

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV 2017-01077

BETWEEN

ANISHA RAFFICK

also known as LISA RAFFICK

Claimant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

Before The Honourable Madam Justice Margaret Y Mohammed

Dated the 11th October, 2018

APPEARANCES:

Mr. Ganesh Saroop instructed by Mr. Haresh Ramnath Attorneys at law for the Claimant.

Ms. Ronelle Hinds instructed by Ms. Kendra Mark Attorneys at law for the Defendant.

JUDGMENT

1. On the 22nd November 2013 the Claimant was charged for possession of a dangerous drug namely cocaine for the purpose of trafficking. On the 22nd October 2015 the charges were dismissed in the Magistrate's Court.
2. The Claimant instituted the instant proceedings alleging that the aforesaid charge was laid against her maliciously and without reasonable and probable cause. She has sought an order

for damages including exemplary and/or aggravated damages for malicious prosecution and for false imprisonment since she was detained from the 21st November 2013 to the 2nd December 2013 when she was granted bail.

The Claimant's case

3. The Claimant's pleaded case is that on 21st November 2013 at around 2:00 am a party of twelve officers came to the premises of her mother situated at No. 21 Mac Pancham Street, Borde Narve Village, Princes Town ("the premises"). As the Claimant's father opened the door PC Daniel Gerald ("PC Gerald") informed him that he had a warrant in the name of the Claimant's husband Randy Lawrence to search the premises for guns and ammunition. The warrant was not shown to the Claimant's father.
4. The Claimant's father informed PC Gerald that the house does not belong to Randy Lawrence but they can still search it. PC Gerald demanded to know where the Claimant and Randy Lawrence were sleeping and the Claimant's father told him in the middle bedroom. PC Gerald and two officers, one male and one female went straight into the middle bedroom where the Claimant was staying. While officers were in the said middle bedroom, all the occupants of the said home namely the Claimant, her parents, Randy Lawrence, her fifteen year old brother and her two daughters aged eleven and two were in the living room.
5. After spending less than one minute in the middle bedroom, PC Roger Harripersad ("PC Harripersad") came out and stated that he found cocaine in the said bedroom. PC Gerald then showed everyone what he allegedly found and Randy Lawrence protested.
6. The Claimant's father asked PC Gerald what was found and he informed him that it was cocaine, plenty cocaine. Randy Lawrence continued his protest and another officer told PC Gerald to lock up everybody in the house if Randy Lawrence was not claiming the alleged drug. However, Randy Lawrence refused to confess.

7. A police officer then said to bring the handcuffs for everybody and to call child services for the baby. Upon hearing this and to prevent her family from being locked up and her children taken away, the Claimant told the officers that the cocaine belonged to her. The officer then arrested the Claimant and Randy Lawrence and they were taken to the San Fernando Police Station. Later that day, Randy Lawrence was taken to a room upstairs in the San Fernando Police Station for inquiries and the Claimant was placed in a holding cell. She told police officers that she was feeling sick and she needed to see a doctor but she was ignored.
8. At around 7:00 pm the Claimant was taken to the room upstairs of the Police Station where she saw Randy Lawrence in the presence of approximately four officers which included two males, one female and PC Gerald, all of whom were present at the time of the arrest. The said officers were having discussions with Randy Lawrence and demanded one hundred thousand dollars (\$100,000.00) from him for his release. PC Gerald also told Randy Lawrence that the Claimant had to sign a statement so that she would be charged for possession of a small amount of cocaine where she can plead guilty and receive a fine. Randy Lawrence asked the officers to release the Claimant since he had agreed to pay the said sum however the officers said that someone had to get charge. PC Gerald asked Randy Lawrence how long he would take to organize the money and Randy Lawrence told him that he would get the money that night as this was not the first time that PC Gerald arrested Randy Lawrence, framed him and demanded monies from him for his release.
9. The Claimant was given a piece of paper and was told to sign by PC Gerald in order to release Randy Lawrence and she signed it.
10. The Claimant again requested to see a doctor since she began vomiting and she was experiencing severe back pains. However, her request was ignored. She was taken to the Gasparillo Police Station where she spent the night.
11. The next morning the Claimant was taken to the Princes Town Magistrates' Court where she was charged and bail was not granted. The Claimant was then taken to a cell at the Princes Town Magistrates' Court and later that afternoon she was transferred to the

Remand Yard Women's Prison. During this period she was unable to see her daughter and the condition of the cells were unsanitary.

12. The Claimant continued to feel sick and on 27th November 2013 she was taken to the infirmary at the Prison and later taken to the Mount Hope Hospital on 29th November 2013. The Claimant was diagnosed with pyelonephritis, fever, loin to groin pain, constipation, diarrhea, hematemesis and dysuria.
13. The Claimant claimed that she spent twelve (12) days in custody until she was granted bail on 2nd December 2013. On 22nd October 2015, the Magistrate determined the matter in the Claimant's favour.
14. The Claimant claims that as a result of her arrest and prosecution her reputation has been harmed, humiliated, ridiculed and she suffered personal injuries and mental anguish. The Claimant claims that she lost income for the period of twelve (12) days in the sum of \$21,000.00.

The Defence

15. The Defendant's case is that PC Harripersad had reasonable and probable cause for the laying the charges against the Claimant.
16. Prior to 20th November 2013, PC Harripersad received information that one Randy Lawrence and the Claimant were storing narcotics at a house on the premises. PC Harripersad and other officers from the Criminal Investigation Department, Operations Unit, Southern Division conducted surveillance of the premises over a period of time.
17. As a result of the said surveillance, on 20th November 2013, PC Harripersad swore and obtained a warrant to search the premises for firearms and ammunition.
18. At around 1:50 am, PC Harripersad together with a party of officers including Acting Sergeant Ramroop ("Sergeant Ramroop"), PC Morris ("PC Morris") and PC Gerald

proceeded to the premises to execute the said search warrant. There were also two officers from the Canine Unit. At 2:20 pm the officers arrived at the premises. PC Harripersad knocked on the door of the home and called out "POLICE" to the occupants of the home. The Claimant, not her father opened the door. PC Harripersad also observed two elderly persons, a man and three children, whom he later learnt were the Claimant's parents and Randy Lawrence. The said officers introduced themselves by showing the occupants their Trinidad and Tobago Police Identification Cards ("TTPS ID Card").

19. PC Harripersad enquired from the Claimant her name and informed the Claimant that he had in his possession a warrant to search the premises for firearms and ammunition. PC Harripersad read and showed the Claimant and other occupants the said warrant and enquired from them if there was anything mentioned in the warrant on the premises and they replied "No".
20. PC Harripersad, Sergeant Ramroop, PC Morris, PC Gerald and other officers conducted a search of the house in the presence of the Claimant and the other occupants. Whilst searching the middle bedroom, in the presence of the Claimant and Randy Lawrence, PC Harripersad found a black plastic bag containing a quantity of creamish rock solid resembling cocaine. The substance was wrapped in black tape and found in a wardrobe. The room was searched for three minutes before the black plastic bag was found.
21. PC Harripersad showed the black plastic bag to the Claimant and informed her that in his opinion it was cocaine and based on the quantity that it was for the purpose of trafficking. PC Harripersad cautioned the Claimant and she replied "Officer that is my cocaine them don't know nothing about that". PC Harripersad informed the Claimant that her utterances amounted to a confession and that she may be prosecuted for an offence. PC Harripersad further cautioned the Claimant and then arrested her, informed her of her legal rights and privileges and she made no reply.
22. During the search PC Morris identified himself to Randy Lawrence by showing him his TTPS ID Card and informed him that he had information that there was an outstanding

warrant for his arrest from the Ste Madeleine Police Station. PC Morris cautioned and informed Randy Lawrence of his legal rights and privileges and he remained silent. The Claimant and Randy Lawrence were placed in separate vehicles and taken to the San Fernando Police Station.

23. At 6:30 am the officers, the Claimant and Randy Lawrence arrived at the said station and were handed over to the sentry on duty. The said officers continued a police exercise and responded to a report of kidnapping.
24. At 3:00 pm PC Harripersad returned to the San Fernando Police Station. In the presence of WPC Lewis, Sergeant Ramroop and PC Morris, PC Harripersad approached the Claimant and reminded her about the utterance she made before her arrest. The Claimant was then cautioned and asked to sign the Station Diary Extract which she did voluntarily. The black plastic bag containing a quantity of cream rocklike solid wrapped in black tape resembling cocaine was weighed and it amounted to 595 grams.
25. PC Harripersad informed the Claimant that due to the weight of the exhibit she would be charged for the offence of possession of cocaine for the purpose of trafficking. PC Harripersad cautioned the Claimant and she remained silent. He then affixed a piece of masking tape to the exhibit and wrote his markings on same.
26. At 3:35 pm PC Harripersad formally charged the Claimant for the offence of possession of cocaine for the purpose of trafficking. At 3:40 pm PC Harripersad served the Claimant with the notice of Prisoner and at 3:50 pm the Claimant's finger prints were taken by WPC Lewis. Randy Lawrence was released from custody at 4:10 pm.

The Issues

27. The issues to be resolved are:
 - a. Has the Claimant established an absence of reasonable and probable cause on the part of the arresting and charging officer PC Harripersad to charge the

Claimant for the offence of possession of a dangerous drug for the purpose of trafficking?

- b. Whether the Claimant proved malice on the part of PC Harripersad in initiating proceedings against her?
- c. Was the Claimant falsely imprisoned?
- d. If the Claimant succeeds in proving her claim is she entitled to the damages which she has claimed?

28. At the trial, the Claimant and her father Mr. Zainool Raffick (“Mr. Raffick”) gave evidence on her behalf. The evidence on behalf of the Defendant were from Sergeant Ramroop, PC Gerald and PC Harripersad.

Has the Claimant established an absence of reasonable and probable cause on the part of the arresting and charging officer PC Harripersad to charge the Claimant for the offence of possession of a dangerous drug for the purpose of trafficking?

29. It was submitted on behalf of the Claimant that PC Harripersad did not have reasonable and probable cause to charge her for the offence of possession of a dangerous drug for the purpose of trafficking since there was no information upon which a search warrant was obtained; there was no search warrant; even if there was a search warrant, its execution was improper; the police officers planted the alleged drug in the middle bedroom of the house; PC Gerald’s motive to plant the said drug was to extort money from the Claimant’s husband Randy Lawrence in order for charges not to be laid and even after the Claimant was charged PC Harripersad was delinquent in not taking steps to prosecute the charges.

30. The Defendant argued that PC Harripersad had reasonable and probable cause to prosecute the Claimant for the aforementioned offence since he had obtained a search warrant based on information he received from surveillance; the search warrant was properly executed; the alleged drug was found in the middle bedroom of the house where the Claimant was staying; the Claimant confessed that the drug was hers; after the Claimant was charged, PC

Harripersad pursued the prosecution by having drug examined by the Forensic Sciences Centre (“the FSC”) and he attended Court.

31. The essential ingredients for a malicious prosecution claim as set out in **Clerk & Lindsell on Torts**¹ 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.”

32. 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**² 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?
- (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?”

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

¹ 20th ed. At page 1070, para 16:09

² H.C.A. No. 1388 of 1989

“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.” ”

34. 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**³ 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”).
35. The Privy Council in **Trevor Williamson v The Attorney General of Trinidad and Tobago**⁴ 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

³ [1938] AC 305 at page 309

⁴ [2014] UKPC 29

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, 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.”

36. It was not in dispute that the Claimant has proven that she was charged with the offence of being in possession of a dangerous drug namely cocaine for the purpose of trafficking and that the proceedings were terminated in her favour in the Magistrate’s Court. The onus was on the Claimant to prove that the arresting officer, PC Harripersad, did not have reasonable and probable cause to arrest her for the aforementioned offence and that PC Harripersad instituted and carried out the proceedings against her maliciously.

The Offence

37. The Claimant was charged under section 5(4) of the **Dangerous Drugs Act**⁵ for being in possession of a dangerous drug, namely, cocaine for the purpose of trafficking. Section 5(4) provides that:
- “(4) A persons who trafficks in any dangerous drug or in any substance represented or held out by him to be a dangerous drug or who has in his possession any dangerous drug for the purpose of trafficking is guilty of an offence.”
38. Section 3(1) of the **Dangerous Drugs Act** defines a “dangerous drug” as a narcotic drug listed in the First Schedule or a thing that contains such a drug or a psychotropic substance listed in the Second Schedule or a thing that contains such a drug. In the First Schedule cocaine is listed under item 2.
39. Where the Claimant alleges that she was charged and prosecuted without reasonable and probable cause the burden of proof is placed on the Claimant. The existence of reasonable and probable cause is a question of fact which must be judged in light of the facts known to the Defendant at the time of initiation of the prosecution⁶.
40. The facts in dispute centred on: the existence of a search warrant; the conduct of the search/planting of alleged cocaine; the motive for the Claimant’s confession; the reason for Randy Lawrence’s arrest; the alleged extortion of Randy Lawrence at the police Station; and the officers conduct in prosecuting the charge against the Claimant.
41. In determining the version of the events more likely in light of the evidence, 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

⁵ Chapter 11:25

⁶ CV 2010-03388 Mark Blake v The Attorney General of Trinidad and Tobago per Boodoosingh J

improbability of the rival contentions. (**Horace Reid v Dowling Charles and Percival Bain**⁷ cited by Rajnauth-Lee J (as she then was) in **Winston Mc Laren v Daniel Dickey**⁸).

42. The Court of Appeal in **The Attorney General of Trinidad and Tobago v Anino Garcia**⁹, took the position that in determining the credibility of the evidence of a witness any deviation by a Claimant from his pleaded case immediately calls his credibility into question.
43. In order to determine whether PC HARRIPERSAD had reasonable and probable cause to institute the prosecution or whether he acted with malice in instituting the prosecution, the Court is required to consider the information that was in his mind at the time the charges were laid.

The existence of a search warrant

44. The Claimant's case was that the police officers said they had a search warrant in the name of her husband Randy Lawrence to search the premises for guns and ammunition. However, she was not shown the alleged search warrant.
45. The Claimant's evidence in chief was that she had always known PC Gerald to be called "Danny" since they grew up in the same neighbourhood and only recently she discovered that his name was "PC Gerald".
46. The Claimant testified that the officers said they had a search warrant but it was not shown to her. She acknowledged in cross-examination that she did not state that the officers told her that they had a search warrant in her witness statement but she maintained that they did not show her any search warrant. The Claimant also maintained that she knew PC Gerald since she was a teenager.

⁷ Privy Council Appeal No. 36 of 1897

⁸ CV 2006-01661

⁹ Civ. App. No. 86 of 2011 at paragraph 31

47. The Claimant's father, Mr. Raffick testified that PC Gerald told him that he had a warrant in the name of "Randy Lawrence" to search the premises for guns and ammunition. He testified that he had always known PC Gerald to be called "Danny" since his childhood days as PC Gerald had grown up in the same neighbourhood where he (Mr. Raffick) lived and he only recently discovered that his correct name was "PC Gerald". He testified that PC Gerald had arrested Randy Lawrence a few times and demanded money from him as a bribe for his release and Randy Lawrence paid PC Gerald. In cross-examination, Mr. Raffick testified that Randy Lawrence also knew PC Gerald since they both grew up in the same area. He maintained his position that PC Gerald had arrested Randy Lawrence at least on two occasions. He admitted that he had no proof or details of when Randy Lawrence paid any money to PC Gerald. He maintained that PC Gerald said that he had a search warrant and he added that the said warrant was not shown to him.
48. Therefore, the evidence on behalf of the Claimant was that both she and Mr. Raffick knew PC Gerald before the incident; both the Claimant and Mr. Raffick were told of a search warrant in the name of Randy Lawrence to search for guns and ammunition but the search warrant was not shown to them.
49. The Defendant pleaded that PC Harripersad received information that Randy Lawrence was storing narcotics at the premises. PC Harripersad and other officers conducted surveillance of the premises for a period of time and as a result of the surveillance a search warrant was obtained to search the premises for arms and ammunition.
50. PC Harripersad's evidence was that he indicated to the Claimant that he had a warrant to search the premises for arms and ammunition. He read it and showed it to her. In cross-examination, PC Harripersad testified that he had obtained information from an informant that the Claimant and Randy Lawrence were storing drugs at the premises. He admitted that contrary to the Police Service Standing Order 17 Part 6 which states that there is a duty to record the name, address of the informant and the time, date and place of the incident including a brief detail of the incident, there was no record in the Station Diary Extracts produced by the Defendant of any information from an informant. According to PC Harripersad he conducted surveillance of the premises on at least five occasions and he

made a record of it in the Station Diary Extract which he did not include in his witness statement. He admitted that the surveillance was not about the Claimant being in possession of drugs. He told Sergeant Ramroop of his surveillance and he was told to obtain a search warrant. He said that he obtained the search warrant for arms and ammunition and it was in the Claimant's name. He admitted that the search warrant which he read to the Claimant was not part of the Defendant's evidence in the instant case. He relied on the Station Diary Extract for the 21st November 2013 3:00pm entry which stated that the said officers executed a "bench warrant for firearm and ammunition in the name of Lisa Raffick".

51. Sergeant Ramroop testified that he was informed by PC HARRIPERSAD that he had obtained a search warrant for the premises to search for firearms and ammunition. He said that upon arrival at the premises the police called out "Police" and "Lisa Raffick". PC HARRIPERSAD told the Claimant that he had a warrant to search the premises for firearms and ammunition and enquired from her if she was "Lisa Raffick" and she said "Yes". PC HARRIPERSAD read and showed the warrant to the Claimant and enquired if there was anything as mentioned and she said "No".
52. In cross-examination Sergeant Ramroop stated that PC HARRIPERSAD told him that he had information about Randy Lawrence and the Claimant being in possession of arms and ammunition. He denied that he was informed that they were involved with narcotics. He saw the search warrant and he admitted that it was not part of his witness statement. He was unable to give any explanation for not attaching the search warrant. He confirmed that "Lisa Raffick" was called out and not "Randy Lawrence" since only the Claimant's name was on the search warrant. He denied that the police were conducting enquiries of Randy Lawrence at the same time as the Claimant.
53. PC Gerald's witness statement was notably void of any information concerning the surveillance conducted before the obtaining of the alleged search warrant. However, from his evidence in cross-examination, it was clear that he had a significant role in providing information about the Claimant. PC Gerald testified in cross-examination that he knew the Claimant and her family. He admitted that he had information of the Claimant's criminal activity which he passed on to Sergeant Ramroop. He said that he and PC HARRIPERSAD

conducted surveillance of the Claimant for over a month but he could not recall the exact dates and he said that the Claimant did not have a car rental business on the premises. He admitted that he made no record of the surveillance in his pocket diary or the Station Diary. Instead, he said he made a note in his “desk diary” which he did not present to the Court. He said that he saw the warrant which PC Harripersad obtained to search the premises but he could not recall if it was for arms and ammunition.

54. In my opinion, the evidence of PC Harripersad, Sergeant Ramroop and PC Gerald were all lacking in credibility with respect to the surveillance and the search warrant. PC Harripersad said that he received information from an informant but he did not make a record of it which was contrary to Standing Order 17 Part 6. Even the Station Diary Extract which he produced had no information to support his assertion that he received information from an informant and/or the informant was PC Gerald. This was inconsistent with PC Gerald’s evidence who admitted that he was the informant. PC Harripersad also failed to produce any record of any occasion when he conducted the surveillance and there was no record of the police vehicles used in the said surveillance.
55. Further, PC Harripersad said that he received information about the Claimant and Randy Lawrence being involving in narcotics and this was the basis for the surveillance. He reported his findings from the surveillance to Sergeant Ramroop. However, Sergeant Ramroop admitted that he did not question the credibility of the information he received from PC Harripersad but he advised PC Harripersad to seek a warrant for arms and ammunition. Yet the alleged search warrant was not obtained for both the Claimant and Randy Lawrence but for only the Claimant. In my opinion, the failure to present any explanation for seeking a search warrant for arms and ammunition given that the information and alleged surveillance were for narcotics and only for the Claimant raises significant suspicions on the existence of any such search warrant.
56. With respect to PC Gerald’s evidence on the alleged surveillance, this was also lacking in credibility. PC Gerald said that he knew the Claimant and her family before the incident. In my opinion, if he was involved in the surveillance of the Claimant and her family it is highly probable that he would have been aware that there was a car rental business on the

premises. Further, like PC Harripersad, PC Gerald had no record of the surveillance and his evidence that he had such information in his desk diary was not credible since, if he had this contemporaneous note, it is highly likely that he would have produced it as part of his evidence to the Court.

57. Sergeant Ramroop's evidence was lacking in credibility since he was the most senior officer in charge but he could not recall how long the surveillance was and he did not assess the credibility of the information obtained from surveillance.
58. In my opinion, the lack of credibility of the evidence for the witnesses for the Defendant, the inconsistencies between the evidence for the witnesses for the Defendant, and the lack of contemporaneous documents to support the material assertions made by the Defendants witnesses of the surveillance and the search warrant make the Claimant's position more plausible that there was no search warrant and she was only told of a search warrant and she was not shown it.

The conduct of the search/planting of the alleged cocaine

59. The Claimant's case is at the time the officers searched the middle bedroom where the black plastic bag containing the alleged cocaine was found all the occupants of the house were in the living room. It was not in dispute that Mr. Raffick had no objection to the premises being searched. The Defendant denied the allegations and stated that the Claimant was present during the search of the middle bedroom.
60. Where there is an allegation of fabrication the onus is on the party making the allegation to provide cogent evidence to prove the allegations. Indeed, the approach the Court has taken has been that the more serious the allegation, the less likely it is that the event occurred and, hence, the stronger the evidence should be before the Court concludes that the allegation is established beyond a balance of probability. In **Re H and Others (minors)(sexual abuse: standard of proof)**¹⁰ the Court explained:

¹⁰ (1996) A.C 563

“Where the matters in issue are facts the standard of proof required in non-criminal proceedings is the preponderance of probability, usually referred to as the balance of probability. This is the established general principle. ...

The balance of probability standard means that a court is satisfied that an event has occurred if the court considers that, on the evidence, the occurrence of the event is more likely than not. When assessing the probabilities the court will have in mind as a factor, to whatever extent is appropriate in the particular case, that the more serious the allegation the less likely it is that the event occurred and, hence, the stronger should be the evidence before the court concludes that the allegation is established on a balance of probability. Fraud is less likely than negligence. Deliberate physical injury is usually less likely than accidental physical injury... Built into the preponderance of probability standard is a generous degree of flexibility in respect of the seriousness of the allegation.

Although the result is much the same, this does not mean that where a serious allegation is in issue the standard of proof is higher. It means only that the inherent probability or improbability of an event is itself a matter to be taken into account when weighing the probabilities and deciding whether on a balance of probabilities and deciding whether, on a balance, the event occurred. The more improbable the event, the stronger must be the evidence that it did occur before, on a balance of probability, its occurrence will be established. Ungood-Thomas J. expressed it neatly in *In re Dellow's Will Trusts* (1964) 1 W.L.R. 451 at 455: “The more serious the allegation the more cogent the evidence required to overcome the unlikelihood of what is alleged and thus to prove it.”

This substantially accords with the approach adopted in authorities such as the well-known judgment of Morris L.J. in *Hornal v. Neuberger Products Limited* (1957) 1 Q.B. 247, 266. This approach also provides a means by which the balance of probability standard can accommodate one's instinctive feeling that even in civil

proceedings a court should be more sure before finding serious allegations proved than when deciding less serious or trivial matters.”¹¹ (Emphasis added).

61. The aforesaid approach has been adopted in this jurisdiction. In **Wayne Carrington v The Attorney General of Trinidad and Tobago**¹² Gobin J noted at page 5 of the judgment that:

“Now if I accept that the police officer concocted a story and planted cocaine on the Claimant, that will of course provide sufficient evidence of malice. It will follow that there would have been no cause whatsoever for the prosecution. But this is not a conclusion that a court can lightly come to. Although the standard of proof is a balance of probabilities, the court will require the most cogent evidence to support such findings.”

62. The onus was on the Claimant to provide the most cogent evidence in order to prove on a balance of probabilities that PC Gerald and the other officers planted the black plastic bag containing the alleged cocaine in the middle bedroom house when none of the occupants were present.

63. The Claimant testified that PC Gerald and two other officers, one male and one female entered the middle bedroom where she and her husband Randy Lawrence were sleeping and told them to leave the said room. She said that PC Harripersad did not enter the middle bedroom at the said time. According to the Claimant, when the officers were in the middle bedroom all the occupants of the house were in the living room. After spending less than one minute in the middle bedroom, PC Gerald and not PC Harripersad which she erroneously stated at paragraph 7 of her Statement of Case, came out and stated that he had found cocaine in the said room. The said bedroom appeared to remain in the same condition as when she left it. PC Gerald then showed everyone the black plastic bag which he said he found in the middle bedroom and Randy Lawrence protested. PC Gerald said that it was cocaine, plenty cocaine. Randy Lawrence denied that there was cocaine in the bedroom.

¹¹ Re H and Others (minors) (sexual abuse: standard of proof) [1996] A.C 563 at page 586, paragraphs C - H

¹² CV 2007-03211

64. In cross-examination, the Claimant maintained that she was in the middle bedroom when the police officers came to the premises. She was told to leave the bedroom and to go into the living room. PC Gerald informed her that he had found cocaine in the middle bedroom and since she was in the living room she could not see what was taking place in the bedroom. PC Gerald never told her where in the middle bedroom the cocaine was found and she denied that he said that it was found in the wardrobe which was in the middle bedroom. She testified that after PC Gerald said he found the cocaine the search did not continue.
65. The evidence of Mr. Raffick was that as he opened the front door of the house on the premises, PC Gerald told him that he had a warrant in the name of Randy Lawrence to search the premises for guns and ammunition. He told PC Gerald that the house did not belong to Randy Lawrence but they can still search the house. PC Gerald demanded to know where Randy Lawrence and the Claimant were sleeping and he told him that they were in the middle bedroom of the house. The said bedroom had one wardrobe in which both Randy Lawrence and the Claimant occupied and kept their clothes. PC Gerald and two officers, one male and one female, went straight into the middle bedroom where Randy Lawrence and the Claimant stayed. PC Haripersad did not go into the middle bedroom. While the officers were in the bedroom all of the occupants were in the living room. After spending one minute in the middle bedroom PC Gerald came out and stated that he found cocaine in that room and he showed PC Gerald then showed everyone the black plastic bag which he said he found in the bedroom and Randy Lawrence protested. He then asked PC Gerald what it was and he said cocaine, plenty cocaine. Randy Lawrence continued to protest. In cross-examination, Mr Raffick's evidence in chief was unshaken.
66. I accept that there was an inconsistency between the Claimant's evidence and her Statement of Case on the name of the officer who came out of the middle bedroom with the black plastic bag with the alleged cocaine. However, based on the evidence of Mr. Raffick and the undisputed fact that PC Gerald was known to the Claimant and Mr. Raffick before the incident it is highly plausible that both the Claimant and Mr. Raffick would have known if

it was another officer and not PC Gerald who had returned from the middle bedroom with the black plastic bag with the alleged cocaine.

67. Therefore, the evidence on behalf of the Claimant was that PC Gerald and two other officers, one male and one female went into the middle bedroom where the Claimant and Randy Lawrence were to conduct a search; during the search all the occupants of the house, including the Claimant and Randy Lawrence were in the living room; PC Gerald came out of the middle bedroom shortly after entering and he showed them a black plastic bag which he said contained plenty of cocaine.
68. The evidence by the witness for the Defendant on the search was not consistent with each other and were in some instances even inconsistent with the Defendant's pleaded case. Paragraph 3(i) of the Defendant's Defence stated that the middle bedroom was searched by PC Harripersad, Sergeant Ramroop, PC Morris and PC Gerald and paragraph 7 of the Defence said the search lasted for three (3) minutes. However, Sergeant Ramroop's evidence in chief was that during the search he and PC Harripersad entered a bedroom accompanied by the Claimant. PC Harripersad then searched a wardrobe and found a black plastic bag containing a cream rock solid resembling cocaine. He observed that it also had black tape. The other occupants of the house were in the living room during the search which was adjacent to the bedroom which was searched. PC Harripersad then showed the black plastic bag to the Claimant and the other occupants and he told them that it was his opinion that the cream rock solid was cocaine and it was for the purpose of trafficking.
69. Sergeant Ramroop maintained this position in cross-examination. He denied that PC Gerald was present for the search and when the black plastic bag was opened. He said that the search lasted for 15 to 20 minutes that the information in the Defence was incorrect.
70. I do not accept that Sergeant Ramroop was being a witness of truth when he gave evidence that PC Gerald was not present during the search and the length of the search of the middle bedroom being 15 to 20 minutes. He was the most senior officer at the time of the incident and it is highly probable that he gave instructions in the preparation of the Defence which placed PC Gerald as one of the officers who searched the middle bedroom. His change in

position without explanation and which contradicted the Defence appeared to be a deliberate attempt to remove PC Gerald from the search.

71. PC Harripersad's evidence in chief was that he, Sergeant Ramroop, PC Morris, PC Gerald and other officers entered the house where a systematic search was conducted. Whilst searching the middle bedroom he found a black plastic bag containing a quantity of cream rock solid resembling cocaine wrapped in black tape in a wardrobe which was situated on the northern side of the room. According to PC Harripersad he found the plastic bag in the presence of Sergeant Ramroop and the Claimant. During the search of the home the other occupants were in the living room which was in close proximity to the bedroom in which the substance was found. After finding the said substance, he showed the black plastic bag to the Claimant and other occupants and told them that it was his opinion that it was cocaine and based on the quantity it was for the purpose of trafficking.
72. In cross-examination, PC Harripersad at first maintained that he and Sergeant Ramroop searched the middle bedroom, he found the black plastic bag with the substance, he opened it and it was a rock solid creamish substance. However, when Counsel for the Claimant brought to his attention the contents of paragraph 3 of the Defence he admitted that PC Gerald was present. He also said the search lasted for three minutes. He admitted that he did not smell or taste the substance. He said that he knew that it was cocaine and Sergeant Ramroop who was present agreed that it was cocaine and an officer in his presence announced that the substance was cocaine.
73. In my opinion, the credibility of PC Harripersad's evidence in chief that PC Gerald not being present during the search of the middle bedroom was totally undermined by his admission in cross-examination that PC Gerald was present. This admission was consistent with the Defence and the evidence from the Claimant and her witness, Mr. Raffick, that PC Gerald was part of the search, he found the black plastic bag and he announced that it contained cocaine, plenty cocaine.
74. PC Gerald's evidence was inconsistent with the Defendant's position stated in the Defence that he was present and took part in the search of the middle bedroom. According to PC

Gerald's witness statement he was not one of the officers who conducted the search of the bedroom and he was not present when the black plastic bag in which the alleged cocaine was found. He stated that he first entered the premises, he went inside and then he went outside at the back of the house. He eventually re-entered the house because the cocaine was found. In cross-examination PC Gerald stated that the information in the Defence which stated that he was present for the search of the middle bedroom was incorrect. In my opinion, PC Gerald was not a witness of truth since he too would have been one of the officers who gave instructions in the preparation of the Defence which stated that he was part of the search and his evidence was contradicted by PC Harripersad's admission in cross-examination.

75. PC Gerald also testified that in the party of officers there was one officer from the canine unit and that after the cocaine was found the said officer and another officer entered the house. I understood PC Gerald's evidence to be that since the party of officers were executing a search warrant for arms and ammunition, an officer attached to the canine unit and a dog trained to search for arms and ammunition was also part of the team. However, none of the other witnesses for the Defendant indicated that there was any officer attached to the canine unit as part of the search party which in my opinion undermines the credibility of this evidence by PC Gerald. Further, the evidence is even more incredible since it calls into question why the officer from the canine unit with the search dog was not deployed during the search.
76. The allegation of fabrication and planting of evidence by police officers is a serious matter. However, given my aforesaid analysis of the evidence on this issue, I have concluded that PC Gerald, PC Harripersad and Sergeant Ramroop were all present during the search of the middle bedroom when none of the occupants of the house was present. I am satisfied that there was cogent and compelling evidence that the black plastic bag containing the alleged cocaine was planted by the police officers who searched the middle bedroom since they had the opportunity to do so as no occupant from the house was present during the search of the middle bedroom.

The motive for the Claimant's confession

77. It was not in dispute that the Claimant stated that the cocaine was hers. It was her case that she made this confession under duress since an officer threatened to arrest all the occupants of the house and call child services for her children which included a baby. According to the Claimant, after PC Gerald announced that the bag had cocaine, plenty cocaine, Randy Lawrence refused to claim it and an officer cursed him and said to lock him up. A female police officer then said to bring the handcuffs for everybody and to call child services for the baby. She testified that in order to prevent her parents from being arrested and her children being taken away she told the officers that the cocaine belonged to her. She and Randy Lawrence were then arrested and placed in two separate vehicles and taken to the San Fernando Police Station.
78. In cross-examination, the Claimant's evidence was unshaken. She insisted that it was a female police officer who made the statement and she could not describe her although she had seen her before.
79. Mr. Raffick's evidence corroborated the Claimant's evidence that the Claimant only confessed that the alleged cocaine was hers after a police officer demanded handcuffs for everybody and to call child services. In cross-examination Mr. Raffick's evidence was also unshaken.
80. The evidence from Sergeant Ramroop was that he did not recall any officer stating to bring handcuffs for everyone and to call child services.
81. PC HARRIPERSAD's witness statement is notably silent on any utterance made by an officer to arrest everyone and to call child services. However, in cross-examination he said that he could not recall if any officer told PC Gerald to lock up everybody. He said he only arrested the Claimant after she made the utterance that the cocaine was hers.
82. PC Gerald said that the Claimant admitted that the cocaine was hers after PC HARRIPERSAD indicated that he had found a substance and he believed that it was cocaine. However, in

cross-examination he stated that he was not present inside the house when the black plastic bag containing the drugs were found.

83. There are two rival contentions arising from the evidence. If the Claimant's evidence is to be believed then her only motive to admit to the possession of the alleged cocaine in circumstances when she knew that she did not have such item with her was because there was a threat that her family would have been arrested and more importantly, her children would have been taken away by child services. If the Defendant's position is to be accepted then the Claimant confessed to being in possession of a large sum of cocaine voluntarily. Given the two rival contentions, in my opinion, the only reasonable contention is that of the Claimant which is she only made the confession out of fear since based on one of the officer's statement her family was to be arrested and her children was to be taken away by child services.

The reason for arresting Randy Lawrence

84. It was not in dispute that Randy Lawrence was arrested together with the Claimant after she confessed that the alleged cocaine in the black plastic bag was hers. It is the Claimant's case that reason for the arrest of Randy Lawrence was a total fabrication since the purpose of the visit by the officers to the premises was to arrest Randy Lawrence in order to extort money from him but they had to arrest her since she confessed that the cocaine was hers.
85. The totality of the evidence for the Defendant before they arrested Randy Lawrence was that PC Gerald knew the Claimant and Randy Lawrence since they grew up and lived in the same neighbourhood. PC Gerald informed PC Harripersad that the Claimant and Randy Lawrence were storing narcotics on the premises. They conducted surveillance of the said premises for about one month but they did not make any record of the surveillance which was conducted. Based on the information obtained from the surveillance PC Harripersad obtained a warrant in the name of the Claimant, to search the premises for arms and ammunition. The officers went to the premises where they called out the Claimant's name, Lisa Raffick and indicated that they had a search warrant which they showed to the

Claimant. Only PC Harripersad, Sergeant Ramroop and another officer searched the middle bedroom, which the Claimant and her husband Randy Lawrence were in but the search was conducted only in the presence of the Claimant. PC Gerald was not part of the search of the middle bedroom and he came into the house after the drugs were found. PC Harripersad found the black plastic bag in a wardrobe in the middle bedroom in the presence of the Claimant and Sergeant Ramroop. After PC Harripersad showed the Claimant and the other occupants of the house the black plastic bag and told them that he was of the opinion that it was cocaine and based on the quantity it was for trafficking, PC Harripersad cautioned them in accordance with the Judges Rules and the Claimant confessed that the cocaine was hers. He then informed the Claimant that her statement was a confession and he arrested her and informed her of her legal rights.

86. If I accept the aforesaid Defendant's version of the events then the only plausible reason Randy Lawrence was arrested was for possession of the alleged cocaine since it was found in the middle bedroom which he occupied with the Claimant.
87. However, according to the evidence of PC Harripersad, Randy Lawrence was not arrested for any offence related to the alleged cocaine found in the middle bedroom which he occupied with the Claimant. PC Harripersad testified that after the Claimant was arrested, PC Morris then identified himself to Randy Lawrence with his TTPS Identification Card and informed him that there were outstanding warrants for his arrest at the Ste Madeline Police Station. PC Morris then cautioned and informed Randy Lawrence of his legal rights and the latter remained silent. In cross-examination, he maintained that Randy Lawrence was arrested for outstanding warrants and that PC Morris had that information. He acknowledged that PC Morris was not a witness in this matter.
88. Sergeant Ramroop's evidence was not different. He also testified that the reason Randy Lawrence was arrested by PC Morris was due to an outstanding warrant for his arrest from the Ste Madeline Police Station. PC Gerald's evidence was that he heard PC Morris having a conversation with Randy Lawrence and that later PC Morris arrested Randy Lawrence. In cross-examination he said that before the police officers went to the premises they intended to arrest Randy Lawrence based on information from PC Morris.

89. In my opinion, the reason put forward by the Defendant for the arrest of Randy Lawrence was not plausible for the following reasons. There was no evidence from PC Morris that he had any outstanding warrant to arrest Randy Lawrence. None of the witnesses for the Defendant adduced a copy of the outstanding warrant to support their assertion. There was no explanation from any of the witnesses for the Defendant why Randy Lawrence was only arrested for the outstanding warrant *after* the Claimant was arrested for the alleged cocaine. In my opinion, if PC Morris had an outstanding warrant it is more plausible that when the police officers arrived at the premises they would have called out both the Claimant and Randy Lawrence and not the Claimant alone since the police officers would have had two warrants, one in the Claimant's name and the other to arrest Randy Lawrence. Further, if there was a warrant to arrest Randy Lawrence it is more plausible that he would have been arrested as soon as the police entered the house and saw him and not after the Claimant confessed.
90. Based on the Defendant's own evidence, it is inherently implausible that PC Morris had any warrant to arrest Randy Lawrence. It is more plausible that Randy Lawrence was arrested since the officers had an ulterior motive which is consistent with the Claimant's case that the officers arrested him to extort money from him.

The alleged extortion of Randy Lawrence at the police station

91. The allegation made by the Claimant was that PC Gerald extorted the sum of one hundred thousand dollars (\$100,000.00) from Randy Lawrence at the San Fernando Police Station in order for him not to be charged and to secure his release is very serious which goes to the heart of the credibility and public confidence in law enforcement in this jurisdiction.
92. The only evidence of any extortion of Randy Lawrence at the San Fernando Police Station was from the Claimant. According to the Claimant at around 7 pm she was taken to a room upstairs at the San Fernando Police Station where she saw Randy Lawrence. There were approximately four officers in the said room which included two male officers and one female officer and PC Gerald. She said that all of the four officers were present at the time

of the arrest. According to the Claimant the officers were having discussions with Randy Lawrence and demanded one hundred thousand dollars (\$100,000.00) from him for his release. PC Gerald also told Randy Lawrence that the Claimant had to sign a statement which she did so that she would be charged for a little amount where the Claimant could plead guilty for a fine. The Claimant also testified that Randy Lawrence asked that she be released since he had agreed to pay the said sum but he was told that somebody had to be charged. PC Gerald then asked Randy Lawrence how long he would take to organize the money and Randy Lawrence told him that he would get the money that same night. The Claimant testified that Randy Lawrence paid to PC Gerald the sum of one hundred thousand dollars (\$100,000.00) and he was not charged. The Claimant was given a piece of paper and she was told by PC Gerald to sign it in order for Randy Lawrence to be released which she signed.

93. In cross-examination the Claimant maintained her position. She accepted that she did not have proof that Randy Lawrence paid the money. She also stated that Randy Lawrence was not a witness in this matter since he was fearful for his life. She denied that Randy Lawrence was released at 4:10 pm which was stated in the Station Diary Extract. She was certain that it was dark outside when Randy Lawrence was released.
94. It was submitted on behalf of the Defendant that the Court should make adverse inferences against the Claimant for the failure by Randy Lawrence to provide any evidence in this matter to prove the allegation that he paid a bribe to the officers. The Claimant submitted that the Court ought not to make such adverse inferences since the law on adverse inferences is clear and unequivocal.
95. In **Erica Henry v Massy Stores (Trinidad)**¹³, Donaldson-Honeywell J considered the law on adverse inferences. The Court referred to **Phipson on Evidence**¹⁴, which stated:
“(W)here a party declines to call a witness in respect of whom he has served a witness statement, the court cannot compel the party to call him as a witness, but

¹³ CV 2014-4027

¹⁴ 16th Edn. (2005) at para 11-15

the court may draw an adverse inference against a party who fails to call a witness to deal with certain evidence.”

29. The principles applicable as to when such adverse inferences can be drawn were also set out by the Claimant citing Brooks L.J. in **Wisniewski v Central Manchester Health Authority**[1998] **PIQR 324** as follows:

“(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.

(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.” [Emphasis added]

30. The principle was effectively summarised by the Hon. Rahim J in Michael Coban (A minor by his mother and next friend Carol Noel) and Carol Noel v the AG (CV 2010-03064) at paragraph 33 as follows: “It is well established that where a party does not call a witness who has given a witness statement touching on a relevant matter who is not known to be unavailable and/or who has no good reason for not attending, and the other side has adduced relevant evidence, the trial judge is entitled to draw an inference adverse to that party and to find that matter proved. See Wisniewski v Central Manchester Health Authority [1998] P.I.Q.R. p 324;

Ramroop v Ganeias and others CV 2006-00075. The party seeking to rely on such an inference must establish a prima facie case on the matter in question.” (Emphasis added.)”

96. It is clear that adverse inferences can be drawn when a witness gives a witness statement but fails to attend the trial. In the instant case Randy Lawrence did not file a witness statement. There was no evidence that he was even charged for any offence. Indeed none of the circumstances set out in **Wisnieski** applied to the Claimant and therefore I am not prepared to draw any adverse inference for the absence of evidence by Randy Lawrence in this case. Indeed if I am to do so, then I would be equally entitled to draw adverse inferences against the Defendant for failing to call all the officers who attended to the Claimant’s premises on the day in question, in particular PC Morris. However, I am not prepared to do so.
97. Sergeant Ramroop testified that around 3:00 pm on the 21st November 2013, Woman Police Constable Lewis (“WPC Lewis”) brought the Claimant to the Operations office where PC Harripersad weighed the black plastic bag containing the quantity of the cream rocklike solid wrapped in black tape resembling cocaine in the presence of the Claimant. The substance weighed 595 grams. PC Harripersad then informed the Claimant that due to the weight she would be charged for the offence of possession of cocaine for the purpose of trafficking. PC Harripersad cautioned the Claimant and she remained silent. PC Harripersad then marked the exhibit.
98. However, in cross-examination, Sergeant Ramroop stated that at 3:00pm on the 21st November 2013 PC Harripersad asked WPC Lewis to take the Claimant from the cell at the San Fernando Police Station to a room upstairs in the said station. He could not recall if Randy Lawrence was present in the room but he was certain that it was before 4:10 pm. In the presence of PC Lewis he and the Woman Police Constable approached the Claimant and asked her for her confession.
99. PC Harripersad’s evidence in chief on this issue was consistent with Sergeant Ramroop’s evidence in chief. In cross-examination, he admitted that Randy Lawrence was taken to the

Operations Room which was upstairs. He denied that the reason Randy Lawrence was taken there was to negotiate a bribe. He stated that Randy Lawrence was not present when the black plastic bag was weighed and the Claimant was cautioned since he was in the Operations Room at that time. He insisted that the Claimant signed the declaration which contained her confession at 3:00 pm and Randy Lawrence was released at 4:10 pm.

100. PC HARRIPERSAD annexed to his witness statement a copy of the Station Diary Extract for Thursday 21st November 2013 3:00pm. Notably missing from the Station Diary Extract was any note of the processing of the Claimant and Randy Lawrence at the San Fernando Police station. Indeed the note in the said Station Diary Extract which was produced to the Court stopped at the arrest of the Claimant and Randy Lawrence on the premises. Therefore the Station Diary Extract as a contemporaneous document does not assist the Court in determining if the Claimant and Randy Lawrence were at some point in time in the same room in the upstairs of the building at some time after 3:00 pm.
101. PC Gerald testified that at the police station he did not meet with the Claimant or Randy Lawrence in a room upstairs. He had no interaction with the Claimant and Randy Lawrence at the police station. He never demanded monies from Randy Lawrence and he did not demand the Claimant to sign a statement. He had no further dealings with the Claimant and Randy Lawrence. In cross-examination he maintained his position. He added that although Randy Lawrence was arrested he was not charged and he was not present when the Claimant signed the confession.
102. The two rival contentions arising from the evidence are the Claimant's which is that she was placed in a room in the upstairs of the San Fernando Police Station sometime after 3:00 pm of the 21st November 2013. In that room was Randy Lawrence and PC Gerald who told Randy Lawrence if he paid him one hundred thousand dollars and the Claimant signed a statement confessing to being in possession of a small quantity of drugs, Randy Lawrence would be released. Randy Lawrence and the Claimant agreed to PC Gerald's demand and Randy Lawrence was released shortly after the Claimant signed the statement of confession.

103. The other contention was that the Claimant voluntarily signed the statement confessing to the possession of the alleged cocaine after she was cautioned. She had no contact with Randy Lawrence at the San Fernando Police Station. About one hour after the Claimant signed the said confession Randy Lawrence was coincidentally released.
104. There are challenges in accepting either contention. With respect to the Claimant's contention there was no evidence from Randy Lawrence to corroborate the Claimant's evidence that PC Gerald agreed to release him if he was paid the sum of one hundred thousand dollars (\$100,000.00) and if the Claimant signed the confession. While I accept the Claimant's evidence that Randy Lawrence was not a witness since he was fearful for his life, this is a serious allegation which requires corroborating evidence to persuade the Court. There was also no evidence that the said money was paid.
105. On the other hand, the Defendant's contention is also lacking since there was no reason to account for the release of Randy Lawrence. It was the evidence of all the witnesses for the Defendant that Randy Lawrence was only arrested on an outstanding warrant from the Ste Madeline Police Station and not for the possession of the alleged narcotic. In my opinion, given the circumstances of Randy Lawrence's arrest there was no basis for him to be released.
106. While there was no evidence to corroborate the Claimant's evidence I am of the opinion that her contention is more plausible for the following reasons. Firstly, based on the Claimant's evidence and that of PC Harripersad and Sergeant Ramroop in cross-examination, the Claimant was placed in a room in the upstairs of the San Fernando Police Station sometime during the afternoon of the 21st November 2013. It was highly probable that the Claimant was placed in the same room upstairs where both Randy Lawrence and PC Gerald were since the terms of the deal were being negotiated and her signing the confession was part of it. Secondly, there was no proper basis for Randy Lawrence to be arrested since there was no outstanding warrant for his arrest. I am fortified in this position since if there was, the officers could not have simply released him but they ought to have turned him over to the Ste Madeline Police Station. Thirdly, it was highly suspicious that about an hour after the Claimant signed the confession which she said was part of the

agreement arrived in the room upstairs that Randy Lawrence was released without charge given that the alleged cocaine was found in the middle bedroom which he occupied.

The officers conduct in prosecuting the charge against the Claimant

107. The Claimant asserted that after she was charged, PC Harripersad's conduct in the prosecution of the case against her was negligent and malicious. According to the Claimant she was charged on the 22nd November 2013 at the Princes Town Magistrate's Court and bail was not granted. She was only granted bail on the 2nd December 2013 and the matter was dismissed on the 22nd October 2015 although the Certificate of Analysis stated that the substance was not cocaine or any other prohibited substance.
108. PC Harripersad testified that he received the Certificate of Analysis which was dated the 8th June 2015 for the substance in the black plastic bag on the 12th June 2015 and that the report stated that it was not a prohibited substance. He prepared a report for the prosecutor dated the 16th June 2015, He annexed copies of the Certificate of Analysis, his report and the Summary of Evidence to his witness statement.
109. According to the Certificate of Analysis the substance was only submitted to the FSC on the 3rd January 2014 which was two months after the Claimant was charged. There was no explanation by PC Harripersad in his witness statement for this inordinate delay in submitting the substance.
110. The Certificate of Analysis was dated the 8th June 2015 which was eighteen (18) months after the substance was submitted. While it is reasonable to accept that at the FSC there is a high volume of work, there was no explanation in PC Harripersad's witness statement of the efforts he made in following up this matter with the FSC. It is reasonable to conclude that PC Harripersad was quite content to allow this matter to languish.
111. Although the report was dated the 8th June 2015, PC Harripersad testified that he collected it four days later and before he prepared the report for the prosecutor on the 16th June 2013. Again there was no explanation in PC Harripersad's witness statement for his lack of haste

at this stage given that he had confirmation that the charges against the Claimant could not be sustained since it was not a prohibited substance.

112. In cross-examination, PC Harripersad accepted that part of his duty as the charging officer was to prepare the file for the prosecutor. He stated that the matter was first called on the 21st November 2013 and tracing was available since that date but the prosecution had objected to bail due to tracing. He accepted that for the entire 2014 he did not appear in Court and that more than one year after the Claimant was charged, disclosure was made by the prosecution in the Magistrate's Court. He admitted that although he received the Certificate of Analysis which stated that the substance in the black plastic bag was not prohibited on the 11th June 2015 and he knew that the matter was coming up on the following day on the 12th June 2015, he still did not attend Court and he did not present the said report to the prosecutor. He accepted that if he attended Court on the 12th June 2015 with the said report the matter against the Claimant would have been dismissed.
113. In my opinion, the admissions made by PC Harripersad in cross-examination supports the Claimant's case that his approach in prosecuting the matter was laissez-faire. PC Harripersad did not even seek to put forward any explanation for his two month delay in sending the substance to the FSC for testing; for not actively following up the results and even after he received it he still did not act with any diligence in having it brought to the prosecutor's attention.

The application of the objective and subjective tests

114. Based on my aforesaid findings of fact the information which PC Harripersad had in his mind before he charged the Claimant were: her confession that a black plastic bag containing a cream rock solid which neither he nor none of the other officers who did the search tested by taste or smell to confirm if it was cocaine; an utterance by the Claimant at the premises made under duress that her family would be arrested and her children would be taken away by child services; and a statement with her confession signed at the San Fernando Police Station in suspicious circumstances since it resulted in securing the release

of the Claimant's husband Randy Lawrence. In my opinion this was not sufficient for PC Harripersad to have reasonable and probable cause to charge the Claimant.

115. Even if PC Harripersad did have reasonable and probable cause to charge the Claimant, there was no reasonable and probable cause to pursue the prosecution since there was a delay without explanation of sending the substance in the black plastic bag for testing; no explanation on the efforts made by PC Harripersad in following up to report from the FSC; a delay without explanation for presenting the results of the Certificate of Analysis which stated that the substance was not a dangerous drug to the Court.

Was PC Harripersad actuated by malice in instituting the proceedings against the Claimant?

116. The Claimant pleaded the following particulars of malice at paragraph 22 of the Statement of Case:

“PARTICULARS OF MALICE

- a. The Police Officers knew or ought to have known that there was no reasonable grounds or belief for the arrest and prosecution of the Claimant and no direct evidence to corroborate that the Claimant indeed committed the said offence.
- b. The Police Officers charged and prosecuted the Claimant without conducting any proper, lawful investigation. Thereby the conduct of the Police was arbitrary, illegal, oppressive and unconstitutional.
- c. The servants and/or agents of the Defendant charged the proposed Claimant knowing or ought reasonably to have known that there was not sufficient evidence as would justify a prosecution.
- d. An improper purpose such as, in the hope that they would advance their careers, can be inferred from the facts and circumstances of lack of probable cause or that there was no honest belief in the guilt of the accused.
- e. The alleged drug was not found in the said premises.

- f. The Police Officers attempted to frame the Claimant with the intentions of obtaining a bribe, which they received from the Claimant's husband, Randy Lawrence and the Police Officers forced the Claimant into signing a statement in order to release her husband.
- g. The Police Officers continued the Prosecution even after it was discovered that the substance was not a prohibited drug.
- h. The servants and/or agents of the Defendant acted rashly in charging the proposed Claimant for the said offence.
- i. The servant and/or agents of the Defendant failed to give a proper assessment to the weight of the evidence before laying the charges against the proposed Claimant or continuing the prosecution.
- j. The servants and/or agents of the Defendant failed to attach any weight to any statement from the proposed Claimant, whether written or oral, as to her involvement in the said crime and/or to investigate any denial of wrong doing done by the proposed Claimant.
- k. The Claimant spent twelve (12) days in custody until bail was granted on the 2nd day of December, 2013. From the evidence led the exhibit was not in fact cocaine or any other prohibited substance.
- l. On the 22nd day of October, 2015 Case No: 4654/13 between P.C. R. Harrypersad No. 18711 and the Claimant was heard before Her Worship Ms. Debra Quintyne, at the Princes Town Magistrate's Court in Trinidad and Tobago and was on the said date determined in favour of the Claimant."

117. In **A v NSW**¹⁵ 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."

118. The Court further went on to observe at paragraph 12:

¹⁵ [2007] HCA 10; 230 CLR 500

“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.

119. In the Privy Council decision of **Sandra Juman v The Attorney General of Trinidad and Tobago**¹⁶ 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 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.”

120. In the Court of Appeal decision in **Sandra Juman v the Attorney General**¹⁷ 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.”

¹⁶ [2017] UKPC 3

¹⁷ Civ. App. 22 of 2009

121. It was submitted on behalf of the Claimant that her malicious prosecution was premised on a conspiracy among the police officers, to extort the Claimant and her husband, Randy Lawrence. Counsel argued that an absence of reasonable and probable cause is also evidence of malice.
122. In the instant case malice can be inferred since PC Harripersad knew he had no evidence to charge the Claimants since the black plastic bag containing the alleged cocaine did not contain a prohibited substance; it was planted by the officers who conducted the search of the middle bedroom; the search was not conducted in the presence of the Claimant; and the confession by the Claimant that she was probably guilty of any offence was made under duress.
123. However, that was not all. PC Harripersad's conduct in prosecuting the Claimant after she was charged adds to the implication of malice on his part. PC Harripersad failed to act diligently in sending the substance to the FSC for testing. He sent it almost two months after the Claimant was arrested. He failed to provide any reason for this delay which adds credibility to the Claimant's case that he was part of the conspiracy to extort her and her husband. As the complainant, he also failed to prepare the court file for the prosecutor, brief the prosecutor and prepare disclosure. He missed court for the entire 2014. After he sent the substance for testing he failed to diligently follow up the results. He received the results almost eighteen months after he had submitted it and he provided no evidence of any effort he made on following up the matter at the FSC. Even after he received the results he did not act with haste and provide it to prosecutor immediately since the matter was coming up the next day. It is highly probable if the results were brought to the Court's attention when the matter was called on the 12th June 2015 the matter would have been dismissed by the Court. Instead the results were brought to the Court's attention some four months after in October 2015 when the charges were dismissed.
124. Further, it was common ground that the Claimant and PC Gerald knew each other. In my opinion although PC Gerald was not the officer who charged the Claimant his role in the conspiracy is significant since he was involved in the alleged surveillance of the Claimant

and her husband, he provided information to PC Harripersad, he was involved in the search of the middle bedroom where the black plastic bag with the substance was found and he announced to the occupants of the house that cocaine, plenty cocaine was found.

Was the Claimant falsely imprisoned?

125. Although the Claimant pleaded that she was falsely imprisoned for twelve days, Counsel for the Claimant did not address this issue in the closing submissions. However, this was an issue which arose from the pleadings and the evidence and as such I am still obliged to treat with it in this judgment.

126. In **Ramsingh v The Attorney General of Trinidad and Tobago**¹⁸ 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".

127. **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.¹⁹ The test is partly objective and partly subjective²⁰. It is subjective because the arresting police officer must have formulated a genuine suspicion within his own mind that the accused person, (in this

¹⁸ [2012] UKPC 16 at para 8

¹⁹ *Dallison v Caffery* [1965] 1 Q.B. 348 at 370).

²⁰ *O' Hara v Chief Constable of the Royal Ulster Constabulary* [1997] 1 AER 129 p 138j –139a) per Lord Hope of Craighead

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.

128. Under section 5 of the **Dangerous Drugs Act** being in possession of cocaine for the purpose of trafficking is an arrestable offence.
129. The Claimant did not plead any particulars for lack of reasonable and probable cause with respect to her claim for damages for false imprisonment. However from the evidence, I have found that there was no warrant for the search of the premises; none of the occupants were present during the search of the middle bedroom when the black plastic bag with the alleged cocaine was found; PC Harripersad formed the view that the substance in the black plastic bag was cocaine only from its appearance as he did not taste or smell it and the Claimant's confession at the house was not voluntary but under duress. In my opinion given all these circumstances, the Defendant failed to discharge its burden that the Claimant's arrest was justified.
130. I have therefore concluded that the Claimant was wrongly imprisoned for the period 21st November 2013 to the 2nd December 2013 when she was granted bail which was eleven days.

If the Claimant succeeds in proving her claim is she entitled to the damages which she has claimed?

131. The Claimant has asked for special damages, compensatory damages, aggravated damages and exemplary damages.

Special Damages

132. It is settled law that the Claimant must plead and prove the item of loss and its value for

special damages²¹. In **Anand Rampersad v Willies Ice-Cream Ltd** ²² Archie J.A. (as he then was) said the following on proof of special damages:

“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”. ”

133. The Claimant is seeking compensation for loss of income for her period of detention for twelve days in the sum of \$21,000.00. The Claimant testified that she earned a daily income of \$1,750.00 from the rental of five vehicles which she rented at \$350.00 per vehicle. In support of her claim the Claimant produced the Certificate of Registration of her company LRG Rentals which she said she owns with two other persons being her husband Randy Lawrence and Glen Ramcharitar and a letter dated 24th January 2017 signed by her and the other directors. The said certificate demonstrated that the Claimant was a partner in the said rental business, but the said letter produced does not prove that the Claimant lost the amount claimed in the absence of evidence by the other partners since it is self-serving.
134. However, the Claimant failed to call Randy Lawrence and Glen Ramcharitar to support her evidence of loss of income in the sum of \$21,000.00. Under cross-examination the Claimant stated that she did not know she had to bring them as witnesses to support her case. She also revealed under cross-examination that her business could operate without her. Further, the Claimant’s sole witness, Mr. Raffick did not support the losses claimed by the Claimant. The Claimant has also failed to provide any bank statements, payslip or rental car agreements to demonstrate the said vehicles were contracted to be rented at the fee of \$350.00 for the said period of her detention. The Claimant admitted under cross-examination that she failed to produce such evidence.

²¹ *British Transport Commission v. Gourley* [1956] AC 185

²² Civ Appeal No 20 of 2002 page 8

135. In my opinion, the Claimant had the benefit of legal advice in advancing her claim. Her evidence to prove her loss in special damages was self-serving and not persuasive. She therefore failed to satisfy the Court that she suffered the loss which she claimed as special damages. As such I make no award for special damages as claimed by the Claimant.

Compensatory damages

136. 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*”²³. The awards for damages in claims made for false imprisonment and 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.”

137. Apart from pecuniary loss, the relevant heads of damages²⁴ 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.

138. 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

139. 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**²⁵, it was held that a single figure is awarded for all heads of compensatory

²³ Livingstone v Raywards Coal Co. (1880) 5 App.Cas.25 at 39

²⁴ Mc Gregor on Damages, 17th Ed., 2003, paras. 38-004 to 38-005

²⁵ Civ App. No. 159 of 1992, at page 9

damage, including aggravated damages. In **Thompson v Commissioner of Police of the Metropolis**²⁶ 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 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.”

140. It was submitted on behalf of the Claimant that the factors which warrant an award for aggravated damages are: PC Harripersad knew that he had no reasonable grounds to arrest and prosecute the Claimant; PC Harripersad knew that there was insufficient evidence to justify a prosecution; PC Harripersad failed to conduct a proper investigation before laying the charge; PC Harripersad failed in his duty to actively progress the case in the Magistrate’s Court and to attend Court in 2014; the Claimant was arrested and prosecuted without any evidence of her involvement in any crime; and the Claimant is a business woman who owned and operated a car rental business and as a result of the charge she suffered damage to her professional reputation.
141. The Claimant’s period of detention was eleven days.
142. The Claimant testified that her reputation has been harmed, she was humiliated, ridiculed and suffered mental anguish. However, the Claimant failed to demonstrate how her reputation professional, or otherwise, have been injured. She admitted under cross-examination that she has not stated the ridicule she received or how she was humiliated. Further, the Claimant’s only witness, her father Mr. Raffick did not state that his daughter was humiliated or that she was ridiculed. The Claimant also has not provided any evidence that she was of sound character and reputation prior to her arrest in this matter and that she

²⁶ [1998] QB 498

experienced mental distress from the actions of the Defendant. Therefore, there is no evidence for the Court to make a finding under these heads.

143. The Claimant also testified that as a result of her arrest, she fell ill and began vomiting and suffered from severe back pains. She said that she demanded to see a doctor but was given no assistance by police officers. The Claimant also stated that upon being transferred to Remand Yard, Golden Grove Women's Prison, she continued feeling unwell and was denied access to a toilet, a bed and water. She indicated that she pleaded with Prison Officers to see a doctor but her requests were ignored. According to the Claimant, it was only on 27th November 2013 she was transferred to the infirmary room where she saw a doctor and she was taken to the Mount Hope Hospital on 29th November 2013. The Claimant was then admitted and diagnosed with pyelonephritis (urinary tract infection), fever, loin to groin pain, constipation, diarrhea, hematemesis (vomiting of blood) and dysuria (painful urination). In support the Claimant adduced medical evidence which demonstrated that she was hospitalized with the various illness which she stated.
144. The Claimant did not state the name nor described the officers to which she complained of feeling unwell, or who denied her from access to a toilet. Further, at the first hearing of the matter on 22nd November 2013, the Notes of Evidence of the proceedings in the Magistrate's Court does not reflect that the Claimant made any complaints to the Magistrate that she was unwell. The Claimant admitted in cross-examination that she did not make such complaints.
145. The Claimant also admitted in cross-examination that prior to her arrest she had previously received medical treatment for pyelonephritis/urinary tract infection. This was reflected in the medical records attached to the Claimant's witness statement as exhibit "A"²⁷. The Claimant also admitted under cross-examination that her ailments were caused by her holding up her urine since there were inadequate toilet facilities. In my opinion, while the Claimant had a pre-existing condition, it is highly probable that her illness was aggravated by the poor toilet facilities both at the Police Station and at remand Yard, Golden Grove

²⁷ Pages 31 and 34 of the Second Trial Bundle.

Prison. In these circumstances I have found the Claimant's hospitalization is linked to her arrest and detention and that this is an aggravating factor.

146. The Claimant testified that after being discharged from the Mount Hope Hospital she had to seek further medical treatment. However, she failed to state the name of the doctor she visited nor has she provided any medical notes to support her continued medical attention. In this regard, I have attached no weight to this aspect of the Claimant's evidence.

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

- a) **Felix Hyndaman v The Attorney General of Trinidad and Tobago**²⁸ delivered on the 31st July 2001. The plaintiff was imprisoned for some twenty (20) days before being freed on bail. The Court awarded \$85,000.00 which included an element of award for aggravated damages.
- b) **Stephen Seemungal v The Attorney General**²⁹ delivered on the 18th May 2010. The claimant was imprisoned for a period of twelve (12) days on the basis of a warrant which was invalid. He gave evidence of the unsanitary conditions at the Golden Grove Prison. He was awarded the sum of \$100,000.00 for false imprisonment inclusive of aggravation and the sum of \$60,000.00 for exemplary damages and interest at the rate of 6% per annum.
- c) **Brahim Rampersad v The Attorney General of Trinidad and Tobago**³⁰ delivered on the 21st July 2010. The plaintiff was awarded \$190,000.00 for malicious prosecution after being detained for twelve (12) days.
- d) **Ramdial v The Attorney General**³¹ delivered on the 14th April 2011. The claimant was imprisoned for a period of eight (8) days and his prosecution proceeded for a period of 5 years. He was awarded the sum of \$125,000.00.

²⁸ HCA T-71 of 1999

²⁹ CV 2007-01952

³⁰ HCA S1528 of 2002.

³¹ CV2009-02336

- e) **Thaddeus Clement v The Attorney General**³² delivered on the 31st July 2013. The claimant was imprisoned for a period of 150 hours/6 days and charged with robbery. He was awarded the sum of \$160,000.00 with interest at the rate of 6% per annum.

148. Based on the judicial trends the range appears to be between \$100,000.00 to \$250,000.00. Taking into account the circumstances in this matter, I am of the opinion that an adequate award for general damages which sum includes an uplift for aggravation is the sum of \$220,000.00. I therefore award the Claimant the sum of \$220,000.00 as general damages including an uplift for aggravating factors.

Exemplary Damages

149. Exemplary damages may be awarded where there is the presence of outrageous conduct disclosing malice, fraud, insolence and cruelty. In **Rookes v Barnard**,³³ 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.
150. 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**³⁴ 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 ...” .

³² Civ Appeal 95 of 2010

³³ [1964] AC 1129

³⁴ P.C.A No. 71 of 2007

151. 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:
- 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.
152. In addition to the three criteria set out by Lord Devlin the learned authors of **McGregor on Damages**³⁵ 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.
153. 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 her 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.
154. 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 and plant evidence on the Claimant. The Claimant was charged as a result and the officers proceeded with the prosecution in a laissez faire manner which continued for two years. In my view, such action by the officers as agents

³⁵ 19th Edition at paragraphs 13-033 to 13-044

of the State was oppressive. I therefore award exemplary damages in the sum of \$20,000.00 to the Claimant.

Interest

155. The award of interest on damages is discretionary pursuant to section 25 of the **Supreme Court of Judicature Act**³⁶. The Court of Appeal in **The Attorney General of Trinidad and Tobago v. Fitzroy Brown et al**³⁷ 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.
156. 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 ie 3rd April 2017 to the date of judgment.

Costs

157. The costs in this matter is to be determined on the prescribed scale pursuant to Part 67 of the CPR.

Conclusion

158. PC Harripersad did not have reasonable and probable cause to charge the Claimant. Malice can also be inferred since PC Harripersad knew he had no evidence to charge the Claimant since the black plastic bag containing the alleged cocaine did not contain a prohibited substance; it was planted by the officers who conducted the search of the middle bedroom;

³⁶ Chapter 4:01

³⁷ CA 251 of 2012

the search was not conducted in the presence of the Claimant; and the confession by the Claimant that she was probably guilty of any offence was made under duress. Further, PC Harripersad's conduct in prosecuting the Claimant after she was charged added to the implication of malice on his part.

159. The Claimant was wrongly imprisoned for eleven (11) days from the period 21st November 2013 to 2nd December 2013 when she was granted bail.
160. The Claimant failed to satisfy the Court that she suffered the loss which she claimed as special damages.
161. The Claimant is awarded the sum of \$220,000.00 as general damages including an uplift for aggravating factors.
162. The Claimant is awarded the sum of \$20,000.00 in exemplary damages.

Order

163. Judgment for the Claimant.
164. The Defendant to pay the Claimant general damages assessed in the sum of \$ 220,000.00 with interest at the rate of 2.5% per annum from the date of service of the Claim Form i.e 3rd April 2017 until judgment. This sum includes an uplift for aggravated damages.
165. No award is made for special damages.
166. The sum of \$20,000.00 is awarded as exemplary damages.
167. The Defendant to pay the Claimant's costs in the sum of \$45,000.00.

.....
Margaret Y Mohammed
Judge