

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV2015-00198

BETWEEN

WINSTON BLADES

(ALSO CALLED WINSTON BLAZE)

STERLYN SCIPIO

MERTHLYN SCIPIO

EMMANUEL BLADES

JANELLE SCIPIO

(ALSO CALLED JENNELLE FIGARO)

CHRISTAL BLADES

(ALSO CALLED CRYSTAL BLAZE)

SHAWN MARCANO

ROGER SCIPIO

Claimants

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

Before the Honourable Mr. Justice R. Rahim

Appearances:

Mr. W. E. J. Campbell for the Claimants

Ms. S. Sukhram instructed by S. Maharaj for the Defendant

Judgment

1. By Claim Form filed on the 19th January, 2015, the claimants seek damages inclusive of exemplary damages for malicious prosecution. The incident which gave rise to the claimants' claim occurred on the 12th December, 2004 ("the said date") when Police Constable Jeff Insanali ("PC Insanali") accompanied by other police officers executed a search warrant for firearms and ammunition at a house situate at 368 St. Julien Village, Princes Town allegedly occupied by Roger Scipio ("Roger"). During the search of the house, PC Insanali allegedly found a plastic bag containing one hundred and fifty (150) foil packets each containing a cream solid substance which the police alleged to be the dangerous drug cocaine. The packets weighed twenty-six grams. Consequently, the claimants were charged with possession of cocaine for the purpose of trafficking contrary to *Section 5(4) of the Dangerous Drugs Act, Chapter 11:25.*

2. According to the claimants, when the police officers arrived at the house they met Earl Scipio, now deceased ("Earl"), Merthlyn Scipio ("Merthlyn"), Janelle Scipio ("Janelle"), Christal Blades ("Christal") and Roger. The other claimants were not present. Shawn Marcano ("Shawn") was arrested on the Naparima Mayaro Road and Winston Blades ("Winston"), Sterlyn Scipio ("Sterlyn") and Emmanuel Blades ("Emmanuel") were later arrested pursuant to warrants issued for their arrest. Winston Blades died on the 18th June, 2016. Further, the claimants allege that Roger, Shawn and Sterlyn did not live at the said address. According to them, Roger lived at No. 2070 Bucket Corner, Princes Town and Shawn lived at No. 512 Naparima Mayaro Road, New Grant. Earl is not a claimant and so is not relevant to this case. It is to be noted that nowhere in the pleaded case is it pleaded that Sterlyn does not reside at the house. It is however his evidence that he lived at the address but in a different house.

3. The claimants allege that they were falsely arrested and charged for the said offence as they were never in the possession of cocaine as PC Insanali did not find cocaine at the house. Moreover, the claimants deny the allegation made by the police that Roger jumped through a window during the search and made good his escape on foot.

4. After they were charged, the claimants appeared before a Magistrate at the Princes Town Magistrates' Court. It is their case that they were unlawfully kept in custody until they were released on bail. Further, after approximately sixty-four (64) adjournments, the charge was dismissed by the Magistrate on the 20th January, 2011. Consequently, it is the case of the claimants that the said charge was brought against them falsely, maliciously and without any reasonable and probable cause. The claimants also claim that their reputation and character have been gravely injured and that they have all suffered considerable mental, bodily pain and anguish.
5. By Defence filed on 30th September, 2015 the defendant claims that PC Insanali had reasonable and probable cause to arrest and charge the claimants for possession of a dangerous drug known as cocaine for the purposes of trafficking. The defendant neither admits nor denies that Roger, Shawn and Sterlyn are non-residents at the premises. However, it is the defendant's case that Roger and Shawn gave PC Insanali the said address as theirs during the search of the house and the said address was later recorded in the station diary for both Roger and Shawn. The defendant further states that the said address was used by the arresting officer at the Magistrates' Court for Roger. However, the address used for Shawn at the Magistrates' Court was No. 103 Naparima Mayaro Road, Princes Town.
6. According to the defendant, upon receiving information that Roger was resident at the said address PC Insanali obtained a warrant to search the premises for possession of arms and ammunition. Upon arrival at the premises, PC Insanali met with Roger, Merthlyn, Janelle, Christal and Shawn. The defendant denies that Earl was at the said house during the search on the said date. According to the defendant, Winston, Earl and Emmanuel were arrested pursuant to warrants of arrest which were issued at the request of PC Insanali subsequent to the search. The defendant further denies the assertion that PC Insanali did not meet Shawn at the said house on the said date and also denies the assertion that Shawn was arrested on the Naparima Mayaro Road. Moreover, the defendant avers that Roger jumped through a window and made good his escape on foot whilst the search of the said house

was being conducted. The defendant further avers that whilst conducting the search on the said house, PC Insanali found a clear plastic bag containing a quantity of a cream solid substance wrapped in foil paper which resembled cocaine in the bedroom, underneath the lower mattress of one of the double decker beds. As such, it is the case of the defendant that the claimants were not maliciously prosecuted since PC Insanali had reasonable and probable cause to arrest and charge them all with the offence.

Issues

7. Winston, Merthlyn, Janelle, Christal and Emmanuel all admitted that they were living at the said the house. Aside from the main issues of law applicable in malicious prosecution claims, there are certain disputes of fact which must be resolved, these are as follows;
 - i. Whether a plastic bag containing one hundred and fifty foil paper packets which contained a cream solid substance resembling cocaine was found in the house;
 - ii. Whether Roger jumped through the window during the search of the said house and made good his escape on foot;
 - iii. Whether Roger admitted to occupying the house at the time the search was being conducted;
 - iv. Whether Shawn was present at the said house during the search and informed PC Insanali that he was occupying the house as averred by the defendant or whether he was arrested on the Naparima Mayaro Main Road as he says; and
 - v. Whether Sterlyn occupied the house.

The Law

8. 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.*

9. Since (a) and (b) are not in dispute, the issues of law in this case are as follows;
 - i. Whether PC Insanali had reasonable and probable cause to set the law in motion against any of the claimants;
 - ii. Whether PC Insanali, in so doing was actuated by malice;
 - iii. If it is found that PC Insanali lacked reasonable and probable cause and there was malice involved, what is the appropriate measure of damages.

The evidence for the claimants

10. In order for the court to make its findings of fact, the details given in evidence must of necessity be herein set out. The plausibility or credibility of the facts presented by either side is substantially dependent on what the court makes of the evidence which is somewhat voluminous.
11. The claimants with the exception of Winston (deceased) gave evidence. According to the evidence of the claimants, there are three houses situate at 368 St. Julien Village, Princes Town (“the said address”). Merthlyn and her common law husband Winston are the owners of the house which was searched. The evidence of Merthlyn, Janelle and Christal shall be treated with jointly so as not to result in an incoherent presentation of the facts surrounding this case.
12. According to the evidence of the claimants, the house is a small wooden one measuring about forty-five feet by fifteen feet and consists of a bedroom, a living room, a dining room, a kitchen and a small gallery. During cross-examination, Janelle testified that the house consists of two bedrooms. As the evidence would later show, it appears that access to the second bedroom is only had through an external door. As one goes up the steps to the

gallery, the internal bedroom is on the left and the kitchen is on the right. The living and dining rooms are situated in middle of the home. In the bedroom, there are two windows consisting of glass louvers, one window is at the front and the other is at the back of the bedroom. The back of the house rests on wooden posts about eight feet high and the front of the house rests on the ground. The rooms are separated by thin ply board.

13. It was the evidence of Merthlyn that on the said date after lunch time, a party of seven to eight police officers showed up at the house. At the time of the search, Merthlyn's daughters, Janelle and Christal were at home. Roger was also at the said house as he had dropped in on his way home. Janelle was nineteen years of age at the time and Christal was fifteen years old. Janelle testified that the other persons living at the said house were Emmanuel, Earl and Sterlyn. During cross-examination, Merthlyn denied informing the officers that Sterlyn, Emmanuel, Winston and Earl resided at the said house.

14. During the search Janelle, Christal and Merthlyn were ordered to sit in the living room. The police officers began by searching the living room first, then the kitchen and the bedroom. After searching the bedroom, PC Insanali exited the bedroom and informed Janelle, Christal and Merthlyn that he had found something. According to the evidence of Janelle, Christal and Merthlyn, PC Insanali did not tell them or show them what he had found. Thereafter, Janelle, Christal and Merthlyn were informed that they were under arrest and were placed in handcuffs and taken to a police vehicle parked on the Main Road. At this time, Merthlyn did not know where Roger was. She testified that she did not see Roger jump through any window. Janelle also testified that she did not see Roger jump through any window. During cross-examination, Merthlyn testified that she could not say for certain whether Roger jumped through the window in the bedroom as she was seated in the living room at the time.

15. Janelle, Christal and Merthlyn all testified that Shawn was not at the said house when the officers searched same. That Shawn was standing on the Main Road where the police vehicles were parked and PC Insanali arrested him there and took him to the police station.

16. According to the evidence of Merthlyn, she only learnt the reason for her arrest when she appeared in court the next day and the offence was read out to her by the Magistrate. She testified that PC Insanali did not find any dangerous drug in her home on the said date as he claimed and falsely and maliciously charged her along with the other claimants with the said offence. Further, Merthlyn testified that PC Insanali falsely alleged that Roger lived at her home and that Shawn was at the said house during the search when in fact Shawn was arrested on the Main Road.
17. Merthlyn was in custody for about thirteen days before obtaining bail. At the time, she was employed with Trinidad Cement Limited as a Labourer earning two hundred dollars (\$200.00) per day. Merthlyn testified that each day she had to go to court, she lost a day's pay. She went to court about sixty-one times. Merthlyn did not provide the court with any pay slips or other document to substantiate her loss of earnings.
18. Janelle was also in custody for about thirteen days before obtaining bail. Christal spent two weeks at the St. Jude's Home for girls. The case lasted for about seven years. Merthlyn testified that she paid Mr. Valere, attorney-at-law five thousand dollars (\$5000.00) to defend her in court over the seven years. Janelle and Christal testified that their father, Winston paid Mr. Valere five thousand dollars (\$5000.00) to defend them in court over the seven years. Janelle, Christal and Merthlyn each paid a transportation fee of eight dollars (\$8.00) each day to attend court. Janelle, Christal and Merthlyn provided no receipts or documentary evidence in respect of any of the sums set out above.
19. **Roger** is a mason by trade. He testified that at about 2:00 p.m. he was at the house eating a meal before going to his home situate at No. 2070 Bucket Corner, Rio Claro. According to Roger, a party of officers showed up at the said home. PC Insanali knocked on the door to the living room while shouting "*police police!*" Roger got up and opened the front door and was told by PC Insanali that he had a warrant in Roger's name to search the house. PC Insanali went into the living and dining room and patted down Roger. PC Insanali found nothing on him. Thereafter, PC Insanali and another officer began searching the kitchen area and the living room in Roger's presence. Nothing was found. The officers then

searched the bedroom in the presence of Roger. Roger testified that he did not see either of the officers find anything in the bedroom.

20. He testified that the two officers did not complete the search of the bedroom but spoke to each other quietly and hurriedly left the bedroom leaving him behind. From where Roger was in the bedroom, he heard PC Insanali saying that they found something in the bedroom. When the officers left Roger in the bedroom, he hid himself behind a wardrobe. After the officers left with Janelle, Christal and Merthlyn, Roger came out of hiding and waited until the police vehicles left.

21. Roger denied jumping through a window on the northern side of the house or anywhere else to make good his escape on foot. He testified that the officers left him in the bedroom. Roger further testified that if he had jumped out of the window, he would have broken his legs due to the height of the window from the ground.

22. He also testified that Shawn was not present at the said house when the police party searched it and that PC Insanali knew that he was not living at the said house.

23. According to him, he attended court on fifty-five occasions. He retained an attorney to defend him in court and paid him five thousand dollars (\$5000.00). Roger also spent eight dollars (\$8.00) in travelling to the court each day he had to be present. Roger further testified that each day he had to go to court, he lost a day's pay of three hundred dollars (\$300.00). Roger did not provide any documentary proof such as pay slips and/or receipts to substantiate his loss of earnings and expenditure.

24. **Shawn** is a mason by trade. He testified that he was walking slowly on the Naparima Mayaro Road about twenty-five feet from the gap to the said house. He saw about three police vehicles parked on the roadway in front of the gap. He then saw a party of officers carrying Janelle, Christal and Merthlyn in handcuffs towards the police vehicles. Thereafter, PC Insanali arrested Shawn without giving him a reason for so doing. He testified that he was a regular visitor at the said home but was not present on the said day.

According to Shawn, he knew nothing of the said offence until he appeared before the Magistrate and she read out the charge to him.

25. Shawn remained in custody for about nine months before he was bailed. During cross-examination, he testified that he has nine previous convictions. He paid his attorney five thousand dollars (\$5,000.00) to defend him. He attended court some sixty-two times. He testified that each time he attended court he lost a day's earnings of three hundred dollars (\$300.00). He further testified that he paid eight dollars (\$8.00) in travelling each time he went to court. Shawn did not provide any documentary proof such as receipts and/ pay slips to substantiate his loss of earnings and expenditure.
26. **Emmanuel** is the son of Merthlyn and Winston and the brother of Janelle and Christal. He lives at the said house but was not present on the said date. He testified that Sterlyn does not live at the said house but lives in another house closeby. He was arrested pursuant to a warrant of arrest. He testified that he was informed by the police officer who arrested him that he was being arrested for possession of a dangerous drug namely cocaine for the purposes of trafficking. Emmanuel was arrested on the same day as his father, Winston and made an appearance in court on the 14th February, 2005. After his arrest, Emmanuel spent two weeks at the Youth Training Centre in Arouca before obtaining bail.
27. According to the evidence of Emmanuel, at the time of his arrest he was employed as a mason earning three hundred dollars (\$300.00) per day. He testified that he lost those earnings each time he had to attend court. Emmanuel attended court about fifty-five times prior to dismissal. He also paid eight dollars (\$8.00) in traveling on each occasion he attended court. Emmanuel testified that his father, Winston paid his attorney five thousand dollars (\$5,000.00) to defend him in court. Emmanuel did not provide any documentary proof such as receipts and/or pay slips to the court to prove his loss of earnings and expenditure.
28. **Sterlyn** is a Market Vendor. During cross-examination, he testified that he is Janelle's brother. It is his evidence that he does not live at the said house. While he lives at the same

address, he actually lives but in one of the other houses at that address. According to him, on the day of the search he was not at home. More than two years after the search was conducted, Sterlyn was arrested on warrant. Thereafter, Sterlyn was made to appear before a Magistrate at the Princes Town Magistrates' Court to answer the charge of being in possession of a dangerous drug namely cocaine on the said date for the purpose of trafficking. Sterlyn testified that he knew nothing about the said charge.

29. Sterlyn spent one month in jail before receiving bail. He also paid five thousand dollars (\$5,000.00) to his lawyer to defend him and attended court on forty occasions. He testified that on the occasions he attended court he lost daily earnings of about two hundred dollars (\$200.00). He further testified that he paid eight dollars (\$8.00) in traveling each time he attended court. As is the case with the other claimants, Sterlyn did not provide the court with any documentary proof to prove loss of earnings and expenditure.

The evidence for the defendant

30. The defendant called three witnesses, PC Insanali, Woman Police Constable Candy Saunders-Alfred ("WPC Saunders-Alfred") and Police Constable Terence Rahim ("PC Rahim"). No relation to this court.

31. PC Insanali is currently attached to the Guard and Emergency Branch, Southern Division. He has been a member of the Trinidad and Tobago Police Service ("TTPS") for over sixteen years. On the 12th December, 2004, he was attached to the Princes Town Task Force and was based at the Princes Town Police Station. On the morning of the said date, while on mobile patrol PC Insanali received information from a reliable informant. During cross-examination, PC Insanali testified that he received the information at about 10:00 p.m. and that he had previously used information from the said informant which turned out to be accurate. He was also aware that the said informant had provided information to other police officers which turned out to be true. As a result of the information he received, he swore to an information before a Justice of the Peace in Princes Town and obtained a search warrant to search Roger's premises for firearms and ammunition.

32. At around 1:45 p.m., PC Insanali along with eight other police officers, all dressed in police uniform proceeded to the said address. The eight officers were PC Haynes, PC Martin, PC Richardson, PC Rahim, PC Ali, PC George, PC Emrit and WPC Saunders-Alfred. The officers journeyed in two police vehicles one of which was driven by PC Insanali, namely van registration number TBJ 6821.
33. When the officers arrived at the said address, they parked the police vehicles on the roadway. The premises were not fenced. One officer stayed on the roadway to secure the police vehicles and the other officers made their way through a track which began at the same level as the roadway but descended some distance thereafter. As PC Insanali entered from the road, he noticed an old, abandoned, broken down, wooden house approximately twenty feet by ten feet in size. About twenty feet into the track, PC Insanali noticed an abandoned wooden shack approximately eight feet by eight feet in size. Further into the track there was another house which was approximately fifty feet from the road-way heading in a northern direction. During cross-examination, PC Insanali testified that the latter measured approximately thirty to forty feet in length and fifteen to twenty feet in width. The track leading to this house was made of broken bricks and stone. PC Insanali along with the other officers made their way through the track and approached the house. PC Insanali testified that from the information he received he knew that the latter house was the residence of Roger.
34. The witness then sought to provide a detailed description of the events as they unfolded that day. Having approached the house, it was then surrounded by three officers. PC Haynes stood in the vicinity of the front door and the two other officers positioned themselves at the opposite corners of the house. Of course as a matter of common sense the house would have at least four corners so that this evidence is rather unhelpful in giving the court an idea as to whether the two officers were positioned at opposite corners, at the back or front of the house or both. PC Ali stayed in the area of the broken down shack. PC Insanali knocked on the front door of the said house and in a loud tone of voice, called out “*Roger this is police*”. He repeated his call and Roger eventually came to the door. During

cross-examination, PC Insanali testified that he had not known Roger prior to that day. Both PC Insanali and PC Rahim identified themselves to Roger by showing him their Trinidad and Tobago Police Identification Cards. Thereafter, PC Insanali informed Roger that he was in possession of a warrant to search the premises for firearms and ammunition. The warrant was then shown and read to Roger. During cross-examination, PC Insanali testified that he did ask Roger whether he lived in the said house but did not ask Roger if the said house was his. The officer testified that all those who were in the house had admitted living at the house so that the court infers that he is saying by this evidence that Roger also admitted living at the house.

35. PC Insanali then asked Roger if there were any other occupants of the house and Roger answered that Merthlyn, Janelle, Christal and Shawn were present and were occupants of the house. They then all came to the doorway. PC Insanali and PC Rahim then identified themselves to the other occupants in the same manner and read the search warrant to each of them individually. They were then asked whether the address which was read was correct and whether they all resided there. According to PC Insanali, each person confirmed that they lived at the said house. PC Insanali then requested the assistance of WPC Saunders-Alfred as it had been ascertained that there were several female persons present in the house.

36. PC Insanali then asked everyone present to be seated in the living room area. He testified that as soon as one enters the front door of the said house, one will meet the living room area which was the main area of the said house. The kitchen area was to the right and there was no partition between the living room and the kitchen area. During cross-examination, he testified that there was one window situated between the kitchen and the living room.

37. Roger accompanied PC Insanali and PC Rahim during the search. The other occupants were left in the living room under the supervision of WPC Saunders-Alfred. The kitchen and the living room were searched first. They then searched the bedroom which was located to the western side of the house and was separated from the living room and kitchen area by a board partition. There was a door frame to enter the bedroom but there was no door.

Upon entering the bedroom, there was a wooden window to the right. This window was approximately four feet high and three feet wide. During cross-examination, PC Insanali denied that the windows in the bedroom were louvered. In the bedroom there was a cupboard and two double decker beds. In searching the bedroom area, underneath the lower mattress of one of the double decker beds, PC Insanali found a clear plastic bag containing a quantity of foil packets. PC Insanali checked the foil packets and observed they all contained a cream solid resembling that of cocaine.

38. PC Insanali showed two of the packets to Roger. He then informed Roger that he was of the opinion that the solids found were cocaine. Roger was then cautioned but did not reply. PC Insanali then enquired from Roger as to the name of the persons who slept in the room and Roger replied that everyone did. PC Insanali then asked Roger to accompany PC Rahim and him to the living room to show the rest of occupants what was found. PC Insanali testified that while proceeding to the living room Roger jumped through the open wooden window in the bedroom and made good his escape on foot. PC Insanali and PC Rahim called out to the officers outside alerting them that Roger had jumped through the window. There were a lot of high bushes to the back of the house where Roger jumped. PC Insanali did not chase Roger because the height from the window to the ground was approximately eight feet. PC Rahim also did not pursue Roger. Two officers positioned outside the house pursued Roger but were unsuccessful in capturing him and Roger made good his escape through the bushes.

39. During cross-examination, PC Insanali testified that he was in the process of exiting the bedroom when Roger jumped through the window. That he was walking in front, Roger was behind him and PC Rahim was behind Roger. PC Insanali then returned to the living room where he showed the packets to Merthlyn, Janelle, Christal and Shawn, informed them that they were under arrest and cautioned them. They did not respond. Upon enquiry by PC Insanali, Merthlyn stated that Winston, Earl, Steryln and Emmanuel were the other occupants of the house.

40. According to the evidence of PC Insanali, there was another bedroom next to the one where he found the cocaine like substance. This bedroom could only be accessed through a door at the front of the house. PC Insanali enquired who slept there and was informed by Merthlyn that it was Earl's room. He checked that bedroom and observed there was only a small mattress on the floor.
41. Merthlyn, Janelle, Christal and Shawn were then handcuffed and taken to the Princes Town Police Station. At the police station, PC Insanali counted each of the foil packets found in the plastic bag and placed a blue dot on each packet. He counted one hundred and fifty packets. He then opened each packet and there was a cream solid substance in each packet. He then weighed the packets and it weighed twenty-six grams. Each packet was then placed back into the clear plastic bag and PC Insanali labelled the bag with masking tape marked "J.I. 12.12.04". All of this was done in the presence of PC Rahim, Merthlyn, Janelle, Christal and Shawn.
42. In the presence of PC Rahim and WPC Saunders-Alfred, PC Insanali cautioned Merthlyn, Janelle, Christal and Shawn again and informed them of their legal rights and privileges. PC Insanali testified that they did not reply or make any requests. PC Insanali then served Merthlyn, Janelle, Christal and Shawn with an original Notice to Prisoner and with the assistance of other police officers. Those four were then charged. PC Insanali then recorded the relevant entries in the Station Dairy and handed over the exhibits to personnel in charge of the station for safe keeping in the storage room.
43. The females were taken to the Mon Repos Police Station as there were no female police officers on duty at that time at the Princes Town Police Station. According to PC Insanali, it is not a practice that minors are placed in cells. They are usually left on the corridor since the door to the corridor is also locked. Christal was a fifteen year old minor at the time so that the inference is that she was not placed in a cell.
44. Sometime later on the said date, PC Insanali obtained warrants of arrest for Winston, Earl, Steryln, Roger and Emmanuel. PC Insanali testified that he obtained warrants for the arrest

of the aforementioned persons because Merthlyn informed him that those persons resided at the said house and since the cocaine like substance was found in a room where everyone had access to and used. Shortly thereafter, PC Insanali handed over the warrants of arrest for Winston, Earl, Steryln, Roger and Emmanuel to PC Toussaint, who was the warrant officer at the Princes Town Station at the time.

45. On or about the 25th November, 2005, PC Insanali obtained a Certificate of Analysis dated the 17th March, 2005 which demonstrated that cocaine was identified within the contents of the one hundred and fifty foil packets contained in the seal transparent plastic bag.
46. According to the evidence of PC Insanali, the matter went on for many years at the Magistrates' Court. PC Insanali only gave evidence in 2010, some five years later since Christal was in an accident and was hospitalized for a long time. All of the claimants herein as well as PC Insanali had to be present for the matter to be tried and determined. PC Insanali testified that he was aware that there was an outstanding warrant of arrest for Steryln, who was not arrested until three years after the said date. PC Insanali further testified that he was not present in court on some occasions because he was on vacation leave. PC Insanali was also on injury leave at one point as he was involved in a motor cycle accident. He further testified that he is aware that the address for Shawn in the Information was stated as 103 Naparima Mayaro Road. PC Insanali was not certain as to why that was so stated however he testified that in his experience it may have occurred as a result of another officer preparing the Information while he was recording the relevant entries in the Station Diary, however this is speculation on his part.
47. PC Insanali testified that he did not charge the claimants out of malice. According to PC Insanali, he had proper reasons for charging all of the claimants since cocaine like substances were found in a room which everyone had use and access to and no one claimed ownership of the packets. PC Insanali further testified that Shawn and Winston have previous convictions.

48. **PC Rahim** is currently attached to the Homicide Bureau, Region three based at San Fernando. He has been a member of the TTPS for the past nineteen years. On the said date, PC Rahim was attached to the Princes Town Police Station. PC Rahim testified that he was familiar with the premises of said the house as he has been there on prior occasions because *“there were warrants for these persons, they were known to the police and they were known for criminal activities”*. PC Rahim did not explain who he was referring to when he said *“these people”*.
49. PC Rahim’s evidence in relation to the events which transpired on said date during the search on the said house was considerably the same as PC Insanali and as such, it need not be repeated. His cross examination was uneventful and there are no material inconsistencies between his evidence and PC Insanali.
50. On the 20th January, 2011, PC Rahim was summoned to the Magistrates’ Court and was informed that he was a witness for PC Insanali for the said charge. According to the evidence of PC Rahim, he could not recall the details of the events which took place on the said date as same took place in 2004. He testified that he was neither briefed by the prosecution nor was he shown any documents such as the Station Diary extracts in order to refresh his memory.
51. At the hearing in the Magistrates’ Court, PC Rahim was sworn in and asked if he knew why he was there. PC Rahim asked the court for an opportunity to familiarize himself with the facts of the said date but was denied such an opportunity. PC Rahim was asked about his pocket diary. According to the evidence of PC Rahim, his pocket diary along with other police documents were destroyed in a fire which occurred at the San Fernando Police Station in 2009. PC Rahim testified that when he said during the hearing at the Magistrates’ Court that he could not recall making any entry, he was referring to the Station Diary. Having perused the Station Diary entries in relation to the said date, PC Rahim testified that none of the entries were made in his handwriting. According to PC Rahim, having now reviewed the Station Diary extracts, he can recall the said date and what took place.

52. **WPC Saunders-Alfred** is currently attached to the Cyber Crime Unit. She has been a member of the TTPS for the past thirteen years. On the said date she was attached to the Princes Town Police Station as a Woman Special Reserve Police officer. WPC Saunders-Alfred could not recall much of the events which took place on the said date during the search of the said house. However, whatever she could remember was similar to the evidence given by PC Insanali and PC Rahim and as such her evidence need not be repeated.

Findings of fact

Whether a plastic bag containing one hundred and fifty foil paper packets which contained a cream solid substance resembling cocaine was found in the house

53. The court finds that the evidence of PC Insanali is to be preferred over that of the claimants in relation to the manner in which the house was searched and the fact that a plastic bag containing one hundred and fifty (150) foil packets each containing a cream solid substance resembling that of cocaine was found in the bedroom of the house, underneath the lower mattress of one of the double decker beds therein. It is clear on the evidence that the officers were armed with a search warrant. The endorsement of execution written at the back of the warrant which was made by PC Insanali on the day of the search, supports the matters testified to by himself, PC Rahim and WPC Saunders-Alfred. The endorsement of execution supports the testimony of the police officers that the cocaine like substance was found that day. If it were otherwise, it would be that PC Insanali searched the house, found nothing, but still arrested the claimants and took them to the police station where he produced a clear plastic bag containing one hundred and fifty foil packets containing a cocaine like substance. In those circumstances it would mean that the two other officers who were present in the house whilst the search was being conducted namely, PC Rahim and WPC Saunders-Alfred, would have been part of a large conspiracy to frame the claimants with possession of cocaine.

54. In the court's view, this case is void of any evidence which would support the claimants' case that the officers had any reason or motive for such a conspiracy. Further, the actions of Roger in escaping the house (discussed below), lent credence to the fact that the packets were discovered as the police say they were. The court therefore finds that there was in fact no conspiracy between any of the officers to frame the claimants on the said date and the clear plastic bag containing the cocaine like substance was found in the house.

Whether Roger jumped through the window during the search of the said house and made good his escape on foot and whether he admitted to occupying the house at the time the search was being conducted

55. The court finds that Roger's version of the events which allegedly took place on the said date are highly implausible for several reasons and simply makes no sense when common sense is applied. Firstly, Roger testified that the officers forgot him in the bedroom after the search. The court agrees with the defendant that it is more than passing strange that the officers would have forgotten him in the bedroom given the fact that he was the first person they met at the home and he was the only claimant present with them throughout the search of the house. This simply does not make sense. There is no evidence that the room where the packets were found was the last room searched. So that the court would also have to ask itself as a matter of common sense whether the officers would move on to continue the search and forget that he was with them, leaving him in the bedroom. The answer clearly is no.

56. But the more the story of Roger is examined the more it reeks of untruth. It is admitted that those present within the house on that day were then arrested and taken to the police station. If Roger is to be believed it would mean that the police would have arrested everyone else present at that house except Roger, (the man who is listed on the warrant as being resident at that address), who was also present and who they took with them while conducting the search because they forgot him. One only has to repeat the story to appreciate its incredibility.

57. Further, Roger testified that if he had jumped out of the window, he would have broken his legs due to the height of the window from the ground. The court finds that this evidence is purely self-serving and is unbelievable having regard to the absence of credibility of his other evidence. Even if the height of the window was some eight feet from the ground, it is a well known fact of human behaviour that men do desperate things which they may not otherwise do when faced with dire circumstances. It is therefore not inconceivable that Roger may have jumped from such a height.
58. Moreover, the claimants have sought to disprove the defendant's case that Roger jumped out of the bedroom window by stating in their witness statements that the internal bedroom windows had louvres. It is significant that this fact was only stated for the first time at the witness statement stage. It was not set out in either the statement of case or as is to be expected a reply. By the stage of Reply, it was clear that the police were alleging that Roger jumped through a window and made good an escape. The court therefore is of the view and finds that the evidence that the windows in the internal bedroom consisted of louvers was an untruth told in an attempt to bolster their claim that Roger did not jump through the window.
59. Further, even though Merthlyn, Cristal and Janelle testified that they did not see Roger jump through the window, their evidence must be taken in the context that they were all seated in the living room, therefore, it was quite plausible that they did not in fact see Roger jump through the window in the bedroom as they were situate elsewhere. Merthlyn, Cristal and Janelle did not give evidence that they could have seen in the bedroom whilst being seated in the living room. It means also by the same coin that Roger's evidence of being left in the bedroom was in no way corroborated by Merthlyn, Christal and Janelle. As a consequence, the court finds that it is more likely than not that Roger did in fact jump through the window during the search and made good his escape on foot.
60. The court therefore finds that the defendant's version of events are quite plausible and accepts same to be true. According to the evidence of PC Insanali, after finding the clear plastic bag containing the cream solid substance resembling that of cocaine, Roger was

showed two of the packets and informed that PC Insanali was of the opinion that the solids found were cocaine. Roger was then cautioned and asked the names of the persons who slept in the room. Roger replied that everyone did. PC Insanali then asked Roger to accompany PC Rahim and him to the living room to show the rest of occupants what was found. While proceeding to the living room Roger jumped through the open wooden window in the bedroom and made good his escape on foot. PC Insanali and PC Rahim called out to the officers outside alerting them that Roger had jumped through the window. PC Insanali did not chase Roger because the height from the window to the ground was approximately eight feet. PC Rahim also did not pursue Roger. Two officers positioned outside the house pursued Roger but were unsuccessful in capturing him and Roger made good his escape through the bushes.

61. Much weight was made by the claimants in relation to the number of officers positioned outside of the said house. According to the claimants, the fact that there were six officers positioned outside the house makes the story of Roger's escape highly improbable. Firstly, the court accepts the reasons given by PC Insanali and PC Rahim for not pursuing Roger. Secondly, PC Insanali's evidence in relation to the position of the officers was very clear. One officer remained on the Main Road to look after the police vehicles, one stayed in the vicinity of the broken down shack, three stayed outside of the house and three went into the house. As such, only three officers as opposed to six officers were positioned outside of the house. Even though there were three officers positioned outside of the house who may have been capable of capturing Roger, taking into consideration the two versions of events, in the court's view, common sense and plausibility lies with the finding that Roger's version of events is simply unlikely.

62. Moreover, the court finds that Roger did in fact inform PC Insanali that he occupied the house. Clearly, it was for that reason Roger made good his escape on foot when the cocaine like substance was found in the house.

Whether Shawn was present at the said house during the search and informed PC Insanali that he was occupying the house as averred by the defendant or whether he was arrested on the Naparima Mayaro Main Road

63. The court finds that the defendant's evidence in relation to Shawn lacks credibility. The evidence of the defendant that Shawn was left seated in the living room with Merthlyn, Cristal and Janelle under the supervision of WPC Saunders-Alfred is simply unlikely. It is more likely than not that PC Insanali and PC Rahim would have had Shawn accompany them during the search since according to the defendant's case, Roger and Shawn were the only two males present at the house. Additionally, even though the said address was recorded as being Shawn's address in the stationary diary, a different address was used for Shawn at the Magistrates' Court. PC Insanali's explanation for the differences in addresses for Shawn was inadequate and unsatisfactory. The court is not satisfied that Shawn was present at the home when the officers arrived that day. The court finds that it is more likely than not that he was arrested on the Naparima Mayaro Main Road. Further, the court accepts the claimants' evidence that Shawn does not live and/or occupy the said house.

Whether Sterlyn occupied the house.

64. Sterlyn was arrested pursuant to a warrant of arrest more than two years after the search of the said house. The evidence of the claimants concerning Sterlyn's occupation of the said house was somewhat inconsistent. Sterlyn and Emmanuel testified that Sterlyn did not reside and/or occupy the said house whereas Janelle testified that Sterlyn lived at the said house. According to the evidence of the defendant, PC Insanali obtained a warrant of arrest for Sterlyn because Merthlyn informed him that Sterlyn resided at the house. It was therefore incumbent upon PC Insanali to obtain independent confirmation of whether Sterlyn lived and/or occupied the said house. As such, the court accepts the evidence of Sterlyn that he does not live and/or occupy the said house.

Reasonable and Probable cause

65. It is settled law that the question of whether there was reasonable and probable cause involves both subjective and objective tests. In Manzano supra His Lordship, Mendonca JA delivering the decision of the court set out both the subjective and objective elements 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.”

Possession of Dangerous Drugs

66. In determining the issue of reasonable and probable cause to lay the charge, the court must consider the specific charge laid and the deeming provision. The claimants were all charged for the offence of possession of a dangerous drug, namely cocaine for the purpose of trafficking, contrary to Section 5(4) of the Dangerous Drugs Act, Chapter 11:25 which provides as follows;

“A person who trafficks in any dangerous drug or in any substance represented or held out by him to be a dangerous drug or who has in his possession any dangerous drug for the purpose of trafficking is guilty of an offence.”

67. **Section 21(1) of the Dangerous Drugs Act** (the deeming provision) is also instructive. It provides as follows;

“Without limiting the generality of section 5(1) or 5(4) any person who occupies, controls, or is in possession of any building, room, vessel, vehicle, aircraft, enclosure or place in or upon which a dangerous drug is found shall be deemed to be in possession thereof unless he proves that the dangerous drug was there without his knowledge and consent.”

68. In the consolidated matter of **Randy Ramoutar v The Attorney General of Trinidad and Tobago CV2012-1842** and **Joseph Balliram v The Attorney General of Trinidad and Tobago CV2012-1430**, Justice Dean-Armorer in determining the interpretation of the word “occupy” as seen in statutes relied on the case of **Koonjan Ramdass and Camla Ramoutar v Richard Knights Mag. No 13 of 2002**. In Koonjan Ramdass, the appellants were charged with the possession of drugs and firearms. At the Magistrates’ court, the appellants were found guilty for both offences. They appealed their conviction. The crucial issue in the appeal was whether there was sufficient evidence to support that the appellants were occupants of the premises where the drugs and firearms were found. In his decision, Sharma CJ (as he then was) referred to the case of R v. Lou Hay Hung [1946] O.L.R 187 which interpreted the meaning of “occupy” in section 17 of the Opium and Narcotic Drug Act. The Court of Appeal in Lou Hay Hung at pages 191 to 192, Per Robertson C.J.O stated as follows;

“The word “occupy” and “occupant have a variety of shades of meaning. No doubt, we commonly speak of the “occupants” of a dwelling house, meaning thereby all persons who, at the time live there. We use the word in even a wider sense when we speak of the “occupants” of premises, meaning thereby all the persons who happen to be within them at the particular time. Primarily, however, “to occupy” means “to take possession”, and such wider meanings, while no doubt now well recognized by usage, and proper enough in the right context, are not the only meanings, according even to present common use. The narrower and primary significance has been attached to the word “occupied”

69. At page 7 of his judgment Sharma CJ went on to state the following;

“The judge further added that to give “occupy” the wider meaning might produce an unjust result. For example, if the head of the household had drugs unlawfully, and his wife, children and servants know this, it could not be the intention of the statute to make them all guilty of the offence for keeping opium in their possession. The proper sense to be attributed to the word “occupies” in s. 17 is the limited sense that will extend the section only to cases where there is an element of control of the premises and of their use in the person charged”.

70. Sharma CJ further relied on the case of Rex v Gun Ying [1930] D.L.R. 925. In Rex supra, Mulock C.J.O at pages 927 to 928 stated that the words *“occupies, controls or is in possession of any building...are not used in their widest, but on the contrary in their limited sense, namely that such occupation, control, or possession must, under the circumstances, be of a nature which goes to support the charge, otherwise the presumption of possession does not arise.”*

71. At page eight of his judgment, Sharma CJ stated that from those two authorities, it showed that the courts in interpreting “occupy” gives it the narrow rather than the wide meaning. As such, Sharma CJ ruled that the appellants were not in occupation of the premises due to the fact that they were temporarily visiting same.

Findings

72. For there to have been reasonable and probable cause by the police, in respect of both the subjective and objective elements of the test, PC Insanali must have had an honest belief that on the information available to him at the time of the charge, there was a case fit to be tried both as a matter of his subjective belief and also as a matter of objective assessment by the court. In so believing, he must have found as a prerequisite to laying the charge that each claimant would have had knowledge that he/she had possession of the bedroom in which the plastic bag and its contents which resembled that of cocaine was found.

73. Further, the effect of the deeming provision set out supra is to vest any person *who* occupies, controls, or is in possession of any building, room, vessel, vehicle, aircraft, enclosure or place in or upon which a dangerous drug is found with possession (knowledge and control) because of their occupation. The burden is then placed on that person in the criminal law to prove that the drugs were there without his knowledge and consent. For the purpose of the civil law of malicious prosecution, when considering both the subjective and objective elements of reasonable and probable cause in this case, it would mean that the court must be first satisfied that the claimants or some of them were either found in the house at the same time that the drugs were found and they admitted occupation, PC Insanali held an honest belief that they were in such occupation and the court is of the view that that belief is a reasonable one on the facts.

74. In this regard the court finds that it is clear that PC Insanali would have been of the honest belief that Roger, Merthlyn, Janelle and Christal were in occupation and possession of the bedroom in which the plastic bag containing the contents which resembled that of cocaine was found and had knowledge of same. The only reasonable inference that can be drawn from the fact that there was only one internal bedroom with two sets of double-decker beds being shared was that the occupants of same had knowledge of the plastic bag and its contents and were in occupation and possession of the room. Additionally Roger, Merthlyn, Christal and Janelle would have been deemed to be in possession of the plastic bag and its contents by virtue of the deeming provision. That in the court's view was sufficient to amount to reasonable and probable cause to charge them.

75. In relation to Steryln, Emmanuel and Shawn however, the position is quite different. Even though Emmanuel has admitted that he occupied the said house, this admission came long after he had been charged for the offence. The court's assessment of reasonable and probable cause must relate to the information available to the police prior to the laying of the charge and not thereafter. It is this information which forms the basis for the honest belief. On the evidence, the information available to PC Insanali at the time he issued the warrant of arrest for Emmanuel came from Merthlyn, herself an accused person at the time,

on a charge for the same offence, who informed him that Emmanuel occupied the house. The court finds grave discomfort in the use of the information provided by a person accused or suspected of the commission of the very offence against another so as to vest the other with liability without independent corroborative information. It was incumbent upon PC Insanali to obtain independent confirmation of whether Emmanuel occupied the said house. The court therefore finds that although PC Insanali may have honestly believed that Emmanuel lived at the house because he was told so, the court is not satisfied that the relevant information, lacking independent confirmation is not a reasonable conclusion when the objective test is applied. It follows that the court has found that PC Insanali lacked reasonable and probable cause to charge Emmanuel.

76. Having regard to the findings of fact that Steryln and Shawn did not occupy the said house and were not found in the said house of the day of the search they could not have been in possession and/or control of the bedroom in which the plastic bag containing the cocaine like substances were found. Further, the deeming provision could not have applied to them. So that it is quite clear to the court that applying the relevant test both subject and objective, there would have been no reasonable and probable cause to charge Steryln and Shawn for any offence.

Malice

77. 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 as follows;

“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.”

78. In *Cecil Kennedy v Donna Morris Civil Appeal no. 87 of 2004*, Sharma CJ stated the following at paragraph 28;

“... there are numerous authorities which indicate that where a lack of reasonable and probable cause is NOT proved, the question of malice does not arise: Randolph Burroughs v. AG HC 4702/1986; HC 2418/1987. In Abbott v. Refuge Assurance Co. Ltd. [1961] 3 All ER 1074, it was agreed that once there was a prosecution to make possible a civil action, then the proposed plaintiff could not be actuated by malice, to render himself liable to an action in damages for malicious prosecution. According to Ormerod L.J. in that case: “It may well be that the definition of malice in an action of this kind is wide enough to cover an ‘improper or indirect motive’, but I cannot accept that an indirect motive includes doing something which the law has said must be done before civil proceedings may be instituted.””

79. Malice may be inferred from an absence of reasonable and probable cause: *See Harold Barcoo v The Attorney General of Trinidad and Tobago HCA No. 1338 of 1989 at page 23, per Mendonça J (as he then was).*

Findings

80. The court having found that Shawn was in fact arrested on the Main Road as opposed to being arrested in the said house means that PC Insanali and his witnesses would have not been truthful to the court when they testified in relation to Shawn. This itself is sufficient in the court’s view to prove malice in relation to Shawn. Further, malice can be inferred from the fact that PC Insanali failed to verify the information he received from Merthlyn relating to the occupants of the house. As such, the court finds that the prosecution of Shawn, Emmanuel and Steryln was initiated by malice the police having had no reasonable and probable cause to charge them.

Damages

81. Shawn, Emmanuel and Steryln claimed damages inclusive of exemplary damages. Exemplary damages are usually only awarded if compensatory damages are inadequate to punish the defendant or to deter others. According to the House of Lords in **Rookes v Barnard (1964) AC 1129** at page 1221, “*exemplary damages are essentially different from ordinary, damages. The object of damages in the usual sense of the term is to compensate. The object of exemplary damages is to punish and deter...*”

General damages

82. Damages in cases of malicious prosecution are awarded under three (3) heads;
- i. Injury to reputation- to character, standing and fame.
 - ii. Injury to feelings- for indignity, disgrace and humiliation caused and suffered.
 - iii. Deprivation of liberty- by reason of arrest, detention and/or imprisonment: See **Thadeus Clement v the Attorney General of Trinidad and Tobago Civ. App. 95 of 2010 at paragraph 12, per Jamadar JA**
83. Shawn, Emmanuel and Steryln pleaded that they were greatly injured in their credit, character and reputation. They further pleaded that they suffered considerable mental and bodily pain and anguish. However, they did not lead any evidence to demonstrate the manner in which they were greatly injured in their credit, character and reputation. Of course some damage in that regard is to be presumed. Further, they did not lead any evidence to show that they suffered considerable mental and bodily pain and anguish above and beyond that which is to be presumed in the circumstances. In fact, in the case of Shawn, he has nine (9) prior convictions so that one could hardly envisage that he would suffer great injury to his character and reputation.

84. The length of time Shawn, Emmanuel and Steryln were detained was as follows;

- i. Shawn was arrested on the 12th December, 2004 and first appeared in the Magistrates' court on the 13th December, 2004. He testified that he was in custody for about nine (9) months but did not state the date upon which he was released. According to the notes of evidence from the Magistrates' court, on the 28th July, 2005, Shawn was granted his own bond and on the 4th October, 2002 he was remanded on continuing bond which means he was more than likely released on the 28th of July as the process of entering into one's own bond is a simple one which is usually done at the court on the very day.
- ii. Emmanuel first appeared at the Magistrates' court on the 4th February, 2005. He testified that he spent two weeks at the Youth Training Centre in Arouca, however he did not mention the date upon which he was released. According to the notes of evidence, on the 4th February, 2005 Emmanuel was remanded and granted own bond and on the 14th February, 2005 he was remanded on continuing bond. This means that he was more likely than not released on the 4th February 2005.
- iii. Sterlyn first appeared at the Magistrates' court on the 13th April, 2007. He testified that he spent one month in custody but also failed to mention the date of his release. The defendant submitted that Sterlyn secured bail on the 15th February, 2007 and therefore was in custody for two (2) days. In response the claimants submitted that the number of days spent in custody was not challenged by the defendants. According to the notes of evidence from the Magistrates' court, on the 15th February, 2007 Merthlyn posted the cash sum of three thousand dollars (\$3000.00) bail for Sterlyn's release. It therefore follows that he was released on the 15th February 2015, some two days after his arrest and the court so finds.

85. The defendant submitted that the following damages are reasonable;

- i. Sterlyn – between \$15,000.00 to \$20,000.00
- ii. Emmanuel –between \$55,000.00 to \$60,000.00
- iii. Shawn –between \$80,000.00 to \$100,000.00

86. In arriving at those figures, the defendant relied on the following authorities;

- i. **Bernard Baptiste v. The Attorney General of Trinidad and Tobago and Premchand Seepersad H.C.A. Cv. 3617 of 2001**, Stollmeyer J (Date of judgment – 23rd February 2005) – The plaintiff in this matter was detained for two (2) days. An award of \$25,000.00 was granted for wrongful arrest and malicious prosecution (inclusive of aggravated damages). This award included an element for the plaintiff not being informed of his right to retain an attorney. The court found that the plaintiff was handcuffed and opined that the said handcuffing was unnecessary. The court further found that the plaintiff suffered some affront to his dignity and reputation when he was seen handcuffed by persons in his neighbourhood.
- ii. **Darren Mc Kenna v The Attorney General of Trinidad and Tobago CV2006-03114**, Stollmeyer J (Date of judgment – 17th April 2008) - The claimant in this matter was detained for three (3) days. An award of \$40,000.00 was granted for false imprisonment and malicious prosecution (including aggravated damages). In this case the aggravating factors were that the warrant was neither shown nor read to the claimant and attempts were made to browbeat a confession out of the claimant.
- iii. **Deosaran Palakdhari v. The Attorney General of Trinidad and Tobago CV. 2007-01747**, Dean-Armorer (Date of judgment – 25th July 2008) – The claimant was arrested at home by police officers. He was detained for three (3) days and two (2) nights. The Court awarded general damages of \$10,000.00 for malicious prosecution. There were no aggravating factors.
- iv. **Felix Hyndman v The Attorney General of Trinidad and Tobago H.C.A. T-71 of 1996**, Tam J (Date of judgment – 31st July 2001) - The plaintiff was imprisoned for some twenty (20) days before being freed on bail. In those circumstances, the Court awarded \$85,000.00 which included an element of award for aggravated damages and a further sum of \$25,000.00 for exemplary damages. The aggravating factors were that the plaintiff was forced to participate in a search, he was beaten and forced down an area leading to a cave and beach and he was never advised of his right to a lawyer.

87. In determining a reasonable figure for general damages, the court also considered the followings cases;

- i. **Ted Alexis v the Attorney General of Trinidad and Tobago No S-1555 of 2000,** decision given on the 17th March, 2008, Kangaloo J - Cocaine was planted on a claimant and he was imprisoned for two and a half (2 ½) months until he was able to access bail and the charge remained pending for four (4) years. The Court awarded general damages in the sum of \$100,000.00 for unlawful arrest, false imprisonment and malicious prosecution, inclusive of aggravated damages and \$25,000.00 as exemplary damages to mark the court's disapproval of the officer's conduct. The court took account of the serious nature of the charge and the fact that evidence was planted on the claimant. Interest at the rate of 12% per annum from the date of filing to the date of judgment was also awarded on the general damages.
- ii. **Curtis Gabriel v Attorney General of Trinidad and Tobago HCA S-1452 of 2003,** Rajkumar J - the claimant spent eighty-four (84) days in prison and was awarded \$125,000.00 for general damages which included an element for aggravation, and the sum of \$50,000.00 by way of exemplary damages.
- iii. **Brahim Rampersad v The Attorney General of Trinidad and Tobago, H.C.A. S-1578 of 2002** – The claimant was detained for two weeks. Master Paray-Durity awarded \$190,000.00 as general damages inclusive of aggravated damages and \$30,000.00 as exemplary damages for wrongful arrest, false imprisonment and malicious prosecution.

Findings

88. Having regard to the evidence before the court and the award in similar cases the court would therefore make the followings awards of general damages;

- i. Steryln – the sum of twenty- five thousand dollars (\$25,000.00)
- ii. Emmanuel – the sum of sixty thousand dollars (\$60,000.00)

iii. Shawn –the sum of one hundred thousand dollars (\$100,000.00)

89. The court is not of the view that this is a suitable case for the award of exemplary damages for any of the successful claimants *save and except* for Shawn, the court having found that the police were untruthful in their evidence as to where he was found on that day. The damages must in this case be punitive in that regard as it is oppressive conduct on the part of the police to hold someone in the street and arrest and charge on the basis that he occupied a house when in fact he was not present within that house and there is no credible evidence that he lived there. The general damages for Shawn shall also include an uplift for aggravation in the circumstances of the arrest.

Special Damages

90. In their statement of case, the claimants listed out their particulars of special damages. Special damages must be specifically pleaded and proven: **Grant v Motilal Moonan Ltd (1988) 43 WIR 372 per Bernard CJ and reaffirmed in Rampersad v Willies Ice Cream Ltd Civ App 20 of 2002.** The claimants have accepted that they did not provide any supporting evidence to prove their claim for legal fees. In relation to the claims for loss of earnings, the claimants have also not provided any documents to support that they were employed as they alleged neither have they produced any evidence to show the salaries which they earned.

91. However, the claimants submitted that Sterlyn being a market vendor would not have had pay slips and as such should be compensated for his loss of earnings. Sterlyn testified that he attended court on forty (40) occasions. He further testified that on the occasions he attended court he lost daily earnings of about two hundred dollars (\$200.00).

92. The claimants further submitted that they should be awarded the money they expended to travel to court. According to the evidence of the claimants, they spent eight dollars (\$8.00) to travel to court each day they had to be present. The defendant submitted that the

claimants have admitted that they attended court on fewer occasions as stated in their evidence. The defendant further submitted that the claimants have also admitted that they would not have had to pay transportation costs on every occasion they attended the Magistrates' Court as they were in police custody on some of those occasions. The court notes that the claimants have adjusted the amount of days they have claimed for traveling expenses to compensate for the days they would have been in custody and would not have paid traveling. Emmanuel claimed travelling expenses for thirty-seven (37) occasions at eight dollars per occasion and Shawn claimed travelling expenses for fifty (50) occasions at eight dollars per occasion.

Findings

93. The court finds that the claim for special damages was not made out. The court agrees that Sterlyn being a market vendor would not have had pay slips however, the court would be engaging in speculation if it granted Sterlyn's claim for loss of earnings of two hundred dollars per day since the court has no proof whatsoever that he did in fact earn two hundred dollars per day. Further, the court was provided with no proof that the fee for travelling to and from the Princes Town Magistrates' Court to and from their respective homes was eight dollars. The exercise would be one in speculation should the court grant the claim for traveling expenses.

Costs

94. Having regard to the fact that only three of the claimants were successful in their claims means that the defendant has succeeded in respect of other claimants. In those circumstances, the court is of the view that the successful Claimants are entitled to their costs and the defendant to its costs in relation to the claimants who were unsuccessful. The court also notes that the first claimant is since deceased and has therefore played no part in these proceedings.

95. The court will therefore make the following order;

- i. The defendant shall pay to the claimant Steryln Scipio general damages for malicious prosecution in the sum of twenty-five thousand dollars (\$25,000.00).
- ii. The defendant shall pay to the claimant Emmanuel Blades general damages for malicious prosecution in the sum of sixty thousand dollars (\$60,000.00).
- iii. The defendant shall pay to Shawn Marcano general damages for malicious prosecution inclusive of an uplift for aggravation in the sum of one hundred thousand dollars (\$100,000.00).
- iv. The defendant shall pay to Shawn Marcano exemplary damages in the sum of twenty five thousand dollars (\$25,000.00).
- v. The claims of the First, Third, Fifth, Sixth and Eighth claimants are dismissed.
- vi. The defendant is to pay to the Second, Fourth and Seventh Claimants the prescribed costs of the claim based on the value of their respective awards.
- vii. The Third, Fifth, Sixth and Eighth claimants are to pay to the defendant the prescribed costs of the claim in the sum of fourteen thousand dollars (\$14,000.00).

Dated the 19th July, 2017

Ricky Rahim

Judge