

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No: CV2017-01294

Between

ELIZABETH JOGIE

Claimant

And

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

Before the Honourable Mr. Justice R. Rahim

Date of Delivery: September 25, 2019

Appearances:

Claimant: Mr. A. Mohammed instructed by Mr. G. Saroop

Defendant: Ms. T. Ramlogan instructed by Ms. J. Joseph

JUDGMENT

1. By Claim Form filed on April 13, 2017 the claimant seeks damages inclusive of aggravated and/or exemplary damages for malicious prosecution. The claimant claims that on or about November 20, 2000 she was at her business place situate at No. 12 Dopson Drive, Philippine when Police Constable Kirk Griffith ("Sgt. Griffith") approached her and informed her that she was suspected of "voter padding" by changing her address to another place.
2. The claimant alleges that she maintained her innocence and informed Sgt. Griffith that she was presently living at No. 12 Alice Street, La Romaine with her mother-in-law, Amina Mohammed (deceased) who was at that time on her death bed and that she and her family were in the process of moving out of their current address at Dopson Drive, where she and her then husband, Shaheed Mohammed were renting and not permanently residing.
3. According to the claimant, Sgt. Griffith then told her that she was lying and that if she did not give a statement to him, he was going to arrest her immediately. The claimant alleges that she maintained her innocence but that as she was fearful for her liberty and in fear that she would be taken away from her children, she acceded to Sgt. Griffith's demand.
4. On November 30, 2000 Sgt. Griffith laid an Information against the claimant alleging the following;

"On the 11th day of October 2000, at San Fernando and in the said County of Victoria, did knowingly and willfully make, otherwise than on oath, a statement false in a material particular, to wit, that sometime in June 2000, she ELIZABETH JOGIE, had changed her place of residence from 12 Dopson

Drive, Phillipine to 12 Alice Street, La Romain such statement having been made in a document which she was required to make by written law for the time being in force, namely Form 22 of Prescribed Form Rules made under the Representation of the People Act Chapter 2:01 Contrary to Section 8(b) of the Perjury Act, Chapter 11:14.”

5. In or around December 2, 2000 the claimant, upon being informed that there was a warrant for her arrest, voluntarily presented herself at the San Fernando Criminal Investigation Department office and was arrested by police officers attached to that station. At the station, the claimant was made to wait in the charge room for a period of approximately five hours before she was granted own bail.
6. On or around December 3, 2000 the claimant appeared before a Magistrate at the San Fernando Magistrate's Court and the aforementioned charge was read to her. The claimant was not called upon to plead and the matter was adjourned. Thereafter, the claimant was made to appear approximately thirty-one times at the San Fernando's Magistrates' Court. On April 22, 2013 Her Worship, Mrs. Ramoo-Haynes discharged the charge against the claimant on the basis of the continued non-appearance of the Complainant and no explanation of the absence of the Complainant.
7. Consequently, the claimant alleges that she was arrested, charged and/or prosecuted without reasonable and probable cause. That as a result of her malicious prosecution, she suffered embarrassment, humiliation, inconvenience, distress, irreparable damage to her character and reputation, loss and damage.

ISSUES

8. It is settled law that in a claim for malicious prosecution, the claimant must prove (a) that the law was set in motion on a charge for a criminal offence by the defendant, (b) that he was acquitted of the charge or that the proceedings were otherwise determined in his favour, (c) that in instituting and continuing the prosecution, the defendant did so without reasonable and probable cause, (d) that the defendant was actuated by malice and (e) as a consequence the claimant suffered damage.¹

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

THE CASE FOR THE CLAIMANT

10. The claimant gave evidence for herself. She is currently unemployed. She testified that on or about November 20, 2000 she was at her business place located at No. 12 Dopson Drive, Phillipine. That whilst in the process of moving out goods from a container at her business place, Sgt. Griffith approached her and informed her that she was suspected of “voter padding” by changing her address to another place.

¹ Manzano v The Attorney General of Trinidad and Tobago Civil Appeal No.151 of 2011

11. On hearing the aforementioned, the claimant became shocked and confused. She pleaded her innocence and informed Sgt. Griffith that she was presently living at No. 12 Alice Street, La Romaine with her mother-in-law, Amina Mohammed (deceased) who was at that time on her death bed. She further informed Sgt. Griffith that she and her family which included her then husband, Shaheed Mohammed ("Shaheed") and children were in the process of moving out of their current address at Dopson Drive. That they were temporarily renting the property at Dopson Drive and not permanently residing therein.
12. The claimant testified that at that juncture, Sgt. Griffith became visibly agitated and accused her of lying. That Sgt. Griffith informed her that if she did not give a statement to him, he was going to arrest her immediately. On hearing the aforementioned, the claimant again pleaded her innocence to Sgt. Griffith. However, as she was fearful for her life and liberty and that she would be taken away from her children, the claimant acceded to Sgt. Griffith's demand and gave a statement. Sgt. Griffith wrote the statement and made the claimant sign same.
13. The claimant testified that she was very disappointed and distressed that Sgt. Griffith had 1) threatened her by duress in order to obtain a statement from her and 2) stated that if she did not do so she would be arrested and placed in jail.
14. On or around December 2, 2000 the claimant was informed by a party of police officers that there was a warrant for her arrest. Consequently, she voluntarily presented herself at the San Fernando Criminal Investigation Department office where she was arrested by police officers attached to that station. At the station, the claimant was made to wait in the charge

room, under arrest, for a period of approximately five hours before she was granted own bail by the Justice of the Peace.

15. The claimant testified that as a result of her detention and prosecution, she was deprived of her liberty for a period of approximately five hours whilst she was detained in the charge room at the San Fernando Police Station. She further testified that she was deprived of her constitutional rights to life, liberty and security of person and enjoyment of property and the right not to be deprived thereof except by due process of law.

16. At the time of her arrest and prosecution, the claimant was employed as the Managing Director of Mohammed's Bookstore, Tunapuna Branch. During the period of her prosecution, several people would attend the store and chastise and jeer at her. Persons would call her a "*voter padder*", a "*corrupt individual*" and a "*corrupt UNC*". The claimant testified that the aforementioned was extremely embarrassing and debasing to her character and reputation. As a consequence, the claimant lost interest in her business and handed same over to her now ex-husband, Shaheed.

17. The claimant testified that the matter also took a toll on her personal life as soon after, Shaheed and she separated and their relationship subsequently ended in divorce. She further became disenchanted with her life as she was tired of persons repeatedly asking Shaheed and her about the matter.

18. After Shaheed and she separated and during the course of her prosecution at the San Fernando Magistrates' Court, the claimant moved to the United States in or around 2005 to start a new life and to seek new opportunities. However, her ability to find permanent work and new life in the United States was affected by the need for her to continuously return to Trinidad

and Tobago in order to appear before the San Fernando Magistrates' Court. The requirement to attend the San Fernando Magistrates' Court also caused the claimant financial stress as she had to expend all of her savings to book flights from the United States to Trinidad on numerous occasions.

19. Moreover, her matter was widely published in the daily news. The claimant's name and information were included in newspaper articles on several occasions. During that time, people who knew her would stay away from her and that affected her business.²

20. The claimant testified that to date, even though the matter has been discharged against her, she continues to be treated like a criminal. That due to the embarrassment she has suffered as a result of the incident, she continues to keep a low profile as people would continue to treat her like a "*UNC criminal*" and a "*voter padder*".

21. The claimant further testified that to date, she remains confused as to why the police charged her with the offence of perjury as she took the necessary measures in October, 2000 to change her address to 12 Alice Street, La Romain in accordance with the law and at no time did the Elections and Boundaries Commission ("*EBC*") ever inform her that there was a query to the change of address. Also, at no time was the claimant ever disqualified from voting by the EBC during her prosecution and to date.

22. The claimant was further confused as to how the police could charge her with giving a false statement when one Michael Sookdeo ("*Sookdeo*"), a

² A copy of the excerpts of the daily newspapers concerning the allegations of "*voter padding*", the claimant's arrest and prosecution at the San Fernando Magistrates' Court were annexed to the claimant's witness statement at "*E.J.3*".

field officer with the EBC at the material time, confirmed through one Radica Ramlogan (“Radica”) that the claimant was living at the changed address (12 Alice Street) which validated the change of address.

23. The claimant testified that she believes that Sgt. Griffith’s decision to charge her along with the other thirty individuals approximately one week prior to the 2000 General Elections was done with the intention to influence the results of the then upcoming General Elections and to deter people from turning out to vote. The claimant further testified that she believes that there was no evidence that showed that she ever gave a false declaration on the Form 22 document as alleged by the defendant.
24. As a result of this incident, the claimant has lost all trust and confidence in the Trinidad and Tobago Police Service (“TTPS”) and the EBC. She testified that it has been very hard to move on with her life and to come to terms with the ordeal and stress she suffered during her prosecution.
25. To date, as a result of the terrifying ordeal she was made to endure for thirteen years, the claimant is fearful of using her identification card for any transaction. Whenever she attends to the EBC’s office to renew her identification card, she is always nervous and tremble with fear that they would arrest her again for no apparent reason.
26. To date, the claimant continues to suffer many sleepless nights and fear that police officers would lock her up again for criminal offences which she never committed. As a result of this incident, the claimant now keeps to herself and no longer goes out as often as she used to. Consequently, the claimant testified that this incident has permanently scarred her for life. That she has missed out on several opportunities to better her life as a

result of the thirteen years she was required to attend the Magistrates' Court.

27. The claimant further testified that as a result of this incident, she has suffered great distress, embarrassment, humiliation, inconvenience, loss and damages.

The cross-examination of the claimant

28. According to the claimant, she conducted a wholesale, import and export business at the property situated at Dopson Drive. She rented that property on a yearly basis. Her lease was expiring in February, 2001. She could not recall the exact date she began renting that property but she testified that same was not her permanent address. That she rented it as a commercial business although she would sometimes sleep there.

29. In November, 2000 she was not conducting business at the property situated at Dopson Drive. She was then referred to her witness statement wherein it was stated that on November 20, 2000 she was at the property situated at Dopson Drive moving out goods. In response the claimant stated that she was at the property moving goods because she still had a lot of goods there. She then admitted that she was still conducting business at the property situated at Dopson Drive in November of 2000.

30. Prior to this matter, the claimant did not know Sgt. Griffith. November 20, 2000 ("the said date") was the first time she interacted with Sgt. Griffith. When Sgt. Griffith and the two other officers visited the claimant at the property on Dopson Drive, Sgt. Griffith identified himself by showing her his TTPS identification card. Sgt. Griffith also informed the claimant of the reasons for his visit. She admitted that he told her that he was investigating

electoral fraud or voter padding and that he showed her a copy of her form 22 which is the form notifying the EBC that there has been a change of residence.

31. The claimant was referred to the said form dated October 11, 2000 wherein the following was stated;

"...Take notice that I have changed my place of residence as follows:

From: 12 Dopson Drive, Phillipine

To: 12 Alice St La Romaine

On the day of June, 2000

My name is JOGIE ELIZABETH and my registration number is 19590408045..."

32. The claimant testified that someone at the EBC assisted her in filling out the form, that the person would have asked her the relevant questions and filled out the form. When the person had completed filling out the form same was either read over to her or given to her to read. The claimant then signed the form.

33. The claimant testified that she would have moved to Alice Street in December, 2000. That in June, 2000 she, Shaheed and their children would have started the process of moving out of Dopson Drive to Alice Street. The claimant initially testified that when Sgt. Griffith visited the property at Dopson Drive on the said date, she informed him that she was in the process of moving out of Dopson Drive. The claimant was then asked whether at the time of Sgt. Griffith's visit, she had not moved to Alice Street but was in the process of moving out of Dopson Drive. In response, she testified that when Sgt. Griffith visited Dopson Drive on the said date, she had already moved out of Dopson Drive and had been living at Alice

Street and that when Sgt. Griffith met her at Dopson Drive, she was there moving stuff.

34. The claimant agreed that Sgt. Griffith asked her in the presence of her brother-in-law, Raphique Mohammed (“Raphique”) if she wanted to give a statement in relation to the information she provided. She testified that she agreed to give the statement because Sgt. Griffith had forced and threatened to arrest her if she did not give the statement. She further agreed that Sgt. Griffith asked her whether she needed an attorney or relative present whilst the statement was being given and that she indicated that Raphique’s presence would suffice.

35. The claimant was referred to the statement she gave to Sgt. Griffith on the said date and she indicated to the court which signature on same was hers. In that statement, the following was stated;

“...I’m living at 12 Dopson Street Phillipine (sic) with my husband SHAHEED MOHAMMED approximately five to seven years now, his mother AMINA MOHAMMED lives at 12 Alice Street La Romaine. She is about seventy something years and she is very ill and is on her ...death bed. She is bed ridden. She doesn’t really like me because of how she speaks to me... I lived there up until the year 1989 and I moved out and rented different apartments at Vistabella Marabella San Fernando... we moved back to my mother’s home at Barrackpore...up until 1992 and since then I’ve been living at 12 Dopson Street Phillipine with my husband and four children... We are renting at this address and the lease would be up in February 2001 and we would be moving to my mother in law home at 12 Alice Street La Romaine next year. I’m still living here at the moment. In October of this year... 2000 my husband and I went to Election and Boundaries and we spoke to an employee there and told her that we don’t have long again at

12 Dopson Street Phillipine because the lease would be up in February 2001 and we would be moving to Alice Street La Romaine... She did not say anything all she did was filled out a white form putting in my name address Trinidad and Tobago identification card number... the month of application the month since I've been living at Alice Street La Romaine which is June 2000. I read the form and signed it and we left..."

36. The claimant accepted that after Sgt. Griffith had taken the aforementioned statement, he read same to her, enquired whether she had any objections to it and asked her to sign it. After the claimant was referred to her statement, she agreed that she and her family were at Dopson Drive and that they were going to move when the lease expired in 2001.

37. The claimant was aware that Raphique had also given a statement. She heard certain parts of Raphique's statement. She did not hear when Raphique said that she was his sister-in-law, that she was married to his brother and that they were living at Dopson Drive.

38. After the claimant and Raphique gave their respective statements, Sgt. Griffith cautioned the claimant and informed her of her rights and privileges. Sgt. Griffith also asked the claimant to submit a specimen of her signature.

39. Radica was Amina's (the claimant's deceased mother-in-law) house keeper. On October 21, 2001 Sookdeo visited 12 Alice Street to investigate whether the claimant was at that premises. The claimant was not present at Alice Street when Sookdeo made his visit as she was at her place of employment, Mohammed's book store. According to the claimant, when Sookdeo visited Alice Street, Radica informed him that she had been living

at that address for the past two months. The claimant denied speaking to Sookdeo via telephone.

THE CASE FOR THE DEFENDANT

40. The defendant called one witness, Retired Police Sergeant Kirk Griffith (“Sgt. Griffith”). Sgt. Griffith was a police officer for thirty-five years having joined the TTPS on July 16, 1980. He retired on December 15, 2015. Since January 25, 2016 he has been attached to the Homicide Bureau of Investigations located at Riverside Plaza Port-of-Spain as a Case Review Specialist.
41. On November 20, 2000 Sgt. Griffith was attached to the Criminal Investigations Department of the San Fernando Police Station. At that time, he was a police constable attached to the Electoral Fraud Squad Department based at the Homicide Bureau in San Fernando Police Station. His duties included attending briefings, reviewing and undertaking investigation of electoral fraud cases.
42. At or around November, 2000 Senior Superintendent, Ruthven Paul (“Paul”) was in charge of the Electoral Fraud Squad Unit (“the fraud squad”). Sgt. Griffith usually attended briefings with Paul during which they would review form 22 submitted to the police by the EBC together with other documents such as form A134 and form 19 which are forms used for validation or invalidation of a person’s residence. Form 22 is a document used when a person wishes to change their address to another location. The person wishing to change their address to another location is required to go to the EBC to fill out the form and submit the information.

43. After the form 22 is received by the EBC, the EBC assigns field officers to investigate the information on the form 22 that was submitted by the applicant. If the investigations reveal any evidence of electoral fraud, same is reported to the police. The police would then further investigate the matter and then consult the office of the Director of Public Prosecutions (“DPP”) for guidance and a recommendation.
44. In relation to this matter, there was a briefing on a date which Sgt. Griffith could not recall. Sgt. Griffith was given an assignment by Paul. He received the claimant’s information including her form 22 and other documents.
45. On November 20, 2000 Sgt. Griffith together with PC Matas and another police officer (whose name Sgt. Griffith could not recall) proceeded to the home of the claimant located at No. 12 Dopson Drive, Philippine. They were both dressed in civilian clothing. Upon arrival at the location, they exited the vehicle. They saw two persons at the house. Both PC Matas and Sgt. Griffith formally identified themselves by means of their TTPS identification card. Sgt. Griffith stated that the purpose of their visit was that of investigating electoral fraud. Sgt. Griffith further explained what he meant. The two persons at the house came to be known as the claimant and Shaheed.
46. Thereafter, Sgt. Griffith showed the claimant’s form 22 to her and asked whether she was aware of the said form. Sgt. Griffith testified that the claimant informed him that she did not fill out the form but signed same.³ She further informed him that the identification card number and signature on the form was hers. Sgt. Griffith cautioned the claimant.

³ A copy of the form 22 was annexed to Griffith’s witness statement at “K.G.1”.

47. Sgt. Griffith asked the claimant whether she lived at No. 12 Alice Street, La Romaine and she responded by saying “*we are actually not living there but intend to do so by February, 2001 when our lease expires at No. 12 Dopson Drive Phillipine*”. Sgt. Griffith further cautioned the claimant under Rule 2 of the Judges Rules and informed her of her rights and privileges. He also informed her of her right to remain silent and that anything that she said could be used as evidence.
48. Whilst interviewing the claimant, a male East Indian person arrived at No. 12 Dopson Drive and introduced himself as Raphique Mohammed (“Raphique”). Raphique informed Sgt. Griffith that he was the claimant’s brother-in-law. Sgt. Griffith confirmed the aforementioned with the claimant. Thereafter, Sgt. Griffith identified himself to Raphique by the use of his TTPS identification card.
49. At that time, PC Matas walked away to assist the other police officer with the interviewing of Shaheed.
50. In the presence of the claimant and Raphique, Sgt. Griffith placed markings “K.G. E.J 20/11/2000” on the claimant’s form 22. Sgt. Griffith then asked the claimant if she wished to give a written statement in relation to the information she provided and she agreed to do so. Sgt. Griffith further asked the claimant whether she needed an Attorney-at-law or relative present when the statement was being recorded. The claimant indicated that Raphique’s presence would suffice. Sgt. Griffith asked Raphique if he objected to the aforementioned and he did not.
51. Sgt. Griffith informed the claimant of her legal rights and privileges and took out a caution statement sheet form which he filled out in the claimant and Raphique’s presence. The claimant’s address, age, occupation and the

person present during the recording of the statement was written on the caution statement sheet. Sgt. Griffith testified that at no point in time was the claimant placed under arrest.

52. Sgt. Griffith then wrote the preamble as required under the Judges' Rules as follows; *"I, Elizabeth Jogie wish to give statement. I want someone to write down what I say. I have been told that I need not say anything unless I wish to do so and whatever I say may be given in evidence. I have also been told that I have the rights to retain a legal advisor or have a relative or friend present at the recording of this statement. I told the officer present that I want my brother-in-law Raphique Mohammed to be present."* Thereafter, Sgt. Griffith invited the claimant in the presence of Raphique to read the preamble to the statement which she did aloud. Sgt. Griffith asked the claimant if she understood same and she indicated that she did. Sgt. Griffith then invited the claimant and Raphique to sign and date the preamble which they did.

53. The claimant informed Sgt. Griffith that they could sit in her house at a table to record the statement. Consequently, she escorted Sgt. Griffith and Raphique into her house where the statement was recorded. Sgt. Griffith asked the claimant whether she wanted to write the statement herself and she stated that she did not and that he (Sgt. Griffith) could write it. The claimant therefore dictated her statement to Sgt. Griffith and he wrote down same.⁴ After the statement was taken, Sgt. Griffith re-read same to the claimant in the presence of Raphique. The claimant was asked if she understood the statement and she stated that she did.

54. Thereafter, Sgt. Griffith informed the claimant that he needed PC Matas to be present and whether she had any objections. She indicated that she did

⁴ A copy of the statement was annexed to Griffith's witness statement at "K.G.2."

not. Sgt. Griffith then called PC Matas who joined them at the table. Sgt. Griffith in the presence of PC Matas and Raphique, asked the claimant to read the statement aloud. Sgt. Griffith then asked the claimant and Raphique to initial some errors that had been made when he recorded the statement. Sgt. Griffith then asked the claimant if the contents of the statement were correct and she stated yes. Sgt. Griffith invited Raphique and PC Matas to sign the statement.

55. Sgt. Griffith further explained the certification of the statement to the claimant according to the Judges' Rules. The claimant indicated to Sgt. Griffith that she understood and affixed her signature to the certificate at the end of the statement. Raphique and PC Matas also signed the certificate.

56. Sgt. Griffith also asked Raphique for a statement and he complied.⁵ Raphique's statement stated as follows;

"... I know ELIZABETH JOGIE she is my sister in law and is married to my brother SHAHEED MOHAMMED and they live at 12 Dopson Street Phillipine (sic). On Monday 20th November 2000 at 1130 am I went to Shaheed's home at 12 Dopson Street Phillipine where I saw a man of negro descent speaking to ELIZABETH JOGIE. I realise that he was a police officer when he called me and identified himself as Constable Griffith he then told me in the presence of ELIZABETH that he was investigating the padding of the Electoral lost and that ELIZABETH was going to give him a statement and that before he wrote it she needed me to be present at the taking of that statement. ELIZABETH then said it is true. I didn't hear him forced or threatened her to give the statement it was of her own free will..."

⁵ A copy of Raphique's statement was annexed to Griffith's witness statement at "K.G.3".

57. On November 28, 2000 Sgt. Griffith, Senior Superintendent Paul along with other officers proceeded to the office of the DPP where they met with the former DPP, Mr. Mark Mohammed. The former DPP perused the claimant's file and advised that she should be charged contrary to section 8(b) of the Perjury Act, Chapter 11:14.

58. Sometime thereafter, Sgt. Griffith obtained a warrant for the claimant's arrest which was executed. Sgt. Griffith could not recall the exact manner in which the warrant was executed and whether the claimant's attorney was contacted.

59. On January 10, 2001 Sgt. Griffith continued enquiries, prepared forensic submission forms in relation to the claimant's form 22 and specimen handwriting and signatures in favour of the claimant.⁶ The aforementioned documents were submitted to scientific officer II, Glen Parmasar ("Parmasar").

60. On April 2, 2001 Sgt. Griffith met with Registration Officer, Utilda Wharwood ("Wharwood") at the office of the EBC and showed her a copy of the claimant's form 22 and the original A134 Field Investigation report form in which Field Investigator, Michael Sookdeo ("Sookdeo") recorded his findings in respect of the claimant. A statement was recorded from Wharwood.⁷

61. On October 18, 2001 Sgt. Griffith had a conversation with Sookdeo at his work place located at Siparia Junior Secondary School. Sookdeo was shown a copy of the form A134 Field Investigation report in respect of the

⁶ A copy of these documents were annexed to Griffith's witness statement at "K.G.4."

⁷ A copy of Wharwood's statement was annexed to Griffith's witness statement at "K.G.5."

claimant. Sookdeo wrote a statement with regards to the investigation he undertook.⁸

62. On May 2, 2002 Sgt. Griffith returned to the Forensic Science Centre and met with Parmasar. Parmasar provided Sgt. Griffith with the claimant's form 22 and two documents containing the claimant's handwriting and signature together with a certificate of analysis. Sgt. Griffith testified that the certificate of analysis confirmed that the claimant's handwriting and the handwriting on her form 22 was the same.⁹

63. Sgt. Griffith attended several hearings at the San Fernando Magistrates' Court. The matter was heard before His Worship Wellington who demanded that Sgt. Griffith bring witnesses for the defence which he did. After several hearings and adjournments, Sgt. Griffith was told by State Counsel for the Prosecution that he (Sgt. Griffith) would be informed of the date of the next hearing. However, on the next date of hearing, Magistrate Mrs. Ramoo-Haynes who held for Magistrate Wellington, dismissed the matter. Sgt. Griffith was not present at that hearing because he was told by State Counsel that she would inform him when the matter was listed to start. Sgt. Griffith found out from a police officer after the date of the last hearing that the matter was dismissed.

64. Sgt. Griffith testified that the charges against the claimant were laid based on his investigations, the evidence he had obtained which included the claimant's form 22, the statements from the claimant and PC Matas and the directions from the DPP. According to Sgt. Griffith, there was sufficient evidence to charge the claimant. Sgt. Griffith denied that he was negligent and/or malicious in his investigations.

⁸ A copy of the statement written by Sookdeo was annexed to Griffith's witness statement at "K.G.6."

⁹ A copy of the certificate of analysis was annexed to Griffith's witness statement at "K.G.7."

65. Sgt. Griffith further denied threatening the claimant to give a statement. He testified that the statement given by the claimant was given by her freely. That in Raphique's statement it was stated that he (Raphique) did not hear Sgt. Griffith force or threaten the claimant to give a statement.

The cross-examination of Sgt. Griffith

66. Prior to the year 2000, Sgt. Griffith did not investigate any electoral or perjury matters. Sgt. Griffith did not receive a complaint directly from the EBC in relation to the claimant. Senior Superintendent Paul had received the information/report from the EBC relating to the claimant and briefed Sgt. Griffith on same. As such, Sgt. Griffith never saw any written report from the EBC relating to the claimant. According to Sgt. Griffith, the information that he was briefed on by Senior Superintendent was not logged into any pocket diary or station dairy.

67. Sgt. Griffith testified that he did not receive a form 19 in relation to the claimant. He received a form 22 and a form A134 in relation to the claimant. The forms 19 and A134 are what the EBC's Field Officers are given to carry out their investigations. Sgt. Griffith further testified that the claimant's form 22 was invalid.

68. On November 20, 2000 Sgt. Griffith and the other two officers, PC Matas and retired Inspector Neptune arrived at Dopson Drive at approximately 11:00 am. At the time of executing his witness statement, Sgt. Griffith could not recall Inspector Neptune's name. Prior to attending Dopson Drive, Sgt. Griffith conducted no investigations to determine whether that address was the claimant's place of residence. Sgt. Griffith's purpose of attending to Dopson Drive was to determine whether the claimant lived permanently there. When he arrived at Dopson Drive, he did not see any

containers at the property. He did not have any search warrant to go into the claimant's property at Dopson Drive. Sgt. Griffith had his pocket diary on his person when he attended Dopson Drive. He testified that he did log his conversations with the claimant in his pocket diary however he did not log his observations of the property at Dopson Drive. Sgt. Griffith could not find his pocket diary.

69. When he arrived at Dopson Drive, he observed two persons, the claimant and her husband. He did not see any workers present. Sgt. Griffith identified himself to the claimant. He denied that he threatened the claimant and told her that if she did not give a statement, he would arrest her. Sgt. Griffith began recording the claimant's statement at approximately 11:50 am. Sgt. Griffith did not enquire as to which address the claimant's bills were being sent to. He further did not enquire whether the claimant had moved all of her stuff from Dopson Drive because she had stated that she intended on moving to Alice Street when her lease expired in 2001. Sgt. Griffith could not recall whether he visited Alice Street.

70. Sgt. Griffith did not obtain a statement from Shaheed as he was also being interviewed/investigated for electoral fraud by retired Inspector Neptune.

THE OFFENCE

71. The claimant was charged with the following offence;

"On the 11th day of October, 2000 at San Fernando and within the limits of the said County of Victoria, did knowingly and wilfully make, otherwise than on oath, a statement false in material particular, to wit, that sometime in June 2000, she Elizabeth Jogie, had changed her place of

residence from 12 Dopson Drive, Philippine to 12 Alice Street, La Romain such a statement having been made in a document which she was required to make by written law for the time being in force, namely Form 22 of Prescribes Form Rules made under the Representation of the People Act Chapter 2:01 contrary to Section 8(b) of the Perjury Act, Chapter 11:14”

72. **Section 8 of the Perjury Act** provides as follows;

“8. Any person who knowingly and wilfully makes (otherwise than on oath) a statement false in a material particular, and the statement is made—
(a) in a statutory declaration; or
(b) in an abstract, account, balance sheet, book, certificate, declaration, entry, estimate, inventory, notice, report, return, or other document which he is authorised or required to make, attest or verify by any written law for the time being in force; or
(c) in any oral declaration or oral answer which he is required to make by, under or in pursuance of any written law for the time being in force, is liable, on conviction on indictment, to a fine and to imprisonment for two years.”

73. Further, **Section 15 of the Perjury Act** provides as follows;

“15. A person shall not be liable to be convicted of any offence against this Act, or of any offence declared by any other written law to be perjury or subornation of perjury or to be punishable as perjury or subornation of perjury, solely upon the evidence of one witness as to the falsity of any statement alleged to be false.”

74. Moreover, **Section 66 of the Registration Rules of the Representation of the People Act Chapter 2:01** provides as follows;

“66. (1) Subject to this rule, the question as to whether a person is or was resident at any material time or during any material period shall be determined by reference to all the facts of the case.

(2) The place of residence of a person is generally that place which has always been, or which he has adopted as, the place of his habitation or home to which place, when away therefrom, he intends to return. Specifically, when a person normally sleeps in one place and has his meals or is employed in another place, the place of his residence is where the person sleeps.

(3) Generally, a person’s place of residence is where his family is; if he is living apart from his family, with the intent to remain so apart in another place, the place of residence of such person is the other place.

(4) Temporary absence from a place of residence does not cause a loss or change of place of residence.

(5) Any person who has more than one place of residence may opt in respect of which place he desires to be registered, in the form set out as Form No. 31 in the Prescribed Forms Rules, and shall send the same to the Registration Officer or Officers of the registration areas where his places of residence are situated.

(6) No person shall for the purposes of these Rules be deemed to be resident in any polling division to which he has come for the purpose of engaging temporarily in any employment of a seasonal nature...”

ISSUE 1 – Reasonable and probable cause

Law

75. 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

76. The defendant submitted that the claimant proved to be an unreliable witness as her evidence under cross-examination was inconsistent with her evidence in chief and her pleaded case.

77. According to the defendant, the claimant alleged in her witness statement that Sgt. Griffith threatened her into giving the statement by stating that he would arrest her immediately if she did not do so. The defendant submitted that the claimant's evidence seemingly contradicts the aforementioned allegation. That during cross-examination, the claimant confirmed that Sgt. Griffith upon approaching her informed her of his

name, showed her his TTPS identification card and informed her of the reasons of his visit.

78. The defendant further submitted that although the claimant claimed that Sgt. Griffith threatened to arrest her and forced her to make a statement, she agreed to dictate a statement and in fact, led him to a metal table where they sat together with her brother-in-law and she dictated the statement to Sergeant Griffith. That even though the claimant was so fearful as she claimed, she dictated a full historic statement with complete details of her living arrangements stemming from the time 1981 and even gave details of her relationship with her mother-in-law. According to the defendant, the aforementioned information would not have been forthcoming if the claimant was threatened and was in fear.

79. The defendant submitted that the claimant confirmed that the statement was true and correct and that it bore her signature as having certified it as being true and correct. That even after the statement confirmed that the claimant had been living at Dopson Drive and that she was going to move when the lease expired in February, 2001 Sgt. Griffith did not arrest the claimant. As such, the defendant submitted that the claimants' allegations against Sgt. Griffith is a total fabrication and a failed attempt at showing that his motives were malicious.

80. The defendant submitted that it should be noted that although, the claimant's brother-in-law, Raphique was present on the said day and also witnessed her dictating her statement to Sgt Griffith, she did call him as a witness in this matter to support her case.

81. According to the defendant, Sgt. Griffith's evidence during in cross-examination was consistent with their pleaded case and was supported by

contemporaneous documents. The defendant submitted that evidence of the witnesses when compared to the contemporaneous documents, the pleaded case and the inherent probability of the rival contentions all weigh in favour of the defendant's case being more probable.

82. According to the defendant, the claimant alleged that Sgt. Griffith had fabricated and/or concocted the charges against her. The defendant submitted that although the standard of proof is on a balance of probabilities, a court would require the most cogent evidence to support such a finding of concoction and/or fabrication.¹⁰ That where the allegations is that the police concocted a case, the discrepancies must be such that they point to a serious lack of credibility.

83. The defendant submitted that the claimant has failed to discharge her burden of proving fabrication and/or concoction on the evidence. That she has not provided any evidence of same. According to the defendant, in order to discharge her burden of proving concoction and/or fabrication, the claimant was required to provide evidence of how the concoction and/or fabrication occurred. The defendant submitted that she ought to have produced the documents and evidence that were relied upon in order to effect the charge and demonstrate that the said evidence was concocted. That she was required to use the evidence/statements which were sent to the DPP to inform the making of the charge to demonstrate the fabrication and concoction that she alleged. The defendant further submitted that the claimant failed to do so and has provided no proper reason for failing to do so.

¹⁰ CV 2007 – 3211: Wayne Carrington v Attorney General, para 6 per Justice Gobin

84. According to the defendant, the claimant also alleged that its agents failed to make any proper and adequate investigations prior to arresting and/or charging her. That Sgt. Griffith had insufficient or no reliable evidence to arrest and/or charge her. The defendant submitted that proof of negligence and recklessness is not evidence of lack of reasonable and probable cause and, more importantly, is not evidence of malice.

85. The claimant further alleged that the defendant's agents failed to adduce any reliable evidence against her. The defendant submitted that it is not required of any prosecutor that he must have tested every possible relevant fact before he takes action. That the prosecutor's is not to ascertain whether the claimant has a defence but rather, whether there is a reasonable and probable cause for a prosecution.¹¹

The submissions of the claimant

86. The claimant submitted that her case of malicious prosecution is premised on the basis that there was a fabrication and/or insufficient evidence, that there was a lack of evidence of an honest belief in her guilt and furthermore, there was insufficient evidence to establish that the elements of the offence of perjury was made out against her and that there was an improper motive and/or malice when she was charged.

87. According to the claimant, she was mostly cross-examined on largely irrelevant issues and in relation to material issues, she was a generally forthright, consistent and truthful witness. The claimant submitted that during cross-examination, she testified that Dopson Drive was never her

¹¹ See *A v New South Wales* [2007] 3 LRC 693 (at page para. 86), citing *Herniman v Smith* [1938] 1 All ER 1 at 10.

permanent address and that it was mainly used as a business address. That she reiterated that her fixed place of abode was always Alice Street.

88. The claimant was cross-examined on her form 22 and she confirmed that she signed the form but that the personnel at the EBC had filled out the other contents of the document. According to the claimant, she during cross-examination testified that in June, 2000 she had moved and transitioned to Alice Street and that her children were already living there. The claimant submitted that it is pertinent to note that **Section 66 of the Registration Rules of the Representation of the People Act Chapter 2:01** does not preclude a person from having multiple residences and moreover, temporary absence from a place of residence does not cause a loss or change in the place of residence.

89. The claimant submitted that she never disputed that the statement taken by Sgt. Griffith on the said date was not signed by her. That she always maintained that it was Sgt. Griffith who had prepared the statement and that she signed it as she was told by him that should she not sign, she would be arrested and taken away from her children.

90. According to the claimant, she was consistent in her testimony as it relates to the fact that she had employed a housekeeper, Radica at her place of residence at Alice Street and that she recalled a field officer from the EBC having interviewed Radica as it relates to her (the claimant's) place of residence.

91. The claimant submitted that most of her witness statement was not materially challenged, that she attempted to answer all questions posed to her and that any inconsistencies were not damaging to her case in any way. The claimant further submitted that the court should take particular

note that there was no material challenge to most of her evidence and that Counsel for the defendant did not put the defendant's case to her.

92. The claimant submitted that during cross-examination Sgt. Griffith proved to be an unreliable, inconsistent witness whose demeanour was evasive, aggressive and at times hostile to Counsel for the claimant. According to the claimant, Sgt. Griffith provided little or no assistance to the court since he refused to answer questions posed to him by Counsel for the claimant and seemed to be answering his own questions and not those of Counsel for the claimant.

93. The claimant submitted that during cross-examination, Sgt. Griffith admitted that he never made any checks at the residence of the claimant to verify whether or not she was living there. Sgt. Griffith further testified under cross-examination that the claimant's form 22 was invalidated however when asked to show where in his witness statement such evidence existed, he was unable to answer. When questioned on his version of events which allegedly took place on the said date Sgt. Griffith admitted that he did not do any prior investigations to determine whether either Dobson Drive or Alice Street was the residence of the claimant.

94. When questioned further on the prior investigations, Sgt. Griffith alleged that he had a briefing with Paul and that the claimant's registration was invalidated by Wharwood. The claimant submitted that aforementioned was not mentioned in Sgt. Griffith's witness statement or in the defendant's Defence.

95. Sgt. Griffith was then questioned on the interview of the claimant at Dobson Drive. He testified that the claimant's then husband, Shaheed was present at the material time, yet under cross-examination agreed that the

alleged statement he took from the claimant made no mention of Shaheed's presence. Sgt. Griffith also claimed to have a pocket diary in his possession, however no extracts from his diary was ever disclosed to the court.

96. During cross-examination, Sgt. Griffith further stated that PC Matas came after the statement was taken. According to the claimant, the aforementioned was inconsistent with Sgt. Griffith's witness statement in which he stated that PC Matas was present when he arrived at Dobson Drive. Moreover, Sgt. Griffith stated that the caution of the claimant was recorded in the Station Diary, however same was not disclosed to the court.

97. When questioned as to whether any further enquiries were made at the EBC prior to charging the claimant, Sgt. Griffith claimed to have spoken to Wharwood and Sookdeo, however during cross-examination he agreed that the statements before the court were recorded after the charging of the claimant. Sgt. Griffith further conceded during cross-examination that he had no statements from Wharwood and Sookdeo when the file was allegedly sent to the DPP for advice. Sgt. Griffith also agreed that there was no evidence before the court as to what information was obtained in the investigation of the claimant and that the copy of file submitted to the DPP was not disclosed to the court.

98. The claimant submitted that the court, for the reasons set out above, ought to take note of the demeanour of Sgt. Griffith, the lack of evidence of what was in Sgt. Griffith's mind at the time of laying the charge, the absence of evidence from the EBC stating that a complaint was submitted by it to the police and find on a balance of probabilities, that Sgt. Griffith,

the charging officer, had no honest belief and/or no reasonable and probable cause to charge the claimant.

99. The claimant submitted that in order to determine whether there was reasonable and probable cause to charge her with the offence of perjury, there is a statutory requirement of corroboration of the statement alleged to be false. That the corroborative evidence maybe documentary evidence in addition to the independent witness evidence of the falsity of the statement.

100. The claimant submitted that having regard to the evidence before the court, the defendant has failed to demonstrate to this court what evidence Sgt. Griffith had in his possession at the time of laying the charge, including any corroborative evidence. As such, the claimant submitted that Sgt. Griffith failed to demonstrate that he in fact had an honest belief in her.

Findings

101. For there to have been reasonable and probable cause in respect of both the subjective and objective elements of the test, Sgt. Griffith must have had an honest belief that on the information available to him at the time of the charge, there was a case fit to be tried both as a matter of his subjective belief and also as a matter of objective assessment by the court.

102. According to the evidence of the defendant, Sgt. Griffith was assigned by his then Senior Superintendent to do further investigations into the claimant's form 22. Consequently, on November 20, 2000 Sgt. Griffith and two other officers went to Dopson Drive where Sgt. Griffith interviewed the claimant. Sgt. Griffith showed the form to the claimant

and asked whether she was aware of the said form. The claimant informed Sgt. Griffith that she did not fill out the form but signed same and that the identification card number and signature on the form was hers. She also admits that she provided the information to the person who filled out the form and that she was aware of its contents and understood same. It follows that there was information before Griffith and the claimant provided the information that she had moved residence.

103. It was also the evidence of the defendant that during the interview, the claimant made certain utterances to Sgt. Griffith to the effect that she was not living at Alice Street and that she intended to move to Alice Street when her lease to the property at Dopson Drive expired in February, 2001. This oral statement demonstrates a clear inconsistency between with the information provided by the claimant in the form 22. This is information upon which Griffith may have relied and in fact did rely.

104. Further the claimant provided a written statement in the presence of her brother-in-law, Raphique to Sgt. Griffith. In that statement, the claimant also stated that she was living at Dopson Drive, and that she intended to move to Alice Street when her lease had expired. Sgt. Griffith also took a statement from, Raphique. In that statement, Raphique stated that the claimant was living at Dopson Drive. Both of these statements, one coming from the claimant herself and the other from her relative was information that Griffith may have also relied on.

105. During cross-examination, the claimant admitted that she was still conducting business at the property situated at Dopson Drive in November of 2000 and that she would have moved to Alice Street in December, 2000. That in June, 2000 she, Shaheed and their children would have started the process of moving out of Dopson Drive to Alice Street. The claimant initially

testified that when Sgt. Griffith visited the property at Dopson Drive on the said date, she informed him that she was in the process of moving out of Dopson Drive. The claimant was then asked whether at the time of Sgt. Griffith's visit, she had not moved to Alice Street but was in the process of moving out of Dopson Drive. In response, she testified that when Sgt. Griffith visited Dopson Drive on the said date, she had already moved out of Dopson Drive and had been living at Alice Street and that when Sgt. Griffith met her at Dopson Drive, she was there moving stuff. However, after the claimant was referred to the statement she gave to Sgt. Griffith, she agreed that she and her family were residing at Dopson Drive and that they were going to move when the lease expired in 2001.

106. The court is of the view that the above amount to clear material inconsistencies on the part of the claimant. These inconsistencies within her testimony have greatly affected her credibility.

107. Further, and more importantly in the context of the present claim, it means that the weight of the information before Griffith at the time he laid the charge both from available viva voce evidence and from the contemporaneous documents tipped the scale in favour of the residing of the claimant being Dopson Drive at the time she made the declaration to the EBC and that she would have been aware of her false statement to the EBC. It is therefore clear to the court that it was reasonable to believe that the claimant has committed the offence and Griffith did in fact so believe. The information was in the court's view pellucid.

108. Additionally, the fact that Sookdeo, a temporary field officer with the EBC stated in a statement given to Sgt. Griffith that he (Sookdeo) visited Alice Street on October 24, 2000 to investigate whether the claimant lived there and was told by Radica that the claimant was living

there for the past two months (having not met the claimant) was insufficient in the court's view to tip the weight of the information the other way. It was therefore not enough (contrary to the submission of the claimant) to support a finding that Sgt. Griffith lacked reasonable and probable cause to charge the claimant and the court so finds.

109. It should be noted that Sgt. Griffith was not in receipt of Sookdeo's statement at the time he charged the claimant. Although Sgt. Griffith did not have that statement of Sookdeo at the time of charging the claimant, the court found it appropriate to note that in that statement Sookdeo stated that even though he validated the claimant's registration, he was of the opinion that it should be further investigated. The court finds that that evidence lends credence to the defendant's evidence that the claimant's form 22 was sent to the police for further investigations.

110. Upon those further investigations, Sgt. Griffith obtained both oral and written evidence from the claimant that she was not residing at Alice Street. Sgt. Griffith had not only the admission of the claimant but also the statement from Raphique in which Raphique stated that at the material time, the claimant was residing at Dopson Drive. That being the case, Sgt. Griffith would have had an honest believe that the claimant did knowingly and willfully make a false statement.

111. The court also does not believe the claimant's evidence that she was forced and/or threatened by Sgt. Griffith into giving a statement. During cross-examination, the claimant testified that although Sgt. Griffith threatened to arrest her and forced her to make a statement, she was the one who offered to sit at the table inside of her home to have the statement executed. This did not in the court's view appear to be the actions of someone who was threatened to provide a statement.

112. Even more telling of the authenticity of the statement, it is the evidence that the claimant gave a very detailed statement complete with particulars of her living arrangements stemming from 1981 and of her relationship with her mother-in-law. These clearly appear to be matters which on the evidence would not have been within the knowledge of Griffith. Additionally, Raphique certified that he did not hear Sgt. Griffith force or threaten the claimant into giving a statement and that the claimant's statement was given of her own free will. Surely if this was not the case, the claimant may have wished to call him as a witness to prove otherwise but she has failed to do so. The court therefore accepts the certification of Raphique on the statement in that regard.

113. The claimant made heavy weather of the fact that Sgt. Griffith admitted that prior to attending Dopson Drive, he did not conduct any investigations to determine whether either Dobson Drive or Alice Street was her residence. The court finds that the issue Sgt. Griffith was investigating was not whether Dopson Street was the claimant's residence but whether she told an untruth when she declared that her residence was Alice Street. It follows that the argument of a failure to investigate whether she lived at Dopson Drive does not and cannot assist the case for the claimant. In that regard, it is also a matter of common sense that an individual may have more than one residence. However, be that as it may, the information in possession of Griffith was that the claimant by her form 22 declared that she in fact lived at Alice Street and her admission in her statement given to Sgt. Griffith was that Alice Street was not her residence.

114. Finally, the claimant submitted that the defendant failed to demonstrate that Sgt. Griffith had reasonable and probable cause to charge her as he did not possess statements from Wharwood and Sookdeo when he sent the file to the DPP for advice. Further that there was no

evidence before the court as to what information was obtained in the investigation of the claimant and the copy of file submitted to the DPP was not disclosed to the court. The court does not agree with those submissions. The fact remains and the court so finds that at the time of charging the claimant, Sgt. Griffith had in his possession a statement from the claimant in which she clearly admitted that she was not living at Alice Street and that she provided false information to the EBC which was written down on the form and approved by her. Sgt. Griffith also possessed a statement from her brother-in-law, Raphique in which he stated that the claimant was resident at Dopson Drive. As such, it was more than clear to this court that Griffith had reasonable and probable cause to charge the claimant.

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

DISPOSITION

116. The order of the court is therefore as follows;
- i. The claim is dismissed;
 - ii. The claimant shall pay to the defendant the prescribed costs of the claim on the basis of the value of the claim being one for \$50,000.00 in the sum of \$14,000.00.

Ricky Rahim
Judge