

GRENADA

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 9 OF 2003

BETWEEN:

MARGARET JOSEPH

Appellant

and

**[1] THE ATTORNEY GENERAL
[2] RAPHAEL HAMILTON**

Respondents

Before:

The Hon Mr. Brian Alleyne, SC
The Hon Mr. Michael Gordon, QC
The Hon. Mr. Othneil Sylvester, QC

Justice of Appeal
Justice of Appeal [Ag.]
Justice of Appeal [Ag.]

Appearances:

Dr. Francis Alexis for the Appellant
Mr. Darshan Ramdhani for the Respondents

2003: December 2;
2004: April 26.

JUDGMENT

[1] **GORDON, J.A. [AG.]:** By a Writ of Summons with Statement of Claim attached filed on 9th July 1999 the Appellant claimed against the Second Respondent damages for wrongful arrest, false imprisonment and malicious prosecution and against the first Respondent as the employer of the second Respondent. The facts are not complicated.

[2] On 7th January 1999 the second Respondent, who was a policeman at the time, led a party of three police officers (himself and two others) to search the home of the Appellant. The search was for stolen items, and, according to the second

Respondent's witness statement, the warrant was issued on the basis of information received. The Appellant's house was searched but no stolen goods were found.

[3] The above facts are common in the stories of both the Appellant and the Respondent. The Appellant asserts that the only thing taken from her house was a wallet containing \$40.00 which was in the Appellant's bedroom. It is the Appellants story that the second Respondent took the wallet but gave no reason for doing so. She goes on to say that the party of police left her house at that point.

[4] The second Respondent's version differs somewhat from the story of the Appellant. He admits to finding a wallet but alleges that the wallet contained a hand rolled cigarette containing green plant material. The second Respondent goes on to say that he cautioned the Appellant and informed her it was an offence to have marijuana in her possession "and touched her on the shoulder to confirm the arrest". He stated that he told the Appellant to accompany him to St. Paul's Police Station but she refused to accompany him. According to him, he and the two other policemen left the Appellant warning her that they would return.

[5] The Appellant denies both that there was a cigarette in the wallet and that the second respondent attempted to arrest her.

[6] The second Respondent's story continues that on 12th January 1999, some five days after the initial execution of the search warrant, he obtained a warrant for the arrest of the Appellant and executed that warrant at approximately 5.00 pm on that same day in the company of a woman police officer. In his words:

"Despite the presence of the female officer Margaret (the Appellant) was reluctant to go to the station and had to be persuaded to do so. On the way from her home to the Police transport Margaret Joseph began showing a lot of hostility to me despite the fact that I allowed the other officers to handle her. She was speaking in a loud voice, crying and at one point refused to walk. I decided in the interest of the safety of the officers

and of Margaret Joseph I instructed that she should be placed in handcuffs thereby restraining her.”

[7] The Appellant’s version of the arrest is as follows:

“On Tuesday 12 January 1999 at about 5.10 pm the Second Defendant with two other police officers returned to my home at Perdmontemps aforesaid. He told me I was under arrest. I asked him for what. He replied for resisting arrest on the previous occasion for a hand rolled spliff. I pointed out that on the previous occasion he never told me about being under arrest and he did not show me any marijuana or tell me about it...I however began going with him in obedience to his arrest order; yet, unnecessarily he handcuffed me.”

[8] The learned trial Judge in a rather terse judgment held simply that the Claimant had not proved her case on a balance of probabilities and gave judgment for the Defendants.

[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.

[10] The Grenada Criminal Law, as do most systems of Criminal law, makes provision for the issue of warrants for the arrest of persons. Title III of the Criminal Procedure Code, Cap 2 of the Laws of Grenada deals with the whole issue of powers of arrest and warrants for the arrest of persons. There has been no allegation either in the Statement of Claim, the evidence or the submissions before the learned trial Judge that the warrant of arrest which was executed by the second Respondent was irregularly obtained. Hence, based on the pleadings, the evidence and the maxim *omnia presumuntur rite esse* this Court is bound to find that the warrant was regularly issued. Similarly, there is no allegation that the warrant was irregularly executed. The only possible complaint on the part of the

Appellant might be a breach of Section 14 of the Criminal Procedure Code which reads:

“A person arrested whether with or without warrant shall not be handcuffed, or otherwise bound, or searched, unless in case of necessity, or of reasonable apprehension of violence, or of attempt to escape, or by order of the Court.”

It would seem to me that a breach of Section 14 would give rise to an action in assault, which was not pleaded, not an action for wrongful arrest. I hold therefore that the action for wrongful arrest fails.

[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. There is no allegation that the Appellant was held by the police, prior to bail being granted, beyond the time permitted by law. The allegations regarding the conditions in which the Appellant was held are a different issue, and not one that can be adjudicated by this Court based upon the pleadings in this case.

[12] The only cause of action left, therefore, is that of malicious prosecution. In **Glinski v McIver**¹ 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**²

[13] The Appellant's Statement of Claim does not at any point plead any grounds on which a finding of malice could rest. Nor does her witness statement do more than

¹ [1962] 1 All ER 696

² [1978] 3 All ER 540

to allege malice without giving any factual basis on which such a conclusion could be drawn.

[14] In the circumstances I would dismiss the appeal and affirm the judgment of the Court below and order that the Appellant pays the Respondents costs in this appeal.

[15] In the Court below, costs were agreed between the parties at \$500.00 and I would order a similar sum in this appeal

Michael Gordon, QC
Justice of Appeal [Ag.]

I concur.

Brian Alleyne, SC
Justice of Appeal

I concur.

[Sgd.]
Othneil Sylvester, QC
Justice of Appeal [Ag.]