

EASTERN CARIBBEAN SUPREME COURT

COMMONWEALTH OF DOMINICA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. DOMHCV2011/364

BETWEEN:

[1] BERNARD WILTSHIRE

Claimant

And

[1] THE GOVERNMENT OF THE COMMONWEALTH OF DOMINICA BY THE
ATTORNEY GENERAL

[2] POLICE OFFICER CUFFY M.

[3] POLICE OFFICER, COMMODORE F.

[4] POLICE OFFICER, BLAIZE H.

Defendants

Appearances:

Dr. William E. Riviere for the Claimant

Ms. Pearl Williams of the Attorney General's Chambers for the Defendants

.....
2013: September 16th

December 10th

Re-issued: December 11th
.....

JUDGMENT

[1] **THOMAS, J [AG]:** On March 22nd, 2012 the claimant, Bernard Wiltshire, filed an amended claim form against the 1st to 4th defendant.

[2] The claimant's case is that on or about 2nd June 2011 in response to a message brought to the claimant's office by the 4th defendant on the instructions of the 2nd defendant. The claimant attended at the office of the Criminal Investigation Department (C.I.D) of the Commonwealth of Dominica Police Force. That at the CID the claimant was interviewed "for a comparatively brief period by all standards immediately following which he was without reasonable cause, arrested, detained in a cell and thereby deprived of his liberty for about ten hours, until without charge, he was released therefrom."

[3] The further averments of the claimants are:

- a) The 2nd, 3rd and 4th defendants were acting in the performance on purported performance of their police function;
- b) The 3rd and 4th defendants were acting under the orders of the 2nd defendant
- c) The interview aforesaid was in respect of a single passport application form in which the claimant had in or about 2006, recommended the applicant, a person whom the claimant reasonably believed to be a citizen of the Commonwealth of Dominica and holder of a previous Commonwealth of Dominica passport, and as therefore fit for the issue of a new passport;
- d) The claimant was arrested without a warrant and without being informed of the reason for the arrest;
- e) The claimant was detained in police cells for about 10 hours during which time he was not interrogated;
- f) The claimant could not be considered to be a flight risk;
- g) In the premises the claimant was wrongfully arrested, falsely imprisoned and deprived of his liberty.
- h) The claimant sustained severe shock and mental anguish and has suffered loss and damage

- i) The claimant was treated differently and unfairly from other persons who were known to have recommended persons to be holders of Dominican passports within the context of the inquiries being conducted by the police
 - j) The claimant's damage was aggravated when his arrest and imprisonment were made known to the public news media as a result of which the same was broadcast to the public at large, causing the claimant to be thereby subjected to humiliation and disgraced and to be brought into ridicule and contempt.
 - k) The conduct of the 2nd, 3rd and 4th defendant's was arbitrary, oppressive and/ or unconstitutional and or merits damages on the footing of exemplary damages.
- [4] And the claimants claims: general damages, aggravated damages, exemplary damages, Interest thereon at statutory rate from the date of judgment, costs ,further and/or other relief.

Amended Defence

- [5] In their defence the defendants admit paragraph 2 of the statement of claim but contend that the said defendants are not in the employ of the 1st defendant and therefore cannot be the reason for the 1st defendant being sued
- [6] With respect to the claimant's averment that he was arrested without reasonable cause, this is denied and avers that the claimant was lawfully arrested on suspicion of having committed the offence of conspiracy to obtain a passport. And with respect to the issue of the claimant attending the CID, the 4th defendant contends that the message was 'brought' to the claimant via telephone when the claimant informed him that he could not be attending the CID and if the 2nd defendant wanted to speak to him he should come to his chambers.
- [7] At paragraph 5 of the defence, with respect to the purpose of the interview, the averment is that the interview was not in relation to a single passport application but in relation to the dishonest and improper, unlawful signing of the Commonwealth of Dominica passport

application form in which he asserted he had known the applicant for more than two years and that he accordingly was able to vouch that the applicant was a fit and proper person to be issued a Commonwealth of Dominica passport.

- [8] The further averments of the defendants are as follows: the arrest without a warrant is denied and it averred that the claimant was informed of the reasons for his arrest; the investigation into the matter continued while the claimant was in custody; the contention by that claimant that he was released without being charged is denied; the claimant is put to strict proof regarding the contention that his arrest was unlawful; and any loss or damage

Reply

- [9] In reply the claimant contends that at no time before or during his 10 hours of arrest was he ever informed of the reason for his arrest. And further that during the interview he was never questioned in relation to any conspiracy to commit any act with anyone, including conspiracy to obtain a passport.
- [10] The claimant denies that his recommendations of the said applicant was dishonest, improper and unlawful; and denies further that he was ever informed of the reason for his arrest reasonably necessary to allow the 2nd defendant to conduct further inquiries into the matter under investigation.
- [11] Finally, in relation to paragraph 3,8,9,11,13 and 16 of the amended defence the claimant replies that "he was wrongly arrested, falsely imprisoned and deprived of his liberty, in circumstances wherein he suffered loss and damage for which he claims general, aggravated and exemplary damages.

Evidence

Bernard Wiltshire

- [12] In his witness statement, the claimant, Bernard Wiltshire, details the events at Police Head Quarters, Roseau where he was interviewed by Inspector Cuffy about a questionable application form, in particular a passport application from submitted by one Younis Abraham. According to Bernard Wiltshire, the police officer showed him the form and asked him whether the signature belonged to him, and to which he responded in the affirmative, "after looking briefly at it."
- [13] The responses and explanations given in relation to the individual were also by the claimant and the 3rd and 4th defendants placing him in a cell after the interview which lasted "no more than 10-15 minutes at the most."
- [14] The next issue dealt with by the claimant was his second arrest on 30th January 2012 and being charged on this occasion. Varying degrees of speculation are tendered as to the reasons for him being arrested a second time and being charged.
- [15] Under cross-examination Bernard Wiltshire maintained that what he did in relation to the application from the issue was that normal procedure based on his understanding of the procedure. The claimant also maintained that he was not told of the nature of the charge nor was the matter of conspiracy. In this connection the claimant said that "the officer" told him that he the officer, was satisfied that he, the claimant did not know one named Nash Mitchel in the matter.
- [16] In re-examination the claimant testified that when he was released he was told he did not know this man. It is also his testimony that his arrest made the news and radio station; and that in this regard too he received phone calls.

Matthew Cuffy

- [17] Matthew Cuffy is Inspector of Police in the Dominica Police Force and attached to the Criminal Investigation Department. His evidence in chief is that on 2nd June 2011 he was conducting investigations into an alleged fraud at the Registry in connection with a

number of certificates of birth which were issued to non-nationals resulting in such persons obtaining Commonwealth of Dominica passports.

- [18] In further evidence this connection the witness says that in the course of his investigation of the matter he came across a particular passport application which was alleged to have been signed or recommended by the claimant. Also in evidence is what he did in relation to the claimant and in particular the instructions given by Cpl. Commodore.
- [19] Under cross-examination Cuffy acknowledged that he was the police officer who spoke to the claimant on the date of his arrest and who gave instructions to other officers with respect to the claimant.
- [20] The witness was next cross-examined regarding the interviews of the claimant and gave details. And with respect to Nash Mitchell, Inspector Cuffy explained that he was trying to make a connection between what the claimant said and Nash Mitchell who was part of the investigation at the time. According to Inspector Cuffy, the claimant told him he did not know Nash Mitchell.
- [21] Inspector Cuffy also give evidence concerning the persons he interviewed and the reasons therefore after it was put to him that he had adequate time to decide whether the claimant was involved in the scam. He said the investigation was broad based on the procedure to obtain a passport, including the recommendation to receive a passport. And when it was put to the officer that he did and have sufficient information to arrest the claimant, the witness responded by saying that he had reason at the time to suspect him based the interviews and other reasons.
- [22] In re-examination Inspector Cuffy gave the basis upon which he arrested the claimant on reasonable suspicion, being the same name appearing on two forms and one being crossed out and Younis Abraham being inserted. Further, that Abraham was successful in obtaining a Commonwealth of Dominica passport. The passport was classified as

being fraudulently obtained and the person was recommended by the claimant and submitted by Nash Mitchell and who also collected the passport.

Frank Commodore

[23] Cpl. Frank Commodore is attached to the Criminal Investigation Department and says he knows the claimant. He says that on the 2nd June, 2011 because of the investigation into an alleged fraud at the Registry regarding the issue of birth certificates, Inspector Cuffy gave him instructions to go to the claimant's office to inform him that Inspector Cuffy would like to see him at the C.I.D. It is also his evidence that later that day Inspector Cuffy instructed him to call the claimant to remind him of Inspector Cuffy's earlier request. Cpl Commodore then gave the evidence of the sequel, including the claimant's response and further instructions from Inspector Cuffy and the claimant's arrival at the C.I.D.

[24] Under cross-examination Cpl. Commodore testified that on 2nd June 2011 he met the claimant walking towards Police Headquarters in the vicinity of Astaphan's and that the claimant told him he was coming towards Police Headquarters.

Hazani Blaize

[25] Cpl. Hazani Blaize is attached to the stationed at teg Roseau Police Station and attached to the C.I.D, and he says he knows the claimant.

[26] In further evidence Cpl. Blaize says that he was involved in the investigation of fraud at the Registry with respect to the issue of birth certificates to non-nationals resulting in such persons obtaining passports of the Commonwealth of Dominica.

[27] According to Cpl. Blaize, prior to 2nd June 2011 he had a telephone conversation with the claimant and Inspector Cuffy's desire to speak to him, and the claimant's response.

[28] In cross-examination it was put to the witness that Inspector Cuffy never gave the claimant a reason for the claimant's arrest. The response to the affirmative, in saying that the claimant did ask Inspector Cuffy as to why he was being arrested. The witness added that Inspector Cuffy did not lower his voice to speak to the claimant.

[29] There was no re-examination of this witness

Issues

[30] The issues for determination are:

1. Whether or not the arrest of the claimant was lawful
2. If the arrest was unlawful, whether the claimant is entitled to damages for wrongful arrest, and false imprisonment and aggravated damages, and exemplary damages.
3. Whether any party is liable to pay costs.

Issue No.1

Whether or not the arrest of the claimant was lawful

[31] It is common ground that the claimant was arrested on the 2nd June 2011 and then released; but on 30th January 2012 the claimant was again arrested but he was charged on this occasion in relation to one of the procedures relating to the obtaining of a Commonwealth of Dominica passport.

Submissions

[32] In submissions on behalf of the claimant learned counsel, Dr. William E. Riviere begins with an analysis of the law relating to arrest without warrant. In this regard the dicta in the following cases are cited: **Irish v Barry**¹ **Dallison v Caffery**² **Broughton v Jackson**³ **Dumbell v Roberts**⁴ and **Mohammed – Holgate v Duke**⁵.

¹ [1965] 8 WIR177,281

[33] Learned counsel next examines the evidence in an effort to show that the police officers did not have reasonable cause in arresting the claimant. The submission in this regard continue as follows:

“24. As to the substantive offence in respect of the claimant was about to be arrested and detained, the 2nd defendant said nothing, whether to the claimant or, even to the 4th defendant. In fact, there is nothing in the pleadings, or witness statement of the defendants which suggest, even remotely, the substantive definitive crime which the claimant was suspected to have been party.”

[34] It is the further submission that three suspects in the scam, namely: Nash Mitchell, Lindon Marie, and Kimana James were interviewed ⁶ prior to the claimant's arrest and none of these persons implicated the claimant. It continues thus:

“30 Neither the text of the interviews with these suspects nor the statement signed by the 4th and 2nd defendants on November 30th 2011 and January 31st 2012 respectively, nor the pleadings of the defence indicate that any of these suspects were shown the passports application form signed by the claimant at Part 9 thereof.”

“31 Further, the defendants have tendered evidence nothing from any other source in support of their contention that on the morning of June 2nd 2011 they had reasonable cause to arrest and detain the claimant without-warrant. The 2nd defendant stated in his statement dated January 31st 2012 that discussions had been held with personnel at various institutions of state...the authorities at FedEx were also interviewed. From the village of Soufriere, where the relevant documents stated Younis Abraham to have been born, information was obtained from a Justice of the Peace and from the keeper of birth records of the village. None of these discussions revealed any information whatsoever linking the claimant to the alleged forgery of birth certificates or to the alleged fraudulent obtaining of Commonwealth of Dominica passports or to any conspiracy on his part to commit either offence.”

[35] With respect to reasonable cause the submissions on behalf of the claimant is that there were no reasonable grounds for the claimant's arrest on suspicion that he was involved in a conspiracy to obtain a Commonwealth of Dominica passport., according to learned

² [1967] 2 ALL ER 610,619

³ [1952] 1 QB 383

⁴ [1944] 1 ALL ER 326,329

⁵ [1984] AL 437

⁶ Nash Mitchell was interviewed on 26th May 2011 and 28th May 2011. Lindon Marie was interviewed 27th May 2011 and on 28th May 2011. Kimana James was interviewed on 31st May 2011.

counsel there must be "a projected crime" and the question is what is the crime involved in the claimant being arrested "on suspicion of conspiracy." In support the dictum of Scott LJ in **Leachinsky v Christie** is cited.

[36] The submissions, in effect, ends in this way:

"46...[W]e most humbly submit that on the morning of the claimants arrest and detention, the defendant police officers did not believe that they had reasonable and probable cause for arresting him on suspicion of having committed any manner of conspiracy whatsoever. Had they so believed they would have told him so during the interview, and given him a fair and open chance to clear himself? But for reasons best known to them that had nothing to do with 'suspicion of conspiracy' they failed to do so"

[37] The submissions of behalf of the defendants Ms. Pearl Williams begins with the issue as to when arrests are permissible and also the law relating to reasonable suspicion :

"Arrest

In order for an arrest to be lawful an arresting officer must satisfy himself that there exists reasonable suspicion of guilt: *Dumbell v Roberts* [1944] 1 All ER 326.

The use of arrest in order to interview and/or seek further evidence from a suspect, or to arrest as a means of exercising control over a suspect with a view to securing a confession or other information where it is necessary to bring matters to a head speedily, to preserve evidence or to prevent the further commission of a crime, is permissible (*Blackstone's Criminal Practice 2013/PART D PROCEDUR/ Section D1 Powers of Investigation*).

In forming a reasonable suspicion a constable may rely on hearsay, provided that it is reasonable and he believes it (*Clarke v Chief Constable of North Wales Police* [200] All ER (D) 447).

Reasonable suspicion is not to be equated with prima facie proof and the source of reasonable suspicion may be information received from a third party and not anything observed by the police officer: *Fitzroy Marshall v Detective Corporal Thompson and the Attorney General* (1979) 16 JLR 479 (SC).

Further according to the case of *Mohammed Al Fayed v The Commissioner of Police Mohammed* [2002] EWCHC 1739 paragraph 19.

Suspicion arises at or near the starting point of an investigation of which the obtaining the prima facie proof is at the end. When such proof has been obtained,

the police case is complete; it is ready for trial and passes on to its next stage. It is indeed desirable as a general rule that an arrest should not be made until the case is complete. But if arrest before that were forbidden, it could seriously hamper the police."

[38] The submissions go on to raise issues which go on to deal with the following matters"

"1. At the material time, being 2nd June 2011, there was an investigation into an alleged fraud at the Registry with reference to birth certificates which were issued to non-nationals as a result of this, non-nationals applied for and obtained Commonwealth of Dominica passports and there was reasonable grounds for suspecting the claimant had committed the offence of conspiracy to obtain a passport.

2. On 2nd June 2011 the 2nd defendant noticed a passport application form with Younis Abraham being the applicant. It was signed and recommended by the claimant and the attached photograph to the application was signed by the claimant as a true likeness of the applicant Younis Abraham

3. Also on 2nd June 2011 the 2nd defendant had knowledge of application form 107560 in which the name Mitchell Nash was crossed out and the name Younis Abraham written above.

4. Younis Abraham, a non Dominican national who visited Dominica lived in the same community where suspect Nash Mitchell lived and is the same applicant who the claimant had signed and recommended in Part 9 of the application form.

5. At the interview, the claimant could not identify the applicant's photograph and during cross-examination the claimant admitted that he was shown the photograph and that he could not recall the person.

Also at the interview the claimant when asked if he knew Younis Abraham, the claimant could not recall the applicant. He also said it was too far back for him to remember. During cross-examination the claimant admitted that he had signed Part 9 of the passport application form but he could not recall the person and the person may have been introduced to him. Further, in cross-examination the claimant admitted that he was not sure he had known the applicant, Younis Abraham for at least two years."

The Law

Power of Arrest

[39] The police powers of arrest are conferred both by common law and by statute. In the Commonwealth of Dominica there are two statutes. The first is the **Criminal Law and Procedure Act**⁷ of which section 12 (4) provides as follows:

“(4) Where a constable with reasonable cause, suspects that a felony has been committed, he may arrest without warrant anyone whom he with reasonable cause suspects to be guilty of the offence.”

[40] Also under the **Police Act**⁸ section 12 (1) (c) says that: “It shall be the duty of the Police Force to take lawful measures for... (c) Apprehending and causing to be apprehended persons who have committed, or are charged with or suspected of having committed or having abetted the commission of, or being about to commit any crime or offence.”

[41] Provisions like the foregoing are manifestations of the rule of law and are aimed at preserving law and order and at the same time eliminating the chances of arbitrary arrest.

[42] Section 12 (4) of the **Criminal Law and Procedure Act** uses the words ‘with reasonable cause suspects but in the corresponding English and other legislation the requirement is reasonable and probable cause and in **Hicks v Faulkner**⁹ Mr. Justice Hawkins gave this interpretation:

“I should define reasonable and probable cause to be, an honest belief in the guilt of the accused based on a full conviction, founded upon reasonable grounds, of the existence of a state of circumstances, which, assuming them to be true would reasonably lead an ordinary prudent and cautious man placed in the position of the accused to the conclusion that the person charged was probably guilty of the crime imputed.”

[43] Later in **Dallison V Caffrey**¹⁰ Lord Diplock gave this reasoning”

⁷ Cap. 12:01

⁸ Cap. 14:01

⁹ [1881] 8 QBD 167

¹⁰ [1964] 2 ALL ER 610,619

“Where a felony has been committed a person whether or not he is a police officer, acts reasonably in making an arrest without warrant if the facts which he himself knows or of which he has been credibly informed at the time make it probable that the person arrested committed the felony. This is what constitutes reasonable and probable cause.”

[44] As noted above, the legislation in the Commonwealth of Dominica is less onerous in that it speaks only uses the words ‘with with reasonable cause suspects’ but even with the words ‘reasonable and probable cause suspects’ the legislative intent is the same which is to curb arbitrary arrest and detention while at the same time curbing crime. And there can be no doubt that the primary requirements in this regard are reasonableness – an objective standard.

[45] In the English case of **Broughton v Jackson**¹¹ Lord Campbell had this to say:

“The only thing which can be certainly affirmed in general terms about the meaning of ‘reasonable cause’ in this connection is that on the one hand a belief honestly entertained is not enough. The defendant must show facts which would create a reasonable suspicion in the mind of a reasonable man.”

[46] In summary, then, what the law requires of police officers in making an arrest without warrant is to have reasonable cause, being an objective standard, that the person in question has committed the crime. As said before, the word “guilty” could mean guilty as being found guilty by a court of law.

[47] In light of the foregoing the celebrated decision of the House of Lords in **Christie v Leachinski**¹² must be brought into the equation at a later stage as after a trial, as there is no trial rather, it points to the commission of the offence.

Did the defendants have reasonable cause to suspect the claimant?

[48] The salient issue in this entire matter is an application form for a passport of the Commonwealth of Dominica, in the name of Younis Abraham. This form the claimant

¹¹ [1852] 18 QBD 383

¹² [1947] , ALL ER 567

admitted he signed by was of a declaration to the effect that the applicant, Abraham, was a fit and proper person to hold such a passport.

[49] This issue goes back prior to 2nd June 2011 and thereafter. The evidence which the court accepts is that the defendants based information received on 24th May 2011 went to several Governments Departments and elsewhere to investigate the matter of forged birth certificates which in turn were used to apply for Commonwealth of Dominica passports.

[50] The following pieces of evidence which the court accepts as being factual are relevant in the determination of the reasonable cause to suspect:

- (1) Between 26th May and 2nd June, 2011, several persons were interviewed and gave statements to the defendants concerning the alleged forgery of certificates of birth. The persons were Lindon, Marie, Nash Mitchel, Harolda Henry, Kimana James, Cleve Tavnier, Charles Henry.
- (2) Most of the above mentioned persons were at some point prior to 24th May 2011 worked at the Registry, being the department which processes certificates of birth.
- (3) On 24th May 2011 the defendants had in their possession certificates of birth attached to applications for passports with respect to Khyati Hind; Abraham Younis; Koja Mohammed; Ambarky Azra; Alasari Safaa; Alansari Yasmeen and Meftah Amel. The certificates of birth for the above persons bear the name of Lindon Marie and were issued between 22nd June 2005 and 11th November 2005. Kimana James' name is recorded as having issued certificates of birth for Abraham Younis; Alansari Lubna; Alansari Labreen and Abraham Mohammed between 11th February 2005 and 2nd March, 2006.
- (4) After 2nd June 2011 the defendants caused certain searches to be done at the Princess Margaret Hospital the Village Council at Petite Savanne and other places with respect to certificates of birth bearing the names Hind Khyati, Melanie Antoine, Saffa Alansari, Sabreen Alansari, Lubana Alansari, Younis Abraham and Amel Meftah

- (5) In passport application form #10760¹³ Nash Mitchell was recommended by Justice of the Peace on 27th June 2005 but that was crossed out and the name Abraham Younis substituted. Cleve Tavernier indicated in his interview of 2nd June 2011 that while the handwriting on the form was his, he did not make the name change.
- (6) Nash Mitchell in his interview indicated that the change on the application form was made by him after the Immigration Officer told him something. He however could not remember the officer's name.
- (7) Nash Mitchell indicated in one of his interviews that he had the authority to collect passports from the passport office and that he did FedEx two passports to a country which he did not remember.
- (8) On the said application form it is indicated that Abraham is single but the claimant in his interview said: "I think he is married to a Dominican."
- (9) In the interview of Harolda Henry it was put to her that passport #107560 bearing the name Younis Abraham was delivered to a Harolda Henry as shown in the Immigration Passport Delivery Register. It was denied that such a delivery was made.
- (10) On 30th May 2011 Lindon Marie and Nash Mitchell were brought before the Roseau Magistrate's Court where charges were read to them and they were remanded. Kimana James also was charged on 14th June 2011.

Reasoning

[51] In seeking to advance the claimant's case learned counsel, Dr. William E. Riviere advances that: the text of the interviews with the suspects or the pleadings indicate that the suspects were shown the passports application signed by the claimant, the defendants have not tendered in evidence nothing from any other source in support of their contention that on 2nd June 2011 they had reasonable cause to arrest and detain the claimant without warrant; none of the discussions held with persons at certain Government institutions and the authorities at FedEx reveal any information linking the claimant to any forged certificates of birth or the alleged obtaining of Commonwealth of Dominica passports, or to any conspiracy on his part to commit either offence; the

¹³ Trial Bundle at pp 55

interrogations of the suspect and the cross-examination of the claimant lead to the conclusion that the defendants never entertained any belief that the claimant might have participated in any unlawful conspiratorial activities under investigations, but rather were concerned with whether the claimant had known the applicant for two years or more and had recommended for the issue of a passport; and the default on the part of the claimant might have led to an offence flowing from the making of a false declaration and not to conspiracy, including to fraudulently obtaining Commonwealth of Dominica passport, for which he was arrested.

[52] According to learned counsel, this is confirmed by a certain pleading at paragraph 5 of the amended defence.

[53] In seeking to address the matter of reasonable cause learned counsel invites the court to consider whether or not conspiracy without more in the nature of a substantive crime is to be treated as an offence. According to learned counsel there must be a "projected crime".

[54] In the narrowing of the issue of reasonable cause learned counsel for the claimant submits the following:

"39. In any event, the defence failed to plead any grounds at all for their suspicion concerning the claimant and the case for the defence provided no evidence upon which the honourable court might even remotely find that the claimant was lawfully arrested and detained.

40. Taking account of the matter the interrogation suspects, whether before or following the 2nd June 2011 arrest, nor discussion with personnel at state institutions, yield any information whatsoever about the claimant involvement in the subject matter of the police investigations on which the arresting officer could have relied, could only have come from two sources."

[55] Learned counsel identifies to sources: (1) the spurious and false link they established between suspects Nash Mitchell, Younis Abraham and the claimant. The purported link was passport number 107560; and (2) the interviews of the claimant on June 2nd 2011 which resulted in the 2nd defendant's dissatisfaction with the claimant's "explanation" of whether or not he knew Younis Abraham.

[56] The submissions¹⁴ on behalf of the defendants by learned counsel are less complex, this is the essence of the submissions: "... that at the material time, the 2nd day of June 2011, investigations were being conducted into an alleged fraud at the Registry with reference to a number of birth certificates which were issued to non-nationals as a result of which it appears that the non-nationals applied for Commonwealth of Dominica passports and were successful and there were reasonable grounds for suspicion.

Conclusion

[57] The court finds it necessary to comment on the submissions on behalf of the claimant. In this regard the court considers that learned counsel treated the matter as being akin to an actual criminal trial and hinting at issues such as proof beyond a reasonable doubt.

[58] In the case of **Gibbs v Rea**¹⁵ Lord Hope of Craighead in discussing the obtaining a warrant by acting maliciously said this:

"It should be remembered that in order to have reasonable suspicion the officer need not have evidence amounting to a prima facie case. Information from an informer or a tip off from a member of the public may be enough to satisfy him that he would be justified in applying for a warrant to search premises."

[59] Whether or not the defendants had reasonable cause to suspect that a crime had been committed is not an elaborate issue as the claimant seeks to make it. And it must be said again that this is not a criminal trial since no court of law is involved at this stage and the defendant's are mere police officers exercising statutory and common law powers nor is it a trial on a charge of conspiracy.

¹⁴ The following authorities are cited: *Dumbell v Roberts* [1944], ALL ER 326, Blackstone's Criminal Practice 2013, Part D-D1 Procedure – D1 Powers of Investigation, *Castorina v Chief Constable of Surrey* [1988] WL 622,865

Associated Provincial Picture Houses Ltd v Wednesbury Corporation [1948] 1 KB 223, *Fitzroy Marshall v Detective Corporal Thompson v Attorney General* [1979] 16 JLR 479, *Mohamed Al Fayed v The Commissioner of Police* [2002] EWC 1734 at para 19

¹⁵ [1998] 3 WLR 72

- [60] It is common ground that reasonable suspicion can only be derived or inferred from the events prior to the 2nd June 2011. In real terms it is the interviews of the suspects plus checks made at certain Government offices and at private business places in order to ascertain whether the persons were in fact born in the Commonwealth of Dominica.
- [61] The evidence reveals that a number of persons had certificates of birth prepared and issued by Lindon Marie and Kimana James between 2nd June 2004 and 2nd March 2006. The persons were Khyati Hind, Abraham Younis, Koja Mohammed, Ambarky Azza, Alsari Safaa, Alansari Yasmean, Meftah Amel, Alansari Lubna, Alansari Sabreen and Abraham Mohamed.
- [62] But the evidence goes further to show that Nash Mitchel was given authority to collect passports and then sent them by FedEx to a country which he could not recall.
- [63] What must be remembered is that the evidence which the court accepts as fact is that in the midst of an alleged forgery scheme involving certificates of birth one applicant was Abraham Younis. This applicant or recipient was part of the alleged scheme since his name appeared on a certificate of birth was prepared by Kimana James although Kimana James never acknowledged her signature although it appeared on the document. It so happened that the person who made the recommendation for the passport was a person named Bernard Wiltshire but the denial by Kimana James matters not at this stage of mere reasonable suspicion.
- [64] At this point the court must pause to say that there is no semblance of arbitrariness on the part of the defendants since they carried out investigations upon the receipt of a report on 24th May 2011 until the further event of 2nd June 2011. The point must be made that even before the 2nd June 2011 the defendants had charged two persons in connection with the alleged forgery scheme.
- [65] There is the evidence of Inspector Cuffy in the circumstances causing the claimant to be requested to come to see him, but there was no immediate compliance with the request.

Eventually the claimant went to see Inspector Cuffy and the subsequent interview lasted 10 to 15 minutes and ended up with the claimant being charged with conspiracy since at this time Inspector Cuffy had in his possession the passport applications form of Abraham Younis.

[66] Learned counsel for the claimant takes issue with what he sees as the brevity of the interview, but this must be viewed in the context of what the defendants had known from the eight interviews conducted with suspects plus information gathered from visits to previous offices. This is detailed above. To the point, the defendants had information on Abraham Younis so that the 10-15 minutes cannot be short in the circumstances.

[67] The defendants' submission summarize the position thus:

"On the same day the 2nd defendant had knowledge of passport applications form 107560. In that particular application form the name Mitchel Nash was crossed out and the name Abraham Younis was written above Younis Abraham a non-national who had visited Dominica and lived in a community where the suspect Nash Mitchel resided is the same applicant that the claimant had signed and recommended (Part 9) of the application form. The 2nd defendant therefore armed with this information became very concerned and suspicious and hence the reason why the claimant was interviewed."

[68] The narrow point is that the claimant was asked about his signature as the recommender at Part 9 of the form. And it came down to mean that the claimant was not sure as to who the person was and could not remember. The claimant also said at the interview that the applicant was married to a Dominican; but the applicant on the form indicates that he is single. Then when the claimant was told that the applicant is an Iraqi national the claimant said that the person who rented from him looked like a foreigner and then submitted that it was a Lebanese "chap" who was renting his downstairs with his wife.

[69] On the day following the interview, the claimant's letter to Inspector Cuffy stated in part the following:

"As I told you I cannot recall many details of the particular matter. But I believe that the man calling himself Younis Abraham was introduced to me by somebody. It may have been former tenants of mine by the names of Christine and Fadi Suliman who rented downstairs from June 2004- August or September 2005. I will keep trying to remember more details, but I must stress Inspector that I cannot be

absolutely certain that the Suliman's were the introducers, but that I can remember right now. Mr. Suliman was of Middle Eastern origin and his wife Dominican. They introduced me also to their brother, I believe, but I cannot remember whether it was this man claiming to be the brother."¹⁶

[70] Learned counsel has pointed to the fact that the claimant was not questioned regarding the certificate of birth. It would seem that the purpose of these submissions is to cast doubt on the reasonableness of the suspicion. But this submission cannot rise to that level for as Inspector Cuffy said in evidence the matter of obtaining a passport is a process and the process involves the certificate of birth and then the application for a passport. The evidence suggests that the claimant was only involved in the latter process. And in any event there is no evidence that he worked at the Registry between June 2005 and March 2006 and connected with the issue of certificates of birth sufficiency of the information regarding the charge.

[71] Learned counsel for the claimant submits further that the fact that Inspector Cuffy informed the claimant that he was charged with conspiracy vitiates the charge.

[72] Reliance is placed on the ratio in **Christie v Leachinsky**¹⁷ in which it was said that upon arrest without a warrant the police officer must inform the person of the true ground of arrest. But that is not the entirety of the ratio as there are three other relevant propositions of law which state:

"2. If the citizen is not so informed, but is nevertheless seized, the policeman apart from certain exceptions is liable for false imprisonment.

3. The requirement that the person arrested should be informed of the reason why he is seized naturally does not exist if the circumstances are such that he must know the general nature of the alleged offence which he is detained

4. The requirement that he should be informed does not mean that technical or precise language need be used. The matter is one of substance, and turns on the elementary proposition that in this country a person is *prima facie*, entitled to his freedom and is only required to submit to restraint on his freedom if he knows in substance the reason why it is claimed that restraint should be imposed."

[73] Contextually this is the submissions on behalf of the defendants:

¹⁶Trial bundle page 99

¹⁷ Loc cit

"Given the fact that the 2nd defendant had knowledge of the Claimant as an attorney-at-law and well versed in the law, he was not satisfied with the explanation the claimant had given in relation to the application form and this aroused the suspicion of the 2nd Defendant even more at which point the 2nd defendant in the presence of the 4th Defendant arrested the Claimant on suspicion of conspiracy. The 4th Defendant during cross-examination agreed that the 2nd Defendant did give the Claimant reason for his arrest. The 2nd Defendant then gave the instructions to the 3rd Defendant to place the Claimant in the cell."

[74] What the learned counsel for the defendants had done is to put the arrest into the context of the law in order to show the legality of the charge and arrest.

[75] And further to the foregoing, the claimant's own evidence is his witness statement at paragraphs 2 and 30 put him well within proposition enunciated in **Christie v Leachinsky**

"I am 65 years old and a practicing attorney for nearly 30 years call. From 2000-2001, I served as the Attorney General of the Commonwealth of Dominica. I served as the Resident Tutor of the University of the West Indies in Dominica, Dominica's official delegate to the conference of non-aligned Nations in Havana in 1979..."

[76] It is therefore the determination of the court that the arrest of the claimant was lawful because the defendants had reasonable cause to suspect that an offence had been committed and the claimant committed the offence on account of:

- (1) investigations over the period 24th May 2011 to 2nd June 2011 concerning a report of forged certificates of birth;
- (2) in the course of the investigations, interview were conducted with suspects and some suspects were subsequently charged in this connection;
- (3) the name of one person charged appears on the certificate of birth relating to Younis Abraham, notwithstanding the fact that the suspect denied the signature appearing thereon does not belong to her;
- (4) the claimant said both expressly and implied that he was not sure that he remembered the applicant;

- (5) the claimant signed the recommendation in Part 9 of the passport application form despite the fact that he remembered the Sulimans were of Middle Eastern origin and introduced their brother to him;
- (6) the claimant said in evidence that he was aware that making a false declaration in the context of a passport application is serious;
- (7) there are two main facts which should have caused such an experienced attorney-at-law such as the claimant to exercise restraint: namely his fading memory of the person to whom he may have been introduced and the fact that the Suliman's are Middle Eastern origin and they had introduced their brother to him;
- (8) the fact that the claimant was not shown the certificate of birth bearing the name Younis Abraham does not vitiate the charge as the claimant's action did not relate to that aspect of the process of obtaining a passport;
- (9) even though the claimant was not told the exact nature of the charge on the day of his arrest, in the context of what he was told by Inspector Cuffy, his own statement prior to his arrest plus his more than 30 years practicing law and a former Attorney General of the Commonwealth of Dominica sufficed to give him a clear idea as to the charge in the circumstances;
- (10) The convergence of names such as Koja, Azra, Safaa, Amel, Yesmeen, Amel, Younis, Lubna and Sebreen making applications for passports within a short period of time.

Issue No.2

If the arrest was unlawful, whether the claimant is entitled to damages for wrongful arrest, and false imprisonment and aggravated damages

[77] The court has ruled that the claimant was lawfully arrested on the ground of reasonable suspicion that he had committed an offence the issue of damages does not arise

Issue No. 3

Whether any party is liable to pay costs.

[78] The claimant did not succeed on his claim and by virtue of Part 64.6 (1) of CPR 2000; the claimant is liable to pay costs in accordance with Part 65.5 (2). The court therefore orders the claimant to pay costs of \$7,000.00.

ORDER

IT IS HEREBY ORDERED AND DECLARED as follows:

1. The arrest of the claimant was lawful because the defendants had reasonable cause to suspect that an offence had been committed by the claimant on account of:
 - (1) investigations over the period 24th May 2011 to 2nd June 2011 concerning a report of forged certificates of birth;
 - (2) in the course of the investigations, interviews were conducted with suspects and some suspects were subsequently charged in this connection;
 - (3) the name of one person charged appears on the certificate of birth relating to Younis Abraham, notwithstanding the fact that the suspect denied the signature appearing thereon does not belong to her;
 - (4) the claimant said both expressly and implied that he was not sure that he remembered the applicant;
 - (5) the claimant signed the recommendation in Part 9 of the passport application form despite the fact that he remembered the Sulimans were of Middle Eastern origin and introduced their brother to him;
 - (6) the claimant said in evidence that he was aware that making a false declaration the context of a passport application is serious;
 - (7) there are two main facts which should have caused such an experienced attorney-at-law such as the claimant to exercise restraint namely: his fading memory of the person to whom he may have been introduced and the fact that the Suliman's are of Middle Eastern origin and they had introduced their brother to him;

- (8) the fact that the claimant was not shown the certificate of birth bearing the name Younis Abraham does not vitiate the charge as the claimant's action did not relate to that aspect of the process of obtaining a passport;
 - (9) even though the claimant was not told the exact nature of the charge on the day of his arrest, in the context of what he was told by Inspector Cuffy, his own statement prior to his arrest plus his more than 30 years practicing law and a former Attorney General of the Commonwealth of Dominica sufficed to give him a clear idea as to the charge in the circumstances;
 - (10) the convergence of names such as Koja, Azra, Safaa, Amel, Yesmeen, Amel, Younis, Lubna and Sebreen making applications for passports within a short period of time.
2. In light of the courts' determination that the arrest was lawful the issue of damages does not arise.
3. The claimant must pay the defendants costs in the amount of \$7,000.00.

Errol L. Thomas

High Court Judge [A.G]