amin. She repeated this concern as the factor which led her eventually to lay the charge against the Claimant. It was also the evidence of W.P.C. Williams, that she was satisfied that it was procedurally proper, to accept a statement which was submitted to her by a person other than the author. She took steps to locate the security guard, and eventually laid the charge because she held the view that the Claimant probably breached the order.

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<sup>16</sup> Harold Barcoo v. The AG, HCA No. 1338 of 1989 at page 23

49. It is therefore my view that there is no proof that W.P.C Williams lacked an honest believe in the guilt of the accused. There is accordingly no basis, upon which this Court could infer malice.

50. It follows that I am of the view, and I hold that the Claim ought to be and is hereby dismissed.

***Orders***

51. The Claim is dismissed

52. Costs to be assessed before a Master in Chambers on a date to be fixed by the Registrar of the Supreme Court.

53. The Claimant do pay the Defendant (2/3) of the costs of and associated with this Case.

Dated this 9<sup>th</sup> March, 2017

M. Dean-Armorer  
Judge