[2025] JMSC Civ 114

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2014HCV03026

BETWEEN	**LEON STEPHENSON**	**CLAIMANT**
AND	**THE BANK OF NOVA SCOTIA**	**FIRST DEFENDANT**
AND	**THE ATTORNEY GENERAL OF JAMAICA**	**SECOND DEFENDANT**

IN OPEN COURT

Ms. Catherine Minto for the Claimant

Mr. Stephen McCreath instructed by the Director of State Proceedings for the Second Defendant

Heard: January 29, 30 & September 25, 2025

False Imprisonment – Malicious Prosecution – Customers report unauthorised withdrawals - Bank launches internal investigation against claimant who was an employee – Police report made by bank and claimant fired - Claimant discontinues claim against employer – Defendant calls no evidence – Conduct of cross-examination relevant to determination of issues joined – Judicial remand cannot be counted as period of detention – Police acted independently of bank to lay charges – Honest belief officer held at time of arrest – Reasonableness of length of detention

WINT- BLAIR J

Background

[1] The claimant was, at the material time, employed as a Customer Care Representative by the Bank of Nova Scotia. He was assigned to the Contact Centre, which is a non-customer branch.

[2] It was reported to the police by representatives of the bank that the claimant had illicitly used the bank's computer database to manipulate customers' banking information, change their passwords and carry out third-party transfers from their accounts. Members of the Jamaica Constabulary Force ("JCF"), assigned to the Organised Crime Investigation Division ("OCID"), carried out investigations, arrested, and charged the claimant.

The Claim

[3] This claim was discontinued against the first defendant on June 3, 2019. The second defendant is sued under the Crown Proceedings Act as the matters complained of were committed by members of the JCF who are servants and/or agents of the Crown.

[4] The claimant is seeking damages for false imprisonment and malicious prosecution, wrongful and unlawful seizure of personal property, trespass to personal property, unlawful entry, and search. He claims the award of aggravated and exemplary damages, as well as a declaration that his motor vehicle was unlawfully searched and detained by the JCF.

[5] At the commencement of the trial against the second defendant, Mr McCreath announced that both of his witnesses, whose witness statements had been filed and served, were no longer serving members of the JCF. He applied for an adjournment to make further attempts to locate these witnesses.

[6] Ms Minto submitted that she was taken by surprise, having had no opportunity to take instructions on this new development, and also applied for a brief adjournment. Each side was given the day, and the trial was adjourned to start on January 30, 2025.

[7] On January 30, 2025, Mr McCreath still could not locate his witnesses and made an oral application for their witness statements to be admitted as hearsay documents under section 31E of the Evidence Act and rule 29.8(1)(b) of the Civil

Procedure Rules ("CPR"). He relied on section 31E(6) of the Evidence Act to argue that the Court could dispense with any requirement for notice.

[8] Ms Minto, in response, stated that there was no material before the Court upon which it could exercise its discretion, and there would be prejudice to the claimant who could not now cross-examine the absent witnesses. Ms Minto cited the instructive case of **Ann-Marie Sinclair & Winston Jackson v Glenroy Mason and Merle Dunkley**[1] in which Sykes, J (as he then was) settled the question of how section 31E of the Evidence Act is to be applied at trial. This authority, once read by Mr McCreath, led to his decision to withdraw the application.

[9] I have read and considered the written submissions, for which I am grateful, as they have provided considerable assistance. I intend no disrespect to the industry of counsel; however, I have not included them in this decision.

The claimant's case

[10] The claimant's case is that on June 10, 2011, while carrying out his duties, he was approached at about 11:00 am by three bank representatives from the Security Department. He was then escorted to a conference room with glass doors and windows, making him visible to staff and others entering or leaving the building. He felt embarrassed. The bank representatives confiscated his mobile phone, ID, and swipe card. He was without food or water, denied permission to make a phone call, and was not allowed to leave the premises. During questioning about transactions he knew nothing of, he was alone in the room. He was detained there from 11:00 am until 5:00 pm.

[11] At 5:00 pm, a group of police officers arrived, and he was handed over to them. He was handcuffed by the police in the presence of his colleagues. The police took

---

[1] CLAIM NO. C.L. 1995/S – 188; August 5, 2009

him to the parking lot, and he watched as they searched his car. Next, he was placed in the back seat of a marked police vehicle. He was taken to OCID, and while handcuffed, he overheard the bank security officer, Mr Everton Mitchell, tell Sgt. Bailey that he had "viewed customer accounts" that had been the subject of fraudulent transfers. The claimant said he heard Sgt Bailey tell Mr Mitchell that that was not sufficient to charge him. However, Mr Mitchell said the bank had the required proof and that he was to be charged for his participation in the fraudulent transfers.

[12] The claimant maintained that viewing customers' accounts is part of his job description, and any transfers he made would have required the use of his unique staff identification code, which would have been recorded. The bank had no record that he had ever participated in any transfers, and he was never shown any such record. He could not perform any withdrawals or transfers without the prior authorisation of and input from a Supervisor. The Supervisor would have had to have been part of the actual transfer/withdrawal process, and this was required for all transfers and withdrawals. Further, the bank was able to generate a report of all transactions in which his unique identification code was used, indicating whether he had participated in any such withdrawals or transfers.

[13] He was held at OCID from 5:00 pm until 11:00 pm without being allowed a phone call. Sometime after 11:00 pm, twelve members of the JCF took the claimant to his residence in Hughenden, where, in the presence of his landlord, neighbours, and friends, the police entered his house. A large crowd had gathered outside to watch.

[14] The police searched and seized several documents, notebooks, a laptop, a flat-screen TV, a TV remote and stand, jewellery including two gold necklaces, two bracelets, and two gold rings, thumb drives, as well as $329,000.00 from a shoebox in his closet. They did not provide him with a list of these items, only a receipt for the cash at his insistence. No search warrant was served on him; he was given nothing to read while handcuffed. His landlord was questioned about how he paid rent.

[15] The claimant gave evidence that he was taken back to OCID, then to Central lock-up, where he remained for two weeks without charge or bail, and was unable to make a phone call. He was not questioned; he was left in a dirty, smelly cell under deplorable conditions.

[16] It was according to the order of a visiting Magistrate who visited every Thursday that he was charged. The judge visited on a Thursday, saw him in the lock-up and made the order which he heard her make.

[17] Later that night, a Cst Maurice Vacciana told him he was charged with 'cybercrimes'. He was taken to Court, and bail was denied as the police were still investigating. Others were said to be involved, but the claimant was considered to be the mastermind, and the concern was that he would interfere with witnesses. Bail was denied two or three times, as the police either informed the Court that they were still investigating or that they were awaiting information from Scotia Canada.

[18] The claimant was granted bail on July 18, 2011, with reporting conditions; his travel documents were submitted to the police, and a stop order was issued. He took up his bail on August 4, 2011.

[19] The police continued the prosecution for three years without any evidence of his involvement in the fraudulent transfers. There were so-called co-conspirators charged, whom the claimant said he did not know and had never seen. They provided written statements to the police in which he was not mentioned. The statement of the investigating officer also did not mention him.

[20] The claimant stated he attended court more than 12 times. He appeared in court between June 2011 and April 10, 2014, when the charges were dismissed. The charges under the POCA were also dismissed.

[21] The police brought an application for an order for the continued detention of seized cash and for forfeiture of the $329,000.00 in the Sutton Street Parish Court. The

forfeiture case ended in his favour, and the cash was returned to his attorney-at-law. Legal fees were applied to the said sum.

[22] An article in the Flair magazine published on March 31, 2003, had named him the 'sexiest man of the month' and so he 'had a little fame'. After his arrest, he was called 'dutty money' in his community.

[23] The claimant could not find a job, lost his rented premises in Hughenden, had to move back in with his mother, and had to walk to report as a condition of bail. He lost his independence. Jewellery taken from him was never returned. The police 'misplaced' two gold necklaces, two bracelets, and two gold rings, a TV, a Sharp TV remote, a Blackberry Pearl cell phone, and a laptop, all valued at $325,000.00. Further, the police left his car doors open, causing a DVD player, 16" spare tyre and a car jack to be stolen, all valued at $61,500.00.

[24] During cross-examination, it was suggested that the claimant had lied when he told the court that he was not required to log in using his unique staff ID code, which he denied. It was also suggested that the claimant was not a credible witness, which he denied. Further, the claimant denied being advised by the bank that two customers ("the two customers") had complained about being unable to log in to their accounts. He admitted that he became aware that the bank was investigating the complaints made by these two customers during the court proceedings. He also acknowledged being told by a bank representative that money had been transferred out of the accounts of the two customers. The claimant denied knowing that the bank's investigation had revealed he had accessed the accounts of the two customers without their permission. He stated that he first learned in court that over Two Million dollars had been withdrawn from the accounts of the two customers without their approval, and not by means of the bank's representative.

[25] Regarding the search at his home, the claimant admitted that it took place in his view and presence and during the search, accounting information relating to clients

of the bank was found. However, he was not aware that during the search, the police found accounting information related to the two customers. In the next very question, he agreed that he had been told by the police that accounting information regarding the two customers was found during the search of his house.

[26] The claimant disagreed that the police never said they did not have enough evidence to charge him, as when Officer Bailey said so, Mr Mitchell jumped up and said he had evidence.

[27] The claimant denied that, upon arrest, he told the police he had met Andrew at the Boulevard Plaza, who had mentioned he would give him a “ting” in exchange for some accounts. The claimant agreed he participated in a question-and-answer session with the police, but was uncertain about the date of June 14, 2011, as suggested to him.

[28] The claimant flatly denied that he was charged on June 15, 2011, maintaining that he was charged three weeks later, after a charge or release order was made by a visiting Magistrate. It was put to the claimant that it was a lie that there was any such charge or release order, which he denied.

[29] Despite this, the claimant admitted that his first court date was on June 20, 2011, he was denied bail and remanded in custody on that date. He nevertheless maintained that he was in lock-up for three weeks without being charged, as the Magistrate visited on the third Thursday of each month.

[30] The claimant also admitted that, contrary to his witness statement, the police had compiled a list of items taken from his home after the search, and that he had signed the said list. Contrary to his witness statement, he also admitted to signing that he had received his laptop and cell phone. He also could not state the total cash returned to his attorney and whether or not it was returned with interest.

[31] It was suggested to the claimant that he was lying regarding the TV remote and TV stand, which were returned to him and for which he signed. These suggestions

were denied. It was put to the claimant that he was lying when he stated that he was not served with a search warrant; the claimant also denied this suggestion.

[32] During re-examination, the claimant stated that the accounting information at his home included roughly 15-25 names of ‘sales targets' who were bank customers. These sales targets are lists of clients to whom he attempts to sell bank products, such as credit cards, loans, mortgages, or accounts. He explained that he used a checkmark to indicate a closed sale, an asterisk for pending sales, and a line for customers who had not yet been contacted or required a callback. The list was handed to Cst Vacciana, who mentioned needing to verify it with Mr Mitchell of the bank; however, the list was subsequently never seen again. Andrew was never accused of being a co-conspirator.

The second defendant’s case

[33] The second defendant filed a defence admitting that the police were acting with reasonable and/or probable cause at all material times and were not motivated by malice. The defence stated that on 10 June 2011, a representative of the first defendant’s head office reported an alleged case of fraud supposedly committed by the claimant. The police's presence was instigated by Mr Everton Mitchell, servant and/or agent of the first defendant.

[34] Cst Maurice Vacciana and other JCF members visited the first defendant’s Contact Centre, where he interviewed and took a statement from the Regional Vice President of the International Banking Contact Centre. The police were notified that the first defendant, with assistance from its internal security team, investigations unit, and Scotiabank International in Toronto, Canada, initiated enquiries after two customers filed complaints in May and June 2011. The customers reported being unable to access their accounts online and claimed they had no knowledge of third-party transfers made from their accounts.

[35] Information sent by Scotiabank International to the internal security and investigations unit revealed that the accounts were compromised and were all

accessed several times by a unique user identifier belonging to the claimant for the period May 25, 2011, to June 6, 2011, without authorisation from the first defendant or without corresponding calls from its customers.

[36] Cst Maurice Vacciana of the Organised Crime Division commenced an investigation, believing based on the information received from the first defendant's enquiries that the claimant's actions extended beyond simply viewing accounts involved in fraudulent transfers. It also included the claimant's access to recipient customers during that period.

[37] The defendant states that Cst Vacciana, upon being satisfied that there was reasonable and probable cause to suspect that the claimant had committed a crime, took the claimant into custody at about 5:30 pm, arresting him on reasonable suspicion of breaches of the Cybercrimes Act, Proceeds of Crime Act, and the Larceny Act. When cautioned, the claimant said: "*Officer, I met a guy by the name of Andrew on Boulevard Plaza about three weeks ago who told me that he would 'give me a ting if I get some accounts for him*." The claimant was handcuffed and transported to OCID.

[38] The defendant admits the claimant was handcuffed but makes no admission to the person in whose presence this was done. The defendant denies that the investigation against the claimant was led by an officer assigned to OCID at the material time with the name or rank of Sgt Bailey. Cst Vacciana admittedly executed the search warrant under section 18(d)(e) of the Forgery Act.

[39] The defendant admits to taking from the person of the claimant a Geneva watch, a chain, two bracelets, and two rings, and denies that any jewellery was removed from the claimant's home.

[40] The defendant acknowledges that the claimant was interviewed during a question-and-answer session with his attorney, Mr. Patrick Bailey. The claimant was charged on June 15, 2011, with conspiracy to defraud and possession of criminal property. He was scheduled to appear before the Corporate Area Criminal Court

at Half Way Tree on June 17, 2011. However, his counsel indicated that the claimant would instead appear on June 20, 2011. On that date, June 20, 2011, the claimant was remanded in custody until June 27, 2011. He was later granted bail on July 15, 2011, with reporting conditions.

[41] The defendant stated that the investigations conducted by Cst Vacciana provided reasonable or probable cause to lay the charges, considering the cash and documents found in the claimant's possession during the search of his home, including customers' personal banking information, such as the two customers who initially made complaints to the bank. Further, the investigations carried out with the international assistance of the first defendant revealed that the online logs related to the two customers disputing the third-party transactions were generated from Jamaican IP addresses.

[42] Further analysis identified additional customers' accounts compromised through access from these IP addresses, as well as accounts that received third-party transfers. The total unauthorised withdrawals from these accounts exceeded $2 million, carried out via third-party transfers. With international assistance, the first defendant received internal reports detailing staff access to customer information files. Analysing these reports for the relevant customers and the transferred accounts revealed that the claimant had accessed them during the specified period.

[43] In the circumstances, the police had reasonable and probable cause to believe that the claimant had illicitly utilised the first defendant's computer database to manipulate customers' banking information to facilitate unauthorised withdrawals.

[44] The second defendant elected to call no evidence at the end of the claimant's case. The parties relied on statements given as exhibits by Cst Maurice Vacciana and Althea Howard. The statement of Cst Vacciana, dated June 24, 2011, details the arrest of those jointly charged with the claimant. The claimant is not mentioned in either statement.

Issues

1) Whether the police had lawful justification to arrest/detain the claimant.

2) Whether the police had reasonable and probable cause, or whether they were actuated by malice in prosecuting the claimant.

3) Whether there was an unlawful entry and search of the claimant's home and car.

4) Whether there was trespass to the personal property of the claimant.

5) Whether the second defendant is liable to the claimant for damages. If so, the quantum to be awarded

6) Whether aggravated and exemplary damages are appropriate.

The approach of the court

[45] As a trial judge, I have developed an approach over many years that guides my duty. When evaluating a witness's credibility, I recognise that demeanour is only one factor among many. I must also consider the substance of the evidence, approaching it with reason, logic, and common sense. In this trial, I have weighed the testimony of the sole witness against the documentary evidence presented during the trial.

[46] I find support for this approach in the dictum of Robert Goff LJ from a case cited by counsel for the defendants in **Armagas Ltd v Mundogas SA (The Ocean Frost)**[2] which states that:

---

[2] [1985] 1 Lloyd's Rep 1, 57 cited in Charles Villeneuve, Kyoto Securities Limited v Joel Gaillard and another [2011] UKPC 1 at para 67

> *"… I have found it essential… when considering the credibility of witnesses, always to test their veracity by reference to the objective facts proved independently of their testimony, in particular by reference to the documents in the case, and also to pay particular regard to their motives and to the overall probabilities. It is frequently very difficult to tell whether a witness is telling the truth or not; and where there is a conflict of evidence such as there was in the present case, reference to the objective facts and documents, to the witnesses' motives, and to the overall probabilities, can be of very great assistance to a Judge in ascertaining the truth."*

[47] The evidence before the court was partly oral and partly documentary. The evaluation of the witness and evidence will be based on the issues identified by the court. The documents presented at trial are items of real evidence. It is for the court to decide the weight to be given to the various aspects of the evidence presented.

Facts found

[48] Before deciding whether the claimant has met the burden of proof on a balance of probabilities that the defendant is liable, I have outlined the facts I accept and which will underpin the application of the law. The resolution of the factual disputes depends entirely on the credibility of the sole witness.

[49] I find that the defendant and a police team attended the claimant's assigned bank branch on June 10, 2011. The claimant's description of his job in his witness statement makes it plain that his role was to help customers. This is separate and distinct from a role to assist the bank in selling its products to sales targets, which was not part of the job description exhibited in evidence or described in his testimony at trial.

[50] He was arrested, handcuffed, and taken into custody. He was transported to the Central police station and later to his residence, which was searched. The distinction in the evidence regarding which police station the claimant was first taken to is irrelevant, as there is no dispute that the claimant was in police custody acting within their lawful duty, and nothing turns on that.

[51] A police team of eight, not twelve members as claimed by the claimant, went to the claimant's house. They left OCID at 7:50 pm, as shown in the agreed OCID station diary entry in evidence. Therefore, I do not accept that the team left at 11:00 pm, as the claimant testified. The claimant was taken from OCID to the Central lock-up at 10:30 pm, which I find is supported by and consistent with the station diary entry in evidence, which states the same.

[52] The claimant was taken into custody in handcuffs. He stated that a search warrant was produced as evidence, but it was not presented to him when the search was conducted. I believe this is because the warrant concerns a forgery charge, which was never the specific charge against the claimant. If the claimant had seen or been informed about the search warrant, then he would have been aware of the forgery charge.

[53] The claimant's pleadings and his witness statement both said that to date, the police had not provided him with a list of the items removed from his home. However, the documentary evidence includes lists of items removed by the police from the claimant's home. These lists have all been signed by the claimant, and there is no dispute about this.

[54] Neither a TV remote nor a TV stand appears on the lists before the Court as having been removed from the residence, as was stated in the claimant's witness statement. Moreover, neither of these items appears in his pleadings as having been removed. There are also lists of items returned to him that were similarly signed.

[55] There are several inconsistencies between the claimant's pleadings, his witness statement, and the documentary evidence he has relied on. It is the documentary evidence that the Court will use to resolve this conflict in the evidence he has presented.

[56] The claimant's pleadings state that he was placed in custody at the Central police station lockup and held for **three** weeks from June 10, 2011, without bail or any

criminal charge laid against him. The witness statement stated that the claimant was taken back to OCID, then to Central Lock-up, where he remained for **two weeks** without charge or bail, nor could he make a phone call.

[57] Regarding the first court appearance, the claimant stated that the charges were heard at the Resident Magistrates' Court for the parish of St Andrew (as it then was), holden at Half Way Tree on June 21 and 27, 2011. Exhibit 30, the OCID station diary, which is accepted and relied upon by the claimant, shows that the initial court date of June 16, 2011, was rescheduled to June 20, 2011, and that his lawyer was informed of this change.

[58] During cross-examination, the claimant confirmed that his court date was indeed June 20, 2011. I accept that he appeared before the court on that date with his attorney's consent. It is also clear that he was represented by Mr Patrick Bailey, who made no habeas corpus application. This, in my view, indicates that counsel took no issue with the length of detention, specifically, the period the claimant was in custody from the date of arrest to the date of charge. Additionally, senior counsel did not request that the hearing date be moved forward; in fact, the evidence is that counsel consented to the hearing date being moved further from June 16 to June 20, 2011.

[59] In respect of the charges laid, it was pleaded by the claimant that at midnight on July 2, 2011, he was charged with conspiracy to defraud, upon the order of a visiting Magistrate, that he was to be charged or released.

[60] Between June 10 and June 20, 2011, neither two nor three weeks could have passed. It was suggested to the claimant in cross-examination, with which he disagreed, that he was charged on or about June 15, 2011. However, the court can infer that the likely date of charge was June 15, 2011, and that was the reason the court date was changed from June 16 to June 20, 2011, as was recorded in the station diary at OCID.

[61] Although the claimant did not accept the suggested date of charge, his main argument was that the visiting Magistrate arrived every Thursday, and it was on one of those Thursdays that she ordered him to be charged or released. In cross-examination, he also claimed that the Magistrate visited on the third Thursday of each month. However, there could have been only one Thursday between June 10 and June 20, 2011. The claimant's pleadings and evidence are therefore in conflict, and the evidence of the claimant on this point can neither be accepted nor relied upon, as is explained below.

[62] The claimant pleaded that the police did not interview him while he was in custody; however, in cross-examination, he admitted that he participated in a question and answer session with his attorney, and the evidence discloses a record of this interview taking place on June 14, 2011, in the presence of the claimant's attorney.

[63] It is therefore more probable that the claimant was charged on or about June 15, 2011, as was suggested. A charge on or about June 15, 2011, also accords with the agreed station diary in evidence, which shows that Mr Bailey was contacted about the court date on June 15, 2011, and he consented to the court date being moved from June 16, 2011, to June 20, 2011.

[64] The claimant was never asked in cross-examination whether he knew that it was his attorney who had wanted him to first appear in court on June 20, 2011, as had been pleaded by the defendant. I accept the station diary entry on this point and find that it was with the consent of Mr Bailey that the court date was moved.

[65] The evidence of the date of charge given by the claimant as July 2, 2011, is therefore rejected. It means, therefore, that the claimant did not remain in custody without charge or a court date for the period from June 10 to June 20, 2011. This is the relevant period under review.

[66] It was also pleaded that on June 10, 2011, two bank representatives summoned the claimant from his desk. The evidence in chief on this aspect is that at 11:00 am, the claimant was approached by three representatives from the bank who

worked in the Security Department. This is another inconsistency between the claimant's pleadings and his evidence.

[67] It was pleaded but not proven by any evidence that a security guard employed by the first defendant was stationed outside the conference room door. That the bank's representatives seized the claimant's identification card and cellular phone. That at the bank, when the police handcuffed the claimant, there were managers present.

[68] In the agreed exhibit, which was the first application for continued detention of seized cash under section 76 of the Proceeds of Crime Act, Cst Vacciana indicated that the cash was seized from the claimant's address at about 9:30 pm on June 10, 2011. To ground this application, Cst Vacciana stated that the claimant, while employed as a customer service representative of the bank, used the bank's computerised system to manipulate customer banking information by changing customer passwords and security authentication and passed on those account information to other sources to effect unauthorised withdrawals from customers' accounts in excess of Two Million dollars, (J$2,000,000.00). There was no evidence that the claimant himself made these withdrawals, nor was that the allegation.

[69] The following averments in the witness statement of the claimant were not pleaded:

a. Alleged co-conspirators were charged; these were individuals unknown to the claimant, whom he had never seen before or whose names he did not know. They had provided written statements to the police, which did not mention the claimant.

b. The forfeiture case ended in his favour, and the cash was returned to his attorney-at-law, who applied for legal fees owed to him in the sum of $483,691.00.

c. The items allegedly stolen from his car.

d. The value of the items of jewellery seized by the police. The particulars of special damages state, “lost and stolen items seized”, and assign a global sum to that item without more.

[70] The claimant’s statement of case consisted of many omissions, inconsistencies and factual inaccuracies between his pleadings and oral evidence, as well as between his evidence in chief, cross-examination and the documentary evidence he relied upon. In addition, the evidence regarding the accounting information for the two customers found at the claimant’s residence emerged during cross-examination, as this information is not in the claimant’s evidence in chief. My assessment of the claimant's evidence is that it left much to be desired and was unreliable.

The failure to plead

[71] The statement of case of a party should include all the material facts necessary to prevent surprise and set out the extent of the dispute between the parties. At trial, there was no application to amend the pleadings to include any of the omitted material contained in the witness statement (see Lord Woolf MR in **McPhilemy v Times Newspapers Ltd**).[3]

The effect of the failure to call evidence and the cross-examination of the claimant

[72] In this case, I have looked at the contested facts as set out in the pleadings as well as the issues both agreed and not agreed. The claimant, who bears the burden of proving his claim and all the assertions made therein, is required to discharge this burden on a balance of probabilities.

[73] In terms of the conduct of the defendant’s case, the tenor of the cross-examination was to challenge the overall credibility of the claimant, to cast him as one who was unworthy of belief and to suggest that he was an unreliable witness. The case put

---

[3] [1999] 3 All ER 775

to him was that he was aware of the allegations made against him by the bank, which then complained to the police. The reason for the investigation and charge was based on third-party transfers from the two customers' accounts, which he accessed, and whose accounting information was found at his residence, as outlined in the defence. In testing the evidence of the sole witness, Mr McCreath put the issues raised in the defence to the claimant.

False Imprisonment

[74] There is no dispute that the claimant was held in custody. In the absence of legal justification, the detention of a person against his will constitutes the tort of false imprisonment. In **The Attorney General v Glenville Murphy**[4] Harris, JA, stated that:

> "*The burden is on the clamant to prove that the police had no lawful justification for his arrest. However, if it is shown that the arrest was unjustifiable and the period of detention unjustifiably lengthy, the onus shifts to the defendant to show whether, in all the circumstances, the period of detention was reasonable – See Flemming v Det Cpl Myers and the Attorney General."*

[75] Section 13 of the Constabulary Force Act authorises the police to apprehend anyone reasonably suspected of having committed any offence or who may be charged with having committed an offence. The defence raised in this claim is that the arrest was lawful.

[76] Pursuant to section 33 of the Constabulary Force Act as interpreted by **Peter Flemming v Det Cpl Myers and the Attorney General**,[5] it is for the claimant to prove that, where the police are acting in the execution of their duty, there was no

---

[4] [2010] JMCA Civ 50

[5] (1989) 26 JLR 525

legal justification for his detention as he was arrested without reasonable and probable cause or that he was arrested maliciously.

[77] Alternatively, if the claimant was initially detained lawfully and it can be demonstrated that he remained in custody for an unduly long period after arrest without being brought before a court, the burden of proof shifts. In that instance, the defendant must then provide evidence to prove that the length of custody was justified and reasonable.

[78] In all the circumstances of the case, this court must consider:

a. whether the claimant has demonstrated that there was no lawful justification for the arrest;

b. whether the officer had a proper case to be laid before the court, comprising the facts within his knowledge;

c. the information the officer had ascertained, by whatever means, and

d. the effect it had on him at the time he arrested and charged the claimant. In other words, what did the officer honestly believe?

[79] In **Christie v Leachinsky**[6] Lord Simonds said, "It *is not an essential condition of lawful arrest that the constable should at the time of arrest formulate any charge at all, much less the charge which may ultimately be found in the indictment*".

[80] On an assessment of the evidence, it was the claimant's evidence that Everton Mitchell of the bank told the police Sergeant on the night of the arrest that he would provide proof of the allegations against the claimant to the police, as what had been conveyed to the Sergeant was deemed to be insufficient to lay a charge.

[81] The claimant provided no evidence related to the paragraphs in the defence that dealt with the information in Cst Vacciana's possession at the time of his arrest,

---

[6] [1947] 1 All ER 567 at 575

and this failure affects the issues of lawful justification and honest belief. Having failed to challenge these parts of the defendant's case, they are viewed as accepted by the claimant.

[82] The claimant's evidence was that "it was said in court" that others were involved, and that he was the mastermind, as well as that information was to come from Canada, all of which suggests to me that the file was incomplete. This means that the prosecution's file was at the case management stage, and it would not be unreasonable to conclude that an earlier court date would have led to an adjournment to complete the file and to provide disclosure. The claimant has provided no evidence to indicate whether his attorney was present at his court dates, nor has he tendered any of the disclosure from the criminal proceedings, which he stated he had read. It is for the claimant to show by evidence that there was no lawful justification for his arrest, and in my view, he has failed to do so.

[83] In **The Attorney General v Glenville Murphy**,[7] Harris, JA, in discussing section 13 and the state of mind of the investigating officer, wrote:

> *[8] The fact that the police are empowered to arrest and detain in custody any person on suspicion of his having committed an offence does not mean that they are at liberty to do so without lawful justification. This suspicion must be reasonable. The police must show that the arrest was justified. An action for false imprisonment offers a safeguard against police excess and abuse of their powers. As a general rule, no injury is suffered by a claimant where he is arrested but subsequently shown to be innocent before being taken to court. However, in circumstances where he is detained for an unreasonable period, then the detention constitutes the wrong, making the detention illegal ab initio.*
>
> *In* ***Flemming v Detective Corporal Myers and The Attorney General*** *(1989) 26 JLR 525 at page 530 Carey P (Ag) said: "Where the person arrested is released, upon proof of his innocence or for lack of sufficient*

---

[7] [2010] JMCA Civ 50

evidence before being taken to court no wrong is done to him. Where however he is kept longer than he should, it is the protracted detention which constitutes the wrong, the "injuria". This abuse of authority makes the detention illegal ab initio. I see nothing either in principle or in authority to prevent an action for false imprisonment. Indeed it is a valuable check on abuses of authority by the police."

[9] The burden is on the claimant to prove that the police had no lawful justification for his arrest. However, if it is shown that the arrest was unjustifiable and the period of detention unjustifiably lengthy, the onus shifts to the defendant to show whether in all the circumstances, the period of detention was reasonable - see ***Flemming v Det. Cpl Myers and The Attorney General****.*

[13]…The word 'reasonably', as used in section 13 of the statute imposes a subjective as well as an objective element. It does not introduce an exclusive objective element. The test for the purpose of section 13 is partly subjective and partly objective…

[14] Surely, the question as to whether the arresting officer entertained a genuine belief that the respondent had sexually molested his daughter is a highly critical consideration and ought to be the first step in determining whether the arrest was justified. The issue as to the existence of an honest belief on the part of the police of the respondent's guilt, indubitably, must ground the foundation of the subjective test. If it is found that the police had honestly believed that the respondent had molested his daughter, then no liability could be ascribed to them. However, if it established that they could not have had any genuine suspicion that he had done so, then the objective test comes into play. Consideration would then have to be given as to whether there were reasonable grounds for the police to have reasonably suspected that he had committed the offence."

[84] Lord Denning M.R. acknowledged investigative capacity in **Dallison v Caffrey**[8], when he said that the police could do what was reasonably required to investigate a case, he said:

---

[8] [1964] 2 All ER 610 at 617

> *"When a Constable has taken into custody a person reasonably suspected of felony, he can do what is reasonable to investigate the matter and to see whether the suspicions are supported or not by further evidence. ...So long as such measures are taken reasonably, they are an important adjunct to the administration of justice; by which I mean of course, justice not only to the man himself, but also to the community at large. The measures must, however be reasonable. In Wright v. Court (1825), 4 B & C. 596 a constable held a man for three days without taking him before the Magistrate. The constable pleaded that he did so in order to enable the private prosecutor to collect his evidence. That was plainly unreasonable and the constable's plea was overruled."*

Reasonableness of the length of time in custody

[85] This brings me to an evaluation of the claimant's time in custody. In **Trevor Williamson v AG of Trinidad and Tobago**,[9] The Privy Council stated that it is for the detaining authority to justify all periods of detention.

> "*23. While in a false imprisonment claim, the onus of establishing that detention is justified rests with the detaining authority, the Board is satisfied that, for that onus to arise, it is necessary for a person detained on foot of an admittedly valid arrest to raise the issue of the legality of his detention during a specific period."*

[86] The question of the reasonableness of the length of time the claimant was held in custody before appearing in court is a fact to be found in light of all the circumstances.

[87] In the present case, there were eleven days between the arrest and the claimant's first appearance before the court. The date of arrest was June 10, 2011. Mr Patrick Bailey was involved with the claimant from June 14, 2011, when he appeared at the question and answer session, as was set out in the defence at paragraph 19. The date of charge was June 15, 2011, and the first court date initially set for June

---

[9] [2014] UKPC 29

16, 2011, was changed with the consent of Mr Bailey to June 20, 2011. The claimant first appeared in court on June 20, 2011.

Judicial remand

[88] The Court remanded the claimant on the first date and at each subsequent court date until he was granted bail on July 18, 2011, with reporting conditions in place. His travel documents were submitted to the police, and a stop order was issued. He took up his bail on August 4, 2011.

[89] There is an authority of some vintage that states, 'No action can lie for false imprisonment for a period of detention resulting from a court order.' In **Christie v Leachinsky**,[10] where the Court of Appeal said, *"any liability of the police for the arrest* [of the appellant] *ended when the stipendiary ordered the remand in custody for the remand was the action of the magistrate for which the appellants cannot be held responsible as for false imprisonment*."

[90] There is also settled authority that an independent intervening act can break the chain of causation and that judicial action can operate as a novus actus interveniens to break the chain of causation.

[91] The Privy Council in **Terrence Calix v Attorney General of Trinidad and Tobago**[11] heard a malicious prosecution case, in which the Board rejected the Court of Appeal's conclusion that the grant of bail and the claimant's inability to take it up constituted a judicial act that was the cause of his continued detention. Mr Calix had been in custody for 115 days on remand. The failure of a defendant to secure his release on bail could not properly be characterised as a judicial act.

---

[10] [1947] 1 All ER 567 at 570

[11] [2013] UKPC 15

[92] The Board held that while judicial remand may constitute an intervening act sufficient to prevent an action in false imprisonment, it did not absolve the prosecutor of liability in an action for malicious prosecution. The prosecutor remained answerable for the natural and probable consequences of setting the law in motion. This means that the fact that the appellant remained in custody did not extinguish the respondent's responsibility for the loss of liberty and reputational harm which flowed directly from the wrongful prosecution. Therefore, the evidence that the claimant was in custody without bail or charge for over two weeks is rejected.

[93] Section 15(3) of the now-repealed Chapter III of the Constitution of Jamaica (Order in Council), 1962, was discussed by Forte, JA, in the case of **Peter Flemming**. The wording of the sections concerning these rights has been amended in the equivalent section of the Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act, 2011 ("the Charter"), but their substance and effect remain unchanged. Forte, JA stated as follows:

"*Section 15(3) of the Constitution states:*

> *"Any person who is arrested or detained*
>
> *a) for the purposes of bringing him before the court in execution of the order of a court or;*
>
> *b) upon reasonable suspicion of his having committed or being about to commit a criminal offence; and who is not released shall be brought without delay before a court."*

At common law, a police officer always had the power to arrest without warrant a person suspected of having committed a felony. in those circumstances however, he was compelled to take the person arrested before a Justice of the Peace within a reasonable time. The fundamental rights and freedoms which are preserved to the people of Jamaica by virtue of the Constitution are rights and freedoms to which they have always been entitled. in D.P.P. v. Nasralla (1967) W.L.R. 13 at page 13 Lord Devlin in delivering the judgment of the Board acknowledged this proposition. in referring to Chapter III of the Constitution which preserves the fundamental 3 rights and freedoms he states: "This chapter as their Lordships have already noted, proceeds upon the presumption that the fundamental rights which it covers are already secured to the people of Jamaica by existing law.

It is my view, therefore, that the words "without delay" as used in section 15 (3) ought to be construed in the light of the common law right which had previously existed and in arriving at the appropriate period which would constitute action "without delay", all the circumstances of the particular case should be examined in order to determine whether the person arrested was brought before the Court within a reasonable time."

[94] In construing the meaning of delay in section 15(3), Forte, JA relied on the meaning of "as soon as practicable" in **R v Holmes ex parte Sherman and Another**[12] in which Donaldson, L.J. said:

> "*The arrested person has to be bailed or brought before a Magistrates' Court 'as soon as practicable. Practicability is obviously a slightly elastic concept which must take account of the availability of police manpower transport and Magistrates' Court. It will also have to take account of any unavoidable delay in obtaining sufficient evidence to charge, but this latter factor has to be assessed in the light of the power of the police to release on bail conditioned by a requirement to return to the police station when further inquiries have been completed and a power to release and rearrest when the evidence is more nearly sufficient.*"
>
> *In my view, similar considerations would be applicable in respect of the provision of the Constitution and the common law in determining in a particular case whether an arrested person was taken before a Justice of the Peace or a Resident Magistrate within a reasonable time.*

[95] In assessing the reasonableness of the period in custody, the claimant was in custody between June 10 and June 13, 2011, without charge. The timeline shows that the question and answer with counsel took place on June 14, 2011. The claimant was charged the next day, on June 15, 2011, with conspiracy to defraud and possession of criminal property. The date of communication with Mr Bailey about the court date was June 15, 2011. Mr Bailey consented to the date being changed from June 16, 2011, to the first court date of June 20, 2011.

[96] This case involved offences that were not committed in the presence of the police, and these offences required their investigation. The police had to wait for

---

[12] (1981) 2 All E.R. 612 at 616

documents from the bank, which was the complainant. This occurred against the backdrop of an allegation of major fraud committed against customers, allegedly with the participation of a bank employee.

[97] I consider that the claimant's testimony indicated he was brought to his home, where his family and friends saw him in handcuffs, taken there and taken away by the police. This was not a situation where the claimant's whereabouts were unknown. He said he was not allowed a phone call; the inference is that someone else contacted Mr Bailey on his behalf. However, in this trial, there was no evidence indicating when Mr Bailey became involved with the claimant. This evidence would have been helpful in evaluating whether the duration of the period of detention was reasonable.

[98] In my view, the claimant has failed to demonstrate that he was held in custody for an unduly long period or that he was detained in custody without more, as his evidence suggests. Each case must turn on its particular facts, and in this case, the time he was in custody was not unreasonable in light of the offences for which he was charged.

[99] An arrested person has a constitutional right to be brought promptly before a court after he has been charged. The evidence does not support a finding that the period in custody was unduly long or that there was any lack of promptitude in bringing the claimant before the court, and I so find. The claim for false imprisonment fails.

Malicious Prosecution

[100] In the case of **Wills v Voisin**,[13] the elements of the tort were set out. In an action for malicious prosecution, in order to succeed, the claimant must prove on a balance of probability the following: 1. That the law was set in motion against him

---

[13] (1963) 6 WIR 50

on a charge for a criminal offence. 2. That he was acquitted of the charge or that otherwise it was determined in his favour. 3. That when the Prosecutor set the law in motion, he was activated by malice or acted without reasonable or probable cause. 4. That he suffered damage as a result. A failure to establish one or more of these elements will result in the claimant failing in to establish this tort.

[101] Section 33 of the Constabulary Force Act provides that an action against a constable for acts done in the execution of his office shall be in tort, whether the act was done maliciously or without reasonable or probable cause. However, where the claim is against the police, as Forte, JA stated in **Peter Flemming**, in interpreting section 33 of the Constabulary Force Act, the claimant only has to prove one or the other.

[102] There is no dispute that criminal proceedings were instituted against the claimant and subsequently terminated. There was no documentation from the criminal court before this court. That being said, the claimant said the case was dismissed, which means there was no finding of insufficiency in the evidence, nor was there any determination as to his guilt or innocence. This means that the determination of the case was not on its merits.

[103] The claimant has not produced a certificate of acquittal in this matter, as he could not have done so, since he was not pleaded and there had been no adjudication on the merits of his criminal case. This is the law established by the well-known case of **The Attorney General of Jamaica v Keith Lewis**.[14]

[104] The claimant has not been acquitted; however, he has had a determination in his favour as he has no criminal record and no return date and most importantly, he enjoys the protection of section 16(5) of the Charter, which protects the right of a person charged with a criminal offence with the presumption of innocence. It

---

[14] Supreme Court Civil Appeal No 73/05; October 5, 2007

provides that – *"every person charged with a criminal offence shall be presumed innocent until he is proved guilty or has pleaded guilty."* I find that the claimant has proven the second element of the tort.

[105] Regarding the third element, the question of who prosecuted the claimant has been obliquely raised in the claimant's pleadings and evidence.

Who was the prosecutor

[106] The claimant's pleadings state that it was Mr Mitchell who laid the information against the claimant, which resulted in his detention. Knowing that the claim against the bank was discontinued, this and all paragraphs related to wrongful termination, as well as any conflation with private prosecutions, ought to have been removed and a further amended claim filed in advance of the trial. No application was made on the date of trial for the claim to be amended.

[107] As a general rule, a prosecution will be considered to be brought when the information is laid and by the person who lays it. The *American Law Institute, Restatement of the Law, Torts*, 2d (1977), section 653, deals with the matter thus:

> *"When a private person gives to a prosecuting officer information that he believes to be true, and the officer in the exercise of his uncontrolled discretion initiates criminal proceedings based upon that information, the informer is not liable under the rule stated in this section even though the information proves to be false and his belief was one that a reasonable man would not entertain. The exercise of the officer's discretion makes the initiation of the prosecution his own and protects from liability the person whose information or accusation has led the officer to initiate the proceedings. If, however, the information is known by the giver to be false, an intelligent exercise of the officer's discretion becomes impossible, and a prosecution based upon it is procured by the person giving false information. In order to charge a private person with responsibility for the initiation of proceedings by a public official, it must therefore appear that his desire to have the proceedings initiated, expressed by direction, request or pressure of any kind, was the determining factor in the official's decision to*

commence the prosecution, or that the information furnished by him upon which the official acted was known to be false."[15]

[108] The complainant was the bank. There is no evidence that could be interpreted to suggest that the police actions were directed, encouraged, procured, or requested by anyone for the purpose of arresting the claimant. The police were entitled to act independently based on the information they received. The police were not agents of the bank and acted on the information they received, which led them to believe an offence had been committed.

[109] Although the complaint which resulted in the claimant's arrest was made by the bank, there is no material which shows that the police failed to exercise their own independent discretion in respect of whether or not to charge the claimant, and I find that they were responsible for instituting the prosecution of the claimant. I also find that the police exercised their own judgment and effected the arrest pursuant to section 13 of the Constabulary Force Act, and are the prosecutors who set the law in motion against the claimant.

Malice

[110] The Privy Council in **Trevor Williamson v the Attorney General of Trinidad and Tobago**[16] set out the law on the torts of false imprisonment and malicious prosecution:

"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 the proof of a negative proposition, normally among the most difficult of evidential requirements.

---

[15] **Martin v Watson** [1996] AC 74 at 84
[16] [2014] UKPC 29

Secondly, malice must be established. A good working definition of what is required for proof of malice in the criminal context is to be found in A v NSW [2007] HCA 10; 230 CLR 500, at para 91:

> *"What is clear is that, to constitute malice, the dominant purpose of the prosecutor must be a purpose other than the proper invocation of the criminal law - an 'illegitimate or oblique motive'. That improper purpose must be the sole or dominant purpose actuating the prosecutor"*

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 motives is for a purpose other than bringing a person to justice: Stevens v Midland Counties Railway Company (1854) 10 Exch 352, 356 per Alderson B and Gibbs v Rea [1998] AC 786, 797D. 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, [2014] AC 366 at para 101, Gregory v Portsmouth City Council [2000] 1 AC; 426C; Proulx v Quebec [2001] 3 SCR 9. Proving malice is a "high hurdle" for the claimant to pass: Crawford Adjusters para 72a per Lord Wilson.

13. Malice can be inferred from a lack of reasonable and probable cause – Brown v Hawkes [1891] 2 QB 718, 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.

14. On the question of reasonable and probable cause, or the lack of it, a prosecutor must have 'an honest belief in the guilt of the accused based upon a full conviction, founded upon reasonable grounds, of the existence of a state of circumstances, which, assuming them to be true, would reasonably lead any ordinarily prudent and cautious man, placed in the position of the accuser, to the conclusion that the person charged was probably guilty of the crime imputed': Hicks v Faulkner (1878) 8 QBD 167, 171 per Hawkins J, approved by the House of Lords in Herniman v Smith [1938] AC 305, 316 per Lord Atkin. The honest belief required of the prosecutor is a belief not that the accused is guilty as a matter of certainty, but that there is a proper case to lay before the court: Glinski v McIver [1962] AC 726, 758 per Lord Denning."

[111] Malice can be inferred from a lack of reasonable and probable cause and depends on the facts of each case. Where there is no basis for suspicion accompanied by reluctance to proceed with the charge, the inference may be drawn. It is for the tribunal of fact to make a finding on the question of malice.

[112] In the case at bar, there was a failure to move the case forward on each of the court dates. The claimant's witness statement states that bail was denied as the police said they were still investigating, others were involved, he was the mastermind and would likely interfere. The court was informed that the police were awaiting information from Canada, and others were charged as co-conspirators whom he had never met, nor did he know, nor did these other individuals mention the claimant in their statements.

[113] The essential feature of malicious prosecution is the abuse of the court's process. The claimant's evidence does not demonstrate that an improper and wrongful motive was the driving force behind the prosecution. These assertions constitute insufficient material from which to infer that Cst Vacciana intended to manipulate the legal system or to prosecute the claimant for an extraneous and improper motive. The case of **Williamson** states that it must be shown that the prosecutor's motives were for a purpose other than bringing the person to justice. The prosecutor's motives are absent from the evidence; therefore, no assessment can be made. Malice has not been proven.

Whether there was reasonable and probable cause

[114] In **Gervan Bennett v Sergeant Devon Grant and The Attorney General**[17] McDonald J said, '*it is for the claimant to establish the absence of reasonable and probable cause, not for the defendant to establish its presence*….". The burden rested squarely with the claimant to prove, on the preponderance of the evidence, that the defendant had no genuine belief in the prosecution instituted against him (see **Neville Williams v Janine Fender, Carlton Henry and The Attorney General**).[18]

---

[17] 2007 HCV 02493 (delivered on May 16, 2011)

[18] HCV 00126/2005, (delivered on July 1, 2009)

[115] The court recognises that for a police officer to have reasonable and probable cause, there is no requirement for the evidence to be such as would necessarily secure a conviction or for the police officer to satisfy himself that there is no valid defence to the charges (see **Glinski v McIver**).[19] The duty of a police officer is not to decide whether or not an offence has been committed; that is the duty of the judge.

[116] In the Privy Council case of **Kevin Stuart v Attorney General of Trinidad and Tobago**[20], The Board considered the correct test for determining the state of mind of the police officer against whom a claim for malicious prosecution has been brought. Their Lordships made the following observation at paragraph 26, which is relevant to this case:

> *"26. Nevertheless, and although nothing turns on it in this case, 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 in order 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 in the guilt of the accused. 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 up. 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***

---

[19] (1962) AC 726 at 742-745 and 769)

[20] [2022] UKPC 53

> ***that a police officer is only concerned to see that there is a case proper to be laid before the court."*** (Emphasis added.)

[117] In assessing these factors both subjectively and objectively, the officer based his honest belief on evidence that revealed the existence of information indicating that, at approximately 11:00 am on June 10, 2011, representatives from the bank's Head Office reported an alleged case of fraud allegedly committed by the claimant. On that date, Cst Vacciana interviewed and obtained a statement from the Regional Vice President for the International Banking Contact Centre, and received information that two customers had complained to the bank, which had launched an internal investigation.

[118] The investigation revealed that the customers' accounts had been compromised. The claimant's unique user identifier had accessed them several times between May 25 and June 6, 2011, without authorisation from the bank or any calls from the customers. This information, together with information the bank was to provide (as indicated by the claimant when he said Mr Mitchell told the police he had "proof"), formed the basis for the officer's honest belief and was the basis upon which the claimant was arrested. There was no way to test the veracity of statements made or the information given, which led the police to the bank, nor was it the duty of the police to do so.

[119] In this case, the evidence discloses the following facts, which would have been apparent from the information given to the investigating officer:

(a) The claimant was assigned to a particular branch of the bank; he was not a remote or hybrid employee.

(b) The duties of the claimant did not include sales or business development. He worked in the Customer Contact Centre, which was a non-customer branch. It was customers who called the branch, not employees of the bank calling customers.

(c) Any contact with clients was only to assist customers, not for any other purpose.

(d) There is no evidence that the claimant was authorised to work in any other location other than in the assigned branch during assigned hours.

(e) There is no evidence that the claimant was authorised to remove accounting information from the branch, and more so, to retain it at his residence. The said accounting information was not locked away. It was found in a book.[21]

(f) Accounting information of the two customers who had complained about unauthorised withdrawals from their accounts was found at the claimant's residence.[22]

(g) When the claimant was making calls using the accounting information in his possession, if these calls were from his residence, he had not explained what time he would have been allotted to do that duty, as well as perform his customer service function.

(h) The claimant, as a bank employee, was in possession of $329,000.00 in cash contained in a shoe box in his closet, which he said was to buy a new car.

(i) The evidence is that the claimant told the police he met someone by the name of Andrew, who promised a 'ting' in exchange for bank accounts. The cash in the shoe box would have raised suspicions in the mind of the police.

[120] If Mr Stephenson was indeed involved in transactions that could have resulted in money being taken from the two customers' accounts, he had a clear explanation

---

[21] See the list of seized items

[22] This information was absent from his witness statement and emerged during cross-examination.

when questioned: he was an innocent employee whose particular transactions required supervisor approval.

[121] The rehearsal of that explanation failed to establish the claimant's innocence. It may have merely implicated others. This is a response that any discriminating police officer would expect from someone who is likely guilty of the offence. Although the explanation might be consistent with innocence, it does not definitively and inevitably lead to that conclusion.

[122] In the circumstances, to have continued to harbour suspicions about Mr Stephenson, even after he had given his explanation, cannot make Constable Vacciana's decision to proceed with the charges unreasonable. In these circumstances, the officer was entitled to arrest the claimant, and as a consequence, the initial arrest was lawful. It has not been shown by the claimant that the police acted with no genuine belief in the prosecution, nor that there was no proper case to be laid before the court. The claimant has therefore failed to establish this element of the tort.

Search and seizure

[123] In **Dallison v Caffrey**,[23] the accused was charged with theft and detained after a positive witness identification. The police knew the accused due to his history of larceny convictions. The constable did not directly take him to a police station. Instead, he took the accused to the house where he allegedly worked at the time of the crime. The house owner backed up his alibi. The accused brought an action for false imprisonment and malicious prosecution. The Court of Appeal, dismissing the action, held that when a constable took into custody a person reasonably suspected of a felony, he could do what was reasonable to investigate without becoming liable for false imprisonment. He was not bound to take the suspect

---

[23] [1964] 2 All ER 610

directly to the police station. Whether the constable acted reasonably was a question for the judge, and not the jury. In the instant case, there was reasonable and probable cause to arouse suspicion. Thus, the constable was not liable for false imprisonment and malicious prosecution.[24]

[124] In this case, the police were entitled to do what was reasonable to investigate the complaint. Cst Vacciana executed the search warrant under section 18(d)(e) of the Forgery Act. There was also no evidence upon which this Court could look behind the warrant to determine whether or not the issuing justice had cause. Further, there was no material upon which to ground a finding that, having initially made a lawful arrest, the police were not entitled to search the premises, having obtained a valid search warrant to do so.

[125] The declaration that the claimant's motor vehicle was unlawfully searched and detained by the JCF is not supported by any evidence. There is no proof that the police unlawfully detained the vehicle. The claimant states that it was searched in the bank's parking lot, and the police left it unlocked. The claimant has not shown how, as a matter of law, any liability attached to the police for a car parked in a parking lot. Therefore, as this assertion of unlawful detention is not made out, no declaration can be granted.

Trespass to personal property

[126] This tort aims to seek a remedy under the law in relation to wrongful interference with chattels/goods, and Ms Minto cited the learned author, John G. Flemming, in The Law of Torts, 8th edition, at page 55:

> *"There are three (3) ways in which one might deprive another of his property: by wrongfully taking it, detaining it, or disposing of it. In the first, the defendant gains possession by wrongful appropriation, in the second he might acquire possession rightfully but retains it wrongfully, and in the third*

[24] Reproduced from Case Overview

> *he neither takes nor retains it wrongfully but so disposes of the chattel that it is lost to the owner, for example by destruction or sale. Corresponding to these modes of dispossession, the common law has provided three actions: trespass for the first, detinue for the second and trover for the third.*

[127] Trespass to goods is a tort that has long existed at common law to provide compensation to persons whose possession of their chattel has been directly interfered with. Trespass to goods is actionable per se, or in other words, without proof of any actual damage to the chattel.[25]

[128] Under section 33 of the Constabulary Force Act, it is for the claimant to establish that the trespass to goods was committed by the police either with malice or without reasonable or probable cause. If the claimant fails to establish this, then judgment must be entered in favour of the defendant (see **Chong v Miller**).[26] The claimant ought to have particularised the allegations of malice such that the defendant would have been alerted to, and been put in a position to answer to these averments. Having not done so, the claimant has not made out this element of the tort.

[129] Additionally, the claimant asserts that the police searched his residence and seized various items, including several documents, notebooks, a laptop, a flat-screen TV, a TV remote and stand, jewellery such as two gold necklaces, two bracelets, and two gold rings, as well as thumb drives and $ 329,000 in cash from a shoe box in his closet. They did not provide him with a list of these items, only a receipt for the cash when he insisted. Items of jewellery and household furnishings taken from his residence were never returned. The jewellery seized was never returned, and the police allegedly 'misplaced' two gold necklaces, two bracelets, two gold rings, a TV, a Sharp TV remote, a BlackBerry Pearl mobile phone, and a laptop, all valued at $325,000.00. Moreover, the police left his car doors open, resulting in

---

[25] See paragraph 22 – 02 of the text - Clerk and Lindsell on Torts, 16th ed.

[26] [1993] J.L.R. 80

the theft of a DVD player, a 16-inch spare tyre, and a car jack, collectively valued at $61,500.00.

[130] The claimant admitted during cross-examination that, contrary to his witness statement, the police had compiled a list of items taken from his home after the search, which he also signed. He also admitted that he signed as receiving his laptop and cell phone. However, he could not specify the total cash returned to his attorney or whether it included interest. It was suggested that he was lying about the TV remote and TV stand, which were returned to him and for which he signed; he denied these suggestions.

[131] The defendant admits to taking from the person of the claimant a Geneva watch, a chain, two bracelets, and two rings, and denies that any jewellery was removed from the claimant's home. The defendant admits that all, save certain items of jewellery, were returned to the claimant, who signed as having received them. The value of the items of jewellery seized by the police was not pleaded by the claimant.

[132] The claimant's pleadings and his witness statement stated that, to date, the police had not provided him with a list of the items removed from his home. However, the evidence shows lists of items removed by the police from the claimant's home, all signed by the claimant. These lists also include items returned to him, which were similarly signed. A TV remote and a TV stand do not appear on any of these lists as having been removed, contrary to what was stated in the claimant's witness statement; nor did the claimant plead that these had been removed from his residence. This indicates that the claimant has been less than truthful with this Court. While this Court finds that the claimant was dispossessed of his jewellery, no award can be made as a consequence of the foregoing. Reputational damage need not be assessed in light of the findings above and the orders below.

Conclusion

[133] There was no reason not to believe that the police investigation was in good faith or that the claimant's detention was for any other reason than to further the investigation by confirming or dispelling the suspicions which grounded the arrest.

[134] ORDERS

1. The claim is dismissed.

2. Judgment for the Second Defendant

3. Costs to the Second Defendant to be taxed if not agreed.

……

Wint- Blair J