

Commonwealth of The Bahamas
In the Supreme Court
Public Law and Constitutional Division
Claim No. 2023/PUB/con/00011

B E T W E E N

HOSNELL SAMUEL

Claimant

AND

D/CPL. 2733 LINCOLN MCKENZIE

First Respondent

AND

THE COMMISSIONER OF POLICE

Second Respondent

AND

DIRECTOR OF PUBLIC PROSECUTIONS

Third Respondent

AND

THE ATTORNEY GENERAL OF THE COMMONWEALTH OF THE BAHAMAS

Fourth Respondent

Before: Her Ladyship The Honourable Madam Justice Cheryl Bazard KC

Appearances: Ms. Candice McPhee for the Claimant
Mr. Rudolph Dames for the Respondents

Hearing Dates: 15 January 2026 and 23 June, 2026

RULING

Public Law – Unlawful Arrest - False Imprisonment – Malicious Prosecution – Assault and Battery – Murder - Breach of Article 19(1) and 19(4) –Post Mortem Report- Nolle Prosequi – No Reasonable or Probable Cause for Continuing Prosecution – Malice.

BAZARD, J:

[1.] The Claimant has brought proceedings against the Respondents for wrongful arrest, false imprisonment and malicious prosecution. The incident stems from the arrest and subsequent criminal charge of Murder brought by the First Defendant against the Claimant.

[2.] The Claimant was arrested on 7 January 2017 for an investigation into the death of Leonardo Joseph. He was formally charged on 11 January 2017 and, the following day, arraigned and remanded to the Bahamas Department of Correctional Services (BDOCS). On 20 March 2017, he was served with Voluntary Bill of Indictment No. 61/3/2017 (“VBI”). He was released on bail on 31 December 2018. The Third Defendant filed a Nolle Prosequi on 15 March 2023, which resulted in his discharge.

[3.] The First Defendant is an agent of the Second Defendant and was the investigating officer.

[4.] The Second Defendant is the Commissioner of Police, an officer responsible for the command, superintendence, oversight and management of all protocols, policies and mandates regarding the conduct and duties of members of the Royal Bahamas Police Force.

[5.] The Third Defendant is the Director of Public Prosecution, an officer responsible for the prosecution of criminal matters within the Commonwealth of The Bahamas.

[6.] The Fourth Defendant is the Attorney General of the Commonwealth of The Bahamas, whose function is to oversee, review and provide advice, as well as defend any action against the executive branches and the Government of The Bahamas.

Background

[7.] The Claimant asserts that he was charged by the First Defendant without a proper investigation. He claims the Record of Interview was conducted on 11 January 2017 and not 7 January 2017. He states that he was allegedly assaulted by officers and that the interview took place between 10:49am and 10:50pm on 11 January 2017, after the assault, and that he only cooperated because he was beaten. He argues that there was no reasonable or probable cause for the Third Defendant to file VBI 61/3/2017, and that Leonard Joseph (“the deceased”) died from sudden cardiac death on 7 January 2017. He considers his prosecution to be driven by an unjustified and malicious motive.

[8.] The Claimant commenced this action on 21 April 2023 by an Originating Application and Statement of Claim seeking the following reliefs:

“(a) Award of Special, General and Aggravated and Exemplary damages for Unlawful Arrest and Imprisonment pursuant to breaches of his fundamental rights pursuant to Article 19(1) and 19(4) of the Constitution of The Bahamas and or under the Common Law.

(b) General Aggravated and Exemplary Damages for the Tort of Malicious Prosecution.

(c) General Aggravated and Exemplary for Tort of Assault and Battery.”

[9.] In their Defence filed on 28 March 2024, the Defendants denied the majority of the Claimant's allegation and only admitted to paragraphs 2, 5, 7, 9, 11, 20, 30, 31, 46, 49 and 50 of the Claimant's Statement of Case.

[10.] The Defendants assert that the Claimant had a verbal argument with the family members of the deceased and the deceased himself, during which he struck the deceased with a hammer. Afterwards, the deceased shouted that the Claimant had hit him in the head with the hammer. The deceased collapsed, and shortly thereafter, EMS responders arrived and confirmed that he was lifeless. The Defendants also claim that during the Claimant's recorded interview, he admitted to having a physical altercation with the deceased and stated that the deceased had hit him multiple times with brass knuckles and he did not intend to hit the deceased in the head with a hammer. The recorded interview was not produced by the Defendants.

[11.] The Defendants assert that the Claimant was lawfully arrested on suspicion of murder, with police officers having reasonable grounds based on available information. They argue a *prima facie* case is not necessary for the arrest. The Defendants deny any false or wrongful arrest or detention of the Claimant. They contend that there was reasonable and probable cause to charge the Claimant with murder.

[12.] The Defendant denies any breach of the Claimant's constitutional rights under Article 19 of the Constitution and opposes any entitlement under Article 28 of the said Constitution.

Issues

[13.] The legal issues for consideration are as follows:

1. **Whether the Claimant was falsely arrested and imprisoned by the Defendants or was his arrest justified and his detention reasonable in the circumstances;**
2. **Whether the Claimant was maliciously prosecuted, or whether the action of the First Defendant in charging and prosecuting the Claimant was activated without malice and with reasonable and probable cause;**
3. **Did the Defendants breach the Claimant's fundamental rights under the Constitution;**
4. **Whether the Claimant is entitled to damages.**

Evidence

Mr. Hosnell Samuels

[14.] Mr. Samuels filed his Witness Statement on 24 March 2025, which stood as his evidence in chief. He states that on 6 January 2017 he was involved in a verbal altercation with the deceased, who allegedly entered his apartment uninvited and threatened him upon leaving. He says he reported the incident to the Carmichael Road Police Station. The following day he was arrested, his vehicle was searched, and he was detained. He denies being questioned on 7 January 2017 and disputes a Detention Record entry purporting to record an admission that he struck the deceased in self-defence, asserting that the entry is false. He further alleges that on 11 January 2017 he was transferred to the Criminal Investigation Department, during which period there are gaps in the

Detention Record, and that while in custody he was assaulted by police officers and subjected to suffocation with a plastic bag, causing him to participate in a recorded interview out of fear for his life.

[15.] Mr. Samuels relies on the post-mortem examination of 12 January 2017, which recorded the cause of death as sudden cardiac death, and contends that the defendants were therefore unable to establish that the deceased died as a result of unlawful harm. He maintains that the accounts given to police by the deceased's family members were untrue. He states that he remained in custody from 7 January 2017 until he was remanded to the Bahamas Department of Correctional Services on 12 January 2017, where he remained until 18 December 2018. A Voluntary Bill of Indictment was filed on 20 March 2017 and was not withdrawn until 1 March 2023. During that period he was subject to bail conditions, including a nightly curfew and regular reporting requirements, and he ultimately left Nassau due to fear of repercussions arising from the murder charge.

Defendants' evidence

[16.] The Defendants relied upon the evidence contained in VBI 61/3/2017 which summarized the following witness evidence:

(a.) Gregory St. Merand stated that he saw the Claimant take a hammer from the back of a truck and enter his home. He heard an argument between the Claimant and the deceased, during which Leonardo said, "Bey, he hit me with the hammer." Later, he observed the deceased walk to the front of the apartment, complain of chest pains, sit on a wall, and then fall face down with blood coming from his temple and mouth.

(b.) Nisean Davis stated that he saw the Claimant and the deceased arguing, during which the Claimant was seen hitting a wall with a hammer and inviting the deceased to come nearer. He heard the deceased say, "he hit me," and when he looked again, he observed the deceased retreating from the door.

(c.) Walcott Moss only saw the Claimant and the deceased arguing.

(d.) Craig Reckley states that he is the uncle of the deceased. He confirmed that the Claimant and the deceased were arguing and that he left them arguing. He didn't see the incident.

Findings of Facts

[17.] Each party called one witness. I have observed both witness, namely Hosnell Samuels and Assistant Superintendent McKenzie (formerly D/Cpl 2733 McKenzie) and wish to highlight certain aspects of their testimony.

Hosnell Samuels

[18.] I found the evidence of Mr. Samuels credible. He testified that he and the deceased were alone inside his house at the time of the incident and that there was a verbal altercation between them. At the time of the incident, his right arm was in a cast following an earlier assault by the

brother of the deceased. The deceased entered into his residence and was the aggressor in the incident.

[19.] Mr. Samuels testified that he was arrested the day following the incident and taken to the hospital and examined. He denied sustaining soft tissue injuries as a result of the altercation.

[20.] During the re-examination, Mr. Samuels denied striking the deceased on the head with a hammer. He claimed that he made that statement during the interview because he was afraid and followed the police's instructions.

ASP Lincoln Mckenzie

[21.] ASP Lynden Mckenzie appeared evasive in his testimony. He confirmed the Post Mortem was dated 12 January 2017, with the time of death recorded as 1:13am on 7 January 2017. He acknowledged Dr. Kiko Bridgewater conducted the post mortem and that he signed the death certificate, which listed cause of death as "sudden cardiac death, cardiomegaly, and left ventricular hypertrophy." When asked about his mention of "significant contributing factors being blunt force trauma to the face inflicted by the Claimant" in his witness statement, he stated that this information was included in Dr. Bridgewater's report. It should be noted that Dr. Bridgewater's report noted cause of death as:

"1 (a) Sudden Cardiac Death

(b) Cardiomegaly with Left Ventricular Hypertrophy

2 Alleged Assault with Blunt Force Trauma to Face.

Pathologic diagnosis

1. Sudden Cardiac Death, with:

- A. Cardiomegaly, 590 g**
- B. Asymmetrical Left Ventricular Hypertrophy, free wall 2.0 cm, septum 1.1 cm**
- C. History of Sudden Collapse within a short interval**
- D. Absence of any other significant injuries**

Other findings:

II. Multiple blunt force injuries to face, including:

- A. Laceration to left cheek with surrounding contused abrasion**
- B. Laceration to right nostril**
- C. Laceration to inner lining of lower lip.**

Opinion

"...It was alleged that he had been struck in the head region with a hammer. EMS was called and he was pronounced dead upon their arrival. External examination of the body revealed multiple blunt force injuries to the face region, however these injuries were not significant enough to directly cause death. Internal Examination revealed an enlarged heart with an

unevenly thickened left ventricular wall which would have predisposed to the development of Sudden Cardiac Death by a fatal irregular heart rhythm.” [Emphasis added]

[22.] ASP McKenzie testified that his decision to charge the Claimant was based not solely on his confession but also on statements from civilian and police witnesses, together with the recovery of the hammer. He further testified that, after concluding his investigation, he consulted with prosecutors on 7 January 2017, and that the Claimant was formally charged on 11 January 2017, prior to completion of the post-mortem report.

[23.] ASP McKenzie was also asked about the allegation of coercion against the Claimant, and the following exchange occurred:

“Q: The Claimant alleges he was assaulted and coerced into confessing. What do you say to that?”

A: That allegation is false. He was examined at hospital and no injuries consistent with assault by police was found.”

[24.] Mr. McKenzie concluded that he still genuinely believes the Claimant committed the offence.

Law and Analysis

Was the arrest of the Claimant unlawful?

[25.] The constitutional right from arbitrary arrest and detention is enshrined in **Article 19(1)(d) of the Constitution** which states:

“No person shall be deprived of his personal liberty save as may be authorized by law in any of the following cases –

(d) upon reasonable suspicion of his having committed, or of being about to commit, a criminal offence;...”

[26.] **Section 31(2)(a) of the Police Act** provides:

“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 – he reasonably suspects of having committed an offence;...”

[27.] Counsel for the Claimant in her submission contends that Claimant’s arrest violated **Article 19(1)(c) and (d) of the Constitution of the Bahamas**, which permits deprivation of liberty only where authorized by law, including upon reasonable suspicion of committing or about to commit a criminal offence. Counsel argues that no crime had been committed and therefore no reasonable suspicion could lawfully arise. Relying on **Merson v Cartwright [1994] BHSJ No. 54**, where the court held that the absence of evidence supporting reasonable suspicion amounted to a breach of constitutional rights entitling the plaintiff to damages. The Claimant submits that the Defendants’ assertion that a prima facie case was unnecessary and that officers subjectively believed he

committed an offence is insufficient. Accordingly, the Claimant maintains he is entitled to judgment on liability for unlawful arrest.

[28.] Counsel for the Defendants submits that the powers of police officers is premised on suspicion and that the arresting officers in this case, had acted on reasonable suspicion which arose from the information provided to them.

[29.] The Court accepts that one of the threshold for police arrest is reasonable suspicion. In **Daran Neely and the Attorney General 2016/CLE/gen/no00623**, Winder CJ comprehensively discussed what constitutes “reasonable suspicion. At paragraphs 96 to 100 he states:

“[96.] In Kevin Renaldo Collie v The Attorney General [2020] 1 BHS J. No. 59, at paragraph 46, Stewart J identified the basic circumstances in which an arrest made by a police officer without a warrant pursuant to section 31(2)(a) of the Police Force Act, 2009 will be unlawful:

46. ...an arrest is unlawful if:-

46.1 the arresting officer has not sufficiently satisfied himself that a suspect is responsible for the commission of an offence and therefore arrests a suspect without reasonable suspicion: and/or

46.2 the arresting officer does not inform the suspect of the reason for his arrest as soon as practicable.

[97.] With respect to the first of the circumstances identified in Kevin Renaldo Collie, the linchpin of section 31(2)(a) of the Police Act, 2009 is the concept of “reasonable suspicion”. “Reasonable suspicion” is a low threshold falling short of a prima facie case. It does not require evidence amounting to prima facie proof. In *Parker v The Chief Constable of Essex* [2019] 3 All ER 399, Sir Brian Leveson P summarized the leading English authorities on the concept at paragraph 115 thusly:

[115] I can summarize the relevant (and agreed) legal principles. The bar for reasonable cause to suspect set out in s 24(2) of the 1984 Act is a low one. It is lower than a prima facie case and far less than the evidence required to convict. *Dumbell v Roberts* [1944] 1 All ER 326 at 329 and *Shaaban Bin Hussien v Chong Fook Kam* [1969] 3 All ER 1626 at 1630-1631, [1970] AC 942 at 948-949; see also *Castonrina* (supra (at 21) and *O’Hara* [1997] 1 All ER 129 at 134, [1997] AC 286 at 293. Further, prima facie proof consists of admissible evidence, while suspicion may take account of matters that could not be put in evidence (*Hussien* [1969] 3 All ER 1626 at 1631, [1970] AC 942 at 949 and *O’Hara* [1997] 1 All ER 129 at 134, [1997] AC 286 at 293). Suspicion may be based on assertions that turn out to be wrong (*O’Hara* [1997] 1 All ER 129 at 139, [1997] AC 286 at 298). The factors in the mind of the arresting officer fall to be considered cumulatively (*Armstrong* (supra) at [19] and *Buckley* (supra) at [16]).

[98.] While an arresting officer must have more than a suspicion of general unlawful conduct, the arresting officer need not know or be able to specify the specific details of the particular offence for which the arrest is made. It is enough that the arresting officer reasonably suspects the existence of facts amounting to an arrestable offence of a kind which he has in

mind (e.g., suspicion of “involvement in kidnapping” is sufficient); *Betaudier v Attorney General for Trinidad and Tobago* [2021] 5 LRC 155 per Lord Lloyd-Jones at paragraph 15.

[99.] The test for “reasonable suspicion” is both subjective and objective. The officer must genuinely suspect that the person he intends to arrest committed an offence and the officer must have reasonable grounds for that belief based on the facts known to or information given to them at the time of the arrest. In *Jerone Thompson Sr. and others v Lynden Saunders* SCCiv App No. 2 of 2023, Evans JAC, delivering the judgment of the Court of Appeal, said at paragraphs 41 and 42:

41. As stated by this Court, differently constituted, in *Antoine Russell v The Attorney General et al.* SCCiv App. No. 186 of 2017, reasonable suspicion and reasonable belief are two distinct tests. The test under 31(2)(a) of the Police Act is reasonable suspicion.

42. In *Kevin Renaldo Collie Stewart, J.* relying on the English case of *O’Hara v Chief Constable of the Royal Ulster Constabulary* (1996) UKHL 6 opined that:

“44 As stated in *O’Hara* the test for reasonable suspicion is a simple but practical one and relates entirely to what is in the mind of the arresting officer at the time of the arrest. It is partly subjective, because the arresting officer must have formed a genuine suspicion in his own mind that the Plaintiff has been concerned with the act he is accused of. It is also partly objective, because there must also be reasonable grounds for the suspicion formed which goes no further than what was in the mind of the arresting officer at the time of the arrest.” [Emphasis added]

100. While an arresting officer can form a reasonable suspicion a person has committed an offence based on hearsay, provided that it is reasonable and the arresting officer genuinely believes it, but an arresting officer can never be a mere “conduit” for somebody else. The learned editors of *Blackstone’s Criminal Practice 2023* summarize the position thusly at paragraph D1.5:

Informing a reasonable suspicion a constable may rely on hearsay provided that it is reasonable and that the constable believes it (*Clarke v Chief Constable of North Wales Police* [2000] All ER (D) 477. Thus a constable may arrest a person as a result of radio information, or even an anonymous telephone call, provided that the person arrested corresponds to the description in the message (*King v Gardener* (1979) 71 cr App R 13; *DPP v Wilson* [1991] RTR 284); the constable may act on the word of an informant, although such a source should be treated with considerable reserve (*James v Chief Constable of South Wales* [1991] 6 CL 80). The constable may rely on an entry in the police national computer, unless in the light of all the circumstances some further inquiry is called for before suspicion can properly crystallise (*Hough v Chief Constable of Staffordshire Police* [2001] EWCA Civ 39); or on a briefing from another police officer (*Alford v Chief Constable of Cambridgeshire* [2009] EWCA Civ 100) or investigator such as an officer from the SFO (*R(Rawlinson) v Central Criminal Court* [2012] EWHC 2254 (Admin), [2013] 1 WLR 1634). The arresting officer is not under a duty to check information supplied, and an arrest will be lawful even if the information was incorrect (*R(Tchenguiz) v Director of the SFO* [2012] EWHV 2254 (Admin), [2013] 1 WLR 1634; *R (Chatwani) v NCA* [2015] EWHC 1283 (Admin)).”

[30.] When this Court reviews the circumstances holistically and based on the information available to police officers at the time of arrest, the officers had reasonable and probable cause to arrest the Claimant. I find that the arrest of the Claimant on 7 January 2017 was lawful. The issue of false imprisonment follows the resolution of the malicious prosecution claim.

Malicious Prosecution

[31.] The next issue to be determined is whether the prosecution against the Claimant was maliciously brought.

[32.] In an action for malicious prosecution a claimant must prove first that he was prosecuted by the defendant, that is to say that the law was set in motion against him on a criminal charge; second, that the prosecution was determined in his favour; third, that it was without reasonable and probable cause; and further, that it was malicious (see: **Clerk v Lindsell on Torts 16th ed (1989) p. 1042, para 19-05**)

[33.] The Defendants deny that the prosecution was without reasonable and probable cause and contend that the Claimant has to prove malice, namely that the prosecution was actuated by spite, ill will, or improper motives. It is further contended by the Defendants that the police officer who brought the charge acted on proper legal advice. Counsel for the Defendants relied on **Stapeley v Annets and Another [1963] 3 All ER Reports 1541**.

[34.] The Claimant argued that the prosecution lacked reasonable or probable cause to charge him with Murder under section 291(1)(b) of the Penal Code, Chapter 84. Counsel submits that, according to the test in **Glinski v McIver**, there must be objective grounds to justify believing the Claimant was guilty and that there was a "case to be tried."

[35.] The Claimant contends that no evidential basis supported such belief, noting that the post-mortem evidence identified the cause of death as sudden cardiac death, with no significant injuries consistent with unlawful harm. Additionally, the alleged statements from family members were hearsay and incapable of grounding a sustainable prosecution.

[36.] Counsel for the Claimant relies on the ruling in the Application for a Stay, where it was argued that the prosecution could not prove that the death resulted from the Claimant's actions. The learned Judge acknowledged concerns regarding the state of the evidence but held that she could not override the prosecutorial discretion of the Director of Public Prosecutions. A nolle prosequi was ultimately entered on 15 March 2023.

[37.] The Claimant submits that the evidential position had not materially changed and therefore no reasonable or probable cause existed to maintain the prosecution, relying on **Gilchrist v Gardner [1891] N.S.W. R. 184** and **Khan v Singh (1960) 2 W.I.R. 442**.

[38.] Counsel for the Claimant further argued that malice was demonstrated by the Defendants' continued reliance on factually incorrect assertions despite invitations at the pre-trial management stage to review the case file. Reliance was placed on the discrepancies within the Detention Record, in particular, the timing date of the interview and the timing of the charge and custody

entries. The Claimant alleged that any confession was obtained through duress, although no medical evidence was adduced substantiating physical assault.

[39.] The law is settled that reasonable and probable cause consists of an honest belief in the guilt of the accused, founded upon reasonable grounds, that there exists a proper case to lay before the court (see: **W/Cons 2305 Sweeting et al v Atisha Tinker et al SCCivAPP No. 50 of 2009**, which affirmed **Hicks v Faulkner (1878) 8 Q.B.D 167, 1717**)

In assessing this element, the Court must consider the totality of the material available to the Defendants at the time the prosecution was initiated and during its continuation.

[40.] Further guidance is drawn from **Feizal Khan v Commissioner of Police, et al 2006/PUB/coon/0001**, where Klein J at paragraph 90 stated the following:

“90. I have already set out the basic principles relating to the tort of malicious prosecution based on the submission of the parties. But I would also wish to refer to two recent Privy Council authorities-Matadai Roopnarine v Attorney General of Trinidad and Tobago [2023] UKPC 30, Stuart v Attorney General of Trinidad and Tobago [2022] UKPC 53, [2023] 4 WLR- where the Board very instructively set out and elaborated on the relevant principles. In Matadai, the Privy Council said:

“19. As stated in the Board’s recent decision in Stuart v Attorney General of Trinidad and Tobago [2022] UKPC 53, [2023] 4 WLR 21 (“Stuart”) at para 1:

‘The tort of malicious prosecution has five elements all of which must be proved on the balance of probabilities by the claimant: (i) that the defendant prosecuted the claimant (whether by criminal or civil proceedings); (2) that the prosecution ended in the claimant’s favour; (3) that the prosecution lacked reasonable and probable cause; (4) that the defendant acted maliciously; and (5) that the claimant suffered damage. See, e.g., *Clerk and Linsell on Torts*, 23rd ed (2020), para 15-13; *Winifield and Jolowicz on Tort* 20th ed (2020), para. 20-006.’

20. As explained in Stuart at para 26, reasonable and probable cause means an honest belief based on reasonable grounds that there is a proper case to lay before the court—see *Glinski v McIver* [1962] AC 726] at pp. 758 per Lord Denning.

21. Malice means an improper motive. The proper motive for a prosecution is a desire to secure the ends of justice. Malice will be established if it is shown that this was not the motive of the defendant or that something else was. Malice may be inferred from lack of reasonable and probable cause but this will depend on the facts of the individual case—see *Clerk & Linsell on Torts*, 23rd ed (2020), para 15-57; *Williamson v Attorney General of Trinidad and Tobago* [2014] UKPC 29 at paras 11-13.

Proof of absence of reasonable and probable cause

22. In order to establish that the relevant person did not have an honest belief based on reasonable grounds that there was a proper case to lay before a court it will

generally be necessary for the claimant to identify the nature of the information upon which the decision to do so was made. As explained in *Clerk v Lindsell* at para. 15-35:

‘The question of reasonable and probable cause may create difficulties in the conduct of a trial; first, it involves the proof of a negative and, secondly, in dealing with it the judge has to take on himself a duty of an exceptional nature. The claimant has, in the first place, to give some evidence tending to establish an absence of reasonable and probable cause which is operating on the mind of the defendant. To do this, the claimant must identify the circumstances in which the prosecution was instituted. It is not enough to prove that the real facts established no criminal liability against him, unless it also appears that those facts were within the personal knowledge of the defendant. If they were not, the claimant must show the nature of the information on which the defendant acted, which is sometimes done by putting in the depositions which were before the magistrate.’”

[41.] The gravamen of the Claimant's allegations involves numerous factors which I have previously discussed. The Court must consider all circumstances known to the Defendants at the time the prosecution was instituted and during its continuation.

[42.] At the time the charge was laid, the First Defendant relied primarily on witness accounts indicating that the deceased had alleged that the Claimant struck him. None of these witnesses observed the altercation. Their accounts were therefore, at best, hearsay. It is also notable that the Claimant was charged before the post mortem examination was conducted.

[43.] Notwithstanding this, I accept that allegation, taken at its highest, was capable of grounding suspicion. I therefore find that there may have been reasonable and probable cause at the time the charge was initially brought. However, upon receipt of the post mortem report, which recorded the cause of death as sudden cardiac death and that the laceration was not significant to cause the death, the prosecution continued.

[44.] I also note the discrepancy concerning the date of the record of interview. While the Defence asserts that it occurred on 7 January 2017 and the Claimant maintains it occurred on 11 January 2017, I accept, based on the hospital form dated 8 January 2017 that the interview more likely occurred on 7 January. This issue, however, does not materially advance the defendant's evidential position.

[45.] I accept that direct evidence is not the only reliance required for prosecution and that circumstantial evidence may suffice. (**Attorney General of Trinidad and Tobago v Harridath Maharaj [2024] UKPC 1**).

[46.] Having regard to the post mortem findings and the absence of any evidential development thereafter, careful consideration ought to have been given to whether the charge should be maintained, amended or discontinued. The Third Defendant was in a position to consider the evidence and the VBI and make a determination on the Claimant's fate well before the *nolle prosequi* was entered.

[47.] In all the circumstances, I find the evidential foundation necessary to sustain an honest belief in probable guilt was absent once the medical evidence became available.

[48.] There was no basis upon which the prosecutor could reasonably believe the Claimant could be convicted. The available evidence namely: hearsay statements, absence of direct eyewitness evidence, the post mortem findings, and the absence of further investigative steps, could not reasonably sustain an honest belief in probable guilt.

[49.] In the absence of any evidential basis capable of sustaining an honest belief in probable guilt, the continuation of the prosecution invokes the inference that it was not motivated by a proper desire to bring an offender to justice.

[50.] I therefore find that, while reasonable and probable cause may have existed at the inception of the charge, it did not exist for the continuation of the prosecution. The maintenance of the proceedings thereafter was without reasonable and probable cause.

Malice

[51.] I now turn to the question of whether the prosecution was actuated by malice. As noted in **Williamson v. Attorney General of Trinidad and Tobago [2014] UKPC 29** as reported in **85 WIR at pages 452 to 461**, Lord Kerr noted at page 457 I paragraph 11:

[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 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 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 found in *A v NSW* [2007] HCA 10, (2007) 230 CLR 500 (at [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’

[12] An improper and wrongful motive lies at the heart of the tort, therefore. It must be the driving force behind the prosecution. In other words, it has to be shown that the prosecutor’s motive is for a purpose other than bringing a person to justice: *Stevens v Midland Counties Railway Company* (1854) 10 Exch 352 at 356 per Alderson B and *Gibbs v Rea* (1998) 52 WIR 102 at 111, [1998] AC 786 at 797. The wrongful motive involves an intention to manipulate or abuse the legal system: *Crawford Adjusters Ltd (Cayman) v Sagicor General Insurance (Cayman) Ltd* [2013] UKPC 17, (2013) 83 WIR 157, [2014] AC 366 (at [101]); *Gregory v Portsmouth City Council* [2000] 1 All ER 560 at 565, [2000] 1 AC 419 at 426; *Prulux v Quebec* (A-G) 2001 SCC 66, [2001] 3 SCR 9. Proving malice is a ‘high hurdle’ for the claimant to pass: *Crawford Adjusters* (2013) 83 WIR 157 at [72](a) per Lord Wilson.

[13] Malice can be inferred from a lack of reasonable and probable cause – *Brown v Hawkes* [1891] 2 QB 718 at 723. But a finding of malice is always dependent on the facts of the individual case. It is for the tribunal of fact to make the finding according to its assessment of the evidence. [Emphasis added]

[52.] Having determined that the prosecution lacked reasonable and probable cause, I need to assess whether it was still pursued for a legitimate prosecutorial purpose. In this case, post-mortem evidence undermined the claim of unlawful killing, and there was no adequate evidential foundation for a conviction. No additional investigative steps were taken, and the prosecution continued for five years until the *nolle prosequi* was entered.

[53.] I am satisfied that the tort element, as reaffirmed in **Feizal Khan** and supported by Privy Council authorities, was established. The Defendants prosecuted the Claimant, the prosecution ended in his favor, and it was pursued without reasonable or probable cause. The Defendants acted with malice, and the Claimant suffered damages.

False Imprisonment

[54.] The law of false imprisonment was discussed in **Omar Archer Sr. v The Commissioner of Police and another** [2024] 1 BHS J. No. 27 at paragraphs 58 and 59. There, Fraser J (as she then was) affirming the case of *Lashawn Cooper v The Commissioner of Police* stated the following:

“58. The Cooper decision also addressed the law of false imprisonment. There, Charles Snr. J (as she then was) made the following pronouncements:

“[61] False imprisonment is defined by Clerk and Lindsell on Torts, 17th ed. (1995) pp 592-593, para 12- 17 as “complete deprivation of liberty for any time, however short, without lawful cause.” The work then quotes the “terms de la Ley” **Imprisonment is no other thing but the restraint of a man’s liberty, whether it be in the open field, or in the stocks, or in the cage in the streets or in a man’s own house, as well as in the common goals; and in all the places the party so restrained is said to be a prisoner so long as he had not his liberty freely to go at all times to all places whether he will without bail or mainprise or otherwise.”**

[62] The principle was explained by Deyalsingh J in *Bostien v Kirpalani’s Ltd* (1979) High court of Trinidad and Tobago No. 861 [unreported], per Deyalsingh J (see page 13) in this way:

“It is clear from the authorities that to constitute a false imprisonment there must be restraint of liberty...a taking control or possession of the plaintiff or control of his will. The restraint of liberty is the gist of the tort. It is enough if pressure of any sort is present which reasonably leads the plaintiff to believe that he is not free to leave, or if the circumstances are such that the reasonable inference is that the plaintiff was under restraint, even if the plaintiff was himself unaware of such restraint. There must in all cases be an intention by the defendant to exercise control over the plaintiff’s movements over his will, and it matters not what means are utilized to give effect to this intention...(emphasis added)”

59. Gilbert Kodilinye in *Commonwealth Caribbean Tort Law Fourth Ed. (2009)* at pages 17 and 18 had this to say:

“False imprisonment’ is a misleading term. ‘False’ normally means ‘fallacious’ or ‘untrue’, but in this tort it means merely ‘wrongful’ or ‘unlawful’. ‘Imprisonment’ usually involves locking a person in jail, but in this tort it has a much wider meaning and includes not only incarceration in prison, but any physical restraint...It is a fundamental requirement of the tort that the plaintiff’s freedom of movement in every direction must have been restricted...In order to be an actionable false imprisonment, the restriction upon the plaintiff’s liberty must be unlawful (emphasis added).”

[55.] The Court has determined that the Claimant’s arrest was lawful and that the subsequent arraignment of the claimant and his remand to BDOCS was pursuant to a judicial order, and was thus lawful and does not ground a claim for false imprisonment.

[56.] In light of my findings on malicious prosecution, while reasonable and probable cause may have existed at the inception of the charge, it ceased to exist once the post mortem evidence became available. As such, the prosecution was thereafter maintained without reasonable and probable cause and was actuated by malice.

[57.] Having regard to all the circumstances, I find that the Claimant’s initial arrest and subsequent remand were effected pursuant to lawful authority, however his continued detention for a period of 682 days in maximum security was as a result of the prosecution that was maintained maliciously and without reasonable and probable cause. However, it should be stated that the deprivation of liberty forms part of the damage recoverable under the successful claim for malicious prosecution.

Assault and Battery

[58.] The law relating to assault is well settled. In *Commonwealth Caribbean Tort Law; Fourth Ed. (2009)* learned author Gilbert Kodilinye at page 11 defines assault as:

“An assault is a direct threat made by the defendant to the plaintiff, the effect of which is to put the plaintiff in reasonable fear or apprehension of immediate physical contact with his person...In assault, the act of the defendant must have been such that a reasonable man might fear that violence was about to be applied to him. The test is objective, not subjective. Thus, if a person of ordinary courage would not have been afraid, the fact that the particular plaintiff was afraid will not make the defendant liable.

[59.] The Claimant alleges that he was taken into a room, a plastic bag was placed over his head, and he was beaten and threatened. According to the Claimant any confession obtained was made out of fear of further violence.

[60.] The Claimant relies in part on a twelve-hour gap in the Detention Record on 11 January 2017. However, that discrepancy, without more, is insufficient to ground liability. The Court was

not provided with the original detention record or corroborative evidence to explain the alleged anomaly. Standing alone, such a gap does not establish that an assault or battery occurred.

[61.] The Claimant's allegation of assault is not supported by independent or contemporaneous evidence. There is no medical record documenting injuries consistent with the alleged beating. Having regard to the totality of the evidence, I am not satisfied on a balance of probabilities that the Claimant was assaulted. This ground of his claim is dismissed.

Breach of Constitutional Rights

[62.] I find that the Claimant's constitutional right to protection from arbitrary detention under **Article 19(4) of the Constitution** was breached and he is entitled to damages.

Aggravated and Exemplary Damages

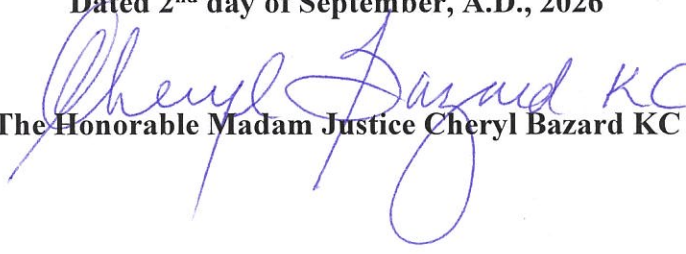
[63.] The Court does not accept that the Claimant is entitled to aggravated and exemplary damages. His damages stem from malicious prosecution and arbitrary detention. The matter of damages is referred to the Registrar for Assessment, as this Court dealt solely with the question of liability.

Conclusion

[64.] I therefore find that the Claimant was falsely imprisoned, maliciously prosecuted and his constitutional rights were breached.

[65.] Costs to the Claimant to be assessed if not agreed.

Dated 2nd day of September, A.D., 2026


The Honorable Madam Justice Cheryl Bazard KC