

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2011-02632

BETWEEN

ANTHONY CHRISTOPHER MAUGE

Claimant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

Claim No. CV2011-02987

BETWEEN

LAWRENCE BLAKE

Claimant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

Before the Honourable Mr. Justice Vasheist Kokaram

Appearances:

Mr. Abdel Mohammed for the Claimant (Anthony Christopher Mauge)

Mr. Lemuel Murphy for the Claimant (Lawrence Blake)

Mr. Safraz Alsar instructed by Ms. Cherisse Nixon for the Defendant (AG)

ORAL DECISION

1. These claims are the Defendants for damages for malicious prosecution came up before me at a pre trial review. In CV 2011-02632 Christopher Mauge v AG (“the

Mauge action) I gave comprehensive directions with a view to conducting a trial. In the interim CV 2011-02987 Lawrence Blake v AG (“the Blake action”) was transferred from Justice Harris’ docket to meet the Mauge action. The Blake action came on for its first case management conference before me on 19th March 2012 which coincided with the pre trial review in the Mauge action.

2. Both actions arose out of the same facts. A trial date was set in the Mauge matter. There was no trial date set in the Blake matter. I decided to sacrifice the trial date in Mauge and to formally consolidate the proceedings. In that way I could concentrate on disposing of both the Defendant’s applications which were filed in both the Blake and Mauge matters and then fix a trial date for both matters. I was of the view that the Court’s and the parties’ resources would be more efficiently utilized by having both the Mauge and Blake actions heard together. The witnesses in both matters for the Defendants are the same, the cross examination of both Claimants could be more conveniently be carried out if they are taken first. Consolidating the proceeding will also avoid a scenario where I will have to make findings of fact in the Mauge matter arising out of the same transaction in which Blake is involved without giving him the opportunity to participate in the Mauge action by cross examining the Defendant’s witnesses.
3. There are now two applications before the Court, the Defendant’s application to strike out the proceedings and the Defendant’s application to strike out portions of the Claimant’s witness statements. The Defendant argued the striking out application first and asked the Court to rule on the state of the pleadings and to hold that there was no reasonable ground for bringing the claim. It was not therefore an application to strike out based on the insufficiency of evidence as disclosed in the Claimant’s witness statements.
4. A Court will only strike out a claim on the ground that it discloses no ground for bringing the claim in clear cases. In circumstances where there is mixed law and fact it will be slow to strike out. Similarly I accept that the Court will be equally slow to strike out a claim on the doorstep of a trial on the face of the pleadings alone where all the pre trial work is far advanced and where the “pleading point” was

plainly obvious to the Defendant as a point to be articulated much earlier in these proceedings without having the parties incur unnecessary costs in preparing for a trial. In some cases the delay in taking such a point alone is enough to defeat such a procedural application. In this case I consider this delay to be one of the main factors in exercising my discretion against striking out the claim.

5. Further I cannot say that the case is bound to fail. A weak case does not automatically translate to one that should be struck out on the basis that there is no ground for bringing the claim. I understand the difficulty of the Defendant with the Claimant's pleadings is that the particulars are really conclusions made without stating the facts on which the conclusions were based. How is the Claimant saying that the Defendant fabricated the charges? What facts are being relied upon by the Claimant to say that the charge was fabricated? This is the main complaint of the Defendant. In my view the circumstances and the facts being alleged by the Claimant are to be gleaned from the Statement of Case and the obvious, if probably simple, case of the Claimant is "I did not have the drugs on my person and both arresting officers knew it and yet arrested and charged me for being in possession of drugs". Counsel for the Claimant has agreed that this is the simple issue to be determined. It is an extremely narrow set of facts which form the basis of both the plea of lack of reasonable and probable cause and malice.
6. It would appear to me that the Claimant is relying on this same fact to prove both ingredients in the tort of malicious prosecution. The two ingredients of lack of reasonable and probable cause and malice are indeed distinct and there must be facts to support each limb. However there are cases where proof of lack of reasonable and probable cause can be relied upon to demonstrate malice. In these claims the Claimants and Defendant have proffered two entirely different versions of the circumstances and reasons for the arrest and I do not expect the trial to be very long as the issue to be determined is very narrow. The burden of course is on the Claimant. As I have pointed out to the Claimant there are no corroborating witnesses and his allegations made against the State is a very serious one I have made them aware of the warning made by Justice Gobin in

Wayne Carrington v AG CV 2007-03211, of the heavy burden on a Claimant who alleged that charges have been fabricated by officers of the State.

7. I have considered the authorities referred to by the Defendant where pleadings in claims for malicious prosecution were struck out as being deficient but each case must be determined on its facts to determine what live issues if any arise for determination and whether those issues are germane to establishing a cause of action. The Defendant's application to strike out the Statement of Case will therefore be dismissed. Because of the narrow issue to be decided I will however strike out paragraphs 22 (e) of the Statement of Case. Both allegations have no place in establishing the tort of malicious prosecution by the arresting officers.
8. I then proceeded to strike out portions of the Mauge and Blake witnesses' statements. In relation to the Blake witnesses' statement the paragraphs struck out were done by consent. In relation to the Mauge witness statements the portions of paragraphs 20, 21, 22, 25, 33, 44 were struck out on the grounds of hearsay Paragraphs 47, 48 and 53 were struck out by consent, they were conceded by the Claimant's attorney as being irrelevant. Paragraphs 54, 56, 57 and 58 were struck out on the ground of irrelevance and/or it constituted evidence which were not in support of any material fact pleaded in the Statement of Case.
9. Costs were reserved to be dealt with at the trial.

Dated 3rd April 2012

Vasheist Kokaram
Judge