

2. The Defence's sole intended witness for this matter, from whom viva voce evidence at trial is expected to be given, is the arresting officer – D/Cpl. Charmaine Hibbert. There is also, only one expected witness for the Claimant, this being the Claimant herself.
3. When this matter came up before this Court for trial on October 24th, 2011, the matter was caused to have to be adjourned, arising from the unavailability due to illness of the Crown Counsel who had primary conduct of this matter, namely, Mrs. Trudy Dixon-Frith. Arising from this, the Court brought to the attention of both the Claimant's Counsel and the Defendant's counsel who was holding brief for Mrs. Frith on October 24th, 2011, various matters which the Court believes ought to be dealt with as soon as possible hereafter and certainly well in advance of any new trial date. In that regard, the Claimant has, through her Counsel and arising from the Court's invitation for these to be done, made application to this Court for various amendments to be permitted in respect of both the Claim Form and Particulars of Claim. In addition, the Claimant's Counsel has informed this Court, upon enquiry by this Court as to aspects of the witness statement of the Claimant and whether such aspects would or would not constitute hearsay evidence, that all information allegedly reported to the Claimant and referred to in her witness statement in that context, are being relied on solely as original evidence.
4. Crown Counsel, Mrs. Frith, who appeared at the Court hearing upon the Court's continuation of this matter on October 25th, 2011, informed this Court then, that she had been apprised by Counsel who held brief for her on the first day of the respective application and submissions of the Claimant and had no objection to any of the

amendments being proposed, nor did she have anything to urge upon this Court in response to the Claimant's contentions vis-à-vis paragraphs 1, 3, 4 and 7 of the Claimant's witness statement, that all of the matters reported in each of those paragraphs as having allegedly been told to the Claimant by any other person or persons, are being relied on solely as original evidence.

5. In the circumstances, this Court accepts that the statements attributed to others and as recorded in paragraphs 1, 3, 4 and 7 of the Claimant's Witness Statement, constitute original evidence and are therefore admissible as evidence at trial, but only to the extent that such statements go to show, both individually and collectively, what was/were made known to the Claimant by another person or persons, such as, for instance, the arresting officer.
6. Additionally, this Court accepts that the amendments as sought by the Claimant to her Claim Form and Particulars of Claim, ought to be granted, as the Court cannot envision any prejudice whatsoever arising to the Defendant therefrom. Indeed, the learned Crown Counsel did not even so much as imply that there would have been any such, as there was no objection to the proposed amendments and rightly so.
7. The final issue which had to be dealt with, concerns potential hearsay issues in respect of the witness statement of D/Cpl. Charmaine Hibbert, the arresting officer. Again, on the invitation of the Court, the parties were invited to make oral submissions to this Court, on this, particularly insofar as the statements attributed to others and as referred to in paragraphs 3, 4, 5, 6, 7, 8, 9, 11, 14, 15, 16, 17 and 23 of D/Cpl. Hibbert's witness statement is concerned.

8. In making his submissions on this matter, the Claimant's counsel stated emphatically, that he was objecting to the respective statements attributed to any other person or persons in paragraphs 8, 10, 11, 14, 15, 16, 17 and 21 of Officer Hibbert's witness statement. For the most part, the objections to the admissibility of such statements centered around the issue of hearsay, except that with respect to paragraph 10 of Officer Hibbert's witness statement, the issue of the admissibility of expert evidence was also raised in objection. Insofar as paragraph 23 of Officer Hibbert's witness statement is concerned, counsel for the Claimant has suggested that that paragraph contains hearsay evidence, but the same is not being seriously objected to by the Claimant. Those are the objections in brief.
9. Mrs. Frith, in response, stated that the Crown/Defendant is relying on all of the statements attributed to others, as contained in the witness statement of D/Cpl. Charmaine Hibbert, as constituting original evidence going towards establishing the state of mind of the arresting officer at the times when she respectively arrested and later charged the Claimant for the relevant offence. It is the Claimant that has alleged malice and lack of reasonable and probable cause on the part of the attesting officer, in having arrested and later charged the Claimant. It should be noted that the case law, such as for example – **Glinski v. McIver [1962] A.C. 726 and Wills v. Voisin [1963] 6 W.I.R.50**, have made it clear that whilst absence of reasonable and probable cause may assist in proving malice, the term 'malice' is nevertheless, not to be equated with the lack of reasonable and probable cause.
10. Section 33 of the Constabulary Force Act requires the Claimant to establish either malice or lack of reasonable and probable cause for the constable's actions done in

the course of his duty as such, if the Claimant is to be successful in establishing the torts of either malicious prosecution or false imprisonment.

11. It seems to me, that in determining whether or not malice existed on the part of the relevant police officer at the material time, this Court must carefully, at trial, consider the state of mind of that officer, albeit that in determining that state of mind, objective considerations, such as whether or not there existed reasonable and/or probable grounds for her actions at the material times, will undoubtedly be an important factor to be taken into account. This therefore brings me to the second point on this particular issue, which is that in determining whether a constable had reasonable grounds for suspecting that a person may have committed an offence, it is to be noted that “suspicion” ought not to be equated with prima facie proof. This point is made clearly by the Privy Council in its Judgment in the case **Hussien & Ors and Chong Fook Kan & anor. (Malaysia) [1970] A.C. 942**. The Judgment of their Lordships in that case, was delivered by Ld. Devlin. In his Judgment, he went at length to discuss the distinction even between prima facie proof and suspicion. See paragraphs 948B-949C. **He has stated at page 949B, that – “Prima facie proof consists of admissible evidence. Suspicion can take into account matters that could not be put in evidence at all”. (Emphasis mine)** It has long been recognized at common law, that a constable is justified in arresting a person without a warrant upon a reasonable suspicion of a felony having been committed and of the person being guilty of it, (See page 948G of Hussien case). On this, it also seems to me, that the reasonableness of the arresting officer’s suspicion is to be assessed, not from the arresting officer’s viewpoint, but objectively, since if this were not so, then mere

suspicion in the mind of the officer concerned, would be enough to enable that officer to effect a lawful arrest. The law however requires that that officer's suspicion be reasonable if he is to lawfully effect such a purpose.

12. In my view, the only means by which this Court, at trial, would be in a position to determine whether the relevant officer had proper grounds for 'reasonable suspicion' as at the time when she effected the arrest of the Claimant in this case, is if this Court knows what was the information upon which the officer claims to be relying in that regard. Thus, the state of mind of the officer concerned is very relevant towards enabling this Court to determine whether objectively, her state of mind was informed by reasonable grounds such as would serve to justify, in law, the suspicion which she had.
13. Insofar as malicious prosecution is concerned, again too, it is the state of mind of the officer that initiated the prosecution which must be carefully considered by this Court. This Court will consider objective factors in assessing the officer's state of mind at the relevant time, but in any event, any evidence going towards establishing the officer's state of mind at the relevant time, must, of necessity, not only be relevant, but also, ought properly to be accepted by this Court, as constituting original evidence going towards establishing the officer's state of mind at the material time and I thereby rule accordingly. Furthermore, I reject the Claimant's contention that expert evidence is being relied on by the defence at paragraph 10 of Officer Hibbert's witness statement. It is not, to my understanding, the doctor's opinion as to the state of one of the minor's hymen at the material time, that the Crown is seeking

to rely on. Rather, it is that the provision of that opinion to the relevant officer, goes towards establishing the state of mind of the officer.

14. All in all therefore, I rule that the proposed evidence in relation to which objections have been made by the Claimant is all admissible as original evidence and I will Order accordingly. Thus my Order in this matter as were made on the 26th October, 2011 is as follows:-

- (I) It is ordered that the trial of this matter is adjourned until the 12th day of April, 2012 for one day.
- (ii) The Claimant shall be permitted to amend her Particulars of Claim at paragraph 6 thereof, by replacing that which presently exists as paragraph 6 with the following words – “At all material times the said D/Cpl Charmaine Hibbert was acting within the scope of her engagement as a member of the Jamaica Constabulary Force in arresting the Claimant and falsely imprisoning her in the circumstances.”
- (iii) The Claimant shall be permitted to amend her Particulars of Claim as follows, by replacing that which presently exists as paragraph 8(b) thereof, with the following wording – “Exemplary and/or Aggravated Damages.”
- (iv) The Claimant shall be permitted to amend her Particulars of Claim, by replacing that which presently exists as paragraph 9 thereof, with the following wording as the heading of that newly worded paragraph – “Special Damages” and below that heading, the following particulars thereof :-

- i) Attorney-at-law’s fees - \$ 90,000.00

ii)	Transportation expenses for 45 days @ \$1500 per day	-	<u>\$ 67,500.00</u>
	Total		<u>\$157,500.00</u>

- (v) The Claimant shall be permitted to amend her Particulars of Claim by renumbering the paragraph which presently exists as paragraph 9 thereof, as paragraph 10 of the intended Amended Particulars of Claim.
- (vi) The Claimant shall be granted an extension of time within which to comply with the Order of Master George as was made on November 19th, 2009. Such extension of time shall be until the 8th day of November, 2011.
- (vii) The Claimant shall be permitted to amend Claim Form, to have that which presently exists as the first paragraph thereof, replaced with the following wording –:

“The Claimant Ann-Marie Lewis, Businesswoman of Broughton District, Little London, in the parish of Westmoreland, claims against the Defendant the Attorney General for the Island of Jamaica, to recover damages on the footing of : Aggravated and/or exemplary damages for False Imprisonment and Malicious Prosecution, for that on or around February 13th, 2006, one Charmaine Hibbert, whilst acting in her capacity or her purported capacity as a member of the Jamaica Constabulary Force, unlawfully, maliciously and without reasonable or probable cause, held and detained the Claimant at Negril Police Station lock-up in the parish of Westmoreland, on false charges.”

- (viii) The Claimant shall be permitted to amend her Claim Form by replacing that which presently exists as the second paragraph thereof, with the following wording -:

“The Claimant claims further that she was held and kept in police custody up until February 23, 2006 when she was offered bail and subsequently attended Court up until the matter was withdrawn by the Crown on July 26th, 2006 and the Claimant was discharged.”

- (ix) The Amendments of the Claim Form and Particulars of Claim, as permitted by virtue of Orders Nos. 2-8 above, shall be respectively contained in the Amended Claim Form and Amended Particulars of Claim and both of these amended documents shall be filed and served by or before November 8, 2011.
- (x) Unless the Claimant complies with the Order at No. 9 above by November 8th, 2011 then any Amended Particulars of Claim or Amended Claim Form, as may be either thereafter filed or served or sought to be relied on by the Claimant at trial, shall not be considered by this Court.
- (xi) It is ordered that as regards the Witness Statement of Ann-Marie Lewis the statements as alleged made by D/Cpl. Charaine Hibbert to the Claimant and as set out in paragraphs 1, 3 and 4 of the Claimant’s Witness Statement, shall stand as original evidence which is not being relied upon by the Claimant in proof of the truth of the respective contents thereof, but rather, as intended proof of the allegations that these respective statements were made to the Claimant by D/Cpl. Hibbert.

- (xii) It is further Ordered that as regards paragraph 7 of the Witness Statement of the Claimant, the information allegedly told to the Claimant and that which the Claimant allegedly told W/Cpl. Charmaine Hibbert, shall stand as original evidence, which is not being relied upon by the Claimant in proof of the truth of its contents, but rather as intended proof of allegations that these respective statements were made to the Claimant.
- (xiii) It is Ordered that all of the statements attributed to any person or persons, whether named or un-named, as have been referred to in the witness statement of Woman D/Col. Charmaine Hibbert shall be admissible in evidence at Trial, but shall not be relied upon as proof of the truth of the contents of those respective statements, but rather, as original evidence towards establishing the state of mind of Officer Hibbert at the relevant time (s).
- (xiv) The Defendant shall be at liberty to file and serve an Amended Defence and if it chooses to exercise that option, the same shall be filed and served by or before December 22, 2011.
- (xv) The Claimant and the Defendant shall file and serve Bundles of Submissions and Authorities and index to Authorities, by or before April 5th, 2012.
- (xvi) The costs of and attendant upon the Court hearings pertaining to this matter as held on the 24th, 25th and 26th October, 2011, are costs in the Claim.
- (xvii) The Claimant shall prepare, file and serve this Order.

I had rendered this reasoned Judgment orally and informed the parties then, that if they so wished, the same would be reduced into writing and delivered to the parties. Mrs. Frith, before the close of the Court's proceedings on that day, requested that a written judgment be delivered. It is in accordance with my promise to do so, that same now exists and is to be delivered to the respective parties.

Dated the day of November 2011

Kirk Anderson (J.)