

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2010-05237

BETWEEN

MIGUEL REGIS

Claimant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

Before the Honourable Mr. Justice Vasheist Kokaram

Appearances:

Mr. Gerald Ramdeen for the Claimant

Ms. Cherisse Nixon for the Defendant

JUDGMENT

1. This is a claim for damages for malicious prosecution and assault and battery. The Claimant was charged on 26th May 2009 with having committed the offence of robbery with violence against one Gregory Johnson depriving him of his personal property, to wit, money (\$275.00) and a nokia cell phone together valued in the sum of \$425.00 contrary to **section 24 (1) (b) of the Larceny Act Chap 11 (12)** as amended. Police Constable Fabien Reid laid the said charge at the Criminal Investigations Department Port-of-Spain. The Claimant was in the custody of the police at the Criminal Investigations Division Port-of -Spain for

approximately three days before the charge was laid. The Claimant alleges that he was assaulted and beaten by Police Officers unknown while detained at the Criminal Investigations Department, Port-of-Spain.

2. The charge came up for hearing before the Port-of-Spain 5th Magistrates' Court and it was adjourned on several occasions due to the non appearance of Officer Reid. On 15th October 2010, the charge was dismissed for want of prosecution and the Claimant was discharged.
3. The instant claim is indeed an uncomplicated one. The Claimant is employed as a law clerk and messenger of Mr. Gerald Ramdeen, Attorney-at-Law. The Claimant contends that while liming on the corner of the Brian Lara Promenade and Henry Street around 6 o'clock in the afternoon on the 23rd May 2009 in the company of a number of friends, he said, he was approached by police Constable Reid and was arrested. Accordingly to his evidence Officer Reid did not ask him any questions but simply grabbed him from the company of his friends and uttered the words "*come leh we go ah taking you in for robbery*". He was taken to the Port-of-Spain Criminal Investigations Department in a marked police vehicle. Present in the transporting vehicle were other police officers and a civilian. At the Criminal Investigations Department he was interviewed on three occasions by a group of Police Officers. The Claimant alleges that on the third occasion the Police Officers were dressed in plain blue tactical clothing and started to "*rough him up*" and he was hit a number of blows to his body by the Officers who were asking him questions. The identities of those Officers are unknown. He protested his innocence throughout this experience and he was held in a cell at the Criminal Investigations Department for three days until the 26th May 2009 when he was charged with the offence of robbery with violence.
4. By his Claim Form filed December 21st 2010 the Claimant claims the following relief:
 - Damages for Malicious Prosecution and all consequential loss suffered by the Claimant as a result of the actions of Officer Reid in commencing and prosecuting the charge against the Claimant;

- Damages for Assault and Battery committed on the Claimant at the Port-of-Spain Criminal Investigations Department by police officers acting in the course of their duty on the 26th May 2009;
- Aggravated and exemplary damages;
- Special Damages in the sum of \$15,500.00; and
- Costs

5. Conversely, the Defendant tells quite a different story. According to the Defendant, The Claimant was brought into the Criminal Investigations Department as a robbery suspect on 23rd May 2009 at 7:13 in the morning in the company of three Police Officers, namely Officers Francis, Brown and Smith. He was handed over to Police Constable Logie who made the relevant entries in the station diary. Those entries play a very important part in this trial. Officer Reid was not there at the material time when the Claimant was received nor was Officer Reid in the company of the other Police Officers at the time of the Claimant's arrest. The Defendant contends that the Claimant was seen in the company of other men on the Brian Lara Promenade beating and robbing a man later identified as Gregory Johnson. Constable Francis who was dressed in plain clothes at the time reported that he too was robbed around 6:40 in the morning and he further reported to Officer Logie that while looking for the men that robbed him he observed the Claimant along with other men beating and robbing a man. Constable Francis arrested the Claimant and brought him to the police station. The victim Gregory Johnson who was bleeding from a wound to his head came into the Criminal Investigations Department and whilst there he identified the Claimant as one of the men who had beaten and robbed him.

6. Officer Reid was subsequently assigned the task of conducting enquiries into the matter. He went to the Central Police Station where he spoke to Officer Logie and to the Virtual Complainant, who as a result of the injury to his head had to be sent to the Port-of-Spain General Hospital. As a result of this pursuit of medical treatment, the Virtual Complainant did not return to the Criminal Investigations Department on that day. The Claimant was cautioned by Officer Reid and he replied "*boss I ent know nothing about that yes I was in the*

area ah buy a burger and then ah went by hawk and spit for a beer then the police come and hold meh”.

7. Officer Reid conducted enquiries and after considerable effort re-established contact with the virtual complainant who came to the station and gave a statement. In his statement, Mr. Johnson said that at around 6:45 in the morning on Saturday 23rd May 2009 he was about to purchase some doubles at a vendor located on Henry Street and the Brian Lara Promenade when he was approached by a man who told him that he was a Police Officer. This man slammed him against a wall. Mr. Johnson then asked the man to show him his Identification Card and suddenly a strong unshaven man, brown in complexion with low hair who Mr. Johnson remembered as having followed him from the Scotia Bank ATM machine, proceeded to slap him on the right side of his face and told him “*yuh now come out the bank and yuh have money*”. The virtual complainant replied “*I had no money*” and then another person came up pushed his hands the Virtual Complainant’s pants pocket and pulled out \$275.00 and a bank card. The strong person who followed him from Scotia Bank kicked him in his face close to his eyes and he felt a hard blow to his head which was a hit inflicted by a piece of wood. The virtual complainant then made a report to the Besson Street Police Station and was told to go to the Central Police Station. He was dropped off at the Central Police Station and while he was there he saw the strong man, made him out as one of the men who robbed him, and pointed him out to the officers saying, “*officers this is the one of the men that slapped me and that is the one who give me the kick*” – The man so identified by the virtual complainant was the Claimant.

8. It is generally accepted that the ingredients of the tort of malicious prosecution are correctly stated in **Clerk and Lindsell on Torts p 1042, para 19-05:**

‘In an action of malicious prosecution the plaintiff must show first that he was prosecuted by the defendant, that is to say, that the law was set in motion against him on a criminal charge; secondly, that in so far as they were capable of doing so the charges were determined in his favour; thirdly, that it was without reasonable and probable cause for the defendant instituting or carrying on those proceedings; fourthly, that the defendant was actuated by malice; fifthly, that he

suffered damage. The onus/burden of proving every one of these is on the plaintiff on a balance of probabilities.'

9. It was common ground before me that Officer Reid charged the Claimant for the offence and the charge was determined in the Claimant's favour. Therefore, for our present purposes, the third and fourth limbs of the tort of malicious prosecution falls for determination in this case. By his statement of case the Claimant advanced that Officer Reid had commenced the prosecution of him for the offence of robbery with violence without reasonable and probable cause and that he did so maliciously. Both of these ingredients must be proven by the Claimant to maintain a successful claim in accordance with the legal precept "He who asserts must prove". Thus, the Claimant bears the burden of proving the lack of reasonable and probable cause and the presence of malice on the part of the Defendant.

10. Therefore, this trial concerns the determination of those two elements: whether the prosecution was set in motion without reasonable and probable cause and whether it was actuated by malice. Justice Mendonca, as he then was, in **Harold Barko v. The Attorney General of Trinidad and Tobago HCA 1388 1989** identified the following questions to be posed in determining the question of reasonable and probable cause:
 - i. Did the prosecutor have an honest belief in the guilt of the accused?
 - ii. Did the prosecutor have an honest conviction of the existence of the circumstances relied on?
 - iii. Was the conviction based on reasonable grounds? and
 - iv. Did the matters relied on constitute reasonable and probable cause in the belief of the accused guilt?

11. The first two issues are subjective while the latter questions are objective ones. The starting point in determining whether the arresting officer had reasonable and probable cause is to ascertain what was in the mind of the arresting officer and determine whether those grounds on which he relied as the basis for his suspicion were reasonable. Chief Justice Wooding in the case of **Irish v Barry 8 WIR 177** put the questions to be posed and answered as follows:
 - Do those facts warrant a suspicion that a felony has been committed and

- Do they also warrant a suspicion that the person who is arrested committed it or was a party to its commission

12. In so far as exploring the subjective elements is concerned one must note that it is not an exercise undertaken to prove guilt. It is a question of the honest belief in guilt and then an honest conviction of the circumstances which compelled the arresting officer to lay the charge. Those two questions strike a common theme as to the bona fides of a prosecution. Was there a bona fide belief? Is the belief bona fide based on reasonable grounds? Couched differently, the question is was the belief emanating from a reasonable as opposed to a wholly irrational or unreasonable premise? The motivation for laying the charge must be bona fide. The arresting officer must act with honesty in pursuing the prosecution.

13. On the question of the honest belief of the arresting officer or bona fide belief, Justice Hawkins in **Hicks vs. Faulkner (1881) 8 QBD 167** usefully analyzed that requirement at page 173:

“the question of reasonable and probable cause depends in all cases not upon the actual existence but upon the reasonable bona fide belief in the existence of such a state of things as would amount to a justification of the course pursued in making the accusation complained of no matter whether this belief arises out of the recollection and memory of the accuser or out of information furnished to him by another. It is not essential in any case that facts should be established proper and fit and admissible as evidence to be submitted to the jury upon an issue as to the actual guilt of the accused.”

14. The distinction between facts to establish actual guilt and those required to establish a bona fide belief in guilt should never be lost sight of in our analysis. Therefore, we are not dealing with the actual prosecution where the facts will be tested and the criminal standard of proof of beyond a reasonable doubt will be imposed by law. We are dealing with the initial prosecutorial phase and the foundation of the prosecution process. The learned writers of **Halsbury Laws of England Fifth Edition** couched it in this way at paragraph 642:

“the presence of reasonable and probable cause for a prosecution does not depend upon the actual existence but upon a reasonable belief held in good faith in the existence of such facts as would justify a prosecution”.

It is not required of a prosecutor that he must have tested every possible relevant fact before he takes action. His duty is not to ascertain whether there is a defence but whether there is reasonable and probable cause for a prosecution: Lord Atkin in **Hernaman v Smith [1938] AC 305**. The belief in the existence of such facts as would justify a prosecution or the belief in the accused guilt may arise out of information furnished to him by others and accepted by him as true. There may be reasonable and probable cause for preferring a criminal charge even though the prosecutor has before him only prima facie evidence or such as might not be admissible before a jury and the question will be whether the impression produced on the mind of the prosecutor by the facts before him was such as would be produced on the mind of a discreet and reasonable man. The absence of corroboration is not evidence of want of reasonable probable cause.

15. In dealing with the aspect of acting on information as was done in the instant matter by Officer Reid, the prosecutor would not be adjudged by the same standard as a prosecution in a court but circumstances must objectively be judged to give rise to a conviction in the rationality of the prosecutor’s belief: per Lord Denning in **Glinski v McIver [1962] AC 726**. The prosecutor has only to be satisfied that there is a proper case to lay before the court or in the words of Lord Mansfield that there is a probable cause to bring the accused to a fair and impartial trial.

16. I wish to make the following observations in so far as the Claimant case is concerned:

- Firstly, no attempt was made to substantiate the serious allegations of fact as pleaded in the Statement of Case. Principally those were: (1) that the Virtual Complainant at the time of the arrest of the Claimant by police indicated to police Officer Reid that he was not robbed by the Claimant; (2) that Officer Reid threatened the Claimant that he would be charged with several other offences if he did not tell the officers who were the other persons who robbed Gregory Johnson.

(3) That constable Reid on several occasions before charging the Claimant with the offence threatened the Claimant that he would be charged with other offences.

- Secondly, there was a marked deviation in the Examination in Chief from the Claimant's own Witness Statement when he commenced his testimony by stating very strongly and very forcefully that the arrest took place on the 22nd May 2009 and not on the 23rd May 2009. This forceful contention was made in the face of all the contemporaneous documents - the pre-action protocol letter, the Claimant's own pleadings and his Counsel's query in re-examination as to why there was this change. It is also remarkable that the Claimant has placed this incident at 6:00 in the evening which was reiterated by him in his testimony in the witness box when as a matter of fact the station diary extract exhibited in this matter demonstrates that the Claimant came into the police station at around 7:00 in the morning. Both the CID office where he was charged and Independence Square lie in the city of Port of Spain and it is unfathomable that it would take that length of time to transport the Claimant from the place of arrest to the police station
- Thirdly, there is absolutely no mention by the Claimant of Mr. Johnson in his evidence. Whereas, both of the Defendant's witnesses testified that Mr. Johnson came to the station to make a report and positively identified the Claimant as one of the men who robbed him. The station diary is a contemporaneous record of that fact.

17. As it relates to the Defendant, the first observation I make is that it is clear that the Officer Reid did not charge the Claimant as soon as he was brought into the police station. The charge was laid some three days subsequent to the arrest of the Claimant. This was explored by the Claimant's Attorneys at law when Officer Reid was cross examined. It was submitted by the Claimant that at the time the Claimant was arrested and brought to the police station there was no probable cause to charge the Claimant. Further, there being no further evidence forthcoming, no identification parade, how then could Officer Reid have had a reasonable or honest belief in the guilt of the Claimant? However, there is another inference that can be

drawn from the delay in laying the charge and that is that Officer Reid conducted further investigations demonstrating that he did not act hastily but was thoroughly pursuing the story of the virtual Complainant Mr. Johnson. Indeed, a reasonable inference can be drawn that that was the action of a prosecutor who would like to be satisfied that once he sets the wheels of the law in motion, he has covered all the bases. In the absence of any other evidence, it is certainly a matter for this court to draw what reasonable inferences are to be made from those facts.

18. The second observation I make of the Defendant's evidence is centered on the Claimant's contention that there was no evidence to support the charge that the Claimant stole a Nokia phone. On this issue, I have noted the evidence of Officer Reid under cross examination and the absence of any statement of fact that he did receive such information in his witness statement. But I do not think it is a fatal matter as the process set in motion was robbery with violence and I do not think that the charge as laid by Officer Reid would have been dismissed as a non starter at the Magistrate's Court had it been resisted on that basis alone. Looking at all the evidence in totality I found the witnesses for the Defendant more credible and consistent. There was no corroborating evidence from the Claimant when from his own evidence he had identified potential witnesses to his arrest. On the other hand, the Claimant appeared to be either over compensating to prove his case or making statements without any basis to do so. This would certainly account for the very serious statements of fact being made in his Statement of Case mentioned earlier in this judgment, and when being put to the proof at the trial there simply was no evidence to support those statements. This was also demonstrated when he began his testimony with the very unusual assertion that the arrest took place on the 22nd and not the 23rd. The Claimant's assertion was quite incomprehensible and certainly against the weight of all the evidence.

19. In my view, Officer Reid acted sensibly, prudently and cautiously before charging the Claimant. He considered the station diary extracts, made enquiries of Officer Logie and made very detailed and protracted efforts to find the virtual Complainant Mr. Johnson. I can see no criticism of the officer in conducting his investigation in that manner.

20. I find as a fact that Mr. Johnson had positively identified the Claimant, as the person who had robbed him and perpetrated violence on him, both at the station and in the Statement as recorded by Officer Reid. This is supported by the unshaken evidence of the Defendant's witnesses and the contemporaneous records. I do not view Officer Reid's failure to conduct an Identification Parade as evidence of lack of an honest belief in the guilt of the Claimant. I do not consider Officer Reid's laying of the charge as a superficial exercise, merely taking orders and executing those orders to charge the Claimant having regard to his painstaking efforts to find Mr. Johnson. His attempts to find the virtual complainant demonstrate his desire to gather complete information and to conduct full and proper enquiries. Thus, there is nothing wrong, unreasonable or irrational for the investigating officer to secure the statement of the victim of the crime before laying the charge. The discrepancy in laying a charge in relation to the cell phone and the absence of that fact in the witness statement is inconsequential. It is clear that a reasonable man assumed to know the law and possessed of the information available to Officer Reid would conclude that there is a reasonable cause to lay the charge of robbery with violence. Therefore, Officer Reid has satisfied both the subjective and objective elements of the test necessary to determine if there is reasonable and probable cause to prosecute.

21. As far back as the 19 century Lord Eldon LC in the case of **Young v Leven (1822) 1Sh 179 at page 210** stated the relationship between reasonable and probable cause and the question of malice thus:

“... if a man's malice is foul as can be represented but yet he has probable cause for the complaint, he cannot be liable to any action for a malicious prosecution; and on the other hand if it has been found that he has no probable cause for the complaint, but if his mind is devoid of malice, neither can an action be maintained.”

In addition, in the local case of **Randolph Burroughs v. AG, HC 4702/1986; HC 2418/1987**, Justice Ibrahim reasoned that since the Plaintiff had failed to discharge the burden of proving that the prosecution was undertaken against him without reasonable and probable cause, it had become unnecessary to consider the question of malice.

22. In my view, the Claimant has failed to prove that officer Reid did not have the requisite reasonable and probable cause for charging him with the offence of robbery with violence. Consequently, the Claimant cannot maintain that Officer Reid acted with any malus animus as the finding of the presence of reasonable and probable cause to charge ousts any allegation of malice.
23. Turning to the issue of the allegation of assault, there is a glaring lack of any corroborating evidence to prove certain key elements of the Claimant's allegation that he was assaulted and battered. Moreover, the Claimant has given evidence that he was in the company of friends on the evening he was arrested. However, there is no explanation as to why none of those persons was able to testify on his behalf. The contemporaneous record indicates quite a different story from that advanced by the Claimant. These records disclose that Officer Reid did not arrest the Claimant, did not take him to the police station, and was not amongst the group of police officers who saw the Claimant at the Brian Lara Promenade.
24. In addition, Officer Logie's evidence was not seriously tested in cross examination and his testimony put to rest the Claimant's allegation and that he was assaulted by Officer Reid and others. From my analysis of the totality of the evidence, the Claimant's claim for damages for assault and battery fails for the following reasons:
- i. There a very vague allegation in both the Statement of Case and the Witness Statement of an assault with no attempt to clarify the nature and effect of this assault.
 - ii. There are two witnesses who gave unshaken evidence to the contrary - Officers Reid and Logie.
 - iii. There is no medical report to corroborate any assault or any other witness for the Claimant to do same.
 - iv. There was no or no serious cross examination of the Defendant's witnesses on whether an assault had occurred.
 - v. Having regard to the very careful manner in which constable Reid conducted his enquiries and investigations it is not believable that an assault at least from him would have been perpetrated on the Claimant.

25. Therefore, I have found that there is absolutely no merit in the claim for an assault and battery committed on the Claimant at the Criminal Investigations Department by officers on the 26th May 2009 and I also see no merit in the claim for malicious prosecution. Officer Reid's demeanor in the witness box and the manner in which he gave his answers in explaining and re-tracing his steps as to the laying of the charge appeared to me to be meticulous, and where he erred he confessed that he fell into error. This is not the hallmark of someone who was acting hastily to prosecute without any evidential foundation. Accordingly, there was no abuse of the criminal process.

26. The claims are therefore dismissed with costs to be paid by the Claimant to the Defendant. Unless either counsel would like to be heard on the question of the value of the claim, the value of the claim will stand at \$40,000.00.

Dated 31st July 2012

Vasheist Kokaram
Judge