

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
CIVIL DIVISION

COMMONWEALTH OF DOMINICA
CLAIM NO: DOMHCV2019/0186

BETWEEN:

FINAN HERBERT SABAROCHE Claimant

and

THE ATTORNEY GENERAL OF THE COMMONWEALTH OF DOMINICA
MICHEAL LAUDAT Defendants

Before the Honourable Madam Justice Zainab Jawara-Alami

Appearances: Ms Janae Jackson holding papers for Ms Cara Shillingford for the Claimant
Mrs Tameka Burton for the Defendants

2024: November 28, 29

2025: May 6

The Facts

- [1] **JAWARA-ALAMI.J.** By a Claim form dated and filed on 6th September 2019, the Claimant files a claim in tort seeking damages for assault and battery, false imprisonment, unlawful arrest, and malicious prosecution.
- [2] The Claimant submits that the case presents a mixed claim, grounded in both constitutional law and the law of torts. In the Statement of Claim¹, the Claimant pleads that the Defendants are liable in tort for assault, battery, unlawful arrest, false imprisonment, and malicious prosecution. Additionally, the Claimant asserts that these acts constituted a violation of his

¹ Trial Bundle Volume 1 pages 1 to 14

constitutional rights², including the right to liberty, the right to the protection of the law, the right to freedom of movement, and the right to protection from discrimination.

- [3] At the outset, it must be noted that the present claim has been brought pursuant to Part 8 of the Civil Procedure Rules (CPR), rather than under Part 56, which specifically governs constitutional claims. Consequently, the Claimant has not adopted the correct procedural route for seeking constitutional remedies. In addressing the procedural issue, Saunders JCCJ in **Jaroo v Attorney General**³ and **Attorney General v Rumanoop**⁴ both decisions of the Trinidad and Tobago courts, reiterated the well-established principle that constitutional relief, should not be granted where an adequate alternative remedy exists, save in cases where the circumstances disclose some exceptional feature that justifies invoking the Constitution. This approach is further reinforced by express provisions in some Caribbean constitutions which mandate that courts decline constitutional relief where a parallel or alternative remedy is available and sufficient. As a consequence therefore, this judgment will be confined to the tortious claims only.

Factual Contentions of the Claimant

- [4] The Claimant is 76 years old and asserts that he is a lifetime member of the Commonwealth Parliamentary Association, a former Government Minister, and currently resides in Manvel, Houston, Texas, United States of America.
- [5] The Claimant states that on or about 2 June 2011, at approximately 10:00 a.m., he was walking in a southerly direction along Victoria Street in the city of Roseau, heading towards the Parliament building to attend the First Meeting of the Second Session of the First Parliament under the 1978 Constitution of the Commonwealth of Dominica. He had received an official invitation to attend the said parliamentary session from the Clerk of Parliament.

² Paragraph 24 of statement of claim

³ (2002) 59 WIR 519 (TT PC)

⁴ (2005) UKPC 15

- [6] While proceeding toward the Parliament building, the Claimant was stopped by the 2nd Defendant and Corporal Bernard Abraham, who questioned him regarding his destination. In response, the Claimant asked "why do you want to know?"⁵ ". The 2nd Defendant repeated the question and the Claimant answered by informing the 2nd Defendant that he was on his way to Parliament since he had been invited by the Clerk of Parliament to attend. The Claimant was then directed to proceed via Turkey Lane, which constituted a longer route to the Parliament building. However, the Claimant continued along Victoria Street, whereupon he was blocked by the 2nd Defendant and Corporal Bernard Abraham.
- [7] When the Claimant attempted to continue walking, the 2nd Defendant threatened to arrest him if he moved any further. A scuffle ensued during which Corporal Bernard Abraham grabbed the Claimant's left hand, and the 2nd Defendant seized the back waist area of the Claimant's pants and dragged him some distance.
- [8] The Claimant states that he was placed under arrest by the 2nd Defendant, who failed to inform him of the reason for his arrest. The 2nd Defendant instructed the Claimant to enter a police vehicle, which then transported him to the Roseau Police Station at approximately 10:30 a.m.
- [9] The Claimant further alleges that while detained at the Roseau Police Station, the 2nd Defendant walked past his cell at approximately 1:30 p.m. and again at 2:30 p.m. It was not until around 3:02 p.m. that the Claimant was handed a copy of the charges against him. He was charged with three offences: (i) resisting arrest, (ii) obstructing a police officer in the execution of his duties, and (iii) beating a police officer
- [10] The Claimant recalls that he was taken to the Criminal Investigations Department (CID), where he was fingerprinted and photographed. He was subsequently released on bail in the sum of ECD \$6,000.00 at approximately 3:25 p.m., after having spent approximately five hours in what he contends was unlawful police custody and false imprisonment.

⁵Statement of claim paragraph 5

FACTUAL CONTENTIONS OF THE DEFENDANTS

- [11] The Defendants aver that on or about June 29, 2011, the Opposition United Workers Party had called on its supporters and others to congregate outside the Parliament Building in protest against the Government. As a consequence, special security arrangements were put in place in the vicinity of the Parliament Building and the Chief of Police directed and briefed members of the Dominica Police Force that Victoria Street was closed to vehicular traffic. That on that day the Dominica Police Force erected barriers under the direction of the Chief of Police and the sign "Restricted Area" was placed thereon.
- [12] The Defendants claim that the Chief of Police had issued instructions limiting access to the Parliament area exclusively to Members of Parliament and individuals possessing an invitation or pass to enter the Parliament building. They confirm that Corporal Bernard Abraham and the 2nd Defendant were part of a contingent of police officers detailed to perform security duties in that area.
- [13] The Defendants assert that barriers were installed along Victoria Street near the roundabout close to the Fort Young Hotel. Corporal Bernard Abraham was positioned at the western end of the barriers near the roundabout, while the 2nd Defendant was stationed at the eastern end. At approximately 10:15 a.m. on 2 June 2011, the Claimant approached Corporal Abraham and attempted to enter the restricted area. Corporal Abraham stopped the Claimant and informed him that only individuals with an invitation or pass were permitted to pass through the barrier, as the area was restricted to the general public. The Claimant allegedly responded by asserting that he was a Dominican, knew his rights, and was a Member of Parliament. However, he did not produce any invitation or pass authorizing his entry.
- [14] The Defendants also assert that when informed he needed an invitation to access the Parliament building, the Claimant stated that he was prepared to get arrested that day. Corporal Abraham then called the 2nd Defendant over to assist who upon being briefed, asked the Claimant whether he had a pass or invitation. The Claimant did not respond but instead walked past the 2nd Defendant.

[15] The Defendants further assert that they pursued the Claimant, and Corporal Abraham asked him to leave the restricted area, informing him that he was obstructing police officers in the execution of their duties. Despite repeated requests, the Claimant allegedly neither responded nor produced an invitation. Thereafter, the 2nd Defendant informed the Claimant that he was under arrest for obstruction. The 2nd Defendant grabbed the Claimant's left hand while Corporal Abraham held his right hand. The Claimant allegedly resisted vigorously, freeing his right hand from Corporal Abraham's grasp, and then used his right hand to push the 2nd Defendant in the chest, causing him to lose his balance and fall against a flagpole.

[16] According to the Defendants, the Claimant was subdued by Corporal Abraham and the 2nd Defendant and placed into a police vehicle. The Defendants assert that the Claimant's actions in wilfully obstructing police officers gave them reasonable and probable cause to believe he was committing an arrestable offence. They deny that the Claimant was falsely imprisoned or unlawfully detained.

[17] The Defendants admit that the criminal case initiated against the Claimant was eventually dismissed for want of prosecution, approximately eight years after the charges were filed. They submit, however, that the dismissal resulted from delays attributable to both the prosecution and the Claimant in the criminal proceedings and argue that they, as Defendants in the present civil action, are not solely culpable for that outcome.

[18] No issue arises as to the vicarious liability of the 1st Defendant in the event that the 2nd defendant is found liable

The Evidence

[19] The Claimant relies on the evidence contained in the witness statements of Lennox Linton, Daniel Lugay, and Johnson Boston. The witness Eric James was not permitted to give evidence via Zoom, and, since his evidence would be untested, his witness statement was disregarded. The Claimant filed a witness summary on 15th March 2021 and attempted to substitute the witness summary for a witness statement on 18th November 2024, the day of the trial. Naturally, the application was denied and the claimant was ordered to give viva voce evidence in chief.

[20] The Claimant's 1st witness was the claimant himself who testified that he was arrested by the defendants on his way to parliament with an official invitation on 29th June 2011. He states that he was grabbed on the arm and by the waist of his pants and in the scuffle the corporal Abraham fell. He was put in a van and taken to the police station where he had to wait until the 2nd Defendant came back to the station to be charged. He testifies that he was placed in a dirty female cell that had no seat or toilet facilities and received his charge⁶, Exhibits B1 and B2 as marked, which state that the claimant beat Inspector Laudat, a member of the police force whilst in the execution of his duty as well as resisted arrest. He testifies that he was granted bail in the sum of \$6000 at about 4pm. He was charged before the magistrate courts and lost count as to the number of adjournments he suffered. He states that the case was filed in 2011 and was dismissed in 2019 and when he migrated to the USA he had to travel back and forth for the hearings.

[21] Under cross examination he admits that there were barriers on the street blocking access to the road leading through parliament. He admits that the people passing on the sides were allowed to pass. He admits to proceeding along the route that was restricted. He claimed that Inspector Laudat slipped when he grabbed the claimant and admitted that he did not obey the direction of the 2nd Defendant that he could not pass through the restricted area. Still under cross-examination the Claimant made the following statement with regards to the 2nd Defendant, that;

“he said he was arresting me for obstructing him in doing his duties but I didn’t even take that serious...”

[22] He accepts that his trial proceeded before two magistrates and exhibits “H1”, “H2” and “H3” concluded that there were “delays caused by both sides” in the matter.

[23] Lennox Linton and Daniel Lugay also witnesses for the claimant, testified along similar lines. Mr. Lugay admits that barriers were placed on Victoria Street and restricted both human and vehicular and hardly saw much of what ensued on that day

⁶ Trial bundle No 3 tab 8

[24] The defendants' evidence was such that the Second Defendant gave evidence on behalf of both Defendants. Under cross-examination, his testimony remained consistent with the contents of his witness statement. According to the Second Defendant, pedestrian access was being regulated on the day in question, and individuals were not permitted to enter the cordoned or restricted area without an invitation or a valid pass. The Claimant nevertheless proceeded through the restricted zone. The Second Defendant stated that he warned the Claimant that he would be arrested if he continued further.

[25] The Second Defendant testified that he stumbled backward because of the scuffle with the claimant and consistently denied the Claimant's allegation that he visited the Claimant's cell at 1:30 and 2:30 and smiled at him.

Claimant Submissions.

[26] Counsel for the Claimant relied on her summary of legal arguments and authorities filed on 25th January 2024 and elected not to repeat those legal propositions in her oral closing submissions. I pause at this point state that, it must be noted that closing submissions are intended to provide a concise and persuasive summary of the evidence and legal arguments, aimed at assisting the court in reaching a decision. When submissions become overly lengthy or unfocused, they risk undermining this objective.

[27] Returning back to the Judgement, the Claimant contends that the Second Defendant unlawfully targeted him on account of his perceived political opinion. He maintains that he was a known political figure who had turned against the Labour Party and had publicly expressed opposition to it. On that basis, the Claimant argues that it is implausible that the Second Defendant was unaware of his political stance in relation to the current Government. In support of this assertion, the Claimant gave evidence that one of the officers who accosted him alongside the Second Defendant remarked that "he is accustomed to causing trouble."

[28] The Claimant further submits that, when asked to provide the legal authority for preventing individuals from walking through the cordoned area, the 2nd Defendant cited section 12(a) and (b) of the Police Act, Chapter 14:01. The 2nd Defendant claimed that this provision authorized the police to regulate traffic and control access to public thoroughfares. The

Claimant argues that section 12(a) and (b) of the Police Act contains no such authority. Rather, section 12 merely prescribes the general duties of the police to take lawful measures for, inter alia, preserving the public peace and preventing and detecting crimes and offences. There is nothing within the section empowering police officers to arbitrarily prevent individuals from walking along Victoria Street or similar public roads.

[29] The Claimant submits that the parliamentary session concluded at approximately 1:00 p.m., yet the Claimant remained in detention until after 3:00 p.m., allegedly as a form of punishment. The Claimant contends that he was deliberately left in a dark and unsanitary holding cell for approximately five hours due to the malice of the 2nd Defendant. The Claimant asserts that the 2nd Defendant maliciously caused him to be charged and prosecuted with three criminal offences, despite having full knowledge that the Claimant had been falsely imprisoned for a period of approximately five hours. This, the Claimant argues, constituted a violation of his constitutional rights to liberty and freedom of movement guaranteed under the Constitution of the Commonwealth of Dominica.

[30] The Claimant further submits that during the eight-year period following his arrest, the 2nd Defendant continued to be employed by the Government and received his salary, even on the days he attended court. It is alleged that the 2nd Defendant frequently failed to appear for court hearings, thereby contributing significantly to the delay of the criminal proceedings for eight years.

[31] During the eight years that this matter remained pending in the court system, the Claimant submits that he suffered tremendous hardship. He attended court about twenty-three times which was very inconvenient and expensive and spent USD\$15,000.00 on airfare to return to Dominica to answer the criminal cases.

[32] The Claimant maintains that at all material times, he was lawfully entitled to proceed to the Parliament building, having received an official invitation from the Clerk of Parliament. The 2nd Defendant had no lawful authority to prevent the Claimant from walking along Victoria Street. The Claimant contends that the actions of the 2nd Defendant and the other officer who physically restrained him amounted to an unlawful assault and battery, as well as an unlawful arrest and false imprisonment.

Defendant's submissions

[33] The Defendants rely on their submissions filed on 31 October 2023. They submit that the Chief of Police, as the Licensing Authority under the **Vehicles and Road Traffic Act (VRTA)**,⁷ is authorized to erect barriers on public roads. It is argued that the barriers in question constituted traffic signs under the Act. The Defendants specifically rely on Section 83, Section 2, and Section 4 of the **VRTA**, which identify the Commissioner of Police as the Licensing Authority. Further reliance is placed on Section 12(1)(e) of the **Police Act**⁸.

[34] The Defendants submit that where a deliberate and intentional action is taken with a view to frustrating statutory procedures required of the police, such conduct can amount to the offence of obstruction. Accordingly, they maintain that the Claimant was lawfully charged under Section 36(2) of the **Small Charges Act**⁹, and was lawfully arrested.

[35] It is further submitted that the Claimant was found committing an offence when, in the view of the 2nd Defendant and other police officers, he deliberately ignored the lawful direction of the 2nd Defendant, walked past the barrier (constituting a traffic sign), and entered the restricted area without producing an invitation or pass. This conduct, the Defendants argue, obstructed the 2nd Defendant in the execution of his statutory duty to regulate pedestrian traffic, which is included in the definition of “traffic” under the **VRTA**.

[36] The Defendants also highlight **Section 8** of the **Criminal Law and Procedure Act**¹⁰, in support of their position that the arrest and subsequent charges against the Claimant were lawful.

[37] The Defendants submit that the evidence of the 2nd Defendant is more credible and ought to be preferred over that of the Claimant, particularly regarding the description of events where the Claimant allegedly tried to release himself from the grasp of the police officers and shoved the 2nd Defendant in the chest. The Defendants argue that the weight of the evidence favors their version of events and that the 2nd Defendant informed the Claimant

⁷ Chapter 46:50 Revised Laws of Dominica

⁸ Chapter 14:01 Revised Laws of Dominica

⁹ Chapter 10:39 Revised Laws of Dominica

¹⁰ Chapter 12:01 of the Revised Laws of Dominica (2017),

at the time that he would be arrested for obstruction. The Claimant himself gave evidence that, prior to being taken to the police station, he heard the other two charges with which he would be charged.

[38] It is accordingly submitted that, in all the circumstances, the Claimant must be taken to have known the reason for his arrest. The Defendants rely on the authority of **R v Smart (1952) 6 JLR 132** to support the proposition that knowledge of the reason for arrest may be inferred. Therefore, it is submitted that the arrest of the Claimant was lawful.

[39] Regarding the allegation of **False Imprisonment**, the Defendants maintain that the arrest and subsequent detention of the Claimant were lawful.

[40] On the issue of **Assault and Battery**, the Defendants submit that any force used to arrest the Claimant was lawful, proportionate, and does not amount to assault or battery. It is emphasized that the evidence demonstrates minimal force was used and that the Claimant has not alleged that he sustained any personal injury as a result of the arrest.

[41] On the claim of Malicious Prosecution, the Defendants submit that the actions giving rise to the charges against the Claimant occurred in the presence of the 2nd Defendant. As such, the 2nd Defendant's belief that there was a proper case fit for prosecution was reasonable and genuine, thereby negating the allegation of malice

[42] On the issue of malice, the defedants submit that in a claim for damages for malicious prosecution, it is incumbent upon the claimant to prove that the prosecution was actuated by malice. The Defendants contend that none of the particulars of malice pleaded by the Claimant are supported by the evidence ¹¹adduced at trial. The Defendants therefore submit that they are not liable to the Claimant for any damages or relief at all and that the Claimant's claim should be dismissed in its entirety.

¹¹ (see para 18 (a) - (e) of the Statement of claim

The Issues

[43] Upon consideration of the established facts, the Court is called upon to determine: (i) Whether the Claimant was unlawfully arrested and falsely imprisoned; (ii) Whether the Claimant was assaulted and battered; (iii) Whether the prosecution instituted against the Claimant was malicious..

Resolution of Issue No 1- Whether the Defendant unlawfully arrested and falsely imprisoned the Claimant

The Law and Discussions

[44] False imprisonment occurs where there is the unlawful restraint of a person's freedom of movement without lawful justification. As stated in **Halsbury's Laws of England**¹², the mere fact of restraint constitutes false imprisonment unless the Defendant can justify the detention. Once the Claimant establishes that he was detained, the burden shifts to the Defendant to prove that the detention was lawful. The law further provides that any total restraint of the liberty of the person, for however short a time, by the use or threat of force or by confinement, constitutes an imprisonment. The essence of the claim of false imprisonment is the mere imprisonment. The claimant is not required to prove that the imprisonment was unlawful or malicious as a separate element. Once the claimant proves that he was imprisoned by the defendant, a prima facie case is made out, and the onus lies on the defendant to justify the imprisonment. Thus, for false imprisonment to be actionable, the restriction upon the claimant's liberty must be unlawful¹³.

[45] On the facts as found, it is not in dispute that the Defendants exercised a restraint upon the liberty of the Claimant. The facts not in contention are that on or about the 2nd of June 2011, at approximately 10:00 a.m., the Claimant walked along Victoria Street towards the Parliament building. Barriers had been mounted and were manned by police officers near the roundabout along Victoria Street. At some point, the Claimant walked into the cordoned area and was stopped by the 2nd Defendant and Corporal Bernard Abraham, who

¹² Halsbury's Laws Of England Vol 97 A 2021

¹³ Weldon v Home Office [1990] 3 WLR 465.

questioned him about his destination. The Claimant initially responded by asking, “Why do you want to know?”. The Claimant was directed to proceed along Turkey Lane, which constituted a longer route to the Parliament building. Notwithstanding this direction, the Claimant continued along Victoria Street but was physically blocked by the 2nd Defendant and Corporal Bernard Abraham. The Claimant attempted to continue walking and the 2nd defendant threatened to arrest the Claimant if he moved any further. That there was a scuffle and Corporal Bernard Abraham, grabbed the Claimant's left hand and the 2nd Defendant grabbed the back waist area of the Claimant's pants and dragged him some distance.

[46] Having established the relevant factual background, and the the burden of proof in actions for false imprisonment, the critical issue now to be determined is whether the restraint exercised was lawful. Accordingly, the burden rests on the Defendant to prove that the arrest was lawful, relying on any applicable statutory powers and legal justifications available to police officers. It is also established that an arrest may be effected either with or without a warrant, depending on the circumstances and the statutory authority invoked.

[47] Now, the Defendants in their defense have submitted that the the Commissioner of Police is the Licensing Authority under **section 4 of the VRTA**¹⁴ and is authorised to erect barriers on a public road by virtue of and **Section 12 (1) (e) of the Police Act**¹⁵ which provides;

(1) It shall be the duty of the Police Force to take lawful measures for

...

(e) regulating the traffic upon public through fares and removing obstructions therefrom

It is interesting to note that Traffic under Section 2 of the Vehicles and Road Traffic Act “means vehicles of every description, pedestrians and all animals being ridden, driven or led (my emphasis).

[48] **Section 83 of the VRTA** provide that ;

(1) Subject to subsection (2) the Licensing Authority may cause or permit traffic signs to be placed, erected or otherwise marked on or near any road,

¹⁴ Chap 46:50 Revised Laws of Dominica 2017

¹⁵ Chap 14:01 Revised Laws of Dominica 2017

and may authorize any traffic signs so placed erected or otherwise marked before the coming into force of this Act to be retrieved.

...

(4) Any traffic sign erected, placed, marked or retained on or near any road shall unless the contrary is proved, be deemed to –

(a) have been lawfully erected, placed, marked or retained; and

(b) be of the prescribed type and substantially of the prescribed size and colour, where size, colour and type of the same have been prescribed, and in other cases to be of a character authorized by the Licensing Authority under this Section.

[49] The term "traffic sign" is broadly defined under **Section 2 of the VRTA** as:

"Any object or device (whether fixed or portable) for conveying to traffic on a road, or any particular class of traffic, warning, information, requirements, restrictions, or prohibitions of any description."

This definition encompasses a wide array of devices, from permanent signs to temporary markers, and includes both stationary and movable objects intended to communicate rules, restrictions, or guidance to road users.

[50] The Court accepts the Defendants' submission that, pursuant to Section 4 and Section 83 of the VRTA and Section 12(1)(e) of the Police Act, the Commissioner of Police, as Licensing Authority, was empowered to erect barriers on a public road as traffic signs. "Traffic" under Section 2 of the Vehicles and Road Traffic Act includes pedestrians. Further, the barriers erected on Victoria Street, being intended to regulate movement toward the Parliament building, fall within the statutory definition of traffic signs. Accordingly, the erection of barriers by the Police was lawful and within their statutory powers.

[51] The Claimant, in his testimony before the Court, admitted that he was aware barricades had been erected at the junction leading toward the Parliament building. He contends that he was under no legal obligation to stop walking, arguing that the police have no authority to restrict a person's movement unless effecting an arrest based on reasonable suspicion

of a criminal offence. I find as a fact that the Claimant did, in fact, observe the barriers and yet proceeded to walk through them. He further testified that the 2nd Defendant approached and questioned him about his destination, to which he responded, “*why do you want to know*”¹⁶. Notably, this exchange was omitted from his initial testimony, which casts doubt on the completeness and reliability of his testimony. In his own words, the Claimant testified:

“I started walking and then they said if you don’t stop, I will arrest you, and I didn’t respond. I continued walking and Corporal Abraham held me by my left hand. I am left-handed and had my invitation in my right hand. Inspector Laudah held me by the back of my pants — we call it ‘centure cullot’ — and told me that ‘you are under arrest’”.

[52] This sequence of events demonstrates that the Claimant was not arbitrarily restrained, but rather that his refusal to comply with traffic control measures and engage constructively with the officers resulted in the intervention. The arrest occurred only after repeated warnings and non-cooperation, while officers were attempting to verify his reasons for being in that cordoned area.

[53] Further, the 2nd Defendant testified that he informed the Claimant he was being arrested for obstruction, and proceeded to hold the Claimant by the left hand, while Corporal Abraham held the Claimant’s right hand. According to the 2nd Defendant, the Claimant resisted arrest, managing to free his right hand from Corporal Abraham’s grip. He then used that hand to push the 2nd Defendant in the chest, causing him to lose balance and fall against a flagpole. Notably, the Claimant himself confirmed in his evidence that he heard the 2nd Defendant instruct the police officer transporting him to charge him with “**beat and resist**,” indicating that the allegation of resistance and physical contact was not fabricated.

[54] The Claimant’s conduct, as shown in the testimony, demonstrates that he ignored the instructions and warnings issued by the 2nd Defendant prior to being arrested. His decision to continue walking through a barricaded area, coupled with his resistance during

¹⁶ Paragraph of the witness summary of the claimant

the arrest and physical push against the officer, are material facts that weigh against the claim of unlawful restraint.

[55] At this juncture, two critical legal questions arise; Whether the 2nd Defendant and Corporal Abraham had reasonable and probable cause to arrest the Claimant; and Whether they were legally justified in arresting and detaining the Claimant without a warrant. These questions turn on an assessment of the Claimant's actions at the scene specifically, his failure to comply with traffic control measures, his refusal to cooperate with police officers engaged in their lawful duties, and his active resistance once the arrest process began.

[56] It is well settled that a police officer may, without warrant, arrest a person whom he reasonably suspects of having committed an offence¹⁷ and this is the common law position as seen in **Dallison v Caffery** [¹⁸which held that an arrest without a warrant must be justified by showing reasonable and probable cause. This power is also confirmed by statute and can be found in **Section 8 of the Criminal Law and Procedure Act**¹⁹ provides

(1) Any person found committing an offence punishable either upon indictment or summary conviction, may be immediately apprehended by any constable, or peace officer, without a warrant, or by the owner of the property on or with respect to which the offence is being committed, or by his servant, or any other person authorised by the owner, and shall be forthwith taken before a Magistrate to be dealt with according to law.

(2) For the purposes of this Part the word "constable" includes a gazetted officer or subordinate officer.

[59] The offence that the Claimant was arrested for was obstruction and was subsequently charged under section 36 (2) of the Small Charges Act ²⁰which states

¹⁷ Section 6(1) (a) of the Police Act,

¹⁸ 1965] 1 QB 348

¹⁹ Chap 12:01 of the Revised Laws of Dominica 2017

²⁰ Chap 10:39 of the Revised Laws of Dominica 2017

Any person who assaults or beats or wounds or resists or wilfully obstructs any member of the police service, or any rural or special constable while in the execution of his duty, is liable to a fine of five thousand dollars and three years imprisonment. Provided that the Magistrate may abstain from trying the case summarily and commit the offender for trial for an indictable offence.

[60] The evidence herein, supports the assertion that the police officers were under lawful instructions to restrict access to the Parliament area. The Claimant did not comply with the requests to use the alternative route, albeit a longer route and failed to produce his invitation although he held same in his hands and attempted to pass through a restricted area despite being informed otherwise. The Court accepts the Defendants' account that the Claimant was uncooperative and physically resisted officers. I find that the officers had reasonable and probable cause to believe that the Claimant was obstructing them in the execution of their duties. The Court therefore finds that the Claimant's arrest was lawful under the circumstances and that his detention was not unlawful.

[61] I say so because, in **Christie v Leachinsky**²¹, it was held that it is the constitutional right of every citizen to know why he is being detained, so that he will be in a position to know whether he is entitled to resist the arrest. The claimant states that he was transported to the Roseau Police Station at about 10:30 am and at approximately 3:02 pm, he was handed a copy of his charges and was charged with 3 offences namely; resisting arrest, obstructing a police officer in the execution of his duties, and beating a Police Officer. He was released on bail in the sum of ECD\$6,000.00²² at approximately 3:25 pm and spent about five hours in police custody. This is clearly within the time limit prescribed by The Constitution²³ as he was informed of his reasons of arrest way before the 24 hours prescribed. Based on the evidence at trial, I must say that I prefer the evidence of the defendant with regards to this issue.

²¹ [1947] AC 573

²² Trial Bundle 3 Exhibit C Tab 10

²³ Section 3(2) of The Constitution Of The Commonwealth Of Dominica

Resolution of Issue No2- Whether the Claimant was assaulted and battered;

[62] In resolving this issue at hand, the Court must determine whether the actions of the Defendants, in effecting the Claimant's arrest, amounted to assault and battery. The evidence adduced by the Claimant is that Corporal Bernard Abraham grabbed his left hand while the 2nd Defendant held the back waistband of his trousers and dragged him a distance, thereby subjecting him to assault and battery. The Defendants on their side, argue that any force applied in arresting the Claimant was lawful and does not constitute assault or battery.

[63] The term 'assault' typically implies the application of physical force to the person but, in the law of torts, the actual application of force to the person is not an assault but a battery, and an assault means any act which puts the plaintiff in fear that a battery is about to be committed against him. "For practical purposes today, "assault" is generally synonymous with the term "battery" and is a term used to mean the actual intended use of unlawful force to another person without his consent". See **Fagan v Metropolitan Police Commissioner**²⁴.

[64] The evidence instant indicates that the physical contact between the officers and the Claimant occurred during a lawful arrest and minimal force was used to arrest the Claimant with his hand held and the back of his trousers held and did not result in any injury. In **Collins v Wilcock**²⁵, it was held that reasonable force used in effecting a lawful arrest does not amount to battery. This principle was echoed in **Joseph v The Attorney General of St. Lucia**²⁶, where the Court upheld the lawfulness of proportionate force in similar circumstances. A valid defence to an action for false imprisonment as well as for assault and battery is that the restraint imposed upon the claimant occurred pursuant to a lawful arrest. While the burden lies on the Defendants to prove the lawfulness of the arrest, which burden he has discharged, the evidence supports that only proportionate force was used in response to the Claimant's resistance. Consequently, the claim for assault and battery is without merit and therefore fails.

²⁴ [1968] 3 All ER 442, p 445

²⁵ [1984] 1 WLR 1172

²⁶ SLUHCV2011/0997

Resolution of Issue No 3-Whether the prosecution instituted against the Claimant was malicious;

[65] The Claimant contends that the prosecution initiated against him was malicious and malicious prosecution has been defined as “an abuse of the process of the Court by wrongfully setting the law in motion on a criminal charge”. See *Mohamed Amin v. Jogendra Kumar Bannerjee*.

[66] In *Glinski v McIver*²⁷, the House of Lords clarified the essential elements required to establish a claim for malicious prosecution, emphasizing that a claimant must prove all four elements as follows; (a) the prosecution was instituted by the defendants; (b) the prosecution was determined in the claimant’s favour; (c) there was no reasonable and probable cause for the prosecution; and (d) the prosecution was actuated by malice. To succeed in an action for damages for malicious prosecution, the Claimant must establish all four elements outlined above. Each element will now be considered in turn.

Whether the prosecution was instituted by the Defendants

[67] Firstly, the Claimant must first demonstrate that the Defendant instituted the prosecution, meaning the Defendant must have been "actively instrumental in setting the law in motion" against claimant. It has been held that liability may arise even if the Defendant did not personally prosecute the case, but instead took steps such as laying an information before the court. A person who lays before a magistrate an information is engaged in a prosecution and he may be responsible for the prosecution²⁸. Exhibit B(1), B(2),²⁹ show that charges were indeed laid against the Claimant and on 1st July 2011, the Claimant was brought before the court on charges of willfully obstructing an inspector during the execution of his duties, contrary to Section 36(2) CAP 10.39. The prosecution was formally initiated when the matter commenced on 2nd August 2012 and concluded on 12th March 2019. This element is therefore established.

²⁷ [1962] AC 726

²⁸ *Davis v Noak* (1817) 1 Stark 377.

²⁹ Trial bundle 3 tabs 8 and 9

Whether the prosecution was determined in the claimant's favour

[68] The second requirement is that the proceedings terminated in the Claimants favour. Proceedings terminate in a claimant's favour in a number of ways one of which includes where proceedings are discontinued on the defendant or are abandoned. In this case instant, the magistrate dismissed the case for want of prosecution for the reasons as stated that; *“This matter has dragged on for eight (8) years now and from the record of the Court, the blame lies almost equally on both sides. It is therefore the view of this Court, that to adjourn it further in these circumstances, would be perpetuating an abuse of the Court process and therefore, amount to injustice. Given the view of this Court, no further adjournment will be granted. The charges are all struck out for want of Prosecution and the Defendant is hereby discharged from all complaints”*³⁰. The Magistrate herein had dismissed the case for want of prosecution and while the dismissal was not on the merits, it nonetheless constitutes a valid and effective termination of the proceedings in favor of the claimant. This element is also established.

Whether there was no reasonable and probable cause for the prosecution;

[69] Reasonable and probable cause for a prosecution according to Halsbury's Laws of England³¹ refers to *“ 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 any ordinarily prudent and cautious man, placed in the position of an accuser, to the conclusion that the person charged was probably guilty of the crime imputed”*

[70] The burden of proof here, is not static. Once the claimant has presented sufficient evidence to support their claim, the burden shifts to the defendant. In **Dallison v Caffery, Diplock LJ**³² outlined the test to be applied to determine whether there was reasonable and probable cause for a prosecution, stating: *“A person, whether or not he is a police officer, acts reasonably in prosecuting a suspected felon if the credible evidence of which he*

³⁰ Tab 23 bundle 3-Magistrates Decision

³¹ Tort (Volume 97A (2021)

³² (1964) 2 All E.R. 610

knows raises a case fit to go to the jury that the suspect is guilty of the felony charged. This is what in law constitutes reasonable and probable cause for the prosecution."

[71] The question to address at this stage is whether the 2nd Defendant was satisfied that there was a proper case, fit to be tried, to lay before the court against the Claimant. Having determined under Issue 1 that the Claimant's arrest was lawful under the circumstances, and accepting the Defendants' account that the Claimant was uncooperative and physically resisted the 2nd Defendant and other officers, it is clear that the officers had reasonable and probable cause to believe that the Claimant was obstructing them in the execution of their duties. Therefore, it can safely be concluded that the 2nd Defendant, having been present and witnessing first hand the resistance and obstruction by the Claimant, had reasonable and probable cause to initiate the prosecution.

Whether the prosecution was actuated by malice

[72] For malice to be established, it must be shown that the Defendant was actuated by "malice in fact," meaning that the Defendant's actions were driven by spite, ill-will, or improper motives. See **Halsbury's Laws of England**³³

[73] The essence of malice was described in the leading judgment of **Willers v Joyce** at paragraph 55, which was cited in the case of **Sandra Juman (Appellant) v The Attorney General of Trinidad and Tobago and another (Respondents)**³⁴. The judgment states: ***"As applied to malicious prosecution, it requires the claimant to prove that the defendant deliberately misused the process of the court. The most obvious case is where the claimant can prove that the defendant brought the proceedings in the knowledge that they were without foundation... But the authorities show that there may be other instances of abuse. A person, for example, may be indifferent whether the allegation is supportable and may bring the proceedings, not for the bona fide purpose of trying that issue, but to secure some extraneous benefit to which he has no color of a right. The critical feature which has to be proved is that the proceedings instituted by the defendant were not a bona fide use of the court's process."***

³³ Halsbury's Laws Of England Vol 97 A 2021

³⁴ (Trinidad and Tobago) [2017] UKPC 3

[74] I adopt the sentiments above and apply them to the present case. The Claimant argues that he was singled out for unfair and less favorable treatment due to his perceived political opinion. However, the 2nd Defendant's evidence is that he, along with approximately fifty other officers, received instructions at a police briefing at police headquarters, to allow only persons with invitations to Parliament to enter Victoria Street and to set up a cordon accordingly. I have found no positive evidence to suggest that the 2nd Defendant harbored improper motives towards the Claimant. There is also no evidence linking the Claimant's political views to the actions of the 2nd Defendant at the material time. In fact, the evidence shows that the Claimant walked past the barrier set up on Victoria Street and continued forward, despite being informed by the 2nd Defendant that doing so would obstruct the officer in the execution of his duties. At that point, it is clear that the Claimant committed an offense. When arrested, the Claimant sought to free himself from the officers' grasp, providing reasonable and probable cause for the charges brought against him.

[75] Further, in considering whether the prosecution of the Claimant was actuated by malice, the Court is mindful of the distinction made by the Privy Council in *Sandra Juman v The Attorney General of Trinidad and Tobago*,^{supra}, where it was held: "***A failure to take steps which it would be elementary for any reasonable person to take before instituting proceedings might in some circumstances serve evidentially as a pointer towards deliberate misuse of the court's process, but sloppiness of itself is very different from malice.***" In this case, while the prosecution experienced delay, the Court observed that the delay by the prosecuting authorities went beyond mere negligence. The prolonged delay coupled with the decision to continue the prosecution despite the delay, suggested a disregard for the proper administration of justice. This could support an inference of malice but, it has been established that even if malice is proven, the Claimant will still fail in a claim for malicious prosecution where reasonable and probable cause is established. With this said, having earlier found that the 2nd Defendant had reasonable and probable cause to arrest the Claimant, I find no evidence from which malice can be inferred and I so hold.

[76] In the final analysis, the Claimant has only managed to satisfy two of the four essential elements required to prove malicious prosecution. It is well-established that all four

elements are cumulative and must be proven together for a claim of malicious prosecution to succeed. As earlier posited, to succeed in a claim for malicious prosecution, the Claimant must satisfy all four essential elements of the tort. The burden of proof rests on the Claimant, and as affirmed in *Glinski v McIver*,^{supra}, failure to establish any one of these elements is fatal to the claim.

[77] On a balance of probabilities, the Claimant has failed to prove that his arrest and detention were unlawful or that his prosecution was motivated by malice, as alleged. Accordingly, the Claimant's case fails in its entirety and is hereby dismissed.

[78] On the issue of costs, it is trite law that the successful party is generally entitled to costs pursuant to CPR 64.6(1). However, in the present circumstances, the justice of the case warrants a departure from this general rule as permitted under Rule 64.6(2). Accordingly, I make no order as to costs.

[79] This decision is informed by the clear indication that there was an abuse of the court's process in this matter. It is deeply concerning that proceedings initiated against the Claimant in 2011 were only terminated in 2019, a period of eight years. Such prolonged prosecution, without due diligence or urgency, constitutes a misuse of judicial process. The matter was ultimately struck out by the Magistrate for want of diligent prosecution, underscoring the prosecution's failure to proceed in a timely and responsible manner. The duty to prosecute a case expeditiously and with care rests firmly with the prosecution, failure to do so without a doubt, amounts to an abuse of the court's process. This approach is consistent with the established principle that the award of costs is discretionary and must be exercised in accordance with the overriding objective of dealing with cases justly.

[80] That said, this court is constrained in its findings on this issue as the pleaded particulars did not plead or raise the issue of abuse of process in any paragraph of the pleadings, nor was it advanced in the submissions of counsel. The Claimant's case focused solely on the torts of malicious prosecution and false imprisonment.

[81] It is settled law that a claim alleging abuse of process must be expressly and distinctly pleaded. The opposing party must be given proper notice of such an allegation so as to have an opportunity to respond and as such allegations of abuse of process should not be raised indirectly or by implication. This is because, abuse of court process arises from specific factual circumstances, and where such facts are not clearly disclosed typically through affidavit evidence, a court is not in a position to make a proper finding on that basis.

Disposition

[82] In conclusion therefore, I find as follows:

1. The claim for unlawful arrest, assault and battery by the 2nd Defendant fails;
2. The claim for malicious prosecution also fails;
3. The claim is dismissed; and
4. There shall be no order as to costs.

Justice Zainab Jawara-Alami
High Court Judge

BY THE COURT

REGISTRAR
