COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law & Equity Division

Claim No. 2024/CLE/gen/000465

BETWEEN

EDITH ALBURY

Claimant

AND

COLINA INSURANCE LIMITED

Defendant

Before: The Honourable Chief Justice Sir Ian R. Winder

Appearances: Sharanna A.C. Higgs for the Claimant
E. Terry North and Darzhon Rolle for the Defendant

Hearing date(s): 9 December 2025 and 7 July 2026 and

JUDGMENT

WINDER, CJ

This is the claim of the Claimant (Albury) for damages for malicious prosecution against the Defendant (Colina).

Background

[1.] Albury's claim was commenced by Standard Claim form on 24 May 2024. The Statement of Claim, seeks relief as follows:

1. Damages for malicious prosecution in the amount of $267,250.80.
2. Punitive Damages to be assessed.
3. Legal practitioner's prescribed costs on issue in the amount of $25,465.08.
4. Interest on such sums as may be found due to Albury at such rate and for such period as the Court thinks fit pursuant to The Civil Procedure (Award of Interest) Act, Ch. 80.

[2.] The particulars of the claim for malicious prosecution were set out in the Statement of Claim, as follows:

> Colina maliciously reported and prosecuted Albury which resulted in her inability to obtain a license from the Insurance Commission of The Bahamas:
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> i.) In or about the early part of 2016 Albury attended the office of the Insurance Commission to attend to the renewal of her insurance agent's license.
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> ii.) Albury paid the requisite license renewal fee. Albury was duly informed by Insurance Commission personnel to collect the renewed insurance agent's license in a week.
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> iii.) At the material time Albury was employed with Worldwide Insurance Agency and Brokers, situated at number nine (9) Montrose Avenue, Nassau, N.P., The Bahamas.
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> iv.) Albury attended the Insurance Commission several times to collect the renewed license and was turned away by Insurance Commission personnel and not provided with the renewed license.
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> v.) Insurance Commission personnel made excuses as to why the renewed license was not ready several times. On one occasion of Albury's attendance, she was advised that the machine used to print the license was not working and out of service.
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> vi.) Albury enquired concerning what was preventing her collection of the renewed license and was ultimately advised by the Board of Insurance Commissioners (the "Board") that there was an outstanding issue of alleged fraud reported by Colina.
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> vii.) The Board refused to accept evidence from Albury which showed that the complaint by Colina was unfounded and without merit.

viii.) The Insurance Commission refused to renew Albury's insurance agent's license. In the circumstances Albury was unable to continue in the profession of being an insurance agent which she had operated in from the year 1985

ix.) In or about January 2018 Albury received a call from the Royal Bahamas Police Force (RBPF) Central Detective Unit (CDU). The RBPF officer informed Albury that if she did not attend CDU they would locate her person and arrest her.

x.) Albury attended CDU on 24th May, 2018 and was informed that she was being detained with reference to a complaint made by Colina Insurance Limited (the "Company") that Albury stole from the Company.

xi.) Albury was charged by the RBPF and arraigned before the Magistrates Court in the Commonwealth of The Bahamas on or about 3rd June, 2019 on the following charges: Stealing by reason of employment, contrary to section 340 (4) of the Penal Code Chapter 84 and Fraudulent breach of trust, contrary to section 48 of the Penal Code Chapter 84 (the "Charges").

xii.) Albury was required to retain an Attorney-at-law to assist in the conduct of the bail application on her behalf before the Supreme Court and spent eight (8) days in prison while awaiting receipt of Supreme Court bail.

xiii.) Albury pleaded not guilty and defended the Charges against her from on or about 24th May of 2018 to on or about 15th May of 2023.

xiv.) The Charges against Albury were discharged on or about 15th May 2023.

[3.] Colina denied the claim in a Defence filed in the action. The (Amended) Defence set out as follows:

1. Colina contends that the Particulars of Claim disclose no reasonable cause of action.
2. Without prejudice to the aforementioned, Colina will rely on the facts hereinafter set out.
3. Paragraph 1 and 2 of the Particulars of Claim are admitted. Save that Albury's employment with Colina ended on the 30th December 2013, paragraph 3 of the Particulars of Claim is also admitted.
4. Save that Colina admits that the Plaintiff ceased to be employed by Colina on the 30th December, 2013 paragraph 7 of the Particulars of Claim is denied. Colina states that Albury resigned as an agent of Colina on the 30th December, 2013 after Colina received a report from the Insurance Commission of The Bahamas following its investigation into matters reported to it by Colina and others that Albury had engaged in unethical business practices contrary to Colina's Sales and Marketing Code of Ethics.
5. Save that the Plaintiff resigned her position and ceased working as an agent of Colina on the 30th December, 2013 paragraph 5 of the Particulars of Claim is admitted.
6. Colina denies that the prosecution was initiated or carried on by it as is alleged by the Plaintiff in paragraph 8 of the Particulars of Claim. On the contrary the said charge was made and the prosecution carried on by the Royal Bahamas Police Force (the Police)

and Colina, by its agent, the late Mr. Stephen Haughey (Mr. Haughey) was merely called up to give evidence.

7. Moreover, save that Colina admits paragraphs 6xi, 6xii, and 6xiv of the Particulars of Claim Colina neither admits nor denies paragraph 6i, through 6ix inclusively and paragraph 6xiii of the Particulars of Claim as Colina has no knowledge of the allegations or stated therein.
8. On the 8th April 2019, Mr. Haughey made a statement to the Police which statement along with statements of the aggrieved Policy Holders of that Defendant formed the basis of the complaint made to the Police upon which they brought the following charges against Albury:

a. Stealing by reason of employment contrary to s.340 (4) of the Penal Code; and
b. Fraudulent Breach of Trust contrary to s.48 of the Penal Code.

9. Alternatively, if, which is denied, Colina was responsible for the said prosecution, it denies that it was maliciously or without reasonable and probable cause.
10. It is denied that Albury suffered the loss, damage, and expense alleged in paragraphs 7, 8, 9 and 10 of the Particulars of Claim or any damage, or any injury or damage suffered by her or that the same was occasioned by or resulted from the prosecution of the said charges against her as alleged or at all.

The Evidence

[4.] At trial Albury gave evidence in her case and called Tonique Lewis (Lewis) as a witness. Colina called D'Andra Johnson (Johnson) as a witness in their case.

Albury's Evidence

[5.] Albury filed a witness statement on 1 October 2025. She was subject to cross examination and re-examination. A summary of that evidence is as follows:

[6.] Albury says that she is a veteran insurance agent who, at the material time of trial, was employed as a real estate agent. She brings this claim arising out of events connected to the renewal of her insurance agent's licence and subsequent criminal charges initiated by Colina.

[7.] Albury states that in early 2016, while employed with World Wide Insurance Agency and Brokers, she sought to renew her insurance agent's licence. She paid the requisite renewal fee and was informed by personnel of the Insurance Commission of The Bahamas that the renewed licence would be available for collection within one week.

[8.] Albury attended the Insurance Commission on several occasions thereafter but was repeatedly turned away. She was told variously that the licence was not ready and, on one occasion, that the machine used to print licences was out of service.

[9.] Upon enquiring further, Albury was advised by the Insurance Commission that an adverse report alleging fraud had been made against her by Colina in 2015. She was told that this report prevented the renewal of her licence. Although she sought a meeting with the Board and provided evidence demonstrating that the allegation was unfounded, the Board refused to accept her evidence, and the Insurance Commission declined to renew her licence. As a result, she was unable to continue practising as an insurance agent, a profession she had held since 1985.

[10.] In January 2018, Albury received a call from the Royal Bahamas Police Force's Central Detective Unit advising that she would be arrested if she did not attend CDU. She attended on 24 May 2018 and was informed that Colina had alleged she stole premium payments totalling $1,085 from several customers. She was subsequently charged on 3 June 2019 with stealing by reason of employment and fraudulent breach of trust.

[11.] Albury spent eight days in custody awaiting bail and retained counsel to assist with her bail application. Between May 2018 and May 2023, she attended court on twenty-six occasions. The witnesses identified by Colina appeared sporadically and failed to produce receipts as directed by the magistrate. The matter was repeatedly adjourned.

[12.] On 15 May 2023, the Magistrate's Court, after a trial, acquitted Albury of all charges.

[13.] Albury asserts that despite the obvious deficiencies in the prosecution's case, Colina refused to withdraw the charges. She contends that the unfounded allegations, the prolonged criminal proceedings, and the refusal to renew her licence caused irreparable damage to her reputation and effectively ended her career as an insurance agent, leaving her unable to re-enter the profession.

[14.] When cross examined, Albury stated as follows:

[15.] She had worked for Colina, as an insurance salesperson. In November 2013, she informed Colina's management that she needed to resign in order to care for her mother and daughter, both of whom were seriously unwell.

[16.] Her evidence was that her resignation took effect on 30 November 2013 and that she did not work for Colina during December 2013.

[17.] Albury was questioned about Tameko Gibson, whom she said she had met when he attended Colina's office to reinstate a policy. She denied knowing that Mr Gibson had made a complaint against her. Her evidence was that she had reported Mr Gibson to Colina.

[18.] In re-examination, Albury explained that Mr Gibson had left the office to obtain current identification and had not returned. She said that she could not remit the money associated with the transaction because the identification was inadequate and the amount was short. She also said that she had mistakenly given Mr Gibson a $100 bill instead of a $10 bill as change.

[19.] Albury testified that she reported the matter to the office secretary and her manager. According to her, Colina's head office subsequently contacted Mr Gibson during a three-way telephone call, in which he admitted what had occurred and accepted that he was at fault. Albury did not produce a copy of the report which she said she had made.

[20.] Albury further testified that, when she later sought to renew her insurance licence, the Insurance Commission informed her that Colina had made an adverse report about her in 2015 and that this was the reason her licence could not be renewed.

[21.] She said that the Insurance Commission initially granted her a meeting and permitted her to obtain a letter from the person concerned in the allegation. According to Albury, she was subsequently informed that the Commission would no longer accept the letter. She was also told that neither the letter nor her attorney would be permitted at the next meeting and that she was to attend alone.

[22.] Albury said that the issue raised during the licensing process concerned a cheque from Tanya Kelly. She understood the allegation to be that she had taken Ms Kelly's cheque and applied the proceeds to policies belonging to members of Rashawn Rigby's family.

[23.] Albury's explanation was that Ms Kelly's cheque was payable to Colina and that, with the cashier's permission, she cashed the cheque for Ms Kelly. She said that she gave Ms Kelly cash which had been received in respect of the Rigby policies and wrote the relevant policyholders' names on the back of Ms Kelly's cheque so that Colina would apply the cheque to those policies.

[24.] Albury denied stealing or improperly applying any money. She said that, when it became apparent that the allegation concerning Ms Kelly's cheque could not be sustained, the allegation changed to one that she had stolen the premiums paid in respect of the Rigby-related policies.

[25.] Albury testified that, on 24 May 2018, approximately five years after the relevant transactions, she attended the Central Detective Unit following communication from the Royal Bahamas Police Force. She said that she was detained and informed that Colina had complained that she had stolen premiums from several customers.

[26.] Albury did not remember the name of the officer who interviewed her or whether she signed a written record of interview. She accepted that she answered "no comment" to the questions put to her. Her explanation was that her attorney was present and had advised her to respond in that manner. She said that she had never previously been involved in court proceedings of that nature and therefore followed her attorney's advice.

[27.] A material issue in cross-examination was the identity of the person or entity responsible for initiating the criminal proceedings. Albury repeatedly maintained that Colina had brought or initiated the case against her. She said that personnel at the Central Detective Unit had told her that Colina had the case against her.

[28.] Albury was shown documents indicating that an officer of the Insurance Commission had referred the matter to the police for review and requested consideration of whether criminal charges should be instituted. She nevertheless disagreed that the Insurance Commission had initiated the case. Her evidence was that Colina had supplied the Commission with incorrect and malicious information.

[29.] In re-examination, Albury said that, so far as she knew, the persons responsible for commencing the proceedings were Colina's human resources manager and her own manager.

[30.] Albury denied committing any offence or other infraction. She testified that she defended the criminal proceedings for approximately six years and was ultimately found not guilty because, as she put it, there was no evidence against her.

[31.] In relation to loss, Albury clarified that she sought compensation for lost commission rather than salary. The sum of $267,250 was put to her in cross-examination.

[32.] Albury said that, in her view, her loss commenced in 2016, when she attempted to renew her licence, and continued to the date of trial. She added that her attorney had advised her that she could claim only for a more limited period. In her oral evidence, she did not provide a detailed calculation explaining how the sum of $267,250 had been derived.

Lewis' evidence

[33.] Lewis filed a witness statement on 1 October 2025. She was subject to cross examination and re-examination. A summary of that evidence is as follows:

[34.] Lewis, Counsel and Attorney-at-Law called to the Bahamas Bar, stated that she acted on behalf of Albury in defence of criminal charges brought against her following a complaint made by Colina Insurance Limited. She confirmed that her evidence was based on matters within her knowledge, and where not, she identified the source of her belief.

[35.] Lewis deposed that as a result of Colina's complaint, Albury was charged by the Royal Bahamas Police Force and arraigned before the Magistrates Court on or about 3 June 2019 for stealing by reason of employment, contrary to section 340(4) of the Penal Code, and fraudulent breach of trust, contrary to section 48 of the Penal Code.

[36.] Lewis stated that throughout the prosecution no evidence was produced to establish that Albury received or misappropriated premium payments as alleged. The prosecution's principal witness, Steve Haughey, who served as Chief Operating Officer for seven and a half years immediately preceding the prosecution, provided no evidence showing that Albury received any customer payments.

[37.] Lewis further stated that the remaining prosecution witnesses, all clients of Colina, failed to substantiate the allegations. Metrice Arthur confirmed that her policy did not lapse until 2015, well after Albury had left Colina's employment in December 2013. Rashawn Rigby testified that a payment he made to Albury did not amount to the required premium and could not confirm whether funds given to his wife, Andrea Newton, were ever paid to Albury. No evidence was provided by Newton to confirm receipt of any such funds. Two additional witnesses, Waydenell Butler and Clanell McKenzie, gave statements during the investigation but did not attend trial.

[38.] Lewis stated that the prosecution failed to prove the essential elements of the offences beyond a reasonable doubt, and Albury was accordingly acquitted on 15 May 2023. Lewis further noted that the matter was repeatedly adjourned over a five-year period due to the prosecution's failure to secure witnesses or produce documentary evidence. Despite these deficiencies and the prosecution's inability to present cogent evidence, Colina did not withdraw its support for the continuation of the criminal proceedings against Albury.

[39.] When cross-examined, Lewis stated as follows:

[40.] She had represented Albury in the criminal proceedings. Her evidence concerned the identity of the complainant, the investigation and charging process, the evidence presented in the Magistrate's Court, and the manner in which the criminal proceedings were determined.

[41.] She maintained that the charges against Albury arose from a complaint made by Colina. She explained that Albury had been charged with stealing by reason of employment and had been employed by Colina at the material time. Lewis also relied upon the criminal docket. She said that, as a matter of criminal practice, the first person named on a docket is ordinarily the complainant and that the first name appearing on Albury's docket was that of an employee of Colina. She further relied upon the particulars of the charges, which referred to stealing by reason of employment.

[42.] Lewis was shown a letter from the Insurance Commission requesting that the matter be reviewed to determine whether criminal charges should be instituted against Albury for failing to pay over premiums received on behalf of an insurer. Lewis said that she did not remember having seen the letter previously. Notwithstanding the contents of that letter, Lewis maintained that Colina was the complainant. She distinguished between the Insurance Commission referring the matter to the police or recommending that charges be considered and the identity of the complainant in the resulting criminal proceedings.

[43.] Lewis's position was that a charge of stealing by reason of employment identified the employer as the complainant. She said that Albury had been charged with stealing by reason of employment and fraudulent breach of trust, and that Colina was identified as the complainant. She noted that Albury had not been charged under a provision which identified the Insurance Commission as the complainant.

[44.] Lewis accepted that the police exercised an independent discretion whether to charge a suspect. She explained that the police would ordinarily take a statement from the complainant, interview other witnesses, and determine whether there was sufficient material to justify a charge.

[45.] Lewis said that, in relation to more serious offences, the investigative file could be sent to the Office of the Director of Public Prosecutions for advice as to whether the available material was sufficient to support a charge.

[46.] Lewis agreed that the police could charge a person where there was reasonable or probable cause. She nevertheless emphasised that the process began with a complaint, followed by an investigation and a determination as to whether the available material was sufficient.

[47.] Lewis was shown statements from policyholders and a representative of Colina in which police action was requested. She observed that the policyholders described themselves as customers of Colina. She also said that no witness from the Insurance Commission appeared to have given a comparable statement in the capacity of complainant. Lewis therefore maintained that, although the Insurance Commission may have recommended that the matter be reviewed or prosecuted, it had not formally made the complaint upon which the criminal charges proceeded. In her view, Colina remained the complainant.

[48.] Lewis was also questioned about the evidence of Matrice Arthur. Her witness statement apparently recorded that Ms Arthur's policy did not lapse until 2015. In cross-examination, Ms Lewis was shown Ms Arthur's police statement, which stated that Ms Arthur discovered in 2013 that her policy was three months in arrears.

[49.] Lewis responded that a statement given to the police was not, without more, the witness' evidence at the criminal trial. She explained that the evidence before the Magistrate would have been the oral testimony given by the witness in court, unless the police statement was admitted as an exhibit.

[50.] Lewis observed that Ms Arthur's police statement did not appear to have been marked as an exhibit. Her position was therefore that the statement did not establish what evidence Ms Arthur had given before the Magistrate. Lewis disagreed with the suggestion that the criminal proceedings ended merely because prosecution witnesses failed to attend court. She accepted that the matter had been adjourned on several occasions and that, on some occasions, witnesses either failed to attend or attended without the documents required to support the allegations.

[51.] Lewis nevertheless testified that material prosecution witnesses gave evidence. She identified Mr Haughey, whom she described as the complainant or Colina's representative, as well as Ms Arthur, Mr Rigby, and a male witness whom she recalled as the husband or partner of one of the policyholders.

[52.] Lewis said that Mr Haughey gave evidence and was cross-examined. She also said that the male policyholder was cross-examined. According to her recollection, that witness could say only that he gave policy payments to his wife and could not confirm whether she had paid those sums to Colina.

[53.] Lewis testified that Ms Arthur began giving evidence, after which the prosecution obtained an adjournment to produce supporting documents. According to Ms Lewis, those documents were not subsequently produced. Lewis's assessment was that the prosecution evidence remained insufficient after Mr Haughey and the other witnesses had testified. She rejected the proposition that the charge was simply dismissed because witnesses failed to attend.

[54.] In answer to questions from the Court, Lewis confirmed that the criminal proceedings proceeded through a full trial. She said that the prosecution called evidence and closed its case, following which she made a no-case submission on behalf of Albury. The Magistrate rejected that submission. Lewis said that the defence then called evidence, closing addresses were made, and the Magistrate delivered a decision. Her evidence was therefore that the acquittal followed the completion of the trial and the Magistrate's consideration of the evidence, rather than a purely procedural dismissal.

Johnson's Evidence

[55.] Johnson filed a witness statement on 29 September 2025. She was subject to cross examination and re-examination. A summary of that evidence is as follows:

[56.] Johnson is the General Counsel and Corporate Secretary of Colina, a registered insurer incorporated under the laws of the Commonwealth of The Bahamas and operating from East Bay Street, New Providence, with additional branches throughout the country.

[57.] Johnson stated that Albury was employed by Colina as a sales representative responsible for selling insurance products to individuals and businesses. Albury served in this role from 1 August 2009 until her resignation on 30 December 2013.

[58.] Johnson explained that both before and after Albury's resignation, Colina received and investigated a complaint from policyholder Tameko Gibson. The complaint was documented in an email dated 24 December 2013 and was investigated by Colina's Special Investigation Unit ("SIU") as Case #2013-035.

[59.] According to Johnson, Gibson visited Colina to have his policy reinstated. Albury completed the reinstatement form, collected the funds, and issued a receipt. However, the SIU found no record of the reinstatement form being submitted for processing or the funds being recorded in Colina's system.

[60.] Johnson stated that the SIU concluded that Albury failed to remit premiums collected from Gibson within forty-eight hours and failed to submit the reinstatement form. These failures were found to violate Colina's Sales and Marketing Department Code of Ethics, and disciplinary action was recommended.

[61.] Johnson noted that Albury tendered her resignation by handwritten note dated 30 December 2013 addressed to Sandra Smith, Manager of Colina's Rosetta Branch, and that her departure was communicated internally by email on 31 December 2013.

[62.] Johnson stated that after Albury's resignation, the SIU investigated additional complaints from policyholders between 10 December 2013 and 5 February 2014. These complaints, made by Clanell McKenzie, Rashawn Rigby, Andrea Newton, Metrice Arthur, and Waydenell Butler, alleged that premiums paid to Albury were not recorded in Colina's internal system.

[63.] Johnson further stated that during an exit interview on 3 January 2014, Albury indicated that she resigned to pursue better compensation and benefits.

[64.] Johnson explained that on or about 18 February 2014, Colina completed Form 12 (Part B) for submission to the Insurance Commission of The Bahamas. In that form, Colina indicated uncertainty as to whether all funds collected by Albury had been remitted and stated that she would not be re-employed due to previous misconduct. The form was sent to the Insurance Commission on 13 February 2014.

[65.] Johnson referred to a statement dated 8 April 2019 from the late Stephen Haughey, former Chief Operating Officer of Colina, in which Haughey stated that Colina initially reported its findings regarding Albury to the Insurance Commission in February 2016.

[66.] Johnson also referred to a written report dated 28 May 2019 by WDC Monita Varence, who stated that a complaint was initiated by Kean Smith of the Insurance Commission. Smith provided Varence with a report outlining payments allegedly not remitted and copies of premium receipts. Varence interviewed Haughey and several policyholders and reported that she arrested and cautioned Albury on 24 May 2018.

[67.] Johnson stated that on 8 April 2019, Haughey was summoned to the Central Detective Unit and informed WDC Varence that internal investigations, including interviews with affected policyholders, concluded that Albury had engaged in unethical business practices and breached Colina's Sales and Marketing Code of Ethics.

[68.] Johnson asserted that apart from providing information to WDC Varence during the investigation, Colina was not involved in the prosecution of Albury. She stated that the charges were brought by the Royal Bahamas Police Force and that proceedings commenced on behalf of the Commissioner of Police following the conclusion of police investigations.

[69.] When cross examined Johnson stated as follows:

[70.] Johnson commenced employment with Colina in October 2022. She accepted that she had not been employed by Colina in 2013, when Albury resigned, or in 2018, when the complaints underlying the proceedings in the Magistrate's Court were made.

[71.] Johnson was questioned about references to Tameko Gibson in paragraphs 3 to 5 of her first witness statement. She said that she was aware that the Magistrate's Court proceedings were against Albury in respect of actions said to have occurred during Albury's time with Colina.

[72.] When asked whether those proceedings concerned Mr Gibson, Ms Johnson did not identify him as a person involved in the criminal case. She accepted that her knowledge of the specific persons involved was limited to the names and information appearing in her witness statements.

[73.] Johnson said that she could assist the Court with the background only to the extent recorded in Colina's documents. Her knowledge was derived from Colina's records rather than from personal involvement in the events.

[74.] Johnson said that Colina's records documented an investigation, the process followed during that investigation, and the documents submitted to the Insurance Commission of The Bahamas in connection with the complaint.

[75.] Johnson was referred to paragraph 11 of her witness statement, which cited a statement dated 8 April 2019 from the late Steve Haughey, Colina's former Chief Operating Officer, taken by Woman Detective Constable 3854 Monita Varence. According to the passage put to Ms Johnson, Colina initially reported its findings concerning Albury to the Insurance Commission in February 2016.

[76.] Johnson was asked to explain the interval between Albury's resignation in 2013 and the report to the Insurance Commission in 2016. She said that the records indicated that an initial complaint against Albury led to an investigation and a recommendation that Albury should face punitive consequences within the company. Albury thereafter resigned, and further complaints were subsequently received concerning matters said to have occurred during her employment.

[77.] Johnson testified that the subsequent complaints were reported to the Insurance Commission for the protection of the insurance industry. She said that the Commission was required to be notified when complaints of that nature were received. When pressed for an explanation for the lapse of time, Ms Johnson said only that the complaints were received later and that, according to Colina's records, Colina reported them after their receipt.

[78.] Johnson accepted that she had not been employed by Colina, and had not participated in the decision-making process, when the complaint was made. She was therefore unable to give direct evidence of the motivation of the individuals who decided to make the complaint. She said that she could speak only to what was recorded in Colina's corporate records and not to any individual person's motivation.

Issues

[79.] The agreed issues for determination in this dispute are as follows:

(1) Whether or not it was Colina who lodged the complaint against Albury to the RBPF thereby initiating the criminal prosecution against her?

(2) In the event that it is determined that the prosecution was initiated by Colina, whether or not said prosecution can be deemed malicious?

(3) Whether or not Albury is entitled to Damages for malicious prosecution and punitive damages to be assessed as compensation for the effect of Colina's actions against Albury?

Analysis and Disposition

[80.] The legal principles surrounding a claim for malicious prosecution were helpfully discussed in the Court of Appeal case of **The Commissioner of Police and another v Rod Andrew Bethel** [2022] 2 BHS J. No. 88. At paragraph 20 through 22 of the judgment, Jones JA states as follows:

> 20 The learned authors of Clerk & Lindsell on Torts 23rd ed. para 15-3 provide us with the essence of the tort of malicious prosecution:
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> > "In an action for malicious prosecution, the claimant must show first that he was prosecuted by the defendant, that is to say, that the law was set in motion against him by the defendant on a criminal charge or, now, via civil proceedings; secondly, that the prosecution was determined in his favour; thirdly, that it was without reasonable and probable cause; and fourthly, that it was malicious. The onus of proving every one of these is on the claimant. Evidence of malice of whatever degree cannot be invoked to dispense with or diminish the need to establish separately each of the first three elements of the tort. Nor does the presence of malice affect the operation of the defence of illegality, which may apply to defeat an action for malicious prosecution.73."
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> 21 The court considered what is reasonable and probable cause in W/Con 2305 Sweeting, The Commissioner of Police, The Attorney General vs. Atisha Tinker & Omar McPhee SCCivApp No. 50 of 2009. The court said:
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> > "The statement of Hawkins, J. in Hicks v Faulkner (1878) 8 QBD 167, 171 and approved in the. House in Herniman v. Smith (1938) A.C. 305, 316 made with reference to malicious prosecution, can be adopted for present purposes.
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> > "That brings me to the consideration of what is reasonable and probable cause. Now I should define reasonable and probable cause to be, an honest belief in the guilt of the accused based upon a full conviction, founded upon reasonable grounds, of the existence of a state of circumstances, which, assuming them to be true, would reasonably lead any ordinarily prudent and cautious man, placed in the position of the accuser, to the conclusion that the person charged was probably guilty of the crime imputed. There must be: first, an honest belief of the accuser in the guilt of the accused; secondly, such belief must be based on an honest conviction of the existence of the circumstances which led the accuser to that conclusion; thirdly, such secondly mentioned belief must be based upon reasonable grounds; by this I mean such grounds as would lead any fairly random man in the defendant's situation, so to believe; fourthly, the circumstances so believed and relied on by the accuser must be such as amounts to reasonable ground for belief in the guilt of the accused."
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> 22 In Trevor Williamson v The Attorney General of Trinidad and Tobago [2014] UKPC 29. Privy Council considered the elements of reasonable and probable cause, and stated:

"11. In order to make out a claim for malicious prosecution, it must be shown, among other things, that the prosecutor lacked reasonable and probable cause for the prosecution and that he was actuated by malice. These particular elements constitute a significant challenge by way of proof. It has to be shown that there was no reasonable or probable cause for the launch of the proceedings. This requires the proof of a negative proposition, normally among the most difficult of evidential requirements. Secondly, malice must be established. A good working definition of what is required for proof of malice in the criminal context is to be found in A4 v NSW [2007] HCA 10; 230 CLR 500, at para 91: "What is clear is that, to constitute malice, the dominant purpose of the prosecutor must be a purpose other than the proper invocation of the criminal law–an 'illegitimate or oblique motive'. That improper purposc must be the sole or dominant purpose actuating the prosecutor"

[81.] In order to succeed in a claim for malicious prosecution, Albury must establish that: (1) she was prosecuted by Colia, that is to say, that the law was set in motion against her by Colina on a criminal charge; (2) that the prosecution was determined in her favour; (3) that it was without reasonable and probable cause; and (4) that it was malicious.

[82.] Albury' case is that:

(1) Colina's complaint and supporting information set the criminal law in motion;
(2) the prosecution ended in her favour following a full trial;
(3) Colina lacked reasonable and probable cause;
(4) malice or an improper motive should be inferred;
(5) the prosecution caused her financial loss and other damage; and
(6) she is entitled to the relief claimed.

[83.] I am satisfied, on the evidence which I have seen and heard, that this claim for malicious prosecution cannot be sustained. Albury has failed to demonstrate that the action was instituted or conducted by Colina, that Colina acted maliciously, or that there was no reasonable or probable cause for the prosecution of the case against her.

The Institution of Proceedings

[84.] The Court accepts that Colina 's involvement in the events leading to Albury's prosecution must be assessed by distinguishing between Colina's internal investigations, its regulatory reporting obligations, the actions of the Insurance Commission, and the independent functions of the Royal Bahamas Police Force. The evidence demonstrates that these were separate and sequential processes.

[85.] Colina conducted internal investigations into complaints made by several policyholders following Albury's departure. Those investigations resulted in findings that certain premiums allegedly collected by Albury were not recorded in Colina's internal system. The Court accepts that Colina completed and submitted Form 12 to the Insurance Commission in February 2014, noting uncertainty as to whether all funds collected by Albury had been remitted and indicating that she would not be re-employed due to misconduct.

[86.] In February 2016 Colina reported its investigative findings to the Insurance Commission. On the evidence, that report was made pursuant to Colina's regulatory obligations and was not, in form or substance, a criminal complaint directed to the police. The Court accepts that Colina characterised the report as a regulatory notification intended to protect the insurance industry.

[87.] The Court finds that the Insurance Commission undertook its own assessment of the material provided by Colina and subsequently referred the matter to the Royal Bahamas Police Force. The Commission's letter of 22 May 2017 expressly requested a police review, asked whether criminal charges should be instituted, identified a possible offence under section 135 of the Insurance Act, and provided the information necessary for a police investigation. The Court is satisfied that the Commission, not Colina, initiated the referral to law enforcement.

[88.] The Court finds that the police conducted an independent investigation. WDC Varence's report records that she received instructions from Kean Smith of the Insurance Commission to continue the investigation. The police obtained statements from policyholders, interviewed Colina's representative, interviewed Albury, and exercised their own discretion in determining whether charges should be laid. The Court accepts the evidence of Lewis that the police ordinarily charge only where they consider there to be reasonable or probable cause.

[89.] The Court finds that the Royal Bahamas Police Force formally charged Albury and commenced criminal proceedings on behalf of the Commissioner of Police. The prosecution was conducted by the State, not by Colina. Any information provided by Colina or the policyholders formed part of the evidentiary material considered by the police but did not compel the laying of charges.

[90.] The Court finds that Albury's oral evidence concerning the initiation of the prosecution was inconsistent with the documentary record. Although her witness statement acknowledged that the Royal Bahamas Police Force charged her, she repeatedly asserted in cross examination that Colina prosecuted her. She maintained this position even when shown the Insurance Commission's referral letter and the police report.

[91.] The Court finds no evidential basis for Albury's assertion that Colina supplied false or malicious information to the Insurance Commission. That allegation was neither pleaded with particularity nor supported by evidence capable of establishing malice or an absence of reasonable and probable cause.

[92.] In light of the foregoing, the Court finds that Colina did not institute or conduct the prosecution against Albury. Its role was limited to internal investigation, regulatory reporting, and cooperation with the police investigation. The initiation of the criminal process was undertaken by the Insurance Commission, and the decision to prosecute was made independently by the Royal Bahamas Police Force.

Reasonable and Probable Cause

[93.] If I am wrong as to the institution of the proceedings, I am satisfied nonetheless that Albury has failed to establish or demonstrate an absence of a reasonable and probable cause for the institution for the proceedings against her.

[94.] The Court accepts that the burden lies on Albury to prove an absence of reasonable and probable cause. It is not for Colina to demonstrate affirmatively that reasonable and probable cause existed. Albury must establish, on the evidence, that Colina did not honestly believe the allegations it reported or that such belief was not based on reasonable grounds.

[95.] Albury did not present evidence capable of demonstrating what Colina actually believed at the time of its regulatory reporting, nor did she provide a basis from which the Court could infer that Colina lacked a genuine or reasonable belief in the concerns it raised. Albury's evidence did not address Colina's state of mind in any meaningful way.

[96.] I accept that Colina received complaints from several policyholders alleging that premiums paid to Albury had not been recorded in Colina's internal system. These complaints formed part of the factual matrix that informed Colina's internal review. Colina conducted an internal investigation through its Special Investigation Unit, which identified concerns relating to unrecorded premiums and failures to follow internal procedures. The existence of such findings is relevant to assessing whether Colina had grounds to believe that irregularities had occurred.

[97.] The Court further accepts that Colina submitted the Form 12 to the Insurance Commission and later provided a regulatory report in 2016, as a part of its statutory obligations. The Insurance Commission undertook its own review of the material and subsequently referred the matter to the Royal Bahamas Police Force for investigation. This referral was made independently of Colina.

[98.] I am satisfied that the police conducted their own investigation, obtained statements from policyholders, interviewed Colina's representative, interviewed Albury, and independently determined that charges should be laid.

[99.] I accept Colina' submission that Albury's eventual acquittal does not, in itself, establish that the proceedings were commenced without reasonable and probable cause. An acquittal reflects the prosecution's failure to prove guilt beyond a reasonable doubt; it does not retrospectively negate the existence of reasonable grounds for investigation or referral. What the proceedings does demonstrate however, is that the Magistrate was satisfied that the prosecution had established a prima facie case and rejected Albury's no case submission. This supports that claim that the prosecution was not one without reasonable and probable cause.

[100.] In light of the evidence, the Court finds that Albury has not discharged the burden of proving an absence of reasonable and probable cause. The material before the Court demonstrates that Colina acted within its regulatory obligations, that the Insurance Commission independently referred the matter to the police, and that the police independently decided to prosecute. There is no evidential basis upon which the Court could conclude that Colina acted without reasonable and probable cause.

Malice

[101.] I am satisfied that Albury has failed to establish any malice on the part of Colina. Albury did not particularize the claim of malice and submitted that malice may properly be inferred where Colina lacked reasonable and probable cause. She argues that if Colina did not honestly believe that the allegations against her could be proved through admissible and reliable evidence, the Court may infer that the complaint was made for a purpose other than the proper enforcement of the criminal law. Having found that Albury has failed to establish a reasonable and probable cause, it follows that malice could not be established on her case.

Conclusion

[102.] Albury's claim for malicious prosecution is hereby dismissed. Colina shall have its reasonable costs, to be assessed if not agreed.

Dated this 17th day of August 2026

Sir Ian. Winder
Chief Justice