REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2009-03208

BETWEEN

THADEUS CLEMENT **Claimant**

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO **Defendant**

Before the Honorable Mr. Justice V. Kokaram

Appearances:
Ms. M. Ramsundar for the Claimant
Mr. Pierre instructed by Ms. S. Khan and Ms. R. Tang Pak for the Defendant

JUDGMENT

1. **Introduction:**

1.1 After the first case management conference in this matter, the Claimant filed an application to strike out the Defendant's Defence on the ground that it disclosed no ground for defending the claim and was an abuse of process. On the day of hearing of that application, the Defendant filed an application seeking the Court's "leave" to amend its Defence. I dismissed the Defendant's application and struck out the Defence. The reasons for so doing are now set out in this judgment.

2. The proceedings:

2.1 This claim arises out of the arrest of the Claimant by the servants and agents of the Defendant on 23rd October 2004. The Claimant contends that the arrest was unlawful and in breach of his constitutional rights. By his claim filed on 7th September 2009 he sought damages including aggravated and/or exemplary damages for malicious prosecution and/or for false imprisonment. He also claimed a declaration that the Claimant was denied his fundamental constitutional right pursuant to section 5(2) (c) (ii) and/or section 5(2) (c) (iii) of the Constitution of Trinidad and Tobago, namely the right to retain and instruct without delay a legal advisor of his choice and hold communications with him.

The Claimant alleges that on Friday 22 October, 2004, during the afternoon, he was "liming" at a bar close to the taxi stand at Siparia, named Chrisaria Bar, Busy Corner Siparia. He later went to the bar at St. Margaret, Claxton Bay at approximately 7 p.m. with two friends while the Claimant's taxi, registration #HBH 6810 was parked at the taxi stand in Siparia. It was on Saturday 23 October 2004, during the early hours, following midnight, that the Claimant contended he was arrested and falsely imprisoned and charged by Police Constable Manwaring #13283 attached to the CID, San Fernando Police Station. Police Constable Manwaring charged the Claimant for the robbery of property from Mr. Samuel Belfon contrary to section 24(1)(a) of the Larceny Act Chapter 11:12 as amended by Act number 17 of 1989. PC Manwaring claimed that the robbery took place at the Roy Joseph Housing Scheme on the evening of Friday October 22, 2004. The Claimant was held in custody until being brought before the San Fernando Magistrate's Court on Monday 25 October 2004 and then held until Friday 29 October at the Remand Yard Facility. The matter was heard before His Worship Mr. Wellington, Deputy Chief Magistrate at the San Fernando Magistrate's Court and dismissed in favour of the Claimant.

2.2 The Claimant relied on the following facts in support of his claim of malicious prosecution:

(a) The servant and/or agent of the Defendant knew or ought to have known that the charges were fabricated.

(b) The servant and/or agent of the Defendant maliciously and/or negligently laid the charge against the Claimant knowing fully well that there was no basis for the same. The Claimant was in fact framed by Police Constable Manwaring. PC Manwaring failed to investigate the whereabouts of the Claimant on the said afternoon and evening who was at all material times liming in Siparia and with two friends at St. Margaret, Claxton Bay. At all material times, the Claimant's taxi, vehicle registration #HBH 6810 was parked at the Siparia taxi stand and the Claimant was not working on the said afternoon and evening.

(c) The servant and/or agent of the Defendant fully knew or ought to have known that he had no reliable evidence against the Claimant to establish or implicate him in the commission of the offence.

(d) Notwithstanding the fact that the servant and/or agent of the Defendant knew or ought to have known that he had no satisfactory evidence against the Claimant, he nevertheless continued the prosecution against the Claimant despite knowing that the Claimant was innocent of the commission of the offence.

(e) The servants and/or agent of the Defendant were prepared to lie in court under oath to secure the conviction of my client.

(f) The servant and/or agent of the Defendant was reckless/negligent in the discharge of his duty as a Police Officer as it related to the arrest and/or prosecution of the Claimant.

By reason of the matters aforesaid, the Claimant was deprived of his liberty, has suffered mentally and had incurred expenses in and about his defence in the Magistrate's Court and has suffered damage. The duration of the criminal proceedings was lengthy and the Claimant suffered for the duration of this time and this period is particularly excessive for the Claimant to have had the matter unsettled."

2.3 The Defendant filed its Defence on 11th December 2009. The Defence in essence amounted to a bare denial. The Defence stated as follows:

"The Defendant neither admits nor denies paragraph 3 of the Statement of Case since those are matters not within the knowledge of the Defendant."

Save and except that on Saturday October 23, 2004 the Claimant was arrested and charged by PC Manwaring for the robbery of property from Mr. Samuel Belfon contrary to Section 24(1)(a) of the Larceny Act Chapter 11:12 as amended by Act No. 17 of 1989, the Defendant denies that the Claimant was falsely imprisoned and neither admits nor denies that the robbery took place at the Roy Joseph Housing Scheme on Friday October 22, 2004 and that the Claimant was held in custody until being brought before the San Fernando Magistrate's Court on Monday October 25, and that the said Claimant was then held until Friday 29 October at the Remand Yard Facility.

The Defendant admits paragraph 5 of the Statement of Case that the matter was heard as case number 8428/04 before his Worship Mr. Wellington, Deputy Chief Magistrate at the San Fernando Magistrate's Court and dismissed in favour of the Claimant.

The Defendant denies paragraph 6 of the Statement of Case and the particulars of malice contained therein and states that PC Manwaring had reasonable and probable cause for laying the said complaint against the Claimant and acted in good faith and without malice and in the belief that he was discharging a public duty so to act.

PARTICULARS OF PUBLIC DUTY

PC Manwaring acted at all material times pursuance of his duties under the Police Service Act 15:01 of the Laws of the Republic of Trinidad and Tobago, namely the duty to preserve the peace and to detect crimes and other infractions of the law, to apprehend and summon before justices and prosecute persons reasonably suspected

of having committed offences. The Defendant will rely on the provisions of the Police Service Act Chapter 15:01 for its full effect and meaning."

2.4 At the first Case Management Conference convened on 13th January 2010 the Court reviewed the Defence with both parties and raised the preliminary issue of whether there was a reasonable defence. The Claimant's attorney at law indicated that the Defence amounted to a bare denial. The Defendant accepted the deficiency in the Defence and indicated that he may need to amend. No formal application was made nor was any such application filed or before the Court at that case management conference. The Defendant did not indicate what would have been the nature of the amendment. The Court therefore directed both parties to consider the following issue at the next Case Management Conference scheduled for February 1, 2010 "whether the Defence disclosed any reasonable defence."

2.5 Before the next Case Management Conference both parties filed their respective applications. The Claimant filed an application to strike out the defence and for permission to enter judgment against the Defendant on January 29, 2010 and on the morning of the hearing of the Case Management Conference, the Defendant filed its application for leave to amend its Defence.

The application to amend

2.6 The grounds in support of the application to amend the Defence was as bare and unhelpful as the Defence itself. In the affidavit of R. Tang Pack sworn and filed on 1st February 2010, the Defendant's instructing attorney at law set out the following fact in support of her application: *"I am advised by Counsel, Mr. Emmanuel Pierre that in light of new instructions received by P.C. Manwaring of the San Fernando Police Station in the form of further station diary extracts it has become necessary for the Defendant to amend its defence."*

2.7 This affidavit is unhelpful as it does not tell this Court when the instructions were received by PC Manwaring. It does not explain how the station diary extracts assist

the Defendant in any material way. It does not set out why the Defendant must amend its Defence nor does it set out any proposed amendment. The Court must be provided with sufficient facts to justify the exercise of its discretion. The Court cannot be invited to fumble in the dark to await the emergence of the Defendant's new defence in whatever shape or form. This application falls far short of the threshold to be met under Part 20.1 CPR.

3. Principles governing permission to amend

3.1 Rule 20.1 (2) CPR gives the Court the discretion to grant permission to change a defence at a case management conference. The Court must exercise its discretion to give effect to the overriding objective. Disposing of a case justly would mean that amendments should be allowed to enable the real matters in controversy between the parties to be determined. However the Court does not act in vain and amendments with no real prospect of success will be refused as to do otherwise will defeat the overidding objective. See ***Clarke v Slay*** [2002] EWCA Civ 113.

3.2 Unfortunately this Court cannot make any assessment at all on the merits of the proposed amendment as the Defendant failed to identify the nature of the proposed amendment. In making applications for an amendment parties must indicate the nature of the proposed amendment usually by stating in a short form the proposed amendment in the application or annexing a draft amended "pleading" to the application.

3.3 Further, the Court repeatedly asked attorney at law for his reasons for the amendment. The only answer was that the Defendant "needed to amend" because of the instructions obtained from the station diary. The Court could not assess the merits of the proposed amendment and to exercise the discretion in favour of the Defendant would not fulfill the overriding objective in those circumstances. The application for an amendment must therefore fail.

3.4 The Defendant of course faced an additional difficulty. Pursuant to rule 20.1 (3) CPR the Court may not give permission to change a defence after the "first case management conference" unless the party wishing to change a statement of case can satisfy the Court that the change is necessary because of some change in circumstances which became known after the case management conference. At the first case management conference on 13th January 2010 the Court gave directions for the parties to address it on the issue of whether the Defence disclosed any reasonable defence and adjourned the case management conference.

3.5 The general powers of case management includes directing the orders in which issues are to be tried and dismissing or giving judgment on a claim after a decision on a preliminary issue see rule 26.1 (g) (h) and (k) CPR. To deal with this case justly the Court therefore determined that the issue of what appeared to be a defective defence should be dealt with as the first issue. The Court "signed off" on the first case management conference after giving directions as to how this claim is to be managed. In this case the claim was to be effectively managed by determining whether a reasonable ground of defending the claim existed at the next case management conference which was scheduled for 1st December 2010. It was not a "continuation" of the first case management conference.

3.6 The Defendant must therefore show a "*change of circumstances which became known after the first case management conference and that this change in circumstances necessitates a change to the statement of case*". See ***William Assoon v Petroleum Company of Trinidad and Tobago*** CV 2006-01194 per Stollmeyer J.

3.7 Nothing was submitted to this Court by attorney for the Defendant as to the reason for the amendment or whether there was a change in circumstances, save that the Defendant's attorney received new instructions from an additional station diary. Without any details as to the date when this station diary was obtained or when these instructions were received, this of itself could not constitute a "change in circumstances" within the meaning of rule 20.1 CPR.

4. Striking out the Defence:

4.1 The Court may strike out a defence or part of a Defence if it appears to the Court that the defence or the part to be struck out discloses no ground for defending a claim. See rule 26.2 (c) CPR. In this case the Defendant's defence amounted to a bare denial to the Claimant's claims of false imprisonment and malicious prosecution and claims for constitutional relief.

4.2 The Defendant admitted that the Claimant was arrested and charged by PC Manwarring for the robbery of property from Mr Samuel Belfon contrary to section 24(1) (a) of the Larceny Act. The Defendant admitted that the charges were eventually dismissed by Magistrate His Worship Mr Wellington. The Defendant however denied in effect every other allegation made by the Claimant.

4.3 The issues raised by the Claimant was that there was no basis in fact for the said charge, the charges were "fabricated" by PC Manwarring and he knew fully well that he had no or no reliable evidence to establish or implicate the Claimant in the commission of the Defence, that he lied under oath and prosecuted the charge knowing he had no evidence against the accused and that at no time during his imprisonment was he told of his rights to instruct an attorney or his right to communicate with a friend. The Defendant did not raise any different version of the events, nor did it set out any reasons for denying these allegations.

4.4 It is trite law that a bare denial under the CPR no longer constitutes a good defence. See rule 10.5 CPR and ***Jacob v Millennium Development Corporation Limited*** CV 2007-1668. Stollmeyer J in ***Ed Jacob*** referred to the useful learning on this issue in Adrian Zuckerman's "Civil Procedure" at page 217:

> *"The old system of bare denials and "holding fences" was wasteful and no longer acceptable. Today, the function of the defence is to provide a comprehensive response to the particulars of claim so that when the two documents are read together one can learn precisely which matters are in* dispute."

4.5 Rule 10.5(1) CPR places an obligation on the defendant to state all the facts on which he relies to dispute the claim. A simple denial is not sufficient. The continuation of the proceedings on the basis of this defence is without any possible benefit to the Claimant and is a waste of resources for both parties. The Defendant simply has failed to set out its Defence as required by the rules. This is a fitting case for the Court to exercise its case management powers of striking out the Defence. See ***Partco Group Limited v Wragg*** [2002] EWCA Civ 594.

4.6 The Court observes however that a more detailed response to the Claimant's claim is set out in the pre action protocol response of the Defendant annexed as "A" to its defence. This was not relied on nor referred to at all by the Defendant's attorney at law in his submissions before the Court. One wonders, if the pre action protocol response contained such facts in response to a claim why it was not included in the Defence. However, in his oral submissions, the Defendant's attorney at law admitted that the Defence constituted a bare denial to the claim and accepted the fatality of that position

5. Order and Directions

5.1 The Defendant's application for permission to amend is dismissed. The costs of that application are to be paid by the Defendant to the Claimant assessed in the sum of $650.00.

5.2 The Defence is struck out. As a consequence permission is granted to the Claimant to enter judgment against the Defendant for damages to be assessed. The costs of the Claimant's application are assessed in the sum of $1500.00 and are to be paid by the Defendant to the Claimant.

Dated this 1st February 2010

Vasheist Kokaram
Judge