

SAINT LUCIA

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

Claim No: SLUHCV 2008/0647

BETWEEN:

ALBERT AUGUSTIN

Claimant

and

WPC 152 BERTIE FERDINAND
THE HONOURABLE ATTORNEY GENERAL OF
SAINT LUCIA

Defendants

Appearances:

Mr. Al Elliot for the Claimant
Mr. Dwight Lay for the Defendants

2010: May 17th,
2011: July 26th

JUDGMENT

[1] **WILKINSON, J.** The Claimant filed a notice of proceedings at April 28th 2008, and served it on the Second Defendant on April 30th 2008. He filed his claim form and statement of claim on July 4th 2008. Therein he sought for alleged acts of battery, unlawful arrest and false imprisonment by the First Defendant the following relief:

- (i) Damages;
- (ii) Aggravated and exemplary damages;

(iii) Interest thereon;

(iv) Further or more relief.

[2] Certain facts are not in dispute. The Claimant was in attendance at approximately 10.00 p.m. at a "Fish Friday" event on Friday February 8th 2008 on Front Street in the village of Anse La Raye and seated on a wall of the village Community Centre. There was loud music, people, food and drink. The Claimant said he "sitt" the First Defendant with his teeth, the First Defendant who was on patrol with another police officer, PC 716 Gillian Lansiquot at the event said that she heard someone "hissing" and on turning around she saw the Claimant sitting on the wall of the community centre by himself. It is here the facts start to diverge. Subsequently PC 716 Lansiquot and the First Defendant visited the Anse La Raye police station where they spent approximately 15 minutes and then they returned to the event. On her return the First Defendant said that she heard someone shout out "Pretty Officer" and when she turned around she saw the Claimant blowing kisses at her. She ignored him. She then heard him shout out "Officer Burty". She turned around towards him and he said to her "I wouldn't mind sucking your cunt." The Claimant denies that he made this statement.

[3] It is a fact that a complaint was made against the Claimant and it read:

"Friday the 8th day of February 2008 about 10.25 pm on Front Street situate in the village of Anse La Raye within the First Judicial District of this State did make use of indecent language to WPC 152 Ferdinand to wit: " Officer Bertie I wouldn't mind sucking your cunt." Contrary to section 508(B) of the Criminal Code of St. Lucia #9 of 2004."

It is a fact that the Claimant and the First Defendant went to mediation on the complaint before the magistrate's court and the notice of outcome of mediation dated March 5th 2008 stated that "The parties settled as a result of the mediation". There was also a mediation agreement (criminal) signed by both the Claimant and the First Defendant and it stated:

"It has been agreed that
Mediation successful.
The Complainant has decided to withdraw the charge."

The extract of judgment from the magistrate's court stated:

"At a sitting of the First District Court held at Anse La Raye on Friday the 7th day of March 2008, the following judgment as rendered in the above cause: Case withdrawn"

The extract of conviction from penalty or of order for payment of money and in default of payment imprisonment stated:

" It is adjudged and ordered by the said Court sitting at Anse La Raye (ALR Court) On Friday 7th March,2008 that the case against the Defendant was Withdrawn."

- [4] It is observed that some of the witness statements of both sides breached the evidence rule on hearsay and though neither Counsel took issue, the Court will apply the hearsay evidence rule.

Issues:

- [5] Whether as a result of the mediation agreement which states that the mediation was successful, the Claimant is barred from bringing this suit.

Whether the Claimant was maliciously prosecuted.

Whether the Claimant was unlawfully arrested.

Whether the Claimant was falsely imprisoned.

Whether the Claimant was assaulted and battered.

The Claimant's evidence

- [6] On Friday February 8th 2008, at approximately 9 p.m. the Claimant said that he was in the village of Anse La Raye, sitting on a wall of the Community Centre with his friends Kenny Jn Francois, and Allison Fedee. There were a lot of people milling around, there was loud music, food and drinks. He from time to time would "sitt" at females passing in the street whom he found to be attractive.
- [7] He saw a young lady, the First Defendant and a man in plain clothes moving a barrier, and he "sitt" at the First Defendant. The First Defendant approached him, identified herself as a police officer and pulled him off the wall. She told him that

they should take a walk to the Police Station. He inquired as to why they were going to the Police Station? She told him that she was arresting him. He inquired why? She started to rough him up, she pushed him, held him by his pants at his buttocks, and told him to walk to the station. She shouted at him to walk. He remembered persons in the street laughing at him along the way. At the station, the First Defendant pushed him behind the counter and said to him "sitt me now". He told her that he did not know that he had broken the law. At the police station he was made to stand against a wall while he was searched and while against this wall the First Defendant with a small book in her hand slapped him on the right side of his face. He was detained until the following day when he was forced to wash dishes and wash a police van with blood in it. He was not given any gloves to use, just soap and water. At noon he was visited by his sister who brought him food. She spoke with a police officer and then he was allowed to leave. He was released without being told why he had been arrested. He was only told by the First Defendant that he could not "sitt" an officer. He was subsequently served with a summons to attend the magistrate's court to answer a complaint for indecent language and on March 7th 2008, after mediation, he was informed by the magistrate that there was no complaint to answer.

[8] Under cross-examination he said that he did not say that the First Defendant pushed him behind the counter and when paragraph 9 of his witness statement wherein it was written was shown to him, he said: "That is what is written". He said that he could only say that the book with which he was struck was very small. His evidence shifted to and fro on which side of his face he had received the slap and eventually he said that he could not remember on which side he had been slapped. He did not visit a doctor for medical treatment for the slap, and he agreed that he had not produced a medical report about any injuries as a result of the slap.

[9] A witness for the Claimant was Mr. Allison Fedee. He said that at the time of the incident complained of by the Claimant he was near the village Community Centre and the Claimant and Kenny were seated on the Community Centre wall. He

remembered that the Claimant "sitt" a person but he did not know who it was. There were many persons around. There was loud music. He saw the First Defendant and a policeman both dressed in plain clothes. Both were known to him as police officers before that night. He saw the First Defendant approach the Claimant and pulled him down off the wall. She said something to the Claimant but he did not hear because of the loud music. He then moved closer and heard the First Defendant tell the Claimant to take a walk to the police station. The First Defendant held the Claimant by his pants at his buttocks from the square until they got to the police station. He followed about 100 yards behind. He repeatedly asked the First Defendant and the policeman "What the fella do?" At the police station he stayed outside but was able to see the inside of the police station because the door was clear and the lights in the station were bright. He saw the First Defendant push the Claimant behind the counter, and "playing her hands in his face." He saw a book in the First Defendant's hand and she slapped the Claimant across his face with the book. He stayed outside the police station for approximately 5 minutes.

[10] Under cross-examination he said that he and the Claimant were good friends and he agreed when it was put to him that he was in the trial to help the Claimant because of the circumstances in which he found himself. He said that when he heard the Claimant "sitt" it was directed at one person and even though the music was loud, it was not so loud that he could hear nothing. The reason that he did not hear the conversation between the First Defendant and the Claimant was because of the loud music. He said that he could not describe the manner in which the First Defendant held the book to slap the Claimant because he only saw the action and not the slap. When asked to describe how the Claimant was standing when he was slapped, he said that the counter in the station "was of a height" so that he could not see if he was standing. He changed the distance that he was following the First Defendant and the Claimant at from 100 yards to 100 feet.

The Defendants' evidence

- [11] The First Defendant was at the time attached to the Anse La Raye police station. She said that her training as a police officer included procedures to be followed when arresting a person she believed to have committed an offence.
- [12] On the night of February 8th 2008, at approximately 10.05 p.m., PC 716 Lansiquot and herself were on foot patrol at Front Street in Anse La Raye. Both of them were dressed in full uniform. Whilst she was standing next to the Community Centre, she heard someone "hissing", and on turning around, she saw the Claimant. He was on the wall of the Community Centre by himself. There was a group of unidentified persons approximately 20 feet away. PC 716 Lansiquot and herself left the site and returned to the station for approximately 15 minutes. They then returned to the area of the Community Centre and to where they were previous standing. She observed that the Claimant was still sitting on the Community Centre wall by himself.
- [13] Shortly after her return, she heard someone shouting out "Pretty Officer." She turned around and saw the Claimant blowing kisses at her. She ignored him and continued observing the crowd. She then heard the Claimant shout out "Officer Burty". She turned towards him and on doing so the Claimant said to her "I wouldn't mind sucking your cunt." On hearing this, she believed that the Claimant had committed an offence. She immediately approached the Claimant, identified herself as a police officer and informed him that it was an offence to use indecent language to anyone and cautioned him. To this the Claimant said "Officer what happen, I cannot express myself?"
- [14] She then used her discretionary powers as a police constable and informed the Claimant that she was arresting him because she had reasonable grounds to believe that he had committed an offence by using indecent language to her. She informed the Claimant of his rights, and asked him to accompany her to the police station. The Claimant initially refused and remained seated on the wall. With the assistance of PC 716 Lansiquot she was able to get the Claimant off the wall and they walked with him to the police station at Anse La Raye. During the journey to

the police station she did not say anything to the Claimant, and she did not hold him by his pants so as to subject him the public ridicule.

- [15] On arrival at the police station she asked the Claimant his name and address, he refused to provide them. She informed the Claimant of his rights as a prisoner in custody in the presence of PC 693 James, PC 716 Lansiquot and PC 460 Narcisse. When she asked the Claimant if he understood his rights, he replied "I know my rights." She asked the Claimant again for his name and address, and once again he refused to provide them.
- [16] She instructed PC 693 James who was the station orderly at the time to put a note in the diary to indicate that the Claimant refused to give his name and address and to process him. She left the police station immediately afterwards to respond to a call.
- [17] The following morning, Saturday February 9th 2008, at approximately 9.30 a.m., she was in the kitchen of the police station together with PC 716 Lansiquot, SPC 73 Joseph, PC 460 Narcisse having breakfast when CPL 80 Prospere entered the kitchen and spoke with her. It was her intention to make further inquiries to illicit the name of the Claimant and charge him for indecent language. However, on the instructions to CPL 80 Prospere she went to the cell holding the Claimant together with PC 460 Narcisse and asked the Claimant his name. He refused to give her his name. At approximately 10.00 a.m. she released the Claimant pending further investigation and informed him that a complaint would be filed against him for indecent language after further inquiries.
- [18] The First Defendant said that having heard the Claimant use of indecent language she held an honest and reasonable belief that there was probable cause for preferring a complaint against the Claimant. She denied slapping the Claimant. A complaint against the Claimant was filed February 14th 2008, and when it first came on for hearing February 29th 2008, it was sent to mediation. At mediation on March 5th 2008, the matter was settled between the Parties and the complaint was withdrawn on March 6th 2008.

[19] Under cross-examination the First Defendant said that "hissing" ("sitting") was a normal thing and she "did not feel anyway about it". The arrest was for the use of indecent language and this was what he was charged with. When asked why would she need to identify herself if she was in uniform, she answered that this was standard procedure with or without uniform. She agreed that the Rights in Custody form was the best procedure for informing the Claimant of his rights but she said since the Claimant refused to give his name the form could not be used. She reiterated that after being read his rights and asked if he wished to exercise any of them, the Claimant never asked for a telephone call and she didn't know if he had asked any of the other officers for a telephone call. It was put to her that at mediation the Claimant apologized and she said that he did so, and that she saw the apology as an acceptance of liability.

[20] Police Constable 716 Gilian Lansiquot said that he was on foot patrol on February 8th 2008 together with the First Defendant at approximately 10.05 p.m. in the vicinity of the community centre at Anse La Raye. They were in uniform. He heard someone "hissing" and on turning around he saw the Claimant sitting on the wall of the community centre. Shortly thereafter, the First Defendant and himself returned to the police station at Anse La Raye for approximately 15 minutes. On returning to the area of the Community Centre, he saw the Claimant still sitting by himself on the community wall. Soon after he heard the Claimant shout out "Officer Burty, I wouldn't mind sucking your cunt." A few persons around them started to laugh. The First Defendant and himself immediately approached the Claimant and the First Defendant identified herself to the Claimant and informed him that it was an offence to use indecent language to anyone and she cautioned him. When cautioned the Claimant made a remark about him "expressing himself". The First Defendant then informed the Claimant that she was arresting him for indecent language. Both the First Defendant and himself then escorted the Claimant to the police station. At the police station, when asked to give his name the Claimant refused to give his name and address. He heard the Claimant say "I know my rights" and that he wanted to apologize. The First Defendant asked the Claimant his name a second time, and against he refused to give his name and address.

The First Defendant then asked PC 693 James, the station orderly to process the Claimant and put a note in the station diary that the Claimant had refused to give his name and address. The First Defendant left the police station shortly thereafter. He heard PC 693 James ask the Claimant for his name and address, and again he did not give the information. PC 693 James then asked the Claimant to remove his belt and shoes. He saw the Claimant remove his belt and shoes. PC 693 James then escorted the Claimant to a cell.

[21] On Saturday February 9th 2008, at approximately 9.30 a.m. PC 460 Narcisse, SPC 73 Joseph, the First Defendant and himself were in the kitchen of the police station having breakfast when CPL 80 Prospere entered and had a discussion with the First Defendant. After the discussion, the First Defendant and PC 460 Narcisse left the kitchen. He did not see the Claimant doing fatigues at the police station on that day.

[22] Under cross-examination he reiterated that the Claimant was sitting alone on the wall. He was not aware if a Rights in Custody form was produced but he did hear the First Defendant inform the Claimant of his rights and asked if he wished to exercise any of his rights and the Claimant responded that he knew his rights and he wanted to apologize. The Claimant also expressed the wish to apologize the following day. When it was put to him that someone was co-operating when they asked to apologize, he responded not necessarily as at the time the Claimant resisted arrest and at the station he was not co-operating. He agreed that because someone said they knew their rights, it did not mean there was an invitation to use those rights.

[23] PC 460 Ishmael Narcisse said that he was on duty when the Claimant was brought into the police station for using indecent language. At the time he was seated at the computer desk in the charge room. He asked the Claimant why had he used such indecent language to the First Defendant, and the Claimant responded that he was only joking with the First Defendant, and he had had a few drinks and was feeling troublesome. He heard the First Defendant ask the Claimant for his name and the Claimant refused to give her his name. He heard

the Claimant say afterwards that he had never been arrested and he didn't want his name in the book. He also heard the Claimant say he wanted to apologize. He heard the First Defendant inform the Claimant of his rights and the Claimant responded, "I know my rights." The Claimant did not want to sign the Rights in Custody form or to call anyone. The First Defendant then left the charge office. He did not see the First Defendant slap the Claimant. He heard PC 693 James ask the Claimant his name and he did not answer. He heard PC 693 James ask the Claimant to remove his shoes and belt, and he saw him escort the Claimant to a cell. On Saturday February 9th 2008, he was in the kitchen of the police station together with the First Defendant, and PC 716 Lansiquot having breakfast when CPL Prospere entered and spoke with the First Defendant. He and the First Defendant left the kitchen and went to the cell where the Claimant was being held. The First Defendant asked the Claimant his name. He refused to give it. She then told the Claimant that pending further investigation that a complaint would be lodged against him. The Claimant was released at approximately 10.00 a.m. Under cross-examination he repeated that the Claimant had wanted to apologize, and said that he had no idea where the Rights in Custody form had disappeared to.

[24] PC 693 Darwin James who is now attached to the Special Services Unit of the Police Force was at February 2008, the police station orderly at Anse La Raye. He saw the First Defendant and PC 716 Lansiquot arrive at the station with the Claimant. Shortly after their arrival he heard the First Defendant ask the Claimant for his name and address and he did not respond. He heard the First Defendant inform the Claimant of his rights as a prisoner in custody and then she asked the Claimant again for his name, and the Claimant did not give it. The First Defendant then instructed him to process the Claimant, and to put a note in the station diary to say that the Claimant had refused to give his name and address. Shortly thereafter, the First Defendant left the station. He did not see the First Defendant slap the Claimant with a book at any time. He asked the Claimant his name, and the Claimant did not give it to him. He then asked him to take off his belt and shoes, which he did, and he escorted him to a cell.

[25] Under cross-examination he said that he heard the First Defendant say to the Claimant that he had a right to a lawyer, a phone call, 3 meals a day, writing material, and to have a friend or a lawyer present when he was charged. It was after this that the First Defendant handed the Claimant over to him. He said that the Claimant requested one (1) telephone call but it did not go through. He agreed that the Rights in Custody form would have provided the name of the individual, date, time of arrest, that the Claimant's rights had been read to him, and whether or not he had decided to exercise his rights, however, the form was not issued to the Claimant.

[26] SPC 73 Franklyn Joseph said that at the time he was the person responsible for washing and cleaning the sole police motor vehicle assigned to the Anse La Raye police station. On Saturday February 9th 2008, he was in the kitchen of the police station at approximately 9.30 a.m. together with the First Defendant, PC 460 Narcisse, and PC 716 Lansiquot having breakfast when CPL 80 Prospere entered and spoke with the First Defendant. Following the conversation he saw the First Defendant and PC 460 Narcisse leave the kitchen together. He did not see the police motor vehicle being washed.

[27] Under cross-examination he said that after he had completed his breakfast, he washed his dishes, and he drove the sole police motor vehicle from the police station to pick up traffic signs set out the previous night and he returned around 11.00 a.m. He was away from the police station for approximately 30 minutes. He could not say if the Claimant was asked to wash the personal vehicles of the remaining police officers or their dishes.

Law:

[28] The Criminal Code¹ provides:

"Arrest without warrant

570. – (1) ...

(2) ...

¹ No.9 of 2004

(3) Where a police officer with reasonable cause, suspects that an offence has been committed, he or she may arrest without warrant anyone whom he or she, with reasonable cause, suspects committed the offence.

571.(1) A person may use such force as is reasonable in the circumstances in the prevention of crime or in effecting or assisting in the lawful arrest of offenders or suspected offenders or of persons lawfully at large."

[29] The Crown Proceedings Act provides:

" 4. LIABILITY OF THE CROWN IN DELICT

(1) Subject to the provisions of this Act, the Crown shall be subject to those liabilities in delict or quasi-delict to which, if it were a private person of full age and capacity, it would be subject –

(a) in respect of delicts or quasi-delicts committed by its servants or agents;

However, proceedings shall not lie against the Crown by virtue of paragraph (a) in respect of any act or omission of a servant or agent of the Crown unless the act or omission would apart from the provisions of this Act have given rise to a cause of action in delict or quasi-delict against that servant or agent or his or her estate.

(2) ...

(3) Where any functions are conferred or imposed upon an officer of the Crown as such by any enactment having the force of law in Saint Lucia and that officer commits a delict or quasi-delict while performing or purporting to perform those functions, the liabilities of the Crown in respect of such delict or quasi-delict shall be such as they would have been if those functions had been conferred or imposed solely by virtue of instructions lawfully given by the Crown.

(4)

(5) Proceedings shall not lie against the Crown by virtue of this section in respect of anything done or omitted to be done by any person while discharging or purporting to discharge any responsibilities of a judicial nature vested in him or her, or any responsibilities which he or she has in connection with the execution of judicial process."

[30] A Claimant alleging malicious prosecution must show 4 essential ingredients to succeed:

"16-09 Essentials of the tort of malicious prosecution In an action for malicious prosecution the claimant must show first that he was prosecuted

by the defendant, that is to say, that the law was set in motion against him by the defendant on a criminal charge; secondly, that the prosecution was determined in his favour; thirdly, that it was without reasonable and probable cause; fourthly, that it was malicious. The onus of proving every one of these is on the claimant. Evidence of malice of whatever degree cannot be invoked to dispense with or diminish the need to establish separately each of the first three elements of the tort.² (My emphasis)

[31] As to what constitutes false imprisonment Clerk & Lindsell states:

"15-23 Imprisonment False imprisonment is "the unlawful imposition of constraint on another's freedom of movement from a particular place." The tort is established on proof of: (1) the fact of imprisonment; and (2) the absence of lawful authority to justify that imprisonment. For these purposes, imprisonment is complete deprivation of liberty for any time, however short, without lawful cause."

In **Margaret Joseph v. [1] The Attorney General [2] Raphael Hamilton**³
Gordon, J.A [Ag.] said:

"[9] Wrongful arrest, false imprisonment and malicious prosecution are three distinct, though often related torts. The first two are really examples of trespass to the person and arise where a defendant acts without lawful authority.

[11] Once there is the finding that the arrest was not wrongful, then it logically follows that the action for false imprisonment must also fail.

[12] The only cause of action left, therefore, is that of malicious prosecution. In **Glinski v. McIver**⁴ the House of Lords held that in order for a plaintiff to succeed in an action for malicious prosecution he must prove one or other of the following: either that the defendant did not believe the plaintiff was probably guilty of the offence: or that a person of ordinary prudence and caution would not have concluded, in the light of the facts he honestly believed, that the plaintiff was probably guilty. Additionally, the plaintiff must prove malice on the part of the defendant, that is any motive other than that of simply instituting a prosecution for the purpose of bringing a person to justice – Wershof v. Metropolitan Police Commissioner.⁵" (My emphasis)

² Clerk & Lindsell on Torts, 12th edition.

³ Civil Appeal No.9 of 2003

⁴ [1962] 1 All E.R. 696

⁵ [1978] 3 All E.R. 540

[32] It is not to be doubted that if the Claimant did say the words attributed to him, and they were proved to have been said that they would be an offence. The Criminal Code⁶ provides:

“508. Any person who in any public place, or to the hearing of the public _ swears, or uses any abusive, indecent or obscene language is liable on summary conviction to a fine of one thousand dollars.”

Findings

[33] Counsel for the Defendants had submitted that mediation was a bar to the proceedings. Mediation occurred and both parties by the mediation agreement stated that the mediation was successful. Mediation is an opportunity for parties in a dispute to meet outside the confines of the courtroom and if possible to discuss in an amicable manner often with some give and take, settlement of the matter without resort to the adversarial system before the court. Two (2) observations are made about the mediation agreement exhibited. Firstly, unlike the high court procedure there are no signatures of counsel on the mediation agreement. Secondly, while the mediation agreement stated that the First Defendant had decided to withdraw the complaint, it makes no reference as to what, if anything, the Claimant did in return for the First Defendant to withdraw the complaint. As the Court understands the mediation process, the Court is not allowed to look behind the mediation agreement signed by the Claimant and the First Defendant to see what if any concessions were made by the Claimant in return for the First Defendant's action to withdraw the complaint. The Court therefore finds that since there is no statement on the mediation agreement as to the actions of the Claimant, that it must hold that the mediation held in the magistrate's court proceedings is not a bar to the Claimant's action in the high court.

[34] As the Court understands the law of malicious prosecution, it is intertwined with unlawful arrest and false imprisonment. The Court therefore proceeds to examine the issue of whether there was malicious prosecution.

⁶ No.9 of 2004

- [35] The Claimant has sought to use the extract of conviction from the Magistrate's Court to support his claim of malicious prosecution. The extract of conviction does not assist the court in its determination as the complaint was withdrawn. This result is not vindication of the Claimant's claim that he was maliciously prosecuted. A party can withdraw a claim at anytime for any number of many reasons. The First Defendant gave her reason as being that as far as she was concerned the matter was settled after mediation.
- [36] In the Claimant's evidence in chief he says that he only 'sitt' at the First Defendant. The First Defendant said that the "sitt" by the Claimant did not cause her to "feel anyway" because it was "a normal thing". The Court is inclined to agree with her because culturally, it is for the very reason that the Claimant has said he did it, many young and older men on seeing a pretty or attractive young woman they would "sitt" at her. If men were to be arrested for "sitting" at women, the courts would be crowded with these complaints. The Court therefore believes that there was more to it and this is what triggered the response of the First Defendant to arrest the Claimant.
- [37] The Claimant's evidence in chief makes no mention that he offered an apology and neither does he deny ever saying the indecent words which it had been alleged that he said in the complaint before the magistrate, and which complaint was disclosed to the Court, and which indecent words are inferred from the statement of his use of insulting language in the defence. His counsel however, cleverly it appears, cross-examined the First Defendant and the Defendants' witnesses at considerable length on the Claimant's offer of an apology without ever putting to the witnesses what were the exact actions or words for which the apology was being offered. The First Defendant has already said that the "sitt" did not bother her and so from her point of view there was only the indecent language. Indecent language which PC 716 Lansiquot said had been uttered.
- [38] After the "sitt" or "hiss" the First Defendant's evidence shows an interruption of at least 15 minutes during which time she went back to the police station, and the arrest. An interruption which was corroborated by other police officers who said

they saw the First Defendant at the police station. The Court believes that if the First Defendant had wished to arrest the Claimant for the "sitt" at her, she would have done it at the time of the "sitt" and not after some time had passed.

[39] The First Defendant and the Defendants' witnesses PC 460 Narcisse confirmed that the Defendant offered an apology and it was clear that their reference was to the indecent language and not the "sitt". PC 460 Narcisse said that he asked the Claimant why he had used the indecent language, and the Claimant response was that he was just joking with the First Defendant. This evidence was not discredited on cross examination. PC 716 Lansiquot who was with the First Defendant when the arrest was made, said that when the First Defendant put to the Claimant that it was an offence to use indecent language, the Claimant laughed and said something about expressing himself, this evidence too was never discredited. He too said he heard the Claimant say he wanted to apologize. Against this background, the Court believes that it is correct in its determination that the apology was being offered for the indecent language and not for the "sitt".

[40] If the Court is correct in determining that the apology was being offered for the indecent language then there was a reasonable and probable cause for arresting the Claimant and subsequently causing a complaint to be filed against him. The Court therefore finds that the Claimant has not made out a case of malicious prosecution.

[41] The Court having found that the Claimant has not made out a case of malicious prosecution, the claims of unlawful arrest and false imprisonment are struck out.

[42] On the claim of assault and battery, the Claimant alleged that he had been slapped with a small book, but could not give the colour of the book's cover, could not remember which side of his face had been slapped even though his suit was filed less than one (1) year after the alleged slap, he could not describe if there were any physical marks, or swellings from the slap, and he did not produce a medical report to support injury from the slap. He said that he was standing against and facing a wall in the station being searched when he was slapped but

his witness, Mr. Fedee appears to place him otherwise. Mr. Fedee who said that the lights in the station allowed him to see everything, he saw the Claimant behind the counter but he could not see if he was standing. He saw the First Defendant playing up her hands in the Claimant's face, and with a book in her hands she made an action which he presumed lead to a slap. He did not see impact. He appeared not to know the location of the Claimant within the police station at the time of the alleged slap.

[43] The Court is of the view that on the totality of the evidence, the Claimant has not proved that he was slapped.

Court's order:

1. The Claimant's claim is dismissed.
2. The Claimant is to pay the Defendants costs in the sum of \$7,500.00

**Rosalyn E. Wilkinson
High Court Judge**