

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2016-04653

BETWEEN

RICHARD DARSOO

Claimant

AND

**P.C MICHAEL PIERRE
(Regimental Number 12171)**

First Defendant

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Second Defendant

Before the Honourable Mr. Justice V. Kokaram

Date of Delivery: Friday 16th March 2018

Appearances:

Mr. Subhas Panday instructed by Ms. Aleena R. Ramjag for the Claimant

Ms. Daniella Boxhill instructed by Ms. Lianne Thomas for the Defendants

JUDGMENT

1. On 26th November 2005 arising out of an altercation at a straightener's yard between Richard Darsoo, the Claimant, and Acting Corporal Michael Pierre, the First Defendant, criminal proceedings were instituted against Mr. Darsoo which were eventually determined in his favour. Acting Corporal Pierre had charged Mr. Darsoo for using obscene language, resisting arrest and being in possession of a broken bottle for the purpose of committing an indictable offence namely to wound contrary to sections 49 and 62(1) of the Summary Offences Act Chapter 11:02 and section 43 of the Police Service Act Chapter 15:01. Mr. Darsoo also filed two (2) cross complaints against Acting Corporal Pierre of assault and using annoying

language contrary to sections 4 and 49 of the Summary Offences Act. Those charges were eventually determined in Acting Corporal Pierre's favour at the Court of Appeal.

2. Mr. Darsoo spent approximately six and a half (6 ½) hours in detention at the San Fernando Police Station before he accessed his own bail on 26th November 2005. He appeared before the San Fernando Magistrates' Court on 28th November 2005. The matters were called approximately thirty six (36) times over an eight (8) year period when they were finally determined. The matters were adjourned for a variety of reasons when eventually on 21st February 2013 the matters were heard and determined in one day.
3. Both gentlemen were strangers to each other before their altercation. Since then they have spent the last twelve (12) years in litigation, eight (8) in the magisterial proceedings and now the last eight (8) months in this claim by Mr. Darsoo for damages for malicious prosecution and false imprisonment.
4. There must be a better way to deal with simple complaints such as these. There must be a better way to make more effective use of the resources of both the parties and the State to resolve what really was an unfortunate exchange between these two gentlemen. It is true that they both have different versions of what took place at the straightener's garage but at its core, the genesis of this dispute stems from plain simple lack of respect for one another. They both agree that Acting Corporal Pierre was speaking to the straightener Mr. Henry about an outstanding job on a vehicle, when Acting Corporal Pierre was politely interrupted by Mr. Darsoo's father. They both agree that there was an argument between Acting Corporal Pierre and Mr. Darsoo's father. Acting Corporal Pierre alleges that Mr. Darsoo pushed him, took up a bottle, threatened and cursed him. Mr. Darsoo says it was Acting Corporal Pierre who slapped him and cursed both him and his father. Within minutes, they were both at the San Fernando Police Station. But there, an intervention was needed not only to restore calm to this emotional episode, but to save both of them from the rigours and expense of criminal proceedings and now civil litigation.
5. I asked this of Acting Corporal Pierre in his testimony and to his credit he indicated that mediation is a better way to resolve some of these minor offences. This is a fitting case in which the Court should repeat the call for the use of mediation even in the criminal setting. As the chronology of this case demonstrates this matter could have been resolved at the earliest

stages when the parties first met at the police station. Our police stations are indeed the first port of call for members of the community seeking help for a myriad of disputes. In fact, both parties went there to “lodge” their complaints or in other words to begin a process to resolve their dispute. Why not institute in those very same police stations mediation units in which trained officers or trained intermediaries or “violence interrupters” can sit with these disputants in a private and comfortable setting and in a safe environment to air their respective views and share what really upset them and convey their expectations of respect from one another.

6. This is a far superior option than to encourage parties to be positional about their respective version of the events in the criminal or civil system leading them to adopt at times incredulous views, or worse, to fabricate stories or lies simply to “save face”. Equally, I recognise that emotions are very high at police stations when persons are making their reports but there should also be readily available such social services as counselling or other social services as anger management to assist those who are embroiled in these disputes. If we view these police stations as “hubs for help”, then as a first call for those in our community seeking to resolve their disputes they should be assessed and redirected to the more effective restorative systems. This not only would assist to alleviate the backlog in our Magistrates’ Courts but certainly would stymie any satellite litigation in our civil courts as criminal matters tend to spawn at times. I hope this claim can be used as a fitting example for the attorneys for the Defendant and for Acting Corporal Pierre to make the case to the relevant authorities for the need to set up such units in our police stations.
7. Indeed the benefits of this approach have been extolled at lengths elsewhere but the value of such an approach where both parties can feel satisfied that they are winners is a much better outcome than asking them to adopt adversarial positions and subjecting their respective conflicting versions to a forensic analysis which at times may not reflect one party’s version of the truth and hence they may feel that for them justice was not served.
8. In this case, justice is defined by among other things, the satisfaction of a burden of proof on the balance of probabilities. It is about the burden on the Claimant to put before the Court sufficient facts which make it more probable that his version is to be accepted. Both Counsel have accepted at the start of this trial that should the Court find in favour of the Claimant’s version of events there is sufficient evidence for a finding for both false imprisonment and

malicious prosecution. Conversely, a finding that the events accord with the Defendant's version, the claim will be dismissed. In this case, there is a fine balance, between the parties in their rivalling versions with hard swearing on both sides. In fact their respective claims against each other failed to cross the threshold of the criminal standard of proof with both the Defendant's charges and the Claimant's cross complaints having been dismissed.¹

9. Where there is an acute conflict of evidence this Court's findings of fact is made by a forensic exercise where less emphasis is placed on the demeanour of witnesses. As the Privy Council warned in **Horace Reid v Dowling Charles** Privy Council Appeal No. 36 of 1987, the wrong impression can be gained by the most experienced of judges if reliance is placed solely on the demeanour of witnesses. Indeed in this case, all three witnesses who testified appeared confident in their responses, were spontaneously re-enacting aspects of the incident and spoke "with a straight face". It is a case of hard swearing. **It is important, therefore, for the Court to examine internal and external inconsistencies in the respective cases. To examine any conflicts internally in the witness statements and cross examination; externally against contemporaneous documents, the pleaded cases and to examine the inherent probability or improbability of the rivalling contentions. Also important are opportunities and motivations for fabrication. See Horace Reid, Shanique Myrie v The State of Barbados CCJ Application No. OA 002 of 2012 and Deryck Warner v The Attorney General of Trinidad and Tobago CV2014-00542. The more inconsistencies there are in one party's story, the more likely he is not speaking the truth.**
10. On the day in question both men came to a straightener's garage operated by Mr. Lawrence Henry, known as "tappie". He was known to Acting Corporal Pierre to have a chequered past. The garage is located in a "squatting area" at Wells Road, Hermitage Village, San Fernando. They were both making enquires from Mr. Henry about vehicles that were under repair by Mr. Henry. Mr. Darsoo was there first with his father and Acting Corporal Pierre arrived subsequently accompanied by his neighbour Mr. Afzal Baksh.

¹ The charges against the Claimant were heard and dismissed by Magistrate Her Worship Ms. N. Diop on 21st February 2013. The Defendant was also found guilty on the cross complaint made by the Claimant. He was reprimanded and discharged pursuant to the section 71(1)(a) of the Summary Courts Act, Chapter 4:20. He appealed the decision and it was overturned by the Court of Appeal.

11. It is the Claimant's case that while he was with his father at a garage, Acting Corporal Pierre had an altercation with Mr. Darsoo and his father and assaulted them. It is only when Mr. Darsoo went to the San Fernando Police Station on the same day to make a report about Acting Corporal Pierre's actions that he was then arrested by Acting Corporal Pierre and charged approximately six hours after being left in a cell. Mr. Darsoo claims that his charges were trumped up and there was no reasonable and probable cause to lay the charges. He claims damages in the range of \$175,000.00-\$200,000.00 for false imprisonment and malicious prosecution and exemplary damages in the range of \$50,000.00- \$60,000.00.
12. The Defendant in this case contends that there was reasonable and probable cause to arrest and charge Mr. Darsoo since it was Mr. Darsoo who abused and assaulted Acting Corporal Pierre. The Defendant has pointed out that critical in this case was that the matter was fully ventilated in the San Fernando Magistrates' Court and in the Court of Appeal where Acting Corporal Pierre made it his duty to prosecute this matter and clearly showed an interest in these charges. It is also critical to note that not every successful dismissal of a claim in a Magistrates' Court will result in a successful claim for malicious prosecution. The starting point of liability is determining whether there was the lack of reasonable and probable cause by Acting Corporal Pierre, the arresting and prosecuting officer.
13. The main issues which arise for determination are²:
- (i) Whether there was reasonable and probable cause for Acting Corporal Pierre to arrest and prosecute the Claimant;
 - (ii) Whether Acting Corporal Pierre acted with malice in his arrest and prosecution of the Claimant;
 - (iii) Whether the Claimant's action for false imprisonment is statute barred.
14. Indeed in analysing which case is more credible, both parties have painted a picture of unprovoked actions without a history of interaction between them. The question must be asked: in the heat of the moment which of the two is more likely to be the aggressor? Which of the two would have the greater motive to fabricate a story? Counsel for the Claimant painted the actions of Acting Corporal Pierre as one of "hooliganism" and "bullyism". Indeed it is a

² Statement of Agreed Issues filed 25th October 2017.

suitable description to characterise either men depending on which version is more credible. In arriving at my conclusion, I will review briefly their respective narratives, the applicable principles of law, deal in short order with the claim of false imprisonment as in my view it is statute barred and then analyse the evidence to determine the credibility of the respective versions. I agree with both parties that if indeed the Claimant's version is accurate, there could be no reasonable and probable cause to lay the charge. Acting Corporal Pierre himself was the prosecutor and complainant. He alone would have been appraised of the true facts. He would therefore have been found to have fabricated a story and peddled it before the Magistrates' Court. Indeed Rajkumar J (as he then was) in **Mustapha Ghany v Attorney General** CV2015-01921 had cause to observe that in determining lack of reasonable and probable cause where the arresting officer is also the complainant and prosecutor:

“However this is not a case where the prosecutor can contend that it is not for him to judge guilt or innocence and that his role is simply to put contested issues of fact before the tribunal of fact to determine the effect of countervailing evidence if any. This is a case where the evidence of a. insulting language, b. obscene language, and c. resisting arrest are all matters where the main witness is Ramadhin himself. If it is found that he lied about any of these matters then he simply cannot contend that it was for the magistrate to decide the facts. In fact it is clear that his testimony is perjured.”³

15. I also agree with both Counsel that such fabrication is indeed sufficient to prove malice or the intent to improperly set the law in motion or to abuse the criminal process.

The respective narratives

16. Mr. Darsoo contends that on 26th November 2005 at around 3:30pm, he and his father visited Mr. Henry's garage to enquire about their vehicles which were being repaired and which were dropped off at the garage two months ago. While they were speaking to Mr. Henry, two men arrived and one of the men, Acting Corporal Pierre, interrupted their conversation and called out to Mr. Henry “Mr. Henry, I want to see yuh now!” Mr. Darsoo and his father stepped back about five (5) feet to allow Acting Corporal Pierre and Mr. Henry to speak. After ten (10) minutes elapsed, Mr. Darsoo's father, who had enough of waiting, politely intervened and

³ **Mustapha Ghany v Attorney General** CV2015-01921, paragraph 45

stated “Mr. Henry you had been dealing with me and I have been waiting so long, deal with me and let me go because I have other things to do.” It is agreed by the parties that Mr. Darsoo’s father did politely intervene in Acting Corporal Pierre’s conversation with Mr. Henry.

17. Mr. Henry then left Acting Corporal Pierre and began speaking to Mr. Darsoo’s father which annoyed Acting Corporal Pierre. He rushed up to Mr. Darsoo’s father and shouted in a loud tone “You know who I is? You know who I is? Why you doh shut yuh old coolie muda c**t?” According to Counsel for the Claimant it was a case of Acting Corporal Pierre attacking the “weakest link” as Mr. Darsoo’s father was an ailing man suffering from medical conditions. Acting Corporal Pierre then pushed Mr. Darsoo’s father causing him to fall to the ground and he laughed. Mr. Darsoo, who was sitting on some logs approximately ten (10) feet away, quietly told Acting Corporal Pierre “You cannot do my father that for nothing.” Acting Corporal Pierre without identifying himself as a Police Officer, walked up to Mr. Darsoo and hit him a “hard stinging slap” on the left side of his face and shouted in a loud and aggressive tone “Go back and sit down.” Mr. Darsoo contends that Acting Corporal Pierre did not tell him to cease and desist from behaving in a disorderly manner and he unlawfully hit him without reasonable and probable cause.
18. Mr. Darsoo told Acting Corporal Pierre that he was going to the San Fernando Police Station to make a report. He contends that at no time did he pick up a Pepsi bottle and point it to Acting Corporal Pierre. He further contends that he did not shout “You eh no f**king police in the back here and I will stab you with this bottle” nor did Acting Corporal Pierre tell him “You’re under arrest for obscene language and for possession of a weapon the bottle.” He also did not tell Acting Corporal Pierre “You have to bring a whole squad of police to lock me up today because it’s the whole village against you.” Mr. Darsoo contends that he doesn’t know anyone in Hermitage Village except the straightener, Mr. Henry.
19. Mr. Darsoo arrived at the police station at approximately 4:00pm. He contends that while he was waiting in the charge room for an officer to take his report, Acting Corporal Pierre arrived and violently scrambled him from behind, held onto the back of his pants and lifted him off the ground. Acting Corporal Pierre flashed something in front of his face and stated he was a

police officer. He did not inform Mr. Darsoo of the reasons for his arrest nor his constitutional rights and privileges, nor did he show Mr. Darsoo a broken Pepsi bottle.

20. Mr. Darsoo contends that he was then shoved and dragged through a dark corridor to the Criminal Investigations Department (CID) and then aggressively pushed into a cell which was dirty, dark and suffocating and was infested with cockroaches and mosquitos. He contends that he experienced difficulty breathing, the floor of the cell was dirty and gave off a pungent odour of stale urine and faeces. He became nauseated and vomited in the cell.
21. Three hours later he begged the officers for water but they refused to provide him with any stating that he was a “badjohn” who was “beating police” and that they would beat him inside the cell if he continued to ask for water.
22. Later that night, his father and Justice of the Peace, Nazim Murdali, came to the Police Station and the Justice of the Peace enquired of the officers why Mr. Darsoo was being detained and whether they intended to lay charges against him.
23. Acting Corporal Pierre then returned and informed Mr. Darsoo that he was going to be charged for three offences but did not state what the offences were. Mr. Darsoo contends that he also told him that he if he did not plead guilty then “I guh beat up yuh mudda c**t.”
24. At approximately 11:30pm, Mr. Darsoo was taken out of his cell and taken to the Charge room. He was granted bail and released from custody around mid-night. He was given three “Notices to the Prisoner” slips for the offences of resisting arrest, obscene language and assault.
25. He contended he appeared at the San Fernando Magistrates’ Court on 28th November 2005 and pleaded not guilty to the charges. The matter was heard during the period 28th November 2005 and 21st February 2013. The charges against him were dismissed by the Magistrate on 21st February 2013 but Acting Corporal Pierre was found guilty on the cross charge and was reprimanded and discharged by the Magistrate.
26. His father died on 29th June 2015.
27. Importantly in this account of the events, Mr. Darsoo was not cross examined on any facts in relation to his detention. In light of the fact that there is absolutely no evidence from Acting Corporal Pierre as to the length of this detention or the conditions under which he was detained Mr. Darsoo’s evidence together with a station dairy extract is the only positive evidence on

which this Court must make its findings of the events which took place after his arrest. This is discussed later in this judgment.

28. Acting Corporal Pierre contends that on 26th November 2005 he was approached by his neighbour Afzal Baksh at his home to accompany him to Wells Road in Hermitage Village, San Fernando where his vehicle was undergoing repairs for over a year by Mr. Henry, a straightener. Acting Corporal Pierre stated that he knew Mr. Henry prior to this because of police investigations that were conducted on larceny of motor cars.
29. Upon their arrival at Mr. Henry's shop, he noticed there were other persons there including Mr. Darsoo and his father. He called out to Mr. Henry while Mr. Baksh remained in the vehicle. Mr. Henry spoke to him for about 10-15 minutes until they were interrupted by Mr. Darsoo's father who was waiting there with Mr. Darsoo to "conduct other business with Mr. Henry". PC. Pierre contends that a small argument ensued between himself and Mr. Darsoo's father which did not involve any racial slurs on his part. Mr. Darsoo then got up from where he was sitting on a log in front of the property and told him "I don't like how you are speaking to my father" and pushed him. This shocked Acting Corporal Pierre who in turned pushed Mr. Darsoo in self-defence. He then showed Mr. Darsoo his police identification card and told him to cease and desist from behaving in a disorderly manner. Acting Corporal Pierre contends that Mr. Darsoo picked up a broken Pepsi bottle, approached him, pointed the broken bottle in his direction and stated "You eh no f**king police in the back here and I will stab you with this bottle".
30. Acting Corporal Pierre then backed away in fear and told Mr. Darsoo "You're under arrest for using obscene language and for possession of a weapon-the bottle" to which Mr. Darsoo said "You have to bring a whole squad of police to lock me up today because it's the whole village against you today." There were other persons observing the incident and Mr. Darsoo "stepped back as if to join with them and other little utterances were being made by them." Acting Corporal Pierre then contacted Police Emergency and left the area. He asked his neighbour to take him to the San Fernando Police Station to make a report. He contends that he never hit Mr. Darsoo nor did Mr. Darsoo inform him he was going to the San Fernando Police Station to make a report.

31. Within a minute of Acting Corporal Pierre's arrival at the San Fernando Police Station, Mr. Darsoo arrived at the station with his father. Acting Corporal Pierre again identified himself by his Trinidad and Tobago Police Identification card and informed Mr. Darsoo of the offences he committed which were using obscene language, possession of a weapon-bottle and resisting arrest. Mr. Darsoo was then arrested and taken to the CID office in San Fernando where he was shown the broken Pepsi bottle. Acting Corporal Pierre in his presence, placed a masking tape on the bottle and placed his markings on it "MPVS RRD 26-11-05". After Mr. Darsoo was processed he was placed in a well-lit cell.
32. Acting Corporal Pierre was subsequently informed that Mr. Darsoo was granted bail within a few hours.
33. He contended that the matter was heard in the San Fernando Magistrates' Court and was heard by several magistrates which consisted of approximately thirty six (36) appearances. The matter was determined by Magistrate Diop on 23rd February 2013. He appealed the decision of the Magistrate and it was heard in the High Court of San Fernando and overturned.

The Criminal Offences

34. The relevant sections under which Mr. Darsoo was charged are set out as follows. Section 43 of the Police Service Act Chapter 15:01 provides:

"43. Every police officer shall have all such rights, powers, authority, privileges and immunities, and is liable to all such duties and responsibilities, as any constable duly appointed now has or is subject or liable to, or may have or be subject or liable to under any written or unwritten law."

35. Section 49 of the Summary Offences Act Chapter 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."

36. Section 62(1) of the Summary Offences Act Chapter 11:02 provides:

“62. (1) Any person having in his custody or possession any weapon, instrument, stick, bottle, stone, or other thing intended for the purpose of committing any indictable offence shall be deemed a rogue and vagabond and liable to imprisonment for two months.”

The proceedings in the Magistrates’ Court

37. The proceedings in the Magistrates Court occurred between 28th November 2005 and 21st February 2013. The charges against the Claimant were dismissed on 21st February 2013. On the same day, Acting Corporal Pierre was convicted on the cross complaint of the Claimant. He appealed the Magistrate’s decision by filing “A form of notice where Court refuses to make a conviction or order” on 7th March 2013 stating that the refusal of Magistrate N. Diop to make any conviction or order on the Claimant was erroneous and unreasonable and a “Form of Notice where Appellant is a Defendant” on 7th March 2013 stating that his conviction was “erroneous on point of law” and was “unreasonable and cannot be supported having regard to the evidence.”

38. In the Magistrate’s Reasons for Case Nos. 10604/05 and 10868-10869/05 the Magistrate outlined her reasons which found that Acting Corporal Pierre failed to discharge his legal burden of proof for the following reasons:

- (i) The Defendant’s case lacked “material matters being evidence that was available to him, evidence that ought to be and could have been led.”
- (ii) The Defendant’s testimony lacked inherent and/or internal consistency.
- (iii) The Defendant attempted to embellish the evidence to cast the Claimant and the events of 26th November 2005 in a less than favourable light.
- (iv) The Defendant did not challenge the evidence on the place at which the incidents occurred.

39. According to Acting Corporal Pierre the appeal of the cross complaint was heard in San Fernando and the decision of the Magistrate was overturned.

False Imprisonment-Reasonable and Probable cause to justify the arrest and detention

40. An arrest is a trespass to the person and is a restriction of liberty. Once the prisoner proves that his liberty was restrained it is for the police to show justification for such restraint. It falls to

Acting Corporal Pierre in this claim to show the existence of reasonable and probable cause for the arrest. The relevant principles to be applied in making a determination of false imprisonment were neatly summarised in **Chandrawtee Ramsingh v The Attorney General of Trinidad and Tobago** [2012] UKPC 16 at paragraphs 7 and 8:

“7. The legal principles are clear. Section 3(4) of the Criminal Law Act 1936, Chapter 10:04 provides: “Where a police officer, with reasonable cause, suspects that an arrestable offence has been committed, he may arrest without warrant anyone whom he, with reasonable cause, suspects to be guilty of the offence.”

8. The relevant principles are not significantly in dispute and may be summarised as follows:

- 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 arrestor to justify the arrest.
- iii) A police officer may arrest a person if, with reasonable cause, he suspects that the person concerned has committed an arrestable offence.
- iv) Thus the officer must subjectively suspect that that person has committed such an offence.
- 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.”

41. There has been no explanation by the Defendant for Mr. Darsoo being detained for close to six and a half (6 ½) hours on these simple charges. Equally and importantly however, the limitation period for the tort of false imprisonment is four (4) years: Section 3 (1) (a) of the Limitation of Certain Actions Chap. 7:09. The Claimant was arrested in November 2005 and remained in custody for a period of six (6) hours. The action was filed on the 30th December 2016, outside the limitation period. See **Thaddeus Clement v The Attorney General of Trinidad and Tobago** Civil Appeal No. 95 of 2010.

Malicious Prosecution-Reasonable and Probable cause to charge

42. It is accepted that Acting Corporal Pierre set the law in motion against Mr. Darsoo on a criminal charge and that it was determined in his favour. Unlike the claim for false imprisonment, it is the Claimant who bears the burden of proving on a balance of probabilities that the Defendant instituted or carried on the proceedings without reasonable and probable cause and did so maliciously.

43. The classic formulation of **Hicks v Faulkner** [1881-85] All ER Rep 187 demonstrates that for the Defendant to have reasonable and probable cause to prosecute the Claimant: (a) there must be an honest belief by the Defendant in the guilt of the accused. (b) Such belief must be based on an honest conviction of the existence of circumstances which led the Defendant to that conclusion. (c) Such belief must be based on reasonable grounds. (d) The circumstances so believed and relied on by the Defendant must be such as to amount to reasonable ground for belief in the guilt of the Claimant.

44. In **Glinski v. McIver** [1962] 1All E.R. 696 Lord Delvin in considering the meaning of 'reasonable and probable cause' stated:

“...what is meant by reasonable and probable cause? It means that there must be cause...for thinking that the plaintiff was probably guilty of the crime imputed: **Hicks v. Faulkner**. This does not mean that the prosecutor has to believe in the probability of conviction: **Dawson v. Vandasseau**. The prosecutor has not got to test the full strength of the defence; he is concerned only with the question of whether there is a case fit to be tried.”

45. In **Williamson v The Attorney General of Trinidad and Tobago** [2014] UKPC 29, the Privy Council stated:

“[11] In order to make out a claim for malicious prosecution, it must be shown, among other things, that the prosecutor lacked reasonable and probable cause for the prosecution and that he was actuated by malice. These particular elements constitute significant challenge by way of proof. It has to be shown that there was no reasonable or probable cause for the launch of the proceedings. This requires the proof of a negative proposition, normally among the most difficult of evidential requirements. Secondly, malice must be established. A good working definition of what is required

for proof of malice in the criminal context is to be found in *A v NSW* [2007] HCA 10, (2007) 230 CLR 500 (at [91]):

'What is clear is that, to constitute malice, the dominant purpose of the prosecutor must be a purpose other than the proper invocation of the criminal law—an “illegitimate or oblique motive”. That improper purpose must be the sole or dominant purpose actuating the prosecutor'

- [12] An improper and wrongful motive lies at the heart of the tort, therefore. It must be the driving force behind the prosecution. In other words, it has to be shown that the prosecutor's motive is for a purpose other than bringing a person to justice: *Stevens v Midland Counties Railway Company* (1854) 10 Exch 352 at 356 per Alderson B and *Gibbs v Rea* [\(1998\) 52 WIR 102 at 111](#), [\[1998\] AC 786 at 797](#). The wrongful motive involves an intention to manipulate or abuse the legal system: *Crawford Adjusters Ltd (Cayman) v Sagicor General Insurance (Cayman) Ltd* [\[2013\] UKPC 17](#), [\(2013\) 83 WIR 157](#), [\[2014\] AC 366](#) (at [101]); *Gregory v Portsmouth City Council* [\[2000\] 1 All ER 560 at 565](#), [\[2000\] 1 AC 419 at 426](#); *Proulx v Quebec (A-G)* 2001 SCC 66, [2001] 3 SCR 9. Proving malice is a 'high hurdle' for the claimant to pass: *Crawford Adjusters* [\(2013\) 83 WIR 157 at \[72\]](#)(a) per Lord Wilson.
- [13] Malice can be inferred from a lack of reasonable and probable cause—*Brown v Hawkes* [\[1891\] 2 QB 718 at 723](#). But a finding of malice is always dependent on the facts of the individual case. It is for the tribunal of fact to make the finding according to its assessment of the evidence.
- [14] On the question of reasonable and probable cause, or the lack of it, a prosecutor must have 'an honest belief in the guilt of the accused based upon a full conviction, founded upon reasonable grounds, 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 the accuser, to the conclusion that the person charged was probably guilty of the crime imputed': *Hicks v Faulkner* (1881) 8 QBD 167 at 171 per Hawkins J, approved by the House of Lords in *Herniman v Smith* [\[1938\] 1 All ER 1 at 8](#), [\[1938\] AC 305 at 316](#) per Lord Atkin. The honest belief required of the prosecutor is a belief not that the accused is guilty as a matter of certainty, but

that there is a proper case to lay before the court: *Glinski v McIver* [1962] 1 All ER 696 at 709–710, [1962] AC 726 at 758 per Lord Denning.”

46. In **Cecil Kennedy v Donna Morris and The Attorney General of Trinidad and Tobago** Civ App. No 87 of 2004 the law of malicious prosecution was summarised as follows:

“[10] Malicious prosecution has been defined as “an abuse of the process of the court by wrongfully setting the law in motion on a criminal charge”: *Mohamed Amin v Jogendra Kumar Bannerjee*.

[11] To succeed in an action for damages for malicious prosecution a plaintiff must prove:

- i. The prosecution by the defendant of a criminal charge against the plaintiff before a tribunal into whose proceedings the criminal courts are competent to inquire;
- ii. That the proceedings complained of terminated in the plaintiff’s favour;
- iii. That the defendant instituted or carried on the proceedings maliciously;
- iv. That there was an absence of reasonable and probable cause for the proceedings; and
- v. That the plaintiff has suffered damage.”

47. More recently the law on malicious prosecution was examined in **Kevin Stewart v The Attorney General of Trinidad and Tobago** Civil Appeal No. P162 of 2015. On the question of reasonable and probable cause to charge Bereaux JA commented at paragraphs 27 and 28:

“[27] The question of reasonable and probable cause in regard to a malicious prosecution was considered by this court in **Manzano v. The Attorney General of Trinidad and Tobago**, Civil Appeal No. 151 of 2011 (Mendonça, Bereaux and Rajnauth-Lee, JA). Mendonça JA giving the decision of the court set out the law at paragraphs 22 to 29. He stated in effect that:

- (i) The police officer must have an honest belief in the accused’s guilt, founded on facts which would reasonably lead any ordinary prudent man to conclude that the accused was guilty of the offence with which he is charged.

(ii) The test has both a subjective and objective element. Reasonable cause must appear from the facts but the officer must also be clear in his own mind that there is a proper basis for the charge.

Two questions thus arise: whether PC Phillips had an honest belief that on the material which was available to him at the time of the charge, there was a fit case to be tried and whether viewed objectively the material on which the charge was founded amounted to reasonable and probable cause to prosecute Stuart.

[28] That burden is not easily discharged. In **Williamson v The Attorney General of Trinidad and Tobago [2014] UKPC 29, (2014) 85 WIR 452** at paragraph 11 Lord Kerr opined:

“In order to make out a claim for malicious prosecution, it must be shown, among other things, that the prosecutor lacked reasonable and probable cause for the prosecution and that he was actuated by malice. These particular elements constitute significant challenge by way of proof. It has to be shown that there was no reasonable or probable cause for the launch of the proceedings. This requires the proof of a negative proposition, normally among the most difficult of evidential requirements.”

Malicious prosecution is therefore not an easy allegation to sustain. The burden is heightened by the requirement of proving malice which is also on the claimant. Under cross-examination Stuart denied that he was involved in any gang activity. While it was ultimately a question of the judge’s assessment of his credibility, the burden then shifted to PC Phillips to show reasonable and probable cause for the prosecution.”

Malicious Prosecution- Malice

48. The Claimant pleaded the following particulars of malice:

- a) “The First Defendant as a servant and/or agent and/or employee of the Second Defendant knew or ought to have known that they had no evidence against the Claimant to implicate him in the commission of these or any offences.

- b) The First Defendant as a servant and/or agent and/or employee of the Second Defendant failed and/or refused and/or omitted to conduct any or any proper investigations in the matters before proceeding with the charge against the Claimant.
- c) By reason of the matters hereinabove complained of, the Claimant was deprived of his liberty as aforesaid and suffered mentally and has incurred expense in or about his defence in the Magistrate's Court and has suffered loss and damage."

49. In **Brown v Hawkes** [1891] 2 Q.B. 718 Cave J defined malice as follows:

"Now malice, in its widest and vaguest sense, has been said to mean any wrong or indirect motive; and malice can be proved, either by shewing what the motive was and that it was wrong, or by shewing that the circumstances were such that the prosecution can only be accounted for by imputing some wrong or indirect motive to the prosecutor. In this case I do not think that any particular wrong or indirect motive was proved. It is said that the defendant was hasty and intemperate... He may also have been hasty, both in his conclusion that the plaintiff was guilty and in his proceedings; but hastiness in his conclusion as to the plaintiff's guilt, although it may account for his coming to a wrong conclusion, does not shew the presence of any indirect motive."

50. Malice is not easily made out. The dominant purpose must be demonstrated to be a purpose other than the proper invocation of the criminal law or an illegitimate use of the criminal process and abuse of the prosecution powers. It is not often the case that proof of lack of reasonable and probable cause would lead to a determination of malice. It is a question of degree if the evidence which demonstrates lack of reasonable and probable cause can also support a finding of malice. If a prosecution was launched on obviously insufficient material that may suffice to support the inference of malice. Malice may also be inferred from the absence of a honest belief in the merits of the case. Indeed this can provide strong evidence of malice. See **Kevin Stewart** and **Williamson**. Accordingly in this case as both attorneys agree if it is found that the Claimant's version is correct then it cannot be that Acting Corporal Pierre had any reasonable basis to charge or let alone pursue the prosecution. Indeed to do so to the hilt on a fabrication is a strong indicator of using the criminal process for an oblique purpose. It is not for him to say "let the magistrate decide" as he himself knows the facts that he has put forward of Mr. Darsoo committing an assault, using obscene language and resisting arrest to

be patently untrue and a manifestation of his own imagination. Such an abuse of the process must be condemned in the strongest terms.

Analysis of the evidence

51. Both parties withstood cross examination and did not wilt under the pressure of the questions put to them, more so Acting Corporal Pierre in a searching examination by Counsel for the Claimant. In the case of Mr. Darsoo he remained unshaken. Counsel for the Defendant pointed out that under cross examination Mr. Darsoo repeated several times that what Acting Corporal Pierre did to his father was not right and I agree that clearly he was agitated and upset over that treatment. When asked in cross examination that he wanted to rescue his father he answered candidly “everybody want to protect their father but what could I have done”. She also indicated that the following supported the Defendant’s case: the contemporaneous documents, Mr. Baksh an independent witness corroborated Acting Corporal Pierre’s version of the events, the bottle which Mr. Darsoo claimed did not exist was tendered into evidence at the police station and Acting Corporal Pierre appeared several times to pursue this matter at the Magistrates’ Court. Mr. Darsoo, according to her was the aggressor and the Defendant’s case is more plausible.

52. To his credit Acting Corporal Pierre pursued these charges and appeared on several occasions. While this on the surface may be an indication of demonstrating an honest belief in the charge, he could also fall on his own petard if it is found by an analysis of this evidence, that the very facts that he put before the Magistrate was a fabrication and trumped up charge. In my view, the Defendant’s case was more inconsistent than that of the Claimant and affected by an inherent implausibility depriving the evidence of any “ring of truth” to it. I shall examine the main items submitted by Counsel for the Defendant in turn.

The contemporaneous documents

53. The contemporaneous documents tendered in this case included the station diary extracts which are very helpful pointers towards determining the credibility of the respective stories. There were no notices to prisoner tendered. There were no diary extracts, however, recording the time when Mr. Darsoo accessed bail and left the station. There are also the notes of

evidence at the Magistrates' Court. I will deal with these documents in turn and how they either corroborate or discredit either party's case.

The station diary extracts

54. These extracts record the arrival of Acting Corporal Pierre at the San Fernando Police Station, the charging of Mr. Darsoo, his fingerprinting and the marking of the bottle as an exhibit. Importantly, there are material inconsistencies between this extract and Acting Corporal Pierre's evidence which I simply cannot discount or overlook. First, the extract reveals that Acting Corporal Pierre arrived at the San Fernando Police Station in company with Afzal Baksh when Mr. Baksh gave the impression that he simply drove Acting Corporal Pierre to the station and left on his way. Second, the extract goes on to say that Acting Corporal Pierre was "bringing in" Mr. Darsoo when nothing could be further from the truth as according to Acting Corporal Pierre, Mr. Darsoo arrived after he did and then under cross examination he admitted that they arrived simultaneously. In any event, it would appear that he did arrive after Mr. Darsoo as he admits that when he saw Mr. Darsoo he held him by his pants. This fits the description of Mr. Darsoo's own evidence that while he was at the station his back was to the door and Acting Corporal Pierre grabbed him by his pants. Further, in the station diary extract he states that when he arrived at the station he saw Mr. Darsoo at the location.
55. It is also recorded in the station diary that Acting Corporal Pierre "managed to retrieve the bottle from Darsook" after which "Richard Darsook" told him that he "have to bring a whole squad to lock me up today because the whole village against you today". This is inconsistent with Acting Corporal Pierre's own account that Mr. Darsoo said those words while Mr. Darsoo held the bottle in his hand. Indeed it is highly improbable that Mr. Darsoo would say those words while Acting Corporal Pierre was armed with a weapon. It is also highly improbable that without any further action taken by Acting Corporal Pierre or anyone to de-escalate the high emotions, if Acting Corporal Pierre's version is accepted, that Mr. Darsoo would simply put down the bottle.
56. What is further alarming is the subtlety with which Acting Corporal Pierre has told his story of the arrest and charge of Mr. Darsoo. The arrest and charge appears in his witness statement to have taken place soon upon his arrival at the station which conflicts with the station diary extracts. Further Acting Corporal Pierre subtly distances himself from the almost six (6) hour

detention of Mr. Darsoo at the station awaiting his charge or bail as no mention is made of it in his witness statement.

57. The station diary records that Mr. Darsoo was arrested and cautioned at 4:05pm. He was then formally charged and a Notice to Prisoner served at 7:10pm. There is absolutely no explanation as to why it would take so long to process Mr. Darsoo at the San Fernando Police Station. Such a long period of detention certainly fits the narrative of Mr. Darsoo that he was being “taught a lesson”. At 7:12pm his fingerprints were taken and at 7:13pm the Pepsi bottle was exhibited and marked in Mr. Darsoo’s presence. In the matter of three (3) minutes Mr. Darsoo was formally charged, fingerprinted and exhibits marked. Why did it take three (3) hours to accomplish this task? There is absolutely no explanation from the Defendant.
58. In fact, making it worse is Acting Corporal Pierre’s subtle inference in giving his evidence that all of this would have taken place almost immediately on the arrival at the station a little after 4:00pm. In paragraph 10 of his witness statement he states:

“There were other adult person’s observing the incident so he stepped back as if to join with them and other little utterances were being made amongst them. He then dropped the bottle and I picked it up. I contacted Police Emergency and I subsequently left the area and I asked my neighbour to take me to the San Fernando Police Station to make a report of what had transpired. Within a minute of my arrival, the Claimant arrived at the station together with his father and at that stage I again identified myself to him by means of my Trinidad and Tobago Police Identification card and told him of the offences he had committed: use of obscene language, possession of the weapon-bottle and resisting arrest. I arrested him and told him of his rights and took him to the CID Office in San Fernando and I showed him the broken Pepsi bottle which I then in his present put masking tape on it and subsequently placed my markings on it “MPVS RRD 26-11-05.” This exhibit was produced at the Magistrates’ Court proceedings in relation to the matter. I processed him and he was placed in a cell and I made all the relevant notes in the Station Diary extract a true copy of which is hereto attached and marked as “A”. I did not throw him in a cell, I can’t recall who placed him in the cell. There is also no “dark corridor” leading up to the cells in the San Fernando Station. The cell area is well lit. After I processed him, I left the

station. I left him at the station and I was later informed that he received bail within a few hours.”

59. From this evidence it suggests that the marking of the exhibit followed immediately after his arrest and before he was formally processed. This is not consistent with the station diary extract which shows firstly that it took three (3) hours (without any explanation for the delay) to formally charge him and second that he was charged first and then the exhibits were marked. If indeed he was placed in a cell according to this testimony after he was processed then according to the station diary he was not put into the cell until 7:10pm? Then where was the Claimant between 4:00pm and 7:10pm? There is no explanation from the Defendant when one would expect the Defendant to be forthcoming with that type of evidence.

60. Conversely we have the evidence of Mr. Darsoo which has not been challenged or tested in cross examination that he was dragged into a cell after he was arrested. His unchallenged testimony is as follows:

“14. I experienced great difficulty in breathing. The floor of the cell was dirty it gave off the pungent and suffocating odor of stale urine and faeces. I became nauseated and vomited in a corner of the cell. It was infested with cockroaches and mosquitos which began to crawl all over my body, face and head. I was distraught and very afraid. My entire body was feeling creepy.

15. After about three (3) hours I begged some officers for some water but they refused to give me any telling me *“No, no f**king water for you, you is badjohn you beating police.”* I continued to beg them for water and one of the Officers told me that if I asked for water one more time again that they would beat me inside the cell. I then crouched down on a concrete bench in a corner of the cell because I was fearful for my personal safety.

16. After about four (4) hours the First Named Defendant returned to the cell and mockingly told me that he would leave me there to suffer until Monday.

17. I was informed by my father and verily believe that sometime later that night he and Justice of the Peace Nazim Murdali came to the Police Station. The Justice of the Peace

asked the Officers what I was being detained for and whether they intended to lay charges against me. He told them that they should charge me or release me.

18. Sometime later the First Named Defendant returned and told me that he was going to give me three (3) charges but he did not identify the offences. He further told me if I did not plead guilty "*I guh beat up yuh mudda c**t.*"
 19. At approximately 11:30pm an Officer took me out of the cell and took me to the Charge Room. Justice of the Peace Mr. Murdali granted me bail. I was released from custody about mid night. Before leaving the Station I was given three Notices to Prisoner slips for the offences of resisting arrest, obscene language and assault. This was the first time during this ordeal that I was informed that I purportedly committed any offences. I never committed these or any other offences."
61. Indeed Acting Corporal Pierre's subtle sequence is also repeated in the Magistrates Court making it appear that the marking of the exhibit and the charges were conducted soon after his arrival at the station or conversely there is no mention by Acting Corporal Pierre in his testimony before this Court or the Magistrates' Court of the three (3) hour delay to formally charge Mr. Darsoo.

Mr. Afzal Baksh

62. Mr. Baksh in his evidence in chief provided a simple story:

- "3. On the 26th November, 2005 I went to the home of Michael Pierre which is #1 Whinchat Drive, Union Hall, Cross Crossing San Fernando. I told Mr. Pierre that I wanted him to accompany me to Wells Road in Hermitage Village, San Fernando. There was a straightener there who had my vehicle a year or more. I had carried the vehicle there to fix. The back of my vehicle had like rotten chassis at the back and I had asked him to fix it for me. I told Mr. Pierre of the location of the straightener, Lawrence Henry, whose nickname is "tappie" and that he was giving me a run around. I asked Mr. Pierre to accompany me to speak to the straightener about my vehicle.
4. The location of the garage where Mr. Henry operated his business was in a squatting area with several wooden structures. On arrival there, I sat in the vehicle whilst Mr. Pierre spoke to the straightener. Whilst seated there I saw Mr. Pierre speaking to the

straightener but there were also other people around. Around 10 minutes or so after, I noted a guy who was sitting on a log get up and approach Mr. Pierre. It appeared that the man who got up from the log was talking to Mr. Pierre. From where I was seated in the car I saw Mr. Pierre being pushed back. I then noticed the guy pick up a bottle and held it in his hand and he came towards Mr. Pierre with it. I could not hear what was going on at the time from where I was seated.

5. I then saw Mr. Pierre talking and I saw the guy put the bottle down after which Mr. Pierre picked it up. Mr. Pierre eventually returned to the vehicle where I was seated. I asked him what happened and why he had the bottle. Mr. Pierre showed me the bottle and explained that because the top was broken it could be used as a weapon. He then asked me to take him to the police station so he could make a report.”

63. Importantly, under cross examination a number of features of his evidence demonstrated an inherent lack of credibility of the Defendant’s case. First, he explained that he saw Mr. Darsoo approach Acting Corporal Pierre who then stepped back. This is a far cry from what Mr. Baksh said in his witness statement that he saw “a push”. This is important as he was shown that very paragraph four (4) in the witness box under cross examination, he read it to refresh his memory and then Counsel continued to ask him questions about it. Mr. Baksh then repeatedly stated and even physically demonstrated in Court that what he saw was Acting Corporal Pierre stepping away. He did not volunteer any information at all of seeing any “push”.

64. Second, he did not hear any of the conversation between the parties as he was too far away and he suffers from a hearing impediment.

65. Thirdly, importantly, he did not see Acting Corporal Pierre speaking to Mr. Darsoo’s father when Acting Corporal Pierre clearly stated he and Mr. Darsoo’s father were involved in an argument.

66. Fourth, it is quite incredulous to believe that when Mr. Baksh asked Acting Corporal Pierre “what happened and why he had the bottle” all that Acting Corporal Pierre said was the bottle could be used as a weapon. Acting Corporal Pierre did not even tell Mr. Baksh about the altercation or the reason why he had to go to the police station to make a report or why that was so important that it took precedence over Mr. Baksh’s own car at the straightener’s which

was there for over one (1) year. What it does tell us is that Mr. Baksh is under, even then, the control of Acting Corporal Pierre. Mr. Baksh held Acting Corporal Pierre in close confidence, he was his neighbour, he used his strength as a police officer to “get back” his car using extra judicial means and if Acting Corporal Pierre says in local parlance “jump the starter” there are no questions asked. It is not surprising that this is the witness who would be produced to attempt to corroborate Acting Corporal Pierre’s story. However, his own evidence falls short of doing so and goes the other way to damage it.

The probable aggressor

67. The question was asked by parties, who is the aggressor? There are several indices pointing to Acting Corporal Pierre to indicate that he was more likely the aggressor and prone to violence on that day. First, he was “retained” by his friend to use extra judicial means to secure the return of his car from a man who Acting Corporal Pierre knew to be a criminal. He clearly went to the straightener with the weight of his years of police experience to intimidate and to bully. If it were otherwise then why would he tell Mr. Baksh to wait in the car? Acting Corporal Pierre is not his attorney nor representative and to have Mr. Baksh stay in the car suggests that he wanted Mr. Baksh not to be involved in whatever Acting Corporal Pierre was going to do at the garage. Second, it is accepted that when Acting Corporal Pierre arrived he called for the straightener. It is more probable that he did not wait on Mr. Henry or he interrupted his conversation with the Darsoos. It is clear he wanted to be treated as a priority. Third, he was brave enough not to be intimidated by the “bottle toting” Mr. Darsoo so much so instead of making a hasty retreat he was bold enough to take up the bottle after Mr. Darsoo “put it on the ground.” If indeed the “crowd” was making utterances, then what were they? Were they in support of or against Acting Corporal Pierre? For him to pick up a weapon in the face of such a hostile crowd, according to him, demonstrates that he had nothing to fear. Fourth, he orders Mr. Baksh to take him to the station who willingly complies without any question about his own vehicle and his own interest. It seems Mr. Baksh had suddenly lost interest in his own vehicle. Fifth, Acting Corporal Pierre admitted to engaging with an elderly Darsoo (Mr. Darsoo’s father) in an argument when it was quite unnecessary for an officer of his rank. Sixth, he pushes Mr. Darsoo when a reasonable officer should have identified himself and calmly deal with the situation if indeed Mr. Darsoo was the aggressor. Seventh, Mr. Darsoo is much

smaller than the muscular Acting Corporal Pierre and finally he admits that at the station he held on to the pants of Mr. Darsoo when there was absolutely no need to do so. Mr. Darsoo was not running away. He was there on his own accord, why grab a citizen's pants if not to intimidate and ridicule? I agree that all of this bears the hallmarks of one who would engage in an act of "hooliganism" and "bullyism" as described by Mr. Darsoo's attorney.

Inherent implausibility of story

68. The Claimant's story fits a picture of Acting Corporal Pierre on a mission to deal with Mr. Henry and being intolerant on any interruption by lesser mortals. He then goes to the station to cover up his actions as he knew the Darsoos were on their way to make a report against him. Indeed Mr. Darsoo has nothing to gain or lose by fabricating this story. Indeed if Acting Corporal Pierre is correct then why would someone who has assaulted a police officer voluntarily go to the police station? Why would Mr. Darsoo put down a weapon if he was supported by the "whole village"? Why would Mr. Darsoo be held for more than six (6) hours without explanation at the station if not to "teach him a lesson"? Why would Mr. Darsoo's father also go to the police station when he did nothing wrong according to even Acting Corporal Pierre?

69. In light of the above, the Claimant's version of events is more credible and he has proven on a balance of probabilities that Acting Corporal Pierre had no reasonable and probable cause to charge and prosecute him and indeed to launch those proceedings on those misguided and distorted facts is an abuse of the criminal process. To continue proceedings was an attempt only to save face when the cross charges were eventually laid against him. Acting Corporal Pierre, in my view, acted with malice.

Damages

70. Pecuniary loss: Mr. Darsoo had satisfactorily proven the cost of legal representation at the Magistrates' Court. He shall be awarded special damages in the sum of \$4,800.00 which is supported by the receipt which was tendered.

71. In general damages, the relevant heads of damages for the tort of malicious prosecution are as follows:

- (i) Injury to reputation; to character, standing and fame.

(ii) Injury to feelings; for indignity, disgrace and humiliation caused and suffered.

(iii) Deprivation of liberty; by reason of arrest, detention and/or imprisonment.

72. I have also considered, aggravating factors that can justify an uplift in the form of an award for aggravated damages as well as exemplary damages.

73. I have considered the fact that with regard to his reputation Mr. Darsoo starts with a good character which has not been impugned. The Claimant would have suffered damage to his reputation and character. As to his feelings, Mr. Darsoo suffered indignity, disgrace in the altercation at the moment of his arrest.

74. Mr. Darsoo endured a loss of liberty for about six (6) hours and a half. “A person’s liberty, like their good reputation, is sacrosanct. To be deprived of it in these circumstances must have caused great suffering to the Appellant”.⁴ In **Millette v Mc Nicholls** Civil Appeal No 14 of 2000 Chief Justice de la Bastide highlighted the effects of the ‘initial shock’ that a person (especially one like the Claimant, who had no prior involvement with the police) experiences when first arrested and imprisoned. This initial shock must be compensated and all the more in this case where it was accompanied by the high-handed and illegal conduct of the police in intimidating and threatening the Claimant’s period in a cell at the San Fernando Police Station (at which there would have been a first initial shock). Chief Justice de la Bastide advises that judges approach the assessment of damages in cases like this “in the round” and that judges need to be careful not to divide the award into compartments for “initial shock ... length of imprisonment and so on”, but rather to ensure that “all the factors be taken into account and an appropriate figure arrived at.” See **Thaddeus Clement v the Attorney General**.

75. There are several aggravating factors in this case, that is, factors arising out of the manner in which the tort has been committed and the conduct and behaviour of the tortfeasor, where that behaviour aggravated the injury and suffering of the Claimant as set out in his witness statement.

76. All of these warrant an uplift in the award of damages (constituting aggravated damages) for malicious prosecution.

⁴ **Thaddeus Clement v The Attorney General of Trinidad and Tobago** Civil Appeal No. 95 of 2010, paragraph 24.

77. I have considered the authorities submitted by the parties and the range of awards in similar cases. See **Harricharan v AG of Trinidad and Tobago** HCA 137/2006 where the Claimant was awarded \$50,000.00 for false imprisonment of up to ten hours and \$75,000.00 for malicious prosecution; **Charran Francis v The Attorney General of Trinidad and Tobago** HC 518/2003 where the sum of \$35,000.00 was awarded for false imprisonment of eight hours; **Nigel Morales v The Attorney General** CV2008-02133 where the Claimant was awarded \$20,000.00 in damages inclusive of an uplift for aggravation for two hours false imprisonment; **Azard Ali v The Attorney General** CV2012-04736 where the Claimant was awarded general damages for false imprisonment of four hours in the sum of \$80,000.00 and **Deryck Warner v Assistant Superintendent Clarke v The Attorney General of Trinidad and Tobago** CV2014-00542 where the Claimant was awarded \$200,000.00 for false imprisonment and malicious prosecution inclusive of aggravated and exemplary damages.
78. In light of these decisions and considering the injury to reputation, feelings and as a consequence of the loss of liberty suffered by the Claimant, together with an additional uplift for aggravating factors, \$70,000.00 as general damages for malicious prosecution is appropriate in this case. Exemplary damages, unlike aggravated damages which are compensatory in nature, are intended to be punitive, to punish or deter a tortfeasor. Such an award is appropriate where the police behave in an oppressive, arbitrary or unconstitutional manner, and where the Court having regard to the award for compensation (inclusive of aggravated damages) is of the view that it is not sufficient to mark the Court's disapproval of the actions of the agents of the State. In this matter the Claimant was clearly subjected to oppressive, arbitrary and unconstitutional action by the police. Exemplary damages will be awarded in the sum of \$10,000.00.

Conclusion

79. I am satisfied on the evidence that the Claimant has on a balance of probabilities demonstrated that Acting Corporal Pierre had no reasonable and probable cause to arrest, charge and prosecute him. It was a fabrication. Acting Corporal Pierre prosecuted the matter with an ulterior purpose. The criminal process was misused by him. As the claim for false imprisonment is statute barred it will be denied. There will be judgment for the Claimant against the Defendant for damages for malicious prosecution assessed as follows. The

Defendant shall pay (a) special damages in the sum of \$6,800.00 with interest at the rate of 2% per annum from the date of filing of the claim to the date of judgment. (b) General damages inclusive of aggravated damages in the sum of \$70,000.00 with interest at the rate of 4% from 1st March 2013 to the date of filing of the claim. (c) Exemplary damages will be awarded in the sum of \$10,000.00. The Defendant shall pay to the Claimant prescribed costs in the sum of \$22,000.00.

Vasheist Kokaram
Judge