

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

Claim No. **CV2016-972**

BETWEEN

**SHAHEED MOHAMMED  
JAMEEL MOHAMMED  
IMTIAZ MOHAMMED**

Claimants

AND

**ATTORNEY GENERAL OF  
TRINIDAD AND TOBAGO**

Defendant

Before the **Honourable Madame Justice Mira Dean-Armorer**  
Appearances:

Ganesh Saroop, attorney-at-law for the Claimant  
Shalini Singh attorney-at-law for the Defendant

**REASONS**

1. In these proceedings, the Claimants sought damages for malicious prosecution against two police officers: WPC Gibbs and PC Tambie-Sammy. I held that they failed to prove malice on the part of either officer. I dismissed the claim. My reasons for so doing are set out below.

***Pleadings***

2. By their Claim Form and Statement of Case filed on April 1, 2016, the Claimants moved the Court for damages for malicious prosecution.

3. The Defendants filed a Defence on November 7, 2016 and an Amended Defence on May 10, 2017.
4. The Claimants filed their Reply on June 9, 2017.

### ***The Evidence***

5. The Court heard the evidence of each of the three Claimants. The Defendant presented four witnesses namely:
  - Jarod Tambie
  - Leah Gibbs
  - Richard Smith
  - Antonio Ramadhin

### ***Facts***

6. Imtiaz, the third Claimant, was at all material times, the father of Shaheed and Jameel, the first and second Claimants. Imtiaz owned and operated a Butcher's shop known as Shaheed Mohammed's Chicken Depot, at Norman Junction Gasparillo. They all lived in the same home.
7. On July 2010, the Claimants were charged by two separate police officers: W.P.C. Gibbs No. 18207 for the offence of "Receiving property of Sebastian Beam knowing same to be stolen" and P.C. Tambie-Sammy for receiving the property of Rasheed Baksh knowing same to be stolen.

8. After numerous hearings, the charges which had been laid by P.C. Tambie-Sammy were dismissed by Her Worship Magistrate Diop on April 4, 2013. Charges which were laid by W.P.C. Gibbs were dismissed on January 30, 2013.
9. It was in this context that the Claimants have instituted proceedings for malicious prosecution.

### *Discussion*

10. There was no dispute that the Claimants had been arrested at the home of the third Claimant on July 23, 2010. The arresting officers were A.S.P Richard Smith and P.C. Antonio Ramadhin. Many issues of fact arose as to the circumstances of the arrest. There were allegations of violence on the part of the police officers. However this was a claim for malicious prosecution and not false arrest. Accordingly, there was no issue as to whether the arrest was justifiable or whether the arresting officers were able to prove that they had reasonable and probable cause for effecting the arrest.
11. In this decision therefore I have focused my attention on the charges as laid by P.C. Tambie-Sammy and W.P.C. Gibbs in order to determine whether the Claimants succeeded in proving the elements of malicious prosecution on a balance of probabilities.
12. An issue also arises as to whether three charging officers concocted or fabricated evidence against the Claimants. I considered these.

### *The Law as to Malicious Prosecution*

13. Sharma CJ in *Cecil Kennedy v Donna Morris*<sup>1</sup> set out the elements of the tort of malicious prosecution in this way:

*“Malicious prosecution has been defined as “an abuse of the process of the court by wrongfully setting the law in motion on a criminal charge”. To succeed in an action for damages for malicious prosecution a plaintiff must prove:*

- i. The prosecution by the defendant of a criminal charge against the plaintiff before a tribunal into whose proceedings the criminal courts are competent to enquire*
- ii. That the proceedings complained of terminated in the plaintiffs favour*
- iii. That the Defendant instituted or carried out the proceedings maliciously*
- iv. That there was an absence of reasonable and probable cause for the proceedings*
- v. That the Plaintiff has suffered damage.”*

14. Courts at the highest levels have considered what constitutes reasonable and probable cause. This concept is of course central to both the torts of false imprisonment and malicious prosecution. The difference is that in respect of the tort of malicious

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<sup>1</sup> Civ. App 87 of 2004

prosecution the burden of proving the absence of reasonable and probable cause is carried by the Claimant.

15. In *Cecil Kennedy (supra)*, Sharma CJ quoted *Halsbury's Laws of England Volume 45(2)* paragraph 469 as to the definition of reasonable and probable cause:

*“Reasonable and probable cause for a prosecution has been said to be 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 lead any ordinarily prudent and cautious man placed in the position of an accuser, to the conclusion that the person charged was probably guilty of the crime imputed.”*

16. In *Glinski v McIver* [1962] All England 696, Lord Denning said:

*“....in order to succeed in an action for malicious prosecution, the plaintiff must prove....**at the time when the charge was made** (my emphasis), there was an absence of reasonable and probable cause for the prosecution....”*

17. In *Glinski v McIver*, Lord Denning emphasised that the prosecuting officer was not required to believe in the guilt of the accused and had this to say:

*“....in truth he has only to be satisfied that there is a proper case to lay before the Court, or in the words of Lord Mansfield, that there is a probable cause “to bring the [accused] to a fair and impartial trial.”<sup>2</sup>*

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<sup>2</sup> Ibid at paragraph 710A

18. The requirement of reasonable and probable cause was considered recently by their Lordships in *Trevor Williamson v AG*<sup>3</sup>

Lord Kerr had this to say:

*“The honest belief required of the prosecutor is a belief not that the accused is guilty as a matter of certainty; but that there is a proper case to lay before the Court”*

19. The element of reasonable and probable cause was also considered by the Court of Appeal in *Nigel Lashley v AG*<sup>4</sup>. Narine, JA said this to say :

*“A police officer need not have evidence amounting to a prime facie case. Hearsay information from other officers may be sufficient to create reasonable grounds for arrest as long as that information is within the knowledge of the arresting officer”.*

Narine JA then emphasised:

*“the lawfulness of the arrest is to be judged at the time of the arrest....”*

***Charge by W.P.C. Leah Gibbs***

20. I proceeded therefore to consider whether the Claimants have proved the elements of malicious prosecution on a balance of probabilities.

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<sup>3</sup> [2014] UKPC 29

<sup>4</sup> *Nigel Lashley v AG* Civil Appeal No. 267 of 2011

21. There was no dispute that the charge was laid and that it was determined in favour of the Claimants with the presiding magistrate holding that there was no prima facie case.
22. I proceeded therefore to consider whether at the time of laying the charge W.P.C. Gibbs held an honest belief that there was a proper case to lay before the Court that the Claimants received stolen property knowing same to have been stolen.
23. In so doing, I was mindful that the burden was carried by the Claimants to prove the absence of that honest belief.
24. The circumstances which informed the mind of W.P.C. Gibbs were that, as an officer attached to the Penal Police Station, she received a report from Sebastian Bean as to the larceny of goats.
25. In the course of cross-examination, W.P.C. Gibbs stated that she conducted investigations in the area.
26. On July 24, 2010, W.P.C. Gibbs received a report that six persons had been brought into the San Fernando Police Station. She spoke to P.C. Ramadhin who told her of the circumstances surrounding the arrest of the 6 persons.
27. P.C. Ramadhin told W.P.C. Gibbs that he had received a tip which led him to the home of the Claimant, where 4 goats were retrieved. He also informed her that Mr. Beam had identified one of the goats as his own. W.P.C. Gibbs informed the Claimants of the allegation and they remained silent.

28. The evidence of W.P.C. Gibbs was supported by that of P.C. Ramadhin, who stated that officers conducted surveillance at home of the Claimants after they received “a tip”. He observed a Mazda 323 arrive, and three persons alighted the vehicle and took goats out of the booth. The goats were received by the Claimants.
29. The testimony of W.P.C. Gibbs was also supported by the entry in the station diary for July 24, 2010. W.P.C. Gibbs also told the Claimants of the charge and they were silent, not denying it.
30. The evidence shows W.P.C. Gibbs as a diligent officer going through all the requirements of an investigation. She fell short of stating that she held an honest belief in the guilt of the accused and by her evidence, laid the charge against the Claimants on the instructions of an unnamed senior officer.
31. It is therefore my view that W.P.C. Gibbs did not even allege that she held an honest belief that the Claimants were probably guilty. By her own evidence she proved the absence of reasonable and probable cause.
32. I therefore proceeded to consider whether W.P.C. Gibbs acted with malice, and whether this is an appropriate case to infer malice from a lack of reasonable and probable cause.
33. The constituent elements of “malice” were considered by the Privy Council in *Sandra Juman v AG [2017] UKPC 3*. Their Lordships reaffirmed the leading decision in *Willers v Joyce* and said:



*“As applied to malicious prosecution, it requires the Claimant to prove that the defendant deliberately misused the process of the Court. The most obvious case is where the claimant can prove that the Defendant brought the proceedings in the knowledge that they were without foundation....The critical feature which has to be proved is that proceedings instituted by the Defendant were not a bona fide use of the Court’s process.”*

34. W.P.C. Gibbs impressed the Court as a witness, who was both honest and professional.

In my view there was no evidence to suggest that the charge which she laid was not a bona fide use of the Court’s process. There was no evidence that W.P.C Gibbs knew that the charges were without foundation.

35. Accordingly, in respect of the charge which was laid by W.P.C. Gibbs it is my view that the claim must fail.

***Charges by P.C. Tambie-Sammy***

I considered whether the Claimants succeeded in proving the elements of malicious prosecution against P.C. Tambie-Sammy.

36. P.C. Tambie-Sammy was very poor as a witness in cross-examination and was unable to recall almost everything. I reminded myself however that the absence of reasonable and probable cause falls to be assessed at the time at which the charge was laid. See

***Glinski v Mc Iver [1962] AC.***

37. The evidence P.C. Tambie-Sammy was that on July 18, 2010 he had been attached to the Santa Flora Police Station when he received a report from Rasheed Baksh as to 4 missing goats. P.C. Tambie-Sammy was detailed to investigate.
38. P.C. Tambie-Sammy was informed that Rasheed Baksh had positively identified 3 of the 4 goats. The identification of the goats by Rasheed Baksh was recorded in the station diary of the San Fernando Police Station.
39. P.C. Tambie-Sammy stated that he received a call on July 24, 2010 from the Penal Police Station informing of the arrest and detention of certain suspects.
40. On July 7, 2010, P.C. Tambie-Sammy interviewed the 3 Claimants along with the 3 other suspects, Kendell Charles, Rugambera Ramgoolie, Ayinda Graham. P.C. Tambie-Sammy stated that the Claimants were cautioned and informed of their rights and gave a response which was recorded in the station Diary.
41. The Station Diary extract recorded that two of the Claimants responded by saying that they knew nothing, while Shaheed responded by saying
- “... Dem come tuh sell de goat and looking for me, but that is a set up....”*
42. P.C. Tambie-Sammy stated that on the advice of unnamed seniors, he, together with P.C. Mc Fortune cautioned the Claimants advised them of their rights and charged them. He did not refer at all to any report from P.C. Ramadhin as to a tip from an informant, or to surveillance of the property or the Mazda 323 which, according to P.C. Ramahin had allegedly brought the goats. P.C. Tambie-Sammy did not indicate that he

held an honest belief in the guilt of the Claimants and he made no distinction between a charge of larceny and a charge of receiving stolen property. P.C. Tambie-Sammy therefore lacked the subjective element of reasonable and probable cause and this element falls to be regarded as proved by the Claimants.

43. I considered the element of malice. There was no evidence of actual malice on the part of P.C. Tambie-Sammy. The issue was therefore whether malice could be inferred from a lack of reasonable and probable cause. (See *Trevor Willsonson v AG*). According to the Privy Council in *Sandra Juman*<sup>5</sup>, the critical feature which has to be proved is that the proceedings were not a bona fide use of the Court's process.
44. It was my view that P.C. Tambie-Sammy was remarkable for his mindlessness. He was clearly acting by rote, according to what was dictated to him. This did not compromise the bona fides of the process.
45. Learned Counsel for the Claimants invited the Court to infer that there was malice because of the friendship between P.C. Ramadhin and P.C. Beam. This clearly had no application to the charge which was laid by P.C. Tambie-Sammy, since this was not communicated to P.C. Tambie-Sammy, who would have had no knowledge of the friendship between P.C. Ramadhin and P. C. Beam.
46. In any event, the tort of malicious prosecution requires proof that the prosecuting officer acted maliciously.

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<sup>5</sup> *Sandra Juman* [2017] UKPC 3

47. Moreover, P.C. Beam is entitled like any other citizen to the protection of the police.

The fact alone that he was colleague of P.C. Ramadhin is an insufficient basis for inferring malice on the part of either P.C. Ramadhin or the prosecuting officers. It was my view that there was no evidence of concoction.

48. It follows that the Claim must be dismissed. Because of my findings on reasonable and probable cause the claimants are to pay  $\frac{1}{2}$  of the cost of the Defendant.

Date of Delivery: January 10, 2020

Justice Dean-Armorer