

**THE EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA**

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

SLUHCV2016/0595

BETWEEN:

**(1) ALEXANDER JULES
(2) LISA CALLENDER**

Claimants

and

THE ATTORNEY GENERAL

Defendant

Before:

The Hon. Mde. Justice Kimberly Cenac-Phulgence

High Court Judge

Appearances:

Mr. Alberton Richelieu for the Claimants

Ms. Kozel Creese with Mrs. Tina Mensah-Louison for the Defendant

2018: May 2, 3.
June 19.

JUDGMENT

[1] **CENAC-PHULGENCE J:** The claimants, Alexander Jules (“Mr. Jules”) and Lisa Callender (“Ms. Callender”) have brought this claim for false imprisonment and malicious prosecution against the Attorney General for the actions of its officers.

[2] Mr. Jules and Ms. Callender were at the establishment known as XXOTIC on the night of 28th April 2016 when police officers attended the establishment and instructed them and some of the ladies who were at the establishment to accompany them to the Major Crimes Unit. At the time, Mr. Jules was performing

DJ services and was in the DJ booth and Ms. Callender was engaged behind the bar.

- [3] The claimants' case is that they were wrongfully arrested without reasonable suspicion and charged for having in their employ Commonwealth citizens who did not have a valid work permit in relation to that employment, contrary to section 3(4)(b) of the **Foreign National and Commonwealth Citizens (Employment) Act**. A total of eight charges were preferred against each of the claimants.
- [4] The claimants alleged that Assistant Commissioner of Police, Milton Desir and Inspector Osman were the ones who gave the instructions to charge them. They alleged that they were taken into custody and wrongfully imprisoned for two days from 3rd to 5th May 2016.
- [5] It is not in dispute that the matter first came up for hearing before the Magistrate's Court on 8th June 2016 and was adjourned to 14th June 2016 when the prosecution withdrew the charges against Mr. Jules and Ms. Callender.
- [6] The claimants alleged that their reputations have been injured, they have been put through inconvenience as the defendant through its officers acted out of spite and malice towards them and subjected them to humiliation, disgrace and ridicule.
- [7] The defendant denied that the claimants were falsely imprisoned and maliciously prosecuted.

Whether the defendant is liable for false imprisonment

- [8] For the purposes of this issue, I confine my discussion to the period 3rd to 5th May 2016 which is what the claimants have pleaded as being the period during which they were falsely imprisoned. It is worthy of note that there was no allegation of false imprisonment in relation to the night of 28th April 2016. In any event, after listening to the evidence of Mr. Jules and Ms. Callender I do not believe them

when they say that they were told by Insp. Osman that she was arresting them. The actions which follow of letting them go and asking them to return the following day are inconsistent with arresting someone.

[9] In fact, Mr. Jules and Ms. Callender did not commend themselves to me as credible witnesses. When asked whether he was being paid for DJ services, Mr. Jules said no and whether he provided security services at the club, he said yes. Ms. Callender on the other hand said she paid him \$50.00 sometimes and at other times he just assisted and that he did not provide security services at the club. In her witness statement, Ms. Callender said that when she was taken to Major Crimes on the night of 28th April 2016, and told to return the following day, she told Insp. Osman that she had nowhere to go as she resided at the club and so she sat outside Police Headquarters until morning. However, in cross-examination, Ms. Callender gave evidence that she and Mr. Jules returned to the establishment with Insp. Osman to secure it and she was not allowed to get anything from the building and when asked by the Court whether she returned to Major Crimes after she left the establishment, she said no. This was confirmed by Insp. Osman who in cross-examination said that they (meaning Ms. Callender and Mr. Jules) did not return to Major Crimes.

[10] False imprisonment is “the unlawful imposition of constraint on another’s freedom of movement from a particular place”.¹ In order to establish false imprisonment, there must be proof of (1) the fact of imprisonment and (2) the absence of lawful authority to justify that imprisonment. It cannot be disputed that on 3rd May 2016 when Mr. Jules was arrested and on 4th May 2016 when Ms. Callender was arrested that they were imprisoned as they were not free to leave at any time.

¹ Collins v Wilcock [1984] 1 WLR 1172, at 1178.

- [11] The question therefore is whether there was lawful authority to justify the arrest of the claimants and by extension the imprisonment and it is for the defendant to justify. The defendant submitted that according to section 570(2) of the **Criminal Code** (“the Code”),² a police officer may arrest without a warrant anyone who is or whom he or she, with reasonable cause, suspects to be, in the act of committing or about to commit an offence. Section 570(3) of the Code provides that where a police officer with reasonable cause, suspects that an offence has been committed, he or she may arrest without warrant anyone whom he or she with reasonable cause suspects committed the offence. The defendant submitted that the police had reasonable cause to suspect that the claimants had committed the offence of employing persons without a valid work permit.
- [12] It is for the defendant to satisfy the Court that he acted on reasonable grounds. Reasonable grounds for suspicion are not to be equated with prima facie proof of guilt. The test is whether in all the circumstances the objective information available to the constable supports reasonable grounds for suspicion of guilt. There is no general or absolute rule that a constable must make all practicable inquiries to confirm or dispel his suspicions before making an arrest.³ In **Buckley v Chief Constable of Thames Valley Police**, it was pointed out that “suspicion is a state of mind well short of belief and even further short of belief in guilt or that guilt can be proved.”⁴ The threshold for showing reasonable suspicion is therefore a low one and in **O’Hara v Chief Constable of the Royal Ulster Constabulary**⁵ it was held that information from other officers may suffice to create reasonable grounds to arrest.
- [13] In the case of **Jarett v Chief Constable of West Midlands Police**,⁶ Potter LJ said that reasonable grounds for suspicion “can arise from information received from another, even if it subsequently proves to be false, provided that a reasonable

² Cap. 3.01, Revised Laws of Saint Lucia 2013.

³ *Holtham v Commissioner of Police for the Metropolis*, The Times, November 28, 1987.

⁴ [2009] ECWA Civ 356 at [9], per Hughes LJ.

⁵ [1997] AC 286.

⁶ [2003] ECWA Civ 397, The Times, February 28, 2003 at [28].

man, having regard to all the circumstances, would regard them as reasonable grounds for suspicion”.

- [14] In this case the evidence of the defendant given by Assistant Commissioner of Police, Milton Desir (ACP Desir) was that during the month of April 2016 he was given responsibility to carry out investigations into alleged human trafficking/smuggling for which Saint Lucia was on a watch list. Three active locations were identified where these alleged illegal activities took place and on the morning of 28th April 2016, an operation was planned to enter the locations identified, the purpose being to continue investigations and gather evidence in relation to prostitution, illegal employment, immigration violations and possession/distribution of controlled drugs.
- [15] According to ACP Desir the operation in relation to the club XXOTIC was headed by Inspector Susanna Osman (Insp. Osman). The evidence of the officers, Desir and Osman was that at the club there was a group of women sitting in a corner dressed in panties, bras and high heel shoes. They also observed a group of men near the bar. ACP Desir said he also observed two ladies dancing in panties, bra and high heel shoes on a pole. When he went further inside he saw Mr. Jules speaking with Insp. Osman. He said Mr. Jules told him he was the DJ. He also observed that Mr. Jules had a notebook open and was showing it to Insp. Osman. When he continued further inside the Club he saw what he said appeared to be a make shift bedroom with two pieces of sponge on the floor, one covered with a bed sheet and the other not covered. He also observed a small waste bin with toilet tissue, two used condoms and two condom wrappers. He said he informed Insp. Osman of this.
- [16] Insp. Osman's evidence was that on the night of 28th April 2016, she headed the team which went to the club XXOTIC. On entering the club, Insp. Osman said she observed a group of ladies dressed in lingerie (panties, bras and high heel shoes), some of whom were seated while others were standing. She said she also

observed two ladies dancing on poles on the stage and a man was seated facing the stage. Her evidence was that Mr. Jules was in a booth north of the stage and it would appear that he was performing DJ services.

[17] Insp. Osman also gave evidence that she noticed a memo book in Mr. Jules' possession which she asked him to see. On inspection of the memo book, she observed that it was dated April 2016 and to each date was a list of single names. The dates were up to the day in question, 28th April 2016. Insp. Osman also observed that in the room behind the stage was a bathroom which contained ladies clothing and handbags. Insp. Osman said that she asked Mr. Jules whether he was on duty and he said yes but that he had got some time off from his supervisor. The duty roster exhibited to Insp. Osman's witness statement confirmed that Mr. Jules was on duty that night at the Marchand Police Station but there was no evidence of whether he was actually given time off as he suggested.

[18] Insp. Osman's evidence is that when she approached Mr. Jules about whether they had a licence to sell intoxicating liquor, he said no and when she asked Ms. Callender, she said she was in the process of obtaining one. Insp. Osman said she indicated to Mr. Jules and Ms. Callender that they would have to close down the club and accompany her to Major Crimes.

[19] The investigating officer assigned to investigate a report of ten female non-nationals working without a valid work permit was PC 343 Kensley Joseph ("PC Joseph"). PC Joseph's evidence was that on 29th April 2016, he took statements under caution from the ladies from the club XXOTIC with the assistance of a Spanish translator for four of them who could not speak English. These statements were then handed over to Insp. Osman. PC Joseph also said he requested information from the Ministry of Labour in writing to establish whether the females had valid work permits, whether an OECS Skills Certificate was required for any of the dancers at the XXOTIC Club and whether the Skills

Certificate covered the area of exotic dancing. The ten ladies were charged on 1st May 2016 for working without a valid work permit.

[20] PC Joseph's evidence is that he charged Mr. Jules for the offence of employing foreign nationals without a work permit. Insp. Osman in her evidence had said that she had informed Mr. Jules that she was arresting him on 3rd May 2016 for employing foreign nationals without a work permit after which she handed him over to PC Joseph. On 4th May 2016, PC Joseph said he arrested and charged Ms. Callender with the same offence. He said that both Mr. Jules and Ms. Callender were cautioned and informed of their rights as prisoners in custody. They were taken before the Magistrate on 4th May 2016 and granted bail. In Mr. Jules' witness statement he suggested that he was arrested on 3rd May 2016 but only charged on 4th May 2016 but in cross-examination he seemed not to be able to recall exactly and admitted that it was possible that he was charged on the 3rd May 2016. The claimants admitted that they did not meet the bail conditions set when they were brought before the Court on 4th May 2016 and were only able to meet these conditions on 5th May 2016.

[21] Section 3(3) of the **Constitution of Saint Lucia**⁷ provides that any person arrested or detained upon reasonable suspicion of his or her having committed, or being about to commit, a criminal offence under the law and who is not released must be brought to court without undue delay and in any case not later than 72 hours after such arrest. In this case, Mr. Jules was kept in custody for one night and Ms. Callender was brought before the Court on the same day she was arrested and charged. There can be no issue here as they were brought before the Court swiftly. The detention of the claimants in custody after bail was granted was solely because they did not meet the bail conditions set on 4th May 2016. This was perfectly in order.

⁷ Cap. 1.01, Revised Laws of Saint Lucia 2008.

[22] When one examines the facts and circumstances of this case, it is clear that the police had reasonable suspicion of the involvement of Mr. Jules and Ms. Callender in the employment of the ladies without valid work permits. By the time they were arrested, the statements under caution had been taken from the ten ladies and also information obtained from the Ministry of Labour. The facts would have raised suspicion in the mind of a reasonable man that the ladies were not just patronizing the club but were employed there. The fact that they were dressed in panties, bras and high heel shoes, some of them seen dancing on poles, the presence of the room with the beds on the floor and presence of ladies' handbags and clothing in the bathroom does not suggest that the ladies present were simply patrons of the club. The memo book taken from Mr. Jules also suggests that he was keeping a record of names for each day. There is no evidence that at any time during the entire incident Mr. Jules indicated that he was just the DJ and had no involvement in the operations of the club. When asked about whether they had a liquor licence, Mr. Jules' responded suggesting that he had knowledge of the operations of the club. It is not at all common for patrons to show up at clubs dressed in panties, bras and high heel shoes.

[23] I find that there was reasonable suspicion for the arrest of Mr. Jules and Ms. Callender and that the arrest was lawful. There was no false imprisonment for the period 3rd to 5th May 2016.

Whether the defendant is liable for malicious prosecution

[24] Malicious prosecution is an abuse of the process of the court by wrongfully setting the law in motion on a criminal charge. In order to establish malicious prosecution, **the claimants must prove** the following:

- (a) The defendant prosecuted them;
- (b) The prosecution ended in their favour;
- (c) That the prosecution lacked reasonable and probable cause; and
- (d) That the defendant acted maliciously.

Whether the defendant prosecuted them

- [25] There is no dispute here as the defendant admits that the claimants were arrested and charged for having in their employ Commonwealth citizens without there being a valid work permit in relation to their employment contrary to section 3(4) of the **Foreign National and Commonwealth Citizens (Employment) Act**⁸ and that they were brought before the Court on 4th May 2016 and granted bail and were released on 5th May 2016 when the bail conditions were met.

Whether the prosecution ended in their favour

- [26] This is also not disputed. The defendant admits that the charges against the claimants were withdrawn by the prosecutor after consultation with the Deputy Director of Public Prosecutions as the claimants had been charged under legislation which had been repealed by the **Labour Act**.⁹
- [27] The claimants must show that the prosecution ended in their favour, and so long as it did it is of no moment how this came about. Withdrawal of a charge, even without prejudice to the right to recommence has been held in Canada to be sufficient.¹⁰

Whether the prosecution lacked reasonable and probable cause

- [28] The claimants 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**,¹¹ Lord Atkin approved and adopted the definition of reasonable and probable cause given in **Hicks v Faulkner**¹² 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

⁸ Cap 16.13 now repealed by the Labour Act.

⁹ Cap. 16.04, Revised Laws of Saint Lucia, 2013.

¹⁰ See *Romegialli v Marceau* (1963) 42 DLR (2d) 481; *Caset v Automobiles Renault Canada Ltd.* (1965) 54 DLR (2d) 600.

¹¹ [1983] AC 305, 316.

¹² (1878) 8 QBD 161,171.

accuser, to the conclusion that the person charged was probably guilty of the charge imputed.”

- [29] Lord Devlin in **Glinski v McIver**¹³ 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 a conviction nor does he have to test the full strength of the defence, he is concerned only with whether there is a case fit to be tried.
- [30] The salient question therefore is whether the facts admittedly known to and believed by the prosecutor when he launched the prosecution furnished him 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.¹⁴
- [31] The fact that the prosecutor has received advice should be regarded as no more than one of the facts to be taken into account, for if the prosecutor did not himself have an honest belief in the case he put forward, it is irrelevant that he received advice before doing so.¹⁵ If the prosecutor believes in the facts of the case and is advised by competent counsel before whom the facts are fairly laid that a prosecution is justified, it will be exceedingly difficult to establish lack of reasonable and probable cause.¹⁶ That the advice of the DPP has been sought has been said to be relevant but not conclusive, in negating any allegation of absence of reasonable and probable cause.¹⁷ The fact that the police in this case charged the claimants under the wrong legislation may be a factor to be

¹³ [1962] AC 726, 766-767.

¹⁴ *Glinski v McIver* [1962] AC 726, at 776 per Lord Devlin.

¹⁵ *Glinski*, at pp. 756-757 per Lord Radcliffe; p. 777 per Lord Devlin.

¹⁶ *Glinski*, at pp. 744-745 per Viscount Simonds.

¹⁷ *Reynolds v Commissioner of Police for the Metropolis* [1985] QB 881.

considered in assessing whether there is reasonable and probable cause. However, in this case, it is not the case that the offence with which the claimants was charged did not exist, but that the legislation under which they were charged had been repealed. The identical provisions of the repealed law are now found in the new **Labour Act**. Had the offence no longer existed or not existed at all, I would have no difficulty in concluding that there was an absence of reasonable and probable cause but that was not the case here.

- [32] 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.
- [33] In this case, the charging of the claimants took place against the following backdrop as can be gleaned from the evidence:
- (a) the information received by the police which caused them to undertake the operation and investigation of the establishment known as XXOTIC.
 - (b) the discoveries made on the night of 28th April 2016 when officers went to XXOTIC to execute the search warrant which they had. They found Ms. Callender and Mr. Jules present at the club. There was a group of ladies dressed in panties, bras and high heel shoes and two were seen dancing on poles.
 - (c) the police officers observed a room with what appeared to be a make shift bed, a waste bin with two used condoms and two used condom wrappers and a bathroom with ladies clothing and handbags.
 - (d) Mr. Jules was supposed to be on duty at the Marchand Police Station but did not report for duty that night.
 - (e) investigations were conducted at the Labour Department as to whether any of the ladies had work permits.
 - (f) the ladies were from different jurisdictions: Antigua, Jamaica, Dominican Republic, Barbados, Dominica and Saint Lucia.
 - (g) the claimants refused to give a statement to the police.

- (h) the Certificate of Registration obtained from the Companies Registry showed the proprietor of the business name XXOTIC to be Lisa Callender and the general nature of the business as being wedding receptions and fund raising activities.
- (i) the claimants were charged after consultations with the Crown Prosecution Service. This was confirmed in cross-examination by Asst. COP George Nicholas that the information which they had was presented to the DPP's office and that office came back with guidance and on that basis he gave instructions to charge.

[34] Mr. Richelieu submitted that the defendant had not negated the claimants' assertion that there was no reasonable and probable cause and that hastiness would be evidence of a lack of reasonable and probable cause.

[35] In relation to Ms. Callender, I think it is quite clear that there was reasonable and probable cause to prosecute her, having regard to the fact that she was the proprietor of XXOTIC and that the ladies were found at the establishment. It is highly unlikely that patrons of a club would be dressed in panties, bras and high heel shoes and it was fair for the police to believe that these ladies were engaged in activities for which they were being remunerated. The evidence from Ms. Callender in cross-examination strengthens my view. Ms. Callender said that the ladies were her friends, that they did not pay to enter the club that night, that she only knew them by their nicknames but somehow she had managed to get all her lady friends to converge on XXOTIC on the night of 28th April 2016 dressed in outfits usually associated with the occurrence of illegal activities.

[36] In relation to Mr. Jules, the police had reasonable and probable cause to prosecute him because the evidence presented suggested that Mr. Jules must have had an interest in this establishment if he took the trouble to get time off from his duties as a police officer when he was supposed to be on duty at the Marchand

Police Station that night. It was significant enough to him that he had to get time off to assist his friend Ms. Callender.

[37] The circumstances of this case must be considered. This was a police operation with not just one officer conducting investigations. The fact that PC Joseph in his evidence on cross examination suggested that he acted on instructions from his seniors to my mind is not indicative of a lack of reasonable and probable cause. In an operation such as the one undertaken in this case, there would be various bits of information which may be obtained by different officers during the course of the investigation which may ultimately lead to a prosecution. In this case, on receipt of all the information and having taken the statements, the police referred the matter to the DPP for advice and relied on that advice in preferring the charges against the claimants. It is not necessary in such a case to show that any one individual officer had an honest belief in the case put forward once it can be shown that collectively, the police thought that there was a basis for the prosecution.

[38] My conclusion here is bolstered by the Canadian case of **Miazgo v Kvello (Miazga 2)**,¹⁸ where the Supreme Court of Canada acknowledged that it is well established that the reasonable and probable cause inquiry comprises both a subjective and objective component, so that there must be actual belief on the part of the prosecutor and that belief must be reasonable in the circumstances. The Canadian Supreme Court was of the view that in such cases, the reasonable and probable cause inquiry is not concerned with a prosecutor's personal views as to the guilt of the accused, but with his or her professional assessment of the legal strength of the case.

[39] This case unfolded in the evidence and in the submissions. The claimants have not in their pleadings stated the facts which they say support their allegation of a lack of reasonable and probable cause. The only allegation which could possibly suggest lack of reasonable and probable cause is the fact that when the matter

¹⁸ 2009 3 SCR 339 (SCC) (Miazga 2).

came before the Magistrate there were no witness statements filed. This is attractive but it must be remembered that reasonable and probable cause is to be assessed at the time of charging. It is for the **claimants to prove** the lack of reasonable and probable cause and once they have stated what they allege to be the basis for their allegation, it is then for the defendant to show that they did have reasonable and probable cause. There cannot simply be a bald statement that the prosecution was without reasonable and probable cause which is what was pleaded in this case.

- [40] In light of the foregoing discussion, I find that the claimants have not discharged their burden of proof and have not given any evidence tending to establish an absence of reasonable and probable cause.

Whether the defendant acted maliciously

- [41] In **Miazga 2**, the Supreme Court of Canada suggested that once it is found that there was reasonable and probable cause, there is no need to proceed further presumably because the claimants must prove all four elements of the tort to be successful. For completeness however, I have addressed the issue.
- [42] It is for the claimants to prove malice in fact, indicating that the defendant was actuated either by spite or ill-will against them, or that the defendant had some improper purpose. Malice is said to exist unless the predominant wish of the accuser is to vindicate the law. A claimant who proves malice but not want of reasonable and probable cause still fails.¹⁹ Malice may be inferred from want of reasonable and probable cause, but lack of reasonable and probable cause is not to be inferred from malice.²⁰

¹⁹ *Turner v Ambler* (1847) 10 QB 252; *Tempest v Snowden* [1952] 1 KB 130, [1952] 1 All ER 1, CA.

²⁰ *Glinski v McIver* [1962] AC 726 at 744, [1962] 1 All ER 696 at 700, HL, per Viscount Simonds.

[43] In **Sandra Juman v The Attorney General of Trinidad and Tobago**,²¹ the Privy Council referred to the case of **Willers v Joyce**²² 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.”

[44] 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.”²³

[45] Counsel for the defendant submitted that the claimants have failed to prove malice and have pleaded nothing in relation to malice. That this is the case I am afraid is correct. The claimants in their statement of claim make a bald allegation of malice but there are no pleadings to support this allegation. Counsel for the claimants submitted that if there is no tangible or credible evidence regarding what the officers honestly believed, then perhaps the officers acted too hastily or over zealously and failed to ascertain by making enquiries facts that would have altered his opinion regarding the guilt of the claimants. Mr. Richelieu referred to the case

²¹ [2017] UKPC 3 at para. 18.

²² [2015] UKSC 43.

²³ Sandra Juman at para. 19.

of **Bernadette Matthew v The Attorney General**²⁴ where Edwards J quoted from Cave J in the case of **Brown v Hawkins** where he said that:

“Malice, in its widest and vaguest sense, has been said to mean any wrong or indirect motive, and malice can be proved, either by showing what the motive was, and that it was wrong or by showing circumstances were wrong, or by showing circumstances were such that the prosecution can only be accounted for by imputing some wrong or indirect motive to the prosecution.”

Mr. Richelieu suggested that this pointed to the fact that the categories of malice are not closed and the circumstances of the case must be considered.

[46] Ms. Creese submitted that the claimants had failed to prove that there was any malice towards them. Mr. Jules in his witness statement simply said that ‘the Defendant through their agents acted out of spite and malice towards me’. He also said that he and ACP Milton Desir had not been on good terms as he had written to the authorities about ACP Desir’s attitude towards him.

[47] ACP Desir in his evidence spoke to the fact that he had been appointed by the Commissioner of Police as adjudicator in relation to a disciplinary matter involving Mr. Jules which had come on for hearing on 21st April 2016 prior to Jules’ arrest. He testified that at that hearing, Jules had raised concerns about him being the adjudicator and he had suggested to him that he write to the Commissioner about it. ACP Desir gave evidence that on 29th April 2016 whilst at Major Crimes, he informed Jules that he would be recusing himself from hearing of his disciplinary matter given his involvement in his arrest and the ongoing criminal investigation.

[48] Ms. Creese submitted that apart from this disciplinary matter, Mr. Jules did not indicate any other thing that would show that ACP Desir had any ill-will towards him or wanted to put him through the court process. In any event, the disciplinary hearing predated the operation on 28th April 2016 and therefore had no bearing on

²⁴ Suit No. 15 of 1999 at para. 53.

same. In cross-examination, Mr. Jules admitted that he had no conflict with Insp. Osman.

[49] There is nothing on the evidence which speaks to ACP Desir's disposition to Mr. Jules and I am unable to accept Mr. Richelieu's submission that the statement by Mr. Jules that ACP Desir had not been on good terms with him could lead to a reasonable inference that their interfacing had not been pleasant. The fact that someone may have had a conflict with another does not necessarily suggest ill-will or spite and this more so when there is no evidence of what 'not on good terms' means.

[50] Ms. Callender has also not provided any evidence to the Court to prove malice. All of the officers testified that they did not know Ms. Callender prior to 28th April 2016. Ms. Callender also in cross-examination admitted that she did not know Insp. Osman prior to the events of 28th April 2016.

[51] There is no evidence that the police officers did not take steps to carry out investigations before charging the claimants. The evidence of PC Joseph detailed the steps which he took to ascertain certain information, enquiries at the Companies Registry, Immigration Department and Labour Department. This was clearly not a situation where the claimants were simply just charged. It is clear that the police had a bona fide belief, rightly or wrongly that they had grounds to prosecute. This is bolstered by the fact that they consulted with the Office of the Director of Public Prosecutions and it was on the basis of that advice that they went ahead with charging the claimants.

[52] The claimants have 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

[53] Having regard to the foregoing discussion, I find that the claimants have not proven their claim on a balance of probabilities.

Order

[54] The order is as follows:

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

**Kimberly Cenac-Phulgence
High Court Judge**

By the Court

Registrar of the High Court