

**THE EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA**

**IN THE HIGH COURT OF JUSTICE
(Civil)**

SLUHCV2013/0473

BETWEEN:

MIGUEL BAPTISTE ANEVILLE aka MIGUEL ONERVILLE

Claimant

and

THE HONOURABLE ATTORNEY GENERAL

Defendant

Before:

The Hon. Mde. Justice Kimberly Cenac-Phulgence

High Court Judge

Appearances:

Mr. Leon Gokool for the Claimant

Mrs. Tina Louison with Mrs. Rochelle John-Charles for the Defendant

2019: June 5;
July 24;
August 30; (written submissions)
2020: May 4.

JUDGMENT

Background

- [1] **CENAC-PHULGENCE J:** The claimant, Miguel Baptiste Aneville also known as Miguel Onerville ("Mr. Aneville") filed a claim against the Attorney General on 3rd June 2013. That claim sought damages for assault and battery, unlawful arrest, negligence, and malicious prosecution; aggravated and exemplary damages; interest; and costs following an incident which occurred on 3rd June 2010 during

which Mr. Aneville was shot by police officers PC 151 Nehemiah Morille (“PC151 Morille”) and PC 705 Melville (“PC705 Melville”) (collectively referred to as “the officers”). That incident resulted in the amputation of both Mr. Aneville’s legs from the region of the knees. Mr. Aneville was later arrested and charged with the offences of possession of an illegal firearm and ammunition on 14th June 2010.

- [2] By application filed on 17th June 2013, the Attorney General sought an order striking out the claim on the basis that the claim was prescribed pursuant to article 2122 of the Civil Code. The master by decision delivered on 24th August 2015 ruled that the causes of action for assault and battery, negligence and unlawful arrest were all prescribed and extinct and that it was only the claim for malicious prosecution which survived. That decision was not appealed by Mr. Aneville.
- [3] Subsequent to the master’s decision, Mr. Aneville filed an amended claim on 29th September 2015, the claim now being for special and general damages for loss and damage suffered as a result of malicious prosecution and vindictory damages for breach of fundamental rights enshrined in the **Constitution of Saint Lucia**. No specific section of the Constitution is pleaded as having been infringed in the accompanying statement of claim.
- [4] The trial in this matter commenced on 5th June 2019 and was adjourned to 24th June 2019 due to the unavailability of one of the witnesses for the defendant due to medical reasons. On 24th June 2019, when the matter was slated to continue, it was brought to the Court’s attention that there was an outstanding application filed by the claimant which it had not dealt with. The Court noted that this application had been filed on 4th June 2019, the day before the commencement of the trial and that it was not part of the Court’s file. The Court also noted that counsel for the claimant had not sought at any point in the proceedings on 5th June 2019 to bring this application to the Court’s attention. Nonetheless, before proceeding with the continuation of trial on 24th July 2019, the Court dealt with and disposed of the application, which sought an order that (a) I recuse myself from hearing the matter

on the basis of a previous ruling denying an application for leave to file evidence from an expert witness which had not been appealed; (b) for a case stated to be referred to the Court of Appeal on the question of what damages could be recovered in an action for malicious prosecution; (c) the statements sought to be tendered as evidence in the witness statement of Woman Police Constable 300 Roseline Edward ("WPC300 Edward") be deemed inadmissible.

- [5] The application was dismissed in its entirety. I found that the fact that I had ruled against the claimant in a previous application was not a proper basis for seeking my recusal. In any event, the trial was now almost concluded, and no objection had been raised during the course of the trial to my continued conduct of the proceedings. I also found that a case stated was inappropriate and the claimant ought to have appealed my previous ruling denying the application for leave to file expert evidence, which he did not do. He could not now seek to get around that by attempting to file a case stated. The issue of the admissibility of the statements of the other individuals charged along with Mr. Aneville will be dealt with subsequently.

The Claimant's case

- [6] Mr. Aneville alleges that he was arrested and charged with the offences of possession of an illegal firearm and ammunition contrary to section 22(3) of the **Firearms Act**¹ whilst at the Victoria Hospital nursing his wounds after he had been shot. According to Mr. Aneville, the matter was called for a period between June 2010 and December 2010 and the charge was dismissed on 1st December 2010.
- [7] In his amended statement of claim, Mr. Aneville alleges particulars of malicious prosecution, to wit:
- (a) The officers ought to have known that Mr. Aneville did not commit the offences alleged but they maliciously and in bad faith laid the said charges against him knowing that there was no basis for same;

¹ Cap. 14.12, Revised Laws of Saint Lucia 2013.

- (b) The officers concocted evidence to the effect that Mr. Aneville was found in possession of a firearm and ammunition which was found on the floor of a vehicle under the rear seat;
- (c) The officers concocted evidence to the effect that Mr. Aneville was holding on to the front part of PC151 Morille's shot gun;
- (d) The evidence of the officers contained in typewritten statements is the product of complicity and prevarication and the fruits of a conspiracy to pervert the course of justice;
- (e) The officers were reckless in the discharge of their duties as police officers as it related to the arrest, shooting and/or malicious prosecution of Mr. Aneville;
- (f) The officers colluded with each other to fabricate evidence of Mr. Aneville holding on to PC151 Morille's service weapon to create the impression that Mr. Aneville was the aggressor and as such had to be shot so as to prevent threat to life and limb of PC151 Morille;
- (g) The officers colluded and conspired to fabricate evidence that Mr. Aneville was acting in a suspicious manner; that he was seated on the rear seat of the vehicle under which the firearm was found; that he ran off when the police officers shouted "Police, stop"; he thereafter rushed at PC151 Morille and grabbed hold of his service weapon; and PC151 Morille, as a result, feared for his life.

[8] In essence, the officers acted in bad faith towards Mr. Aneville, there being no reasonable and probable cause for arresting him, and falsely and maliciously created a scenario in order to provide justification for their illegal actions in using excessive force in shooting him. Mr. Aneville also alleges several particulars of bad faith which will be dealt with at the appropriate time.

The Defendant's case

[9] The defendant denies the claimant's claim and the particulars of malicious prosecution alleged by Mr. Aneville. Specifically, the defendant avers that the evidence of its servants or agents of Mr. Aneville's involvement in the incident on 3rd June 2010 was a true account of the circumstances as they unfolded at the

material time. The defendant further avers that its servants or agents had reasonable and probable cause for laying and instituting the charges that they did against Mr. Aneville. The defendant contends that there was reasonable belief that the firearm and ammunition retrieved from the vehicle belonged to or were in the care or control of Mr. Aneville. The defendant also avers that any alleged injury suffered by Mr. Aneville was not as a consequence of any prosecution of Mr. Aneville but was a direct result of his own illegal actions. Further, the causes of action for assault, battery, unlawful arrest and negligence, having been struck out as being prescribed, cannot form the basis for any alleged loss and damage as claimed.

Issues

- [10] The issues for determination on a claim for malicious prosecution are well settled and as relate to the instant claim are as follows:
- (a) Whether Mr. Aneville was prosecuted?
 - (b) Whether the prosecution terminated in Mr. Aneville's favour?
 - (c) Whether the prosecution lacked reasonable and probable cause?
 - (d) Whether the prosecution was actuated by malice?
 - (e) If malicious prosecution is established, whether Mr. Aneville is entitled to damages as claimed?

Issue (a) Whether Mr. Aneville was prosecuted?

Issue (b) Whether the prosecution terminated in Mr. Aneville's favour?

- [11] These two issues can be easily disposed of. It is undisputed that Mr. Aneville was charged with the offences of possession of a firearm without a licence or permit and eleven rounds of ammunition contrary to section 22(3) of the **Firearms Act**.
- [12] It is trite that proceedings terminate in a claimant's favour if a magistrate dismisses the charge.² In this case, it is not disputed that on 1st December 2010, the said charges against Mr. Aneville were dismissed by the Magistrate in the First District

² Delegal v Highley (1837) 3 Bing NC 950.

Court.³ Mr. Aneville has therefore satisfied the first two limbs of the requirements to prove malicious prosecution.

Issue (c) Whether the prosecution lacked reasonable and probable cause?

The Law

- [13] The claimant must prove that the defendant had no reasonable and probable cause for initiating and maintaining the prosecution. In the House of Lords case of **Herniman v Smith**,⁴ Lord Atkin approved and adopted the definition of reasonable and probable cause given in **Hicks v Faulkner**⁵ as follows:

“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 charge imputed.”

- [14] In **Glinski v McIver**,⁶ Lord Devlin said that reasonable and probable cause means:

“that there must be cause (that is, sufficient grounds; ...) for thinking that the plaintiff was probably guilty of the crime imputed... This does not mean that the prosecutor has to believe in the probability of conviction: ... The prosecutor has not got to test the full strength of the defence; he is concerned only with the question whether there is a case fit to be tried.”

- [15] Objectively, there must be reasonable and probable cause for the prosecution, and the prosecutor must not disbelieve in his case. It is not required of any prosecutor that he must have tested every possible relevant fact before he takes action. His duty is not to ascertain whether there is a defence, but whether there is reasonable and probable cause for a prosecution.⁷

³ See extract of conviction in relation to case nos. SLUCRD2010/0705 and SLUCRD2010/0705A.

⁴ [1983] AC 305, 316.

⁵ (1878) 8 QBD 161,171.

⁶ [1962] AC 726, 766-767.

⁷ *Herniman v Smith* [1938] AC 305 at 319 per Lord Atkin; *Glinski v McIver* [1962] AC 726.

- [16] The salient question therefore is whether the facts admittedly known to and believed by WPC300 Edward when she launched the prosecution furnished her with reasonable and probable cause for doing so. If the prosecutor knew or thought he knew certain facts, it matters not that those facts turn out to be false. The defendant can claim to be judged not on real facts, but on those which he honestly, and however erroneously, believes; if he acts honestly upon fiction, he can claim to be judged on that.⁸ The belief in the existence of such facts as would justify a prosecution, or the belief in the accused's guilt, may arise out information furnished to him by others and accepted by him as true.⁹
- [17] There may be reasonable and probable cause for proffering a criminal charge even though the prosecutor has before him only prima facie evidence,¹⁰ or such as might not be admissible before a jury,¹¹ and the question will be whether the impression produced on the mind of the prosecutor by the facts before him was such as would be produced on the mind, not of a lawyer, but of a discreet and reasonable man.¹² In **Bradshaw v Waterlow & Sons Ltd.**,¹³ the Court of Appeal held that the absence of corroboration of an accomplice's statement is not evidence of want of reasonable and probable cause.
- [18] Whether there is reasonable and probable cause must be addressed in the context of the facts and circumstances which existed at the time of the institution of the prosecution and is a question of fact. The test has both a subjective and objective element.

⁸ Glinski v McIver [1962] AC 726, at 776 per Lord Delvin.

⁹ Hicks v Faulkner (1881) 8 QBD 167 at 173. A prosecutor is entitled to act upon reasonable hearsay evidence (Chatfield v Comerford (1866) 4 F & F 1008).

¹⁰ Glinski v McIver [1962] AC 726.

¹¹ Hicks v Faulkner (1881) 8 QBD 167, DC (affd (1882) 46 LT 130, CA).

¹² Lister v Perryman (1870) LR 4 HL 521.

¹³ [1915] 3 KB 527.

Evidence in Chief

Mr. Aneville

- [19] Mr. Aneville's evidence is that on 2nd June 2010 he was standing on Chapel Street in Gros Islet when a marked police vehicle stopped and a group of police officers including PC151 Morille and PC705 Melville disembarked and rushed violently in his direction. On seeing PC151 Morille approaching with a gun in his hand, Mr. Aneville ran off as he feared being shot. He says he had heard that PC151 Morille was a 'dread' officer. Mr. Aneville said the officers gave chase and eventually caught up with him. He describes being shot by PC705 Melville in his left thigh whilst his hands were up in the air and then being shot in the same left thigh by PC151 Morille. Then he was shot in his right foot by PC151 Morille after he had fallen to the ground. He says he was questioned about the gun he had on him; and he was searched but nothing was found. Mr. Aneville says he never held on to PC151 Morille's firearm. Mr. Aneville was subsequently transported to Victoria Hospital where he was treated.
- [20] Mr. Aneville's evidence is that at no time was he seated in any vehicle as he was on Chapel Street when he saw the officers. He denies having ever been in possession of any firearm or ammunition that night or having any knowledge that there was any firearm or ammunition on any vehicle that night. He denies being a passenger on motor vehicle M82 that night. Mr. Aneville denies knowing Sergovich Marvus Johnson, Bennet Leriche and Thaddeus Laurent and says he was never in their company that night.
- [21] Mr. Aneville says he was arrested and charged at Victoria Hospital with the offences of possession of an illegal firearm and ammunition but does not provide any further details of his arrest. Mr. Aneville's evidence is that the prosecution was without reasonable and probable cause and was instituted maliciously to cover up the illegal and disproportionate use of force which the officers used that night. Mr. Aneville says he is permanently disabled as a result of the malicious prosecution and requires constant medical care.

PC151 Morille and PC705 Melville

- [22] PC151 Morille along with PC705 Melville were part of a squad of police officers on mobile patrol in the Gros Islet area on the night of 2nd June 2010. PC151 Morille had cause to approach a minibus registration number M82 ("the vehicle") and noticed four men on board the vehicle shuffling in a suspicious manner. He also noticed one man seated at the back of the vehicle wearing a hooded jacket and asked the men to disembark the vehicle to be searched. Three of the men disembarked the vehicle and lined up to be searched whilst the man in the black hooded jacket ran off. PC 151 Morille immediately gave chase armed with his shot gun. He recounts in his evidence that he eventually met up with the man who suddenly ran up to him and grabbed the shot gun and tried to pull it from him. A tussle ensued and all the while the man kept holding on to the shot gun and PC151 Morille says he repeatedly asked the man to drop the shot gun.
- [23] PC705 Melville then approached and shouted to the man to drop the weapon but he still refused. PC151 Morille says he heard a shot fired and the struggle continued, and his shot gun went off. He says he was eventually able to fire one shot gun round at the man and he fell to the ground. The emergency department was called, and it was whilst waiting for the ambulance that PC151 Morille says the man identified himself as Miguel Aneville. After Mr. Aneville was taken to hospital, PC151 Morille says he noticed the vehicle leaving the scene and he along with other officers gave chase. They eventually caught up with the vehicle and its three occupants on the Gros Islet Highway near the Shell Gas Station.
- [24] A search was conducted of the three occupants of the vehicle and nothing illegal was found on their person. A search was conducted of the vehicle in the presence of the three men and one .22 long rifle was recovered from under the rear seat where PC151 Morille had said he observed Mr. Aneville had been sitting when he had first asked the occupants of the vehicle to disembark on Chapel Street. A total of eleven (11) rounds of ammunition were also recovered from the rifle.

- [25] The three men were all arrested and escorted to the Gros Islet Police Station by PC705 Melville and a report made to the diarist of possession of firearm and ammunition by Mr. Aneville.
- [26] PC705 Melville's evidence confirms that whilst he and other officers were conducting searches of other individuals in the area of Chapel Street, he noticed an individual wearing a black hooded jacket running away from PC151 Morille. He says PC151 Morille gave chase shouting to the individual to stop. PC705 Melville ran in the direction PC151 Morille had headed and could hear PC151 Morille shouting 'Police, stop' repeatedly. He eventually caught up with PC151 Morille and the man who was holding on to and pulling PC151 Morille's gun. He says he shouted, 'Police, drop the weapon' but the wrestle continued. PC705 Melville says he feared for his life and that of his colleague and therefore discharged one round of ammunition in Mr. Aneville's direction, but he continued holding on to the weapon. He says he heard the shot gun go off twice and then saw Mr. Aneville fall and he dropped the weapon.
- [27] PC705 Melville's account of what transpired with respect to the pursuit and search of the vehicle is as recounted by PC151 Morille. PC705 Melville says that on 3rd June 2010 he met with WPC300 Edward, spoke to her, and handed over the sealed exhibit bags which contained the firearm and ammunition recovered in the presence of the three men who were the occupants of the vehicle when the items were taken.

WPC300 Edward

- [28] WPC300 Edward was on duty at the Gros Islet Police Station on 3rd June 2010 at about 12:15 a.m. when a report of possession of firearm and ammunition was referred to her for investigation. She says she met Thaddeus Laurent, Sergovich Marvus Johnson and Bennet Leriche in custody at the Gros Islet Police Station. WPC300 Edward says she carried out investigations into the matter and received police witness statements including statements from PC151 Morille and PC705 Melville.

- [29] On 4th June 2010, WPC300 Edward says Thaddeus Laurent was charged in the presence of his lawyer for the offences of possession of firearm and ammunition. Thaddeus Laurent offered to give a statement which she recorded on the prescribed 'statement under caution' form in the presence of his lawyer. According to WPC300 Edward's evidence, on that same day, Sergovich Marvus Johnson and Bennet Leriche were similarly charged in the presence of a Justice of the Peace and statements were recorded from them on the prescribed form in the presence of the Justice of the Peace.
- [30] On 14th June 2010, WPC300 says she met Mr. Aneville at the Gros Islet Police Station and informed him that she was investigating two charges against him, namely possession of a firearm and possession of ammunition. She says she cautioned him, and he remained silent. He was informed of his rights as a prisoner in custody and was then charged for the said offences in the presence of a Justice of the Peace.
- [31] WPC300 Edward says based on the evidence which she received during the course of her investigations which included police witness statements, statements under caution of the accused persons and the physical exhibits, all four of the accused, namely Miguel Aneville, Sergovich Marvus Jognson, Bennet Leriche and Thaddeus Laurent were jointly charged for the offences of possession of firearm and of ammunition. WPC300 Edward's evidence confirms that the charges against Mr. Aneville were dismissed as a result of the absence of witnesses.
- [32] The statements under caution were exhibited to WPC300 Edward's witness statement. At the commencement of the trial, counsel for the defendant, Mrs. Tina Louison ("Mrs. Louison") brought to the Court's attention the fact that the statement under caution of Mr. Aneville had been omitted from the trial bundle. Counsel for the claimant, Mr. Leon Gokool ("Mr. Gokool") objected to the statement on the basis that Mr. Aneville denied that the statement was his; it was not his handwriting and it was taken at a time when he was unconscious. Mrs. Louison's position was that

the statement was being relied on to establish reasonable and probable cause and also to be able to put prior inconsistent statements made by Mr. Aneville to him. At the conclusion of this intervention, I allowed the statement under caution of Mr. Aneville to be admitted as it had been disclosed by the defendant during standard disclosure and had not been objected to by the claimant before trial. Given the purpose for which the defendant sought to rely on the document, it was admissible. Further, there was no evidence from the claimant to support his contention that the statement was taken at a time when he was unconscious or that the signature on the statement was not his.

[33] As previously alluded to, Mr. Gokool had made application to exclude the statements under caution of the other three accused persons. His contention was that in civil proceedings the defendant could not rely on the statements of co-accused charged for the very offences to show reasonable and probable cause as they would not have been able to use the statements of co-accused persons in the criminal trial. He also submitted that the statements had been obtained in contravention of the law and that the claimant was never confronted with them. He did not say what law had been contravened, nor did he indicate the authority to support his contention that the claimant as a co-accused had to be confronted with the statements of the other co-accused.

[34] Mrs. Louison in answer indicated that the statements of the co-accused were not being relied on for their truth but simply to show that this was the evidence that the investigating officer would have gathered prior to instituting the charges and which would have informed whether there was reasonable and probable cause for the laying of charges. The evidence was not automatically inadmissible as it was up to the prosecution to decide how it would proceed with prosecution of the matter subsequent to charge.

[35] At the conclusion, the Court ruled that the statements under caution taken from the three co-accused were admissible. The statements were being relied on to show the basis for the prosecution. The claimant showed nothing which established that the statements had been obtained in contravention of the law. The fact that the statements may be inadmissible in a criminal trial does not mean that they were obtained in contravention of the law. The Court found that the statements were being admitted to show reasonable and probable cause and not that the statements were true. In addition, the Court found that the statements were disclosed since 30th August 2018 and there had been no objection to them by the claimant. Objection was not even taken at the point of preparation and filing of the trial bundle and also was not raised on the first day of the trial.

[36] The cases referred to by Mr. Gokool dealt with admissibility of evidence of co-accused at criminal trials and were therefore not applicable to these circumstances. The statements were being relied on to support the defendant's position that it had reasonable and probable cause for proffering the charges against the claimant and as such were deemed admissible.

Cross-examination:

Mr. Aneville

[37] In cross-examination, Mr. Aneville confirmed the reason he said he ran when approached by the police, which was based on PC151 Morille's reputation. He therefore admitted that he had run off when approached by the officer. He indicated that on the 2nd June 2010 he was at Maynard Hill with his friend Marvellous. He confirmed that he was wearing a black hooded jacket which is consistent with PC151 Morille's evidence. Mr. Aneville in cross-examination said that Marvellous' friend came by on board a minibus. There were two persons on the minibus apart from the driver said Mr. Aneville. He admitted that he and Marvellous boarded the minibus and they eventually went to Gros Islet. He claimed that he never saw the police officers in the police vehicle nor did he observe them searching persons in

the area. Mr. Aneville insisted that he was not on the minibus when the police approached the minibus and that he was standing on the road.

[38] Although Mr. Aneville sought to deny that he had given a statement to the police, in cross-examination, he said he was asked some questions by the police the following day at the hospital but he did not give a statement. He accepted that the police recorded the answers he gave in writing. He said he did not sign the document, that the police did not read over what he had written to him. When asked whether he ran away when the police had indicated that they wanted to search him, Mr. Aneville said the police had indicated they wanted to search everybody.

[39] In cross-examination, Mr. Aneville agreed that he was charged on 14th June 2010 at the Gros Islet Police Station. However, in his evidence in chief, he had said he had been charged at hospital. Mr. Aneville said he could not recall whether he had been shown the firearm and ammunition that had been recovered in the presence of a Justice of the Peace but then agreed that it was probable that it had been shown to him. Mr. Aneville admitted that he was aware that the police officers on the scene had given statements against him, that other persons had been charged and that they had given statements to the police and that he was aware of the evidence that the prosecution had against him.

PC151 Morille

[40] The majority of the cross-examination of PC151 Morille centered on what had been recorded in the station diary on the night of the incident. I do not consider though that this has any bearing of the issues to be decided in the case. PC151 Morille gave a statement under caution as part of the investigation process and this is what is relied on as part of the basis for the prosecution. PC151 Morille completely denied Mr. Aneville's version of events and was adamant that his version of events is what transpired.

WPC300 Edward

- [41] Cross-examination of this witness commenced at about 12:50 p.m. and was suddenly brought to an abrupt end by Mr. Gokool who indicated to the Court that it was his understanding that there was another matter scheduled for 2:00 p.m. The Court enquired of him how much time he required to complete his cross-examination to which he responded two hours. The Court did express its surprise that counsel required that much time. However, no indication was given that counsel would not be given the time he required to complete cross-examination. Mr. Gokool then indicated that he would not cross-examine any further if he could not get the time he indicated and that he would be doing his closing submissions. At this point the Court indicated that it would make the determination as to what would happen to the scheduled 2:00 p.m. matter and that this was not a matter for counsel. The Court invited Mr. Gokool to reconsider his position and continue with his cross-examination and he declined. The behaviour displayed by Mr. Gokool was highly improper and is certainly not behaviour to be countenanced by the Court.

Closing Submissions

- [42] The claimant's closing arguments span some 120 pages. I have attempted as best as I could to distil what I believe are the salient contentions of the claimant for the purposes of this decision.
- [43] In closing submissions, counsel for the claimant seeks to say that the defence should have stated in detail the basis for the prosecution and offends Part 10 of the **Civil Procedure Rules 2000** ("CPR") in that it does not set out the defendant's case. In the words of counsel for the claimant, "there was no factual template on which the defendant asserted that it had reasonable and probable cause for the prosecution and that it was without malice."¹⁴ However, the purpose of pleadings was examined in the case of **Eastern Caribbean Flour Mills Limited v Ormiston Boyea et al.**¹⁵ In that case Barrow J.A. said:

¹⁴ Page 20 of the Claimant's closing submissions.

¹⁵ SVGHCVP2006/0012, delivered 16th July 2007 at paragraph 43.

“The position, as gathered from the observations of both their Lordships, is that the pleader makes allegations of facts in his pleadings. Those alleged facts are the case of the party. The “pleadings should make clear the general nature of the case,” in Lord Woolf’s words, which again I emphasize. To let the other side know the case it has to meet and, therefore, to prevent surprise at the trial, the pleadings must contain the particulars necessary to serve that purpose. But there is no longer a need for extensive pleadings, which I understand to mean pleadings with an extensive amount of particulars, because witness statements are intended to serve the requirement of providing details or particulars of the pleader’s case.”

[44] Barrow JA quoted from Lord Hope at paragraphs 49 and 50 of the case of **Three Rivers District Council v Bank of England (No. 3)**,¹⁶ where the learned justice said as follows:

“49. In my judgment a balance must be struck between the need for fair notice to be given on the one hand and excessive demand for detail on the other. In *British Airways Pension Trustees Ltd v Sir Robert McAlpine & Sons Ltd* (1994) 72 BLR 26, 33-34 Saville LJ said:

“The basic purpose of pleadings is to enable the opposing party to know what case is being made in sufficient detail to enable that party properly to prepare to answer it. To my mind it seems that in recent years there has been a tendency to forget this basic purpose and to seek particularisation even when it is not really required. This is not only costly in itself, but is calculated to lead to delay and to interlocutory battles in which the parties and the court pore over endless pages of pleadings to see whether or not some particular point has or has not been raised or answered, when in truth each party knows perfectly well what case is being made by the other and is able properly to prepare to deal with it.”

50. These observations were made under the old rules. But the same general approach to pleadings under the CPR was indicated by Lord Woolf MR in *McPhilemy v Times Newspapers Ltd* [1993] 3 All ER 775, 792J-793A:

“The need for extensive pleadings including particulars should be reduced by the requirement that witness statements are now exchanged. In the majority of proceedings identification of the documents upon which a party relies, together with copies of that party’s witness statement, will make the detail of the nature of the case the other side has to meet obvious. This reduces the need for particulars in order to avoid being taken by surprise. This does not mean that pleadings are now superfluous. Pleadings are still required to mark out the parameters of the case that is being

¹⁶ [2001] UKHL 16.

advanced by each party. In particular they are still critical to identify the issues and the extent of the dispute between parties. What is important is that the pleadings should make clear the general nature of the case of the pleader. This is true both under the old rules and the new rules.”

- [45] Counsel for the claimant also submitted that the fact that, on the facts, the claimant had committed an assault against a police officer and was not charged for that offence was proof that there was no reasonable and probable cause. However, the mere fact that the claimant was not also charged for assault does not in any way prove that there was a lack of reasonable and probable cause to charge him with the offence of possession of firearm and ammunition.
- [46] The claimant contended that the documents relied on were not attached to the defendant’s defence. However, based on the dicta in **Eastern Caribbean Flour Mills Limited**, that would not have been necessary given the purpose of the pleadings. In addition, the documents were disclosed as part of standard disclosure and the claimant would therefore have been fully aware of what information or evidence had been gathered during the police investigation. The fact that the statements were not appended to the defence is not fatal.
- [47] It must be remembered that the defendant is not required to prove the facts which are alleged. It must only produce evidence to show the basis for the having reasonable and probable cause. The notion that the Director of Public Prosecutions must be the one to give instructions to charge is not supported by the case of **Alexander Jules et al v The Attorney General** as submitted by the claimant. In **Alexander Jules**, advice had been sought from the Crown Prosecution Service before proffering the charges against the claimants and the point was made that that was a relevant, but not conclusive, factor in negating an allegation of absence of reasonable and probable cause.
- [48] The closing arguments of the claimant to my mind resemble closely the arguments which would be necessary in a criminal trial to show that the Crown had not proven

its case against the defendant beyond a reasonable doubt. Some of what the claimant suggests should have been part of the defendant's evidence go beyond establishing reasonable and probable cause, and would amount to proving the actual case in the criminal trial.

[49] The submissions fail in my opinion to acknowledge that there is no need for a prosecutor to prove all the elements of the offence in order to establish reasonable and probable cause. In this vein, there would have been no need for the defendant to have provided any evidence from a ballistic or forensic expert in this matter that the objects seized were in fact firearm and ammunition as the claimant contended in his closing arguments.

[50] The claimant, in closing submissions, submitted that there is no rule of law which permits a tribunal, in the absence of pleadings which would have identified the grounds upon which reasonable and probable cause was founded at the time of instituting the prosecution and upon which an honest belief in the guilt of the claimant was reached, to use documents or material which the prosecutor had at the time of the inauguration of the prosecution, to say that the defendant must have had reasonable and probable cause and an honest belief.

[51] The claimant similarly contended in his submissions that the statements under caution were not mentioned in the defence and that this is fatal and should not have been produced at trial. However, these documents were all disclosed and referred to in WPC300 Edward's witness statement and are part of the evidence of the defendant. In respect of both these complaints about the level of detail of the pleadings contained in the defence, I would again refer to the dicta in **Eastern Caribbean Flour Mills Limited** quoted above, which establishes that it is the witness statements that will make the detail of the nature of the case the other side has to meet obvious and reduces the need for particulars in the pleadings.

- [52] The evidence relied on by the prosecutor came from various sources. It is clear from WPC300 Edward's witness statement that she relied on these statements to found her belief that there was reasonable and probable cause. The Court is therefore entitled to look at the evidence of the defendant as a whole to assess whether indeed it could give rise objectively to reasonable and probable cause.
- [53] WPC300 Edward clearly says in her witness statement that based on the evidence which she received – police witness statements, statements under caution of the four accused persons and the physical exhibits she laid the charges. Whilst not using the words reasonable and probable cause, these formed the basis for her laying the charges. The Court can probe the evidence to see if it could have provided any basis for the charges laid against the claimant. It is an assessment of the evidence which the prosecutor had at the time she charged the claimant which is important.
- [54] The case of **Dexter Smith v the Attorney General et al**¹⁷ relied on by the claimant stands in sharp contrast to the case at bar. The investigating officer in that case was cross-examined and the court evaluated the evidence and concluded that the sole evidence that tied the claimant to the drugs was that of Kyron Nicholas, the person who had changed his testimony. The court also observed that the investigating officer failed to interview persons who may have been critical to the investigations and so there was no way she could have held an honest belief in the guilt of the claimant. These are not the circumstances in the instant case.
- [55] Counsel for the claimant, in the closing submissions, several times submitted that the fact that nothing illegal was found when the vehicle was first stopped and searched on Chapel Street supports Mr. Aneville's allegation that the prosecution lacked reasonable and probable cause. However, Mr. Aneville, the claimant does not in his evidence in chief allude to a search of the vehicle on Chapel Street being conducted. In the statement under caution dated 3rd June 2010, which he denies is

¹⁷ GDAHCV2008/0328, delivered 7th October 2010, (unreported).

his, he says that 'the officers came to the minibus and told the driver that they had to search the minibus.' There is nothing on his evidence to suggest that that search was carried out because as soon as they came off the vehicle, Mr. Aneville took off running and PC151 Morille pursued him. There is no evidence of a search of the vehicle being conducted at that time from any of the other witnesses or in the statements under caution of the other occupants of the vehicle.

Analysis of the evidence

[56] It is extremely important in this matter to remember that the claims for assault and battery, unlawful arrest, and negligence were dismissed. Therefore, there is nothing on the pleadings which requires this Court to make any finding or determination as to the lawfulness or not of the actions of the officers in shooting Mr. Aneville. That is not a matter upon which I can make any pronouncements. The two incidents are separate and it is only this Court's function to adjudicate on the issue of whether there was an absence of reasonable and probable cause in prosecuting Mr. Aneville for the offences of possession of a firearm and ammunition; and therefore, whether Mr. Aneville's claim for malicious prosecution has been made out. Counsel for the claimant seeks to have the Court make pronouncements on the legality of the shooting as all the allegations of bad faith are premised on the defendant using unnecessary force and having no basis for the actions which they took. However, any allegations of bad faith relevant to this claim must be bad faith in instituting proceedings against Mr. Aneville for possession of illegal firearm and ammunition. It must be presumed that the actions of the defendant in relation to the shooting of Mr. Aneville were lawful in the absence of any finding otherwise.

[57] It is for the claimant on a claim for malicious prosecution to prove the lack of reasonable and probable cause. The defendant must then place evidence before the Court to assist with the assessment of whether there was indeed reasonable and probable cause to have charged Mr. Aneville with the offences of possession of firearm and ammunition contrary to the **Firearms Act**.

[58] There is no evidence in chief or on cross examination which supports any of the particulars of malicious prosecution alleged in the statement of claim. There is no evidence that the officers concocted or fabricated evidence or that they conspired so to do. The officers involved gave statements to the investigating officer as to what transpired on the night of 2nd June 2010. The prosecution of Mr. Aneville was not based solely on the officers' statements but also on statements of the other occupants of the minibus and of Mr. Aneville himself.

[59] The question is what evidence was relied on by WPC300 Edward as the basis for her decision to charge Mr. Aneville with the offences of possession of firearm and ammunition. Let us examine the evidence which was available.

Mr. Aneville's statement under caution

[60] Mr. Aneville's statement under caution taken on 3rd June 2010 established that he was on board the minibus which went to Chapel Street, Gros Islet. In that statement he said he was with Marvellous at the roadside at Maynard Hill when Marvellous' friend came to check him. He and Marvellous boarded the minibus and proceeded to Gros Islet. Mr. Aneville's statement revealed that when they got to Gros Islet they all got off the minibus and were standing outside smoking and talking. They then got back into the minibus in order to leave the area. Mr. Aneville says he sat in the middle seat of the minibus. Marvellous' friend sat in front of him. Marvellous was still outside talking to someone when the police arrived. He says they began to search the men who were around and then an officer came to the minibus and indicated that he wished to search the minibus. Mr. Aneville then said the officer asked everyone to get off the minibus. Mr. Aneville in his statement indicated that he tried to place himself in a position where the police would not see him and then he heard the officer call out to him to stop and come and then he began to run. Mr. Aneville describes what then transpired and how he was shot. He said he was asked what he threw away and whether it was a firearm and he indicated that it was a 'joint'. He said the officers came with a black nylon bag which was closed and asked him whether he did not have a firearm and he said no. Mr. Aneville said he

knew the officer who shot him because of a prior shooting incident involving that same officer in the CDC buildings.

Statements under caution of the three occupants of the minibus

[61] Thaddeus Laurent (“Laurent”) who was the driver of the minibus spoke of having to drop a friend, Marvus at Gros Islet on that night. He said that his friend was with a man who asked for ride to Gros Islet. His statement suggested that the man was seated at the back of the minibus and he heard him say ‘Police, driver, drive!’. He then said both he and Marvus asked the man why. He indicated that the police came and asked them to get off the vehicle and the man who was seated at the back was hesitating. When he did get off, Laurent said the man started running and then he heard shots being fired. After waiting a while, Laurent said he, Marvus and “Beno” left and were stopped by the police when they got to the Beausejour junction along the Gros Islet Highway. The police searched the minibus and he said when the back was opened, the police found a firearm. Laurent said he did not know anything about the firearm but one of the other men told the police that he had seen the man who ran earlier bend to put something beneath the seat. Laurent said he did not know the man who had run away from the police.

[62] Sergovich Marvus Johnson (“Marvus”) said he received a call from Laurent and when Laurent came by his house in Pavee, he asked him for a ride to Gros Islet. He said Miguel was present during his conversation with Laurent and asked for a ride to the Lime. However, when they got to the Lime, Miguel did not get off and they then drove to Gros Islet. As soon as they stopped in Gros Islet, the police pulled up close to the minibus and Miguel told Laurent to drive off. Laurent refused to do so. The police then asked everyone to disembark the vehicle and they were searched. Miguel was the only one left in the vehicle and the police asked him to get off and when he did, he ran away. Marvus said he heard the shots being fired. After about forty-five minutes, Marvus said they decided to leave and when they got opposite the Beausejour junction, they were pulled over by the police. The police

asked everyone to get off the vehicle and it was searched. They found a firearm under the rear seat of the vehicle and asked whose firearm it was.

[63] Bennet Leriche aka “Beno” (“Leriche”) said he was on Laurent’s vehicle when a man whom he only knows by features asked for a ride to Gros Islet. He said the man was there with a friend who asked for a ride to Gros Islet as well. He said when they reached Gros Islet town and parked, the police arrived. He said he heard the friend say, “Police, drive!” to which Laurent said he was going nowhere. The police then asked everyone to get off the vehicle. He said the friend came out of the vehicle and ran away. The police also ran, and he said he heard shots being fired. After about an hour, Leriche said they left and when they got opposite the Beausejour junction the police stopped them and conducted a search of the vehicle. He said the police found a firearm where the friend had been sitting. He said he did know this man from anywhere.

[64] In closing submissions, Mrs. Louison submitted that ‘the assertion that the prosecution was motivated by a desire to cover up the alleged disproportionate use of force is incapable of proving a lack of reasonable and probable cause.’ She continued that this assertion does not analyse the state of the evidence which existed at the time of the institution of the charges and therefore is incapable of proving a lack of reasonable and probable cause. I completely endorse these submissions.

[65] The evidence taken as a whole revealed the following:

- (a) Mr. Aneville was on board the vehicle (minibus M82) driven by Laurent when it went to Gros Islet on the night of 2nd June 2010 and that apart from Laurent there were two other occupants. All the accounts given by the occupants of the vehicle account for four persons being on board the vehicle when it got to Gros Islet;
- (b) That Mr. Aneville was wearing a black hooded jacket. He admitted this in cross-examination;

- (c) That Mr. Aneville was seated towards the rear of the vehicle at the time the occupants were asked to disembark;
- (d) That Mr. Aneville hesitated when asked to disembark the vehicle;
- (e) That Mr. Aneville ran away when he was asked to disembark the vehicle for the purposes of being searched and the police, namely, PC151 Morille gave chase and was later joined by PC705 Melville;
- (f) That the vehicle was eventually searched about an hour later and the firearm with eleven (11) rounds of ammunition was recovered under the rear seat of the vehicle which is consistent with where Mr. Aneville had been sitting. Evidence of this came not only from PC151 Morille but from the other occupants of the vehicle.

[66] It is only natural that if individuals are asked to disembark a vehicle for the purpose of a search being conducted and one of them runs off, that this would arouse some suspicion as to the reason for such behaviour. From all accounts, there was nothing which preceded Mr. Aneville's 'taking off' except that the police indicated that they would be conducting a search. One would think that if there was nothing to hide that Mr. Aneville would simply have complied with the instructions and not run off. His behaviour therefore aroused suspicion. Coupled with this, his sitting position in the vehicle and the recovery of the firearm in the area where he had been seated, would further lead to a conclusion that there is reasonable and probable cause that Mr. Aneville was in some way connected with the firearm. Counsel for the claimant made much ado about the omission of this evidence from the statement of PC705 Melville. However, I note that the evidence reveals that PC705 Melville was not with PC151 Morille when he approached the vehicle, observed suspicious behaviour and instructed the occupants to disembark to be searched. PC705 Melville was searching other persons in the area, not being the four alleged to have been in the vehicle, when he observed Mr. Aneville run off and PC151 Morille giving chase. He joined the scene when PC151 Morille had caught up with Mr. Aneville and therefore would not have been in a position to give evidence of where Mr. Aneville was sitting

on the bus and whether he was acting suspiciously while on the bus. Therefore, this alleged 'omission' can be of no effect.

[67] The law on possession must also be considered. Section 22(3) of the **Firearms Act** states that "a person shall not be in possession of any other firearm or ammunition without a valid licence issued under the Act." The **Firearms Act** does not define 'in possession of'. That expression is defined in the **Criminal Code**¹⁸ in section 6(4). It states as follows:

"The expression "**be in possession**" or "**have possession**" includes not only having in one's own personal possession, but also—

(a) knowingly having—

- i. in the actual possession or custody of any other person;
- ii. in any place (whether belonging to or occupied by oneself or not) for the use or benefit of oneself or of any other person;

(b) where there are 2 or more persons, and any one or more of them, with the knowledge and the consent of the rest has or have anything in his or her or their custody or possession it shall be deemed to be in the custody or possession of each and all of them."

[68] The Court of Appeal in the case of **Lester Charles et al v Commissioner of Police**¹⁹ considered the concept of possession. The first and second appellant had been tried jointly for the offences of possession of cocaine with intent to sell and possession of a firearm without a firearm licence and ammunition. The prosecution's case was that both appellants were in a parked car and when the police approached, the second appellant fled from the back seat. The first appellant who was the driver was caught trying to get out of the vehicle and in the process a package of cocaine fell out. On a further search of the vehicle, the police discovered two more packages of cocaine on the back seat, a firearm and rounds of ammunition at the front of the car as well as a large sum of money. Both appellants denied knowledge of any of the items which the police found. The second appellant denied that he was in the car at all.

¹⁸ Cap. 3.01, Revised Laws of Saint Lucia.

¹⁹ ANUMCRAP2009/0001, delivered 15th March 2010 (unreported).

[69] In relation to the first appellant, the Court held that the law was well settled and relied on the case of **DPP v Brookes**.²⁰ He being the driver of the car and taking into consideration the conspicuous places in which the cocaine and firearm were found, the inference could properly be drawn that he was in possession of its contents with the requisite knowledge. In relation to the second appellant, the Court held that a joint enterprise was not defeated by the fact that the vehicle in which the cocaine and firearm were found was not that of the second appellant or that the items were not found on his person.

Conclusion

[70] The investigating officer was entitled to have regard to the evidence of the co-accused in deciding whether to lay charges against Mr. Aneville. In summary, the recovery of the firearm in the area where Mr. Aneville was seated in the vehicle taken together with the behaviour of Mr. Aneville in fleeing when approached by the police, failing to surrender and the scuffle which ensued between him and the officers as described in the evidence of PC151 Morille, PC705 Melville and in Mr. Aneville's own statement under caution, taken objectively, would have led a reasonable and prudent man to conclude that there was reasonable and probable cause for a prosecution in the circumstances. I would note here that counsel for the claimant set out at length under the heading he entitled "the objective test of the reasonable and trained police officer"²¹, the duties and powers of police officers in relation to the test of establishing reasonable and probable cause. I would reiterate here that the objective test is that of what "the reasonable and prudent man" would conclude on the material before him. There is therefore no basis for me to delve into the duties, powers, and training of police officers in this regard.

²⁰ (1974) 21 WIR 411 at 415.

²¹ Claimant's submissions, pages 64-72.

[71] There is nothing on the evidence which suggests that PC300 Edward did not believe the evidence that had been placed before her. She was not cross-examined in this regard at all. The subjective and objective elements of the test in relation to reasonable and probable cause have been satisfied.

[72] The evidence of WPC300 Edward stood uncontroverted; the claimant's counsel chose not to continue to cross-examine her. Whilst I agree that her witness statement could have been more detailed, it pointed to the evidence which she had in her possession at the time when the claimant was charged and from which the Court can make a determination as to whether such would constitute reasonable and probable cause. The defendant must show by its evidence that there was reasonable and probable cause but that does not shift the burden of proof at all.

Issue (d) Whether the prosecution was actuated by malice?

[73] The claimant in a claim for malicious prosecution is obligated to prove all the elements of the offence. Therefore, a finding by the Court that the prosecution did not lack reasonable and probable cause would suggest that there is no need to proceed to discuss this fourth issue. However, for the sake of completeness, I will.

[74] A claimant in a claim for damages for malicious prosecution or other abuse of legal proceedings has to prove malice in fact indicating that the defendant was actuated either by spite or ill-will against the claimant, or by indirect or improper motives.²² In the case of **Shearer and another v Shields**,²³ the court stated that malice in fact means an actual malicious intention on the part of the person who has done the wrongful act.

[75] The claimant has the burden of proving malice.²⁴ A claimant who proves malice but not want of reasonable and probable cause still fails.²⁵ Malice may be inferred from

²² Hicks v Faulkner (1881) 8 QBD 167 at 175.

²³ [1914] A.C. 808 at 814.

²⁴ Brown v Hawkes [1891] 2 QB 718 at 726, CA, per Lord Esher MR.

²⁵ Tempest v Snowden [1952] 1 All ER 1, CA.

want of reasonable and probable cause but lack of reasonable and probable cause is not to be inferred from malice.²⁶

[76] In **Sandra Juman v The Attorney General of Trinidad and Tobago**,²⁷ the Privy Council referred to the case of **Willers v Joyce**²⁸ at paragraph 55 wherein the essence of malice was described as follows:

“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. ... 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.”

[77] The Court went on in **Sandra Juman** to say that:

“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 the present case there was no cause to doubt that the first respondent believed, rightly or wrongly, that there were sufficient grounds to prosecute, or that the object of charging the appellant was to place the matter before the magistrate for the court to decide the question of her guilt; and there was no suggestion that he had any ulterior improper motive.** Even if the court had decided that objectively the first respondent lacked reasonable and probable cause to prosecute the appellant, there was no basis to hold that he acted with malice.”²⁹ (my emphasis)

[78] The claimant in his pleadings set out a total of twenty-seven (27) paragraphs of particulars of bad faith. As far as I can glean, the claimant’s allegation is that the officers acted maliciously by deliberately fabricating evidence and concocting material. The allegation is that the officers acted in bad faith because there was no reasonable and probable cause to shoot the claimant. What the claimant is required to prove is that the prosecution for possession of firearm and ammunition was

²⁶ *Glinski v McIver* [1962] AC 726 at 744.

²⁷ [2017] UKPC 3 at para. 18.

²⁸ [2015] UKSC 43.

²⁹ *Sandra Juman* at para. 19.

actuated by malice; that the decision of the prosecutor to charge the claimant was as a result of malice. There is nothing on the claimant's pleadings which suggests any malice on the part of the investigating officer, WPC300 Edward who is the one who charged the claimant and the three other accused men.

[79] In closing submissions and which was not part of Mr. Aneville's evidence in chief, the claimant contended that the police 'maliciously prepared and signed a statement for the claimant making it appear that it was dictated and signed by him in which he confessed to the assault on PC151 Morille. Counsel contended that this piece of evidence alone is sufficient to prove the malice allegation because the prosecution knew that they tricked the claimant and were using the prosecution to introduce this unfairly obtained and fraudulent document to discredit him.' There is no evidence to support this contention at all.

[80] The malice must be shown to exist on the part of the prosecutor in relation to the prosecution for the offences of possession of firearm and ammunition. The claimant's submission is that WPC300 Edward acted maliciously by concealing that the claimant was hospitalised having lost both legs and making it appear that all was normal and regular when she assumed the role of charging the claimant. I am not sure how this amounts to malice in the sense of what is required to be proven.

[81] The claimant in closing submissions submitted that WPC300 Edward clearly demonstrated that she was merely a conduit to pass off the malice of PC151 Morille as in cross-examination she had not the faintest clue of what is a complaint on oath as required for the instituting of a prosecution and went further to submit that the fact that she was not conscious of such elementary procedures convinces that there was a measure of manipulation and manoeuvring to have her charge the claimant. Firstly, cross-examination of WPC300 Edward was brought to an abrupt end and only consisted of the following exchange:

"Counsel: You charge Miguel Aneville for the offences of possession of firearm and ammunition?"

Edward: Yes.
 Counsel: You laid a complaint in the Magistrate's Court?
 Edward: I do not understand.
 Counsel: How did you charge him?
 Edward: I charged him in the presence of his lawyer.
 Counsel: You have to prosecute the matter and you had to file a document in the court?
 Edward: I am trying to understand what he is asking.
 Counsel: I have no cross-examination further."

[82] WPC300 Edward was the investigating officer who made the decision to charge Mr. Aneville and the other three men with the offences of possession of firearm and ammunition. There is no evidence that she was the prosecutor in the Magistrate's Court. I am at a loss as to how this is evidence of malice on her part in proffering the charges against Mr. Aneville. It is quite disingenuous to use this snippet from the aborted cross-examination to say that this shows malice on the part of WPC300 Edward.

[83] Mr. Aneville in cross-examination confirmed that he had had no prior history with PC151 Morille. In fact, he admitted that what he said he knew of PC151 Morille was because of what he had heard and that he had not interacted with him prior to 2nd June 2010. Mr. Aneville also said that he had had no previous interactions with PC705 Melville or WPC300 Edward.

[84] In closing submissions, Mrs. Louison submitted that the claimant alleges malice based solely on conjecture. She contended that he had failed to provide evidence of the circumstances which suggests or tends to suggest that the prosecution can only be accounted for by imputing an improper motive. In the submissions, Mrs. Louison submitted that the claimant alleged that the police instituted the charges as a means of covering up the alleged disproportionate use of force and injuries sustained by the claimant during the course of the incident, however there was no evidence which leads to that conclusion. Further, counsel submitted that the decision whether or not to lay the charges was taken by the investigating officer who

had not participated in the incident which culminated in the shooting of the claimant. With this submission, I agree.

Conclusion

- [85] The claimant, Mr. Aneville has not proven that the prosecution in this case was actuated by malice and the facts do not support a finding of malice on a balance of probabilities.

Conclusion on the Claim and Order

- [86] Having regard to the foregoing discussion, I find that the claimant has not proven his claim on a balance of probabilities. He has failed to prove all the elements of the tort of malicious prosecution. There is therefore no need to determine the issue of whether he is entitled to damages as claimed. In any event, the damages recoverable by a claimant in a claim for malicious prosecution must be related to the prosecution. These damages have been defined in **Saville v Roberts**³⁰ by Holt CJ as having three aspects: (1) damage to a person's reputation; (2) damage suffered by being put in danger of losing one's liberty or losing property and (3) pecuniary loss caused by the cost of defending the charge. The special and general damages claimed by Mr. Aneville all relate to his injuries sustained as a result of him being shot by the police and are in no way related to the alleged malicious prosecution.
- [87] Counsel for the claimant made the proposition that "nothing prevents a court from awarding damages for personal injuries for malicious prosecution if it is established that the damage was suffered during the course of prosecution or as a precondition to prosecuting the claimant."³¹ While I agree that damages may be awarded where a claimant is put in danger of loss of life or limb suffered during or as a result of a prosecution which is established in **Saville**, no authority has been cited for an award of damages for personal injury suffered 'as a precondition to prosecution'. In any

³⁰ (1698) 12 Mod. 208.

³¹ Claimant's Submissions, page 60

event, I am unable to see how personal injury could be a precondition to prosecution, and that concept was not explained to the Court. I would simply note that the shooting of Mr. Aneville took place on 3rd June 2010 by PC151 Morille and PC705 Melville and the prosecution was instituted against him on 14th June 2010 by WPC300 Edward. Therefore, it cannot logically be said that the shooting of Mr. Aneville, which occurred some 11 days prior was a consequence of the prosecution.

Order

[88] The order is therefore as follows:

- (1) The claim is dismissed.
- (2) The claimant is to pay the defendant prescribed costs in the sum of \$7,500.00.

**Kimberly Cenac-Phulgence
High Court Judge**

By the Court

Registrar