IN THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV 2014-03547

BETWEEN

YASIN ABU BAKR

Claimant

AND

NALINI SINGH

First Defendant

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Second Defendant

Before the Honourable Mr. Justice Frank Seepersad

1. Mr. F. Scoon and Ms N. Lowman for the Claimant
2. Mr. R. Rajcoomar, Ms. Redhead and Ms. Almarales instructed by Ms. Bansee for the 1st Defendant
3. Mr. J. Singh instructed by Mr. Taklalsingh, for the 2nd Defendant

Date of Delivery: 20th November, 2017

DECISION

Overview

1. The Claimant instituted this claim following his arrest and subsequent prosecution for the murder of Israel Sammy who died on the May 20, 1998.

2. The claim alleges that the First Defendant, a Magistrate in her capacity as Coroner for St. George West County, Port-of-Spain, maliciously, and without reasonable and probable cause, issued a warrant of apprehension for the Claimant following an inquest into the death of Israel Sammy. As a result, the Claimant was incarcerated for some twenty-two days at a maximum-security facility charged with murder. He seeks the following reliefs:
    i. Damages, inclusive of aggravated and exemplary damages;
    ii. A declaration that his rights under the Constitution have been contravened;
    iii. Interest, and
    iv. Costs.

3. At the conclusion of the trial the Court gave directions for the filing of submissions and thereafter subsequent applications were made to vary the Court's timetable. This resulted in delay which curtailed the Court's ability to issue a judgment within the time that it initially indicated. The Claimant's last submissions were filed on 3rd October 2017 and although several extensions were granted the 2nd Defendant failed to provide the Court with any assistance as it failed, refused and/or neglected to file any submissions.

Sequence of Events

4. The chronology of the events relative to the Claimant's case, is as follows:
    i. Israel Sammy was murdered on May 20, 1998.
    ii. The inquest into the death of Israel Sammy was formally opened by the Coroner on February 2, 2009. After taking evidence, a summons was sent for the Claimant and an individual named Brent Miller who had implicated the Claimant in the murder of Israel Sammy in an unsigned police statement.

iii. The Claimant retained counsel and on March 17, 2009 when the matter was called, counsel for the Claimant submitted that the Coroner recuse herself on the ground of apparent bias. In delivering her ruling on May 14, 2009, the Coroner rejected the submission.

iv. The inquest continued and ultimately culminated with a decision to issue a warrant of apprehension for the Claimant and Brent Miller.

v. The Claimant was arrested and appeared before the Chief Magistrate charged with murder.

vi. Twenty-two days after he was apprehended the DPP discontinued the proceedings against the Claimant.

Issues

5. The issues that arise for the Court's determination are as follows:

   a. Whether or not a claim for malicious prosecution can be instituted against the Coroner and/or whether the Coroner enjoyed absolute or qualified immunity.

   b. Whether an action for malicious prosecution can be mounted pursuant to the provisions of the Magistrate's Protection Act Chap 6:03.

   c. If an action for malicious prosecution can be made as against the Coroner, was the Claimant was maliciously prosecuted?

   d. Whether or not the Second Defendant is liable in damages, and if so, what measure of damages should be awarded?

   e. Whether the Claimant is entitled to the Constitutional reliefs sought, and if so, what relief should be granted.

The role of the Coroner and Coroner's Courts

6. The Coroner's Court has a deeply rooted history and its powers have evolved through the passage of time. It is considered a Court of record but is neither a civil nor criminal Court. Its main function is to investigate and not adjudicate. Therefore, it is not to make any finding as it relates to the guilt or innocence of an individual, especially since there are no

parties to an inquest. In the case of **R. v. Surrey Coroner, ex p. Campbell 1982 1 Q.B. 661**, Lord Justice Watkins at page 675 explained:

> *"…[W]e have no doubt that a Coroner's inquest is still a Court, though one having characteristics which are unique in the English legal system, in that its function is to investigate but not to reach a final decision such as a judgment order or verdict of guilt."*

7. In Trinidad and Tobago, Coroners, when appointed are bound by the Coroner's Act Chap 6:04. Pursuant to Section 3 of this Act, all Magistrates (who are creatures of statute) are Coroners of Trinidad and Tobago but are limited to their districts under the Summary Courts Act Chap 4:20 unless otherwise required by the Chief Justice. As creatures of statute, the Magistrates' jurisdiction is limited to the four corners of the statutes from which their powers are derived and therefore they must act in strict compliance with the aforesaid statutory restrictions.

8. The Coroner's Act delineates the ambit of the function and powers of the Coroner and of specific relevance are sections 10 and 10A of the Act which provide as follows:

> *"10. (1) A Coroner having received the report of the District Medical Officer as to the cause of death of any person, shall carry out a preliminary investigation as to the cause and circumstances of the death.*
>
> *(2) Where upon the completion of the preliminary investigation the Coroner finds that the circumstances of the case warrant no further enquiry he shall deliver his findings in open Court on such date, time and place to be fixed by the Clerk of the Peace of the district to which the Coroner has been assigned.*
>
> *(3) The Clerk of the Peace shall cause written notice to be given to the investigating officer, and any parties interested therein, of the date, time and place for the delivery of the findings.*
>
> *10A. Where upon the completion of the preliminary investigation the Coroner finds that the circumstances of the case warrant further enquiry he shall hold an inquest in accordance with this Act."*

9. Having conducted the inquest, the Coroner may take a further step in accordance with the Act and can set the law in motion so as to cause the preferring of a charge on indictment. Section 28 of the Act provides that:

> *"28. If, during the course or at the close of any inquest, the Coroner is of opinion that sufficient grounds are disclosed for making a charge on indictment against any person, he may issue his warrant for the apprehension of the person and taking him before a Magistrate, and may bind over any witness who has been examined by or before him in a recognisance with or without surety to appear and give evidence before the Magistrate."*

The liability of Magistrates in the performance of their judicial duties

10. It is an ancient and established rule under the common law that judicial officers are protected by judicial privilege in the exercise of judicial functions undertaken within the ambit of their jurisdiction. This "immunity" exempts the judicial officer from civil liability under the common law. In the case of puisne judges, this privilege is an absolute one as denoted by Lord Denning MR in **Sirros v. Moore 1975 QB 118:**

> *"No matter that the judge was under some gross error or ignorance, or was actuated by envy, hatred and malice, and all uncharitableness, he is not liable to an action. The remedy of the party aggrieved is to appeal to a Court of Appeal or to apply for habeas corpus, or a writ of error or certiorari, or take some such step to reverse his ruling."*

11. There is a need for judicial privilege so that those who hold the office may execute their judicial duties independently without being fettered by the fear of being liable for damages. While Judges are protected under the common law, Magistrates do not have the same level of protection and the issues that relate to Magistrates' immunity have been addressed in the Magistrate's Protection Act of Trinidad and Tobago Chap. 6:03 (MPA) which provides that

Magistrates may be liable in civil law where they exceed their jurisdiction, act maliciously and/or without reasonable and probable cause. Section 4 the Act provides as follows:

> *"4. The endorsement of the writ of summons in every such action shall allege either that the act was done maliciously and without reasonable and probable cause, or that it was done in a matter not within the jurisdiction of the Magistrate, otherwise the writ shall be set aside on summons; and if the plaintiff fails at the trial to prove the allegation, a verdict shall be given for the Defendant."*

12. In **Myrtle Crevelle v. The Attorney General of Trinidad and Tobago Civ. App. 45 of 2007** at paragraph 22, the Court of Appeal considered Section 4 and said as follows:

> "Section 4 gives right of action against a Magistrate in respect of an act done by him in the execution of his duty which is done maliciously and without reasonable and probable cause. It follows that an action alleging malice wold normally be in respect of an act of a magistrate done within jurisdiction."

13. Notwithstanding the position as aforesaid, the Act shields Magistrates from civil liability save in particular circumstances. Sections 5 and 6 of the Magistrate's Protection Act Chap 6:03 (MPA) speak to whether or not certain actions can be maintained against a Magistrate in the execution of his/her duties and the said sections 5 and 6 read as follows:

> *"5. (1) Any person injured by any act done by a Magistrate in a matter not within his jurisdiction, or in excess of his jurisdiction, or by any act done in any such matter under any conviction or order made or warrant issued by him, may maintain an action against the Magistrate without alleging that the act complained of was done maliciously and without any reasonable and probable cause.*
>
> *(2) No such action shall be brought for anything done under the conviction or order, or for anything done under any warrant issued by the Magistrate to procure the appearance of such party and followed by a conviction or order in the same matter, until after the conviction or order has been quashed by the High Court.*

6. No action shall in any case be brought against any Magistrate for anything done under any warrant which has not been followed by a conviction or order, or if, being a warrant upon an information for an alleged indictable offence, a summons was issued previously thereto, and served upon such person personally, or by its being left for him with some person at his usual or last known place of abode, and he has not appeared in obedience thereto."

14. Section 6 of the MPA pellucidly outlines that where a warrant has been issued but is not followed by a conviction or order that no case shall be brought against any Magistrate. Counsel for the Claimant submitted that a final order was in fact made against the Claimant at the end of the inquest since the Coroner/Magistrate found sufficient grounds to issue a warrant of apprehension for the Claimant for the murder of Israel Sammy in accordance with section 28 of the Coroner's Act.

15. The Court of Appeal in the case of **Crevelle** (supra) at paragraph 32 of the judgment referred to an 'order' in the context of section 6 to mean: *""Order", in both sections 5 and 6 thus refers to a final order made after a substantive hearing of the charge or matter before the Magistrate."* In this case, it must be reiterated that the Coroner's Court proceedings are inquisitorial and not accusatorial in nature and there could have been no substantive hearing of any charge before the Coroner.

16. Under the Coroners Act and more particularly sections 10, 10A, 20 to 34, the procedure as to how an inquest is commenced and conducted is provided for. By virtue of the law as prescribed under the Coroners Act, the First Defendant had a discretion to hold an inquest and as such, the manner in which she exercised her discretion to hold same, which included inter alia the summoning of the Claimant and taking such evidence as she saw fit, cannot be subject to question and/or she cannot be subject to action and/or she is immunized from any liability by virtue of Sections 6 and 9 of the Magistrates Protection Act.

17. Having considered the law and having noted that the proceedings before the Coroner were inquisitional in nature, it cannot be said that there was a substantive hearing of the charge or that the decision to issue the warrant was a final order as contemplated under Section 6 of the MPA. The Claimant's case against the 1st Defendant is therefore misconceived and devoid of merit. In the event that the Court is wrong on this issue, it will proceed to consider the Claimant's action in relation to the tort of malicious prosecution.

The law in relation to malicious prosecution.

18. In an action for malicious prosecution, the Claimant must establish the presence of the following ingredients as outlined in Clerk and Lindsell on Torts, 18th Edition at page 823, para 16-06: *"In an action of malicious prosecution the plaintiff must show first that he was prosecuted by the Defendant, that is to say, that the law was set in motion against him on a criminal charge; secondly, that in so far as they were capable of doing so the charges were determined in his favour; thirdly, that it was without reasonable and probable cause for the Defendant instituting or carrying on those proceedings; fourthly, that the Defendant was actuated by malice; fifthly, that he suffered damage. The onus/burden of proving every one of these is on the plaintiff on a balance of probabilities."*

19. In **Hicks v Faulkner (1878) 8 Q.B.D 167 at 171** reasonable and probable cause was defined 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."*

20. At page 173 of the judgment, Hawkins J stated as follows:

> *"The question of reasonable and probable cause depends in all cases, not upon the actual existence, but upon the reasonable bonâ 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 - no matter whether this belief arises out of the recollection and memory of the accuser, or out of information furnished to him by another. 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 to establish actual guilt and those required to establish a bonâ fide belief in guilt should never be lost sight of in considering such cases as that I am now discussing. Many facts admissible to prove the latter, would be wholly inadmissible to prove the former."

21. In the House of Lords decision of **Glinski v. McIver (1962) AC 726**, Lord Denning approved the definition advanced in **Hicks (supra)** and stated as follows:

> *"In the first place, the word 'guilty' is apt to be misleading. It suggests that in order to have reasonable and probable cause, a man who brings a prosecution, be he a police officer or a private individual, must, at his peril, believe in the guilt of the accused. That he must be sure of it, as a jury must, before they convict. Whereas in truth he has only to be satisfied that there is a proper case to lay before the Court…After all, he cannot judge whether the witnesses are telling the truth. He cannot judge whether the witnesses are telling the truth. He cannot know what defences the accused may set out. Guilt or innocence is for the tribunal and not for him…So also with a police officer. He is concerned to bring to trial every man who should be put on trial, but he is not concerned to convict him…No, the truth is that a police officer is only concerned to see that there is a case proper to be laid before the Court."*

22. Lord Devlin provided further guidance in the case of **Glinski v McIver(supra)** in relation to the definition of reasonable and probable cause when he said that it: "…means that there must be cause (that is, sufficient grounds…) for thinking that the Plaintiff was probably guilty of the crime imputed."

23. In the case of **Harold Barcoo v The Attorney General of Trinidad and Tobago HC 1388 of 1989**, Mendonca J (as he then was) identified several questions to be posed in determining the question of reasonable and probable cause at pages 4 and 6 of the judgment, these questions are as follows:

    (i) "Did the prosecutor have an honest belief in the guilt of the accused?

    (ii) Did the prosecutor have an honest conviction of the existence of the circumstances relied on?

    (iii) Was the conviction based on reasonable grounds?

    (iv) Did the matters relied upon constitute reasonable and probable cause in the belief of the accused guilt?"

24. The first two tests outlined by Mendonca J (as he then was) in **Harold Barcoo** (supra) are subjective and the latter two objective.

25. In **Glinski v McIver** (supra) Lord Denning provided further guidance in relation to the manner in which a malicious prosecution claim can be proved and his Lordship said:

> *"First, there are many cases where the facts and information known to the prosecutor are not in doubt. The plaintiff has himself to put them before the court because the burden is on him to show there was no reasonable and probable cause. The mere fact of acquittal gets him nowhere. He will therefore refer to the depositions which were taken before the magistrate: or he may refer, as here, to the statements taken by the police from the witnesses: and he will argue from thence that there was no reasonable or probable cause."*

26. In relation to malice, **Halsbury's Laws of England/Tort (Volume 97 (2015))/9** at paragraph 728 states: *"A Claimant in a claim for damages for malicious prosecution or other abuse of*

legal proceedings has to prove malice in fact indicating that the Defendant was actuated either by spite or ill-will against the Claimant, or by indirect or improper motives."

27. In **Cecil Kennedy v Donna Morris and the Attorney General Civ App 87 of 2004** it was stated that in proving malice a Plaintiff is not required to demonstrate spite or hatred, he is only required to demonstrate that a prosecution was prompted by improper and direct motives and that the proper motive for a prosecutor is the desire to secure the ends of justice and if this is not a Defendant's true or predominant motive then a plaintiff will succeed in a claim for malicious prosecution.

28. Further, in the case of **Williamson v The Attorney General of Trinidad and Tobago [2014] UKPC 29**, at page 4, paragraph 12, Lord Kerr held that "*it has to be shown that the prosecutor's motives is for a purpose other than bringing a person to justice...the wrongful motive involves an intention to manipulate or abuse the legal system"*

29. In **Clifford v The Chief Constable of the Hertfordshire Constabulary [2008] EWHC 3154 (QB)** it was stated at paragraph 47 that: *"Malice in relation to the tort means improper motive. Any motive other than that of simply instituting a prosecution for the purpose of bringing a person to justice, is a malicious motive on the part of the person who acts in that way: Steven v Midland Counties Ry.(1854) 10 Ex 352, 356. Absence of reasonable and probable cause may lead to the inference of malice being drawn."*

30. In relation to the requirement to establish malice Mendonca JA stated in the case of **Manzano v The Attorney General of Trinidad and Tobago CV2010-2754** at paragraphs 46 to 49 as follows:

> *"46. Malice in this context means not only spite, or ill-will but also an improper motive (see Gibbs v Rea [1998] AC 768, 797).*
>
> *47. The proper motive for a prosecution is a desire to secure the ends of justice. So in the context of malicious prosecution a Defendant would have acted maliciously if he*

initiated the prosecution through spite or ill-will or for any other motive other than to secure the ends of justice. It follows therefore that even if a Claimant cannot affirmatively establish spite or ill-will or some other improper motive, he may still succeed in establishing malice if he can show an absence of proper motive.

48. Malice may be inferred from the absence of reasonable and probable cause because if there is no reasonable and probable cause for the prosecution it may be inferred that there was an absence of proper motive and hence malice. In A v State of New South Wales the Court however interjected this caution when inferring malice from the absence of reasonable and probable cause (at para. 90): "No little difficulty arises, however, if attempts are made to relate what will suffice to prove malice to what will demonstrate absence of reasonable and probable cause. In particular, attempts to reduce that relationship to an aphorism - like, absence of reasonable cause is evidence of malice (cfJohnstone v Sutton (1786) 1 TR 510 at 545 per Lord Mansfield and Lord Loughborough: 'From the want of probable cause, malice may be, and most commonly is, implied'; Varawa v Howard Smith Co Ltd (1911) 13 CLR 35 at 100 per Isaacs J: '[T]he want of reasonable and probable cause is always some, though not conclusive, evidence of malice...' but malice is never evidence of want of reasonable cause (cfJohnstone v Sutton 91786) 1TR 510 at 545 per Lord Mansfield and Lord Loughborough [99 ER 1225 at 1243]: 'From the most express malice, the want of probable cause cannot be implied...') - may very well mislead. Proof of particular facts may supply evidence of both elements. For example, if the plaintiff demonstrates that a prosecution was launched on obviously insufficient material, the insufficiency of the material may support an inference of malice as well as demonstrate the absence of reasonable and probable cause. No universal rule relating proof of the separate elements can or should be stated." It may therefore be a question of degree whether malice should be inferred from the absence of reasonable and probable cause. If the prosecution was launched on "obviously insufficient material" that may suffice to support the inference of malice.

49. Malice may also be inferred from the absence of honest belief in the merits of the case. Indeed this can provide strong evidence of malice (see Haddrick v Heslop (1848) 116 ER 869)."

31. Ultimately malice may be established when the Court finds that the circumstances are such that malice can be inferred given the absence of reasonable and probable cause or where the Claimant has demonstrated that the Defendant had an improper motive by adducing either direct evidence of same or based on the reasonable inferences which could be drawn having regard to the state of the evidence before the Court.

Application of the law to the facts

Was the Claimant prosecuted by the First Defendant?

32. According to Halsbury's Laws of England/TORT (VOLUME 97 (2015))/9 at paragraph 718:

"A prosecution exists where a criminal charge is made before a judicial officer or tribunal, and any person who makes or is actively instrumental in the making or prosecuting of the charge is deemed to prosecute it, and is called the prosecutor. A person who lays before a Magistrate an information stating that he suspects and has good reason to suspect another, or who prefers a bill of indictment, is engaged in a prosecution; and he may be responsible for the prosecution even though the charge made before the Magistrate is an oral one, and even though, after making the charge before the Magistrate, or even without making one, he is bound over to prosecute and does so."

33. The Coroner issued a warrant for the Claimant to be taken before a Magistrate to answer the charge of murder. After the Coroner issued the warrant it was open to the Claimant to judicially review the decision but this was not done. Once the Claimant was apprehended and he appeared before the Court, the Director of Public Prosecutions was vested with the constitutional power to prosecute the Claimant. The Coroner neither laid an information before the Magistrate nor did she prefer a Bill of Indictment and the Coroner was not the person who prosecuted the Claimant.

Were the proceedings determined in the Claimant's favour?

34. It is not disputed that the DPP discontinued the charge against the Claimant when a formal notice of discontinuance was served in accordance with Section 9a of the Constitution of Trinidad and Tobago.

Was there reasonable and probable cause?

35. If a claim for malicious prosecution could be sustained as against the Coroner, the issue or question as to whether there was reasonable and probable grounds for prosecution would be dependent upon the existence of sufficient grounds so as to justify the issuing a warrant in accordance with the provisions of Section 28 of the Coroners Act.

36. In **R v. Galbraith (1981) 1WLR 1039** the test to determine whether there exists a case to answer was laid down by Lord Lane CJ at page 1042 as follows:

> *"How then should the judge approach a submission of "no case"? (1) If there is no evidence that the crime alleged has been committed by the Defendant, there is no difficulty. The judge will of course stop the case. (2) The difficulty arises where there is some evidence but it is of a tenuous character, for example because of inherent weakness or vagueness or because it is inconsistent with other evidence. (a) Where the judge comes to the conclusion that the prosecution evidence, taken at its highest, is such that a jury properly directed could not properly convict upon it, it is his duty, upon a submission being made, to stop the case. (b) Where however the prosecution evidence is such that its strength or weakness depends on the view to be taken of a witness's reliability, or other matters which are generally speaking within the province of the jury and where on one possible view of the facts there is evidence upon which a jury could properly come to the conclusion that the Defendant is guilty, then the judge should allow the matter to be tried by the jury. It follows that we think the second of the two schools of thought is to be preferred… There will of course, always be in this branch of law, be borderline case. They can safely be left to the discretion of the judge."*

37. In **Blackstone's Criminal Practice, 2014** at page 1759 at paragraph D16.57 it is stated that:

> *"However, the second limb of the Galbraith test does leave a residual role for the Court as assessor of the reliability of the evidence. The Court is empowered by the second limb of Galbraith test to consider whether the prosecution's evidence is too inherently weak or vague for any sensible person to rely on it. Thus, if the witness undermines his own testimony by conceding that he is uncertain about vital points, or if what he says is manifestly contrary to reason, the Court is entitled to hold that no reasonable jury properly directed could rely on the witness's evidence and therefore (in the absence of any other evidence), there is no case to answer."*

38. The issue as to what may amount to be "sufficient grounds" in the context of an inquest was also considered in **Jervis on the Office and Duties of Coroners** at Paragraphs 13 to 32 where it is stated:

> *"The Coroners Act 1887 required the inquest, in case of a finding of murder or manslaughter, to the name the person(s) found to have committed the homicide, and the inquisition operated as an indictment of the person(s) so charged, who would be committed for trial on the inquisition at the next assizes. This was never the law in relation to any other offence involving killing. But in 1977 the power of the inquest in effect to charge a person with homicide was abolished, and further amendments removed the other surviving distinctions in Coroner's law between murder, manslaughter and infanticide on the one hand, and other homicide offences on the other. So since 1977 the inquisition has played no direct role in the criminal process. The conclusion of unlawful killing, which was then introduced, was not intended to indicate even a prima facie case of criminal liability. Instead it was introduced in order to enable the judgment-neutral fact of how the deceased came by his death to be recorded. By concentrating on the deceased rather than any alleged perpetrator (who in any event could not be named), it was hoped to turn the verdict into a purely factual record. Yet logically it is difficult to state that a person has been the victim of a crime without first being satisfied that a crime has been committed. Public perception has accordingly been that unlawful killing is a judgmental, and not merely*

a factual, conclusion. Although the establishment in civil proceedings of the fact of the crime is only required to be achieved to the civil standard, i.e. the balance of probabilities, the English Courts after 1977 established the rule that the conclusion of unlawful killing could not be reached unless the Coroner or jury was satisfied to the criminal standard of proof, i.e. beyond reasonable doubt. Prior to 1977 this would have been nonsense. At most, a finding of murder or manslaughter by an inquest operated to charge a person, not to convict him. And a grand jury, or (later) examining Magistrates, did not have to be satisfied of guilt beyond reasonable doubt before committing for trial. A case to answer was sufficient. Other common law jurisdictions have accordingly held that the civil standard is enough, thus avoiding the English error".

39. In **R (Cash) v. HM Coroner for the County of Northamptonshire and Chief Constable of Northamptonshire Police (interested party) [2007] EWHC 1354 (Admin)** Keith J at Paragraphs 22 to 24 stated:

"[22] A Coroner is obliged to leave to the jury those verdicts - and only those verdicts - which are properly open to them to reach on the evidence. In determining whether a particular verdict is open to the jury to reach on the evidence, the test is similar to that laid down in R v Galbraith [1981] 2 All ER 1060, 144 JP 406, [1981] 1 WLR 1039, which identified the test for determining whether a Defendant in a criminal case has a case to answer. Early on in his judgment, Lord Lane CJ identified at p 1040F-G two schools of thought on the topic:

"There are two schools of thought: (1) that the judge should stop the case if, in his view, it would be unsafe (alternatively unsafe or unsatisfactory) for the jury to convict; (2) that he should do so only if there is no evidence upon which a jury properly directed could properly convict."

The answer the Court gave was at p 1042B-E:

"(1) If there is no evidence that the crime alleged has been committed by the Defendant, there is no difficulty. The judge will of course stop the case.

(2) The difficulty arises where there is some evidence but it is of a tenuous character, for example because of inherent weakness or vagueness or because it is inconsistent with other evidence. (a) Where the judge comes to the conclusion that the prosecution evidence, taken at its highest, is such that a jury properly directed could not properly convict upon it, it is his duty, upon a submission being made, to stop the case. (b) Where however the prosecution evidence is such that its strength or weakness depends on the view to be taken of a witness's reliability, or other matters which are generally speaking within the province of the jury and where on one possible view of the facts there is evidence upon which a jury could properly come to the conclusion that the Defendant is guilty, then the judge should allow the matter to be tried by the jury. It follows that we think the second of the two schools of thought is to be preferred.

There will of course, as always in this branch of the law, be borderline cases. They can be safely be left to the discretion of the judge."

[23] How is the Galbraith test to be applied to inquests, specifically to whether a verdict of unlawful killing should be left to the jury? In R v HM Coroner for Exeter and East Devon ex parte Palmer [2000] Inquest LR 78, Lord Woolf MR said:
"In a difficult case, the Coroner is carrying out an evaluation exercise. He is looking at the evidence before him as a whole and saying to himself, without deciding matters which are the province of the jury, 'Is this a case where it would be safe for the jury to come to the conclusion that there had been an unlawful killing? If he reaches the conclusion that, because the evidence is so inherently weak, vague or inconsistent with other evidence, it would not be safe for a jury to come to the verdict, then he has to withdraw the issue from the jury. In most cases there will only be a single proper decision which can be reached on any objective assessment of the evidence. Therefore one can either say that there is no scope for Wednesbury reasonableness or there is

scope, but the only possible proper decision which a reasonable Coroner would come to is either to leave the question to the jury or not, as the case may be.

However, as was pointed out by the Lord Chief Justice in Galbraith, in these cases there will always be borderline situations where it is necessary for the Coroner to exercise a discretion. It is only in such a situation that he has a discretion. It follows, therefore, that [the role which] the test of reasonableness enunciated in Wednesbury has to play in relation to decisions as to whether to leave a particular issue to the jury or not . . . is extremely limited."

[24] It is possible to argue that Lord Woolf was saying that the Galbraith test was not the appropriate test for a Coroner to apply when considering whether a verdict of unlawful killing should be left to the jury. After all, according to Galbraith, the question is not so much whether it would be unsafe for the jury to convict, but rather whether there was evidence on which the jury could convict. But Lord Woolf made it clear in R v Inner South London Coroner ex parte Douglas-Williams [1999] 1 All ER 344, 162 JP 751 that the Galbraith test was to apply. At p 349a he said that "a Coroner should adopt the Galbraith approach in deciding whether to leave a [particular] verdict" to the jury. He then returned to the ambit of the limited discretion which the Coroner enjoys in this area. At p 349a-c, he added:

"The strength of the evidence is not the only consideration and, in relation to wider issues, the Coroner has a broader discretion. If it appears there are circumstances which, in a particular situation, mean in the judgment of the Coroner, acting reasonably and fairly, it is not in the interest of justice that a particular verdict should be left to the jury, he need not leave that verdict. He, for example, need not leave all possible verdicts just because there is technically evidence to support them. It is sufficient if he leaves those verdicts which realistically reflect the thrust of the evidence as a whole. To leave all possible verdicts could in some situations merely

confuse and overburden the jury and if that is the Coroner's conclusion he cannot be criticised if he does not leave a particular verdict."”

40. In the context of determining what amount to “sufficient grounds” pursuant of Section 28 of the Coroner’s Act, this Court is of the view that the Galbraith test is applicable and the 1st Defendant had to consider before determining that there existed sufficient grounds for the issuing of a warrant, whether there existed evidence upon which she could have safely concluded that the Claimant was responsible for the murder of Sammy and she had to address her mind to the inherent weakness and/or vagueness of the evidence so as to determine whether a sensible person could rely upon same.

41. The Claimant, in his Amended Statement of Case at paragraph 26.4 stated that the First Defendant “pursued the Claimant’s prosecution knowing and it being evident that there were not sufficient grounds for making the charge” and pleaded particulars in support.

42. The only evidence before the First Defendant that implicated the Claimant in the murder of Israel Sammy was a photocopy of a type written statement bearing endorsements that it was given by one Brent Miller also called “Big Brent” of Ariapita Road, St. Ann’s which was taken by No. 12721 Ag. Cpl Veronique in the presence of No. 14117 WPC Bacchus at the Port of Spain Prison and dated July 31, 2003. A photocopy of the typewritten statement previously recorded by Veronique and Bacchus, was admitted into evidence as “CE1” during the inquest.

43. During the course of the Inquest, the First Defendant also received the following additional evidence and information in relation to this caution statement.

    i. The caution statement of Brent Miller was a photocopy of a type written version of a caution statement which was recorded by Cpl. Veronique.

ii. When he was first questioned about the statement, Sgt. Veronique said that it was recorded at the Homicide Bureau Office, Police Headquarters, Port of Spain. Under cross examination however and in contradiction to his earlier statements, the witness testified that the caution statement was recorded while Brent Miller was in custody at the Royal Jail.

iii. Sgt. Veronique testified that "we wrote down exactly what he [that is Brent Miller] said on pieces of caution paper" but he did not have the document or a copy of same and he further said that he did not retain a photocopy of the statement because of the sensitivity of the matter. The witness further testified that on completion of the statement, he believed that he handed it over to Superintendent Paul.

iv. Sergeant Veronique stated that the type written statement appeared to be an accurate reflection of the original but the original of the said caution statement was never put before the Coroner and no good reason was advanced for the absence of the original document.

v. Although Sgt. Veronique said he gave the original statement to Senior Superintendent Paul, Snr. Supt. Paul gave evidence that Mr. Nedd took possession of the original and Mr. Nedd stated that he turned the statement over to Assistant Superintendent, Khan, on the 1st of July, 2004. However, Asst. Supt. Khan denied that a caution statement was handed to him and stated that he knew nothing about any statement given by Brent Miller to the Police.

44. On the 2nd day of September 2009, Sgt. Veronique, was recalled to be cross examined by Mrs. Pamela Elder, SC who acted on behalf of the Claimant and he gave the following evidence:

i. He never signed any page of the Statement;
ii. It was his usual practice to sign the statements that he records;
iii. The caution at the top of the statement had not been signed.

iv. He did not place his initials or sign next to his initials;

v. The statement bore a certificate of the Justice of the Peace, Mr. Stephen Young and Mr. Young witnessed the statement;

vi. The statement was taken on July 31st, 2003, at which time Brent Miller had been charged with conspiracy to murder and possession of firearms and the murder of Jilla Bowen at Movie Towne;

vii. At the trial for conspiracy Justice Ibrahim upheld a no case submission on the basis that Brent Miller's evidence was unreliable;

viii. Brent Miller read over the statement and the Director of Public Prosecution previously disregarded the said Miller statement and placed no reliance on same;

ix. The JP did not certify that Brent Miller read the statement;

x. On the 9th day of September 2003, the DPP discontinued all charges against Brent Miller pertaining to Movie Towne incident.

45. It appears that the 1st Defendant focused exclusively on the alleged Miller statement. This statement was allegedly given while he was facing another charge and the statement was given under the condition of a promise of immunity. It is not in dispute that a Court subsequently found that Miller was an unreliable witness. There was also conflict between information in the statement and the findings in the post mortem and there was
further conflict on the evidence in relation to factual issues.

46. Although the Coroner's decision was not judicially reviewed, it appears to this Court, that the evidence before her was inherently weak, vague and there were intrinsic inconsistencies which were such that a sensible person may not have relied upon same and in fact no reasonable jury properly directed would have relied upon same. Miller had been discredited and the Coroner should have exercised caution in relation to the statement and should have realised that there was no other evidence that linked the Claimant to the murder of Sammy. Consequently, this Court is firmly of the view that there were no sufficient grounds which could have justified the Coroner's decision to issue a warrant for the arrest the Claimant under Section 28 of the Coroner's Act.

Did the 1st Defendant act with malice?

47. Where the evidence demonstrates that the operation of bias materially affected the manner in which a prosecution was commenced, such a circumstance is one from which malice can be inferred. Judicial officers must always disregard the nature of the litigants before them and ever cognizant that the Justice must be blind to bias, all litigants even those who are infamous or notorious, must be treated in such way so as to ensure that the decision rendered excluded any irrelevant considerations and that same was formulated with singular regard to the evidence before the court, having objectively applied the law. This manner of approach is mandatory and the public must always have confidence, that before the courts in this land issues of personality, political persuasion, ethnicity, social status and even notoriety, are always disregarded. The 1st Defendant's Wednesbury unreasonable decision to issue a warrant may have been premised upon an erroneous understanding and/or misapplication of the law, but that by itself cannot establish malice and Judicial Officers can and do often err when rendering judgments as they can wrongly apply and/or interpret the relevant law. There is no evidence to suggest that the Coroner operated with any improper motive. The evidence reveals that during the course of the Inquest, she acted with procedural fairness and the Claimant was given an opportunity to be heard. The Coroner issued two written rulings that outlined her analysis of the law and facts and though her application of Section 28 of the Coroner's Act was fundamentally flawed there is no evidence to suggest that she was guided by any motive other than that of discharging her statutory obligations so as to secure the ends of justice.

48. In the circumstances even if a claim for malicious prosecution could be instituted as against the Coroner (which as discussed it cannot), on the facts before the Court the requisite parameters necessary to establish the tort, do not exist as she did not prosecute the Claimant nor is there any evidence upon which this Court can find that she acted with malice. Consequently, the claim for malicious prosecution as against the 1st Defendant is devoid of merit and must be dismissed.

49. It is the Court's view that after the warrant was issued by the Coroner, the prosecution of the matter was entirely within the remit of the office of the Director of Public Prosecutions. Therefore, any matter which concerned the manner of detention and/or the prosecution of the Claimant fell within the purview of the DPP's office.

50. The particulars of malicious prosecution were entirely pleaded as against the Coroner. The Claimant's case essentially rested on a pleading that the 1st Defendant was responsible for maliciously prosecuting him and the Court has already concluded that, in this case, that claim cannot succeed. There was no legal justification for the Claimant's arrest and incarceration and the Court has great difficulty in understanding why it took over 20 days for the charge to be discontinued. This position, notwithstanding, the Claimant's case was not properly structured and there are no particularised pleadings of malicious prosecution against the Second Defendant. Essentially, there is no allegation that after the Coroner issued the warrant that the DPP went on to prosecute the Claimant without sufficient and/or probable cause to so do. Accordingly the 2nd Defendant has no case to answer in relation to the tort of malicious prosecution.

Is the Claimant entitled to Constitutional reliefs?

51. The Claimant in previous Court proceedings namely CV2014-03548, brought a constitutional motion against the current 1st Defendant in respect of matters arising out of the exact facts of this case. The Court made a determination on the matter, which was upheld by the Court of Appeal and at paragraph 10 of its judgment this Court stated as follows:

> *"10. The Claimant has instituted a civil claim for malicious prosecution in action CV 2014-03547. The matter is docketed before this Court and is premised upon the same facts as are outlined in the instant application under section 14 of the constitution. The Claimant submitted that the instant claim and the malicious prosecution claim differ in one important respect in that the instant claim seeks:*

"An order quashing the finding of the aforementioned Coroner that at the close of the inquest there were sufficient grounds for charging the Claimant with the murder of Mr. Israel Sammy."

11. It cannot be disputed that a Coroner is empowered to find that there are sufficient grounds for the institution of any relevant charge that accords with the evidence adduced during the inquest. The issue as to whether that evidence was in fact sufficient is not an issue that involves Section 14 of the Constitution. That is an issue that could have been addressed by way of judicial review. No such action was however filed within the required time period. While the existence of a parallel remedy does not automatically render a constitutional motion an abuse of process, there are no exceptional circumstances or special features of the complaint in this case so as to justify the course that has been adopted.

12. The decision of the Coroner was made within the confines of due process. An inquest was conducted and there is no evidence to suggest that the process engaged by the Coroner was flawed or that the said process was conducted in a manner which resulted in a contravention of the Claimant's constitutionally enshrined rights.

13. The Claimant submitted that he can proceed with two separate claims, premised on two separate versions of fact, with the primary difference being the fact of malice which would be known only to the Defendant and the Coroner. This position cannot be condoned and litigation cannot be conducted on such an ad hoc basis with the hope that "something must stick".

14. The Claimant also submitted that there is value in quashing the Coroner's order and that the quashing of same bears significance that is not properly met in damages. It was further submitted that the quashing of the Coroner's order as a primary remedy is not available under malicious prosecution proceedings. After the Coroner directed that the Claimant should be charged with the offence of murder, the Director of Public Prosecutions, acting within the parameters of his authority discontinued the charge as against the Claimant. There is therefore no order by the Coroner that remains on record as suggested by the Claimant and no practical benefit can be derived from the nullification or removal of the Coroner's order.

15. In the circumstances the instant action is inappropriate and amounts to an abuse of the Court's process. For the reasons that have been outlined the fixed date claim form filed herein on the 29th September 2014 and the affidavit filed in support thereof are hereby struck out pursuant to Part 26.2 (1) b of the Civil Proceedings Rules 1998 (as amended)."

52. The position adopted by the Court as aforesaid restricts any further consideration of any related aspect of the instant claim. This fact notwithstanding at paragraphs 29 and 30 of his Amended Statement of Case the Claimant alleged that he was deprived of his right to life, liberty and security of the person except by due process of law and that his rights to equality of treatment and equality before the law were compromised. The evidence before this Court has established that the rules of natural justice were adhered and observed during the Inquest and there is no evidence to suggest that the procedure engaged was flawed or that any of the Claimant's rights were compromised. Consequently the Claimant cannot avail himself of any constitutional relief.

53. For the reasons that have been outlined the Claimant's case is hereby dismissed and the parties shall be heard on the issue of costs.

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FRANK SEEPERSAD

JUDGE