

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV 2011 - 03769

BETWEEN

Owing Goring

Claimant

AND

The Attorney General of Trinidad and Tobago

Defendant

Before the Honourable Mr. Justice Ricky Rahim

Appearances:

Mr. G. Ramdeen instructed by Mr. B. Debideen for the Claimant

Ms. T. Gibbon-Glen instructed by Ms. A. Ramroop for the Defendant

Judgment

1. The Claimant claims damages, inclusive of aggravated and exemplary damages, for malicious prosecution. The Claimant also claims special damages in the sum of \$10,000.00.

The Claim

2. The Claimant claims that on the 1st December 2006 he was charged by PC Samlal for the offences of possession of marijuana and possession of cocaine. According to the Claimant, the charging officer, PC Samlal, lacked reasonable and probable cause to proffer the charges.
3. The Claimant avers in his statement of case that on the 30th November 2006, he appeared at the San Fernando Magistrate's Court in connection with an unrelated matter. While there he was told by police officers that they would have him arrested later that day.
4. On the evening of the 30th November, the Claimant claims he was playing cards when police officers began searching the area. He alleges that a quantity of narcotics was found in the grass and an officer told PC Samlal "give that to the Claimant". The Claimant was then arrested.
5. The Claimant maintains that at no time was he in possession of the narcotics and that the police gave him a "frame case"
6. According to the claimant, he was granted bail on the 1st December 2006, but was unable to meet the conditions and he was placed in a holding cell at the Magistrate's Court. The Claimant particularised the conditions in his Statement of Case. He was later taken to the State Prison where he was detained until the 5th March 2007 in inhumane and unsanitary conditions. These conditions are also particularised in the Claimant's statement of case.

The Defence

7. The Defendant is sued pursuant **State Liability and Proceedings Act Chap 8:02**. The Defendant denies the Claimant's allegations that PC Samlal lacked reasonable and probable cause.

8. The Defendant denies that the narcotics were found in the grass and claims that it was in fact found on the Claimant. The Defendant further denies the allegation that the Claimant was seen by police officers in the Magistrate's court and told that he would be arrested. According to the Defendant the Claimant was formally charged by PC Samlal on the 30th November 2006 in the following circumstances:
 - i. PC Samlal reported to work on the 30th November 2006 around 7 a.m. and was dispatched for mobile patrol in the company of PC Stoute and other members of the armed forces.
 - ii. While on patrol on George Street, Ste. Madeleine, around 3:30 p.m. on the said day, PC Samlal observed the Claimant standing on the road.
 - iii. When the Claimant noticed the approaching vehicle he ran through a track. PC Samlal stopped the vehicle and he and PC Stoute alighted from the vehicle and chased after the Claimant. The Claimant was subsequently held and searched a black plastic bag containing several clear plastic packets with what resembled plant material and a piece of black plastic with what seemed like a quantity of creamish rock like solid was found.
 - iv. The Claimant was then arrested for offences contrary to s. 5(1) of the **Dangerous Drug Act No. 38 of 1991** as amended by **Act No. 44 of 2000**, suspecting on reasonable grounds that the offences had been committed by the Claimant. The Claimant was cautioned and told of his legal rights and taken to the Ste. Madeleine Police where he was again cautioned and told of his legal rights and formally charged.

9. The Claimant was taken to the San Fernando Police Station around 6:00 p.m. the same day and on the 1st December 2006, he was taken to the San Fernando Magistrate's court and was granted bail. The Claimant was taken back to court on several occasions between the December 2006 and April 2007. The matter was dismissed on the 24th April for want of prosecution.
10. The Defendant denies further that the acts of PC Samlal were unconstitutional, arbitrary or oppressive. Further, the Defendant contends that the Claimant is not entitled to the special damages claimed as same has not been pleaded nor proved.

The Issues

11. In a claim for Malicious Prosecution, the claimant must prove (a) that the law was set in motion against him on a charge for a criminal offence; (b) that he was acquitted of the charge or that otherwise it was determined in his favour; (c) that the law was set 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 he has suffered damage: see *Halsbury's Laws of England Volume 97 (2010) 5th Edn. Para 627, 636*. Since (a) and (b) were not in dispute, the issues that the court identified were as follows:
 - (i) Whether PC Samlal had reasonable and probable cause to set the law in motion against the claimant;
 - (ii) Whether PC Samlal, in so doing had been actuated by malice.
 - (iii) If it is found that PC Samlal lacked reasonable and probable cause and there was malice involved, whether the claimant has suffered damage.
12. The court notes that submissions were to be filed by the Claimant by 29th May 2013. To date, no submissions have been filed and the court must proceed without the benefit of the Claimant's submissions.

Reasonable and Probable Cause

13. Reasonable and probable cause is an honest belief that that circumstances exist which, assuming them to be true, would reasonably lead any ordinarily prudent and cautious man, placed in the position of an accuser, to the conclusion that the person charged was probably guilty of the crime imputed: see **Cecil Kennedy v AG of Trinidad and Tobago** **Cv App 87 of 2004; Halsbury's Laws of England Volume 97 (2010) 5th Edn. Para 641.**
14. The question of whether there was reasonable and probable cause involves both subjective and objective tests. The objective element involves a consideration of 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. The subjective test considers whether the Defendant honestly believed that the claimant was guilty.
15. This is a question of fact and the court must consider the facts known to PC Samlal leading to the Claimant's prosecution.
16. According to the evidence of PC Samlal and PC Stoute the basis upon which they instituted the prosecution was as follows:
 - i. PC Samlal reported to work on the 30th November 2006 around 7 a.m. and was dispatched for mobile patrol in the company of PC Stoute and soldiers PTE Maitland and PTE Charles in an unmarked vehicle PBZ 1869. The police officers were dressed in police uniform tactical wear and the soldiers were dressed in army uniform.
 - ii. The party was on patrol in George Street, Ste. Madeleine around 3:30 p.m. when PC Samlal observed the Claimant standing on the road. The Claimant noticed the approaching vehicle and immediately ran through a

track. PC Samlal became suspicious and instructed PC Stoute to stop the vehicle. He and PC Stoute alighted from the vehicle and chased after the Claimant.

- iii. The Claimant was subsequently held and searched and a black plastic bag containing 35 clear plastic packets each containing plant material resembling marijuana and a piece of black plastic containing a quantity of creamish rock like solid resembling cocaine was found in the Claimant's **front right pocket**. PC Samlal informed the Claimant that he believed the substances were marijuana and cocaine and he arrested him for offences contrary to s. 5(1) of the **Dangerous Drug Act No. 38 of 1991** as amended by **Act No. 44 of 2000**, suspecting on reasonable grounds that the offences had been committed by the Claimant.
- iv. The Claimant was cautioned and told of his legal rights and taken to the Ste. Madeleine Police Station around 3:45 p.m. where he was again cautioned and told of his legal rights and formally charged for possession of marijuana and cocaine.
- v. The plastic bag found on the Claimant was then weighed in the presence of the Claimant and PC Stoute and taped and marked for later conveyance to the Forensic Science Centre.
- vi. After the Claimant was processed around 6:00 p.m. he was taken to the San Fernando Police Station

17. Of note is that the Defendant's pleaded case had been that the item was found in **the Claimant's hand**. This is measured against the evidence of both PC Samlal and PC Stoute that the plastic bag was found **in the Claimant's pocket**. When questioned on this in cross examination, PC Samlal explained that it was an error on his part and that the drugs were in fact found in the Claimant's right front pocket. The court believes that this inconsistency is not fatal to the Defendant's case but goes against the witness' credibility when considering the case as a whole. The court is tasked with a fact finding exercise which ought generally to be approached by looking at the inherent probabilities of the various versions together with all the viva voce evidence, in the case: *Alice Mohammed v*

Jeffrey Bacchus C.A.CIV.106/2001 per Sharma JA. In Alice Mohammed (supra) the fact that the Claimant's pleaded case was significantly different to what was admitted in cross examination aided the court in finding that the Claimant was an unreliable witness and her version of events was not accepted. To this end the court is not of the view that in the present case, the inconsistency was of such significance that it has tainted the credibility of both officers as far as the finding of the narcotics was concerned. The court finds that finding narcotics in the pocket is equally plausible. Witnesses may give inconsistent testimony for several reasons. The witness may be trying to deceive by making up the story altogether, or the witness may be making a genuine mistake. In this case the court also considered the fact that the evidence was being given over 6 years after the incident by police officers who work would have necessarily involved several similar cases over time. The credibility of the testimony is therefore not in the court's view affected to the extent that their evidence is vitiated. The essence of the evidence remains, namely that the plastic bag was found on the Claimant's person.

18. The Claimant on the other hand testified that the Defendant's version of events is incorrect. In this regard, the Claimant testified that:

- i. The Claimant had appeared in the San Fernando Magistrate's Court the morning of the 30th November 2006 on charges. After the matter was determined, he was taken to the holding cell of the court and a police officer told him that he would lock him up later. The Claimant was released later that day.
- ii. Later that day the Claimant was on his way to the grocery and was passing through George Street, Ste Madeleine, when he saw someone he knew playing cards. While playing cards everyone suddenly got up and ran. When the Claimant turned around he noticed a police pick up coming towards him. The vehicle stopped by him and two officers came out and ran behind the men who had ran off. PC Samlal was allegedly one of those officers. The driver then came out and asked the Claimant his name and searched him.

- iii. PC Samlral returned with a black plastic bag in his hand and the driver allegedly told PC Samlral to “give that to him” and pointed to the Claimant.
- iv. Despite his protestation that the item did not belong to him, the Claimant was then arrested and taken to the St. Madeleine police station. He was later charged for possession of marijuana and cocaine and processed and placed in a cell over night.
- v. At about 7 a.m. the next day, 1st December 2006, the Claimant was taken to the San Fernando police station and later taken to the San Fernando Magistrate’s Court. Although he was granted bail on that occasion he could not meet the conditions and was only able to meet the conditions of bail on the 5th March 2007.

19. The Claimant insisted in cross examination that the car in which the police officers arrived was not an unmarked one but a police vehicle with lights on its hood and a police sign on the bonnet.

20. Further, the Claimant gave evidence that he had been playing all fours with three other men when they suddenly ran off. The court thinks it implausible that the Claimant would be the only one to remain upon seeing the group run off. This makes no sense. This is particularly so since the Claimant’s evidence is that his back was to the arriving police. This means that when the men ran, according to his testimony, he would have still been seated. He said that when he looked back he observed the police vehicle coming towards him. He then said the police came up to him and searched him. But if his evidence is to be believed, he is still seated at this time. One would have reasonably expected him in those circumstances to have also run. It just does not accord with common sense that he would remain seated while his playing partners ran off.

21. The evidence of PC Samlral however gives a version of events that are quite plausible. It was submitted by the Defendant (and accepted by the court as a reasonable inference to

be drawn from the evidence) that PC Samlal's suspicion was first raised by the act of the Claimant running off on seeing the police approach in the unmarked vehicle. There would have been no other reason for suspicion prior to that as the fact of men playing cards at the side of the road is a West Indian tradition that attracts no particular suspicion.

22. In this regard the evidence of PC Samlal in cross examination was as follows:

"The incident took place on an incline, a little hill. I saw the claimant while I was in the vehicle. I was in the vehicle about 100 feet away from him when I first saw him. He started to run. Stoute drive up before I disembarked. From 100ft he started to run already. Stoute was driving. I told Stoute drive up. I told him someone just run. I brought it to his attention. I can't recall how I did that. I wasn't sure. I can't say he put the vehicle in park and pulled up the handbrakes. The vehicle wasn't a full stop when I came out. By the time I came out the vehicle the claimant was 20 feet into the track. I chased the claimant. I can't average how far he was from the vehicle when I caught him. He had gone approximately another 10 feet when I caught him. He was running. People does run when engaged in illegal activity. He was running fast. I was running faster than him to catch him. I make up the 20 then the 10 and caught him 30 ft away. It had some grass waist height. I can remember seeing grass on the sides of the track. There were two army officers on patrol with me."

23. The evidence of PC Stoute on cross examination is however as follows;

"There is an incline to go up before where the incident took place. While going up George St I saw the claimant. He was approximately 10 feet away from me when I first saw him while in the vehicle. At that point PC Samlal was in the vehicle with me. He pointed out the claimant to me. Samlal told me look ah man running dey. There were other people around where the claimant was. I brought the vehicle to a stop. Samlal came out when the vehicle stop. By the time I brought the vehicle to a stop Goring was about 12 feet away from the vehicle. He take off. Officer Samlal and me went behind him. Both of us grabbed him at the same time. We chased him and he was running fast. He

was about 50 to 60 meters away from the vehicle when we caught him about 175 feet away. The track had grass around. Some of the grass was high about 4 to 5 feet high. There were two army officers with us. When me and Samlal chased they ran after the other fellas that ran."

24. Much weight was made of the variation in this evidence in relation to the distance the officers were away from the claimant when he is alleged to have run and from when they first saw him and also the time it would have taken for the police to catch up with the Claimant during the chase. But these are more often than not matters of perception which can vary greatly between witnesses. Variations in time and distance and in the description of a foot chase are to be expected even on the part of seasoned police officers and do not in the court's view taint the credibility of these officers in relation to the essential facts of the event, namely that they the officers saw the men run, one of whom was the claimant and one officer gave chase and eventually held him. The court considers that the officer doing the chasing at first was PC Samlal and his estimation may have been more reliable as he followed through and held the claimant. It was the duty of PC Stoute to drive and so his estimation may attract less weight. This may well account for the inconsistency in the evidence.

25. As such, the Defendant contended that this was a perfectly reasonable response on the part of PC Samlal, and that in the circumstances of what had been found, he felt he had an honest belief in the Claimant's guilt, enough to lay a proper case before the court.

26. Assuming the facts known to PC Samlal to be true, the court is of the view that a reasonable man having knowledge of these facts would have believed that the Claimant was guilty of the alleged crime. The court thinks that this is so particularly in light of the Defendant's evidence that the Claimant ran on seeing the officers.

27. Reasonable and probable cause does not mean that the prosecutor has to believe in the probability of conviction. The prosecutor is concerned only with the question of whether

there is a case fit to be tried. *Glinski v McIver* [1962] 2 WLR 832. In this regard the court is of the view that PC Samlal did honestly believe that the Claimant was guilty. In cross examination the Claimant's attorney raised the issue that the police car had not been unmarked but it had been a police vehicle. While the court does not believe this evidence, as no evidence to support such a contention has been given, this evidence does not diminish the credibility of the Claimant's evidence. Even if the police vehicle was unmarked, it is common knowledge that in a small society such as ours the unmarked police vehicles attached to a police station in an area are well known as police vehicles by persons within the community. If therefore, the argument of the Claimant is that he did not have cause to run because he was unaware that the oncoming vehicle was in fact a police vehicle, the court does not accept that explanation.

28. The most important inconsistency raised with respect to the Defendant's case had been the Defendant's pleadings that the plastic bag had been found in the Claimant's hand while the testimony of PC Samlal and PC Stoute was that it had been found in his front right pocket. As discussed at paragraph 17 above, the court does not think that this weighs against PC Samlal's credibility particularly because his evidence is in a large measure corroborated by PC Stoute.

29. The court finds therefore that the Claimant has failed to prove that there was an absence of reasonable and probable cause for the institution of the criminal proceedings against him.

Malice

30. A Claimant in a claim for damages for malicious prosecution has to 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: *Halsbury's Laws of England Volume 97 (2010) 5th Edn. Para 639*

31. Where lack of reasonable and probable cause is not proved, the question of malice does not arise: *Cecil Kennedy v AG of Trinidad and Tobago* Cv App 87 of 2004.
32. Having ruled that the Claimant has not proven the lack of reasonable and probable cause, the issue of malice does not arise for consideration. In any event, the Claimant has given no particulars of malice in his pleadings and the court is unable to consider same.

Disposition

33. The order of the court is therefore as follows:
- a. The Claim is dismissed.
 - b. The Claimant is to pay the prescribed costs of the claim to the Defendant in the sum of \$14,000.00.

Dated this 17th day of July, 2013.

Ricky Rahim

Judge