

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2014-03039

Between

**KATHLEEN ALI-MOHAMMED
BHAGMANIA BICKRAM**

Claimants

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

Before The Honourable Mr. Justice Seepersad

Appearances:

1. Mr. A. Pariagsingh instructed by Mr. Ramnath for the Claimant
2. Ms. E. De Silva instructed by Ms. S. Roberts for the Defendant

Date of delivery: 25th January, 2016

REASONS

1. Before the Court for its determination was the Claimants claim for damages for malicious prosecution as well as a claim for aggravated and exemplary damages.
2. The gist of the Claimants case was that they together with Benneth Pacheco were at their home on the 25th July, 2004, when the police came without a search warrant and conducted a search of their home and the environs of the house. Two officers came from the back of their property with a bag and alleged that same contained ammunition. Consequently the Claimants and Pacheco were charged with possession of ammunition not being the holders of the requisite license contrary to section 6 (1) of the Firearm Act Chap. 16.01 (as amended). The case against the Claimants was dismissed at the Couva Magistrates Court due to the non appearance of the Complainant.
3. The Defence joined issue with the facts as outlined by the Claimants. The Defendant stated that the Complainant had received information as at July 2004 in relation to Pacheco and he conducted investigations and obtained a search warrant to search Pacheco's home. The Defence further stated that a search was duly conducted at the said house and the Complainant found in a bedroom a cardboard type barrel in which there was a crocus bag that was wrapped in a red curtain and inside same 319 cartridges were found. As a result the Claimants and Pacheco were charged.
4. Each Claimant filed a witness statement and the claimants also filed a statement of Jessica Abinas, who is the 1st Claimant's sister and the daughter of the 2nd Claimant. The Defendant relied on the evidence of the Complainant Officer Neil Brandon John and that of Officer Anand Bissoon.
5. The Court had to address its mind to a question of fact and it had to determine whether or not it accepted the version of the evidence presented by the Claimants namely that the bag in which the ammunition was contained was found by the police at the back of the house or whether same was found in the bedroom as advanced by the Defendant.
6. At paragraph 4 of her witness statement the 2nd Claimant said that two officers opened the bag at the back door and said that they had found the bag in the fig patch which was

about 20 feet from the back fence. She also said that the Complainant Brandon John was present when the bag was opened and when the officers indicated where it was found. According to her evidence the complainant was not one of the officers who came from the back of the house. The 1st Claimant however, before this Court, gave in cross examination, an account that conflicted with her witness statement and the evidence given by the 2nd Claimant. She stated that the Complainant Brandon John was in fact one of the officers who came with the bag from the back of the house. The Court viewed this departure as significant. On the Claimants' case there were two conflicting versions as to whether or not the Complainant was part of the party of officers who had retrieved the bag from the back of the house.

7. The Court did not find the evidence of the Claimants' witness Ms. Abinas to be helpful. She was 10 years old at the time the incident occurred and she could not recall any of the material events that occurred on the night in question.
8. The Court found that the evidence presented by both witnesses for the Defendant was clear, concise, cognizant and compelling. There was general consistency between the evidence of both defence witnesses and both officers instilled in the Court the unshakable feeling that they were both witnesses of truth. The Court formed the view that the Defence witnesses gave an accurate account of the events that transpired and this view was reinforced, having considered the contradiction on the Claimants' case as to whether Noel John did or did not form part of the party of officers who came with the bag from the back of the house. The Court found that the said inconsistency served to shake the Court's confidence in the credibility of the Claimants' evidence and led the Court to find as a fact, on a balance of probabilities, that the position outlined by the Defendant was more plausible and probable.
9. The Court therefore accepted the evidence advanced by the Defendant and found as a fact that the crocus bag was found inside a barrel in the north eastern bedroom and the Court therefore rejected the Claimants' evidence that the bag was brought by officers from the back of the house.

10. Having found that the bag containing the ammunition was found in a bedroom of the house and having noted the provisions of the Firearms Act, the Complainant had, at the material time, reasonable and probable cause to charge the Claimants and he had sufficient evidence upon which he could have reasonably formed an honest belief in the guilt of the Claimants, additionally there was no evidence to suggest that he acted with malice.

11. Accordingly the Claimants' case was dismissed and the Claimants were ordered to pay to the Defendant costs calculated on a prescribed costs basis in the sum of \$14,000.00 and the Court further ordered that there was to be a stay of execution of 28 days on the payment of the costs awarded.

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FRANK SEEPERSAD

JUDGE