

**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

Claim No: CV2016-00769

Between

**BRIAN LYNCH**

Claimant

And

**THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO**

Defendant

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

Date of Delivery: April 8, 2019

Appearances:

Claimant: Mr. B. Busby

Defendant: Ms. T. Ramlogan instructed by Ms. K. Matthew

## REASONS

1. On March 20, 2019 the court made the following order;
  - i. The claim is dismissed;
  - ii. The claimant shall pay to the defendant the prescribed costs of the claim on the basis of the value of the claim being one for \$50,000.00 in the sum of \$14,000.00.
  
2. The following are the reasons for this decision.

## BRIEF BACKGROUND

3. By Amended Claim Form filed on July 21, 2016 the claimant sought damages inclusive of aggravated and exemplary damages for false imprisonment and malicious prosecution. The incident which gave rise to the claimant's claim occurred on December 14, 2010 ("the said date"). In his version of the events, at about 3:00 pm, a party of police officers of African descent unlawfully entered the claimant's property situate at No. 21 Hibiscus Drive, Pleasantville, San Fernando and asked the claimant what he had to smoke. The claimant responded by stating that he had nothing. Thereafter, one of the officers said to put the handcuffs on the claimant as he (the officer) had found a "roach" which the claimant interpreted to mean that the officer was saying that he found the butt of a marijuana cigarette commonly called a "joint". The roach that was allegedly found by the officer was never shown to the claimant. The claimant was taken to the Mon Repos Police Station ("the station").

4. At the station, the claimant was kept overnight in a cell and was taken the next morning (December 15, 2010) to the San Fernando Magistrate's Court to answer a charge that he had in his possession a certain dangerous drug namely Cannabis Sativa 'L' commonly called marijuana, contrary to section 5 (1) of the Dangerous Drugs Act, Chapter 11:25. On December 15, 2010 Police Constable #16272 Shaeed Ali ("PC Ali") appeared in the Magistrate's Court as the Complainant in the charge against the claimant. PC Ali who is of East Indian descent (the relevance of the ethnicity of PC Ali will become apparent later in these reasons) was known to the claimant. PC Ali was not among the party of police officers that went to the said house at No. 21 Hibiscus Drive on December 14, 2010 and arrested the claimant.
5. On December 15, 2010 PC Ali did not produce before the Magistrate a butt of a marijuana joint but in fact produced some loose plant like material. When the charge was read to the claimant by the Magistrate, the claimant at first pleaded guilty believing that the charge was for possession of the butt of a marijuana cigarette. That being the case the claimant felt that it would have been easier for him to plead guilty and pay a small fine rather than stay in custody for several months or years awaiting the trial or at any rate have the charge hanging over his head for several months or years.
6. However, when PC Ali produced the loose plant like material, the claimant protested that he was never told by the police officers that they found loose plant like material resembling marijuana but that the police officers told him that they had found a roach. Thereupon, the Magistrate changed the plea to not guilty. The claimant was remanded in custody and bail with a surety to be approved by the Clerk of the Peace was set in the sum of \$15,000.00. Accordingly, the claimant claims that the charge against him was brought maliciously and without any reasonable and probable cause

and that he was falsely imprisoned from the time of his arrest on December 14, 2010.

7. After December 15, 2010 the matter was called twenty-four times before it was eventually dismissed on March 16, 2012 for want of prosecution. During the period December 14, 2010 to May 3, 2011 the claimant remained in custody. On May 3, 2011 the claimant obtained bail and was released on continuing bond.
8. By Amended Defence filed on December 11, 2017 the defendant claims that on the said date, Ali in company of PC Narine Bisnath ("PC Bisnath") was in a police vehicle on mobile exercise and enquiries. That PC Ali in company of PC Bisnath were driving along Hibiscus Drive Pleasantville when they observed the claimant walking along said road. According to the defendant, the claimant turned and looked in the direction of the police vehicle and began walking at a faster pace. Consequently, PC Ali became suspicious of the claimant's actions and caused the police vehicle to stop. Both officers alighted from the vehicle, approached the claimant and identified themselves to the claimant by means of their Trinidad and Tobago Police Service identification card.
9. Thereafter, PC Ali in the presence of PC Bisnath proceeded to searched the claimant and found in his right front pants pocket, one clear plastic bag containing plant material resembling that of marijuana. PC Ali showed same to the claimant and informed the claimant that he was of the opinion that the said plant like material was that of marijuana, a dangerous drug. When the claimant was cautioned, he remained silent. PC Ali further informed the claimant of his constitutional rights and privileges and thereafter arrested him for possession of marijuana. The claimant was handcuffed and placed in the police van to be transported to the station.

10. At the station, PC Ali in the presence of the claimant weighed the plant like material resembling marijuana, which was in a transparent plastic packet. PC Ali then affixed masking tape marked SA 14/12/10 to the transparent plastic packet. The defendant claims that PC Ali does not know the claimant. Consequently, the defendant avers that at all material times, PC Ali had reasonable and probable cause to charge and prosecute the claimant.
11. On December 15, 2010 PC Ali did appear in the Magistrates' Court as the Complainant in the charge against the claimant.

### **THE ISSUES**

12. It was undisputed that the claimant was arrested, charged and the charge was determined in his favour. Aside from the main issues of law, there was one dispute of fact which was how the claimant arrested.
13. The main issues of law for determination by this court were as follows;
  - i. Whether there reasonable and probable cause to charge the claimant;
  - ii. If not, was the police complainant actuated by malice;
  - iii. Whether the claimant was falsely imprisoned from December 14, 2010 to May 3, 2011; and
  - iv. Whether the claimant is entitled to damages including aggravated and exemplary damages. The issues for determination by this court are as follows;

## THE CASE FOR THE CLAIMANT

14. The claimant gave evidence for himself. He is otherwise called Stanley Brian Lynch. He is sixty-six years of age<sup>1</sup> and currently resides at No. 21 Hibiscus Drive, Pleasantville, San Fernando (“Hibiscus Drive”). He began living at Hibiscus Drive from the year 2013 after the house he lived in at No. 8 Newbold Street, Mon Repos, San Fernando (“Newbold Street”) was destroyed by fire on March 13, 2013. The house at Newbold Street belonged to the claimant’s deceased grandmother, Carmen Harper who died on November 16, 1983. He was living at Newbold Street with his grandmother and after her death, he continued to live there.
15. He obtained a letter dated September 5, 2013 from the Fire Services verifying that the house at Newbold Street was in fact destroyed by fire.<sup>2</sup> He had submitted the original of that letter in the year 2013 to the Housing Development Corporation but he kept a copy of it which is what he was able to produce. In May, 2017 he went to the office of the Housing Development Corporation to try to recover the original of that letter but he was unable to do so as it could not be found. He therefore asked his lawyer to do a letter to the Fire Service requesting a letter verifying that the house at Newbold Street had been destroyed by fire. On June 7, 2017 he collected from the Fire Service a letter dated May 31, 2017 verifying that the house was destroyed by fire on May 13, 2013.<sup>3</sup> Among the items that were destroyed in the fire was his passport.
16. During the month of June, 2017 he applied for a new passport. In order to do so he needed to get a letter from the Fire Service addressed to the

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<sup>1</sup> A copy of the claimant’s birth certificate was annexed to his witness statement at “B.L. 1”.

<sup>2</sup> A copy of that letter was annexed to the claimant’s witness statement at “B.L. 2”.

<sup>3</sup> A copy of the letter the claimant collected from the Fire Service which was addressed to his lawyer Mr. Brian Busby was annexed to his witness statement at “B.L. 3”.

Immigration Office verifying that there was a fire at his home at Newbold Street on March 13, 2013. He obtained a letter from the Fire Service dated June 2, 2017 to that effect. He kept a copy of that letter and submitted the original to the Immigration Office.<sup>4</sup>

17. The house at Hibiscus Drive belonged to the claimant's father, Rupert Lynch ("Rupert") who died on November 5, 1977. From the year 2002 (after the death of his mother, Sylvia Lynch), the claimant began to rent out the house at Hibiscus Drive. The house at Hibiscus Drive is a four bedroom house. The claimant owns that house along with his siblings. He has a one-fifth share in the property. On March 3, 2010 Justice Tiwary-Reddy made an Order declaring that the claimant holds a one-fifth interest in the property at Hibiscus Drive.<sup>5</sup>

18. Starting from the year 2002, the claimant rented the house to several persons. On August 18, 2005 the claimant went to Trinidad Publishing Company Limited and placed an advertisement in the newspaper for the rental of the property.<sup>6</sup>

19. He rented out the house at Hibiscus Drive to Jeneile Osborne and Wazim Abdool. The claimant served those two tenants with a Notice to Quit dated November 24, 2005.<sup>7</sup> Thereafter, the claimant brought proceedings in the Magistrate's Court to evict Jeniele Osborne and Wazim Abdool from Hibiscus Drive.<sup>8</sup> At another time, the claimant rented the house at Hibiscus

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<sup>4</sup> The copy of that letter from the Fire service was annexed to the claimant's witness statement "B.L. 4".

<sup>5</sup> An office copy of the order was annexed to the claimant's witness statement at "B.L. 10".

<sup>6</sup> The advertising receipt that the claimant received from Trinidad Publishing Company was annexed to his witness statement at "B.L. 5".

<sup>7</sup> A copy of the Notice to Quit was annexed to the claimant's witness statement at "B.L. 6".

<sup>8</sup> A certified Copy of the Extract of Magistrate's Case Book for February 3, 2006 was annexed to the claimant's witness statement at B.L.7".

Drive to Darren Carter and Mahalia Achong. He also served them with a Notice to Quit dated November 13, 2007<sup>9</sup> and brought proceedings in the Magistrate's Court to evict Darren Carter and Mahalia Achong from Hibiscus Drive.<sup>10</sup>

20. In December, 2010 the tenant who was renting the house at Hibiscus Drive had moved out so that the house was unoccupied at the moment but it was not abandoned. The claimant testified that it was at all times a well-kept house and certainly was not dilapidated. To the front of the house there was and still is a lawn that at all times is cut and well kept. The house faces south. The claimant took a photograph of the front of the house using his cellular phone which has a camera and with the assistance of a friend, he printed the photograph.<sup>11</sup> The claimant was standing on the street and took the photograph with the camera facing north. The claimant testified that the photograph was not altered and that it is a true image of the front of the house. He also took a photograph of the western side of the house. He used his cellular phone which has a camera to take the photograph. He was standing to the side of the house with the camera facing in a north-eastern direction. With the assistance of a friend, he printed the photograph.<sup>12</sup> The claimant testified that that photograph was not altered and that it is a true image of the western side of the house.

21. On December 14, 2010 ("the said date") the claimant went to Hibiscus Drive to carry out some repair work on the house with a view to renting it out again. He attended San Fernando Technical Institute between the years 1968 to 1971 where he did building construction. He is a trained carpenter

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<sup>9</sup> A copy of the Notice to Quit was annexed to the claimant's witness statement at "B.L. 8".

<sup>10</sup> A certified Copy of the Extract of Magistrate's Case Book for February 7, 2008 was annexed to the claimant's witness statement at "B.L. 9".

<sup>11</sup> The said photograph was annexed to the claimant's witness statement at "B.L. 11".

<sup>12</sup> The said photograph was annexed to the claimant's witness statement at "B.L. 12".



and therefore he went to do the repairs to the house himself. On the said date, he had just arrived at Hibiscus Drive to start the repair work. He was in one of the bedrooms to the back of the house sorting out his tools when at about 3:00 pm, he heard someone shout “*police*”. He left the bedroom and walked towards the front of the house. He saw a man and a woman inside of the house. The claimant did not give them permission to enter the house. The man and the woman were of African descent. The man was a dark Negro man over six feet tall. He had a gun in his hand. The man and the woman were not in police uniform. Very quickly other persons who were outside of the house came into the house and they surrounded the claimant. Some of them were in police uniform. None of the officers who came into the house was of East Indian descent. They were all of African descent. The claimant testified that PC Ali was not among the party of police officers who came to Hibiscus Drive on the said date.

22. On the said date, the claimant did not know the names of any of the police officers who came to Hibiscus Drive. The claimant knew the man (who entered the house first with the woman) before that day by seeing him around the San Fernando area. The claimant however did not know his name. The claimant had seen him years before as he was then a MTS Security Guard working at Pleasantville Senior Comprehensive School. The claimant had also seen him playing basketball at the Skinner Park Basketball Court. He heard him being called by a nick name of “Pecko” or “Preko” or something that sounds like that. The claimant also felt that his name may have been Nicholson, Nicolls, Nicolas or a name sounding like that. He therefore could not at the time of his arrest or even up to the time when he commenced these proceedings state what that officer’s name was. The claimant subsequently found out that most likely his name is PC Nicholas as his name was mentioned in the defence filed in another malicious

prosecution matter, Claim No. CV2016-04192, the claimant filed against the Attorney General.

23. The police officers who came into the house at Hibiscus Drive on the said date did not identify themselves to the claimant. They also never showed him a search warrant. The claimant testified that the property at Hibiscus Drive is private property and that he had not given any of the police officers permission to enter the property.
24. On the said date, there was no front door in place in the house at Hibiscus Drive. On a previous occasion, police officers had broken down the door of the house, went into the house and arrested the claimant. The claimant testified that the officers on that occasion had laid a “trumped up” charge against him that was dismissed. That was the subject of the other matter before the court (Claim No. CV2016-04192).
25. Consequently, one of the projects the claimant had to do was to put back up the front door. He had not gotten around to putting the door back up at the material time. As such, when the police officers entered the house on the said date, there was an open door space between the gallery and the living room. The claimant took a photograph of the door and the door space. He took the photograph with his cellular phone which has a camera. When he took that photograph, he was standing inside the house with the camera facing in a westerly direction. In order to take the photograph, he took the door from off the floor and leaned it up against the door space. The said front door consists of two doors pad locked together. With the assistance of a friend, he printed the photograph.<sup>13</sup> The claimant testified

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<sup>13</sup> The said photograph of the front door was annexed to the claimant’s witness statement at “B.L. 13”.

that the photograph was not altered and that it is a true image of the western interior of the house and the front door that was broken down.

26. On the said date, when the police officers entered the house and surrounded the claimant, he was subjected to a barrage of questions from the police officers as several of them were asking him questions all at the same time. He recalled being asked what he had to smoke. He responded to that by saying that he had nothing. He told the officers that he was about to start doing repair work to the house. One of the police officers then said put the hand cuffs on him as he (the officer) found something. The police officer then said that he found a "roach" which the claimant interpreted to mean that the officer was saying that he found the butt of a marijuana cigarette. The claimant testified that he had no drugs of any description in his possession or in the house at Hibiscus Drive. The police officers never showed him any "roach" or any drug of any description.
27. The claimant testified that he had nothing unlawful on the property to justify the police arresting him. None of the police officers searched him and in any event he had no drugs or anything illegal on his person that could have justified the police officers arresting him.
28. An officer who was behind the claimant hand cuffed him and in the full view of persons in the area, he was taken out into the street and placed to sit in the open tray of a marked police vehicle which was a pick up. He was taken directly to the Mon Repos Police Station ("the station") which is a short distance from Hibiscus Drive. The drive from Hibiscus Drive to the station took no more than around five to ten minutes. At the station, the claimant was finger printed. The claimant testified that at no point in time did he see PC Ali at the station and that PC Ali was not the officer who finger printed him. The claimant further testified that he was not shown any marijuana

and no exhibit was weighed or marked in his presence. That he was not told what charge was laid against him.

29. Thereafter, he was placed in a cell and was not given anything to eat or drink. He was not even permitted to wash his hands to wash off the ink from the finger printing. The cell in which the claimant was placed was no bigger than about eight feet by ten feet and there were over ten prisoners crammed into the cell. There was no bed or bench in the cell. The floor of the cell was concrete. The cell was filthy. There was an unflushed toilet bowl in the cell that was full of faeces. The toilet could not be flushed from inside the cell. The claimant testified that the stench in the cell was unbearable. That there was filth on the walls and the floor of the cell. There was also urine on the walls and on the floor of the cell. As there was no room to move about in the cell and the claimant remained standing in the cell throughout the night. There was no room for him to stretch out to lie down. In any event if there was room, the only place he could have laid down was on the concrete floor that was covered with urine and faeces.

30. The next morning which was December 15, 2010 the claimant was hand cuffed and taken to the San Fernando Police Station. At the San Fernando Police Station, he was placed in a cell with other prisoners who were to be taken to court that morning. From the San Fernando Police Station, he was walked still hand cuffed to the San Fernando Magistrate's Court which is about a block away from the Police Station. He was walked down the Harris Promenade to the Magistrate's Court in the full view of the public. He was then placed in a holding cell and then taken to the 1st Court where he was placed in the cell inside the court.

31. When the matter was called, the claimant initially pleaded guilty thinking that the charge was for possession of the butt of a marijuana cigarette

which is what one of the officers while they were at Hibiscus Drive had claimed he found. Even though the charge was a false charge, the claimant felt then that it would have been easier for him to plead guilty and pay a small fine rather than stay in custody many months or years awaiting trial or at any rate having the charge hanging over his head for several years or months. Much to his surprise, however, PC Ali who appeared as the Complainant in the matter opened a bag and produced a quantity of loose material he said was marijuana.

32. The claimant testified that he knew PC Ali as he (the claimant) had seen PC Ali several times before in the San Fernando Magistrate's Court. The claimant knew PC Ali to be working at Court and Process in the San Fernando Magistrate's Court. The claimant testified that PC Ali was not present at Hibiscus Drive on the said date. That he was led to believe by the police officers who arrested him that they were claiming that they had found a butt of a marijuana cigarette. The claimant immediately protested to the Magistrate that he was never told anything about loose material. The Magistrate then changed the plea to not guilty. The claimant was remanded in custody and bail with a surety to be approved by the Clerk of the Peace was set in the sum of \$15,000.00. The matter was transferred to the 6th Court.

33. The claimant was detained by the police from approximately 3:00 pm on December 14, 2010 until the morning of December 15, 2010 when he was taken before the court. That was a period of at least eighteen hours. He was then remanded in custody and taken to Golden Grove Prison ("the prison"). He eventually obtained bail on May 3, 2011 and was released on continuing bond. He therefore spent one hundred and thirty-nine days on remand at the prison.

34. The claimant testified that at the prison, the conditions were very harsh. That he was in an overcrowded cell that was approximately ten feet by ten feet. There were about thirteen prisoners in the cell. In order for the prisoners to sleep, they had to sleep in what is called "razor blade style". That is, prisoners had to sleep lying on their sides and they had to stay in one position as there was no space to move. The prisoners were kept in the cell for twenty-three hours at a time. Airing was for only one hour per day Monday to Friday. There was no airing on weekends. There was twenty-four hours lock down on weekends. In the cell there was a slop pail which the prisoners were allowed to empty only once a day. The claimant testified that there was always an unbearable foul stench in the cell.

35. The claimant is a vegetarian and the meals served were not for vegetarians. He had to make an appointment to see the doctor to be prescribed with a vegetarian diet. Upon entry into the prison, the claimant immediately made a request to see the doctor but he did not see the doctor until about one month later and so did not begin to obtain vegetarian meals until about one month after seeing the doctor. During the two month period before he started to receive vegetarian meals, he suffered tremendously as the majority of the food offered to him he could not eat. He survived largely from receiving from other prisoners' bits and pieces of their meals that as a vegetarian he could have eaten.

36. The matter was called twenty-five times. PC Ali did not appear on nineteen occasions when the matter was called. On March 16, 2012 the charge laid against the claimant by PC Ali was dismissed for want of prosecution.<sup>14</sup>

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<sup>14</sup> The Magistrate's Court Proceedings were annexed to the claimant's witness statement at "B.L. 14".

37. The claimant testified that as a result of the false charges laid against him, he was made to suffer great pain, injury, loss and damage. That he lost his liberty for a substantial period of time and was locked up under very harsh conditions. The claimant further testified that he had to endure the fear and anxiety of having the false charge hanging over his head. That it was particularly stressful in that he knew that he had done nothing wrong but found himself in custody with the possibility that even though he had committed no offence, he could have been found guilty of the charge and sentenced by the Magistrate to a term of imprisonment if the magistrate believed PC Ali.
38. The claimant had great difficulty trying to come to grips with the fact that the police caused a false charge to be laid against him and putting PC Ali as the complainant when he was not even among the party of officers who went to Hibiscus Drive on the said date. The claimant testified that it was never been disclosed to him what the motive of the police was for arresting him on the said date and laying the false charge against him. The claimant further testified that the person behind it has remained hidden in the background.
39. According to the claimant, in the defendant's original Defence, PC Ali spoke about an informant whom he refused to name. The claimant testified that he cannot help but believe that that person was the master mind behind the injustice that was inflicted on him. That he cannot help but believe that the actions of the police and in particular PC Ali were designed to discourage him from going to the property at Hibiscus Drive.
40. When the claimant was arrested on the said date, he was not given any opportunity to secure his tools or to secure the house. As a result, the claimant lost the following tools;

- i. a Black and Decker jig saw valued at \$375.00;
- ii. one hand saw valued at \$52.00;
- iii. one key hole saw valued at \$155.00;
- iv. one flat head screw driver valued at \$12.00;
- v. one Phillip head screw driver valued at \$12.00;
- vi. one hammer valued at \$52.00;
- vii. one twelve inch pipe wrench valued at \$54.00;
- viii. one pair of pliers valued at \$96.00; and
- ix. one chisel valued at \$49.00.

41. The claimant testified that he could not produce the receipts for those items as same was destroyed in the fire when the house at Newbold Street was burnt down. Further, when the claimant was arrested, he had \$1,700.00 on him which was taken from him by the police officers at the station. That money was never returned to the claimant.

#### The cross-examination of the claimant

42. On the morning of the said date, the claimant was at Newbold Street. He arrived at Hibiscus Drive around lunchtime. Before going to Hibiscus Drive, he went to the market. He took a taxi to Hibiscus Drive. He therefore took his tools from Newbold Street to the market and then to Hibiscus Drive. He went to the house at Hibiscus Drive to do repairs on the bathroom and doors of the house.

43. The claimant agreed that in was in February, 2010 the front door of the house at Hibiscus Drive was broken down by the police. The claimant further agreed that since there was no door to secure the house, same was unsecured since February, 2010.



44. On the said date, the claimant heard a voice say "police". Although the officers who entered the house did not identify themselves to the claimant, he knew they were police officers as one officer had his gun in his hand and they said police.
45. The claimant denied 1) that around 6:30 am on the said date he was walking along Hibiscus Drive, 2) that he saw a police vehicle and began walking faster, 3) that the police officers stopped the police vehicle and PC Ali and PC Bisnath alighted from the vehicle, approached him and identified themselves, 4) that PC Ali informed him of his suspicions and that they wanted to search him and 5) when PC Ali searched him, he found a clear plastic containing a plant like material resembling that of marijuana in the claimant's front right pants pocket. The claimant therefore denied being arrested along Hibiscus Drive, Pleasantville by PC Ali. He further denied having any interactions with PC Ali on the said date. He arrived at the Mon Repos Police Station at around lunchtime or close to lunch time.
46. The claimant also denied that at the Mon Repos Police Station, PC Ali weighed and affixed a piece of masking tape to a transparent plastic packet and placed the markings SA 14/12/2010. He further denied that PC Ali finger printed him. He was charged on the evening of the said date.
47. The officer who was present at the house with a gun took the \$1,700.00 from the claimant. The claimant did make complaints to the officers present about the money that was taken from him.
48. According to the claimant, when the matter was first called, he pleaded guilty although he had nothing illegal on him because the house at Hibiscus Drive was unsecured.
49. The claimant has two previous convictions.

## **THE CASE FOR THE DEFENDANT**

50. The defendant called two witnesses, Sergeant Shaeed Ali and PC Bisnath.

### **The evidence of Sergeant Shaeed Ali**

51. Sergeant Shaeed Ali ("Sgt. Ali") is presently assigned to the South-Western Division Task Force based at the Cap de Ville Police Post. He has been a police officer for approximately sixteen years. In December 2010, he was a police constable attached to the Criminal Investigations Department/Operational Unit of the San Fernando Police Station. His duties included investigating reports, patrol, detecting crime, attending court and other general police duties. Sgt. Ali testified that in all his years of being a police officer, he has never worked at Court and Process in San Fernando.

52. On said date whilst on exercise duty at approximately 6:30 am, Sgt. Ali in company of PC Bisnath and other officers was in a marked police vehicle proceeding on mobile exercise and enquiries. As they were proceeding along Hibiscus Drive Pleasantville road, Sgt. Ali observed the claimant walking along the said road. The claimant upon seeing the officers turned and looked in the direction of the police vehicle and began walking at a faster pace.

53. Consequently, Sgt. Ali became suspicious of the claimant's actions and had a conversation with PC Bisnath. Sgt. Ali thereafter caused the said police vehicle to stop. Both Sgt. Ali and PC Bisnath along with the other officers alighted from the police vehicle and approached the claimant. Sgt. Ali and PC Bisnath each identified themselves to the claimant by means of their Trinidad and Tobago Police Service identification card.

54. Sgt. Ali in the presence of PC Bisnath searched the claimant and found in his front right pants pocket, one clear plastic bag containing a plant like material resembling that of marijuana. Sgt. Ali showed the same to the claimant and informed the claimant that he was of the opinion that the plant like material was that of marijuana, a dangerous drug. Thereafter, Sgt. Ali cautioned the claimant who remained silent.
55. Subsequently, Sgt. Ali arrested the claimant and informed him of his legal rights and privileges. Sgt. Ali handcuffed the claimant, placed him into the police motor vehicle and conveyed him to Mon Repos Police Station.
56. The 'take off' entry was made at 11:00 am in the San Fernando Police Station Diary because Sgt. Ali was based at that police station. Later that day when Sgt. Ali returned to the Mon Repos police station, he charged the claimant for the offence of possession of a dangerous drug namely Cannabis Sativa L commonly called marijuana.
57. At the Mon Repos Police Station in the claimant's presence, Sgt. Ali weighed and affixed a piece of masking tape to the transparent plastic packet and placed the markings SA 14/12/10. The claimant was then fingerprinted and he signed the fingerprint form. At 3:10 pm, Sgt. Ali served the claimant with a Notice to Prisoner. The claimant was searched and placed into a cell. Thereafter, Sgt. Ali left the Mon Repos Police Station and returned to the San Fernando Police Station.
58. Sgt. Ali testified that he is not aware of any \$1700 which was allegedly taken from the claimant. That a note of any items that would have been taken from the claimant would have been recorded in the Charge Book.

59. Sgt. Ali testified that as the incident involving the claimant's arrest would have occurred some four years ago, it was not likely that he would have remembered every single detail regarding the claimant's arrest when giving instructions to the Instructing Attorney. Also during his time as a police officer attached to the Criminal Investigations Department/Operational Unit, he has been to an abandoned house located at Hibiscus Drive Pleasantville on more than one occasion where several persons have been arrested. Having read the Station Diary Extract dated December 14, 2010 Sgt. Ali recalled the claimant having been arrested whilst walking along Hibiscus Drive, Pleasantville in the vicinity of the abandoned house.<sup>15</sup>

60. On February 21, 2011 Sgt. Ali filled out the exhibit forms and took the exhibits to the Forensic Centre for analysis. Prior to that date, Sgt. Ali made many requests to his Supervisor at that time for transportation to have the exhibits transported to the Forensic Centre however due to the lack of transportation it was submitted on February 21, 2011. On May 11, 2012 the certificate of analysis confirmed that the plant like material found on the claimant's person was that of cannabis sativa L.<sup>16</sup>

61. According to Sgt. Ali, on December 15, 2010 the claimant appeared before the San Fernando Magistrates Court to answer the said charges. Sgt. Ali was present on that day and appeared as the complainant in the matter. He testified that it is noted from the endorsements attached to the Information that he was absent from court on nineteen occasions. He further testified that he failed to attend on the said occasions as he was rostered for other duties and there was a lack of manpower at the station

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<sup>15</sup> A copy of the Station diary day duty of the San Fernando Police Station was annexed to Sgt. Ali's witness statement at "B".

<sup>16</sup> A copy of the Certificate of analysis was annexed to Sgt. Ali's witness statement at "C".

on several occasions. He was also absent from court since the matter was not fixed for trial. He did not recall receiving the two Notices to Complainant issued by the court.

62. On March 16, 2012 the matter was dismissed for want of prosecution. On that day, Sgt. Ali was present and had informed the court that he had checked the Forensic Centre for the Certificate of Analysis up to February, 2012 and the exhibit was still not ready. As such, on that day the matter was dismissed since the Forensic Science Centre had not yet tested the exhibit and the Certificate of Analysis was not ready even though Sgt. Ali had submitted the exhibit to them at the beginning of the matter.

63. Sgt. Ali testified that prior to the incident, he did not know the claimant. That he has never arrested, charged or interviewed or had any interaction whatsoever with the claimant. Sgt. Ali further testified that as he found loose plant like material resembling that of marijuana on the claimant during the search of his person, he had reasonable and probable cause to charge the claimant for possession of marijuana. That at no time was there any property search as the claimant was walking along the road when he began to act suspicious upon seeing the officers.

64. As such, it was the testimony of Sgt. Ali that the claimant's person alone was searched and that he found a plastic bag containing loose plant-like material resembling that of marijuana. According to Sgt. Ali, he never entered any premises of the claimant on the said date, neither did he observe any other of the officers enter any premises along the Hibiscus Drive Road. Sgt. Ali testified that at all times he acted fairly towards the claimant without malice and ill- will.

### The cross-examination of Sgt. Ali

65. On the said date, various officers from different units and stations were sent out on the exercise. From where ever Sgt. Ali was dispatched, there would have been a station diary entry recording his dispatching. No such station diary extract was produced to the court.
66. Sgt. Ali could not recall whether the type of police vehicle they were using on the said date was a Sedan or a van. PC Bisnath was the driver of the vehicle on the said date. Sgt. Ali was sitting in the front passenger seat and there was one other officer sitting in the back of the vehicle. As such, Sgt. Ali testified that where he stated in his witness statement that PC Bisnath and he were accompanied by other officers, that was probably a typo as there was only one other officer with them. He could not recall the name of the other officer. Sgt. Ali, PC Bisnath and the other officer were all in plain clothes. They were on mobile patrol on Hibiscus Drive. There was no other police vehicle with police officers at Hibiscus Drive at that time.
67. Hibiscus Drive runs east to west. The vehicle was being driven in easterly direction. The claimant was in front of the police vehicle, on the left side of the road. The police vehicle was stopped alongside the claimant. When the vehicle came to a stop, Sgt. Ali and Bisnath alighted from same. Sgt. Ali identified himself to the claimant and told him of his observations and suspicions. Sgt. Ali could not recall the exact words he would have told the claimant. Sgt. Ali would have search the claimant by patting him down and turning his pockets inside out.
68. He then arrested the claimant and informed him of his rights and privileges. Sgt. Ali could not recall the exact words he would have used to inform the

claimant of his rights and privileges. Sgt. Ali handcuffed the claimant and placed him in the back seat behind the front passenger seat of the police vehicle.

69. Sgt. Ali could not recall if from Hibiscus Drive went directly to the Mon Repos Police Station. From Hibiscus Drive it would take about ten minutes to reach to the Mon Repos Police station. No one else was taken up in that police vehicle. Sgt. Ali was referred to the San Fernando Police Station dairy extract annexed to his witness statement at "B". in that extract, the following was recorded;

*"...also around 6:35 am on 14.12.2010 whilst on exercise duty at Pleasantville Circular, PC Bisnath observed one Seonne Fortune...driving vehicle...PC Bisnath alighted identified himself to him... he was then arrested informed of his legal right and privileges and cautioned...he was arrested and conveyed to the Mon Repos Police Station on further enquiries..."*

70. Notwithstanding the aforementioned, Sgt. Ali testified that PC Bisnath, the other officer, the claimant and he were the only persons in the police vehicle.

71. When they arrived at the Mon Repos Police Station, PC Bisnath parked the vehicle and the claimant was taken into the station. Sgt. Ali could not recall who took the claimant into the station. He agreed that an entry of the claimant's arrival in the station had to be made and that that entry would have recorded who brought in the claimant and at what time.

72. Sgt. Ali could not recall how long he stayed at the Mon Repos Police Station but he left in the same police vehicle being driven by PC Bisnath and ended up in the San Fernando Station at around 11:00 am. He then returned to the Mon Repos Police Station in the afternoon of the said date.
73. The purpose of the claimant signing his finger print form was to show that his finger prints were given. Sgt. Ali agreed that that form is important. Moreover, Sgt. Ali agreed that the Notice to Prisoner is made in duplicate and that he also did not produce the Notice to Prisoner he gave to the claimant.
74. Sgt. Ali was referred to the San Fernando Station diary extract annexed at "B" to his witness statement. He agreed that he would have caused that entry to be recorded in the station diary. He further agreed that he did not produce any form signed by the claimant.
75. Sgt. Ali was referred to the original Defence filed in this matter. In that Defence, it was stated that the claimant was arrested at the house situate at Hibiscus Drive and that the house had no door. Sgt. Ali testified that he knew that there was no door to the house because he and other officers would have gone to the abandoned house on Hibiscus Drive sometime prior to said date when he arrested the claimant.
76. Sgt. Ali denied that the claimant was arrested at around 3:00 pm at the house situate at Hibiscus Drive and that he (Sgt. Ali) was not present. He further denied that another officer arrested the claimant.



## The evidence of PC Bisnath

77. **PC Bisnath** is currently assigned to the Criminal Investigation Department, San Fernando Police Station. He has been a police officer for approximately twenty years. In December, 2010, he was a police constable attached to the Criminal Investigations Department/Operation Unit of the San Fernando Police Station. His duties included investigating reports, patrol, detecting crime, attending court and other general police duties.
78. On the said date, at approximately 6:30 am PC Bisnath in the company of Sgt. Ali was in a marked police vehicle which was being driven by PC Bisnath. PC Bisnath and Sgt. Ali were both dressed in plain clothes and were on mobile exercise and enquiries with other police officers. As they were proceeding along Hibiscus Drive, PC Bisnath observed a man of African descent walking along the said road look in their direction, quickly turn and began walking at a faster pace. PC Bisnath became suspicious of the man's actions whilst at the same time Sgt. Ali pointed out the man to PC Bisnath and said something. PC Bisnath later came to know that the man is the claimant herein.
79. PC Bisnath then caused the police vehicle to stop and Sgt. Ali and he alighted and approached the claimant. PC Bisnath and Sgt. Ali both identified themselves to the claimant by means of their Trinidad and Tobago Police Service Identification Card.
80. Sgt. Ali in the presence of PC Bisnath searched the claimant and found in his front right pants pocket one clear plastic containing a plant like material resembling that of marijuana. Sgt. Ali showed the same to the claimant and informed the claimant that he was of the opinion that the plant like material

was that of marijuana, a dangerous drug. PC Bisnath observed that Sgt. Ali cautioned the claimant who remained silent.

81. Subsequently, Sgt. Ali arrested the claimant and informed him of his legal rights and privileges. The claimant was handcuffed, placed in the police motor vehicle and taken to the Mon Repos Police Station.

82. PC Bisnath testified that prior to the incident, he did not know the claimant. That he has never arrested, charged or interviewed the claimant. PC Bisnath has also never had any interactions with the claimant. PC Bisnath further testified that at no point in time did he or any of the police officers enter the claimant's premises. That the claimant was seen walking along the road and the suspicious actions he displayed when he saw the police caused them to stop and search him on the road way.

83. At the Mon Repos Police Station in PC Bisnath and the claimant's presence, Sgt. Ali weighed and affixed piece of masking tape to the transparent plastic packet and placed the markings SA 14/12/10. Thereafter, Sgt. Ali charged the claimant for the offence of possession of marijuana.

84. PC Bisnath subsequently left the Mon Repos Police Station and returned to the San Fernando Police Station. That was the end of his involvement in that matter. He does not recall going to the San Fernando Magistrates' court at any time for that matter as it was never fixed for trial. Thereafter, PC Bisnath learnt that the matter against the claimant was dismissed.

### The cross-examination of PC Bisnath

85. PC Bisnath could not recall whether the police vehicle he was driving on the said day was a Sedan or a van. He, Sgt. Ali and another police officer in police uniform was in the vehicle on the said date. PC Bisnath could not recall the name of the other officer. Sgt. Ali was in the left passenger seat.
86. Hibiscus Drive runs east to west. PC Bisnath was proceeding in an easterly direction on Hibiscus Drive. When PC Bisnath saw the claimant, the claimant was approaching the vehicle and he was about eighteen to twenty feet away. The claimant was on the left side of the road. Thereafter, the claimant turned away and began walking in the opposite direction. PC Bisnath caused the vehicle to stop. He stopped the vehicle at the side of the claimant and Sgt. Ali and he alighted from the vehicle. When they alighted from the vehicle, they both identified themselves to the claimant. Thereafter, Sgt. Ali informed the claimant of his observations and suspicions and proceeded to search the claimant.
87. After the claimant was arrested, PC Bisnath, Sgt. Ali and the other officer continued on their mobile and exercise duty in the Mon Repos and San Fernando district. They eventually took the claimant to the Mon Repos Police Station. PC Bisnath parked the vehicle at the main entrance at the front of the station. He and Sgt. Ali took the claimant into the station.
88. PC Bisnath denied that the claimant was arrested at 3:00 pm on the said date at the house on Hibiscus Drive.
89. Pleasantville Circular is about three to four minutes away from where the claimant was arrested.

## **FINDINGS OF FACT**

90. The claimant's version as to how he was arrested is diametrically opposed to the version given by the defendant. In such circumstances, the court has to determine which version of events was more probable in light of the evidence. In ***Horace Reid v Dowling Charles and Percival Bain***<sup>17</sup>, Lord Ackner delivering the judgment of the Board stated that where there is an acute conflict of evidence, the trial judge must check the impression that the evidence of the witnesses makes upon him against (1) contemporaneous documents; (2) the pleaded case; and (3) the inherent probability or improbability of the rival contentions.

91. Upon an analysis of the evidence, the court found that the version of events given by the defendant's witnesses was more probable than that of the claimant. The defendant called two witness, Sgt. Ali and PC Bisnath. In support of their version of events, the defendant's witnesses attached a San Fernando station diary day duty extract dated December 14, 2010 and a Certificate of Analysis dated May 11, 2012. The claimant sought to establish numerous purported inconsistencies within the testimony of the defendant's witness. The court dealt with those purported inconsistencies as follows.

92. The claimant submitted that Sgt. Ali and PC Bisnath were not truthful witnesses as they both told different stories. That during cross-examination one officer stated that when they saw the claimant, he was walking towards the police vehicle while the other officer stated that when they saw him he was walking away from the police vehicle, that is, in the same direction the

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<sup>17</sup> Privy Council Appeal No. 36 of 1897 at page 6.

police vehicle was travelling. The court found that Sgt. Ali did not state during cross-examination that the claimant was walking away from the police vehicle. In response to Counsel's question whether the claimant was in front of the police vehicle whilst it was proceeding east, Sgt. Ali stated yes. As such, his testimony was not inconsistent with PC Bisnath's testimony that the claimant was walking towards the police vehicle.

93. The second inconsistency the claimant relied upon in an attempt to taint the credibility of the officers was that Sgt. Ali during cross-examination stated that the third officer who was in the vehicle was in plain clothes whereas PC Bisnath stated during cross-examination that the third officer was in uniform. The claimant also invited the court to observe that in the San Fernando station diary extract there was no mention in the report of there being any other police officer in the company of Sgt. Ali and PC Bisnath. The court was further invited to observe that in the Amended Defence it was repeated several times that Sgt. Ali was in the company of PC Bisnath. That it was not pleaded in the Amended Defence that Sgt. Ali and PC Bisnath were in the company of any other police officer.

94. Witnesses may give inconsistent testimony for several reasons. The witness may be trying to deceive by making up the story altogether, or the witness may be making a genuine mistake. In this case the court also considered the fact that the incident occurred in 2010 and that the evidence was being given approximately eight years after the incident by police officers whose work would have necessarily involved several similar cases over time. Further, it was clear on the evidence that the officers had been on several exercises that morning so that it is exceedingly plausible that there may be reasonable inconsistency in relation to non-material facts of the kind set out above. As such, the court found that the credibility of the officer's testimony was not affected to the extent that their evidence was vitiated.

The essence of the evidence remained, namely that the claimant was found walking at approximately 6:30 am along Hibiscus Drive, Pleasantville and that upon searching him one clear plastic bag containing a plant like material resembling that of marijuana was found on the claimant's person.

95. The third inconsistency was that both Sgt. Ali and PC Bisnath in their witness statements stated that they were in the company of more than one police officer whereas during cross-examination they stated that they were in the company of one officer. Sgt. Ali during cross-examination stated that that may have been a typographical error. The court accepted that explanation and it reminded itself once again that the officers were giving evidence almost eight years after the incident.

96. The fourth inconsistency was that during cross-examination Sgt. Ali stated that they took the claimant to the Mon Repos Police Station and left him there. Further that they left the Mon Repos police station at around 11:00 am and journeyed at the San Fernando police station. Sgt. Ali further stated that he and Bisnath returned to the Mon Repos police station later that day and in the presence of PC Bisnath and the claimant he weighed the marijuana, finger printed the claimant, charged him and served him with Notice to Prisoner.

97. Whereas PC Bisnath during cross-examination stated that he and Sgt. Ali took the claimant to the Mon Repos police station and the marijuana was weighed, the claimant was fingerprinted, charged and served with a Notice to Prisoner and all that was done before he and Sgt. Ali left the Mon Repos police station. PC Bisnath further stated that when he left the Mon Repos police station he did not return to that station on that day.

98. The claimant submitted that if it was that, according to PC Bisnath, after taking him to the Mon Repos police station he and Sgt. Ali never left the Mon Repos police station until after the marijuana was weighed and the claimant was charged and served with a Notice to Prisoner, then clearly it was impossible for Sgt. Ali to have been at the San Fernando police station at 11:00 am on the said date to enter or cause to be entered in the station diary report upon which the defendant relied. That Sgt. Ali's evidence was very clear that he served the claimant with Notice to Prisoner at 3:10 pm on that day. Further, Sgt. Ali's evidence in his witness statement clearly stated that the entry in the San Fernando station diary was made at 11:00 am on that day. The claimant submitted that according to PC Bisnath's evidence that could not have happened.

99. Accordingly, the claimant submitted that the evidence on behalf of the defendant completely discredited the San Fernando station diary extract upon which the defendant so heavily relied. That the combined evidence of Sgt. Ali and PC Bisnath does not support Sgt. Ali's claim to be present at the San Fernando police station at 11:00 am on that day. The claimant further submitted that the court must not lose sight of the fact that the station diary report is a self-serving document in that Sgt. Ali admitted that either he wrote himself or told someone what to write.

100. Again, the court found that that inconsistency within the testimony of the officers did not taint the credibility of the officers in relation to the essential facts of the event, namely that that the claimant was found walking at approximately 6:30 am along Hibiscus Drive, Pleasantville and that upon searching him one clear plastic bag containing a plant like material resembling that of marijuana was found on the claimant's person. As mentioned above, the officers would have dealt with a number of cases and as the matter occurred approximately eight years ago, not all the facts

would be fresh in their memory. It follows that the argument of attorney for the claimant may have some merit in that the matters set out in the extract may not be entirely correct.

101. However, the court found that the inconsistency within the officers' testimony did not completely discredit the San Fernando station diary extract. The extract which was provided to this court contained many events which would have occurred on the said date. As such, if the part of that extract which contained the events pertaining to the claimant was a concoction, then the court would have to believe that all events recorded before and after was also a concoction having regard to the fact that many similar matters are dealt with within the walls of one single entry. A court must ask itself whether this is a reasonable belief or whether reason and common sense would dictate that in such a convoluted entry errors are likely to be made. In the court's view the latter was to be preferred and the court so found.

102. Additionally, matters of human behaviour would dictate that a motive for lying would be a strong indicator of whether something is in fact a deliberate lie or set up as it were. Given the facts of this case the court simply did not believe that this was the case as there was no evidence that Sgt. Ali knew the claimant prior to the said date nor was there any evidence of prior animosity between the two.

103. Much weight was made by the claimant of the fact that the defendant failed to supply the court with the extract of Sgt. Ali's pocket diary and the Mon Repos station diary extract which would have recorded the claimant's arrival at the station. The defendant did provide explanations for the absence of both records. In response to the request for the production of Sgt. Ali's pocket diary, the defendant stated that at the material time Sgt.



Ali did not have pocket diary. The claimant submitted that it was highly unlikely that the State or Police Service would fail to provide its police officers with pocket diaries given its importance. To make such an assumption, the court would be engaging in speculation. As such, as there was no evidence to the contrary that Sgt. Ali did not have a pocket diary at the time, the court accepted that explanation. Further, a pocket diary is in any event a non-independent statement made by the very witness. The matters contained in such a document, not unlike those contained in a station diary extract, offends the rule against narrative in that the fact that a witness says the same thing on an occasion prior does not by virtue of that fact make the statement true or more likely to be true.

104. In response to the request for the production of the Mon Repos station diary extract for the said date, the defendant stated that the diary could not be located at that time. That by memorandum dated March 7<sup>th</sup>, 2017, the SDO I/C Mon Repos Police Station informed the SDO I/C Legal Unit Southern Division that *“copies of the station diary were submitted to your end and said diaries for the requested period can no longer be located at this time, the records in the Mon Repos Station movements of completed register book indicate that the diaries were sent to the Office of the Chief Clerk re: Legal Unit”*. By memorandum dated September 29, 2017 the Chief Clerk of the Southern Division indicated that checks were made at the Chief Clerks Office of the Southern Division and the said diaries were not found. Copies of the respective memorandums were supplied.

105. According to the claimant, the defendant produced and tried to enter into evidence an uncertified copy of an extract purportedly from the Mon Repos station diary which extract upon objection by Counsel for the claimant was struck out at the trial on the basis that it was not certified by the Commissioner or Deputy Commissioner of Police in accordance with

section 22 of the Evidence Act, Chapter 7: 02. The claimant invited the court to make the adverse findings against the defendant. The court however declined so to do and did not make any adverse inferences against the defendant for production of the uncertified extract of the Mon Repos station diary as that extract was disclosed by the defendant in its list of disclosure filed on June 13, 2017. Consequently, the defendant's list of disclosure was made prior to the claimant's notice of application for disclosure of the Mon Repos station diary extract which recorded the claimant's arrival at the station. As seen from above, as at October 10, 2017 the Mon Repos station diary day duty could not have been located. Consequently, it was not accurate to imply that the defendant sought to enter into evidence an extract from the Mon Repos station diary after it had stated that same could not be found.

106. Lastly, the claimant submitted that during cross-examination, Sgt. Ali was cross-examined on the complete change in the defence and how he knew that there was no door at the house. According to the claimant, Sgt. Ali responded stating that it was because he had previously gone to that house and arrested the claimant. The claimant submitted that that evidence contradicted Sgt. Ali's evidence that he did not know the claimant and never arrested, charged, interviewed or had any interaction with him prior to the said date.

107. However, Sgt. Ali did not state during cross-examination that he had gone to the house at 21 Hibiscus Drive prior to this incident and arrested the claimant. He in fact stated that he would have gone to an abandoned house on Hibiscus drive sometime prior to when he arrested the claimant and that he could not recall what number of Hibiscus drive that abandoned house was located. As such, Sgt. Ali did not contradict his evidence that he did not know the claimant prior to the said date.

108. Consequently, the court found that the officers' account of events that occurred on the said date which was supported by contemporaneous documents was more probable than the claimant's version of events.

## **ISSUES OF LAW**

### **THE OFFENCE**

109. The claimant was charged with possession of a dangerous drug namely Cannabis Sativa 'L' commonly called marijuana contrary to **Section 5 (1) of the Dangerous Drugs Act Chapter 11:25** which provides as follows;

*"5 (1) Subject to section 2, a person who has in his possession any dangerous drug is guilty of an offence and is liable—*

*(a) upon summary conviction to a fine of twenty-five thousand dollars and to imprisonment for five years;*

*(b) upon conviction on indictment to a fine of fifty thousand dollars and to imprisonment for a term which shall not exceed ten years but which shall not be less than five years.*

*(2) Subsection (1) does not apply to—*

*(a) a person who has the possession of a dangerous drug under a licence issued pursuant to section 4 permitting him to have possession of that drug;*

*(b) a medical practitioner, dentist, veterinary surgeon or pharmacist who is in possession of a dangerous drug for any medicinal purpose;*

*(c) a person who obtains a dangerous drug for medicinal purposes from or pursuant to a prescription of a medical practitioner, dentist or veterinary surgeon;*

*(d) a person authorised under the Regulations to be in possession of a dangerous drug;*

*(e) a person who is acting for and under the supervision of a person mentioned in paragraph”*

110. **Section 3(4) of the Criminal Law Act, Chapter 10:04** provides as follows;

*“Where a police officer, with reasonable cause, suspects that an arrestable offence has been committed, he may arrest without warrant anyone whom he, with reasonable cause, suspects to be guilty of the offence.”*

111. The onus of establishing reasonable and probable cause for an arrest is on the police.<sup>18</sup>

112. Narine JA in **Nigel Lashley v The Attorney General of Trinidad and Tobago**<sup>19</sup> stated as follows;

*“...The test for reasonable and probable cause has a subjective as well as an objective element. The arresting officer must have an honest belief or suspicion that the suspect had committed an offence, and this belief or suspicion must be based on the existence of objective circumstances, which can reasonably justify the belief or suspicion. A police officer need not have evidence amounting to a prima facie case. Hearsay information including information from other officers may be sufficient to create reasonable grounds for arrest as long as that information is within the knowledge of the arresting officer: O’Hara v. Chief Constable (1977) 2 WLR 1; Clerk and Lindsell on Torts (18th ed.) para. 13-53. The lawfulness of the arrest is to be judged at the time of the arrest.”*

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<sup>18</sup> See Dallison v. Caffery (1964) 2 All ER 610 at 619 D per Diplock LJ.

<sup>19</sup> Civ Appeal No 267 of 2011 at paragraph 14

## Issue 1 – Reasonable and probable cause

### Law

113. It is settled law that the question of whether there was reasonable and probable cause involves both subjective and objective tests. In **Manzano v The Attorney General of Trinidad and Tobago**<sup>20</sup>, 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.”*

### Findings

114. For there to have been reasonable and probable cause in respect of both the subjective and objective elements of the test, Sgt. Ali must have had an

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<sup>20</sup> Civil Appeal No.151 of 2011

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. As the court found that the version of events given by the officers were more probable than that given by the claimant, it follows that Sgt. Ali would have had reasonable and probable cause to charge the claimant.

115. According to the evidence of the defendant, on the said date whilst on exercise duty at approximately 6:30 am, Sgt. Ali in company of PC Bisnath and other officers was in a marked police vehicle proceeding on mobile exercise and enquiries. As they were proceeding along Hibiscus Drive Pleasantville road, Sgt. Ali observed the claimant walking along the said road. The claimant upon seeing the officers turned and looked in the direction of the police vehicle and began walking at a faster pace.

116. Consequently, Sgt. Ali became suspicious of the claimant's actions and caused the police vehicle to stop. Both Sgt. Ali and PC Bisnath along with the other officer alighted from the police vehicle and approached the claimant. Sgt. Ali and PC Bisnath each identified themselves to the claimant by means of their Trinidad and Tobago Police Service identification card.

117. Sgt. Ali in the presence of PC Bisnath searched the claimant and found in his front right pants pocket, one clear plastic bag containing a plant like material resembling that of marijuana. Sgt. Ali showed the same to the claimant and informed the claimant that he was of the opinion that the plant like material was that of marijuana, a dangerous drug. Thereafter, Sgt. Ali cautioned the claimant who remained silent.

118. Subsequently, Sgt. Ali arrested the claimant and informed him of his legal rights and privileges. Sgt. Ali handcuffed the claimant, placed him into the police motor vehicle and conveyed him to Mon Repos Police Station.

119. Having found one clear plastic bag containing a plant like material resembling that of marijuana on the claimant's person, Sgt. Ali would have had an honest belief that the claimant was in possession of a dangerous drug contrary to section 5(1) of the Dangerous Drug Act. Consequently, Sgt. Ali did have reasonable and probable cause to arrest and charge the claimant.

## Issue 2 – Malice

### Law

120. Mendonça JA in ***Sandra Juman v The Attorney General***<sup>21</sup> 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.”

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<sup>21</sup> Civil Appeal No. 22 of 2009

## Findings

121. Having ruled that there was reasonable and probable cause, the issue of malice did not arise for consideration.

### Issue 3 – False Imprisonment

122. As there was reasonable and probable cause to arrest and charge the claimant, the claimant was not falsely imprisoned from December 14, 2010 to May 3, 2011.

123. For these reasons, the Court therefore disposed of this Claim in the manner set out at paragraph 1 above.

Ricky Rahim  
Judge