

**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

CV2019-00504

BETWEEN

**HECLIFF HANEIPH**

**NARDA GUYADEEN**

**HANNAH HANEIPH**

Claimants

AND

**THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO**

Defendant

**Before the Honourable Justice R. Rahim**

Date of Delivery: January 30, 2025

**Appearances:**

Claimant: H. Ramnath

Defendant: S. Sukhram and J. Mitchell instructed by A. Ramsook

## **JUDGMENT**

### **Introduction**

1. This is a claim for damages, including aggravated and/or exemplary damages, for malicious prosecution. The Claimants, a family comprising Hecliff Haneiph (now deceased), his wife Narda Guyadeen, and their daughter Hannah Haneiph, allege that they were wrongfully arrested and prosecuted following a police search at their home on June 21, 2013. The search, led by Police Constable Andre Joseph, resulted in charges against the Claimants for possession of a firearm, ammunition, and marijuana for trafficking, three separate charges. The charges were eventually dismissed for want of prosecution. According to the Defendant, the search was conducted pursuant to a valid search warrant obtained from information provided by an informant.
2. By order dated November 7, 2023 the second Claimant was appointed to represent the estate of the first Claimant for the purpose of continuing these proceedings. The witness statement of the deceased first Claimant was also admitted into evidence pursuant to part 29 of the Civil Proceedings Rules 1998 (as amended). For the sake of clarity, the Claimants shall be referred to by their first names and the witnesses for the defence by their surnames.

### **The Claim**

3. The Claimants are family. The first and second Claimants are husband and wife and the third Claimant is their daughter. The incident that gave rise to the instant claim occurred on June 21, 2013. According to the Claimant, one Police Constable, Andre Joseph, No. 13738 ("PC Joseph") along with other officers "executed a search warrant" at their home.

4. Subsequently, the officers searched the claimants' residence inside out and both sides of a drain on the Claimants' southern boundary but nothing illegal was found. The Claimants described their property such that on the western side there is a locked, abandoned house that is separated from the bushy area by a wall to the "front".
5. The officers then went to the said bushy area and allegedly returned with a bag containing a firearm and some marijuana.
6. The Claimants aver that they were arrested and charged with the offences of possession of a firearm and ammunition without a licence and possession of marijuana for the purpose of trafficking. They were granted station bail the following day. Eventually, the Claimants appeared before a Magistrate where the charges were read to them and their bail was revised.
7. The matter was called approximately twelve times before the Magistrate discharged the matters for want of prosecution.
8. It is the Claimants' case that they are neither the owners nor occupiers nor were they in control of the premises where the firearm and marijuana were found. As such, they contend that PC Joseph acted maliciously and there was no reasonable and/or probable cause in charging the Claimants.

#### The Defence

9. The Defendant has relied on the defence that PC Joseph and the other officers acted with reasonable and probable cause with the public duty entrusted to them. In addition, PC Joseph received certain information from an informant, from which he formed an opinion and subsequently obtained a search warrant.

10. Upon arrival at the Claimants' premises, the first Claimant opened the door for PC Joseph and the other officer to come in. The first Claimant was shown the search warrant by PC Joseph and subsequently the first Claimant allegedly surrendered a small quantity of marijuana that was in his bedroom.
11. Thereafter, the first Claimant took the officers behind the house and pointed to a water tank stand. Upon searching in between the tank stand and some bricks, PC Joseph found a firearm and bag containing marijuana. Further checks behind some galvanise revealed a large quantity of marijuana. There were no bushes on that side of the premises.
12. The Defendant described the Claimants' property as being fenced at the front and on both sides. The western fence was a wire fence which was blocked off by galvanise sheets on the Claimants' side of the fence. At the back of the property was a drain but nothing illegal was found there. The area in which the tank stand was located was in the control and possession of the Claimants.
13. Throughout the search the second and third named Claimants who were occupiers of the house were present.

## **CASE FOR THE CLAIMANTS**

### **Hecliff Haneiph**

14. Hecliff is the first named Claimant is deceased. Around midday on June 21, 2013, PC Joseph, along with officers from the Arouca police station, conducted a search of the Claimants' home. Officers searched the Claimants' house, yard and drain, as well as both sides of the southern boundary, but did not find anything illegal. They then moved to the western side of the property, where an abandoned but locked house

stood. The officers later reported finding a firearm and marijuana in a bag near this area.

15. Hecliff testified in his witness statement that their property is separated from the bushy area by a wall to the front, and neither he, his wife, nor his daughter owned, occupied, or controlled the premises where the officers found the illegal items. The officers arrested him without informing him of his rights and took him to the Arouca Police Station. His daughter was granted station bail the following day. The Claimants appeared before a Magistrate on June 24, 2013 and were granted bail with reporting obligations. At 3:00 p.m. that same day, Hecliff and his wife accessed bail.
16. The Claimants attended several court hearings until the Magistrate dismissed the charges on February 28, 2018. During the Magistrate's court proceedings Hecliff retained legal representation for himself, his wife and his daughter incurring \$20,000.00 in legal fees. He also claimed \$1000.00 in loss of earnings and \$450.00 in travel expenses between Pleasantville and the San Fernando Magistrates' Court where the case was transferred.
17. Hecliff also testified that the charges have damaged the Claimants' reputation, caused them humiliation and mental anguish and created financial hardship. Hecliff has not however told the court his line of business.
18. By letter dated October 10, 2018 the Claimants' attorney sent a pre-action protocol letter to the Defendant seeking resolution. The Defendant requested additional time to respond by December 28, 2018, but failed to do so.

19. Anything that was found by the police officers was found on the western side of the property at the abandoned property. The search conducted outside of the premises and on the property on the western side was done in the Claimants' absence but within their view and the black bag was found in a bushy area to the back of the property on the western side and not by any tank. He clarified that the Claimants did not have a tank stand at the time. The water tank and stand mentioned by the Defendant was part of the abandoned property. Hecliff exhibited copies of photographs of the bushy area with a partial fence and an abandoned tank stand on the abandoned property.

20. He also highlighted that officers conducted the search without producing a warrant and bypassed about eight stations en route to their home. At the time the officers arrived Hecliff was asleep. He described their premises as fenced to the front with a partial fence made of galvanise on the western side. On the eastern side the entire fence is fenced by a neighbour. There was no search of the Claimants premises and the abandoned property on the western side in the presence of the Claimants as Hecliff was in the living room whilst his wife and daughter were in the gallery to the front. The Claimants were present with their granddaughter at the time of the search. It was denied that Hecliff pointed to any water tank stand or made any statements to the Defendant. The water tank behind his house was constructed as part of the extension to his home in 2014/2015. Whatever was found by the officers was found in one bag on the abandoned property.

21. Owing to his absence he could not be cross examined and so the court is very much aware that his untested evidence must be viewed with caution.

## **Narda Guyadeen**

22. Narda, the second Claimant corroborated the events of June 21, 2013. She stated that at the time of the search she was in the gallery which is to the front of the house. She asserted that she had nothing to do with the property where the bag with the marijuana was found and did not visit the abandoned house.
23. When Narda was arrested she also was not informed of her rights. After her court appearance at the Arima Magistrates' Court on June 24, 2013 she was granted bail with reporting conditions. She spent three days in police custody.
24. All other aspects of her witness statement mirrored that of Hecliff.

## **Cross-examination**

25. Before June 21, 2013 Narda never knew or interacted with Officer Joseph. She recalled that six or seven officers including Joseph arrived at their home. When the officers entered the house, the officers informed Narda that they came to search for firearms and ammunition. However, she could not recall whether any search warrant was shown or read aloud to her.
26. The officers asked for her husband and Narda took them to Hecliff in the bedroom. Before Narda left the bedroom, the officers were talking with Hecliff. Narda was not present when the officers searched the bedroom but was in the living room. As such she was unaware of the allegation that Hecliff took the officers into the bedroom and a small quantity of marijuana was found.

27. The search moved to outside but Narda remained in the gallery with one police officer. She denied being present with the officers when they searched the entire outdoor premises. At paragraph 3 of her witness statement she testified that the officers searched up and down, on both sides of a drain on the southern boundary and nothing illegal was found. She initially testified in cross examination that the search was done in her view but then admitted that from the gallery she was only able to see the western side of their property which has a wire fence and is blocked off by galvanise. The southern boundary is to the back of the premises.

28. Narda saw the officers enter the yard with the abandoned house on the western side of her house. When questioned as to why she did not tell the officer in the gallery that those premises were not owned or controlled by the Claimants Narda testified that at that time she was confused and afraid.

29. She did not witness Hecliff taking the officers to any water tank stand behind their house as there was no tank stand in their yard. She also did not see Hecliff showing Joseph to the galvanised area and did not hear Hecliff utter to Joseph that he is keeping the illegal items for someone. Her evidence was as follows<sup>1</sup>;

*Q. I put it to you, PC Joseph then asked, in your presence, if you were in possession of a Firearm User's License or a Firearm User's Employee Certificate, and you responded, "No."*

*A. Yeah.*

*Q. You were informed of your rights and privileges by PC Joseph?*

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<sup>1</sup> Transcript page 15 lines 9 to 22);



*A. I can't remember that.*

*Q. I put it to you, you were then cautioned and told of the offences that were committed.*

*A. Well, not to my knowledge neither. The Woman Police Officer just told me when they came back from search, they just told me to suit up, "You and your*

*daughter going down." All right? That's what they told me.*

30. It therefore also appeared that in cross-examination Narda accepted that she was asked by the police whether she was an FUL holder.

31. By paragraph 6 of the Reply, it was pleaded that the water tank stand behind the house of the Claimants (not the one next door at which the Claimants allege the police indicated they found the narcotics) was not in existence at the time of this incident. At paragraph 1(f) of the very Reply, it is pleaded that the tank stand was not built until 2016/2017. Further at paragraph 13 of her witness statement she had testified in chief that at the time they had no tank stand at the back of their house as same was only built sometime in 2014/2015. Narda testified in cross examination that the water tank behind their house was not constructed in 2014/2015 as stated in her witness statement but in 2016/2017 as stated in the Reply to Defence. She described it as a pedestal stand with the tank on top of it. She however admitted that she always had a tank but not a tank stand until 2016/2017.

32. It was put to her that the police were armed with a search warrant and that it was shown and read aloud to her before commencing the search and her response was that she could not remember. It is noted by the court that at paragraph 3 of her witness statement she did in fact admit

that on the said day police came to their home on that day and “executed a search warrant”.

33. Finally, she admitted that neither she nor her husband made any complaint to the Police Complaints Authority.

### **Hannah Haneiph**

34. Around midday on June 21, 2013 police officers arrived at the Claimants home. Although they stated they were there to execute a search warrant, they did not produce one. When the police officers arrived, Narda granted them entry. Hecliff was in the bedroom asleep and Hannah was in the gallery at the front of the house.

35. They searched inside the Claimants’ home, the ceiling and yard and nothing illegal was found. They also searched both sides of the drain along the southern boundary and nothing illegal was found. The officers then moved to a bushy area where there was an abandoned, but locked house on the western side of the Claimants’ property and returned with a bag indicating that they found a firearm and marijuana.

36. The search of the western side occurred outside the Claimants’ premises and not in their presence, though within their view. During this time Hannah was in the gallery which is to the front of the house. The officers found the black bag in a bushy area behind the abandoned property, on the western side. At that time, there was no tank stand on their premises so the only tank stand was the one by the abandoned property on the western side. The Claimants constructed a tank stand to the back of their property in either 2014 or 2015, so whatever was found by the police officers was found in the abandoned property on the western side. The Claimants’ premises are fenced to the front and a partial galvanised fence is on the western side. Hannah testified that

she had nothing to do with the abandoned property and did not go there. The entire eastern side was fenced by a neighbour.

37. She was arrested but not informed of her rights. She was taken to the Arouca Police Station. On June 22, 2013 she was granted station bail. Two days later the Claimants attended the Magistrates' Court and the matters were adjourned and transferred to the San Fernando Magistrates' Court. They continued to appear before the Magistrate on several adjourned dates until the charges were discharged against the Claimants on February 28, 2018.

#### Cross-examination

38. Hannah recalled the day of the incident was a Friday and she had just gotten home from school and was in her bedroom when the officers arrived. At that time, she was fifteen years old. When the officers saw Hannah she was told to step outside and she went to the gallery, to the front of the house. The officers did not interact with Hannah nor was she shown a search warrant. She knew the officers searched the inside of the house but because she was in the gallery, Hannah did not know if her father spoke to the officers or what if anything he did. It was her evidence that she did not know whether her father had accompanied the police officers in their search outside.

39. When the officers were outside Hannah remained in the gallery with an officer. She saw the officers search the western side of the property as this was in her view. On this side there was a wire fence on the western side which is blocked off by galvanise. She did not see the officers search the southern boundary but they went to a bushy area which Hannah maintained was not her property. Hannah testified that she was scared that officers were searching her home and so she remained quiet and further, it did not occur to her to mention the

bushy area/abandoned property as this was not the Claimants' property.

40. During Hannah's cross-examination Hannah reiterated that she was not in the presence of the officers so she did not see them talking to her father. The officers also did not ask Hannah if she had anything illegal as she was not in their presence.

41. She was arrested but was not cautioned or advised of her rights. She could not recall what took place at the Arouca police station.

42. Hannah was questioned about the construction of the water tank stand and she testified it was in 2016 or 2017. This evidence was not in her witness statement.

## **CASE FOR THE DEFENDANT**

### **Andre Joseph**

43. Joseph a Police Constable and the charging officer, has been a police officer of over twenty-three years. On June 21, 2013 whilst on duty at the Northern Division Task Force at the Arouca Police Station, Joseph received information from an informant. Thereafter, Joseph obtained a search warrant from a Justice of the Peace and proceeded with six officers to the premises of Hecliff. Using two police vehicles the informant accompanied the officers and gave directions to the Claimants' home. Joseph testified that due to the extensive lapse of time he has been unable to locate the investigator's file containing the search warrant.

44. On arrival Joseph knocked on the front door and Hecliff opened it. He and the other police officers identified themselves by means of their TTPS identification cards and asked whether he was Hecliff Haneiph

and he responded in the affirmative. The search warrant was shown and read to the both Hecliff and Narda, they were asked if they had anything illegal and they replied “no”. As mentioned by Peterson and Pit (below) the Claimants were asked to secure their valuables before the premises was searched.

45. A short time after Hecliff as if stuttering told the police that he had “a little smoke” in his bedroom to which he took them and where a very small quantity of marijuana was found and bagged. Joseph continued to search the entire premises which was fenced at the front and both sides. The western fence was made of wire-mesh and blocked off by galvanise sheets on the Claimants’ side of their fence. There was a drain to the back of the premises.

46. A search was conducted near the western fence and another quantity of marijuana was found on the Claimants’ side of the fence under the galvanise. Hecliff was cautioned and asked if there was anything else illegal on the premises. Hecliff then took the police to the water tank within his yard at the back thereof which had been placed on some concrete blocks and between some of those blocks a black plastic bag was found containing a firearm and another parcel with marijuana.

47. It was his evidence that house of the Claimants is separated from the neighbouring premises by a wire fence so the tank stand was in the possession and control of the Claimants. There was no abandoned property on the side of their property and at no time did any officer go to a bushy area with an abandoned house. Joseph testified that in addition, after caution Hecliff said that he was keeping the items for someone who had threatened him.

48. Joseph explained that the usual practice is when illegal items are found on a property all the occupiers of the premises will be arrested and charged.
49. The marijuana was weighed, marked and sent to the Forensic Science Centre. However, the firearm was not lodged as Joseph was uncertain whether it should be lodged at the FSC or at SAUTT. The certificate of analysis attached to these proceedings relates to the marijuana. That certificate showed that there were three items submitted to FSC, a transparent "Diamond" plastic bag with marijuana, one hundred and ten foil packets each with a blur dot and a transparent plastic bag also containing marijuana. The total weight of the marijuana was found to be 5.3 kilograms (11.46 lbs when converted).
50. Sometime in early 2014 Joseph was transferred to the Traffic Branch and in April of that year he was shot in friendly fire in his leg and went on injury leave. He was charged later that year and was suspended, but was reinstated in May 2018. His reason for not attending court was because of his injury and also, he lost track of the court dates while on leave. Joseph however made several attempts to call the Prosecutor, left messages but no one replied to him. Sometime later the Prosecutor informed Joseph that the matters against the Claimants had been dismissed in 2018.

#### Cross-examination

51. Joseph accepted that a copy of the forensic report regarding the firearm and ammunition was not before the court, but testified he did obtain same. Furthermore, the issue of where to lodge firearms and ammunition was resolved and these items are no longer taken to the FSC.

52. It was pointed out to him that at paragraph 11C of the defence it is pleaded that the search of the bedroom started in the presence of Hecliff but under cross examination he was saying that both Hecliff and Narda were present when the bedroom was searched. He explained that the search began in the presence of Hecliff and continued when Narda entered the room.
53. It is undisputed that the search warrant is not before this court. Joseph explained that he prepared a provisional case file which contained a summary of the evidence and the search warrant. Joseph testified that the said file which was at his home, could not be located and he could not recall where it is due to the passage of time.
54. Joseph agreed that the search warrant and the backing would have shown when it was executed, the officers present and the illegal items found. He also provided a typed statement (which he did not save to the computer file), to the Prosecutor about the missing file which was also not before the court.
55. Joseph did not have a pocket diary with him on the day of the incident only a desk diary. When questioned as to where therefore he would record the utterances made by the Claimants Joseph testified that these entries were made in the station diary. Neither a senior officer or any of the Claimants initial the alleged verbal statements. According to the station diary extract Joseph, accompanying officers and another prisoner (not the informant as testified by Joseph) proceeded to the Claimants' premises at 2:45 p.m. It was suggested to Joseph that the officers arrived around midday and he replied that it was 2:00 p.m. Joseph denied that when they arrived it was Narda who opened the door and that Hecliff was at the time in the bedroom.

56. Joseph's version is that the search warrant bore the name of Hecliff but it was shown to him and Narda because she was present. The warrant was read aloud to them both while Hannah was in the living room. However, the filed Defence pleads that the warrant was shown to all of the Claimants and makes no mention of it being read to them.
57. It was also pointed out to him that by paragraph 11C of the Defence, it is pleaded that the police began to search the premises and at that point Hecliff intervened to tell them that he had a little smoke in his bedroom. It was pointed out to him that this is different from the sequence set out in his witness statement and he denied same. Having examined the witness statement the court is of the view that it is consistent with the pleaded case of the defence namely paragraph 11C of the Amended Defence.
58. Joseph's evidence is that four different sets of marijuana were found. On the first day of the Magistrate's Court hearing the descriptions were given to the court and endorsed on the information, describing three exhibits of marijuana. Nowhere on the information is the little smoke which he says was found separately described as an exhibit. It testified that it was part of the other exhibits but did not say which part. In his view this was an error made by the Prosecutor.
59. It was suggested to Joseph that he did not charge anyone for the marijuana found in the bedroom to which he replied that he charged all Claimants; Narda because she slept in the bedroom and Hannah because she occupied the house. Attorney noted that the weight written at the back of the information was that of 17 grammes and enquired as to how he could have charged for trafficking for 17 grammes. Joseph testified that he had no idea how that figure came to be placed at the back of the information.



60. Joseph testified that the marijuana found including what was found in the bedroom weighed over 1000 grammes, the minimum amount for a charge of trafficking. The difficulty is that out of the three informations produced to the court, two are for firearms and one only for narcotics. That one simply says that the weight was 17 grammes.

61. When it was put to Joseph that no mention is made in the station diary extract about searching the bedroom and finding anything, Joseph replied that he could not recall.

62. According to him, the search conducted outside by the western side was done in the presence of Hecliff while Narda and Hannah stood to the back of the house watching. Joseph denied that they were in the house. It was later suggested that the first and second Claimants' granddaughter was also present but Joseph denied same. In relation to the utterances made by Hecliff during the search, Joseph could not clearly explain why same was recorded in the station diary extract but not in his witness statement.

63. He was referred to alleged inconsistencies between the entries in station diary extract, the Defence and his witness statement as follows:

- a. At paragraph 11(f) of the Defence it is pleaded that Hecliff took the officers to the water tank and removed a black bag from concrete bricks and handed to the police who then opened same and found the firearm and more marijuana. This defence pleads nothing about an utterance. Attorney for the Claimants then referred him to his witness statement which appeared to be on terms with that pleaded in the Defence. However, both the Amended Defence and the relevant station diary extract set out that at the time of taking the police to the water tank, Hecliff had made an

utterance that he would tell the truth, that there was gun and weed. The suggestion is that the utterance was a fabrication as it is not contained in the Defence or the witness statement. The allegation is that similarly the alleged finding of guns and ammunition along with other marijuana must be a fabrication.

64. He was also cross-examined on the fact that in his witness statement he stated that he had found the marijuana under the galvanize before finding the one in the tank stand but the sequence of events is different in the Amended Defence. In that Amended Defence the sequence is that Joseph went to the tank stand, found the firearm then checked under the galvanise. Joseph testified that the sequence of events was that he first checked under the galvanise, went to the tank stand and moved the brick the first Claimant pointed out. It was suggested that this evidence was not in his witness statement. Joseph maintained that the firearm and marijuana were found at the premises of the Claimants (in the bedroom, in the tank stand and under the galvanise).

65. There was no abandoned house or overgrown bushes on the western side, and further the first Claimant told the officers where to look.

66. The reason Joseph did not engage the Southern Division before heading to the Claimants' home was because the informant was not comfortable with dealing with officers in that division. It was suggested that Joseph's motive for charging the Claimants was so he, Joseph, would not return to the Arouca police station empty-handed. He denied this.

## **Sheldon Peterson**

67. Police Constable Peterson has served with the TTPS for over 27 years.

At the time of the incident, he was attached to the CID Northern Division at the Arouca Police Station from 2000 to 2013. On June 21, 2013 Peterson was informed by Joseph that an informant had made an allegation. Joseph showed Peterson a search warrant issued in Hecliff's name.

68. Peterson accompanied Joseph and five other police officers of the Arouca CID and Northern Task Force to the Claimants home at No. 70 Cedar Drive, Pleasantville, San Fernando. Upon arrival around 2:45 p.m. Peterson, Joseph and two other officers went to the front of the house whilst the other officers went to cordon off the premises. The front door was open and Hecliff was in the gallery area. Joseph identified himself and the other officers.

69. Peterson described the premises as consisting of a concrete dwelling house outfitted with locked gates, windows, front door and a galvanised roof. There was a wall to the front of the premises with a gallery area and a couple steps to go up from the roadway into the compound. As he entered there was a chicken wire fence on his right, but he could not recall if there was a wall to the back of the premises.

70. They asked Hecliff if he possessed any items mentioned in the warrant and he denied having any such items. Joseph then asked the Claimants to secure their cash and valuables and commenced the search. Hecliff then said "Sir let me tell you the truth. I have something here I will give you now." He led Peterson and the other officers behind the house and pointed to an area with the chicken wire fence and galvanise sheets. Peterson and Joseph were then taken to a water tank, with a tap, at the back of the house. The tank stood on a makeshift concrete brick stand

which comprised of stack of grey building blocks which were not cast but were on top of each other on the flat side. In the centre after removing two bricks they found a black plastic bag which when examined in presence of Hecliff revealed a firearm and 6 rounds of ammunition. Peterson testified that the first Claimant admitted to keeping the items for someone.

71. Peterson and Joseph went to the galvanised area at the other side of the house which had been previously pointed out by Hecliff (where it appeared that construction was taking place) where they retrieved a large black plastic bag with a large quantity of marijuana wrapped in transparent plastic and a smaller plastic bag with about 110 foil packets containing marijuana.

72. The first Claimant was cautioned by Joseph who replied that he was keeping it for someone. The retrieved items were shown to Narda and Hannah and that Narda was cautioned. All the Claimants were placed in a police vehicle and taken to the Arouca police station. This was the extent of Peterson's involvement in the matter.

#### Cross-examination

73. There were approximately seven officers involved in the exercise. Peterson denied that they were accompanied by an informant or anyone else in the police vehicle. On arrival at the Claimants' premises the door was already open and the officers were invited inside by Hecliff. He was then shown the search warrant by Joseph who read it aloud. Peterson accepted that he did not say in his witness statement that the warrant was read aloud to anyone and the evidence was not in his witness statement. When they entered the house, Hannah was in the living room but Peterson could not recall where Narda was situated.

74. In his witness statement Peterson only mentioned the searches that took place outside. He accepted there was no mention of a search inside the house or the bedroom and that marijuana was found therein. He admitted that he took no notes and had no independent record of what occurred. His evidence was based on his recall from what he read in the station diary.

75. While searching outside Hecliff accompanied both he and Joseph. He could not recall where Narda and Hannah were at that time save that they were on the premises. It was Hecliff who removed the bricks at the tank stand. The tank had water and so Peterson and Joseph emptied the water and removed the tank before Hecliff removed the blocks to reveal the plastic bag. He accepted that this evidence was not in his witness statement. Thereafter, on the western side a large garbage bag with marijuana was found. Peterson also recalled seeing about 100 foil packets of marijuana but did not state where this quantity was found or if these packets were in the garbage bag.

#### **Ishmael Pit**

76. Pit is a Police Sergeant with twenty-three years in the service and has been attached to the Northern Division Task Force at the Arouca police station from 2013 to the filing of his witness statement. On the date of the incident while on duty, Pit had a conversation with Joseph and was also shown the search warrant for the Claimants' premises. The location was outside of the Division so Pit notified a senior officer and the officers were permitted to go to the premises and execute the search warrant.

77. When the officers arrived at the premises Pit was one of the officers at the front door along with Peterson and Joseph. The officers identified themselves by showing their TTPS identification cards, showed the

warrant to Hecliff and indicated it was their intention to search the premises. This process was repeated with the other Claimants.

78. Pit and other officers secured Narda and Hannah by having them seated in the living room whilst Peterson and Joseph in the presence of Hecliff searched the house and premises. Pit could not recall how Joseph got his attention but Joseph showed Pit a firearm, ammunition and marijuana. The Claimants were also shown the items, arrested by Joseph and taken to the Arouca police station.

79. At the station Joseph interviewed Hecliff and all the Claimants were later charged for the offences. Pit then instructed a team to have the Claimants processed. There was no further involvement by Pit in the matter and Joseph was later transferred to another police station.

#### Cross-examination

80. Pit is now an Assistant Superintendent of Police. He could not recall a civilian accompanying the officers to the Claimants home or on their return save and except the Claimants who were arrested. He also could not recall whether it was Hecliff or Hannah who opened the front door. Throughout the exercise Pit was mostly present in the house and was not part of the search outside.

81. A search was conducted inside but Pit could not recall if anything illegal was found.

82. While the first Claimant was outside with the officers, at first Pit was in the living room with the second and third Claimants. He could not recall where the second and third Claimants were when the illegal items were found, but the search outside took time so if the second and third

Claimant went from the living room to outside the house they would be accompanied by Pit or directed by the officers.

83. Pit did not have a pocket or desk diary during the exercise. On his return to the police station he made a note in the station diary, and testified that the officers do not initial the notes made. However, if a person being charged with a criminal offence has made any utterances and it is being relied on by an officer, the said officer would have the would-be defendant sign or initial the station diary entry in which the utterance is recorded.

## The Law

84. In **Kevin Stuart v Attorney General of Trinidad and Tobago**<sup>2</sup>, Lord Burrows said at paragraph 1 that the tort of malicious prosecution contains five elements:

*“The tort of malicious prosecution has five elements all of which must be proved on the balance of probabilities by a claimant: (1) that the defendant prosecuted the claimant (whether by criminal or civil proceedings); (2) that the prosecution ended in the claimant’s favour; (3) that the prosecution lacked reasonable and probable cause; (4) that the defendant acted maliciously; and (5) that the claimant suffered damage. See, eg, Clerk and Lindsell on Torts (2020, 23rd edition) para 15-13; Winfield and Jolowicz on Tort (2020, 20th edition) para 20-006”.*

And at paragraph 26;

*“Nevertheless, and although nothing turns on it in this case, there is one point on the law which it is helpful to clarify. This concerns the question as to what the police officer’s honest (and*

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<sup>2</sup> [2022] UKPC 53

*reasonably held) belief must be about in the context of deciding whether there is a lack of reasonable and probable cause. It has commonly been stated that the honest belief must be as to the accused's guilt in respect of the offence charged: see Hicks v Faulkner (1878) 8 QBD 167, 171, per Hawkins J, which was approved by the House of Lords in Herniman v Smith [1938] AC 305. But in the Board's view, the principled and correct approach was articulated by Lord Denning in the House of Lords in Glinski v Mclver [1962] AC 726. He said at pp 758-759:*

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

85. In **Matadai Roopnarine v Attorney General of Trinidad and Tobago**<sup>3</sup>, the matter was dismissed at first instance after hearing a submission of no case to answer and said decision was upheld by a majority in the Court of Appeal. The Board had to decide whether it was wrong to hold

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<sup>3</sup> [2023] UKPC 30



that no such case had been made out on the evidence. It was held that the appellant had failed to prove the absence of reasonable and probable cause not because of the weakness of his evidence but because he had not provided any evidence directed at the key issue of the circumstances in which the prosecution had been instituted and the nature of the information on which the prosecutors had acted. Since his case on malice depended on an inference being drawn from absence of reasonable and probable cause, it necessarily followed that malice had also not been established. The following passages are instructive:

*31. A decision as to whether a prosecution has been brought without reasonable and probable cause involves a value judgment. It does not simply involve the making of primary findings of fact. As such it does not fall within the Devi v Roy practice – see Betaudier v Attorney General of Trinidad and Tobago [2021] UKPC 7 at para 16; Water and Sewerage Authority of Trinidad and Tobago v Sahadath [2022] UKPC 56 at paras 19-26.*

*34. As made clear in the passages cited above from Clerk & Lindsell, Abrath and Glinks the claimant “must identify the circumstances in which the prosecution was instituted” and “show the nature of the information on which the defendant acted” – Clerk & Lindsell. This involves giving some evidence as to those circumstances and that information - Abrath. The claimant has to put before the court “the facts and information known to the prosecutor” – Glinski.*

*36. The appellant’s witness statement and oral evidence was similarly focused on his dealings with the police rather than the nature of the information on which they were acting. It described the search of his home, his questioning on three*

*occasions by the police, the taking of samples of his handwriting, the shame and embarrassment caused to him by his arrest at work, his charge despite protestations of innocence, the overcrowded and filthy conditions in which he was held on remand and the discontinuance of the prosecution.*

*37. Although no one has doubted the truthfulness of this evidence, those matters are not key to establishing his pleaded claim. The appellant knew from the respondent's pleaded defence and the evidence of the police officers at the preliminary inquiry before the Magistrates the nature of the information on which they had acted. At the malicious prosecution trial, however, no evidence was led as to these matters.*

*44. As both the judge and the majority held, the reason why the appellant failed to prove the absence of reasonable and probable cause was not the weakness of the appellant's evidence but rather the absence of any evidence from him directed at the key issue of the circumstances in which the prosecution was instituted and the nature of the information on which the prosecutors acted. On this issue "that evidence has not been forthcoming", as the judge found, and there was "no prima facie case at all", as the Court of Appeal held.*

86. Malice can be proven not only by evidence of spite, or ill-will but also by evidence of an improper motive<sup>4</sup>. Malice may be proven by way of direct evidence or it may be inferred. According to Mendonça, JA in **Alistaire Manzano v The Attorney General of Trinidad and Tobago**<sup>5</sup> at paragraphs 47 to 49:

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<sup>4</sup> *Gibbs v Rea* [1998] AC 786

<sup>5</sup> Civil Appeal No. 151 of 2011

47. *The proper motive for a prosecution is a desire to secure the ends of justice. So, in the context of malicious prosecution a defendant would have acted maliciously if he initiated the prosecution through spite or ill-will or for any other motive other than to secure the ends of justice. It follows therefore that even if a claimant cannot affirmatively establish spite or ill-will or some other improper motive, he may still succeed in establishing malice if he can show an absence of proper motive.*

48. *Malice may be inferred from the absence of reasonable and probable cause because if there is no reasonable and probable cause for the prosecution it may be inferred that there was an absence of proper motive and hence malice. In **A v State of New South Wales** the Court however interjected this caution when inferring malice from the absence of reasonable and probable cause (at para. 90):*

*“No little difficulty arises, however, if attempts are made to relate what will suffice to prove malice to what will demonstrate absence of reasonable and probable cause. In particular, attempts to reduce that relationship to an aphorism - like, absence of reasonable cause is evidence of malice (cf **Johnstone v Sutton** (1786) 1 TR 510 at 545 per Lord Mansfield and Lord Loughborough: ‘From the want of probable cause, malice may be, and most commonly is, implied’; **Varawa v Howard Smith Co Ltd** (1911) 13 CLR 35 at 100 per Isaacs J: ‘[T]he want of reasonable and probable cause is always some, though not conclusive, evidence of malice...’ but malice is never evidence of want of reasonable cause (cf **Johnstone v Sutton** 91786) 1TR 510 at 545 per Lord Mansfield and*

*Lord Loughborough [99 ER 1225 at 1243]: ‘From the most express malice, the want of probable cause cannot be implied...’ - may very well mislead. Proof of particular facts may supply evidence of both elements. For example, if the plaintiff demonstrates that a prosecution was launched on obviously insufficient material, the insufficiency of the material may support an inference of malice as well as demonstrate the absence of reasonable and probable cause. No universal rule relating proof of the separate elements can or should be stated.”*

*It may therefore be a question of degree whether malice should be inferred from the absence of reasonable and probable cause. If the prosecution was launched on “obviously insufficient material” that may suffice to support the inference of malice.*

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

87. In addressing the issue of imputing malice to the manner in which a police officer carried out his investigation, the decision of **Sandra Juman v The Attorney General of Trinidad and Tobago**<sup>6</sup> at paragraph 17 is instructive:

*“[...] 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*

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<sup>6</sup> [2017] UKPC 3

*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.”*

## **Possession and occupation**

88. **Section 5** of The **Dangerous Drugs Act** Chap 11:25 speaks about possession and trafficking in dangerous drugs. The relevant sections provide:

*5. (4) A person who trafficks in any dangerous drug or in any substance represented or held out by him to be a dangerous drug or who has in his possession any dangerous drug for the purpose of trafficking is guilty of an offence.*

*5. (5) Subject to subsection (7), a person who commits the offence of trafficking in a dangerous drug or of being in possession of a dangerous drug for the purpose of trafficking is liable upon conviction on indictment to a fine of one hundred thousand dollars or, where there is evidence of the street value of the dangerous drug, three times the street value of the dangerous drug, whichever is greater, and to imprisonment for a term of twenty-five years to life.*

*5. (9) A person, other than a person referred to in subsection (2), found in possession of more than—*

*(a) twenty grammes of diacetylmorphine (heroin);*

*(b) ten grammes of cocaine;*

- (c) five hundred grammes of opium;*
- (d) thirty grammes of morphine; or*
- (e) one kilogramme of cannabis or cannabis resin,*

*is deemed to have the dangerous drug for the purpose of trafficking unless the contrary is proved, the burden of proof being on the accused.*

89. **Section 21** of the Act speaks prescribes when an occupier is deemed to be in possession;

*21. (1) Without limiting the generality of section 5(1) or (4), 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.*

90. **Section 5** of the **Firearms Arms Act** Chap 16:01 reads:

*5. (2) For the purposes of any prosecution for an offence under this Part or Part IV, a person who—*

- (a) is found with any firearm or ammunition;*
- (b) occupies, controls or is in possession of any land, building, room, vessel, vehicle, aircraft or place in or on which is found any firearm or ammunition;*
- (c) is proved to have had with him or under his control any firearm or ammunition; or*
- (d) is proved to have had with him or under his control anything in or on which is found any firearm or*

*ammunition, shall be deemed to be in possession of such firearm or ammunition in the absence of lawful excuse, the proof of which lies on the person.*

91. In the consolidated matter of **Randy Ramoutar v The Attorney General of Trinidad and Tobago** CV2012-1842 and **Joseph Balliram v The Attorney General of Trinidad and Tobago** CV2012-1430, Justice Dean-Armorer (as she then was) in determining the interpretation of the word “occupy” as seen in statutes relied on the case of **Koonjan Ramdass and Camla Ramoutar v Richard Knights** C.A. Mag. No 13 of 2002. In **Koonjan Ramdass**, the appellants were charged with the possession of drugs and firearms. At the Magistrates’ court, the appellants were found guilty for both offences. They appealed their conviction. The crucial issue in the appeal was whether there was sufficient evidence to support the appellants’ occupation of the premises in which the drugs and firearms were found. In his decision, Sharma C.J, referred to the Ontario case of **R v. Lou Hay Hung** [1946] O.L.R 187 which interpreted the meaning of “occupy” in section 17 of the **Opium and Narcotic Drug Act**. The Court of Appeal in **Lou Hay Hung** at pages 191 to 192, Per Robertson C.J.O stated as follows:

*“The word “occupy” and “occupant have a variety of shades of meaning. No doubt, we commonly speak of the “occupants” of a dwelling house, meaning thereby all persons who, at the time live there. We use the word in even a wider sense when we speak of the “occupants” of premises, meaning thereby all the persons who happen to be within them at the particular time. Primarily, however, “to occupy” means “to take possession”, and such wider meanings, while no doubt now well recognized by usage, and proper enough in the right context, are not the only meanings, according even to present common use. The*

*narrower and primary significance has been attached to the word “occupied”*

92. At page 7 of his judgment Sharma C.J, went on to state the following:

*“The judge further added that to give “occupy” the wider meaning might produce an unjust result. For example, if the head of the household had drugs unlawfully, and his wife, children and servants know this, it could not be the intention of the statute to make them all guilty of the offence for keeping opium in their possession. The proper sense to be attributed to the word “occupies” in s. 17 is the limited sense that will extend the section only to cases where there is an element of control of the premises and of their use in the person charged”*

93. Sharma C.J, further relied on the case of **Rex v Gun Ying** [1930] D.L.R.

925. In **Rex** supra, Mulock C.J.O at pages 927 to 928 stated that the words “occupies, controls or is in possession of any building ... are not used in their widest, but on the contrary in their limited sense, namely that such occupation, control, or possession must, under the circumstances, be of a nature which goes to support the charge, otherwise the presumption of possession does not arise.”

94. At page eight of his judgment, Sharma C.J, stated that from those two authorities, it showed that the courts in interpreting “occupy” gives it the narrow rather than the wide meaning. As such, Sharma C.J, ruled that the appellants were not in occupation of the premises due to the fact that they were temporarily visiting same.

95. In **Bissessar et Al v The State**<sup>7</sup>, John, J.A. consider the above case and said:

*The general principles gleaned from these cases are:*

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<sup>7</sup> Criminal Appeal No. 21 and 22 of 2005



- i. *“occupies” under section 21(1) applies only to cases where there is actual occupation or an element of control of the premises and of their use in the person charged;*
- ii. *occupation, control, or possession must, under the circumstances, be of a nature which goes to support the charge, otherwise the presumption of possession does not arise;*
- iii. *serendipitous presence in a building is not equivalent to occupation thereof;*
- iv. *there is a mental element to the act of being in possession of dangerous drugs.*

96. In ***Bharath and Bohoroquez v the State***<sup>8</sup>, Weekes, J.A. cited two Canadian authorities that dealt with premises:

*6. Authorities in this jurisdiction are inconsistent on this issue and require review. However, before we come to look at the decided cases it is useful to consider the jurisprudence in certain Canadian provinces in which there is legislation in pari materia with s. 21(1) of the Act. The Opium and Narcotic Drug Act, 1929 section 15 states:*

*“Without limiting the generality of paragraph (d) of section four of this Act, any person who occupies, controls or is in possession of any building, room, vessel, vehicle, enclosure or*

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<sup>8</sup> Cr.App. Nos. 49 and 50 of 2008

*place, in or upon which any drug is found, shall, if charged with having such drug in possession without lawful authority, be deemed to have been so in possession unless he proves that the drug was there without his authority, knowledge or consent, or that he was lawfully entitled to possession thereof."*

*7. In R v. Gun Yin, [1930] 3 D.L.R. 925, police officers entered the premises of the appellant. They entered a bedroom and found the appellant's wife and another man smoking opium. They also found a can with a small quantity of opium under the bed. The appellant was away conducting business at Niagara Falls when the search was conducted. He was charged and convicted with unlawful possession of a narcotic drug contrary to section 15 of the Opium and Narcotic Drug Act 1929.*

*8. The appeal was allowed as the Court found that the drug was there without his knowledge. Chief Justice Mulock considered section 15 and the words "occupies, controls or is in possession of." He found that the words are not used in the widest sense but in their limited sense namely that occupation, control or possession must under the circumstances be of a nature which goes to and supports the charge, otherwise the presumption does not arise.*

*9. In R v. Lou Hay fling [1945] O.L.R. 187, police officers searched premises in Ontario and found a quantity of opium on the premises, together with implements to smoke opium. The premises were formerly owned by the appellant as he had sold them to a Mrs. Watson some*

*two and a half months before the arrest. He continued to live at the premises and the opium was not found in the rooms he occupied. He denied knowledge of the use or presence of opium on the premises and this was confirmed by Mrs. Watson. Both the appellant and Mrs. Watson were charged and convicted of unlawful possession of opium contrary to section 17 (previously section 15) of Opium and Narcotic Drug Act, 1929. The appellant appealed his conviction.*

*10. The appeal was successful as the court held that there was nothing in the nature of personal possession and he could not be said to "occupy" any part of the premises except his own bedroom in the sense that he had a degree of control over it. C.J.O. Robertson considered the meaning of the word "occupies" in relation to section 17. He held that "to occupy" means "to take possession" in a broad and proper context but also considered its narrow usage in the case of R v. Gun Yin. He held that to give the word "occupies" a broad meaning would produce unjust and unreasonable results and that it should be construed narrowly. The key point was that the element of control of the premises and its use by the person charged must be shown for them to be caught by section 17.*

## **Discussion**

97. In this case, there is no issue that the Claimants were charged for criminal offences and were discharged. The issues therefore are whether there existed reasonable and probable cause so to do, (whether the charging officer held the honest belief that he possessed

enough evidence to lay such charges before the court), if not then whether the charges were actuated by malice. In the circumstances of the present case, the case for the police was that they were in fact present and found the illegal items. Further, that those items were shown to them by Hecliff. Additionally, the case against Narda and Hannah is that they were occupiers of premises in which the items were found and so would have fallen within the deeming provisions in respect of both the drugs and firearms.

98. On the other hand, the Claimants deny that any drugs or firearms were found on their premises and claim that items were found in an abandoned property next door.

99. This is therefore one of those cases where the court must make findings of fact in relation to the two competing versions of events. This is the first port of call as where the case goes from there is highly dependent on those findings. It is also to be borne in mind that the burden of proof lies with the Claimants.

### **Reasonable and probable cause**

#### **Findings of Fact**

##### **Was there a search warrant**

100. The pleaded case of the Claimants is that the police came to the home and executed a search warrant on that day. There has been no denial of this on their part. In the court's view it is more likely than not that there was in fact a search warrant in existence at the time of the search. The issue of the Claimants appears to be that the warrant was not read to them. But it is not their pleaded case that there was in fact no warrant so to the extent that they attempt now to raise this, the court does not accept it. The court accepts and finds that there was

such a warrant. Hannah's evidence that no search warrant was produced is assessed in light of her evidence that she was in the house at the time of the initial interaction with the police officers and it is clear that the interaction in that regard was between the officers and her parents.

#### Was marijuana found in the bedroom

101. The court thinks it more likely than not, that no such marijuana was found in the bedroom of the Claimant. For starters, Joseph could give no reason why the list of exhibits at the back of the Information carried no such exhibit. His only answer which was not a credible one was that it was mixed up with the other marijuana. This was not logical. Even more so however, is the fact that two other police officers present with the party inside the house where the marijuana was allegedly found testified to no such finding. It is not in their witness statement and neither did they attempt to introduce it in their evidence in cross examination (to their credit). Further, there was no other officers who would have been in a position to testify as to the alleged utterance that such an oral admission was in fact made. None whatsoever. This certainly would have been a matter that they would have remembered as the statement amounted to an incriminating one. The inconsistency between their testimony and that of Joseph on this issue is telling.

#### Was marijuana found in the yard under the galvanize

102. The Defendant's witnesses gave conflicting accounts of the sequence involved in the finding of the marijuana under the galvanize. In the Amended Defence it is pleaded that Joseph checked the tank stand and between some bricks found the firearm and ammunition and then a transparent bag with marijuana behind the galvanise a black

plastic bag with a large quantity of marijuana. Under cross-examination Joseph testified that he searched under the galvanise and then went to the tank stand. Peterson's version is the first Claimant pointed to the galvanise area and they went to the tank stand, searched and found the items and then went back to the galvanise area to search. In the court's view the conflicts were in no way material. On the whole of the evidence it is more likely than not that Hecliff told the officers of both sets of items as they stated but went to the tank stand first then to the galvanize where the items were found.

103. In that regard the burden lay with the Claimants to prove their case that the police in fact went to an abandoned property next door and found the offending items. Clearly it was not the case for the Claimants that they were being set up by the police in that the police planted the items. They do not say so. It is their case that whatever was found was found next door. The court does not believe that a search was conducted next door and that items were found next door. Part of the reason for same are the circumstances surrounding the finding of the firearms at the tank stand dealt with next.

104. Finally, on this issue, the record of the court shows the weight of the combined exhibit to have been 17 grammes. This is not plausible and it is more likely than not that an error was made in that regard as testified to by Joseph. When one looks at the description there are 110 foil packets with masking tape markings, one clear loose plastic bag with plant material with markings and a circular "bale" wrapped in shrink wrap contained compressed plastic material resembling marijuana again with markings. All of the items were placed in a large black plastic bag with markings. As a matter of common sense, it is highly unlikely that all of these items would or could weigh 17 grammes.

105. But more than that, the Certificate of Analysis from the Forensic Science Centre (FSC) shows that the very exhibits carrying the very same markings were submitted to it and the report concluded that the total weight of the exhibits was 5.4 Kilograms and the weight of the active ingredient in marijuana cannabis sativa L was in fact 5.2 Kilograms. There are two things to note from this. Firstly, the chain of custody is unbroken. It means that it is more likely than not that the exhibits produced in court were the ones submitted to the FSC in respect of which it made its findings. Secondly, it is clear on the findings of the FSC that the weight of the containers, namely bags etc was a mere 0.2 Kg while the weight of the marijuana was 5.2 KG. It could not be the case therefore that the figure of 17 grammes set out on the information was correct and the court finds that it was an error.

Were a firearm and ammunition found in the tank stand on the property

106. The evidence of the Claimants deviated from their pleaded case and eventually settled on their tank stand being built in or around 2013/2014. But that is the present tank stand which from the photographs, appears to be made of concrete. The evidence is that they in fact had a tank before that. The evidence of the police is that the “stand” was a makeshift one consisting of loose blocks stacked on each other. That they had to empty the water in order for Hecliff to reach the items. This in the court’s view was highly plausible as tanks are rubber and require flat surfaces to sit upon. It is a very common practice in Trinidad that temporary tank stands made of blocks are erected. In that regard, the Claimants submitted that the police were inconsistent on who actually removed the bag from the blocks. The court is of the view that no such inconsistency is demonstrated and even if there is one it is minor in nature and does not go to the issue

of credibility of the finding. Human nature is such that three persons may witness the same event and give three slightly different versions thereof. The application of that understanding and common sense tells the court that any perceived inconsistency is not material.

107. The Claimants also submitted that in his evidence in chief Joseph said nothing about 6 cylindrical objects resembling ammunition was found, although Peterson said that in his presence Joseph revealed that the firearm contained the 6 cylindrical objects. The Claimants also submitted that the records show two different descriptions of the firearm and ammunition. The first was the description recorded by the Magistrate, *"a metal object resembling firearm with serial No. PX 6640B and 'Baretta' written. Rectangular and metal object resembling a magazine with masking tapes on box with markings."* The second is the station diary, *"which contained a metal object resembling a firearm which contained (6) cylindrical objects resembling ammunition ..."*

108. In the court's view there once again is no material distinction between the two sufficient so as to cast credibility on the fact that they were found. When the evidence is considered together it is more likely than not that the firearm contained the magazine which itself contained the 6 rounds of ammunition. There is the matter of the absence of a forensic report into the firearm and ammunition. It was the evidence of Joseph that one was eventually obtained but it is not before the court. The court does not accept that the absence of the report is material to the issue it has to decide. The Magistrates' court did in fact record a description of same which means they existed and were presented in court. The issue for this court is whether they were found on the property of Hecliff by his admission.



109. In relation to his alleged admission the court is of the view that he did in fact make such an admission having regard to how well hidden the items appeared to be. Further, that the station dairy does record that particular admission though not the one in relation to the bedroom.

110. Finally, there is on the evidence no motive for the police to make up these allegations against Hecliff. There was no history between them, there is no suggestion that such a find would lead to promotion or that the officers had some interest to serve. There was a suggestion in cross examination as follows<sup>9</sup>:

*Q: Oh, I see. You see, I am suggesting to you that the only reason you charged the Claimants is that you did not want to return to Arouca, having engaged six other police officers to leave Arouca to come San Fernando. Your only reason you charged them is that you did not want to return empty-handed. You have to charge somebody ...*

*A: No sir that is not the truth.*

111. The suggestion is of course an implausible one for several common sense reasons and the court rejects it. Finally, it was also suggested that a successful prosecution for drugs and guns would be of benefit to the police officer and he agreed. This again is a matter of wide applicability. The court is not of the view that Joseph set out to charge these Claimants for these reasons as that is highly implausible. He did in fact offer an explanation for why he failed to engage the police in the Southern Division which is telling. His evidence was that he did not know who he could trust. The court accepts this as the reality of Trinidad and Tobago and of his reality.

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<sup>9</sup> Transcript page 48 lines 10 to 15

### The abandoned premises

112. The Claimants deny owning, occupying or controlling the abandoned property on the western side. They maintain a partial fence separated their property from the abandoned area where the firearm and marijuana were allegedly found. On the Claimants' side of their property is a wire fence barricaded with galvanised sheets which partially separates their property from the abandoned property on the western side.

113. The witnesses for the Defendant, particularly Joseph, testified that there was no abandoned house or bushy area at this location.

114. The pictures attached show a boundary line (the drain) separating the Claimants' property from an abandoned house. The court does not believe that the officers would not have seen an abandoned house if one in fact existed. However, there is no evidence of when the pictures provided by the Claimants were taken. They do tell a story however. The tank stand at the back of their house is shown as a concrete walled structure of some age. According to their evidence this tank stand did not exist in that form when the incident occurred. It must mean therefore that the pictures before the court were recent and not taken at the time of or shortly after the incident. So, while the pictures show that at the date they were taken, there appears to be an abandoned building, there is no photographic evidence before the court that at the date of the incident the said building was in fact abandoned. So that the pictures do not prove that which the Claimants think they do. So, the court accepts the evidence of the police that there was no abandoned building, the inference being that there was no such building and the Claimants having failed to prove same by way of their photographs.

115. The court therefore finds that the First and Second Claimants have not proven that there was an absence of reasonable and probable cause to arrest and charge them for the offences.

#### The minor Claimant Hannah

116. Hannah was 15 years old at the time. It is clear that she was an occupier of the property including the area of the tank and galvanize. In the court's view it may not have been the case that she was an occupier of the bedroom in the sense ascribed to the deeming provisions by the authorities set out above, however, the record of the endorsement at the back of the Information at the Magistrate's Court does not show that there was any exhibit proffered that was allegedly found in the bedroom. Further, it was the finding of the court that there was no such find. So essentially, Hannah was not charged for this and the court so finds. It follows that she too has failed to discharge the burden to prove her case in relation to the absence of reasonable and probable cause on the charges.

#### Overarching credibility

117. The court having found that no marijuana was found in the bedroom the issue of the credibility of Joseph becomes a live one in relation to the rest of his evidence. In that regard the court found that it believed him in relation to the finding of the other items because there was supporting evidence from the other officers in relation to those other items but not in relation to the alleged finding in the bedroom. In that regard that it is the finding of the court that while it did not believe that part of his evidence it found his other evidence to be plausible and believable.

118. Finally, the issue of malice does not arise.

**Disposition**

119. The order is as follows:

- a. The claim is dismissed.
- b. The Claimants shall pay to the Defendant the prescribed costs of the claim in the sum of \$14,000.00.

**Ricky Rahim**

**Judge**