

**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**Claim No. CV2014-03955**

**Between**

**SHAHEED MOHAMMED**

**Claimant**

**AND**

**THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO**

**Defendant**

**Before the Honourable Mr. Justice Robin N. Mohammed**

**Date of Delivery:** Wednesday 4 March 2020

**Appearances:**

Ms. Kavita Sarran and Ms. Alana Rambaran for the Claimant

Ms. Ronnelle Hinds instructed by Ms. Kendra Mark for the Defendant

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**JUDGMENT**

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**I. Introduction**

[1] On 27 October 2014, the Claimant filed his Claim Form and Statement of Case against the Defendant requesting relief of the Court in the form of damages, including aggravated and/or exemplary damages for malicious prosecution. An amended Statement of case was filed on 7 January 2015. The Defendant filed its appearance to

the Amended Statement of Case on 4 February 2015, therein disclosing its intention to defend the Claim.

[2] The Defendant, thereafter, filed two applications before the Court on 24 February 2015 and 8 April 2015 for extensions of time for filing and serving the Defendant's Defence. The Court granted the requested extensions on both occasions. Consequently, the Defendant filed its Defence on 8 May 2015. The Claimant later filed a Reply to the Amended Defence on 18 May 2016.

[3] In response, the Defendant by its Amended Defence filed on 20 April 2016, in essence, contended that there was reasonable and probable cause to prefer the charges against the Claimant and that there was no malice in the actions of the prosecuting officers. As such, the Defence contended that this was not a case of malicious prosecution.

[4] The Claimant filed a witness statement in support of his claim on 21 November 2016. Three witness statements were filed in support of the Defence. They were that of (i) Rajesh Gokool, Police Sergeant Regimental No. 13053; (ii) Desley Adams, Police Corporal Regimental No. 16263; and (iii) Leon Bassant, Police Corporal Regimental No. 16407.

[5] The matter proceeded to trial after which Counsel for both parties filed written closing submissions on 31 March 2017.

## **II. Factual Background**

### **The Claimant's case**

[6] According to the Claimant, on 19 September 2006, he and his father, Imtiaz Mohammed, were at their ranch in Mayaro during the day and upon returning home they were informed by his mother, Sandra Mohammed, that four plain clothes police officers visited their residence and left a message for the Claimant's father to visit the Marabella Police Station.

Later that day, the Claimant's father and mother visited the Marabella Police Station where they were met by PC Teesdale and PC Deosaran. These police officers informed them that the Claimant's name was being called in several robberies in the Marabella and Couva districts. The police officers requested that the Claimant visit the Marabella Police Station to be questioned and be part of an Identification Parade (hereinafter "ID Parade").

[7] On 20 September 2006 at around 12:00p.m., the Claimant visited the Marabella Police Station along with his mother where they met PC Teesdale and PC Deosaran. The police officers cautioned the Claimant and immediately placed him in a prison cell. The Claimant stated that he and his mother tried to find out why he was placed in a prison cell but the police officers ignored them.

Approximately half an hour later, PC Teesdale and PC Deosaran returned and took the Claimant to an interrogation room where the police officers questioned the Claimant about some robberies in the Couva district. The Claimant repeatedly pleaded his innocence to the police officers and informed them that he did not know of any robberies in the Couva district.

[8] Thereafter, the Claimant was taken to the Couva Police Station at around 1:00a.m. on 22 September 2006 by two police officers from the Couva Police Station. The Claimant was placed in handcuffs and placed in an interrogation room with three police officers; he later found out that two of the police officers were Corporal Adams and PC Mohammed. Corporal Adams and PC Mohammed interrogated the Claimant and he again denied any knowledge of any robberies in the Couva district, which had allegedly taken place on 3 September 2006.

[9] At the Chaguanas Police Station, the Claimant was placed on an ID Parade and was subsequently charged for the following offences allegedly committed in the Couva district:

- (i) On 03/09/06 at Couva robbed Cheryl Dabreo of her property valued at \$2,200.00;
- (ii) On the 03/09/06 robbed Neil Brandon John of his property valued at \$600.00;

(iii) On the 22/09/06 at Couva Police Station being a person in custody, on a lawful charge, did escape lawful custody.

The Claimant was taken to the Justice of the Peace at the Chaguanas Magistrates' Court where he was formally charged for the above offences before being taken to the Remand Yard Prison.

[10] The Claimant made numerous appearances at the Couva Magistrates' Court before Her Worship Magistrate Quintyne before his charges were dismissed on 27 October 2010.

[11] The Claimant was also charged for the following offences allegedly committed in the Marabella district:

- (i) Case No. 8499/06 – On 03/08/06 at Marabella being armed with a firearm together with other persons robbed Jillian Prescott of property;
- (ii) Case No. 8500/06 – On 03/08/06 at Marabella being armed with a firearm together other persons robbed Shammed Khan of property;
- (iii) Case No. 8501/06 – On 03/08/06 at Marabella being armed robbed Marilyn La Mott at her property using personal violence.

[12] These matters were heard on numerous occasions before Her Worship Magistrate Ramsumair-Hinds and were eventually dismissed on 7 January 2011 and 25 July 2013.

[13] In these premises, the Claimant stated that the conduct of the police officers (being servants and/or agents of the State) was arbitrary, oppressive and/or unconstitutional. In his Amended Statement of Case, the Claimant then sought to set out (i) the particulars of malice and/or absence of reasonable and probable cause and (ii) the particulars or grounds of aggravated and/or exemplary damages.

[14] With respect to particulars of malice and/or absence of reasonable and probable cause, the Claimant in essence alleged that the police officers concocted and/or fabricated evidence to the effect that: (i) the Claimant had robbed Cheryl Dabreo; (ii) the Claimant had robbed Neil Brandon John; and (iii) the Claimant had escaped lawful custody. In

addition, the police officers had failed to inform and/or provide adequate information to the Claimant and to provide him with an opportunity to verify his whereabouts at the time of the alleged offences had been committed and failed to conduct proper investigations into the matter, were reckless and ignored the presumption of innocence of the Claimant.

[15] The Claimant further alleged that the police officers concocted and/or fabricated evidence to the effect that the Claimant was involved in an armed robbery of Jillian Prescott, Shammed Khan and Marilyn La Mott in the company of other persons.

[16] In support of his claim for aggravated and/or exemplary damages, the Claimant alleged that he suffered humiliation, distress and embarrassment because of the incident. In addition, the Claimant alleged that contrary to **section 4 of the Constitution of Trinidad and Tobago**, he was denied his right to life, liberty, security of the person and enjoyment of property and the right not to be deprived thereof except by due process of law.

[17] Furthermore, the Claimant alleged that he was denied the right upon his arrest to instruct, without delay, a legal advisor of his choice and to hold communication with him contrary to **section 5(2)(c)(ii) of the Constitution**; the right to be brought promptly before an appropriate judicial authority contrary to **section 5(2)(c)(iii) of the Constitution**; and the right to a telephone call, namely, to a friend and/or relative at the time of detention contrary to the provisions of the Constitution. In conclusion, he noted that the Defendant had never responded to the pre-action letter dated 30 September 2014 from his (the Claimant's) attorney-at-law.

### **The Defendant's Case**

[18] From the Defendant's Amended Defence, it appears that the offences for which the Claimant was charged were said to be done on three different dates: 3 August 2006, 3 September 2006 and 22 September 2006. The Claimant was alleged to be involved in two robberies; one on 3 August 2006 and another on 3 September 2006. Nevertheless, I will summarise the Defendant's case chronologically, leading up to the Claimant's arrest and the charges being laid.

[19] According to the Defendant, on 3 August 2006, Sergeant Gokool was detailed to investigate a report of an armed robbery with violence at House of Flave Restaurant and Bar (“the House of Flave Robbery”) located at Southern Main Road, Marabella. On or about 4 August 2006, Sergeant Gokool accompanied PC Reid and PC Deosaran to House of Flave Restaurant and Bar.

[20] On arrival at House of Flave Restaurant and Bar, Sergeant Gokool met with and interviewed the proprietress, Marilyn La Mott who reported that on 3 August 2006, two men with firearms entered the said Bar and announced a “hold up” and proceeded to rob her and other persons of cash and valuables. She further indicated that one of the men was wearing a bandana over his face but it fell off when he bent down to pick up some items on the floor. Thus, she was able to see the person’s face. Ms. Mott gave a description of the suspects and a statement was recorded. PC Reid interviewed the other persons who were robbed, including one Jillian Prescott, and also recorded statements. The police officers subsequently received information that there was a third assailant involved as the getaway driver.

[21] The Defence also alluded to another robbery, this time at the Couva district, which occurred on 3 September 2006. Corporal Bassant received a report of a robbery at White Diamond Casino (“White Diamond Robbery”) located at Southern Main Road, McBean Village, Couva. Corporal Bassant proceeded to the said location with other police officers. He met with Neil Brandon John, Cordel Joseph, Hancell Motilal, Navita Joseph, Christopher Serrette and Cheryl Dabreo. Each of these persons made a report to Corporal Bassant. These reports indicated that two men entered the White Diamond Casino, one armed with a firearm and the other with a cutlass. The two men were described in detail to Corporal Bassant.

[22] According to the Defendant, Corporal Bassant received the following reports:

- (i) Neil Brandon John reported that the men robbed him of one Motorola cellular phone valued at \$600.00.

- (ii) Cordel Joseph reported that the men robbed him of one Motorola cellular phone valued at \$1,800.00.
- (iii) Hancell Motilal reported that the men robbed him of \$1,200.00 cash.
- (iv) Navita Joseph reported that the men robbed her of one gold ring valued at \$2,000.00.
- (v) Christopher Serrette reported that the men robbed him of one wallet valued at \$60.00, one driver's permit valued at \$200.00, one Nokia cellular phone valued at \$2,500.00 and \$160.00 cash.
- (vi) Cheryl Dabreo reported that the men robbed her of six gold rings valued at \$2,200.00.

Corporal Bassant recorded the said information and statements were obtained from and signed by each of the six persons.

[23] Corporal Bassant, in conducting his investigations, contacted the Crime Scene Investigators to retrieve evidence from the scene and communicated information about the description of the men and the reports received to the Southern Division Police.

[24] Sometime in or around mid-September 2006, police officers arrested two men that fit the description given by the victims in the House of Flave robbery. Those two persons were Edward Dennis and Ansine Singh who were subsequently interviewed by Sergeant Gokool at the Marabella Police Station. The men were cautioned and informed of their legal rights and privileges. Both men gave information that amounted to a confession of being involved in the said robbery at the House of Flave Restaurant and Bar. Both men further indicated that a third party named Shaheed Mohammed also called "Puggy" was involved in the robbery and they gave a description of him as well as his address.

[25] Sergeant Gokool along with other police officers, including PC Teesdale and PC Deosaran, subsequently visited the Claimant's residence but the Claimant was not at home. However, his mother was present at the residence. Sergeant Gokool informed the Claimant's mother that the police was seeking her son in relation to certain investigations

being conducted. The Claimant's mother indicated to the police officers that she would bring the Claimant to the Marabella Police Station.

[26] At around 3:30pm on 20 September 2006, the Claimant arrived at the Marabella Police Station. PC Teesdale together with PC Deosaran identified themselves as police officers to the Claimant. PC Teesdale informed the Claimant of the reports of robberies in the Marabella district and of information which he received, that is, that the Claimant was involved in these crimes. PC Teesdale informed the Claimant that he was a suspect and cautioned him. The Claimant denied knowing anything about the robberies stating "*Officer, I eh know about them thing nah*". PC Deosaran informed the Claimant that he was to be placed on an ID Parade relative to those robberies and he made no objections. The Claimant was subsequently placed in a cell by himself.

[27] Sergeant Gokool was informed of the Claimant's detention at the Marabella Police Station and he subsequently interviewed the Claimant in relation to the report of the House of Flave robbery. The Claimant was subsequently placed on an ID Parade and was positively identified by Marilyn La Mott as one of the assailants involved in the robbery at the House of Flave Restaurant and Bar on 3 August 2006.

[28] In or about 1:20am on 22 September 2006, Corporal Adams and PC Santia arrived at the Marabella Police Station to convey the Claimant to the Couva Police Station for the purpose of conducting an ID Parade relative to reports of robberies which had occurred in the Central Division.

[29] In or around 2:15am, Corporal Adams and PC Santia arrived at the Couva Police Station with the Claimant. The Claimant was then placed on a bench in the Criminal Investigations Department office to be questioned about the said reports of robberies in the presence of other officers. The Claimant at this time was not handcuffed.

[30] PC Mohammed interviewed the Claimant about certain robberies in the Couva District and the Claimant replied, "*Boss, is only White Diamond we do*". PC Mohammed then



cautioned the Claimant and informed him of his legal rights and privileges. PC Mohammed requested the Claimant to give a statement but he refused.

[31] Corporal Adams subsequently informed the Claimant that he intended to have him placed on an ID Parade. Shortly thereafter, however, the Claimant stood up and made good his escape from the Couva Police Station. Corporal Adams, PC Mohammed and other police officers immediately pursued the Claimant. The Claimant flung himself over a bannister on the northern side of the station, falling head first and hitting his head on the ground. The police officers saw the Claimant flung himself over a chain link fence, falling to the pavement on the Couva Main Road. The Claimant then got up and ran in a north-westerly direction through the Republic Bank car park and into some bushes.

[32] Corporal Adams, PC Mohammed and other police officers conducted a search for the Claimant who was found hiding under some bushes near the Bank. The Claimant was informed by Corporal Adams that he was under arrest for the offence of escaping lawful custody and he was informed of his legal rights and privileges. The Claimant made no requests.

[33] After being detained, the Claimant was taken back to the Couva Police Station. In or about 2:35am, Corporal Adams formally charged him for the offence escaping lawful custody. Corporal Adams requested the Claimant's fingerprint impressions but he refused to cooperate.

[34] During the Claimant's detention at the Couva Police Station, Corporal Bassant interviewed the Claimant about the robbery at the White Diamond Casino. Corporal Bassant made observations as to the Claimant's description and informed him that he matched the description of one of the alleged offenders and that he was suspect. Corporal Bassant cautioned the Claimant and told him of the need to hold an ID Parade. The Claimant made no objections. Corporal Bassant did not take a statement from the Claimant because the Claimant was uncooperative.

[35] At approximately 3:00a.m. on 22 September 2006, Corporal Adams and PC Santia conveyed the Claimant to the Chaguanas Police Station for the purpose of being placed on an ID Parade regarding the reports of the robbery in the Central Division.

[36] Shortly thereafter, Acting Corporal Bassant provided the names and contact numbers of the victims to the Chaguanas Police station to take conduct over the Claimant's ID Parade. At the Chaguanas Police Station, Acting Police Inspector Quamina informed the Claimant of the information that the police received in relation to the White Diamond Robbery on 3 September 2006 and that he, the Claimant, was a suspect. The Claimant was cautioned and he replied "*Boss I ah know nothing about that*".

[37] Acting Police Inspector Quamina informed the Claimant that it was his intention to place him on an ID Parade in connection with the said offence and the Claimant made no objections. Acting Police Inspector Quamina explained the ID Parade procedure to the Claimant and informed him that he could have his attorney, family or friend present to witness the parade. The Claimant indicated that his mother, Sandra Mohammed, would represent him. Ms Mohammed was present when the ID Parade was conducted with the Claimant in the parade line up. The Claimant was positively identified by the victims. Corporal Bassant was later informed that the Claimant and one Edward Dennis were positively identified by the victims.

[38] Sergeant Gokool compiled a file with information he had obtained from his investigations and forwarded same to his senior, Police Sergeant Hosein, for instructions. According to the Defendant, based on the information that Sergeant Gokool and PC Reid received during their investigations, which included reports from victims, information from the co-accused and also positive identification, the officers honestly believed that the Claimant was guilty of committing the robberies at the House of Flave Restaurant and Bar. Sergeant Gokool, therefore, charged the Claimant for the following offences:

- (i) On 03/08/06 at Marabella being armed with a firearm together with other persons robbed Jillian Prescott of property;
- (ii) On 03/08/06 at Marabella being armed with a firearm together other persons robbed Shammed Khan of property;

(iii) On 03/08/06 at Marabella being armed robbed Marilyn La Mott her property using personal violence.

[39] Corporal Bassant referred his file to his superior and was later instructed to prefer charges against the Claimant and Edward Dennis in relation to the “White Diamond robbery”. Based on his instructions and on his own belief, Acting Corporal Bassant laid several charges against the Claimant and Edward Dennis. They were as follows:

- (i) On 03/09/06 at Couva robbed Cheryl Dabreo of her property valued at \$2,200.00;
- (ii) On 03/09/06 robbed Neil Brandon John of his property valued at \$600.00;
- (iii) On 03/09/06 at Southern Main Road Mc Bean Village Couva, in the county of Caroni being armed with a firearm and cutlass together with other persons robbed Cordell Joseph of one Motorola cellular phone valued at \$600.00 cash TTD;
- (iv) On 03/09/06 at Southern Main Road Mc Bean Village Couva, in the county of Caroni being armed with a firearm and cutlass together with other persons robbed Hancell Motilal of \$1,200.00 cash TTD;
- (v) On 03/09/06 at Southern Main Road Mc Bean Village Couva, in the county of Caroni being armed with a firearm and cutlass together with other persons robbed Navita Joseph of one gold ring valued at \$2,00.00 cash TTD;
- (vi) On 03/09/06 at Southern Main Road Mc Bean Village Couva, in the county of Caroni being armed with a firearm and cutlass together with other persons robbed Christopher Serrette of one wallet valued at \$60.00, one driver’s permit valued \$200.00, one Nokia cellular phone valued at \$2,500.00 cash TTD and \$160.00 cash TTD.

[40] PC Adams also charged the Claimant for the following:

- (i) On the 22/09/06 at Couva Police Station being a person in custody, on a lawful charge, did escape lawful custody.

[41] The Claimant, in reply, averred that on 3 August 2006, he was at all material times working at his father’s meat shop known as S. Mohammed Chicken Depot. He stated that he was employed with the meat shop and performed several functions. According to him,

on 3 August 2006, which was a Thursday, he was involved in the slaughtering, cleaning and dissecting of two bulls. This procedure took the Claimant 6 hours to complete (from the start of slaughtering to cleaning the area).

[42] The Claimant averred that prior to meeting Edward Dennis and Ansine Singh at the Chaguanas Police Station, he did not know them. The Claimant stated that he was placed on an ID Parade in which he was the only young man; the other persons were men in their 40's and were of a darker complexion to him. He further stated that all the persons in the ID Parade were all dressed differently.

[43] The Claimant alleged that he saw Jillian Prescott come into the area where he was placed and saw her give a bottle of Hennessy to Acting Corporal Teesdale and PC Deosaran. He was shown to Jillian Prescott by Teesdale before the ID Parade was conducted. He heard PC Teesdale inform Jillian Prescott, "*this is the man we find ent he is the one*". The Claimant saw Jillian watch him sceptically. It was after this that the Claimant was placed on the ID parade and was picked out by Jillian Prescott.

### **III. Issues**

[44] Based on the facts and evidence as pleaded and proffered by the Claimant and the Defendant before this Court, the issues for determination are as follows:

- i. **Whether Sergeant Gokool, Corporal Bassant and Corporal Adams had reasonable and probable cause to arrest and charge the Claimant?**
- ii. **If not, did the police officers act with malice in so arresting and charging the Claimant?**

[45] If this Court were to find that there was no reasonable and probable cause to arrest and charge the Claimant and that the police officers indeed acted with malice in so arresting and charging the Claimant then, *only in those circumstances*, would the Court have to further determine the issue of whether the Claimant is entitled to damages for malicious prosecution including aggravated and/or exemplary damages. For this reason, the issues as outlined in the paragraph above shall be canvassed first and in turn.

#### IV. Law

[46] The essential elements of a claim for malicious prosecution, which are clearly established in case law and stated pointedly in **Handbook on Award of Damages for False Imprisonment and Malicious Prosecution in Trinidad and Tobago**<sup>1</sup> as well as **Clerk & Lindsell on Torts**<sup>2</sup>, are that:

- (i) the Claimant must have been prosecuted by the Defendant, in the sense that the law must have been set in motion against the Claimant in a criminal charge;
- (ii) the proceedings complained of must have terminated in the Claimant's favour;
- (iii) there must have been absence of reasonable and probable cause for the prosecution;
- (iv) the Defendant instituted the proceedings maliciously; and
- (v) the Claimant suffered damage.

[47] Each of the five aforementioned elements must be proven by the Claimant to succeed in a claim for malicious prosecution. In this matter, the first two elements were clearly established. There is no dispute that the Claimant was charged with criminal offences and that the prosecution of those offences was determined in his favour.

[48] Accordingly, the primary issues remaining to be determined therefore relate to whether the police officers had reasonable and probable cause in arresting and charging the Claimant and whether they were actuated by malice. In a claim for malicious prosecution, the onus lies on the Claimant throughout to prove malice and the absence of reasonable and probable cause: **Glen Baptiste & ors v PC Clive Brereton & AG**<sup>3</sup>

#### **Reasonable and Probable Cause**

[49] In **Hicks v Faulkner**<sup>4</sup>, Hawkins J defined what is reasonable and probable cause. At page 191 of his judgment he stated as follows:

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<sup>1</sup> The Trinidad and Tobago Judicial Education Institute (2013)

<sup>2</sup> 22nd Edition at page 1173 para 16.12

<sup>3</sup> Glen Baptiste & ors v P.C. Clive Brereton No 7345 and the Attorney General of Trinidad and Tobago H.C.A. No 1842 of 1997

<sup>4</sup> (1878) 8 QBD 167

*“I should define reasonable and probable cause to be an honest belief in the guilt of the accused based upon a full conviction, founded upon reasonable grounds, of the existence of a state of circumstances, which, assuming them to be true, would reasonably lead any ordinarily prudent and cautious man placed in the position of the accuser, to the conclusion that the person charged was probably guilty of the crime imputed. There must be first, an honest belief of the accuser in the guilt of the accused; secondly, such belief must be based on an honest conviction of the existence of the circumstances which led the accuser to that conclusion; thirdly, such secondly mentioned belief must be based upon reasonable grounds – by this I mean such grounds as would lead any fairly cautious man in the defendant's situation so to believe; fourthly, the circumstances so believed and relied on by the accuser must be such as amount to reasonable ground for belief in the guilt of the accused.”*

And then at page 192, Hawkins J stated:

*“The question of reasonable and probable cause depends in all cases not upon the actual existence, but upon the reasonable bona fide belief in the existence of such a state of things as would amount to a justification of the course pursued in making the accusation complained of. No matter whether the belief arises out of the recollection and memory of the accuser, or out of information furnished to him by another. It is not essential in any case that facts should be established proper and fit and admissible as evidence to be submitted to the jury upon an issue as to the actual guilt of the accused. The distinction between facts necessary to establish actual guilt and those required to establish a reasonable bona fide belief in guilt should never be lost sight of in considering such cases as I am now discussing. Many facts admissible to prove the latter would be wholly inadmissible to prove the former. It cannot of course be laid down as an abstract proposition that an accuser is justified in acting either upon the credited statement of an informant, or upon his own memory. The question must always arise*

*according to circumstances whether it was reasonable to trust either the one or the other.”*

[50] The test as stated by Hawkins J was approved by Lord Denning in **Glinski v McIver**<sup>5</sup> and further to that our Court of Appeal in **Sandra Juman v The Attorney General of Trinidad and Tobago**<sup>6</sup> applied with approval Lord Denning’s deduction of reasonable and probable cause in **Glinski**. As stated by Rajnauth-Lee JA (as she then was) in **Sandra Juman** at para. 9:

*“In **Glinski**, Lord Denning observed that the police officer does not have to believe in the guilt of the accused. He has only to be satisfied that there is a proper case to go before the court. He cannot judge whether the witnesses are telling the truth. He cannot know what defences the accused may set up. Guilt or innocence is for the tribunal and not for him. Further, in **Glinski**, Lord Devlin observed that the prosecutor does not have to believe in the probability of obtaining a conviction. He is only concerned with the question whether there is a case fit to be tried.”[Emphasis added]*

[51] In the case of **Trevor Williamson v The Attorney General of Trinidad and Tobago**<sup>7</sup> at paragraphs 11 and 14, Lord Kerr, applying **Glinski v McIver** (*supra*) said:

*“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 the proceedings. This requires the proof of a negative proposition, normally among the most difficult of evidential requirements...”*

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<sup>5</sup> [1962] 1 All ER 696

<sup>6</sup> CA 22 of 2009

<sup>7</sup> [2014] UKPC 29

*On the question of reasonable and probable cause, or the lack of it, a prosecutor must have 'an honest belief in the guilt of the accused based upon a full conviction, founded upon reasonable grounds, of the existence of a state of circumstances, which, assuming them to be true, would reasonably lead any ordinarily prudent and cautious man, placed in the position of the accuser, to the conclusion that the person charged was probably guilty of the crime imputed': Hicks v Faulkner (1878) 8 QBD 167, 171 per Hawkins J, approved by the House of Lords in Herniman v Smith [1938] AC 305, 316 per Lord Atkin. The honest belief required of the prosecutor is a belief not that the accused is guilty as a matter of certainty, but that there is a proper case to lay before the court: Glinski v McIver [1962] AC 726, 758 per Lord Denning."*

### **Malice**

[52] There is a connection between absence of reasonable and probable cause and the element of malice. As explained by Rajnauth-Lee J.A. in **Sandra Juman** (*supra*) at para 25:

*"Malice must be proved by showing that the police officer was motivated by spite, ill-will or indirect or improper motives. It is said that malice may be inferred from an absence of reasonable and probable cause but this is not so in every case. Even if there is want of reasonable and probable cause, a judge might nevertheless think that the police officer acted honestly and without ill-will, or without any other motive or desire than to do what he bona fide believed to be right in the interests of justice: Hicks v Faulkner [1878] 8 Q.B.D. 167 at page 175."*

[53] In **Browne v Hawkes**<sup>8</sup>, Cave J. stated as follows:

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<sup>8</sup> (1891) 2 QB 718 at 722



*“Now malice, in its widest and vaguest sense, has been said to mean any wrong or indirect motive; and malice can be proved, either by shewing what the motive was and that it was wrong, or by shewing that the circumstances were such that the prosecution can only be accounted for by imputing some wrong or indirect motive to the prosecutor. In this case, I do not think that any particular wrong or indirect motive was proved. It is said that the defendant was hasty and intemperate.... He may also have been hasty, both in his conclusion that the plaintiff was guilty and in his proceedings; but hastiness in his conclusion as to the plaintiff’s guilt, although it may account for his coming to a wrong conclusion, does not shew that presence of an indirect motive...”*

[54] From the above statements on the principle of law, it appears that once the Court is satisfied that there was reasonable and probable cause to prosecute the Claimant, the question of malice does not arise. However, if the Claimant is able to establish on a balance of probabilities that the prosecutor acted without reasonable and probable cause, the Claimant must also establish on the evidence that the police officers were actuated by malice, that is, by any wrong or indirect motive, spite or ill-will.

## **V. Analysis**

[55] Where the Claimant alleges that he was arrested, charged and prosecuted without reasonable and probable cause, the burden of proof rests on him. The existence of reasonable and probable cause is a question of fact, which must be judged in light of the facts known to the Defendant at the time of the arrest and the laying of the charge.

It is to be determined objectively and subjectively, that is to say: objectively, whether a reasonable man having knowledge of facts that the Defendant knew at the time he instituted the prosecution, would have believed that the Claimant was guilty of the alleged crime, and subjectively, whether the Defendant who

laid the charge or carried on the proceedings, honestly believed that the Claimant was guilty. What the Defendant believes must be based upon facts known to him, at the time that he initiated the prosecution<sup>9</sup>.

[56] The Claimant relied on his own evidence to prove an absence of reasonable and probable cause on the part of Sergeant Gokool, Corporal Bassant and Corporal Adams. The Claimant in his witness statement maintained his pleaded case throughout but did nothing more to support his claim. In support of his claim, the Claimant exhibited to his witness statement the following:

- (i) a true copy of the extract of the Couva Magistrates' Court Case Book for Case Nos. 2593/06, 2595/06 and 2598/06 which were heard and determined on 27 October 2010;
- (ii) a true copy of the extract of the San Fernando Magistrates' Court Case Book for Cases No. 8500/06 and 8501/06 which were heard and determined on 7 January 2011; and
- (iii) a true copy of the extract of the San Fernando Magistrates' Court Case Book for Case Nos. 8499/06 and 8500/06 which were heard and determined on 25 July 2013.

[57] The Court finds that the Claimant has not placed before the Court *any* evidence that the police officers involved in this matter lacked reasonable and probable cause in arresting and charging him for the charges, which were dismissed.

[58] In fact, the Claimant admitted in cross-examination that the police officers had reason to arrest him<sup>10</sup> and that the police officers did not fabricate or concoct any evidence in this matter<sup>11</sup>. He also accepted that he could not say whether the ID Parade was conducted in accordance with standard protocol and with the

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<sup>9</sup> O'Hara v. Chief Constable of the Royal Ulster Constabulary [1997] 1 All ER 129 at 138; Mario Richards v. The Attorney General CV 2006-02973, at pp. 14-15.

<sup>10</sup> NOE dated 21 February 2017, page 15, lines 34-45; page 16, lines 9-12

<sup>11</sup> Ibid page 16, lines 16-19

Trinidad and Tobago Police Standing Orders<sup>12</sup>. The following is an extract from the Notes of Evidence of the material part of the cross-examination of the Claimant by defence counsel, Ms Hinds:

*Ms. Hinds: I put it to you that Ansine Singh and Edward Dennis told officers that “Puggy” was also involved in the robberies.*

*Mr. Mohammed: I don’t know ma’am.*

*Ms. Hinds: I put it to you that you are also called “Puggy”.*

*Mr. Mohammed: Yes ma’am.*

*Ms. Hinds: I put it to you that officers had reason to arrest you.*

*Mr. Mohammed: I don’t know ma’am.*

*Court: What is your answer there, sorry, what is your last answer?*

*Ms. Hinds: Your response to the last question I asked you.*

*Mr. Mohammed: Could you reply it back again?*

*Ms. Hinds: Sure, I said I put it, no, I put it to you that officers had reason to arrest you.*

*Mr. Mohammed: Yes ma’am.*

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<sup>12</sup> Ibid page 11, lines 39-43

**Court:** *Well, well, I just want to make sure the witness understands what is being asked, right. First, I thought I heard you say “I don’t know” when the question was asked, right?*

**Mr. Mohammed:** *Yes sir.*

**Court:** *And the question is asked again and you said “yes ma’am”. What do you mean by “yes ma’am” that they had reasons to arrest you?*

**Mr. Mohammed:** *Yes sir.*

**Court:** *Alright.*

[59] Furthermore, under cross-examination, the Claimant was inconsistent and contradicted his evidence. A material contradiction raised was whether he was positively identified at the ID Parades. In his witness statement, the Claimant stated that he was not positively identified by any person or Marilyn La Mott at the ID Parade held at the Marabella Police Station<sup>13</sup>. However, in cross-examination, he admitted that he was placed on 2 ID Parades – one at Marabella Police Station and one at Chaguanas Police Station – where he was positively identified by the victims involved in the matters<sup>14</sup>. This was consistent with the entries in the station diary extracts attached to the Defendant’s witness statements. The following is an extract from the Notes of Evidence of the material part of the cross-examination of the Claimant by defence counsel, Ms Hinds<sup>15</sup>:

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<sup>13</sup> Para 27 of Witness Statement

<sup>14</sup> NOE dated 21 February 2017, page 11, lines 1-9; page 16, lines 1-4

<sup>15</sup> NOE dated 21 February 2017, page 11, lines 1-9; page 16, lines 1-4

***Ms. Hinds:***                      ***Mr. Mohammed, I put it to you that you were placed on two identification parades, and you were positively identified by all the victims involved in those matters.***

***Mr. Mohammed:***        ***Yes ma'am.***

[60] The Claimant, in cross-examination, agreed that he was aware that both Mr. Ansine Singh and Edward Dennis said “Puggy was involved”. He further agreed that he did not state in his witness statement that he is known by the name “Puggy”. The Claimant admitted that he is called “Puggy”<sup>16</sup>.

[61] In this regard, in my assessment, the Claimant proved to be an incredible and unconvincing witness. The inconsistencies, contradictions, omissions and lack of credible evidence showed that he was not a credible witness and the Court could not rely on his evidence.

[62] The Defendant’s witnesses, on the other hand, were consistent on the material aspects of the case in their evidence. All of the Defendant’s witnesses maintained the Defendant’s pleaded case in their witness statements. The Defendant’s version of the facts in respect of the circumstances, under which the Claimant came to be arrested and charged, particularly in comparison to the Claimant’s case, was supported by the oral testimony of the police officers and the station diary extracts.

[63] The Defendant put before the Court a great deal of evidence in support of its pleaded case. The Defendant submitted as follows:

- (i) A station diary day duty extract from the Marabella Police Station for 18 September 2006;

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<sup>16</sup> Ibid page 10, lines 27-37

- (ii) A station diary day duty extract from the Marabella Police Station for 20 September 2006;
- (iii) A station diary day duty extract from the Marabella Police Station for 21 September 2006;
- (iv) A station diary day duty extract from the Couva Police Station for 22 September 2006;
- (v) Written Statements from the six victims of White Diamond robbery on 3 September 2006 namely; Hancell Motilal, Neil Brandon Joseph, Cordell Joseph; Cheryl Dabreo, Navita Joseph and Christopher Serrette;
- (vi) Copies of the charges laid by way of information against the Claimant on 22 September 2006; and
- (vii) Corporal Bassant's investigation report.

[64] Since the Claimant was charged with offences occurring out of three separate incidents, I will consider each incident separately in determining whether the police officers had reasonable and probable cause to charge the Claimant.

#### **House of Flave robbery on 3 August 2006**

[65] Sergeant Gokool maintained that he was detailed to investigate a report of a robbery with violence at the House of Flave Restaurant and Bar on 3 August 2008. He maintained that he interviewed Marilyn La Mott and that she reported that two men with firearms entered the establishment, announced a "hold up" and proceeded to rob her and other persons of their valuables. Sergeant Gokool also maintained that Jillian Prescott was interviewed and a statement was recorded.

[66] In cross-examination, Sergeant Gokool maintained that two suspects, Edward Dennis and Ansine Singh gave information, which amounted to a confession; that the Claimant was involved in the alleged robbery. He testified that the suspects referred to a person by the name of "Puggy" who he later found out to

be Shaheed Mohammed<sup>17</sup>. In fact, as stated above, the Claimant, under cross-examination, admitted that he is also called “Puggy”. Furthermore, the Station Diary Day Duty extract from the Marabella Police Station for 18 September 2006 certifies that one Ansine Singh and Edward Dennis told Sergeant Gokool and PC Teesdale that “Puggy” was involved in the House of Flave robbery.

[67] During cross-examination, there appeared to be a contradiction in Sergeant Gokool’s evidence. In his witness statement at paragraph 9, he indicated that the robbery allegedly took place on 3 August 2006. However, from the station diary extract dated 18 September 2006, the alleged robbery of House of Flave Restaurant and Bar is recorded to have taken place on 3 September 2006.

[68] Nonetheless, after examining the entries in the station diary and its contents, the Court notes that the robbery, for which the suspects were questioned, was the robbery at the House of Flave Restaurant and Bar on 3 August 2006. The Court, therefore, finds that this was an inadvertent recording error on the part of the recording officer. In this regard, the Court accepted that the suspects were questioned about the House of Flave robbery on 3 August 2006 for which, they both said that “Puggy” was involved.

[69] During cross-examination, Sergeant Gokool maintained that he took a statement from Marilyn La Mott personally. However, he could not recall whether he took a statement from Jillian Prescott. Sergeant Gokool testified that Marilyn La Mott’s statement assisted him in laying the charges against the Claimant<sup>18</sup>. He, however, admitted that Marilyn La Mott’s statement was not attached to his witness statement. This was the extent of Counsel’s cross-examination on this point; she did not go further in ascertaining why the statement was not exhibited in support of his evidence. Further, Sergeant Gokool was questioned about his interview with the Claimant and the taking of notes and attaching same to his

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<sup>17</sup> Ibid page 26, lines 34-43

<sup>18</sup> Ibid, page 13-33

witness statement. He responded that he made a check for the notes but he could not find them<sup>19</sup>. Sergeant Gokool also admitted in cross-examination that he did not fail in his duty to take notes and attach same to his witness statement<sup>20</sup>.

[70] Sergeant Gokool maintained that Marilyn La Mott positively identified the Claimant as one of the assailants involved in the robbery at House of Flave Restaurant and Bar on 3 August 2006. This was certified by the Station Diary Day Duty extract from the Marabella Police Station for 21 September 2006. This extract also states that the Claimant was positively identified by Jillian Prescott for the robbery on 3 August 2006 at the House of Flave Restaurant and Bar.

[71] Nevertheless, during cross-examination, Counsel questioned Sergeant Gokool about the transparency of the ID Parade involving the Claimant and the ID Parade form. He, however, testified that he would not be able to say whether the ID Parade involving the Claimant was flawed because he was not involved. Sergeant Gokool further testified that there would not be an ID Parade form attached to his witness statement because he was not in possession of same since that form rests solely with the identification officer<sup>21</sup>.

### **White Diamond Robbery on 3 September 2006**

[72] Corporal Bassant maintained that on 3 September 2006, he received a report of a robbery at the White Diamond Casino. When he arrived at the Casino, he met with the victims: Neil Brandon Joseph, Cordell Joseph, Hancell Motilal, Navita Joseph, Christopher Serrette and Cheryl Dabreo. Corporal Bassant stated that Neil Brandon Joseph reported that two men entered the establishment and announced a “hold up”. One of the men was armed with a firearm and the other, a cutlass. He gave a description of the assailants in detail. Corporal Bassant maintained that each of the victims made a report to him.

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<sup>19</sup> Ibid page 28, lines 38-41

<sup>20</sup> Ibid page 28, lines 42-46

<sup>21</sup> Ibid page 29, line 11 to page 30, line 2



[73] Corporal Bassant maintained that he met the Claimant and Edward Dennis at the Couva Police Station. He, however, did not state on which date this occurred. The Court is of the view that this omission is immaterial as it does not lend any support on establishing the presence or absence of reasonable and probable cause on the part of the Defendant.

[74] Corporal Bassant maintained that he interviewed the Claimant and made observations as to his description and informed him of the report of robbery with aggravation on 3 September 2006. He informed the Claimant that he was a suspect and that he matched one of the descriptions of the offenders in the report. He maintained that he cautioned the Claimant and told him of his intention to have him placed on an ID Parade. Corporal Bassant, however, did not take a statement from the Claimant because he refused to give one.

[75] Corporal Bassant testified that he received signed written statements from the victims on 5, 24 and 29 September 2006. These statements were exhibited to his witness statement. Nonetheless, in cross-examination, Corporal Bassant agreed with Counsel for the Claimant that when the Claimant was charged on 22 September 2006, he had not yet received the majority of the signed written statements from the victims<sup>22</sup>.

[76] Counsel for the Claimant enquired from Corporal Bassant whether it would be fair to say that he did not receive any description of the Claimant except from Cheryl Dabreo on 5 September 2006 before the Claimant was charged and he replied as follows:

*“No I would of receive a description from from several of the am, the victims, on the 3rd of September 2006, Cheryl Dabreo would be included as one of the persons giving a description.”*<sup>23</sup>

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<sup>22</sup> Ibid page 20, line 35 to page 21, line 5

<sup>23</sup> Ibid page 21, lines 6-25

[77] Corporal Bassant maintained in cross-examination that he charged the Claimant based on the report that he received on 3 September 2006, the initial first description and the ID Parade. He stated that the other statements were recorded after the Claimant was charged<sup>24</sup>.

[78] The Court wishes to highlight that the Claimant in his witness statement gave alibis for the 3 August 2006<sup>25</sup> and 3 September 2006<sup>26</sup>. In his pleadings, he averred that the police officers failed to provide him with an opportunity to verify his whereabouts at the time of the alleged offences. However, Counsel for the Claimant did not probe Sergeant Gokool neither Corporal Bassant on whether they attempted to verify his whereabouts at the time of the alleged offences.

[79] Nonetheless, 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**<sup>27</sup> 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*”).

[80] Furthermore, Counsel for the Defendant’s submission on adverse inferences to be drawn from the absence of the Claimant’s mother and father as witnesses is unmerited. The Court at this stage is not concerned in trying the charges against the Claimant. Therefore, there is no need for the Claimant to call any alibi witness in support of his case. The Court is only concerned in determining whether the police officers had reasonable and probable cause to charge the Claimant.

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<sup>24</sup> Ibid page 22, lines 10-18 and lines 32-38

<sup>25</sup> Paras 23-25 of Witness Statement

<sup>26</sup> Paras 32-33 of Witness Statement

<sup>27</sup> [1938] AC 305 at page 309

## Escaping Lawful Custody on 22 September 2006

[81] Corporal Adams maintained on 22 September 2006, he and PC Santia conveyed the Claimant to the Couva Police Station for the purposes of an ID Parade relative to outstanding robberies in the Central Division. He maintained that on arrival at the Couva Police Station, the Claimant was taken to the Criminal Investigations Department office to be questioned; he was left on a bench and was not handcuffed. This is confirmed by the Station Diary Day Duty extract from the Couva Police Station for 22 September 2006, which indicated that the Claimant was in fact placed in the CID office.

[82] Corporal Adams maintained that he questioned the Claimant in relation to the robberies in the Couva Area and that the Claimant replied, "*Boss is only White Diamond we do.*" This was certified by the Station Diary Day Duty extract from the Couva Police Station for 22 September 2006. The Claimant was asked to give a statement but he was unwilling to do so.

[83] Corporal Adams maintained that the Claimant was informed that he was to be placed on an ID Parade. Corporal Adams further maintained that he saw the Claimant jump on a desk in the office and run through a door located on the northern side of the office, dive over a concrete bannister, run towards a fence on the northern side of the station, fling himself over a chain-link fence, land on the pavement of Couva Main Road and continue running towards the direction of Republic Bank. He maintained that he, PC Mohammed and two other officers pursued the Claimant and found him hidden behind some bushes in the car park of Republic Bank. This was all confirmed by the Station Diary Day Duty extract from the Couva Police Station for 22 September 2006.

[84] In cross-examination, Corporal Adams maintained that the Claimant was not handcuffed while he was left on a bench in the CID office. He testified that he did not pursue the Claimant alone; PC Mohammed and two other officers

accompanied him<sup>28</sup>. Corporal Adams was questioned about whether the other officers gave a statement on what occurred to corroborate his version of events and he stated that he could not recall<sup>29</sup>.

[85] Counsel for the Claimant has asked the Court to draw adverse inferences against the Defendant for the following:

- (i) Sergeant Gokool's failure to attach the victims' written statements to his witness statement;
- (ii) Corporal Adams' failure to attach the interview notes of the Claimant to his witness statement; and
- (iii) the Defendant's failure to call PC Mohammed and the other officers who were present with Corporal Adams on 22 September 2006 at the time the Claimant was alleged to have escaped lawful custody.

[86] Counsel relied on the authorities of **Sieunarine v Doc's Engineering Works (1992) Ltd**<sup>30</sup> and **Ijab Oba Braithwaite v The Attorney General of Trinidad and Tobago**<sup>31</sup>.

[87] In **Ijab Oba Braithwaite v The Attorney General of Trinidad and Tobago** (**supra**), the Court cited the following:

*"50. In the case of H.C.A No. 434 of 2001 Shairoon Abdool v B&L Insurance Company Limited – delivered 25th November, 2002, the Honourable Justice Mendonça (as he then was) at page 14 cited Cross on Evidence (9th edition) at P. 37 where the following passage from the judgment of Newton & Norris JJ in the case of O'Donnell v Reichard (1975) VR 916, 929 is referred to:*

*"[Where] a party without explanation fails to call a witness a person whom he might reasonably be expected to call, if that person's evidence*

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<sup>28</sup> Ibid page 35, lines 38-43

<sup>29</sup> Ibid page 35, lines 44-47

<sup>30</sup> H.C. No 2387 of 2000

<sup>31</sup> CV2010-04502

would be favourable to him, then, although the jury may not treat as evidence what they may as a matter of speculation think that person would have said if he had been called as a witness, nevertheless, it is open to the jury to infer that that person's evidence would not have helped the party's case; if the jury draw that inference, then they may properly take it into account against the party in question for two purposes, namely (a) in deciding whether to accept any particular evidence, which has in fact been given, either for or against that party, and which relates to a matter with respect to which the person not called as a witness could have spoken; and (b) in deciding whether to draw inferences of fact, which are open to them upon evidence which has been given, again with respect to matters to which the person not called as the witness could have spoken"

He stated:

***"The same in my view can be said of the failure of a party to produce documents which he might reasonably be expected to produce. In such a case the Court may infer that had the documents been produced it would not have helped the party and the Court is entitled to take that into account against the party in question for the purposes referred to in the passage just cited from the judgment of Norris & Newton JJ."***

**51. In *Wisniewski v Central Manchester Health Authority (1998) 7 PIQR 323* the Court of Appeal held that in certain circumstances a court may be entitled to draw adverse inferences from the absence or silence of a **witness** who might be expected to have material evidence to give on an issue in an action. At P.340 of the *Wisniewski* case Brooke LJ stated that:**

- (a) In certain circumstances a court may be entitled to draw adverse inferences from the absence or silence of a witness who might be expected to have material evidence to give on an issue in an action.***
- (b) If a court is willing to draw such inferences they may go to strengthen the evidence adduced on that issue by the other party or***

*weaken the evidence, if any, adduced by the party who might reasonably have been expected to call the witness.*

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

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

[88] The Court has considered the instances upon which Counsel has asked that adverse inferences be drawn. However, the Court holds that no adverse inference would be drawn against the Defendant. The written statements of the victims who made the report to Sergeant Gokool would have been contemporaneous documents as to what occurred on 3 August 2006 and would have assisted in bolstering the Defendant's claim of having reasonable and probable cause. Nonetheless, both victims (Marilyn La Mott and Jillian Prescott) positively identified the Claimant as the assailant in the robbery and this was certified by the Station Diary Day Duty from the Marabella Police Station for 21 September 2006. Furthermore, the details of the interview with the Claimant are not in issue, therefore, failing to disclose the interview notes would not affect the Defendant's case.

[89] The Court finds that no reasonable inference can be drawn from the absence of PC Mohammed and the other officers present on 22 September 2006 that their evidence would have been adverse to the Defendant's case. The Court accepted that Corporal Adams was questioning the Claimant, he witnessed the Claimant attempting to escape, he was one of the officers who pursued the Claimant and he was the arresting and charging officer. Furthermore, his evidence was

certified by the Station Diary Day Duty extract from the Couva Police Station for 22 September 2006. In this Court's view, the extract was sufficient to corroborate Corporal Adams' evidence as it is a contemporaneous document. Moreover, the details of the interview with the Claimant are not in issue, therefore, failing to disclose the interview notes would not affect the Defendant's case.

[90] Nevertheless, in my assessment, the Defendant's witnesses proved to be truthful, convincing and credible. They remained unshaken throughout cross-examination and maintained that no evidence was fabricated against the Claimant in laying any of the charges and that there were reasonable grounds to charge the Claimant for the offences.

[91] The Court is of the view that the Claimant has failed to discharge the burden of proving the test of malicious prosecution on a balance of probabilities. I am convinced from the evidence, that in light of the law as aforementioned, the instant claim does not reveal a case of malicious prosecution. It is evident that the police officers in this matter did indeed have reasonable and probable cause for the prosecution against the Claimant.

[92] With respect to the House of Flave robbery, altogether, Sergeant Gokool would have had all of the following information in his mind before deciding to charge the Claimant, namely:

- (i) A report from Marilyn La Mott on 3 August 2006;
- (ii) A written statement from Marilyn La Mott;
- (iii) A written statement from Jillian Prescott;
- (iv) Oral confession of the Claimant's involvement in the robbery from Edward Dennis and Ansine Singh; and
- (v) Positive Identification of the Claimant by Marilyn La Mott on 21 September 2006.

[93] In relation to the White Diamond robbery, the information which Corporal Bassant would have had at the time of laying the charges against the Claimant was as follows:

- (vi) Oral reports from Hancell Motilal, Neil Brandon Joseph, Cordell Joseph; Cheryl Dabreo, Navita Joseph and Christopher Serrette on 3 September 2006;
- (vii) Written statement from Cheryl Dabreo on 5 September 2006; and
- (viii) Positive identification of the Claimant by Hancell Motilal, Cordell Joseph and Neil Brandon John on 22 September 2006.

[94] As regards the charge of escaping lawful custody, Corporal Adams would have had all of the following information in his mind before deciding to charge the Claimant, namely:

- (i) Being present at the time that the Claimant made good his escape from lawful custody at the Couva Police Station.

[95] Undoubtedly, Sergeant Gokool, Corporal Bassant and Corporal Adams had adequate evidence against the Claimant and it is clear to me that, applying the definition of “*reasonable and probable cause*”, the police officers subjected to this instant claim, would have had an honest belief in the guilt of the Claimant founded on reasonable grounds of the existence of a state of circumstances which, assuming them to be true, would reasonably lead any ordinarily prudent and cautious man placed in the position of the police officers, to the conclusion that the Claimant was probably guilty of robbery with aggravation and escaping lawful custody.

[96] Furthermore, I am convinced that it can be appropriately said that the police officers in this case, given the information that was before them, would have been reasonably satisfied that there was a proper case to go before the Court: **Glinski** and **Sandra Juman** applied.



[97] In these premises, without prejudice to the presumption of innocence of the Claimant in respect of the criminal charges, I am satisfied that the police officers, Sergeant Gokool, Corporal Bassant and Corporal Adams, had reasonable and probable cause to arrest, charge and prosecute the Claimant. I am further satisfied that such action of arresting, charging and prosecuting the claimant was *not* actuated by malice. The Claimant's claim of malicious prosecution fails and therefore there is no need for this court to explore any issue in respect of the Claimant's entitlement to damages.

## **VI. Disposition**

[98] The Claimant has not proved the elements of malicious prosecution in the instant claim. In light of my findings, the Claimant's claim shall be dismissed. The general rule that costs follow the event shall apply in this case. Accordingly, the Claimant shall be ordered to pay the Defendant's costs to be quantified on the prescribed scale. Before such costs can be quantified the **value of the claim must first be determined** in accordance with **Part 67.5(2) of the CPR 1998**.

[99] On the basis that (i) the Defendant is the successful party; (ii) the claim is for damages with no fixed monetary amount claimed; (iii) there was no agreed amount between the parties as to the value of the claim; and (iv) the Court has not stipulated an amount as the value of the claim, the claim is therefore deemed to be a claim for **\$50,000.00** in accordance with **Part 67.5(2)(c) of the CPR 1998** as amended by **Legal Notice No. 126 of 2011**. The matter having been determined after a full trial, the prescribed costs are quantified in the sum of **\$14,000.00** in accordance with the **Scale of Prescribed Costs in Appendix B of Part 67 CPR 1998**.

[100] In light of the above analyses and findings, the order of this Court is as follows:

**ORDER:**

1. The Claimant's Claim and Amended Statement of Case filed on 27 October 2014 and 7 January 2015 respectively be and are hereby dismissed.
2. The Claimant shall pay to the Defendant costs to be quantified on the prescribed scale pursuant to Part 67.5(2)(c) of the CPR 1998.
3. The said costs have been quantified in the sum of \$14,000.00 in accordance with the Prescribed Scale of Costs in Appendix B of Part 67 of the CPR 1998.

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**Robin N. Mohammed**  
**Judge**