

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

No. CV 2018-03747

BETWEEN

CLINT ATTONG

Claimant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

Before The Honourable Madam Justice Margaret Y Mohammed

Date of Delivery: 11 December 2020

Appearances:

Mr Cedric Neptune instructed by Mr Auldrice Neptune Attorneys at law for the Claimant.

Ms Ronnelle Hinds instructed by Mrs Kendra Mark-Gordon Attorneys at law for the Defendant.

JUDGMENT

1. A police officer has a duty to investigate allegations of any crime before taking steps to arrest and charge a person for an offence. The failure by any police officer to comply with this duty can have serious consequences on both the State and the person who was wrongly arrested and charged. The instant action concerns the failure by a police officer to conduct a proper investigation before he arrested and charged the Claimant.

THE CLAIM

2. The Claimant is a Safety Officer who lived at 20 Padmore Street, San Fernando. The Claimant alleged that on the 17 October 2014 at about 3:15 a.m., police officers

reportedly attached to the San Fernando Criminal Investigations Department, visited him at his home in 2 police vehicles. Among those police officers were then Police Corporal Dinoo (Ag.) regimental number 12522 ("PC Dinoo") and then Police Constable Rahim regimental number 14011 ("PC Rahim").

3. Upon arrival at the Claimant's home, one of the police officers climbed through an open space left for a window and opened the door to the Claimant's bedroom. The said police officers informed the Claimant that they were investigating a report of larceny, wherein it was alleged that he had unlawfully obtained the total sum of \$11,000.00 from Nicolette Prince ("Ms Prince") and Jonelle Joefield ("Ms Joefield") and that he had also made threats to their lives.
4. The Claimant was arrested and on 18 October 2014 he was charged with three criminal offences namely;
 - (i) That on Thursday 4 September 2014 at Carlton Centre San Fernando in the County of Victoria with intent to defraud, he obtained from Ms Joefield the sum of \$4,000.00 TT currency in cash by falsely pretending that he was an Associate of Avery Auguste ("Mr Auguste") and that he had been sent by Mr Auguste to receive payment of the said \$4,000.00.
 - (ii) That on Tuesday 2 September 2014 at Gulf City La Romaine San Fernando in the County of Victoria with intent to defraud, he obtained from Nicolette Prince the sum of \$2,000.00 TT currency in cash by falsely pretending that he was an Associate of Mr Auguste and that he had been sent by Mr Auguste to receive payment of the said \$2,000.00.
 - (iii) That during the month of August 2014 at Gulf City La Romaine in the County of Victoria with intent to defraud, he obtained from Ms Prince the sum of \$5,000.00 TT currency in cash by falsely pretending that he was an Associate of Mr Auguste and that he had been sent by Mr Auguste to receive payment of the said \$5,000.00.

5. Upon being arrested the Claimant was taken to the San Fernando Criminal Investigations Department ("CID"), where he was interviewed by PC Dinoo and PC Rahim between 4:00 a.m. and 6:25 a.m. on 17 October 2014. During the said interview, the Claimant admitted to knowing Ms Joefield for approximately 10 years but categorically denied ever taking any money from either Ms Joefield or Ms Prince. Further, during the said interview the Claimant informed the interviewing police officers that he had not obtained any money from Ms Joefield or Ms Prince but they had been attempting to obtain money from him, to assist in accessing the sum of '*\$500,000.00 United States currency from Ghana*'. During the said interview, the Claimant also gave a full account of the circumstances surrounding his knowledge and interaction with Ms Joefield and Ms Prince, as well as the names of other relevant persons.
6. Following the interview, the Claimant was placed in a cell at the San Fernando Police Station and was subsequently charged by PC Dinoo on 18 October 2014. He was kept in the said cell until Monday 20 October 2014, when he was taken to the San Fernando Magistrates Court to answer the said charges. At the San Fernando Magistrates Court he was granted bail in the sum \$80,000.00 to be approved by the Clerk of the Peace. The Claimant was able to access his bail on the same date, but he was subjected to reporting conditions at the Mon Repos Police Station as a condition of the said bail.
7. During his period of detention, the Claimant was forced to sleep on the concrete floor because no beds and/or mattresses were provided. The said cell had roaches and the Claimant was placed in a cell with at least 2 other persons/individuals who were charged for and/or suspects for other criminal offences. Further, the Claimant had to endure the scent of urine and faeces from a dysfunctional human waste system and on other occasions the scent of 'black disinfectant'; a lack of running water; and a lack of proper ventilation.
8. Whilst in the custody of the police, the Claimant, being unfamiliar with the environment and scared for his safety urinated on himself and suffered an anxiety attack on 18 October 2014. He was taken to the San Fernando General Hospital by

personnel from the San Fernando CID. He received medical attention at the said hospital following which he was discharged into the custody of police officers on the same day.

9. While in the cell at the San Fernando Police Station, Constable Murray Mohammed (“PC Mohammed”) who is one of the Defendants/Respondents in other High Court proceeding with the Claimant, visited the cell and threatened the Claimant by saying “*Clint Attong, dead man tell no tales*’.
10. The Claimant was not permitted to take a bath nor was he allowed to brush his teeth for the entire period of his detention at the CID.
11. The Claimant retained Mr Subash Panday, Attorney at law to represent his interest in the matter at the cost of \$8000.00. Prior to this incident the Claimant was never arrested, investigated or charged with any criminal offence for any breaches of the laws of Trinidad and Tobago. The Claimant has suffered injury to his liberty and injury to his feelings; indignity, mental suffering, disgrace and humiliation, with loss of social status.
12. The charges were called on at least 15 times and on each occasion the Claimant attended Court. The matter was set for trial on approximately 5 occasions before it was eventually dismissed by a Magistrate sitting in the San Fernando First Magistrates Court on 11 September 2017.
13. Based on the aforesaid facts, the Claimant has claimed damages for his unlawful arrest, false imprisonment and malicious prosecution. He has also sought aggravating and/or exemplary and/or vindictory damages for malicious prosecution; damages for violation of his constitutional rights; special damages in the sum of \$8,000.00 for legal fees; interest and costs.

THE DEFENCE

14. The Defendant denied the assertions made by the Claimant. The Defendant’s position was that on or about Thursday 25 September 2014, PC Dinoo was attached to the CID,

San Fernando Police Station. While on duty at around 3:00pm, Ms Joefield of No. 19 Charles Street Gasparillo and Ms Prince of No. 34 Betsy Street La Romaine visited the said station. Ms Joefield made a report (“the First Report”) that around 1:00 pm on 11 September, 2014 she met the Claimant, whom she knew at Carlton Centre, High Street, San Fernando and she gave him \$4,000.00TT. Ms Prince reported that on 26 August 2014 and 2 September 2014, she also met the Claimant, whom she knew, at Gulf City Shopping Complex where she gave him a total of \$7,000.00TT, being \$5,000.00 and \$2,000.00 on the respective dates, in order to repay a debt. However, same was not done.

15. On Monday 29 September 2014, PC Dinoo recorded a written statement from Ms Joefield (“the First Joefield Statement”) who provided details of the arrangements that she had made with a co-worker to borrow the sum of \$7,000.00 TT for her cousin, Ms Prince. Ms Joefield outlined the circumstances surrounding her paying the Claimant \$4,000.00TT, out of fear, under the assumption that he would return the said monies to the said person.
16. On Monday 29 September 2014, PC Dinoo also recorded a written statement from Ms Prince (“the First Prince Statement”) who stated that she had to repay a debt and provided details of the circumstances surrounding her paying the Claimant \$5,000.00TT and \$2,000.00TT under the assumption that he would return the said monies to the said person that she had borrowed the monies from.
17. Subsequent to receiving the First Report, the First Joefield Statement and the First Prince Statement, PC Dinoo had a conversation with the Inspector of the CID and received instructions to detain the Claimant and conduct an interview with him.
18. At around 2:40 a.m. on Friday 17 October 2014, PC Dinoo and a party of police officers including PC Rahim visited the Claimant’s premises at 20 Padmore Street, San Fernando. Upon arrival at the Claimant’s premises, officers entered through an open gate. PC Dinoo knocked on the front door of the said home and announced the presence of police officers. A man of mixed descent opened the said door. PC Dinoo

identified himself as a police officer by showing him his Trinidad and Tobago Police Service Identification Card and enquired from him the whereabouts of the Claimant. The said man directed the officers to the back of the house, where he again announced his appearance as a police officer and met a man of mixed descent who identified himself as the Claimant.

19. PC Dinoo identified himself to the Claimant as a police officer by showing him his Trinidad and Tobago Police Service Identification Card and informed him of the report he was investigating. PC Dinoo cautioned the Claimant and he remained silent. PC Dinoo asked the Claimant to accompany him to the San Fernando Police Station to continue enquires. The Claimant agreed and was conveyed to the said station. At around 3:15 a.m., the Claimant and the party of officers arrived at the said police station. The Claimant was placed in a room where PC Dinoo again informed him of the report he had received and at around 4:00 am, PC Dinoo in the company of PC Rahim interviewed the Claimant. On completion of the said interview, the Claimant was asked to read over the said statement (“the Claimant’s Interview Notes”) and asked whether it was true and correct. The Claimant’s Interview Notes were subsequently signed by the Claimant, PC Dinoo and PC Rahim.
20. On the said day, PC Dinoo recorded a written further statement from Ms Joefield (“the Second Joefield Statement”), in which she provided details of the person from whom she arranged for Ms Prince to borrow \$7,000.00TT. She identified the said man as “Avery from Moruga”. On the said day, PC Dinoo recorded a written further statement from Ms Prince (“the Second Prince Statement”), who like Ms Joefield identified the person from whom she borrowed the said money from as “Avery” and provided further details as to her interaction with the Claimant.
21. Upon perusing the Second Joefield Statement and the Second Prince Statement recorded on the same date, PC Dinoo recorded a written statement (“the Auguste Statement”) from Mr. Avery Auguste of No. 470 Moruga Road, St. Mary’s Village. In the Auguste Statement, Mr Auguste admitted to lending Ms Prince the sum of \$7,000.00TT and denied authorising anyone to collect any monies on his behalf.

22. PC Dinoo compiled a file and received instructions to formally charge the Claimant. On Saturday 18 October 2014, PC Dinoo served the Claimant with a Notice to Prisoner for three (3) offences contrary to section 9 of the Summary Offences Act¹ (“the Summary Offences Act”) and section 34 (1) of the Larceny Act² (“the Larceny Act”). The Claimant’s Interview Notes were authenticated by a Justice of the Peace on Sunday 19 October 2014, at the San Fernando Police Station. On Monday 20 October 2014, PC Dinoo swore to 3 complaints relative to the said offences. On the said date, the Claimant appeared before a Magistrate at the San Fernando Magistrate’s Court. PC Dinoo prepared a Summary of Evidence for use at the Magistrate’s Court.

THE ISSUES

23. If the Claimant’s version of the events is correct it means that, he was detained without reasonable and probable cause by the police officers on the 17 October 2014; PC Dinoo did not have reasonable cause to charge him on the 18 October 2014 and when PC Dinoo did so he was actuated by malice. Conversely, if the Defendant’s version is correct then PC Dinoo had reasonable and probable cause to arrest and charge the Claimant and in doing so PC Dinoo acted without malice.
24. For the Claimant to succeed with his action the following issues are to be determined in his favour:
- (a) Did PC Dinoo have reasonable and probable cause to suspect that the Claimant had committed an offence?
 - (b) Has the Claimant established an absence of reasonable and probable cause on the part of PC Dinoo to charge him for the offence of larceny and/or intent to defraud?

¹ Chapter 11:02

² Chapter 11:12

- (c) Has the Claimant proven that PC Dinoo was actuated by malice in initiating proceedings against him?
 - (d) Whether the period the Claimant was detained was reasonable?
 - (e) Is the Claimant entitled to damages and if so, what is the quantum to which he is entitled?
25. Based on the parties' respective pleaded cases, there are factual disputes to be resolved in order to determine the aforesaid issues. In such circumstances, the Court has to satisfy itself which version of events is more probable in light of the evidence. To do so, the Court is obliged to check the impression of the evidence of the witnesses against the: (1) contemporaneous documents; (2) the pleaded case; and (3) the inherent probability or improbability of the rival contentions, (**Horace Reid v Dowling Charles and Percival Bain**³ cited by Rajnauth–Lee J (as she then was) in **Mc Claren v Daniel Dickey**⁴).
26. The Court must also examine the credibility of the witnesses based on the guidance of the Court of Appeal judgment in **The Attorney General of Trinidad and Tobago v Anino Garcia**⁵, where it stated that in determining the credibility of the evidence of a witness any deviation by a party from his pleaded case immediately calls his credibility into question.

THE WITNESSES

27. At the trial, the Claimant gave evidence. The Defendant's witness was PC Dinoo.

DID PC DINO O HAVE REASONABLE AND PROBABLE CAUSE TO SUSPECT THAT THE CLAIMANT HAD COMMITTED AN OFFENCE?

28. The particulars of lack of reasonable and probable cause which the Claimant pleaded with respect to the Claimant's unlawful arrest were that the police officers: (a) failed

³ Privy Council Appeal No. 36 of 1897

⁴ CV 2006-01661

⁵ Civ. App. No. 86 of 2011 at paragraph 31

to properly investigate the matter before unlawfully arresting him; (b) were reckless in arresting him as they had no probable and /or reasonable cause to arrest him; and (c) failed to investigate or properly investigate his denial of any wrong doing.

29. The onus is on the police to establish reasonable and probable cause for the arrest of and detention of the Claimant. Narine JA in **Nigel Lashley v The Attorney General of Trinidad and Tobago**⁶ described the onus as:

“It is well settled that the onus is on the police to establish reasonable and probable cause for the arrest: **Dallison v. Caffery** (1964) 2 All ER 610 at 619 D per Diplock LJ. The test for reasonable and probable cause has a subjective as well as an objective element. The arresting officer must have an honest belief or suspicion that the suspect had committed an offence, and this belief or suspicion must be based on the existence of objective circumstances, which can reasonably justify the belief or suspicion. A police officer need not have evidence amounting to a prima facie case. Hearsay information including information from other officers may be sufficient to create reasonable grounds for arrest as long as that information is within the knowledge of the arresting officer: **O’Hara v. Chief Constable** (1977) 2 WLR 1; **Clerk and Lindsell on Torts** (18th ed.) para. 13-53. The lawfulness of the arrest is to be judged at the time of the arrest.”⁷

30. At page 8, Narine JA continued:

“The power to arrest is by its very nature a discretionary one. A police officer may believe that he has reasonable and probable cause to arrest a suspect, but may decide to postpone the arrest, while he pursues further investigations. His exercise of the discretion may be based on the strength or weakness of the case, the necessity to preserve evidence, or the need to ensure that the suspect does not abscond to avoid prosecution. The exercise of the discretion must be considered in the context of the particular circumstances of the case. The discretion must be exercised in good faith and can only be challenged as

⁶ Civ Appeal No 267 of 2011

⁷ Supra para 14

unlawful if it can be shown that it was exercised “unreasonably” ... Arrest for the purpose of using the period of detention to confirm or dispel reasonable suspicion by questioning the suspect or seeking further evidence with his assistance is an act within the broad discretion of the arrestor... A police officer is not required to test every relevant factor, or to ascertain whether there is a defence, before he decides to arrest... Further, it is not for the police officer to determine whether the suspect is in fact telling the truth. That is a matter for the tribunal of fact.

31. The tort of false imprisonment is established by proof of the fact of imprisonment and the absence of lawful authority to justify the imprisonment⁸. In **Ramsingh v The Attorney General of Trinidad and Tobago**⁹ 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 arrestor, 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 arrestable 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”.

32. **Ramsingh** reinforced 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.¹⁰ The test is

⁸ Clerk & Lindsell on Torts 20 ed at paragraphs 15-23

⁹ [2012] UKPC 16 at para 8

¹⁰ *Dallison v Caffery* [1965] 1 Q.B. 348 at 370).

partly objective and partly subjective¹¹. It is subjective because the arresting police officer must have formulated a genuine suspicion within his own mind that the accused person 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.

33. The power of a police officer to detain a person without a warrant exists not only at common law, but also under statute. These powers are encapsulated in the provisions of the Police Service Act¹² and the Criminal Law Act¹³.

34. Section 46 of the Police Service Act provides:

“(2) Without prejudice to the powers conferred upon a by subsection (1), a police officer, and all persons whom he may call to his assistance, may arrest without a warrant a person who within view of such police officer commits an offence and whose name or residence is unknown to such police officer and cannot be ascertained by him.”

35. Section 3(4) of the Criminal Law Act provides:

“Where a police officer, with reasonable cause, suspects that an arrestable offence has been committed; he may arrest without warrant anyone whom he, with reasonable cause, suspects to be guilty of the offence.”

36. The distinction between reasonable suspicion and prima facie proof was examined by the Privy Council in **Shaaban & Ors v Chong Fook Kam & Anor**¹⁴. At page 1630 of the judgment, Lord Devlin stated:

“Suspicion in its ordinary meaning is a state of conjecture or surmise where proof is lacking; “I suspect but I cannot prove”. Suspicion arises at or near the starting

¹¹ O’ Hara v Chief Constable of the Royal Ulster Constabulary [1997] 1 AER 129 p 138j –139a) per Lord Hope of Craighead

¹² Chapter 15:01

¹³ Chapter 10:01

¹⁴ PC Appeal No 29 of 1968

point of an investigation of which the obtaining of prima facie proof is the end. When such proof has been obtained, the police case is complete; it is ready for trial and passes on to its next stage.”

37. Lord Devlin continued at page 1631:

“There is another distinction between reasonable suspicion and prima facie proof. Prima facie consists of admissible evidence. Suspicion can take into account matters that could not be put in evidence at all ... Suspicion can take into account also matters which, though admissible could not form part of a prima facie case.”

38. The House of Lords in **Holgate Mohammed v Duke**¹⁵ concluded, that a police officer’s use of his discretion to make an arrest where reasonable grounds for suspicion exists cannot be questioned except on Wednesbury grounds. Lord Diplock explained at page 443 of the judgment that:

“...since the wording of the subsection under which he acted is "may arrest without warrant," this left him with an executive discretion whether to arrest her or not. Since this is an executive discretion expressly conferred by statute upon a public officer, the constable making the arrest, the lawfulness of the way in which he has exercised it in a particular case cannot be questioned in any court of law except upon those principles laid down by Lord Greene M.R. in Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation [1948] 1 K.B. 223...The first of the Wednesbury principles is that the discretion must be exercised in good faith. The judge in the county court expressly found that Detective Constable Offin in effecting the initial arrest acted in good faith. He thought that he was making a proper use of his power of arrest.”

39. It was submitted on behalf of the Claimant that he was arrested by police officers on 17 October 2014 when they visited his home around 2:40 a.m. and at that time PC Dinoo did not have reasonable and /or probable cause to arrest him as PC Dinoo was

¹⁵ (1984) 1 AC 4

only in possession of the First Prince Statement and the First Joefield Statement, which were insufficient to justify the arrest of the Claimant

40. Counsel for the Defendant argued that the Claimant is not entitled to any relief for wrongful arrest since at the time he was arrested, PC Dinoo had sufficient information from the First Report, the First Joefield Statement and the First Prince Statement to effect the arrest of the Claimant.
41. PC Dinoo was the officer who arrested the Claimant. He stated in his witness statement that on Thursday 25 September 2014, he was attached to CID at the San Fernando Police Station as an Acting Corporal. His duties included but were not limited to supervising the shift, recording of reports, conducting investigations into reports of serious crime; conducting patrols and performing other duties as detailed.
42. According to PC Dinoo, around 3:00 pm on the said date, while he was on duty at the office Ms Joefield and Ms Prince made a report against the Claimant. Ms Joefield reported that at around 1:00 p.m. on 11 September 2014 she met with the Claimant, who she knew, at Carlton Center, High Street, San Fernando and she gave him \$4,000.00 TT. Similarly, Ms Prince reported that between the 26 August 2014 and 2 September 2014 she met the Claimant, who she knew, at Gulf City Shopping Complex where she gave him \$7,000.00TT. Ms Prince stated that she gave the Claimant \$5,000.00 TT on 26 August 2014 and \$2,000.00TT on 2 September 2014. The said money was given to the Claimant to pay a debt she owed however it was not paid. PC Dinoo stated that he made an entry into the Station Diary at the San Fernando Police Station of the report he received and he attached an uncertified copy (“the Station Diary Extract”) to his witness statement¹⁶.
43. PC Dinoo also testified that he was instructed to continue enquires into the said report. On 29 September 2014, he recorded the First Prince Statement and the First Joefield Statement, as this was the time they were available to provide same.

¹⁶ V.D.1

44. According to PC Dinoo, Ms Prince reported in the First Prince Statement, that sometime in the last week in August 2014, she was at Gulf City Mall and had in her possession \$5,000.00TT as she had to repay some money. While at the Mall she met the Claimant who she knew. From an earlier conversation via telephone, the Claimant informed her that the men she borrowed the money from wanted to kidnap her. The Claimant stated that he would carry the money to them. Ms Prince gave the Claimant the said money. On the same evening the Claimant again called Ms Prince and indicated that he paid the said money and that the said men wanted the rest of the money which amounted to \$2,000.00 TT. As a result, on Tuesday 2 September 2014, Ms Prince again met with the Claimant at Gulf City Mall where she gave him the said \$2,000.00TT. Subsequently, Ms Joefield met with Ms Prince at Ms Prince's home and while there, Ms Joefield informed her that the money had not been paid by the Claimant. The said monies were still outstanding and were being demanded by the men. PC Dinoo attached a copy of the First Prince Statement¹⁷ to his witness statement.
45. PC Dinoo further stated in his witness statement that Ms Joefield had reported in the First Joefield Statement, that about 2 months prior to the date of her statement, she had organized for her cousin Ms Prince to borrow the sum of \$7,000.00 TT from one of her co-workers. About 1 week after the money was collected, she received telephone calls from the Claimant who she knew for the past 10 years and worked with at Damus. The Claimant called her via her cell phone and told her that the men Ms Prince had borrowed the money from wanted to kill her. Ms Joefield became fearful for the life of her cousin. On Thursday 4 September 2014, she met the Claimant at Carlton Centre and gave him \$4,000.00 TT, so he could give the men the money so they would not harm Ms Prince. Ms Joefield thought the Claimant had paid the said sum, however, she realized otherwise when she was asked by her co-worker about payment of the said money. Ms Joefield then met Ms Prince at her home and informed her of what transpired with the Claimant. It was only then that she realized that the

¹⁷ V.D. 2

Claimant had taken her money. PC Dinoo attached a copy of the First Joefield Statement¹⁸ to his witness statement.

46. PC Dinoo further stated that upon receiving the First Prince Statement and the First Joefield Statement, he had a conversation with the Inspector of the CID, San Fernando and was advised to detain the Claimant and interview him relative to the report.
47. According to PC Dinoo, on 17 October 2014, at around 2:40 am, while in the company of a party of officers from the CID office, San Fernando, he visited the Claimant's home at 20 Padmore Street San Fernando, in 2 police vehicles 1 marked and the other unmarked. He spoke with the Claimant. He identified himself by his Trinidad and Tobago Police Service Identification Card and told the Claimant of the report he was investigating. He cautioned the Claimant who remained silent. PC Dinoo then asked the Claimant to accompany him to the San Fernando Police Station to continue further enquires and he agreed. The Claimant was then conveyed to the said station in a police vehicle. He attached to his witness statement an uncertified Station Diary extract of San Fernando Police dated 17 October 2014¹⁹("the Second Station Diary Extract").
48. PC Dinoo was cross-examined on the First Report, the contents of the First Prince Statement, the contents of the First Joefield Statement and the steps, if any, he took based on the information which he received from the interview and the said Statements.
49. PC Dinoo confirmed in cross-examination that according to the First Station Diary Extract, he recorded a complaint on the same date from Ms Joefield who stated that on the 11 September 2014, she gave the sum of \$4000.00TT to the Claimant to give to her cousin Ms Prince but Ms Prince never got it. Ms Prince alleged that she gave the Claimant monies between the 26 August 2014 (\$5,000.00TT) and 2 September 2014 (\$2,000.00TT) to pay a debt which she owed.

¹⁸ V.D. 3

¹⁹ V.D. 4

50. The First Joefield statement was shown to PC Dinoo. He accepted that in the first Joefield statement, Ms Joefield gave an account of 2 incidents where she gave the Claimant an initial \$4000.00TT and then \$2000.00TT. He also testified that in the First Joefield Statement, Ms Joefield also gave an account of certain interactions between herself and Ms Prince. She alleged that she and her cousin, Ms Prince borrowed \$7000.00TT from a co-worker, whose name was not provided. Ms Joefield also alleged that the Claimant had called her and stated that the person Ms Prince had borrowed the money from wanted to kill her.
51. PC Dinoo admitted in cross-examination that he did not inquire from Ms Joefield about the telephone number that had made the phone calls, which she said she had allegedly received from the Claimant. PC Dinoo explained that he thought that this enquiry was unnecessary as Ms Joefield had stated that she had known the Claimant for 10 years. PC Dinoo also admitted in cross-examination that he did not inquire what period of time the alleged calls were made and that when Ms Joefield had stated that she gave the Claimant the money so that “the people wouldn’t do Nicole anything”, he did not inquire if she had made a report to the police about this alleged threat. PC Dinoo further admitted that when the Claimant was arrested and interviewed, he never asked him for his phone number or his whereabouts on the dates which Ms Joefield and Ms Prince alleged that they had given him money.
52. Counsel for the Claimant continued taking PC Dinoo through the First Joefield Statement. PC Dinoo agreed that according to the First Joefield Statement, Ms Joefield told him that on 29 September 2014, she met Ms Prince at her home in La Romaine and after conversations between them relating to the Claimant, they both realized that they were deceived and he had taken their money. Ms Joefield stated that when she realised this, she called the Claimant about it and he threatened to kill her “because she was lying on him.” She further stated that she told the Claimant that she would report him to Santana, and he stated that if she reported him, he would kill Santana as well. He accepted that at the time Mr Santana was a First Division Officer attached to the Southern Division of the Police Service and he resided in Gasparillo.

However, PC Dinoo testified that he was unable to recall if he had asked the Claimant about these threats during the course of the interview.

53. Counsel for the Claimant also took PC Dinoo through the First Prince Statement. PC Dinoo testified in cross-examination that in the First Prince Statement, Ms Prince alleged that sometime in August 2014 while she was in Gulf City Mall, the Claimant, who was a friend of Ms Joefield met with her and she gave him \$5000.00. She alleged that the person who had lent her the cash, wanted to kidnap her if she did not repay the money. PC Dinoo testified that despite hearing this he did not inquire whether Ms Prince had made a report to the police of that incident/threat or the phone number from which these threats were being made.
54. PC Dinoo accepted in cross-examination that Ms Prince had also stated in the First Prince Statement that she only became aware that the persons who she had borrowed money from were asking about it and had visited Ms Joefield at her home, when the said Ms Joefield visited her home on the 25 September 2014. PC Dinoo accepted that he did not recognize that the First Joefield Statement had failed to mention that she had received a visit from the person that Ms Prince had borrowed the money from.
55. PC Dinoo also testified in cross-examination that he had received the Claimant's address from Ms Joefield and that it could have been easily located. However, he only visited the address on the 17 October 2014 in the early hours of the morning, where he found the Claimant, told him of the alleged offence which the latter denied and escorted him to the San Fernando Police Station.
56. The Claimant's evidence in chief as set out in his witness statement mirrored the facts set out in his pleaded case. According to the Claimant's witness statement, on the 17 October 2014 at about 3:15 a.m., he was at home when police officers attached to the San Fernando CID came to his home which is located at 20 Padmore Street San Fernando. He was questioned by PC Dinoo who identified himself as a police officer and told him that he was investigating a report of larceny, wherein it was alleged that the Claimant had stolen the total sum of \$11,000.00 from Ms Prince and one Ms

Joefield. PC Dinoo also told him that it was alleged that he had made threats to the lives of Ms Prince and Ms Joefield.

57. The Claimant denied those allegations. PC Dinoo arrested the Claimant and took him to the San Fernando Police Station. The Claimant stated that he was unable to recall the exact time he reached in the police station, but he knew that it was still dark and that it was sometime after 3:00 am or before 4:00 am.
58. The Claimant testified in cross-examination that at his home PC Dinoo had stated that he was investigating a report of larceny made by Ms Prince and Ms Joefield, and he informed him that he was a suspect. The Claimant denied the allegations but he admitted that he had known Ms Joefield for 10 years. He also denied taking money from her or Ms Prince.
59. Based on PC Dinoo's evidence, the nature of the offences which Ms Joefield and Ms Prince reported against the Claimant amounted to larceny and intent to defraud.
60. Section 9 of the Summary Offences Act²⁰ states,

"Any person who is guilty of the larceny or the attempt to commit the larceny of any chattel, money, or valuable security, such larceny not being accompanied by burglary or housebreaking, menace or threat, nor amounting to robbery with violence, or who embezzles, or by any false pretence obtains or attempts to obtain from any other person with intent to defraud, any chattel, money, or valuable security, where such chattel, money or valuable security does not in any case exceed the value of two thousand dollars, is liable to a fine of three thousand dollars or to imprisonment for six months."
61. While, section 34(1) of the Larceny Act²¹ states,

"Any person who, by any false pretence, with intent to defraud, obtains from any other person any chattel, money, or valuable security, or causes or procures any money to be paid, or any chattel or valuable security to be

²⁰ Chap 11:02

²¹ Chap 11:12

delivered, to himself or to any other person for the use or benefit or on account of himself or any other person, is liable to imprisonment for five years."

62. At the time the Claimant was arrested PC Dinoo had the following information in his possession: the First Report which was supported by the First Station Diary Extract; the First Joefield Statement and the First Prince Statement. Therefore, all the information which PC Dinoo had were the allegations made by Ms Prince and Ms Joefield.
63. PC Dinoo's evidence in cross-examination clearly demonstrated that he failed to conduct any investigation, to determine the veracity of the allegations which Ms Joefield and Ms Prince had made against the Claimant, before he took the decision to arrest the Claimant.
64. PC Dinoo did not enquire from Ms Joefield the particulars concerning the phone calls in which she alleged the Claimant issued threats to her; he did not ascertain the telephone number from which the call was made, or the date and/or time of the said call; and he did not check Ms Joefield telephone records to confirm that she had received the said phone calls. Further, PC Dinoo did not even check any CCTV footage to ascertain if Ms Joefield and/or Ms Prince were at the locations where they allegedly gave money to the Claimant; and he did not conduct any enquiries to ascertain where they obtained the money which they said they gave to the Claimant. Further, PC Dinoo did not make any further enquiries to resolve the discrepancy between the First Joefield Statement and the First Prince Statement, which he admitted in cross-examination that he had observed.
65. In my opinion, the verification of the allegations made by Ms Joefield and Ms Prince were important, as there were inconsistencies in the information in the First Report as recorded in the First Station Diary Extract, the First Joefield Statement and the First Prince Statement. In particular, the reason Ms Joefield indicated for giving the Claimant the sum of \$4000.00 TT was different in the First Station Diary Extract and the First Joefield Statement. Further, in the First Report as recorded in the First Station

Diary Extract, Ms Prince reported that she gave money to the Claimant on the 26 August 2014 and 2 September 2014. However, in the First Prince Report she stated that she only became aware after those dates, on the 25 September 2014, that the person she had borrowed money from was asking about it. Further, the First Joefield Statement did not corroborate the First Prince Statement, that Ms Joefield had told Ms Prince on the 25 September 2014 while at Ms Prince's home, that the persons who Ms Prince had borrowed money from had visited Ms Joefield at her home and asked about their money.

66. In my opinion, a prudent and cautious person placed in the same position as PC Dinoo would have made the aforesaid enquiries. Based on the lack of verification and aforesaid inconsistencies, even before PC Dinoo visited the Claimant, he did not have any objective information to form the opinion that the Claimant had committed any offence. Indeed, PC Dinoo's evidence in his witness statement was that he was told by an Inspector in CID to detain the Claimant for questioning. So on PC Dinoo's own evidence, he did not form any general suspicion based on any facts he had in his possession. Further, the purpose of visiting the Claimant's home was not to arrest him but to detain him so that he could be interviewed, which implied that he did not have reasonable and probable cause at that time to arrest the Claimant.
67. In any event, PC Dinoo accepted in cross-examination that he had arrested the Claimant at his home on 17 October 2014 and PC Dinoo did not even attempt to interview the Claimant and/or verify the Claimant's version about the allegations made against him by Ms Prince and Ms Joefield before he arrested the Claimant.
68. For these reasons, I have concluded that the Claimant was wrongly arrested and detained on the 17 October 2014.

HAS THE CLAIMANT ESTABLISHED AN ABSENCE OF REASONABLE AND PROBABLE CAUSE ON THE PART OF PC DINOO TO CHARGE HIM FOR THE OFFENCE OF LARCENY AND INTENT TO DEFRAUD?

69. The Claimant's particulars of lack of reasonable and probable cause by PC Dinoo in charging him for the offence of larceny, were that PC Dinoo charged him without any evidence and/or sufficient evidence; and PC Dinoo failed to investigate the information given by the Claimant before charging him.
70. It was not in dispute that the Claimant was charged for three (3) offences, namely one (1) offence contrary to section 9 of the Summary Offences Act²² and two (2) offences contrary to section 34(1) of the Larceny Act²³.
71. The essential ingredients for a malicious prosecution claim as set out in **Clerk & Lindsell on Torts**²⁴ 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.”
72. The test for whether there is reasonable and probable cause has both subjective and objective elements. In **Harold Barcoo v the Attorney General of Trinidad and Tobago**,²⁵ 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

²² Chapter 11:02

²³ Chapter 11:12

²⁴ 20th ed. At page 1070, para 16:09

²⁵ H.C.A. No. 1388 of 1989

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?”

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

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

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

74. 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**²⁶ 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.”)

75. The Privy Council in **Trevor Williamson v The Attorney General of Trinidad and Tobago**²⁷ at paragraphs 11-13, repeated the relevant law with respect to a claim for malicious prosecution as:

“11. In order to make out a claim for malicious prosecution it must be shown, among other things, that the prosecutor lacked reasonable and probable cause for the prosecution and that he was actuated by malice. These particular elements constitute significant challenge by way of proof. It has to be shown that there was no reasonable or probable cause for the launch of proceedings. This requires the proof of a negative proposition, normally among the most difficult of evidential requirements. Secondly, malice must be established. A good working definition of what is required for proof of malice in the criminal context is to be found in **A v NSW [2007] HCA 10; 230 CLR 500**, at para 91:

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

12. An improper and wrongful motive lies at the heart of the tort, therefore. It must be the driving force behind the prosecution. In other words, it has to be shown that the prosecutor’s motives is for a purpose other than bringing a person to justice: **Stevens v Midland Counties Railway Company (1854) 10 Exch 352, 356 per Alderson B and Gibbs v Rea [1998] AC 786, 797D**. The wrongful motive involves an intention to manipulate or abuse the legal system **Crawford Adjusters Ltd (Cayman) v Sagikor General**

²⁶ [1938] AC 305 at page 309

²⁷ [2014] UKPC 29

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.”

76. It was not in dispute that the Claimant has proven that he was charged with the offences of intention to defraud Ms Prince and Ms Joefield of certain sums of money on certain dates under section 9 of the Summary Offences Act and section 34(1) of the Larceny Act; and that the proceedings were dismissed against the Claimant on the 11 September 2017 by a Magistrate sitting in the San Fernando First Magistrate’s Court. The onus was on the Claimant to prove that the arresting officer, PC Dinoo did not have reasonable and probable cause to charge him for the aforementioned offences and that he instituted and carried out the proceedings against him maliciously.
77. Having concluded that PC Dinoo did not have reasonable cause to arrest the Claimant, the next step is to consider what additional information he had before he charged the Claimant.
78. The Claimant stated in his witness statement that at the police station, he was interviewed by PC Dinoo and PC Rahim during the period 4:00 a.m. and 6:25 a.m. on 17 October 2014. He attached a copy of that interview to his witness statement as “C. A. 1” (“the Claimant’s Interview Notes”). According to the Claimant, in the interview he admitted knowing Ms Joefield for approximately 10 years but he categorically denied ever taking any money from either her or Ms Prince. He also informed the interviewing police officers, that he did not obtain any money from Ms Joefield or Ms Prince and that it was Ms Joefield and Ms Prince, who were attempting to obtain money from him because they had indicated to him that they were trying to help someone to gain access to the sum of ‘\$500,000.00 United States currency from Ghana’. The Claimant also stated that he provided a full account of the circumstances surrounding his knowledge and interaction with Ms Joefield and Ms Prince. He also gave the names of other persons who could have assisted in the investigations during

the said interview. The Claimant also stated that after the interview he was placed in a cell and kept until 18 October 2014, when he was charged with the aforesaid offences.

79. The Claimant was cross-examined about the interview that had been conducted by PC Dinoo at the police station; the contents of the Claimant's Interview Notes; and his relationship with Ms Joefield, Ms Prince and Chubby.
80. In cross-examination, the Claimant testified that after he was arrested, he was taken to the San Fernando Police Station where he was interviewed by PC Dinoo. He was unable to recall if PC Rahim was present, but testified that PC Mohammed had been present during the interview.
81. The Claimant confirmed in cross-examination that in the Claimant's Interview Notes, he had stated that he knew Ms Joefield for 10 years, as they were colleagues at work but they were not friends and that he had met Ms Prince through Ms Joefield. He was unable to recall where he met Ms Prince. He also admitted that he knew that both Ms Prince and Ms Joefield needed money and that Ms Prince had borrowed \$7,000.00TT from Chubby and his brother in 2014, but he denied taking money from either Ms Joefield or Ms Prince. He accepted that in the Claimant's Interview Notes he stated "a few months ago" he met Ms Prince and Ms Joefield, where they all conversed and Ms Prince stated that she needed money. He stated after that conversation, he received a telephone call from Ms Joefield where she stated that she needed \$1500.00 and he also received a telephone call from a man who introduced himself as her father and who enquired when he was getting his money. The Claimant testified in cross-examination that he provided the records about the said telephone calls.
82. The Claimant also testified in cross-examination that he was aware that Ms Prince was expecting \$500,000.00 USD from Ghana, but she needed money in order to get that money. According to the Claimant, Ms Prince showed him receipts from Western Union where she had already sent money to a man in Africa, using money she and Ms Joefield had borrowed from Chubby's brother. The Claimant stated that he had no

personal relationship with either Chubby or his brother and that he only recently became aware of Chubby's real name (which is Andrew Cooper) and he was unsure whether Chubby's brother's name was Auguste or Ogiste. The Claimant also testified that he knew Chubby and his brother due to the nature of his job because he saw them around periodically. The Claimant stated that in 2014, he was a safety officer and he oversaw several projects and while working at Damus, he was either assigned to oversee the workers or safety officers who were employed, depending on the location.

83. The Claimant also testified in cross-examination that he was aware that PC Dinoo had taken statements from Ms Prince and Ms Joefield, but he was unable to recall the date.
84. The Claimant's evidence in cross-examination on his relationship with Ms Joefield and Ms Prince and the reason they needed money, was consistent with the contents of the Claimant's Interview Notes.
85. PC Dinoo stated in his witness statement that he interviewed the Claimant at the San Fernando Police Station in the presence of PC Rahim and the interview was completed at approximately 6:25 am. The Claimant read over the Claimant's Interview Notes, signed each page and he and PC Rahim then placed their signatures on each page. He attached a copy of the Claimant's Interview Notes to his witness statement as "V.D.5".
86. PC Dinoo also stated that in or about lunch time on the same day that he recorded the Claimant's Interview Notes, he continued to make further enquires. He took further statements from Ms Prince, Ms Joefield and a statement was also taken from Avery Auguste ("Mr Auguste") by Acting Inspector Persad. He stated that after submitting his file to his superior, he was advised to take a further statement from Ms Prince and Ms Joefield to acquire further information and clarification.
87. PC Dinoo attached a copy of the statement he recorded from Ms Prince on 17 October 2014 ("the Second Prince Statement") to his witness statement as "V.D 6". According to PC Dinoo, in the Second Prince Statement, Ms Prince provided more details in

relation to the transaction and she clarified her relationship with Ms Joefield as her cousin. In the First Prince Statement, Ms Prince had mentioned that Ms Joefield was a friend. Further, Ms Prince provided the names of the persons from whom she borrowed the said money as “Chubby” and “Avery” and she provided the reason she had borrowed the money, which was that she needed it in order to get some money from the United States.

88. PC Dinoo attached a copy of the statement he recorded from Ms Joefield on 17 October 2014 (“the Second Joefield Statement”) to his witness statement as “V.D 7”. According to PC Dinoo, in the Second Joefield Statement, Ms Joefield also clarified her relationship with Ms Prince as being her cousin. Ms Joefield provided details of the arrangements concerning the collection of money by Ms Prince. Ms Joefield indicated that the said money was collected from her co-worker, Andre Cooper, also known as “Chubby’s brother” and a man named “Avery from Moruga”. She also confirmed that the said money was for Ms Prince to use to collect some money from the United States.
89. PC Dinoo stated that he obtained a statement from Mr Auguste (“the Auguste Statement”) on the 17 October 2014, which he attached to his witness statement as “V.D. 8”. According to PC Dinoo, Mr. Auguste stated in the Auguste Statement, that he borrowed the sum of \$7,000.00 from the Police Credit Union and confirmed that he loaned the said sum to Ms Prince and Ms Joefield. Mr Auguste also outlined details which corroborated Ms Prince’s and Ms Joefield’s information on the arrangement and circumstances surrounding him lending them the said sum. Mr Auguste further stated that he did not authorize anyone to collect the said money on his behalf and he did not know the Claimant.
90. PC Dinoo explained that he did not take a statement from Andre Cooper since Ms Prince and Ms Joefield did not borrow any money from him. According to PC Dinoo, the Auguste Statement confirmed that Mr Auguste had lent the monies to Ms Prince and Ms Joefield. PC Dinoo stated that he attempted to acquire a copy of the said

cheque which Mr Auguste stated he had received from the Police Credit Union, however, he was unsuccessful.

91. According to PC Dinoo, after compiling the file, he received instructions from his superior to charge the Claimant. On the 19 October 2014 he then formally charged the Claimant with one offence contrary to section 9 of the Summary Offences Act and 2 offences contrary to section 34(1) of the Larceny Act. He served the Claimant with the Notice to Prisoner on the said date and he attached a copy to his witness statement as "V.D. 9".
92. PC Dinoo was cross-examined on his ability to locate the Claimant before charging him; the interview which he conducted with the Claimant; the reasons he sought to obtain the Second Prince Statement and the Second Joefield Statement; the contents of both Statements provided by Ms Prince and Ms Joefield, as well the Auguste Statement.
93. According to PC Dinoo, at the time of proffering of the charges against the Claimant the latter had no previous convictions or pending criminal matters. He knew that the Claimant was residing at 20 Padmore Street San Fernando and he could have been easily found. He accepted that it would have been prudent to release the Claimant and to do a proper investigation before laying any charges, because he could have been easily found.
94. PC Dinoo testified in cross-examination that the Claimant co-operated fully with the investigators. During the said interview, the Claimant again denied the allegations and he gave an account of the circumstances under which he knew Ms Joefield and Ms Prince. PC Dinoo also stated that at no time during the interview he indicated to the Claimant the precise dates and times that he allegedly obtained the money from either Ms Prince or Ms Joefield.
95. PC Dinoo also testified in cross-examination that during the interview, the Claimant gave an account of the circumstances under which he knew Ms Joefield and Ms Prince

and the Claimant denied taking any money from either of them. PC Dinoo admitted that he did not make any inquiries into the Claimant's whereabouts on the dates when Ms Joefield and Ms Prince alleged they gave him money. He also admitted that he did not attempt to obtain the CCTV footage of those areas, for the date and times mentioned by Ms Joefield and Ms Prince, to ascertain whether either of them or the Claimant could be identified.

96. According to PC Dinoo, during the interview the Claimant stated that he was approached by Ms Joefield and Ms Prince with respect to \$500,000.00 US which they were supposed to collect from Ghana. The Claimant also stated that he had been receiving emails from Ms Prince. However, PC Dinoo admitted that he did not request copies of these emails or make inquiries of either Ms Prince or Ms Joefield about the emails or the monies mentioned to him by the Claimant. PC Dinoo also testified that during the interview, the Claimant mentioned that Ms Joefield's father had called him and asked him about \$7000.00, that the Claimant had reportedly borrowed from him. He admitted that Mr. Joefield was not interviewed in relation to the investigation and that he did not make any inquiries of Ms Joefield to ascertain whether she knew about the telephone calls by her father to the Claimant.
97. PC Dinoo also stated that during the interview, the Claimant had stated that Ms Joefield became aggressive towards him and started calling him on his cell phone, making visits to his house and making certain comments to him. The Claimant also stated that Ms Joefield had indicated that Santana was her neighbour and that "she will make him get lock up", and she will talk to her father who is an ex-police officer. PC Dinoo admitted that he did not inquire about the telephone number the Claimant had received the call from Ms Joefield. PC Dinoo also admitted in cross examination that he knew Cecil Santana was a police officer attached to the Southern Division i.e. the Police Division in which the San Fernando CID is located. He was also aware that at that time Cecil Santana resided at Gasparillo. PC Dinoo admitted that he did not seek to ascertain whether Mr Cecil Santana was the neighbour of Ms Joefield. He also did not seek to ascertain whether Ms Joefield's father was a former police officer.

98. PC Dinoo further stated in cross-examination that during the interview with the Claimant, he first heard about the sum of \$500,000.00 US which involved both Ms Prince and Ms Joefield. He also stated that the Claimant spoke of a 'rift' between Ms Prince and Ms Joefield and from his investigation he agreed that the Claimant was speaking the truth. He accepted that he did not act properly as he did not seek to clear up the issues spoken of by the Claimant during the interview, although it was the first time he was made aware of those issues. Further, he did not re-interview the Claimant prior to the laying of the charges, notwithstanding that he recorded three additional statements after conducting the interview with the Claimant.
99. PC Dinoo was taken through the Second Prince Statement. He agreed that Ms Prince had not mentioned any of the things that the Claimant had shared with him during his interview on the 17 October 2014. He admitted that he did not seek verification or clarification from Ms Prince in relation to the information recorded in the Claimant's Interview Notes. He agreed that he only learnt from the Second Prince Statement that sometime in July, Ms Prince had told Ms Joefield that she needed \$7000.00TT to obtain some money from the US. PC Dinoo accepted that the Second Prince Statement raised some concerns and he needed to take a closer look at the information.
100. PC Dinoo noted that in the Second Prince Statement, it was the first time Ms Prince indicated that the Claimant allegedly called her phone and told her that "Chubby and dem have people passing by her house and they want to kidnap her". However, he admitted that he did not ask Ms Prince for any details about that phone call, such as the number from which it was made or whether she spoke with Ms Joefield about it. PC Dinoo also testified in cross-examination that Ms Prince also stated that a rift had developed between herself and Ms Joefield, which he had learned about from the Claimant on an earlier date, but he did not request further details from her about the rift.
101. PC Dinoo was taken through Ms Joefield's Second Statement. He agreed in cross-examination that this was the first time Ms Joefield had (i) mentioned the name of the person whom she and Ms Prince had allegedly borrowed money from; (ii) mentioned

that both herself and Ms Prince had also borrowed money from the Claimant so that they could obtain money from the US (iii) indicated that she met with the Claimant in KFC San Fernando and that whilst there he told her that the person from whom Ms Prince had borrowed money wanted to kill her; (iv) indicated that the Claimant allegedly told her that he would collect the money from Ms Prince and split it; (v) stated that she had refused the Claimant's offer to split the money but he kept texting her about it; and (vi) indicated that after she gave the Claimant the money, "Chubby and them" came to her home and threatened to kill her. He admitted that he did not ask Ms Joefield to see the text messages between the Claimant and herself, or inquire whether she had reported the threat to the police. PC Dinoo accepted that although several issues arose from the Second Joefield Statement he did not attempt to interview the Claimant again.

102. PC Dinoo was shown the Auguste Statement. He accepted that Mr Auguste stated that he went to the Police Credit Union in San Fernando and applied for a loan of \$7000.00TT and that he received a cheque in that amount. He also stated that Mr Auguste indicated that while he was at the Police Credit Union, Chubby, Ms Joefield and Ms Prince met him there.
103. PC Dinoo agreed in cross-examination that neither Ms Joefield nor Ms Prince stated in any of their statements anything about (i) going to the Police Credit Union; (ii) Mr Auguste's name; or (iii) that they had allegedly borrowed money from anyone. PC Dinoo testified that he made checks and he was able to confirm that Mr Auguste had obtained a loan from the Police Credit Union in that amount, but he was unable to obtain a copy of the cheque.
104. It was submitted on behalf of the Claimant, that it was clear from the evidence of PC Dinoo, that he failed to conduct a proper investigation as an investigator/police officer with over 24 years' experience. Counsel also submitted that if PC Dinoo had conducted a proper investigation, he would not have had any objective facts as a basis for him to have reasonable and probable cause to charge the Claimant.

105. Counsel for the Defendant instead argued that the Claimant's claim of malicious prosecution must fail, as at the time the Claimant was charged PC Dinoo had sufficient information from the First Report, the First Prince Statement, the Second Prince Statement, the First Joefield Statement, the Second Joefield Statement, the Claimant's Interview Notes and the Auguste Statement.
106. In my opinion, the admissions made by PC Dinoo on the information which he failed to obtain in order to verify the allegations made against the Claimant, demonstrated that he did not have adequate objective facts. In failing to obtain these adequate objective facts, PC Dinoo did not have reasonable and probable cause to charge the Claimant for the offence of larceny and intent to defraud.
107. In particular, PC Dinoo was unable to objectively verify that Mr Auguste lent Ms Prince and Ms Joefield the sum of \$ 7,000.00 TT, as he was unable to acquire a copy of the cheque from the Police Credit Union. This objective information was material as this was the sum of money Ms Prince and Ms Joefield alleged they had paid over to the Claimant.
108. PC Dinoo also did not have the CCTV recording of the areas, at the dates and times which Ms Prince and Ms Joefield alleged they met the Claimant and paid the sums of money to him. Again, this CCTV recording was important since PC Dinoo had 2 diametrically opposite versions of any money being paid to the Claimant. In my opinion, the CCTV recording would have been a contemporaneous record which would have independently verified to PC Dinoo which version was more reliable.
109. Further, PC Dinoo conducted no investigation to determine the veracity of the allegations which Ms Prince and Ms Joefield made on the relationship between the Claimant and Chubby and/or Chubby's brother. In my opinion, this was important as the Claimant admitted in the interview that he knew Chubby and his brother but he did not receive any money from Ms Prince and/or Ms Joefield.
110. Ms Joefield reported that the Claimant allegedly threatened her and threatened to kidnap her. However PC Dinoo did not ask her whether she made a report of those

threats to the police prior to 25 September 2014, but in hindsight he believes that he should have asked her that question. Further during the interview with the Claimant, he did not inform him of any report of threats made by Ms Joefield. In my opinion, this omission meant that PC Dinoo did not attempt to verify the allegation made by Ms Joefield against the Claimant.

111. PC Dinoo did not conduct any investigation surrounding the allegation made by Ms Joefield in the Second Joefield Statement, where for the first time she alleged that after she gave the money to the Claimant she indicated that “Chubby and them” visited her home and threatened her. In my opinion, if Ms Joefield believed that her life was being threatened, it was more probable that she would have reported these threats to the police service. However, PC Dinoo made no such enquiries.
112. PC Dinoo was told by the Claimant in the interview that it was Ms Joefield who threatened to report him to Mr Santana, a senior police officer. PC Dinoo knew Mr Santana was an officer attached to the First Division of the Police Service in the Southern Division and that he resided in Gasparillo which was in the same area that Ms Joefield stated she resided. In order to determine the veracity of the Claimant’s allegation of the threat made by Ms Joefield, it was incumbent on PC Dinoo to interview Santana to determine if the latter knew Ms Joefield; the nature of the relationship between Santana and Ms Joefield; and whether Santana was the neighbour of Ms Joefield. However, he failed to do so, which meant that he had no objective information concerning this alleged threat.
113. PC Dinoo also failed to ascertain whether Ms Joefield’s father was a former police officer. This was material as the Claimant had alleged that Ms Joefield’s father had called him and made inquiries about the money. Again, if PC Dinoo had made any further enquiries by interviewing Ms Joefield’s father, he would have ascertained if the latter was a former police officer and he would have obtained a telephone contact number from him to conduct further investigations. In this regard, there was also no evidence from PC Dinoo that he obtained from the Claimant the alleged telephone number from which Ms Joefield’s father made that call.

114. Ms Joefield indicated to PC Dinoo that the Claimant had called her on her telephone on several occasions. However, PC Dinoo did not ascertain the telephone number the Claimant allegedly contacted her from and what time the calls were allegedly made. Further, when the Claimant was arrested and subsequently interviewed, he did not ask the Claimant to provide his telephone number. In the absence of making these inquiries, PC Dinoo had no objective basis that the said telephone calls were made by the Claimant to Ms Joefield.
115. Further, notwithstanding that the Claimant, during the said interview told him that he was in possession of emails from Ms Prince and Ms Joefield that could have supported his assertions, he did not ask the Claimant for those emails to verify the Claimant's version.
116. During the interview, the Claimant also stated that he received a telephone call from Ms. Joefield's father, as well as other telephone calls from Ms Joefield and Ms. Prince. However, PC Dinoo did not seek to verify this information.
117. The Claimant during the interview spoke of 'rift' between Ms Prince and Ms Joefield and from his investigation he agreed that the Claimant was speaking the truth. He further accepted that he did not do the proper thing by not seeking to clear up the issues spoken of by the Claimant during the interview, although it was the first time he was made aware of those issues. Further, he did not re-interview the Claimant prior to the laying of the charges, notwithstanding that he recorded three further statements from Ms. Joefield and Ms. Prince after conducting the interview with the Claimant. Most importantly, he stated that Ag. Inspector Persad gave him instructions to charge the Claimant, however, he did not give him instructions to clear up any of the issues raised by the Claimant during his interview.
118. Therefore the objective facts which PC Dinoo had at the time he charged the Claimant were: (a) the Claimant knew both Ms Joefield and Ms Prince; (b) the Claimant knew Chubby and his brother due to the nature of his work as a safety officer; (c) the

Claimant knew that Ms Prince and Ms Joefield had borrowed money from Chubby's brother in order to obtain US money from abroad; and the Claimant co-operated fully with the investigators.

119. PC Dinoo did not have any objective facts concerning: the dates, times and places where Ms Joefield and Ms Prince stated they met the Claimant and gave him money; the emails which the Claimant stated he received from Ms Prince and Ms Joefield; the telephone number which the Claimant used to issue threats to Ms Joefield; the telephone number of Ms Joefield's father from which he called the Claimant; whether Ms Joefield's father was a police officer; the telephone number from which Ms Joefield issued a threat to the Claimant using Santana's name; whether Santana knew Ms Joefield; and the \$7,000.00 TT which Mr Auguste lent Ms Prince which was obtained from the Police Credit Union.
120. In my opinion, a reasonable man who is assumed to know the law on the offences of larceny and intention to defraud and who had the aforesaid objective facts which PC Dinoo had in his possession, would not have believed that there was reasonable and probable cause to charge the Claimant for the said offences.

HAS THE CLAIMANT PROVEN THAT PC DINOO WAS ACTUATED BY MALICE IN INITIATING PROCEEDINGS AGAINST HIM?

121. In the Claimant's particulars of malicious prosecution the Claimant pleaded that the complainant, in this case PC Dinoo, was prepared "to lie under oath" to secure a conviction against the Claimant; the complainant, PC Dinoo, failed to attend Court and/or take any reasonable steps to secure the attendance of the virtual complainants to prosecute the charge against the Claimant.
122. It was submitted on behalf of the Claimant that there was a clear absence of any reasonable and probable cause by PC Dinoo, in proffering the said charges against the Claimant and on this basis the Court can properly infer malice and/or improper

motives. The Claimant further submitted that in proffering the said charges, it may have been the desire of PC Dinoo to complete the investigation in a speedy manner or his hope that the laying of charges on the Claimant would reflect well on him.

123. Counsel for the Defendant submitted that the Claimant failed to prove that PC Dinoo acted with any malice or improper motive in charging the Claimant for the offences of larceny and intention to defraud. Counsel further submitted that at the time of charging the Claimant, PC Dinoo had sufficient information from the report and statements received to form reasonable and probable cause to charge.

124. In the Privy Council decision of **Williamson** at paragraph 11, the Board, referred to **A v NSW**²⁸ and set out a definition of what is required for proof of malice as follows:

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

125. At paragraph 13 of **Williamson** the Board stated:

“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.”

126. This high threshold of malice was again reiterated and applied by Bereaux JA in **Attorney General of Trinidad and Tobago v Kevin Stuart**²⁹. At paragraph 36, Bereaux JA pronounced that the imputation of malice should not be made lightly when he stated the following:

“Absence of reasonable and probable cause, in certain circumstances can lead to an inference that the laying of the charge was malicious. But such

²⁸ [2007] HCA 10.

²⁹ Civ Appeal P 162 of 2015

an imputation is not to be lightly made. Indeed, courts should proceed with caution. See Mendonça JA in Manzano (supra) where he noted:

“In *A v State of New South Wales* the Court however interjected this caution when inferring malice from the absence of reasonable and probable cause (at para. 90): ‘No little difficulty arises, however, if attempts are made to relate what will suffice to prove malice to what will demonstrate absence of reasonable and probable cause. In particular, attempts to reduce that relationship to an aphorism - like, absence of reasonable cause is evidence of malice (cf *Johnstone v Sutton* (1786) 1 TR 510 at 545 per Lord Mansfield and Lord Loughborough: ‘From the want of probable cause, malice may be, and most commonly is, implied’; *Varawa v Howard Smith Co Ltd* (1911) 13 CLR 35 at 100 per Isaacs J: ‘[T]he want of reasonable and probable cause is always some, though not conclusive, evidence of malice...’ but malice is never evidence of want of reasonable cause (cf *Johnstone v Sutton* 91786) 1TR 510 at 545 per Lord Mansfield and Lord Loughborough [99 ER 1225 at 1243]: ‘From the most express malice, the want of probable cause cannot be implied...’) - may very well mislead. Proof of particular facts may supply evidence of both elements. For example, if the plaintiff demonstrates that a prosecution was launched on obviously insufficient material, the insufficiency of the material may support an inference of malice as well as demonstrate the absence of reasonable and probable cause. No universal rule relating proof of the separate elements can or should be stated.’

It may therefore be a question of degree whether malice should be inferred from the absence of reasonable and probable cause. If the prosecution was launched on “obviously insufficient material” that may suffice to support the inference of malice.

49. Malice may also be inferred from the absence of honest belief in the merits of the case. Indeed this can provide strong evidence of malice (see *Haddrick v*

Heslop (1848) 116 ER 869).”

127. The essence of malice was described in the leading judgment in **Willers v Joyce**³⁰ 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.”

128. Based on my assessment of PC Dinoo’s failure to conduct any proper investigation before he made the decision to charge the Claimant, it is difficult for me to find that he had a proper motive when he charged the Claimant. It is especially difficult for me to make such a finding, in light of the fact that PC Dinoo admitted in cross-examination that the Claimant co-operated with the investigators and that it would have been prudent of him to release the Claimant and do a proper investigation before the laying of any charges, because the Claimant could have been easily found. For these reasons, I have concluded that the Claimant has proven that PC Dinoo was actuated by malice when he laid the charges against him, as he did not have any proper motive for doing so.

WHETHER THE PERIOD OF DETENTION WAS REASONABLE?

129. The Claimant testified in cross-examination that he was unable to recall the exact time he arrived at the police station, but he knew that it was still dark and that it was

³⁰ [2016] 3 WLR 477

sometime between 3:00 am to 4:00 am in the morning of the 17 October 2014. PC Dinoo's evidence was that he arrived at the Claimant's house at approximately 2:40 am on the 17 October 2014. In light of the evidence, it is reasonable to conclude that the starting point for the Claimant's period of detention was from approximately 3:00 am on the morning of the 17 October 2014.

130. It was not in dispute from the pleadings, that the Claimant remained in custody from 19 October 2014, when he was charged until 20 October 2014 when he was granted bail by a Magistrate and which he accessed on the same day.
131. It was submitted on behalf of the Claimant that his entire period of detention was unlawful. PC Dinoo admitted in cross-examination that the Claimant was arrested on the 17 October 2014. It was also submitted that the Claimant was released on the 20 October 2014 when he was granted bail by the Magistrate
132. It was submitted on behalf of the Defendant that the Claimant's period of detention from the date of the arrest until he was charged was justified, as PC Dinoo required time to receive the Second Prince Statement, the Second Joefield Statement and the Auguste Statement.
133. Having concluded that PC Dinoo did not have reasonable and probable cause to arrest and charge the Claimant and that PC Dinoo was motivated by an improper purpose when he charged the Claimant, it follows that the entire period of the Claimant's detention was unlawful.

IS THE CLAIMANT ENTITLED TO DAMAGES AND IF SO WHAT IS THE QUANTUM TO WHICH HE IS ENTITLED TO?

134. In a claim for wrongful arrest, malicious prosecution and false imprisonment, the Claimant is entitled to recover general damages for the imprisonment. The Claimant is also entitled to recover general damages for any physical or mental injury, which

results directly from his imprisonment, as well as damages for the loss of liberty itself, which should reflect the length of the unlawful detention³¹.

135. Moosai J (as he then was) in **Kamal Samdath Ramsaran v Romiel Rush and the Attorney General**³² stated as follows :

“The principal heads of damage for false imprisonment would appear to be the injury, that is, the loss of time considered primarily from a non-pecuniary viewpoint, and the injury to feelings, that is, the indignity, mental suffering, disgrace and humiliation, with any attendant loss of social status. Also damages may be given for any injury to reputation, for as Lawrence LJ said in **Walter v. Attools** (1944) 61 TLR 39, 40, “a false imprisonment does not merely affect a man’s liberty; it also affects his reputation.”

136. In awarding general 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**³³, it was held that a single figure is awarded for all heads of compensatory damage, including aggravated damages. Lord Wolf in **Thompson v Commissioner of Police of the Metropolis**³⁴ 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.”

137. The Claimant stated at paragraphs 4 and 21 of his witness statement that he was arrested from about 3:15 am on 17 October 2014 and detained until 20 October 2014,

³¹ Halsbury’s Laws of England Tort Vol. 97 (2015) paragraph 556

³² H.C.A. No. S-1597/86

³³ Civ App. No. 159 of 1992, at page 9

³⁴ [1998] QB 498

where he appeared before the Magistrate and was granted bail. However, the Claimant did not state the time that he was released. According to paragraph 10 of PC Dinoo's witness statement, at 2:40 am he and a party of officers left the San Fernando Police Station to visit the Claimant's home at 20 Padmore Street San Fernando. At paragraph 12, PC Dinoo stated that at around 3:15 am he and the said officers returned to the said station with the Claimant. This was corroborated by the First Station Diary Extract. The Claimant was therefore detained for a period of approximately 3 days.

138. The Claimant set out his evidence on the injury to feelings at paragraph 26 of his witness statement. He stated that as a result of his arrest he was placed in a cell and he was unfamiliar with the surroundings. The Claimant testified that he was forced to sleep on the concrete floor because no beds and/or mattresses were provided. The cell that the Claimant was placed in, had roaches and at least 2 other persons/individuals who were charged for and/or suspects for other criminal offences. Further, the Claimant had to endure the scent of urine and faeces from a dysfunctional human waste system and on other occasions the scent of 'black disinfectant'; a lack of running water; and a lack of proper ventilation. He also stated that there was no running water and the cell was not properly ventilated. He further stated that he was not permitted to take a bath nor brush his teeth for the entire period of detention.
139. The Claimant also stated that he felt scared for his life and urinated on himself and suffered an anxiety attack on 18 October 2014. He was then taken to the San Fernando General Hospital where he received medical attention and was discharged. The fact that the Claimant was taken to the San Fernando General Hospital was not disputed by the Defendant but it disputed the reason.
140. It was submitted on behalf of the Defendant, that the Claimant did not prove that the reason he was taken to the San Fernando General Hospital was because he experienced an anxiety attack, as he did not provide any medical records to support that the Claimant did suffer from such a condition.

141. There was no medical report attached to the Claimant's witness statement to demonstrate that he suffered with a medical condition which causes anxiety attacks and/or that on the said day he was taken to the San Fernando General Hospital and treated for an anxiety attack. In cross-examination, the Claimant admitted that he was unable to recall if he received a medical report.
142. In my opinion, the duty was on the Claimant to request a copy of his medical record from San Fernando General Hospital to prove that he was taken to the said Hospital because he had suffered an anxiety attack. The failure by the Claimant to produce such a report makes it difficult to make such a finding. However, the fact that police officers saw it fit to take the Claimant to the San Fernando General Hospital for treatment, while he was in custody, is sufficient for me to find that he suffered with an ailment which precipitated this visit.
143. In cross-examination, the Claimant testified for the first time that he was handcuffed to a bed at the San Fernando General Hospital. I have attached little weight to this evidence and treated it as lacking in credibility, as if this was important information, it would have formed part of the Claimant's pleaded case and his witness statement.
144. The Claimant's evidence on the injury to his reputation was set out at paragraph 29 of his witness statement. The Claimant stated that prior to this incident he was never arrested, investigated or charged with any criminal offence. Under cross-examination the Claimant accepted that he has not provided any documentary evidence or witness to prove that he has a good character. In my opinion, the evidence on the injury suffered to the Claimant's reputation was limited, as he did not state the manner in which his reputation was injured.
145. The Claimant also stated at paragraphs 30 to 32 of his witness statement that the charges were called on at least 15 times and on each occasion he attended Court. The matter was set for Trial on approximately 5 occasions, before it was eventually dismissed by the Magistrate sitting in the San Fernando First Magistrates Court on 11 September 2017. He annexed to his witness statement a true copy of the Magistrates

Case Book at the San Fernando First Magistrates Court for the 11 September 2017 as “C. A. 3”.

146. The Claimant also stated that Ms Prince and Ms Joefield never once appeared at any of the hearings and that PC Dinoo absented himself on several occasions from the matter as well.
147. According to the Claimant, during the period of the hearing of the matter in the Magistrate’s Court, he continued to receive threats and demands from Ms Joefield seeking to extort money from him to ‘Drop the Case’. He stated that he reported these incidents to the Mon Repos Police Station together with telephone extracts/numbers showing the said telephone calls. However, personnel of the Mon Repos Police Station did not investigate his reports. He was therefore forced to make a report to the Police Complaints Division. To corroborate this evidence he attached to his witness statement a copy of the said report which is marked “C. A. 4”. This aspect of the Claimant’s evidence was unshaken in cross-examination.
148. Counsel for the Claimant submitted that a reasonable award for damages for general damages inclusive of an uplift for aggravated damages is the sum of \$185,000.00.
149. Counsel for the Claimant relied on the several local unreported cases on the quantum of damages to be awarded.
150. Counsel for the Defendant submitted that a reasonable award for damages for false imprisonment should be in the range of \$50,000.00 to \$65,000.00 and for malicious prosecution it should be in the range of \$50,000.00 to \$70,000.00.
151. Counsel for the Defendant also referred the Court to several local unreported cases on the quantum of damages to be awarded.
152. In my opinion, the relevant authorities in the instant matter which guide the Court on the quantum of damages are:

- (a) **Anil Roopnarine v The Attorney-General of Trinidad and Tobago**³⁵. The Claimant sued for, inter alia, unlawful arrest and false imprisonment. There was no claim for damages for malicious prosecution. The Court found that the time which he spent in custody was excessive, by 2 ½ days. On the 3 February, 2017, the Claimant was awarded \$50,000.00 in general damages.
- (b) **Winston Blades, Sterlyn Scipio & Ors v The Attorney General of Trinidad and Tobago**³⁶. The Claimant, Emmanuel Scipio filed a claim for malicious prosecution which lasted over 7 years and was detained for a period of less than 2 weeks. On 19 July 2017 the Court awarded the sum of \$60,000.00.
- (c) **Frank and Bathazar v The Attorney General of Trinidad and Tobago**³⁷; The Claimants were detained from the 9 to the 12 August, 2011. The Claimants were awarded a sum of \$65,000.00 each on 10 January 2018.
- (d) **Miguel Benoit v PC Keston Hanooman No. 18725 & Ors.**³⁸ The Claimant was charged with the offences of escaping lawful custody, throwing missiles, using obscene language and possession of a weapon. The Claimant was detained for 3 days and 1 hour prior to attending court. As a result of his arrest and charge a picture of him appeared in the newspapers. Prior to his arrest he has never been arrested and charged. On 9 October 2019, the Court awarded the Claimant the sum of \$75,000.00 inclusive of an uplift in aggravated damages for false imprisonment and \$50,000.00 for malicious prosecution.
- (e) **Azim Hosein v The Attorney General of Trinidad and Tobago**³⁹. The Claimant was an ex-police officer and was arrested and charged by officers. He was detained for approximately 9 hours. He was taken to court the next day and the matter was dismissed. As a result of his arrest he became depressed and failed to fulfil his religious and work obligations. The Claimant being diabetic, also was not fed while he was detained. On 11 February 2020, the Court awarded the sum of \$75,000.00 with an uplift for aggravated damages for both false imprisonment and malicious prosecution.

³⁵ CV 2013-04439

³⁶ CV 2015-00198

³⁷ CV 2015-02719

³⁸ CV 2017-01506

³⁹ CV 2014-03962

153. In arriving at an award for damages, I have considered that the period of detention was 3 days. The period for the prosecution was from the date the Claimant was charged on 18 October 2014 until the charges were dismissed on 11 September 2017. During that period the matter was called before the Magistrate at least 15 times and on each occasion the Claimant attended. I have also taken into account that the Claimant's evidence on the filthy conditions of the cell, in which he was kept during his detention was unshaken in cross-examination; and during the time he was in detention he became ill to the extent that he had to be taken for treatment at the San Fernando General Hospital.
154. In my opinion, a reasonable range for the award of general damages for the period of detention is between \$60,000.00 and \$70,000.00. I have found that the conditions of the cell in which the Claimant was kept was an aggravating factor and for this reason I award the higher limit of the range of \$70,000.00, for the false imprisonment of the Claimant, which includes an uplift for aggravated damages.
155. With respect to the award of damages for malicious prosecution, in my opinion, a reasonable range for the award of general damages is between \$60,000.00 and \$70,000.00. I have found that the failure by PC Dinoo to attend Court when the matter was called, the reasons adduced for his failure to do so and that the Claimant was subjected to threats from Ms Joefield for the duration of the matter in the Magistrate's Court were aggravating factors. For these reasons, I award the higher limit of the range of \$70,000.00 for the malicious prosecution claim which includes an uplift for aggravated damages.

EXEMPLARY DAMAGES

156. Although the Claimant made a claim for exemplary damages, Counsel for the Claimant did not address this claim in his written submissions.

157. It was submitted on behalf of the Defendant that the circumstances in the instant matter do not warrant an award of exemplary damages, as the Claimant has not particularised in his pleadings the facts which give rise to such an award and that the Court in **Bernard Baptiste v The Attorney General of Trinidad and Tobago and Premchand Seepersad**⁴⁰ did not award exemplary damages for this reason.
158. Exemplary damages may be awarded where there is the presence of outrageous conduct disclosing malice, fraud, insolence and cruelty. In **Rookes v Barnard**,⁴¹ 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.
159. The function of exemplary damages is not to compensate, but to punish and deter, and 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**⁴² 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 ...” .
160. 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:
- (i) A plaintiff cannot recover exemplary damages unless he is the victim of the punishable behaviour;
 - (ii) An award of exemplary damages should be moderate; and

⁴⁰ HCA 3617 of 2001

⁴¹ [1964] AC 1129

⁴² P.C.A No. 71 of 2007

(iii) Awards of exemplary damages should be considered in light of the means of the parties.

161. In addition to the three criteria set out by Lord Devlin, the learned authors of **McGregor on Damages**⁴³ set out additional criteria as:

- (i) The conduct of the parties;
- (ii) The relevance of the amount awarded as compensation;
- (iii) The relevance of any criminal penalty;
- (iv) The position with joint wrongdoers; and
- (v) The position with multiple claimants.

162. I have decided against making any award for exemplary damages as there were no facts which were particularised by the Claimant which could form a basis to make such an award. Further, I was not convinced from the evidence that the actions of PC Dinoo were oppressive or calculated by him to make any profit.

SPECIAL DAMAGES

163. It is trite law that the Claimant must plead and prove the item of loss and its value for special damages. It is not enough for the Claimant to assert, he must prove. In **Anand Rampersad v Willies Ice-Cream Ltd**⁴⁴ Archie JA (as he then was) in speaking about special damages stated as follows:

“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’.”

⁴³ 19th Edition at paragraphs 13-033 to 13-044

⁴⁴ Civ Appeal No 20 of 2002

164. The Claimant claimed the sum of \$8,000.00 as legal fees paid for representation at the Magistrates' Court. In my opinion, the Claimant has failed to prove the sum he has claimed as special damages, as there was no documentary proof that the sum claimed was paid and at the Pre-Trial Review I had struck out the said receipts.

INTEREST

165. The award of interest on damages is discretionary pursuant to section 25 of the **Supreme Court of Judicature Act**⁴⁵. The Court of Appeal in **The Attorney General of Trinidad and Tobago v. Fitzroy Brown et al**⁴⁶ 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 were applicable, the Court of Appeal reduced the interest awarded from 9% to 2.5% per annum.

166. Therefore, interest on general damages in the instant matter is awarded at the rate of 2.5% per annum from the date of service of the Claim Form, i.e. 26 October 2018 to the date of judgment.

ORDER

167. Judgment for the Claimant.

168. The Defendant to pay the Claimant general damages in the sum of \$70,000.00 for the wrongful arrest and false imprisonment and \$70,000.00 for the malicious prosecution. Both sums include an uplift for aggravated damages. Interest on the said sums at the rate of 2.5 % per annum from the date of service of the claim i.e. 26 October 2018 until judgment.

⁴⁵ Chapter 4:01

⁴⁶ CA 251 of 2012

169. The Defendant to pay the Claimant prescribed costs in the sum of \$31,116.16.

/s/Margaret Y Mohammed
Judge