

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2013-03924

BETWEEN

CARLTON MORGAN

Claimant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

Before the Honourable Mr. Justice V. Kokaram

Date of Delivery: 20th February 2015

Appearances:

Mr. Kevin Ratiram for the Claimant

Ms. Linda F. Khan instructed by Ms. Kezia Redhead for the Defendant

JUDGMENT

1. On 8th October 2009 the Claimant, Carlton Morgan, was arrested and charged by Police Constable Richard Kishore for the offence of using insulting language to provoke another person to commit a breach of the peace. The charge that was laid against Mr. Morgan was subsequently dismissed at the San Fernando Magistrates' Court. Mr. Morgan contends that he never used any insulting language and instituted this claim for damages for wrongful arrest, false imprisonment and malicious prosecution.
2. According to Mr. Morgan on that day he was using public transportation on a journey from Point Fortin to San Fernando to visit his doctor. It was after 1:00pm that the incident

occurred. He was sitting in the front passenger seat of a maxi taxi. Eventually the maxi taxi turned onto the Gulf View Link Road. The maxi taxi began to move slowly in traffic near the Gulf City Mall when according to Mr. Morgan, an argument ensued between the passengers in the maxi taxi and PC Kishore who was on duty standing at the side of the road. He then ordered the maxi taxi to stop, opened the door and dragged out Mr. Morgan from the maxi taxi. Despite protesting his innocence PC Kishore told Mr. Morgan “ah mad to cuff yuh down right here” and dragged him to a parked police vehicle some distance away. He was transported to the San Fernando Police Station. After some complaints made by Mr. Morgan about pains in his back he was taken to the San Fernando General Hospital where he received treatment. He was later charged and released on his own bail. Subsequently on 19th October 2012 after several appearances at the San Fernando Magistrates’ Court the charge was dismissed for non appearance of the complainant.

3. If this version of the incident by Mr. Morgan is correct then it was an abuse of police power as the officer had no reason whatsoever to charge nor to touch Mr. Morgan as no arrestable offence was committed by him.
4. PC Kishore however had another version of the events leading to Mr. Morgan’s arrest. According to him he together with other officers was on “roadblock duty” at the Gulf View Link Road in front of Gulf City Mall. The vehicles were as a result creeping slowly along the road. It was around 1:50p.m when he caused a vehicle in front of the maxi taxi transporting Mr. Morgan to be stopped that Mr. Morgan then “push his head and upper body out of the left front door window” of the maxi taxi and began hurling insults at the police officer¹. In response PC Kishore identified himself to Mr. Morgan, told him of the offence, cautioned him, opened the door and asked him to step out, arrested him, informed him of his rights and privileges and escorted him to a nearby police vehicle. He was transported to the San Fernando Police Station where he was charged for the offence.

¹ “like that person doh have no licence!” “you police is ah ass hole. You know what you doing? You is a stupid police!” “I going to see the Prime Minister now. I go tell him about you. You would not be long here again!”

5. The critical issue to be determined at this trial is whether PC Kishore had reasonable and probable cause to arrest and charge the Claimant. If he did both the claims for wrongful arrest, false imprisonment and malicious prosecution would fail. In my analysis the Defendant's testimony was unshaken and PC Kishore's account was sufficiently corroborated by another police officer who was present and witnessed the incident to lead this Court to believe that it is more probable that Mr. Morgan was the offender in this matter. In such circumstances PC Kishore did have reasonable and probable cause to arrest Mr. Morgan and to later charge and prosecute him for the offence. It is true that a continued detention without charging an accused may make such an arrest unlawful, however no complaint can be made on the facts of this case of the treatment of Mr. Morgan while in custody as explained in this judgment.
6. The Claimant in setting out his case for wrongful arrest, false imprisonment and malicious prosecution ought to properly set out his case for each of these torts making it clear especially in the claim for wrongful arrest and false imprisonment what aspect of the detention was being complained of. Although the burden is on the Defendant to justify an imprisonment, I commend the modern approach of a Claimant providing particulars of wrongful arrest or false imprisonment such as whether there was no reasonable and probable grounds for the arrest, whether he was detained on a non arrestable offence, whether there was a failure to inform the arrested person of the facts and grounds of arrest or there was an unnecessary lengthy detention. The list is not exhaustive but is consistent with the Claimant's obligation to set out its case as prescribed by Part 8.6CPR. See *Bullen & Leake & Jacob's Precedents of Pleadings 16th ed.* In any event the parties agreed that the following issues arise for determination at the trial:
 - (a) Whether the Defendant through PC Kishore had reasonable and probable cause to arrest and detain the Claimant and lay the charge of using insulting language to provoke another to commit a breach of the peace;
 - (b) If the Defendant did not have such reasonable and probable cause did he act maliciously in laying the charge?
7. At a pre trial review the parties agreed on the following facts:

- (a) That the Claimant was detained for a period of 5 hours from around 1:50p.m on 8th October 2009 to 6:50p.m when he was granted bail by PC Jokhan and allowed to leave the San Fernando Police Station.

After exchanging their respective advice on quantum the parties also agreed:

- (b) Without admitting liability general damages are submitted by the parties to be in the region of \$40,000.00 to \$50,000.00.

The criminal offence

8. Before a Police Officer can lawfully arrest someone without a warrant: (1) he must have reasonable cause to suspect that an arrestable offence has been committed and, (2) he must have reasonable cause to suspect that the person to be arrested is guilty of the offence or (3) he must have reasonable suspicion that the person has committed an offence.
9. The offence of using insulting language is a summary offence. Section 49 of the Summary Offences Act Chap 11:02 provides:
- “49. Any person making use of any insulting, annoying or violent language with intent to, or which might tend to, provoke any other person to commit a breach of the peace, and any person who uses any obscene, indecent or profane language to the annoyance of any resident or person in any street or of any person in a place to which the public is admitted or has access, or who fights or otherwise disturbs the peace, is liable to a fine of two hundred dollars or to imprisonment for thirty days.”
9. It is an arrestable offence and PC Kishore is empowered to arrest Mr. Morgan if he has committed or the officer reasonably suspects him of committing the said offence. See sections 104 of the Summary Courts Act Chp 4:02 and Sections 35, 45 (a) and (b) of the Police Service Act Chapter 51:01.²

² **Summary Courts Act- 104 Chp 4:02.** Any person who is found committing any summary offence may be taken into custody, without warrant, by any constable, or may be apprehended by the owner of the property on or with respect to which any such offence is committed, or by his servant or any other person authorised by him, and shall in the latter case be delivered as soon as possible into the custody of any constable to be dealt with according to law.

105. On a person being taken into custody for a summary offence without a warrant, any police officer of or above the rank of corporal may in any case, and shall, if it will not be practicable to bring such person before a Magistrate or Justice within twenty-four hours after he was so taken into custody, enquire into the case, and, unless the

Reasonable and Probable cause

10. The gist of the tort of false imprisonment is the mere imprisonment. A constable is liable in false imprisonment if he unlawfully arrests or detains another in circumstances which do not amount to a valid arrest. He is also liable if he makes a lawful arrest but does not comply with the conditions for continued detention, or if he detains the person for an unreasonable time without taking him before a magistrate. See *Halsbury's Laws of England Vol. 97 (2010)* para 545. The Privy Council recently in **Ramsingh v The Attorney General of Trinidad and Tobago** [2012] UKPC 16 at para 8, set out the relevant principles to determine the tort of false imprisonment which are:

- i. The detention of a person is prima facie tortious and an infringement of section 4(a) of the Constitution of Trinidad and Tobago;
- ii. It is for the arrester to justify the arrest; that is the Defendant in this case;
- iii. A police officer may arrest a person if with reasonable cause he suspects that the person concerned has committed an arrest-able offence;
- iv. Thus the officer must subjectively suspect that the person has committed such an offence; and
- v. The officer's belief must have been on reasonable grounds or as some of the cases put it, there must have been reasonable and probable cause to make the arrest;
- vi. Any continued detention after arrest must also be justified by the detainer."

11. The question of reasonable and probable cause is also relevant to the tort of malicious prosecution. Whereas to justify an arrest the Defendant may show that the officer had reasonable cause to suspect that the person committed the offence, in malicious prosecution it is for the Claimant to prove that the officer did not have reasonable and probable cause to institute proceedings (and acted maliciously).

12. In the tort of malicious prosecution the essential ingredients are set out in *Clerk & Lindsell on Torts (20th Ed)* at page 1070, para. 16:09:

offence appears to such police officer to be of a serious nature, grant him bail in accordance with the Bail Act, subject to a duty to appear before a Court at such time and place as the police officer appoints; but where such person is retained in custody he shall be brought before a Court of summary jurisdiction as soon as practicable.

“In an action for malicious prosecution the claimant 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 the prosecution was determined in his favour; thirdly, that it was without reasonable and probable cause; fourthly, that it was malicious. The onus of proving every one of these is on the claimant. Evidence of malice of whatever degree cannot be invoked to dispense with or diminish the need to establish separately each of the first three elements of the tort.”

13. It is not in issue that PC Kishore did charge Mr. Morgan and the prosecution was determined in his favour. The question in relation to the third and fourth elements referred to above is whether PC Kishore has reasonable and probable cause to set the prosecution in motion and did so maliciously. As the Privy Council in **Ramsingh** observed the test of reasonable and probable cause in a claim of false imprisonment has both subjective and objective elements. Similarly in the tort of malicious prosecution the test to determine reasonable and probable cause is both subjective and objective³. See **Harold Barco v the Attorney General**⁴ Mendonca J (as he then was). The test can be summarized as follows:
- a. Did the officer honestly have the requisite suspicion or belief?
 - b. Did the officer when exercising the power honestly believe in the existence of the “objective” circumstances which he now relies on as the basis for that suspicion or belief?
 - c. Was his belief in the existence of these circumstances based on reasonable grounds?
 - d. Did these circumstances constitute reasonable grounds for the requisite suspicion or belief?

14. In *Halsbury Laws of England Vol. 45(2)* at para 469 reasonable and probable cause for a prosecution is described as follows:

“Reasonable and probable cause for a prosecution has been said to be an honest belief in the guilt of the accused based on a full conviction, founded upon reasonable grounds,

³ The objective test was stated by Diplock LJ in **Dallison v Caffrey** [1962] 2 All ER 610 at 619

⁴ HCA 1388 of 1989

of the existence of a state of circumstances which, assuming them to be true, would reasonably lead any ordinarily prudent and cautious man, placed in the position of an accuser, to the conclusion that the person charged was probably guilty of the crime imputed.”

15. Recently the Court of Appeal in **Juman v AG** CA 22 of 2009 per Rajnauth-Lee JA offered guidance on this ingredient of lack of reasonable and probable cause in a claim for malicious prosecution as follows:

“9. Lord Radcliffe in the case of **Glinski v McIver** [1962] A.C. 726 stated that the ultimate question was whether the prosecutor was motivated by what presented itself to him as reasonable and probable cause. Mere belief in the truth of the charge would not protect a prosecutor if the circumstances would not have led an ordinarily prudent and cautious man to conclude that the person charged was probably guilty. 2 In **Glinski**, Lord Denning observed that the police officer does not have to believe in the guilt of the accused. He has only to be satisfied that there is a proper case to go before the court. He cannot judge whether the witnesses are telling the truth. He cannot know what defences the accused may set up. Guilt or innocence is for the tribunal and not for him. 3 Further, in **Glinski**, Lord Devlin observed that the prosecutor does not have to believe in the probability of obtaining a conviction. He is only concerned with the question whether there is a case fit to be tried.”

16. In determining whether the arresting officer had reasonable and probable cause to prosecute the Claimant, the first enquiry therefore is to ascertain what was in the mind of the arresting officer and to determine whether the grounds on which the arresting officer relied as the basis for his suspicion were reasonable, or that the circumstances were such as to lead an ordinary prudent man to conclude the person charged was probably guilty.

17. It is for the Defendant in this claim for wrongful arrest/false imprisonment therefore to first justify the arrest and detention of Mr. Morgan. It must demonstrate that PC Kishore had reasonable and probable cause to make the arrest. It is for the Claimant in the claim for malicious prosecution to prove that PC Kishore did not have reasonable and probable cause to lay the charge and prosecute him and acted maliciously. The main issue in this trial

therefore is essentially a simple question of fact did PC Kishore hold the honest belief based on a full conviction founded on reasonable grounds that Mr. Morgan was probably guilty of the crime imputed. This is resolved by an analysis of the respective testimonies of the witnesses to determine whether Mr. Morgan used insulting language on the day he was arrested and charged for the offence.

Assessment of the evidence

18. The Claimant alone gave evidence in support of his claim. The Defendant led evidence through PC Kishore and Police Constable Harnarine Ramlogan who accompanied the arresting officer and was present when the incident took place. There was agreement by the parties on a bundle of documents which was tendered into evidence and marked “A” comprising:

- Station Diary extract of the San Fernando Police Station dated 8th October 2009.
- Station Diary extract of the Ste. Madeleine Police Station dated 8th October 2009.
- Medical report of Carlton Morgan.
- Notice to Prisoner.
- Charge Book Extract from the San Fernando Police Station.
- Case of 3970/09 notices of proceedings from the Magistrates’ Court.

19. In assessing the credibility of witnesses the Court is guided by the judgment recently delivered by the Court of Appeal in **AG v Anino Garcia v AG** CA Civ. 86/2011 where Bereaux JA placed emphasis on the assessment of the credibility of witnesses as against the pleaded case, contemporaneous documents and the inherent probabilities of the rivalling contentions. Adopting the guidance of **Reid v Charles** Privy Council Appeal No. 36 of 1987 the Court of Appeal commented:

“where the wrong impression can be gained by the most experienced of judges if he relies solely on the demeanour of witnesses, it is important for him to check that impression against contemporary documents, where they exist, against the pleaded case and against the inherent probability or improbability of the rival contentions, in the light in particular of facts and matters which are common ground or unchallenged, or disputed only as an afterthought or otherwise in a very unsatisfactory manner. Unless this

approach is adopted, there is a real risk that the evidence will not be properly evaluated and the trial judge will in the result have failed to take proper advantage of having seen and heard the witnesses. ” (emphasis mine)

20. Ultimately in assessing rivaling accounts of an incident one has to adjudge which is the more plausible: whether an officer will suddenly open a door to a vehicle and drag out a passenger and charge him with such an offence or that that person would have done something to trigger such an event. It is also submitted by the Claimant’s attorney that the incident may also be a case of mistaken identity that PC Kishore simply nabbed the wrong person. However there are no aggravating features in this case, nor allegation of ill treatment at the police station, nor a case of prior history or victimization to create the impression that PC Kishore lost his senses and arrested Mr. Morgan or set a prosecution in motion without any basis to do so.

The Claimant’s evidence:

21. Mr. Morgan appeared to be a simple elderly man. His story as revealed in his witness statement is a brief and simple one. He was travelling in the maxi taxi sitting in the front seat, he heard passengers in the maxi shouting loudly. All of a sudden a man came up to the door. He did not know him to be an officer. He told the maxi to stop and opened the door held onto his left arm and pulled him out saying “You come out”. Mr. Morgan said it was not he who was shouting when PC Kishore replied “Ah mad to cuff you down right here.” He then told him to walk down the road and PC Kishore began walking down the road while holding Mr. Morgan’s arm who walked with him to a police vehicle.

22. On examining the Claimant’s statement of case and his witness statement there were a number of discrepancies. First he states in his statement of case that a number of persons were arguing with the officer. He however distanced himself from this statement in his witness statement by saying that there were people shouting in the maxi taxi but he did not look back or knew who they were speaking to. It was only after he was forced out of the maxi taxi and held by the officer he formed the belief that the people had been shouting at PC Kishore. Immediately it appears that in making the statement that persons were shouting he creates the impression that nothing untoward was being said to provoke PC Kishore

specifically. Unlike in his statement of case where he states categorically that there was an argument with PC Kishore. Under cross examination he denied that he knew what was being said or who was speaking as he had just done some surgery and could not freely move his neck to turn around. I have noted a medical report which suggests there was soft tissue injury of the back but the degree of immobility Mr. Morgan complained of is not corroborated in that report. Interestingly he states that he realized that PC Kishore was probably annoyed about the “shouting” without saying specifically what was said. It is more probable that insults were being hurled at PC Kishore, based on Mr. Morgan’s own conclusion it is more probable that the words said were loud enough for PC Kishore to have heard it. The issue then on his own evidence is whether Mr. Morgan is the one who shouted at PC Kishore.

23. Second, he states as a matter of fact in his statement of case that PC Kishore was on duty but says in his witness statement that at the time he did not know who he was but only later discovered who the officer was. In fact he was at pains to point out in his cross examination that he could not identify who this person was at the time as there were no identifying marks on this person he simply wore a red jersey. It was only when he was walking with PC Kishore on the way to the police vehicle he realized “well is probably police.” It is more probable that he knew it was a police officer for him to have easily succumbed to that authority.

24. Third on the question of time there are some unusual aspects. First in his statement of case he says that he began his journey from San Fernando to Point Fortin at 8:00a.m. However he had arrived at the Gulf View Link Road after 1:00p.m that day. There was no explanation why he took so long on this route and this was not explored in cross examination. Further he states in his statement of case that he was released on bail at 6:00p.m. After disclosure he changed his case in his witness statement to being released at around 7:00p.m. It is odd having regard to the fact that the parties agreed that he was released on bail at 6:50p.m and that in his witness statement he states that “he was allowed to leave” rather than the agreed fact that he was released on bail.

25. Under cross examination the Claimant stated that he did not say anything at all to PC Kishore. However he tried to embellish his version and paint an even more serious picture than his witness statement had portrayed under cross examination. There are two material

instances. One, he gave the impression, in spite of what was stated in his statement of case, that PC Kishore could not be identified as a police officer. According to him this stranger opened the door and grabbed him and pulled him out he made no effort to call out for help or to resist. It is more probable that PC Kishore was wearing some identification and that he identified himself as an officer for Mr. Morgan not to have raised an alarm.

26. Second to bolster his case against PC Kishore he added that he nearly fell into the road when the officer pulled him. That he was grabbed and pulled up the road. But that intensity and severity in action by PC Kishore is not described in Mr. Morgan's witness statement or statement of case when it clearly should have been as Mr. Morgan is also seeking aggravated and exemplary damages.

27. None of these on their own may prove to be material however taken together it paints a picture of one being economical with the facts and as I have found economical with the truth.

The Defendant's witnesses:

28. The contemporaneous document of the station dairy entry which was admitted into evidence sets out essentially the defence of the Defendant and the testimonies of both witnesses PC Kishore and PC Ramlogan:

“No 12915 Pc DICKIE driving vehicle PCL 9799 in company with No 13412 Pc RAMLOGAN and No 13427 Pc KISHORE returned to station with prisoner CARLTON MORGAN 69 years afro trini unemployed of #13 Kallou Road Point Fortin and Pc KISHORE reported around 1.50pm on today's date 8/10/09 he was on roadblock duty at Gulf View Link road La Romain when he caused a pink Mitsubishi lancer wagon motor to stop and at the rear of this vehicle was a brown band maxi taxi which also stopped and the said prisoner who was the lone passenger in the front passenger seat in the left of said maxi taxi pushed his head and upper body out of the left front door window area and said in loud tone of voice “like that person doh have no license” Pc KISHORE continued his road check duty and the said prisoner shouted in a loud tone of voice and pointed at Pc KISHORE “you police is a ass hole you know what you doing you is a stupid police” Pc KISHORE became annoyed and approached the said prisoner and identified himself as a police officer to the defendant by showing to him his police identification card and told

him of the offence of insulting language he had committed and cautioned him and he replied in a loud tone of voice “I going to see de Prime Minister now I go tell him about you, yuh would not be long here again.” Pc KISHORE then asked the said prisoner to step out of the said maxi taxi, which he did and Pc KISHORE then arrested the said prisoner and informed him of his constitutional rights and privileges and he said in a loud tone of voice “I go report you to the commissioner he living Point Fortin where I living.” And Pc KISHORE with the assistance of the other police officers brought the said prisoner to station.”

29. I did note that both witness statements of PC Kishore and PC Ramlogan are almost identical. However I have to take into account as well that according to them the offence took place in their presence. They both noticed Mr. Morgan shout the offending words, they both had a clear view of him and the account was inscribed in the station diary during the course of the afternoon. Both witnesses for the Defendant were unshaken in this evidence. There was no attempt in cross examination to suggest that these words were said by other people in the maxi taxi.
30. There are three aspects of the Defendant’s evidence that I find more compelling than the Claimant’s. First there were no material inconsistencies between their testimonies with its pleaded case and the contemporaneous documentary evidence.
31. Second, both officers recall Mr. Morgan saying that “I go report you to the commissioner. He living Point Fortin where I living”. It bears a ring of truth as it is unlikely that the officers not knowing who Mr. Morgan is or where he lived or having a past history between them would manufacture this unless it was something that Mr. Morgan actually said.
32. Third, importantly PC Kishore’s evidence was corroborated by PC Ramlogan who I find to be a witness of truth. He was on the scene with other officers as part of the road block exercise. The incident took place in his presence. PC Ramlogan was not shaken at all in cross examination on the actual words said or that Mr. Morgan did not say the offending words. Further he was not tested at all on the manner in which Mr. Morgan was detained and arrested by PC Kishore. This would significantly destroy Mr. Morgan’s case that he did not

know who PC Kishore was and that the officer simply grabbed him and pulled him up the road.

33. There are some aspects of PC Kishore's evidence which the Claimant's counsel submitted demonstrated his inconsistency. His failure to document in detail everything that he said in his witness statement in the station diary. That he took only a few minutes to write up the station diary entry. That he held on to Mr. Morgan's arm and pulled him out. That he failed to attend the Magistrates' Court on eleven occasions and that this demonstrated his lack of belief in the guilt of Mr. Morgan.

34. I am satisfied that that not every detail leading up to an arrest is documented in the station diary. Some attempt was made to discredit PC Kishore's account as recorded in the station diary when he said he only took two minutes to write it up. The parties not producing the original of the station diary makes it difficult to say how many lines were contained the entry in the original handwriting and how long it would take to write it. But in any event such a submission is quite disingenuous to discredit PC Kishore's contemporaneous record of the incident. PC Ramlogan's unshaken and untested evidence contradicts Mr. Morgan's account that he was "pulled out". The record at the Magistrates' Court speaks for itself that PC Kishore and his witness appeared on some occasions and not on others and that Mr. Morgan was ready on some occasions and not on others. There were reasons stated on the record for the failure of PC Kishore to attend as being on "sick leave". There is no other material produced to this Court to doubt the contents of the Magistrates' Court's record or to disbelieve PC Kishore who claimed to be on sick leave on some occasions. I am satisfied that PC Kishore was prepared to prosecute the case armed with his witness in this matter at the Magistrates' Court.

35. Finally in my overall assessment the treatment of Mr. Morgan by PC Kishore is not consistent with an officer who was manufacturing a case against him. He was transported to the San Fernando Police Station without incident. When he was being processed by PC Kishore he attended to Mr. Morgan's complaint of a back injury. There was no suggestion that he was assaulted by the officer. He was taken to the San Fernando General Hospital. The medical report revealed he had a minor back injury. He was offered a meal. He was released

on his own bail that same day. There is no hint of malice or lack of honest belief on the part of PC Kishore.

36. I am therefore satisfied by the Defendant's evidence that the following facts have been established which is inconsistent with the Claimant's version of the events (a) that there was a police road block exercise; (b) there were several officers including PC Ramlogan when the maxi taxi came to a standstill; (c) the vehicle in front was caused to be stopped by PC Kishore; (d) the Claimant at that point used insulting language; (e) the Claimant was asked to come out the vehicle and was not dragged out; (f) the Claimant was then informed of his legal rights and arrested by PC Kishore; (g) he was taken to the San Fernando Police Station and his detention was as long as was necessary to write up the charges and process Mr. Morgan as well as to obtain medical attention for him at the San Fernando General Hospital. (h) PC Kishore was not guilty of malingering in failing to attend the Magistrates' Court when the charges were dismissed. The record provides adequate reasons why at times the prosecution and the defence were not ready to proceed. The record is not indicative of his lack of honest belief in the guilt of the accused.

37. This is enough to find that on a balance of probabilities the officer had legal and probable cause to make the arrest, to lay the charge and to prosecute Mr. Morgan. It is not necessary for the Court to therefore consider the ingredients of malice. See **Wills v Voisin** 6 WIR 50.

38. Indeed had I formed the view that there was no reasonable and probable cause to arrest or prosecute Mr. Morgan and in fact that the officer was mistaken in his view I would have had to consider whether that mistaken belief can form the basis for both lack of reasonable and probable cause and malice. It however does not arise in this case.

Conclusion:

39. The Claimant's claim is dismissed. The Claimant shall pay to the Defendant prescribed costs based on a stipulated value of \$40,000.00 pursuant to rule 67.5 (2) (b) (iii) which is the sum of \$11,500.00.

Vasheist Kokaram
Judge