

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law & Equity Division

Claim No. 2019/CLE/gen/000605

BETWEEN

CHAKARA BURROWS, Personal Representative of

THE ESTATE OF KENSELL BURROWS

Claimant

AND

THE COMMISSIONER OF POLICE

First Defendant

AND

THE ATTORNEY-GENERAL OF THE BAHAMAS

Second Defendant

Before: The Honourable Chief Justice Sir Ian R. Winder

Appearances: Candice Smith and Nathan Smith for the Claimant
Kayla Green-Smith with Navardo Frazer for the Defendants

Hearing date(s): 2 December 2025 and 25 March 2026

JUDGMENT

WINDER, CJ

This is the claim for damages for malicious prosecution, false imprisonment, unfair dismissal and unlawful arrest against the Defendants. The Claimant sues as the personal representative of the estate of the late Kensell Burrows (Burrows) who died on 3 August 2020, since the commencement of this action. The action is being continued by his widow.

Background

[1.] Burrows' claim was commenced by Writ of Summons on 3 May 2019. The Statement of Claim, seeks relief as follows:

1. Damages for Malicious prosecution, False imprisonment, Unlawful arrest;
2. Damages for wrongful and/or Unfair Dismissal;
3. Pain, Suffering and Loss of Amenities;
4. Aggravated Damages;
5. Interest;
6. Further or other relief; and
7. Costs

[2.] The Statement of Claim is settled in the following terms:

1. The Plaintiff was at all times a citizen of the Commonwealth of The Bahamas and previously under the employ of the First Defendant.
2. The First Defendant at all material times was the Commissioner of Police, a post which at all material times was held by Mr. Ellison Greenslade. The police officers referred to in this claim were at all material times acting under his direction and control in the purported performance of their police functions within the meaning of the Police Force Act 2009.
3. The Second Defendant was at all material times the Attorney General of the Commonwealth of The Bahamas.
4. On or about the 1st day of May A.D., 2012 the Plaintiff was in the western area of New Providence, The Bahamas when he was unlawfully arrested with others by agents and/or employees of the First Defendant.
5. The Plaintiff was arrested whilst at the Blue Water Resort establishment for possession of a firearm, possession of dangerous drugs and possession of counterfeit notes.
6. The Plaintiff was arrested by Detective Corporal 2623 Kavanaugh Cleare and Detective Constable 3350 Williams and taken to the Police Quarter Guard for Two (2) days. On the 3rd day of May A.D, 2012 the Plaintiff was taken before Chief Magistrate Joyann

Ferguson Pratt in Magistrate Court Number 9 and arraigned on the aforementioned charges.

7. The Plaintiff pleaded not guilty and was granted bail which was duly signed by his respective suretors. Despite being given bail and his suretors signing his bail, the Plaintiff was placed back under arrest and transported to Police Headquarters East Street without any information being given to him and/or his immediate family members. By reason of the unlawful arrest by the First Defendant and/or his agents, the Plaintiff was deprived of his liberty and suffered loss and damages.

PARTICULARS OF UNLAWFUL ARREST

- a. Failed to inform the Claimant of the fact of his arrest after he was arraigned in court and received bail.
 - b. Failed to inform the Claimant of the ground for his arrest;
 - c. Could not have suspected and did not suspect, reasonably or at all, that the Plaintiff was guilty of any offence;
 - d. It was not necessary to arrest the Plaintiff in order to have him appear before the First Defendant as he was under the employ of the First Defendant.
 - e. Failed to exercise reasonable skill, care and diligence while acting in the capacity as a police officer.
8. The Plaintiff was taken to the Police Headquarters where he was forced to remain until he was seen by the First Defendant who terminated his employment without any discussion, meetings and/or any investigation in the matter.
 9. The Discharge Certificate given to the Plaintiff wrongfully alleged that the Plaintiff's conduct and general character had been unsatisfactory, however, prior to the malicious prosecution of the Plaintiff, there were never any disciplinary proceedings or warnings given to the Plaintiff in relation to his conduct as an Officer.
 10. The Plaintiff at all material times was an exemplary officer who also was a member of the Royal Bahamas Police Force Band. The First Defendant failed to consider allowing the Plaintiff to be interdicted whilst awaiting the outcome of the court hearing. The First Defendant owed a duty of care to the Plaintiff in the conduct of the court hearing. The First Defendant owed a duty of care to the Plaintiff in the conduct of his investigations prior to his termination. In breach of the duty of care by the First Defendant, the Plaintiff suffered and continues to suffer loss and damages.
 11. At the time of the termination the Plaintiff's employment he suffered loss of approximately four (4) years salary, loss of vacation, loss of increments, loss of group medical insurance coverage, loss of opportunity for promotion and advancements.

PARTICULARS OF UNFAIR and/or WRONGFUL DISMISSAL

- a. Failed to place the Plaintiff on interdiction pending the outcome of the trial;

- b. Failed to conduct a proper investigation of the Plaintiff's employment history;
- c. Failed to conduct a proper investigation and/or meeting prior to terminating the Plaintiff; and
- d. Failed to consider the Plaintiff's employment record when terminating contract.

The First Defendant acted unlawfully and with extreme prejudice and malice when terminating the Plaintiff's employment. By reason of the First Defendant's unfair and/or wrongful dismissal the Plaintiff suffers and continues to suffer loss and damages.

12. The First Defendant's action further caused pain and suffering to the Plaintiff who had recently been married two (2) months prior to his arrest, on the 3rd day of March A.D., 2012.
13. The Plaintiff's marriage suffered greatly because of the malicious prosecution and wrongful/unfair dismissal by the Defendants. This resulted in the Plaintiff developing hypertension during the ongoing trial and being unable to get adequate care due to lack of finances. As a result of the trial the Plaintiff was also unable to satisfy a loan which he had taken whilst under the employ of the First Defendant. The loan went into default resulting in the Plaintiff having a Judgment Order issued against him. By reason of the First Defendant the Plaintiff suffered and continues to suffer pain and suffering and loss of amenities.
14. The Plaintiff at all material times maintained his innocence throughout the trial of his matter. On the 14th day of May A.D., 2012, the Plaintiff appeared before Chief Magistrate and was given a trial date for the 9th and 10th October 2012. On the 9th day of October A.D., 2012, the Prosecutor for the court requested an adjournment on the basis that the Second Defendant and/or its agents intended to assume the prosecution of the matter. The matter was therefore adjourned to the 7th of February A.D., 2013.
15. The matter has to be adjourned once again to the 19th February and on a number of occasions until the 26th October 2015 when the Plaintiff was discharged by the Learned Magistrate for want of prosecution.
16. The Second Defendant filed an appeal on the 30th October 2015 against the Plaintiff and his co-accused on the grounds that the decision of the Chief Magistrate was unreasonable or could not be supported having regard to the evidence. Due to the Second Defendant and/or its agents maliciously continuing with the appeal of this matter despite there being no evidence, the Plaintiff continued to accrue legal expenses in defence of his innocence.
17. The Plaintiff was forced to face another malicious prosecution by the Second Defendant for another three (3) years whereby it was not until the 26th November 2018 the Court of Appeal delivered its ruling and was satisfied that the Chief Magistrate could not be faulted in the exercise of her discretion in the circumstances and the appeal stood as dismissed.

18. The Plaintiff after his termination and during the course of the malicious prosecution, the Plaintiff suffered medical issues from the stress and pressure of financial loss, legal expenses , marital problems and suffered an continued to suffer loss and damage.
19. The prosecution of the Plaintiff was brought without probable or reasonable cause.

PARTICULARS OF MALICIOUS PROSECUTION

- a. Failed to employ competent employees;
- b. Failed to initiate a proper investigation prior to charging the Plaintiff;
- c. Failed to properly consider the facts and evidence prior to charging the Plaintiff;
- d. Failed to properly consider the evidence in the Magistrate Court prior to filing Appeal;

...

[3.] At trial, Counsel for the Claimant indicated that the claim for defamation was being withdrawn as a result of the Defendants submission that the claim could not survive Burrows' death, by virtue of the Survival of Actions Act.

[4.] The Defendants denied the claim in a defence filed on 17 May 2024. The Defence set out as follows:

1. The Defendants raise preliminary objections and reserve the right to pursue procedural challenges to the Claim, including striking out portions of the Amended Statement of Claim. They further contend that any claims for wrongful or unfair dismissal, or any other claims filed outside the statutory period, are barred by section 12 of the Limitation Act.
2. The Defendants admit the formal matters pleaded in paragraphs 1, 2, 3 and 5 of the Amended Statement of Claim, and admit that Burrows was arrested, though they assert that the arrest was lawful. Save for limited admissions, they deny or make no admission to the remaining allegations and put the Claimant to strict proof.
3. The Defence sets out the circumstances of the police operation conducted on 1 May 2012 at the Blue Water Resort by officers of the Drug Enforcement Unit. The Defendants assert that officers executed a search warrant, encountered suspects attempting to flee, and recovered a firearm after one suspect was shot. They state that six males, including Burrows, were found in the unit and informed of the search warrant. A money tag for \$10,000 was allegedly found in Burrows's pocket, and a 9mm pistol was discovered in the bathroom from which Burrows had emerged.
4. The Defence further asserts that additional searches on 2 May 2012 uncovered \$38,600 concealed in the ceiling of the unit. Burrows was interviewed and denied involvement.

The Defendants state that, following investigation, a reasonable belief was formed that Burrows had committed offences relating to possession of an unlicensed firearm, ammunition, dangerous drugs, and materials for forging notes.

5. The Defendants state that Burrows was placed in Quarter Guard and subsequently dismissed from the Royal Bahamas Police Force on 3 May 2012 pursuant to section 21(1)(c) of the Police Force Act, on the basis that he was dismissed “with cause.” They emphasize that the Police Force Act provides an internal appeal mechanism for aggrieved officers and that Burrows did not appeal his dismissal.
6. The Defence recounts the subsequent criminal proceedings involving Burrows and other accused persons. Various co-accused pleaded guilty to certain charges, while others pleaded not guilty. After multiple adjournments, the matters were dismissed for want of prosecution in October 2015, and the Court of Appeal later upheld the dismissal. The Defendants contend that the dismissal of criminal charges—particularly without a hearing on the merits—does not undermine the Commissioner’s statutory authority to dismiss an officer.
7. The Defendants maintain that Burrows’s arrest was lawful and authorised under the Penal Code, Police Force Act, Criminal Procedure Code, Firearms Act, and Dangerous Drugs Act. They assert that Burrows refused to clarify his involvement when interviewed, and that investigations continued accordingly. Save for matters expressly admitted, the Defendants deny each and every allegation in the Amended Statement of Claim.

The Evidence

[5.] At trial Chakara Burrows, Cyprianna Deveaux Bowe and Yolanna Colebrooke gave evidence in Burrows’ case. The Defendants called Assistant Commissioner of Police Roberto Goodman (Goodman), Inspector Kavanaugh Cleare (Cleare), Inspector Reno Lewis (Lewis), and Police Constable Theo Williams (Williams) as witnesses in their case.

[6.] Chakara Burrows was Burrows’ widow, Colebrooke was his sister-in-law and Deveaux Bowe was his mother-in-law. None of Burrows’ witnesses were present at any material time and therefore could not assist in the distilling the cause of action. Their evidence tended to support Burrows’ damages claim. These witnesses were not subject to cross-examination by the Defendants in any meaningful way.

[7.] It is perhaps appropriate to begin by indicating the evidence which I accept. Having seen the witnesses and observed them as they gave their evidence, I accepted the evidence of the Defendants’ witnesses to be truthful, and any inconsistencies attributed to the passage of time.

[8.] The first and most obvious observation is that the only evidence which was provided as to the material events came from the Defendants. Goodman, Cleare, Williams and Lewis who gave evidence of what transpired that night and the days that followed concerning the arrest, detention, charge and prosecution of Burrows. Two of the officers involved in the events, like Burrows, have passed away. This includes Detective Inspector Demeritte, who appears to have been one of the leaders of the operation.

[9.] Upon arrest, Burrows gave no account to the police that might have assisted in presenting his version of events. He was entitled to remain silent, but his silence left his case without any statement from him. Indeed, when asked the basic question of his name, he replied, "no comment". His wife, Chakara, sought to rely on hearsay statements about what had been said to her, but I have rejected those statements as inadmissible.

[10.] Goodman, Cleare and Williams gave evidence about the operation conducted at Unit 18, Blue Water Resort, on 1 May 2012. Lewis did not participate in that initial operation. His direct involvement began on 2 May 2012 and concerned the further search for money and the ensuing investigation.

[11.] The evidence of Goodman, Cleare and Williams was that, at approximately 7:00 p.m. on 1 May 2012, officers from the Drug Enforcement Unit attended Unit 18 Blue Water Resort, pursuant to information and a search warrant concerning dangerous drugs and firearms. Goodman and Demeritte were the inspectors responsible for leading the operation. Williams, then a comparatively junior officer, said that certain details of the briefing were not disclosed to him because of his rank, and he could not recall whether the warrant named Kenlexis Mackey.

[12.] Goodman described Blue Water Resort as a condominium-style development whose structures generally had multiple levels. Demeritte and other officers proceeded to the front door, while Cleare and Williams went to the rear. Williams heard Demeritte shout, "Police, open the door!" Goodman could not recall whether Burrows opened the door, whether the officers forced entry, or whether the door was already open. He did recall that entry into that part of the premises took some time.

[13.] Cleare and Williams heard breaking glass from the eastern part of the building and saw a dark-complexioned man in a white shirt and dark trousers climbing onto or standing on the roof. Cleare identified himself as a police officer and repeatedly ordered the man not to move. According to Cleare, the man reached towards his right side, began removing an object from his waist, and then turned towards Cleare holding what appeared to be a weapon.

[14.] Williams' evidence was narrower. He saw the man moving an object from his waist despite Cleare's commands, but did not say that he personally identified the object as a firearm. Williams heard Cleare shout "weapon", draw his service weapon and fired. Williams then fired one shot in the man's direction, saying that he feared for his life.

[15.] Cleare likewise said that he shouted "weapon" and discharged one round from his service pistol. In oral evidence, he could not confirm whether his shot struck Mackey. Williams also could not say whether his shot caused the injury.

[16.] After the shots, the man moved eastwards and out of Cleare's and Williams' sight. When Cleare and Williams joined Goodman and the officers on the eastern side, four men were on the roof. Goodman ordered them to descend. Three began complying; the fourth said that he could not move because he believed that he had been shot. He later came off the roof and entered the unit through a broken window.

[17.] The injured man was identified as Kenlexis or "Kenny" Mackey. Goodman said Mackey was the person who emerged from the broken window and was later lying on a couch reporting that he had been shot. The officers entered Unit 18 and arrested Mackey, Kenrick Smith, Neil Ferguson, Dion Campbell, Kevin Doreus and Burrows. Goodman estimated that eight to ten officers were present and confirmed that every person found inside was arrested. Cleare said that he did not question the occupants before their arrest. Goodman recalled that some questions were asked but could not remember asking who rented the unit or why the men were there; his immediate concern was obtaining medical assistance for Mackey.

[18.] Cleare searched a north-eastern restroom on the first floor in the presence of the occupants and other officers. He found a black-and-silver Smith & Wesson pistol, serial number PDL1389. Williams and Goodman were present when the bathroom was searched. Goodman said the weapon was inside the toilet tank and that no firearm was recovered from the roof.

[19.] Goodman's witness statement records that the pistol had a magazine containing three live 9mm rounds. Cleare and Williams later marked or initialed the weapon and three rounds for identification before it was handed over for further investigation. Cleare could not say in oral evidence whether fingerprints had been taken from the weapon.

[20.] The search also produced a clear plastic bag containing suspected marijuana on a stairwell, bleached Bahamian dollar bills, and chemicals and related articles. Goodman placed toothbrushes, bottles of Joy, bleach, a blow dryer, buckets of water and money testers on the top floor, and the marijuana on or between the stairwells.

[21.] Cleare similarly said that the articles were on the upper floor and the marijuana between the top and second floors. Williams, despite refreshing his memory from his statement, could not recall whether the bleached notes and chemicals were upstairs or downstairs; he remembered only that the firearm was in a first-floor restroom and the marijuana was on a stairway.

[22.] Lewis was not part of the initial team and could not say where Burrows was taken after arrest. He became involved because of the suspected money laundering element. On 2 May 2012, Lewis and other officers returned to Unit 18 with Mackey and a search warrant. Lewis searched the kitchen ceiling and found cash in four stacks wrapped with currency bands. Mackey denied ownership. The money was counted in his presence at the Drug Enforcement Unit and totalled \$38,600.

[23.] Later that afternoon, Lewis and other officers searched Mackey's office at the Bahamas Telecommunications Company. Nothing illegal was found, but the officers recovered a receipt dated 27 April 2012 for a money counter and counterfeit-money detector. Mackey made no comment when shown it. Lewis confirmed orally that the police did not search the workplaces of the other five occupants.

[24.] Campbell, Ferguson and Smith denied knowing about the cash. Doreus told Lewis that he had rented the apartment on Mackey's instructions for a private meeting, handed the key to Mackey on 28 April 2012, knew nothing of the activities there, and attended only to use the restroom. Lewis accepted orally that his knowledge that Doreus rented the unit came from information received during interview.

[25.] Mackey answered "no comment" to 47 questions asked by Lewis in the presence of counsel. Lewis did not interview Burrows. He was informed by Detective Inspector Ferguson that Burrows had been interviewed about the seized money and answered "no comment" to all questions.

[26.] Goodman and Cleare knew Burrows as a police officer before the incident, although Goodman did not know him personally. Williams did not know him and learned from a supervisor that he was a police officer. Goodman described Burrows as fair-skinned and very heavily built and ultimately accepted that a recorded weight of about 420 pounds was consistent with his description.

[27.] Cleare's oral evidence expressly distinguished Burrows from the rooftop men. He confirmed that Burrows was present in the building but was not on the roof. Williams identified Mackey, rather than Burrows, as the rooftop individual involved in the shooting. Goodman likewise identified Mackey as the person who came through the broken window and was injured.

[28.] When it was put to Williams that nothing warranted Burrows's arrest, Williams relied on Burrows's presence among the persons inside the residence when the items and firearm were found. Goodman similarly confirmed that all persons present were arrested and that he conducted no personal search of any occupant. Cleare did not question the occupants before arrest.

[29.] Cleare's evidence was that the object appeared to be a weapon. Williams' evidence was that he saw an object being moved and reacted after Cleare shouted "weapon". Although Mackey remained on the roof after being shot, no firearm was recovered from the roof, and no evidence identified the pistol in the toilet tank as the object seen during the encounter.

[30.] All of the men found in Unit 18 were charged on 2 May 2012 by the police officers and arraigned before the Chief Magistrate on 3 May 2012, with Possession of an Unlicensed Firearm, Possession of Ammunition contrary to section 5 (1)(b) respectively of the Firearms Act; and Possession of Material for Forging Notes pursuant to section 380(1)(a) of the Penal Code.

Law Analysis and Disposition

[31.] The Claimant's case is that Burrows was unlawfully arrested, unlawfully detained, wrongfully (or unfairly) dismissed from his employment and maliciously prosecuted.

[32.] The Defendants raised the preliminary issue of limitation, and submitted that the claim is statute-barred under section 12 of the Limitation Act.

[33.] Section 12 of the Limitation Act provides:

12. (1) Where any action, prosecution or other proceeding is commenced against any person for any act done in pursuance or execution or intended execution of any written law or of any public duty or authority or in respect of any alleged neglect or default in the execution of any such written law, duty or authority the provisions of subsection (2) shall have effect.

(2) The action, prosecution or proceeding shall not lie or be instituted unless it is commenced within twelve months next after the act, neglect or default complained of or in the case of a continuance of injury or damage within twelve months next after the ceasing thereof.

[34.] The Defendants rely on the fact that Burrows was arrested on 1 May 2012, charged on 2 May 2012, appeared before the Chief Magistrate for arraignment on 3 May 2012 and discharged from the Royal Bahamas Police Force on the day of his arraignment. The Writ of Summons however, was not filed until 3 May 2019.

[35.] The Defendants say that Section 12 applies where proceedings are brought against a person for an act done in the pursuance, execution or intended execution of a written law or public duty or authority, or for an alleged neglect or default in executing such a law, duty or authority. Section 12(2) provides that such proceedings must be commenced within 12 months of the relevant act, neglect or default. Burrows was therefore required to institute proceedings within 12 months of his discharge, instead the action was commenced approximately seven years after the relevant act. The defendants therefore submit that it falls outside the statutory period.

[36.] The Defendants combine the limitation defence with a separate complaint concerning Burrows' failure to use the statutory appeal process. They rely on section 21(2) of the Police Force Act, under which a police officer aggrieved by the Commissioner's decision could appeal to the Governor-General within seven days. They submit that Burrows did not exercise that right.

[37.] The Claimant's two principal answers to the defendants' reliance on section 12 of the Limitation Act 1995: (1) the malicious prosecution did not accrue until November 2018 and (2) the wrongful-discharge injury continued until the prosecution ended.

[38.] The Claimant submits that a cause of action for malicious prosecution could not arise until the criminal proceedings had finally terminated in Burrows' favour. Those proceedings ended on 26 November 2018 and as the Writ was issued on 3 May 2019, the Claimant argues that the malicious prosecution claim was commenced within 12 months of accrual and is therefore timely even if section 12 applies.

[39.] This is a submission which I accept. Time, with respect to the malicious prosecution cause of action did not begin to accrue until the appellate proceedings were concluded, in November 2018. This period had to include the period which the appeal of the Magistrate's decision was extant.

[40.] The Claimant submits that the injury resulting from Burrows' dismissal did not occur on 3 May 2012. Instead, it continued throughout the criminal proceedings until 26 November 2018. They argue that the ongoing criminal case prevented Burrows from obtaining employment. In response to the failure to appeal the dismissal it is argued that Burrows was arraigned and dismissed on the same day, 3 May 2012 and could not reasonably have been expected to challenge his dismissal while simultaneously confronting criminal proceedings initiated by the same institution that employed him. The Claimant argues that it would have been unrealistic to expect Burrows to appeal or otherwise challenge his dismissal while the Royal Bahamas Police Force maintained that the criminal proceedings remained ongoing.

[41.] This submission is untenable. Burrows was obligated to bring his claim for unfair/wrongful dismissal within the prescribed period. This was independent of the criminal charges he was facing. I am satisfied that the claim for wrongful or unfair dismissal, having been brought seven years after the accrual of the cause of action, is now statute barred.

Malicious Prosecution

[42.] 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 paragraphs 20-22 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:

“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”

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:

“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.

“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."

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 purpose must be the sole or dominant purpose actuating the prosecutor"

[43.] In order to succeed in a claim for malicious prosecution, the Claimant must therefore establish that: (1) he was prosecuted by the Defendants, that is to say, that the law was set in motion against him by the Defendants on a criminal charge or, now, via civil proceedings; (2) that the prosecution was determined in his favour; (3) that it was without reasonable and probable cause; and (4) that it was malicious.

[44.] I am satisfied, on the evidence which I have seen and heard, that this claim for malicious prosecution cannot be sustained. The Claimant, in my view, has failed to demonstrate that there was no reasonable or probable cause for the prosecution of the case against Burrows or that the Defendants acted maliciously.

[45.] The Court accepts that the burden lies on the Claimant to prove an absence of reasonable and probable cause. It is not for the Defendants to demonstrate affirmatively that reasonable and probable cause existed. The Claimant must establish, on the evidence, that the Defendants did not honestly believe the allegations levied against Burrows or that such belief was not based on reasonable grounds.

[46.] The Court finds that the Claimant did not present evidence capable of demonstrating what the Defendants believed at the time it laid the charges against Burrows, nor did they provide a basis from which the Court could infer that the Defendants lacked a genuine or reasonable belief

in the prosecution. The Claimant's evidence did not address the Defendants' state of mind in any meaningful way.

[47.] The Claimant has not, in my view, demonstrated that (1) there was no honest belief of the Defendants in the guilt of the accused; (2) that such belief was not based on an honest conviction of the existence of the circumstances which led the Defendants to that conclusion; (3) that the belief was not based upon reasonable grounds which would lead any fairly random man in the Defendants' situation, so to believe; and (4) that the circumstances so believed and relied on by the Defendant was not such as amounts to reasonable ground for belief in the guilt of the accused. I am therefore satisfied that there was reasonable and probable cause for the institution for the proceedings against Burrows.

[48.] The evidence reflect that the Defendants had reasonable and probable grounds for instituting charges against Burrows, who was found to be in premises where an illegal firearm, ammunition, illicit drugs, alleged materials for forging notes, and concealed cash had been found.

[49.] The law imposes a presumption with respect to persons found in premises where firearms are found. This issue was thoroughly discussed in the Court of Appeal case of **Brandon Patton et al v The Commissioner of Police MCCrApp. No. 28 of 2024**, which share strikingly similar facts to the instant case. The prosecution's case against Brandon Patton, Jahwise Watkins, and Demetrius Sands (along with a fourth defendant who did not appeal) was that on Sunday 7 May 2023, shortly after 8:00pm, police, acting on information and armed with a search warrant, went to a one-bedroom Air B&B situated at Smith's Point, Grand Bahama to conduct a search in reference to an unlicensed firearm and ammunition. Sands had rented the Air B&B.

[50.] Upon approaching the house, a male who later identified himself as Jahwise Watkins, was observed exiting the front door of the residence. Officer Tate shouted "Police" whereupon Watkins attempted to re-enter the residence through the front door which was then quickly closed and locked from the inside. The police then apprehended Watkins on the outside of the house. After repeatedly knocking on the door of the residence and shouting: "Search warrant, don't move, put your hands up," the front door was eventually opened by Deshando Rahming.

[51.] On entering the one-bedroom residence, officers discovered Demetrius Sands slouched down behind the bathroom door. Brandon Patton was found hiding on the side of the bed in the bedroom. All four men were then led to the front room of the residence where they were shown the search warrant and informed that a search would be conducted in reference to suspected possession of dangerous drugs and an unlicensed firearm and ammunition. The police discovered, on top of the dining room table, in plain view, a green plastic bag along with two clear and black packages containing suspected marijuana. Following a search of a taped up reclining chair the police discovered one black Smith and Wesson firearm with one magazine containing 6 rounds of

ammunition. Under cross examination, Officer Tate testified that the cushion of the reclining chair was “unorganized”; that part of the chair was “slightly out of the chair” and that “the chair leg was twisted.” All four men were cautioned in reference to the offences of possession of dangerous drugs, unlicensed firearm and ammunition respectively. All suspects made no comment except for denying ownership of the firearm and ammunition.

[52.] The appellants Brandon Patton, Jahwise Watkins, and Demetrius Sands (along with a fourth defendant who did not appeal) were convicted and sentenced for the offences of being concerned together in possessing a firearm and 6 rounds of ammunition; and (ii) being concerned together possessing dangerous drugs with intent to supply. The three Appellants, each appealed against their respective convictions and sentences. In their respective Notices of Appeal, they each raised identical grounds of appeal, challenging the Magistrate’s decision to convict and sentence them.

[53.] In dismissing the appeal and affirming the convictions for possession of a firearm, ammunition and dangerous drugs with intent to supply the Court engaged in a detailed examination as to the meaning of occupier. At paragraphs 76-94 and 99-102, Crane-Scott JA:

76. By virtue of section 8A(1) of the Firearms Act, once a defendant is shown to be an “occupier” of premises where an illegal firearm is found, the fact of possession of the firearm must be taken to have been proved by operation of law. In real terms this means that based on his ‘deemed possession’ of the firearm, the defendant then bears the “evidential burden” of adducing sufficient evidence on the balance of probabilities to raise an issue for determination by the trier of fact.

77. Put another way, in cases where section 8A(1) of the Firearms Act is invoked and a defendant is shown to be “occupier” of premises where an illegal firearm is found, possession of the firearm is proved by operation of law. Thereupon, unless the defendant leads evidence sufficient to rebut the statutorily presumed fact of possession, his conviction for possession of the illegal firearm is virtually assured.

78. Count 3- Sections 22(1) and (3) of the Dangerous Drugs Act provide as follows:

“22. (1) It is an offence for a person to have a dangerous drug in his possession, whether lawfully or not, with intent to supply it to another in contravention of the provisions of this Act.”

(2)

(3) For the purposes of subsection (1), where a person is found in possession of two or more packets containing dangerous drugs, or a quantity of dangerous drugs in excess of such quantity as may be prescribed in regard to that drug, it shall be presumed, until the contrary is proved, that he was in possession of that drug with intent to supply it to another or others, irrespective of whether that other or others be within The Bahamas or elsewhere.”

[Emphasis added]

79. In similar fashion to the Firearms Act, section 22(3) of the Dangerous Drugs Act also creates a statutory presumption of possession of a defendant who the evidence shows is “**found in possession**” of a specific number of packets or specific quantities of dangerous drugs. Here again, once it is shown that the defendant was “**found in possession**” (whether actual or constructive) of the prescribed quantities, the defendant then bears the “evidential burden” of adducing sufficient evidence on the balance of probabilities to rebut the statutorily presumed fact of possession of dangerous drugs with intent to supply. A similar provision is found in section 29(6) of the Dangerous Drugs Act, which provides:

“29. (6) Where any drug to which this Act applies is, without proper authority, found in the possession of any person or stored or kept in a place other than a place prescribed for the storage or keeping of such drug, such person, or the occupier or owner of such drug, such person, or the occupier or owner of such place or the owner of or other person responsible for the keeping of such drug unless he can prove such drug was deposited there without his knowledge or consent, shall be guilty of an offence against this Act.” [Emphasis added]

80. Having outlined the relevant statutory framework and explained how the relevant deeming and statutory provisions are intended to operate, we can now examine the Appellants’ complaints more closely.

81. The Appellants all challenge their convictions on Counts 1 and 2 (i.e. the firearms and ammunition offences) primarily on the basis that the learned Magistrate erred in law by not first satisfying himself on the evidence that the Appellants were in fact “occupiers” before applying the deeming provisions of section 8A(1) of the Firearms Act.

82. At the outset, it must be said that both counsel are correct in observing that the word “*occupier*” in the Firearms Act is not defined. They however have different opinions as to the legal meaning to be ascribed to the word “*occupier*” in section 8A(1) of the Firearms Act.

83. On the one hand, Mr. Deal contends that based on decided cases, the word “*occupier*” connotes control, in the sense that an occupier has the ability to exclude strangers from the place occupied. On the other hand, counsel for the Respondent, Ms. Coccia, submits that the word “*occupier*” or “*occupant*” should be given its ordinary dictionary meaning, that is to say, it applies to anyone who “*occupies, resides in or is in a place*”. Furthermore, notions of control, she said, are not relevant when determining the meaning of the word.

84. Given counsels’ divergent views, it now falls to us to ascertain the legal meaning of the word “*occupier*” for purposes of section 8A(1) of the Firearms Act.

85. The task of ascertaining the meaning of words and sentences which appear in legislation passed by Parliament invariably requires the court to embark on an exercise of statutory interpretation. While resorting to judicial decisions from other jurisdictions may shed light on how other courts have interpreted those words or provisions, such decisions are not by themselves conclusive of anything. The existence of such authorities certainly cannot

relieve a court from itself interpreting the statute with the goal of ascertaining the legislative intent as reflected in the language of the statute to be construed.

86. In *Bruno Rufa v. The Queen and William Pratt* SCCivApp. No. 131 of 2016 (a decision of this Court handed down on 27 March 2018) the Court of Appeal (differently constituted) stated:

“47. Perhaps the most basic rule of statutory interpretation is that which mandates a court to construe the words and sentences in a statute in their ordinary and natural meaning in the context in which they appear in the statute unless to do so would produce a result which cannot reasonably be supposed to have been the true intention of the legislature. This rule is generally known as the “plain meaning rule”, which Francis Bennion formulates at Section 195 of his text as follows:

‘ 195. It is a rule of law (in this Code called the plain meaning rule) that where in relation to the facts of the instant case-

(a) The enactment under inquiry is grammatically capable of one meaning only, and

(b) On an informed interpretation of that enactment the interpretative criteria raise no real doubt as to whether that grammatical meaning is the one intended by the legislator,

the legal meaning of the enactment corresponds to that grammatical meaning, and is to be applied accordingly.”

[Emphasis added]

87. The Firearms Act was first enacted in The Bahamas in 1969. Thus far, this Act has been amended on no less than ten different occasions since then. In 2011, Parliament, doubtless in an attempt to register this society’s abhorrence to the violent crimes spawned by illegal firearms and ammunition, amended the Firearms Act once again.

88. The 2011 amendment introduced a slew of new provisions including, inter alia, a mandatory minimum sentencing regime and a number of rebuttable presumptions designed to facilitate the prosecution of firearms offences by casting the burden of proving specific facts on defendants charged with possessing illegal firearms. It was against this background that the firearm possession offence in section 5 was amended and the statutory presumptions in sections 8A(1) and 9A(3) introduced.

89. **As we see it, by introducing these provisions, Parliament has chosen to create firearm possession offences in which knowledge by the defendant that he has custody or control of a firearm is not an essential element of the offence, but is “presumed” or “deemed” to be proven once the defendant is shown to “occupy, reside in or to be in” a place where the illegal firearm is found. Furthermore, the issue of a defendant’s lack of knowledge and control will only arise (as provided in sections 8A(1) and 9A(3) respectively) if the “contrary is proved” at trial.**

90. As this Court (differently constituted) observed in *Larry Artillus* (above), ‘deeming’ provisions and statutory presumptions of this type are not unknown to the law and:

“17.... Operate as a reverse onus provision, raising a broad presumption of guilt on the occupant of any house or premises in which a revolver is found unless the contrary is proved. The presumption it creates may be rebutted by an accused person on a balance of probabilities.

18. Despite Lord Sankey’s reminder in *Woolmington v DPP* [1935] AC 462 that it is the duty of the prosecution to prove the prisoner’s guilt, statutory reverse onus provisions are not unknown to English courts which have in more recent times found themselves grappling with the increased use of such provisions in English statute law. See *R v. Lambert* [2001] WLR 206; Attorney-General’s Reference No. 4 of 2002 and *Sheldrake v. DPP* [2004] UKHL 43.

19. Some may regard section 5(2) as an inroad in the presumption of innocence contained in Article 20(2)(a) of the Constitution, but until such time as it is declared to be unconstitutional, it is to be followed by the courts of The Bahamas.”

91. **With this understanding of Parliament’s intent, we reject the Appellants’ suggestion that the word “occupier” in section 8A(1) of the Firearms Act should be interpreted as connoting a requirement that the Appellants first be proved to be in control of the premises where the firearm was found. To accept this submission would make a mockery of the statutory presumption of possession and the ‘deeming’ provisions which were brought into force in The Bahamas by way of the amendments to the Firearms Act in 2011.**

92. In the result, we agree with Ms. Coccia that the word “occupier” is to be construed in its plain and ordinary meaning which is that the rebuttable presumption in section 8A(1) applies to any defendant who is shown to “reside in, or to occupy, or to be in” a place or in premises where an illegal firearm is found.

93. In convicting the Appellants on Count 3 (for possession of dangerous drugs with intent to supply), it is evident that the learned Magistrate³⁶ did not say that he had relied on the deeming provisions and rebuttable presumption in sections 22(3) or 29(6) of the Dangerous Drugs Act. Indeed, based on the reasons provided at paragraph 45 of his Ruling, it is very doubtful whether he relied on the rebuttable presumptions at all.

94. **Having considered the matter, we are satisfied that given the evidence of the drugs being discovered in plastic bags in plain view on top of the dining room table in a residence in which all four defendants were present, the Magistrate’s decision to convict all of them on Count 3 was a decision he was entitled to make. We do not find that his decision to convict was unreasonable in the circumstances and there is no basis on which we can or will interfere.**

...

99. We are satisfied that the prosecution’s evidence, **including the fact that illegal items were discovered inside the house, was clearly sufficient to justify the Magistrate’s**

conclusion that the other three defendants (including Patton) were all “occupiers” inside the residence along with Sands when the firearm and ammunition (and drugs) were found.

100. As the learned Magistrate correctly observed having determined that the four defendants had a prima facie case to answer, each defendant opted to offer no evidence to rebut the prosecution’s case as required by section 8A(1) of the Firearms Act.

101. At the close of the prosecution’s case, the evidence clearly established that Patton was an “occupier” of the premises where the illegal firearm was found. As we have explained, by virtue of section 8A(1) of the Firearms Act, the fact of his ‘deemed’ possession of the firearm was proved by operation of law. **As Patton elected not to lead evidence to the contrary to rebut the statutorily presumed fact of possession, his conviction for possession of the illegal firearm and ammunition for which he had no license or certificate was inevitable.**

102. In the circumstances, the Magistrate’s decision to convict was perfectly reasonable. Furthermore, we are satisfied that Patton’s convictions on Counts 1 and 2 are neither unsafe nor unsatisfactory.

[Emphasis added]

[54.] According to the high authority in **Patton v Commissioner of Police** the law is clear that a person found to be in premises where an illegal firearm is found is deemed to be in possession of the illegal firearm, by operation of law.

[55.] As regards Burrows, the evidence establishes that he was found to be in Unit 18 Blue Water Resort and was arrested with the other occupants. Unlike the others found to have ran onto the roof, he was found inside the premises, where all of the contraband was found. The evidence of Goodman was that it took the police an inordinate period of time gain access to the premises, for the door to be opened.

[56.] Burrows was found to be in premises where an illegal firearm, ammunition in addition to illicit drugs, alleged counterfeiting materials and concealed cash had been found. He is therefore deemed to be in unlawful possession of the illegal firearm and the other illicit material. When eventually questioned, Burrows made no comment or offered no rebuttal to the presumption that he was deemed to be in possession.

[57.] I am compelled to note, that Burrows was a police officer, sworn to fight crime and to arrest and bring perpetrators in possession of illegal firearms, drugs and other unlawful activity, to justice. He is nonetheless found in premises where illicit material is found strewn throughout the house, in which the occupants in the residence were roaming about between levels. The evidence

in this case, as it was in the **Patton et als v Commissioner of Police** case, that there was an inordinate period for the Police to gain access to the premises, of which Burrows was inside.

[58.] Burrows' eventual success in the criminal trial does not, in itself, establish that the proceedings were commenced without reasonable and probable cause. The dismissal reflects the prosecution's failure to get its witness to trial; it does not retrospectively negate the existence of reasonable grounds for instituting the proceedings.

[59.] I am satisfied therefore that the Defendants had reasonable and probable grounds for instituting proceedings against Burrows.

Malice

[60.] If I am wrong as to there being reasonable ground for the institution of proceedings, I am satisfied that the Claimant has failed to establish any malice on the part of the Defendants. The Claimant did not particularize the claim of malice but submitted the following as the basis for the Court inferring malice:

- (1) the complete absence of any individualized evidence against Burrows is itself consistent with an improper purpose.
- (2) the discharge on the morning of arraignment before any finding of guilt, before any hearing demonstrates that the institution had predetermined guilt from the fact of arrest.
- (3) the continuation of prosecution for years after co-accused admitted their individual guilt.
- (4) the appeal of the acquittal.
- (5) the construction of a retrospective individualised case built around the money tag allegation appearing for the first time in civil proceedings fourteen years after the events.

[61.] As is demonstrated in the Court of Appeal decision in **Patton et al v Commissioner of Police** there is no requirement of any individualized evidence against Burrows to make out the offences, as he was charged jointly with others. The submission therefore, that the absence of any individualized evidence against Burrows is consistent with an improper purpose, is misconceived, and malice could not be inferred.

[62.] The decision of the Commission to discharge Burrows as an officer, in circumstances where the Commissioner was satisfied that there were reasonable grounds to prosecute him, even if premature, could not be said, on these facts, to be founded on an improper motive. It is not suggested that this behaviour of the Commissioner was peculiar to Burrows, and not to other police

officers who were charged with Criminal offences. It is not disputed, on the evidence, that: (1) Burrows was a police officer, sworn to fight crime and to arrest and bring perpetrators in possession of illegal firearms, drugs and other unlawful activity, to justice; (2) he was found to be in premises where illicit material is found strewn throughout the house; and (3) there was an inordinate period for the police to gain access to the premises, of which Burrows was inside. In my view, it could not be said that a decision to terminate Burrows was actuated by malice in these circumstances.

[63.] While Burrows' co-accused Neil Ferguson may have admitted to possession of the drugs, it does not appear that he did so prior to the institution of the proceedings against Burrows, but before the Magistrate, during the course of the trial. None of the co-accused owned up to the firearm, as Kevin Doreus who initially accepted responsibility for the firearm, changed his plea to not guilty and ultimately denied ownership in the firearm. Additionally, none of the co-accused pleaded guilty to the offence of possession of materials for forging notes. Persons may be in joint possession of a firearm and ammunition, of drugs and of materials for forging notes as occurred in the **Patton et al v Commissioner of Police** where 4 men were so convicted. In the case of Burrows, he was charged with being concerned together with his co-accused, in all of the offences. In Ferguson's admission of guilt there was no indication of his exonerating Burrows, as occurred in the case of **Derek Belle v The Commissioner of Police** MCCrApp & CAIS No. 277 of 2015. It is also to be noted that it was the co-accused, Kenlexis Mackey, who was shot on the roof and seen by the officers with the gun. Mackey never left the roof, however, the firearm was found in a first-floor bathroom, the floor where Burrows was located.

[64.] The decision to appeal the Magistrate's discharge, for want of prosecution, could flow from a genuine belief in the guilt of Burrows and not from malice towards him. I am not prepared to infer that there was malice against him on this account. Likewise, erroneous statements made in defence counsel's pleadings, in 2024, could not truly be said represent the malice which Burrows must show in the Commissioner of Police, as the cause of the bringing of charges against him in 2012.

[65.] It is also to be noted that the Attorney-General assumed carriage of the prosecution of the case in the Magistrates Court at a very early stage, rather than allow it to be prosecuted by the Commissioner of Police and his agents. The Attorney General continued with the action, a position which, in my view, suggests a level of independence in the prosecution of the claim and militates against the inference of malice.

Unlawful arrest and detention

[66.] An arrest and detention, in the name of the State, is *prima facie* a breach of Article 19(1) of the Constitution, which must be justified. Every arrest and every imprisonment is *prima facie* tortious as well. The protection conferred by the law in this regard is not, however, absolute. One of the exceptional circumstances in which a person may be deprived of their liberty under authority

of law, is if they are lawfully arrested on the basis that they were reasonably suspected of having committed a criminal offence.

[67.] Section 31(2)(a) of the **Police Force Act, 2009** permits a police officer to arrest without a warrant any person he reasonably suspects of having committed an offence. The legislation provides:

(2) Without prejudice to the generality of the foregoing or any other provision of this Act, a police officer may, without a warrant, arrest a person –

(a) he reasonably suspects of having committed an offence.

[68.] The Privy Council decision in **The Estate of Claudia Edwards Bethel (Respondent) v Attorney General of The Bahamas and another (Appellants) (The Bahamas)** [2026] UKPC 26, provides a useful discussion on the power of the police to arrest and detain. At paragraph 31 the Court states:

31. But while section 9 of the Immigration Act requires reasonable cause to suspect that the person arrested has committed an offence under the Act or the regulations, it is not necessary for the arresting officer to have a specific statutory provision in mind. In this respect, the Board respectfully disagrees with the reasoning of Crane-Scott JA (see para 24 above) stressing that the appellants had to prove that the arresting officer had reasonable cause to suspect that Mrs Bethel had committed a specific offence under the Page 10 Immigration Act. In *Betaudier v Attorney General of Trinidad and Tobago* [2021] UKPC 7; [2021] 5 LRC 155, the Board considered a similar issue relating to a statutory provision which allowed an officer to arrest without warrant a person suspected of having committed an arrestable offence. The Board expressed the view that: “

... while it is not sufficient that an officer has suspicion of some general unlawful conduct, neither under section 3(4) nor at common law is it necessary to establish that an arresting officer had in mind specific offences or statutory provisions.”

This followed the approach identified by Bingham LJ in *Chapman v Director of Public Prosecutions* (1988) 89 Cr App R 190, at p 197:

“It is not of course to be expected that a police constable in the heat of an emergency, or while in hot pursuit of a suspected criminal, should always have in mind specific statutory provisions, or that he should mentally identify specific offences with technicality or precision. He must, in my judgment, reasonably suspect the existence of facts amounting to an arrestable offence of a kind which he has in mind.”

In the same way, section 9 does not require the arresting officer to identify infringement of a specific statutory provision under the Immigration Act. However, it does require the officer to have in mind the nature of the suspected offence and a factual basis for suspecting it.

[69.] Taken as a whole, the police evidence is that officers attended at Unit 18 Blue Waters Resort, Cable Beach, New Providence under the authority of a drugs and firearms warrant. Cleare and Williams saw a man later, identified as Mackey on the roof moving an object from his waist. Cleare believed the object to be a weapon, shouted "weapon", and fired one shot. Williams then fired one shot in asserted fear for his life. Mackey was injured, but the evidence did not establish which shot struck him. He was found on the roof with 4 of the men, not including, Burrows.

[70.] The officers entered the unit and arrested all six people present, including Burrows. Cleare found a Smith & Wesson pistol in a first-floor toilet tank. Officers also found three rounds of ammunition, suspected marijuana on a stairway, bleached currency, chemicals and associated articles. The evidence did not attribute any of those items individually to anyone in the premises and no one owned up to the items at that time.

[71.] The fact that Burrows was arrested on suspicion of the offences for which he was charged is supported by the detention record which records, in the *Reasons for Arrest* section, the words possession of dangerous drugs and possession of firearms and ammunition.

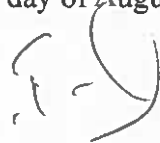
[72.] In my view, the police were entitled to arrest and detain Burrows because he was found in premises containing drugs, firearms, alleged counterfeiting materials, and concealed cash. The presumptions arising from his presence in those premises, including deemed possession of the illegal firearm discussed above, provided ample support for his arrest and detention.

[73.] I am therefore satisfied that Burrows was lawfully arrested by the police as he was reasonably suspected of having committed criminal offences and his detention justified.

Conclusion

[74.] Burrows' claim for malicious prosecution, unlawful arrest and detention, unfair/wrongful dismissal and defamation is hereby dismissed. The Defendants shall have its reasonable costs, to be assessed if not agreed.

Dated this 17th day of August 2026



Sir Ian. Winder
Chief Justice