

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

No. CV2016-02922

Between

ALLISTER RICHARDS

Claimant

And

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

**Before Her Honour Madam Justice Eleanor Joye Donaldson-Honeywell**

**Appearances:**

Mr. Kevin Ratiram, Attorney at law for the Claimant

Ms. Daniella Boxhill and Ms. Lianne Attorneys at law for the Defendant

**Oral Judgment**

**Delivered on Friday 1<sup>st</sup> June 2018**

1. In this matter the first two factors required for a finding of malicious prosecution were clearly established.
2. Firstly, there was a charge prosecuted against the claimant, namely driving without due care and attention contrary to section 72 of the Motor Vehicle and Road Traffic Act. The charge arose from a collision at 1.25 am on May 18<sup>th</sup> 2008.
3. Secondly, the prosecution of the charge ended in the claimant's favour on December 17<sup>th</sup> 2003 when a no case submission was upheld by Magistrate Quinlan as she then was.

4. Her oral reasons were fully explained at pages 2 to 3 of the transcript as follows-

“The charge against Mr. Allister Richards is that he was alleged to have driven without due care and attention on 18<sup>th</sup> May 2008, at Manahambre Road, Princes Town. The evidence for the police really amounts to – if I can summarize it very simply to an accident having occurred near to the middle of the road. So the evidence establishing the point of impact is close to – if you could call – the centre line of the road.

One of the issues that formed the basis of the no-case submission was the issue of consistency, as it relates to the point of impact between the viva voce evidence of the complainant and the evidence which is a contemporaneous record of the measurements taken by the complainant when he recorded the measurements close to the time that the accident occurred, which is far from the time that the viva voce evidence was tendered.

So the issue is not really so much whether the Court believes the complainant, but it really more comes down to a matter of consistency. And because the issue is so critical, and the issue of the point of impact is really so critical in the finding, and because it is an issue of consistency, which, similarly, would be as critical, and because the record of the point of impact in the diary is contemporaneous with the event, and the viva voce evidence is not contemporaneous with the event, the viva voce evidence relies on the officer refreshing his memory, as well as his other recollection, without refreshing memory. And also, because there is no other evidence – independent evidence – I should say – establishing the point of impact.

Now, there is the evidence of the other driver, for ease of reference we can call him a virtual complainant the evidence of the other driver involved in the accident was that, at the point when the accident occurred he was as far to the left – as he would be – which is really inconsistent with the point of impact. So that evidence does

not assist the Court so much in the finding. And because of the issue of the inconsistency, the Court would have to uphold the submission of Mr. Rattiram.”

5. The charge against Mr. Richards was then dismissed.
6. As it relates to the other elements of the tort of malicious prosecution, namely whether there was no reasonable and probable cause for the charge and the prosecution was accreted by malice, my findings turned on which of the divergent versions of events I accepted as more probable.
7. In this regard it was not in dispute that the claimant’s evidence was entirely consistent with his pleadings. The only basis upon which the defence submitted that adverse inferences should be drawn against him is because he failed to call three eye witnesses to corroborate his story. He however, gave a reason under oath for this, which I accept as truthful, i.e. as it relates to the two passengers in his vehicle, there was a relationship breakup which meant he was no longer in touch with them.
8. The Defendant’s sole witness on the other hand was PC Rago. In my view he was far less believable as a witness. This made it impossible for me to accept his version of events as more probable. His creditability failed to impress in many ways as follows:-
  - a) At paragraph 17 of his witness statement he misrepresented the Magistrate’s disposition of the case, by saying that she found the evidence inconclusive and could not say who was right or wrong. In fact it was clear from the notes of the Magistrate’s reason that due to the inconsistent evidence by PC Rago his account that the collision took place in the southern lane was rejected. Thus clearly the Claimant was not found to be in the wrong in the collision.
  - b) PC Rago, despite being an experienced officer, aware of the relevance of debris placement from the Magistrates decision and the Claimant’s pleaded case, failed in his witness statement, to account for why he was saying debris was on the southern side instead of the northern as recorded by him in the station

diary. It was only under cross examination that he volunteered that there was a transcription error he made in the station diary. He failed to present any documentary evidence of the alleged original record of debris on the southern side e.g. desk diary, personal diary or his statement. In testifying under cross examination in this civil trial he made mention of these documents for the first time.

- c) I also draw adverse inferences from the Defendant's failure to call corroborating witnesses – in particular Officer Mohammed who was on the scene. No reasonable explanation was given for this though corroboration was essential in the absence of any documentation to support the position that debris was on the southern lane.
- d) There were also material inconsistencies between PC Rago's evidence under cross examination compared with his witness statement, the Station Diary and his Magistrates Court testimony. All these were highlighted in oral submissions of Counsel for the Claimant – e.g. re whether PC Rago asked the Claimant to give an account on the scene or not, whether he spoke to the Claimant's passengers and the virtual complainant's passenger.
- e) Finally, there was an inherent improbability about some of the evidence given. That PC Rago mistranscribed Northern, instead of Southern is improbable because he made no other cardinal point error in the station diary. Also his story that he kept asking the Claimant to give a statement whenever, he happened to pass by the station sounds highly improbable. It is clear that a claimant who would go the extent to report the matter of non-investigation to senior officers and to collecting his own evidence from potential witnesses would have incorporated in giving a statement if asked. Furthermore, PC Rago did not have the expected record of any such requests noted in a station diary.

9. Overall PC Rago's account was not one based on which I could make findings in favour of the Defence with regard to the remaining two issues.

10. Accordingly, on the issue as to whether PC Rago had reasonable and probable cause for the charge, I found that he failed to surmount the first hurdle of belief in any circumstances on which it could objectively be said that there was cause for arrest. To put it simply, I find as a fact that PC Rago found collision debris in the lane of the Claimant. This pointed to the Virtual Complainant and not the Claimant being at fault in the collision.
11. This was further borne out by the statement given by one Quintin Mark – an independent witness, which was inexplicably ignored by PC Rago when he charged the Claimant.
12. It is also my finding that the charge was actuated by malice. I draw this inference from the fact that PC Rago knew that both the Station Diary he himself made and the independent witness statement of Quintin Mark showed that the Claimant could not have been at fault in the accident or been found to have been guilty of the offence charged. PC Rago however, attempted to manipulate the criminal prosecution process by giving a different account as to placement of the debris when he testified at the Magistrates Court.
13. I do not accept, as he belatedly said under cross examination, that by his testimony on debris in the Southern lane he was correcting a mistake he made in the diary. Instead, I find that he intentionally fabricated the changed positioning of the debris to try to make out the case against the claimant. This dominant purpose was a motive completely divorced from an intention to bring the perpetrator of a criminal offence to justice.
14. In my view nothing much turns on the contention that there was a failure to give the statutory warning on the night of the collision. That entry by PC Rago like his initial entry that debris was on the northern side was correct. The Claimant has proven particulars 18(i) and (iii) of the particulars of lack of reasonable and probable cause and malice, namely:-

- i) The Complainant, having observed debris on the Claimant's lane shortly after the accident, knew that the accident occurred on the Claimant's lane.
- ii) The Complainant conducted a negligent investigation.

15. In all the circumstances the claimant has successfully made out the case of Malicious Prosecution.

16. **Damages**

In assessing an appropriate award of damages I have considered the extent of damage to fame experienced by the Claimant and the fact that he was put to expense by the Malicious Prosecution.

17. I considered the Claimant, a middle aged person, to be respectably employed in a job related to law enforcement – i.e. cargo loading. Reputation is as important to him as it is to anyone. Having a criminal matter in court for years would impact adversely on his reputation.

18. The offence charged is somewhat similar to the traffic offence in **Imran Khan v the Attorney General** CV 2012-04559 as submitted by Claimant. I would reduce the quantum slightly in this case as the impact of criminal proceedings would more adversely affect a police officer such as Khan in that case. I therefore award \$70,000.00 in general damages.

19. The special damages of \$50,500.00 is also awarded. An award of exemplary damages is appropriate in this case as the officer fabricated the critical evidence to prosecute the claimant.

20. **Order:**

There shall be Judgment for the Claimant against the Defendant. The Defendant is to pay to the Claimant:

- (a) General Damages in the sum of \$70,000.00
- (b) Special Damages in the sum of \$50,500.00
- (c) Exemplary Damages in the sum of \$30,000.
- (d) Prescribed costs.

21. Interest at a rate of 2.5% is awarded on the special and general damages from the date of filing to the date of Judgment in the sum of \$7,500.00.

**Dated this 1<sup>st</sup> day of June 2018**

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**Eleanor Joye Donaldson-Honeywell**  
**Judge.**