

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2015-01920

BETWEEN

KAYODE ALLEYNE

Claimant

AND

AG. CORPORAL CARLON DENOON #16038

First Defendant

PC LEON TOBIAS #17258

Second Defendant

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Third Defendant

Before the Honourable Mme. Justice Jacqueline Wilson

Date of Delivery: June 24, 2019

APPEARANCES:

Mr. Martin George, Ms. Sherisse Walker and Ms. Leandra Latchman Attorneys at law for the Claimant

Mr. Brenston Francois, Mr. Andre Cole and Ms. Laura Persad Attorneys at law for the Defendants

JUDGMENT

1. This is the claimant's claim for malicious prosecution. The claim arises in respect of a charge of unlawful and malicious wounding that was laid against the claimant by the first defendant and which was subsequently dismissed in the Magistrates' court.

2. The claimant alleges that in laying the charge the first defendant acted maliciously and without reasonable and probable cause as he was aware that there was no evidence to support the charge and yet persisted with a groundless prosecution.
3. The defendants contend that there was good ground for laying the charge and that, in so doing, the first defendant acted in the bona fide belief that he was performing a public duty as a police officer.
4. There is a significant disparity in the account of events given by the parties as to what transpired in the early hours of 6 August 2011, when the circumstances giving rise to the charge arose.

THE CLAIMANT'S CASE

5. The claimant alleges that at the material time he and his cousin, Kenyon Alleyne, were at the Eco Sports Bay near to the White Castle Hotel in Hope, Tobago when a fight broke out among a group of persons who started throwing bottles at each other. One of the bottles struck the claimant on the left side of his face causing injury. The claimant approached the group of persons involved and demanded to know who had thrown the bottle that struck him when the second defendant accosted him and pushed him away. The second defendant drew his firearm and discharged four shots one of which struck the claimant in the left shoulder. The claimant ran from the scene followed by his cousin, Kenyon Alleyne, who also was struck by a bullet in his lower right leg.
6. The claimant attempted to drive his vehicle, which was parked a short distance away, to the Scarborough General Hospital. His cousin was in the vehicle with him. The claimant was in a semi-conscious state and unable to complete the journey. He was ultimately taken to the hospital by ambulance and received treatment for the gunshot wound and facial injuries. He was kept for observation until 9 August 2011, when he was discharged. An x-ray of his chest showed that the bullet was lodged on the right side of his chest wall, where it remains to date.

7. The claimant alleges that while he was a patient at the hospital he was handcuffed to the metal railing of the bed and the first defendant and one Acting Sergeant Wilson stood guard over him. Upon his discharge on 9 August 2011 he was taken to the Scarborough Police Station where he was charged with unlawfully and maliciously wounding the second defendant. He was then taken to the Scarborough Magistrates' Court where the charges were read to him and he was granted bail. The proceedings were ultimately dismissed on 6 December 2012 when the Magistrate upheld a submission by his Attorney that there was no case to answer.

THE DEFENDANTS' CASE

8. The defendants allege that at around 3.00 am on 6 August 2011 the second defendant was on duty in plain clothes at the Eco Sports Bar when he observed the claimant having an altercation with another man. During the altercation the claimant was struck with a bottle to his face. He went over to his car where his cousin, Kenyon Alleyne, handed him a cutlass.
9. Armed with the cutlass, the claimant approached his assailant threatening to kill him. The second defendant intervened and identified himself to the claimant as a police officer. The claimant approached the second defendant in a menacing way brandishing the cutlass and using threatening language. The claimant's cousin, Kenyon Alleyne, and another man joined the claimant and began to throw bottles at the second defendant, who was backing away from them, causing him to stumble.
10. While using his left arm to shield himself from the bottles, the second defendant drew his firearm with his right hand and fired a shot at the claimant who was continuing to advance towards him. The claimant continued his approach and the second defendant fired another shot at the claimant hitting him in the left shoulder. The claimant dropped the cutlass and ran away. Kenyon Alleyne and the other man continued to throw bottles at the second defendant who fired two shots at them causing them to run away. Kenyon Alleyne was hit in the right leg by one of the bullets.

11. The second defendant states that he fired the shots in self-defence as he felt fearful for his life.
12. Shortly thereafter, the second defendant made a telephone call to Acting Corporal Daniel and reported the incident to him. Acting Corporal Daniel and Police Constable Roberts came to the assistance of the second defendant and transported him to the Scarborough General Hospital. While awaiting the arrival of the officers, the second defendant was assisted by persons at the scene of the incident. He then became aware that he had received injuries to his upper left arm, left ring finger and left index finger.
13. At the hospital the second defendant observed the claimant and his cousin receiving treatment and he pointed them out to the first defendant, who was at the time conducting inquiries into the shooting incident. Before his arrival at the hospital, the first defendant visited the scene of the incident and spoke to persons there, including one Marlon Callender, who had witnessed the incident. The first defendant made efforts to obtain a statement from the claimant and his cousin at the hospital but they refused to speak to him.
14. Sometime after 6 August 2011 the first defendant returned to the hospital and obtained the second defendant's medical certificate. Thereafter, he sought to interview the claimant and his cousin at the Scarborough Police Station but they again refused to give a statement to him. The first defendant continued enquiries and on 9 August 2011 he charged the claimant with the offence of unlawfully and maliciously wounding the second defendant. He charged Kenyon Alleyne with throwing missiles.
15. The first defendant states that in laying the charges he acted on instructions but also believed the charges to be valid.

THE MAGISTERIAL PROCEEDINGS

16. The first defendant, the second defendant and Mr. Marlon Callender gave evidence in the Magistrates' court at the hearing of the criminal charge against the claimant.
17. The charge was dismissed when the Senior Magistrate upheld a submission by the claimant's Attorney that there was no case to answer. The transcript of proceedings reveals that the Senior Magistrate dismissed the charge as the prosecution had failed to lead evidence that the second defendant sustained injury at the hands of the claimant. The Senior Magistrate found that, notwithstanding the evidence that the claimant wielded a cutlass at the second defendant, "pelting chops," there was no evidence that the cutlass at any time touched the second defendant causing injury.
18. The Senior Magistrate expressed the opinion that the omission on the part of the prosecution to lead material evidence in this regard may have arisen out of a concern to account for the second defendant's discharge of the firearm which overshadowed the need to establish the essential elements of the offence.

MALICIOUS PROSECUTION

19. The question for determination is whether, on a balance of probabilities, the claimant has established the requirements of the tort of malicious prosecution.
20. In this regard the claimant must show that the law was set in motion against him by the defendants on a criminal charge; that the prosecution was determined in his favour; that it was without reasonable and probable cause; that it was malicious; and that he sustained actionable damage: *Wills v Voisin (1963) 6 WIR 50*.
21. There is a preponderance of authority to the effect that malice is established if a defendant is shown to have used the machinery of the courts for an improper purpose and not in contemplation of the discharge of a public function. It is also

well settled that proof of the absence of reasonable and probable cause may itself be evidence of malice: Mendonca JA, *Alistaire Manzano and the Attorney General of Trinidad and Tobago* Civil Appeal No. 151 of 2011 at para 47.

22. In the House of Lords decision of **Gregory v Portsmouth City Council** [2001] 1 AC 419 426, Lord Steyn observed that “*a distinctive feature of the tort is that the Defendant has abused the coercive powers of the state.*” In **Crawford Adjusters Ltd (Cayman) v Sagikor General Insurance (Cayman) Ltd** [2013] UKPC 17 at para 101 Lord Kerr stated that what Lord Steyn meant by “*the coercive power of the state*” was its power to punish. Lord Kerr went on to state that:

“Manipulation of the legal system lies at the root of the tort. A person will only be liable if he pursues a claim which has no foundation and which has, as its dominant purpose at least, an objective other than success in the claim.”

23. In **Trevor Williamson v The Attorney General of Trinidad and Tobago** [2014] UKPC 29 at paras 11-13 Lord Kerr discussed the evidential hurdles that lie in the path of a claimant who alleges malicious prosecution:

11. *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 proceedings. This requires the proof of a negative proposition, normally among the most difficult of evidential requirements. Secondly, malice must be established. A good working definition of what is required for proof of malice in the criminal context is to be found in **A v NSW** [2007] HCA 10; 230 CLR 500, at para 91:*

“What is clear is that, to constitute malice, the dominant purpose of the prosecutor must be a purpose other than the proper invocation of the criminal law - an ‘illegitimate or oblique motive’. That improper purpose must be the sole or dominant purpose actuating the prosecutor.”

12. *An improper and wrongful motive lies at the heart of the tort, therefore. It must be the driving force behind the prosecution. In other words, it has to be shown that the prosecutor’s motive is for a purpose other than bringing a person to justice: **Stevens v Midland Counties Railway Company (1854) 10 Exch 352, 356** per Alderson B and **Gibbs v Rea [1998] AC 786, 797D**. The wrongful motive involves an intention to manipulate or abuse the legal system: **Crawford Adjusters Ltd (Cayman) v Sagicor General Insurance (Cayman) Ltd [2013] UKPC 17, [2014] AC 366** at para 101; **Gregory v Portsmouth City Council [2000] 1 AC 426C**; **Proulx v Quebec [2001] 3 SCR 9**. Proving malice is a “high hurdle” for the claimant to pass: **Crawford Adjusters para 72a per Lord Wilson**.*
13. *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.”*
24. In **Willers v Joyce [2016] UKSC 43** at paragraph 55, Lord Toulson discussed the circumstances in which malice, involving a manipulation of the legal system, may be demonstrated:

“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."

25. In ***Rudall v Crown Prosecution Service*** [2018] EWHC 3287 at para 76 Lambert J re-stated the established principles to prove the absence of reasonable and probable cause as follows:

"a. the question of whether there was an absence of reasonable and probable cause has two strands; the objective and the subjective: it involves considering whether the prosecutor had an honest belief in the charge and whether, viewed objectively, there was a reasonable basis for that belief.

*b. An absence of honest belief in the charge by the prosecutor is conclusive of the absence of reasonable and probable cause, even if a reasonable man could have believed in the charge on the basis of the facts known to the prosecutor. See: *Haddrick v Heslop* [1848]12 QB 268 at 274 -5 "It would be quite outrageous if, where a party is proved to believe that a charge is unfounded, it were to be held that he could have reasonable and probable cause" per Lord Denman CJ.*

*c. It is not necessary for the prosecutor to believe in the guilt of the person accused, he has only to be satisfied that there is a proper case to lay before the court: see *Thacker v Crown Prosecution Service* [1997] EWCA Civ 3000 where Kennedy LJ observed "Guilt or innocence is for the Tribunal and not for him" and *Coudrat v Commissioners of Her Majesty's Revenue and Customs* [\[2005\] EWCA](#)*

[Civ 616](#) where Smith LJ stated “an officer is entitled to lay a charge if he is satisfied that there is a case fit to be tried. He does not have to believe in the probability of conviction.”

d. The Court arrives at the answer to the question of whether there was reasonable cause by examining the facts as they were known to, or appeared to, the prosecutor at the time of charge, “the facts upon which the prosecutor acted should be ascertained.. when the judge knows the facts operating on the prosecutor's mind, he must then decide whether they afford reasonable and probable cause for prosecuting the accused”: see *Herniman v Smith* [1938] AC 505 at 316 per Lord Atkin.

e. The absence or otherwise of reasonable and probable cause involves an analysis of the sufficiency of the evidence. As Sharp J expressed the position in *Besnik Qema v News Group Newspapers Limited* [\[2012\] EWHC 1146 \(QB\)](#) “whether one considers the objective or subjective element of reasonable and probable cause, the focus is always on the sufficiency of evidence to support the prosecution of the offence in question, and the defendant's knowledge of and honest belief in that.”

f. In *Coudrat*, Smith LJ framed the assessment of evidential sufficiency as follows: “when considering whether to charge a suspect, consideration must be given to the elements of the offence with which it is intended to charge him. There must be prima facie admissible evidence of each element of the offence. Although anything plainly inadmissible should be left out of account, we do not think that, at the stage of charging it is necessary or appropriate to consider the possibility that evidence might be excluded at the trial after full legal argument or in the exercise of the judge's discretion. Nor is it necessary to test the full strength of the

defence. An officer cannot be expected to investigate the truth of every assertion made by the suspect in interview.”

g. Absence of reasonable and probable cause must be established, like each of the elements of malicious prosecution, separately. Want of reasonable and probable cause can never be inferred from malice:

i. “From the most express malice, the want of probable cause cannot be implied. A man from malicious motives may take up a prosecution for real guilt, or he may, from circumstances which he really believes, proceed upon apparent guilt and in neither case is he liable to this kind of action”: Johnstone v Sutton (1786) 1 Term Reports 510, 545

ii. “The importance of observing this rule cannot be exaggerated... It behoves the judge to be doubly careful not to leave the question of honest belief to the jury unless there is affirmative evidence of the want of it”: Glinski v McIver [\[1962\] AC 726](#) per Viscount Simonds.

h. The preparedness of counsel to act for the crown is relevant to (and potentially determinative of) the question of reasonable and probable cause. However, each case must be considered on its own facts: see Abbott v Refuge Assurance Co [\[1962\] 1 QB 432](#) “the variations in the circumstances of cases are almost infinite. Clearly the view of counsel, who was not experienced in work of this kind, would not be of any great value to persons seeking his advice; neither would that advice be of any great value however experienced the counsel, if the whole of the facts were not put before him.”

26. In so far as the burden of proof is concerned, in **Gibbs v Rea [1998]** 3 WLR 72 at 88 it was held that:

“Proof that there was an absence of reasonable and probable cause involves proving a negative. So it is clear that slight evidence to show that there was no reasonable or probable cause will be enough to shift the burden of proving reasonable and probable cause on to the defendant.”

DISCUSSION

27. The question is, therefore, whether the claimant has satisfied the high threshold requirements discussed above.
28. It is undisputed that the charge against the claimant was dismissed as a result of the prosecution’s failure to lead evidence that the claimant wounded the second defendant with a cutlass. While the prosecution’s failure to lead key evidence is not a decisive factor in determining the absence of reasonable and probable cause or the presence of malice, such failure must, nevertheless, be examined in the context of all the relevant circumstances.
29. The claimant was charged with unlawfully and maliciously wounding the second defendant contrary to section 14 of the **Offences Against the Persons Act, Chapter 11:08**. Section 14 provides that:

“Any person who unlawfully and maliciously wounds or inflicts any grievous bodily harm upon any other person either with or without any weapon or instrument is liable to imprisonment for five years.”

30. The five-year term of imprisonment prescribed by section 14 is reflective of the seriousness of the offence. In laying the charge against the claimant, the first defendant, as investigating officer, relied on statements given to him by the second defendant, the virtual complainant in the criminal proceedings. The first defendant also relied on a statement by Mr. Marlon Callender, who is said to have witnessed

the incident, and a medical report outlining the injuries sustained by the second defendant.

31. The second defendant's account of events is that he felt fearful for his life when the claimant wielded a cutlass while advancing towards him and the claimant's cousin and another assailant threw bottles at him. The second defendant attempted to fend off the bottles with his left arm and reached for his firearm with his right hand. He fired a shot in the claimant's direction but the claimant continued to advance towards him. He fired another shot in the claimant's direction causing the claimant to drop the cutlass and run away. The two assailants continued to throw bottles at him and he fired two shots in their direction causing them to run away. The second defendant states that he discharged his firearm in self-defence as he felt fearful for his life.
32. The second defendant did not retrieve the cutlass that was left behind by the claimant, notwithstanding that the cutlass was dropped in close proximity to him. In response to the second defendant's report of the shooting incident two police officers visited the scene and took the second defendant to the hospital. There is no indication that these officers saw the cutlass. Neither is an account of the cutlass given by Marlon Callender, who is said to have witnessed the incident.
33. The second defendant was cross-examined at length by Counsel for the claimant regarding his failure to retrieve the cutlass after it was dropped in his presence by the claimant. No sensible account was given by the second defendant for his failure to do so. When pressed by Counsel for the claimant on the matter, the second defendant ultimately ventured, by way of explanation, that his injuries prevented him from picking up the cutlass.
34. The explanation proffered by the second defendant in this regard was so implausible that it entirely undermined his credibility. There was nothing in the medical report to suggest that the second defendant had sustained serious injury. The medical report described the laceration to his left upper arm as "minor" and "superficial"

and the wound on his left ring finger as “minor.” The swelling to his left index finger was described as moderate. The injuries to the upper arm and ring finger were said to have been caused by a sharp object with a mild degree of force while the injury to the ring finger was said to have been caused by a blunt object with mild to moderate force.

35. The medical report was, on the face of it, compiled pursuant to section 127 of the **Summary Courts Act, Chap. 4:20**, under which a report is admissible as evidence of the matters stated therein where the report is made on the day of, or the day after, examination by a registered medical practitioner.
36. The medical report was dated 6 August 2011, the day of the incident. Although the second defendant states in his witness statement that he was taken to the hospital for medical treatment there is nothing in the medical report to indicate that he in fact received treatment for his injuries. In addition, the first defendant’s evidence is that he went to the hospital “some time after 6 August 2011” to collect the medical report. There is no explanation why the medical report was collected by the first defendant, as investigating officer, at an unspecified period after 6 August 2011 and was not instead provided to the second defendant upon his medical examination, in circumstances where the report bears the same date as the medical examination.
37. When considered as a whole, the evidence suggests that the primary purpose of the medical report was to support the laying of a criminal charge against the claimant and not to provide a record of the injuries sustained by the second defendant or the medical treatment received by him.
38. The first defendant appears to have placed significant reliance on the medical report while failing to give due consideration to obvious gaps in the second defendant’s account of events. There is nothing to suggest that the first defendant pursued any meaningful inquiry into the second defendant’s unexplained omission to retrieve

the weapon that was said to have caused him injury when it was left abandoned in his immediate presence.

39. It bears repeating that in dismissing the criminal charge against the claimant in the Magistrates' Court, the Senior Magistrate made the observation that the prosecution's case focussed so heavily on justifying the second defendant's discharge of his firearm that no evidence was led of the offence with which the claimant was charged. Although this view was expressed only provisionally by the Senior Magistrate, in my opinion, her instinctive assessment was borne out by the evidence in these proceedings.
40. In my view, the decision by the first defendant to lay the charge of unlawful and malicious wounding against the claimant was overborne by a desire to assist the second defendant in justifying the use of his firearm and was not the result of an independent and objective investigation. To the extent that the charge was brought against the claimant for a collateral purpose other than to secure the ends of justice, this was an improper resort to, and a manipulation of, the legal process. The requirement of malice is therefore satisfied.
41. The question of reasonable and probable cause must be considered and assessed independent of the question of malice although there is an overlap in the evidence under both heads. The question for determination is whether the first defendant had an honest belief in the charge that was laid against the claimant and, if so, whether that belief was reasonable. At the heart of the assessment is the material upon which the first defendant relied in laying the charge. His honesty and credibility are also relevant factors for consideration.
42. The first defendant's evidence is that on the morning of 6 August 2011 he was on duty at the Criminal Investigation Department when he received a report of a shooting incident at the Eco Sports Bar. He went to the scene of the incident and interviewed persons there including Marlon Callender. He then headed to the Scarborough General Hospital where he saw the second defendant and observed his injuries. The second defendant pointed out the claimant and his cousin, who were

receiving treatment at the hospital, as the persons who had inflicted the injuries on him. The first defendant made efforts to obtain a statement from the claimant and his cousin at the hospital and, three days later, at the Scarborough Police Station, but they refused to speak to him. On 9 August 2011 he laid the charge of unlawful and malicious wounding against the claimant after receiving instructions to do so.

43. There is no clear statement by the first defendant to explain when or why his initial investigation into the shooting incident became overtaken by an investigation into the chopping incident. In cross-examination by Counsel for the claimant, the first defendant stated that he did not conduct investigations into the second defendant's involvement in the shooting incident but an investigation into the matter was launched by an Assistant Superintendent.
44. The first defendant stated that he believed the charge laid against the claimant to be valid notwithstanding that he received instructions to lay the charge. There was no evidence of the material that was put before the person(s) instructing the first defendant to lay the charge or the basis on which their decision was taken.
45. Having considered the evidence and having heard the first defendant, I conclude without hesitation that the first defendant did not have an honest belief in the charge that was laid against the claimant. The documentary evidence on which the first defendant relied in laying the charge was the medical report procured by first defendant himself. No statements were provided to support the account of events given by the second defendant and Marlon Callender nor were details given of the lines of inquiry pursued by the first defendant, in circumstances where the implausibility of the second defendant's account of events was glaringly obvious.
46. In all the circumstances I am of the view that the charge laid against the claimant was groundless, that the first defendant knew it to be so, and that in laying the charge the first defendant was motivated by malice.

DAMAGES

47. In support of his claim for damages, the claimant alleges that he suffered the ordeal of a groundless and unmeritorious prosecution and injury to his credit, character and reputation. He states that he has suffered severe mental anguish and pain and has incurred financial expense in the sum of \$35,000.00 in defending himself in the criminal proceedings.
48. In ***Thaddeus Clement v The Attorney General of Trinidad and Tobago*** Civil Appeal No. 95 of 2010, Jamadar J.A. stated at paragraph 12;

“Apart from pecuniary loss, the relevant heads of damages for the tort of malicious prosecution are as follows:

- (i) Injury to reputation; to character, standing and fame;*
- (ii) Injury to feelings; for indignity, disgrace and humiliation cause and suffered;*
- (iii) Deprivation of liberty, by reason of arrest, detention and/or imprisonment.*

In addition, aggravating factors that can justify an uplift in the form of an award for aggravated damages are to be considered.”

49. In ***Thaddeus Bernard v Nixie Quashie*** Civ App No. 159 of 1992 at p. 5, de la Bastide CJ stated that:

“The normal practice is that one figure is awarded as general damages. These damages are intended to be compensatory and include what is referred to as aggravated damages, that is, damages which are meant to provide compensation for the mental suffering inflicted on the plaintiff as opposed to the physical injuries he may have received. Under this head of what I have called ‘mental suffering’ are included such matters as the affront to the person’s dignity, the humiliation he

has suffered, the damage to his reputation and standing in the eyes of others and matters of that sort.”

50. There is no evidence by the claimant of the period of his detention before charges were laid. No pecuniary loss was pleaded by him apart from the expense incurred in defending the criminal proceedings.
51. In ***Radhika Charan Khan v The Attorney General of Trinidad and Tobago*** CV2011-04688 – the claimant was charged with robbery and using personal violence. She was detained for five hours and awarded \$50,000.00 for malicious prosecution. In ***Dhaniram Dhanput v The Attorney General of Trinidad and Tobago*** HCA No. 458 of 997 the claimant was detained for eight hours. An award of \$30,000.00 was granted for malicious prosecution. In ***Sookdeo Harricharan v The Attorney General of Trinidad and Tobago*** HCA 3068/1999 - the claimant was detained for 10 hours. An award of \$75,000.00 was granted for malicious prosecution, including aggravated damages.
52. I am of the view that an award of general damages in the sum of \$50,000.00 inclusive of aggravated damages is appropriate in all the circumstances.
53. An award of exemplary damages is meant to punish the offender and to deter oppressive and arbitrary conduct. In ***Rookes v Barnard & Ors*** [1964] AC 1129 at 1221 it was established that the object of exemplary damages is to punish and deter and that exemplary damages would be awarded where conduct on the part of servants or agents of the State was oppressive, arbitrary or unconstitutional; where the defendant’s conduct was calculated to make a profit; and where exemplary damages were expressly authorized.
54. I consider that an award of exemplary damages is appropriate to signal the court’s disapproval of the arbitrary exercise of powers by persons exercising a public function. In the circumstances of this case, I consider that an award of exemplary damages in the sum of \$10,000.00 is justifiable.

55. Special damages are awarded to the claimant in the sum of \$35,000.00.
56. Interest is awarded on general damages at the rate of 2.5% per annum from the date of filing of the proceedings to the date of payment and at the rate of 1.25% per annum on special damages for the same period.
57. The third defendant shall pay the claimant's prescribed costs of the claim.

Jacqueline Wilson
Judge