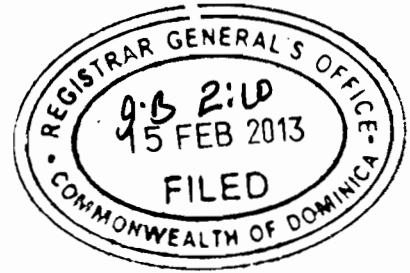


IN THE HIGH COURT OF JUSTICE
COMMONWEALTH OF DOMINICA
DOMHCV2011/0202/210/211/212/222248
[CIVIL]



BETWEEN:

**JULIUS LAMOTHE
JOHN LAMOTHE
JOKIM LAMOTHE
JULIA LAMOTHE
JOSIAH LAMOTHE
JUDE LAMOTHE**

Claimants

and

**BARTHOLOMEW ALIE
THE ATTORNEY GENERAL**

Defendants

Before: The Hon. Justice Brian Cottle

Appearances:

Mrs. Dawn Yearwood-Stewart for Claimants
Ms. Tameka Hyacinth for Defendants

[2012: October 22nd, 23rd 30th]
November 1st
[2013: February 15th]

JUDGMENT

[1] COTTLE J: The claimants filed individual claims against the defendants. As the claims all stem from the same series of events there was an order that the matters be consolidated. They were therefore tried together. The claimants brought the claims alleging assault, battery, false imprisonment and malicious prosecution. They sought damages including aggravated and exemplary damages.

The Evidence

- [2] The claimants filed witness statements which served as their evidence in chief. They say that on Saturday 14th February 2009 they were all (save the 4th claimant) sitting under a mango tree in their yard in Clifton. They were having lunch and wine. A police vehicle stopped in front of the yard and several police officers alighted. They say the officers came up to them and stood silently staring at them. The sixth claimant Josiah asked what the purpose of the police was. Jude who was at the time carrying a stick or a piece of wood asked what the police wanted. They demanded that the police leave the yard. The claimants say the police cursed at them but eventually left.
- [3] Early the next morning there was a knocking at the door of the house where the claimants lived. A large party of armed police officers executed a search warrant on the home and premises of the claimants. During the search a quantity of cannabis seeds was found. The seeds were found in a yard close to the home of the claimants. It turned out that the location of the seeds was on an adjacent parcel, not owned by the claimants but between which and the claimants' parcel there was no discernible boundary. The seeds were about 30 feet from the claimants' house.
- [4] All of the claimants save Jude were arrested and taken to the Portsmouth Police Station. The claimant Jude says he was not present. The defendants say that he was but fled the scene and was able to evade the police pursuit that ensued. The police even say that they fired gunshots in their effort to detain Jude. The other claimants agree that they heard the sound of gunshots that morning. I must say that on this factual conflict I disbelieve Jude Lamothe. He says he was not at home but in his witness statement he says that it was on the same Sunday of the arrests that he learned of the incident. He returned to Clifton the following morning. He says upon learning that the police were looking for him he went to the police station with his attorney "a few days later".
- [5] In his cross examination Jude Lamothe says he returned to Clifton from Marigot two weeks after the incident. His mother says that she told her son Jude that the police were looking for him some two weeks after she had been arrested and released on bail. Jokim Lamothe also says that it was more than one week after he was released on bail that he told Jude the police was looking for him. Jokim said it was at that stage that Jude went to the police station with his lawyer.
- [6] Not surprisingly the defendants give a different version of events. They say that on Saturday 14th February 2009 they were in search of a suspect who lives close to the home of the defendants. Noticing a group of men in a yard they approached to ascertain whether the man they were seeking was among the party. They say they were threatened by the group including Jude Lamothe who was carrying a piece of wood. They say they were intimidated by the claimants and, as they were all unarmed and the claimants claimed to have guns and bullets, they withdrew and returned to the police station. They were successful in locating the suspect they had come in search of.
- [7] Naturally the officers reported the incident involving the claimants to their superiors. A warrant was obtained from the Magistrate's Court to search the claimants' home and premises for unlicensed firearms, ammunition and illegal drugs. They say they executed the warrant. They found no firearms or ammunition but they did find a small quantity of cannabis seeds in a yard about 30 feet from the home occupied by the claimants. As all of the claimants denied knowledge of the drugs

they were all arrested and charged. They were not assaulted. They were promptly brought before the Magistrate and released on bail.

- [8] After a trial the claimants were all found not guilty and discharged. The defendants deny any malice. The claimants produced no medical evidence to substantiate their claim that they were beaten by the defendants. They say they asked the police to take them to the hospital (those who say they had been injured). John Lamothe, Julius Lamothe, Josiah Lamothe and Jokim Lamothe were all taken to the Portsmouth hospital and medically examined.
- [9] At the trial no medical certificates were adduced. In any event the claimants involved were discharged from the hospital. There is no evidence of any medical treatment or medication dispensed to them. Julia Lamothe complained that on the morning she was arrested she asked to be permitted to get dressed and two male officers accompanied her to her bedroom and watched as she got dressed. The defendants deny this and say that there was a female officer with the party who supervised Mrs. Lamothe as she dressed.
- [10] I do not think it likely that the defendants, knowing that they were on a mission to search a home where Mrs. Lamothe lived, would have omitted to have a female officer as part of the search party. I do not accept the evidence of the claimants on this point.
- [11] Having seen and heard all the witnesses and having regard to the inconsistencies identified above especially as it relates to the whereabouts of Jude Lamothe I prefer the evidence of the defendants. I do not believe that they assaulted and beat the claimants. I also conclude that they had good reason to obtain a search warrant and having found the drugs in close proximity to the home of the claimants they had reasonable grounds to charge them with possession of a controlled substance.
- [12] The claimants have not persuaded me on a balance of probability that the actions of the defendants were motivated by malice. It follows that the claims of all the claimants stand dismissed. It is usual for the unsuccessful party to pay legal costs in civil disputes, but I view this claim as akin to an application for an administrative order and so I make no order as to costs.



Brian Cottle
Brian Cottle
High Court Judge