

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV 2016-00250

BETWEEN

MARK VICTOR HAGLEY

Claimant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

Before the Honourable Madam Justice Margaret Y Mohammed

Dated the 16th August, 2017

Appearances

Mr. Abdel Mohammed Attorney at law for the Claimant.

Ms. Lianne Thomas Attorney at law for the Defendant.

REASONS

1. On the 25th July 2017 at the Pre-Trial Review I permitted the witness summary of PC Narine Harrygin which was annexed to the affidavit of Lianne Thomas filed on the 14th June 2017 to stand as the witness summary for the said witness. I also fixed the trial for the 6th December 2017.
2. In making the order I was aware that the Defendant failed to comply with rule 29.13 (2) Civil Proceedings Rule since it did not apply for relief from sanction to file the witness summary out

of time, the Court having given the direction on the 21st June 2017 that the Defendant was to file and serve the witness summary on or before the 27th June 2017.

3. However, I took into account that the Defendant would suffer the greater prejudice if the Court did not permit the witness summary to stand even though it had failed to comply with my order to file and serve the said witness summary which was annexed to the aforesaid affidavit.
4. In determining that the Defendant would suffer the greater prejudice when compared to any prejudice to the Claimant I took into account that:
 - (a) This was a claim by the Claimant for damages for malicious prosecution after he was arrested and charged in June 2006 for 11 offences which included robbery, rape and serious indecency. The onus was on the Defendant to prove that its servants and or agents had reasonable and probable cause in charging and pursuing the prosecution of the Claimant for the said offences.
 - (b) The witness summary was for the only witness which the Defendant has proposed to call at the trial. The Defendant did not file any other witness statements and/or witness summaries.
 - (c) The Claimant was not ambushed at the Pre-trial review with the information in the witness summary since the Attorney at law for the Claimant was aware of the full text of the draft witness summary which was exhibited to the affidavit in support of the application for permission. The said application was served on the attorney for the Claimant before the order was made giving the Defendant permission to file and serve the said witness summary.
 - (d) The Claimant is only calling one witness at the trial namely the Claimant.
 - (e) I did not deem the information in the witness summary to be the evidence in chief for the said witness.

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Margaret Y Mohammed
Judge