REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE
SAN FERNANDO

CLAIM NO. CV2017-01777

BETWEEN

PARWATTEE RAMPERSAD

First Claimant

RAMNATH RAMPERSAD

Second Claimant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

Before the Honourable Madame Justice Quinlan-Williams

Appearances: Summer Abigail Sandy for the Claimants
Ms. Tricia Ramlogan instructed by Ms. Janine Joseph for the Defendant

Date of Delivery: 23rd January 2020

JUDGMENT

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1. The claimants were charged for the offence of possession of marijuana on the 18th March 2006 by PC 14979 Branch. The case was tried at the Princes Town Magistrates' Court. At the end of the prosecution's case on the 28th May 2013 a no case submission was upheld and the charge against the first claimant was dismissed. On the same day, the second claimant was called upon to answer the charge and he was found not guilty.

2. The claimants filed this claim for malicious prosecution on the 15th May 2017. The issue before the court is whether the prosecution of the first and second claimants was malicious.

Evidence

3. The claimants alleged that on the morning of the 18th March 2006, they were at their home at 63 Matabar Trace Barrackpore. They heard the sound of vehicles approaching. The second claimant said he eventually went outside and saw a party of police officers. The first claimant's evidence is that she did not see the officers until they entered her home. They both say that the home was searched. However, they deny that a warrant was shown or read to either of them.

4. They described that their home is made up of two storeys; there are two bedrooms upstairs. They both say that they sleep down stairs and a son also slept downstairs. The first claimant's evidence is that she was searched by a female officer and she gave graphic details of the circumstances surrounding that search. After her search she was taken outside and her evidence is that she remained outside. Sometime after the police informed her that they were arresting her husband, she was also arrested and taken in a separate vehicle to the Barrackpore Police Station where they were both charged for the offence of possession of 65 grams of marijuana.

5. Meanwhile the second claimant's evidence is that he was outside when he heard the sound of his front door being broken and the police entered through the front door. His evidence is that he was in the house while it was being searched but that he did not see them find any black bag. He however said that the officer threw a black bag at him which hit him on his chest and the bag fell to the ground. At no time was he shown or did he see the contents. The second claimant

also said that the bag and its contents were not weighed or marked in his presence.

6. Both claimants were charged and they appeared at the Princes Town Magistrates' Court on the 20th March 2006. The charge was read to them and they both pleaded not guilty.

7. The defendant's case is that PC Branch acting on certain information, paid surveillance to the claimants' home for five days before he obtained a search warrant in the name of the second claimant to search the home for arms and ammunition. A party of police officers proceeded to the home. Upon their arrival at about 6:30am, they knocked on the door about three times before the second claimant answered. He indicated that he had been asleep.

8. PC Branch showed and read the warrant to the second claimant and the search proceeded. The search was conducted in the presence of the second claimant and the first claimant may have been present for some of the search.

9. PC Branch said while searching the police moved a bed and saw shoes, slippers, clothing and some plastic bags. Several of the bags were picked up and opened. In one of the black plastic bags they found a plant like material resembling marijuana. He showed the contents of the bag to the second claimant, the claimant replied "Officer, I does take a lil smoke." The first claimant remained silent.

10. The claimants were both cautioned, informed of their constitutional rights and arrested. They were taken to the Barrackpore Police Station where the black plastic bag and its contents were weighed in the presence of the claimants. It scaled 64 grams. The bag was marked in the presence of the claimants and they were later charged for the offence possession of marijuana.

11. The parties are adidem on the applicable law as it relates to the live issues. The court considered the submissions made by both sides and give due consideration both submission. Specifically, the court gave due regard to all the contradictions and inconsistencies identified and considered what weight, if any, it should apply to them.

Malicious Prosecution

12. The tort of malicious prosecution requires the claimant to prove that[1]

> *in an action for malicious prosecution the claimant must show first that he was prosecuted by the defendant, this is to say that the law was set in motion against him on a criminal charge; secondly, that the prosecution was determined in his favour; thirdly that it was without reasonable and probable cause; fourthly, that it was malicious. The onus of proving every one of these is on the claimant. Evidence of malice of whatever degree cannot be invoked to dispense with or diminish the need to establish separately each of the other three elements of the tort*

13. The third and fourth legal elements required to establish the tort of malicious prosecution; without reasonable and probable cause and malice, are the elements that are relevant for the determination of this claim. There is no dispute that the claimants were charged with a criminal offence and that the prosecution of that offence was determined in their favour.

Without Reasonable and Probable Cause

14. In **Glinski and McIver [1962] A.C. 726 at 758 and 759,** Lord Denning described the test saying:

> *My Lords, in Hicks v. Faulkner Hawkins J. put forward a definition of "reasonable and probable cause" which later received the approval of this House. He defined it as an "honest belief in the guilt of the accused" and proceeded to detail its constituent elements. The definition was appropriate enough there. It was, I suspect, tailor-made to fit the measurements of that exceptional case. It may fit other outsize measurements too. But experience has shown that it does not fit the ordinary*

[1] Clerk and Lindsell on Tort. 20th Edition, paragraph 16:09

run of cases. It is a mistake to treat it as a touchstone. It cannot serve as a substitute for the rule of law which says that, in order to succeed in an action for malicious prosecution, the plaintiff must prove to the satisfaction of the judge that, at the time when the charge was made, there was an absence of reasonable and probable cause for the prosecution. Let me give some of the reasons which show how careful the judge must be before he puts to the jury the question: "Did the defendant honestly believe that the accused was guilty?"

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, or in the words of Lord Mansfield, that there is a probable cause "to bring the [accused] to a fair and impartial trial": see Johnstone v. Sutton. After all, he cannot judge whether the witnesses are telling the truth. He cannot know what defences the accused may set up. Guilt or innocence is for the tribunal and not for him. Test it this way: Suppose he seeks legal advice before laying the charge. His counsel can only advise him whether the evidence is sufficient to justify a prosecution. He cannot pronounce upon guilt or innocence. Nevertheless, the advice of counsel, if honestly sought and honestly acted upon, affords a good protection: see Ravenga v. Mackintosh by Bayley J. 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. He is no more concerned to convict a man than is counsel for the prosecution. He can leave that to the jury. It is for them to believe in his guilt, not for the police officer. Were it otherwise, it would mean that every acquittal would be a rebuff to the police officer. It would be a black mark against him, and a hindrance to promotion. So much so that he might be tempted to "improve" the evidence so as to secure a conviction. 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.

15. Lord Denning's statement of the principles of law related to "reasonable and probable cause" applied the dicta in **Hicks V Faulkner [1898 (8) Q.B.D. 167** that the claimant has to show a negative proposition; the absence of a reasonable and probable cause at the time the charge was laid. This negative proposition is not that the police officer must be satisfied that the person charged is guilty of the crime.

The police officer should not be motivated by the outcome of the judicial process, that the person is convicted, but only that the information available from his investigation is sufficient to make a proper case to be placed before the jury.

16. In the case of **Trevor Williamson v The Attorney General of Trinidad and Tobago [2014] UKPC 29** at paragraphs 11 and 14, Lord Kerr, applying **Glinski and McIver (Supra)** said:

> *In order to make out a claim for malicious prosecution, it must be shown, among other things, that the prosecutor lacked reasonable and probable cause for the prosecution and that he was actuated by malice. These particular elements constitute significant challenge by way of proof. It has to be shown that there was no reasonable or probable cause for the launch of the proceedings. This requires the proof of a negative proposition, normally among the most difficult of evidential requirements…*
>
> *On the question of reasonable and probable cause, or the lack of it, a prosecutor must have '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': Hicks v Faulkner (1878) 8 QBD 167, 171 per Hawkins J, approved by the House of Lords in Herniman v Smith [1938] AC 305, 316 per Lord Atkin. The honest belief required of the prosecutor is a belief not that the accused is guilty as a matter of certainty, but that there is a proper case to lay before the court: Glinski v McIver [1962] AC 726, 758 per Lord Denning.*

17. The claimants is required to prove that the charge was laid without reasonable and probable cause. This does not require the police to be satisfied that the accused is guilty. The police must be satisfied that there is sufficient information for a criminal charge to be placed before the court.

18. As noted by the cases cited, the onus is on the claimants to show that the defendant laid the charge for possession of marijuana without reasonable and probable cause. The court is not satisfied that the claimants have met their burden of proof. While there was cross-examination about the surveillance alleged to have been conducted by PC Branch, the court does not believe that the claimants have actually denied that a black bag with marijuana was found.

19. The claimants challenged the defendant's witness on the credibility of his evidence that he obtained a warrant in the name of the second claimant. In deciding this fact, the court considered the contemporaneous evidence of the station diary extract from the Barrackpore Station dated 18th March 2006 where it is recorded that a search warrant was executed at the home of the second defendant. The court also considered the notes of the proceedings at the magistrates' court and the evidence of PC Branch that he obtained a warrant in the name of Ramdath Rampersad and that was the warrant he executed.

20. The evidence given by the claimants as to the manner in which the police entered their premises also left doubt. It would pass strange that 25 to 30 officers, some of whom according to the evidence of PC Branch, was responsible for doing perimeter duty, would not see the second claimant standing outside his house and have to break down the from door to gain entry to the home, when the home was open.

21. The complainants are relying on the fact that PC Branch asked for their son Ravi to absolve them of responsibility for any illegal items found at their home. However, section of 21 of the Dangerous Drugs Act, Chap. 11:25 states that any person who occupies, controls, or is in possession of any building, room, vessel, vehicle, aircraft, enclosure or place in or upon which a dangerous drug is found shall be deemed to be in

possession thereof unless he proves that the dangerous drug was there without his knowledge and consent.

22. There is ample evidence here and the claimants both admit that they were in occupation and control of the building and the room where the marijuana was found. Even if the police also had some interest in Ravi, that by itself does not change the fact that the claimants were in occupation and control of the relevant space.

23. The court applied a common sense approach the submission relating to lack of documentary evidence. The criminal case was instituted in 2006 and completed in 2013. The pre-action protocol letter was not sent until the year 2017. It is not unreasonable in those circumstances that every document and evidence generated and relevant at the material time would not be available in the year 2017 and for this trial.

24. In the first claimant's witness statement, she said at paragraph 10, that she was not shown the black bag that they say was found in her house. She also said that it was not weighed in her presence. Interestingly the first claimant did not say that there was no marijuana at her house.

25. The second claimant, at paragraph 9 said "I was never shown this black bag that they say was found at my house, the contents of it was never shown to me and it was never weighed or marked in my presence." The second claimant's evidence is that he was present when the search was being conducted and when a black bag was found and thrown at him. He said that he was looking away from the area of the search and did not actually see when it was found. Like the first claimant, the second claimant did not deny having marijuana at his house.

26. Their son and witness Avin Rampersad said, while being cross-examined that he was awoken and told by the police to sit on the steps.

He sat on the steps for about five to ten minutes. From where he sat he could see the police searching his brother Ravi's room. He did not see where the police found the bag. But he heard the police said they found something and he saw that they had a black bag in their hand. Avin Rampersad also said, that when the bag was found he knew his father was in the room. While he could not see this father from his vantage point, he could hear him.

27. From the evidence adduced by the claimants, it appears to the court that a black bag was found. That bag was found in a home owned and controlled by the claimants. The first claimant said that there was one bedroom downstairs. She said that she, her husband and one of her sons occupied that room. The claimants did not dispute the evidence that the contents of that black bag was marijuana.

28. If as the evidence established, PC Branch searched the home of the claimants and found marijuana, the court cannot be satisfied of an absence of a reasonable and probable cause at the time the charge was laid. PC Branch did have reasonable and probable cause to arrest and charge both claimants for the offence.

29. The court noted the cross-examination on behalf of the second claimant that he was not asked to sign the record of the statement alleged to have been made by him. As such, that the submission was that the court should find that the statement was not made by the second claimant. The court did not have to resolve that issue since the evidence satisfied the court that marijuana was in fact found that the home of the claimants.

Malice

30. On the question of malice, **Hicks v Faulkner (Supra)**, explained that there are circumstances where the want of reasonable and probable

cause do not equate to malice. That was the case before them in **Hicks v Faulkner (supra)**. In those circumstances, at pages 174 and 175, Hawkins J said:

> *In an action of this description the question of malice is an independent one of fact…the malice necessary to be established is not malice in law such as may be assumed from the intentional doing of a wrongful act (see Bromage v Prosser (1) per Bayler H) but malice in fact-maus animus- indicating that the party was actuated either by spite or ill-will towards an individual, or by indirect or improper motives, though these may be wholly unconnected with any uncharitable feelings towards anybody*

31. Hawkins J, also said in the judgment, at page 175, malice is a question of fact even where the fact finders:

> *Think there was want of probable cause might nevertheless think that the defendant acted honestly and without ill-will, or any other motive or desire than to do what he bona fide believed to be right in the interest of justice -in which case they ought not, in opinion, to find the existence of malice*

32. In the case of **Brown v Hawkins [1891] 2 QB 718** Cave J. said at page 722

> *Now malice, in its widest and vaguest sense, has been said to mean any wrong or indirect motive; and malice can be proved, either by shewing what the motive was and that it was wrong, or by shewing that the circumstances were such that the prosecution can only be accounted for by imputing some wrong or indirect motive to the prosecutor. In this case I do not think that any particular wrong or indirect motive was proved. It is said that the defendant was hasty and intemperate. It may, I think, be assumed that, believing, as the jury have found he did, that Brown had stolen his boots, the defendant was angry; but, so far from this being a wrong or indirect motive, it is one of the motives on which the law relies to secure the prosecution of offenders against the criminal law. He may also have been hasty, both in his conclusion that the plaintiff was guilty and in his proceedings; but hastiness in his conclusion as to the plaintiff's guilt, although it may account for his coming to a wrong conclusion, does not shew the presence of any indirect motive*

33. Also in the case of **Brown v Hawkins (Supra)**, Lord Justice Kay said at page 728

> *Now, if he honestly believed the charge which he made against the plaintiff, some distinct evidence is required to prove malice, and the only question before us is, what is relied on as evidence of malice. As I understand the argument for the plaintiff, it was said that the evidence to prove malice was that the defendant did not make proper inquiry as to the facts of the case. If that is all, and if that evidence is sufficient, the result would be that the finding on the first question put to the jury, that the defendant did not take proper care to inquire into the facts of the case, would, without more, determine the action in favour of the plaintiff. That cannot be so, and when I look at the evidence (as I have done with care) to find what evidence there was of sinister motive, I can find none on which the jury could reasonably find that the defendant was actuated by malice.*

34. In the case of **Cecil Kennedy v. Donna Morris W.P.C. 11435 and The A.G. of Trinidad and Tobago Cv. App NO. 87 0f 2004**, Sharma C. J. in delivering the judgment of the Court of Appeal, on the issue of malice, said at paragraph 28, "that where a lack of reasonable and probable cause is NOT proved, the question of malice does not arise".

35. The judgment of Lord Kerr in **Trevor Williamson v The Attorney General of Trinidad and Tobago (Supra) states** at paragraphs 13, 16 and 17

> *Malice can be inferred from a lack of reasonable and probable cause – Brown v Hawkes [1891] 2 QB 718, 723. But a finding of malice is always dependent on the facts of the individual case. It is for the tribunal of fact to make the finding according to its assessment of the evidence…*
>
> *This conclusion bears directly on the question whether the prosecution can be inferred to be malicious [that there was no proof of an absence of reasonable and probable cause]. Where there is absolutely no basis for suspicion, especially where that is accompanied by an apparent reluctance to proceed with the charge, one might draw such an inference. But that was not remotely the position here. Of course, the failure of Constable Caldeira to appear on the various occasions that Mr Williamson came before the Magistrates' Court is reprehensible but this is not nearly sufficient, in the Board's view, to allow the inference*

to be drawn that his intention was to manipulate the legal system or to pursue the prosecution for a wholly extraneous and improper motive.

Remembering that it is for the tribunal of fact to make a finding on the question of malice, it is to be noted that Constable Caldeira, in his witness statement of 31 January 2007, prepared for the High Court proceedings, had averred that he had reasonable and probable cause for laying charges against and prosecuting Mr Williamson and had acted throughout in good faith and without malice. He was not challenged on those averments. In those circumstances, the Board finds it unsurprising that both the High Court and the Court of Appeal were not prepared to draw the inference that he had acted with malice in proceeding with the prosecution against Mr Williamson. His appeal against the finding that he had not made out a case of malicious prosecution must be dismissed.

36. In the case of **Sandra Juman (Appellant) v The Attorney General of Trinidad and Tobago and another [2017] UKPC 3**, the Privy Council was called upon to review the decision of the Court of Appeal that there was no malice. In delivering the judgment of the Privy Council, Lord Toulson said at pages 6 and 7:

The question of malice therefore does not arise, but the Board would reject the appellant's attempt to treat the first respondent's alleged failure to carry out sufficient investigation before charging the appellant as amounting or equivalent to malice; or similarly the attempt to treat "recklessness" as tantamount to malice. "Reckless" is a word which can bear a variety of meanings in different contexts. It is not a suitable yardstick for the element of malice in malicious prosecution.

18. The essence of malice was described in the leading judgment in Willers v Joyce at para 55:

"As applied to malicious prosecution, it requires the claimant to prove that the defendant deliberately misused the process of the court. The most obvious case is where the claimant can prove that the defendant brought the proceedings in the knowledge that they were without foundation ... But the authorities show that there may be other instances of abuse. A person, for example, may be indifferent whether the allegation is supportable and may bring the proceedings, not for the bona fide purpose of trying that issue, but to secure some extraneous

benefit to which he has no colour of a right. The critical feature which has to be proved is that the proceedings instituted by the defendant were not a bona fide use of the court's process."

19. A failure to take steps which it would be elementary for any reasonable person to take before instituting proceedings might in some circumstances serve evidentially as a pointer towards deliberate misuse of the court's process, but sloppiness of itself is very different from malice. In the present case there was no cause to doubt that the first respondent believed, rightly or wrongly, that there were sufficient grounds to prosecute, or that the object of charging the appellant was to place the matter before the magistrate for the court to decide the question of her guilt; and there was no suggestion that he had any ulterior improper motive. Even if the court had decided that objectively the first respondent lacked reasonable and probable cause to prosecute the appellant, there was no basis to hold that he acted with malice.

37. In the case of **The Attorney General of Trinidad and Tobago v. Kevin Stuart Civil Appeal No. P162 of 2015**, Bereaux, J.A., applied the decision of the Privy Council in **Sandra Juman (Appellant) v The Attorney General of Trinidad and Tobago and another (Supra).** At paragraph 32, in delivering the judgment of the court, Bereaux J.A. warned of the difficulty in making an inference that malice exists because there is an absence of reasonable and probable cause. In the circumstance of that case, the facts showed

There was nothing in the evidence to justify it, neither did she find or indicate what the improper motive was. The contention that a police officer is actuated by an improper motive is quite a serious allegation. There must be a proper evidential basis upon which to do so, especially when such a finding is made by inference

38. There was no evidence adduced by the claimants from which the court could find or infer that PC Branch or any other officer in the police party were actuated by malice.

39. For the court to consider whether there is malice on the part of the PC Branch, the claimants must first satisfy the court that the charge was

laid without reasonable and probable cause. That hurdle was not overcome in this case. In any event malice is a question of fact, the proof of which is dependent on the peculiar circumstances of each case.

40. In this case there were no circumstances from which the court could find or infer malice. The claimants did not make a positive assertion or put any suggestion to PC Branch from which the court could find or infer malice. The fact that the charge was dismissed on a no case submission made on behalf of the first claimant and that the second claimant was found not guilty in and of itself cannot amount to malice. There are no other circumstances that can be paired to that fact of the dismissal of the criminal charge from which the court can find or infer malice.

41. For that matter the first claimant indicated that she was advised to secure her money and jewelry, I would imagine that for such not to go missing or to prevent allegations against the police consequent upon the search.

42. In fact, based on the evidence of PC Branch it could be said that he acted quite appropriately in the circumstances. Two of the defendants children were upstairs the home and according to the claimants their daughter in law was also home. While all these persons were present in the home at the time of the search and when the marijuana was found only those two persons with obvious control of the premises were arrested and charged. The police did not, as some are want to do, take everyone down and charge everyone with the offence. PC Branch exercised his power and authority in a reasonable manner and clearly without any malice towards the claimants and anyone else in the home at the time the marijuana was found.

Disposition:

43. Based on the court's findings, it is hereby ordered that the claimants claim against the defendant is dismissed.

44. The claimants shall pay the defendant's costs as prescribed.

45. I feel bound to make the observation of an apparent practice that while the police investigates suspicious circumstances surrounding narcotics, the police obtained a warrant for possession of arms and ammunition. I do not know if this practice still obtains in 2020, but the court would hope that the relevant authorities would reconsider such a practice and use their power and authority fairly and not conveniently and for expediency purposes.

…….

Justice Avason Quinlan-Williams

JRC: Romela Ramberran