

**REPUBLIC OF TRINIDAD AND TOBAGO**

IN THE HIGH COURT OF JUSTICE

CV2014-00705

BETWEEN

**MITRA LATCHMAN**

CLAIMANT

AND

**THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO**

DEFENDANT

**Before the Honourable Mr. Justice R. Rahim**

**Appearances:**

Ms. R. Ramjit and Mr. A. Pariagsingh instructed by Mr. G. Saroo for the Claimant

Mr. S. Jaikaran and Ms. R. Turab instructed by Ms. N. Simmons for the Defendant

## Judgment

1. By Claim form filed on the 26<sup>th</sup> February, 2014, the Claimant seeks damages for malicious prosecution and special damages of \$37,160.00 as well as aggravated and/or exemplary damages. On the 26<sup>th</sup> April, 2003, the Claimant was charged with the offences of using obscene language and resisting PC Bunting in the lawful execution of his duties on the 25<sup>th</sup> April 2003 (“the Papourie Road charges”). These offences were alleged to have occurred at Papourie Road at the time the police took the Claimant into custody in relation to an incident which occurred earlier that day at Lalbeharry junction. These charges were dismissed by his Worship Jai Narine on the 5<sup>th</sup> April, 2004. After these charges were dismissed, the Claimant instituted CV2008-02149, Mitra Latchman v The Attorney General of Trinidad and Tobago. The Defendant conceded liability and damages were assessed.
  
2. The present Claim relates to charges which arose as a consequence of the incident which occurred earlier on the same day at Lalbeharry junction ( “Lalbeharry junction charges” ) involving at least one of the same police officers present at Papourie Road later that day, namely No. 15331 Police Constable Rawle Jacob (“PC Jacob”) in respect of whom the Claimant was also charged. It is the second claim to arise from matters which occurred on the same day but at a different place. The second set of charges were that of using obscene language and assault by beating and assaulting with the intention of preventing the lawful detaining of himself. The Lalbeharry junction charges were called forty-six (46) times and on the 10<sup>th</sup> June, 2011 the charges were dismissed by Her Worship Ms. Alert for want of prosecution. The Claimant claims that the Lalbeharry junction charges included a charge of using obscene language which was a duplication of the obscene language charge contained in the Papourie Road charges. He further claimed that the police officers abused their powers by laying the Lalbeharry junction charges against him.

3. The parties were invited to make closing submissions in writing. The Defendant has obliged but to date the Claimant has not made any although the time limited for so doing expired on the 17<sup>th</sup> October 2016 after two extensions sought and granted. The court therefore presumes that the Claimant has chosen not to submit.

### **The Case for the Claimant**

4. The Claimant gave evidence for himself. He is self employed as a small contractor. It is his case that on the 25<sup>th</sup> April, 2003, at about 7:00 p.m. he was on his way home after dropping off some of his workers in Barrackpore. He was in the company of two men named Ronnie and Sheriff respectively. He stopped off at Lalbeharry Trace junction to drop off Sheriff. During cross-examination however, the Claimant's version of events shifted slightly in that he testified that he and Sheriff were being driven by Ronnie in a Junior Sammy dump truck. He had left work at 3:00 p.m. and went to the bank to obtain money to pay salaries as it was a Friday which was payday. He then went to Couva for a haircut. After that he and Ronnie went to a bar where Ronnie had a beer and he had a non-alcoholic drink only as he was not a drinker of alcohol. After they left the bar, Ronnie pulled the dump truck onto the left lane of the two-way road at Lalbeharry junction to drop off Sheriff. Sheriff and Ronnie then got into an argument which attracted a commotion.
5. Upon observing the commotion the Claimant exited the vehicle and began walking towards the commotion at which time a brown Sentra motor vehicle drove towards him from the opposite direction in which the dump truck was parked. The driver of the vehicle was dressed in civilian clothing and at that time the Claimant did not realise that he was someone whom the Claimant had known for many years, namely PC Jacob who then asked the Claimant what was going on. Instead of informing PC Jacob of that which was in progress the Claimant instructed PC Jacob to go up the road. According to the Claimant up to that time he had still not observed that the driver was PC Jacob. PC Jacob

exited his car, approached the Claimant, held him by his collar and slammed him onto the ground.

6. According to the Claimant, the two workers who were arguing then rushed to his assistance and asked PC Jacob why he was beating him up. PC Jacob threatened the Claimant and the men by telling them *“allyuh go see what is police strength.”* Under cross-examination, the Claimant admitted that being assaulted by a police officer is a serious thing but he made no report to the police; that he had been slammed to the ground by PC Jacob but did not seek medical treatment after but instead went to the home of his sister in law to tell them about what occurred. Further, the Claimant testified that Ronnie and Sheriff witnessed the incident but failed to call them as witnesses on his behalf. No reason was given for this. He denied being in the middle of the roadway at the time PC Jacob approached or that PC Jacob blew the car horn for him to move.
  
7. According to him, after the incident in the roadway at Lallbeharry junction, he proceeded to Papourie Road to the house of his sister in law, Lystra Johnson (“Lystra”) where other family members were gathered. Whilst the Claimant was in the yard with Lystra, a police vehicle approached. The police vehicle was occupied by about four police officers, one being PC Jacob. PC Jacob alighted from the right passenger seat of the police vehicle and pointed to the Claimant and said *“look him dey.”* PC Jacobs and the other three officers grabbed the Claimant and started beating him. Whilst being beaten one Officer Mohammed came on the scene and attempted to stop the officers from beating him. The Claimant heard the officers say *“Mohammed dis doh concern you.”* The Claimant’s former wife, Patricia Paul who was also present at the scene told the officers to leave him alone since the Claimant was diabetic. PC Jacob said *“let him dead.”* The Claimant was then dragged to the front of the house and his feet were placed on the path of the back door of the police vehicle. The door was slammed on his feet about four times. The police officers then placed the Claimant in the back seat of the police vehicle and took the Claimant to a nearby gravel road where the Claimant was again dealt several blows about his body. The Claimant lost consciousness and thereafter woke up at the Barackpore police station to a bucket of water being dashed on him. None of the relatives of the

Claimant who were allegedly present were called to give evidence on his behalf and no explanation has been given as to why they were not so called.

8. The Claimant was visited by his attorney at law, who advised the officers on duty that the Claimant should be taken to seek urgent medical attention. The Claimant was not allowed to have a private conversation with his attorney. After his attorney left, PC Charles and PC Bunting took him to the San Fernando General Hospital. The Claimant was treated for his injuries and taken back to the station. During cross-examination, the Claimant testified that PC Charles did not interview him nor did he ask him for a statement. It is the case of the Claimant that he was asked by Senior Police Officers to give statements only after the incident went viral on the media, an investigation was launched against the police officers who had allegedly beaten him and an identification parade was held. The Claimant did provide the statement as requested by the Senior Police Officers.
9. According to the Claimant, he paid a total sum of \$20,000.00 for his defence of the second set of charges. The Claimant did not attach any receipts to prove that these monies were actually expended, he testified that he misplaced the receipts. He further testified that he lost an average income of \$500.00 per for every day that he attended court. He also had to pay for transportation to and from court every day in the amount of \$40.00 per day. During cross-examination, the Claimant testified that on the days he attended court, his work did not continue.
10. The particulars of malicious prosecution set out in the Statement of Case filed on the 26<sup>th</sup> February, 2014 are as follows:
  - i. The Police Officer acting as a servant and/or agent of the State of Trinidad and Tobago knew and/or ought to have known that there was no reasonable and/or probable cause to lay the said second set of charges against the Claimant;
  - ii. The Police Officer acting as a servant and/or agent of the State of Trinidad and Tobago knew and/or ought to have known that there was no possibility of successfully prosecuting the said charges;

- iii. The Police Officer acting as a servant and/or agent of the State of Trinidad and Tobago knew and/or ought to have known that the said charges were baseless, without any substance and fabricated;
- iv. The Police Officer acting as a servant and/or agent of the State of Trinidad and Tobago knew and/or ought to have known that there was no direct and/or circumstantial evidence to corroborate the said charges;
- v. The Police Officer acting as a servant and/or agent of the State of Trinidad and Tobago acted maliciously towards the Claimant based on whatever information they received from officer Jacob and/or other sources in relation to the incident which occurred on the 25<sup>th</sup> April, 2003;
- vi. The Police Officer acting as a servant and/or agent of the State of Trinidad and Tobago knew and/or ought to know that the laying of the second set of charges and subsequent pursuing of prosecution of same after the first charges were laid and dismissed is an abuse of process and amounts to duplicity since the circumstance related to one activity.

### **The Case for the Defendant**

11. The case for the Defendant is that the Lallbeharry charges are separate and apart from the Papourie Road Charges in that it is alleged that obscene language was used against PC Jacob both at Lallbeharry junction and at Papourie Road. The Papourie Road charges are therefore unrelated to the Lalbeharry junction charges. Further, that there was in fact reasonable and probable cause to charge and that the charging officer was not actuated by any type of malice when he laid the charge but was operating acting in the bona fide discharge of his public duty .

12. Evidence for the Defendant was given by retired Police Inspector Anthony Charles (“Charles”) and PC Jacob. At the time of the incident Charles was a Police Corporal. PC Jacob died on the 26<sup>th</sup> May 2016. Before his death, PC Jacob had given instructions to Attorneys on record in the first claim by way of an ordinary statement dated 9<sup>th</sup> January 2006. Further on the 22<sup>nd</sup> April 2014, PC Jacob gave an ordinary statement in relation to

the present claim. No witness statement was filed on his behalf in this claim but a Hearsay notice was filed in relation to both statements. In weighing the evidence of PC Jacob, the court must approach his statements with cautious having recognized that the Claimant has not had the opportunity to cross examine PC Jacob. That factor is not determinative of the weight to be attached on its own but it is certainly a factor which much must be given consideration in the round when weighing all of the evidence.

13. According to the statement of PC Jacob, on the 25<sup>th</sup> April, 2003, at around 8:00 p.m., he in the company of his daughter, Elizabeth Jacob, was driving a beige Sentra motor vehicle, registration number PAY 9591 along Lalbeharry Trace, Monkey Town, when upon reaching the junction of Lalbeharry Trace and Papourie Road, PC Jacob saw the Claimant, whom he knew for about twenty-five year (25) standing in the road among a crowd of persons in front of PC Jacob's vehicle. As PC Jacob attempted to slowly exit Lalbeharry Trace, he sounded his horn for the Claimant to move out of the way. The Claimant then said in loud tone of voice "*Rawle yuh mother cunt drive your fucking car*". The Claimant then approached the driver's side of the vehicle and proceeded to cuff PC Jacob in his neck. As PC Jacob attempted to exit the vehicle, the Claimant grabbed hold of PC Jacob's neck and cuffed him on his face. PC Jacob noticed that the Claimant smelled strongly of alcohol.

14. It is the statement of PC Jacob that PC Jacob held on to the Claimant and identified himself as a Police Officer by means of his Trinidad and Tobago Police Identification Card and informed the Claimant that he was under arrest. The Claimant pulled away and fell backwards to the ground and began to roll on the ground. PC Jacob then held on to his hand and while getting up the Claimant fell to the ground again. At this point in time some bystanders approached and attempted to pull the Claimant away from PC Jacob. The Claimant fell to the ground again. PC Jacob then attempted to pull him up again but the Claimant got up and ran off.

15. Subsequently, PC Jacob returned to his vehicle, dropped his daughter home and proceeded to the Barrackpore Police Station ("the station") where he reported the

incident. The Station Diary extract detailing the said report was annexed to the Defence and marked "A".

16. As a consequence of the report at about 8:45 p.m., PC Jacob accompanied by PC Ronnie Lall, PC Darrel Ramdial and PC Bunting left the station on inquiries. Whilst proceeding along Papourie Road, PC Jacob observed the Claimant standing at the side of the road. PC Jacob pointed out the Claimant to PC Bunting in the presence and hearing of the Claimant by saying "*this is the Mitra who hit me*".
17. PC Bunting attempted to arrest the Claimant who began struggling violently. The other officers assisted PC Bunting in arresting the Claimant. PC Bunting informed the Claimant of the offences he had committed namely using obscene language and resisting arrest, cautioned him and told him of his rights and privileges. When the police officers placed the Claimant in the police vehicle, he jumped out of the vehicle and fell on the roadway, receiving injuries. The Claimant was again placed in the police vehicle and taken directly to the Station where he was placed on a chair in the charge room.
18. At around 9:30 p.m. on the 25<sup>th</sup> April, 2003, Charles took up his shift at the Station where he met with PC Bunting who made a report to him pertaining to the incident which occurred at Papourie Road, Monkey Town, Barrackpore involving the Claimant. Charles proceeded to the cell area of the station where he observed the Claimant. Charles noticed that the Claimant had injuries and at around 1:20 a.m. took him to the San Fernando General Hospital for medical treatment. Prior to the Claimant being taken to the hospital, he was visited by his attorney who also informed Charles that the Claimant was injured. During cross-examination, Charles testified that he was the senior officer in charge of the shift that night.
19. Whilst at the Accident and Emergency Department of the San Fernando General Hospital, Charles met with PC Jacob. PC Jacob was awaiting medical attention. PC Jacob reported to Charles that around 8:25 p.m. on the 25<sup>th</sup> April, 2003, he was at Lalbeharry Trace, Barrackpore, when the Claimant used obscene towards him. PC Jacob further



reported that he spoke to the Claimant about his conduct and attempted to arrest him but the Claimant pulled away and before running off dealt him with several cuffs. Subsequently, PC Jacob reported the incident to the Station and he together with PC Ramsumair, PC Bunting and PC Ramdial went to Papourie Road, Monkey Town, Barrackpore where they arrested the Claimant. In the process of arresting the Claimant who was apparently under the influence of alcohol, began to struggle with PC Bunting and fell receiving injuries. The Claimant was eventually subdued, arrested and taken to the Station.

20. Charles informed the Claimant of the report made to him by PC Jacob and cautioned him to which he made no response. Charles obtained the medical reports for both the Claimant and PC Jacob before returning to the Station. On arrival at the Station, Charles interviewed the Claimant and again informed him of the report made to him by PC Jacob. The Claimant responded to Charles admitting that around 8:15 p.m. on the 25<sup>th</sup> April, 2003, he was at Papourie Road when he had an argument with a police officer he knows as Rawle and he cursed Rawle. The Claimant further stated that he and Rawle had a scuffle and about half an hour after the said Rawle came back with about three to four men who he believed were police officers and they put him in a jeep, took him to a trace and beat him up. The Claimant did not know the other men by name.
21. Charles subsequently received written statements relative to the incident from PC Jacob, PC Bunting and PC Ramsumair. He also requested a written statement from the Claimant but the Claimant refused to provide same.
22. During cross-examination, Charles could not recall many details of the investigation or of whom were or were not witnesses.
23. Based on the reports made by PC Jacob and the Claimant, as well as the medical reports, Charles formed the honest view that he had sufficient cause to lay the second set of charges. During cross-examination, Charles testified that he did not have a statement from the Claimant, the statement which he obtained was from PC Jacob.

24. Subsequently, Charles submitted a report to the Superintendent Area East and received instructions to prefer charges on the Claimant. On the 27<sup>th</sup> April, 2003, PC Charles formally laid the charges of using obscene language and assault by beating and assaulting with the intention of preventing the lawful detaining of himself. On this same day, Charles swore to information and obtained three (3) warrants of arrest for the Claimant. The warrants were handed over to the warrant officer, PC Ramsumair.
25. According to Charles, he attended court on several occasions when the matter was called at the Princess Town Magistrates' Court. On the days he was absent, he was either attending court elsewhere, ill or executing his police exercise duty. The court was informed of the reasons for his absence on these occasions. On an examination of the notes of evidence on the second set of charges (*annexed to the statement of case and marked "C"*), it is noted that there were several days in which Charles was absent without an explanation.
26. It is the evidence of Charles that at no time during the events described herein, he acted with any ill-will, spite or malice towards the Claimant. That prior to the date of the incident, he never met, had relations with, heard of or knew of the Claimant.

### **Duplicity**

27. It is abundantly clear to the court that the Lalbeharry junction charges are separate and apart from the Papourie Road charges both in time and location. The evidence is clear in that regard and the court so finds. There is on the evidence therefore no duplicity in the charges and therefore no abuse of process in the laying of the Lalbeharry charges.

### **Issues**

28. It is settled law that in a claim for malicious prosecution, the claimant must prove (a) that the law was set in motion on a charge for a criminal offence by the Defendant, (b) that he

was acquitted of the charge or that the proceedings were otherwise determined in his favour, (c) that in instituting and continuing the prosecution the Defendant did so without reasonable and probable cause, (d) that the Defendant was actuated by malice and (e) as a consequence the Claimant suffered damage: see *Manzano v The Attorney General of Trinidad and Tobago Civil Appeal No.151 of 2011*

29. Since (a) and (b) are not in dispute, the issues in this case are as follows:

- i. Whether Charles had reasonable and probable cause to set the law in motion against the claimant;
- ii. Whether Charles, in so doing had been actuated by malice.
- iii. If it is found that Charles lacked reasonable and probable cause and there was malice involved, whether the claimant has suffered damage.

### **The Law**

30. In *Manzano* supra His Lordship Mendonca JA delivering the decision of the court set out the both the subjective and objective element of reasonable and probable cause as follows:

*“22. What is reasonable and probable cause in the context of the tort of malicious prosecution was defined in *Hicks v Faulkner* (1881-1882) L.R. 8Q.B.D 167 (which received the unanimous approval of the House of Lords in *Herniman v Smith* [1938] A.C. 305) as follows: “...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.*

23. *It is readily apparent from that definition that reasonable and probable cause has both a subjective element and an objective element. Reasonable and probable cause must appear objectively from the facts but also must exist in the mind of the defendant.”*

31. Further, His Lordship Mendonca JA in *Sandra Juman v The Attorney General Civil Appeal No. 22 of 2009* at paragraph 25 in treating with the issue of malice stated;

*“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 [1987] 8 Q.B.D. 167 at page 175.”*

## **Reasonable and Probable Cause**

### **Findings**

32. The scientific evidence, namely the evidence contained the medical report in relation to PC Jacob dated the 25<sup>th</sup> April 2003 supports the version of events given in the statements of PC Jacob on a material issue. This evidence adds some weight to the statements beyond that which would normally apply should the untested statements have stood alone. There has been no objection to this medical report. That medical emanates out of the Accident and Emergency Department of the San Fernando General Hospital and lists the following injuries to PC Jacob;
- a. Soft tissue injury to
    - i. the left jaw,

- ii. Left side of face
- iii. Lower aspect of right side of back

- b. The injuries were probably inflicted by a blunt object with a moderate degree of force.

33. These injuries are very telling in that it is the case for the Claimant that at no time did he strike or hit PC Jacob. A court must therefore ask the obvious question as to from where these injuries would have been derived by PC Jacob. Is it that he inflicted them himself after the visit to Papourie Road, or he had someone inflict them on him at that time with a view to attending the doctor that very night or is it as a matter of common sense and plausibility that the Claimant was telling an untruth when he gave his version of events. In the court's view, common sense and plausibility lies with the finding that the Claimant's version of events is simply unlikely. It is highly unlikely that the Claimant did not have physical contact with PC Jacob in the manner in which PC Jacob set out in his statement. The cuff to the face and other parts of the upper body are borne out by the contents of the medical.

34. There are several other material aspects of the Claimant's version of events that appear not to be credible as a matter of common sense. Firstly, it is highly implausible that the Claimant would have seen PC Jacob driving the car, would have spoken to him when the car was at a standstill but would have not known that the person with whom he was speaking was in fact the police officer who he knew on his evidence for some twenty to thirty years. That evidence bears the clarity of a ring of untruth.

35. It is also more likely than not that a Police Officer, whether having known the Claimant for several years or not would stop his car and enquire as to the commotion in the usual course of his duty whether on duty or not. This is so whether the Claimant was in fact standing on the roadway or not. Either way it is clear that a Junior Sammy dump truck was parked on the side of the road and two men were causing a commotion within close

proximity. In this society, such action particularly on a Friday evening is likely to attract the attention of many bystanders.

36. As a consequence the court finds that it is more likely than not that the Claimant did in fact use obscene language towards PC Jacob and also assaulted and beat him on his face, his jaw and his back when PC Jacob attempted to arrest him. The court finds that the Claimant did in fact run away from PC Jacob at Lallbeharry junction when PC Jacob tried to arrest him. Clearly, this is the reason that the officers went looking for him subsequently.

37. Charles testified emphatically that the decision to charge was made based on a statement made to him by PC Jacob and also, fundamentally in the court's view, the medical report. Further, it is the testimony of Charles that he interviewed the Claimant who admitted that he used obscene language against PC Jacob and that they had a scuffle. The Claimant denied that Charles ever interview him and indeed no record of such interview notes taken at the time of the interview has been produced by the Defendant. However a station diary entry appears to have been made sometime thereafter. The evidence demonstrates that the visit to the hospital by Charles was for the purpose of conveying the Claimant for medical attention. It is therefore plausible that Charles would have seen PC Jacob at that time at the hospital by virtue of the coincidence of them being there for different purposes at the same time. The medical report shows that the examination of PC Jacob was conducted on the very day so it is plausible that they were both present at the hospital at the same time. In those circumstances, it is more likely than not that PC Jacob would have informed Charles, his senior officer of what transpired and his reason for being at the hospital. The court therefore accepts the evidence of Charles that he spoke and interview the Claimant at that time and the Claimant made the admission to him as being more likely than not. It accords with reason that Charles would speak with the man he had just brought to the hospital, namely the Claimant, about the allegation made by PC Jacob.

38. The court does not accept the evidence of the Claimant in this regard as he has shown himself to be untruthful in relation to the incident at Lallbeharry junction and that has tainted his credibility in the court's view.

39. Even if the court is incorrect in its findings in relation to the interview, there remains the other evidence set out above which formed a reasonable basis to have laid the charges against the Claimant. It is therefore the finding of the court that Charles did in fact have reasonable and probable cause in all of the circumstances.

### **Malice**

40. The Claimant has not listed any separate particulars of malice in his claim but rather particulars of malicious prosecution (listed above). According to the Defendant, within those particulars it is difficult to distill what goes towards malice save for those listed above in "v" and "vi". The Defendant further submitted that there was no direct evidence leading to any ill-will, spite or improper motives by Charles. Moreover, the Defendant submitted that malice cannot be inferred since Charles did not lack reasonable and probable cause to lay the second set of charges. That what can be inferred is that Charles' motive was geared towards securing the ends of justice since he laid the charges after gathering evidence, getting instructions to do so from his seniors and attended court at least on twenty-one (21) occasions when the matter was called.

41. The court has found that Charles was not motivated by spite, ill-will or indirect or improper motives. It is the evidence that in relation to the Lallbeharry junction charges, instructions were in fact obtained by Charles from the Superintendent of the Eastern Division to lay the charges. Charles prepared a report and forwarded same to the Inspector in charge who then forwarded same to the Superintendent of the Eastern Division. It is reasonable to infer that those higher in rank would forward the report and any recommendations contained therein only if they were in agreement with same,

otherwise they would more than likely revert to the investigating officer. Although there was reasonable and probable cause and no malice is to be inferred, having regard to the evidence the court is fortified in its view in any event because there would have been less opportunity for Charles to exercise spite and ill will towards the Claimant due to the various level at which the report had to pass muster within the chain command.

42. Further, the evidence discloses no motive on the part of Charles whether directly or by way of inference.

43. The claim will therefore be dismissed and the parties shall be heard on costs.

Dated the 23<sup>rd</sup> November 2016

Ricky Rahim

Judge