

**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**Claim No. CV 2016-02762**

**BETWEEN**

**DINESH NANDLAL**

**Claimant**

**AND**

**THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO**

**Defendant**

**Before the Honourable Madame Justice Margaret Y. Mohammed**

**Dated the 19<sup>th</sup> February 2018**

**APPEARANCES:**

Mr. Shawn Roopnarine instructed by Ms. Shanta Balgobin Attorneys at law for the Claimant.  
Ms. Tricia Ramlogan instructed by Ms. Diane Katwaroo Attorneys at law for the Defendant.

**DECISION**

1. On Saturday 8<sup>th</sup> September, 2012 around 11:00p.m. the Claimant also known as Frank was “liming” with two friends outside the bar of Mr. Haemnath Bodoie (“Mr Bodoie”) at Bodoie’s Liquor Mart at No. 73 St. John’s Trace, Avocat, Fyzabad (“the Liquor Mart”). At that time he was speaking with Mr Bodoie. Two persons namely Mr. Dillon Oudit also known as Solo (“Solo”) and Mr. Besham Sookraj also known as Bruno (“Bruno”) went into the Liquor Mart and after they came out they went to a nearby shed. Subsequently, Mr. Bodoie received a phone call and went inside the Liquor Mart and shortly after, a police van arrived with two police officers. One of the police officers went upstairs the Liquor Mart and

shortly after Mr. Bodoë and his wife (“Mrs Bodoë”) came out of the Liquor Mart and they pointed out to the police officers Solo and Bruno who were under a shed. Both men were arrested and placed in the police van that eventually drove away.

2. Shortly after, the police van returned, and one of the police officers called out “Frank” to which the Claimant answered. The Claimant was then questioned whether he had a gun on him and if he had pointed it to Solo and Bruno and he had told them to steal items from the Liquor Mart. The police officer claimed that Solo and Bruno had told them this. The Claimant was made to empty his pockets and was then searched and placed in the police vehicle. The Claimant protested that he knew nothing about a robbery or a gun but he was still taken to the Oropouche Police Station where he was stripped searched and then put in a holding cell with Solo and Bruno. According to the Claimant the police officers did not find anything illegal on him.
3. At the police station the Claimant was also questioned by another police officer about a gun and the robbery but he maintained his innocence. On Sunday 9<sup>th</sup> September 2012 the Claimant was taken into another room and he was again questioned about a gun and a robbery. The Claimant indicated that he did not know anything about a gun and/or a robbery but the police officer told him, that the only way he would get away, is if he pleaded guilty to having a gun. The Claimant maintained his innocence. Later that day about 6 pm the Claimant, Solo and Bruno were taken to the Siparia Police Station.
4. On Monday the 10<sup>th</sup> September 2012 the Claimant was taken to the Siparia Magistrate’s Court where he was charged indictably with Solo and Bruno for the offence of stealing contrary to section 4 of the **Larceny Act**<sup>1</sup>. At the hearing Solo and Bruno pleaded guilty and they were sentenced. The Claimant pleaded not guilty and he was remanded for tracing. There was no explanation from the police officers to account why the tracing information was not available at the time. The Claimant averred that he was deprived of the opportunity for bail and remanded to the Remand Yard where he remain for 11 days. On the 21<sup>st</sup> September 2012 the charge against the Claimant was dismissed by the Magistrate.

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<sup>1</sup> Chapter 11:12

5. Based on the aforesaid facts the Claimant instituted the instant action for damages for wrongful arrest, false imprisonment and malicious prosecution. He also claimed aggravated and exemplary damages cost and interest.
6. The Defendant's Defence was that Police Constable Ramnarine regimental number 17071 ("PC Ramnarine") had reasonable and probable cause to arrest and charge the Claimant and that his detention was lawful. The Defendant's version of the incident was that on Sunday 9<sup>th</sup> September 2012 at around 12:15 am PC Ramnarine together with Police Constable Beepath regimental number 15088 were at the Oropouche Police Station when they received a telephone message of a report of larceny at the Liquor Mart. Both officers proceeded to the Liquor Mart in a marked police vehicle registration number TCF 9541.
7. Upon their arrival PC Ramnarine met Mr Bodoë. PC Ramnarine conducted investigations regarding the report of larceny which included interviewing Mr. Bodoë. Mr Bodoë informed PC Ramnarine that around 12:05 am he was in the process of locking up the Liquor Mart for the night when he received a call from Mrs Bodoë who indicated that while she was viewing the hidden camera monitor she observed two boys, whom she knew as Solo and Bruno, walk into the Liquor Mart towards the area behind the counter where the cash from daily sales were kept and removed a quantity of cash and cigarettes and walked out of the area through an unsecured gate. Mr. Bodoë further stated after Mrs Bodoë called him, he checked the cash draw and observed that the sum of \$2000.00 in cash, ten twenty dollar digicel phone cards, five twenty dollar bmobile phone cards, three packs of Broadway cigarettes and a pack of Du-Maurier cigarettes were missing (collectively referred to as "the stolen items"). Together the stolen items were valued at \$2,396.00.
8. PC Ramnarine thereafter inspected the premises and observed a camera directed to the area behind the counter where the cash drawer was situated. The monitor for the camera was located upstairs the Liquor Mart and PC Ramnarine together with Mr Bodoë proceeded upstairs to view the video footage of the camera. In the company of Mr. Bodoë and Mrs Bodoë, PC Ramnarine viewed the footage which showed Bruno and Solo enter the Liquor Mart, proceed towards the area where the cash drawer was located and removed the stolen items. At the same time Mr. Bodoë was seen talking to the Claimant. PC Ramnarine then

proceeded downstairs and saw three male persons outside the Liquor Mart. He asked Mr. Bodoë and Mrs Bodoë to identify the persons they observed in the camera footage and they both pointed to the three men known as Solo, Bruno and the Claimant.

9. Thereafter PC Ramnarine approached Solo and Bruno who were in an area of the yard of the said premises and identified himself by means of his Trinidad and Tobago Police Identification card. PC Ramnarine informed them of the report of larceny and cautioned them. Solo thereafter replied *“Officer, doh lock me up, ah go tell yuh everything. Frank talk to me and Bruno and we plan that he go talk to Bodoë, distract him and we go go in and take the things.”* Bruno was cautioned and he was told that he was a suspect and he replied *“Frank I just take a pack ah cigarettes. Frank tell meh to take it and Solo have the other things.”*
10. PC Ramnarine thereafter proceeded towards the shed where the Claimant was and identified himself by means of his Trinidad and Tobago Identification Card and cautioned him. PC Ramnarine informed the Claimant that he was a suspect in a report of larceny. The Claimant gave his name and replied *“So if I tell them jump in front of a truck, they go do that too.”*
11. PC Ramnarine enquired from Solo, Bruno and the Claimant the whereabouts of the stolen items and Solo dipped into his pocket and gave him \$12.00 cash. Solo thereafter led PC Ramnarine to the western side of the Liquor Mart building where a toilet and bath was located and there he retrieved and gave to PC Ramnarine three packs of Broadway and one pack of Du-Maurier cigarettes and replied *“That all I know about.”* Neither Solo nor Bruno produced the remainder of the money.
12. As a consequence, PC Ramnarine arrested Solo, Bruno and the Claimant and informed them of their rights and privileges. They were placed in the back seat of the marked police vehicle and taken to the Oropouche Police Station.
13. At the Oropouche Police Station enquiries continued. In the presence of Solo, Bruno and the Claimant masking tape was affixed with markings NR 9.9.12 (1) to the four packs of

cigarette and NR 9.9.12 to the \$12.00 cash currency. They were further cautioned and informed of their rights and privileges to which they remained silent. PC Ramnarine also further interviewed Mr. Bodoie and recorded a written statement from him.

14. In the Defence the Defendant denied that PC Ramnarine asked the Claimant whether he had a gun and whether he had pointed it to Solo and Bruno. The Defendant admitted that the Claimant was taken to the Siparia Police Station; the Claimant, Solo and Bruno were charged for larceny; Solo and Bruno pleaded guilty and were sentenced; the Claimant pleaded not guilty and he was remanded due to the lack of tracing. The Defendant denied that they were responsible for the finger printing and tracing of the Claimant since it was not part of their portfolio and out of their control.
15. At the trial, the only witnesses were the Claimant and PC Ramnarine. There were disputes of facts to be resolved in this matter. In such circumstances, the Court had to satisfy itself which version of events was more probable in light of the evidence. To do so, the Court was obliged to check the impression of the evidence of the witnesses on it against the: (1) contemporaneous documents; (2) the pleaded case: and (3) the inherent probability or improbability of the rival contentions. (**Horace Reid v Dowling Charles and Percival Bain**<sup>2</sup> cited by Rajnauth–Lee J (as she then was) in **Mc Claren v Daniel Dickey**<sup>3</sup>).
16. The issues to be determined by the Court are:
  - (a) Did PC Ramnarine have reasonable and probable cause to arrest the Claimant?
  - (b) Did PC Ramnarine have reasonable and probable cause to charge the Claimant?
  - (c) If the Defendant is found liable for any of the above, what is an appropriate award of damages to compensate the Claimant?

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<sup>2</sup> Privy Council Appeal No. 36 of 1897

<sup>3</sup> CV 2006-01661

**Did PC Ramnarine have reasonable and probable cause to arrest the Claimant?**

17. In **Ivan Neptune v The Attorney General of Trinidad and Tobago**<sup>4</sup> Des Vignes J succinctly described the two elements to establish the tort of false imprisonment which I adopt:

*“22. The tort of false imprisonment is established on proof of:*

*(a) The fact of the imprisonment.*

*(b) The absence of lawful authority to justify the imprisonment. **Clerk and Lindell on Torts**, 19<sup>th</sup> Edition at paras 15-23.”*

18. In the instant matter there was no dispute that the Claimant was arrested. The issue is whether there was lawful authority to justify his arrest. The onus is on the police to establish reasonable and probable cause for the arrest. Narine JA in **Nigel Lashley v The Attorney General of Trinidad and Tobago**<sup>5</sup> described the onus as:

*“It is well settled that the onus is on the police to establish reasonable and probable cause for the arrest: **Dallison v. Caffery** (1964) 2 All ER 610 at 619 D per Diplock LJ. The test for reasonable and probable cause has a subjective as well as an objective element. The arresting officer must have an honest belief or suspicion that the suspect had committed an offence, and this belief or suspicion must be based on the existence of objective circumstances, which can reasonably justify the belief or suspicion. A police officer need not have evidence amounting to a prima facie case. Hearsay information including information from other officers may be sufficient to create reasonable grounds for arrest as long as that information is within the knowledge of the arresting officer: **O’Hara v. Chief Constable** (1977) 2 WLR 1; **Clerk and Lindsell on Torts** (18th ed.) para. 13-53. The lawfulness of the arrest is to be judged at the time of the arrest.”<sup>6</sup>*

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<sup>4</sup> CV 2008-03386

<sup>5</sup> Civ Appeal No 267 of 2011

<sup>6</sup> Supra para 14

19. The test is subjective because the arresting police officer must have formulated a genuine suspicion in his own mind that the accused person has committed an offence. It is partly objective since reasonable grounds for the suspicion is required by the arresting officer which must be judged at the time the power of arrest was exercised.
20. The police officers' powers of arrest are set out in **Section 3(4) Criminal Law Act** and **Section 46(1)(d) and (f) Police Service Act**<sup>7</sup>. Under **section 3(1) Criminal Law Act**, an arrestable offence is an offence to which the powers of summary arrest apply where a person may, under or by virtue of any written law be sentenced to imprisonment for a term of five years, and to attempts to commit any such offence. The offence of larceny by virtue of section 4 of the **Larceny Act** is simple larceny, stealing for which no special punishment is provided under the **Larceny Act** or any other act for the time being in force and is punishable with imprisonment for five years. Therefore larceny is an arrestable offence.
21. According to Claimant's evidence in chief, which was unshaken in cross-examination, before PC Ramnarine arrested him PC Ramnarine spoke to Mr Bodoë; he then went inside the Liquor Mart; he came outside where Mr Bodoë and Mrs Bodoë pointed out Solo and Bruno to him; he spoke with Solo and Bruno; he took Solo and Bruno in the police van; shortly after he returned with them; he then spoke to the Claimant where he told him that Solo and Bruno said that he set them up to take the stolen items from the Liquor Mart; he searched the Claimant where he did not find any of the stolen items; he then arrested the Claimant and took him in the police van with Solo and Bruno to the Oropouche Police Station.
22. According to PC Ramnarine's evidence in his witness statement when he arrived at the Liquor Mart he first spoke with Mr. Bodoë who informed him that around 12:05 am on that day, he was in the process of locking up the Liquor Mart for the night when he received a call from Mrs Bodoë. She told him that while she was viewing the hidden camera monitor located upstairs the Liquor Mart when she observed two boys, whom she knew as Solo and Bruno and who frequented the Liquor Mart walk into the area behind the counter where

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<sup>7</sup> Chap 15:01

the cash from the day sales was kept. They removed a quantity of cash and cigarettes and walked out of the area through an unsecured gate. After Mr. Bodoë's wife informed him about her observation, he checked the cash drawer and he observed that the stolen items were missing and together they were valued at \$2,396.00.

23. PC Ramnarine said in his witness statement that the next step he took was he inspected the premises and observed a camera pointing to the area behind the counter where a box was which contained the money from the day sales. The said camera which was located downstairs captured the footage of the larceny. The monitor was located upstairs the Liquor Mart where the family resided. He then reviewed the footage with Mr. Bodoë and Mrs Bodoë and he saw Bruno and Solo enter the Liquor Mart, went into the area where the box was and removed the stolen items. He also saw Mr. Bodoë speaking to a third man whom he called "Frank", who is the Claimant, since the camera captured the area outside the counter as well. PC Ramnarine could not recall if Mr. Bodoë indicated that they were inside the Liquor Mart or just outside during this time.
24. In cross-examination PC Ramnarine admitted that the video footage on the security camera only showed Bruno and Solo taking the stolen items from the Liquor Mart. He accepted that he saw the Claimant speaking with Mr Bodoë but he did not see the Claimant speaking with Solo and Bruno from the said footage. He also agreed that the Station Diary Extract which was the Defendant's contemporaneous document, which he said he wrote up did not state that the Claimant was seen in a conversation with Mr Bodoë. Further PC Ramnarine accepted that the Summary of Evidence for the case in the Magistrate's Court which was prepared by him omitted to state that PC Ramnarine observed the Claimant speaking with Solo or Bruno from the video footage.
25. In my opinion, PC Ramnarine's evidence in cross-examination confirmed that he did not have any evidence from the camera footage that the Claimant took the stolen items from the Liquor Mart and/or that the Claimant was involved in any plan with Solo and Bruno to take the stolen items from the Liquor Mart.



26. According to PC Ramnarine's witness statement he then proceeded downstairs and he saw three male persons of East Indian descent outside the Liquor Mart. He asked Mr. Bodoë and Mrs Bodoë to identify the persons they observed in the camera footage and both of them pointed to three men namely Solo, Bruno and the Claimant.
27. PC Ramnarine said he then approached Solo and Bruno and identified himself by means of his Trinidad and Tobago Police Service identification card. The Claimant was also in the yard but not close to Solo and Bruno. PC Ramnarine informed Solo and Bruno of the report which was made which was that they entered the cashier area of the Liquor Mart and took the stolen items. He said he then cautioned them in accordance with the Judge's Rules. Solo replied "*Officer, doh lock meh up, ah go tell yuh everything. Frank talk to me and Bruno and we plan that he go talk to Bodoë, distract him and we go in and take the things.*" After he cautioned Bruno in accordance with the Judges Rules and told him that he was a suspect and Bruno replied "*I just take a pack of cigarettes. Frank tell meh to take it and Solo have the other things*". This evidence was consistent with the Defendant's pleaded case and one of the Defendant's contemporaneous document which was the Station Diary Extract which recorded the utterances made by Solo and Bruno to PC Ramnarine.
28. In cross-examination, PC Ramnarine admitted that the Claimant's case was that he was there with two friends and that they were not Solo and Bruno. He also admitted that when he arrived at the Liquor Mart the Claimant was some distance away from Solo and Bruno. He accepted that Mr Bodoë did not indicate that Solo and Bruno were the two persons the Claimant was with and that Mr Bodoë did not indicate to him that the Claimant and Solo and Bruno were speaking with each other prior to the larceny. Therefore based on PC Ramnarine evidence in cross-examination he did not have information that the Claimant was there "liming" with Solo and Bruno nor that he had been in conversation with both of them. In my opinion at this stage PC Ramnarine had no cause to believe that the Claimant was involved in any activity with Solo and Bruno.
29. PC Ramnarine also stated in cross-examination that he recorded the utterances from Solo and Bruno in his personal diary but he could not locate it. He accepted that he did not take a full statement from Solo and Bruno before he arrested them and that from the utterances

of Solo and Bruno he still had no evidence when the plan which Solo spoke of was hatched. However later in cross-examination PC Ramnarine changed his evidence and stated that Bruno, who was a minor, made two statements implicating the Claimant in the larceny, at the scene and the next day in the Police Station when Bruno's father was present.

30. The contemporaneous document, the Station Diary Extract stated that Bruno made one utterance which was at the scene which was consistent with the Defence and PC Ramnarine's witness statement. However there was no recording in the Station Diary of two statements made by Bruno which was inconsistent with PC Ramnarine's evidence in cross-examination. Further, the Defendant's other contemporaneous document namely, the Summary of Evidence stated that Bruno made his utterance at the Police Station when he gave his statement in the presence of his father which was inconsistent with the other contemporaneous document which was the Station Diary Extract. In my view the aforesaid inconsistencies on when and how many times Bruno made the utterance to PC Ramnarine implicating the Claimant demonstrates the lack of credibility of PC Ramnarine's evidence that Bruno made an utterance implicating the Claimant in the offence. Since there were at least three different versions of how many times and when Bruno made the said utterance.
31. PC Ramnarine said in his witness statement that he then approached the Claimant who was under the shed in the yard and identified himself by means of his Trinidad and Tobago Police Service identification card. He cautioned the Claimant who gave his name as Dinesh Nandlal. PC Ramnarine told him of the report of the larceny and that the information he had was that he, together with Solo and Bruno taken the stolen items and cautioned him. He replied "*so if I tell them jump in front of a truck, they go do that too.*" This evidence was consistent with the pleaded Defence. In cross-examination PC Ramnarine stated that when he approached the Claimant he informed him that he was a suspect for the offence of larceny which was consistent with the Station Diary Extract and his evidence in chief.
32. However, the Claimant's evidence was that PC Ramnarine informed him that Solo and Bruno had provided information to him that the Claimant had told them to take the stolen items and that PC Ramnarine questioned him about having a gun and he asked him question about robbing the Liquor Mart to which the Claimant denied.

33. In my opinion based on the consistency of this aspect of PC Ramnarine's evidence with his case I accept that when he approached the Claimant he cautioned him before he questioned him.
34. In cross-examination PC Ramnarine stated that the only information he had to implicate the Claimant in the offence was the utterances from Solo and Bruno and from what he had seen in the camera footage. He admitted that in his view the truth was established when Solo told him "*Officer, doh lock me up, ah go tell yuh everything, Frank talk to me and Bruno and we plan that he go talk to Bodoie, distract him amd we go go in and take the things*" and Bruno told him "*Frank I just take a pack ah cigarettes, Frank tell me to take it and Solo have the other things*". He admitted that the camera footage was consistent with the Claimant having a conversation with Mr Bodoie when Solo and Bruno took the stolen items. He said what was important was that the Claimant was talking to Mr Bodoie when the larceny was taking place. He admitted that although he had seen the Claimant talking to Mr Bodoie on the camera footage he did not enquire if the Claimant was a patron of the Liquor Mart since he did not think that was important. PC Ramnarine also confirmed in cross-examination that the Claimant did not admit to committing the offence and protested his innocence.
35. PC Ramnarine then said in his witness statement that he enquired from the Claimant, Solo and Bruno as to the whereabouts of the items taken and Solo dipped into his pants pocket and handed over \$12.00 cash T&T currency and led him to a toilet and bath area on the western side of the building and from the rafter area of the toilet, he retrieved and handed over three packs of Broadway and one pack of Du-Maurier cigarettes and replied "*That all I know about*". None of the men produced the rest of the money.
36. PC Ramnarine admitted in cross-examination that he searched the Claimant, Solo and Bruno for the \$2000.00 and he did not find any cash or any of the stolen items on the Claimant. He also searched a washroom which was at the back of the Liquor Mart where the cigarettes were found in the ventilation blocks and he searched a four feet drain. He said that it was either Solo or Bruno who took him to the washroom area and pointed out

where the cigarettes were hidden. He also only found \$12.00. He did not search the area at the back where there were bushes although he had a flashlight since he concluded that the money was hidden beyond his ability to find it.

37. In my opinion based on PC Ramnarine's own admissions in cross-examination after he conducted the search of the Claimant and the premises, he did not have sufficient evidence to implicate the Claimant since he did not find any of the stolen items on him and he did not take him to any area where the stolen items were found.
38. PC Ramnarine then testified that after he arrested Solo, Bruno and the Claimant and informed them of their rights and privileges. They were placed in the back seat of the marked police vehicle and taken to the Oropouche Police Station together with the items that he recovered. This was consistent with the Defence, the Summary of Evidence document and the Station Diary Extract.
39. The Claimant's case and evidence was that after PC Ramnarine took Solo and Bruno into the police van and left, shortly thereafter he returned with them in the police van. He was then questioned by PC Ramnarine and arrested. In my opinion while there may appear to be two different versions of this part of the incident the common threads were that the Claimant was questioned after Solo and Bruno and that he was taken in the police van with Solo and Bruno to the Oropouche Police Station.
40. In my opinion based on the evidence, PC Ramnarine had the following information at the time when the Claimant was arrested:
  - (a) Video footage of Bruno and Solo taking the stolen items;
  - (b) Video footage of the Claimant speaking with Mr Bodoë;
  - (c) The utterances from Solo and Bruno committing the offence and implicating the Claimant;
  - (d) The \$12.00 cash from Solo and the cigarette boxes which Solo showed PC Ramnarine that were hidden in the ventilation blocks in the toilet at the back of the Liquor Mart.
  - (e) The Claimant's denial of having committing the offence.

41. Narine JA in **Nigel Lashley v The Attorney General of Trinidad and Tobago**<sup>8</sup> stated that there is a discretion the police have when exercising the powers of arrest as:

*“The power to arrest is by its very nature a discretionary one. A police officer may believe that he has reasonable and probable cause to arrest a suspect, but may decide to postpone the arrest, while he pursues further investigations. His exercise of the discretion may be based on the strength or weakness of the case, the necessity to preserve evidence, or the need to ensure that the suspect does not abscond to avoid prosecution. The exercise of the discretion must be considered in the context of the particular circumstances of the case. The discretion must be exercised in good faith and can only be challenged as unlawful if it can be shown that it was exercised “unreasonably”... Arrest for the purpose of using the period of detention to confirm or dispel reasonable suspicion by questioning the suspect or seeking further evidence with his assistance is an act within the broad discretion of the arrestor... A police officer is not required to test every relevant factor, or to ascertain whether there is a defence, before he decides to arrest... Further, it is not for the police officer to determine whether the suspect is in fact telling the truth. That is a matter for the tribunal of fact.”<sup>9</sup>*

42. While the arresting officer has the discretion to arrest in the instant matter in my opinion PC Ramnarine did not have the following information: (a) that the Claimant took the stolen items from the Liquor Mart; (b) the Claimant was seen speaking with Solo and/or Bruno on the video camera footage nor when he arrived at the Liquor Mart; (c) the Claimant and Solo and Bruno standing together when he arrived at the Liquor Mart (d) Mr Bodoë did not tell PC Ramnarine that the Claimant was talking to Solo and/or Bruno (e) after he searched the Claimant he did not find any of the stolen items on the Claimant; (f) the extent of his search of the area was very limited ; and (g) no utterance from Bruno implicating the Claimant.

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<sup>8</sup> Supra

<sup>9</sup> Paras 18 and 19

43. In my opinion, any police officer placed in the position of PC Ramnarine and possessed with the aforesaid objective information would not have honestly believed that the Claimant had committed the offence of larceny. In these circumstances, PC Ramnarine acted improperly when he exercised his discretion to arrest the Claimant for the offence of larceny.

**Did PC Ramnarine have reasonable and probable cause to charge the Claimant for the offence of larceny?**

44. The essential ingredients for malicious prosecution are set out in **Clerk & Lindsell on Torts**<sup>10</sup> which states:

*“In an action for malicious prosecution the claimant must first show 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.”*

45. The test to determine reasonable and probable cause for a prosecution is set out at in **Halsbury Laws of England**<sup>11</sup> as:

*“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, of the existence of a state of the 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.”*

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<sup>10</sup> 20<sup>th</sup> ed. At page 1070, para 16:09

<sup>11</sup> 4<sup>th</sup> ed Vol 45 (2) at para. 472

46. Mendonca J (as he then was) summarized the test in a malicious prosecution matter in **Harold Barcoo v A.G of T. & T. and Browne**<sup>12</sup> as:
- i. Did the officer honestly have the requisite suspicion or belief?
  - ii. 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?
  - iii. Was his belief in the existence of these circumstances based on reasonable grounds?
  - iv. Did these circumstances constitute reasonable grounds for the requisite suspicion or belief?
47. In a claim for malicious prosecution, the burden is on the Claimant to prove all the elements as stated aforesaid; in particular that the police officer did not have reasonable and probable cause to prosecute him and that he acted with malice in doing so. The question of whether there was reasonable and probable cause for the prosecution is one of fact. The test is partly objective and partly subjective. It is objective since it must be shown that a reasonable man having knowledge of the facts that the prosecution knew when the prosecution was instituted would have believed that the Claimant was guilty of the offence charged with. It is subjective since the Defendant must honestly believe that the Claimant was guilty of the offence. The Defendant's belief must be based on facts known to him at the time the prosecution was initiated. There is no duty on the part of the police officer to determine whether there is a defence to the charge but only to determine whether there is reasonable and probable cause for the charge<sup>13</sup>. In **Glinski v Mc Iver**<sup>14</sup> Lord Devlin commenting on the meaning of reasonable and probable cause stated that "*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*".

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<sup>12</sup> HCA 1388 of 1989 delivered December 19, 2001 page 5 –6

<sup>13</sup> *Herniman v Smith* 1938 AC 305 per Lord Atkin, "It is not required of any prosecutor that he must have tested every possible relevant fact before he takes action. His duty is not to ascertain whether there is a defence, but whether there is reasonable and probable cause for a prosecution."

<sup>14</sup> [1962] 1 All ER 696 at page 715

48. Kokaram J, referring to the guidance from Rajnauth-Lee JA in a Court of Appeal decision in this jurisdiction **Juman v The Attorney General of Trinidad and Tobago**<sup>15</sup> described the test as:

*“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.”*

49. The particulars of lack of reasonable and probable cause pleaded by the Claimant were that the police officer:

- “(a) Failed to make any or proper and adequate investigations prior to arresting and/or charging the Claimant;
- (b) Failed to interview and/or to take statements from 2 persons who were on the scene at all material time of the alleged incident when the Claimant was arrested and taken away in the police vehicle;
- (c) Acting to plainly unsubstantiated and/or inadequate evidence.
- (d) Failing to have the Claimant traced in a timely manner or at all.”

50. It is not in dispute that the first and second elements have already been established since the Claimant was charged and the charge was dismissed.

51. According to the Claimant’s witness statement after he was arrested he was taken to the Oropouche Police Station where he was searched. The police did not find anything illegal or the stolen items in his possession. While he was searched he was questioned by PC Ramnarine about the robbery and a gun. He denied having a gun and that he had knowledge of any robbery. He maintained his innocence. He was taken to a holding cell after he was searched. The next morning he was removed from the holding cell and taken to a small

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<sup>15</sup> CV 22 of 2009



room where he was questioned by PC Ramnarine where he again stated his innocence. According to the Claimant, PC Ramnarine told him that he could get away with the offence if he pleaded guilty but he kept telling PC Ramnarine that he was innocent. He was returned to the holding cell where he remained until approximately 6:00pm.

52. The Claimant also testified that around 6 pm on the same day, Sunday, he was handcuffed and taken to the Siparia Police Station. At the Siparia police station, a police officer interviewed him and took his name, address and occupation. He was fingerprinted, photographed, booked and placed into a separate holding cell from Solo and Bruno. He was not given a Notice of the Charge being laid against him. He stated that he appeared at the Siparia Magistrate's Court on Monday 10<sup>th</sup> September, 2012 where he learnt that he was indictably charged jointly with Solo and Bruno for the offence of stealing pursuant to section 4 of the Larceny Act. According to the Claimant, Solo and Bruno pleaded guilty but he pleaded not guilty and he was remanded in custody for tracing. He was taken to the Remand Yard in Arouca later that evening and he remained at the Remand Yard for 11 days. He returned to the Siparia Magistrate Court on the 21<sup>st</sup> September, 2012 when the charges against him were dismissed due to insufficient evidence. The Claimant's evidence was unshaken in cross-examination.
53. PC Ramnarine stated in his witness statement that the additional information which he had after the arrest but before he charged the Claimant with the offence for larceny was:
- (a) The Claimant, Solo and Bruno were searched again at the police station and none of the stolen items were found on the Claimant.
  - (b) A Statement from Mr Bodo.
  - (c) A Statement from Solo confirming the utterance he made to PC Ramnarine at the scene which implicated the Claimant
  - (d) The cigarettes which he retrieved from the toilet.
  - (e) The \$12.00 which Solo surrendered to him at the scene.

54. In cross-examination PC Ramnarine admitted that:

- (a) The statement from Mr Bodoë did not implicate the Claimant in committing the offence since Mr Bodoë did not view the camera footage and he did not witness the theft. Mr Bodoë had said that Mrs Bodoë had viewed the camera footage. Mr Bodoë did not state in his statement to the police that the Claimant, Solo and Bruno were speaking with each other before the items were stolen.
- (b) Mr Bodoë's statement did not state that he was talking with the Claimant when the offence was committed.
- (c) He knew that Mr Bodoë's statement on what Mrs Bodoë had seen was inadmissible hearsay in the Magistrate's Court.
- (d) He did not have a statement from Mrs Bodoë who viewed the camera footage.
- (e) He did not secure the camera footage at the Liquor Mart.
- (f) He did not intend to call Solo and Bruno to prove his case against the Claimant.
- (g) He made the decision to charge the Claimant since he thought he had sufficient evidence.
- (h) The Claimant did not admit to committing the offence.
- (i) An important part of proving the case against the Claimant was to prove that he had stolen the items.
- (j) None of the items were found on the Claimant even after he was searched twice.
- (k) He could not recall if he had asked Bruno if he and the Claimant planned the theft.
- (l) From the stolen items he had only recovered \$12.00 out of the \$2,000.00, three packs of Broadway and one pack of Du-Maurier cigarettes. Yet he did not conduct any further investigations to find the balance of the cash and the other items which were stolen.

55. The onus was on the Claimant to prove that PC Ramnarine did not have reasonable and probable cause to charge him for larceny and that PC Ramnarine instituted and carried out the proceedings against the Claimant maliciously. I will now address the questions posed in **Harold Barco**. Did PC Ramnarine honestly have the requisite suspicion and belief that the Claimant committed the offence of taking the stolen items? In my opinion based on the observations made by PC Ramnarine, the very limited search of the area which he

conducted and from the information contained in the statement by Mr Bodoë I have concluded that there was insufficient grounds for him to honestly believe that the Claimant was involved in the larceny of the stolen items.

56. Did PC Ramnarine, when exercising his discretion to charge the Claimant for larceny of the stolen items, honestly believe in the existence of the “objective” circumstances which he now relies on as the basis for his suspicion and belief? Based on PC Ramnarine’s own admission in cross-examination when Solo confessed at the scene that he, Bruno and the Claimant had hatched the plan for the theft he concluded that the truth was established at that point since Solo did not extricate himself from the story. In my opinion, PC Ramnarine did not honestly believe in the existence of the objective circumstances since he arrived at his conclusion without any further investigation and completely disregarded the Claimant’s protestation of his innocence. PC Ramnarine did not even interview the two other persons with whom the Claimant said he was “liming” at the Liquor Mart to even verify the Claimant’s protestations of his innocence. In my opinion, based on the evidence which PC Ramnarine admitted he did not have, he could not and did not have reasonable grounds to suspect and believe that the Claimant had stolen the items.
57. Was PC Ramnarine actuated by malice in charging and prosecuting the Claimant for the said offence? The onus was on the Claimant to show that PC Ramnarine was actuated by malice in instituting the prosecution<sup>16</sup>.
58. The Privy Council in **Trevor Williamson v The Attorney General of Trinidad and Tobago**<sup>17</sup> at paragraphs 11-13, described the ingredients of malice as:

*“11. ... 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; 230 CLR 500, at para 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*

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<sup>16</sup> per Mc. Shine JA in *Wills v Voisin* (1963) 6 W.L.R. 50 at 67 B.

<sup>17</sup> [2014] UKPC 29

-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 motives is for a purpose other than bringing a person to justice: **Stevens v Midland Counties Railway Company (1854) 10 Exch 352, 356 per Alderson B and Gibbs v Rea [1998] AC 786, 797D**. 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, [2014] AC 366 at para 101, Gregory v Portsmouth City Council [2000] 1 AC; 426C; Proulx v Quebec [2001] 3 SCR 9**. Proving malice is a “high hurdle” for the claimant to pass: **Crawford Adjusters para 72a per Lord Wilson**.

13. Malice can be inferred from a lack of reasonable and probable cause – Brown v Hawkes [1891] 2 QB 718, 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.” (Emphasis added).

59. In **Sandra Juman v AG**<sup>18</sup> the Court citing **Hick v Faulkner**<sup>19</sup> stated:

“Malice must be proved by showing that the police officer was motivated by spite, ill will or indirect or improper motives. It is said that malice may be inferred from an absence of reasonable and probable cause but this is not so in every case. Even if there is want of reasonable and probable cause, a judge might nevertheless think that the police officer acted honestly and without ill-will, or without any other motive or desire than to do what he bona fide believed to be right in the interests of justice”<sup>20</sup>

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<sup>18</sup> Civ App 22 of 2009

<sup>19</sup> [1987] 8 QBD 167

<sup>20</sup> Hicks v Faulker [1987] 8 QBD 167 at 175.

60. If there is no proof of malice in the prosecution, the claim in malicious prosecution must fail, even if there is a finding of lack of reasonable and probable cause<sup>21</sup>.
61. The Claimant relied on the particulars of lack of reasonable and probable cause as pleaded in the Statement of Case and set out aforesaid to support a finding of malice.
62. The Defendant submitted that that proof of negligence and recklessness in failing to make any proper and adequate investigation is not evidence of lack of reasonable and probable cause and, more importantly, is not evidence of malice.
63. There was no evidence that the Claimant knew PC Ramnarine prior to the incident. In my opinion given the facts in the instant case malice can be inferred by PC Ramnarine lack of reasonable and probable cause in arresting and charging the Claimant since (a) based on PC Ramnarine's evidence he concluded that the Claimant was guilty of the offence when Solo made the utterance to him implicating the Claimant; (b) PC Ramnarine knew that he did not have any evidence save and except the utterances from Solo and Bruno before he arrested the Claimant but he still proceeded to arrest him; (c) PC Ramnarine also knew, based on the Summary of Evidence that Bruno was only 13 years old and therefore even if Bruno had made an utterance without his guardian being present he ought to have disregarded it; and (d) PC Ramnarine was aware that Mr Bodo's statement did not implicate the Claimant.
64. In my opinion, this was not simply a failure by PC Ramnarine to conduct a thorough investigation. Based on PC Ramnarine own evidence he deliberately refused to conduct any investigation after he made up his mind very early in the proceedings after Solo and Bruno implicated the Claimant in the larceny. For these reasons malice can be imputed by PC Ramnarine's conduct.

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<sup>21</sup> Wershof v. Commissioner of Police (1973) 3 AER 540

**If the Defendant is found liable for any of the above, what is an appropriate award of damages to compensate the Claimant?**

65. Having concluded that the Claimant's arrest and continued detention were unlawful, he is entitled to damages. Counsel for the Claimant submitted that the Court award the Claimant the sum of \$160,000.00 for his period of detention from the 9<sup>th</sup> September 2012 to the 21<sup>st</sup> September 2012 as general damages and the sum pleaded as special damages.
66. The Defendants argued that the Claimant is only entitled to the sum of \$45,000.00 as general damages since the Claimant was charged for a relatively minor offence and as such the Claimant's reputation would not have been seriously affected. Furthermore, his period of detention was from the 9<sup>th</sup> September 2012 to the 10<sup>th</sup> September 2012 when he was remanded into custody by the Magistrate. Therefore the Claimant's loss of liberty was from Sunday the 9<sup>th</sup> September, 2012 at 1:00am to Monday 10<sup>th</sup> September, 2012, a period of two days, which was when he appeared before the Magistrates Court and was then remanded into custody. In support of this contention Counsel for the Defendant argued that the Claimant was remanded in custody on the 10<sup>th</sup> September, 2012 pursuant to a judicial order of the presiding Magistrate and having regard to section **4(6) of the State Liability and Proceedings Act**<sup>22</sup> the State can only be liable in false imprisonment up to the point when a claimant is taken before a judicial authority. Therefore no liability can attach to the State for any period of imprisonment after the Magistrate's decision to remand the Claimant (i.e. after 10<sup>th</sup> September, 2012.)
67. What period of detention should the Claimant be awarded damages for false imprisonment? It was not in dispute that the Claimant's detention began at or around Sunday 9<sup>th</sup> September, 2012 at 1:00am when he was arrested and that he was released on the 21<sup>st</sup> September 2012.

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<sup>22</sup> Chapter 8:02

68. In **Diamond v Minter and Ors**<sup>23</sup> and **Ahmed v Shafique**<sup>24</sup> the Courts have refused to award damages for false imprisonment for the period after a claimant was remanded in custody by a Magistrate. The Courts have held the view that the judicial act by the Magistrate operates as a diver between the loss of liberty due to the false arrest and the continued detention after the person is brought before a judicial officer. In **Terrance Calix v The Attorney General of Trinidad and Tobago**<sup>25</sup> Stollmeyer JA explained that:

*“in the circumstances I have come to the view that the grant of bail by the Magistrate, although not accessed by the appellant, is in law a sufficient ground in this case to disentitle him to an award under this head. I say so for two reasons. The first is that granting bail interposes a judicial act between the prosecution and the continued detention of the accused. The prosecution is no longer the cause of the deprivation of liberty. That deprivation is caused by the judicial act.”*

69. In the instant case, it was not in dispute that the Claimant was remanded by the Magistrate for tracing since the tracing information was not available when the Claimant appeared before the Magistrate on the first occasion. In my opinion the Magistrate had the discretion to grant bail to the Claimant but he/she chose to exercise his/her discretion by not granting bail and remanding the Claimant. There was no evidence that the Magistrate would have exercised the discretion differently if the tracing information was available. In my opinion when the Claimant was brought before the Magistrate on Monday the 10<sup>th</sup> September 2012 he was given the opportunity to obtain bail and was not deprived of it which he alleged. Therefore, when the Magistrate did not grant bail on the 10<sup>th</sup> September 2012 this was a judicial act which was interposed between the prosecution and the continued detention of the Claimant. For this reason I have concluded that the Claimant’s loss of liberty was 2 days, from Sunday the 9<sup>th</sup> September, 2012 at 1:00am to Monday 10<sup>th</sup> September, 2012 which was when he appeared before the Magistrates Court and was then remanded into custody.

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<sup>23</sup> [1941] 1 KB 656 @ 663

<sup>24</sup> [2009] EWHC 618

<sup>25</sup> Civ Appeal No 61 of 2007 transcript page 5 lines 9-19.

70. In **Thadeus Clement v the Attorney General of Trinidad and Tobago**<sup>26</sup> Jamadar JA outlined the relevant heads of damages for the tort of malicious prosecution as:

*“Apart from pecuniary laws, 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.”*

71. In **Anthony Sorzano and anor. v The Attorney General of Trinidad and Tobago and anor.**<sup>27</sup> Mendonca JA described the relationship between damages for deprivation of liberty under malicious prosecution and damages for false imprisonment in as:

*“I think that the position is correctly stated in Mc Gregor on Damages (14<sup>th</sup> Edition) at paragraph 1367-*

*If there had been arrest and imprisonment up to the hearing of the case, damages in respect thereof should be included, and will be the same as would be recoverable in an action for false imprisonment.”*

72. Paragraph 6 of the Claimant’s witness statement stated that at the Oropouche police station, he was taken behind the counter where he was instructed to pull down his pants and roll up his t-shirt. He did as instructed and PC Ramnarine and another male police officer searched him. He said he was embarrassed when he was stripped because he knew he had nothing illegal on him, also he was made to strip in a public area and this was a humiliating experience for him.

73. At paragraph 7 of his witness statement he stated that after he was questioned he was placed in a small concrete cell with Solo and Bruno. The next morning he said he was questioned and returned to the same cell where he remained until 6:00pm of that day. Around 6:00pm he was taken to the Siparia Police Station and he was handcuffed while he was being

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<sup>26</sup> Civil Appeal No 95 of 2010 at paragraph 12

<sup>27</sup> Civil Appeal No 101 of 2002 at paragraph 9



moved. At the Siparia police station, a police officer interviewed him and took his name, address and occupation. He was fingerprinted, photographed, booked and placed into a separate holding cell from Solo and Bruno.

74. At paragraphs 10 and 11 of the Claimant's witness statement he stated that after he was remanded in custody for tracing he was taken to the Remand Yard in Arouca later that evening where remained at the Remand Yard for 11 days. At the Remand Yard, he shared a cell with 4 other men. It was a small, dark concrete cell. He was given a piece of ply wood to sleep on. It was torture, his family was allowed to visit him once per week. He said he hated being locked up like a caged animal and the 11 days in prison were the longest and most horrible days of his life.
75. At paragraph 15 the Claimant described the impact of the incident on him as:
- "As a result of this incident, I was very embarrassed. My neighbours and friends talked to me about the incident and I felt very ashamed. After the incident, I received numerous judgemental looks from my neighbours. Their treatment towards me caused me to feel uncomfortable in my community although my family is very friendly with everyone. I have never had any arrests or convictions before this incident or even up to now."*
76. In considering the award of damages I took into account that the Claimant's period of loss of liberty was 2 days; he was made to strip in front other persons where he was searched at the police station to the Magistrate's Court; it was a relatively simple offence; and that the Claimant who was never arrested previously, felt embarrassed and ashamed in his community after the incident.
77. In **Richardson & Alleyne v The Attorney General of Trinidad and Tobago**<sup>28</sup> the Claimants were awarded \$40,000.00 each inclusive of aggravated damages for false imprisonment for approximately 2 days.

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<sup>28</sup> CV 2007 –2686 delivered on 8<sup>th</sup> January, 2013.

78. In **Indra Samuel and PC Ali and the Attorney General**<sup>29</sup> the Claimant was awarded damages for false imprisonment in the sum of \$45,000.00 inclusive of aggravated damages for the period spent in the cell from around midday on the 8<sup>th</sup> May, 2010 to the time of her release on the 10<sup>th</sup> May, 2010.
79. In **Ricardo Luke Fraser v The Attorney General of Trinidad and Tobago**<sup>30</sup> I awarded the sum \$100,000.00 general damages inclusive of aggravated damages after the Claimant was detained for 5 days. In that case the Claimant was detained at two different police stations.
80. In my opinion, in the instant case an award in the sum of \$50,000.00 inclusive of aggravated damages is a fair award to the Claimant as general damages for his loss of liberty for 2 days.

### **Special Damages**

81. It is settled law that the Claimant must plead and prove his case of special damages. The Claimant pleaded special damages in the sum of \$1,300.00 as fees paid to Attorney at Law to appear and defend him at the Siparia Magistrate Court on two occasions however, the Claimant did not provide any evidence of the said payments. For this reason the sum is not awarded.
82. The Claimant also pleaded loss of earnings as a Hydroblaster at \$3,360.00 per week for 4 weeks. The Claimant submitted a job letter from Industrial Cleaning Specialist dated the 18<sup>th</sup> December 2015 annexed and marked “B” to his Statement of Case verifying his position as a Hydroblaster as well as the amount he was paid at the time of his detention. He also relied on a hearsay notice to have the said letter admitted into evidence. The Claimant stated at paragraph 14 of his witness statement that due to his arrest and detention, he could not work. He worked as a Hydroblaster with Ultra Hi Technology Ltd and he

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<sup>29</sup> CV 2014-00608 delivered on 23<sup>rd</sup> February, 2016

<sup>30</sup> CV 2014-03967 delivered 24<sup>th</sup> November 2016

earned a weekly salary of \$3,360.00. He was unable to return to work for approximately four weeks and he lost this sum because of not being able to work when the shutdown job started.

83. It was submitted by Counsel for the Defendant that the detention of the Claimant by the Defendant's agents/servants were 2 days and therefore only 2 day's loss of earnings at a sum of \$960.00 should be allowed.
84. I accept that the Claimant was unable to work for 2 days but there was no evidence from the said letter that he suffered a loss of income for the 2 days ie between Sunday 9<sup>th</sup> September 2012 and Monday 10<sup>th</sup> September 2012. I therefore make no award for this claim.
85. The Claimant's claim as cost of certified notes at \$24.00 is awarded since the Claimant provided evidence of this sum.

### **Exemplary damages**

86. The Claimant pleaded a claim for exemplary damages but in the closing submissions he did not submit any argument to support the claim. It was submitted on behalf of the Defendant that there is no justification for an award for exemplary damages to the Claimant since the Claimant would be adequately compensated by an award for general damages and there was no evidence of oppressive conduct on the part of PC Ramnarine that warrants the Court's mark of disapproval or to vindicate any right of the Claimant.
87. The primary object of an award of damages is to compensate the Claimant for the harm done to him and a possible secondary object is to punish the defendant for his conduct in inflicting that harm. "<sup>31</sup> **Rookes v Barnard**<sup>32</sup> established that exemplary damages can be awarded in 3 types of cases namely:

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<sup>31</sup> Mc Gregor on Damages 18<sup>th</sup> Edition at paragraph 11-001

<sup>32</sup> [1964] AC 1129

- a. Cases of oppressive, arbitrary or unconstitutional action by servants of the Government;
- b. Cases where the defendant's conduct has been calculated by him to make a profit for himself which may well exceed the compensation payable to the plaintiff; and
- c. Cases in which exemplary damages are expressly authorized.

88. In **Rookes v Barnard** Lord Devlin stated:

*“In a case in which exemplary damages are appropriate, a jury should be directed that if, but only if, the sum which they have in mind to award as compensation (which may of course be a sum aggravated by the way in which the defendant has behaved to the plaintiff) is inadequate to punish him for his outrageous conduct, to mark their disapproval of such conduct and to deter him from repeating it, then they can award some larger sum.”*

89. I do not make an award for exemplary damages since in my opinion, it cannot be said that PC Ramnarine and the other police officers involved in this matter used any oppressive, arbitrary or unconstitutional action. While I accept that the Claimant said that he was stripped searched at the Oropouche police station and he was not given the opportunity to obtain bail since the tracing information was not available in my opinion this was not oppressive behaviour and in awarding general damages I considered these matters in giving an uplift for these aggravating factors.

### **Order**

90. The Claimant was wrongfully arrested and wrongfully detained for 2 days.

91. The Defendant to pay the Claimant special damages in the sum of \$ 24.00 with interest at the rate of 1.5% per annum from the 9<sup>th</sup> September 2012 until judgment.

92. The Defendant to pay the Claimant general damages, which includes an uplift for aggravated damages, in the sum of \$ 50,000.00 with interest at the rate of 2.5% per annum<sup>33</sup> from the date of filing of the claim to judgment.
93. No award for exemplary damages.
94. The Defendant to pay the Claimant prescribed cost in the sum \$14,387.06.

.....  
**Margaret Y Mohammed**  
**Judge**

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<sup>33</sup> See **The Attorney General of Trinidad and Tobago v Fitzroy Brown & Ors.**<sup>33</sup>, it was ordered that the rate of interest on general damages should be 2.5%. It was further stated that any reference to the prime lending rate ought to be considered in commercial matters, but for damages matters like personal injury cases, the short term investment rate is more appropriate.

**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**Claim No. CV 2016-02762**

**BETWEEN**

**DINESH NANDLAL**

**Claimant**

**AND**

**THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO**

**Defendant**

**Before the Honourable Madame Justice Margaret Y. Mohammed**

**Dated the 1<sup>st</sup> May, 2018**

**APPEARANCES:**

Mr. Shawn Roopnarine instructed by Ms. Shanta Balgobin Attorneys at law for the Claimant.  
Ms. Tricia Ramlogan instructed by Ms. Diane Katwaroo Attorneys at law for the Defendant.

**DECISION- VARIATION OF ORDER**

1. On the 19<sup>th</sup> February 2018 I ordered that:
  - (a) the Claimant was wrongfully arrested and wrongfully detained for 2 days;
  - (b) The Defendant to pay the Claimant special damages in the sum of \$ 24.00 with interest at the rate of 1.5% per annum from the 9<sup>th</sup> September 2012 until judgment.
  - (c) The Defendant to pay the Claimant general damages, which includes an uplift for aggravated damages, in the sum of \$ 50,000.00 with interest at the rate of 2.5% per annum from the date of filing of the claim to judgment.

(d) No award for exemplary damages.

(e) The Defendant to pay the Claimant prescribed cost in the sum \$14,387.06.

2. Having found for the Claimant on liability, after I made the aforesaid order the Attorney at law for the Claimant asked the Court for the opportunity to place before it the Privy Council decision in **Terrance Calix v the Attorney General of Trinidad and Tobago [2013] UKPC 15** since in determining the award for damages the Court had considered the Court of Appeal decision which was reversed by the Privy Council on the issue of damages, in particular the issue of loss of liberty. I permitted the parties to file submissions on this issue since if the Claimant was correct my basis for only awarding damages for a period of 2 days for loss of liberty was based on an incorrect proposition of law.

3. In **Terrance Calix** the Privy Council stated at paragraph 23 that:

*“The respondent did not seek to uphold the Court of Appeal’s conclusion that the grant of bail was a judicial act which became the cause of the appellant’s detention. A claimant’s failure to take up a grant of bail (which is the avowed basis on which the appellant should not recover compensation for loss of liberty) is not a “judicial act”. In any event, although a judicial act precludes liability in false imprisonment, it does not relieve the prosecutor of liability in malicious prosecution: the prosecutor remains liable for the damage caused by his setting the prosecution in motion - see *Lock v Ashton* (1848) 12 QB 871 (116 ER 1097). For the reasons given above in relation to the judge’s error in concluding that the appellant would have obtained bail, the Court of Appeal’s second conclusion viz that it was the appellant’s failure to apply for a variation of his bail conditions which endangered his liberty is also erroneous. The Board has therefore concluded that the appellant was entitled to recover compensation for his loss of liberty.” (Emphasis added)*

4. I agree with the submission by Counsel for the Claimant that the Defendant’s reliance on the decision of Master Doyle in **Anthony Sorzano and Steve Mitchell v The AG HCA S 46 of 1996** is flawed since that decision was appealed and in any event **Terrance Calix** is the leading authority on this issue.

5. Having considered the Privy Council decision in **Terrance Calix** I agree with Counsel for the Claimant's I am entitled to take into account the Claimant's loss of liberty in assessing the sum for damages.
6. In determining the award for damages for loss of liberty and malicious prosecution I have also considered the following cases. In **CV 2014-03967 Ricardo Luke Fraser v The Attorney General of Trinidad and Tobago**, I awarded the Claimant the sum \$100,000.00 in aggravated damages after the Claimant was detained for 5 days. In **CV 2015-03116 Nigel Superville v The Attorney General of Trinidad and Tobago**; **CV 2015-03117 Annette Superville v The Attorney General of Trinidad and Tobago**; **CV 2015-03118 Sue Ellen McLean v The Attorney General of Trinidad and Tobago** Donaldson-Honeywell J awarded the Second Claimant the sum of \$150,000.00 in general damages, \$10,000.00 in special damages and \$30,000.00 in exemplary damages after she was detained at the Golden Grove Women's Prison for 12 days in the above consolidated matters.
7. Based on the aforementioned cases I award the Claimant the sum of \$140,000.00 as general damages.
8. I now vary my order made on the 19<sup>th</sup> February 2018 to read as follows:
  - (a) The Claimant was wrongfully arrested and wrongfully detained for 2 days;
  - (b) The Defendant to pay the Claimant special damages in the sum of \$ 24.00 with interest at the rate of 1.5% per annum from the 9<sup>th</sup> September 2012 until judgment.
  - (c) The Defendant to pay the Claimant general damages, which includes an uplift for aggravated damages, in the sum of \$ 140,000.00 with interest at the rate of 2.5% per annum from the date of filing of the claim to judgment.
  - (d) No award for exemplary damages.
  - (e) The Defendant to pay the Claimant prescribed cost in the sum \$30,800.00.

.....  
**Margaret Y Mohammed**  
**Judge**