

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE  
(Sub-Registry, San Fernando)**

**H.C.A. No. S-1555 of 2002  
H.C.A. No. 3795A of 2002**

**Between**

**TED ALEXIS**

**Plaintiff**

**AND**

**THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO**

**P.C. DAVID MEREZ #11298**

**Defendants**

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**BEFORE THE HONOURABLE MR. JUSTICE C. KANGALOO**

**Appearances:**

Mr. Anand Ramlogan for the Plaintiff  
Mr. Bhimsingh for the First Named Defendant  
No appearance for the Second Named Defendant

**DECISION**

**THE FACTS**

1. In this matter the Plaintiff claims against the First Named Defendant:
  - (1) Damages for malicious prosecution;
  - (2) Damages for unlawful arrest and detention;
  - (3) Damages for false imprisonment;

- (4) Aggravated and/or exemplary damages;
  - (5) Interest;
  - (6) Costs;
  - (7) Such further or other relief as the nature of the case may require or as the Court may deem fit and appropriate.
2. By his Statement of Claim, the Plaintiff alleges that on the 30<sup>th</sup> day of December, 1996 the Second Named Defendant maliciously and without reasonable and probable cause preferred against the Plaintiff the charge of having in his possession a dangerous drug, namely cocaine, for the purpose of trafficking contrary to **Section 5(4) of the Dangerous Drugs Act No. 30 of 1991**.
  3. The pleaded particulars of malice of the Second Named Defendant are, *inter alia*:
    - (a) That the Second Named Defendant knew that the said charge against the Plaintiff was fabricated against him;
    - (b) The Plaintiff was not found with cocaine in his possession;
    - (c) The Second Named Defendant knew or ought to have known that he had no or no reliable evidence against the Plaintiff to implicate him in the commission of the offence;
    - (d) The Second Named Defendant failed and/or refused and/or omitted to conduct proper investigations before deciding to prefer the charge against the Plaintiff.

4. The Plaintiff then alleges that as a consequence of the charge he was forced to attend Court and was imprisoned pending the hearing and determination of the matter on the 24<sup>th</sup> day of October, 2000 when the case was dismissed. The Plaintiff avers that he was unlawfully arrested and detained.
5. By the First Named Defendant's Defence, the First Named Defendant admits that the Second Named Defendant P.C. David Merez #11298 preferred against the Plaintiff the charge as stated by the Plaintiff but denies that it was done maliciously and without reasonable and probable cause. The Defence then goes on to give certain particulars of reasonable and probable cause.

### **Preliminary Point**

6. At the trial of the matter, the First Named Defendant took a preliminary point, namely that the allegations in the Statement of Claim are against the Second Named Defendant P.C. David Merez #11298 but that, when one looks at the witness statement of the Plaintiff, no mention is made of Merez and since there is no evidence against the Second Named Defendant there can be no action subsisting against the First Named Defendant. The First Named Defendant's Counsel therefore asked for the matter to be dismissed.
7. The Court indicated that it would hear all the evidence in the matter and would rule on the preliminary point in its decision.
8. The Plaintiff then gave evidence and was not cross-examined by Mr. Bhimsingh, Counsel for the First Named Defendant. The

Plaintiff then closed his case. The First Named Defendant had no evidence to lead on its behalf and its case was also closed.

9. After hearing oral submissions from the Attorney-at-Law for the Plaintiff and the Attorney-at-Law for the First Named Defendant, the Court asked for Written Submissions to be filed and then adjourned the matter for decision. However, the matter was recalled later in the morning at approximately 11.15 a.m. by consent of both parties and Mr. Ramlogan, who appeared for the Plaintiff, indicated to the Court that he wanted to tender into evidence the Notes of Evidence and Proceedings in the matter of **Siparia Magistrate's Court Case 7524 of 1996 – P.C. David Merez, #11298 v. Ted Alexis** as certified by the Clerk of the Peace on the 15<sup>th</sup> day of October, 2003. Mr. Bhimsingh for the First Named Defendant agreed that these Notes of Evidence and Proceedings could be tendered into evidence by consent. Mr. Ramlogan further indicated to the Court that the Second Named Defendant was never served with these Notes of Evidence and Proceedings.

### **The Preliminary Point**

10. Given the fact that the Court is now apprised of the Notes of Evidence and Proceedings which took place in the Siparia Magistrate's Court which proceedings were determined in favour of the Plaintiff and that they were tendered into evidence by consent, it is now apparent to the Court from the said Notes of Evidence that P.C. David Merez #11298 was instrumental in arresting the Plaintiff and preferring the charge against the Plaintiff.

11. There is evidence against the Second Named Defendant in terms of the role that he played in the arresting and charging of the Plaintiff. In those circumstances, the Court is of the view that Mr. Bhimsingh's preliminary point should fail and, further, the Court notes that it is admitted by the First Named Defendant on the pleadings that the Second Named Defendant preferred against the Plaintiff the charge as alleged by the Plaintiff. **(See paragraph 3 of the First Named Defendant's Defence).**

### **Evidence of Ted Alexis**

12. The evidence of the Plaintiff, Ted Alexis, which is uncontradicted and was the only *viva voce* evidence given in the matter, is that:
  - (i) On the 30<sup>th</sup> day of December, 1996 he left his home which was at Cary Gregory Street, behind the Siparia Cemetery and in the vicinity of the Siparia Market to drop off his daughter.
  - (ii) He was proceeding through the back of the Market to get to Cara Gregory Street when he suddenly felt someone grab him by his left hand and his neck and began hitting him with some metal on his neck.
  - (iii) He then saw a man with a hood who had a pistol gun.
  - (iv) He later learnt that this man was a police officer by the name of Carl who told him to walk with him and he took him behind a tomb where he met Mr. Celestine Phillip who hit him with a walkie-talkie on his forehead.

- (v) He then saw another man who was known as police officer McCalphin. He came from Cemetery Street having pulled up in a Mazda 323 motor car. He rested his elbow on the hood of the car and held a black plastic bag out in his left hand and he said “*Yuh school call!*”
- (v) The Plaintiff states that that was the first time he had ever seen the bag in his life and he was not aware of its contents but McCalphin took out a “Three Plumes” matchbox out of the bag and showed it to him.
- (vi) Mc Calphin then told him that he was arrested for the possession of cocaine for the purpose of trafficking. He was taken to the Crime Investigation Division (CID) office in Siparia.
- (vii) He was neither told of his right to consult and have communications with an Attorney-at-Law, neither was he informed of any right to a telephone call.
- (viii) He was placed in prison for a total of two and a half (2½) months until he was able to get bail in March of 1997. This he says was the worst experience of his life.
- (ix) He was taken to the Siparia Magistrate’s Court on numerous occasions but on Tuesday the 24<sup>th</sup> day of October, 2000, the matter was heard and dismissed by Mr. O. Jokhan.
- (x) He finally claims in his witness statement that he has been harmed in his reputation and has suffered distress and

inconvenience as a result of this matter and he has been deprived of his liberty.

13. This is the evidence that the Court was faced with in the matter, which evidence was uncontradicted as there was no cross-examination by Mr. Bhimsingh on behalf of the First Named Defendant. Surprisingly, at the stage when the matter was recalled at 11.15 a.m. and the Notes of Evidence and Proceedings in the Siparia Magistrate's tendered into evidence by consent, Mr. Bhimsingh did not indicate to the Court that he wanted to reopen his case and/or to cross-examine the Plaintiff in this matter.
14. In the circumstances, the Court is left to assess the evidence of the Plaintiff in light of the Notes of Evidence and Proceedings.

### **Analysis of the Law and the Evidence**

15. The tort of malicious prosecution is committed where the Defendant maliciously and without reasonable and probable cause initiates against the Plaintiff a criminal prosecution which terminates in the Plaintiff's favour, and which results in damage to the Plaintiff's reputation, person or property (**Gilbert Kodiliyne, Commonwealth Caribbean Tort, Text, Cases and Materials, Chap. 3, p. 67**).
16. It is for the Plaintiff to prove all the elements of the tort, and failure to establish any one or more of the requirements will result in the Plaintiff losing his action for malicious prosecution. The essential elements which the Plaintiff must prove to establish malicious prosecution may be set out as follows:

- (1) That the law was set in motion against the Plaintiff on a charge of a criminal offence.
- (2) That he was acquitted of the charge or that otherwise it was determined in his favour.
- (3) That the Prosecutor set the law in motion against him without reasonable or probable cause.
- (4) That in so setting the law in motion, the Prosecutor was actuated by malice. Further, the Plaintiff must have suffered damage as a result of the Defendant's actions.

(See **Wills v. Voisin [1963] 6 W.I.R. 50 @ 57**).

17. In the present case, elements (1) and (2) have been established by the Plaintiff. However, the latter elements listed at (3) and (4) above warrant greater attention by this Court in determining whether there is evidence sufficient to establish malicious prosecution. The Plaintiff must establish on the evidence that there was "*no reasonable and probable cause*" to prosecute him. The *locus classicus* of the definition of reasonable and probable cause is found in the dictum of Hawkins J. in **Hicks v. Faulkner [1878] 8 QBD 167 @ 171**:

***"I should define 'reasonable and probable cause' to be an honest belief in the guilt of the accused based upon a full conviction, founded on reasonable grounds, of the existence of a state of circumstances which, assuming to be true, would reasonably lead an ordinarily prudent and cautious man, placed in the position of the accuser,***



***to the conclusion that the person charged was properly guilty of the crime imputed.”***

18. It is not necessary to be certain that the evidence will be such as to secure a conviction nor is it necessary to determine whether there is a Defence. In **H.C.A. No. 2727 of 1990 (S-785 of 1990) Rambajan Baboolal v. The Attorney General**, Mr. Justice Humphrey Stollmeyer stated at **p. 31** thereof:

***“There is no requirement upon the police to ensure that before instituting proceedings there is evidence available as will be ‘legally sufficient to secure a conviction’. A policeman is not required to determine whether there is a Defence, only whether there is a reasonable and probable cause for the prosecution ...”***

19. The question at this stage is whether the Plaintiff has made out his case against P.C. Merez #11298, and if he has, then by virtue of the **State Liability and Proceedings Act, Chap. 8:02**, the First Named Defendant will be liable.

The Court is of the view that the Plaintiff has established the essential elements of malicious prosecution in that the uncontradicted evidence of the Plaintiff is that the black plastic bag in which was found cocaine in a “Three Plumes” matchbox was planted on the Plaintiff by certain policemen which policemen were known to PC Merez #11298. The Court finds therefore that PC Merez #11298 set the law in motion against the Plaintiff without reasonable or probable cause and further, in so setting that law in motion, PC Merez #11298 was actuated by malice.

20. As to proving malice, Mr. Justice Stollmeyer in **H.C.A. No. 2257 of 1993 – Cecil Kennedy v. Donna Morris and the Attorney General** said at **p. 10**:

*“... The Plaintiff is not required to demonstrate spite or hatred. He is only required to demonstrate that a party was prompted by improper and indirect motives. The proper motive for a prosecution is the desire to secure the ends of justice and, if this not the Defendant’s true or predominant motive, then the Plaintiff will succeed on a claim for malicious prosecution. Similarly, if it was shown that there was some other motive for the prosecution of the charges, while not invariably so, an absence of reasonable and probable cause can be evidence of malice. See Clerk and Lindsell on Torts, 15<sup>th</sup> Ed., para. 18-27 ...”*

21. Given the uncontradicted evidence of the Plaintiff, whom I have assessed as a witness of truth, I accept that the black plastic bag and the “Three Plumes” matchbox with the cocaine were planted on the Plaintiff. I further accept that the Plaintiff saw that black plastic bag and the “Three Plumes” matchbox for the first time when the police held him on the 30<sup>th</sup> day of December, 1996.
22. The Court has had regard to the learning in “**Civil Actions against the Police**” **3<sup>rd</sup> Ed. para. 8-071 at p.372** where it states that there are three (3) ways to prove that the prosecution was “malicious”:
- (1) Where there is a specific malicious motive;

- (2) Where the prosecution is brought on the basis of false evidence; and
- (3) The lack of reasonable and probable cause is evidence on which malice can be inferred.
23. This prosecution was brought on the basis of false evidence. There was a lack of reasonable and probable cause and therefore I find that the Plaintiff has established his claim for malicious prosecution.

I therefore further find that the Plaintiff has made out his claim on the tort of false imprisonment. According to **Clerk and Lindsell on Torts, 18<sup>th</sup> Ed. (2003) para. 13-19:**

***“The tort of false imprisonment is established on proof of:***

***(a) The fact of imprisonment; and***

***(b) The absence of lawful authority to justify that imprisonment.”***

24. The first criterion is not an issue in this case and with respect to the second criterion, Lord Hope of Craighead in **R. v. Governor of Brockhill Prisons, ex parte Evans (No. 2) [2001] 2 AC 19** explained the legal position at **p. 32:**

***“The tort of false imprisonment is a tort of strict liability. But the strict theory of civil liability is not inconsistent with the fact that in certain circumstances***

*the harm complained of may have been inflicted justifiably. This is because it is of the essence of the tort of false imprisonment that the imprisonment is without lawful justification. As Sir William Holdsworth, A History of English Law, 2<sup>nd</sup> Ed. (1937) Volume VIII, p. 446, put it: 'A Defendant could escape from liability if he could prove that his act was, in the circumstances, permitted by law, either in the public's interest, or in the necessary defence of his person or rights of property ...'*

25. Given the findings that I have made on the planting of “evidence” on the Plaintiff, it follows therefore that there was an abuse of lawful authority to justify the Plaintiff's imprisonment.

#### **Damages – The Pecuniary Loss**

26. The Plaintiff has made a claim for special damages representing the costs incurred to secure his legal representation and incidental expenses associated with travelling. However, notwithstanding the fact that these are special damages claimed, the Plaintiff has brought no evidence to substantiate those figures. He makes a bald assertion in his witness statement that these monies were spent, without annexing any sort of supporting documentation. It is for the Plaintiff to prove his loss and such proof must be to the satisfaction of the Court. In coming to this conclusion on special damages, I am guided by **C.A. No. 200 of 2002 – Anand Rampersad v. Willie's Ice Cream** which is authority for the principle that the Plaintiff must prove his loss.

In those circumstances, without the necessary documentary evidence, I have disallowed the special damages claimed by the Plaintiff.

### **General Damages**

27. In respect of malicious prosecution, the Plaintiff is entitled to recover for injury to reputation as well as for injury to feelings, i.e. indignity, humiliation and disgrace, caused to him by the fact of the charge being preferred against him; see **McGregor on Damages, 14<sup>th</sup> Ed. p. 929 para. 1367**. Also with respect to damages recoverable in a case of false imprisonment, I am guided by the authority of **H.C.A. No. 2587 of 1998 – Kamaldaye Maharaj v. P.C. Hobbs, PC Charles and the Attorney General of Trinidad and Tobago** in which the Honourable Mr. Justice Mendonca, as he then was, said at **pp. 10-11**:

***“In a case of false imprisonment a successful Plaintiff may recover damages for injury to liberty. Damages may also be recovered for injury to feelings, that is to say, indignity, mental suffering, disgrace and humiliation suffered by the Plaintiff as well as for any physical injury as well as injury to reputation. With respect to pecuniary loss, such loss which is not too remote is recoverable ...”***

28. I am also mindful of the dictum of the Honourable Mr. Chief Justice de la Bastide in **C.A. No. 159 of 1992 – Thaddeus Bernard v. Nixie Quashie** where he stated that general damages should be a single compensatory figure which should include aggravated damages:

***“That is damages which are meant to provide compensation for the mental suffering inflicted on the Plaintiff as opposed to the physical injuries he may have received. Under this head of what I have called mental suffering are included such matters as the affront to the person’s dignity, the humiliation that he has suffered, the damage to his reputation and standing in the eyes of others and matters of that sort.”***

29. Finally, in terms of exemplary damages, I have had regard to the statement of Lord Devlin in **Rookes v. Barnard [1964] 1 All ER 367** where he said that exemplary damages, that is, damages whose object is to punish and deter should not be awarded except in only two (2) categories of cases at common law:

1. Oppressive, arbitrary or unconstitutional action by the servants of the Government; and
2. Where the Defendant’s conduct has been calculated by him to make a profit for himself which may well exceed the compensation payable to the Plaintiff.

It is the first limb of Lord Devlin’s statement which I take into consideration in assessing damages in this matter.

### **Period of Incarceration**

30. Mr. Bhimsingh has submitted that the Plaintiff was granted bail but was unable to secure it due to his peculiar circumstances and that the First Named Defendant should not be liable for the period

subsequent to the remand. See **Lock v. Ashton 12 QB 870** and **Diamond v. Minter and Others [1941] 1 KB 656 @ 663**. He further submitted that the Plaintiff has not put forward sufficient evidence before the Court to explain his inability to access bail granted to him on the 30th day of December, 1996. He therefore submits that the Plaintiff cannot establish a claim for false imprisonment for the period after which he was granted bail.

No evidence has been put before this Court as to why the Plaintiff could not access bail granted to him. The Court can only presume that the Plaintiff could not have afforded the bail granted to him. However, the Court is of the view that by planting the cocaine on the Plaintiff, the State is liable for all damages flowing from this act.

If the Plaintiff was unable to access bail after it was granted to him on the 30<sup>th</sup> day of December, 1996, then this Court should not disregard, in assessing damages for malicious prosecution and/or False Imprisonment, the fact that he spent a further two and a half (2½) months in jail before he was able to access bail.

In those circumstances, I consider the period of incarceration for the Plaintiff to be two and a half (2½) months.

### **General Damages/Aggravated Damages**

31. Having regard to the principles stated above, on the issue of general damages and the Plaintiff's claim for aggravated damages, I have approached the matter in the round, I have considered the authorities cited by both sides and I have decided that the sum of

**\$100,000.00** to include an award of aggravated damages is an appropriate award.

The factors I have taken into account in coming to this award are as follows:

- (1) This is a case in which PC Merez #11298 maliciously prosecuted the Plaintiff;
- (2) "Evidence" was planted on the Plaintiff and the Plaintiff was subsequently charged;
- (3) The charges remained pending for a period of approximately four (4) years;
- (4) The charge was naturally defamatory of the Plaintiff as the charge was very serious and by its very nature it impaired the fame and reputation of the Plaintiff;
- (5) The charge also exposed the Plaintiff to the loss of liberty on conviction and it must have caused him fear, distress and worry only because he knew that he was not guilty of any charge given that the evidence was fabricated against him; and
- (6) I further consider in the circumstances of this case that PC Merez #11298 was actuated by malice in the laying of the charges and it must have been within his contemplation at the time of laying the charge that the charge could not have been proved yet he nevertheless proceeded to charge the Plaintiff. PC Merez' actions constituted a very serious abuse of power.



32. In all of the circumstances therefore and bearing in mind the authorities referred to by Counsel on both sides, I find that the sum of **\$100,000.00** in general damages should be paid to the Plaintiff. I further find that a further sum of **\$25,000.00** should be awarded as exemplary damages to mark the Court's disapproval of the conduct of PC Merez #11298.
33. There will be interest on the award of general damages at 12% per annum from the date of the filing of the Writ of Summons herein to the date of judgment. The First Defendant is to pay the costs of the Plaintiff to be taxed in default of agreement.

Dated this 17th day of March, 2008.

**C. Kangaloo**  
**Judge**