

REPUBLIC OF TRINIDAD AND TOBAGO

**IN THE HIGH COURT OF JUSTICE
(Sub-Registry, San Fernando)**

Claim No. **CV2019-01350**

BETWEEN

JUNIOR JOHN

Claimant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

Before the Honourable Mr. Justice R. Rahim

Date of Delivery: December 13, 2021.

Appearances:

Claimant: Mr. K. Ratiram.

Defendant: Mr. A. Cole instructed by Ms. R. Ragbir and Ms. A. Hosang.

JUDGMENT

1. This claim for malicious prosecution arose out of a charge preferred against the Claimant subsequent to an incident that occurred on October 1, 2009, in Buenos Ayres. The evidence against the claimant stems mainly from a statement from the victim of a robbery, Samuel Paul¹.

2. In summary, the statement by Paul given to the police after the robbery sets out the following.

3. On October 1, 2009, Paul got into an argument with Neil Walker whose brother Clemson Davis subsequently hit Paul with a stone behind his neck. Paul left the area of the incident and walked home with his wife. Sometime later, upon hearing the screams of his wife he proceeded outside of their house (which he described as being well lit with house lights and streetlights) and observed the claimant with a cutlass and Davis with a shovel approaching his home. The claimant came up to him and proceeded to chop him all over his body. At some point, Davis shouted out to the claimant that he could kill Paul so the assailants left the house through the back door. Paul was wounded and taken to the Point Fortin Hospital and later transferred to the San Fernando Hospital. He recalled that he stabbed the claimant with a pair of scissors either in his neck or chest area during the incident.

4. The claimant was arrested and charged with the offence of wounding with intent to do grievous bodily harm. He appeared before the Magistrate Court and was committed to stand trial at the High Court for the offence as charge. He was indicted by the Director of Public Prosecutions not only for that offence but also for the offence of attempted murder. On the second day of the trial at the High Court, the virtual complainant, Samuel Paul did not appear to give evidence and the case was dismissed. It should be noted that Davis, his co-accused had been discharged at the Magistrate's Court.

¹ TB 2, PDF 19, 20 namely the recorded statement of Samuel Paul.

5. The defendant contends that Sgt. Felix acted with reasonable and probable cause in preferring the charges. In addition, Sgt Felix solely relied on the statement of Paul, from which he, Sgt Felix formed an opinion and subsequently obtained a warrant for the claimant's arrest.

Issues to be determined

6. It is settled law that to succeed in an action 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 damage².
7. Since (a), (b) and (c) are not in dispute, the issues of law in this case are as follows:
 - i. Whether the claimant was maliciously prosecuted by the defendant's servant, Sergeant Felix; and
 - ii. If it is found that Sergeant Felix was actuated by malice in setting the law in motion against the claimant, what is the appropriate measure of damages.

Case for the Claimant

8. The claimant gave evidence for himself and called two other witnesses, his wife, Nadia John, and friend Wendell Laing.

Junior John

9. The claimant, a construction worker who is also called 'African', lives with his wife and children. He described the events of October 1, 2009, which led to instant proceedings. That

² See *Manzano v The Attorney General of Trinidad and Tobago* Civil Appeal No. 151 of 2011.

morning, the claimant went hunting with friends and returned home sometime in the evening. Thereafter, his friend Wendell Laing visited him, they cooked and Laing left sometime around 11:30 p.m.

10. The following day, the claimant says he heard of an allegation against him that he assaulted one Samuel Paul. Paul lived in Buenos Ayres, the same address as the claimant. He dismissed the allegations and told himself it was a baseless rumour. It is his evidence therefore that no such incident ever occurred.
11. The claimant relied on the Station Diary entry in which Sgt Felix detailed the events of October 1, 2009³. According to the note, one Maurisa Rambert reported that she heard her neighbour Roxanne in an argument with her husband Andy Paul. Rambert also saw Paul with multiple chop wounds. Thereafter, Felix and PC Boodram responded to the incident and went to Spring Trace, Buenos Ayres. The officers spoke with Paul's sister, Christine Gludon, and she identified the claimant as one of the assailants (the other being 'Clem') who was armed with a cutlass and who chopped Paul about his body. In addition, the claimant sustained injuries after Paul stabbed him with a scissors. The entry further set out that the incident occurred in an area lit by electrical streetlights. The claimant denied there were streetlights close to Paul's address.
12. It is the claimant's evidence that during the weekdays he was not at home between the hours of 7:00 a.m. and 5:00 p.m. but on weekends he is usually at home. Nonetheless, he denied that any police officer visited his home from October 1, 2009, to March 5, 2010.
13. On March 5, 2010, the claimant was arrested at his home. According to him, the experience was embarrassing and traumatic. Further, the complainant, Sgt Felix did not caution him or inform him of his constitutional rights. The claimant pleaded with Sgt Felix to interview his wife and Laing to confirm that he the claimant was at home when the incident occurred.
14. After his arrest, the claimant was kept in custody until he appeared before a Magistrate on March 8, 2020. He was jointly charged with Clemson Davis and bail was denied. Thereafter,

³ See TB 2, PDF 12 namely a message from Maurisa Rambert at 9:25 p.m.

he was remanded in custody until March 10, 2010. On that day, he was granted bail and obtained the same later that afternoon. During his time in custody, he described the cell as filthy and uncomfortable and, from the experience, he suffered emotional distress. The claimant claims that he also suffered emotional distress upon his release from prison as persons would say certain things that painted him as a violent person.

15. It was his evidence that no evidence from the alleged witnesses mentioned in the station diary entry was led at the Preliminary Inquiry at the Magistrate's Court. . On December 20, 2010, the claimant was committed to stand trial. On June 1, 2017 the Claimant's case was first called before the High Court where fresh bail was set and he was remanded to prison as he could not have secured bail until June 10, 2017. On October 3, 2018 his case was called at the Assize and the State sought and obtained an adjournment on the basis that Paul was absent. The case was adjourned to October 10, 2018 on which day Paul was again absent and the State informed the court that it could not prove its case without Paul. As such, the charges were dismissed against the claimant.

16. According to the claimant, he expended \$60,000.00 in legal fees.

Cross-examination by the defendant

17. He testified that at the time of the incident the Claimant worked at Petrotrin, Point-a-Pierre, but he gave no further details of his employment. On the day of the incident, he returned from hunting around 3:00 p.m. and maintained that his friend left around 11:30 p.m. The claimant was of the view there was no need to clear his name of the rumour that he had assaulted Paul, because he the claimant did not commit the act. Further, he denied that he was in hiding.

18. Both the claimant and Paul reside in Buenos Ayres but at different street addresses. The claimant testified that he lives about a quarter mile from Paul and, therefore, his house is not in proximity to Paul. By that the court assumes that he means close proximity. Furthermore,

he maintained that the day after the incident, no police officers visited him at his home. When questioned about his whereabouts during the period of October 3, 2009, to March 4, 2010, the claimant testified that he was at work during the hours of 7:00 a.m. and 5:00 p.m. He went on to explain that if police officers were looking for him, his parents and other neighbours living close by would have informed him. In addition, he testified that he is well-known in his community.

19. During the preliminary hearing at the Magistrate's court, Paul pointed to the claimant and identified him as the person who assaulted him. The claimant accepted this but maintained that he did not assault Paul.

20. He testified that a streetlight had recently been mounted where the incident allegedly occurred.

21. The Attorney for the defendant referred to the claimant's antecedents and the claimant accepted that he was charged in the past for the offences of murder, assault and resisting arrest.

22. In relation to the claimant's contention that he suffered emotional distress, he testified that he did not provide any medical documents in his witness statement.

Nadia John

23. Nadia is the wife of the claimant. At the time of the incident, she was pregnant with the couple's fourth child.

24. She confirmed that the claimant left home to hunt on the morning of October 1, 2009 and returned home at around 3:30 p.m. Furthermore, around 6:00 p.m. she saw her husband and Laing cooking in their backyard and thereafter, periodically when he came into the kitchen. According to Nadia, when she was in the house, she heard the claimant and Laing talking and

laughing outside. Around 10:00 p.m. Nadia went outside and informed the claimant she was retiring to bed.

25. The following day, the claimant informed her of a rumour that he the claimant had assaulted Paul and Nadia similarly dismissed the rumour.
26. According to Nadia, the claimant was arrested in the presence of his children and neighbours. The arrest allegedly traumatized the older children. Furthermore, Nadia says she suffered emotional distress when the claimant was denied bail at the first hearing at the Magistrate's court and during his incarceration.
27. Prior to the claimant's arrest, Nadia says she was always at home while the claimant was at work. Accordingly, during the period October 1, 2009 and March 5, 2010 no police officers visited her home.
28. According to Nadia, she has known the claimant since she was seven years and he was never known to be a violent person. Furthermore, she is not aware of any criminal reports made against the claimant.

Cross-examination by the defendant

29. Nadia testified at the time of the incident she was unemployed. Furthermore, on October 1, 2009, there were no streetlights at Jackson Trace and Spring Trace. She went on to explain that the claimant usually went hunting when hunting season opened on October 1st.
30. Nadia maintained that during the period of October 2, 2009, to March 5, 2010, neither Sgt. Felix nor any other police officer came to her home and inquired as to the whereabouts of the claimant.

Wendell Laing

31. Laing resides at Jackson Trace, Buenos Ayres. On October 1, 2009, he recalled being at the home of the claimant. They cooked wild meat that was captured by the claimant. According to Laing, he and the claimant ate, drank and talked until Laing left at around 11:00 to 11:30 p.m. During that time, Nadia would go outside to mingle with them until she retired to bed at around 10:00 p.m. Furthermore, the claimant, occasionally and for a few minutes, went into the house to check on his wife and children and carry food for them.

32. Laing says the claimant informed him of the rumour that he the claimant had assaulted Paul. However, Laing never knew the claimant to be a violent man or to be involved in any criminal activity.

33. In relation to whether there were streetlights at Spring Trace or not, Laing says he is familiar with the area and there were no streetlights near Paul's home.

Cross-examination by the defendant

34. Laing testified that the village where he lives is small, and he knows Paul. In addition, Laing and the claimant are neighbours. Therefore, when hunting season opens, Laing says he is customarily invited to the claimant's house.

35. Laing denied that he was not at the home of the claimant on the night of the incident.

Case for the Defendant

36. The first defendant led evidence from Sergeant Lyndon Felix.

Lyndon Felix

37. Felix is an acting Sergeant of the Police. At the time of the incident, on October 1, 2009, Felix was a Corporal of Police attached to the Erin Police Station. On the day in question, Felix was on mobile patrol together with PC Boodram both in police uniform. Whilst on patrol, Felix received a report from Maurisa Rambert and thereafter proceeded to No. 15 Spring Trace, Buenos Ayres.
38. Upon arrival, Sgt Felix says the area was well lit with electrical lights from houses as well as streetlights. Sgt Felix was met by Paul's sister Christine Gludon. Gludon informed him that she observed the claimant also known as 'African' and Clemson Davis walking into Spring Trace where they followed Paul into his house. Gludon also informed Felix that the men drew their cutlasses and chopped Paul about his body and then escaped in some nearby bushes. Felix says he observed blood in the living room and formed the opinion there was a struggle and someone was wounded. Thereafter, he interviewed witnesses but they refused to give written statements. Furthermore, a police photographer took pictures of the crime scene but Sgt. Felix was unable to state whether biological evidence was collected by CSI. However, Felix made the point that blood samples are not required at every crime scene that involves wounding.
39. Felix says he continued investigations and visited Paul at the hospital, questioned him and, he gave a statement identifying the claimant as his assailant⁴. According to Sgt Felix, Paul's wife declined to provide a statement because she allegedly was fearful for her safety.
40. He relied on the Station Diary entries to support the fact that he conducted investigations into the incident as well as the recorded statements of neighbours. Sgt Felix testified that he had reasonable and probable cause to arrest the claimant. On October 5, 2009, Felix obtained an arrest warrant in the name of the claimant and Clemson Davis.
41. However, from October 2009 to March 2010 and despite multiple police patrols in Buenos Ayres, the claimant could not be found. Felix made the point that he was not the arresting

⁴ See also TB 2, PDF 74 namely the medical report dated 1/10/09 of Samuel Paul.

officer in March 2010. Felix says that prior to 2009, there were reports that the claimant was a member of a gang involved in criminal activity and further that he was known to the police.

42. As mentioned above, the claimant eventually obtained bail and was committed to stand trial in the Assizes. Felix says at the preliminary hearing he testified on behalf of the prosecution, but Davis was discharged. Felix was also adamant that he not falsify evidence against the claimant and conducted reasonable and necessary inquiries.

Cross-examination by the claimant

43. Felix was questioned on reports of the claimant's criminal activity and testified that he, Felix provided no documents to support his contention. Sgt Felix never arrested the claimant and testified that there were a few attempts to do so but the claimant could not be found.

44. Felix further testified that upon the claimant's arrest in March 2010, he could not say whether the claimant was charged with or interviewed in relation to any other offences or offences related to gang activity. In essence, Sgt Felix says there were notes recorded in different station diaries but he was not called upon to produce same for the instant matter. Sgt Felix also did not provide interview notes with the utterances of the claimant.

45. Felix maintained there were streetlights at Spring Trace and denied that he incited Paul to state same in his statement. Furthermore, Felix accepted that there is no document from the Trinidad and Tobago Electricity Commission ("T&TEC") or a statement from PC Boodram to support Sgt Felix's contention there were streetlights.

46. Attorney for the claimant questioned Felix on his investigation process. When asked the pointed question of whether Sgt Felix instructed the police photographer, WPC Johnson to take photographs of the crime scene, it appears to the court that he at first attempted to evade the question and testified that Johnson fulfilled her duties. Following this, Sgt Felix also

testified that he did not instruct Johnson to photograph the disputed streetlights and maintained it was her duty to capture what was relevant.

47. Felix continued his investigation by interviewing the neighbours who informed him they witnessed the assault on Paul by the claimant. Attorney for the claimant attempted to discredit this evidence and referred the claimant to the Station Diary Note of October 2, 2009. In the note Felix recorded that the neighbours declined to give any information as they wished not to be involved⁵. However, Felix stood by his witness statement and stated that he did not record the names of the neighbours to safeguard them.
48. He was then referred to the telephone message book and the initial report from one Maurissa Rambert⁶. The message records that Roxanne Paul got into an argument with her husband, and that she also saw Andy Paul with multiple chops wounds. Felix accepted that Paul's wife may have witnessed the incident. However, Sgt Felix says he could not recall if Paul's wife was interviewed and whether she provided a statement.
49. Sgt Felix also testified that on the night of the incident into the following morning, he searched for the claimant. He explained that he made physical checks at Jackson Trace for the claimant but also admitted he did not know the claimant's address. Felix also testified that he conducted patrols during the period the claimant could not be found but could not recall whether he went to the claimant's house and knocked on his door. Attorney for the claimant asked about recorded notes of these matters but Sgt Felix maintained that he needed to be referred to the Station Diary extracts.
50. Sgt Felix could also not recall if Walker was interviewed or whether on the night of the incident Paul stated what the claimant was wearing and how long he Paul observed the claimant for.

⁵ See TB 2, PDF 16 namely the SDE that states the account of the neighbours that declined to give any information.

⁶ See TB 2, PDF 12 namely a message from Maurisa Rambert at 9:25 p.m. received by one PC Mohammed.

51. In Paul's statement he stated that during the altercation with the claimant, he Paul stabbed the claimant with a pair of scissors. Sgt Felix testified that it was not necessary to obtain a search warrant to search the claimant's house for the said scissors.

The Court's Approach

52. In *Horace Reid v Dowling Charles and Percival Bain*⁷, Lord Ackner delivering the judgment of the Board stated that where there is an acute conflict of evidence, the trial judge must check the impression that the evidence of the witnesses makes upon him against:

- i. Contemporaneous documents;
- ii. The pleaded case; and
- iii. The inherent probability or improbability of the rival contentions.

Reasonable and Probable Cause

53. The presence of reasonable and probable cause has both an objective and subjective criteria.

54. The learned authors in Halsbury's⁸ defined the existence of reasonable and probable cause as:

It has been said that whether there was reasonable and probable cause for a prosecution or not is a question of fact and not law. However, it is for the judge and not the jury, when there is a trial for malicious prosecution by a jury, to decide on the relevant facts whether there is reasonable and probable cause. If the facts are disputed, it is the province of the jury to find for the judge what are the relevant facts known to the prosecutor before he made the charge, including the inferences to be drawn from them.

The question whether the defendant in a claim for malicious prosecution had an honest belief that the claimant was guilty of the charge for which the prosecution was brought is a question

⁷ Privy Council Appeal No. 36 of 1897 at page 6.

⁸ Halsbury's Laws of England, Tort, Vol 97A (2021), para. 315

which may be put to the jury; but there should not be added to it words which may cause the jury to consider whether there was reasonable and probable cause for that belief, as this is a question for the judge, and the question of the defendant's belief should not be put unless there is evidence of his lack of belief. Indeed it may well be preferable in many cases to put to the jury, instead of any question about the defendant's belief, the salient disputed facts on the determination of which the judge may found his decision whether there was or was not reasonable or probable cause. Although malice may be inferred from want of reasonable and probable cause, want of reasonable and probable cause is not to be inferred from malice.

55. In ***Manzano***, supra His Lordship, Mendonça 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.

Submissions of the defendant

56. It was submitted on behalf of the defendant that Sgt Felix's reasons for his reasonable and probable cause resulted firstly from the information of Rambert. Also, the objective circumstances, namely the information received from Gludon who identified the claimant as Paul's assailant, interviews with the neighbours, the photographs taken, the statement of Paul and his medical report.

57. It was further submitted that the clothing worn by the claimant at the time of the incident is of little significance because Paul identified the claimant as his assailant. In addition, Paul testified that he knew the claimant as they both attended the same school and as such Paul properly identified the claimant.

58. Attorney for the defendant made the point that in relation to information given by the neighbours, the said information was written in a way to protect their identity. Reference was made to the evidence of Sgt Felix that the claimant was a violent person and persons feared coming forward.

Submissions of the claimant

59. It was submitted on behalf of the claimant that the defendant failed the objective test of reasonable and probable cause. Attorney cited cases with examples of the prosecution's failure to properly investigate an allegation especially in cases where the facts are diametrically opposed. Furthermore, Felix had a duty to conduct further inquiries into the claim that the claimant assaulted Paul⁹.

60. The claimant argued that there is no evidence that streetlights were installed at Spring Trace nor did he call PC Boodram to corroborate same. The claimant also argued that it was important that at the time of the incident, Felix ought to have inquired as to what the claimant was wearing. No statements were obtained from Rambert and from Gloudon. The court also notes that no identification parade was conducted.

61. Attorney made the point that it was imperative that Felix made an attempt to go to the claimant's home on October 1, 2009, or October 2, 2009. Therefore, the claimant relied on ***Bisram et al. v The Attorney General and Brereton***¹⁰ and submitted that it would have taken little time to investigate the address of the claimant. As such, the claimant is of the view that Felix was biased against him.

⁹ See ***Cliff Lewis v The Attorney General of Trinidad and Tobago***, CV2016-04580 at para. 89 of the judgment.

¹⁰ H.C. 3324/1993, per Deyalsingh J at para. 32 of the judgment.

62. Attorney for the claimant also highlighted that Paul's wife who was present at the time of the incident did not record a statement.

63. The court notes that Felix places PC Boodram as being present when they visited the crime scene, but Felix provided no explanation why there was no recorded statement or entry by PC Boodram.

Discussion and Finding

64. The court finds the following to be the facts on the evidence:

- a. Sgt Felix relied solely on the statement provided by Paul and oral information given by others including the sister of Paul, and the person who made the report.
- b. That written statements do not appear to have been recorded from those persons.
- c. That in the face of the only evidence of previous knowledge by Paul of the Claimant being that stated in his statement to the police that he "knew him very well", it was not integral that an identification parade be held.
- d. This is particularly so in this case as the evidence given by Paul at the Magistrate's Court puts the Claimant on the scene of the assault with the stone earlier on that night. It was the evidence of Paul that he saw the Claimant running away after Davis assaulted Paul with the stone.
- e. The evidence given by Paul at the Magistrate's Court also sets out the history between Paul and the Claimant, they having attended the same school. This tends to confirm that the knowledge that Paul had of the Claimant would have rendered an Identification parade unnecessary and unsafe. In that context the absence of a description of the clothing being worn by the person alleged to have committed the offence is of no relevance as this could have made no impact on the decision to charge in the circumstances.
- f. Sgt Felix was possessed of information that the area in which the offence was committed was well lit by streetlights and house lights (see statement given by

Paul to the police the day after the incident). That information came from the victim, his wife and personal information from Sgt. Felix upon visiting the scene.

- g. There are no photographs that depict any such streetlights.
- h. Sgt Felix was in possession of information that a man named Junior John known to the victim proceeded into the yard in the sight of the victim who was able to say that he saw the men who he knew and what they possessed, namely a cutlass and a shovel. The information is that the two men followed the victim into the well lit house and chopped him while in the house, the allegation being that the Claimant planassed (dealt blows with the flat side of the cutlass) the victim twice, then chopped the victim five times before running away.
- i. There was no first description provided by the victim other than named identification of the men he claimed he knew.

65. The case was one in which a direct allegation was being made by an alleged victim in which he named the person who he alleged committed the act. In that case, the opportunity to identify the perpetrator of the offence was the primary important issue. The statement recorded from Paul did not necessarily have to contain all the evidence that he was to give at trial. It is quite permissible in law that a witness clarifies or amplifies evidence contained in his statement while testifying. So that the statement of Paul was clear that he knew the Claimant before the incident and that it was the claimant who attacked him.

66. Much heavy weather was made of the absence of photographs of the street lighting, the absence of an ID parade, the absence of other witnesses, the absence of written statements from others and the failure of the police to investigate the matter from the point of view of the Claimant, that is to investigate any possible alibi.

67. In the courts' view, the absence of these matters are a matter of weight for a tribunal of fact at a trial. It is not in every identification case that one will find several items of supporting evidence. There are various degrees of strength of evidence of identification. In this case, the absence of photographs showing the lighting was not a matter that would not have impacted in any substantial manner on the decision to charge as the oral evidence from the victim was

that there were street lights and further that the chopping in fact took place within his well lit home. While photographs may have made the case stronger, the absence thereof does not derogate from the quality of the evidence that was in possession of the Sergeant at the time.

68. In relation to the absence of other witnesses, the evidence of Sgt Felix is entirely consistent with the general demeanour of the society in which we live and this has been so now for many years. People often say what they saw in private but refuse to give statements either out of fear or otherwise. This is entirely plausible. It did not mean that the fact that persons did not want to speak out meant that the Sergeant did not have sufficient information to cause him to hold the honest belief that the Claimant had committed an offence. The word of the victim alone may be enough in some cases and this was one of those cases. To apply a general principle that the word of the victim by itself would be insufficient to lead to reasonable and probable cause would be to turn our system of justice on its head.

69. In this case, Sgt Felix was tasked with satisfying himself that the opportunity provided to the victim to identify the person who attacked him was such that it did not render the identification unreliable. The Sgt was the first port of call for that assessment. In the court's view, it is clear that based on the viva voce statement of Paul alone, which the Sgt had in his possession the Sgt was of the honest belief that Paul had an ample opportunity to reliably identify the attacker whom he had known for some time before.

70. Additionally, the fact that the home of the Claimant was not searched goes to the weight to be attached should the case proceed to trial and not to whether the Sgt. had reasonable and probable cause. Should there have been a search and nothing was found or had the cutlass been found somewhere else then perhaps this could have been considered by the police when deciding whether to charge and even then it may not have had any impact.

71. In relation to the fact that the police did not interview the Claimant about his whereabouts the evidence is that the Claimant was told of the allegation upon arrest and cautioned and proceeded to remain silent. His whereabouts on that night would have been within his peculiar knowledge and he would therefore have been the ideal person to tell the police of his whereabouts so that they could have spoken to the persons who he alleged were present with him. But he chose to exercise his right to stay silent. The suggestion therefore that the

police were then supposed to seek out people close to him to determine whether he had an alibi is disingenuous. There lies no such duty on the police in the case where the suspect says absolutely nothing about an alibi and there is therefore no other reasonable basis for the police to be informed that the suspect may have an alibi.

72. In that respect the evidence of the Claimant is that Sgt. Felix never asked him about his whereabouts as testified to by the Sergeant. The court does not accept this as true. There appears to be no evidence and no rationale as to why Sgt Felix would adopt a different approach to the Claimant than that recommended by the Judges Rules. The fact that the Claimant may have faced a previous charge for murder does not on its own make it so that the officer would have been biased against the Claimant on that basis as officers interact with persons who have been repeatedly charged on a daily basis without holding the fact of previous charge against them. Further there is no other evidence from which the court can infer a logical basis for the bias of Sgt Felix.

73. The statement given by Paul to the police also disclosed that Paul told the police that he stabbed the Claimant with a pair of scissors to his neck area while defending himself and he appeared to be bleeding from his neck. It is the case for the Claimant that no investigation was done to confirm that he had no such injury and also no search was done for the scissors. This he says demonstrates a lack of reasonable and probable cause to charge him and bias on the part of Sgt. Felix.

74. Sgt Felix when cross examined on the issue stated that he could not recall the statement of the stabbing but admitted that he did not ask for the scissors or thought it necessary to do a blood test on the scissors. In the court's view the matter of whether the blood type of the Claimant may have been different to the blood type on the scissors is highly speculative for several reasons. Firstly such evidence could only have been obtained if the blood type of the suspect was then obtained which it was not. Secondly, whether the person did in fact bleed and whether such blood having on the facts been mixed with all the blood at the scene was capable of being isolated is also a matter of speculation. The photos attached to the proceedings do show what appears to be a tremendous amount of blood having been spilled. The result of such an enquiry may have had one of three results. It may have shown that there

was no different blood type other than the victim or that there was a different blood type than that of the Claimant (assuming that the Claimant voluntarily gave a blood sample to the police as there existed no law at that time to compel a suspect to give a blood sample) or that the blood grouping was the same as the Claimant. However, the fact that the blood sample may have been the same as that of the Claimant would not have meant as a matter of proof beyond reasonable doubt that the Claimant was involved as blood samples of the entire world fall into a small number of categories. Neither would the absence of his blood sample have had the same effect in the context of the evidence of what occurred on that night. It would have still been open to the tribunal of fact to find that despite the absence of the same blood group of the Claimant, the evidence of identification was so strong as to be reliable to found a conviction.

75. The absence of such evidence in the court's view would not have been determinative of whether there was reasonable and probable cause to charge.
76. The court therefore finds that in all of the circumstances there was reasonable and probable cause as a matter of an objective assessment and that Sgt Felix held an honest belief that the Claimant had committed an offence. There was also reasonable and probable cause as a matter of the subjective view of Sgt. Felix.
77. Before moving on the court must note the proliferation of matters of this nature that appear to be coming before these courts in which Claimants take the approach that it was the duty of the police to investigate whether a suspect may have not been guilty of the offence without information that points in that general direction. It must be borne in mind that save in limited circumstances no such duty lies on the police. It follows that not every case in which the matter has been dismissed does there arise a justiciable case for malicious prosecution. This case is clearly one in which the cause of action does not arise.

Malice

78. The mere lack of reasonable and probable will not equate to malice in every case.

79. In relation to malice, the learned authors¹¹ went on the state:

A claimant in a claim for damages for malicious prosecution or other abuse of legal proceedings has to prove malice in fact indicating that the defendant was actuated either by spite or ill-will against the claimant, or by indirect or improper motives. However, there is not malice merely because the claimant's conviction was a necessary step towards the defendant's fulfilment of some ulterior objective.

The claimant has the burden of proving malice. In a jury trial the question of malice or no malice is for the jury not for the judge, and if there is any evidence on which the jury could find malice, the judge must leave the question to it. A claimant who proves malice but not want of reasonable and probable cause still fails. Malice may be inferred from want of reasonable and probable cause but lack of reasonable and probable cause is not to be inferred from malice.

80. Mendonça JA in **Sandra Juman v The Attorney General**¹² 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.

81. 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

¹¹ Halsbury's Laws of England, Tort, Vol 97A (2021), para. 314

¹² Civil Appeal No. 22 of 2009

¹³ [2017] UKPC 3

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 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.

82. Having regard to the ruling of the court this issue does not arise for the consideration of the court.

83. The claim is dismissed and the Claimant shall pay to the Defendant the prescribed costs of the claim in the sum of \$14,000.00.

Ricky Rahim

Judge