

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2017-00460

BETWEEN

DARYL MAHABIR

Claimant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

Before the Honourable Madame Justice Margaret Y Mohammed

Date of Delivery April 1 2019

APPEARANCES:

Mr Kevin Ratiram Attorney at law for the Claimant.

Mrs Maria Belmar-Williams instructed by Ms Laura Persad Attorneys at law for the Defendant.

JUDGMENT

1. Within recent years, there has been an upsurge in matters brought before the Court in this jurisdiction where there are allegations of fabrication of evidence by the police. An allegation that a police officer has fabricated evidence in the execution of his duties is very serious and if found to be true has the consequential effect of further undermining the public's

confidence in the Police Service of Trinidad and Tobago. The instant action concerns such an allegation.

2. The Claimant is a self-employed vendor who sells bar-b-que, doubles and vegetables at his stall situated at 124 Reform Main Road, Gasparillo. He was arrested on Saturday 9 February, 2013 by Police Constable Jason Dailey Regimental Number #17940 (“PC Dailey”) and he was taken to the Gasparillo Police Station (“the Police Station”) where he was placed in a cell. He was formally charged by PC Dailey for 2 offences namely for using obscene language in a public place to the annoyance of persons contrary to Section 49 of the **Summary Offences Act**¹ and for resisting arrest by PC Dailey whilst in the execution of his duty contrary to Section 59 of the **Police Service Act**² (collectively referred to as “the said offences”).
3. Two days after, PC Dailey laid the two complaints³ for the said offences at the San Fernando Magistrates’ Court. The Claimant appeared before a Magistrate in the San Fernando Magistrate’s Court and he was granted bail. He was taken to Remand Prison, Golden Grove, Arouca, and on 14 February, 2013 he was released on bail. About 16 months thereafter, on 17 July 2014 the Claimant was found not guilty of both charges. The Claimant was detained for approximately 5 days.
4. The Claimant seeks damages for wrongful arrest, false imprisonment and malicious prosecution. He also seeks aggravated and exemplary damages, interest and costs.

THE OPPOSING VERSIONS

¹ Chapter 11:02

² Number 7 of 2006

³ No. 456/13 and 457/13

5. Invariably in every matter brought by a party against the police, there is a considerable divergence of the two accounts of the incident.
6. The Claimant's account is that in November, 2012 he was at his stall when a police vehicle with four police officers including Corporal Ifill Regimental #12152 ("Cpl Ifill") arrived. Cpl Ifill ordered the Claimant to stand against the police vehicle, which he did. The officers searched the Claimant but they did not find anything illegal on him. Cpl Ifill told the Claimant "One of these days, I go ketch you by yourself." The officers then left.
7. Around 1:00 pm on 9 February, 2013 the Claimant was liming in Champs Bar, Ben Lommond Village, Williamsville ("the Bar") since one of his friends was having a birthday party in the Bar. A police vehicle pulled into the car park of the Bar. Three officers namely Cpl Ifill, PC Dailey and WPC Ploutcholie entered the Bar. Cpl Ifill pointed in the Claimant's direction and said "Look he dey. Hold him, Hold him." PC Dailey then walked up to the Claimant and roughly grabbed hold him saying, "Yuh lock up, yuh lock up, come here". At the same time PC Dailey began to pull the Claimant towards the exit of the Bar in the direction of the police vehicle. The Claimant was arrested in full view of the persons in the Bar. The Claimant then said "Me ent do nothing you know boss. Why you locking me up for? PC Dailey ignored the Claimant, pulled him towards the vehicle and put him in it.
8. The Claimant was taken to the Police Station and placed in a small overcrowded, filthy cell with nothing to sleep on. The Claimant was charged on the 11 February, 2013. He appeared before a Magistrate on the same day where he was granted bail but he was unable to obtain same. He was taken to the Remand Yard, Golden Grove, Arouca where he was kept in a small, overcrowded cell with nothing to sleep on with a bucket as a

toilet. He was released on bail on 14 February, 2013 and on the 17 July, 2014 he was found not guilty by a Magistrate.

9. The particulars of malice and lack of reasonable and probable cause which the Claimant pleaded were:
 - (a) At no time did he use obscene language, or resist arrest;
 - (b) PC Dailey charged the Claimant in collusion with Cpl Ifill who intended to victimise him;
 - (c) PC Dailey laid the charges knowing that he would give false/fabricated evidence against the Claimant at the trial of the matter.

10. The Defendant's account is that on or about 9 February, 2013 at approximately 11:30 p.m. PC Dailey was on mobile patrol duty in a marked police vehicle Registration Number PCD 3840 in Ben Lommond Village, Williamsville. He was dressed in plain clothes and was accompanied by Cpl. Ifill, Police Constable Khallie Regimental #16861 ("PC Khallie") and Police Constable Sookram Regimental #5697 ("PC Sookram"). Cpl. Ifill was dressed in plain clothes. PC Khallie and PC Sookram were dressed in police uniform.

11. Whilst on patrol, PC Dailey observed a group of persons inclusive of a man of East Indian descent, dark complexion, approximately 5 feet 4 inches tall (the Claimant) standing on the eastern side of the Guaracara Tabaquite Road, Ben Lommond. The Claimant was approximately 2 to 3 buildings away from a bar which is also located on the eastern side of the Guaracara Tabaquite Road, Ben Lommond. The Claimant was not in any bar nor was he on the compound of a bar when PC Dailey first observed him nor at the time PC Dailey and the other police officers approached him. The area in

which the Claimant was standing was well lit and illuminated by lights from surrounding houses and streetlights.

12. Given the time of night and acting in accordance with his duty to preserve the peace and detect crime and other breaches of the law, PC Dailey caused the police vehicle to come to a stop to perform a routine check and search. All of the police officers inclusive of PC Dailey exited the police vehicle. Upon exiting the police vehicle PC Dailey observed a bulge in the Claimant's waist and he formed the opinion that it may have been an illegal item. As the police officers approached the Claimant, he began to shout, "allyuh fucking police hadda kill meh, fuck allyuh."
13. PC Dailey became annoyed and identified himself to the Claimant as a police officer by means of his Trinidad and Tobago Police Service Identification Card. He told the Claimant of the offence of the use of obscene language in a public place and cautioned him. The Claimant made no reply.
14. PC Dailey told the Claimant that he was under arrest for the offence of the use of obscene language in a public place and held onto his right hand. The Claimant pulled away violently and shouted in a loud tone of voice, "Let meh go boy". The Claimant was subdued and PC Dailey told him of the offence of resisting arrest and cautioned him. The Claimant made no reply. The Claimant was arrested and PC Dailey informed him of his rights and privileges. The Claimant made no request nor did he reply.
15. At about 12:45 a.m. the police officers arrived at the Police Station with the Claimant. At about 12:50 a.m. the Claimant was secured and placed in a cell. The Claimant made no requests nor did he make any complaints. At

about 1:00 a.m. PC Dailey formally charged the Claimant with the 2 aforesaid offences.

16. On or about the 11 February, 2013 PC Dailey laid Complaints No. 456/13 and 457/13 for the said offences at the San Fernando Magistrates' Court.
17. If the Claimant's version of the events is correct it means that PC Dailey acted in collusion with Cpl Ifill and knowingly fabricated a case against the Claimant by arresting and charging him for the 2 said offences.
18. Conversely, if the Defendant's version is correct then PC Dailey had reasonable and probable cause to charge the Claimant, and his claim must fail.
19. There were disputes of facts to be resolved in this matter. In such circumstances, the Court has to satisfy itself which version of events is more probable in light of the evidence. To do so, the Court is 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**⁴ cited by Rajnauth–Lee J (as she then was) in **Mc Claren v Daniel Dickey**⁵).
20. The Court of Appeal in **The Attorney General of Trinidad and Tobago v Anino Garcia**⁶, took the position that in determining the credibility of the evidence of a witness any deviation by a party from his pleaded case immediately calls his credibility into question.

⁴ Privy Council Appeal No. 36 of 1897

⁵ CV 2006-01661

⁶ Civ. App. No. 86 of 2011 at paragraph 31

21. For the Claimant to succeed the following issues are to be determined in his favour:
- (a) Was the Claimant wrongfully arrested?
 - (b) Has the Claimant established an absence of reasonable and probable cause on the part of the arresting and charging officer, PC Dailey to charge him for the offences?
 - (c) Was PC Dailey actuated by malice when he charged the Claimant?
 - (d) Was the Claimant falsely imprisoned?
 - (e) If the Claimant succeeds in proving his claim what is an appropriate award of damages to compensate the Claimant?

WAS THE CLAIMANT WRONGFULLY ARRESTED?

22. 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**⁷ 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

⁷ Civ Appeal No 267 of 2011

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.”⁸

23. At page 8 Narine JA continued:

“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.”

24. Therefore, 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

⁸ Supra para 14

grounds for the suspicion is required by the arresting officer, which must be judged at the time the power of arrest was exercised.

25. The police officers powers of arrest are set out in **Section 3(4) Criminal Law Act**⁹ which states:

“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.”

26. **Section 46(1)(d) and (f) Police Service Act**¹⁰, also empowers a police officer to arrest without a warrant in the following circumstances:

“46. (1) A police officer may arrest without a warrant-

... (d) a person in whose possession anything is found which may reasonably be suspected to have been stolen or who may reasonably be suspected of having committed an offence with reference to such thing;

... (f) a person whom he finds in any public or private place or building and whom he suspects upon reasonable grounds of having committed or being about to commit an offence.”

27. 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

⁹ Chapter 10:04

¹⁰ Chapter 15:01

use of violent or obscene language to the annoyance of other persons in a street or public place is punishable on summary conviction to a fine of \$200.00 or to imprisonment for thirty days.¹¹ The offence of assaulting, obstructing or resisting a police officer in the execution of his duty is punishable on summary conviction to a fine of \$10,000.00 and to imprisonment of 2 years.¹²

28. There were two versions of the events leading up to the Claimant's arrest. The Claimant testified that in November 2012, he was a bar-b-que vendor operating out of his home when a police vehicle arrived with four police officers, including Cpl Ifill. Cpl Ifill ordered him to stand against the police vehicle and he searched him, but he did not find anything illegal on him. After they were finished, Cpl Ifill told him "one of these days, we go ketch you by yourself" and they left. On the morning of 9 February, 2013 he was at the Bar when around 1:00am he saw a police vehicle enter the Bar's car park which was in front the Bar. Three officers came out of the police vehicle and entered the Bar. One was Cpl Ifill, another was PC Dailey and WPC Ploutcholie.
29. According to the Claimant, Cpl Ifill pointed in his direction and said 'Look he dey. Hold him. Hold him". PC Dailey then came up to him and grabbed him and said "Yuh lock up. Yuh lock up. Come here" and he began pulling him towards the exit of the Bar. As PC Dailey did so, the Claimant began protesting, saying "Me ent do nothing you know boss. Why you locking me up for?" but he was ignored and he pulled into the police vehicle.

¹¹ Section 49 Summary Offences Act Chapter 11:02

¹² Section 59 Police Service Act No. 7 of 2006

30. In cross-examination, the Claimant accepted that he did not call any witnesses on his behalf to support his assertion of the incident in November, 2012 which he had with Cpl Ifill. He stated that he was of the opinion that the words uttered to him by Cpl Ifill was a threat and he accepted that he did not report the threat to the police.
31. The Claimant stated that on the day he was arrested the officers were Cpl Ifill and PC Dailey who were in plain clothes, PC Sookram who was in uniform and the only female police officer in uniform was WPC Ploutchoulie. He insisted that WPC Ploutchoulie was present and that PC Khallie was not present when he was arrested. He accepted that although he stated in his witness statement that WPC Ploutchoulie was present on the day he was arrested, there was no record in the Station Diary Extract which was one of the documents in the Agreed Bundle of Documents in the trial. He also maintained that he was in the Bar when the officers arrested him.
32. In my opinion, the Claimant's evidence in chief on the events in November, 2012 and on the night of the incident in February 2013 was unshaken in cross-examination.
33. Based on the Claimant's evidence the sequence of the events before he was arrested was (a) the Claimant was threatened by Cpl Ifill about three months before he was arrested; (b) he was inside the Bar when he was arrested; (c) he saw the police vehicle enter the car park of the Bar which was at the front of the Bar; (d) three officers, Cpl Ifill, PC Dailey and WPC Ploutcholie exited the vehicle and entered the Bar; (e) Cpl Ifill pointed in his direction and said to hold him; (f) PC Dailey grabbed him and told him he lock up and then he pulled him towards the Bar exit; (g) the Claimant protested but he was ignored and put into the police vehicle.

34. The Claimant called one witness, his friend Justin Charles to support his case. Mr Charles testified that on the morning of 9 February, 2013 he was at Charms Bar around 1:00am. The Claimant was also there. Whilst there a police van stopped in front the Bar and three police officers came out and came into the Bar. One was Cpl Ifill. He saw Cpl Ifill walk toward the Claimant and say "Look him there. Hold him. hold him" and another officer walked up to the Claimant and grabbed his arm and said "yuh lock up." The Claimant then said that he had not done anything and he asked why the police were holding him. However, the police officer who had held him pulled him to the police vehicle and put him in it. The police officers then got into the vehicle and left.
35. In cross-examination Mr Charles testified that he has known the Claimant for over 15 years and on date the Claimant was arrested he had known him for over 10 years. He acknowledged that the Claimant was his close friend since they socialized and visited each other's homes. He said that he was aware that the Claimant is suing the State for money/damages and as a friend he would like to help him in seeking justice and he would be willing to help his friend through his testimony and he would appreciate a successful outcome for him.
36. I accept that as a friend Mr Charles would have wanted to assist the Claimant's case and in this regard I examined his evidence with caution in determining the weight I attached to it. It was not surprising that the sole witness the Claimant called was one of his friends since the Claimant had testified that he was at the Bar in February, 2013 to celebrate one of his friend's birthday.

37. In my opinion, Mr Charles' evidence in chief was not shaken in cross-examination in material aspects. His evidence corroborated that of the Claimant namely that (a) the Claimant was inside the Bar when he was arrested; (b) the police officers came into the Bar; (c) Cpl Ifill pointed out the Claimant and uttered words to another officer; (d) the other officer walked towards the Claimant and grabbed his arm and told him he was locked up; (e) the Claimant did nothing except he asked why he was locked up; and (f) the Claimant was then put into the police vehicle. In my opinion, although Mr Charles was a friend of the Claimant, since his evidence in chief was not shaken in cross-examination I attached weight to his evidence which corroborated that of the Claimant.
38. The Defendant's version of the events was from PC Dailey and PC Khallie.
39. PC Dailey testified that on 9 February, 2013 at approximately 11:30pm he was on mobile patrol in Ben Lommond Village. He was dressed in plain clothes and he was accompanied by Cpl Ifill (PC Dailey referred to him as Sergeant Ifill), PC Khallie and PC Sookram. Cpl Ifill was dressed in plain clothes and the two other officers were in uniform. Whilst on patrol along the Guaracara Tabaquite Road, he observed a group of persons inclusive of the Claimant standing on the eastern side of the Guaracara Tabaquite Road. At that time, he recognised the Claimant to be a person of interest. The Claimant was standing approximately 2-3 buildings away from the Bar which was also located on the eastern side of the Guaracara Tabaquite Road. The Claimant was not in any Bar nor was he on the compound of a Bar when he first observed him nor at any the time he approached him. The area was well lit. He caused the vehicle to be stopped in order to perform a routine check and search. All officers exited the vehicle and upon exiting he noticed a bulge on the Claimant's waist and he formed the

opinion that it may have been an illegal item. He approached the Claimant to search him and the other officers approached the other men to search them.

40. According to PC Dailey, upon approaching the Claimant he heard him say in a loud tone, "Allyuh fucking police go have to fucking kill meh, fuck allyuh." He became annoyed, identified himself as a police officer by showing his Trinidad and Tobago Police Identification Card, told the Claimant of the offence of use of obscene language in a public place and cautioned him. The Claimant made no reply.
41. He told the Claimant he was under arrest and held onto his right hand and the Claimant shouted in a loud tone of voice, "Let me go boy." He eventually subdued the Claimant using reasonable force and told him of the offence of resisting arrest and cautioned him. The Claimant made no reply. When he arrested the Claimant and informed him of his legal rights and privileges and the Claimant made no request or reply.
42. PC Dailey's evidence on his version of the incident was undermined in cross-examination which demonstrated that he was not a witness of truth. Firstly, he stated that the only other officers at the incident were Cpl Ifill, PC Khallie and PC Sookram. He denied that WPC Ploutchoulie was present. He was shown a transcript of his evidence from the proceedings in the Magistrates' Court where he said he was with Cpl Ifill and WPC Ploutchoulie. Yet he maintained that he did not state this and that he did not know any officer by the name Ploutchoulie. In my opinion, the evidence in the Magistrate's Court proceedings which were within months from the incident was a contemporaneous record and it demonstrated that from PC Dailey's own evidence WPC Ploutchoulie was one of the

officers at the time of the incident which was consistent with the Claimant's evidence.

43. Secondly, PC Dailey stated in his evidence in chief that after he exited the police vehicle he saw a bulge in the Claimant's waist. He stated that when he observed the bulge he formed the view that it could have been an illegal weapon. PC Dailey admitted that he made the note in the Station Diary upon returning to the Police Station. He accepted that in his note in the Station Diary Extract which was before the Court, he did not mention that he had noticed a bulge in the Claimant's waist.
44. Counsel for the Claimant indicated to PC Dailey that although the Amended Defence and his witness statement mentioned the bulge in the Claimant's waist, in his evidence in chief before the Magistrate's Court he did not mention the bulge in the Claimant's waist. PC Dailey accepted this but he stated that he did not forget about it when he testified in the Magistrate's Court but he just chose not to mention it. PC Dailey stated that he could not state any reason to account for him leaving out the information about the bulge in the Claimant's waist from the Station Diary Extract and in his evidence in chief in the Magistrates' Court. He said that he mentioned it in the witness statement in the instant matter because the information about the bulge came out in cross-examination in the proceedings in the Magistrate's Court.
45. In my opinion, PC Dailey's evidence in chief about any bulge which he noticed in the Claimant's waist was discredited by his own contemporaneous records of the Station Diary Extract and his evidence in the Magistrate's Court proceedings both of which were noticeably silent on this issue. If this was important as PC Dailey now wanted the Court to

believe as the reason he was of the opinion that the Claimant had an illegal item, then he would have included it in both the Station Diary Extract and in his evidence in the Magistrate's Court. But the silence in both caused me to believe that this evidence of any bulge in the Claimant's waist was a fabrication by PC Dailey which only arose from the Magistrate's Court proceedings which he continued in the instant matter in an attempt to persuade the Court that this was a reasonable basis for PC Dailey to approach the Claimant.

46. Thirdly, PC Dailey stated at paragraph 8 of his witness statement that as he approached the Claimant, the latter said, "Allyuh fucking police go have to fucking kill meh, fuck allyuh". However, under cross-examination, PC Dailey admitted that in his Station Diary entry, he did not mention the second expletive. The note in the Station Diary Extract stated that the Claimant said, "Allyuh fucking police hadda kill me, fuck allyuh". PC Dailey also admitted in cross-examination that his evidence in chief at the Magistrates' Court also did not contain the second expletive. In my opinion, this inconsistency undermined the credibility of PC Dailey's evidence that those words were indeed uttered by the Claimant at all. More importantly it appeared to me that PC Dailey was seeking to embellish his evidence against the Claimant, to make him look as bad as possible by adding the second expletive.
47. Further, the inherent probability of PC Dailey's version was not realistic. If the Claimant had indeed uttered the words to PC Dailey which he alleged, it is highly improbable that PC Dailey having told him of the offence he committed, and cautioned him, the Claimant would have remained silent. At the very least the Claimant would have protested his innocence.

48. Fourthly, PC Dailey's evidence where he saw the Claimant was also discredited by his evidence in cross-examination. He stated at paragraph 4 of his witness statement that the Claimant was part of the group of persons standing in front of the Bar when he saw him. He denied that the Claimant was in the Bar. However, in cross-examination he stated that when he came upon the Claimant he was standing a short distance away from a group of persons. PC Dailey stated that a short distance could be a relative term. Again this inconsistency undermined the credibility of PC Dailey's evidence that he approached the Claimant outside the Bar.
49. Fifthly, PC Dailey stated at paragraph 7 of his witness statement that the other officers surrounded the other men to search them. The Amended Defence was silent on the other persons being searched by the other police officers. However, PC Dailey stated in cross-examination that he approached the Claimant and the other officers secured the other persons to prevent them from interfering with the search of the Claimant. Counsel for the Claimant pointed out to PC Dailey that this was inconsistent with paragraph 7 of his witness statement. PC Dailey was unable to state which account was accurate. Even PC Dailey's note in the Station Diary Extract is silent on this issue. Again, this inconsistency demonstrated that PC Dailey's evidence that he approached the Claimant outside the Bar was untrue since if it was credible his evidence on what the other officers were doing when he approached the Claimant would have been consistent.
50. Sixthly, based on the Defendant's Amended Defence and PC Dailey's evidence there were several different versions of the Claimant's conduct after PC Dailey told the Claimant that he was under arrest. In the Amended Defence the Defendant's pleaded that after the Claimant was told that he was under arrest he pulled away violently. PC Dailey's witness statement

stated that after he told the Claimant that he was under arrest, he held onto the Claimant's hand and the Claimant shouted in a loud tone "let go meh boy." He eventually subdued him using reasonable force and told him of the offence of resisting arrest and he cautioned him again and the Claimant did not reply. The entry in the Station Diary Extract stated that the Claimant pulled away violently after PC Dailey held unto his arm.

51. However, in PC Dailey's evidence in chief in the Magistrate's Court proceedings PC Dailey's evidence is silent on the Claimant pulling away violently. In cross-examination, in this matter and in the Magistrate's Court proceedings PC Dailey admitted that the Claimant did not try to pull away violently from him after he told him that he was under arrest. Counsel for the Claimant asked PC Dailey to account for all the different versions. Astonishingly, PC Dailey told the Court that he chose not to answer this question.

52. In my opinion, PC Dailey's evidence that the Claimant pulled away violently after he was told that he was under arrest and when PC Dailey held unto the Claimant's hand was a blatant untruth and when confronted with all the inconsistencies in his evidence he could not give any explanation. It appeared to me that PC Dailey's version in the Station Diary Extract was a fabrication in order to support himself for arresting the Claimant for resisting arrest. In my opinion, PC Dailey's admission twice in cross-examination, both at the Magistrate's Court proceedings and in this matter, that the Claimant did not pull away was more credible since when confronted with the truth he had no other choice but to make this admission. Therefore, in the absence of the Claimant pulling away, there was no reason to arrest the Claimant for resisting arrest.

53. Seventhly, PC Dailey testified that he subdued the Claimant from attempting to avoid arrest by placing him in handcuffs. However, his evidence was not credible since his own contemporary note in the Station Diary Extract was that the Claimant was eventually subdued with the assistance of the other officers. He agreed in cross-examination that this note suggested that he got help from the other officers but he also stated that based on his previous response in cross-examination, the Station Diary Extract was incorrect. PC Dailey also testified that while the Claimant was being subdued by him, the Claimant did not say anything at all. This includes while he was handcuffing him. He agreed that the Claimant was cooperative after he uttered the words "lemme go boy" and as far as he knew no one sustained any injuries or damage to clothing and the Claimant gave no resistance to go into the police vehicle. In my opinion, PC Dailey's evidence in cross-examination that the Claimant was co-operative was more credible and it was consistent with the Claimant's evidence that he did not resist after he was arrested. Therefore, PC Dailey's evidence and the Defendant's case that the Claimant resisted arrested was not supported by PC Dailey's evidence.
54. PC Kallie's evidence also did not assist the Defendant's case. He testified that he has been a police officer for approximately 15 years. On 9 February, 2013 he was attached to the Police Station and he was on mobile patrol with Cpl Ifill, PC Dailey (who was driving) and PC Sookram. Around 11:30 pm they were approaching Guaracara Tabaquite Road when he observed a group of persons standing along the side of the road in front of a Bar inclusive of the Claimant whom he recognised as a person of interest. However, this was inconsistent with PC Dailey's admission in cross-examination that the Claimant was standing away from the group of persons.

55. PC Khallie testified that he and the other officers approached the group of persons with the intention of carrying out a routine stop and search exercise. Upon approaching the group, the Claimant shouted "All yuh fucking police have to kill me, fuck all yuh." PC Dailey identified himself by showing his Trinidad and Tobago Police Service Identification card and he did likewise as did the other officers. He then heard PC Dailey inform the Claimant of the offence of obscene language and cautioned him and the Claimant made no reply. PC Dailey held onto the Claimant's right hand in an attempt to arrest him, however the Claimant pulled away violently. He and the other officers had to assist in arresting him. This was inconsistent with PC Dailey's evidence in cross-examination that the Claimant did not react violently and that he was co-operative.
56. PC Khallie also testified that he heard PC Dailey inform the Claimant of the offence of resisting arrest and cautioned him, however the Claimant did not reply and he was then conveyed to the Police Station to be charged for the offences.
57. In cross-examination, PC Khallie stated that he prepared the information for his witness statement from his memory and with guidance from the note made in the Station Diary Extract. He admitted that he did not make the entry in the Station Diary. He admitted that he had been involved in countless routine stop and search of persons and that many persons responded to the police in a hostile manner with obscene language. The Claimant's conduct was not unusual to him.
58. In my opinion, the contradictions in the evidence between PC Khallie and PC Dailey demonstrated that they both were not witnesses of truth.

59. The Defendants had filed a witness statement for Cpl Ifill. He was given three opportunities to attend Court. However, he failed to do so. On the first occasion the Court was informed that Cpl Ifill was unable to attend Court due to illness. On the second occasion Counsel for the Defendant presented a medical certificate which stated that due to illness Cpl Ifill could not attend Court for 7 days. On the third occasion there was no explanation put forward by Counsel for the Defendant for Cpl Ifill's non-attendance.
60. It was submitted on behalf of the Claimant that the Court should draw an adverse inference by Cpl Ifill's failure to attend Court to give evidence although he was given three opportunities to do so. **Wisniewski v Central Manchester Health Authority**¹³ establishes the test which the Court is to apply in drawing adverse inferences due to the failure by a party to call a witness. In **Wisniewski** the Court concluded the following:
- "From this line of authority I derive the following principles in the context of the present case:
- (1) In certain circumstances a court may be entitled to draw adverse inferences from the absence or silence of a witness who might be expected to have material evidence to give on an issue in an action.
 - (2) If a court is willing to draw such inferences they may go to strengthen the evidence adduced on that issue by the other party or to weaken the evidence, if any, adduced by the party who might reasonably have been expected to call the witness.

¹³ [1998] Lloyd's Rep Med 223

(3) There must, however, have been some evidence, however weak, adduced by the former on the matter in question before the court is entitled to draw the desired inference: in other words, there must be a case to answer on that issue.

(4) If the reason for the witness's absence or silence satisfies the court, then no such adverse inference may be drawn. If, on the other hand, there is some credible explanation given, even if it is not wholly satisfactory, the potentially detrimental effect of his/her absence or silence may be reduced or nullified."

61. I agree with the Claimant's submission that an adverse inference is to be made by Cpl Ifill's non-attendance to give evidence in this trial although a witness statement was filed on his behalf. Cpl Ifill's evidence was important in this matter since the Claimant alleged that he threatened him in November, 2012 and that he was arrested in February, 2013 since Cpl Ifill had a grudge against him. It was also a major part of the Claimant's case that PC Dailey arrested him since PC Dailey was acting in collusion with Cpl Ifill. In my opinion, Cpl Ifill's failure to attend Court was deliberate and the Court was left with the impression that he had something to hide. By Cpl Ifill's failure to attend Court to give evidence, there was no evidence on behalf of the Defendant to support its Defence that Cpl Ifill did not threaten the Claimant in November 2012, he did not have a grudge against the Claimant and that he did not act in collusion with PC Dailey in causing the Claimant to be arrested in February, 2013. For these reasons I accept the Claimant's unchallenged evidence that Cpl Ifill had threatened him in November, 2012 and it was based on this grudge he acted in collusion with PC Dailey in causing the Claimant to be arrested and charged in February, 2013.

62. Based on the weight of the evidence I have concluded that:
- (a) Cpl Ifill threatened the Claimant in November 2012.
 - (b) After November 2012 Cpl Ifill had a grudge against the Claimant.
 - (c) Cpl Ifill and PC Dailey acted in collusion to arrest and charge the Claimant for the said offences.
 - (d) The Claimant was inside of the Bar when he was approached and arrested by PC Dailey.
 - (e) The officers involved were Cpl Ifill, PC Dailey and WPC Ploutchoulie.
 - (f) Cpl Ifill pointed out the Claimant and said to hold him.
 - (g) PC Dailey grabbed the Claimant told him he was lock up and exited the Bar.
 - (h) The Claimant protested but he was ignored and placed in the police vehicle.
63. In determining whether PC Dailey had reasonable and probable cause to arrest the Claimant, the first enquiry is to ascertain what was in his mind and to determine whether the grounds on which PC Dailey relied on as the basis for his suspicion were reasonable. Based on my findings of fact, any police officer placed in the position of PC Dailey and possessed with the aforesaid objective information could not have honestly believed that the Claimant had used obscene language in a public place or resisted arrest. For these reasons I have concluded that based on the subjective and objective elements of the test for a lawful arrest of the Claimant, PC Dailey did not have reasonable and probable cause to arrest the Claimant.

HAS THE CLAIMANT ESTABLISHED AN ABSENCE OF REASONABLE AND PROBABLE CAUSE ON THE PART OF THE ARRESTING AND CHARGING OFFICER PC DAILEY TO CHARGE THE CLAIMANT FOR THE OFFENCES?

64. The essential ingredients for a malicious prosecution claim as set out in **Clerk & Lindsell on Torts**¹⁴ are:

“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.”

65. The test whether there is reasonable and probable cause has both subjective and objective elements. In **Harold Barcoo v the Attorney General of Trinidad and Tobago**¹⁵ Mendonca J (as he then was) quoted from the 1987 edition of the text *Civil Actions Against the Police* by R. Clayton Q.C. and Hugh Tomlinson Q.C., where the authors laid out the test as to whether there is reasonable and probable cause at page 147:

- “(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?

¹⁴ 20th ed. At page 1070, para 16:09

¹⁵ H.C.A. No. 1388 of 1989

- (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?"

66. Mendonca J (as he then was) continued his explanation at page 6 as follows:

"The person who must entertain the requisite suspicion (belief) is the arresting officer (prosecutor). It is his mind that is relevant. The arresting officer in order to satisfy the subjective elements of the test must have formed the genuine suspicion in his own mind that the person arrested has committed an arrestable offence and he must have honestly believed in the circumstances which formed the basis of that suspicion. The objective test was put this way by Diplock L. J. in *Dallison v Caffery* [1965] 1 QB 348 (at page 619):

"The test whether there was reasonable and probable cause for the arrest or prosecution is an objective one, namely whether a reasonable man, assumed to know the law and possessed of the information which in fact was possessed by the defendant, would believe that there was reasonable and probable cause."

67. There is no duty on the part of the 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 (see **Herniman v Smith**¹⁶ 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

¹⁶ [1938] AC 305 at page 309

whether there is a defence, but whether there is reasonable and probable cause for a prosecution).”

68. The Privy Council in **Trevor Williamson v The Attorney General of Trinidad and Tobago**¹⁷ at paragraphs 11-13, repeated the relevant law with respect to a claim for malicious prosecution as:

“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 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; 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 -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**,

¹⁷ [2014] UKPC 29

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.”

69. It was not in dispute that the Claimant has proven that he was charged with the offences of using obscene language in a public place to the annoyance of persons and for resisting arrest by PC Dailey whilst in the execution of his duty and that the proceedings were terminated in his favour in the Magistrate’s Court. The onus was on the Claimant to prove that the arresting officer, PC Dailey did not have reasonable and probable cause to arrest him for the aforementioned offences and that PC Dailey instituted and carried out the proceedings against him maliciously.

70. I have already concluded that PC Dailey did not have reasonable and probable cause to arrest the Claimant. The Defendant did not present any evidence from any of its witnesses to demonstrate that PC Dailey obtained additional evidence after he arrested the Claimant for the said offences which caused him to charge the Claimant.

71. Therefore, in the absence of any additional evidence after the arrest, PC Dailey also did not have did not have reasonable and probable cause to charge the Claimant for the said offences. It appeared to me that the basis of PC Dailey charging the Claimant was based on collusion with Cpl Ifill.

WAS PC DAILEY ACTUATED BY MALICE WHEN HE CHARGED THE CLAIMANT?

72. In **A v NSW**¹⁸ the Court described malice as:

“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.”

73. The Court further went on to observe at paragraph 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.

74. In the Privy Council decision of **Sandra Juman v The Attorney General of Trinidad and Tobago**¹⁹ the Court dismissed the appeal and made the following comment on malice as:

“18. The essence of malice was described in the leading judgment in *Willers v Joyce* at para 55:

“As applied to malicious prosecution, it requires the claimant to prove that the defendant deliberately misused the process

¹⁸ [2007] HCA 10; 230 CLR 500

¹⁹ [2017] UKPC 3

of the court. The most obvious case is where the claimant can prove that the defendant brought the proceedings in the knowledge that they were without foundation... but the authorities show that there may be other instances of abuse. A person, for example, may be indifferent whether the allegation is supportable and may bring the proceedings, not for the bona fide purpose of trying that issue, but to secure some extraneous benefit to which he has no colour of a right. The critical feature which has to be proved is that the proceedings instituted by the defendant were not a bona fide use of the court's process."

75. In the Court of Appeal decision in **Sandra Juman v the Attorney General** ²⁰ Mendonca JA described at paragraph 25 how the Court can infer malice as:

"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: Hicks v Faulkner [1987] 8 Q.B.D. 167 at page 175."

76. In this case there was both actual and inferred malice. There was actual malice by PC Dailey since he set in motion the prosecution of the Claimant by charging him and by giving fabricated evidence and false testimony in the Magistrate's Court proceedings knowing that he had no basis to do so. In my opinion, malice can be inferred by the lack of reasonable and

²⁰ Civ. App. 22 of 2009

probable cause when PC Dailey charged the Claimant for the two offences since he had absolutely no basis to do so. Malice can also be inferred since the evidence was that the Claimant was arrested since Cpl Ifill had threatened him a few months before he was arrested and Cpl Ifill pointed out the Claimant to PC Dailey to arrest him which supported the Claimant's case of collusion between PC Dailey and Cpl Ifill in his arrest and charge.

WAS THE CLAIMANT FALSELY IMPRISONED?

77. In **Ramsingh v The Attorney General of Trinidad and Tobago**²¹ the Privy Council repeated the principles to determine the tort of false imprisonment as:

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

²¹ [2012] UKPC 16 at para 8

78. **Ramsingh** reinforces that the onus is on the police to justify the arrest in an action for unlawful arrest and to establish reasonable and probable cause for it.²² The test is partly objective and partly subjective.²³ It is subjective because the arresting police officer must have formulated a genuine suspicion within his own mind that the accused person, (in this case the Claimant) committed the offence. It is partly objective as reasonable grounds for the suspicion are required by the arresting officer at the time when the power is exercised.
79. The Defendant failed to demonstrate that the arrest was lawful therefore the entire period of detention from the 9 February 2013 to the date of his release on 14 February 2013 at 8:00 am was unlawful.

IF THE CLAIMANT SUCCEEDS IN PROVING HIS CLAIM WHAT IS AN APPROPRIATE AWARD OF DAMAGES TO COMPENSATE HIM?

80. The Claimant pleaded a claim for both special damages and general damages.

Special Damages

81. The Claimant claimed loss of earnings for 4 days. The Claimant testified that he was self-employed. He worked from Wednesdays to Sundays; he sold doubles from 6:00 a.m. to 8:00 a.m.; he sold vegetables from 10:00 a.m. to 5:00 p.m.; and he sold bar-b-que from 7:00 p.m. to 10:00 p.m. He testified that as a result of being arrested and charged he did not work on

²² *Dallison v Caffery* [1965] 1 Q.B. 348 at 370).

²³ *O' Hara v Chief Constable of the Royal Ulster Constabulary* [1997] 1 AER 129 p 138j –139a) per Lord Hope of Craighead

Saturday 9 February, 2013, Sunday 10 February, 2013, Wednesday 13 February and Thursday 14 February, 2013. He claimed that he made approximately \$500.00 profit per day and that he lost \$2,000.00 in earnings.

82. In cross-examination the Claimant admitted that he had no records of the business to produce. He went on to state, “The business I running you really didn’t get paperwork for them.” He also admitted that in the absence of paperwork, the figure he quoted, of \$500.00 profit a day, was a guess.
83. It was submitted by Counsel for the Claimant that the nature of the businesses of selling doubles, vegetables, and bar-b-que are simple and that it is entirely plausible that the Claimant had no paperwork. Counsel also argued that the Defendant’s Counsel never asked the Claimant if he had a bank account at all and that the Claimant’s guess was just an average.
84. In **Bobby Mungal** des Vignes J (as he then was) referred to the learning of the Court of Appeal in **Anand Rampersad v Willie’s Ice Cream Ltd** where the Court referred to the old English authority of **Bonham-Carter v Hyde Park Hotel**²⁴ where Archie JA (as he then was) stated:

“The rule is that the plaintiff must prove his loss. The correct approach is as stated by Lord Goddard C.J in *Bonham Carter v Hyde Park Hotel* [1948] 64 Law Times 177:

“Plaintiffs must understand that if they bring actions for damages, it is for them to prove their damage; it is not enough to write down the particulars, so to speak, throw them at the head of the court saying ‘This is what I have lost; I ask you to give me these damages’. They have to prove it”.

²⁴ [1948] 64 Law Times 177

85. In a more recent decision in this jurisdiction, **Jennifer Kalloo**²⁵ Master Alexander at pages 9-10 set out the challenges which the Court faced without any corroborating evidence as:

“In the view of this court, Jennifer could have called evidence to corroborate her claim that she earned income from her handcrafting and that this income came in monthly. She could have provided bank statements or summoned customers or other witnesses who could have attested to her involvement in handcrafting for financial reward. She could have produced pictures of her work or even given some form of evidence as to where or to whom she sold her pieces and of the costing so that this court would have had some reference point to aid with this assessment. Instead, she chose to bring no evidence but to provide a fixed monthly income which, she admitted to this court, was subject to variation on a monthly basis. There was no evidence as to how this sum varied monthly and whether her earnings, if so, were greatly reduced or increased in some months and why this was so and/or if she had a regular clientele or depended on persons walking in to purchase. There was not a modicum of evidence of any income earned from this pastime and this court was at a loss as to how she was able to come up with a fixed income and the basis for this. This is unacceptable and more especially so as her medical evidence does not speak to her earning capacity prior to or after the tree fell on her or whether she was totally or even partially handicapped from earning income through handcrafting. This claim is denied outright for a failure to prove same.”

²⁵ CV 2008-05025

86. I was not satisfied that the Claimant had proven that he suffered a loss of earnings of \$500.00 per day for four days since there was no evidence to corroborate the Claimant's evidence of the sum of \$500.00 per day. The only evidence was the Claimant's viva voce evidence which was self-serving in the given circumstances. Even his self-serving evidence was lacking in detail such as the volume of goods he sold, his expenses, and the number of customers he had. He also failed to produce any witnesses such as regular customers or even persons from who he purchased products to demonstrate his daily turnover in sales which by extension would have supported the quantum of his daily loss of earnings.
87. The Claimant also failed to produce any documentary evidence to support the sum he claimed as his loss per day. The nature of the items the Claimant sold meant that he would have had to purchase products to prepare the bar-b-que and doubles or to purchase the vegetables which he sold. Even if it was a small cash based business it is highly probable he would have had some records relating to his business.
88. For these reasons no award is made for special damages.

General Damages

89. The object of an award of damages is essentially to put the Claimant back into the position he/she would have been in if he/she had not "sustained the wrong for which he is now getting his compensation or reparation."²⁶ The awards for damages in claims made for false imprisonment and

²⁶ Livingstone v Raywards Coal Co. (1880) 5 App.Cas.25 at 39

wrongful arrest have varied depending on the period of imprisonment and the circumstances in which each Claimant was kept and treated by the State. General damages for false imprisonment are assessed under the heads of “injury to liberty” and “injury to feelings.”

90. Apart from pecuniary loss, the relevant heads of damages²⁷ 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.
91. The Court must be mindful not to overcompensate a Claimant where there is an overlap in damages for claims both in false imprisonment and malicious prosecution.

Aggravated Damages

92. In awarding damages, the Court can award aggravated damages where there are factors which can justify an uplift in the form of an award for aggravated damages. In **Bernard v Quashie**²⁸, it was held that a single figure is awarded for all heads of compensatory damage, including aggravated damages. In **Thompson v Commissioner of Police of the Metropolis**²⁹ Lord Woolf MR in giving the judgment of the court stated at page 516:

“Such damages can be awarded where there are aggravating features about the case which would result in the Plaintiff not

²⁷ Mc Gregor on Damages, 17th Ed., 2003, paras. 38-004 to 38-005

²⁸ Civ App. No. 159 of 1992, at page 9

²⁹ [1998] QB 498

receiving sufficient compensation for the injury suffered if the award were restricted to a basic award. Aggravating features can include humiliating circumstances at the time of arrest or the prosecution which shows that they behaved in a high handed, insulting, malicious or oppressive manner either in relation to the arrest or imprisonment or in conducting the prosecution.”

93. The Claimant testified that when he was taken to the Police Station he was put in a cell which was 10 feet by 10 feet. There were five other men in the same cell. There was a toilet but it appeared to be clogged and smelt horrible. There was nothing to sleep on and he was forced to lie on the ground. On 11 February, 2013 he appeared before a Magistrate at the San Fernando Magistrates’ Court and he was granted bail but he could not access same and he was taken to the Remand Yard Prison.
94. The Claimant stated that at the Remand Yard he was kept in a cell 10 feet by 10 feet with four other men. There was a bucket for a toilet and nothing to sleep on forcing him to sleep on the ground. On 14 February, 2013 he was released on bail. On 17 July, 2014 he was found not guilty.
95. According to the Claimant, being arrested, charged and having the case hanging over his head for years was one of the worst experiences of his life. He felt extremely embarrassed when people would say to him that they heard he was in jail.
96. In cross-examination the Claimant admitted that one of the documents in the agreed bundle was his criminal record. He agreed before being arrested and charged by PC Dailey he was arrested and charged before. He said in November, 2008 he was charged for robbery with violence. In May 2008 he was charged for trafficking of marijuana in May, 2008 and in July, 2009 he was charged for possession of imitation firearm.

97. The Claimant agreed that getting locked up was not new for him when he was arrested and charged by PC Dailey as it was not the first time he was arrested and charged and it was not the first time he had to go to court and stand as a Defendant. The Claimant was asked if after being charged several times a lot of people would have known "he made a jail" he said "no" because we lived in different areas.
98. It was submitted on behalf of the Claimant that the factors which warrant an award for aggravated damages are: the Claimant was arrested in full view of a number of persons in the Bar; his wrongful arrest was conducted by three officers (PC Dailey, Cpl Ifill, and WPC Ploutcholie); at this trial, a fourth officer joined in namely PC Khallie; at the Police Station the Claimant was kept in a 10 feet by 10 feet cell with five other men, with a clogged, smelly toilet, with nothing to sleep on; on Remand the Claimant was kept in a 10 feet by 10 feet cell with four other men, and a bucket for a toilet, again with nothing to sleep on; the matter went on before the Magistrates' Court for some 16 months; and the Claimant felt extremely embarrassed, as people said things such as, "So I hear you make a jail boy" or, "So I hear you get lock up boy".
99. PC Khallie testified that at the police station, he assisted PC Dailey to secure the Claimant in the cell. The Claimant made no requests and had no complaints. According to PC Khallie, the cells at the police station were about 20 feet by 20 feet and they were clean on the day on which the Claimant was detained and that the cells are cleaned on a regular basis.
100. In cross-examination, PC Khallie stated that he remembered the cell was clean from 6 years ago and on the morning of 9 February since he had cause to pay attention to the cleanliness of the cell and that he did not refresh his memory from any note. He had reason to pay attention to that

detail because the cells at Police Station are used primarily for homicide suspects so they have to ensure they were clean and anytime they sent a prisoner to the cells they have to ensure it is clean. He said he specifically recalled the state of the cell on 9 February but he would not be able to recall the state of the cell of every prisoner he placed in the cell, but he just happened to remember the state of this cell.

101. In my opinion, it is highly improbable that PC Khallie would have recalled in such detail that the cell which he placed the Claimant in at least 6 years ago was clean without his memory being refreshed by a note in the Station Diary. Therefore, I did not attach any weight to his evidence on the condition of the cell at the police station.

102. I concluded that the Claimant did not suffer any loss of reputation since by his own admission he did not have a clean record of not having been charged with any offences before the charges by PC Dailey. He was charged for several serious offences previously. In my opinion, it was not probable that persons who lived in his community were unaware of the previous charges.

103. However, I considered that the Claimant's period of detention was 5 days and the conditions of the cells both at the police station and in the Remand Yard were filthy.

104. In determining the award of general damages, in addition to the evidence, I also considered the following relevant judicial trends:

(a) **Charlton Dover v The Attorney General**³⁰. The Claimant was detained for 4 days. On 18 December, 2012 the Claimant was

³⁰ CV 2010-00108

awarded the sum of \$60,000.00 for false imprisonment and malicious prosecution. This included aggravated damages.

- (b) **Roshini Maharaj v The South-West Regional Health Authority**³¹. The original Claimant had sued for false arrest, and wrongful imprisonment, for a period of 7 days at the San Fernando General Hospital. There was no malicious prosecution. On the 30 October, 2013, the Court awarded the sum of \$180,000.00 in general damages.
- (c) **Anil Roopnarine v The Attorney-General of Trinidad and Tobago**³². The Claimant sued for, inter alia, unlawful arrest and false imprisonment. There was no malicious prosecution. The Court found that the time which he spent in custody was excessive, by two and a half days. On the 3 February, 2017, he was awarded \$50,000.00 in general damages.
- (d) **The Attorney-General of Trinidad and Tobago v Kevin Stuart**³³. The Claimant sued for wrongful arrest, false imprisonment and malicious prosecution. His claim for malicious prosecution failed on appeal, but the claim for false imprisonment was upheld, for a period of 2 days. On the 25 July, 2017, he was awarded \$50,000.00 in general damages.

105. In the instant matter given the evidence, and the period of detention a reasonable award for general damages which includes an uplift for the aggravating factors is \$140,000.00 since the Claimant was arrested in full view of several person of the Bar, the reasons for his arrest and subsequent

³¹ CV 2009-04734

³² CV 2013-04439

³³ Civ Appeal 162/15

charges were based on a total fabrication and collusion between Cpl Ifill and PC Dailey, the conditions of the cell at the Police Station and Remand Yard were deplorable and the prosecution of the Claimant by the police went on for 16 months after he was charged.

Exemplary Damages

106. Exemplary damages may be awarded where there is the presence of outrageous conduct disclosing malice, fraud, insolence and cruelty. In **Rookes v Barnard**,³⁴ Lord Devlin stated that exemplary damages are different from ordinary damages and will usually be applied –
- (i) where there is oppressive, arbitrary or unconstitutional conduct by servants of government;
 - (ii) where the defendant's conduct had been calculated to make a profit; and
 - (iii) where it was statutorily authorised.
107. The function of exemplary damages is not to compensate but to punish and deter and that such an award can appropriately be given where there is oppressive, arbitrary or unconstitutional action by servants of the government. Lord Carswell in the Privy Council case of **Takitota v The Attorney General of Bahamas**³⁵ stated that, “[T]he awards of exemplary damages are a common law head of damages, the object of which is to punish the defendant for outrageous behaviour and deter him and others from repeating it ...” .
108. In computing the award for exemplary damages there are several criteria which the court should take into account. Lord Devlin in **Rookes v Barnard** set it out as follows:

³⁴ [1964] AC 1129

³⁵ P.C.A No. 71 of 2007

- a. A plaintiff cannot recover exemplary damages unless he is the victim of the punishable behaviour;
 - b. An award of exemplary damages should be moderate; and
 - c. Awards of exemplary damages should be considered in light of the means of the parties.
109. In addition to the three criteria set out by Lord Devlin the learned authors of **McGregor on Damages**³⁶ set out additional criteria as:
- a. The conduct of the parties;
 - b. The relevance of the amount awarded as compensation;
 - c. The relevance of any criminal penalty;
 - d. The position with joint wrongdoers; and
 - e. The position with multiple claimants.
110. It was submitted on behalf of the Defendant that the circumstances of the instant matter do not warrant an award of exemplary damages; the Claimant has not particularised in his pleadings the facts which give rise to such an award; and that even if the Court is inclined to believe the Claimant's version of events, an award of general damages with uplift for aggravation would be sufficient to compensate the Claimant based on the allegations contained in the Claimant's pleadings and the evidence in support that will be adduced by the Claimant.
111. Having accepted the Claimant's version of events, I am of the opinion that an award for exemplary damages is appropriate since the officers as servants and/or agents of the State used their authority to concoct a story against the Claimant. The Claimant was charged as a result and the officers proceeded with the prosecution. In my view, such action by the officers as

³⁶ 19th Edition at paragraphs 13-033 to 13-044

agents of the State was oppressive and must be utterly condemned. I therefore award exemplary damages in the sum of \$20,000.00 to the Claimant.

Interest

112. The award of interest on damages is discretionary pursuant to section 25 of the **Supreme Court of Judicature Act**³⁷. The Court of Appeal in **The Attorney General of Trinidad and Tobago v. Fitzroy Brown et al**³⁸ reduced interest awarded for false imprisonment, where allegations of assault were made, at the rate which is payable on money in court placed on a short term investment account. As such, bearing in mind that monies are placed in the Unit Trust account and since this was not a case where the commercial lending rates was applicable the Court of Appeal reduced the interest awarded from 9% to 2.5% per annum.
113. Therefore, interest on general damages in the instant matter is awarded at the rate of 2.5% per annum from the date of service of the Claim Form i.e. 7 July, 2017 to the date of judgment.

CONCLUSION

114. I have found that the Defendant failed to discharge the burden of proving that PC Dailey had reasonable and probable cause to arrest the Claimant for the said offences. There were several inconsistencies in the evidence of PC Dailey which demonstrated that he was not a witness of truth. The evidence from PC Khallie did not assist the Defendant's case since his evidence was inconsistent with PC Dailey's and the failure by Cpl Ifill to attend Court on three occasions to give evidence caused me to form the view that he had something to hide and that the Claimant's version of the

³⁷ Chapter 4:01

³⁸ CA 251 of 2012

incident was more credible. I found that the Claimant was threatened by Cpl Ifill in November, 2012; Cpl Ifill held a grudge against the Claimant and PC Dailey acted in collusion with Cpl Ifill to arrest and charge the Claimant.

115. In the absence of any additional evidence after the arrest, it follows that PC Dailey did not have reasonable and probable cause to charge the Claimant for the said offences.
116. I have also concluded that PC Dailey was actuated by malice when he charged the Claimant. In this case, there was both actual and inferred malice. There was actual malice by PC Dailey since he set in motion the prosecution of the Claimant by charging him and by giving fabricated evidence and false testimony in the Magistrate's Court proceedings knowing that he had no basis to do so. In my opinion, malice can be inferred by the lack of reasonable and probable cause when PC Dailey charged the Claimant for the said offences since he had absolutely no basis to do so. Malice can also be inferred since the evidence was that the Claimant was arrested since Cpl Ifill had threatened him a few months before he was arrested and Cpl Ifill pointed out the Claimant to PC Dailey to arrest him, which supported the Claimant's case of collusion between PC Dailey and Cpl Ifill in his arrest and charge.
117. For these reasons, the Defendant failed to provide any evidence that the arrest was lawful therefore, the entire period of detention was unlawful.
118. Having found that the Claimant is successful in his claim, it follows that he is entitled to damages. I have not awarded any special damages since I was not persuaded that the evidence to prove this loss was satisfactory. I award general damages in the sum of \$140,000.00 which includes an uplift for

aggravated damages. I also award exemplary damages in the sum of \$20,000.00 since the actions by PC Dailey and Cpl Ifill were an abuse of their powers and must be strongly condemned.

ORDER

119. Judgment for the Claimant.

120. The Defendant to pay the Claimant general damages assessed in the sum of \$140,000.00 with interest at the rate of 2.5% per annum from the date of service of the Claim Form i.e. 7 February, 2017 until judgment. This sum includes an uplift for aggravated damages.

121. No award is made for special damages.

122. The sum of \$20,000.00 is awarded as exemplary damages.

123. The Defendant to pay the Claimant's prescribed costs in the sum of \$33,000.00.

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Margaret Y Mohammed
Judge