

**IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
FEDERATION OF ST CHRISTOPHER AND NEVIS
NEVIS CIRCUIT
A.D. 2022**

CLAIM NO. NEVHCV2021/0011

BETWEEN

TIVONNE BRYANT

And

THE ATTORNEY GENERAL OF ST CHRISTOPHER AND NEVIS

Before: **His Lordship Justice Patrick Thompson Jr.**

Appearances: Mr. Eustace Nisbett for the Claimant
 Ms. Rivi Lake and Ms. Eshe Hendrickson for the Defendant

2022: October, 10th
 December, 20th

JUDGMENT

THOMPSON JR. J:

Factual Background:

1. By and large, the facts in this matter are not in dispute. For this reason, the factual background recites the facts as found by this Court in arriving at its decision.
2. In or about June 2014, the authorities (Royal St Kitts and Nevis Police Force (“the Police”) and St Christopher and Nevis Customs Department (“Customs”) had reason to believe that person or persons unknown had brought in contraband at the Vance Amory International Airport (“the Airport”).

3. In June 2014, Travonne Bryant ("Travonne") was a Customs Officer with Customs and stationed at the Airport. At around 5:50 am on the morning of June 14th 2014, Travonne reported for work at the Airport.
4. According to Travonne, at some point¹ before reporting to work that morning he received a call from a childhood friend known as "Money". Money had relocated to St Kitts and told him (Travonne) that someone had sent him (Money) a DVD player and a box of colouring books for his daughter (Money's).
5. Travonne examined the items. The DVD player was in an open bag and while the coloring books appeared to be wrapped they appeared to be coloring books. He exercised his discretion not to charge duty on the items and took the items into his custody.
6. According to Travonne, his brother Travis Bryant ("Travis") had given him a ride to work early that morning. Travonne asked Travis to wait for the package, that is to say, the bag containing the DVD player and box of coloring books. Travonne then gave the package to Travis and told him to take the package home to their parents' house.
7. It is not clear if Travonne told Travis to take the package and place it in a 'junk bus' adjacent to the Bryant family residence at Brick Kiln, Nevis or whether Travis decided to do so of his own volition. In any event Travis was never called as a witness by either side. For what it's worth, the bus belonged to the Bryant family but the land on which the bus was parked did not belong to the Bryant's.
8. Shortly afterwards, a Customs Officer named Bjorn Griffin came to the airport. According to Travonne, Officer Griffin appeared to be searching for something in the customs clearance area. Officer Griffin did not appear to find what he was looking for and made a telephone call.
9. According to Travonne, something did not seem right. He knew that the only package that had been released from Customs on his shift that morning was the one that he gave to Travis. As a result he placed a call to Travis's mobile phone. Travis did not answer him. He then placed a call to Tivonne Bryant's mobile phone ("Tivonne"). Tivonne did not answer. He then placed a call to his parent's home. Tivonne answered that call.
10. Travonne told Tivonne that he should see if Travis had put the package in the 'junk bus' and that if the package was there, then Tivonne should bring the package back to the Airport for him (Travonne). According to Travonne, Tivonne said that he was sleeping but would see what he could do.
11. According to Tivonne he received the call from Travonne and went out to the bus and found a bag in the bus. He retrieved the bag and started walking. He caught a ride that took him halfway to the Airport. Thereafter, he walked the rest of the way to the airport.
12. While Tivonne was making his way to the airport Officer Griffin and Assistant Comptroller Webbe were questioning Travonne about the package. Travonne lied. He told the officers that someone named Ken Brown had come and collected the package at the airport that morning. He did not know

¹ It was never established when this call was received or how Travonne received the call.

Ken Brown and said that Ken Brown told him that he was collecting the package for his sick grandmother.

13. While Travonne was being questioned by the authorities, Tivonne arrived at the airport. Travonne was allowed to speak with Tivonne without the supervision of anyone. Travonne told Tivonne that he did not need the package anymore and that he could take it back to the bus. Tivonne left.
14. According to Mr. Webbe, Travonne then told him that he was ready to talk and then asked Mr. Webbe what penalties would be inflicted on him. He then told Mr. Webbe that he had cleared the package for his friend in St. Kitts known as 'Money' and that he had asked Tivonne to look in the bus for the package and bring it to the airport. According to Mr. Webbe, Travonne told him that he (Travonne) will call Tivonne and let him know that the authorities will collect the package from him.
15. The authorities then immediately left the airport with Travonne in tow. When they got to the Bryant residence, Tivonne was not there.
16. According to Tivonne he was unable to get a ride back so he walked most of the way. It was a 30-60 minute walk so when he was very close to his home he stopped and spoke with a relative and got some water. While speaking with the relative, he got a call from Travonne. Travonne asked him to come home. He complied. When he got home he saw customs officers with dogs in the yard. The officers asked him questions and asked him for the package.
17. He showed the authorities the package and they told him to give the package to Travonne. Tivonne was then told that he was a part of the investigation and would have to go with them. He asked what would happen if he did not go and was told by Mr. Webbe that he would have to go either by will or by force.
18. Travonne and Tivonne left with the officers. They were taken to the Airport. They were questioned separately and Tivonne denied knowledge of the bag and repeated that he was asked by his brother to bring the bag to Customs.
19. Travonne and Tivonne were then taken to a room at the airport where the DVD player was disassembled. A firearm and 21 rounds of ammunition was discovered in the DVD player while the colouring book box contained three clear bags containing a white powdery substance. Unsurprisingly, when that white substance was field tested it was cocaine.
20. The Police then came to the airport and Travonne and Tivonne were taken back to their home at Brick Kiln Village. The house was searched and nothing was found and Travonne and Tivonne were then taken to the Customs Offices at Long Point. They were questioned and they were kept at the Customs Offices until around 8 pm that night when they were transported to the Charlestown Police Station.
21. They were charged and taken before the Magistrate's Court on June 18th, 2018. The Magistrate refused to admit them to bail and they were granted bail by the High Court on July 12, 2018 after a period of 28 days in custody.

22. Tivonne is employed as a Port Constable and was initially suspended from his employment without pay but was paid 50% of his salary until he was reinstated into his employment on 30 April 2019. Tivonne thus claims to be entitled to the remaining 50% of his salary for the period from June 2018 to April 2019.
23. Neither side saw it fit to furnish the Court with evidence as to the dates when Tivonne appeared in the Magistrates Court but everyone is agreed that on 26 January 2020 the prosecution withdrew all of the charges against Tivonne.
24. Tivonne thus initiated these proceedings against the Defendant. He says that the prosecution falsely imprisoned him, maliciously prosecuted him and he seeks damages for these breaches. The Defendant disputes these claims thus necessitating the trial that engaged this Court's attention.

Unlawful Arrest

25. The Police and Customs have wide ranging powers. These include a power of arrest.² Those powers allow the authorities to arrest a person without a warrant if they reasonably suspect that person of having committed an offence.
26. Reasonable suspicion is both subjective and objective and the reasoning of Mr. Justice Ramdhani in the case of Everette Davis v The Attorney General of St Christopher and Nevis is instructive:

"The law gives the police the right to detain and or arrest anyone upon reasonable and probable cause that that person has or is about to commit an offence. 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 the fact at the time. It does not relate to a perception of the law."

27. Applying this reasoning to the facts of the present case, it is clear that there were reasonable grounds to suspect Tivonne of having committed an offence. A reasonable policeman would have had ample grounds for suspecting that at the least, the Bryant brothers (including Travis) were involved in the possible importation and possession of a firearm, ammunition and cocaine. Travonne would have appeared to be most culpable in view of his lies to the Police when taxed and his knowledge of the package and its consignee. Travis would have initially transported the package from the Airport and Tivonne would have brought it back to the Airport from whence Travis placed it and then back home.
28. On that initial objective analysis there were ample grounds for suspecting that the Bryant brothers were implicated in serious criminality. The information available to the Police was unequivocal. Either all or some of the Bryant brothers were engaged in serious criminality. It was thus reasonable to

² See Section 145 of the Customs Act and Section 6 of the Police Act.

arrest and detain them in order to investigate further. On that basis, it beggars belief that no one saw it fit to arrest and detain Travis as well.

False Imprisonment

29. Mr. Nisbett accepts, as he must that if Tivonne was lawfully arrested, his detention pursuant to that arrest was not unlawful. Tivonne complains that in breach of Article 5(2) and 5(3) of the Constitution he was not informed of the charges within 48 hours or brought before the Court within 72 hours respectively.
30. Tivonne's oral evidence on this issue was deficient. He could not recall the day that he was brought to the Magistrate's Court on the first occasion. The Defendant's witness, Inspector Stephens confirmed that Tivonne was first charged on June 17th, 2018 and then charged with further offences on June 18th, 2018 and brought to the Magistrate's Court on June 21st, 2018. The following table puts into chronological context this Court's findings.

Date	Event
Thursday June 14 th , 2018	Tivonne arrested and detained
Sunday June 17 th , 2018	Tivonne first charged
Monday June 18 th , 2018	Tivonne charged with other charges arising from same incident
Thursday June 21 st , 2018	Tivonne attends Magistrate's Court

31. Article 5(2) provides that a person arrested or detained "shall with reasonable promptitude and in any case not later than 48 hours after such arrest or detention be informed in a language that he or she understands of the reasons for his or her arrest or detention." The onus is on the authorities to ensure compliance with Article 5(2). The authorities accept that the charge documents were served on Tivonne on June 17th, 2018. That is clearly beyond the 48 hour period mandated by the Constitution. It is noteworthy that the Constitution does not mandate the service of the written charge. The Constitution only provides that the reason for Tivonne's detention should have been communicated to him. The challenge for the Defendant is that no police officer gave evidence that Tivonne was orally told of the reasons for his detention. In this Court's view, that would have sufficed for the purposes of Article 5(2).
32. This Court has little doubt that Tivonne was aware of the reasons for his detention and arrest. A box that he had been carrying around for well over an hour had been found to contain cocaine, a firearm and ammunition. That box and bag had been opened in front of him. He could have been left in no doubt that his detention was as a result of that discovery. All the same, the onus was on the Defendant to demonstrate that they had in fact complied with Article 5(2) whether in writing or otherwise. The failure do so means that this Court is satisfied that Article 5(2) was breached in respect of Tivonne.
33. Article 5(3) provides that any person who is arrested or detained upon reasonable suspicion of his having committed a criminal offence and who is not released shall be brought before a court without undue delay and in any case not later than 72 hours after his arrest or detention. Tivonne was brought

to the Magistrate's Court 7 days after his initial arrest. No evidence has been brought before this Court to justify or explain why the authorities saw it fit to flout Tivonne's constitutional rights.

34. Tivonne was required to languish in custody at the Charlestown Police Station on Monday June 18th, Tuesday June 19th and Wednesday June 20th before he was brought to the Magistrate's Court on Thursday June 21st, 2018. The authorities therefore saw it fit to impose a further 72 hours detention on Tivonne in addition to the 72 hours that had expired on Monday June 18th, 2018. The fact that no explanation was proffered for this egregious breach suggests that breaches of this nature are the norm. This Court therefore has little difficulty in finding that Tivonne's article 5(3) constitutional rights were also breached.

Malicious Prosecution

35. The elements of malicious prosecution are well settled. The late Chief Justice Wooding in Wills v Voisin (1963) 6 WIR 50 set out these elements as follows:

- (i) That the law was set in motion against the plaintiff by the Defendant on a charge for a criminal offence;
- (ii) That the plaintiff was either acquitted of the charge or it was otherwise determined in his favour;
- (iii) That the prosecutor set the motion in law without reasonable and probable cause; and
- (iv) That in so setting the law in motion the prosecution was actuated by malice.

36. In the present case, all sides are agreed that the first two elements are established. A criminal charge was laid against Tivonne and that criminal charge was determined in his favour when the proceedings were withdrawn on January 26, 2020.

37. This Court, by its findings above, is satisfied that there was reasonable and probable cause for initially setting the law in motion against Tivonne. However, that is not the end of the matter. Prosecutors have a duty to continuously keep matters under review. Each adjournment has the effect of continuing the matter until the next hearing date and as such applications for adjournments should be rigorously scrutinized.³

38. Malicious prosecution is not just limited to the initiation of proceedings but to their continuation. In Thacker v Crown Prosecution Service [1997] Lexis Citation 4461 Lord Justice Kennedy cites the reasoning of Chief Justice Lord Goddard in Timms v John Lewis & Co [1951] 2 K.B. 459 in the following terms:

"It is quite easy to imagine a case in which a person was thoroughly justified in bringing proceedings, and then in the course of the case something comes to light which shows the prosecution to be in fact groundless. Then if the prosecutor insists on continuing the prosecution without at any rate

³ See per Lord Bingham in Hereford Magistrates' Court ex parte Rowlands [1998] Q.B. 110 at pages 127-128.

informing the court of the facts which he has since discovered, he will, I think possibly have no reasonable or probable cause for continuing the prosecution and at any rate will be guilty of malice.”

39. Therefore, the fact that there was reasonable cause for initiating the proceedings does not mean that there was reasonable and probable cause for its continuation. Counsel for the Defendant appeared oblivious to the fact that each adjournment of the matter meant that the matter against Tivonne continued. In their view, the fact that the matter ended without a trial meant that the proceedings ended at a reasonable time. In this Court’s view, this approach belies a fundamental misunderstanding of the criminal process. The onus is on the State to justify initiating and continuing a matter on each subsequent date listed for its continuation.
40. In this regard, it is significant that Inspector Stephens accepted that when the matter was withdrawn against Tivonne in January 2020 nothing had changed. The investigation had not progressed. In cross examination, Inspector Stephens accepted that the last witness statement in this matter was dated June 30th, 2018. Inspector Stephens was not minded to accept that the charges could have been withdrawn at an earlier stage but it is difficult to see why he refused to accept this.
41. There was no evidence before this Court as to any investigative steps taken in this matter. A clear chronology setting out the investigative steps taken and advice requested or received was imperative. Comptroller Webbe was taken by surprise when this Court asked him whether any investigations were conducted in respect of Travis and Inspector Stephens vaguely alluded to ‘some hearsay relating to Travis that went nowhere’. Furthermore, Inspector Stephens was surprised to learn that the bag was retrieved in a bus adjacent to the Bryant property.
42. In this Court’s view, if in the Crown’s view there was a case against Tivonne then it is difficult to see how there wasn’t a case against Travis as well. Travis had had the initial interaction with the bag and Travis had placed the bag in the bus where Tivonne later recovered it. As at June 30th, 2018 the witness statements confirmed that Tivonne had only retrieved the bag from the bus, brought it to the Airport and was on his way home with the bag when he was detained by the authorities. How then does the Defendant justify its decision to continue these proceedings against Tivonne in the Magistrates Court over the course of 2018, the whole of 2019 and into January 2020?
43. The evidence as to the dates of Tivonne’s court appearances in the Magistrate’s Court would have been helpful to either side but neither side saw it fit to assist the Court in this way. Ultimately it is clear that the Defendant opted to continue these proceedings in the Magistrate’s Court against Tivonne from June 2018 to January 2020. Each adjournment of the case during this period meant that the case continued. The burden was on the Crown to show, not that there was reasonable and probable cause to initiate the case but that there was reasonable and probable cause for its continuation.
44. The reasoning of Lord Goddard CJ as set out above is instructive since that reasoning confirms that persisting in a prosecution when there is a change of circumstances can amount to the malice element in a case for malicious prosecution. By that reasoning, insisting on a prosecution, where there is no change of circumstances only to belatedly withdraw same roughly 18 months later can suffice for the absence of reasonable and probable cause. This Court is therefore satisfied that there was no reasonable and probable cause for continuing the prosecution against Tivonne after June 30th, 2018.

Malice

45. As a matter of law, the burden of proving malice rests on Tivonne. Malice is difficult to prove since it requires proof of a negative. Nonetheless in the case of Mitchell v Jenkins [1833] 110 E.R. 908, the Court held that in an action for malicious arrest, malice can be inferred from the want of probable cause.
46. The Privy Council in Williamson v Attorney General of Trinidad and Tobago at paragraph 11 of their judgment cited with approval the reasoning of the Australian High Court⁴ in A v State of New South Wales [2007] HCA 10 at paragraph 91. In this court's view, paragraphs 90-95 of the Australian High Court decision are instructive and are set below in full for their true import and context:
90. *"No little difficulty arises, however, if attempts are made to relate what will suffice to prove malice to what will suffice to demonstrate absence of reasonable and probable cause. In particular, attempts to reduce that relationship to an aphorism - like, absence of reasonable cause is evidence of malice, but malice is never evidence of want of reasonable cause- may very well mislead. Proof of particular facts may supply evidence of both elements. For example, if the plaintiff demonstrates that a prosecution was launched on obviously insufficient material, the insufficiency of the material may support an inference of malice as well as demonstrate the absence of reasonable and probable cause. No universal rule relating proof of the separate elements can or should be stated.*
91. *What is clear is that, to constitute malice, the dominant purpose of the prosecutor must be a purpose other than the proper invocation of the criminal law - an "illegitimate or oblique motive". That improper purpose must be the sole or dominant purpose actuating the prosecutor.*
92. *Purposes held to be capable of constituting malice (other than spite or ill will) have included to punish the defendant and to stop a civil action brought by the accused against the prosecutor. But because there is no limit to the kinds of other purposes that may move one person to prosecute another, malice can be defined only by a negative proposition: a purpose other than a proper purpose. And as with absence of reasonable and probable cause, to attempt to identify exhaustively when the processes of the criminal law may properly be invoked (beyond the general proposition that they should be invoked with reasonable and probable cause) would direct attention away from what it is that the plaintiff has to prove in order to establish malice in an action for malicious prosecution - a purpose other than a proper purpose.*
93. *Two further observations should be made about the element of malice. First, its proof will often be a matter of inference. But it is proof that is required, not conjecture or suspicion. Secondly, the reference to "purposes other than a proper purpose" might be thought to bring into this realm of discourse principles applied in the law of defamation or in judicial review of administrative action. No doubt some parallels could be drawn with the principles applied in*

⁴ The High Court is the apex court in the Australian judicial system. 7 judges, Gleeson CJ, together with Justice Gummow, Kirby, Hayne, Callinan, Heydon and Crennan comprehensively reviewed the law on malicious prosecution in this matter.

those areas. But drawing those parallels should not be permitted to obscure the distinctive character of the element of malice in this tort. It is an element that focuses upon the dominant purpose of the prosecutor and requires the identification of a purpose other than the proper invocation of the criminal law.

- 94 At a time before the development of what now is known as administrative law, significant questions of public law, and of abuse of power by public officials, were determined as issues in tort actions. What may be understood as echoes of the administrative law principles respecting improper purpose in the exercise of a statutory power may sometimes be heard in the reference in the tort of malicious prosecution to improper purposes of prosecutors.
- 95 However, this does not warrant any conclusion that a failure to take account of relevant considerations, or a taking account of irrelevant considerations, would necessarily constitute malice for the purposes of this tort. The tort of malicious prosecution is a private law remedy that is not available to all who have been prosecuted unsuccessfully. It is available only upon proof of absence of reasonable and probable cause and pursuit by the prosecutor of some illegitimate or oblique motive.”
47. The foregoing paragraphs confirm that Tivonne was required to prove the absence of a reasonable and probable cause and the pursuit by the prosecutor of some illegitimate or oblique motive. This Court is satisfied that there was no reasonable and probable cause for continuing the prosecution against Tivonne after June 30th, 2018 but there was no evidence from either side as to the motives of the prosecutor in continuing the prosecution until its termination in January 2020.
48. Malice can however be inferred from the lack of reasonable and probable cause.⁵ At paragraph 77 of the case of Rudall v Crown Prosecution Service [2018] EWHC 3287 it was confirmed that ‘malice can be inferred from an absence of reasonable and probable cause but not from a finding of lack of reasonable and probable cause where there is an honest but unreasonable belief.’ In the present case there is no evidence of any honest but unreasonable belief by the prosecutors that addressed their decision to continue the case against Tivonne.
49. The case of Brooks v Warwick (1818) 171 E.R. 682 is instructive. In that case, the Court held that the pressing of the charge by the defendant against the plaintiff was such a ‘crassa ignorantia’ that it amounted to malice. In that case, the plaintiff had taken a forged bank note into his possession in the ordinary course of his business. The note had come into the plaintiff’s hands after it had passed through other person’s hands and Lord Ellenborough had little difficulty in finding that the decision to press a criminal case for felonious possession of the note against the plaintiff was clearly malicious and £50 pounds⁶ in damages was awarded to the plaintiff.
50. The parallels between Brooks v Warwick and the present case are clear and obvious when viewed in the context of the decision to continue the prosecution against Tivonne. As at June 2018 the state of the investigations (based on the evidence at trial) confirmed that Tivonne was an innocent courier. The bag and its contents were in his physical custody and control but possession also requires proof

⁵ See Williamson v Attorney General of Trinidad and Tobago at paragraph 13.

⁶ The equivalent of £7,033.82 in today’s currency.

of a mental element. There was no evidence upon which the prosecutors could ascribe any intention to possess what was subsequently revealed in the DVD player and colouring books to Tivonne.

51. Critically, there was no evidence to suggest that the bag came into Tivonne's physical custody and control other than he and Travonne had described. If that was correct there was no basis for continuing to prosecute him. This evidence should thus have suggested to the reasonable prosecutor that there was no case for prosecuting Tivonne since if the physical custody and control of the bag was innocently explained that explanation would mean that any intent to possess was also negative.
52. Otherwise, how then would the prosecutors be able to explain the decision to prosecute Tivonne and not Travis? On the evidence, Travis was the one who had initially collected the bag from Travonne. Travis had placed the bag where Tivonne had found it in the 'junk bus' and it was arguable that Travis and Travonne were acting together. With all of those facts to hand, how could a reasonable prosecutor come to the view that it was necessary to prosecute Tivonne and not Travis? The answer to this question leads to the inescapable inference that the prosecutor was impelled to do so by an oblique or illegitimate purpose (per Williamson).
53. In Gibbs v Rea [1998] A.C. 786, a Privy Council decision from the Cayman Islands, the Board had no difficulty finding that the absence of reasonable and probable cause and an improper motive can be proved by circumstantial evidence. For this reason, it was open to the Court of Appeal in the Cayman Islands to find malice and the Privy Council by a majority of 3 to 2 confirmed the Court of Appeal's decision to find malice by inference. In Gibbs v Rea the defence remained silent on the issue of reasonable and probable cause. In the instant case the Defendant failed to adduce any evidence as to the state of mind of the prosecutor on the decision to continue these proceedings against Tivonne.
54. This Court is not second guessing the prosecutor's decision but when one considers the totality of the circumstances and the lack of evidence as to the prosecutor's state of mind this Court is compelled to find that malice is inferentially proved. Despite the failure of both sides to provide evidence regarding the state of mind of the prosecution when deciding to continue the proceedings against Tivonne, this Court is entitled to presume that the prosecutors had properly discharged their functions.
55. This Court tests its reasoning in this way. Assume for the sake of argument that another Bryant sibling or parent had answered the house phone and returned the bag to the Airport. On what basis could the continuation of a prosecution be justified against that person? What if a neighbor or passing acquaintance had been asked to return the bag to the Airport? There was clearly a nexus between the bag and Travonne.
56. The case against Tivonne depended on evidence that Tivonne and Travonne were acting together. In the absence of any such evidence there was no reasonable and probable cause for continuing the prosecution against Tivonne without any evidence to show that he was more than an innocent or unwitting courier. The clearest evidence to confirm this state of affairs is in the fact that Inspector Stephens accepted that nothing changed between the state of the case in June 2018 and January 2020. This Court is compelled to conclude that only some oblique motive could justify the decision to continue the prosecution of Tivonne in those circumstances, particularly where there is no

evidence as to the state of mind of the prosecutors and no reasonable and probable cause for the continuation of the proceedings against Tivonne after June 2018.

57. Tivonne is thus entitled to damages for malicious prosecution.

Damages

58. Damages for malicious prosecution have to fall under at least one of the following three heads of damage.

- (i) Damage to a person's fame such as where the matter he is accused of is scandalous;
- (ii) Damage to a person, such as where his life, limb or liberty is endangered; and/or
- (iii) Damage to property, such as the expense of acquitting himself of the crime with which he was charged.

59. Mr. Nisbett accepts that his client led no evidence from which a Court could find that his client suffered any damage to his fame. Ms. Dorette Bryant, the mother of the Bryant boys was not called as a witness at trial but the reference in her witness statement that she had heard many persons ridicule her sons as bad boys who were involved in guns and drugs would not have assisted Tivonne. In order to assist Tivonne, his mother would had to have said that Tivonne in particular had been ridiculed as a 'bad boy' since it is his fame and not that of the Bryant brothers that is under consideration. The fact that Travonne pleaded guilty to misconduct confirms specific damage to Tivonne's fame was required.

60. Tivonne's statement that his name and picture were on the local news and that he was mocked on the streets as a drug lord does not greatly assist him. It was incumbent on his lawyer to adduce evidence of these online postings to support his client's case. Damages are at large and may include compensation for loss of reputation and injured feelings. This Court accepts that damage to his reputation was a natural consequence of the prosecution being continued against Tivonne but there is no clear distinction between the media coverage that Tivonne's initial arrest would have attracted and its subsequent continuation.

61. In this Court's view, it is the continuation of the proceedings that amounts to malicious prosecution and as such any damages to Tivonne's fame must bear that fact in mind. All the same, this Court is minded to award the sum of EC\$7,500.00 for the damage to Tivonne's reputation that was occasioned by the continuation of these proceedings against him.

62. Tivonne was admitted to bail by the High Court on July 12th, 2018. In this Court's view, Tivonne should be compensated in damages for the loss of his liberty from July 1st to July 12th, 2018. June 30th, 2018 was the date of the final statement taken by the authorities in this matter. There was no evidence before this Court as to any further investigative step that was taken in this matter by the authorities after that date. There was no evidence that the investigation was continuing or what further steps were being undertaken. As at July 1st, 2018 the position was the same as it came to be on January 26th, 2020. Tivonne was thus deprived of his liberty for 12 days because of the decision to continue the prosecution against him.

63. This Court has considered the authorities cited by counsel for Tivonne and is of the view that the sum of EC\$15,000.00 is eminently reasonable for Tivonne's loss of liberty for 12 days. See Millette v McNicolls Civil Appeal No. 14 of 2000 where it was stated that an element of initial shock is to be considered during an assessment of damages for wrongful arrest and false imprisonment. This Court is however satisfied that despite Tivonne's initial arrest being lawful, his detention was unreasonably prolonged. There was no explanation as to why Tivonne's bail application took so long to come on for hearing or whether the reasons for this delay lay with Tivonne, the Court, or his lawyers.
64. Tivonne is also entitled to damages for the expense of acquitting himself of the crime with which he was charged. No retainer agreement or receipt was tendered in evidence which confirmed the sum of EC\$7,500.00 which Tivonne says he was required to pay to his lawyers for the trial in this matter. Tivonne also claims that he paid the sum of EC\$3,000.00 to his lawyers in order to secure bail. In this Court's view, the sum sought for bail cannot reasonably be recovered since Tivonne had been lawfully arrested and detained. Put another way, he would have needed to seek bail irrespective of whatever steps the prosecutor had taken since this Court found that his arrest and detention was legally justified. He cannot therefore recover the sum of EC\$3,000.00 as the cost of the bail application.
65. The paucity of evidence tendered by Tivonne on this issue does not disentitle him to a sum as damages for the costs of having the criminal proceedings terminated in his favour. In this Court's view, the sum of EC\$5,000.00 is eminently reasonable in view of the fact that Tivonne appeared to have made several Court appearances between July 12th, 2018 and January 26th, 2020.
66. Tivonne sought exemplary damages on the basis of the first limb in Rookes v Barnard [1964] A.C. 1129, that is to say, damages for the oppressive, arbitrary or unconstitutional actions by the servants of government. 'Servants of government' should be construed broadly and it is undisputed that same therefore encompasses the Defendant.⁷ This Court is however not persuaded that the actions of the authorities in continuing a prosecution against Tivonne amounted to oppressive and arbitrary actions by servants of the government, in line with Rookes. In Rookes itself, the House of Lords as it then was made a major effort to place limits on the power of awarding said damages. The discretion to award said damages should be carefully exercised and should normally be reserved for breaches that are 'particularly extreme' or 'outrageous'. Awards of exemplary damages should only be made in instances where a compensatory award of damages is inadequate.⁸
67. Tivonne also sought aggravated damages. Unlike exemplary damages which are punitive in nature, aggravated damages are awarded to compensate the claimant when the defendant's motives, conduct or manner of inflicting the injury may have injured the claimant's feelings of dignity and pride. Aggravated damages are awardable for malicious prosecution where the Defendant acted with malevolence or spite or acted in a high handed, malicious, insulting or aggressive manner. Aggravated damages for malicious prosecution are to compensate for injured feelings when a basic compensatory award is inadequate.
68. There is no basis for arriving at such a finding that a basic compensatory award is inadequate. There is no basis for finding on the particular facts of this case that the Defendant by continuing the

⁷ Broome v Cassell & Co Ltd [1972] AC 1027, 1130 (per Lord Diplock)

⁸ See Muuse v Home Secretary [2010] EWCA Civ 453 at paragraph 70

prosecution against Tivonne for 18 months were acting in the manner described above. A court should jealously guard its power to award aggravated damages particularly where there was no evidence from Tivonne as to any of the evidential requirements to justify such an award of damages.

69. Finally, this Court found that the Claimant's constitutional rights under Article 5(2) and 5(3) were breached. These breaches relate to the fact that Tivonne was not informed of the reason for the charges within 48 hours of his detention or brought before the Court within 72 hours of his detention. Tivonne had originally filed a constitutional motion. Pursuant to an order made by Justice Moise on February 15th 2021, Tivonne amended his claim form in order to proceed with it as an ordinary civil claim but in his amended claim form and statement of claim claimed redress for constitutional breaches.
70. In this case, no award of exemplary or aggravated damages was made to Tivonne so there is no scope for duplicating an award of damages for breach of Article 5(2) and 5(3) of the Constitution. Not all breaches of constitutional rights result in awards of damages, especially when said award would lead to duplicity.⁹ This Court has found as a fact that Tivonne was entitled to be told of the reason for his arrest and detention no later than 48 hours after he had been arrested and detained. As Tivonne was not told of his arrest and detention within that stipulated time, his right under Article 5(2) of the Constitution has been breached.
71. It is important however that the breach of Tivonne's right under Article 5(2) is balanced against the facts. What loss, damage or injury did Tivonne suffer as a result of this failure to inform him as to the reasons for his detention? He knew the reason for his detention even if he wasn't told in so many words by the authorities. The failure to serve him with the charge sheet or tell him that he was detained pursuant to the discovery of cocaine and firearm and ammunition that he had just witnessed should not result in an award of damages. This Court therefore acknowledges and declares the breach but declines to award compensation to Tivonne for this breach in these circumstances.
72. The Article 5(3) breach meant that Tivonne was detained for approximately 72 hours longer than was constitutionally permitted. It is often that a breach of a constitutional right will require more than a declaration to that effect.¹⁰ The breach of Article 5(3) in this case should result in an award of damages. Such an award however should not be so large as to be a windfall, nor should it be so small as to be nugatory.¹¹ There is no suggestion that the Defendant is being doubly compensated since his detention was legally justified, albeit up until the expiration of the 72 hours. In this Court's view, damages in the sum of EC\$5,000.00 for this breach is eminently reasonable.
73. Article 5(3) represents an important safeguard. Every citizen is entitled to be taken before the Court without delay. The failure to comply with this guarantee can only result in an award of damages. This Court's jurisdiction to hear and determine private law claims does not oust its jurisdiction to determine whether constitutional breaches are established. Moreover, the Defendant would or should always have known that a breach of Article 5(3) had occurred. Quite why they chose to come to trial on this narrow issue is difficult to understand.

⁹ *Merson v Cartwright et anor (Bahamas)* [2005] UKPC 38

¹⁰ *Attorney General of Trinidad and Tobago v Ramanoop* [2005] UKPC 15; [2005] 2 WLR 1324 at 18

¹¹ See *Fuller (Doris) v Attorney General* (1997) 56 WIR 337, per Patterson JA at 402

74. In view of the foregoing the Claimant is entitled to damages for malicious prosecution as set out below together with his prescribed costs.

(i)	Damages for damage to the Claimant's reputation -	EC\$7,500.00
(ii)	Damages for the Claimant's loss of liberty -	EC\$15,000.00
(iii)	Damages for legal costs in securing acquittal -	EC\$ 5,000.00
(iv)	Damages for breach of Article 5(3) -	EC\$ 5,000.00
	Total	<u>EC\$32,500.00</u>

Patrick Thompson Jr.
Resident High Court Judge

BY THE COURT

REGISTRAR