

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

Civil Appeal No. CA P404 of 2018
Claim No. CV 2016-02926

BETWEEN

WINSTON RAMPERSAD

Appellant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Respondent

PANEL:

Justice Charmaine Pemberton, JA

Justice Gillian Lucky, JA

Justice Carla Brown-Antoine, JA

APPEARANCES:

Mr. J. Jagroo for the Appellant

Ms. M. Belmar-Williams instructed by Ms. C. Le Gall for the Respondent

DATE OF DELIVERY: December 8, 2025

I have read the judgment of Justice Gillian Lucky, J.A. I agree with it and have nothing to add.

/s/ Charmaine Pemberton

Justice of Appeal

I have also read the judgment of Justice Gillian Lucky, J.A. and I, too, agree with it and have nothing to add.

/s/ Carla Brown-Antoine

Justice of Appeal

JUDGMENT

Judgment delivered by Justice Gillian Lucky, J.A.

INTRODUCTION

[1] This appeal arose from the decision of the trial judge (“TJ”) to dismiss the claim by the Appellant, Winston Rampersad (“WR”), a fisherman, for malicious prosecution against the Respondent, the Attorney General of Trinidad and Tobago (“AG”); and to order WR to pay prescribed costs in the sum of TT\$14,000.00.

[2] In the High Court proceedings, WR sought –

- [i] Damages, including aggravated and/or exemplary damages for malicious prosecution;

- [ii] Interest at such rate and for the period as the court may deem fit;
- [iii] Such further relief as the court may deem fit; and
- [iv] Costs.

[3] In determining the claim, the TJ addressed two primary issues: whether Police Complainant, WPC Neema Thompson regimental number 16704 (“WPC Thompson”) lacked reasonable and probable cause in charging WR and if she did, whether malice could be inferred from the absence of such reasonable and probable cause.

[4] The TJ found that –

- [i] There was a lack of reasonable and probable cause to charge WR with the offence; but
- [ii] There was no malice in charging WR.

It is these findings of the TJ that form the basis of this appeal.

[5] In order to determine whether the TJ was plainly wrong in dismissing the claim for malicious prosecution, it is necessary to consider the background that prompted WR to initiate these proceedings.

BACKGROUND

[6] On 21st March 2007, WPC Thompson was on patrol in a marked police vehicle accompanied by PC Sookraj and other police officers. Around 12:10 p.m., after receiving certain information and consulting with the other police officers, she observed a gold Nissan B13 motor vehicle bearing registration number PBJ-7814. WPC Thompson instructed the driver of the vehicle to stop along the South Trunk Road, South Oropouche, near the old entrance to Mosquito Creek. WPC Thompson,

PC Sookraj, and the other police officers exited the marked police vehicle and identified themselves to the occupants. WPC Thompson directed the driver, Jade Phillip, the front seat passenger, Hayden Hoyte, and the left back seat passenger, WR, to exit the vehicle. She informed them that they were suspected of conveying firearms and ammunition. The police officers conducted a search of the individuals, but nothing illegal was found on any of them.

[7] WPC Thompson and the other police officers then searched the vehicle and found, in the trunk area, a feedbag containing one cylindrical parcel wrapped in blue and clear plastic and another cylindrical parcel wrapped in black and clear plastic. Upon examining the parcels, WPC Thompson observed that they contained compressed plant material. In the presence of PC Sookraj, WPC Thompson informed the occupants that she was of the opinion that the plant like material was marijuana and because of the quantum, it was for the purpose of trafficking. She cautioned each of the occupants and they remained silent. WPC Thompson and the other police officers then charged the occupants of the vehicle, including WR, and transported them, along with the seized material, to the San Fernando Police Station. Subsequent analysis confirmed that the contents of the two parcels contained *cannabis sativa*, commonly referred to as marijuana. Both of the parcels together weighed 22.28 kgs.

[8] On 22nd March 2007, WR and the other occupants of the motor vehicle were brought before the Siparia Magistrates' Court, where the charge was read and each accused was cautioned. On 29th July 2008, it was reported that Hayden Hoyte (the front seat passenger) was deceased.

[9] On 6th January 2009, WR and Jade Phillip appeared in the Siparia Magistrates' Court for the preliminary inquiry. On that same day, the magistrate found that a *prima*

facie case was made out against each of them. They were both committed to stand trial at the Assizes.

[10] WR subsequently received a notice advising that a *nolle prosequi* was filed on 6th September 2012, thereby discontinuing the proceedings against him. On 26th August 2016, WR filed a claim for malicious prosecution against the AG.

GROUND OF APPEAL

[11] WR challenged the TJ's finding on malice and advanced eight (8) grounds of appeal. The grounds of appeal filed are stated verbatim –

a. The reliance on the case of Sandra Juman (Appellant) v The Attorney General of Trinidad and Tobago and another [2017] UKPC 3 was misplaced as the facts in Juman were quite different and he erroneously accepted wholesale the reasoning set out by the Board without reference to the factual scenario of both cases;

b. He [TJ] erred in confining the Appellant's pleaded case on malice to simply that the "decision to prosecute was reckless and unthinking" without reference to the pleaded case on malice [ROA p 21 paras 41 (a) to (f)].

c. Having failed to consider these aspects of the Appellant's case he [TJ] was instead unduly preoccupied with the issue of whether the arresting officer had been "reckless" in failing to carry out sufficient investigations. In so doing he [TJ] failed to consider his own finding that the charging officers admitted that there was in effect no investigation carried out by the charging officer [ROA p 319 line 29-34].

d. He [TJ] failed to consider that the evidence under cross examination revealed a complete failure by the charging officer to take any steps, even the most elementary ones for any for any reasonable person to take before instituting proceedings, which was consistent with the Appellant's pleaded case on malice.

e. He [TJ] failed to consider that the failure of the arresting officer to do so was based on her own mistaken belief that "it is customary police procedure that when you find persons in a private vehicle with a quantity of drugs, that they be charged together." [ROA P 264 line 12 to 16] and that it is not customary in possession matters to do enquiries [ROA p 27 line 7 to 11]. This confirmed the Appellant's case that the arresting officer failed to conduct proper investigations and ignored the presumption of innocence before charging him. She charged the Appellant not on the basis of reliable evidence against the Appellant but on the basis of an illegal "customary police procedure". This raises a prima facie case of inferred malice.

f. The learned judge failed to draw adverse inferences from which an evidential platform for a finding of malice could be built. The court erred in its analysis and evaluation of the stark inconsistencies between the charging officer's written and oral evidence and the Defendant's pleaded case. The admission by the charging officer under cross examination that she arrested and charged without conducting any enquiries due to an undisclosed "customary police procedure that when you find persons in a private vehicle with a quantity of drugs, that they be charged together" is totally inconsistent with the Respondent/Defendant's pleaded case. No mention is made of such a police practice or policy in the pleaded defence nor is such an aversion made in response to the Appellant's pleaded case on malice.

g. Having regard to the complete lack of policing, investigation or inquiries before arresting and charging the Appellant and the admissions by the charging officer that the Appellant was arrested due to a customary police procedure” and not to secure justice, the finding of malice was ripe for the picking and the trial judge erred in failing to consider the evidence in support of same.

h. The court did not consider or appreciate the evidence in support of an inference of malice based on the absence of reasonable and probable cause. The judgment of Lord Kerr in *Trevor Williamson v The Attorney General of Trinidad and Tobago* (Supra) states at paragraphs 13, 16 and 17 –

“Malice can be inferred from a lack of reasonable and probable cause – *Brown v Hawkes* [1891] 2 QB 718, 723. But a finding of malice is always dependent on the facts of the individual case. It is for the tribunal of fact to make the finding according to its assessment of the evidence”. See further, “BETWEEN REASONABLE AND PROBABLE CAUSE AND MALICE IN THE LAW OF MALICIOUS PROSECUTION: A COMMONWEALTH UPDATE” by Chuks Okpaluba, Adjunct Professor of Law University of Fort Hare.

COURT OF APPEAL’S APPROACH

[12] This appeal is one grounded in law in that it addresses whether the TJ misapplied the law as it related to (i) the finding on malice and tangentially (ii) whether the objective and subjective aspects of reasonable and probable cause were proved on the evidence.

[13] In the case of *Attorney General of Trinidad and Tobago v Miguel Regis* Civ App 79 of 2011, Mendonça JA (as he then was), in delivering the judgment of the Court of Appeal stated –

11. ... we may say that unless it can be demonstrated, for example, that the trial judge disregarded or ignored or failed to take sufficient account of relevant considerations or regarded and took into account irrelevant considerations or that the decision is so unreasonable or against the weight of the evidence or cannot be supported having regard to the evidence or that the judge omitted to apply or misapplied some relevant legal principle or that the decision is otherwise fundamentally wrong, the Court of Appeal will not generally interfere with the exercise of a court's discretion. (emphasis mine).

Elements of Malicious Prosecution

[14] We need only remind the parties of the five constituents of the tort of malicious prosecution – (1) that the defendant prosecuted the claimant (whether by criminal or civil proceedings); (2) that the prosecution was determined 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. The burden of proving all the elements lies on the claimant. These five elements have informed many decisions, for example, in *Kevin Stuart v Attorney General of Trinidad and Tobago*¹.

[15] In this judgment, since there was no cross-appeal by the Respondent on the finding of the TJ that there was no reasonable and probable cause, focus was placed on the elements of malice, which was the subject of the appeal. However, we found in this

¹ [2022] UKPC 53

particular appeal, the two issues of malice and reasonable and probable cause were intertwined. As a result, the TJ's decision on reasonable and probable cause was examined later in this decision.

Malice

[16] In *Trevor Williamson v The Attorney General of Trinidad and Tobago* [2014] UKPC 29, the Privy Council stated –

11... 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 motives is for a purpose other than bringing a person to justice...The wrongful motive involves an intention to manipulate or abuse the legal system...Proving malice is a "high hurdle" for the claimant to pass... (emphasis mine)

[17] In order to satisfy the element of malice, Counsel for WR pleaded in the terms reproduced below –

- a) Police Constable Neema Thompson regimental number 16704 concocted and/or fabricated evidence to the effect that on 21st day of March 2007 the Claimant was in possession of a dangerous drug for the purpose of trafficking namely marijuana;
- b) Police Constable Neema Thompson regimental number 16704 failed to inform and/or provide adequate information to the Claimant about the particulars of the offence before he charged and failed to provide an opportunity for the Claimant to either provide a response to the charge or give an explanation to the alleged offence;
- c) Police Constable Neema Thompson regimental number 16704 failed to conduct proper investigations into the matter and ignored the presumption of innocence of the Claimant before charging him for the offence of possession of a dangerous drug for the purpose of trafficking namely marijuana on the 21st day of March 2007;
- d) Police Constable Neema Thompson regimental number 16704 fully knew or ought to have known that he had no reliable evidence against the Claimant to establish and/or implicate him in the commission of the offence on 21st day of March 2007 but nevertheless continued to prosecution against the Claimant;
- e) The evidence given by Police Constable Neema Thompson regimental number 16704 pertaining to the arrest and/or malicious prosecution of the Claimant was given in the

knowledge that it was false and/or concocted and that the Claimant would be prosecuted for the above mentioned offence;

f) Police Constable Neema Thompson regimental number 16704 was reckless in the discharge of her duties as it related to the arrest and/or malicious prosecution of the Claimant for the offence. **(ROA Pages 21-22).**

[18] This Court considered the following excerpts from the cross-examination of WPC Thompson –

Q Right. And before you took the Claimants to the San Fernando Police Station, you informed them of the reason why you was taking them down or you just carried them down?

A No, he was informed of his reasons for being taken to the San Fernando Police Station. **(ROA Page 263 Lines 30-34).**

...

Q You tell him that or who tell him what was the reason?

A I told him.

Q And what you tell him?

A What I said to him?

Q You could recall? Yes. You could recall what you said?

A Yes. That based on the quantity of drugs found that he would be charged for the offence of possession of narcotics – possession of marijuana for the purpose of trafficking.

Q But you didn't find that on him, the drugs?

A No, but it is customary police procedure that when you find persons in a private vehicle with the quantity of drugs that they be charged together because the drugs – that is customary police procedure.

Q ... To charge everybody and ask questions after?

A No, to charge everybody because it was a private vehicle.
(ROA Page 264 Lines 1-20).

- ...
- Q Right. At that time. So you would have had to do some sort of investigation, some sort of inquiries before you laid this charge against the Claimant, not so?
- A The inquiries, no ma'am.
- Q So you didn't have to ask anything, find out, well, he was not the driver, so he was the passenger, where he was going, you didn't have to do anything?
- A Well, it is not customary in possession matters that you do inquiries. (ROA Page 270 Lines 3-11).
- ...
- Q Yeah. And that was a prudent, diligent officer like yourself would do, charge everybody, don't ask anything?
- A In a possession matter, yes, ma'am.
- Q Now, I put it to you that you failed to conduct any sort of inquiries, ma'am, before you opted to charge this man for this offence of possession you would agree?
- A Yes, ma'am.
- Q Right. And in the absence of doing any kind of inquiries you didn't have any kind of information that linking this Claimant to the fact that you find this drugs in the trunk, you had no information that that was his own, not so? **(ROA Page 270 Lines 24-35).**
- ...
- A The information that I had was that he was found with that drugs in his constructive possession.
- Q And where you get that information from because you –
- A Not the information, sorry, when I stopped the vehicle the drugs was in his constructive possession.
- Q ...But I want to know what inquiries you do to find out if this man is just in a car going up the road, what you find out from him, what you ask, what you enquired of him, I want to know what you do?
- A I did not enquire anything from him.
- Q I didn't do anything that is exactly it. And in the absence of that evidence, in the absence of those inquiries, ma'am you continue to

charge this man without doing any investigation not so? You agree or disagree?

A I disagree.

Q Okay. So you had sufficient information, evidence, whatever word you want to use, you had sufficient evidence before you to charge this Claimant?

A Yes, ma'am.

Q Yes. Okay. And you had sufficient evidence to continue to prosecute this man?

A Yes ma'am. (ROA Page 271 Lines 1-23).

(Emphasis mine)

[19] Having considered WR's pleadings and WPC Thompson's evidence at paragraph [18] above, the TJ found that –

... the question now relates to whether malice can be inferred from the lack of reasonable cause. And in that regard, I am guided by the Judgment of the Privy Council in Sandra Juman v The Attorney General–

'As to malice, it was not suggested that the first respondent had a positive improper motive, but Mr Badenoch submitted that his decision to prosecute her was reckless and unthinking; ...

He simply assumed that the statutory deeming provision enabled him to charge her, without making basic inquiries into the circumstances. The decision to prosecute, in Mr Badenoch's submission, did not proceed from a reasonably formed belief in adequately investigated evidence, but from an unreasoned and unjustified belief that he could.

Again, this echoes the evidence of ... WPC Thompson.

It was submitted that such reckless indifference was equivalent to malice. Mr Badenoch relied in particular on a passage from the decision of the Board in the admiralty case of *The Evangelismos* ... where it was said that 'there may be cases in which there is either mala fides or that *crassa negligentia*, which implies malice, which would justify a Court of Admiralty giving damages [for wrongful arrest of a vessel], as in an action brought at Common law damages may be obtained'.

Now, in this case with Sandra Juman, it was in fact held that there was reasonable [and] probable cause. But going down further, at paragraph 17 [the] Privy Council had this to say –

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

...in the circumstances there could be no question of any improper motive being imputed on the Charging Officer and therefore I hold that even though there was no reasonable and probable cause for the Claimant to be charged for the offence that there was a lack of malice. (ROA Page 320 Lines 1-35, Page 321 Lines 1-35 and Page 322 Lines 1-6)

- [20] Counsel for WR submitted that the TJ's reliance on *Juman* was misplaced. Counsel argued, that the facts in *Juman* were different and that the TJ erroneously accepted the reasoning set out by the Privy Council without reference to the factual scenario of this case. Counsel for the AG submitted that the TJ's finding of no malice was sustainable on the totality of the evidence and that this was not a case in which malice could be inferred properly from an absence of reasonable and probable cause.
- [21] When we examine the Privy Council's decision in *Juman*, we note that the Board had to consider whether the trial judge and the Court of Appeal were correct in their findings that the police complainant had reasonable and probable cause to prosecute the appellant (*Juman*) and whether the prosecution was tainted by malice.
- [22] *Juman* was arrested with others at a two-storey wooden structure located in Pond Street, La Romain ("the premises"), after firearms and ammunition were found during a police search at the premises. She was charged under section 6(1) of the Firearms Act, kept in custody overnight, then released on bail. After approximately twenty (20) appearances before the magistrates' court, the charges against her were dismissed on a submission of no case to answer. *Juman* filed a claim for malicious prosecution and false imprisonment against the police complainant and the respondent.
- [23] Counsel for *Juman*, argued that the decision to prosecute *Juman* was reckless and unthinking, and that the police complainant had simply assumed that the statutory deeming provision under section 5(2) of the Firearms Act (*now repealed*) namely, "in any prosecution for an offence... a person who is proved to have had in his possession or under his control anything whatsoever in or on which is found any firearm or ammunition shall, until the contrary is proved, be deemed to have been

in possession of such firearm or ammunition”, enabled him to charge her without making basic inquiries into the alleged possession of firearms and ammunition.

[24] The Privy Council ultimately dismissed the appeal stating that–

16. This case is far removed from one where it would be right for the Board to depart from that settled practice. There was nothing complex or exceptional about the case. The trial judge heard the evidence, accepted the first respondent’s account of the facts and his reasons for prosecuting the appellant, considered that he acted with reasonable cause and acquitted him of malice. The Court of Appeal considered carefully the criticisms made by the appellant, examined the evidence (including the judge’s note of the first respondent’s cross-examination) and came to the same conclusion as the judge.

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

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

As applied to malicious prosecution, it requires the claimant to prove that the defendant deliberately misused the process of the court. The most obvious case is where the claimant can prove that the defendant brought the proceedings in the knowledge that they were without foundation ... But the

authorities show that there may be other instances of abuse. A person, for example, may be indifferent whether the allegation is supportable and may bring the proceedings, not for the bona fide purpose of trying that issue, but to secure some extraneous benefit to which he has no colour of a right. The critical feature which has to be proved is that the proceedings instituted by the defendant were not a bona fide use of the court's process.

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

[25] In *Juman*, as in this case, the parties were alleged to have had in their possession an unlawful item. The trial judges in both matters were tasked with determining whether the police officer had an improper motive at the time the charges were laid. This Court finds *Juman* to be suitably applicable in this case and therefore was appropriately relied on by the TJ in determining whether WPC Thompson acted with malice when she charged WR. The point is that reckless indifference without more cannot equate to malice. We therefore agree with the TJ's finding of no malice.

[26] Counsel for WR submitted that WPC Thompson charged WR based on an undisclosed customary police policy. Counsel relied on the cross-examination of WPC Thompson when she stated the following – (1) “when you find persons in a private vehicle with a quantity of drugs, that they be charged together” (**ROA Page 264 Lines 1-20**); and (2) “it is not customary in possession matters to do inquiries” (**ROA Page 270 Lines 3-11**). According to Counsel, this alleged policy was not part of the AG’s pleaded case and only emerged for the first time during the cross-examination of WPC Thompson. Counsel further contended that charging WR solely on such a policy (whether in existence or not), reflected an improper motive and supported an inference of malice.

[27] When WR was charged with possession of *cannabis sativa* (commonly called marijuana) for the purpose of trafficking contrary to section 5(4) of the Dangerous Drugs Act, Chapter 11:25 (“DDA”) in 2008, WPC Thompson also relied on section 21(1) of the DDA -

5. ...(4) A person who traffics 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.”

“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. (emphasis mine).

[28] At the time WR was charged, the prevailing interpretation of section 21(1) of the DDA was set out in the decision of *Mantoor Ramdhanie et al v. The State*, (“*Ramdhanie*”), *Cr. App. Nos. 91-93, 97 of 1997*) where Ibrahim J.A. (now deceased) stated –

With due respect to counsel's submissions, we are of the opinion that all the prosecution has to establish where the drug is found in a vehicle is that the accused person either occupies or controls or is in possession of that vehicle..

In this case, with respect to the appellant Mantoor there was no issue that he was in the vehicle. The issue was whether he was in the front or rear seat. But his position in the vehicle made no difference to the application of sec. 21 of the 1991 Act... (emphasis mine).

[29] The interpretation of section 21(1) of the DDA as set out by Ibrahim JA in *Ramdhanie* above was later re-examined in the decision of *Latchmi Bharath and Ferney Bohoroquez a/c Ferney "Pena" Borohoquez ("Bharath")* Cr. App. No. 49 & 50 of 2008, where the Court of Appeal noted that the authorities in our jurisdiction were inconsistent on the interpretation of the word "occupier".

[30] In *Bharath*, two police officers observed a motor vehicle, Mazda model 323, at Gulf City Mall ("the mall"). The vehicle was parked in the mall and the police officers stayed a short distance away and observed the vehicle. After a short period of time, the officers approached the vehicle and asked the occupants to exit. The first appellant (Bharath) was seated in the passenger seat, while the second appellant (Bohoroquez) was the driver and, a third person, Olivares was seated in the back. The police officers conducted a search and found a white opaque feed type bag containing packets of a white powdery substance later identified as cocaine weighing 21.3 kgs. The bag was found in the middle of the rear seat. The officers also found 1.747 million Bolivares and three one-dollar U.S. notes on Olivares.

- [31] The appellants were convicted along with Olivares for possession of a dangerous drug for the purpose of trafficking and were sentenced to eight (8) years and ten (10) years hard labour respectively.
- [32] On appeal, the Court considered whether Bharath qualified as a person who “occupied” a vehicle, as contemplated by section 21(1) of the DDA. Weekes JA (as she then was), in delivering the judgment of the Court of Appeal stated—
40. For all purposes the term “occupies” within the Act is to be given its narrow meaning incorporating an element of control. An example of such control might be that the prosecution evidence establishes that a passenger is directing the vehicle’s route or that the relationship between driver and passenger allows for an inference of a measure of control by the passenger. Mere presence cannot and does not equate to “occupation” (Emphasis mine).
- [33] In the matter before us, the findings of fact by the TJ were that (i) WR was a passenger in the motor vehicle at the material time; (ii) drugs were found in the trunk of the vehicle; and (iii) WPC Thompson did not carry out any investigation or inquiry after being satisfied that WR was present in the vehicle. The substance of this part of the appeal was whether, based on the factual scenario, the TJ was right when he stated that WR was not an ‘occupier’ within the meaning of section 21(1) of the DDA.
- [34] The question of whether WPC Thompson acted with malice involved consideration of the interpretation of section 21(1) of the DDA. Having considered the authorities—*Juman*, *Ramdhania* and *Bharath*—the prevailing law at the time when WR was charged, was that a person who occupies a vehicle in which a dangerous drug was found, was deemed to be in possession, unless he proved that the drug was there without his knowledge and consent.

[35] Although styled as customary or policy, charging a person found to be in a vehicle where there are dangerous drugs was the operational guide based on the state of the law at that time. In other words, the law informed how police operations were to be effected. Can WPC Thompson be faulted or be tainted with malice or improper motive in the circumstances? The burden on the Appellant to prove that was not discharged. This Court therefore agrees with the TJ on his finding that there was no malice and upholds his decision on this ground.

[36] Counsel for WR further submitted that the TJ failed to consider and draw adverse inferences from the admission made by WPC Thompson that no investigations were carried out. Counsel also argued that the TJ was unjustly pre-occupied with whether WPC Thompson was 'reckless' in failing to carry out an investigation.

[37] In answer to the question of malice, Counsel for the AG submitted that malice was a distinct factual issue requiring proof of improper motive, not mere recklessness or insufficient investigation. Counsel argued that WR did not plead improper motive, nor was evidence led to support allegations of fabrication. WPC Thompson's reliance on a customary police procedure emerged during cross-examination and there was no evidence to suggest a deliberate misuse of process.

[38] This Court agrees with Counsel for the AG that WR did not plead either the fact of or give particulars of improper motive; or lead any evidence to that effect. The case for WR, as set out in paragraph 0 above, on the issue of malice was based the following –

- [i] Fabrication;
- [ii] Failure to inform or provide adequate information to WR about the particulars of the offence or provide WR with an opportunity to respond;
- [iii] Failure to conduct sufficient investigations;

- [iv] Lack of evidence; and
- [v] Recklessness.

[39] The Privy Council has consistently set a high bar for any complainant to prove malice requiring proof that the prosecution has either [i] deliberately misused the court process [ii] acted from an ulterior improper motive, or [iii] pursued an illegitimate or oblique purpose. From the evidence as reflected in paragraph [18] of this judgment, this Court, like the TJ, is not persuaded that WPC Thompson had those considerations in mind when she decided to charge WR.

[40] In fact, this Court is of the view that WPC Thompson honestly believed, on the material before her, that there was a proper case to put before the court. Her belief was supported by the interpretation of the law **at the time to charge** 'any person' found in a vehicle where unlawful drugs were discovered. In those circumstances, there is no reason to overturn the TJ's findings on malice.

[41] Once we accepted as we did that WPC Thompson acted in accordance with the interpretation of the law at the time when WR was charged, then any issue of recklessness, insufficient investigation or drawing of adverse inferences cannot be favourably considered. The TJ was acutely aware of WR's case and was correct in his finding that WPC Thompson's decision to charge WR was not actuated by malice.

Reasonable and probable cause

[42] Notwithstanding our conclusion in paragraphs [40] and [41] above, this Court examined whether the TJ correctly applied the law in relation to the question of lack of reasonable and probable cause. As there was no challenge to the TJ's finding on this issue, this Court invoked its powers pursuant to section 39(2) of the Supreme Court of Judicature Act, Chap. 4:01 to consider the issue afresh.

39...(2) The powers of the Court of Appeal under this section may be exercised notwithstanding that no notice of appeal or respondent's notice has been given in respect of any particular part of the decision of the High Court by any particular party to the proceedings in Court, or that any ground for allowing the appeal or for affirming or varying the decision of that Court is not specified in such a notice; and the Court of Appeal may make any order, on such terms as the Court of Appeal thinks just, to ensure the determination on the merits of the real question in controversy between the parties.

[43] Reasonable and probable cause entails that a police officer had an honest belief that a crime had been committed. Lord Burrows in *Stuart* explained what a court had to interrogate in determining reasonable and probable cause. The learned Law Lord said at paragraph 26 that –

26. ... the question as to what the police officer's honest (and reasonably held) belief must be about in the context of deciding whether there is a lack of reasonable and probable cause...in the Board's view, the principled and correct approach was articulated by Lord Denning in the House of Lords in *Glinski v McIver* [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. (Emphasis mine).

[44] It is only when it is established on the evidence that the police officer did not have that honest belief, then the requirement adumbrated by Lord Denning in *Glinski* as lack of reasonable and probable cause is proved.

[45] In the 2021 case of *Matadai Roopnarine v Attorney General of Trinidad and Tobago*², the Court of Appeal had to deliberate on the issue of absence of reasonable and probable cause to determine whether to allow the appeal. It was stressed that the onus of proof lay on the claimant. The majority of the Court of Appeal upheld the trial judge's decision that the claimant did not discharge the burden of proof, so that the tort was not made out successfully. The Privy Council³ agreed with the Court of Appeal's majority decision and provided further guidance on the approach to be adopted in determining whether there was an 'honest belief' on the part of the person who laid the charge, in this case, WPC Thompson. At paragraph 22, the Privy Council stated –

Proof of absence of reasonable and probable cause

22. In order to establish that the relevant person did not have an honest belief based on reasonable grounds that there was a proper case to lay before the court it will generally be necessary for the claimant to identify the nature of the information upon which the

² Civil Appeal No. P-101 of 2013

³ [2023] UKPC 30

decision to do so was made. As explained in Clerk & Lindsell at para 15- 35:

The question of reasonable and probable cause may create difficulties in the conduct of a trial: first, it involves the proof of a negative, and secondly, in dealing with it the judge has to take on himself a duty of an exceptional nature. The claimant has, in the first place, to give some evidence tending to establish an absence of reasonable and probable cause which is operating on the mind of the defendant. To do this, the claimant must identify the circumstances in which the prosecution was instituted. It is not enough to prove that the real facts established no criminal liability against him, unless it also appears that those facts were within the personal knowledge of the defendant. If they were not, the claimant must show the nature of the information on which the defendant acted, which is sometimes done by putting in the depositions which were before the magistrate.

[46] In the High Court, Counsel for WR relied on the admission by WPC Thompson that no investigation was conducted to show that there was any connection between WR and the drugs that were found in the vehicle. Counsel contended that WPC Thompson's failure to conduct an investigation or make any inquiry to establish such a nexus, undermined any assertion of an 'honest belief' on the part of WPC Thompson that there was sufficient evidence to lay the charge. Counsel submitted that the outcome was that the element of reasonable and probable cause was not satisfied.

[47] Counsel for WR further submitted that based on *Bharath*, "the arresting officer showed a complete disregard for the truth, and had no interest in investigating the

matter because she had no appreciation for the law (i.e. the claimant's mere presence would not have sufficed) and the role and function of a police officer. Her misunderstanding of the law was so egregious, that it equated mere presence with reasonable suspicion. Her approach to the offence was reminiscent of it being a crime of strict liability, where mere presence determined the issue of reasonable suspicion." (ROA Page 208 paragraph 17).

[48] Counsel for the AG did not address the case of *Bharath* in the High Court and made no reference to any other case that would have assisted the TJ in the interpretation of the law **at the time of the laying of the charge against WR**. This omission by Counsel for the AG was unfortunate considering that the Court of Appeal in *Bharath* recognised the inconsistent interpretation of section 21(1) of the DDA that existed at the time of the *Bharath* appeal, and more so, at the time WR was charged.

[49] It is interesting to note that WR was committed to stand trial in 2009, before the *Bharath* decision and the *nolle prosequi* was filed in 2012, after the *Bharath* decision.

[50] Although the appropriate interpretation of section 21(1) of the DDA was not expressly pleaded by either party in the High Court, it emerged as a live issue during the cross-examination of WPC Thompson as set out at paragraph [18] above.

[51] It is clear, that the interpretation of the word 'occupier' as used in section 21(1) of the DDA was at the forefront of the mind of the TJ. His question to WPC Thompson during cross-examination elicited evidence about whether WR was a mere occupant or whether he had exercised any control of the vehicle –

THE COURT ...Would you be able to say, Ms Thompson, whether the Claimant was in control of anything inside the trunk of the vehicle?

THE WITNESS I can't say if the Claimant was in control of anything in the trunk. **(ROA Page 255 Lines 25-30).**

[52] Having considered the elements of malicious prosecution, the TJ stated –

...I am satisfied for the purposes of this decision that at the time he was not the occupier of the vehicle, in terms of the requirement under the Dangerous Drugs Act for the deeming provision to have taken place.

I find that the police did not make the necessary . . . inquiries to find out whether or not he was the occupier of that vehicle. And therefore, there was no reasonable and probable cause to charge the Claimant with the offence. **(ROA, Page 319 Lines 25-34)**

The TJ accepted that in order to lay the charge, WR had to be considered an “occupier” of the vehicle.

[53] In *Manzano v The Attorney General of Trinidad and Tobago Civil Appeal No. 151 of 2011*, Mendonça JA (as he then was), in delivering the judgment of the Court of Appeal, reaffirmed that the test for determining reasonable and probable cause encompasses a subjective and objective element. At paragraphs 23 and 29, he stated –

23. It is readily apparent from that definition that reasonable and probable cause has both a subjective element and an objective element. Reasonable and probable cause must appear objectively from the facts but also must exist in the mind of the defendant.

...

29. The honest belief must be based on reasonable grounds. This is the objective element. It introduces the test of the reasonable man and asks the question whether viewed objectively there was

reasonable and probable cause for the prosecution. In *Dallison v. Caffery* [1965] 1 Q.B. 348, 371 Diplock, L.J. (as he then was) said:

The test whether there was reasonable and probable cause for the arrest or prosecution is an objective one, namely whether a reasonable man, assumed to know the law and possessed of the information which in fact was possessed by the defendant, would believe there was reasonable and probable cause.
(emphasis mine).

[54] It is clear that the TJ applied the principles in *Bharath* when he made the determination that WR “was not an occupier of the vehicle in terms of the requirement under the Dangerous Drugs Act for the deeming provision to have taken place.” (**ROA Page 319 Lines 26-28**). However, at the time WR was charged, the prevailing law was that as stated in *Ramdhanie*, and not *Bharath*. Therefore, the TJ, having accepted the reason proffered by WPC Thompson for not conducting any inquiries before charging WR, ought to have appreciated that there was no onus on WPC Thompson to do so based on **the interpretation and application of the law at that time**. The TJ was therefore plainly wrong to have found that there was no reasonable and probable cause to charge WR.

DISPOSITION:

- [i] The Appeal is dismissed;
- [ii] The orders of the trial judge are affirmed; and
- [iii] The Appellant is to pay the Respondent’s costs of the appeal assessed at two-thirds of those prescribed in the High Court.

**/s/ Gillian Lucky
Justice of Appeal**

The Panel gratefully acknowledges the assistance received by Judicial Research Counsel.