

**REPUBLIC OF TRINIDAD AND TOBAGO**

IN THE HIGH COURT OF JUSTICE

CV NO. 2011 -01296

BETWEEN

**NICOLE WILLIAMS**

Claimant

AND

**THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO**

AND

**BRIAN PETERS**

Defendants

**BEFORE THE HONOURABLE MADAM JUSTICE JONES**

**Appearances:**

**Mr. J. Ottley for the Claimant.**

**Ms. A. Alleyne instructed by Ms. W. Charles for the Defendants.**

**Reasons**

On Thursday, 26<sup>th</sup> October 2000 the Claimant and her husband Christopher Andrews (“Andrews”) were charged with the following offences under the Forgery Act: that they without lawful authority or excuse, knowingly had in their possession:

- (i) revenue paper, to wit, that they without lawful excuse knowingly had in their possession, a quantity of Republic of Trinidad and Tobago licensing department drivers permit data forms before the said forms had been duly stamped, signed or issued for public use, contrary to section 13(a) of the Act

- (ii) paper, namely the 11 blank Scotiabank Trinidad and Tobago Limited cheques, 18 blank Scotiabank Trinidad and Tobago managers cheques, 10 blank Republic Bank Limited cheques, 36 blank The Royal Bank of Trinidad and Tobago Limited cheques, 5 blank First Citizens Bank Limited cheques and 11 blank First Citizens Bank Managers cheques intended to resemble and pass special paper, such as is provided and used for making bank notes, contrary to section 12(a)(i) of the Act.

My decision in this case rest on my determination of two issues: (i) whether there was reasonable and probable cause to institute the prosecution and (ii) whether the prosecution was instituted maliciously. The burden of proof is on the Claimant to show that in instituting the prosecution the Second Defendant had no reasonable and probable cause to do so and was motivated by malice.

The first issue, reasonable and probable cause, involves both subjective and objective questions, namely whether on the facts adduced:

- (i) the prosecutor had an honest belief in the guilt of the accused
- (ii) the prosecutor had an honest conviction of the existence of the circumstances relied on
- (iii) was his conviction based on reasonable grounds; and
- (iv) the matters relied upon constitute reasonable and probable cause in the belief of the accused's guilt?

In this regard it must be remembered that the issue is not whether or not what the prosecutor

believed was in fact true but whether, given the information available to him, his belief that there was a proper case to lay before the court was both honest and reasonable. In other words, the issue is whether the Second Defendant honestly believed the case which he laid before the Magistrate and was such a belief reasonable on the facts available to him.

**Section 13(a) of the Forgery Act** provides that any person who without lawful authority or excuse, the proof whereof shall lie on the accused, purchases, receives or knowingly has in his custody or possession any special paper provided and used for making bank notes, currency notes, treasury bills and government debenture bonds or any revenue paper before the paper has been duly stamped, signed and issued for public use is liable to imprisonment for two years.

Section 12(a)(i) provides that any person who without lawful authority or excuse, the proof whereof shall lie on the accused, makes or uses or knowingly had in his custody or possession any paper intended to resemble and pass as special paper, such as is provided and used for the making of any bank note, currency note, treasury bill or government debenture bond is liable to imprisonment for seven years.

With respect to both charges the prosecution must establish two things: (i) that the items found are such as described in the charge and (ii) that the accused knowingly had these items in their possession. Insofar as (i) is concerned it is not in dispute that Andrews was committed to stand trial at the Assizes on both charges. With respect to (ii) section 14(b) of the Act provides as follows: “where the having of any document, seal or dye in the custody or possession of any person is in this act expressed to be an offence, a person shall be deemed to have a document, seal or dye in his possession if he (a) has it in his personal custody or possession or (b)

knowingly and wilfully has it in (i)the actual custody or possession of any other person or (ii) any building, lodging, apartment, field, or other place whether open or enclosed, and whether occupied by himself or not. It is immaterial whether the document, matter or thing is had in such custody, possession or place for the use of such person or for the use or benefit of another person.

At issue here, therefore is whether, on the facts available to the Second Defendant it was reasonable for him to charge the Claimant as a person deemed to have the documents in her possession in accordance with section 14 (b) of the Act. In this regard in my opinion the cases of **Maharaj and Mohammed v The State Cr. App. Nos. 30 and 31 and Ramdass and Another v Knights** relied on by the Claimant do not assist.

As regards to the second issue, malice, the Claimant is required to prove: malice in fact that the Defendant was actuated either by spite or ill will against her or by indirect or improper motives. If the Defendant had any purpose other than that of bringing a person to justice, that is malice.

The usual position is, however that where a lack of reasonable and probable cause is not proved the question of malice, does not arise.

With respect to credibility I was impressed with the manner and demeanour of the Second Defendant in the witness box and find that he presented as a credible witness. I was not however as impressed with the Claimant. In my opinion the Claimant was not a credible witness. In particular I do not accept her evidence in cross-examination that she was not living with her husband at the time. While this does not affect the facts of the case it does affect her credibility.

It would seem to me that if it was that she was not living with her husband at the time as she claims she would have stated that very early in the day: in her conversation with the Second Defendant soon after the charges were laid and in her statement of case and witness statement. To my mind, this was a key item of her defence to the charges laid and her attack on the position taken by the Second Defendant with respect to charging her. Instead, she raises this only in cross-examination, by way of ambush as it were. In the second place I agree with the submissions of the Defendants' attorney that it is in conflict with her pleaded case. In the statement of case the reason she proffers for not being on the premises at the time is not that she was not living with Andrews but rather that she was on 48 hours duty at the prison. The only reasonable conclusion drawn from this statement is that she was saying that she would have been there but for the fact that she was on duty.

I also do not accept her evidence that she was informed by the Second Defendant that he knew that she had nothing to do with the items found but that he had to charge her so that her husband could not get away on a technicality. In the first place it is simply incredulous. By his manner and demeanour in the box and his evidence the Second Defendant strikes me as an efficient and effective police officer who does things by the book. He does not give the impression of being stupid. In my opinion to make such an admission is simply stupid. It is frankly unbelievable that such an officer would make such an admission to an accused.

Further, and more importantly according to the Claimant, the conversation occurred when she went to the fraud squad office on 30<sup>th</sup> October. According to her she was accompanied to the office by one of her senior prison officers as well as her attorney. Yet she says that no-one else was present when the statement was made.

The extent of the conversation as described by her was that the Second Defendant informed her that he had conducted a search on 26<sup>th</sup> October and found certain items. It was at that point in time she says that he made the admission and told her that her husband was a pest. She says he then pointed to some documents on his desk and told her that they were the blank cheques and licensing forms that she was charged for having. She then told him she never saw those items and knew nothing about them. She says within minutes he had fingerprinted her and she was taken to the Port-of-Spain Magistrate's Court. It would seem to me that the very reason that the attorney would have accompanied the Claimant to the police station was to be present when she was arrested and if she was questioned by the police. It is very strange therefore that this conversation took place without her attorney being present. I do not accept the Claimant's evidence in this regard.

It is not in dispute that at the time of laying the charges the Claimant was married to Andrews and that prior to laying the charges the Second Defendant had known Andrews as being a person who had previously been in police custody for fraud offences related to cheques and other fraudulent items and had seen the Claimant visiting him while he was in such custody.

I accept the Second Defendant's evidence that (i) at the time of the search the Second Defendant was informed by Andrews that he lived there with his wife Nicole Williams-Andrews; (ii) he saw female clothing and effects in the house, all over the bedrooms in particular.; (iii) the premises comprised a two bedroom house completely enclosed by a wall and a fence, both of which were at least 5 feet high; (iv) within the perimeter wall was a rabbit coop in which the officers found two black plastic bags which contained, among other things, the items for which the Claimant and Andrews were charged; (v) other similar items were found in the house for

which neither party was charged. In this regard I accept that the Second Defendant found on the premises, either in the house or in the rabbit coop, the items listed on the back of the search warrant.

According to the Second Defendant the circumstances relied on to prefer the charges against the Claimant were:(i) the items which were the subject of the charges were found in the premises which only the Claimant and her husband occupied; (ii) her husband at no time admitted sole or any knowledge of or responsibility for the items being on the premises; (iii) these premises were completely fenced with no indication that it was a thoroughfare;(iv) the items found in the rabbit coop was in the area which could be easily accessed by both the Claimant and Andrews and there was nothing to indicate that the Claimant did not have access to and or knowledge of the said items.

In addition, he says that there were two other things, which influenced his charging the Claimant. One was the other items found in the house, which he says, although not sufficient to give rise to a criminal charge on their own, caused him to form the opinion that the occupants of the house were involved in fraudulent activities such as the making of cheques and other fraudulent items.

He says that these items were found in places in the house to which both occupants would be expected to have access to and knowledge of. According to him, the type of fraudulent activity which would logically be associated with items found in the house was in keeping with the type of fraudulent activity which was associated with items found in the coop which formed for the subject matter of the charge.

The second was the fact that the Claimant had visited Andrews while he was in the custody of police on similar charges. According to the Second Defendant to his mind, this was an indication that the Claimant knew that Andrews was once a person of interest to the police with respect to his involvement in making fraudulent cheques and other items. From this he drew the inference that the Claimant would have been put to notice as to any such illegal activity on the part of her husband, especially where, to his mind, there was cogent evidence, based on the items found in the search of the house and the yard that the fraudulent activities were being carried out on the premises.

At the end of day I accept the evidence of the Second Defendant and find that in laying the charges he had an honest belief in the guilt of the accused and an honest conviction of the existence of the circumstances relied on. The Second Defendant has therefore satisfied the subjective test. The question is whether he meets the objective one.

In my opinion the Second Defendant also meets the objective test. The question to be answered here is whether a reasonable man assumed to know the law and possessed of the information that was in fact possessed by the Second Defendant's would believe that there was reasonable and probable cause for the prosecution.

The Claimant has complained that no evidence was led against her at the Magistrate's Court. To my mind, except insofar as it may impinge on the Second Defendant's credibility this has no relevance to the issues that I have to decide. It is clear that the Claimant was charged because the Second Defendant was of the opinion that she was the wife of Christopher Andrews and at the time occupied the premises with him and that given the location of the items found she must



have known that they were there in the premises. To my mind it would seem to me that the fact that no specific evidence was led in the Magistrates court with respect to the Claimant does not in the circumstances affect his credibility. Indeed, while he does give evidence of the existence of female clothing in the premises and a description of the premises given the rules of evidence, most, if not all of the other information which would have influenced him to arrive at the decision to charge the Claimant would have been inadmissible in evidence before the Magistrate.

It would seem to me that given the wide ambit of section 14(b) of the Act and considering all the circumstances a reasonable man would have concluded that there was reasonable and probable cause to prosecute the Claimant for the charges. In my view it was reasonable in the circumstances for the Second Defendant to charge the Claimant on the facts that were before him. In my opinion the objective test is also satisfied.

That being the case it is open to me to find that the question of malice does not arise. In any event even if I had come to the conclusion that the Claimant had failed the objective test on the facts as found by me and for the reasons already stated I am not satisfied that the Claimant has demonstrated that in laying the information against the Second Defendant acted maliciously.

Accordingly, the Claimant's case is dismissed.

Dated this 17<sup>th</sup> day of May, 2012.

**Judith Jones**  
**Judge**