

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No: CV2016-04580

Between

CLIFF LEWIS

Claimant

And

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

Before the Honourable Mr. Justice R. Rahim

Date of Delivery: July 11, 2019

Appearances:

Claimant: Mr. K. Ratiram

Defendant: Mr. E. Jones instructed by Mr. R. Grant

JUDGMENT

1. By Claim Form filed on December 21, 2016 the claimant seeks damages inclusive of aggravated and/or exemplary damages for malicious prosecution. On July 1, 2009 Sergeant Hubert La Rode (“Sgt. La Rode”) laid Information No. 4136/09 against the claimant alleging that on May 16, 2008 at No. 5 Clementy Street, Tunapuna the claimant wounded Kelvin Alleyne (“Alleyne”) with intent to do Alleyne grievous bodily harm. The claimant claims that Sgt. La Rode laid the charge against him maliciously and without any reasonable and probable cause.

2. On December 30, 2009 the claimant voluntarily turned himself into the Tunapuna Police Station. On December 31, 2009 the claimant appeared before a Magistrate at the Tunapuna Magistrates’ Court and bail was fixed. However, the claimant’s family was unable to access bail in time for him to be released. Consequently, he was taken to the Maximum Security Prison in Arouca. He was released on bail around mid-night. Thereafter, the matter proceeded in the Tunapuna Magistrates’ Court. On February 1, 2012 the claimant was committed to stand trial by Her Worship Magistrate Nanette Forde-John. The claimant was later indicted on a charge of burglary and a charge of wounding with intent to do grievous bodily harm.

3. On January 20, 2016 the claimant’s trial began at the First Assize, Hall of Justice, Port of Spain. On February 18, 2016 the claimant was acquitted of both counts on the indictment.

THE CASE FOR THE CLAIMANT

4. The claimant gave evidence for himself. He is a Sergeant in the Trinidad and Tobago Defence Force. In 2007, he met two young ladies, Mandy and Amanda (“the girls”). At that time, the girls were tenants of house located at No. 5 Clementy Street, Tunapuna (“the house”) which was owned by Kelvin Alleyne (“Alleyne”).

5. Sometime thereafter, the claimant developed a romantic relationship with Mandy. As a result of the relationship, he visited the house on a regular basis. On various occasions Alleyne complained to the claimant about the behaviour of the girls. Alleyne also told the claimant that he wanted to evict the girls. The claimant promised Alleyne that he would speak with the girls about their behaviour. The claimant also told Alleyne that he would take responsibility for the girls and asked Alleyne not evict them. During cross-examination, the claimant testified that the responsibility he spoke of was his promise to try to speak with to the girls which was what Alleyne had asked him to do.

6. In early May, 2008 the claimant visited the house upon the request of Alleyne. When the claimant arrived at the house, Alleyne showed him various damaged items which Alleyne complained the girls had damaged. The claimant promised to speak with the girls about compensating Alleyne for the damages. Thereafter, the claimant deliberately had no further contact with Alleyne.

7. Around the end of January, 2009 the claimant encountered Alleyne in a bar at El Dorado. Alleyne began shouting at the claimant and telling the claimant that it was because of him, he allowed the girls to remain in the house and therefore he (the claimant) had to compensate him (Alleyne)

for the damaged items. In annoyance, the claimant told Alleyne to “*do what the hell you want*”, and left the bar.

8. On December 29, 2009 after a conversation with his wife, the claimant contacted Sgt. La Rode who informed him that he (Sgt. La Rode) had a warrant for his arrest and that he (the claimant) should turn himself into the Tunapuna Police Station (“the station”) the next day.
9. On December 30, 2009 the claimant turned himself into the station. It was at that time he learnt that on July 1, 2009 Sgt. La Rode laid a charge against him for wounding Alleyne with intent to do grievous bodily harm. The claimant was totally shocked. He was placed under arrest around 8:30 am. Around 12 noon, he was released on station bail. During cross-examination, the claimant testified that prior to December 30, 2009 he did not know Sgt. La Rode. That December 30, 2009 was the first time he met Sgt. La Rode.
10. On December 31, 2009 the claimant appeared before a Magistrate at the Tunapuna Magistrates’ Court and bail was fixed around 11:00 a.m. However, the claimant’s family were unable to access the bail in time for him to be released from the court. Consequently, the claimant was taken to the Maximum Security Prison in Arouca. Around mid-night, he was released on bail. The claimant testified that remaining in custody and being taken to prison was very traumatic.
11. Thereafter, the matter proceeded at the Tunapuna’s Magistrates’ Court. The claimant was represented by an Attorney-at-Law, to whom he paid the sum of \$3,500.00 in legal fees on June 15, 2011 and received a receipt.

12. On February 1, 2012 the claimant was committed to stand trial by the Magistrate and he was subsequently indicted on one count of burglary and one count of wounding with intent to do grievous bodily harm.

13. On January 20, 2016 the claimant's trial began at the Assize and he was represented by an Attorney-at-law, to whom he paid the following sums of money in cash;

- i. May 14, 2014 - \$10,000.00;
- ii. August 29, 2014 - \$10,000.00;
- iii. October 23, 2014- \$8,000.00;
- iv. January 7, 2015 - \$7,000.00;
- v. March 11, 2015 - \$2,500.00;
- vi. April 22, 2015 - \$1,500.00;
- vii. June 29, 2015 - \$5,000.00;
- viii. August 3, 2015 - \$1,500.00;
- ix. August 28, 2015 - \$1,500.00;
- x. October 5, 2015 - \$1,000.00;
- xi. November 2, 2015 - \$1,500.00;
- xii. November 23, 2015 - \$500.00.

14. As such, the claimant paid the sum of \$50,000.00 in legal fees. Receipts were provided.

15. On February 18, 2016 the claimant was acquitted of both counts.

16. The claimant testified that prior to December 29, 2009 no officer went to his home relative to any report of wounding Alleyne. Further, no officer including Sgt. La Rode ever searched the claimant's house for anything. Moreover, no officer including Sgt. La Rode ever interviewed the claimant

relative to the said report to enquire where the claimant was at the time of the alleged attack or whether he had any idea why Alleyne would lie on him. As such, the claimant was never contacted by any officer to discuss the said report.

17. The claimant testified that being charged, arrested and having this matter hanging over his head for over five years was extremely embarrassing and traumatic, especially being a soldier.

THE CASE FOR THE DEFENDANT

18. The defendant called one witness, Sgt. La Rode. Sgt. La Rode has been a police officer for approximately twenty-five years. He is currently attached to the Crime and Problem Analysis Branch of the Trinidad and Tobago Police Service.

19. On April 28, 2009 Sgt. La Rode was on duty at the Tunapuna Police Station. He was detailed to continue enquires into a report of wounding made by Alleyne on May 16, 2008 that two men had broken into his home, and that one of the men held Alleyne down and cut him with a knife or cutlass. Alleyne further indicated that he was able to escape and run out of his house. Alleyne however did not provide a name or first description of the suspect at the time of the initial report.¹

20. Sgt. La Rode formed the opinion that the previous investigator assigned to the said report failed to conduct further enquiries as it was approximately one year later that he, Sgt. La Rode was detailed to conduct enquiries into

¹ A copy of the stationary diary extract entry No. 2 page 32, dated May 16, 2008 was annexed to Sgt. La Rode's witness statement at "H.L.R.1".

the report made by Alleyne. Consequently, Sgt. La Rode began to investigate the report.

21. Alleyne visited the station to enquire about the report and Sgt. La Rode interviewed Alleyne to update himself on the allegations. On April 29, 2009 Sgt. La Rode recorded a statement from Alleyne and on that occasion, Alleyne provided physical descriptions for the persons that assaulted him at his home on May 16, 2008 for the first time. During the interview, Alleyne identified the claimant as being one of the persons involved in his wounding. In so doing, Alleyne stated that he was familiar with the claimant and that he (Alleyne) had two young ladies renting a room in his house and the claimant frequently visited one of the girls at his house.²

22. Sometime thereafter, Sgt. La Rode visited the scene of the crime at No. 5 Clementy Street, Tunapuna. Whilst there, Alleyne pointed out the damage that was done to his fridge and the area in which glass was broken at the time of the incident. At that time, Sgt. La Rode had at his disposal photographic evidence that was taken at the scene when the police officers visited the scene on May 16, 2008. He also had in his possession, the initial report of wounding entered in the station diary on May 16, 2008.

23. Sgt. La Rode visited the Eric Williams Complex, Mt. Hope where he obtained the medical reports of Alleyne which showed the injuries sustained by Alleyne due to the incident on May 16, 2008 and treatment he received for same.³

² Copies of the written and transcribed versions of Alleyne's statement dated April 29, 2009 were annexed to Sgt. La Rode's witness statement at "H.L.R.2".

³ Copies of Alleyne's medical records were annexed to Sgt. La Rode's witness statement at "H.L.R.3". The medical reports stated that Alleyne received a jagged laceration to his left hand at the base of his thumb and a laceration at his right elbow,

24. Sometime thereafter La Rode made attempts to contact a woman who was a witness to the wounding. Those attempts were unsuccessful. Sgt. La Rode also attempted to contact and source a further contact and/or locate the other woman who stayed at the premises of Alleyne. However, she had moved out and Sgt. La Rode had no idea where she was. He also made several attempts to contact the claimant for the purpose of conducting an interview and furthering his enquiries into the report but those attempts proved futile. Sgt. La Rode then sought on several occasions to contact the claimant's place of work, the Trinidad and Tobago Defence Force Base located at Camp Cumuto. On each occasion, he was not allowed to speak with or make arrangements to meet with the claimant.

25. Consequently, Sgt. La Rode addressed his mind to the Alleyne's version of events, specifically whether Alleyne's report was fabricated to get back at the claimant for not compensating him for the damages done to his premises. Sgt. La Rode looked at the seriousness of the injuries that were suffered by Alleyne and came to the conclusion that Alleyne would not have fabricated such a report against someone who was not responsible for committing such an act against him. Further, Sgt. La Rode had several opportunities to observe the conduct and demeanor of Alleyne and formed the opinion that his report was genuine.

26. Based on the evidence he had in his possession at the time, Sgt. La Rode sought advice from the Senior Police Officer at the station and received instructions to charge the claimant for the offence of wounding.

27. On July 1, 2009 Sgt. La Rode prepared and laid Indictable Information No. 4136/09 in respect of one charge namely, that on May 6, 2008 at No. 5 Clementy Street, Tunapuna the claimant wounded Alleyne with intent to

do grievous bodily harm contrary to Section 12 of the Offences Against the Person Act Chapter 11:08. An indictable warrant was obtained for the arrest of the claimant.⁴

28. On December 30, 2009 Sgt. La Rode executed the warrant on the claimant when the claimant appeared at the station. Sgt. La Rode identified himself to the claimant as a police officer by means of his Trinidad and Tobago Police Service Identification card. Sgt. La Rode then read the charge to the claimant and informed him of his legal rights and privileges. The claimant made no reply.

29. The claimant was taken to the Magistrates' Court on December 31, 2009. Sgt. La Rode was unaware that the claimant was granted bail and that he was unable to access same and was as a consequence taken to the Maximum Security Prison, Arouca.

30. Sgt. La Rode testified that he was at all times acting within his authority pursuant to the Police Service Act Chapter 15:01. He was also acting on the instructions his superior officers gave him which they were authorized to give him based on the evidence they had in their possession at the time of the investigation. Sgt. La Rode further testified that the charge he laid against the claimant was done based on extensive investigation into the report of wounding. According to Sgt. La Rode, the investigations into the report of wounding were properly and thoroughly conducted.

⁴ A copy of the Indictable Information was annexed to Sgt. La Rode's witness statement at "H.L.R.4".

The cross-examination of Sgt. La Rode

31. When Sgt. La Rode was appointed as the investigator he obtained and read the station diary entry made on the date of incident, May 16, 2008. The station diary entry provided as follows;

“No 13129 Pc Ramjitsingh returned to station in PBT 1083 driven by No 15231 Pc Ramlackhan and the former reported having gone to Clementy Street El Dorado and interviewed one Kelvin Alleyne age 57 of African descent a factory worker at Carib Brewery who reported that around 1.00 am on the 16th May 2008. He was lying on a mattress in the living room of his house which is situated in the north eastern corner of the said house when he observed a man entering the house by opening a door on the western side of the house. He further reported that the man put a knife to his throat and another man chopped him on his right hand from above elbow and demanded money. He reported that the other man then cut him on his left hand and he ran out the house screaming for help... Pc Ramjitsingh upon entering the premises observed a mattress lying on the ground and a Red liquid substance resembling that of blood splattered on the said mattress... Pc Ramjitsingh also observed a room on the northern side of the house ransacked... Pc Ramjitsingh retrieved on guiness (sic) bottle which was pointed out by the informant as belonging to the alleged offenders to be processed by the crime scene expert... Pc Ramgitsingh further interviewed the informant who reported that the men took a Nokia Cell phone valued \$150.00 from him... Pc Ramjitsingh give the informant a medical report form to seek medical attention. Also visiting the scene was Insp Ramai duty Inspector and ambulance PBS 6026 driven by No20317 EMT Seepersad in company with No 20278 EMT Francis who conveyed the informant to the Eric Williams Medical Center for medical treatment. Entry to the premises by the alleged offenders by opening a door on the western

side of the building exit via point of entry. No description of the alleged offenders given.”

32. Sgt. La Rode testified that it was PC Ramjitsingh who had failed to conduct further inquiries. Upon being appointed investigator of the report, Sgt. La Rode would have tried to contact PC Ramjitsingh and PC Ramlackhan. However, his efforts to contact those officers proved futile since he believes he was informed that PC Ramjitsingh had resigned from the service and PC Ramlackhan was on vacation. Sgt. La Rode also made efforts to contact Insp. Ramai but those efforts were unsuccessful. At the time of being appointed investigator of the report, Sgt. La Rode knew Insp. Ramai but he did not speak to him about the report.

33. Sgt. La Rode agreed that when he read the aforementioned station diary extract, it would have occurred to him that the Guinness bottle may have had the finger prints of one or both of the men who attacked Alleyne. He further agreed that he would have been keen to ascertain whether that Guinness bottle was checked for finger prints. In terms of his efforts to ascertain whether the Guinness bottle was checked for finger prints, Sgt. La Rode attempted to contact PC Ramjitsingh and PC Ramlackhan. When his attempts to contact those officers proved futile, he attempted to contact a CSI person but that also proved futile. He did not speak to any of the property keepers at the station to find out if they had the bottle in their possession.

34. Sgt. La Rode agreed that as the station diary extract stated that the attackers entered Alleyne’s house through a door, same would have strongly suggested that the attackers would have touched that door. Sgt. La Rode further agreed that as PC Ramjitsingh found one of the rooms in

the house ransacked same would have suggested that the attackers would have touched items in the room. As such, Sgt. La Rode agreed that it would have been a possibility that the attackers' finger prints were on the door and/or on items in the house. Sgt. La Rode made efforts to contact the CSI office to find out if anyone visited the scene to obtain figure prints but same proved futile as it was a year after the incident occurred.

35. Sgt. La Rode would have prepared a statement for the Magistrates' Court. He could not recall whether he recorded his unsuccessful efforts to contact the abovementioned officers as well as the CSI office in that statement. Sgt. La Rode did not make any attempts to obtain a copy of the statement he prepared for the Magistrates' Court to produce to this court.

36. As seen from above, the station diary extract recorded on May 16, 2008 noted that no description of the alleged offenders was given. Sgt. La Rode agreed that in most instances, it is proper police procedure that a police officer investigating a report like the one at hand would seek to ascertain from the victim either the identity or the description of the perpetrator(s).

37. Sgt. La Rode was referred to the statement he recorded from Alleyne on April 29, 2009. The statement provided as follows;

"... On 15th May, 2008...I came home and whilst watching television, I fell asleep in my living room. I was awoken between the hours of 1am to 2am, when my door was broken into and Cliff Lewis and another man entered my home. At this time the television and all the lights in my house was on. The man, who had a knife in his hand, placed the said knife at my neck and Cliff who had a cutlass in his right hand, asked me you and who here. I told him I alone here, he then searched the house, he attempted to enter my

bedroom and found it locked. He then asked me for the keys to my room, which I handed over.

Cliff was about to enter my room when the beaded curtain made a noise, the man looked in that direction, and I snatched his hand with the knife. He called out Cliff who in turn came to his assistance. Cliff fired a chop at my head and I put my left hand to block and I got chop on my hand between thumb and index finger. Cliff fired a next chop at me and I block with my right hand receiving a chop on my right upper arm between my shoulder and elbow. Cliff told me if I go to the Police he would damage my son. I throw myself against the door, the door was open so I ran outside. A neighbour called me so I went there, a short time after I saw Cliff and the other man ran from the house into a car that was parked on the road.

The neighbour called the Police, the Police and the ambulance came, a short time after. They took me to Mt. Hope Hospital where I was treated and later discharge...

The man who was with Cliff, is about 5ft 7inches tall, not too slim, low hair cut, clean shaven, round face and did talk much. Cliff is about 5ft 10 inches tall, medium built, oval face, brown complexion, low hair cut and clean shaven."

38. Sgt. La Rode agreed that the statement he took from Alleyne on April 29, 2009 was different from what was recorded in the station diary entry on May 15, 2008. Sgt. La Rode asked Alleyne what prompted him to name the claimant a year later and Alleyne indicated that the claimant had told him he would have harmed his son. Sgt. La Rode asked Alleyne for details of the car used by the claimant and the other man but Alleyne did not provide any description of the car.

39. Sgt. La Rode agreed that he would have formed the view that the neighbour who called the police was or could have been an eye witness to the men running out into the car. Sgt. La Rode did ask Alleyne for the name of the neighbour. Sgt. La Rode could not recall the name of Alleyne's neighbour. When he visited Alleyne's house, he attempted to interview the neighbour but she had moved out. Alleyne only had the first name of the neighbour and had no contact information for her. The neighbour lived a short distance from Alleyne. Upon returning to the station after visiting the house of Alleyne, Sgt. La Rode would have made an entry in the station diary to record that he tried to locate the neighbour but was unsuccessful.
40. The photographic evidence that Sgt. La Rode had in his possession when he visited the scene did not form part of the evidence on the charge he laid against the claimant. Those photographs were evidence for the malicious damage which occurred at the house. Sgt. La Rode did not make any attempts to retrieve those photographs to produce to this court.
41. Sgt. La Rode did not attempt to contact the claimant via his cell phone because he did not have his number. Alleyne did not provide Sgt. La Rode with the claimant's number. Sgt. La Rode made several calls to Camp Cumuto in an attempt to contact the claimant but he was never allowed to speak to him. Consequently, in an attempt to contact the claimant, Sgt. La Rode visited the claimant's place of residence. When he visited the claimant's residence he was told that the claimant was at Camp Cumuto. Sgt. La Rode would have made a note in the station diary of his visit to the claimant's residence. He would have also made a note in the station diary of his calls to Camp Cumuto.

42. Sgt. La Rode did not see it fit to obtain a search warrant for the claimant's house to search for the knife and/or cutlass that was used in the attack of Alleyne.

ISSUES

43. 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.⁵

44. Since (a) and (b) are not in dispute, the issues of law in this case are as follows;

- i. Whether Sgt. La Rode had reasonable and probable cause to set the law in motion against the claimant;
- ii. Whether Sgt. La Rode, in so doing was actuated by malice; and
- iii. If it is found that Sgt. La Rode lacked reasonable and probable cause and there was malice involved, what is the appropriate measure of damages.

⁵ Manzano v The Attorney General of Trinidad and Tobago Civil Appeal No.151 of 2011

ISSUE 1 – Reasonable and probable cause

Law

45. 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.”

The submissions of the defendant

46. According to the defendant, on April 28, 2009, Sgt. La Rode was detailed to continue enquiries into a report of wounding made by Alleyne on May 16, 2008. Sgt. La Rode was informed that on May 16, 2008 Alleyne had reported that two men had broken into his house, that one of the men held him down and cut him with a knife or cutlass and that the men were

subsequently able to escape. The defendant submitted that at the time of the initial report, Alleyne was unable to provide a name and/or description of the accused and/or suspects. However, on April 29, 2009 an updated report was taken by Sgt. La Rode from Alleyne and on that occasion Alleyne provided a name and physical descriptions of the persons who assaulted him at his home on May 16, 2008. The defendant further submitted that Sgt. La Rode being the investigating officer had firsthand knowledge of the circumstances surrounding the offence for which the claimant was charged.

47. The defendant submitted that the evidence given by Sgt. La Rode during cross-examination in relation to the evidence he had in his possession at the time of laying Information No. 4136/09 against the claimant was consistent with his witness statement. The station diary extract for the initial report of wounding of Alleyne dated May 16, 2008, the subsequent recorded statement of Alleyne dated April 29, 2009 and the medical evidence received by Sgt. La Rode on behalf of Alleyne were all annexed to the Sgt. La Rode's witness statement.

48. As such, the defendant submitted that Sgt. La Rode based on his investigations and the evidence he had in his possession at the time honestly believed that the claimant was guilty of the offences for which he was charged. That a reasonable man placed in the position of Sgt. La Rode would have held the same belief and also charged the claimant.

49. The defendant relied on **Section 23 of the Indictable Offences (Preliminary Enquiry) Act Chapter 12:01** which provides as follows;

“(1) When all the witnesses on the part of the prosecutor and the accused person, if any, have been heard, the Magistrate shall if, upon the whole of

the evidence, he is of the opinion that no prima facie case of any indictable offence is made out, discharge him; and in such case any recognizance taken in respect of the charge becomes void.

(2) Where the Magistrate is of the opinion, on consideration of the evidence and of any statement of the accused, that there is sufficient evidence to put the accused on trial for any indictable offence, the Magistrate shall commit the accused for trial—

(a) in custody, that is to say, by committing him to prison there to be safely kept until delivered in due course of law; or

(b) on bail in accordance with the provisions of the Bail Act, that is to say, by directing the accused to appear before the High Court for trial, and where his release on bail is conditioned on his providing a surety and, in accordance with section 16 of the Bail Act, the Magistrate fixes the amount in which the surety is to be bound with a view to his entering into his recognisance subsequently, the Magistrate shall, in the meantime, commit the accused to custody in accordance with paragraph (a) of this subsection...”

50. According to the defendant, the claimant’s claim was that the charge laid against him was done so without and/or lack of reasonable and probable cause and that the investigation conducted by the charging police officer was done so negligently. The defendant relied on the case of ***Hicks v Faulkner***⁶ wherein Hawkins J had the following to say;

“The question of reasonable and probable cause depends in all cases not upon the actual existence, but upon the reasonable bona fide belief in the existence of such a state of things as would amount to a justification of the course pursued in making the accusation complained of. No matter

⁶ [1881-85] All ER Rep 187 at 192

whether the belief arises out of the recollection and memory of the accuser, or out of information furnished to him by another. It is not essential in any case that facts should be established proper and fit and admissible as evidence to be submitted to the jury upon an issue as to the actual guilt of the accused. The distinction between facts necessary to establish actual guilt and those required to establish a reasonable bona fide belief in guilt should never be lost sight of in considering such cases as I am now discussing. Many facts admissible to prove the latter would be wholly inadmissible to prove the former.”

51. As such, the defendant submitted that there is a clear distinction between facts necessary to establish actual guilt which is to be considered by a judicial officer or Magistrate and those required to establish a reasonable bona fide belief in guilt which is to be considered by the police officer. Consequently, the defendant submitted that it ought not to be considered that Sgt. La Rode was malicious in the prosecution of the claimant since the Magistrate found that on the evidence laid before her same could have led to a conviction at trial.

The submissions of the claimant

52. The claimant submitted that if a person who had been committed to stand trial by a Magistrate, is automatically debarred from later succeeding in a malicious prosecution case on that basis, it means that no person who was found not guilty at the Assizes, could succeed in a claim for malicious prosecution, since for a matter to have reached the Assizes, the person must have been committed by a Magistrate, and then indicted by the Director of Public Prosecutions (“DPP”). The claimant further submitted that in respect of matters proceeding indictably from the Magistrates’

Court to the Assizes, neither the Magistrate, nor the DPP, nor the trial Judge, are finders of fact. The only finder of fact is the jury. That similar to the jury, this court, in this malicious prosecution trial, is also a finder of fact.

53. According to the claimant, **Section 23 (2) of the Indictable Offences (Preliminary Enquiry) Act** provides that where a Magistrate is of the opinion that there is sufficient evidence to put the accused on trial for any indictable offence, the Magistrate shall commit the accused for trial. As such, the claimant submitted that it is clear therefore, that the Magistrate makes no finding of fact. That he only determines if there is sufficient evidence to put the accused on trial. The Magistrate is bound to take the prosecution's case at its highest.

54. According to the claimant, in the instant case, Alleyne testified that the claimant had chopped him. The claimant submitted that the Magistrate was bound to ask himself, *"Assuming this is true, is a case made out against the accused?"* The claimant further submitted that the obvious answer was yes and that the Magistrate was quite right to commit. That the Magistrate's job at that stage was not to dwell on the quality of the Sgt. La Rode's investigation or whether he had reasonable grounds on which to charge the claimant. According to the claimant, the aforementioned is an issue that has to be determined before this court.

55. The claimant submitted that the role of the DPP in indicting an accused person who has been committed, is similar to that of the enquiring Magistrate. **Section 25 (3) of the Indictable Offences (Preliminary Enquiry) Act** provides as follows;

“A person committed for trial may be indicted for any offence for which he was committed for trial or for any offense which, in the opinion of the DPP, is disclosed by the depositions.”

56. As such, the claimant submitted that like the Magistrate the DPP is not a finder of facts. That the DPP’s role is to consider what offence(s) is or are disclosed by the depositions, and to indict the accused accordingly.

57. The claimant relied on the case of the **Attorney-General of Trinidad and Tobago vs Hassan Atwell**⁷ wherein the respondent or accused alleged that the complainant had fabricated a confession by him (the respondent/accused). The complainant alleged that the respondent/accused had voluntarily confessed to him. The enquiring Magistrate committed the respondent/accused, the DPP indicted him, and during the trial, a voir dire was held, at the end of which, the Judge ruled that the confession was admissible. However, the jury found the respondent/accused not guilty on all the counts for which he stood trial. The respondent/accused then sued for malicious prosecution.

58. The Attorney-General sought to strike out the claim on the basis that the respondent/accused was committed and indicted, and the trial Judge allowed the confession into evidence. The said Application was dismissed by the High Court Judge. The Attorney-General appealed, and the Court of Appeal dismissed the Appeal.

59. At page 6, lines 42-48, Ms. Jackman, who appeared for the Attorney-General, submitted that since the respondent/accused had been committed by the Magistrate and indicted by the DPP, he could not sue, it

⁷ Court to Appeal No. 253/11

having passed, according to her, “... *three judicial independent judicial officers...*”. The Court of Appeal rejected the aforementioned. At page 6, lines 4-7, CJ Archie stated, “*The Judge makes no finding of fact as to whether he made the statement or not, you know, because it is the jury who makes that finding of fact*”. Further, at page 9, lines 22-25, CJ Archie continued by asking Ms. Jackman, “*So, how in those circumstances can you say that he is barred from suing because it got to a jury in the first place? It has to go to a jury before you can mount a malicious prosecution claim*”.

60. At page 9, lines 26-34 Madame Justice of Appeal Yorke-Soo Hon said to Ms. Jackman, “*And it has to pass through the process. That is, from the police to the Magistrate to the DPP. And they have different roles to play at each stage of that process. It is only when it comes to trial that there is a determination as to whether or not it was fabricated. So when the Magistrate commits him, that is not in the contemplation of the Magistrate. He only determines whether a prima facie case has been made out*”.

61. The claimant submitted that in this malicious prosecution matter before this court, the court is being asked to examine the investigation done by the Sgt. La Rode to determine whether he conducted reasonable and/or crucial and/or necessary enquiries after receiving the report from Alleyne, to verify whether Alleyne was speaking the truth or not. That this court is being asked to enquire whether Sgt. La Rode’s investigation was negligent, biased, and tainted with malice. The claimant further submitted that those were things which could not possibly have impacted on the tasks to be performed by the enquiring Magistrate. As such, the claimant submitted that the fact that the claimant was committed to stand trial by the

Magistrate has no bearing on whether Sgt. La Rode had reasonable and probable cause.

62. According to the claimant, he alleged that Sgt. La Rode conducted no enquiries into the report prior to charging him. The claimant also alleged that Sgt. La Rode was biased against him, in favour of Alleyne. As such, the claimant submitted that the first issue to be considered is whether a malicious prosecution matter can succeed on the basis of an investigator failing to conduct enquiries.

63. The claimant submitted that at the time Sgt. La Rode charged him, he had in his possession a statement from Alleyne dated April 29, 2009, wherein Alleyne stated that on May 16, 2008 the claimant and another man entered his home, and the claimant chopped him twice. Sgt. La Rode also had a copy of Alleyne's patient notes from the Eric Williams Medical Sciences Complex, showing that Alleyne did sustain chop wounds. The claimant submitted that one may think that on that basis, Sgt. La Rode had reasonable and probable cause to charge him but that a closer examination of the case law shows that it is not that simple.

64. The claimant relied on the case of *Radhika Charan Khan v The Attorney-General of Trinidad and Tobago*⁸, wherein the claimant sued for malicious prosecution. On March 12, 2003, Lorna Byragee made a report on behalf of her mother, Rajo Batchasingh ("the VC"), to W.P Cpl. Ann Marie Mc Dowell ("the complainant"). The complainant did not testify at the malicious prosecution trial. However, under cross-examination at the malicious prosecution trial, the claimant stated that on May 12, 2003, the complainant and other officers visited to her home. That the complainant

⁸ CV 2011-04688

told her that a report had been made against her. The substance of same was that the claimant had stolen \$22,000.00 from the VC. The complainant also told the claimant that the VC had reported that she (the claimant) had pushed her down. The claimant stated that she told the complainant that she had received no more than \$200.00 from the VC as a payment for taking her to the doctor. She further stated that she suggested to the complainant that the money had been stolen from the VC's daughter. The complainant then took the claimant to the VC's home, where the VC stated that the claimant had pushed her down, and took her money, and caused her to hit her head. The claimant again protested her innocence. That conversation took place in the complainant's presence. Later that night, the complainant charged the claimant with robbery with violence. The claimant was later convicted at the Magistrates' Court, but the Court of Appeal later quashed her conviction.

65. Justice Dean-Armorer considered the issue of whether, at the time the complainant charged, she had reasonable and probable cause to do so. At paragraph 22, Her Ladyship quoted the definition of reasonable and probable cause from *Hicks v Faulkner* 1938 AC at page 305, as, *"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"*.

66. Her Ladyship then went onto consider how the aforementioned should be applied in the case of an investigating police officer. At paragraphs 47 to 50 Her Ladyship stated as follows;

“47. It is my view that an ordinarily prudent and cautious man, placed in the position of WPC Mc Dowell would have regarded the respective reaction of the accused and the accuser as inadequate for laying a charge. The ordinarily prudent and cautious person would have enquired whether the victim suffered injuries, or sought and received medical attention. This would have led to an enquiry of any attending physician. According to the uncontroverted evidence in this case, WPC Mc Dowell did not embark on these enquiries at all.

48. In my view, the ordinarily prudent and cautious man, seized of the Claimant’s response that the money had been taken by Batchasingh, would have at least questioned Batchasingh and taken a statement from her...

49. WPC Mc Dowell failed to make these investigations. The officer failed to enquire as to the whereabouts of the Claimant at the time of the alleged incident, or as to the location where the incident allegedly occurred.

*“50. ...according to the evidence before this Court, WPC Mc Dowell has fallen far short of the test of the ordinarily prudent and cautious investigator as depicted in *Herniman v Smith* and has failed the objective aspect of the test of the presence of reasonable and probable cause.”*

67. Consequently, the claimant submitted that **Radhika Charan Khan** supra clearly showed that it was not enough that a VC told the police that the defendant did something and the police are then deemed to have reasonable and probable cause to charge. That the investigator is bound to conduct enquiries, to test what has been reported to him. The claimant further submitted that the necessary enquiries would depend on the facts and circumstances of each case.

68. The claimant submitted that Sgt. La Rode would have had to consider not only whether Alleyne was chopped, but whether it was the claimant who

chopped him. That there appeared reasonable and probable cause for Sgt. La Rode to believe that Alleyne was in fact chopped, via the patient notes but there was no reasonable and probable cause to believe that it was the claimant who had chopped him.

69. According to the claimant, various possibilities existed in respect of the incident as described by Alleyne in his statement. The claimant submitted that it was possible that Alleyne only got a fleeting glance of the man, and was mistaken, when he said it was the claimant. That Sgt. La Rode should have also considered that on the statement itself, Alleyne had a motive to lie on the claimant since Alleyne stated that the claimant had promised to repair what was damaged and buy back what was stolen, but thereafter, whenever he called the claimant, the claimant hung up on him.

70. The claimant further submitted that a victim of a chopping like in this case may not have seen his attacker. That if he has a grudge against someone, he may have taken that opportunity to allege that it was that person who had chopped him, just to get that person in trouble. Moreover, the claimant submitted that when someone is chopped, they may not have seen their attacker but in their mind, they may have believed that it was a particular person who chopped them and so may have told the police (untruthfully) that he did see the person who chopped him. According to the claimant, it was for all the aforementioned reasons that the investigator must conduct enquiries, to determine if the alleged attacker, was actually the attacker.

71. The claimant further relied on the case of **Bernard Baptiste v The Attorney-General of Trinidad and Tobago & Another**,⁹ wherein Elizabeth

⁹ CV 3617 of 2001

Fontanelle (“the VC”), on the morning of December 21, 1999, went to the Carenage Police Station, and reported that the previous evening, she and the plaintiff had gone to Macqueripe in his maxi-taxi. Whilst there, she alleged they had an altercation and the plaintiff pulled out what appeared to be a firearm and threatened her, and that the firearm discharged in the maxi-taxi. The plaintiff then took her to her home, and threatened to kill her if she told the police. The second defendant was detailed to investigate. The plaintiff later heard that the police were looking for him and went to the St. James Police Station to make enquiries. He was later arrested and taken to the Carenage Police Station, where the second defendant interviewed him and took a statement from him. The second defendant then got a search warrant, and searched his home and his maxi-taxi. No firearm or ammunition was found. Also, there was no sign of any indentation in the maxi that may have been the result of a firearm being discharged in it. The second defendant later recorded a statement from the VC.

72. At pages 8 & 9 of the judgment, Justice Stollmeyer (as he then was) stated as follows,

“...This statement and what was said in it, however, was countered or contradicted by Mr. Bernard’s statement in which he denied the allegations against him and if not contradicted, then it was certainly not supported by the results of the searches of Mr. Bernard’s house and the maxi-taxi... What is relevant, what is material, is that Constable Seepersad could not have been certain that there was enough evidence at that time to proceed with charging Mr. Bernard... I have come to the conclusion that the Plaintiff has established lack of reasonable and probable cause for the Prosecution...”

73. As such, the claimant submitted that **Bernard Baptiste** supra demonstrated that where it is possible to check for other evidence, that can corroborate the alleged victim's claim, such checks should be made and depending on the facts, where no such corroboration is found, it is possible for the court to hold that no reasonable and probable cause existed.

74. The claimant also relied on the case of **Ricardo Watson v The Attorney-General of Trinidad and Tobago**,¹⁰ wherein on October 21, 1998, PC Telesford charged the claimant with housebreaking and larceny. On the said day, PC Charles also charged the claimant with possession of marijuana for the purpose of trafficking. Both charges were dismissed, and the claimant sued for malicious prosecution. At the malicious prosecution trial, PC Telesford testified that on October 21, 1998 Jakhima Brewster gave a "caution statement" to PC Nanan saying that on October 20, 1998 the claimant and he drove to a house in Diamond Vale, where he (Brewster) broke into a house and removed certain items, assisted by the claimant. Based on the aforementioned, PC Telesford obtained a warrant to arrest the claimant.

75. At page 5 of the judgment, Justice Stollmeyer (as he then was) stated as follows;

"He did not however, make any attempt to speak with the Claimant and carry out no (sic) investigations at all... In summary, the charge was laid on the basis of Jakhima Brewster's statement. There was no effort to investigate, no interview of the Claimant..."

¹⁰ CV 2006-01668

76. At page 9, His Lordship further stated as follows;

“In my view, there was lack of reasonable and probable cause in respect of both prosecutions. The charge of housebreaking and larceny was preferred on the basis of what was said by an informer who was not trustworthy and no investigation whatsoever was carried out. No effort was made to verify the information given”.

77. Consequently, the claimant submitted that based on the aforementioned cases, it is very possible for there to be a lack of reasonable and probable cause for charging, even where the police have received a report, statement and/or information incriminating the claimant.

78. The claimant has asked the court to find that Sgt. La Rode knowingly and intentionally lied to the court when he stated that he did the following;

- i. Tried to locate the claimant;
- ii. Tried to locate the woman who was a witness to the report of wounding;
- iii. Attempted to ascertain if any prints were found on the bottle, and to locate the bottle; and
- iv. That he had in his possession photographs.

79. The claimant also asked the court to find that an ordinarily prudent and cautious investigator would have done all of the above. Further, the claimant asked the court to find that such an investigator would have tried to speak to the officers who visited Alleyne’s home on the morning of the incident, especially Constable Ramjitsingh and would have sought a description of the said car with a view to trying to locate it and the

suspects. Moreover, the claimant asked the court to find that Sgt. La Rode did not do any of those things.

80. According to the claimant, the initial station diary entry made on May 16, 2008 did not include any description of the alleged offenders which meant that Alleyne never named the claimant, gave any physical description or told the police that he knew one of the men from before. In his statement of April 29, 2009, however, Alleyne named the claimant as one of the men. The claimant submitted that the aforementioned in itself ought to have led Sgt. La Rode to have doubts about the truthfulness of Alleyne's claim, not that he was chopped, but as to who chopped him.

81. Further, the only thing Alleyne stated in respect of not previously naming the claimant was that the claimant told him if he went to the police, he (the claimant) would damage his son. The claimant submitted that Sgt. La Rode ought to have viewed that explanation with much suspicion when it was given in the statement.

82. According to the claimant, in his statement dated April 29, 2009 Alleyne clearly recounted the incident in chronological order. The claimant submitted that when one looks at that alleged utterance by the claimant, and where it is located in the statement, it clearly suggests that the claimant told Alleyne the aforementioned in the middle of the physical altercation. The relevant portion of the statement reads as follows;

"Cliff fired a next chop at me and I block with my right hand receiving a chop on my right upper arm between shoulder and elbow. Cliff told me if I go to the Police he would damage my son. I throw myself against the door: the door was opened so I ran outside".

83. The claimant submitted that it was not realistic or practical that he would have made such an utterance in the middle of the melee or fracas. The claimant further submitted that although Alleyne alleged that he did not previously name him due to a threat to harm his son, Sgt. La Rode never probed Alleyne as to what prompted his change of mind. That if the threat was a deterrent to naming the claimant at the time of the incident, why was it not a deterrent on the date of the statement. Similarly, if Alleyne was willing to name the claimant at the time of statement, why was he unwilling to do so at the time of the incident. According to the claimant, Sgt. La Rode clearly could not have been bothered to probe Alleyne at all on the issue of his very belated naming of the claimant as one of the men who chopped him.

84. Consequently, the claimant submitted that having regard to the facts and circumstances of this particular case, the defendant has not remotely shown that Sgt. La Rode had reasonable and probable cause when he charged him.

Findings

The test after acquittal at the Assize

85. This court is bound by the decision of Their Lordships of the Court of Appeal in ***Atwell*** supra. It is clear that the tests to be applied by both the Magistrate and the DPP are different to that to be applied by the complainant in a given case. Further, the law as it stands requires this court to treat with the issue of reasonable and probable cause both as a matter of objective assessment and subjective in relation to the officer who lays the complaint, not in relation to judicial officers or those whose duties

include the performance of quasi-judicial functions in the procedural line. In this court's view there is good reason for this. The law of malicious prosecution does not only require the application of that test but malice is the second ingredient for which no judicial officer save and except the finder of fact (the jury) can lawfully consider.

86. A simple example would suffice to demonstrate the fallacy of the defendant's argument in this case. In the case of evidence being fabricated by the police, such a case if properly presented may run the gamut of the process but result in an acquittal by a jury at the end of it all. The verdict of the jury may mean that they were in doubt about the case for the prosecution or simply that did not believe the police were telling the truth and that they manufactured evidence. It would have of course not been open to any judicial officer to so find either at a Preliminary Inquiry or Assize Trial. However, the accused in such a case is not debarred from suit for malicious prosecution and so he may be able to demonstrate that it is more likely than not that the police manufactured false evidence against him and that the complainant knew. It would therefore follow that both limbs of the test would have been set out entitling the accused person to judgment. Otherwise, the fact that the case makes it all the way to verdict will be a bar to a suit in relation to malicious prosecution. This itself is an absurd proposition in law as one of the ingredients for the tort is a discharge or acquittal.

87. The court therefore accepts the arguments of the claimant on this issue in toto.

Findings of fact

88. For there to have been reasonable and probable cause in respect of both the subjective and objective elements of the test, Sgt. La Rode 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 further that must have been the case as a matter of objective assessment by this court.

89. According to the evidence of Sgt. La Rode, he was detailed to continue investigations into a report of wounding made by Alleyne approximately one year after the incident occurred. When Sgt. La Rode was appointed as the investigator of the report made by Alleyne on April 28, 2009, he (Sgt. La Rode) obtained and read the station diary entry which had been made on the date of incident, May 16, 2008. Upon reading the station diary extract, Sgt. La Rode would have been informed that PC Ramlackhan, PC Ramjitsingh, Insp. Ramai, EMT Seepersad and EMT Francis would have visited the scene of the incident on May 16, 2008 and that PC Ramjitsingh was the main investigator of the incident. He would have further been informed that 1) there were two offenders, 2) Alleyne was lying on a mattress when he observed a man entering his house by opening a door on the western side of the house, 3) PC Ramjitsingh retrieved a Guinness bottle from the scene which Alleyne alleged to be belonging to one of the offenders, 4) PC Ramjitsingh observed that a room in Alleyne's house was ransacked, 5) Alleyne alleged that a Nokia cell phone valued at \$150.00

was taken from him and 6) (of great importance) no description of the offenders was given by Alleyne.

90. On April 29, 2009 Sgt. La Rode recorded a statement from Alleyne. Upon perusing the statement given by Alleyne and the station diary extract, the court noted that there were numerous differences between the two. Firstly, in his statement, Alleyne identified one of offenders as being the claimant and gave a description of the second offender. Alleyne alleged in the statement that the claimant had told him that if he went to the police, he (the claimant) would harm his son. Secondly, in his statement, Alleyne stated that he was asleep when he was awoken when his door was broken into by the claimant and the other man. In the station diary extract, there was no mention of Alleyne being asleep and the door of his house being broken into. Thirdly, in the statement there was no mention of a Nokia cell phone being taken. Fourthly, in his statement, Alleyne alleged that the claimant and the other man ran from his house into a car parked on the roadway. In the station diary, there was no mention of the offenders fleeing the scene by car.

91. The court is cognizant of the fact that the station diary extract would not have been as detailed as the statement given by Alleyne. However, the court finds that it is highly unlikely that one's memory of events would be more accurate one year after the event rather than when the report was made so that the purported identification of the claimant one year after appears at the least to be highly unreliable. It is also unlikely that Alleyne

would have kept the information that he knew the offender well a secret and would either have only remembered it or revealed it one year later.

92. Further, the court finds that the reason given by Alleyne for not identifying the claimant at the time of the incident, that is that the claimant threatened to harm his son if he went to the police was implausible since there was no indication to this court that the threat was no longer subsisting. As such, the court finds that the identification of the claimant one year later and the reason given by Alleyne for so doing was sufficient to make Sgt. La Rode highly suspicious about the correctness of the identification and so he ought to have made other proper enquires.

93. After recording the statement from Alleyne, Sgt. La Rode visited Alleyne's house and obtained Alleyne's medical reports from the Eric Williams Complex, Mt. Hope. The medical reports would have confirmed that Alleyne did in fact receive chop wounds on May 16, 2008.

94. In his witness statement, Sgt. La Rode testified that sometime thereafter he made attempts to contact a woman who was a witness to the wounding and that those attempts were unsuccessful. He also attempted to contact and source a further contact and/or locate the other woman who stayed at the premises of Alleyne. However, she had moved out and Sgt. La Rode had no idea where she was staying at the time. He also made several attempts to contact the claimant for the purpose of conducting an interview and furthering his enquiries into the report but those attempts proved futile. Sgt. La Rode then sought on several occasions to contact the claimant's place of work, the Trinidad and Tobago Defence Force Base

located at Camp Cumuto. On each occasion, he was not allowed to speak with or make arrangements to meet with the claimant. The court accepts Sgt. La Rode's evidence that he did attempt to locate the witness to the wounding and the woman who stayed at the premises of Alleyne.

95. The court further accepts that Sgt. La Rode may have tried to contact the claimant but finds it difficult to accept that he could not have contacted him through the proper channels if he was having difficulty finding him in the usual course of events. This was a matter of a serving member of the police service contacting a serving member of the Defence Force. The court does not accept that La Rode made reasonable efforts to contact the claimant in the circumstances.

96. During cross examination, Sgt. La Rode testified that he attempted to contact PC Ramjitsingh and PC Ramlackhan. That his attempts to contact those officers were unsuccessful since he believes he was informed that PC Ramjitsingh had resigned from the service and PC Ramlakhan was on vacation. Sgt. La Rode further testified during cross-examination that he made efforts to contact Insp. Ramai but those efforts were unsuccessful. At the time of being appointed investigator of the report, Sgt. La Rode knew Insp. Ramai but he did not speak to him about the report. The court does not accept Sgt. La Rode's evidence that he tried to contact the aforementioned officers as his reasons for being unable to contact them are unsatisfactory they being fellow police officers. Further, he has admitted that he did not speak with Ramai although he knew Ramai had been involved but he gave no reason for same.

97. Moreover, during cross-examination Sgt. La Rode testified that he attempted to contact the CSI office to find out whether the Guinness bottle was checked for prints but that proved futile. The court accepts Sgt. La Rode's evidence that he attempted to ascertain whether the Guinness bottle was checked for prints.

98. In his witness statement, Sgt. La Rode testified that he addressed his mind to the Alleyne's version of events, specifically whether Alleyne's report was fabricated to get back at the claimant for not compensating him for the damages done to his premises. Sgt. La Rode looked at the seriousness of the injuries that were suffered by Alleyne and came to the conclusion that Alleyne would not have fabricated such a report against someone who was not responsible for committing such an act against him. Further, Sgt. La Rode had several opportunities to observe the conduct and demeanor of Alleyne and formed the opinion that his report was genuine. It must be noted that this happened one year after the incident so that little or no weight should have been attributed to the demeanor of Alleyne after such a long period.

99. Based on the evidence he had in his possession at the time, Sgt. La Rode sought advice from the Senior Police Officer at the station at that time and received instructions to charge the claimant for the offence of wounding.

100. The court therefore finds that La Rode barely attempted to do investigations into the report. Essentially, not having so done, he remained with the same unreliable and potentially manufactured evidence by Alleyne. It would have been pellucid to Sgt. La Rode that unless he had

received more evidence there was insufficient at that time to charge the claimant. That those investigations showed there were many other matters that ought to have been considered as same may have led to a charge not being proffered. The cases relied on by the claimant clearly demonstrate that it is not sufficient for an officer to simply take the word of a virtual complainant without carrying out the necessary investigations that the circumstance of a particular case requires. That principle is of particular application given the facts of the present case.

101. The circumstances of this case, particularly in light of Alleyne's belated identification of the claimant, required Sgt. La Rode to continue his investigations into the report and at the very least attempt to obtain a statement from the claimant prior to charging because of the abject paucity of the evidence and in particular unreliability of the identification.

102. Consequently, having regard to the fact that the evidence which Sgt. La Rode had in his possession at the time of laying the charge against the claimant was highly unsatisfactory, Sgt. La Rode could not have had an honest belief that there was a case fit to be tried. Further, a reasonable man having knowledge of the facts that Sgt. La Rode did at the time he instituted the prosecution, would not have had a reasonable belief in the claimant's guilt. In fact to the contrary he would have had serious material doubts given the circumstances and the court so finds. There was therefore no reasonable and probable cause for laying the charge in this case both as a matter of the subjective belief of Sgt. La Rode and objectively.

ISSUE 2 – Malice

Law

103. Mendonça JA in **Sandra Juman v The Attorney General**¹¹ 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.”

104. In the Privy Council case of **Williamson v Attorney General of Trinidad and Tobago**,¹² Lord Kerr stated the following in relation to malice at paragraphs 11 to 13;

“[11] ...A good working definition of what is required for proof of malice in the criminal context is to be found in A v NSW [2007] HCA 10; 230 CLR 500, at para 91 “What is clear is that, to constitute malice, the dominant purpose of the prosecutor must be a purpose other than the proper invocation of the criminal law – an ‘illegitimate or oblique motive’. That improper purpose must be the sole or dominant purpose actuating the prosecutor”. [12] An improper and wrongful motive lies at the heart of the tort, therefore. It must be the driving force behind the prosecution. In other

¹¹ Civil Appeal No. 22 of 2009

¹² [2014] UKPC 29

words, it has to be shown that the prosecutor's motives is for a purpose other than bringing a person to justice: *Stevens v Midland Counties Railway Company* (1854) 18 JP 713, 23 LJ Ex 328, 10 Exch 352, 356 per Alderson B and *Gibbs v Rea* [1998] AC 786, 797D, [1998] 3 WLR 72, 1 OFLR(ITELR) 719. The wrongful motive involves an intention to manipulate or abuse the legal system *Crawford Adjusters Ltd (Cayman) v Sagicor General Insurance (Cayman) Ltd* [2013] UKPC 17, [2014] AC 366 at para 101, [2013] 4 All ER 8; *Gregory v Portsmouth City Council* [2000] 1 AC 419; 426C, [2000] 1 All ER 560, [2000] LGR 203; *Proulx v Quebec* [2001] 3 SCR 9. Proving malice is a “high hurdle” for the Claimant to pass: *Crawford Adjusters* para 72a per Lord Wilson.

[13] Malice can be inferred from a lack of reasonable and probable cause – *Brown v Hawkes* [1891] 2 QB 718, 723, 60 LJQB 332. But a finding of malice is always dependent on the facts of the individual case. It is for the tribunal of fact to make the finding according to its assessment of the evidence.”

105. Further, in the Privy Council decision of **Sandra Juman v The Attorney General of Trinidad and Tobago**,¹³ Lord Toulson at paragraph 18 had the following to say about malice;

“The essence of malice was described in the leading judgment in *Willers v Joyce* at para 55: “As applied to malicious prosecution, it requires the claimant to prove that the defendant deliberately misused the process of the court. The most obvious case is where the claimant can prove that the defendant brought the proceedings in the knowledge that they were without foundation ... But the authorities show that there may be other instances of abuse. A person, for example, may be indifferent whether the

¹³ [2017] UKPC 3

allegation is supportable and may bring the proceedings, not for the bona fide purpose of trying that issue, but to secure some extraneous benefit to which he has no colour of a right. The critical feature which has to be proved is that the proceedings instituted by the defendant were not a bona fide use of the court's process."

106. Further, Mendonça JA in Manzano supra stated the following at paragraph 47;

"The proper motive for a prosecution is a desire to secure the ends of justice. So in the context of malicious prosecution a defendant would have acted maliciously if he initiated the prosecution through spite or ill-will or for any other motive other than to secure the ends of justice. It follows therefore that even if a claimant cannot affirmatively establish spite or illwill or some other improper motive, he may still succeed in establishing malice if he can show an absence of proper motive."

The submissions of the defendant

107. The defendant submitted that in his Statement of Case, the claimant pleaded in the particulars of malice and lack of reasonable and probable cause that Sgt. La Rode was negligent in his conduct of his enquiries prior to laying the charge against the claimant and that he had a bias between the claimant and Alleyne. In response to that, Sgt. La Rode during cross-examination indicated that prior to him being detailed on April 29, 2009 to investigate the report of wounding of Alleyne, he had no personal or professional interaction with the victim Alleyne or the claimant. As such, the defendant submitted that the claimant has not

provided any cogent evidence to support his allegation of malice. The defendant further submitted that the issue of malice may turn on whether the court accepts the evidence of the claimant, and that the evidence of the claimant should not be accepted.

The submissions of the claimant

108. The claimant submitted that it is not a prerequisite for him to show that Sgt. La Rode and he had interacted prior to the charge in order for malice to be proved. That whilst prior interaction, and certainly prior “bad blood”, could be a strong basis for concluding that there was malice on the part of Sgt. La Rode that is not always the case.

109. The claimant submitted that an investigator can lay a charge hoping that that would reflect well on his job performance and increase his chances for upward mobility in the Police Service. That an investigator may simply be eager to bring his investigation to an end, perhaps to please his superiors, or because the statutory time period for charging is upon him. According to the claimant, in case like the aforementioned, the investigator has not charged because of any bad blood between the claimant and himself but at the same time, charging for such reasons cannot be said to be done for the purpose of bringing a person to justice, and so, his motive cannot be deemed to be a proper one.

110. The claimant submitted that Sgt. La Rode’s improper motive was known to him only, in his mind. That he would not tell anyone that he charged the claimant to increase his chances of promotion. As such, the claimant submitted that one cannot expect him to enter Sgt. La Rode’s mind, to ascertain exactly what the improper motive was. That the

claimant therefore does not have to show what was the improper motive, but rather, that Sgt. La Rode did not have a proper motive.

111. According to the claimant, Sgt. La Rode's improper motive can be gleaned from the evidence in the case. The claimant submitted that while he has alleged that Sgt. La Rode conducted a negligent investigation that was not the end of the matter, for negligence alone is not malice. The claimant also alleged that Sgt. La Rode was biased against him.

112. The claimant submitted that if Sgt. La Rode knew that he was supposed to do certain things as the investigator, but knowingly failed to do them, and then comes to court, and lies and says that he did those things, the question is whether that shows malice. According to the claimant, Sgt. La Rode basically stated that he made numerous efforts to meet and/or speak to him before charging him, but that he (the claimant) was avoiding him (which reflected poorly on him (the claimant)). The claimant submitted that if the court finds that Sgt. La Rode was knowingly lying when he stated the aforementioned, then it cannot be said that he had a proper motive for charging.

113. The claimant relied on **Bernard Baptiste** supra wherein Stollmeyer J (as he then was) stated as follows at page 9;

"...Generally, this lack of reasonable and probable cause is regarded as absence of proper motive and it can of itself be evidence of malice. I have come to the conclusion that in the present instance it is proper and appropriate to regard this lack of reasonable and probable cause as constituting malice. The necessary desire to secure the ends of justice has not been shown as the Defendants are required to do..."

114. The claimant submitted that it should be borne in mind that in **Bernard Baptiste** supra, the police had actually recorded a statement from the plaintiff. Additionally, there was no issue of the complainant lying to the court and claiming that he conducted enquiries which he in fact did not do. That in this case, there was no attempt by Sgt. La Rode to interview the claimant, and numerous lies told by Sgt. La Rode as to things he supposedly did. Consequently, the claimant submitted that the court in this case should find that Sgt. La Rode acted with malice.

Findings

115. Malice may be inferred from the absence of reasonable and probable cause. The lack of reasonable and probable will not equate to malice in every case. It is well established that the proper motive for a prosecution is a desire to secure the ends of justice.

116. In this case, it appears that the failure by Sgt. La Rode to properly investigate in light of the obvious deficiency in the evidence of identification means that malice can be inferred from the lack of reasonable and probable cause. The court finds that the actions of Sgt. La Rode were highly suspicious bearing in mind that there was no identification of the claimant in the initial report but one year later Sgt. La Rode records a statement from Alleyne in which Alleyne readily and comfortably identifies the claimant and gives an implausible reason for not identifying the claimant at the time of the incident. The actions of Sgt. La Rode were also suspicious in light of the fact that he could not locate the first investigator and any other police officer or evidence. As such, the

court finds that the claimant was maliciously prosecuted and so he is entitled to damages.

117. To say that which has happened in this case is unfortunate is an understatement. The police are entrusted with wide powers in order to preserve the peace and protect citizens. However, with the exercise of that power comes an equally onerous responsibility to ensure that that power is not exercised in a manner that amounts to abuse with the attendant consequence of tremendous harm to both the citizen and public confidence in the TTPS. In this case, the claimant would have endured years of waiting with the sword of Damocles over his head at the Magistrate's Court and then at the Assize not knowing when his ordeal would come to an end in circumstances where he should not have been charged at all. The TTPS would do well to ensure that abuse of this kind is eradicated from the service.

ISSUE 3 – *Damages*

Special Damages

118. It is settled law that special damages must be specifically pleaded and proven.¹⁴

119. The claimant testified that he paid the first lawyer the sum of \$3,500.00 in legal fees for representation at the Magistrates' Court. The proceedings from the Magistrates' Court are in evidence and it shows that

¹⁴ 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.

one attorney at law represented the claimant as he has testified. The claimant attached a receipt from that attorney to his statement of case and referred to same in his witness statement.

120. The claimant further testified that he was represented at the Assize trial, and that he paid a total of \$50,000.00 for that representation. The claimant also attached receipts for the sums paid to the attorney on record to his statement of case and referred to same in his witness statement.

121. The claimant's trial at the First Assize, Hall of Justice began on January 20, 2016 and ended on February 18, 2016, just under a month it began.

122. The claimant submitted that the sums of \$3,500.00, and \$50,000.00, for the Preliminary Enquiry and trial respectively are very reasonable. That the court should award the sum of \$53,500.00 in special damages.

Findings

123. In *The Great Northern Insurance Company Limited v Johnson Ansoia*,¹⁵ Mendonca JA stated as follows at paragraph 97;

"...it seems clear that the absence of evidence to support a plaintiff's viva voce evidence of special damage is not necessarily conclusive against him. While the absence of supporting evidence is a factor to be considered by the trial Judge, he can support the plaintiff's claim on the basis of viva voce

¹⁵Civil Appeal No: 121 of 2008

evidence only. This is particularly so where the evidence is unchallenged and which, but for supporting evidence, the Judge was prepared to accept. Indeed in such cases, the Court should be slow to reject the unchallenged evidence simply and only on the basis of the absence of supporting evidence. There should be some other cogent reason.”

124. The court finds there would be no doubt that the claimant would have incurred legal fees to retain Attorneys at law to represent him at the criminal proceedings. The claimant annexed the receipts he was given by both lawyers to his statement of case but the defendant did not consent to same going into evidence. The claimant did not annex the receipts to his witness statements nor did he point out the specific attachment numbers to the statement of case in his witness statement. Nonetheless, the evidence of the claimant in relation to the payment of the legal fees to both lawyers is credible, plausible, essentially unchallenged and his reference to receipts in his witness statement can only refer to those attached to his statement of case and the court so finds. The court will therefore award the sum of \$53,500.00 in special damages.

General Damages

125. Damages in cases of malicious prosecution are awarded under the three following 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.¹⁶

126. In ***Thaddeus Bernard v Quashie***,¹⁷ de la Bastide C.J. stated the following in relation to aggravated damages;

“The normal practice is that one figure is awarded as general damages. These damages are intended to be compensatory and include what is referred to as aggravated damages, that is, damages which are meant to provide compensation for the mental suffering inflicted on the plaintiff as opposed to the physical injuries he may have received. Under this head of what I have called ‘mental suffering’ are included such matters as the affront to the person’s dignity, the humiliation he has suffered, the damage to his reputation and standing in the eyes of others and matters of that sort. If the practice has developed of making a separate award of aggravated damages I think that practice should be discontinued.”

127. According to the evidence of the claimant, he voluntarily turned himself into the Tunapuna Police Station on December 30, 2009 and was arrested around 8:30 am. He was later released on station bail at around 12:00 p.m. On December 31, 2009 the claimant appeared before a Magistrate at the Tunapuna Magistrates’ Court where he was granted bail. However, he was unable to access bail in time and so was taken to the Maximum Security Prison, Arouca. Around mid-night, he was released on bail. The claimant testified that remaining in custody and being taken to prison were very traumatic.

¹⁶ See *Thaddeus Clement v the Attorney General of Trinidad and Tobago* Civ. App. 95 of 2010 at paragraph 12, per Jamadar JA

¹⁷ CA No 159 of 1992

128. On February 1, 2012 the claimant was committed to stand trial. The claimant was however indicted on a charge of burglary and a charge of wounding with intent to do grievous bodily harm. On January 20, 2016 the claimant's trial began before the First Assize, Hall of Justice, Port of Spain. On February 18, 2016 the claimant was found not guilty on both charges.

129. The claimant testified that being charged, arrested and having this matter hanging over his head for over five years was extremely embarrassing and traumatic, especially he being a soldier.

The submissions of the defendant

130. The defendant submitted that the claimant failed to argue and/or plead reasons why he ought to be awarded aggravated damages. The defendant further submitted that if it is found liable, an appropriate award of general damages to the claimant is \$50,000.00 to \$60,000.00. In so submitting, the defendant relied on the following cases.

131. Firstly, the case of **Bisham Seegobin v The Attorney General of Trinidad and Tobago**,¹⁸ wherein the claimant was awarded \$60,000.00 in general damages for false imprisonment and malicious prosecution. The offence for which he was charged was stealing and he was detained for a period of sixty-six hours. In calculating the award, Master Alexander accepted the following;

- i. The claimant was grabbed by the elbows and dragged out of his house by police in front of his wife, mother and children;
- ii. His neighbours witnessed the incident;

¹⁸ CV 2009-03089

- iii. He was made to strip and was placed in a prison cell in his underwear only;
- iv. He felt claustrophobic;
- v. He had to use a hole in the ground as a toilet which led to some form of depression;
- vi. There was no bed in the cell so he had to sleep and sit on the floor;
- vii. He was not allowed to bathe;
- viii. He was heckled and laughed at by prisoners and police officers;
- ix. The cell was in a deplorable state.

132. The defendant submitted that **Bisham Seegobin** supra is distinguishable from the instant case as the claimant in that case was charged with the more serious offence of stealing, there were many aggravating factors as promulgated above, and the conditions of the cell were pleaded by the claimant in that case. The claimant in this case however gave no evidence as to the condition of the cells in which he was detained and was charged with the less serious offences of burglary and wounding with intent to do grievous bodily harm.

133. Secondly, the case of **Darren McKenna v Estate Constable Leslie Grant #1662 & The Attorney General of Trinidad and Tobago**,¹⁹ wherein the claimant was granted \$40,000.00 in general damages for false imprisonment, malicious prosecution and aggravated damages. He was charged with possession of marijuana and was incarcerated for three days before being granted bail. It was stated that the claimant lost his job as a plumber, sustained severe shock and mental anguish, his credit was injured and his reputation brought into scandal, odium and contempt. The

¹⁹ CV 2006-03114

claimant also continually protested his innocence and was not allowed to bathe until the day he was first taken to court.

134. The defendant submitted that there are notable differences between **Darren McKenna** supra and the case at hand. That the claimant in Darren McKenna was said to have lost his job and that his reputation was brought into scandal, odium and contempt which is likely to have been caused by the nature of the offence for which he was charged.

135. Thirdly, the case of **Harold Barcoo v The Attorney General of Trinidad and Tobago & Inspector Phillip Browne**,²⁰ wherein the plaintiff was charged with possession of ammunition which was eventually dismissed. The plaintiff later claimed damages for false imprisonment and malicious prosecution. He was imprisoned for five days and the proceedings against him continued for over a year before it was determined. The sum of \$75,000.00 was awarded as compensatory damages which included an element of aggravated damages. The following factors were considered in making the award;

- i. The fact that while the proceedings were still pending at the Magistrates' Court, it was published in the newspaper;
- ii. The racial abuse and threats the plaintiff endured during his detention;
- iii. The conditions of the cage and the cell in which he was detained;
- iv. The trauma and mental anguish suffered by the plaintiff during the imprisonment and the prosecution;
- v. The fact that the defendants sought to the end to justify an arrest and prosecution that was clearly unjustifiable.

²⁰ H.C.A. No. 1388 of 1989

136. The defendant submitted that the plaintiff in Harold Barcoo supra was charged with a much more serious offence and was also detained for two days more than the claimant in the present case. That the prosecution in both cases went on for a similar length of time, however in Harold Barcoo, the treatment received and the conditions endured by the plaintiff while he was incarcerated surpassed that alleged by the claimant in this case. The defendant further submitted that the fact that the proceedings were published in the newspaper would have also been considered in that case in deciding an appropriate award of damages.

The submissions of the claimant

137. The claimant submitted that he was imprisoned for sixteen and a half hours. That the aggravating factors in this case were as follows;

- i. The claimant was a soldier, and was expected to uphold the law and protect citizens, which he would have been seen to have breached.
- ii. The claimant was charged with, and later stood trial for very serious offences.
- iii. The charge remained pending for some six and a half years.
- iv. Being taken to prison, and remaining in custody, were very traumatic for the claimant.
- v. Being arrested and charged, and having the matter hanging over his head were very traumatic for the claimant.

138. The claimant submitted that having regard to the circumstances of this case, the sum of \$120,000.00 to \$130,000.00 in general damages

(including aggravated damages) is reasonable. In so submitting, the claimant relied on the following cases;

- i. **Darsoo v PC Pierre and The Attorney-General of Trinidad and Tobago**,²¹ Kokaram J - the claimant was charged with using obscene language, resisting arrest and being in possession of a broken bottle to commit an indictable offense. He was kept in custody for six and a half hours. On March 16, 2018, he was awarded \$70,000.00 for malicious prosecution.
- ii. **Ramharack v The Attorney-General of Trinidad and Tobago**,²² Donaldson-Honeywell J - the claimant was charged with escaping lawful custody and using obscene language. He was kept in custody for four hours. On October 25, 2018 he was awarded \$70,000.00 for malicious prosecution, and \$25,000.00 for the detention.
- iii. **Allister Richards v The Attorney-General of Trinidad and Tobago**,²³ Donaldson-Honeywell J – the claimant was charged with careless driving. There was no deprivation of his liberty. On June 1, 2018, he was awarded \$70,000.00 for malicious prosecution.
- iv. **Lewis v The Attorney-General of Trinidad and Tobago**,²⁴ Boodoosingh J - the claimant was charged with using obscene language. He was kept in custody for eighteen hours before being put on an ID Parade. On July 2, 2010 he was awarded \$75,000.00 for malicious prosecution and \$50,000 for unlawful detention.

²¹ CV 2016-04653

²² CV 2015-01925

²³ CV 2016- 02922

²⁴ CV 2007-01952

Findings

139. Having regard to the evidence before the court, the fact that no evidence was led of the conditions of the cell in which he was detained (it ought not to be presumed that all cells are the same especially those at the Maximum Security facility) and the award in similar cases, the court considers in this case that it is not only the period of detention that is relevant to the award. The factors set out by the claimant above are of equal importance and carry much weight. The claimant would have been made to endure the ordeal of a journey through the criminal justice system as an accused person with all the attendant trappings and consequences both to his persona (feelings of indignity, disgrace and humiliation) and to his reputation. For example, when an accused is committed at the Magistrate's Court to stand trial, his bail expires and he must be granted fresh bail and processed once again. He is therefore taken into custody until he secures bail. Similarly, when he first appears at the Assize, the same process is once again carried out. Further, when the jury retires to consider their verdict, the bail of an accused person on trial expires and the accused is taken to the cells under the court to await the verdict. Logic would dictate that this may be one of the most harrowing periods for an accused person. So that these are matters which a court must consider and the impact on the mind of the person accused.

140. In all of the circumstances therefore, the court is of the view that an award of \$120,000.00 in general damages for malicious prosecution inclusive of an uplift for aggravation is appropriate.

Exemplary Damages

141. Exemplary damages are awarded in cases of serious abuse of authority. The function of exemplary damages is not to compensate but to punish and deter. The case of **Rookes v Barnard**²⁵ established that exemplary damages can be awarded in the following three types of cases;
- i. Cases of oppressive, arbitrary or unconstitutional action by servants of the Government;
 - ii. Cases where the defendant's conduct has been calculated by him to make a profit for himself which may well exceed the compensation payable to the plaintiff; and
 - iii. Cases in which exemplary damages are expressly authorized.

The submissions of the defendant

142. The defendant submitted that the claimant should not be awarded exemplary damages. That in the event the court accepts the claimant's evidence an award of \$10,000.00 in exemplary damages is appropriate. In so submitting, the defendant relied on the following cases.

143. Firstly, the case of **Gerald Rodney Rampersad v The Attorney General of Trinidad and Tobago**,²⁶ wherein the claimant had been charged with possession of marijuana for the purpose of trafficking contrary to the Dangerous Drugs Act, but the charges were later dismissed against him. He then brought his action seeking damages for malicious prosecution. The claimant was awarded exemplary damages in the sum of \$5,000.00 and

²⁵ (1964) AC 1129

²⁶ CV 2009-04698

that award was said by Dean-Armorer J to be made to reflect the court's disapproval of police action in fabricating a charge against the claimant. Her Ladyship further stated the following at paragraph 42;

“Moreover, it is clear from the admitted facts of this case that from October, 2005, when P.C. Haynes obtained the Certificate of Analysis, the prosecuting officer would have been aware that the charge of trafficking was unsupported by the evidence. P.C. Haynes nonetheless continued the prosecution of the original charge until it was dismissed on 14th November 2006. The continuation of the charge was entirely without reasonable and probable cause or any honest belief in the guilt of the claimant.”

144. Secondly, the case of **Chabinath Persad v The Attorney General of Trinidad and Tobago & Another**,²⁷ wherein the claimant was arrested and charged with possession of marijuana for trafficking and cultivation on March 7, 1997. At the police station, he was shown a paper on which was printed the name “Ganga Persad” which he was made to sign (but not read) despite indicating that it was not his name. He was taken to the Rio Claro Magistrate’s Court on March 10, 1997 where he heard the name “Ganga Persad” (his brother’s name) being called. Despite protesting that he was not that person, he was not granted bail and remanded into custody. He spend approximately two months and fourteen days at the Golden Grove Prison. He was granted bail in May 1997 and the matter against him came up for trial in July 2001 and went on until February 2003, when it was dismissed. Master Alexander awarded the claimant \$20,000.00 in exemplary damages. At paragraph 44 of the judgment, Master Alexander stated as follows;

²⁷ CV 2008-04811

“In the instant case, the first defendant acted with cynical disregard for the claimant’s rights. His actions were oppressive and actuated by venomous malice towards the claimant. Given that the first defendant was closely acquainted with the claimant, I formed the view that the arrest and prosecution of the claimant under a spurious name justify an exemplary award.”

145. Thirdly, the case of **Harold Barcoo** supra wherein the plaintiff was awarded \$10,000.00 in exemplary damages. Mendonca J (as he then was) stated the following at page 29 of the judgment;

“They arrested and detained the plaintiff without the slightest justification. The circumstances in this case clearly in my view amount to a total abuse of power and fall into the category of oppressive, arbitrary and unconstitutional action.”

The submissions of the claimant

146. The claimant submitted that once the court finds that Sgt. La Rode charged him with malice and lied to the court, exemplary damages should be awarded. That the claimant is prepared (quite generously) to accept \$25,000.00 in exemplary damages.

Findings

147. The court is of the view that this is a suitable case for the award of exemplary damages. The actions of Sgt. La Rode in proceeding to charge the claimant in light of the fact there was insufficient evidence to do so at

that time and his investigations would have made him aware of the many other matters that ought to have been considered prior to charging were arbitrary, oppressive and unconstitutional. The court must continue to send a message that such arbitrary exercise of power by agents of the State will not be tolerated. As such, the claimant is awarded the sum of \$20,000.00 in exemplary damages.

DISPOSITION

148. The order of the court is therefore as follows;
- i. The defendant shall pay to the claimant general damages for malicious prosecution inclusive of an uplift for aggravation in the sum of \$120,000.00 with interest thereon at the rate of 2.5% per annum from the date of filing of the claim to the date of judgment.
 - ii. The defendant shall pay to the claimant exemplary damages in the sum of \$20,000.00.
 - iii. The defendant shall pay to the claimant the sum of \$53,500.00 as special damages with interest thereon at the rate of 1.25% per annum from the date of arrest to the date of judgment.
 - iv. The defendant shall pay to the claimant the prescribed costs of the claim.

Ricky Rahim

Judge