

IN THE EASTERN CARIBBEAN SUPREME COURT  
COMMONWEALTH OF DOMINICA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. DOMHCV2010/0147

VALENTINE JOSEPH

Complainant

and

[1] MERVIN ADAM

[2] THE ATTORNEY GENERAL OF THE  
COMMONWEALTH OF DOMINICA

Defendants

Appearances:

Mrs. Dawn Yearwood Stewart for the Claimant

Mrs. Tameka Hyacinth Burton for the Defendants

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2015: October 17,

2015: December 8; 15

2016: May 18  
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- [1] Stephenson J.: On 27<sup>th</sup> May 2010 the claimant filed suit against Mervin Adams an officer of the Commonwealth of Dominica Police Force and the Attorney General of the Commonwealth of Dominica claiming damages for, false imprisonment and malicious prosecution, aggravated and/or exemplary damages, interest at the statutory rate of interest, costs and such or other relief as may be just. The Attorney General is sued pursuant to the State Proceedings Act.

- [2] The trial took place on 7<sup>th</sup> October 2015 and closing submissions were filed on 8<sup>th</sup> and 15<sup>th</sup> December 2015 respectively by the claimant and defendants. I now render my decision.
- [3] The claimant gave evidence on his own behalf and called no additional witnesses. The first named defendant gave evidence and three witnesses were also called to give evidence on behalf of the defence.
- [4] The following facts are not in dispute:
- (i) That the claimant was arrested and charged with possession of cannabis and possession of cannabis with intent to supply. On 17<sup>th</sup> March 2008 he was arrested and remained in custody until 28<sup>th</sup> April 2009. Bail was denied the claimant by both the magistrate hearing the matter and by the High Court Judge before whom an application for bail was made.
  - (ii) That at all material times the first named defendant was a member of the Commonwealth of Dominica Police Force and he was acting whilst on duty.
  - (iii) That a second person was charged jointly with the claimant and that person pleaded guilty to the charges brought against him and the claimant in the **Magistrate's** Court.
  - (iv) That the claimant was subsequently acquitted of the charges laid against him.

Issues:

- [5] The issue arising is whether the claimant was maliciously prosecuted and whether he was wrongfully imprisoned. Should the court find that he was maliciously prosecuted and wrongfully imprisoned then what damages would he be entitled to recover?

The Claimant's Case:

- [6] On Thursday 13<sup>th</sup> March 2009 the claimant stated that he was arrested whilst **standing outside the Roseau Magistrate's Court and placed in the cells of the court.** Whilst he was there in those cells, his evidence is that **"It was dark and smelly which was upsetting to him"**<sup>1</sup>. That he was later taken to the office of the Drug Squad at Police Headquarters where he met the first named defendant who identified himself to him as a police officer and who informed him that he the first named defendant had seen him driving alone in a pathfinder with registration number TE836 on the Tan Tan public road on the day before.
- [7] That on that day, he (the first named defendant) along with his fellow officers gave chase and that he the claimant drove the vehicle unto a dirt road and crashed and abandoned the vehicle and escaped.
- [8] The claimant also said that he informed the first named defendant that he was not the person driving on the day in question as he was home sick with a toothache and headache, that he lent the jeep to Tyson who was his mechanic for Tyson to **purchase materials for his (the claimant's) car which Tyson was working on.**
- [9] The claimant contends that he was informed by the first named defendant that the vehicle was found to be loaded with Cannabis. The claimant further stated that he told the police officer that the vehicle was not his, that it was rented from JX Rentals and he in turn lent the vehicle to Tyson (*his co accused*) on the Monday 10<sup>th</sup> March 2008. That he was not driving the vehicle on the Tan Tan road as alleged.
- [10] The claimant also said that he was subsequently informed by the first defendant and one Sergeant Cuffy that Tyson went into the police station at Portsmouth and told the police there that he the claimant was not present on the Tan Tan road and that he Tyson had borrowed the jeep from the claimant and that he was driving it.

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<sup>1</sup> Paragraph 2 of the Claimant's witness statement filed on the 28<sup>th</sup> November 2011.

- [11] The claimant said that his denials were ignored by the police and the first named defendant showed him 14 bags containing cannabis and he was told that that was the cannabis which was found in the Pathfinder. He further stated that the first named defendant weighed the cannabis and took samples of the cannabis in his presence. That the weights were entered into a book and samples placed into an envelope which he refused to sign when invited to do so by the first named defendant.
- [12] The claimant further stated that he was then put into the cells at the Roseau Police Station, that the cells were **“hot, dirty and wreaked** of stale urine, food, garbage and **a lot of cockroaches”**. That he was upset and he was uncomfortable, further that he was made to sleep on the bare concrete floor and he was also forced to sit up and brace himself on the cold concrete walls of the cell.
- [13] The claimant said three days after he was arrested he was given copies of his charges and that on 17<sup>th</sup> March 2008 he was taken before the Portsmouth Magistrates Court. That he met up with Tyson at the Portsmouth Court and that Tyson was jointly charged with him for possession and possession of cannabis with intent to supply.
- [14] The claimant in his witness statement said that when he was taken before the magistrate in Portsmouth and the charges were read to him and Tyson and that he pleaded not guilty and Tyson pleaded guilty. That the magistrate taking the plea refused to hear the facts on **Tyson’s** guilty plea and remanded him along with Tyson into custody until 21<sup>st</sup> May 2008 for trial.
- [15] The claimant stated that he applied to the High Court for bail and was unsuccessful in that regard. That he remained on remand at the State Prison from the said 17<sup>th</sup> March 2008 to 28<sup>th</sup> April 2009.

- [16] That after the trial he was found not guilty as charged. The claimant in his witness statement described what he experienced while on remand at the State Prison and gave evidence as to the losses he experienced. I will come to this evidence later if necessary.
- [17] Under Cross examination the claimant maintained that on the Monday he lent the vehicle to his mechanic Tyson. He told this court that “...I lent Tyson the vehicle that I rented. That was from the Monday on that same day I had a toothache and a head **ache I was sick. Tyson came to Vielle Case to get the vehicle.**”
- [18] The claimant also said that “I do not know how he came. I said my car was down **and that’s why Tyson came to get the rented vehicle.**” He then **went on to say** “I rented the Pathfinder a week before because I wanted it to go buy the parts for my vehicle and because I was feeling sick I brought\_it to him for him to get the parts and spray and paint.”
- [19] The claimant maintained under cross examination that “The police made up evidence **against him ... that they maliciously prosecuted him**”. Under cross examination the claimant also said that the police “**arrested him without reasonable cause**” The claimant also stated that “if it was me that was driving the vehicle why **they arrest Tyson**”

#### The **Defendants’ case**

- [20] Police Corporal number 91 Adams the first named defendant gave evidence in his defence as did Police Constable number 429 Luke A and Police Sergeant number 281 Bertrand P.
- [21] Officer Adams said that on 12<sup>th</sup> March 2008 based on credible intelligence received, he along with other officers (Victor and Luke) went on a sting operation in the Tan

Tan area. That whilst they were there he observed motor vehicle registration number TE836 being driven by the claimant. He said in his witness statement that Officer Luke who was driving the police vehicle gave chase to the vehicle.

- [22] That the vehicle was driven down a dirt road to a dead end and wrecked by the claimant who abandoned the vehicle and ran off into the nearby bushes.
- [23] Officer Adams said that he called out to the claimant by name and fired off a warning shot the claimant however continued running and made good his escape. Officer Adams said that the claimant left the pathfinder behind idling.
- [24] The witness said that a search was conducted of the vehicle and 500 pounds of what was later ascertained to be Cannabis packed in 12 Nylon bags, a travel bag and brown package was found. The items were removed and secured in the Portsmouth Police Station.
- [25] Officer Adams said he knew the claimant as Valentine “**Oune**” Joseph and that he was familiar with him. That he knew him for some 8 years at the time (2008) and that when he saw him he recognized him, that he was wearing a black and white cap and he was about 6 to 7 feet away from the claimant when he saw him.
- [26] Officer Adams in his witness statement said that after they secured the items found at the police station that afternoon, he proceeded to Vieille Case in search of the **claimant. He says when he got to the claimant's home he there was no answer and** he was informed that the claimant was not at home.
- [27] Officer Adams stated that he informed members of the Drug Squad that he was in search of the claimant and on 13<sup>th</sup> March 2008 he was told of his whereabouts and after obtaining a duly signed warrant he proceeded to the office of the Drug squad where he identified himself to the claimant and arrested him on the strength of the

warrant he obtained. That the **claimant's rights were read to him and then he was processed.**

[28] Officer Adams stated that whilst he was at the Drug Squad he was informed that one Tyson Laville had walked into the station at Portsmouth and claimed that he was the one driving the Pathfinder which was subject to the raid.

[29] Officer Adams said that he had reason to question the account given by Mr. Laville as he was convinced at the time and remained convinced that it was the claimant that he saw driving the Pathfinder on the date and time in question.

[30] Officer Adams said in his witness statement that it was subsequently found that the pathfinder was rented from JX Car rental by the claimant. Further that the claimant was charged with being in possession of a controlled drug and possession with intent to supply and he was jointly charged with Tyson Laville. Officer Adams stated that Tyson was charged because his passport was found in the pathfinder.

[31] Officer Adams said that he did not concoct the evidence but spoke honestly as to what he witnessed on the day in question and he honestly believed in the guilt of the claimant and his only motive for instituting the charge against the claimant was to secure the ends of justice.

[32] **In commenting on the claimant's evidence Officer Adams stated that the claimant never told him that he was home on the Monday with a toothache and head ache and that he had borrowed the rental vehicle to his mechanic Tyson Laville who was purchasing material to use on his (the claimant's) car which Tyson was working on.** Also that he never told the claimant that Tyson went to the Portsmouth Police Station. The witness also said that the claimant never told him that he was not **present at all or that he had "borrowed<sup>2</sup>" the Pathfinder to Tyson.**

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<sup>2</sup> In Dominica this means that he lent the Pathfinder to Tyson.

- [33] Under cross examination Officer Adams in answer to learned **counsel's probing** questions said that he went to the Tan Tan road along with two other officers Luke A. and Victor T. in two vehicles. That they were all out of the vehicles and that the Pathfinder passed them at a fast rate of speed at about 50 to 55 MPH then he altered it to say that the vehicle was travelling 40 to 45 MPH as stated in his Police Statement. I do not find this to be a material discrepancy.
- [34] Officer Adams also conceded that when he said in his witness statement that the windows of the Pathfinder were down that that was incorrect. He agreed with counsel for the claimant that the window on the front passenger side was half way down. Officer Adams was adamant that it was the claimant that he saw driving the vehicle on 12<sup>th</sup> March 2008.
- [35] Officer Luke also gave evidence as to what happened on the Tan Tan Road on 12<sup>th</sup> March 2008. His evidence for the most part corroborated the evidence of the Officer Adams. What is of importance is that he stated that he knew Tyson before the incident and it was not him who he saw driving the pathfinder on the day in question. I accept his evidence.
- [36] The other two witnesses essentially gave evidence that the vegetable matter found in the vehicle was in fact found to be cannabis and that the vehicle was in fact rented from JX Car rental. There evidence is not in dispute.

#### Courts Considerations

#### The Law:

#### Malicious Prosecution

- [37] The essential ingredients of the tort of malicious prosecution which have been applied by the courts in our jurisdiction are set out in Clerk & Lindsell on Torts



**“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 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.”**<sup>3</sup>

[38] In the case at bar there is no doubt that the first and second elements of the tort were present and satisfied as the law was set in motion against the claimant on criminal charges and the charges were determined in his favour since the charges against him were dismissed.

[39] My decision in this case therefore rests on my determination of two issues:

- (1). whether there was reasonable and probable cause to institute the prosecution against the claimant and
- (2). whether this prosecution was instituted maliciously.

[40] **It is the claimant’s burden to show on the balance of probabilities that the first named defendant had no reasonable and probable cause to institute legal proceedings against him and that in doing so he was motivated by malice.**

Reasonable and Probable cause

[41] Reasonable and probable cause, involves both subjective and objective questions, namely whether on the facts adduced, it can be found that:

- (1). the prosecutor had an honest belief in the guilt of the accused;
- (2). the prosecutor had an honest belief of the existence of the circumstances relied on;
- (3). his belief was based on reasonable grounds and

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<sup>3</sup> (20th Ed) at page 1070, para. 16:09:

(4). the matters relied upon constitute reasonable and probable cause in the **belief of the claimant's guilt.**

[42] The issue is whether Officer Adams **honestly believed in the claimant's guilt when** he laid the complaint before the magistrate and was such a belief reasonable on the facts available to him. This turns on whether there was evidence that the claimant was in possession of the drugs. Was he the person that the police officers saw driving the pathfinder on the day in question?

[43] The case of Glinski –v- McIver<sup>4</sup> provides some guidance in ascertaining whether there was reasonable and probable cause on the part of the police officer. In that case it was stated that the ultimate question was whether the prosecutor was motivated by what presented itself to him as a reasonable and probable cause. It was held that mere belief in the truth of the charge would not protect a prosecutor if the circumstances would not have led an ordinarily prudent and cautious man to conclude that the person charged was probably guilty.

[44] Lord Denning observed that the police officer does not have to believe in the guilt of the accused. He has only to be satisfied that there is a proper case to go before the court. It was held that the police officer 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 the police officer or prosecutor. Further, it was observed in that case that the prosecutor does not have to believe in the probability of obtaining a conviction. He is only concerned with the question of whether there is a case fit to be tried.

[45] The claimant in the case at bar was charged with possession of cannabis and possession with intent to supply. The evidence in the **Magistrate's** Court against the

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<sup>4</sup> [1962] A.C. 726

claimant was provided by Officer Adams and other police officers<sup>5</sup>. Essentially the officers claimed that the claimant was observed driving a motor vehicle that was later found to have the cannabis on board. The police officers gave evidence that they gave chase to the vehicle that was being driven by the claimant who they saw drove the vehicle into an access road crashing it on a bank thereafter the claimant was seen running from the vehicle into the bushes. The claimant denies this ever happened and claims that the first named defendant Officer Adams and his colleagues all lied on him. The evidence adduced at the trial herein by the defence was for all intents and purposes the same thing.

[46] **The claimant's case is that the first named defendant gave this evidence knowing** that the said evidence was not true and that when he did so he knew that the claimant would be prosecuted for the offence based on the facts that he knew were false.

[47] I have listened to the evidence for both the claimant and the defence and I accept the evidence of the defendants on a balance of probabilities that the first named defendant was of the view that it is the claimant that he saw driving the vehicle on the day in question. He formed his view from what he saw, based on his familiarity with the claimant. The learned magistrate found that the quality of the identification offered in the criminal matter did not pass the test required for such a trial that is, he the magistrate was not satisfied beyond a reasonable doubt that the person observed driving the vehicle and running into the bush on the day was the claimant. The standard of proof required in the civil court is lower that it is on the balance of probabilities.

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<sup>5</sup> Police Officers Alandale Luke PC#429, Sgt. #281 Philsbert Bertrand, Police Cpl Clem Bruno and Special Constable Tino Victor

Malice

[48] The other matter to be determined in this matter is whether the institution of the criminal proceedings against the claimant by the first named defendant was activated by malice.

[49] In the Privy Council Case of Williams –v- Attorney General<sup>6</sup> Lord Kerr in rendering **the court’s opinion said**

**“In order to make out a claim for malicious prosecution, it must be shown, among other things, that the prosecutor lacked reasonable and probable cause for the prosecution and that he was actuated by malice. These particular elements constitute significant challenge by way of proof. It has to be shown that there was no reasonable or probable cause for the launch of proceedings. This requires proof of a negative proposition normally among the most difficult of evidential requirements. Secondly malice must be established. ...”**

[50] In the case of Williams v Taylor<sup>7</sup>: it was held that

**“Malice alone is not sufficient, because a person actuated by the plainest malice may none the less have a justifiable reason for prosecution.”**

[51] In the Glinski case,<sup>8</sup> it was also held that the existence of malice cannot by itself **lead to an inference that “reasonable and probable cause” was lacking:**<sup>9</sup> It is as this court understands it, necessary for a successful claimant to prove that the defendants did not actually believe in the charge laid against him. (Emphasis mine)

[52] **It is to be observed that the question of “reasonable and probable cause” is not to** be mixed up with the issue of whether the material before the relevant prosecutor would be sufficient, in law, to secure a conviction. What is important is whether the information is sufficient to make out a prima facie case against the person charged and in this case it would be whether or not there was sufficient information available to the officer warranting the charge which was instituted against the claimant even

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<sup>6</sup> [2015] 2 LRC 717, [2014] UKPC 29

<sup>7</sup> (1829) 6 Bing 183, at 186

<sup>8</sup> Op cit

<sup>9</sup> [ibid @ 744

though we know it was not enough in itself to justify a finding of guilt. Was there in the circumstances of the case at bar a case fit to be placed before the court?

[53] The claimant contends that the court should have little or no difficulty in finding that all of the elements required to prove the case of malicious prosecution are present in the case at bar. The claimant contends that the first named defendant could not have seen the claimant driving the vehicle as it passed as they alleged and that **could only have been achieved if the first named defendant “had bionic eyes as are depicted in cartoons”**<sup>10</sup>

[54] Learned Counsel Mrs. Yearwood Stewart submitted further, that in the circumstances of the case there was no reasonable and probable cause on the part of Officer Adams that he concocted evidence and testified against the claimant and procured the evidence of Office Luke to support his malicious lies. The claimant contends that Officer Adams was at all times was in fact motivated by malice and ill will towards him.

[55] The defendants on the other hand submit that the first named defendant must have belief which was based on reasonable grounds that there was a case to be tried against the claimant. Further those Officer Adams at all material times had an honest belief that on the facts that was available to him at the time of the charge was preferred that there was a case against the claimant fit to be tried.

[56] The defendants contended that the officer believed at the time of the charge and even at the time of the trial that it was the claimant who he saw driving the pathfinder vehicle on the Tan Tan road that day based on his own identification as he saw the claimant himself and that he knew and was familiar with the claimant and that his belief was further confirmed by the circumstantial evidence of finding the rental agreement on the seat of the vehicle. Learned Counsel Mrs. Hyacinth Burton

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<sup>10</sup> See Paragraph 28 of Claimant’s written closing submissions

submitted that this was an honest belief formed on the facts available to Officer Adams at the time that the charge was preferred against the claimant and that in the circumstances it can be concluded that Officer Adams reasonably felt there was a case against the claimant fit to be tried.

[57] It was also submitted on behalf of the defendants that the fact that the identification did not pass the criminal test as laid down in Turnbull does not transform into lack of reasonable and proper cause on the part of the defendants.

[58] Learned Counsel Mrs. Hyacinth Burton made reference to the learning available in Clerk and Lindsell on Torts which stated ‘... **it is for the claimant to satisfy the [court]** that there was a want of proper case and testing of that information’<sup>11</sup>.

[59] The defendants also contend that the fact that claimant was charged with someone who allegedly confessed does not of itself mean that Officer Adams and his **witnesses concocted their evidence as submitted by the claimant**”. The defendants contend that Officer Adams at all times had an honest belief in the probable guilt of the claimant.

[60] I find that even if there was a case of mistaken identity on the part of the first named defendant that does not amount to malice on his part as alleged by the claimant. I find that given the totality of the evidence that the first named defendant did form a view that it was the claimant he saw driving the vehicle that day when he was on the Tan Tan road and that his view was strengthened by the rental agreement that he found in the **vehicle. I do not accept the claimant’s view that the first named** defendant decided it was he who was driving the vehicle because of the rental agreement. Quite to the contrary.

[61] Further, I do not find that the claimant has proved that the first named defendant was actuated by spite of ill will against him. There is no factual basis upon which this court can conclude on the balance of probabilities or otherwise that there was

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<sup>11</sup> Clerk & Lindsell on Torts (19<sup>th</sup> Edition) Paragraph 16-26

malice on the part of the first named defendant. I also find that there were no improper motives on the part of the first named defendant.

#### False Imprisonment

- [62] The claimant was on remand from the date of his arrest to the date of his acquittal a total of 412 days and he claims damages for the unnecessary restraint of his liberty.
- [63] The substance of a claim of false imprisonment is the fact of imprisonment and the claimant need only establish a prima facie case that he was imprisoned by the defendants. The onus then lies on the defendants to justify the imprisonment.
- [64] It is a defence to an action for false imprisonment that the restraint upon the plaintiff was carried out in the course of a lawful arrest.<sup>12</sup>
- [65] In the case at bar the claimant was initially taken into custody on suspicion of drug possession and was subsequently arrested by the first named defendant on the strength of a warrant for possession of cannabis.
- [66] Section 25(1) of the Drugs (Prevention of Misuse) Act<sup>13</sup> confers on the members of the Police Service powers of arrest without a warrant of a person who has committed, or whom the member of the Police Service, with reasonable cause, suspects to have committed, an offence under this Act.
- [67] Further Section 12(4) of the Criminal Law and Procedure Act<sup>14</sup> also confers on the member of the Police Force the power of arrest of persons where they have reasonable cause to suspect that a felony has been committed and where he has reasonable cause to suspect that the person is guilty of the offence.

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<sup>12</sup> The law of Torts in the West Indies Cases and Commentary – Gilbert Kodilinye (1992) Faculty of Law Library University of the West Indies page 14

<sup>13</sup> Chapter 40:07 of the Laws of the Commonwealth of Dominica

<sup>14</sup> Chapter 12:01 of the Laws of the Commonwealth of Dominica

- [68] In the case at bar, the claimant was arrested by an officer of the Dominica Police Service **whilst he was at the Roseau Magistrate's court on business unrelated to the case at bar.** His initial arrest was based on information received by that officer that Officer Adams was looking for him on suspicion of him being in possession of a large quantity of cannabis.
- [69] Learned counsel for the claimant did not make any substantive submission regarding the false imprisonment. On the other hand learned counsel for the defendants made extensive submissions on the issue of false imprisonment and submitted that when the claimant was initially taken into custody at the **Roseau Magistrate's Court the said officer had lawful authority to arrest the claimant based** on the provisions of the Drugs Act and the Criminal Law and Procedure Act.
- [70] Learned counsel for the defendants also submitted that the threshold for establishing reasonable grounds for suspicion is a low one and cited the cases of *Castorina –v- Chief Constable of Surrey*<sup>15</sup> and **O'Hara –v- Chief Constable of the R.C.U.**<sup>16</sup> in support of her submissions that the first officer who took the claimant into custody may form a reasonable cause to arrest the claimant on the basis of information received from other police officers.
- [71] Learned Counsel Mrs. Hyacinth Burton then urged the court to draw the inference that the first officer who arrested the claimant on suspicion had reasonable suspicion based on the fact that he had information not only that the first named defendant was in search of the claimant but why the first named defendant was in search of him and in the circumstances of this case had the power to lawfully arrest the claimant.

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<sup>15</sup> (1988) LG Rev R 241

<sup>16</sup> [1996] UKHL 6



- [72] Taking into consideration the evidence before the court, I find that the officer making the initial arrest had the honest requisite suspicion or belief that the claimant had committed an offence and was suspected to be in possession of a large quantity of cannabis. I find that being informed by a fellow officer that he was in search of the claimant and why that it was sufficient to rely on this information as a basis for his belief. Therefore the initial arrest was legal and within the confines of the law permitting a person to be arrested without a warrant.
- [73] Undisputed evidence was given that Officer Adams obtained a warrant for the arrest prior to proceeding to Roseau, therefore at the time of his arrest by the first named **defendant there was a warrant for the claimant's arrest and in the circumstances a claim for wrongful imprisonment would not stand against the defendants there for.**
- [74] It was submitted that when the claimant was taken before the learned magistrate and bail was denied and a subsequent application for bail in the High Court was also denied. Therefore his remand in custody was for the greater part as the result of a judicial act by two legitimate judicial officers, that is the learned magistrate and the Learned High Court Judge, and therefore no liability can attach to the defendants for the **claimant's consequent imprisonment (on remand)**<sup>17</sup>. However it is noted that this does not operate to relieve the prosecutor of possible liability in malicious prosecution: the prosecutor will still remain liable for the damage caused by his setting the prosecution in motion.
- [75] The defendants have therefore successfully justified the imprisonment of the claimant and the **claimant's claim in false imprisonment therefore fails.**

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<sup>17</sup> *Hope v Evered* ([1886](#)) *17 QBD 338*; *Lea v Charrington* ([1889](#)) *23 QBD 45*.

## Conclusions

- [76] I hold that in light of the evidence available to the defendants on 12<sup>th</sup> March 2008 that the first named defendant genuinely believed that the person he saw driving the vehicle that day was the claimant and based on that belief he preferred the charges against the claimant and that in the circumstances there was a case fit to be placed before the court.
- [77] I also accept that, objectively judged there was indeed such a case. In coming to **that conclusion I have taken into account the defendant's evidence and that of his witnesses** who I accept as truthful witnesses.
- [78] The fact that Tyson pleaded guilty does not irresistibly and inevitably lead to a conclusion that the claimant was innocent. One must bear in mind that the police officers on the Tan Tan road were convinced that it was the claimant that they saw driving the vehicle. This was to be coupled with the fact that the rental agreement was found in the name of the claimant, which information was confirmed with the rental company.
- [79] Furthermore I am not satisfied that there is evidence which I accept on the balance of probabilities to support the serious allegation of malice against the officer. Officer Adams and his fellow officers believed that it was the claimant they saw driving the vehicle on the day and time in question. That the first named defendant sought to prosecute the claimant for that legitimate reason and I do find that the officers were acting within the scope of their powers at all material times. That there was a not guilty finding by the criminal court does not ipso facto mean that the first named defendant did not form the view that based on the case he had before him that there was reasonable case fit to be tried before the magistrate.

[80] The court is of the view that on the totality of the evidence the claimant has not proved his case and accordingly **the court's order is the claimant's case is dismissed** and the claimant shall pay the defendants' costs to be assessed if not agreed.

M.E. Birnie Stephenson  
High Court Judge