

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)**

GRENADA

CLAIM NO. GDAHCV2018/0421

BETWEEN:

LYNDON ROBERTS

Claimant

and

[1] **GRENADA CO-OPERATIVE BANK LIMITED**
[2] **INSPECTOR 117 SHELDON THOMAS**
[3] **WPC 806 FRANCES MC LEAN**
[4] **THE ATTORNEY GENERAL OF GRENADA**

Defendants

Before:

The Hon. Mde. Justice Agnes Actie

High Court Judge

Appearances:

Mr. Nazim Burke for the Claimant

Ms. Deborah St. Bernard with Ssavanna Seales for the bank

Mr. Adebayo Olowu for the Second to Fourth Defendants

2023: June 16
August 9

JUDGMENT

[1] **ACTIE J:** This claim raises the issues of wrongful dismissal, wrongful arrest, false imprisonment, and malicious prosecution.

[2] The claimant was employed as a teller by the bank, when, on 11th November 2013, he experienced a cash shortage in the sum of \$5,444.08 at the closure of business day and was thereafter dismissed on 20th November 2013.

- [3] In an amended claim form filed on 27th July 2022, the claimant claims as against the bank, damages for wrongful dismissal, and as against all the defendants' damages for wrongful arrest, false imprisonment, malicious prosecution, general damages, interest, such further or other relief and costs.
- [4] The claimant contends that he was wrongfully dismissed by the bank with immediate effect, without giving him the required six months' notice in writing or payment in lieu thereof and without affording him an opportunity to offer a defence. The claimant states that the manner in which he was dismissed was abrupt, offensive, harsh, oppressive and contrary to the rules of natural justice, and that same caused him distress.
- [5] The claimant alleges that on or about 15th January 2014, the bank wrongfully and without legal basis or excuse directed and/or procured three officers from the Financial Intelligence Unit (hereafter referred to as "FIU") of the Royal Grenada Police Force to attend his house and arrest him on an allegation that he had stolen the missing funds. The claimant claims that he was taken into custody of the FIU where he was interrogated and released without charge.
- [6] On or about 30th April 2014, the claimant further alleges that he was again arrested at his home by the second defendant on the allegation of stolen money by reason of employment. The claimant avers that he was taken into custody, processed as a prisoner and maliciously and without reasonable and probable cause, charged with stealing the sum of \$5,444.08. On 26th June 2015, the Director of Public Prosecutions discontinued the criminal proceedings against the claimant.
- [7] The claimant contends that he was wrongfully arrested and falsely imprisoned and deprived of his liberty for a period of several hours. The claimant also contends that the bank acted out of spite and malice toward him by causing him to be arrested during the day in the presence of his infant son, subjecting him to humiliation and disgrace.

First Defendant's case

- [8] The bank (hereafter also referred to as “the bank”) denies that its dismissal of the claimant was wrongful. The bank states that its termination of the claimant’s employment was done in accordance with the provisions of the Employment Act which requires two months’ notice as opposed to six months as claimed by the claimant.
- [9] The bank further states that the claimant’s termination of employment was on the basis of an unexplained cash shortage in the sum of \$5,444.08. The bank states that the claimant had a prior breach of the terms of his employment in March 2012 when he admitted to altering the details on a cheque.
- [10] The bank denies that it acted wrongfully or without legal justification or excuse by directing or procuring law enforcement officers as alleged by the claimant. The bank contends that upon the cash shortage and summary dismissal of the claimant, it filed a suspicious activity report with the FIU. The bank denies that it is responsible for any damage or injury to the claimant as alleged.

Second, Third and Fourth Defendants’ case

- [11] The second, third and fourth defendants state that on or about November 2013, a complaint related to an allegation of a possible theft by the claimant was made by senior officials of the bank to the FIU.
- [12] The FIU launched an investigation, interviewed, and obtained statements from the bank’s employees between the period of December 2013 and January 2014.
- [13] On 15th January 2014, the second defendant together with other police officers detained and interviewed the claimant. The second defendant avers that the claimant was detained for about two hours.

- [14] The second, third and fourth defendants state that the claimant was unable to give any explanation or good account of the shortage, and the source of the cash shortage was not discovered.
- [15] On the basis of the claimant's lack of any explanation for the missing funds, the other evidence gathered during the investigation, and after consultation with senior officers of the FIU department, the second, third and fourth defendants aver that there were reasonable grounds to believe that the claimant had stolen the money from the bank. He was arrested and charged with the offence of stealing by reason of employment on 30th April 2014.
- [16] The second, third and fourth defendants aver that it cannot be said that the claimant was falsely imprisoned, or that his arrest and charge were without probable cause or reason.
- [17] The second and third defendants reject that they maliciously and without reasonable cause continued to prosecute the claimant, and deny that the claimant is entitled to relief against them.

Legal Analysis

Whether the claimant was wrongfully dismissed by the bank

- [18] The bank in a letter dated 20th November 2013, dismissed the claimant in purported accordance with **Section 74** of the **Employment Act CAP 89**. Counsel for the claimant submits that the bank has failed to prove that it had a valid reason for terminating the employment of the claimant, and states that the dismissal of the claimant was in contravention of **Section 74** of the **Employment Act**.
- [19] **Section 74** states the following:

“(1) The employment of an employee shall not be terminated by an employer unless there is a valid reason for such termination connected with the capacity or conduct of the employee or based on the operational requirements of the enterprise, or breach of contract of employment or disciplinary rules.”

- [20] The claimant states that he followed all operational protocols established by the bank in the event of a cash shortage, and that other tellers have experienced larger shortages and had not been terminated. The claimant contends that the decision of the bank to terminate his employment was motivated by the bank's desire to end its relationship with the claimant on account of his attempts to unionize workers at the bank, given that such unionization was not desired by management.

Summary Dismissal

- [21] The bank summarily dismissed the claimant and asserts that the basis upon which it terminated the employment of the claimant was the unexplained cash shortage.

- [22] **Section 77 of the Employment Act** states:

"An employer is entitled to dismiss summarily where the employee is guilty of serious misconduct of such a nature that it would be unreasonable to require the employer to continue the employment relationship."

- [23] **Section 2 of the Employment Act** defines serious misconduct as:

"'serious misconduct' means any grave offence which includes, but not limited to unprovoked assault, wilful damage to the employer's property, proven dishonesty, refusal to carry out a reasonable request in accordance with duties"

- [24] In **Henry v Mount Gay Distilleries Limited (Barbados)**¹ it was stated that:

"It is well established that summary dismissal is only justifiable where there has been a breach of one or more duties of the employee and such breach constitutes a repudiation of the contract of employment as being inconsistent with the continued employment of the employee"

- [25] The question as to whether misconduct is such as to justify summary dismissal is a question of fact and degree², and the conduct complained of must be of such a

¹ [1999] UKPC 39

² Henry v Mount Gay Distilleries Limited (Barbados) [1999] UKPC 39

grave and weighty character as to amount to a breach of the confidential relationship between employer and employee³.

- [26] The claimant states that in the present case, the cash shortage was a single and isolated incident and that it ought not to have evoked such a harsh response from the employer. The claimant relies on **Raymond Auguste v Sandy Bay Management Company Limited**⁴ which states that:

“A stern warning letter and reprimand indicating that, should such incident ever recur, it would warrant dismissal would have been more appropriate.”

- [27] The **Raymond Auguste** case concerned an employee’s wilful disobedience of a direct order, in the circumstances of behaviour that was inconsistent with the model employee that the records showed the employee to be, and is distinguishable from the circumstances before this court.

- [28] In the extant case, the bank submits that the claimant had previously received three letters of reprimand for three separate incidents prior to his dismissal. In a letter dated 15th July 2010, Mr Richard Duncan, Managing Director of the bank, issued a letter of reprimand to the claimant in relation to the incorrect loading of cash in the ATM, whereby the claimant accepted full responsibility for the non-compliance with the Bank’s policies and procedures. The second occasion on 10th February 2011, a formal letter of reprimand was issued to the claimant by Marquez Mc Sween, officer in charge, for dishonest conduct in leading his supervisor to believe that he was attending a funeral which he did not attend. Thirdly, in a letter of reprimand dated 13th March 2012, the claimant was suspended for two weeks without for pay for grave and fraudulent misconduct by his collaborative actions in an altered return voucher. The claimant in response to the letter admitted the misconduct and apologized for his transgressions. The said letter cautioned the claimant that management reserved the right to take any action deemed appropriate, including possible termination of employment in the

³ Henry v Mount Gay Distilleries Limited (Barbados) [1999] UKPC 39

⁴ SLUHCv2012/0745

event of any violations of proper conduct or if found guilty of any significant departure from the bank's policies and procedures.

[29] The claimant's witnesses, Ms. Niddica Hankey and Mr. Cordell Louison, former employees of the bank, both stated that it was a fairly common occurrence involving cash shortages/overages experienced by tellers in balancing their accounts at the close of business. The witnesses state that shortages vary between \$50.00 and \$100.00. If the shortage is over \$100.00, the teller is required to do a cash analysis which involves tracing the movement of every note and coin handled by the teller. The witnesses spoke of only one known case of an unexplained shortage in excess of \$5,000.00 which was later discovered to have fallen in a space at the bottom of the cash till.

[30] The position of the claimant is that this breach by way of a cash shortage was essentially insignificant. Ms. Niddica Hankey, who was the immediate supervisor of the claimant at the time of the incident states that cash shortages are normal occurrences. She states that sometimes the problem is resolved on the same day or within days, weeks, months or never resolved. She further states that from the best of her knowledge, it was not the bank's practice to dismiss tellers for cash shortages unless it involved dishonesty, negligence or carelessness resulting in a shortage of a large sum of money which was never unaccounted for or never found. Ms. Hankey further states that in the case of negligence or carelessness and the shortage is not found then, in addition to the measures that may be taken where the shortage is found, the employee may be suspended and, in some instances, may even be dismissed based on the severity of the shortage.

[31] Ms. Hankey did not define what exactly is considered a large sum of money, as well as to put before the court examples of cash shortages for which a teller was dismissed from the bank. None of the witnesses for the claimant mentioned unexplained shortages of any significant sums in comparison to the unexplained cash shortage that the claimant experienced.

[32] The claimant argues that the bank did not conduct a proper investigation and failed to obtain an audit report which is part of its established internal policy in the

event of a significant shortage. The claimant states that there is no evidence to suggest that the bank at any stage prior to his termination resorted to the video tape recordings kept and maintained by the bank's internal security system to determine if the recordings revealed that the claimant had siphoned off monies from his till. The claimant states that presuming that the bank had conducted a proper investigation, the claimant should have been apprised of the results and given an opportunity to be heard before his dismissal.

[33] The bank contends that the trust and confidence between itself and the claimant had broken down at the point of the alleged unexplained shortage of the sum of \$5,444.08 which warranted the dismissal. The bank refers to the decision in **Joshua Fabian v Bank of Nova Scotia**⁵ in which it was held that the employer was justified in its dismissal of the employee taking into consideration that the employee's delinquencies and actions had undermined the trust and confidence which is vital for a proper working relationship between him and the bank.

[34] There are several factors going against the claimant. Firstly, it is the bank's policy to expect cash shortages of no more than the \$100.00. Secondly, there were prior grievances between the claimant and the bank for which the claimant had to be reprimanded and even suspended. Thirdly, Ms. Niddica Hankey, the claimant's supervisor admits that in the case of negligence, carelessness or where the shortage of a significant sum is not found may result in the employee being suspended and even dismissed based on the amount involved, reason and severity of the shortage. The sum in dispute is a substantial amount having regard to the nature of the banking business and the trust and confidence reposed in the claimant as a teller. The court is of the view that the bank was justified in finding that there was a serious breach of the trust and confidence relationship as between employee and employer.

[35] The issue then is whether the claimant was wrongfully dismissed. **Halsbury's Laws of England**⁶ defines wrongful dismissal as:

⁵ Reference No. 6 of 2004

⁶ (2021), vol 41, para 832

“...a dismissal in breach of the relevant provision in the contract of employment relating to the expiration of the term for which the employee is engaged. To entitle the employee to sue for damages, two conditions must normally be fulfilled, namely:

- (1) The employee must have been engaged for a fixed period or for a period terminable by notice and dismissed either before the expiration of that fixed period or without the requisite notice, as the case may be; and
- (2) His dismissal must have been wrongful, that is to say without sufficient cause to permit his employer to dismiss him summarily.”

[36] In **Jupiter General Insurance Co. Ltd v Ardeshir Bomanji Shroff**⁷, it was held that the test to be applied with respect to the second condition for wrongful dismissal is whether the misconduct of the claimant was not such as to interfere with and to prejudice the safe and proper conduct of the business of the company, and therefore to justify immediate dismissal⁸. This test varies with the nature of the business and the position held by the employee.

[37] In the present case, the claimant was employed by the bank under a contract for an indefinite term. The nature of the business with which the employment relationship between the claimant and the bank as a banking institution required trust and confidence in its employees.

[38] The Industrial Court in **Beverly Samuel and the Caribbean Bank Corporation Ltd v Royal Bank of Trinidad and Tobago**⁹ said that:

“a bank is a trustee of the monies of its customers and depositors and as a result it is under a duty to employ only honest employees of the highest standards of honesty and who will perform the best service. If its employees fall short of these expectations they will be pronounced unsuitable, removed and replaced.”

[39] The bank states that management decided to terminate the services of the claimant after analysis of the claimant’s unexplained cash shortage. The misplacement of \$5,444.08 interferes and prejudices the safe and proper conduct

⁷ [1937] 3 All ER 67

⁸ [1937] 3 All ER 67

⁹ Reference No. 36 of 2002 Industrial Court of Antigua and Barbuda

of the bank as a banking institution, especially considering the fact that the claimant could not provide an explanation for such a significant shortage.

- [40] The court is of the view that the bank had sufficient cause to summarily dismiss the claimant whether the missing funds were due to carelessness, negligence or theft. The dismissal of the claimant followed earlier incidents for which the bank deemed the claimant's actions as constituting grave misconduct sufficient to warrant his termination of employment. The claimant was cautioned that any further violations could result in his termination. As a result, the claimant's case against the bank for wrongful dismissal stands dismissed.

Whether the arrest of the claimant on 30th April 2014 was lawful

- [41] **Section 22(3)** of the **Police Act** makes it lawful for the police to detain any person whom he or she believes upon reasonable suspicion to have committed or to be about to commit a criminal offence.

- [42] The interpretation of this power was captured in **Corine Clara v the Attorney General of Grenada**¹⁰ wherein this court held:

"The condition precedent to exercise the statutory power to detain an individual for questioning is whether the police officer at the time of the detention had or believed to have had reasonable suspicion that the detainee had or was about to commit a crime."

- [43] In **Dallison v Caffrey**¹¹ it was held:

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

¹⁰ GDAHCV2013/0514

¹¹ [1965] 1 QB 348

[44] Moreover, in **Everette Davis v The Attorney General of St. Kitts and Nevis**¹², it was stated at paragraph 12 that:

“The test as to whether there is reasonable and probable cause is both subjective and objective. The perceived facts must be such as to allow the reasonable third person and actually cause the officer in question to suspect that the person has committed or is about to commit a crime. It does not matter if the information available to the police leads equally or more to a view that the person may be innocent of the offence, once it leads reasonably to a conclusion that he may have committed, or is about to commit the offence, that is sufficient to ground the arrest. The reasonable police officer is assumed to know the law and possessed of the information in the possession of the arresting officer and would have believed that the claimant was guilty of the offence for which he was arrested. The term ‘reasonable suspicion’ relates to the existence of facts at the time. It does not relate to a perception on the state of the law.”

[45] Following the claimant’s initial detention on 15th January 2014, the third defendant interviewed the claimant and on 23rd January 2014 concluded in her report that “his demeanour did not express any suspicion of theft.”

[46] The claimant submits that the second defendant at the time of executing the second arrest, did not harbour the suspicion that the claimant had committed the offence. The claimant argues that any suspicion that the second defendant may have had was not reasonable.

[47] The fourth defendant argues that notwithstanding that the report submitted by the third defendant to the effect that there is absence of suspicion of theft with regard to the demeanour of the claimant, it matters not that the third defendant did not have reasonable and probable cause to suspect that the claimant had committed the offence of stealing the money in question. The second and fourth defendants further argue that there is no general rule that a police officer must make all practicable inquiries to confirm or dispel his suspicions before making an arrest¹³.

[48] The fact that the investigating officer surmised after the interview that the claimant’s demeanour did not suggest that he committed the offence did not by

¹² SKBHCV2013/0220

¹³ Holtham v COP The Times November 28th 1987

itself exonerate the claimant. The police officer is not the tribunal of facts, the issue in determining whether there was justification for the arrest was based on the report made by the bank for the unexplained disappearance of a significant amount of cash rests with the court. The claimant at the time of the arrest was fully aware as to the reason for which his freedom was being curtailed for a second time.

[49] In **Christie v Leachinsky**¹⁴, Lord Simonds said:

“it is not an essential condition of lawful arrest that the constable should at the time of arrest formulate any charge at all, much less the charge which may ultimately be found in the indictment”.

[50] The plain fact that the claimant was detained and was under compulsion to come to the police station and he knew the reason that this was required of him is sufficient to constitute a valid arrest¹⁵. Accordingly, applying the law to the facts, the court finds that the second arrest of the claimant on 30th April 2014 was lawful.

Whether the second, third and fourth defendants are liable for the false imprisonment of the claimant

[51] False imprisonment is defined in **Hunte et al v Raymond Joseph et al**¹⁶ as:

“... the unlawful imposition of restraint on another’s freedom of movement from a particular place. The elements of the tort are (a) the fact of imprisonment meaning any form of physical restraint and (b) absence of lawful authority to justify that imprisonment.”

[52] The claimant argues that he was imprisoned and that his detention was without lawful authority and justification. The claimant states that he was removed from his home, taken to the Criminal Investigations Department and interrogated for a period of approximately 6 hours before being charged with the offence of stealing by reason of employment and released.

¹⁴ [1947] AC 573, at page 593

¹⁵ *Williamson v AG* 2014 UKPC 29

¹⁶ SLUHCV2017/0068

[53] The fourth defendant states that the claimant was suspected to have committed the offence in question and consequently he was arrested thereby justifying the arrest until bail was granted. The 2nd to 4th defendants submit that once the arrest is lawful there cannot be false imprisonment except where the imprisonment is beyond the time permitted by law. This was so held in **Margaret Joseph v AG**¹⁷ wherein it was stated:

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

[54] The court having found that the arrest of the claimant on 30th April 2014 was lawful, then the claim for false imprisonment must fail.

Whether the second, third and fourth defendants are liable for the malicious prosecution of the claimant

[55] The Privy Council in **Kevin Stuart v Attorney General of Trinidad and Tobago**¹⁸ stated that the tort of malicious prosecution has five elements all of which must be proved on the balance of probabilities by a claimant. To succeed in an action for malicious prosecution, a claimant must establish (1) that the defendant prosecuted the claimant (whether by criminal or civil proceedings); (2) that the prosecution ended in the claimant's favour; (3) that the prosecution lacked reasonable and probable cause; (4) that the defendant acted maliciously; and (5) that the claimant suffered damage.

[56] There is no dispute that the claimant has satisfied the first two limbs of the tort as the prosecution was initiated by the second defendant on 30th April 2014 and was discontinued by the Director of Public Prosecution (hereafter referred to as “the DPP”) on 26th June 2015.

[57] The onus lies on the claimant to establish the absence of reasonable and probable cause and that the prosecution acted maliciously in the prosecution of the case.

¹⁷ (2004) ECSCJ No. 57

¹⁸ [2022] UKPC 53

It is not for the defendant to establish the presence of reasonable and probable cause.

Reasonable and Probable cause

- [58] The reasonable and probable ground of the tort of malicious prosecution has both an objective and subjective element. The objective aspect is whether the officers (in this case the second defendant) had reasonable grounds for bringing the case to court and the subjective aspect is whether the second defendant had the honest belief that the case was a proper case to bring to court. The claimant would succeed on this element if he can prove that second defendant did not have the required reasonable grounds or lacked the required honest belief¹⁹.
- [59] The claimant argues that there is nothing on the evidence that would reasonably cause an objective third party to believe that there existed any causal connection between the arrest of the claimant and the existence of a belief based on reasonable objective grounds that the claimant had committed the crime.
- [60] However, it can be found that on an examination of the statement provided by the bank's employees, documents and procedures of the bank, as well as the interview of the claimant on 15th January 2013, the officer formed the view that since the claimant was responsible for the cash in his possession, as he had the code for his compartment in the vault and the key, the only one with access to his cash till, the electronic system in the bank was functioning properly with no evidence of tampering, then there was reasonable and probable cause to suspect that the claimant may have been responsible for it.
- [61] With respect to the absence of reasonable and probable cause requirement, Lord Devlin in **Glinski v Mclever**²⁰ held that:

“Reasonable and probable cause means that there are sufficient grounds for thinking that the accused was probably guilty but not that the prosecutor

¹⁹ Stuart v AG of Trinidad and Tobago [2022] UKPC 53

²⁰ (1962) AC 726

necessarily believes in the probability of conviction; he is only concerned with the question whether there is a case fit to be tried. Objectively there must be reasonable and probable cause for the prosecution, and the prosecutor must not disbelieve in his case.”

[62] Further, in **Harniman v Smith**²¹ Lord Atkin adopted the definition of reasonable and probable cause given in **Hicks v Faulkner**²² as follows:

“I should define reasonable and probable cause to be, an honest belief in the guilt of the accused based upon 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 the accuser, to the conclusion that the person charged was probably guilty of the crime imputed.”

[63] In **Willers v Joyce**²³ it was held that malicious prosecution:

“... 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 colour 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.”

[64] In order to establish that the prosecution did not have an honest belief in the claimant's guilt, it is for the claimant to provide evidence from which an inference may be drawn as to what the second defendant actually believed.

[65] In November 2013, the third defendant was assigned to investigate a report relating to possible theft of cash by the claimant and conducted interviews with the bank employees between the months of December 2013 and January 2014.

[66] The claimant was first arrested and interviewed on 15th January 2014. The third defendant in her report stated that claimant could not determine what happened

²¹ [1983] 1 All ER 1

²² (1881) 8 QBD 167

²³ (2015) UKSC 43

but suggested other possible some reasons for the shortage such as an overpayment, a transaction not posted, cash paid out and the check or voucher being shredded in error. The third defendant in her report concluded that the claimant's demeanour did not express any suspicion of theft but surmised that liability was on the claimant to account for the missing sum.

[67] It is the evidence that the second defendant was present with the third defendant at the interview. The third defendant was transferred to the traffic department in February 2014, and she handed over her report to her supervisors for review and instructions on the way forward.

[68] The issue is whether the second defendant lacked reasonable or probable cause to prosecute the claimant in light of the report and views expressed by the third defendant.

[69] The second defendant states that he had reasonable suspicion that the claimant stole the money due to the unexplained disappearance of such a significant amount of cash. Mr. Burke for the claimant made much about the fact that the bank did not follow proper internal procedures as it failed to obtain an audit report which is a standard procedure where there is a shortage over the sum of \$250.00.

[70] The court is of the view that the issue whether an audit report was provided is immaterial in the circumstances as it is the evidence that the claimant was in control of his cash for the entire day and a proper cash analysis was conducted. The question is whether the second defendant had reasonable and probable cause and an honest belief in the claimant's guilt. The issue turns on whether it was a proper case to have been laid before the court having regard to all the circumstances.

[71] Lord Kerr in the Privy Council decision in **Trevor Williamson v The Attorney General of Trinidad and Tobago**²⁴ said:

²⁴ [2014] UKPC 29

“11. 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 the proceedings. This requires the proof of a negative proposition, normally among the most difficult of evidential requirements. Secondly, malice must be established.”

At Paragraph 14 it was stated:

“14. On the question of reasonable and probable cause, or the lack of it, a prosecutor must have ‘an honest belief in the guilt of the accused based upon 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 the accuser, to the conclusion that the person charged was probably guilty of the crime imputed’: Hicks v Faulkner (1878) 8 QBD 167, 171 per Hawkins J, approved by the House of Lords in Hemiman v Smith [1938] AC 305, 316 per Lord Atkin. The honest belief required of the prosecutor is a belief not that the accused is guilty as a matter of certainty, but that there is a proper case to lay before the court: Glinski v McIver [1962] AC 726, 758 per Lord Denning.”

[72] Clearly the investigating officer, the third defendant, formed the view that she was not fully convinced that the claimant had stolen the missing funds having regard to various possible reasons given by the claimant for the cash shortage. Both the claimant and Ms. Hankey, a former employee and supervisor of the claimant stated that there could be many reasons for cash shortages other than theft.

[73] The Board in **Trevor Williamson v The Attorney General of Trinidad and Tobago**²⁵ stated to have continued to harbour suspicions even after given an explanation, cannot make an officer’s decision to proceed with the charge obviously unreasonable as:

“16 ... “The rehearsal of that explanation did not establish innocence. It is what an astute police officer would have expected a person who was in fact guilty of the offence to say, although it is, of course, also consistent with innocence. But it does not irresistibly and inevitably lead to that conclusion.”

.....

²⁵ [2014] UKPC 29

“17 This conclusion bears directly on the question whether the prosecution can be inferred to be malicious. Where there is absolutely no basis for suspicion, especially where that is accompanied by an apparent reluctance to proceed with the charge, one might draw such an inference.”

[74] It has commonly been stated that the honest belief must be as to the accused's guilt in respect of the offence charged²⁶. Further the Board **Kevin Stuart v Attorney General of Trinidad and Tobago**²⁷ citing Lord Denning in the House of Lords in *Glinski v McIver*²⁸ states that in establishing guilt the police officer “has only to be satisfied that there is a proper case to be laid before the court”.

[75] Whether malice can be inferred against the prosecution is a matter of fact. The Privy Council in **Kevin Stuart v Attorney General of Trinidad and Tobago**²⁹ states that:

“malice can be inferred from a lack of reasonable and probable cause in a proper case. Malice can be inferred from a lack of reasonable and probable cause and the finding of malice is always dependent on the facts of the individual case.³⁰”

[76] As indicated earlier, the third defendant interviewed the bank officials prior to interviewing the claimant. It was after interviewing the claimant that she formed the view of the claimant's innocence of the charge of stealing. The second defendant arrested the claimant for the missing funds but did not provide any further or fresh investigation after the third defendant's interview given the other possible reasons for the unexplained cash shortage. Further there was a significant delay between the interview in January and the report in February 2014 before the second arrest and charge on the 30th April 2014.

[77] The second defendant did not give any explanation for the delay in charging the claimant neither did he provide evidence of further investigations. The second defendant stated that he formed the view that since the claimant was responsible for the cash in his possession, had the code, was the only person with access and

²⁶ *Herniman v Smith* [1938] AC 305

²⁷ [2022] UKPC 53

²⁸ [1962] AC 726

²⁹ [2022] UKPC 53

³⁰ *Trevor Williamson v The Attorney General of Trinidad and Tobago* [2014] UKPC 29

all the electronic systems of the bank were working properly, then there was reasonable and probable cause to suspect that the claimant was responsible for the unexplained missing cash to justify laying the charge for stealing by reason of employment.

[78] The court taking all the circumstances in the round is of the view that malice can be inferred. Firstly, the interviewing officer, the third defendant, in the presence of the second defendant in January 2014 concluded her lack of honest belief in the claimant's guilt. Secondly, the second defendant without conducting any further investigations laid the charge some months after on the 30th April 2014. Thirdly, the second and third defendants did not appear in court for the nine (9) times the matter was called. The second defendant neither in his witness statement nor at trial proffered any reasons for the delay in proffering the charge and the failure to attend court for all the nine occasions on which the matter was called which eventually led to the discontinuance by the DPP on 26th June 2015 for lack of sufficient evidence.

[79] The appellant in the Privy Council case of **Trevor Williamson v The Attorney General of Trinidad and Tobago**³¹ appeared before the Magistrates' Court no fewer than sixteen times following his initial remand. On all but three of those, the prosecutor failed to appear, and no explanation was given for his non-appearance. Eventually, following yet another failure by the prosecutor to appear, the magistrate dismissed the charge. The Board at Paragraph 17 said:

“This conclusion bears directly on the question whether the prosecution can be inferred to be malicious. Where there is absolutely no basis for suspicion, especially where that is accompanied by an apparent reluctance to proceed with the charge, one might draw such an inference”.

[80] Taking the entire evidence in the round, the court finds that the second defendant lacked honest belief of the claimant's guilt and that the laying of the charge was for some improper motive. The claimant therefore succeeds on the claim for malicious prosecution against the 2nd and 4th defendants.

³¹ [2014] UKPC 29 Para 17

Whether the Claimant's Claim against the Second to Fourth Defendants is Statute Barred

[81] The 2nd to 4th defendants pleaded that the claimant's claim was statute barred pursuant to **Section 2(a) of the Public Protection Act**³² which states that:

"Where any action, prosecution or other proceeding is commenced against any person for any act done in pursuance or execution or intended execution of any statute, or of any public duty or authority, the following provisions shall have effect –

(a) The action, prosecution or proceeding shall not lie or be instituted unless it is commenced within six months next after the act, neglect or default complained of, or, in case of a continuance of injury or damage, within six months next after the ceasing thereof."

[82] The second to fourth defendants argue that **Section 2 of the Public Authorities Protection Act** is applicable as the second and third defendants were exercising a public function as police officers and servants of the crown.

[83] The second to fourth defendants rely on **Sections 26 and 27 of the Crown Proceedings Act**³³:

Section 26 states:

"Nothing in this Act shall prejudice the right of the Crown to rely upon the law relating to the limitation of time for bringing proceedings against public authorities."

Section 27 states:

"(1) This Act shall not prejudice the right of the Crown to take advantage of the provisions of an Act although not named therein; and it is hereby declared that in any civil proceedings against the Crown the provisions of any Act which could, if the proceedings were between subjects, be relied upon by the defendant as a defence to the proceedings, whether in whole or in part, or otherwise, may, subject to any express provision to the contrary, be so relied upon by the Crown."

³² Cap 262

³³ CAP 74

[84] The court in a decision delivered on 24th March 2023 ruled that the first arrest was statute barred and applies the same to the second arrest. The claim having been filed in excess of six months is accordingly protected by **Section 2(a) of the Public Authorities Protection Act** and is statute barred.

[85] In order for the second to fourth defendants to secure the privilege of protection from the **Public Authorities Protection Act**, the conduct of the defendants must be lawful. The court having found against the second defendant that he acted maliciously in prosecuting the claimant cannot therefore benefit from the Act.

Damages

[86] The claimant seeks general damages and alleges that his credit, character and reputation have been greatly injured as he has suffered considerable public scorn, torment and humiliation and also his employment prospects have diminished. The claimant also alleged to have suffered loss and damage, severe shock, mental pain and anguish and considerable torment, inconvenience, and anxiety as a result.

[87] The claimant states that while travelling on public buses, he is openly jeered at and referred to as “the man who thief from Co-op bank”. He states that his neighbours looked at him in disdain and his employment prospects at the local commercial banks and other financial institutions have been rejected or overlooked.

[88] The claimant further states that although surrendering of his passport was not a condition of his bail, he was denied the freedom to leave and re-enter Grenada. Moreover, in his witness statement, the claimant states that on 10th April 2015 he was travelling to Trinidad and Tobago when he was approached by two immigration officers who subjected him to a line of questioning regarding his pending criminal charges. On his return from Trinidad and Tobago, the claimant said he was also apprehended and made to wait. The claimant further states that in September 2015, even after the criminal charges against him had been dismissed, he was approached by Immigration Officers when he was again

travelling to Trinidad and Tobago who apprehended him and questioned him regarding the criminal charge against him. This again occurred on his return from Trinidad and Tobago.

[89] Mr. Howard Pinnock, in a letter dated 5th January 2016, wrote the Passport and Immigration Department advising that the DPP had discontinued the prosecution against the claimant as there was no evidence to justify the continuation of the charge.

[90] The second to fourth defendants failed to provide an explanation as to the rationale behind the claimant's detention during his travel to Trinidad and Tobago, even after the criminal charges against him were dismissed.

[91] It is evident that the claimant experienced injury to his reputation, feelings, indignity and humiliation as a result of the charge being preferred against him for which an award of damages should be awarded. The claimant in submissions provided a lump sum for damages for false imprisonment and malicious prosecution. The claimant having only been successful on malicious prosecutions shall file further submissions in support of the assessment of damages for malicious prosecution.

ORDER

[92] In summary and for the foregoing reasons, it is ordered and directed as follows :

- (i) The claimant's claim for wrongful dismissal against the bank stands dismissed with prescribed costs Pursuant to Part 65.5 (1).
- (ii) The claim against the defendants for wrongful arrest and false imprisonment stands dismissed.

- (iii) Judgment is entered in favour of the Claimant against the second to fourth defendants for malicious prosecution with damages to be assessed, if not agreed.
- (iv) Failing agreement, the claimant shall file and serve further submissions with authorities in support of the assessment of damages on or before September 15, 2023.
- (v) The 4th defendant shall file and serve submissions with authorities in reply on or before 30th September 2023.
- (vi) The assessment shall be conducted on paper unless otherwise directed.

Agnes Actie
High Court Judge

By the Court

Registrar