

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

PORT-OF-SPAIN

CLAIM NO. CV2012-04559

BETWEEN

IMRAN KHAN

CLAIMANT

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

DEFENDANT

Appearances:

Claimant: Abdel Mohammed

Defendant: Raisa Caesar and Manisha Lutchman instructed by Javier Forrester

Dated: 17th November 2014

Before The Honourable Mr. Justice Devindra Rampersad

JUDGMENT

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THE CASE

1. The claimant Imran Khan, who was at the material time a police constable (Regimental No. #16363), has brought this claim against the defendant pursuant to the provisions of the **State Liability and Civil Proceedings Act** Chapter 8:02 of the Laws of Trinidad and Tobago for malicious prosecution.
2. The claimant's case is that on 22 December 2005 at approximately 2:10pm, he was driving his motor vehicle registration number PBA 1215, along Hollis Avenue Arima in an easterly direction at a slow pace. His friend, one Alston Loctor, was seated in the front passenger seat. He said that in the vicinity of Yummy's Bakery, he stopped his vehicle briefly to allow two pedestrians to cross the road.
3. According to the claimant, when he turned into Pro Queen Street, Arima, he observed Police Inspector Samuel Bullen, now a retired Assistant Superintendent of Police (referred to hereinafter as "**ASP Bullen**"), dressed in a khaki coloured uniform, running across Hollis Avenue towards his vehicle. ASP Bullen shouted to him to pull to the side, after which he was instructed to hand over his driver's license and insurance policy. The claimant says that he complied. It is the claimant's case that he was instructed to *"Go in the station and get a f***ing ticket"* by the same ASP Bullen. Because his driver's license and insurance were not returned to him, the claimant says he left his vehicle parked on the left hand side of Pro Queen Street and made his way on foot to the Arima Police Station.
4. It is the claimant's case that he attempted to make a verbal report to the attending officer at the station, Corporal Hosein, but he refused to take the claimant's report. He was instead instructed to wait on ASP Bullen who had not yet arrived at the station. The claimant says that up to the time that he left the police station, at approximately 3:30 pm, his documents were still not returned to him. He says that he returned to the police station at 10:30 pm to make a report, but Corporal Hosein was still on duty. He says that his driver's permit and policy of insurance were then returned to him but he was still unable to make a report. The claimant subsequently made a formal

complaint to the Police Complaints Authority on 23 December 2005, a copy of which was attached to his statement of case and witness statement.

5. It is the claimant's case that on 21 March 2006, his father contacted him and informed him that there was a warrant out for his arrest as he was supposed to attend the Arima Magistrate's Court on that very date. He said that he immediately attended the Magistrates Court at around 2:58 pm and the said warrant was recalled at the request of Mr. Edwards, his attorney. The claimant was placed on bail with surety in the sum of \$3,000 and the matter was adjourned to 28 March 2006.
6. On that date, the claimant appeared before the court and was charged with allowing his vehicle to stand on the road so as to cause unnecessary obstruction, contrary to Regulation 38(6), and using the vehicle for a purpose other than for which it was registered, contrary to Regulation 8 of the ***Motor Vehicle and Road Traffic Act*** Chapter 48:50 of the Laws of Trinidad and Tobago. The claimant pleaded not guilty to the charges. According to the claimant, he appeared before the magistrate eight further times. On 13 June 2008 however, the claimant says he failed to appear as he says he inadvertently recorded the wrong date, and a warrant for his arrest was issued. He was subsequently arrested on 18 August 2008 and was thereafter granted bail in the sum of \$3000.00.
7. On 12 November 2008, the charges against the claimant were dismissed by Magistrate Dubay.
8. The claimant claims in these proceedings that he was arrested, charged and prosecuted wrongfully and without reasonable or probable cause and as a result he suffered embarrassment, humiliation, inconvenience, distress, loss and damage. In his statement of case, the claimant pleaded particulars of malice and/or absence of reasonable and probable cause as well as grounds for aggravated and/ or exemplary damages. The claimant claims as against the defendant for damages including aggravated and/or exemplary damages for malicious prosecution.

THE DEFENCE

9. In defence the defendant says that on the day in question, ASP Bullen did not run towards the claimant's vehicle and shout at him. Instead the defendant says that ASP Bullen was standing at the corner of Queen and Hollis Avenue when he gave the claimant a front stop signal when he noticed that he was plying his private car for hire, and stopping in a no stop zone. It is admitted that the claimant complied with the signal and produced his driver's license and insurance policy.
10. The defendant stated that when the claimant arrived at the station after the incident, he informed one Sergeant Hosein that ASP Bullen had requested that he attend the station and wait for him in order to receive two fixed penalty tickets. It is the defendant's case that Sergeant Hosein then informed the claimant that he had to wait on ASP Bullen. The defendant's case is that the claimant did not in fact wait, but that he left by the time ASP Bullen had arrived. In defence, it was pleaded that ASP Bullen handed the documents over to Police Constable Sutherland to be deposited in the Property Box for safe keeping. The defendant denies that when the claimant returned to the police station at 10:30 pm Corporal Hosein was still on duty and instead the defendant says that Corporal Hosein was not in fact on duty at the time. It was admitted however that it was at this point that the claimant's documents were returned to him.
11. The defendant further admitted that at around 2:58 pm on 21 March 2006 the claimant arrived at the Arima Magistrate's court and the warrant for his arrest was recalled and he was placed on bail in the sum of \$3000. The defendant agreed that the matter was indeed adjourned to 28 March 2006 and that the claimant did miss one court date but categorically stated that it does not accept liability for the arrest in that case as it resulted from the claimant's own inadvertence.
12. The defendant denies its liability and says that ASP Bullen had reasonable and probable cause to arrest the claimant. The defendant also pleaded particulars of reasonable and probable cause including the fact that the claimant was soliciting passengers in his private motor vehicle. The defendant denies that there are grounds for aggravated or exemplary

damages or that the alleged injury, loss and damage suffered by the claimant was as a result of the defendant or its agents.

THE CLAIMANT'S EVIDENCE

HEARSAY NOTICE

13. The claimant filed a hearsay notice on 18 October 2013 stating that he desired to give into evidence the statements made in writing in three documents annexed to the same notice.
14. The hearsay notice made reference to two documents:
 - 14.1. A true extract taken from the station diary at E-999 Arouca Police Station, page 69, numbers 9, 10, 15.
 - 14.2. A true copy of the Radio Log Book for the E-999 Arouca Police Station bearing Entry numbers 1-23
15. The defendant subsequently filed a notice to prove the true copy of the Radio Log Book for the E-999 Arouca Police Station bearing numbers 1-23 dated 27 March 2006.
16. Section 22 of the Evidence Act Chapter 7:02 of the laws of Trinidad and Tobago provides the procedure for the admission of documentary evidence from certain governmental agencies. That section provides that once the copy is certified by the person or persons specified in the second column of the Second Schedule to the Act, in respect of whom no proof would be required as to that person's or persons' hand writing or official position, the document may be received in evidence. With respect to the Police, the name of the certifying officer is the Commissioner of Police or Assistant Commissioner of Police. The documents annexed to the hearsay statement were not so certified and are therefore inadmissible. Consequently, this court would disregard these documents on the ground of inadmissibility.

IMRAN KHAN

17. Much of the claimant's evidence in his witness statement was in line with what was pleaded in his statement of case. He said that around 2:10 pm on 22 December 2005 he was driving his vehicle along Hollis avenue with his friend seated in the passenger seat. He stated that at no point in time did he ever solicit passengers not did he ever have a large pile of single dollar bills in his hand or in the vehicle at all. His evidence is that he was stopped by ASP Bullen who shouted that he should pull his vehicle to the side, a request which he says he complied with along with the request that he produce his driver's permit and policy of insurance. His evidence is that he was harshly ordered to go to the station to get a ticket and that his documents were not returned to him. He then parked his vehicle, secured it and walked to the Arima Police Station. His friend Alston Lactor left him at this point.
18. He said that he arrived at the station around 2:20 pm and verbally reported the incident to Corporal Hosein who then refused to document it, instead ordering him to stay and wait for ASP Bullen. The claimant's evidence is that he waited at the Arima Police Station for about one hour until 3:30 pm when he informed Corporal Hosein that he was leaving. He returned at 10:30 pm hoping to meet another police officer but Corporal Hosein was still on duty at the time. He said he was once again refused a written report but he did receive his documents which were thrown across the counter to him. According to the claimant he never saw ASP Bullen not did he receive a charge slip, nor was he ever informed that he committed an offence. On 23 December 2005 he made a report to the Police Complaints Authority in respect of the incident¹.
19. On 21 March 2006 the claimant said that his father contacted him and told him that there was a warrant out for his arrest since he failed to appear at the Arima Magistrate's Court. His evidence is that he immediately attended the courthouse where the warrant was recalled and cancelled at the request of his attorney and he was placed on bail with a surety of \$3000.00. He was informed of his charges on the next date of hearing on 28 March 2006 to which he pled not guilty. The claimant said that he made about 8

¹ Alleged copies of this complaint were produced but were not properly verified or certified so that this Court did not pay any regard to this unsubstantiated self-serving allegation.

appearances at the court but on 13 June 2008 he failed to appear and a warrant was issued for his arrest. He says he was subsequently arrested and placed in a holding cell at the Arima Magistrate's court for one hour. The warrant was later recalled and his bail was set in the sum of \$5000.00.

20. The claimant's evidence is that on 12 November 2008, Magistrate Dubay dismissed the charges against him. His case is that ASP Bullen had no basis to charge and prosecute him and in fact abused his power as a police officer. He said that after he applied for the notes of evidence and proceedings in the matter, he realized that one Kenny Singh, a police constable, claimed he served the summons on his feet at the La Horquetta Police station on 2 March 2006. The claimant stated in his evidence that this was untrue and that he was in fact never in La Horquetta Police Station on that day. He stated that prior to the day of the incident ASP Bullen had a personal vendetta against him and detailed two incidents to evidence the same.
21. The claimant said that he was caused great distress, humiliation, embarrassment and irreversible damage to his reputation as a result of this incident.

ALSTON LOCTOR

22. This witness gave evidence on behalf of the claimant. He says that on 22 December 2005, he was in the company of his friend, the claimant, as they were headed to the claimant's home. He said that it was 'Christmas season' and while there were a lot of pedestrians on the road, at no time in his presence did the claimant solicit any passengers. He stated that as the claimant drove onto Pro Queen Street, he noticed an officer in khaki uniform who was identified as ASP Bullen. ASP Bullen, according to this witness, shouted to the claimant to pull the car to the side and asked for his license and insurance. The witness says that the claimant complied and handed over the documents. It was his evidence that the same ASP Bullen looked at the claimant and harshly shouted *"go in the station and get ah f***ing ticket!"* after which he walked away without returning the claimant's documents. The witness said that at about 2:20 pm the claimant informed him that he was going to the Arima police station.

THE DEFENDANT'S EVIDENCE

SAMUEL BULLEN

23. ASP Bullen gave evidence that at the time of the incident he was an Inspector of Police. He said that on the date in question he was dressed in a khaki uniform and was on foot patrol. He said that on Hollis Avenue there were several police signs placed which stated "*No Stopping or Waiting*". According to his evidence, around 3 pm he noticed the claimant's vehicle proceeding in an easterly direction at a very slow speed with the driver pointing his fingers, blowing his horn and saying "*Malabar, Malabar*" to people who were standing on the sidewalk. When the claimant's vehicle stopped in front one of the "*No Stopping or Waiting*" signs, he signaled him to stop the vehicle. His evidence is that he enquired as to why the claimant was disobeying the "*No Stopping or Waiting*" signs and causing obstruction to other vehicles. He then said that he noticed a pile of single dollar bills in the claimant's hand which was placed between his legs on the seat. He said that he requested that the claimant hand over his driver's permit and insurance and the claimant complied.
24. According to the witness, he did not have his ticket book with him at the time so he called the Arima Police Station to get an officer to come to Hollis Avenue to issue the claimant with two fixed penalty tickets for the relevant offences, however no officer was available. He said that he then told the claimant to meet him at the Arima Police Station where he would issue the tickets and he took the claimant's documents in order to prepare the tickets. He stated that the claimant then drove to the Arima Police Station.
25. He said that when he arrived at the station he observed that the claimant was not there and he made an entry in the Traffic Offences Register with regard to the offences alleged to be committed. His evidence is that he also made a note in the station diary but he did not prepare the tickets since the claimant was not present when he arrived. He said that he handed over the claimant's documents to Police Constable Sutherland who was under the supervision of one Corporal Hosein.
26. This witness gave evidence that he later laid two complaints without oath at the Arima Magistrate's Court for the two offences and two summonses were

issued for the claimant's appearance. He stated that he was not aware that a warrant was issued for the claimant's arrest. He said that he attended court in this matter approximately six times including when the matter was dismissed on 12 November 2008 due to the file being misplaced.

KENNY SINGH

27. Kenny Singh also gave evidence in this matter. He said that on 2 March 2006 he met the claimant at the La Horquetta police station. He said that he noticed the claimant enter the charge room reception area and he informed him that he had two summonses for him to appear in court. His evidence is that he also informed the claimant that the summonses were taken out by ASP Bullen. The witness said that he handed them to the claimant who responded "*me eh want this summons*" and dropped them to the ground. He said that he left them at his feet in accordance with correct police procedure and made an entry in the station diary, which entry was annexed. The witness said that he deposed to the affidavit of service at the back of each summons.

POLICE SERGEANT NAZIR HOSEIN

28. Sergeant Hosein also gave evidence on behalf of the defence in this matter. He stated that on 22 December 2005, he was on duty at the Arima Police Station when the claimant came to the station and informed him that ASP Bullen had asked him to wait for him in relation to some traffic offences that took place earlier that day. The witness said that the claimant never made any attempts to make any report to him but only stated his reason for being at the station. It is his evidence that the claimant only waited at the station for a short while before he left.
29. According to Sergeant Hosein, ASP Bullen returned to the police station around 4:10 pm and he observed him leave the claimant's driver's permit and insurance with PC Sutherland. The same documents were deposited in the Property Box for safe keeping. The witness said that his duty ended at 6 pm and he left the station at 7 pm.

SUBMISSIONS

THE CLAIMANT'S SUBMISSIONS

30. The claimant's attorney submitted that the issues for determination are:
 - 30.1. Whether the defendant, its agents and or servants, in particular ASP Bullen, had reasonable cause to arrest/ charge the claimant
 - 30.2. Whether the laying of the charge against the claimant was actuated by malice.
 31. On the law of malicious prosecution, it was submitted that in order to succeed in an action for malicious prosecution, the claimant must prove five things, namely, that there has been a prosecution which has caused him damage; that the prosecution was instituted or continued by the defendant; that the prosecution has been terminated in the claimant's favour; that the defendant acted without reasonable and or probable cause, and that the defendant acted maliciously.
 32. It was submitted that despite the burden of proof being on the claimant, the existence of reasonable and probable cause is a question of fact that must be judged in light of the facts known to the defendant at the time of initiation of the prosecution. Reference was made to the case of **Mark Blake v The AG of Trinidad and Tobago** - a decision of Boodoosingh J. It was submitted that the burden is on the claimant to prove malice as determined in **Cecil Kennedy v The AG of Trinidad and Tobago C.A. No. 87 of 2004**. The claimant's attorney further stated that for reasonable and probable cause, the test is whether the defendant honestly believed that the prosecution was proper and it depends on resolving the conflict of evidence between the claimant and the defendant.
 33. The claimant's case of malicious prosecution was premised on fabrication and concoction of evidence to the effect that the claimant caused unnecessary obstruction and used his motor vehicle registration number PBA 1215 for another purpose at Hollis Avenue on the 22nd day of December 2005 in order to justify the laying of the charges.
 34. In his submissions, the claimant's attorney analyzed all of the evidence and ultimately submitted the defendant's witnesses lacked credibility. According
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to the claimant's attorney, if the court was minded to believe the claimant's version of events, then, as the claimant's case was one of fabrication and/or concoction of evidence, this would be sufficient to establish a lack of reasonable and probable cause and malice.

35. It was further submitted that the defendant failed to disclose evidence. It was submitted that in cross-examination, all of the witnesses for the defendant admitted that certain entries were made in the station diaries of the Arima Police Station and La Horquetta Police Station confirming their departure and arrival and their accounts of events, yet no documents to confirm the same was forthcoming. In addition, the claimant submitted that the defendant also failed to call PC Sutherland, who would have been able to corroborate the defendant's version of events. It was submitted that this court should be entitled to draw an adverse inference against the defendant for their non-disclosure of material evidence directly related to the issue of reasonable and probable cause. The claimant's attorney submitted further that the defendant had failed to establish a prima facie case of reasonable and probable cause and that the claimant should be entitled to damages, interest and costs as a result of his malicious prosecution.
36. It was also submitted that the claimant should be entitled to aggravated damages. Reference was made to the cases of ***Thompson v Commissioner of Police*** [1998] Q.B. 498, 516, and ***Thaddeus Bernard v Nixie Quashie*** CA No. 159 of 1992.
37. On the award of damages for malicious prosecution the claimant submitted the following cases:
 - 37.1. ***Lewis v The AG of Trinidad and Tobago*** CV 2007-01952
 - 37.2. ***Sookdeo Harricharan v The AG of Trinidad and Tobago***
 - 37.3. ***Ricardo Watson v The AG of Trinidad and Tobago*** CV2006-01668
38. On the issue of exemplary damages, it was submitted that exemplary damages may be awarded to a claimant in addition to compensatory damages when a defendant's conduct is particularly willful, wanton, malicious, vindictive, or oppressive. Reference was made to ***Kuddus v The Chief Constable of Leicestershire*** [2002] 2 A.C. 122 and ***Aaron Torres v***

Point Lisas Industrial Port Development Corporation Ltd CA No. 84 of 2005.

39. In conclusion, it was submitted that an appropriate award for the claimant would be compensatory damages, inclusive of damages for malicious prosecution, and aggravated damages, in the sum of fifty thousand dollars (\$50,000.00), exemplary damages in the sum of thirty thousand dollars (\$30,000.00)², interest on general damages at the rate of 9 % from the date of service of the claimant's claim form to the date of judgment and continuing at a rate of 12% thereafter to the date of payment and prescribed costs based on the claimant's claim to be assessed pursuant to Part 67 of the Civil Proceedings Rules 1998 (as amended).

THE DEFENDANT'S SUBMISSIONS

40. The defendant's attorney, in her submissions, stated that the issues to be determined were:
- 40.1. Whether ASP Bullen had reasonable and probable cause to prosecute the claimant;
 - 40.2. Whether ASP Bullen was actuated by malice in prosecuting the claimant;
 - 40.3. Whether the claimant suffered the loss and damages claimed;
 - 40.4. Whether the claimant is entitled to aggravated and/or exemplary damages.
41. On the first issue of reasonable and probable cause, it was submitted that for the tort of malicious prosecution to be committed, the defendant must, without reasonable and probable case, initiate prosecution against the claimant. Reference was made to the landmark case of ***Wills v Voisin*** [1963] 6 WIR 50 wherein Wooding CJ set out the elements which constitute the tort. Reference was also made to the cases of ***Tempest v Snoden*** (1952) 1 KB 130, ***Ted Alexis v The AG of Trinidad and Tobago*** HCA #3795A of 2002, ***Hicks v Faulkner*** (1881) 8 QBD 167, ***Rambajan***

² It was submitted that the sum for this item should be "fifty thousand dollars (\$30,000.00)" but it seems that there was a typographical error with the latter figures being the more probable.

Baboolal v The AG HCA No. 2727 of 1990, **Glinski v Mc Iver** (1962) AC 726, and **Harold Barcoo v The AG of Trinidad and Tobago & or** HCA No. 1388 of 1989.

42. On the issue of malice, the defendant's attorney relied on the definition of malice as espoused by Cave J in **Brown v Hawkes** [1891] 2 QB 718 as well as the cases of **Hicks v Faulkner** (1881) 8 QBD 167, **Michael Mungroo v The AG of Trinidad and Tobago** HC No. 491 of 1984, **Abrath v North Eastern Railway** (1886) 1 AC 247 and **Wayne Carrington v The AG of Trinidad and Tobago** CV 2007-03211.
43. It was submitted that the claimant failed to establish his particulars of malice and of reasonable and probable cause. The defendant's attorney noted that the claimant's case was premised upon there being a specific malicious motive of ASP Bullen against him which led him to fabricate the charge against the claimant. In denying the allegation, it was submitted that the claimant failed to establish a specific malicious intent. The evidence of the claimant and the particulars of malice that was pleaded were analyzed with the defendant's attorney submitting that the claimant had no case against the defendant for malice.
44. On the third issue of whether the claimant suffered the loss and damages claimed, the defendant's attorney submitted that, if successful, the claimant should only be awarded damages in line with a scale of \$1500 to \$7000. The defendant relied on the following cases:
 - 44.1. **Mahadeo Sookhai v The AG of Trinidad and Tobago** CV 2006-00986
 - 44.2. **Sookdeo Harricharan v The AG of Trinidad and Tobago** HCA No 3086 of 1999
 - 44.3. **Doodnath Mootoo v PC Flaviney and ors** HCA No S48 of 1998
 - 44.4. **Carlton Morgan v The AG of Trinidad and Tobago** HCA No S 1040 of 1997
45. On the issue of whether the claimant was entitled to aggravated and/or exemplary damages, it was submitted that the claimant was not entitled to an award under that head.

RESOLUTION

46. According to *Halsbury's Laws of England* 4th Edition Reissue Vol. 45(2) Para. 467, malicious prosecution can be described as the prosecution of a claimant without reasonable or probable cause and with a malicious intent. The requirements for an action in malicious prosecution to succeed as follows:
- 46.1. The prosecution by the defendants of a criminal charge against the plaintiffs before a tribunal into whose proceedings the criminal courts are competent to inquire;
 - 46.2. That the proceedings complained of terminated in the plaintiff's favour;
 - 46.3. That the defendant instituted or carried on the proceedings maliciously;
 - 46.4. That there was an absence of reasonable and probable cause for the proceedings; and
 - 46.5. That the plaintiffs have suffered damages.
47. This was confirmed by Wooding CJ in *Wills (supra)*.
48. The first two criteria have already been established. ASP Bullen advanced charges against the claimant and on 12 November 2008 the same charges against the claimant were dropped after he gave evidence before the Magistrate that the file had been lost. Therefore, what the court must determine is whether the proceedings which were initiated before the Arima Magistrate's court were initiated with malice and whether there was any reasonable or probable cause to initiate the same.

REASONABLE AND PROBABLE CAUSE

49. In *Hicks (supra)* at 171, Hawkins J. defined reasonable and probable cause as: "... an honest belief in the guilt of the accused based upon a full conviction, founded upon reasonable grounds, of the existence of a state of

circumstances, which, assuming them to be true, would reasonably lead any ordinarily prudent and cautious man, placed in the position of the accuser, to the conclusion that the person charged was probably guilty of the crime imputed."

50. In **Glinski v McIver** (*supra*), Lord Devlin qualified this by stating that: "*The Prosecutor has not got to test the full strength of the defence; he is concerned only with the question of whether there is a case fit to be tried.*"
51. ASP Bullen stated that he believed the claimant to be plying his private car for hire and stopping in front of removable stop signs. According to ASP Bullen, he said he saw the claimant's behavior and he then pulled the claimant aside and noticed that he had a wad of one dollar bills in his hand which he placed between his legs on the seat. On its own, this may have been sufficient to determine that there was reasonable and probable cause in the case. The claimant and his witness, both of whose evidence remained unshaken, denied the claims of the ASP Bullen, who had no one to corroborate this particular portion of evidence.
52. There is no doubt that this is an issue which turns on the questions of fact which arise. Which of the two versions was the more probable one?
53. This court must confess that ASP Bullen's evidence did in fact have several inconsistencies and reasons for concern.

DISCREPANCIES/ REASONS FOR CONCERN – ASP BULLEN

54. There were discrepancies between his viva voce evidence in cross examination on the one hand and the pleaded case and his witness statement on the other made by the claimant's attorney at law.
55. Firstly, ASP Bullen's reason for coming to the view that the vehicle driven by the claimant was being used contrary to the insurance certificate in breach of Regulation 8 of the **Motor Vehicle and Road Traffic Act**, which is one of the charges brought against the claimant, was that the driver was proceeding "*at a very slow speed pointing his fingers, blowing his horn and saying "Malabar, Malabar" to people who were standing on the sidewalk beckoning them as is usually done when a taxi driver wants someone to*

travel in their vehicle."³ He went on to say that he observed the vehicle, PBA 1215, eventually stop in front of one of the "No Stopping or Waiting" signs on the southern side of the road and two persons entered the vehicle. He also said that he was able to see a pile of single dollar bills in the claimant's hand which he then placed between his legs on the seat.

56. With respect to the second charge, ASP Bullen said that he observed several vehicles to the rear of PBA 1215 blowing their horns to move along the street. As a result he said that he informed the claimant that he would be issued with two fixed penalty tickets – one for the offence stated in the preceding paragraph and the other for unnecessary obstruction contrary to Regulation 38 (6) of the Motor Vehicle and Road Traffic Act.
57. In cross examination, it was drawn to his attention that he never mentioned saying that there was anyone sitting in the passenger seat of the vehicle in the pleadings or in the witness statement although he mentioned in his viva voce evidence that there was someone sitting in the passenger seat. Further, even though he said in his witness statement that he saw 2 persons enter the vehicle, he said for the first time, in cross examination, that there were two ladies in the back of the vehicle. When he was asked if he asked the two passengers that the claimant allegedly picked up for the names, ASP Bullen said that he had nothing to do with them since they did not commit any offence.
58. To my mind, this discrepancy was material. On both sides, the stories were diametrically opposed. On the one hand, the claimant, supported by his witness, denied "*pulling bull*"⁴ whereas ASP Bullen was adamant about what he saw the claimant doing and the manner in which he was behaving. Quite obviously, to proceed with a charge for using his vehicle contrary to the terms of the insurance ASP Bullen would have had to have had some sort of evidence that the claimant was in fact **using** his vehicle for hire. To have relied upon the claimant's alleged slowing down and shouting: "*Malabar, Malabar*", and having a wad of single dollars between his legs surely could not have been enough for ASP Bullen to come to the view that he could charge the claimant for **using** his vehicle contrary to the terms of his insurance. One would have reasonably expected that ASP Bullen would have

³ Paragraph 5 of his witness statement

⁴ Plying for taxi illegally

ascertained who the persons were in the vehicle, such as Mr. Loctor, to eliminate the possibility that the occupants were merely friends or family of the claimant. Further, the presence of 2 females who were unknown to the claimant sitting in the back of his vehicle would surely have enhanced the view that ASP Bullen would have reasonable and probable cause to come to the conclusion that he could charge the claimant for the alleged offence. Surely, such information would have been very important – information which, to my mind, should have been referred to in his witness statement.

59. On the other hand, it seems rather incredible to suggest that ASP Bullen, who was an Inspector at the time, would just arbitrarily accost the claimant and lay a charge against him on manufactured evidence. The claimant's explanation for this "setup" was that ASP Bullen had a personal vendetta against him as a result of an incident which occurred on 27 July 2005 in Tunapuna. According to the claimant, he was on foot patrol on that day and was struck by a motor vehicle and when he attended the Tunapuna police station to document the incident, ASP Bullen, an Inspector at the time, ordered that the claimant give him the drivers documents and shouted "*Do fast with the documents*" and allowed the driver to leave the police station without the motor vehicle being seized for further investigation. He went on to say that he recorded the incident in the Tunapuna Police Station diary but he did not produce that report. In that regard, the claimant produced a letter from the Trinidad and Tobago Police Service, Office of the Legal Office, Northern Division, Area West which was adduced into evidence by way of a hearsay notice dated 18 October 2013 filed by the defendant's attorney at law, and which was not the subject of any counter notice, confirming that despite searches done on the Tunapuna station diary for the period 30 June 2005 to 16 September 2005, no entry was made therein in relation to the claimant. ASP Bullen accepted that there was an incident which occurred in July 2005 involving himself and the claimant but it did not transpire as the claimant put it. Instead, he said that the wing mirror of the vehicle had merely touched the claimant and he asked the claimant not to inflate the situation. To my mind, this acceptance of this incident by ASP Bullen was a credit to his credibility as he seemed to be willing to accept a situation which could have been construed in a negative fashion against him.

60. A further explanation for this alleged vendetta was given in relation to another incident which occurred on in or around November 2005 when ASP Bullen allegedly walked past the claimant "*Khan you like to write eh, you is a dangerous fella, but I more dangerous!*" No explanation was given with respect to what this meant or what it related to and, in the whole scheme of the story, it seems rather arbitrary. ASP Bullen responded in cross-examination that he did not know what this meant and denied that he ever said that.
61. Reference was also made to the discrepancy in his cross examination when, after being asked what offences the claimant had committed for which he was stopped, ASP Bullen's response was "*Breach of the no stopping or waiting sign and using his motor vehicle contrary to the insurance...*" which was different from what was entered in the station diary⁵ and also different from the charge which was eventually laid against the claimant for unnecessary obstruction.
62. The court also notes the following further discrepancies in ASP Bullen's evidence:
- 62.1. Contrary to his statement at paragraph 15 of his witness statement, ASP Bullen did not make the note in the station diary;
- 62.2. The reason given for the issuance of summonses rather than tickets at paragraph 16 of his witness statement was because the claimant was not present when ASP Bullen returned to the Arima Police Station. However, once again, in the station diary extract number 58 on the material date, the contemporaneous note was that the claimant was warned of intended prosecution "*by way of summons*" despite ASP Bullen's evidence in cross examination that he told the claimant that he was going to issue 2 fixed penalty tickets to him for the offences committed.
- 62.3. The claimant's attorney at law submitted that ASP Bullen was evasive and provided no assistance to the court and his testimony was marred by inconsistencies with his written witness statement. Those

⁵ The station diary stated "*Imran Khan driver of PB1215 was warned of intended prosecution by way of summons for (1) unnecessary obstruction and (2) using the private motor in contravention of the terms of the insurance.*"

inconsistencies, along with several irregularities, were pointed out as follows:

- 62.3.1. No note was ever produced in the station diary showing when ASP Bullen left the Arima Police Station to go on foot patrol which was contrary to the Standing Orders of the Police Service.
- 62.3.2. Again, contrary to the standing orders, ASP Bullen had no pocket diary in his possession. ASP Bullen, in cross examination, professed that his failure to have a pocket diary was proper police procedure and he claimed to be unfamiliar with the Standing Orders despite the fact that he was a police officer for over 40 years. This, to my mind, was an incredible assertion by ASP Bullen and it causes great concern when an Inspector of Police, as he was at that time and now a retired Assistant Superintendent of Police, can claim to be unfamiliar with the police Standing Orders.
- 62.3.3. In cross examination, ASP Bullen spoke about movable traffic signs in the area where the incident occurred but stated that there was no official register kept in relation to those signs which was contrary to the defendant's List of Documents filed on 25 April 2013 which identified such a register/order at item number 12 under Schedule 1. However, it must be borne in mind that the List of Documents was not signed by ASP Bullen but was signed by instructing attorney for the defendant so it is difficult for this court to accept that he was necessarily aware of the existence of such a register by reason only of reference to that List of Documents. Nevertheless, one would have expected that an Inspector would have been aware of the existence of such a register as a matter of proper practice and procedure in relation to such signs arising in his area. As a result, it seems more reasonable to accept that the existence of such a register ought to have been known by an Inspector.

- 62.3.4. It was highly improbable for ASP Bullen to have heard the claimant shouting "Malabar Malabar" from a distance of 75 feet away in light of the fact that the area in question on that day was noisy. This court does not necessarily accept such a submission since the evidence suggests that he was shouting rather than speaking in ordinary voice so that it seems more likely than not that ASP Bullen could have heard the claimant shouting as alleged.
- 62.3.5. Reliance was also placed on the fact that ASP Bullen did not say anything in his witness statement about 2 women in the motor vehicle when he stopped it nor was that pleaded. This court has already addressed that issue above.
- 62.3.6. It was suggested that inconsistencies also arose in relation to ASP Bullen's evidence as to the nature of the 2 charges which were intended to be laid against the claimant, as discussed above, and that, further, ASP Bullen's admission under oath that he was of the view that the claimant breached his policy of insurance before even checking the said policy which clearly showed that he had no honest belief that the claimant in fact had committed this offence. The court does not accept this last submission. The claimant was quite clearly driving a private vehicle which was identified in the pleadings and in the evidence as PBA 1215 – the white Honda Civic – so that the visual and audio impression of the claimant beckoning and / or importuning passengers would, prima facie, be inconsistent with his operating a private vehicle at the time. Of course, upon viewing the insurance for the vehicle, this prima facie impression would have been confirmed so that, even though the warning of an impending charge in that regard was technically premature, it would not be wholly unreasonable in light of the circumstances set out by ASP Bullen.

- 62.3.7. A criticism was also raised in relation to the failure of ASP Bullen to question the two alleged passengers in respect of the alleged importuning. In this regard, the court has the following observation to make in addition to its own observations mentioned before. On its own, the very fact of the failure to question the 2 passengers may have merit but that fact was part of a matrix suggested by ASP Bullen which included observation of the claimant's behavior and the pile of one dollar bills in his hand which he put between his legs which caused ASP Bullen to come to a certain conclusion. There is no doubt that a stronger case against the claimant would have required independent evidence which could have been garnered from these 2 persons who could have established their relationship, if any, with the claimant. One could draw the conclusion with reasonable justification that ASP Bullen was not performing his job properly or with a view to ensuring that he could secure a conviction from all the potentially available evidence. From the facts as laid out by ASP Bullen, it seems that he drew a conclusion without contemplating properly how that conclusion could be properly established in a court of law. These 2 alleged parties could have been family, friends or acquaintances so that their presence in the vehicle would not necessarily have corroborated the offence.
- 62.3.8. No corroborating evidence in relation to ASP Bullen's alleged call to the police station in order to have his ticket book sent to him was produced even though he accepted that such an official call should have been logged in the telephone message book.
- 62.3.9. PC Sutherland, who ordinarily would be a necessary witness before the court to establish that the claimant's documents were given to him for safekeeping by ASP Bullen, was not called. ASP Bullen said that he did not

agree that PC Sutherland would be an important witness. This court tends to agree with that statement. There is no doubt that ASP Bullen took the claimant's documents and that they were not returned to him until the next day despite the claimant attending the police station prior to its eventual delivery. However, the production and validity of those documents were not in issue so therefore the court agrees that the presence of PC Sutherland was not strictly required.

62.3.10. It was suggested to ASP Bullen that a fixed penalty ticket could have been issued and left in the care of another officer at the police station to deliver to the claimant when he came for his documents. ASP Bullen countered by saying that he preferred to give the offender the ticket in person. It was raised with him in cross-examination that he alleged that he knew the claimant and his father and therefore also knew where he lived so he could have delivered it personally to which he gave no satisfactory response other than to say no, he could not do that. Mention was also made of ASP Bullen's agreement in cross examination that he had no authority to take the claimant's driver's permit and policy of insurance. More would be said about this in the next section of this judgment on malice.

62.3.11. The claimant's attorney at law raised issue as well with the fact that the information was led in relation to the offences committed by the claimant 25 days after the alleged offence, in breach of Standing Order 44 (24) (b) and failed to provide particulars of the claimant's driver's permit number and policy of insurance number.

62.3.12. ASP Bullen's memory was challenged as well by the claimant's attorney at law in relation to what transpired before the Magistrate on 13 June 2008 when he in fact swore on oath that he caused a warrant to be issued for the claimant which was contrary to his statement at

paragraph 20 of his witness statement that he was not aware that a warrant was issued for the claimant's arrest. It was further challenged in relation to him being unable to recall going on oath before the learned Magistrate and stating that the file in relation to this incident was lost. Both matters, to my mind, illustrated ASP Bullen's inability to recall details in which he himself was involved in therefore quite clearly challenged his credibility.

63. All in all, with this litany of inconsistencies and irregularities, the court is hard-pressed to prefer ASP Bullen's evidence to the virtually unshaken evidence of the claimant and his witness. Even though the court has sifted through each of the allegations made against ASP Bullen, who was the only witness for the defendant in relation to the offences allegedly committed by the claimant, and even though the lack of any obvious motive and the fact of ASP Bullen's long history of service lend themselves to this court accepting his explanation, ASP Bullen has quite obviously dropped the ball on several occasions creating doubt in this court's mind as to the reliability of his evidence. As a result, the court prefers the claimant's unshaken evidence to that of the stumbling evidence of ASP Bullen and this court therefore comes to the conclusion based on the preponderance of evidence before it that ASP Bullen did not have any reasonable or probable cause to assume that charges should be laid since his credibility in relation to the grounds for the offences has not stood the test of cross-examination.

MALICE

64. A claimant who brings an action in malicious prosecution is required to prove a malicious intent on the part of the defendants. In ***Cecil Kennedy v AG and Ors*** CA No. 87 of 2004 the court stated that

"The Plaintiff is not required to demonstrate spite or hatred. He is only required to demonstrate that a party was prompted by improper and indirect motives. The proper motive for a prosecution is the desire to secure the ends of justice and, if this is not the Defendant's true or predominant motive, then the Plaintiff will succeed on a claim for malicious prosecution. Similarly, if it was shown that there was some other

motive for the prosecution of the charges, while not invariably so, an absence of reasonable and probable cause can be evidence of malice."

65. The claimant says that on 22 December 2005 he, along with his friend seated in the front seat, was driving along the roadway where he was stopped by ASP Bullen, had his documents confiscated and told to make his way to the Arima Police Station to wait on ASP Bullen. His evidence was corroborated by that of his passenger Alston Lactor. The defendant on the other hand has stated that the ASP Bullen noticed the claimant plying his private motor vehicle for hire when he stopped him. It was the defendant's evidence that ASP Bullen did not have his ticket book and confiscated the claimant's documents in order to write a ticket, and told the claimant to attend to the Arima Police station to wait on him.
66. Certain key portions of evidence stood out in my mind:
67. In paragraphs 11 and 12 of ASP Bullen's witness statement, he stated that he did not have his ticket book with him so he took the claimant's documents from him and told him to go to the police station to wait for him. In fact he stated specifically *"I took the claimant's documents in order to prepare the said tickets"*. Later in paragraph 16 however, he stated that *"I did not prepare the tickets since the claimant was not present when I arrived at the Arima Police Station."* This leaves the court to wonder why ASP Bullen confiscated the documents at the scene of the incident to prepare the tickets but still made the claimant go to the police station? Even further, ASP Bullen did not go directly to the police station but continued his foot patrol knowing fully well that he had directed the claimant to the police station to await his arrival while taking away the claimant's driver's permit and insurance. In fact, he did not show up at the police station until about 1-2 hours after the alleged incident⁶. To me, this seems to have been a deliberate attempt to penalize the claimant by making him wait an unduly unreasonable amount of time as if to show some sort of authority over him. ASP Bullen accepted that he had no authority to have seized the documents – his attempt to justify it by semantics in saying that he did not seize them but he retained them in his possession was not at all commendable. The fact is that this seemingly deliberate action was not, to my mind, fashioned

⁶ The claimant alleged that the incident took place at around 2:10 PM whereas ASP Bullen alleged that it occurred around 3 PM. The note in the station diary was made at 4:10 PM which would have been just after ASP Bullen returned to the police station.

towards resolving the claimant's alleged infraction expeditiously and meeting the ends of justice but rather towards meting out some sort of "frontier/cowboy justice" in order to penalize him.

68. There has been no authority suggested by or on behalf of the defendant that the fixed penalty tickets could not have been issued by ASP Bullen and left with an appropriate officer to be delivered to the claimant together with his driver's permit and insurance which ASP Bullen could surely have foreseen that the claimant would have been anxious to retrieve. Quite obviously, the claimant was known to ASP Bullen and there was no cogent reason advanced why the fixed penalty tickets could not have even been issued and even delivered by ASP Bullen to the claimant if even if it was necessary to have the claimant attend ASP Bullen in the particular police station to collect the tickets. To my mind, another conscious decision was made to, instead, adopt a more nebulous approach which, at the end of the day, worked to the detriment of the claimant in the allegation of his failure to attend before the Magistrate despite being served. As a result, a warrant for his arrest was issued.

PC SINGH'S EVIDENCE

69. It is most necessary, at this point, to deal with the evidence of PC Kenny Singh. To my mind, PC Kenny Singh was a most unreliable witness. He delivered his viva voce evidence in a repressed and subdued manner and only came to life at the very end when it was put to him that he lied on oath about the service of the summons on the first named claimant.
70. PC Singh's evidence in his witness statement in relation to the service by him on the claimants of the Magistrates' Court summonses was that he attempted to serve the summonses on the claimant, who refused to accept them causing PC Singh to leave the summonses at the claimant's feet. However, in cross examination, he admitted to having handed the claimant the summonses rather than dropping them by his feet. When this discrepancy was put to him, PC Singh went on to say in cross-examination in a quite unbelievable manner and tone that he handed the summonses to the claimant and it was the claimant would then drop it at his own feet - something which was not said in his affidavits on the back of the summonses or his witness statement before this court. When it was

suggested to him by the claimant's attorney at law that his evidence under cross-examination and his evidence in the station diary were at odds with each other, the witness, after taking a very long time to answer, responded by saying: "*No Sir, it is the same.*" This was said despite the fact that he never mentioned in his affidavits that he ever handed the claimant the summonses.

71. A telling ingredient in respect of PC Singh's incredibility was the marked discrepancy between his signature on his witness statement filed in these proceedings and the obviously deliberate marking purporting to be a signature of his on the affidavits on the back of the summonses allegedly served on the claimant which was used in the Magistrates' Court to form the basis of the issue of a warrant of arrest for the claimant in respect of his failure to attend there. The markings on the back of the summonses in the affidavits of service seemed, on a balance of probabilities, to be made by a person other than PC Singh. In fact, PC Singh, in cross examination, accepted that the signature at page 3 of his witness statement ***was different*** from the signature on the 2 affidavits. Attorney at law for the defendant attempted, in re-examination, to elicit an explanation for the difference in the signatures to which PC Singh quite weakly offered was because: "*Sometimes I sign and sometimes I sign my whole name.*" He was then asked to attempt to sign in the same manner as he allegedly signed on the summonses and it was quite obvious that there was a marked difference once again between his signature signed before the court on the day of the trial purporting to be the manner in which he would have signed on the affidavits, and the actual signatures on the affidavits. In fact, attorneys-at-law for the defendant quite candidly acknowledged that there were differences between the signature made in court and the signatures on the affidavits.
72. The defendant's attorney at law correctly suggested that the alleged bad service by PC Kenny Singh did not go to the element of the case which this court has to decide in relation to malicious prosecution unless some sort of grand conspiracy was proven. This court agrees. There was no such evidence to suggest such a conspiracy. Quite obviously, the discrepancy in relation to PC Singh's signature only became apparent upon the filing of his witness statement when his signature was put on his witness statement and

which signature was quite obviously materially different from the signatures on the affidavits behind the summonses. To my mind, however, it further substantiates a feeling of uncomfortableness in the manner in which this matter proceeded. What transpired in relation to the service of the summonses by PC Singh does not directly impact upon this court's ruling but the court cannot close its eyes to the issues raised in relation to PC Singh's evidence in its totality including the signatures on the summonses and the signature on his witness statement.

CONCLUSION ON MALICE

73. As stated in the **Cecil Kennedy** case:

"The proper motive for a prosecution is the desire to secure the ends of justice and, if this is not the Defendant's true or predominant motive, then the Plaintiff will succeed on a claim for malicious prosecution."

74. Having regard to the above concerns, it seems to this court that ASP Bullen on 22 December 2005 did not seem motivated towards securing the ends of justice but rather towards penalizing the claimant directly on his own. In his evidence he admitted that the claimant complied with his requests to stop his vehicle, hand over his documents and attend to the police station. The claimant's evidence remained unshaken and the court finds that the prosecution of the claimant was initiated by malice.

DAMAGES

DAMAGES FOR MALICIOUS PROSECUTION

75. The claimant is entitled in this court's mind to damages for malicious prosecution.

76. The claimant submitted that the following cases ought to be considered in the award for damages.

76.1. ***Lewis v The Attorney General of Trinidad and Tobago*** CV 2007-01952, a decision of Boodoosingh J, delivered on the 2nd July, 2010. The claimant was awarded \$75,000.00 for malicious prosecution and \$50,000.00 for unlawful detention. The claimant was arrested at 1:30 am, taken to a police station and detained there for 18 hours in

deplorable conditions. He was charged with using obscene language. The charge was eventually dismissed. No award for exemplary damages was made. A total of \$125,000.00 was therefore awarded for malicious prosecution and unlawful detention.

76.2. ***Sookdeo Harricharan v The Attorney General of Trinidad and Tobago*** HCA 3068/1999 which was a claim seeking damages for false imprisonment and malicious prosecution. The plaintiff in that matter was charged for the offences of larceny of a motor vehicle. The plaintiff in this matter was a police officer and was charged by officers who were previously known to him. The court found that on the facts of this case the investigation into the alleged theft left much to be desired, as it was inadequate and unfair to the plaintiff. The judge awarded the Plaintiff the sum of \$75,000.00 for the damages suffered as a result of the malicious prosecution.

76.3. ***Ricardo Watson v The Attorney General*** CV2006-01668, in which Stollmeyer J, on 31st July, 2008, awarded \$35,000.00 as general damages for malicious prosecution inclusive of aggravated damages for charges brought for housebreaking and larceny and for possession of marijuana for the purpose of trafficking, both of which were dismissed when they came on for hearing in the Magistrates' Court.

77. The claimant submitted that an appropriate award under the rubric of compensatory damages for the malicious prosecution of the Claimant inclusive of an uplift of aggravated damages for the Claimant is the sum of fifty thousand dollars (\$50,000.00)

78. The defendant on the other hand submitted the following cases:

78.1. ***Mitra Harracksingh v the Attorney General of Trinidad and Tobago and P.C. Neville Adams*** HCA No 2241 of 1992 in which an award of \$5000 was made as damages for false imprisonment of 1 ½ to 2 hours.

78.2. ***Mahadeo Sookhai v the Attorney General of Trinidad and Tobago*** CV 2006-00986 in which, for a detention of ½ hour, damages of \$6000.00 were awarded by Moosai J.

- 78.3. ***Sookdeo Harricharan v the Attorney General of Trinidad and Tobago*** HCA No. 3068 of 1999 in which, for a detention of 1 ½ to 2 hours an award of \$5000.00 was granted by Mendes J.
79. The defendant's submitted that although the cases that they submitted dealt with the loss of liberty they are still instructive in determining the award in the present case. Further reference was made to the cases of ***Doodnath Mootoo v PC Flaviney & ors*** HCA No S-48 of 1998 and ***Carlton Morgan v The Attorney General of Trinidad and Tobago*** HCA No. S 1040 of 1997 and it was submitted that an award of \$1500 to \$7000.00 was appropriate in the circumstances of this case.
80. The court does not find that the cases referred to by the defendant are applicable as the court is meant to consider damages for malicious prosecution and not false imprisonment as the defendant's submissions suggest. The cases submitted by the claimant are more suitable in the circumstances, even though in some cases the damages for malicious prosecution was awarded along with damages for false imprisonment and inclusive of aggravated damages. In order for the court to determine an appropriate and fair award it must consider cases where damages for malicious prosecution are most clearly stated.
81. In ***Sookdeo Harricharan v The Attorney General of Trinidad and Tobago*** HCA 137 of 2006 the claimant was awarded the sum of \$75,000.00 for damages suffered as a result of malicious prosecution. The claimant in that matter was charged for the offences of larceny of a motor vehicle. The claimant was a police officer and was charged by officers who were previously known to him. The Court found that on the facts of this case the investigation into the alleged theft left much to be desired, as it was inadequate and unfair to the claimant.
82. The case of ***Lewis*** (supra), is also apposite as is ***Thaddeus Clement v The Attorney General of Trinidad and Tobago*** where a claimant was arrested and accused of robbery.

AGGRAVATED AND EXEMPLARY DAMAGES

83. The claimant submitted the following cases in support of their position that the claimant ought to be awarded for aggravated damages:

83.1. ***Thadeus Bernard v Nixie Quashie*** CA 159 of 1992, in which De la Bastide JA stated that aggravated damages are: "...damages which are meant to provide compensation for the mental suffering inflicted on the Plaintiff as opposed to the physical injuries he may have received. Under the head of what I have called mental suffering, are included such matters as the affront to the persons dignity, the humiliation he suffered, the damage to his reputation and standing in the eyes of others and matters of that sort."

83.2. ***Gerald v The Commissioner of Police of the Metropolis*** [1998] EWCA Civ 946 in which Auld LJ said: "The common law is still bedeviled with the overlapping notions of aggravated and exemplary damages. Aggravated damages are a supplement to basic damages to compensate for any particularly bad behaviour of the Defendant causing distress, including humiliation and loss of dignity, to the Plaintiff in addition to the other injuries for which he or she is entitled to recover damages. However, such damages carry with them, as do basic damages, an element of punishment for the Defendant. Exemplary damages, on the other hand are solely intended to punish, or to mark the Court's disapproval of, the Defendant's exceptionally bad behavior, and, even then, only to the extent that basic and aggravated damages are inadequate for that purpose."

84. In considering this award, the defendant also referred to the case of ***Thaddeus Bernard*** and in particular the dicta of De la Bastide JA which noted that there should be one award for general damages and the practice of making a separate award for aggravated damages should be discontinued.

85. The claimant's cases are relevant in considering an award for aggravated damages. In considering aggravated damages, the court has to bear in mind whether the claimant is entitled to an uplift to his damages for the great distress, humiliation, embarrassment and irreversible damage to his

reputation. Of course, even though it was pleaded, there was no evidence of irreversible damage to his reputation nor were there any serious aggravating circumstances in relation to the humiliation and embarrassment alleged to have been suffered by the claimant.

86. The court accepts the claimant's depiction in his submission of the aggravating factors in this case. In particular, this court must express its outrage at the attitude adopted by ASP Bullen to "retain" the claimant's documents in circumstances quite obviously designed to detain the claimant and to cause inconvenience as a punishment. It must be said that no matter who is involved, a police officer, including and especially in this case an Inspector of Police, ought to process the documents of an alleged offender in a reasonable and diligent manner rather than to unnecessarily detain that party without some sort of lawful excuse. In this case, there was no reasonable excuse whatsoever put forward for the procedure adopted and the court must signal its dissatisfaction appropriately.
87. In addition, the court would also take into consideration that PC Singh failed to properly serve the summons on the claimant. This court has already ruled that the claimant's documents in respect of the E 999 patrol records are inadmissible as they were not properly certified however the court found the evidence of PC Singh to be wholly unreliable and in the circumstances, the unshaken evidence of the claimant is preferred.
88. As to exemplary damages, the claimant submitted that an appropriate sum to represent exemplary damages in this matter is an award of at least **\$30,000.00** as compensation for the oppressive and arbitrary conduct of the servants and agents of the defendant.
89. The court does not find that there is any need to award exemplary damages in this case in light of the minor infraction alleged and the fact that no major inconvenience and humiliation was alluded to by the claimant and there is no serious evidence of especially oppressive behavior in relation to the charges which were laid against the claimant.

THE ORDER:

90. The court's order in relation to this claim will be as follows:
- 90.1. There will be judgment for the claimant against the defendant.
 - 90.2. The defendant shall pay to the claimant the sum of \$75,000 as general damages including an uplift for aggravated damages together with interest at the rate of 3% per annum from 1 November 2012 to date.
 - 90.3. The defendant shall pay to the claimant the prescribed costs of the action quantified by the court in the sum of \$19,489.86.
 - 90.4. Stay of execution granted until the 31st of December 2014.
91. Further, in relation to this court's inherent jurisdiction and in furtherance of the proper administration of justice, this court directs the Registrar of the Supreme Court to refer a copy of the witness statement of PC Kenny Singh along with all exhibits signed by him and a copy of the court recording of his evidence in cross examination to the Police Complaints Authority, the Commissioner of Police and the Director of Public Prosecutions to hear and determine whether PC Kenny Singh has committed any offence or wrongdoing in relation to the alleged service of the summonses issued by ASP Bullen on the claimant and the divergent and questionable signatures on his witness statement as compared with those on the affidavits on the back of the said summonses.

/s/ Devindra Rampersad

Devindra Rampersad
Judge