

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No.: CV2015-00166

BETWEEN

CARLOS RONDON

Claimant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

Before The Honourable Mr Justice Ronnie Boodoosingh

Appearances:

Mr D. Lezama for the Claimant

Ms R. Jacob, Ms K. Mohan and Mr R. Grant for the Defendant

Date: 5 June 2020

REASONS

1. This is a claim that has its genesis on Divali night in 2001. The case against the claimant was dismissed in 2011. He embarked on these malicious prosecution proceedings in 2015. He also claims for false imprisonment and other relief. For several reasons it took longer than expected for the trial to get going.
2. At the trial the claimant called three witnesses. The defendant called two. The claimant gave evidence. His witnesses were Stacy Ballantyne, Richard Thomas and Joel Western. The defendant's witnesses were Corporal Don Wilkinson, who laid the charges and Peter Persad, who was the person who made the report.
3. The charges laid against the claimant and Joel Western were throwing missiles, malicious damage to the property of Peter Persad and assaulting Peter Persad, thereby occasioning him actual bodily harm. The charges were laid in 2002. Warrants were executed in 2003. They were then brought promptly before a Magistrate.
4. The claimant's case can be summarised as follows. On 14 November 2001 the claimant witnessed a fight between Peter Persad and Joel Western. He was not involved in the fight. He and a group of friends were walking along the Poonah Road, Williamsville, to look at the Divali

lights in the village. Peter Persad and Joel Western were both interested in the same girl. It seems the girl was Persad's girlfriend at the time. Peter Persad was on a bicycle riding along. The claimant's case was that Peter saw the girl with Joel Western and pushed him. They ended up fighting. One Neville Lazar, was driving along the road. He stopped his car. He intervened and helped stop the fight. He eventually took Peter away. The claimant says he was never involved. He did nothing to help Joel Western. The claimant says Lazar witnessed everything but never named the claimant as being involved.

5. The defendant's case was as follows. Peter Persad came to the Gasparillo Police Station on the night of 14 November 2001. He was brought by Lazar. The police officer saw blood coming from his mouth. His nose looked misaligned. A report was made and Peter Persad was sent for medical attention. A few days after Persad returned to the police station and gave a statement. He reported he was riding his bicycle on the night in question. He saw Neville Lazar's car passed by. He stopped and turned to go to him and talk to him. At that time Joel Western approached him. There was an argument. Joel took up a piece of steel pipe and approached him. The claimant also approached him. The claimant held him in a headlock while Joel struck him with the pipe. Joel kicked him. Neville came up and intervened. He tried to pull them away. The claimant threw a bottle. The bottle broke. A splinter from the broken bottle went in Persad's eye. They then damaged his bike and they fled. His story was supported by Lazar.

6. Corporal Wilkinson investigated. This took him to the Williamsville area. He could not locate the claimant and Western for some time. The claimant and Western were charged. He later obtained warrants and these were later executed.

7. There was therefore a conflicting version as to how the incident occurred. The officer had a report from Persad. He had none from the claimant.

8. The principles of malicious prosecution are well established. The claimant has to establish that the police officer acted without reasonable and probable cause. The claimant must prove he was actuated by malice. There is both a subjective and objective element to the police officer's actions.

9. The critical factors before the police officer were as follows. A report was made. On the face of it, it was a credible report. The officer made observations of injuries to Peter Persad. Mr Persad gave a statement saying how he got the injuries and who was involved. There was a medical report obtained for Mr Persad. He went on enquiries. He could not obtain other witnesses. He was unsuccessful for a time in locating the claimant and Western. The claimant had been positively identified. There were no injuries reported of the claimant. There was no report by the claimant or Western. The officer said he had not spoken to Mr

Persad on the night but later on when he came to give his statement. He had been injured and unable to speak on that day.

10. In evidence the police officer said he did not know the claimant or Mr Western before. No reason was advanced as to why he would act maliciously except it was put to him that Peter Persad's mother and Wilkinson's mother were related. Both denied this and no other evidence was given of this.
11. There were also inconsistencies in the claimant's case in the evidence of the witnesses. A few of these can be highlighted. Mr Western added persons in cross-examination who were present who were not mentioned in his witness statement. He put the claimant some distance behind them. His version was that Peter Persad came off the bike and slapped Joel Western. In cross-examination he spoke of Mr Persad cursing, grabbing the jersey of Mr Western and then fighting. Mr Western spoke of two fights. Stacy Ballantyne spoke of Mr Western slapping Mr Persad off the bike. Richard Thomas spoke of an argument first. He did not speak of slapping off of the bike. There were inconsistencies as to who parted the fight. There were inconsistencies about the involvement of one Keev, in parting the fight.
12. Further no injuries were mentioned in respect of Joel Western. It would be odd that he would receive no injuries if the fight occurred as he said.

Given these various factors I preferred the evidence given by the defendant and the version of events which they described to the version of the claimant and his witnesses.

13. Those matters apart, what the court had to consider was what did the police officer have before him. He had a credible report. He was told who was responsible. Mr Persad had a significant injury. He attempted to get other evidence but could not. Faced with such a situation it was both his duty and reasonable for him to put the persons named by Mr Persad before the court for the court to make a determination on the allegations. In fact, had he not done so, he would have been failing in his duty. A guarantee of a conviction is of course not necessary. The question is reasonable and probable cause to put the claimant before the court. I find that the police officer had such cause.

14. Malice did not follow in such circumstances.

15. The evidence before the court is that the claimant was taken before a Magistrate reasonably promptly. After that arrangements were made for bail. In the circumstances I find that the period of detention was not unduly long. I found it was necessary in the circumstances and has been justified by the defendant.

16. The result is that the claimant has not proved his case and the claim is therefore dismissed. The claimant must pay the costs of the claim to the defendant in the sum of \$14,000.00.

Ronnie Boodoosingh

Judge