[2026] JMSC Civ 48

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2017HCV02226

BETWEEN	**MARK LEWIS**	**CLAIMANT**
AND	**THE ATTORNEY GENERAL OF JAMAICA**	**1st DEFENDANT**
AND	**DWIGHT FRANCIS**	**2nd DEFENDANT**
AND	**MICHAEL MING**	**3rd DEFENDANT**
AND	**KEMAR LEWIS**	**4th DEFENDANT**

IN CHAMBERS

Mr Jovell Barrett instructed by Nigel Jones & Company for the Claimant

Mr Matthew Gabbadon instructed by the Director of State Proceedings for the 1st Defendant

Mr Dwight Francis – Present - Unrepresented

Mr Michael Ming – Absent - Unrepresented

Mr Kemar Lewis – Absent - Unrepresented

Heard: January 24, 2024 and March 20, 2026

Civil Litigation: Tort - Malicious Prosecution and False Imprisonment - Default Judgment - Rule 12.9 (2) (b) - Multiple Defendants – Default Judgment against one Defendant before the conclusion of the trial.

M. JACKSON J

Introduction

[1] This trial involves Malicious Prosecution and False Imprisonment claims by Mr. Mark Lewis against all defendants.

Background

[2] On 30 July 2015, the claimant appeared before the Port Antonio Resident Magistrate's Court, charged with the offence of Threatening a Crown Witness. The complainant was the 2nd Defendant, Mr Dwight Francis. The 3rd and 4th Defendants, Mr Michael Ming and Mr Kemar Lewis, were eyewitnesses to the offence.

[3] The indictment sets out the charge as follows:

> *Mark Lewis, on 29th July 2015, attempted to dissuade witness, Dwight Francis, from giving evidence in the case of* ***Regina v Mark Lewis*** *for Unlawful Wounding.*

[4] On 29 March 2017, the matter concluded in his favour. Her Honour, Mrs Majorie Moyston, the Resident Magistrate at the time, endorsed the Indictment as follows:

> *No evidence offered at the complainant's request. Accused discharged.*

[5] On 12 July 2017, the claimant commenced these proceedings, seeking special, general, aggravated, and exemplary damages, together with costs and any other relief this court may grant.

[6] The core of his claim is that Constable Kenya Lee Dwyer, an agent of the 1st defendant, the Attorney General of Jamaica, apprehended and formally charged him without reasonable and probable cause, allegedly acting with malice. Consequently, he suffered damage to his reputation, lost business and employment opportunities, incurred financial losses in defending the case, and endured inhumane conditions during detention.

[7] The 1st defendant has been brought into these proceedings on the basis of vicarious liability and is being sued in a representative capacity under section 13 of the **Crown Proceedings Act**.

[8] In the defence filed on 17 September 2019, the 1st defendant maintained that the arrest and charge were based on reasonable and probable cause, that a proper case existed to be placed before the court at the time of his charge, and that the charge was not motivated by malice.

[9] The defence further stated that the period of arrest and charge, during which the claimant was in custody from 30 July 2015 at 8:40 a.m to 31 July 2015 at 10.00 a.m, when he was taken to court, did not constitute unreasonable detention, and that his subsequent detention resulted from judicial intervention.

[10] The 2nd defendant filed a defence on 8 September 2017. He maintained that he did not act with malice. He did not file a witness statement or give evidence at the trial. However, his witness statement in the criminal matter was admitted as an exhibit at the trial.

[11] The 3rd and 4th defendants failed to respond to the claim. On 19 October 2020, a default judgment was entered against them. The proceedings against them are joined with this trial for an assessment of damages hearing.

The Issues to be Determined

[12] The issues to be determined can be summarised as follows:

(a) whether the defendants are liable for malicious prosecution,

(b) whether the 1st Defendant is liable for false imprisonment, and

(c) whether the claimant has suffered loss as a result of (a) and (b), and whether the claimed damages are recoverable.

The law

[13] Citizens have the right to file complaints against a police officer or private individual who exceeds, abuses, or misuses their authority, or commits a tort against them. This right exists under both common law and by statute.

[14] Section 33 of the **Jamaica Constabulary Force Act** grants statutory authority that extends beyond common law, enabling citizens to bring legal proceedings against its members for actionable torts committed against them. It provides that**:**

> *Every action to be brought against any Constable for any act done by him in the execution of his office, shall be an action on the case as for a tort, and in the declaration it shall be expressly alleged that such act was done either maliciously or without reasonable or probable cause; and if at the trial of any such action the plaintiff shall fail to prove such allegation he shall be non -suited or a verdict shall be given for the defendant"*

Malicious Prosecution

[15] The law in this area is settled. Their Lordships of the Privy Council, in **Stuart v Attorney General of Trinidad and Tobago [2022] UKPC 53,** at paragraph 1**,** set out the law as follows:

> *" [1]….The tort of malicious prosecution has five elements all of which must be proved on the balance of probabilities by a claimant: (1) 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, eg, Clerk and Lindsell on Torts (2020, 23rd edition) para 15-13; Winfield and Jolowicz on Tort (2020, 20th edition) para 20-006."*

[16] In **Hicks v Faulkner**, [1878] 8 QBD 167, at 171, Hawkins J. provided guidance on the test for reasonable and probable cause. He helpfully set it out as follows:

> *"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 ordinary 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…"*

[17] The learned judge then provided this further helpful guidance:

> *"The question of reasonable and probable cause depends in all cases not upon the actual existence, but upon the reasonable bona fide belief in the existence of such a state of things as would amount to a justification of the course pursued in making the accusation complained of…No matter whether the belief arises out of the recollection and memory of the accuser, out of information furnished to him by another…The distinction between facts necessary to establish actual guilt and those required to establish a reasonable bona fide belief in guilt should never be lost sight of, considering such a case as I am now discussing. Many facts admissible to prove the latter would be wholly inadmissible to prove the former." 2 1881 AER 1987 pg.—191 para b, c.*

[18] In paragraph 26 of **Stuart v. Attorney General of Trinidad and Tobago,** their Lordship joined this discourse by seeking to clarify and provide further guidance on the meaning of reasonable and probable cause. They relied on the pronouncements of Lord Denning MR in the House of Lords in **Glinski v McIver** and offered the following guidance:

> *" [26]……there is one point on the law which it is helpful to clarify. This concerns the question as to what the police officer's honest (and reasonably held) belief must be about in the context of deciding whether there is a lack of reasonable and probable cause.* ***It has commonly been stated that the honest belief must be as to the accused's guilt in respect of the offence charged****: see* ***Hicks v Faulkner*** *(1878) 8 QBD 167, 171, per Hawkins J, which was approved by the House of Lords in* ***Herniman v Smith*** *[1938] AC 305. But in the Board's view, the principled and correct approach was articulated by Lord Denning in the House of Lords in* ***Glinski v McIver*** *[1962] AC 726. He said at pp 758-759:*
>
> *"[T]he word 'guilty' is apt to be misleading. It suggests that, to have reasonable and probable cause, a man who brings a prosecution, be he a police officer or a private individual, must, at his peril, believe the accused guilty. That he must be sure of it, as a jury must, before they convict.*

> *Whereas in truth he has only to be satisfied that there is a proper case to lay before the court…After all, he cannot judge whether the witnesses are telling the truth. He cannot know what defences the accused may set out. Guilt or innocence is for the tribunal and not for him…So also with a police officer. He is concerned to bring to trial every man who should be put on trial, but he is not concerned to convict him…No,* ***the truth is that a police officer is only concerned to see that there is a case proper to be laid before the court.****" (My Emphasis)*

[19] Considering the above, I distil the following questions relevant to the facts of this case, which must be considered in tandem with the issues I deem germane to the resolution of this case:

i. "Did Constable Dwyer have an honest belief at the time that there was a proper case to be placed before the court?"

ii. Did the matters relied on by Constable Dwight constitute reasonable and probable cause that there was a proper case to be placed before the court?

[20] The first question calls for the subjective test, while the latter requires the objective test. It therefore stands to reason that Constable Dwyer must, before deciding to arrest and charge, be satisfied that she has a proper case to present to the court, based on all the evidence available to her at the time. This requirement is distinct from, and not akin to, an honest (reasonably held) belief in the claimant's guilt, as clarified by the board in **Stuart v Attorney General of Trinidad and Tobago.**

[21] Malice must also be established. In **Hicks v Faulkner** [1987] 8 QBD 167, at page 175, it was held that:

> *"Malice must be proved by showing that the police officer was motivated by spite, ill-will or indirect or improper motives. It is said that malice may be inferred from an absence of reasonable and probable cause, but this is not so in every case. Even if there is a want of reasonable and probable cause, a judge might nevertheless think that the police officer acted honestly and without ill-will, or without any other motive or desire than to do what he bona fide believed to be right in the interest of justice."*

[22] Therefore, the claimant must also demonstrate, by evidence, that:

i. The defendants' actions were also motivated by spite, ill will, or indirect or improper motives.

ii. The defendants had an additional motive beyond presenting a just and proper case against him.

False Imprisonment

[23] Section 13 of the **Constabulary Force Act** authorises the police to arrest any person whom they reasonably suspect of committing a crime. The relevant part of that section states:

> *"The duties of the Police under this Act shall be to keep watch by day and by night, to preserve the peace, to detect crime, apprehend or summon before a Justice, persons found committing any offence or whom they may reasonably suspect of having committed any offence…"*

[24] In **Dallison v Caffrey** at 617 B-D, Lord Denning MR states that:

> *"In a claim for false imprisonment, it is well settled that the onus is on the police to establish reasonable and probable cause for the arrest. The test for reasonable and probable cause has both a subjective and an objective element. The arresting officer must have an honest belief or suspicion that the suspect had committed an offence, and this belief or suspicion must be based on the existence of objective circumstances, which can reasonably justify the belief or suspicion. A police officer need not have evidence amounting to a prima facie case. Hearsay information, including information from other officers, may be sufficient to create reasonable grounds for arrest as long as that information is within the knowledge of the arresting officer:* ***O'Hara v Chief Constable*** *(1977) 2 WLR 1; Clerk and Lindsell on Torts (18th Ed) para 13-53. The lawfulness of the arrest is to be judged at the time of the arrest.*
>
> *A police officer is not required to test every relevant factor or to ascertain whether there is a defence before he decides to arrest:* ***Herniman v Smith*** *(1983) AC 305, per Lord Atkin. Nor is he under a duty to resolve conflicts of evidence, and his knowledge of such conflicts does not itself show a lack of reasonable and probable cause.* ***Dallison v Caffrey*** *supra at 622 E per Lord Diplock. Further, it is not for the police officer to determine whether the suspect is, in fact, telling the truth. That is a matter for the tribunal of fact."*

> *It is well settled that a police officer is entitled to arrest a suspect and conduct further enquiries in order to see whether or not his suspicions are supported by further evidence. As long as these enquiries are reasonable, they are an important adjunct of the administration of justice."*

The Subsequent Remand by a Judicial Officer

[25] In **Attorney General of Jamaica and Corporal Orville Clarke v Clayton Tyndale** [2020] JMCA Civ 60, at paragraph 47, Edwards JA expressed an opinion on the situation in which a judicial officer has ordered a remand following an arrest and detention. The learned judge of appeal usefully observed that:

> *"47 There is settled authority, therefore, that no action can lie for false imprisonment for a period of detention resulting from a court order. There is also settled authority that the chain of causation can be broken by an independent intervening act and that judicial action can operate as a novus actus interveniens to break the chain of causation….*
>
> *….A judge who considers whether to exercise a discretion to grant bail, in what sum the bail bond should be and whether or not a surety is to be provided, exercises an independent judicial discretion unrelated to the act of the police in effecting an arrest, and therefore, carries out an independent judicial act. The question whether that act can be viewed as a break in the chain of causation is one of fact, law and policy and must be fully argued in an appropriate case."*

The Offence -Threatening a Crown Witness

[26] This offence constitutes contempt of court and is an indictable misdemeanour at common law. Paragraph 3451 of the 35th edition of the Archbold states as follows:

> *"At common law, interference with witnesses in courts of justice, by threats or persuasion, to induce them not to give evidence, is a misdemeanour punishable on indictment or information "*

The Evidence

[27] At the commencement of the trial, both parties asked the court to admit several documents as exhibits, which they had agreed upon. The pertinent parts of the evidence are contained in D10, D11, and D12, all of which were agreed to form part of the defence's case. These are the witness statements of the 2nd, 3rd, and

4th defendants, recorded by Constable Dwyer, and were to be used in the criminal matter.

Exhibit D12 - The Statement of Dwight Francis - The 2nd Defendant

[28] The gravamen of his report was as follows:

> *"…I work at 5 Smatt Road, Port Antonio, as a welder. I have a matter in court involving Mark Lewis, who lives on Portland Road. He was arrested and charged with unlawful wounding, and I was hospitalised for six (6) days at Port Antonio Hospital. While the case was ongoing in court, the judge repeatedly warned Mr Mark Lewis to stay away from me.*
>
> *On Wednesday, 29/7/2015, around 10:30 a.m., I was at home when I saw Mark Lewis outside, sharpening his machete and slapping it against the side of my house. He then said, "A come you fi come out mek mi chop off yuh head." I stayed inside the house until he left. About half an hour later, I went to my workplace at 5 Smatt Road. Mark Lewis came there again, armed with a machete in his hand and a knife at his waist, and said, "Nuh bother think you a go get weh dis time, mi must kill yuh cause yuh a talk bout` mi stab yuh, mi ago kill yuh before yuh go back a court."*
>
> *I wait until he has left, then go to the station to make the report. I am in constant fear for my life and am still recovering from the stab wound I received from Mark Lewis.*
>
> *Signature: Dwight Francis, 29/7/2015."*

Exhibit - D10 The Statement of Kemar Lewis – The 3rd Defendant

[29] Succinctly, the evidence reads as follows:

> *"I work as a welder with Dwight Francis at a welding shop on Smatt Road, Port Antonio…"*
>
> *On Wednesday, the 29th of July, 2015, at approximately 10.30 a.m., Dwight and I were at the welding shop conducting our usual business when we were*

approached by a man known to me as Buju, whom I had known by face over a period of about two years.

He was riding a bicycle with a bundle of cane on it. He came up to the welding shop, stopped, and started shouting, "Yuh can't hide from me enuh, Dwight. Memba sey mi know yuh where about. A mi cane dem yuh waa stop mi from cut." He picked up the machete he had strapped to the canes and continued, "Mi must kill yuh, yu hear." He was still sitting on the bicycle at the time, then he rode off from the welder's shop onto the main road, still cursing. Dwight put his work gear down and went to the station to make a report. I have been working with Dwight for over 4 years, and that is how I came to know this man I hear people call Buju.

Signature: Kemar Lewis. 18/9/2015"

Exhibit D11- Statement of Michael Ming- The 4th Defendant

[30] The relevant portion of the evidence is as follows:

"…I have been selling fruit for over 20 years. I mostly sell on Smatt Road, Port Antonio… I sell cold jellies and other fruit from a stall."

On Wednesday, 29th July 2015, at about 10:30 a.m, I was at my stall on Smatt Road selling my jellies when I saw a man I had known by sight for several years. I also recognised him as the man who had previously stabbed Dwight Francis, causing him to be hospitalised. The man rode onto the welder's premises on a bicycle, dressed in cut-off trousers and a T-shirt. He had a bundle of cane on the bicycle, as well as a long machete and a large knife in his waistband.

He rode past me at the gate and went up to where Dwight, the welder, was working. I could hear them arguing loudly at the welder's shop, but I could not catch everything that was said. However, as he was leaving the welder, I heard him say the following words: "A dem yah yuh want stop mi from get, but memba sey mi know yuh where abouts, yuh can't get away from mi, a dead yuh ago dead". He rode off on his bicycle down the road, cursing.

Signature: Michael Ming. 18/8/2015"

The Evidence of the Claimant

[31] Without objection, the claimant's witness statement, filed on 18 October 2023, was allowed to stand as his evidence in chief. In summary, the key points of his evidence were as follows:

(a) The 2nd defendant attended the police station and reported to Constable Dwyer that he, the claimant, had threatened to kill him.

(b) Constable Dwyer, without conducting a proper investigation, took him from his home on 30 July 2015, carried him to the station, where she arrested and charged him, and then placed him in custody.

(c) Constable Dwyer did not visit the community or interview anyone there to verify the threat. Notwithstanding his denial of the allegations, Constable Dwyer advised him to state his innocence to the judge, as she would not be driving around the community to conduct any further investigation.

(d) Constable Dwyer unreasonably kept him in custody from the morning of 30 July 2015 to 31 July 2015, without considering granting him bail.

(e) He spent over two months in custody, incurred $23,000.00 in legal fees, lost a job opportunity valued at $150,000.00, incurred $32,000.00 in travel and accommodation expenses, and lost earnings of $3,000.00 and $2,500.00 per week from his employment at the Anchovy Land Settlement and from coconut sales from 2015 to the present.

(f) He was maliciously prosecuted and imprisoned out of spite and ill will rather than as a genuine attempt to serve justice.

(g) Constable Dwyer acted purely out of malice because she was displeased with his acquittal in an unrelated case.

(h) Constable Dwyer came to his home in full view of neighbours, all of whom were at home, and they were able to see him being taken away.

(i) While in the lock-up, he was held in terrible conditions; the cell was small and housed seven other arrestees. He rarely received food and water, was exposed to the smell of excrement, and had to sleep on concrete, with constant restrictions on movement.

(j) The condition in the cell left him deeply embarrassed, and his reputation as a law-abiding citizen of Jamaica has been severely damaged.

The Cross-Examination by Counsel Mr Matthew Gabbadon and the 2nd Defendant

[32] The cross-examination by Mr Gabbadon was directed to showing that the evidence he relied on was free from malice, that there was reasonable and probable cause for the police to arrest the claimant, that his detention was reasonable and lawful, and that he was not entitled to any damages.

[33] The 2nd Defendant sought to highlight the absence of malice, the claimant's status as the aggressor, and the claimant's continued threats to him arising from the court matter.

[34] The gravamen of the cross-examination elicited the following responses from the claimant:

(a) He accepted that he had previously been charged with the offence of assault occasioning actual bodily harm in relation to Kenneth Gumps in 2013, and that he had been found guilty and sentenced to three months' imprisonment.

(b) He acknowledged that the hearing was held in open court and that other persons were present. He was shown Exhibit D18, the

indictment, and accepted that it was the indictment in respect of the previous charge.

(c) He accepted that he was charged in 2015 with unlawful wounding in relation to the 2nd defendant. He was shown Exhibit D16 and accepted that it was the indictment.

(d) He admitted that Constable Dwyer went to his home around 8:40 a.m. on 30 July, 2015. He denied being arrested at his residence or even being informed of the allegations.

(e) He stated that Constable Dwyer told him she wanted him to accompany her to the station. He maintained that he became aware of the allegations whilst at the police station and that he was then arrested and charged there.

(f) He denied the allegations of threatening the 2nd defendant and also denied being in possession of a machete and a knife on 29 July 2015.

(g) He accepted that he was taken to court on 31 July 2015; he, however, stated that he was not permitted to speak. He said that he did not seek bail.

(h) He accepted that, after the allegations about the threats were read out, the judge remanded him in custody. He also accepted that his remand was based on the matter involving the threat and unlawful wounding with which the 2nd defendant is involved.

(i) He also accepted that he was offered bail on 11 August 2015 in the sum of $100,000.00, with sureties and conditions. He further accepted that on 4 September 2015 the bail amount was reduced to $60,000.00, with the same conditions, which enabled him to accept the offer.

(j) He rejected the suggestion that the matter was discontinued because of the 2nd defendant's work commitment, which required him to work in various parishes, and maintained that it was because the witnesses were not attending, and the 2nd defendant and Constable Dwyer failed to attend court.

(k) He said that it was the judge who had to inquire about the witnesses, and that the 2nd defendant told the court that he could not locate them and that he wanted the matter to conclude as a result.

(l) He denied receiving three meals a day while in custody and being treated respectfully.

The Cross-Examination by the 2nd Defendant

(a) He accepted that they had known each other since 2006.

(b) He said the 2nd defendant had disrespected him on previous occasions.

(c) He maintained that the 2nd defendant lied about the threat to avoid compensating him for the properties he had destroyed.

The Evidence of Constable Kenya Lee Dwyer

[35] The witness statement of Constable Kenya Lee Dwyer, filed on 28 November 2023, was allowed to stand as her evidence in chief, without objection. The major plank of her evidence is as follows:

(a) On 29 July 2015, while on guard duty, the 2nd defendant came to the Port Antonio Police Station and lodged a complaint of threats against the claimant.

(b) The 2nd defendant wanted her to handle the report urgently because the claimant had previously stabbed him, causing several days'

hospitalisation, the court date was approaching, and he was the sole witness.

(c) The 2nd defendant reported that the claimant said, among other things, “mi come fi chop off you head, mi must kill yu before we go back to court.”

(d) She recorded the 2nd defendant’s statement, commenced an investigation into allegations, and, with other police, visited the 2nd defendant’s home and workplace.

(e) The 2nd defendant pointed out the area at his home and workplace where the threat occurred and also provided her with a description of the claimant.

(f) She interviewed the 3rd and 4th defendants during her investigation on 30 July 2015, and they corroborated the claimant's account. She also recorded their statements.

(g) She went to the claimant's home on 30 July 2015, at around 8:40 a.m., informed him of the allegations, cautioned him, and arrested and charged him with the offence of Threatening a Crown Witness.

(h) Her arrest and charge were made on the basis of reasonable and probable cause, as she honestly believed, based on the report she received, that the claimant had committed the offence, on the basis of the allegations made against the claimant, the accounts given by the 3rd and 4th defendants, and her investigation.

(i) She took him to the Port Antonio Police Station and placed him in safe custody. The following day, 31 July 2015, she appeared with him before the Port Antonio Resident Magistrate’s Court, where the judge further remanded him after the allegations were told to the court.

(j) The matter concluded in the claimant's favour on 29 March 2017 after the 2nd defendant told the judge he no longer wished to continue with the case, citing work commitments that take him to various parishes daily.

(k) She is aware that the claimant received three meals per day while in custody.

(l) She said that at the time the report against the claimant was made to her, she had completed sixteen (16) years' service with the Jamaica Constabulary Force.

The Cross-Examination

[36] The cross-examination by Mr Jovell Barrett was fierce and extensive. I will highlight the most pertinent points. Notwithstanding this abbreviated account, I considered the entire cross-examination in reaching a final resolution. Significantly, during cross-examination, Mr Barrett sought to discredit Constable Dwyer in relation to paragraph 5 of her witness statement. In paragraph 5 of her witness statement, she stated as follows:

> *"On July 30, 2015, at approximately 8:40 am, I went to the claimant's home in response to a report made to me the previous day by the 2nd defendant. I informed the claimant of the report, cautioned him, and then arrested and charged him with threatening a crown witness. I did so on reasonable and probable cause, as I honestly believed that the claimant had committed the offence, based on the report made to me by the 2nd defendant, the investigation into that report, and authorisation under the law. The claimant was processed and placed in safe custody at the Port Antonio Police Station. I also interviewed and recorded statements from two (2) witnesses, the 3rd and 4th defendants, who confirmed that the claimant made a threat."*

(a) It was suggested that the 3rd and 4th defendants were interviewed at the station on 30 July 2015. She denied the suggestion and

maintained that they were interviewed en route as she set out to arrest the claimant.

(b) It was suggested to her that paragraph 5 of her witness statement was misleading insofar as it gave the impression that she had interviewed the 3rd and 4th defendants and recorded their statements on 30 July 2015. She also denied that to be the case.

(c) When shown Exhibits D 10 and D 12, she accepted that neither contains anything that explicitly states that the 3rd and 4th defendants were interviewed on 30 July 2015. She nonetheless maintained that they were both interviewed that morning before the claimant was arrested.

(d) When asked what time they were both interviewed by her, she said she could not recall the exact time. However, she stated that she started work at 7 a.m on 30 July 2015 and had left the station early that morning.

(e) She maintained that both defendants had acknowledged the threat, seen the claimant, and offered to provide a statement.

(f) When asked by counsel whether she agreed that it would have been necessary to include in her and the 3rd and 4th defendants' statements that they were interviewed on 30 July 2015, she stated that she did not consider it necessary.

(g) It was suggested that paragraph 5 of her witness statement, which states, "*I also interviewed and recorded statements from two (2) witnesses, the 3rd and 4th defendants, who confirmed that the claimant made a threat,"* was an attempt to deceive the court. She denied the suggestion.

(h) She was challenged over the word “action,” which she had recorded in the station’s diary, and asked to explain its meaning. She responded that it was intended to refer to actions she would have taken during the investigation.

(i) She accepted that she had not recorded in the station’s diary that she had interviewed the 3rd and 4th defendants. She also accepted that she would have taken that action during her investigation, before the claimant’s arrest. She denied the suggestion that she was not diligent when it was put to her.

(j) When asked whether it would be inappropriate to act on the complaint based solely on the 2nd defendant's evidence, she agreed.

(k) When asked whether she had taken part in an identification parade, she said that no identification parade was held for the 3rd and 4th defendants.

(l) She was asked whether an identification parade would not have been necessary before the claimant's arrest. She responded that it would not have been necessary. She explained that witnesses had known the claimant for some time and were familiar with him, albeit under his alias. She said she did not think identification was an issue in the case.

(m) It was suggested to her that there were discrepancies in the accounts provided by the 3rd and 4th defendants. It was also put to her that she failed to conduct a thorough investigation and sought out other witnesses. She denied the suggestions and added that both individuals had heard the threats at different times and from different vantage points.

Analysis and Discussion

Malicious Prosecutions

[37] In this trial, I remind myself that the burden of proof rests with the claimant, who must show, on the balance of probabilities, that the prosecution lacked reasonable and probable cause and was motivated by malice. I also remind myself that the claimant bears the burden of proving all five elements of a malicious prosecution claim.

[38] I wish to highlight two undisputed facts. Firstly, the prosecution was initiated following a complaint by the 2nd defendant, which led to the claimant's arrest by Constable Dwyer, the 1st defendant's agent. Secondly, the matter was decided in the claimant's favour.

[39] Having discharged his burden of proof on two of the five elements of malicious prosecution, I must now assess whether, as the claimant contends, the prosecution lacked reasonable and probable cause, the defendants acted with malice, and he suffered damage.

[40] I will first address the evidence provided by Constable Dwyer. Her testimony must undergo comprehensive scrutiny. First, I must address the claimant's contention that there was no reasonable and probable cause. This involves both the objective and subjective tests. That is, whether Constable Dwyer had reasonable grounds to bring the case to court and whether she believed it was a proper case to bring to court.

[41] In her evidence, she stated that the 2nd defendant came to the station and reported that the claimant had threatened him at both his home and his workplace. She said he asked her to address the matter urgently, as the claimant had previously attacked him.

[42] She stated that he also informed her of an ongoing case between them and that the claimant said he would carry out the threat before their next court appearance. She said it was a threat to kill.

[43] Additionally, she stated that the 2nd defendant told her that the claimant had inflicted injuries on him in that case, resulting in six days' hospitalisation. He was still recovering from the injuries, and the judge had repeatedly warned the claimant.

[44] She stated that she recorded a statement from the 2nd defendant, commenced her investigation, and interviewed the 3rd and 4th defendants before arresting and charging the claimant. The threat involved the use of two weapons, a knife and a machete, and was accompanied by menacing words and conduct.

[45] I must have regard to Mr Barrett's cross-examination. He began by focusing on paragraph 5 of her witness statement, which was intended to show that she lacked probable and reasonable cause, that her conduct was motivated by malice, and that she failed to make proper enquiries.

[46] In this regard, he challenged her on whether she had interviewed and taken statements from the 2nd and 3rd defendants before arresting and charging the claimant. He urged the court not to reject her evidence, arguing that it was the opposite of the truth.

[47] Constable Dwyer's responses were firm and resolute, and she remained calm and unwavering throughout the cross-examination. She maintained that the 3rd and 4th defendants had been interviewed before the claimant's arrest and that she was telling the truth.

[48] I also note her response when asked by Counsel to explain why she did not include in their statements, and in her own, the fact that she interviewed them on 30 July 2015 and collected written statements later. I accept her explanation that

it was unnecessary to include this information in the statements. I do not consider it material, nor did I find her unreliable or lacking in credibility on that point.

[49] I accept her clarification regarding paragraph 4 of her witness statement, specifically the dates of her interviews with them and the recording of their statements. A careful review of exhibits D10 and D11 shows that their statements were recorded on 18 September 2015, nearly two weeks later. Accordingly, I accept her evidence that she interviewed both of them on 30 July 2015, prior to the claimant's arrest.

[50] I also consider Mr Barrett's concerns about her failure to enter the community or conduct inquiries before the arrest, as well as her failure to hold an identification parade. Her testimony is clear: she visited the community twice—once on the day the report was lodged and again on the day of the arrest. The 3rd and 4th defendants gave verbal accounts and recorded their statements two weeks later. There is no indication that the claimant provided any names of potential witnesses or of persons who could assist the investigation. Nor was this fact suggested to her.

[51] My observation is that the arrest was not made immediately upon receipt of the report; it was not carried out in haste, despite the seriousness and urgency of the complaint. I bear in mind that a threat to a crown witness is a serious misdemeanour. I therefore accept her evidence that she continued her investigation.

[52] I also do not consider identification to be a material issue in this case. I therefore accept her evidence that an identification parade was unnecessary. Both the 3rd and 4th defendants have said they knew the claimant before and knew him by his alias. They both saw him make the threats and corroborated the 2nd defendant's account that the threat occurred on 30 July 2015. Their overall account of the incident is aptly captured in paragraph 3 of their respective statements.

[53] Mr Barrett also urged the court to consider the absence of an entry in the station diary, which, if present, would have served as evidence that further investigation had taken place before the arrest.

[54] He went on to argue strongly that her admission that she had no prior knowledge of the 2nd defendant was crucial. With that admission, he submitted that it would have been prudent for her to exercise greater caution before relying solely on his report. He also contended that his credibility and reliability were particularly significant, given her failure to conduct further inquiries within the community.

[55] He further submitted that there is no independent evidence from Constable Dwyer showing that she interviewed the 3rd and 4th defendants before charging the claimant. Specifically, he points to the absence of an entry in the station diary.

[56] I do not agree with Mr Barrett's submission that Constable Dwyer must be aware of the 2nd defendant's credibility. When receiving a complaint and making an arrest, she must ensure there is a proper case. It is for the judge or jury to determine guilt and the truth, not for Constable Dwyer to assess the witnesses' honesty.

[57] Equally, she would not know what defences the accused may raise, or, if she did, it would be a matter for the tribunal of fact to assess. Guilt or innocence is for the tribunal. She is only required to bring to trial everyone who should face trial; she should not be concerned with conviction. As a police officer, she is concerned only with ensuring that there is a proper case to lay before the court.

[58] I do not agree that Constable Dwyer was duty-bound to enter the community to ascertain the truth of the allegations. Such action is left to be taken on a case-by-case basis. In this matter, she had the 2nd defendant's statement, evidence of circumstances, such as a pending court case, and the oral accounts of the two independent witnesses. While the claimant need not prove his innocence, he did not present any evidence to support his case, namely that there were witnesses

who could refute the accounts of the 2nd, 3rd and 4th defendants at the time of the investigation. This was never put to or suggested to Constable Dwyer.

[59] When effecting an arrest and formally charging an individual, it is not the responsibility of an arresting officer to establish the factual evidence of actual guilt. The law explicitly states that such a determination falls outside her purview; it is the tribunal of fact's role. She is required only to demonstrate that her actions were motivated by an honest belief that there is a proper case to present to the court, supported by the information she received, the investigation she conducted, and her understanding of the crime complained of.

[60] I remind myself of Lord Denning's oft-cited guidance on guilt, as stated in **Glinski: V McIver,** supra. In this case, she had a report that would satisfy all the ingredients of the offence of threatening a crown witness. This is coupled with interviews of two witnesses who corroborated the 2nd defendant's account. It is a fact that the words of the threat are not in the exact terms as stated by the 2nd defendant. That, I find, is not a matter for her. It is for the tribunal of fact.

[61] In his submission, Mr Matthew Gabbadon urged the court to find that, on the facts as they existed at the time and as presented to Constable Dwyer, and on the ingredients of the offence, she held an honest belief, on reasonable grounds, that there was a proper case to be put before the court.

[62] Counsel further asked the court to find that a reasonable and ordinary person, taking those facts into account, would have reached the same conclusion. In summary, he submitted that the facts and circumstances justified Constable Dwyer forming an honest belief on reasonable and probable cause, thereby making the arrest and charge lawful.

[63] I agree with Mr Gabbadon's submissions. I find that, at the time of arresting and charging the claimant, Constable Dwyer had reasonable and probable cause to form an honest belief that she had a proper case to put before the court.

[64] The prevailing legal jurisprudence is clear. Constable Dwyer is not obliged to have evidence that would directly establish a conviction, nor is she required to conduct an extensive investigation to prove guilt. The primary consideration when arresting and charging the claimant is that she must have sufficient evidence to put a proper case before the court. I therefore accept her evidence that, from the report made to her, the accounts of the 3rd and 4th defendants, and her own investigation, she had sufficient information to form reasonable and probable cause.

[65] Regarding malice, I found no evidence that Constable Dwyer acted with such intent. This must be substantiated. The claimant's evidence is devoid of any such evidence. The cross-examination uncovered no evidence to discredit her, nor did it suggest that her conduct during the arrest was malicious. In respect of this element, I find that the claimant has not demonstrated, on the balance of probabilities, that Constable Dwyer prosecuted him unjustifiably or with malicious intent, so as to make the 1st defendant vicariously liable.

[66] Regarding the 2nd defendant, although he commenced proceedings against the claimant, those proceedings concluded with a ruling in the claimant's favour. Mr Barrett told this court that, because he did not present any evidence to counter the claimant's case, the claimant was rightly entitled to judgment against him.

[67] This court rejects those submissions. On the evidence, the claimant failed to adduce evidence to the requisite standard of proof to demonstrate that the 2nd defendant acted with malice or in bad faith by making a false report to Constable Dwyer. The substratum of his evidence was directed at Constable Dwyer.

[68] Although there have been prior disputes between them, the evidence in relation to this claim shows that the 2nd defendant reported a threat that was independently substantiated. The claimant has not established or pointed to any evidence that the 2nd defendant acted maliciously.

[69] A favourable outcome does not automatically give rise to a claim for malicious prosecution. It is therefore insufficient for the claimant to say that there was a termination in his favour. The claimant must prove all elements of malicious prosecution.

[70] With respect to the 3rd and 4th defendants, Mr Barrett vigorously urged the court to render a judgment in favour of the claimant against them. He directed the court to have regard to the default judgment obtained because they failed to acknowledge the claim after being personally served. He emphasised that this was the most appropriate and natural course of action.

[71] I do not agree with Counsel. For the tort of malicious prosecution, the claimant must prove all five elements, each on the balance of probabilities. Before me, the claimant has failed to discharge this burden. In this claim, no evidence was presented against these defendants, whether directly or indirectly, to support the claim of malicious prosecution.

[72] Equally, and very importantly, they occupied a unique position. They were eyewitnesses and provided an independent account. They were interviewed by Constable Dwyer, and their accounts were reduced to a witness statement. They did not initiate any prosecution against the claimant.

[73] There was no evidence from the claimant to infer or suggest that they maliciously fabricated evidence against him, lied, or acted with malice. Therefore, on the evidence presented, I find that the claimant has not proved his case against them.

[74] As Mr Barrett submitted, a default judgment was obtained against them. In the ordinary case, a judgment against them would follow. This is made clear by rule 12.5 of the **Civil Procedure Rules (CPR).**

[75] However, having regard to my reasons above, if this judgment is enforced, it would be unjust. It would also be contrary to rule 12.9(2)(b) of the CPR, particularly given their status as mere witnesses in the case.

[76] Rule 12.9 of the CPR sets out the circumstances in which a default judgment may be entered where a claim is brought against more than one defendant. Of particular importance to the facts of this case is Rule 12.9(2)(b), which provides that:

> *12.9 (1) ….*
>
> *(2) Where a claimant applies for a default judgment against one or two or more defendants –*
>
> *a) ….*
>
> *b) if the claim cannot be dealt with separately from the claim against the other defendants –*
>
> *I. the court may not enter judgment against that defendant; and*
>
> *II. the court must deal with the application at the same time as it disposes of the claim against the other defendants."*

[77] I find that the facts of this claim squarely fall within rule 12.9(2) (b). The facts are inextricably intertwined. The application for default judgment ought to have been deferred until the conclusion of the case. For this reason, this court will set aside the judgment.

[78] I find no basis in law to enter judgment in favour of the claimant against the 1st, 2nd, 3rd and 4th defendants for malicious prosecution.

False Imprisonment

[79] There was indeed a period during which the claimant lost his liberty; it lasted approximately 24 hours. The burden of proof lies with him to show that the deprivation of his liberty was unlawful and unreasonable. The claimant, upon being taken to court, was remanded by the judge. That was an exercise of

judicial discretion. No evidence was advanced to show that the period was unreasonable or that it lacked probable cause. I agree with Mr Gabbadon's submissions on this ground.

[80] The offence of threatening a crown witness constitutes a serious misdemeanour. The 2nd defendant has previously suffered physical violence at the hands of the claimant. The threat was intended to be carried out before their next court appearance. The period of detention is not unreasonable, and the judge's remand further supports this conclusion.

[81] I therefore have found no basis in law to give judgment for false imprisonment against the 1st defendant.

Damages

[82] Having regard to my findings above and the well-established legal requirements for awarding damages, I do not find that the claimant has met the standard on the evidence adduced. I therefore refuse to make an award in respect of special, general, aggravated and exemplary damages as prayed for.

The Final Disposition

1. In the claim filed by the claimant on 12 July 2017, judgment is hereby entered in favour of the Defendants.

2. Cost to the defendants to be taxed if not agreed on.