

THE REPUBLIC OF TRINIDAD AND TOBAGO

**IN THE HIGH COURT OF JUSTICE
PORT OF SPAIN**

Claim No. CV 2011-00187

Between

DENISH KALICHARAN

Claimant

AND

**THE ATTORNEY GENERAL OF
TRINIDAD AND TOBAGO**

Defendant

BEFORE THE HONOURABLE JUSTICE RICKY RAHIM

Appearances:

Ms. C Bhagwandeem instructed by Ms. S Mohammed for the Claimant.

Ms. L Khan for the Defendant.

Judgment

1. For the reasons following, the judgment of the court is as follows:
 - i. The Claim is dismissed.
 - ii. The Claimant is to pay the prescribed costs of the Defendant in the sum of \$14,000.00.

2. The undisputed facts are that on or about the 28th September 2009, the Claimant was at his home when he was approached by approximately four officers. He was then informed by Police Corporal (PC) Knights, regimental number 12093, that they had received a report that the Claimant had unlawfully removed an air-conditioning unit from the premises of RGB Trinidad and Tobago Limited and that there was a warrant to search the Claimant's premises. The alleged air-conditioning unit was not found in the search. The Claimant was then arrested and taken to the Rio Claro Police Station. At around 8 p.m. that day, the Claimant was transferred to the Mayaro Police Station. On the 29th September 2009, while at the Mayaro Police Station, the Claimant was charged by PC Knights. The charge was that he:

“On the 24th day of September 2009, at Mayaro stole property belonging to Repsol, property valued at \$9,000.00. Contrary to Section 4 of the Larceny Act Chapter 11:12”.

3. Later that day, the Claimant was taken back to the Rio Claro Police Station to obtain bail, but the application was denied and he was subsequently transferred to the Golden Grove Prison. The Claimant was granted bail on the 30th September 2009 at the Mayaro Magistrate's Court.

4. The Claimant's matter was determined on the 9th February 2010 at the Mayaro Magistrate's Court and was dismissed for non-appearance of the prosecution witness.

5. The Claimant avers that the police officers, acting as servants and/or agents of the State, lacked reasonable and probable cause and maliciously and/or negligently laid the charges knowing that there was no basis for same. The Claimant claims damages including aggravated and/or exemplary damages for false imprisonment and malicious prosecution and damages including vindictory damages for breach of the Claimant's constitutional rights contrary to section 4 and section 5 of the Constitution and the Claimant's right to telephone a friend and/or relative.
6. The Defendant avers that PC Knights received a telephone report on the 28th September 2009 from one Premchan Sookram that the Claimant and another employee, Sherwin Dunda unlawfully and without authorization removed an air-conditioning unit from RBG Ltd on the 24th September 2009. Contrary to the Claimant's averment that the Defendant, its servant and/or agents failed to conduct proper investigations the Defendant contends that prior to going to the Claimant's house PC Knights visited the RBG compound and interviewed two female security guards who were on duty on the 24th September 2009. The Defendant also claims that PC Knights interviewed Sherwin Dunda who claimed he was never on the RBG compound on the 24th September. Further, despite the Claimant's claim that no warrant was read or shown to him, the Defendant asserts that the warrant was read to the Claimant in the presence of the Claimant's common law wife.
7. It was the Claimant's case that he was handcuffed in front his home in the view of his neighbours and passers-by, however the Defendant claims that the Claimant was never handcuffed since he cooperated with the police.
8. The Claimant's claim is in the torts of false imprisonment and malicious prosecution, consequently they will be dealt with separately.

False Imprisonment

9. The substance of a claim of false imprisonment is the fact of imprisonment and the claimant need only establish a prima facie case that he was imprisoned by the

Defendant or his agent. The onus then lies on the defendant to justify the imprisonment: **Jeffery John v AG** CV 2009/1536; **Halsbury's Laws of England** VOLUME 97 (2010) 5TH EDITION para 542.

10. It is not in dispute that the Claimant was in fact imprisoned. The burden is now shifted to the Defendant to justify this imprisonment. It has not been argued that there was a warrant for the Claimant's arrest. It was contended by the Defendant that PC Knights, at the time of arrest, had reasonable and probable cause to believe that the Claimant had stolen an air condition unit from the RBG Compound.
11. The matter thus falls to be determined by reference to Section 3 (4) of the **Criminal Law Act Ch 10.04**. By Section 3 (4) of the **Criminal Law Act**, a police officer, who, with reasonable cause, suspects that an arrestable offence has been committed, may arrest without warrant anyone whom he, with reasonable cause, suspects to be guilty of the offence.
12. The test as to whether a police officer has reasonable cause to arrest pursuant to section 3(4) of the **Criminal Law Act**, has both a subjective and objective element: **Ramsingh v AG** [2012] UKPC 16; **Ijaz Bernadine v AG** CV 2010-02956.
13. In determining this issue, Mendonca J, as he then was, in **Harold Barcoo v The Attorney General and Browne** HCA 1388 of 1989 approved the following questions which have been accepted in recent times (see **Ijaz Bernadine v AG** (supra)):
 - 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?

14. Mendonca J noted that the first two questions are subjective, while the second two are objective. Once the objective test is satisfied, the onus is on the Claimant to establish that the subjective test had not been satisfied. Thus, the first enquiry is to ascertain what was in the mind of the arresting officer and to determine whether the grounds on which the arresting officer relied as the basis for his suspicion were reasonable.

15. The information in the mind of PC Knights giving rise to the arrest can be stated briefly:

- i. A telephone report from Premchan Sookram on the 28th September, a manager at RBG Ltd. He reported that on the 24th September 2009, a public holiday, the Claimant and one Sherwin Shunda, employees of RBG Ltd., were seen by two security guards, Wendy Hosein and Ayeisha Boodoo, on the RBG compound removing an air-conditioning unit from the compound. The report was that the Claimant and Sherwin were not on duty on the said day and had no permission to be there.
- ii. The allegations were relayed to Sherwin on the 28th September 2009, to which he replied "I don't know anything about that, I was not even on the compound that day".
- iii. When the Claimant was informed of the allegations on the 28th September 2009, by PC Knights, he admitted to being on the compound on the said day, however denied stealing the air-conditioning unit. The Claimant therefore placed himself at the scene but in an exculpatory manner.
- iv. The item was not discovered at the home of the Claimant or that of Sherwin.

16. The question for consideration thus is whether the grounds on which PC Knights relied were reasonable and whether the circumstances constituted reasonable grounds for the suspicion or belief.
17. It was submitted that several factors contributed to his suspicion. It was the Defendant's primary submission that the inconsistencies between the reports of the Claimant, Sherwin and Dave lead him to suspect that they were responsible for the crime. The court notes that the statements of the security guards and Dave Garcia were not obtained prior to the Claimant's arrest, but were obtained immediately following the arrest on the same day. Despite the fact that the search of the Claimant's home turned up empty, the court does not consider this to be a determining factor. Of importance is the definition of "suspicion" in ***Shaaban Bin Hussien and Others v Chong Fook Kam and Another*** [1970] AC 942. It was explained:

*"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 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. It is indeed desirable as a general rule that an arrest should not be made until the case is complete. But if arrest before that were forbidden, it could seriously hamper the police. To give power to arrest on reasonable suspicion does not mean that it is always or even ordinarily to be exercised. It means that there is an executive discretion. In the exercise of it many factors have to be considered besides the strength of the case. The possibility of escape, the prevention of further crime and the obstruction of police enquiries are examples of those factors with which all judges who have had to grant or refuse bail are familiar."*

18. When one considers the report by Premchan, and the Claimant's admission to the police prior to being taken into custody that he was in fact on the compound on the date of the incident, it is reasonable to form some amount of suspicion. When this is coupled with Sherwin's denial of being on the RBG compound on the 24th September 2009, despite him being placed there by other witnesses, any suspicion formed will be based on reasonable grounds. The absence of physical evidence of the stolen unit, would not, in the court's view detract from this suspicion formed, as suspicion "*is a state of conjecture or surmise where proof is lacking*".
19. The Claimant must now establish that the subjective test had not been satisfied. The Claimant must show that PC Knights "did not in fact believe what *ex hypothesi* he would have believed had he been reasonable. In this regard, the Claimant has not demonstrated that PC Knights did not genuinely believe that the Claimant was involved in the alleged offence.
20. Although the Claimant testified that he was not told the reason for his arrest, in cross examination he admitted that he was in fact informed of the reason. The Claimant testified that there was no basis for his arrest, detention, charge and eventual prosecution. He claimed that despite the fact that no air-conditioning unit was found, and that his colleague Dave Garcia corroborated his version of the facts, PC Knights "*continued to prosecute him like a hardened thief and treated him in a derogatory debasing manner*". The court however finds that PC Knights having received information from Premchan, and information from the Claimant that he was in fact on the compound on the date in question, he would have genuinely suspected the Claimant of participating in the offence charged. There was nothing in the action of PC Knights that indicated that he did not hold a genuine belief on the facts known to him. The lack of physical proof could not in the circumstances derogate from this belief. The possibility that the unit could have been stowed away or sold was a real possibility, among other things, that PC Knights could have taken into account in arresting the Claimant.

21. The Defendant has therefore successfully justified the imprisonment of the Claimant and the Claimant's claim in false imprisonment therefore fails.

Malicious Prosecution

22. The elements necessary to found a claim in malicious prosecution are (a) that the law was set in motion against the Claimant on a charge for a criminal offence; (b) that the Claimant was acquitted of the charge or that otherwise it was determined in his favour; (c) that the prosecutor set the law in motion without reasonable and probable cause; (d) that in so setting the law in motion the prosecutor was actuated by malice; and (e) that the Claimant has suffered damage: see *Halsbury's Laws of England Volume 97 (2010) 5th Edn. Para 627, 636.*

23. From the instant facts, there is no dispute that the Claimant was charged with a criminal offence. There is also no dispute that the proceedings at the Magistrate's Court were determined in his favour since the charges against the Claimant were dismissed. To this end, the elements of malicious prosecution which remain to be determined are:

- (i) Whether PC Knights had reasonable and probable cause to set the law in motion against the Claimant;
- (ii) Whether PC Knights was actuated by malice, spite or improper motive in charging the Claimant.
- (iii) If it is found that PC Knights lacked reasonable and probable cause and there was malice involved, whether the Claimant has suffered damage.

Reasonable and Probable Cause

24. The presence of reasonable and probable cause for a prosecution does not depend upon the actual existence of proof, but upon a reasonable belief held in good faith in the existence, of such facts as would justify a prosecution. In determining whether there

was reasonable and probable cause, there must be an evaluation of the facts known to PC Knights using both objective and subjective tests.

25. The objective element involves a consideration of whether a reasonable man having knowledge of facts that the Defendant or his agent knew at the time he instituted the prosecution, would have believed that the Claimant was guilty of the alleged crime. The subjective test considers whether the Defendant or his agent honestly believed that the Claimant was guilty.

26. The existence of reasonable and probable cause is a question of fact and the court must consider the facts known to the Defendant which led to the Claimant's prosecution. In this regard, the information stated at paragraph 15 above is applicable. Additionally, before the charge was laid PC Knights had obtained the following additional information:

- i. A statement taken from one Dave Garcia on the 28th September 2009, revealing that he, Sherwin, and the Claimant were liming on the 24th September when Sherwin told them that he wanted to collect something from the RBG compound. The three journeyed to the compound but Dave and the Claimant eventually left Sherwin when the Claimant's wife came to pick them up. Dave reported that when they left with the Claimant's wife, Sherwin was still at the compound.
- ii. Statements from Wendy and Ayeisha (the security guards) were recorded on the 28th September 2009. The statement revealed that they saw the Claimant and Sherwin on the compound on the 24th September 2009 and that when they left Sherwin was carrying a cream coloured air-conditioning unit to a silver car. Although the statements were struck off from the witness statement of PC Knights, the evidence of Wendy is still

before the Court in the form of the Magistrate Court Notes from the Mayaro Magistrate's Court.

27. Counsel for the Defendant submitted, having considered the reports received from Premchan and the security guards, that the Claimant and Sherwin were seen on the RBG compound, and that PC Knights formed the bona fide belief that the Claimant and Sherwin had committed the said offence and consequently charged them both for the offence. With this submission the court agrees. Further, it was submitted that despite the discrepancies in the evidence, specifically between Sherwin and the Claimant, it was not for Corporal Knights to test these discrepancies to determine the truth but rather for the court to test the strength of the evidence and make such a determination. The conflicting versions were essentially, in the court's view, a matter of fact. Whether the facts were as admitted by the Claimant or denied by Sherwin is a matter to be decided by the finder of fact. The court agrees that it was not within PC Knights' function to make a determination of the facts.
28. In the circumstances, the court finds that PC Knights had reasonable and probable cause to charge the Claimant.

Malice

29. The Claimant must prove "malice in fact" indicating that the Defendant was actuated either by spite or ill-will against the Claimant, or by indirect or improper motives.
30. It was submitted by the Claimant that PC Knights acted hastily in arresting the Claimant and recklessly in his prosecution due to the personal relationship which he had with Premchan. It was submitted that PC Knights, together with Premchan, fabricated the report of the stolen air-conditioning unit.

31. Although the question of malice does not arise where lack of reasonable and probable cause is not proved, the court finds that there is simply no evidence of malice. The Claimant has failed to place before the court **any** evidence of malice. The insinuation that PC Knights had a personal relationship with Premchan and consequently fabricated the allegations against the Claimant is not enough to amount to evidence either directly or obliquely upon which this court can rely to demonstrate any ill-will, spite or improper motives on the part of the Defendant.

Breach of Constitutional Rights and Right to Telephone a Friend/Relative

32. The Claimant avers that he was denied:

- i. The 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;
- ii. The right upon his arrest and detention to be informed promptly and with sufficient particularity of the reason for his arrest and detention;
- iii. The right upon his arrest to instruct without delay a legal advisor of his choice and to hold communication with him; and
- iv. The right to a telephone call namely a friend and/or relative at the time of detention.

33. A party whose constitutional rights has been infringed can seek both common law damages and damages under the Constitution in a matter before the High Court. The measure of damages under the Constitution is one of vindicatory damages: **Tamara Merson v Drexel Cartwright and The Attorney General** UKPC 61 of 2003.

34. A claim in false imprisonment rests on an unlawful imprisonment therefore a person whose liberty has been taken away by **lawful** authority has no claim. The lack of lawful authority to arrest and consequently a successful claim in false imprisonment is reflected in the constitutional right listed at (i) above. Having previously ruled that the

Claimant's claim in false imprisonment has failed, the court also finds that ground (i) above must also fail. The Claimant was lawfully imprisoned and his rights as reflected in (i) above have not been infringed.

35. The Claimant testified that before his home was searched he was informed by PC Knights of the report made by Premchan that he had unlawfully removed an air-conditioning unit from the RBG compound. In fact, the Claimant admitted in cross examination that he was told the reason for his arrest. The court therefore cannot agree that the Claimant's constitutional right listed at (ii) above was infringed.

36. Although the Claimant denied during cross examination that he was cautioned or informed of his rights and privileges, PC Knights testified that when he arrived at the Claimant's home, he cautioned him and informed him of his constitutional rights and privileges. PC Knights' assertion is reflected in Station Diary Extract dated 28th September, 2009 and exhibited as "R.K.3" to his witness statement.

37. Further, although the Claimant averred that he was denied the right to telephone a relative or friend, PC Knights testified in cross examination that the Claimant was allowed to make telephone calls when he requested. In this regard, Counsel for the Defendant submitted that there is no constitutional right to a telephone call to a friend and/or a relative as alleged by the Claimant. Although this is not a right enshrined in the Constitution, it is a right accruing to a person in custody by virtue of the Judges' Rules to be allowed to speak on the telephone to his attorney or friend provided no hindrance is reasonably likely to be caused to the process of investigation or the administration of justice by his doing so. Although not protected by the Constitution, this right has been accepted as one important in the proper administration of justice: see **Charran Francis v The Attorney General of Trinidad and Tobago** H.C.518/2003. H.C.S.268/2003; **Marlon McQueen v The Attorney General of Trinidad and Tobago** H.C.2969/2003. Further this right has not been put forward as a constitutional right. The Claimant in fact sought

vindictory damages for *“for breach of the Claimant’s constitutional rights contrary to section 4 and section 5 of the Constitution and the Claimant’s right to telephone a friend and/or relative”*.

38. It was submitted by the Defendant that there exists a presumption of regularity in favour of PC Knights as a public officer in the performance of his official duties as a police officer: **Mohanlal Bhagwandeem v Attorney General of Trinidad and Tobago** Privy Council Appeal No. 45 of 2003 at paras. 20, 21, 22. It was further submitted that the Claimant failed to adduce sufficient evidence to rebut this presumption and the only evidence presented was the Claimant’s bare allegation that he was not informed of his constitutional rights at the time of his arrest.

39. This court is cognisant of the fact that the Claimant had previously alleged that he was not informed of the reason for his arrest, but later recanted this during cross examination and admitted that he was in fact informed of the reason for the arrest. His credibility has been seriously impacted by this inconsistency in relation to a prominent feature of his claim. The court consequently considers that it is more likely than not that he was informed of his right to contact, retain and instruct an attorney-at-law and the right to communicate with a friend or relative by way of a telephone call, as stated by PC Knights in his evidence. Additionally, the court considers and accepts the Station Diary Extract dated 28th September, 2009 that the Claimant was so informed. No evidence was brought casting doubt on this cogent documentary evidence and the court therefore finds that the Claimant’s rights outlined in (iii) and (iv) above have not been infringed.

Detention before charge and Detention after denial of bail

40. The Defendant has submitted that the Claimant was detained for a period no longer than was necessary to conduct further investigations into the alleged offence. Further, it

was contended that upon being charged, the Claimant was brought promptly before a Justice of the Peace who denied him bail. Consequently, it was submitted that the Claimant's remand into custody after bail was denied, was the result of a judicial act by a legitimate judicial officer, and no liability can attach to the Defendant for the Claimant's consequent imprisonment.

41. Dealing first with the issue of the Claimant's detention after he was denied bail, the court finds that the Defendant is not liable for damages in false imprisonment at all and further for any detention of the Claimant after he was denied bail by the Justice of the Peace. This refusal of bail was an act of a judicial authority for which no liability can attach to the police: see **Anthony Sorzano and Steve Mitchell v Attorney General of Trinidad and Tobago** H.C.A No. 46 of 1996.
42. It is an established principle of law that a constable can do what is reasonable to investigate an allegation. He is permitted to inquire into whether his suspicions about a person suspected of an offence are well founded and supported by further evidence: **Dallison v Caffery** [1964] 2 All ER 610. The arrestor must justify the continuance of the suspect's custody by showing that it was reasonable.
43. On the issue of detention, the Claimant submitted that he was taken to the Rio Claro Police Station around 5 p.m. on the 28th September 2009, where he was placed in a cell for 3 hours before being taken to the Mayaro Police Station. At the Mayaro Police Station the Claimant claims he was placed in a cell for about 18 hours. On the 29th September 2009 at about 2 p.m. the Claimant was charged. At about 2:30pm that day the Claimant was taken to the Rio Claro Police Station to be granted bail by a Justice of the Peace but was denied same.
44. The court is of the view that the Claimant's detention until he was granted bail at the Magistrate's Court was lawful. The Claimant's detention was reasonable in the

circumstances, to continue investigations. During this period of detention, investigations were ongoing. PC Knights obtained and executed a search warrant at the home of Dave Garcia, obtained a statement from Dave Garcia and communicated with the two security guards at the RBG Compound. Arrangements were made to interview the security guards and their statements recorded the next day. It has been said, and the court agrees, that some delay after arrest may be justifiable if explained by the taking of such steps, and such delay may actually be in the arrested person's interest as it may result in his release without charge: see **Nigel Lashley v The Attorney General** CV 2009-01274.

45. The Claimant was therefore not wrongfully detained since he was detained for a period no longer than was necessary to conduct further investigations and prefer the charge against him.

46. For these reasons, the court would therefore dispose of the Claim in the manner set out at paragraph 1 above.

Dated this 15th October, 2012.

Ricky Rahim

Judge