

**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**CLAIM NO: CV2015-02367**

**BETWEEN**

**ALVIN DE COTEAU**

**CLAIMANT**

**AND**

**THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO**

**DEFENDANT**

**Before the Honourable Madame Justice Quinlan-Williams**

**Date of Delivery:** December 6, 2018

**Appearances:** Mr. Edwin K. Roopnarine and Shawn Roopnarine  
instructed by Shanta Balgobin for the Claimant  
Ms. Kelisha Bello and Niquelle Nelson Granville  
instructed by Ms. Laura Persad for the Defendant

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**JUDGMENT**

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1. One Friday evening, the claimant was walking along High Street, Princes Town. He was arrested by officers of the Trinidad and Tobago Police Service. He was later charged for the offence of possession of

cocaine. On Tuesday 21<sup>st</sup> May, 2013 the claimant appeared at the Princes Town Magistrates' Court to answer the charge. The charge was eventually dismissed for want of prosecution on 15<sup>th</sup> January, 2015.

2. What were the circumstances prevailing at the time of the claimant's arrest? Did the police officers have just and reasonable cause to arrest the defendant? Or, did the police officers act in a capricious manner and without good and probable cause when arresting the claimant? The circumstances surrounding the claimant's arrest are the key to unravelling this claim.
  
3. The issues before the court is whether the claimant was lawfully arrested, with the appropriate force required to effectuate the arrest, properly charged and prosecuted for a criminal offence. In resolving that issue the court is required to consider whether the claimant was:
  - a. unlawfully arrested;
  - b. unlawfully assaulted and battered;
  - c. falsely imprisoned; and
  - d. maliciously prosecuted.

### **The arrest and what followed thereafter**

#### The claimant's case

4. On Friday 17<sup>th</sup> May 2013 at or about 7:00 p.m. the claimant left his apartment and was walking along High Street Princes Town. Whilst walking, he passed three men standing under a street light. The men were unknown to him. One of the men placed his hand on the claimant's shoulder. The claimant pushed away the man's hand from his shoulder. The claimant roughly enquired why the person was touching him. That person, apparently annoyed, roughly responded that he was a policeman and that the claimant was under arrest. The

claimant aggressively enquired the reason for his arrest. The police officer whose hand had been pushed away, began to slap and cuff the claimant. The police officer then pushed the claimant onto a fence and handcuffed him. Thereafter the claimant was pushed into an unmarked vehicle and taken to the Princes Town Police Station. Another officer slapped the claimant whilst he was in the said vehicle.

5. At the Princes Town Police Station the claimant was taken to a room and made to stand up whilst still handcuffed. The three police officers slapped and cuffed the claimant telling him that they were going to give him a case. The claimant fell on the ground and started to bleed from his ear. The beating then stopped and his cell phone was confiscated. The claimant asserts that the further beating was unlawful.
6. Eventually, the claimant was placed into a cell and the handcuffs were removed. The claimant was given a notice to prisoner indicating that he was charged for the offence of possession of cocaine. On Saturday and Sunday the claimant complained of pain stemming from the beatings. However, these complaints were futile as he was not taken for medical treatment.
7. On the morning of Monday 20<sup>th</sup> May 2013, the claimant was taken for medical treatment at the Princes Town Medical Health Facility and afterwards transferred to the San Fernando General Hospital. The claimant was treated and admitted to Ward 8 Ear, Nose and Throat Department for review where he was diagnosed with having a central perforation to his left ear drum.
8. On Tuesday 21<sup>st</sup> May 2013 the claimant was taken to the Princes Town Magistrates' Court. The Magistrate read the charge to him and he pleaded not guilty. Bail with approval was set in the sum of \$15,000.00. The claimant however could not afford to meet his bail and was

detained at the Golden Grove Prison, Arouca. On Thursday 23<sup>rd</sup> May 2013 he was released on bail from the Golden Grove Prison, Arouca.

9. The claimant avers that his detention at the Golden Grove Prison was traumatic as he was placed in a hot crowded cell containing nine persons. He was forced to sleep on the floor on newspapers and was subjected to the use of an open toilet which everyone else in the cell used.
10. With respect to the prosecution proceedings, the claimant asserts that the matter was called on at least five occasions and was eventually dismissed on the 15<sup>th</sup> January 2015.
11. It is the claimant's case that he was falsely arrested and imprisoned as he denies ever committing any offence. Furthermore, he was maliciously prosecuted as the officers knew he did not commit any offence.
12. Before this incident, the claimant worked as a joiner through referrals from friends and contacts. However, due to the detention, the claimant was unable to work for six days and his business suffered as people found out about the incident. He further claims that his cell phone was taken from him and was never returned causing him to suffer additional loss. Moreover, as a result of attending the Princes Town Magistrates' Court on several occasions, the claimant suffered loss in travelling costs.

The defendant's case

13. On Friday 17<sup>th</sup> May 2013 at around 7:30 p.m. No. 13226 Sgt Inshan Teeluck and No. 15460 Cpl Reid were on mobile patrol duty along the Naparima Mayaro Road, Princes Town in an unmarked police vehicle registration number PCY 6682. The said officers approached the Feed

Depot in close proximity of a known “drug block”. This drug block was familiar to them based on their previous arrests of persons in that area who were found to be in possession of cocaine and/or marijuana. The officers observed the claimant standing on the side of the road in the area of the drug block.

14. The claimant was facing the police vehicle. As the police vehicle drew nearer to the claimant, he turned and swiftly began walking in an easterly direction. The claimant kept glancing in the direction of the said police vehicle. The claimant’s actions aroused the suspicions of both police officers. They decided to investigate. Accordingly, both officers dressed in plain clothes alighted from the vehicle and approached the claimant.

15. Both police officers identified themselves by presenting to the claimant their Trinidad and Tobago Police Service Identification Cards. Subsequently, the claimant gave his name as “Alvin De Coteau”. Sgt Teeluck avers that the claimant was smelling of alcohol. Cpl Reid in the presence of Sgt Teeluck, informed the claimant of his observations and suspicions arising out of the claimant’s actions particularly, his looking at the police vehicle and its occupants, turning around swiftly and walking away briskly. Cpl Reid also told the claimant, in Sgt Teeluck’s presence, that he was of the opinion that he had something illegal in his possession. Cpl Reid searched the claimant. In the presence of Sgt Teeluck, a clear plastic package was found in the claimant’s left front pants pocket. The package contained a cream substance resembling the dangerous drug cocaine.

16. Sgt Teeluck heard Cpl Reid inform the claimant that he was of the opinion that the substance found was cocaine and that he was under arrest for the same. The claimant was cautioned in accordance with Rule III of the Judge’s Rules and he remained silent. Sgt Teeluck also

heard Cpl Reid informing the claimant of his right to contact a family member or an Attorney-at-Law or a friend of his choice. The claimant however made no request.

17. The police officers then asked the claimant where he lived and his response was that he did not live anywhere. The claimant was handcuffed and placed in the back seat of the police vehicle next to Sgt Teeluck where he was transported to the Princes Town Police Station. The defendant asserts that at no time did Cpl Reid or any other servant and/or agent of the State put their hand on the claimant's shoulder. Furthermore, at no point during the claimant's arrest was Cpl Reid or Sgt Teeluck aggressive towards the claimant.

18. At the police station, Sgt Teeluck witnessed Cpl Reid weighing the package, in the presence of the claimant. The package and its contents were labelled R.R. vs A.D. 17/5/13. At about 8:30 p.m. on the said 17<sup>th</sup> May 2013, Cpl Reid charged the claimant for possession of cocaine and gave him a notice to prisoner. The claimant's fingerprint impressions were taken, he was searched and then placed in a cell.

19. The defendant affirms that at no time during the arrest, charging or subsequent detention of the claimant, was he assaulted and/or battered by the police officers or by any other servant and/or agent of the State as proffered by the claimant. In addition, Sgt Ramdial the Shift Commander in charge of the shift from the evening of the 17<sup>th</sup> May 2013 to the morning of the 18<sup>th</sup> May 2013 and who resumed duties on the morning of the 20<sup>th</sup> May 2013, indicated that he visited the cells on both days. At no point in time did the claimant make any complaints about the alleged beating and/or injuries while detained at the police station. Sgt Teeluck also stated that he received no such complaints at any time from the claimant.

## The Law, Findings and Reasons - Unlawful Arrest

20. That the claimant was arrested is an agreed fact. A police officer is allowed by law to arrest a person for an arrestable offence. Section 3(1) of the Criminal Law Act defines an arrestable offence as an offence to which the powers of summary arrest apply. Such powers of arrest include where a person may, or by virtue of any written law, be sentenced to imprisonment for a term of five years. The sentence for a summary conviction for the offence of possession of cocaine is a minimum term of imprisonment of five years.

21. An arrest for an arrestable offence can be made without a warrant. This power of arrest without warrant is given by Section 3(4) of the Criminal Law Act Chap. 10:04 which states:

“Where a police officer, with reasonable cause, suspects that an arrestable offence has been committed, he may arrest without warrant anyone whom he, with reasonable cause, suspects to be guilty of the offence.”

22. The police have additional powers of arrest. Section 45(b), (c) and (d) of the Police Service Act Chap. 15:01 sets out the general duties of police officers. The Police Service Act also empowers police officers to arrest persons found committing an offence for which a warrant is not required:

“45. A police officer –  
(b) may arrest, charge and bring before a summary Court a person found committing any offence rendering him liable to arrest without warrant, or whom he reasonably suspects of having committed any such offence;  
(c) may summon before a summary Court a person whom he reasonably suspects of committing an offence;  
(d) may prosecute a person who commits any offence;”

23. Section 46(1)(f) of the Police Service Act prescribes the circumstances whereby a person may be arrested without a warrant:

“46. (1) A police officer may arrest without a warrant-  
(e) a person whom he finds in any public or private place or building and whom he suspects upon reasonable grounds of having committed or being about to commit an offence;”

24. Justice Mendonça (as he then was) in the case of H.C. 1388 of 1989 *Harold Barcoo v The Attorney General of Trinidad and Tobago* in considered whose suspicions ought to be examined in cases of false arrest or wrongful imprisonment. Pages 5 and 6 of the judgment prescribes:

“The test whether there is reasonable and probable cause has both subjective and objective elements. In Clayton and Tomlinson, Civil Actions against the Police (1987) the authors put the test as follows posed as follows (page 147):

1. Did the officer honestly have the requisite suspicion or belief?
2. Did the officer, when exercising the power, honestly believe in the existence of the “objective” circumstances which he now relies on as the basis for that suspicion or belief?
3. Was his belief in the existence of the circumstances based on reasonable grounds?
4. Did these circumstances constitute reasonable grounds for the requisite suspicion or belief?

The first two questions are “subjective” and the second two are “objective”. If the answer to anyone of these questions is “no” then that officer will not have had “reasonable grounds”.

25. Narine J.A. at paragraph 14 of Civil Appeal No. 267 of 2011 *Nigel Lashley v The Attorney General of Trinidad and Tobago* also laid out the test for reasonable and probable cause for arrest:

“It is well settled that the onus is on the police to establish reasonable and probable cause for the arrest: *Dallison v. Caffery* (1964) 2 All ER 610 at 619 D per Diplock LJ. The test for reasonable and probable cause has a subjective as well as an objective element. The arresting officer must have an honest belief or suspicion that the suspect had committed an offence, and this belief or suspicion must be based on the existence of



objective circumstances, which can reasonably justify the belief or suspicion. A police officer need not have evidence amounting to a prima facie case. Hearsay information including information from other officers may be sufficient to create reasonable grounds for arrest as long as that information is within the knowledge of the arresting officer: *O'Hara v. Chief Constable* (1977) 2 WLR 1; Clerk and Lindsell on Torts (18th ed.) para. 13-53. The lawfulness of the arrest is to be judged at the time of the arrest.”

26. Honourable Madam Justice Margaret Mohammed in CV2012-01650/CV2012-01651 *Brent Marlon Primus and Alban Baptiste v PC Anton Maxime and The AG* highlighted the broader test to be applied when determining reasonable and probable cause under section 46(1) of the Police Service Act as compared to section 3(4) of the Criminal Law Act at paragraphs 17:

“In *Harrylal Singh v AMOCO Trinidad Oil Company and the Attorney General Mendonca* JA examined the difference in the standard of proof that is required under section 3(4) of the Criminal Law Act compared to section 46(1) (d) (then referred to as section 36(1) (d)) of the Police Service Act and he was of the view that section 46(1) provided for a broader test to determine whether there was reasonable suspicion and it “does not confine the enquiry to matters in the mind of the arresting officers”. In his view “only the objective existence of reasonable grounds” is required under the said section.”

27. The onus is on the police officers to establish reasonable and probable cause for the arrest of the claimant under the Criminal Law Act and reasonable suspicion under the Police Service Act.

28. The court is satisfied on a balance of probabilities that the police had both reasonable and probable cause and reasonable suspicion to arrest the claimant. The court prefers the evidence of the Sgt Teeluck over the evidence of claimant as to the circumstances leading to the search of the claimant, the finding of a dangerous drug on his person and his arrest.

29. Sgt Teeluck evidence is that he was on patrol with one other officer. This evidence is supported by the entry in the station diary made at 6:01pm on the 17<sup>th</sup> May, 2013. There is also the entry in the station diary made at 8:00pm on the same day. Both entries certify that Sgt Teeluck and one other officer went out on patrol and returned to the station. This version of the encounter between the police and the claimant is more logical and is much preferred than that given by the claimant. The claimant's evidence is that he saw three men standing under a street light. The reason they were standing there, if one is to believe the claimant, is to place their hand on the shoulder of a citizen going about his business.
30. Further Sgt Teeluck's evidence is that he was familiar with the area where the claimant was seen. He knew from having arrested persons in that area before, that there was a drug block nearby. It makes perfect sense that in those circumstances, a vigilant police officer will be naturally alert. It was the officers' alertness that caused them to observe the claimant standing in the direction of the unmarked police vehicle the officers were in, and the claimant's change in direction while walking away continuously looking over his shoulder.
31. The search that followed was therefore reasonable. Following the search, the police found what appeared to be cocaine. Given the circumstances leading up to the search and the description of the cream coloured substance, it was reasonable for the police to determine that it was cocaine. Possession of cocaine, is an arrestable offence entitling the police to arrest the claimant. These circumstances, satisfies the court, that the police officers had reasonable and probable cause to arrest the claimant. They satisfied both the objective and subjective requirements of the Criminal Law Act. The court is satisfied that Sgt Teeluck honestly believed that the claimant was acting suspiciously. The evidence satisfies the court that

Sgt Teeluck honestly believed that there was a drug block in the immediate vicinity. The court is satisfied that any officer, with the information that Sgt Teeluck and the other officer had, would have formed the same belief and acted in the same way.

32. The claimant also alleges his detention, on Monday 20<sup>th</sup> May, 2013 was illegal. That was the day before he appeared in court for the first time. This submission is not logical. The claimant himself, gives evidence which accounts for the delay in his appearance in court. As a result of his complaints about the pain he was suffering, he was taken to the Princes Town District Hospital and then to the San Fernando General Hospital. The court is satisfied that the claimant's evidence answers that allegation.

#### **The Law, Findings and Reasons - Unlawful Assault and Battery**

33. The learned authors of Clerk and Lindsell on Torts 20<sup>th</sup> Edition at paragraph 15-09 describe a battery as:

“The direct imposition of any unwanted physical contact on another person may constitute the tort of battery. There is no requirement to prove that the contact caused or threatened any physical harm”

34. At paragraph 15-12 an assault is described as:

“...and act which causes another person to apprehend the infliction of immediate or unlawful force on his person. The defendant's act must also be coupled with the capacity of carrying the intention to commit a battery into effect.”

35. In relation to the burden of proof, paragraph 15-07 stated that it is for the claimant to establish interference of his person by the defendant; after which it is for the defendant to justify or defend its actions.

36. The court is satisfied on a balance of probabilities, that there was no assault and battery upon the claimant. The court makes this finding

based on assessing the credibility of the witnesses and the medical evidence.

37. The judgment of the Honourable Mr. Justice Kokaram at paragraph 19 in the case of CV2013-03924 *Carlton Morgan v The Attorney General of Trinidad and Tobago* guides the court to check the impression of the evidence of the witness against the contemporaneous documents, the pleaded case and in the inherent probability or improbability of rival contentions in assessing the claimant's credibility:

“In assessing the credibility of witnesses the Court is guided by the judgment recently delivered by the Court of Appeal in *AG v Anino Garcia v AG* CA Civ. 86/2011 where Bereaux JA placed emphasis on the assessment of the credibility of witnesses as against the pleaded case, contemporaneous documents and the inherent probabilities of the rivalling contentions. Adopting the guidance of *Reid v Charles* Privy Council Appeal No. 36 of 1987 the Court of Appeal commented: ‘where the wrong impression can be gained by the most experienced of judges if he relies solely on the demeanour of witnesses, it is important for him to check that impression against contemporary documents, where they exist, against the pleaded case and against the inherent probability or improbability of the rival contentions, in the light in particular of facts and matters which are common ground or unchallenged, or disputed only as an afterthought or otherwise in a very unsatisfactory manner. Unless this approach is adopted, there is a real risk that the evidence will not be properly evaluated and the trial judge will in the result have failed to take proper advantage of having seen and heard the witnesses.’”

38. The claimant alleged that he got licks from the police, first on High Street and later at the Police Station. In fact, he blamed the injury he suffered on the slaps he got the left side of his face. However, a closer examination of his evidence shows that his claim is that he fell in the station. He claims he was slapped to the left side of his face, he fell and his ear started to bleed. A close examination of his evidence would attribute the bleeding from his ear to the fall.

39. He complained, to the doctors however, about being slapped in his chest and face and he complained about left tinnitus. The medicals do not note anything about a fall. There is a Medical Summary dated the 13<sup>th</sup> May, 2015. This Medical Summary notes that the claimant was seen at the San Fernando General Hospital on the 20<sup>th</sup> May, 2013. He complained about being slapped to the left side of the head. Dr. Singh notes that the claimant was “found to have a central perforation of the left ear drum”. However, Dr. Singh gave no opinion as to what could have caused the perforation. Dr. Singh did not say whether being slapped to the left side of his head could have caused the perforation. Nor did he say whether a perforation can be caused by anything other than blunt force.

40. The other medical is dated the 9<sup>th</sup> September, 2014. It is important to note that Dr. Bridgelal does not render any opinion about the cause of the “Perforated tympanic membrane. Blood in canal” finding. The court is left with no evidence about whether blunt force, either from a fall to the ground or slaps to the left side of the face, could have been the cause of the injury.

41. Allegations about unlawful assault and battery meted out to a citizen by a member of the Trinidad and Tobago Police Service are very serious. They go to the heart of law and order in our democracy. It is imperative for the court to give serious consideration to these allegations.

42. In that light, the court considered, carefully, the credibility of the claimant as well as Sgt Teeluck. When assessing the plausibility of the claimant’s version the court considered a number of allegations made by him:

- a. He claimed that he gave the police his address. That the police saw him emerge from his home along High Street, Princes

Town. However, Sgt Teeluck's evidence is that the claimant refused to give his address. It is expected that a suspect and the eventual defendant's address is important to the police. Why would police officers want to charge a person with "no fixed place of abode" as his address, when it is known. The court is satisfied, that for reasons best and only known to the claimant, he did not provide the police officers with his address.

- b. The claimant's evidence about the nature and extent of the beating itself is outrageous. The claimant's supposition about the reason for his arrest is that he aggressively shrugged off the officer's hand from his shoulder. The claimant's version is that three persons were just standing under a street light. For no apparent reason one of the men touched the claimant on his shoulder. These same officers, who almost immediately started to physically abuse the claimant, according to him, gave him a break from the licks. They then give him two cold Stag beers to drink and then continued to beat him. It was clear to the court that the claimant, belatedly, made up the story about the beer because he wanted to provide an explanation for the police officer saying that when they approached him he smelt of alcohol.
- c. The claimant's evidence is that he was a person of good character. In his evidence in chief the claimant states "I never committed any offence". At another point in his evidence the claimant states "I am ashamed and embarrassed to tell people about this incidence, because I do not want to be judged". Still further in his evidence in chief the claimant stated "People started to say I involved in drugs which was totally untrue". That evidence is clear about the impression it gives. It turns out that the claimant is not a man of good character after all. It

turns out that at the time the claimant was charged for the offence in 2013, it was the ninth time he had been charged by the police. By that time he had recorded against him a conviction for the offence of Possession of Cocaine for Trafficking. That is not a conviction he could have forgotten, it seems, he was sentenced to serve a term of imprisonment of five years with hard labour.

43. The above findings have led the court to conclude that the claimant is not a credible witness. Certainly, the claimant cannot be believed with respect to the evidence of him being unlawfully assaulted and beaten. The court is satisfied by the evidence of Sgt Teeluck, that the claimant was arrested, in the usual course of the police duties. He was taken to the Princes Town Police Station and eventually charged with a criminal offence. Eventually, after being in the police custody over two days, he complained about pain in his ear and was taken to be medically examined. The cause of his injury is unknown to this court.

#### **The Law, Findings and Reasons – False Imprisonment**

44. The relevant principles when considering false imprisonment are stated in the Privy Council judgment of *Chandrawtee Ramsingh v The Attorney General of Trinidad and Tobago* [2012] UKPC 16 at paragraph 8:

“(i) The detention of a person is prima facie tortious and an infringement of section 4(a) of the Constitution of Trinidad and Tobago.

(ii) It is for the arrestor to justify the arrest.

(iii) A police officer may arrest a person if, with reasonable cause, he suspects that the person concerned has committed an arrestable offence.

(iv) Thus the officer must subjectively suspect that that person has committed such an offence.

(v) The officer’s belief must have been on reasonable grounds or, as some of the cases put it, there must have been reasonable and probable cause to make the arrest.

(vi) Any continued detention after arrest must also be justified by the detainer.

45. The court has already determined that the claimant was lawfully arrested and properly charged for the offence of possession of cocaine. The court prefers and accepts the evidence given by Sgt Teeluck about the arrest of the claimant.

46. The charging officer, the police complainant, Cpl Reid did not give evidence. The only material about Cpl Reid's whereabouts stems from endorsements on the back of the Information charging the claimant for the offence. The notes on the last two occasions the criminal case was called, record that there was no appearance of the claimant, and that he was on suspension. However, there is evidence from Sgt Teeluck. Sgt Teeluck was the other officer present with Cpl Reid and had full knowledge and information about the events that occurred at the time of the arrest and at the time of the charging. The court is satisfied on a balance of probabilities that when the claimant was detained there was reasonable cause to suspect that he had committed a crime. Sgt Teeluck, based on his evidence, did have reasonable cause to suspect that the claimant did commit a crime. The reasonable grounds were such that any other police officer, with the same information, would have arrived at the same conclusion.

### **The Law, Findings and Reasons – Malicious Prosecution**

47. The tort of malicious prosecution was defined and its requisite elements were laid out in Civ. App. No. 87 of 2004 *Cecil Kennedy v Donna Morris WPC 11435 & The Attorney General of Trinidad and Tobago*. Sharma CJ stated at paragraphs 10 and 11:

“Malicious prosecution has been defined as ‘an abuse of the process of the court by wrongfully setting the law in motion on a criminal charge.’”



To succeed in action for damages for malicious prosecution a plaintiff must prove:

- (i) the prosecution by the defendant of a criminal charge against the plaintiff before a tribunal into whose proceedings the criminal courts are competent to inquire;
- (ii) that the proceedings complained of terminated in the plaintiff's favour;
- (iii) that the defendant instituted or carried on the proceedings maliciously;
- (iv) that there was an absence of reasonable and probable cause for the proceedings; and
- (v) that the plaintiff has suffered damage."

48. In *Hicks v Faulkner* [1881-85] All ER Rep 187, Hawkins J defined the term 'reasonable and probable cause' as:

"an honest belief in the guilt of the accused based upon a full conviction, founded on reasonable grounds, of the existence of a state of circumstances, which assuming them to be true, would reasonably lead to 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. There must be: first, an honest belief of the accuser in the guilt of the accused; secondly, such belief must be based on an honest conviction of the existence of the circumstances which led the accuser to that conclusion; thirdly such secondly-mentioned belief must be based upon reasonable grounds; by this I mean such grounds as would lead any fairly cautious man in the defendant's situation so to believe; fourthly, the circumstances so believed and relied on by the accuser must be such as to amount to reasonable ground for belief in the guilt of the accused."

49. Furthermore, Hawkins J expounded that reasonable and probable cause for guilt, does not depend on the establishment of evidence to prove actual guilt of the accused. It is only the reasonable bona fide belief in the existence of a state of things or events that would amount to a justification of the course pursued in making the accusation complained of.

50. Malice means that the defendant was actuated by spite or ill-will against the claimant or by indirect or improper motives when the proceedings were instituted: Halsbury's Laws of England Volume 97 (2010), 5<sup>th</sup> Edition. However, if reasonable and probable cause is proven, then the question of malice does not arise. This was confirmed by the Court of Appeal in the case of *Cecil Kennedy* [supra] at paragraph 29:

“In the case of *Burroughs*, it was expressly stated by Ibrahim J that since the plaintiff had failed to discharge the onus of proving that the prosecution was undertaken without reasonable and probable cause, it had become unnecessary to consider the question of malice.”

51. The court is satisfied on a balance of probabilities, that the claimant did not discharge his burden in proving malicious prosecution. The court did not accept his version of events and the dismissal for want of prosecution is not sufficient to establish malice or the lack of reasonable or probable cause.

52. The court has already given the reasons its findings that the claimant is not a credible witness, that the arrest was lawful and the resulting imprisonment not false. These reasons also apply to this issue. When the claimant was searched, he had in his possession a quantity of cream rock like substance that resembled the dangerous drug cocaine. When it was weighed the apparent dangerous drug scaled 0.4 of a gram. The charge followed.

53. The case was eventually dismissed for want of prosecution. Neither the police complainant nor the supporting witness was in court. We can tell from the proceedings that Cpl Reid was on suspension. Sgt Teeluck's evidence is that he did not know of the date of the hearing. The behaviour of the officers may be described tending to bring disrepute to the Police Service, but that behaviour by itself, in these

circumstances do not amount to an absence of reasonable and probable cause to have preferred the charge. The court is therefore satisfied that it does not have to consider the issue of malice.

54. This claim was commenced by claim form and statement of case filed on the 10<sup>th</sup> July, 2015. For reasons outlined in the judgment, it is hereby ordered that there be judgment for the defendant against the claimant.

55. The claimant shall pay the defendant's costs in the sum of \$10,000.00.

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Justice Avason Quinlan-Williams

JRC: Romela Ramberran