

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2011-04213

Between

HARRIDATH MAHARAJ

Claimant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

Before The Honourable Mr. Justice Seepersad

Appearances:

1. Mr. J. Singh instructed by Mr. K. Samlal for the Claimant
2. Ms. J. Baptiste Mohammed instructed by Ms. T. Maharajh for the Defendant

Date of delivery: 15th March, 2016

DECISION

1. The Claimant by Claim Form and Statement of Case filed on the 28th day of October 2011 claimed against the Defendant the following relief:
 - a. Damages including aggravated and or exemplary damages for malicious prosecution;
 - b. Interest at such rate and for the period as the court may deem just;
 - c. Costs;
 - d. Such further and or other reliefs as the court may deem just;

2. In the Statement of Claim, the claimant's case was set out as follows: -
 - On the 27th August, 2003 the Claimant was on duty at the Santa Flora Police Station when he received a report of persons illegally felling trees in the area;
 - After making enquiries on the 30th August 2003 the Claimant came upon persons on main ridge road in the vicinity of a quantity of felled trees. One of those persons was forestry officer Keith Jaggernauth;
 - Mr. Jaggernauth who was dressed in a Forestry Division uniform informed the Claimant that he was felling trees on instructions from Mr. Atkinson for a Government Minister and the relative of another politician. The Claimant and the other officers with him stayed in the area and conducted surveillance;
 - The Claimant also received, on the 4th September 2003, further information that the felled logs were being removed from the forest reserve;
 - The Claimant made arrangements with Boysie Ali, a tractor operator to accompany him to the forest to assist in the removal of the felled logs and while at the reserve he once again met Keith Jaggernauth. No logs were moved. The Claimant also alleged that Jaggernauth indicated that the police were exceeding their power and wanted to set him up but he knew what to do.

- The Claimant was informed by one Sonny Narine also called Ramesh Narine that he was confronted by two persons from Fraud Squad and was threatened to say that he had cut down the trees at the claimant's direction;
- On the 23rd September, 2003 ASP Phillip and Inspector Charles went to the home of the Claimant and informed him of the report that the Claimant was involved in the illegal culling/felling of logs in the vicinity of main Ridge Road.
- The Claimant denied the report and the allegations made against him. The said officers executed a search warrant and searched the Claimant's home;
- The Claimant on the 16th June, 2004 was arrested at the Fraud Squad Office, Port of Spain,
- The Claimant was prosecuted on two charges and attended Court some 48 times. On the 13th November, 2007 the charges were dismissed after the Magistrate upheld a no case submission.
- The Claimant's case is that the servants/agents of the Defendant fabricated the evidence, unlawfully obtained statements by duress from men who were involved in the Claimant's investigation, failed to conduct sufficient investigations; recklessly discharged their duties as police officers; were negligent and or reckless in the conduct of the investigations and had no reliable evidence upon which to charge.

3. The law as it relates to malicious prosecution is well settled in the case of WILLS –vs- VOISIN (1963) 6WIR 50 at page 57 the Court stated: -

“...in an action for the vindication of the right to be prosecuted against unwarranted prosecution, which is the action for malicious prosecution, a plaintiff must show (a) that the law was set in motion against him on a charge for a criminal offence; (b) that he was acquitted of the charge against him or that it was otherwise determined in his favour; (c) that the prosecutor set the law in motion without reasonable and probable cause; and (d) that in so setting the law in motion the prosecutor was actuated by malice.”

4. On the facts of the instant case criteria (a) and (b) as outlined above have been established. The critical issue to be considered is whether the complainant when the charges were instituted did so without reasonable and probable cause and whether he was actuated by malice.

Reasonable and Probable Case

5. Hawkins J, in **Hicks v. Faulkner (1878) 8QBD 167** at page 192 stated that: -

*“The question of reasonable and probable cause depends in all cases not upon the actual existence, but upon the reasonable bona fide belief in the existence of such a state of things as would amount to a justification of the course pursued in making the accusation complained of... It is not essential in any case that facts should be established proper and fit and admissible as evidence to be submitted to the jury upon an issue as to the actual guilt of the accused. **The distinction between facts necessary to establish actual guilt and those required to establish a reasonable bona fide belief in guilt should never be lost sight of...**”*

6. In the text Civil Actions Against Police 3rd Edition at paragraph 8-044 it was stated that the test involves four separate questions, the first two being subjective and the second two objective. The questions to be considered are as follows:
- a. Did the prosecutor have an honest belief in the guilt of the accused?
 - b. Did the prosecutor have an honest conviction of the existence of the circumstances relied on?
 - c. Was the conviction based on reasonable grounds?
 - d. Did the matters relied upon constitute reasonable and probable cause for the belief in the accused’s guilt?
7. The law does not mandate or require that a Complainant has to engage in investigations that are perfect and flawless, however, as articulated by Mendonca JA in **Allistaire Manzano v. The Attorney General of Trinidad and Tobago C.V No. 151 of 2011**, the

complainant must be satisfied that the essential elements of the offence can be established on the evidence that is available. In that case, the learned Judge found that there was a lack of honest belief in the guilt of the accused because the complainant did not have evidence so as to establish that the owner did not give consent to the person charged for the removal of the item.

8. Accordingly, this Court had to consider the evidence that was available to the complainant Harold Phillip and had to determine whether he had the requisite evidence to establish the elements of the offences for which the Claimant was charged. If he did, then the requirement of “an honest belief in the guilt of the accused” would be satisfied, if he did not, then he could not have been reasonably satisfied that there was a case that was fit to be tried and he could not therefore have had “honest belief” in the guilt of the claimant.

The charges

9. The Claimant was charged together with one Ramesh Narine for the following offences:
 - I. On a day or days unknown between Friday 1st August 2003 and Thursday 4th September 2003 at Quarry Village, Santa Flora, in the said County of St. Patrick, did fell a quantity of cedar and teak trees, without a Felling Permit issued by the Authorized Officer of the district. Contrary to **Section 7 (1) of the Forests Act Chapter 66:01 as amended by the Forests (Amendment) Act 1999;**
 - II. On a day or days unknown between Friday 1st August 2003 and Thursday 4th September 2003, at Quarry Village, Santa Flora, in the county of St. Patrick, did fell a quantity of cedar and teak timber from land situated at the said Quarry Village, Santa Flora without a Removal Permit. Contrary to **Section 7A(1) of the Forests Act Chapter 66:01 as amended by the Forests (Amendment) Act 1999.**
10. The relevant provisions of the Forests Act Chp. 66:01 that creates the aforesaid offences provides as follows:

“(1) A person who fells any—

(a) tree listed in the Second Schedule; or

(b) tree on a slope of over thirty degrees, within a minimum of one hectare of land, without a Felling Permit granted in accordance with subsection (2), commits an offence and is liable on summary conviction to a fine of twenty thousand dollars.

(2) An owner or occupier of such land or a person authorised by the owner or occupier of land who desires to fell any tree listed in the Second Schedule shall apply to the authorised officer of the district for a permit to do so, and subject to section 7D, the authorised officer may grant such permit on such terms and conditions as may be necessary in all the circumstances.

7A. (1) No person shall remove any timber from any land by any means whatever, without a Removal Permit granted in accordance with this section.

(2) An application for a permit shall be made by the owner or occupier of such lands.

(3) Where an application is being made to remove timber from private land and the applicant is the owner of such land, he shall make a declaration of ownership in the prescribed form.

(4) An applicant who is not himself the owner, shall make a declaration to the effect that the timber for which the permit is required is *bona fide* private property which has come from private land, with the consent of the owner of such land.”

In accordance with the said section 7 (1), the requisite elements for the offence are:

(i) the felling of a tree listed in the second schedule;

- (ii) the tree was on a slope of over thirty degrees within “minimum of one hector of land.

In relation to section 7A the elements for the offence are:

- (i) removal of trees from any land by any means;
- (ii) the removal from the said lands without a permit.

11. In relation to the issue as to the requisite evidence that was required, Officer Harold Phillip (HP) in cross examination responded as follows to questions poised by Mr. Singh (JS) on behalf of the Claimant, as follows:

JS – The officer shall be satisfied he has evidence to support the case

HP – No! Should have evidence to satisfy that the accused has committed the offence”

“JS – Based on your experience you would have familiarize your with the Section?

HP – I would have read it.

JS – From your understanding what were the elements to be proved?

HP – Trees had been felled, the Trees are ones in the Second Schedule, No permit had been granted.

JS – which witness called to say no permit was granted

HP – Mr. Jaggernaut, Atkinson, Seepersad, Ramnarine

JS – are you sure?

HP – yes

JS – under Section 7A what are the elements to be proven?

HP – timber or trees had been removed and no permits issued

JS – You would need a witness to say that person charged is the person who cut the tree

HP – I would have to have evidence, persons were interviewed

JS – For the purpose of charging the Claimant you would have to have evidence the person participated?

HP – Yes”

The evidence

13. The Claimant's case is that he went to the forest on the 30th August, 2003 as a result of information that he had and he went there with Officer Harripersad and Office Dinoo. When they arrived at approximately 8:42 am at the Mahaval Forest Reserve, he observed a red sunny parked on the side of the road. He said he saw three men and one was dressed in a Khaki uniform with a 'forestry logo' endorsed on the shirt and this man identified himself as Keith Jaggernauth, a forest officer. The Claimant said that he observed a number of felled trees, in the vicinity where Jaggernauth and the other men were. The Claimant said that he spoke to Jaggernauth about a report that he had concerning the felling of trees in the forest reserve and Jaggernauth responded that he had received instructions from one Mr. Atkinson to fell a sufficient quantity of logs for the a Government Minister and for a senior officer at the ministry.
14. The claimant said that he then walked back to the police vehicle and informed Harripersad and Dinoo of his conversation with Jaggernauth and they proceeded to patrol around the reserve. The Claimant said that he and Dinoo remained at the reserve until 6 p.m. and he observed the red sunny had not moved. Officer Harripersad testified before this Court and gave an account which was consistent with the version advanced by the Claimant relative to the events of the 30th August 2003. The Court found that Harripersad was a forthright witness and he instilled in the Court the feeling that he was a witness of truth. In cross examination there were no significant or material departures from the evidence as contained in his witness statement.
15. There was also before the Court a statement that Harripersad had issued to the Claimant which was submitted to the Claimant's superior Senior Superintendent Alphonso prior to

the institution of charges against the Claimant, this statement was also consistent with the evidence given by Harripersad before this Court.

16. The Court also had before it a statement that was signed by Officer Dinoo which was also consistent with the version of events as outlined by Officer Harripersad and the Claimant. This statement was also submitted to Senior Superintendent Alphonso prior to the institution of the charges against the Claimant and was dated 11th September, 2003. It was tendered before the Magistrates' Court during the cross examination of Officer Dinoo as 'V.D1'. Before the Magistrates' Court, Dinoo at paragraph 49-52 of the Notes of Evidence gave a different account of the events of the 30th August 2013. He said that while he was going to the forest with the Claimant, he noticed that two trucks followed them. Eventually the trucks stopped in the forest and thereafter he saw that logs were loaded unto the trucks and he testified that the Claimant spoke to the men who were loading the logs. He said that one truck left and he was told by the Claimant to follow it and he did but the truck eventually turned right at the Quinam Junction and he and the Claimant then proceeded to the Santa Flora Police Station. At the station, he said that he was then instructed by the Claimant to accompany him to Penal and on reaching Penal Rock Road he saw the truck that had turned right at the Quinam Junction and he thereafter took the Claimant back to the Penal Station and he returned to Santa Flora. Sometime later he said the Claimant told him that he needed him to write a statement which had to be submitted to Superintendent Alfonso. During his cross examination before the Magistrate he testified that the Claimant gave him a statement and told him to write his statement consistent with what was written in the statement given to him, 'because it is a serious thing and it have lock up in it'. Dinoo said he was fearful of losing his job and as a result he prepared and signed the statement 'VD1'. He also testified that on or about the 19th September 2003, he took a statement from one Ramesh Narine who came into the station and he said that the Claimant told him to 'book in Narine.'" This officer was not called as a witness before this Court.
17. The version of events given by Dinoo before the Magistrates' Court was very different from what was contained in the statement 'VD1'. In cross examination, before the

Magistrates Court, Officer Dinoo also said that he could not recall whether the statement 'VD1' was the truth.

18. Prior to the institution of the charges against the Claimant, the complainant had before him the statements of the Claimant, Dinoo and Officer Harripersad which were all submitted to the Senior Superintendent Alphonso. There is no evidence before this court to suggest that the Complainant ever questioned Dinoo about the contents of the statement 'VD1'. The Court also noted that the station diary extract for the 30th August 2003, which was made by Dinoo, did not speak of any unusual events.
19. As stated earlier, the Court was impressed by the evidence of Harripersad and there was no reason why, on a balance of probabilities that the version of the events of 30th August 2003 as presented by him should have been rejected by this Court. Given the nature of the information allegedly received by the Claimant in the said conversation and having regard to the fact that the said information was contained in the statements which were submitted to Alphonso, the said statements should have been considered by the Complainant. Any police officer who has committed to discharge the oath of his office, ought to have proceeded with caution in the circumstances and the Complainant should have thoroughly investigated the issue as to what transpired on the 30th August 2003. In doing so Harripersad should have been interviewed and Dinoo should have been questioned in detail about the contents of the statement 'VD1'. Although the complainant stated in his witness statement that he interviewed Harripersad, no statement by Harripersad was ever disclosed during the trial at the Magistrates' Court and no statement from him was produced to this Court.
20. The Claimant said that on the 4th September 2003 he made arrangements with a Sergeant Harnarinesingh to go back to the Mahaval Forest to conduct further investigations and he contacted a tractor operator Boysie Ali, and two other men to accompany him, in the event that he needed to remove and detain any evidence. This exercise was recorded in the station diary. He said when he arrived he saw the same red sunny that he had seen on the 30th August as well as the forest Officer Jaggernaut and two other men.

21. The Claimant said he spoke to Jaggernaut about his information that logs were being illegally felled and Jaggernaut told him that he had stamped 20 logs and that the police were acting outside of their powers. He further said that Jaggernaut shouted “like all yuh police want to set me up or what, we know what to do.” This event was recorded in station diary extract 55 and was exhibited as ‘M4’ before this Court.
22. The Claimant said that on the 11th September, 2003 he met with Senior Superintendent Alphonso and he was asked to submit a report in relation to the events at the Mahaval Forest Reserve. He subsequently submitted a file that contained statements from:
- a. Chanicker Narine, signed and dated the 6th day of September 2003;
 - b. No.11759 Pc Deonath Harripersad signed and dated the 11th day of September 2003;
 - c. No.12533 Acting Corporal Vinton Dinoos signed and dated the 11th day of September 2003
 - d. No. 15630 PC Gopaul signed and dated the 15th day of September 2003;
 - e. No.7723 Sargeant Harnarinesingh signed and dated the 22nd day of September 2003.
23. The Claimant’s statement to Senior Superintendent Alphonso was consistent with the evidence contained in his witness statement and with the statements of Dinoos and Harripersad which were also submitted on the 11th September 2003. In his statement Chanicker Narine said that he was contacted by Inspector Maharaj to accompany him to the forest and at the forest he saw the Claimant speak to men including a forestry officer named Jaggernaut but that he did not hear the conversation. He also said he had noticed a tractor that was driven by Boysie Ali. Sargeant Harnarinesingh in his statement outlined a version of events that was consistent with the statement that was given by the Claimant, relative to the events of the 4th September, 2003. Harnarinesingh said that when they arrived at the forest, the Claimant spoke to Jaggernaut and the Claimant told Jaggernaut that it was likely that the persons who felled the trees would come back for

them and that Jaggernauth replied that he had stamped 20 trees and that the police was going beyond “their power”. Harnarinesingh said that the Claimant and Jaggernauth had another conversation which he did not hear and he further said that the tractor and the men who accompanied them to the forest were there to assist in removing trees if it was necessary but that no trees were removed. Sargeant Harnarinesingh was not called by the Prosecution at the Magistrate’s Court. Having seen and heard the Claimant this Court found that he was forthright, his responses were direct and the Court formed the view that he was a witness of truth.

24. Forest officer Keith Jaggernauth testified before the Magistrates’ Court. The Court noted that the Notes of Evidence did not reflect that any statement of Jaggernauth was disclosed to the defence during the trial at the Magistrate’s Court and so it can be assumed that the evidence given by Jaggernauth before the Magistrate was consistent with his statement that was on the police file, which said file would have been compiled by the complainant Harold Phillip. Jaggernauth spoke of no interaction with the Claimant on the 30th August and he said that on the 4th September he had information and he went to the Forest Reserve where he saw felled trees in the general vicinity and he decided to stamp them, sometime after he saw a tractor driven by Boysie Ali, whom he knew, approaching him and he also saw a police sergeant (the Claimant). The Sargeant was in the company of a plain clothes gentleman and he had a conversation with them and he said he also saw Boysie Ali’s son. Jaggernauth said that he subsequently received instructions from the Director of Forestry and later returned to the forest and he proceeded to stamp felled logs. Thereafter, he said he saw logs in an open lot on the side of the road at Ragoonanan Trace. Based on further instructions received he testified that he recorded their dimensions and 13 logs were removed and taken to the Cap de Ville Nursery, however one was left behind.

25. On the 12th September 2003 Jaggernauth he said that he went to the Cap de Ville Nursery and there he met his immediate supervisor and Superintendent Mohammed. Police officers took photographs of stumps from the forest and dimensions were also taken and

this information was used to match up the logs that were taken from Ragoonanan Trace to the Cap de Ville Nursery.

26. Jaggernaut's account of the events of the 4th September 2003 was very different from the version given by the Claimant before this Court. Although Officer Phillip said he interviewed Harnarinesingh, the Notes of Evidence did not reflect that any disclosure of Harnarinesingh's statement from the file was made to the Defence and no statement from Harnarinesingh was tendered before this Court. Jaggernaut testified before this Court and the Court found that, unlike the Claimant, he was evasive and at times refused to issue direct responses and his body language and gestures instilled in the Court the unshakeable feeling that he was not being honest and frank.
27. The prosecution also called Boysie Ali at the Magistrates' Court. Ali testified that on the 4th September 2003 he received a call from the Claimant to pull logs and his son Roger went with the police in a police vehicle and he drove his tractor to Mahaval area. When they got there he said that Jaggernaut spoke to the Claimant and the Claimant replied "leh we forget that" and they left. In cross examination Ali said that the Claimant did tell him that somebody was stealing wood from the forest and that he wanted to put the wood by the road for a police to watch as he wanted to see who was stealing it. Boysie Ali was not called before this Court.
28. The prosecution further relied on the evidence of Forest Officer Jaglal at the Magistrate's Court. He gave evidence that was similar to Jaggernaut's evidence in relation to the events of the 4th September but he gave no evidence as to the conversation between the Claimant and Jaggernaut as outlined by Jaggernaut. He also said on the 5th September he saw some logs on an open area of land at Ragoonanan Trace and that the logs were loaded on a truck and taken away. This forestry officer was not called before this Court.
29. At the Magistrate's Court Ricky Fiddler who lived at Ragoonanan Trace gave evidence and he testified between the 1st to the 4th September 2003, he had noticed a green truck loaded with logs at Ragoonanan Trace and that the logs were, at the direction of the Claimant, off loaded unto an open area of land at Ragoonanan Trace. The witness gave

no evidence as to the type of logs which he saw nor did he say how long they remained on the open area of land or if they were ever removed and if so by whom. Fiddler did not testify before this Court.

30. The complainant Officer Phillip testified before the Magistrates' Court and his evidence was contained at pgs. 60-68 of the Notes of Evidence. This officer said that at the time he was an Assistant Superintendent of police and was attached to the Fraud Squad. As a result of correspondence received from a Government Ministry under the hand of a Permanent Secretary he said he was assigned to investigate this matter.
31. At the trial before the Magistrate he testified that on the 17th September 2003 he met Ramesh Narine and he recorded a statement from him. In this statement Narine indicated that he had cut logs from the forest on the instructions of the Claimant. Narine however subsequently retracted this statement before a Justice of the Peace and said that he was forced to give the incriminating statement and he further stated that the entire statement was untrue. This recant was issued prior to the institution of the charges against the Claimant. The Complainant Phillip testified that logs were found on an open area of land at Ragoonanan Trace and they were taken to a nursery where they were subsequently matched to stumps found at the Mahaval Forest. He further testified that the Claimant told him that people always dropped logs on the open land at Ragoonanan Trace and that same belonged to his common law wife. Before this Court the complainant did not materially depart from his evidence as contained in his witness statement, however he did not engender in the Court the feeling that he left no stone uncovered during the investigative process and the Court was not impressed by his responses and felt that he deliberately gave very generalized responses in relation to some of the questions posed to him in cross examination.
32. Having reviewed the evidence that was relied upon in support of the prosecution's case the Court noted as follows:
 - a. Although Ramesh Narine subsequently recanted the statement that he had given, the incriminating statements made by him could have been used as evidence

against him but could not have been used as evidence as against his co accused, the Claimant.

- b. There was no nexus on the evidence between the logs that Fiddler testified that he saw being off loaded at the open area of land in Ragoonanan Trace and the logs that were seized at Ragoonanan Trace and subsequently taken to the Cap de Ville nursery and Fiddler never identified any logs.
- c. Officer Dinoo gave evidence before the Magistrate that conflicted with his statement that was submitted to Alphonso. This conflict in Dinoo's evidence would have been known to the complainant prior to the institution of the charge.
- d. Although serious allegations of possible misconduct and corruption had been raised by the Claimant by virtue of the statements allegedly made by Jaggernaut, there is no evidence to suggest that any attempt was made to investigate those allegations. To a large extent the prosecution's case was heavily dependent upon Jaggernaut's evidence. Jaggernaut however was one person against whom serious allegations were made but he was not questioned frontally relative to the events of the 30th August 2003.
- e. There is no evidence that the complainant ever sought to obtain a statement from Jaggernaut as to whether he was at the forest on the 30th August 2003 or whether he had in fact told the Claimant that he had instructions to fell trees for prominent political individuals. Nor is there any evidence to suggest that the complainant obtained any statement from Forest Officer Mervyn Atkinson as to whether or not he had ever issued any instructions to Jaggernaut to fell trees for the said prominent persons. The Court also noted that, although at paragraph 23 of his witness statement the Complainant testified that he interviewed several persons including Atkinson no statement from Atkinson was disclosed at the Magistrate's Court or produced before this court.

- f. The complainant also had no direct evidence to suggest that the Claimant did not have the requisite permits for the removal of logs and no evidence was led to establish that the requisite permits were not issued to the Claimant
 - g. There was no direct evidence to establish that the Claimant did in fact fell trees.
33. In his witness statement Jaggernauth said that on the 4th September 2003 the Claimant told him that he wanted to move the logs for it to look as if “thief was trying to thief from thief”. In the Magistrates’ Court no such evidence was led and if the said statement was contained in a statement given to the Complainant, which was on the police file, same should have been disclosed however there is nothing in the Notes of Evidence that reflects that any such disclosure was made.
34. **An investigating officer is not the arbiter of truth but has to be satisfied that the available evidence is sufficient so as to satisfy the elements of the intended offences.**
35. **Given the factual matrix in this case and given that the complainant was at the time an Assistant Superintendent of Police, a more thorough investigation should have been conducted prior to the institution of the charges. The Complainant had information that the Claimant had alluded to possible misconduct on the part of senior politicians and officers of the State, there were contradictory statements from both Dinoo and Ramesh Narine and there was no direct evidence that linked the Claimant to the offences for which he was charged. Based on the evidence that was presented at the Magistrate’s Court it simply cannot be said that the Complainant could have formed an honest belief in the guilt of the Claimant. There were glaring gaps and deficiencies in the evidence. An officer with the seniority that Phillip had at the time, should have exercised a greater degree of caution and should have conducted a more in-depth and detailed investigation. There is also no evidence to suggest that any advice from the Director of Public Prosecutions (DPP) was sought prior to the institution of charges. The accused/claimant was himself a senior police officer and in such a circumstance, caution should have been exercised to ensure**

that no harm would be occasioned to the public's perception of the police service, unless there was cogent evidence to support the institution of the charges.

36. It also seems quite irregular and this Court is quite concerned that it appears that a memorandum issued by a Permanent Secretary from a Government ministry was sufficient to initiate an investigation. The Court also notes that another senior officer Mohammed was conducting investigations but no reason was ever advanced as to why he was removed and why the complainant was assigned to the instant matter. The circumstances that operated in this case raises issues of concern given that this memorandum resulted in the arrest of an officer who was conducting his own investigation into alleged illegal activity involving officers attached to the forestry division which fell under the purview of the very Ministry from which the memorandum emanated.
37. The police service must always jealously guard its processes from actual or perceived political influence and given the allegations that were made by the Claimant of alleged impropriety by political office holders, greater care should have been exercised by Officer Phillip. Police officers are vested with the trust of the citizenry and they must always ensure that their duties are discharged without bias, favour or ill will. The complainant acted without reasonable and probable cause and the Court can and does infer malice and finds that in preferring the charges against the claimant, the Complainant was actuated by malice. Accordingly the Court finds that the Claimant was maliciously prosecuted and he is entitled to receive an award of damages.

What damages should be paid?

38. **Mc Gregor on Damages 17th Ed., 2003, paras. 38-004 to 38-005** states that the relevant heads of damages for the tort of malicious prosecution include injury to reputation; to character, standing and fame, injury to feelings, for indignity, disgrace and humiliation caused and suffered; and deprivation of liberty by reason of arrest, detention and/or imprisonment.

39. According to Holt C.J. in **Savi v Roberts (1968) 5 Mod. 405**, which was considered in **Berry v. British Transport Commission [1961] 1 Q.B.149**, there are three aspects of damages which may be occasioned by a Claimant. Firstly, damage to his fame if the matter of which he was accused is scandalous. Secondly, to his person, whereby he is imprisoned and thirdly, to his property whereby he has been put to charges and expenses.
40. The Board of the Judicial Committee in a malicious prosecution claim examined damage to reputation in the recent case of **Terrence Calix v. The Attorney General [2013] UKPC 15**. The claimant therein was a street dweller who lived in a shed, and was charged with the assault and rape of 2 persons. The Board stated at paragraph 10 of the judgment that "...compensation should be adjusted to take account of the anguish that the reputational damage occasions." At paragraph 16 of the Board cited with approval the following passage from the authors of Clayton and Tomlinson on *Civil Actions against the Police*, 3rd ed (2004) at paragraph 14-064:

"The seriousness of the offence for which the claimant was prosecuted should be considered. The more serious the offence, the greater the damage to the claimant's reputation. Thus, for example, accusations such as dishonesty or sexual misconduct will cause more damage than accusations of minor public order offences or assaults. A money figure should be placed on this 'reputation damage'. The award should be increased if the prosecution received wide publicity."

and

"The claimant's reputation should then be considered. If he is of good character then the 'loss of reputation' sum should not be reduced. If, on the other hand, he has previous convictions then there will be reductions in his 'loss of reputation' damages."

41. In **Siewnarine Buchoon and others v The Attorney General CV 2006-01846** – the charges against all three Claimants were dismissed approximately 1 year 2 months after they were laid. In their claim for malicious prosecution, the first Claimant was awarded

\$40,000.00; the second Claimant was awarded \$90,000.00 and the third Claimant was awarded \$25,000.00 as general damages, inclusive of aggravated damages. The second Claimant was also \$25,000.00 as exemplary damages for the verbal threats and other abuses that he endured at the hands of the officers.

42. **In Sookdeo Harricharan v The Attorney General and PC Cecil Santana No. 10817**

HCA. No. 3068 of 1999 (delivered on 19th December 2006): - The Plaintiff a police officer with some 25 years service was charged with larceny of a motor vehicle. He was arrested by officers who appeared at his home at 5am in two unmarked police vehicles. Deyalsingh J found that the Plaintiff was not shown the arrest warrant prior to or at any time during the actual arrest, nor was he informed of the charge for which he was being arrested nor was informed of his constitutional right to an attorney. At the police station the Plaintiff was fingerprinted, photographed and placed in a cell with other prisoners. He was taken to the Magistrate's Court and 1 ½ hours later and he was placed on bail and released later that day. He spent roughly 10 hour in custody. The case was called 50 times in the San Fernando Magistrates' Court over a period of 3 ½ years and the magisterial proceedings were dismissed following a no case submission. The Plaintiff was awarded \$75,000.00 as general damages for malicious prosecution.

43. **In Harold Barcoo v The Attorney General and Insp Phillip Browne HCA No. 1388**

of 1989 (delivered on 19th December 2001): - The Plaintiff was a special reserve police officer. He was arrested by a team of police officers headed by an Acting Superintendent, who was investigating the theft of arms from the armoury. The Plaintiff was taken into custody in the afternoon of 22nd May 1987 and interviewed on several occasions up to 25th May 1987, on which date he was charged with possession of ammunition. During his time in custody the Plaintiff was placed in a "cage" which contained other prisoners. He was granted bail by a Magistrate on 26th May 1987 and was taken to state prison where he was placed in a cell with other prisoners and remained there until 27th May 1987, when his bail was posted. The magisterial proceedings were pending for over one year before they were determined. While those proceedings were pending, details of the matter were published in the newspaper. In his claim for false

imprisonment and malicious prosecution, the Plaintiff was awarded \$75,000.00 as general damages (inclusive of an element of aggravated damages) and \$10,000.00 as exemplary damages.

44. In the recent case of **Uric Merrick v. The Attorney General of Trinidad and Tobago and the Commission of Prisons** Civil Appeal No. 146 of 2009, the Court of Appeal awarded the sum of \$200,000 for 36 days of detention.
45. In **CV2009-04698 GERALD RODNEY RAMPERSAD –v- THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO** the Honourable Madame Justice Dean-Armorer awarded the Claimant the sum of **one-hundred and sixty-thousand (\$160,000.00)** where he was charged with possession of marijuana for the purpose of trafficking contrary to the Dangerous Drugs Act and where he was detained for approximately seven (7) days on remand at the Golden Grove Prison.
46. In **CV2013-00844 DILLON RAMIREZ –v- THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO ANORS. –** this Court awarded the Claimant the sum of **one hundred thousand dollars (\$100,000.00)** inclusive of aggravated damages having found that he was maliciously prosecuted.
47. In **CV2012-00914 JACQUELINE CHARLES –v- THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO –** Master Sobion-Awai awarded the Claimant general damages inclusive of aggravated damages in the sum of **one-hundred and ninety-five thousand dollars (\$195,000.00)** for wrongful arrest and malicious prosecution. The Claimant was a known businesswoman and was charged with the offence of obtaining money by false pretenses with the intent to defraud.
48. **The Claimant at the time he was charged, was a senior police officer and he had no criminal record. He was also approaching the end of a long career and had served for over thirty years. He was detained for around 6-7 hours before he was released**

on bail. For someone of his standing and given his intimate connection with the law, his period of detention, though relatively short and the institution of the charges against him must have caused him significant disquiet, discomfort and distress.

49. It is highly plausible that the Claimant's colleagues and members of the public must, given the circumstances, have been aware of the fact of his arrest. The matter was called before the Siparia Court from June 2004 to November 2007. This Court is the district court that serves areas including the area in which the Claimant lived and worked and it is highly likely that he would have been seen by police officers and by members of the public every time he attended Court.

50. For someone circumstanced as the Claimant, the institution of the charges, must have occasioned anguish upon him. The charges involved allegations of dishonesty, for an officer with decades of service, these charges would have negatively impacted upon his reputation and standing, in the eyes of his colleagues, the junior officers who served under him and his standing in the eyes of members of his community. The injury to the Claimant's feelings and to his reputation would have been substantial.

51. Instead of retiring from the service with his head held high it is regrettable that the Claimant exited the service with the allegations of criminal conduct over his head. Having regard to all the factors that have been outlined, this Court is of the view that the Claimant is entitled to substantial damages and awards the sum of \$185,000 as compensatory damage for malicious prosecution inclusive of an uplift for aggravated damages.

Should Exemplary damages be awarded?

52. 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. Exemplary damages are awarded not as compensation, but to punish the wrongdoer and to act as a deterrent to others who might engage in similar conduct.

53. The House of Lords in the matter of **Kuddus –v- The Chief Constable of Leicestershire [2002] 2 A.C. 122** dealt with the principle of exemplary damages and Lord Nicholls stated:

“ The availability of exemplary damages has played a significant role in buttressing civil liberties, such as in claims of wrongful arrest. From time to time, cases do arise where the awards of compensatory damages are perceived as inadequate to achieve a just result between the parties. The nature of the Defendant’s conduct calls for a further response from the courts. On occasion conscious wrongdoing by a Defendant is so outrageous, his disregard of the Plaintiff’s rights so contumelious, that something more is needed to show that the law will not tolerate such behaviour. Without an award of exemplary damages, justice will not have been done. Exemplary damages, as a remedy of last resort, fill what would be a regrettable lacuna.”

54. The Court of Appeal reviewed the law on exemplary damages in **CIVIL APPEAL NO. 84 OF 2005 AARON TORRES V POINT LISAS INDUSTRIAL PORT DEVELOPMENT CORPORATION LIMITED.** In two (2) separate judgments delivered by Mendonca J.A and Warner J.A the Court ruled that exemplary damages were not confined to tortious conduct but extended to the Law of Contract, as well, and said that the Court should focus on the “conduct and wrong doing” of the Defendant in order to vindicate the rule of law. The judgment comprehensively reviewed the development of the law in this area in several commonwealth jurisdictions and identified the relevant principles and tests.

Mendonca J.A at paragraph 57 stated:

“A proper award must therefore look at proportionality in several dimensions. Some of these which can impact on the quantum of the award were identified to be: (1) proportionate to the blame worthiness of the Defendant’s conduct; (2) proportionate to the degree of vulnerability of the claimant; (3) proportionate to the harm or potential harm directed specifically at the claimant; (4) proportionate to the need for deterrence;

(5) proportionate even after taking into account the other penalties both civil and criminal which have been or are likely to be inflicted on the Defendant for the same conduct; and (6) proportionate to the advantage wrongfully gained by the Defendant from the misconduct. Applying these dimensions of proportionality of the facts of this case I can say at the onset that on the evidence there are no other penalties likely to be inflicted on the Respondent. The other matters, however, require some consideration.”

55. In **SEAN WALLACE –v- THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO CV2008-04009** Des Vignes J. awarded the sum of **\$70,000.00** as exemplary damages.

56. In **OWEN GORING –v- THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO C.V 2010-03643.**, Rajkumar J. awarded the Claimant **\$100,000 in exemplary damages.** At page 3 of the judgment, the learned Judge stated- “ *No court can ignore allegations such as those made by this claimant. The assaults he described are no different in effect from torture, and whether you call it assault or torture in this case doesn’t change the nature of the actions that took place. There was no check or balance on the actions that were conducted by the servants or agents of the State in this case because of the fact:*

- 1) *that these types of assault continue to occur despite pronouncements by several courts that steps need to be taken, to ensure that assaults like this do not take place, and*
- 2) *that a long hard look needs to be taken at what takes place on occasion behind prison walls in this country, and*
- 3) *that those various statements (pronouncements) over several years have continued to be ignored despite increasing signals from the courts, from case law, in the form of exemplary damages, it is necessary once again to send such a signal.”*

57. In **C.V 2011-03482 MARVIN JOHNSON –V- THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO, Rampersad J,** stated at paragraph 95

“95. In this case, this court noted that the Claimant was, for some inexplicable reason, made the target of a deliberate attempt to fabricate evidence against him and to tarnish his reputation. This court deprecates this behaviour by the officers involved and wishes to award for exemplary damages to deter the recurrence of such behaviour. To this court, it is unacceptable for the officers to hide behind the allegations of the alleged loss of the Station Diary and of their personal diaries and to come to court and to also allege the loss of the prosecution file containing the alleged written confession and yet subject to the claimant to the added burden of going through the civil case notwithstanding the fact that not one shred of real evidence could be relied upon or produced by the officer to vindicate his decision to bring the charges against the Claimant. The retention and maintenance of official records such as the diaries of officers who are under a duty to make a contemporaneous record of their activities and station diaries and prosecutions files, to my mind be seen as a serious duty imposed upon the police service in order to ensure transparency and preserve public trust in the police service. When all written contemporaneous records mysteriously disappear as in this case, serious questions as to the bona fides of the parties involved arise and, to my mind, need to be investigated

96. In those circumstances, the court awards the sum of forty five thousand dollars as exemplary damages.....”

58. On the facts of the instant case, the Court has found that the complainant did not undertake a full and comprehensive investigation and that salient aspects of evidence that were necessary to establish essential elements of the offences charged were not available to the complainant prior to the institution of the charges.

59. The facts upon which the charges against the Claimant were premised were fundamentally flawed and deficient and Officer Phillip’s decision to charge the

Claimant without the requisite evidence that was necessary so as to form a reasonable belief in the guilt of the Claimant, was in the circumstances reckless. The Court is of the view that the award of compensatory damages which included an uplift for aggravated damage is in the circumstances inadequate and does not lead to a just result. The Court is of the view that the short comings of the Complainant were significant and demonstrated a contumelious disregard for the Claimant's rights and his reputation as a senior officer who was close to retirement. The Complainant in the course of his investigation disregarded the very serious allegations that were outlined by the Claimant and this approach was ill advised. The institution of criminal charges can destroy a lifetime of hard work and sacrifice and can have such a negative impact on the life of the person charged that no quantum of financial award could adequately address. The Court is therefore compelled to issue an award that is proportionate to (i) the Defendant's blame worthiness (ii) the vulnerability of the Claimant (iii) the harm that was occasioned to the Claimant and (iv) the need for deterrence. Policing is serious business and requires impartiality and a keen sense to do that which is just and right. The commitment to protect and serve should always be undertaken in a fair, thorough and comprehensive manner that is devoid of any political motive, direction and or ulterior agenda. In the circumstances this Court awards the sum of \$65,000.00 by way of exemplary damages to the Claimant.

Special damages

60. The Claimant is entitled to recover the quantifiable pecuniary loss that he suffered as the direct consequence of his prosecution and the sum of \$40,000 which he paid for his legal representation that the Magistrates' Court has to be repaid to him.
61. For the reasons that have been outlined:
 - a. The judgment of this Court is that the defendant shall pay to the Claimant damages for malicious prosecution with an uplift for aggravated damages in

the sum of \$185,000, exemplary damages in the sum of \$65,000 and special damages in the sum of \$40,000.00.

- b. The Defendant shall pay interest of the sum of \$40,000.00 at a rate of 3% per annum from the date of the Claimant's arrest to the date of this judgment and thereafter interest shall accrue at the statutory rate of interest.**
- c. Interest shall be paid on the general and exemplary damages awarded at a rate of 3% from the date of service of the claim form to the date of this judgment and thereafter interest shall accrue at the statutory rate of interest.**

62. The Defendant is to pay to the Claimant costs calculated a prescribed costs basis.

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FRANK SEEPERSAD
JUDGE