

**IN THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**Claim No. CV 2016-00777**

Between

**HENRY LEE**

Claimant

And

**THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO**

First Defendant

**THE COMMISSIONER OF POLICE OF TRINIDAD AND TOBAGO**

Second Defendant

**BEFORE THE HONOURABLE MADAME JUSTICE QUINLAN-WILLIAMS**

**Appearances:**

Claimant as a pro se litigant

Defendants - Roshan Ramcharitar

Bryan Basdeo

Dated: 19<sup>th</sup> February 2018

**DECISION**

1. Before the court for its decision is the Notice of Application filed on the 17<sup>th</sup> of August 2017, and the issues raised therein. The Notice of Application is supported by a

submission filed by the defendants on even date. The claimant filed a written submission on the 12<sup>th</sup> of September 2017, in opposition to the defendants Notice of Application.

2. The claimant, a pro se litigant, filed a claim on the 16<sup>th</sup> of March 2016, for damages for Malicious Prosecution, False Imprisonment, Aggravated Damages, Exemplary Damages, Loss of Property, Damages to N.G.O. and interest. An amended Claim Form and Statement of Case were filed on the 2<sup>nd</sup> of March 2017. The Claim form and Statement of Case was re-amended and filed on the 12<sup>th</sup> April, 2017.
3. On the Notice of Application the following issues are to be determined:
  - i. Whether the Second Defendant is a proper party to the claim;
  - ii. Whether the claim for false imprisonment should be struck out;
  - iii. Whether the claim for malicious prosecution should be struck out;
  - iv. Whether the claim for loss of property due to imprisonment and damages to the N.G. O should be struck out; and
  - v. Whether paragraphs 20, 21, 22, 24, 25 and 26 of the re-amended Statement of Case should be struck out.

Issue1: Whether the Second Defendant is a proper party to the claim.

4. The first issue raised in the Notice of Application, is that the second defendant, the Commissioner of Police of Trinidad and Tobago, is not a proper party to the claim. The actions for Malicious Prosecution and False Imprisonment arose out of arrest and charges for Obscene Language and Resisting Arrest and arrest pursuant to outstanding warrants (as alternatives for failure to pay fines). The claimant pleaded “An argument ensued with a police officer and I, which resulted in my arrest for using obscene language and resisting arrest by a police officer”<sup>1</sup>. The claimant also pleaded that a “senior police officer Sahadeo Singh informed me that there was an outstanding

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<sup>1</sup> Paragraph 1 of Amended Statement of Case

warrant for my arrest and I was read my rights”<sup>2</sup>. The actions complained of were taken by police officers of the Trinidad and Tobago Police Service. The **State Liability and Proceedings Act**<sup>3</sup> is instructive on (speak to) the proper party to a claim when the State is involved. Section 2(2) of the **State Liability and Proceedings Act** defines State and who is a servant of the State. These definitions are as follows:

*“the State” means the Republic of Trinidad and Tobago*

*“servant”, in relation to the State, includes an officer who is a member of the public service and any servant of the State, and accordingly (but without prejudice to the generality of the foregoing) includes—*

*...a member of the Trinidad and Tobago Police Service*

5. Therefore police officers, when acting within their duties, are servants of the State. The **State Liability and Proceedings Act, Section 19(2)** (states) provides:

*“Subject to this Act and to any other written law, proceedings against the State shall be instituted against the Attorney General”.*

6. The proper interpretation of the **State Liability and Proceedings Act section 19(2)** was considered by the Privy Council in the case of **The Attorney General of Trinidad and Tobago v Carmel Smith**<sup>4</sup>, that is, the Attorney General is to represent and be the representative of the State. The court is therefore satisfied that the Second Defendant is not a proper party to these proceedings.

Issue 2: Whether the claim for false imprisonment should be struck out.

7. The second issue raised in the Notice of Application is that the claim for False Imprisonment should be struck out as having disclosed no cause of action. The claimant was charged with two offences following his arrest on the 29<sup>th</sup> of November

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<sup>2</sup> Paragraph 12 of Amended Statement of Case

<sup>3</sup> Chapter 8:02

<sup>4</sup> [2009] UKPC 50

2008. On the 7<sup>th</sup> of May 2009, the claimant filed a Notice of Appeal for his conviction and sentence for the offence of Resisting P.C. Bernard in the Execution of Duty. On the 22<sup>nd</sup> of July 2014, his appeal for conviction and sentence for the offence of Resisting Arrest was heard and determined. The conviction and sentence were quashed. However the claimant did not appeal his conviction and sentence for the offence of Obscene Language. That conviction and sentence remain unaltered.

8. Between the time of his conviction on the 7<sup>th</sup> of May 2009, and the appeal being heard for the conviction of Resisting Arrest, the claimant was arrested on outstanding warrants. On the 11<sup>th</sup> of April 2012 the claimant was arrested on the two warrants for failing to pay his fines for the offences of Resisting Arrest and Obscene language. He was released on the 15<sup>th</sup> of May 2012. The claimant, apparently, did not pay his fines for either the offence of Obscene Language (which he did not appeal) nor for the Offence of Resisting Arrest (which he did appeal). The warrant for non-payment for the offence of Obscene Language was therefore properly ordered and executed as he did not pay the fine imposed. With respect to the arrest for the offence under appeal, the court agrees with the decision in **Jeffery John and the Attorney General of Trinidad and Tobago**<sup>5</sup>, where Madame Justice Dean-Armorer stated:

*...it had been the defendant's defence that the arrest had been effected pursuant to a warrant. In my view this is an absolute defence, as long as the arresting officer has satisfied the requirement of s. 49 of the Police Service Act; which provided:*

*(1) When an action is brought against a police officer for an act done in obedience to a warrant or order of a Magistrate or Justice, the officer shall not be responsible for any irregularity in the issuing of the warrant or order or for any want of jurisdiction in the Magistrate or Justice issuing it.*

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<sup>5</sup> CV 2009 - 1536

*(2) In any action brought under subsection (1), the Court shall give judgment for the officer if he fulfils the following conditions:*

*(a) he gives the warrant or order in evidence;*

*(b) he proves that the Magistrate or Justice signed the warrant or order; and*

*(c) he proves that the act complained of was done in obedience to the warrant or order.*

*By section 477 Police Service Act, a police officer is mandated to effect arrests pursuant to an issued warrant even if the warrant is not in his possession.*

9. In the case of **Ramkissoon v P. C. Ramdath and A. G.** the Honourable Justice Edoe, as he then was set out the law concerning arrests pursuant to warrants. Justice Edoe had this to say:

*“The question of whether Ramdath had reasonable and probable cause for the arrest of the plaintiff, does not in my opinion arise in a case where a warrant has been issued. This question is relevant where arrest has been made without a warrant”.*

10. On the claimant’s pleadings, the court is satisfied that the arrest of the claimant was lawfully and so cannot amount to False Imprisonment.

### Issue 3: Whether the claim for malicious prosecution should be struck out

11. The third issue raised in the Notice of Application is for the striking out of the claim for Malicious Prosecution. The pleading do not support this claim for the tort of Malicious Prosecution. The claimant was prosecuted for two offences. He entered guilty pleas for both and later appealed the conviction and sentence for one of those offences. The elements for a claim for Malicious Prosecution are<sup>6</sup>:

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<sup>6</sup> Halsbury Laws of England. Volume 97 (2015). Paragraph 725. Clerk and Lindsell on Torts. 20 ed. 16-09.

- (1) the prosecution by the defendant of a criminal charge against the claimant before a tribunal into whose proceedings the criminal courts are competent to inquire;*
- (2) that the proceedings complained of terminated in the claimant's favour;*
- (3) that the defendant instituted or carried on the proceedings maliciously;*
- (4) that there was an absence of reasonable and probable cause for the proceedings; and*
- (5) that the claimant has suffered.*

12. The claimant's pleadings do not support a claim of Malicious Prosecution. That claim is accordingly struck out.

Issue 4: Whether the claim for loss of property due to imprisonment and damages to the N.G. O should be struck out.

13. The fourth issue raised in the Notice of Application is for the striking out of the claim for loss of property due to imprisonment and damages to NGO. The court has already ruled that the pleadings do not support claims for false imprisonment. Therefore loss suffered due to imprisonment cannot be attributable to the state.

Issue 5: Whether paragraphs 20, 21, 22, 24, 25 and 26 of the re-amended Statement of Case should be struck out.

14. The fifth issue raised in the Notice of Application is for the striking out of paragraphs 20, 21, 22, 24 25 and 26 of the re-amended Statement of Case. These paragraphs appear below:

*Paragraph 20:*

*It is not circumstantial but factual that the destruction of the NGO was the target of my detention and these are the facts:*

*The year 2011 was dedicated by the United Nations as the year for people of African descent and all countries associated with the United Nations were supposed to have funded a nationwide activity in celebration of the year for African people.*

*This NGO (none Governmental Organization) wrote to the sports minister then Anil Roberts for a nationwide "Marble pitching Competition". Despite many visits to his office no acknowledgement letter was ever forwarded for the proposal sent.*

*Paragraph 21:*

*Since slavery to present day, people in authority felt they could dictate the pace or decide what, how or the direction people of African descent should go. Therefore important research among the youths below eighteen years were denied. Therefore Anil Roberts was placed on the organization "Bill Board" as a recognized "House Nigger" and the explanation of his breach of our rights was explained. His denial had breached the fundamental human rights of our people as mentioned in the constitution: Quote*

- a) Free Institution*
- b) Respect the principles of Social Justice and therefore believe that the operations of the economic systems should result in the material resources of the country being so disturbed as to sub serve the common good but that there should be opportunity for advancement on the basis of recognition of merit ability and integrity.*
- c) Have asserted their belief in a democratic society in which all persons may, to the extent of their capacity, play some part in the institutions of the national life and thus develop and maintain due respect for lawfully, constituted authority.*
- d) Recognize that men and institutions remain free only when freedom is founded upon respect for moral and spiritual values and the rule of law.*

*Let it be known that during that period Mr. Sahadeo Singh visited my home and inquired concerning the billboard asking "You put up that sign" My reply "Yes". He looked around walked to the back looked around and walked back to the front and asked "You wrote what is on the board." My reply "Yes any issue affecting people of African descent I would put there. His reply nodding "well ok" and left. He did not say much.*

Paragraph 22:

*All areas of our fundamental Human Rights were denied. Quite recently a construction company losing a court matter, the Judge slammed the state for using a technicality of late filing not to pay the company for honest work done on many schools.*

*The interest of the citizens must be, the overriding objective of the state and not looking for technicalities to imprison its citizens or deny them their rights in earnings.*

*My constant mentioning that I had appealed the case was ignored by the Senior Police because of the fact that "a stay of execution" was not requested not was the issuing Judge or Justice of the Peace acting in his or her judicial function did not consider that if I had appealed the case there was an eliminate of wrongful prosecution amidst. So in the year for people of African descent, therefore an organization for the advancement of African people was destroyed.*

Paragraph 24:

*I wish to draw your attention to the case of **Kamal Samdath Ramsarran vs Romiel Rush P.C 7826 and the Attorney General of Trinidad and Tobago and Other HCS 1597 of 1986** in which the learned judge found that in a claim for false imprisonment, a successful plaintiff may recover damages for injury to **Exhibit G** liberty. He further stated that damages are also recoverable for injury to feelings, that is to say, mental suffering, disgrace and humiliation suffered by the plaintiff as well as any physical injury as well as injury to reputation, 44 of 44.*

Paragraph 25:

*Further, **Exhibit "H"** in the case of **Steven Semungal vs the Attorney General and John Roudier the Commission of Police CV 2009-1832** the claimant was awarded damages for unlawful detention for 12 days on an invalid warrant.*



*I was arrested falsely and imprisoned by the Officers who neglected to inform me of the reasons only on the day of transfer I was shown the warrant for my arrest. They indicated to me that there was a warrant for my arrest in respect of the 2008 incident but refused to show me the warrant. The arrest on the 11<sup>th</sup> April 2012. The warrant could not have been in respect of the 2008 incident as those convictions were under appeal and were in fact overturned on appeal on the 22<sup>nd</sup> July 2014.*

*Paragraph 26:*

*If the police had a warrant they should have shown me the warrant and take me the same day to the prison and if they did not have it then they should not have arrested and detained me until they had procured a warrant, but to detain me for five (5) days showed mischief was amidst. Note 10 of 44 Justice Prakash Moosai states Quote “ But I propose to take judicial notice of the fact that the services of Magistrates and Justices of Peace are available to police officer on duty on any day of the week, inclusive of Saturdays, Sundays and Public Holidays.*

15. The objection to the foregoing paragraphs include that the words are prolix, irrelevant and do not comply with the **Civil Proceedings Rules (CPR) Part 8**. The relevant parts of the **CPR** provides as follows:

*THE OVERRIDING OBJECTIVE*

*1.1(1) The overriding objective of these Rules is to enable the court to deal with cases justly, . . .*

*CLAIMANT'S DUTY TO SET OUT HIS CASE*

*8.6(1) The Claimant must include on the Claim Form or in his Statement of Case a short statement of all the facts on which he relies.*

*SANCTIONS – STRIKING OUT STATEMENT OF CASE*

*26.2(1) The court may strike out a Statement of Case or part of a Statement of Case if it appears to the court –*

*(a) that there has been a failure to comply with a rule, practice direction or with an order or direction given by the court in the proceedings;*

*(b) that the Statement of Case or the part to be struck out is an abuse of the process of the court;*

*(c) that the Statement of Case or the part to be struck out discloses no grounds for bringing or defending a claim; or*

*(d) that the Statement of Case or the part to be struck out is prolix or does not comply with the requirements of Part 8 or 10.*

16. The court must consider whether the words objected to disclose any cause of action, or is supportive of a cause of action otherwise disclosed in the Statement of Case or in the Claim Form. The court is satisfied that the words above recited do not fall into either category. Further, the defendants would be placed in an impossible situation of having to reply to and defend the words complained of if they are allowed to be pleaded and not struck out. There are circumstances where prolix claims can be dealt with by case management directions. However the nature of the words complained of here leads the court to only one decision that is to strike them out for non-compliance with the **CPR Part 8 and 26.2(1)**. In arriving at its decision the court considered the dicta in **Real Time Systems Ltd v Renraw Investments Ltd and others**<sup>7</sup>  
**Judge....stated:**

*In that connection, the court has an express discretion under r 26.2 whether to strike out (it “may strike out”). It must therefore consider any alternatives, and r 26.1(1) (w) enables it to “give any other direction or make any other order for the purpose of managing the case and furthering the overriding objective”, which is to deal with cases justly. As the editors of *The Caribbean Civil Court Practice (2011)* state at Note 23.6, correctly in the Board's view, the court may under this sub-rule make orders of its own initiative. There is no reason why the court, faced with an application to strike out, should not conclude that the justice of the particular case militates against this nuclear option, and that the*

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<sup>7</sup> [2014] UKPC 6

*appropriate course is to order the Claimant to supply further details, or to serve an amended Statement of Case including such details, within a further specified period. Having regard to r 26.6, the court would quite probably also feel it appropriate to specify the consequences (which might include striking out) if the details or amendment were not duly forthcoming within that period. (Paragraph 17)*

17. In the circumstance of the court's rulings on the issues raised that court is satisfied that there is no cause of action against the state requiring adjudication. It is hereby ordered that:

- a. the Claimant's Re-Amended Statement of Case and Claim filed on the 12<sup>th</sup> April, 2017 is struck out;
- b. each party to bear their own costs.

**Justice Quinlan Williams**

**Judge**

(Leselli Simon-Dyette – JRC)