

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV2008-903

BETWEEN

GUMARPAT LUTCHMANIT MAHARAJ

CLAIMANT

AND

**THE ATTORNEY GENERAL OF
TRINIDAD AND TOBAGO**

DEFENDANT

BEFORE THE HON. MADAME JUSTICE JOAN CHARLES

Appearances:

For the Claimant: Ms. Debra James,
Instructed by Mr. Vinda Maharaj

For the Defendant: Ms. Tinuke Gibbons-Glen

REASONS

BACKGROUND

[1] On the 15th February, 2001, instructions were given by the Second Division Officer in charge of the Traffic Section of the Arima Police Station to Police Constable Ali ("P.C. Ali") and three other

Police Constables to change the regular traffic flow along Sanchez Street, Arima due to a funeral procession.

- [2] P.C. Ali was posted on the corner of King and Sanchez Streets, and was directing traffic proceeding west along Sanchez Street to proceed north instead along King Street. The Claimant's motor vehicle, PBB 2547, was proceeding west along Sanchez Street and was directed by P.C. Ali to turn north along King Street.
- [3] The Claimant refused to comply with P.C. Ali's instructions and instead brought his vehicle to a complete stop, thereby obstructing vehicular traffic along the street. P.C. Ali approached the Claimant and informed him of the temporary change in the flow of traffic. However, the Claimant still refused to drive his vehicle along the said King Street, rather kept his vehicle at a standstill.
- [4] P.C. Ali then informed that Claimant that by his refusal to comply, he was committing an offence. The Claimant was asked to produce his Driver's Permit and Certificate of Insurance, and to state his name and address; he did not comply with any of these requests.
- [5] P.C. Ali requested the Claimant's name and address several times after but got no response from the Claimant. He then cautioned the Claimant and sought to arrest him. P.C. Ali asked the Claimant to exit the vehicle in order to effect the arrest but the Claimant refused. A scuffle ensued and the Claimant was

subdued with the assistance of Police Constable Taylor ("P.C. Taylor").

[6] The Claimant subsequently agreed to drive his motor vehicle to the Arima Police Station accompanied by P.C. Taylor, while P.C. Ali walked to the Police Station. The Claimant was processed and detained overnight at the Police Station.

[7] The Claimant then filed a writ on 18th August, 2005, arising out of the incident which occurred on 15th February, 2001 in which he was subsequently prosecuted for:

- i. Refusing to give his name and address to a police officer;
- ii. Failing to comply with the directions of a police officer in the execution of his duties;
- iii. Failing to produce his driver's permit when requested; and,
- iv. Driving without a certificate of insurance.

On 22nd July, 2004, the Claimant appeared before the Arima Magistrates' Court where all charges against him were dismissed due to the non-appearance of P.C. Ali.

[8] The Claimant now brings this action for damages for false imprisonment and malicious prosecution. He proffers that P.C. Ali, dressed in his uniform, was standing at the side of the road and upon seeing his vehicle, pointed in a northerly direction indicating that the Claimant should proceed onto King Street.

However, the Claimant wanted to turn left onto Mausica Road and informed P.C. Ali, who by this time had approached his vehicle, of this. P.C. Ali then, without uttering a word, proceeded to put the Claimant's hand behind his back and place them in handcuffs.

- [9] The Claimant stated that at no time did P.C. Ali alert him to the fact that traffic was being diverged, the reason he was being arrested or requested any form of documentation from him.
- [10] The main issue raised for consideration is whether there was reasonable and probable cause for the arrest of the Claimant. The Court will now examine the issues in turn.

(a) MALICIOUS PROSECUTION

- [11] In Wills v Voisin [1963] 6 WIR 50, Wooding CJ laid down what a claimant must prove in order to make out a case for malicious prosecution. At page 57 (paras. c-d), he opined:

"A plaintiff must show (a) that the law was set in motion against him on a charge for a criminal offence; (b) that he was acquitted of the charge or that otherwise it was determined in his favour; (c) that the prosecutor set the law in motion without reasonable and probable cause; and (d) that in so setting the law in motion the prosecutor was actuated by malice."

The Defendant submitted that the Claimant's case must fail since he has not adduced any evidence to show that the arresting officer, P.C. Ali, acted without reasonable and probable cause or that he was actuated by malice in arresting and charging him.

- **Reasonable and probable cause**

[12] In support of this submission, the Defendant relied upon **SECTION 104** of the **SUMMARY COURTS ACT, CHAP. 4:20**, which provides:

"Any person who is found committing any summary offence may be taken into custody, without warrant, by any constable, or may be apprehended by the owner of the property on or with respect to which any such offence is committed, or by his servant or any other person authorised by him, and shall in the latter case be delivered as soon as possible into the custody of any constable to be dealt with according to law."

[13] The Defendant argued that it is only where, as in this case, a person is "found committing" an offence that an officer can effect an arrest for reasonable and probable cause. Ms. Gibbons-Glen, on behalf of the Defendant, relied on the case of **Lucien Dupont v. The Attorney General of Trinidad and Tobago**, H.C.A 1597/1997 and submitted that "found committing" also includes "seen committing".

[14] The Court was then referred to **SECTION 93** of the **MOTOR VEHICLES AND ROAD TRAFFIC ACT, CHAP. 48:50**, by the Defendant, which states:

“(1) Any driver or conductor of a motor vehicle who commits an offence under this Act or any Regulations made thereunder and refuses to give his name and address or gives a false name or address is guilty of an offence; and it shall be the duty of the owner of the motor vehicle if required to give any information which it is within his power to give and which may lead to the identification and apprehension of the driver or conductor, and any owner who fails to do so within four days of his being notified of such request is guilty of an offence.

(2) Any constable may arrest without a warrant the driver or conductor of any motor vehicle who within view commits any offence under this Act or under the Regulations unless the driver or conductor either gives his name and address or produces his permit for examination.”

The Defendant argued further that the violation of this Section by the Claimant provided “reasonable and probable cause” for P.C. Ali to arrest him.

[15] The Claimant on the other hand referred the Court to **SECTION 3(4)** of the **CRIMINAL LAW ACT, CHAP 10:04**, which provides:

“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."

[16] The Claimant submitted that in order for P.C. Ali to have possessed "reasonable and probable cause", the Claimant needed to commit an arrestable offence and in the Claimant's view, he did not. In support of this submission, the Claimant relied upon the case of Mario Richards's v. The Attorney General of Trinidad and Tobago, H.C.S. 1469/2004, which held that there must be reasonable cause that an arrestable offence was committed for the officer's actions to be justified. Further, the Claimant submitted that **SECTION 3(1)** of the **CRIMINAL LAW ACT** states that the "*powers of a summary arrest apply only to capital offences*".

[17] In answer to the Defendant's submissions that P.C. Ali had reasonable and probable cause to arrest the Claimant, having regard to **SECTION 93** of the **MOTOR VEHICLES AND ROAD TRAFFIC ACT**, the Claimant in turn cited **SECTION 66¹** of the Act in support of his argument that by failing to comply with the instructions of P.C. Ali, he had not committed an arrestable offence.

¹ "Where a police constable in uniform is engaged in the regulation of traffic in a road or where a traffic sign, being a sign of the prescribed size, colour and type or of another character authorised by the Licensing Authority under section 64 or where a notice of the Commissioner of Police under section 68 has been lawfully placed on or near a road, a person driving or propelling a vehicle who –

- (a) neglects or refuses to stop the vehicle or to make it proceed in or keep to, a particular line of traffic when directed to do so by the police constable in the execution of his duty; or
- (b) fails to comply with the indication given by the sign or the notice, is liable on summary conviction for a first offence to a fine of three hundred dollars and on any subsequent conviction to a fine of seven hundred and fifty dollars."

- [18] The Court accepts the evidence of P.C. Ali that the Claimant refused to furnish him with the particulars asked for – his name, address, driver's permit and insurance – after the latter refused to comply with instructions to proceed north along King Street instead of west.
- [19] In the Court's view, the language of **SECTION 93(1) and (2)** of the Act is very clear, once the Claimant refused to give his name and address to P.C. Ali when asked, he committed an offence under the **MOTOR VEHICLES AND ROAD TRAFFIC ACT** for which he was properly arrested.
- [20] In the circumstances, the Court holds that P.C. Ali had reasonable and probable cause to arrest and charge the Claimant as he did.

- **Malice**

- [21] On this head, the Claimant submitted that the failure by P.C. Ali to attend the hearings of his charges in the Magistrates' Court resulting in their dismissal is proof that he was not a credible witness and had acted maliciously in preferring the charges against the Claimant. Ms. James, for the Claimant, argued that P.C. Ali acted without reasonable and probable cause in the arrest, charging and prosecution of the Claimant and invited the Court to find that P.C. Ali was actuated by malice in so doing.
- [22] On this issue, the Defendant submitted that where a Claimant fails to prove a lack of reasonable and probable cause the issue of malice does not arise. In support of this contention, Attorney for

the Defendant referred the Court to the cases of Cecil Kennedy v Donna Morris & The Attorney General, C.A. Civ. No.87/2004 and Nazih Habre v The Attorney General & P.C. Figaro, H.C.A. No. 3800/1990.

- [23] The Court having held that P.C. Ali had reasonable and probable cause to arrest and charge the Claimant herein, finds that on the facts of this case reasonable and probable cause having being established, the issue of malice does not arise. The Court has already accepted P.C. Ali's account of the incident over that of the Claimant and applying the cases of Cecil Kennedy v Donna Morris & The Attorney General and Nazih Habre v The Attorney General & P.C. Figaro, holds that the Claimant has failed to prove malice.

(b) FALSE IMPRISONMENT

- [24] The Defendant directed the Court to a passage from the learned authors of Clerk and Lindsell on Torts, 18th Edition, Chap. 13-20, p. 688, which states:

"An unlawful arrest is a false imprisonment, and if the requirements of the law as to making it clear to the arrested person that he is under lawful restraint, or informing him of the grounds of his arrest, or taking him before the appropriate authorities within a reasonable time are not complied with, an arrest which might otherwise have been justified will be unlawful and ground an action in false imprisonment."

[25] The Court having already held that the arrest of the Claimant was lawful having regard to his breach of **SECTION 93(1) and (2)** of the **MOTOR VEHICLES AND ROAD TRAFFIC ACT**, also accepts P.C. Ali's evidence that he informed the Claimant that he was committing an offence by refusing to comply with the instructions of a police officer in uniform.

[26] There was no dispute that the Claimant was taken directly to the Arima Police Station where charges were laid; he was granted his own bail at the station about an hour after his arrest and after he was charged and attended the Magistrates' Court the following day to answer the said charges.

[27] In the circumstances, the Court upholds the submissions of the Defendant that there was no false imprisonment of the Claimant.

CONCLUSION

[28] It is undisputed that the first two elements necessary to succeed in a claim of malicious prosecution have been met. However, the Claimant has failed to provide the Court with the evidence necessary to prove that the third and fourth elements - lack of reasonable and probable cause and malice - were instrumental in his arrest and prosecution. The Court therefore holds:

- i. P.C. Ali acted with reasonable and probable cause in the arrest, detention, preferring of charges and prosecution of the Claimant;

- ii. P.C. Ali was not actuated by malice in the arrest and prosecution of the Claimant; and,
- iii. The tort of false imprisonment is not made out.

IT IS THEREFORE ORDERED:

1. The Claim is dismissed.
2. The Plaintiff to pay Defendant's cost.

JOAN CHARLES
JUDGE