



[2026] JMSC Civ. 92

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2018HCV00262

BETWEEN	AUDLEY VIVIAN NAIN	CLAIMANT
AND	THE ATTORNEY GENERAL OF JAMAICA	1ST DEFENDANT
AND	ALTHEA PINTO	2ND DEFENDANT

IN OPEN COURT

Mr. Curtis Daniel Cochrane, Attorney-at-Law appearing for the Claimant

Mrs. Kristina Jones instructed by the Director of State Proceedings for the 1st Defendant

Mrs. Vanessa Wallace Jackson instructed by JNW Taylor and Associates for the 2nd Defendant

Heard: December 15th, 2025 and July 17th, 2026

Tort – False Imprisonment – Malicious prosecution – Defamation – Aggravated Damages – Exemplary Damages – Elements which must be proved - Defences – Circumstances in which Aggravated and Exemplary Damages are awarded

T. HUTCHINSON SHELLY, J

BACKGROUND

[1] The Claimant, Mr. Audley Vivian Nain, is a Businessman, President of the Lauriston Citizens' Association and a Justice of the Peace for the parish of St. Catherine. He resides on Bonanza Drive, Lauriston, Spanish Town in the parish of St. Catherine. The 1st Defendant is the Attorney General of Jamaica, sued pursuant

to the Crown Proceedings Act as the representative of the Crown in respect of the actions of members of the Jamaica Constabulary Force (JCF). The 2nd Defendant, Ms. Althea Pinto, is an Administrator who resides on Bonanza Drive, Lauriston, Spanish Town in the parish of St. Catherine, a property sharing a common boundary with an open lot utilized by the Claimant and the Citizens' Association as a Community Centre.

- [2] The claim arises out of an incident on Christmas Eve, December 24th, 2015, which culminated in the arrest, detention and criminal prosecution of the Claimant for the offence of assault occasioning actual bodily harm (ABH). The criminal trial concluded on January 8th, 2018, before Her Honour Ms. Natalie Brooks in the St. Catherine Parish Court, where the Claimant was acquitted.

THE CLAIM

- [3] The Claimant has filed a claim seeking Special Damages, Aggravated and Exemplary Damages for False Imprisonment, Malicious Prosecution and Defamation against the 1st and 2nd Defendants. The Claimant brings this claim against the 1st Defendant pursuant to the Crown Proceedings Act, alleging that the acts complained of were carried out maliciously and/or without reasonable or probable cause by the servants or agents of the Crown purporting to act in the execution of their duties as members of the Jamaica Constabulary Force. In relation to the 2nd Defendant, the Claimant states that she is a tortfeasor who maliciously and actively committed the said torts against the Claimant.
- [4] In his Particulars of Claim filed on January 23rd, 2018, Mr. Nain alleged that on December 26th, 2015 at approximately 2:00 p.m., the 2nd Defendant escorted two Police Officers in a marked police vehicle to his residence and identified him as having committed an assault against her. The Claimant contends that he was arrested and detained at the Spanish Town Police Station for approximately one and a half hours.

[5] Mr. Nain further alleged that on December 27th, 2015 at approximately 2:30 p.m., while at his home, he was again confronted by the 2nd Defendant in the company of two Police Officers, arrested and taken to the Spanish Town Police Station, where he was detained for approximately three hours and twenty minutes.

[6] Mr. Nain also avers that he was subsequently charged with assault occasioning actual bodily harm by Woman Constable Sadieann Griffiths (now Corporal), following consultation with Woman Constable Naron Brown (now Corporal) and was offered bail. Mr. Nain alleges that he was unlawfully and maliciously arrested and detained by the 1st and 2nd Defendants.

[7] Mr. Nain, in his Particulars of Claim, has particularized the causes of action against the 1st and 2nd Defendants in the following way:

1. **False Imprisonment** (alleged against both Defendants for detentions on December 26th and 27th, 2015).
2. **Malicious Prosecution** (alleged against the 1st and 2nd Defendant).
3. **Defamation** (alleged against the 2nd Defendant for spoken words at the Spanish Town Police Station).

[8] At the commencement of the trial, Counsel for the respective parties agreed to the admission of the following documents, which were received into evidence by agreement:

1. Occupancy Permission dated 22.03.2009
2. Receipts dated 2.02.2016, 7.04.2016, 28.09.2016 and 10.07.2017
3. Certificate of Completion
4. Justice of the Peace Commission dated 15.05.2003
5. No.1 Information St C 2016/553
6. Indictment St C 2016/553
7. Spanish Town Station Diary dated 24.12.2015
8. Spanish Town Station Diary dated 26.12.2015
9. Spanish Town Station Diary dated 27.12.2015

10. JCF Form CR10 dated 24.12.2015
11. JCF Form CR10 dated 27.12.2015
12. Medical Certificate for Althea Pinto dated 24.12.2015
13. Summons to Witness dated 29.12.2015
14. Letter from the Clerk of Court, St Catherine Parish Court, dated 3.4.2018

THE DEFENCES

Defence of the 1st Defendant

- [9] The 1st Defendant denied liability for the Claimant's allegations of false imprisonment, malicious prosecution and defamation. It was asserted that the Claimant was lawfully arrested on December 27th, 2015 after the 2nd Defendant reported to the Police that he had assaulted her, identified him as the assailant and provided a Medical Certificate describing visible injuries in support of her complaint. It was asserted that the Police acted with reasonable and probable cause, without malice, and in the lawful execution of their duties.
- [10] The 1st Defendant maintained that the Claimant attended the Spanish Town Police Station shortly after arrangements were being made to locate him and he was detained for approximately twenty minutes while bail was processed, before being released with a date to attend the Spanish Town Parish Court. The 1st Defendant refuted the claim that Mr. Nain was falsely charged or maliciously prosecuted and asserted that the criminal proceedings were supported by witness evidence. The 1st Defendant denied liability for exemplary damages, special damages and interest and put the Claimant to strict proof in respect of same.

Defence of the 2nd Defendant

- [11] The 2nd Defendant denied that she acted maliciously or committed any tort against the Claimant and maintained that the Claimant's arrest and prosecution arose from his assault upon her. She stated that she had resided at her residence at Bonanza Drive, Lauriston, since 1992 and that her property shared a common boundary

with the lots which were utilized by the Claimant and the Lauriston Citizens' Association as a Community Centre.

- [12] The 2nd Defendant contended that over several years, the activities conducted at the Community Centre caused significant disturbance and nuisance to her and her family. She alleged that movie nights, parties, football matches and other recreational events generated excessive noise, loud music, smoke and litter, often continuing late into the night. She stated that the noise was so severe at times that it caused the windows of her home to vibrate and prevented her from resting peacefully. She further alleged that burning conducted on the premises frequently caused smoke and soot to enter her home, interfere with her laundry and adversely affect her family's health and enjoyment of their property.
- [13] She maintained that she repeatedly raised these concerns with the Claimant and persons acting under his leadership and requested that she be informed before any burning activities took place so she could take precautionary measures. However, these requests were ignored.
- [14] In relation to the incident giving rise to the proceedings, the 2nd Defendant stated that, upon observing smoke engulfing her premises and affecting clothing hanging on her line, she approached the dividing wall and requested that the burning be stopped. She stated that she was recording the interaction on her cellular telephone when the Claimant approached her in an angry manner, verbally assaulted her and violently grabbed, squeezed and pulled her hand in an effort to stop the recording, causing bruising and swelling. She asserted that the Claimant was enraged by the recording and intentionally injured her hand.
- [15] The 2nd Defendant further stated that she attended the Spanish Town Police Station, reported the incident to the Police and provided a statement, following which the Claimant was arrested and charged. She denied assaulting the Claimant and specifically denied referring to him as a "*thief*," though she admitted telling

persons at the station that he was a “**liar**” and should be locked up for assaulting and injuring her.

THE CLAIMANT’S EVIDENCE

- [16] In his Witness Statement, the Claimant stated that he and the 2nd Defendant were neighbours who had once enjoyed a very good relationship and the 2nd Defendant had previously served as secretary of the Lauriston Citizens’ Association. He claimed that the relationship subsequently deteriorated following the Association’s occupation of property adjacent to the 2nd Defendant’s residence which she had used for refuse disposal. There were also disputes involving community matters and personal disagreements.
- [17] The Claimant alleged that on December 26th 2015, the 2nd Defendant escorted two police officers to his residence and identified him as the person who had assaulted her, resulting in his arrest and detention at the Spanish Town Police Station for approximately one and a half hours. On the following day, December 27th 2015, she escorted another team of Police Officers to his home resulting in his arrest and detention for approximately three hours and twenty minutes.
- [18] The Claimant asserted that although he was subsequently charged, neither Woman Constable Sadieann Griffiths nor Woman Constable Naron Brown visited the scene of the alleged incident or questioned him about the allegations, leading him to conclude that the matter had not been properly investigated.
- [19] The Claimant also alleged that, while at the Police Station on December 27th 2015, the 2nd Defendant referred to him in the presence of police personnel and community members as “**a liar and thief**” who should be locked up and removed from the Community Centre, words which he contended damaged his reputation and suggested that he was unfit to serve as President of the Lauriston Citizens’ Association and as a Justice of the Peace.

[20] The Claimant stated that he appeared before the St. Catherine Parish Court on numerous occasions between February 2016 and January 2018 before ultimately being found not guilty and discharged by Her Honour Ms. Natalie Brooks on January 8th, 2018. He claimed that the arrests and prosecution caused him significant embarrassment and humiliation within his community and stated that he incurred legal expenses in the sum of **Sixty Thousand Dollars (\$60,000.00)** in defending the criminal proceedings.

Cross-Examination by 1st Defendant

[21] Mr. Nain testified stated that he did not know the names of the officers who came to his home, they did not travel in a service vehicle as they walked there with the 2nd Defendant. He recounted that the complaint arose from an incident on Christmas Eve at a Community Centre event, where the 2nd Defendant recorded him through a wire fence while preparations were underway for a Christmas function. He stated that he asked her to desist, after which she withdrew the phone from within the area in the wall where she had been holding it and it fell. He denied approaching her aggressively, attempting to take her phone, or making any physical contact with her.

[22] He acknowledged that he was displeased with being recorded. He attributed the deterioration in his relationship with the 2nd Defendant to the community centre's use of the property adjacent to her home and asserted that her displeasure was rooted in the fact that this prevented her from disposing of garbage there. Although he initially denied there was any conflict between them, he later accepted that disagreements existed regarding the use of the property.

[23] He testified that following the 2nd Defendant's report, he was taken to the Spanish Town Police Station on December 26th, 2015, where he was detained in a "dock-like" area for approximately one and a half hours before being released on bail. He said an officer informed him that Woman Constable Sadieann Griffiths, who was reportedly off duty, instructed that he return to the station on December 28th, 2015.

However, he was re-arrested on December 27th, 2015 at about 2:00 p.m. On that occasion, he was required to travel in the police vehicle because the 2nd Defendant declared that he was “**a criminal**” and should not drive himself.

[24] Mr. Nain maintained that he was detained for approximately three hours and twenty minutes on December 27th before being granted bail and instructed to attend court. He initially claimed that he was not informed of the charge until he appeared before the court but later accepted that he must have been charged before bail was granted. He also agreed that he had never been placed in a lock up.

[25] He insisted that the prosecution arose directly from the 2nd Defendant's complaint to the Police and stated that she was responsible for the criminal proceedings against him. He conceded that the Police Officers involved, including then Woman Constables Griffiths and Brown, bore no malice toward him and were acting on the report received from the 2nd Defendant. He contended however that no proper investigation had been conducted into these allegations.

[26] Although he recalled that the Officers had attended court, he could not remember whether they gave evidence and explained that it had been an emotionally distressing time for him.

Cross-Examination by 2nd Defendant

[27] Mr. Nain testified that he had known the 2nd Defendant since 2001 and described their former relationship as “*excellent*.” He stated that he, his wife, and daughters welcomed her into the community, socialized regularly with her family, shared meals and celebrations and were closely connected to her household. He explained that he regarded her “**like my daughter**” and considered her to be a pleasant young woman with whom his family felt comfortable and safe interacting.

[28] He said the change in their relationship could be attributed in part to the 2nd Defendant's mother's request that his wife sign documents for her in respect of a

financial matter, which his wife declined to do. He agreed however that he and the 2nd Defendant spoke again after that incident. He stated that tensions increased after the Citizens' Association began operating from two adjoining lots near her premises in 2009. He said that the association used the lots for community meetings, funeral repasts, birthday gatherings and annual Christmas activities. He admitted that no licence had been obtained for this use of the premises. He also acknowledged that sound boxes were sometimes utilized during these events. He agreed that the area was residential and no commercial entities operated there.

[29] Mr. Nain insisted that the 2nd Defendant had previously used the adjoining property to dispose of refuse and this ceased once the association occupied the land. Although he maintained that she never directly complained to him about noise or activities at the property, he conceded that unresolved issues existed between them and accepted that the activities conducted there may have contributed to the hostility between them. He reluctantly admitted that generally she was not informed of community events in the same manner as other residents because she did not participate in community meetings or engage with other residents. He insisted that he could not inform her of events as she was unapproachable. He agreed that she was very vocal but maintained that she never spoke to him about the noise from the sound boxes.

[30] In relation to the events of December 24th, 2015, Mr. Nain stated that preparations were underway for a Christmas morning carol service, including cleaning the premises and burning leaves. He testified that the 2nd Defendant called out to him while he was inside a container on the property and that upon approaching her, he observed her pointing a camera directly at him. He stated that he immediately asked her to remove the camera from his face and denied asking her why she was recording. Mr. Nain accepted that he was angry and upset about being videotaped, which he considered intrusive and disrespectful.

[31] He denied however, that he grabbed the 2nd Defendant or her phone. He insisted that he merely extended his hand to shield his face while asking her to stop

recording, whereupon she pulled her hand and camera back through a wire fence, causing the device to fall. He maintained that he never touched her and denied twisting her wrist or engaging in any physical struggle with her. He accepted that, instead of walking away on seeing her recording, he approached her with his hand outstretched toward the camera.

- [32] Mr. Nain maintained that following the encounter on December 24th, 2015, Police Officers attended his residence on December 26th, 2015 and again on December 27th, 2015. He insisted that the Police Officers spoke to him on both occasions, and maintained that on December 27th, the 2nd Defendant stated that he was “**a criminal**” who should travel in the police vehicle rather than drive himself. He said that the Police acted on her words and placed him in the police jeep. He acknowledged however that Police Officers are generally responsible for arrests and are trained to assess whether an arrest is warranted.
- [33] Mr. Nain testified that the 2nd Defendant referred to him as “**a liar and thief**” both at his gate and at the Police Station. While he said members of his community heard what was said, he was initially unable to identify any independent witness who had heard these words. He then stated that Gary Bourne, who was now living overseas, would have heard, but Mr. Bourne had not provided a statement. Mr. Nain agreed that he had not mentioned that Ms. Pinto said these words at the gate in his witness statement but insisted it happened. He accepted that though he said his wife would have heard, no witness statement has been provided by her in support of these allegations.
- [34] Mr. Nain acknowledged that his acquittal did not necessarily mean that the 2nd Defendant had lied or fabricated her complaint. He also agreed that decisions relating to prosecution and court scheduling were matters for the authorities and not the 2nd Defendant. He maintained, however, that the allegations against him were false and the 2nd Defendant was liable for false imprisonment, malicious prosecution and defamation.

THE DEFENDANTS' EVIDENCE

Evidence of Cpl. Naron Brown

- [35] Corporal Brown stated that on December 24th, 2015, while on station guard duty at the Spanish Town Police Station, the 2nd Defendant reported a case of assault occasioning actual bodily harm ("ABH") against Mr. Audley Nain. Cpl. Brown observed slight swelling to Ms. Pinto's right wrist and a bloodshot right thumbnail. She issued Ms. Pinto with a CR10 form and a medical form, advised her to seek medical attention and return to the station to provide a formal statement.
- [36] She stated that on December 25th, 2015, Ms. Pinto returned to the station with a Medical Certificate, after which a statement was recorded from her. Arrangements were then made for a patrol team to accompany her to identify the accused; however, she was unable to wait and requested that the Officers attend her address instead. The following day, Officers were dispatched to her address but reportedly encountered difficulty locating the premises and were unable to contact her by telephone.
- [37] On December 27th, 2015, she was contacted by Woman Constable Sadieann Griffiths regarding the matter involving Ms. Pinto who was at the station. She gave instructions to Woman Constable Griffiths, who subsequently informed her that the Claimant had been charged on her behalf and granted bail to appear before the Spanish Town Parish Court on February 2nd, 2016. The relevant station diary entries were made, a case file was prepared and submitted for court and the matter ultimately proceeded to trial before Her Honour Mrs. Natalie Brooks, Parish Judge, where the Claimant was found not guilty.
- [38] She maintained that she did not have any malicious intent in prosecuting Mr. Nain, the Claimant and stated that based on the complaint received and observations made, she formed the suspicion that Mr. Nain had committed the offence of assault occasioning actual bodily harm (ABH). Cpl. Brown insisted that she acted with

reasonable and probable cause in the execution of her duties as an Officer of the law.

Cross-Examination of Naron Brown by the Claimant

- [39] Under cross-examination, Cpl Brown confirmed that she was the Investigating Officer in relation to the complaint made against the Claimant and that she had been a member of the Jamaica Constabulary Force for approximately three years at the time. She stated that her investigation involved receiving and appreciating the 2nd Defendant's report, observing slight swelling to her right wrist and a bloodshot thumbnail and reviewing a medical certificate provided in support of the complaint. Cpl. Brown maintained that the report, visible injuries, and Medical Certificate together constituted sufficient grounds for the laying of charges.
- [40] She accepted that if Police Officers attended the Claimant's residence on December 27th, 2015 in relation to the complaint, those Officers should have formed part of the investigation. She insisted however, that she had no knowledge of Officers attending the Claimant's residence on December 26th 2015 and did not know the identities of the Officers involved on either occasion.
- [41] Cpl Brown was questioned about the station diary extracts which had been entered into evidence and acknowledged that typed extracts ordinarily contained certification and signatures from the preparer and these did not. She asserted however that they were true extracts though she did not prepare them.
- [42] Cpl. Brown confirmed that she recorded a statement from the 2nd Defendant but could not recall when she first saw the Claimant during the investigation. She disagreed with the statement in the 2nd Defendant's witness statement that her statement had been recorded on the same day the Claimant was arrested. She indicated that perhaps a further statement had been recorded by Corporal Sadie-Ann Griffiths, the officer who ultimately charged the Claimant.

Cross-Examination of Narona Brown by the 2nd Defendant

- [43] In cross-examination, Cpl. Brown opined that the lawfulness of an arrest was ultimately a matter for the Court to determine. She confirmed that the 2nd Defendant attended the Police Station and reported that she had been assaulted by the Claimant on December 24th, 2015 and that the report was taken by her in the course of her official duties. She accepted that members of the public were entitled to report assaults to the Police and that it was the duty of Police Officers to effect arrests where necessary.
- [44] Cpl. Brown testified that, based on her professional assessment, the 2nd Defendant's injuries were consistent with the allegations made and the Medical Certificate appeared to have been issued by a Medical Practitioner. She regarded the report, the visible injuries and the Medical Certificate as corroborative evidence and stated that, on the basis of the information then available, she honestly formed the view that an arrestable offence had been committed.
- [45] Cpl. Brown agreed that the 2nd Defendant accompanied Police Officers to identify the individual who she alleged had assaulted her, but denied that the 2nd Defendant directed or controlled the manner of the Claimant's arrest. She maintained that the police did not rely solely on the 2nd Defendant's allegations and explained that the decision to arrest and charge the Claimant was based on the evidence available at the time.
- [46] She reiterated that the charge was laid by the Police, that she had prepared and submitted the case file and the decision whether to prosecute the Claimant was ultimately a matter for the Crown rather than the 2nd Defendant. She stated that she observed no conduct by the 2nd Defendant suggesting any abuse of the police process and confirmed that she had not known the 2nd Defendant prior to her attendance at the station on December 24th, 2015.
- [47] Cpl. Brown further stated that her belief that an offence had been committed was honestly held and would not have changed based on events occurring after the

arrest. She emphasized that the 2nd Defendant neither arrested nor detained the Claimant and exercised no control over the prosecution. In response to a question from the Court seeking clarification on the meaning of her remarks that 'the statements (of the arresting officers) should have formed part of her investigation', the witness explained that statements had been requested from the Officers who attended the Claimant's residence, but none had been received.

Evidence of Cpl. Sadieann Griffiths

- [48] Cpl Griffiths stated that on December 27th, 2015, while on station guard duty at the Spanish Town Police Station, the 2nd Defendant attended the station and presented a CR10 receipt relating to a complaint of assault occasioning actual bodily harm (ABH) made against the Claimant. Cpl. Griffiths reviewed the receipt, checked the Station Diary and spoke with then Woman Constable Naron Brown from whom she received instructions and information concerning the matter.
- [49] She stated that Ms. Pinto was instructed to remain in the reception area while arrangements were being made to locate the accused. She subsequently observed a man in the reception area whom Ms. Pinto identified as Audley Nain. She approached him, confirmed his identity, cautioned him and arrested and charged him for assault occasioning actual bodily harm (ABH).
- [50] Cpl. Griffiths stated that the Claimant was taken into custody at approximately 2:20 p.m. placed in safe custody, and granted bail at approximately 2:40 p.m. to appear before the St. Catherine Parish Court on February 2nd, 2016. She maintained that all actions taken were done without malice, pursuant to instructions received, and upon reasonable and probable cause arising from the complaint made against the Claimant.

Cross-Examination of Sadie Ann Griffiths by the Claimant

- [51] Cpl. Griffiths was cross-examined and explained that she could not say by what means the Claimant arrived at the Police Station on December 27th, 2015, as she

first observed him in the reception area after the 2nd Defendant had been instructed to wait there. She stated that no Officer formally handed the Claimant over to her and that she could only speak to having seen him at the station where he was identified by the 2nd Defendant.

[52] She informed the Court that procedurally, persons brought to the station are ordinarily handed over to the Sub-Officer on duty, although it was not always necessary to determine or record which Officers transported an accused person to the station. She therefore could not confirm the Claimant's assertion that Officers had brought him from his residence earlier that afternoon.

[53] In relation to the period of detention, Cpl. Griffiths relied on the Station Diary entry which recorded that the Claimant was arrested at approximately 2:20 p.m. and granted bail at approximately 2:40 p.m. She disagreed with the Claimant's contention that he had been detained for three hours and twenty minutes, explaining that she could only speak to the time recorded at the station and not to events which allegedly occurred before his arrival there.

[54] She said that she did not take a statement from the Claimant, as he made no complaint of illness or assault. She also stated that she did not record a further statement from the 2nd Defendant. Her role was limited to charging the Claimant on behalf of then Woman Constable Naron Brown.

Evidence of the 2nd Defendant – Althea Pinto

[55] Ms. Pinto stated that she resides on Bonanza Drive, Lauriston, St. Catherine, adjacent to the property used by the Claimant as a Community Centre for the Lauriston Citizens' Association. She described the Claimant as a Justice of the Peace and President of the Association. She explained that since the establishment of the Community Centre in or around 2008, she and her family had been subjected to ongoing disturbances arising from excessive noise, smoke, lighting, burning of debris, football matches and litter emanating from activities conducted on the premises. She stated that she made several complaints to the

Claimant and the St. Catherine Parish Council about these disturbances and even attended a meeting with the Parish Manager, during which the Claimant was instructed to reduce noise levels, limit football activities, and utilize composting rather than extensive burning.

- [56]** In relation to the incident of December 24th, 2015, Ms. Pinto stated that smoke from the adjoining property entered her home, prompting her to go outside and record the situation on her cellular phone. She stated that, after calling out to a man operating a lawn mower, the Claimant approached and questioned why she was recording. She explained to him that the Parish Council's instructions had prohibited the creation of large fires causing excessive smoke. She alleged that the Claimant then attempted to seize her cellular phone by reaching over the dividing wall, aggressively squeezing her right hand, causing pain, swelling and injury to her thumb in the process. She stated that she informed him that he was assaulting her and threatened to report the matter to the police, but he continued to verbally abuse her.
- [57]** Ms. Pinto stated that she sought medical treatment from Dr. Jones in Portmore, where her injured hand and thumb were examined. She also attended the Spanish Town Police Station and made a formal report of assault. A few days later she attended the police station to enquire about the status of her case and she was instructed to accompany a team of Police Officers to the Claimant's residence to point him out. She recalled that the Claimant indicated that he would drive himself to the station and she enquired if this was customary. There was then some discussion among the Police Officers about his request following which Mr. Nain was instructed to travel in the police vehicle instead.
- [58]** She stated that on arrival at the Police Station she identified the Claimant to other police personnel, following which he was escorted to provide a statement. She said that her hand remained swollen and painful for several weeks following the incident, which affected her ability to prepare Christmas dinner and carry out normal activities. She said that she remains perplexed by the Claimant's

subsequent acquittal and indicated that the disturbances and activities at the community centre continued thereafter.

Cross-Examination of Althea Pinto by the Claimant

[59] During cross-examination, Ms. Pinto stated that the events occurred over ten years earlier and the dates were close, but she believed she visited the Claimant's residence on December 26th, 2015. She explained that if she had visited his home, she would not have been alone but would have been accompanied by Police Officers from the Spanish Town Police Station. She confirmed that she went to the residence on December 27th, 2015 with two officers. Ms. Pinto stated that the Claimant indicated that he intended to drive himself to the Police Station and she questioned the Officers whether such an arrangement was permissible. She accepted, however, that the decision regarding transportation rested with the Police Officers and confirmed that the Claimant ultimately travelled in the police vehicle.

[60] She denied having derived any particular satisfaction at seeing the Claimant placed in the police vehicle and stated that she was not present in Court when the verdict in the criminal matter was delivered. Consequently, she was unable to comment on the reasons for the Claimant's acquittal.

[61] She denied that she said to the Claimant at the Police Station "***You are a liar and thief and you are to be locked up, the community service is to be moved and you removed.***" She maintained that, after identifying the Claimant to the Police, she left the station. It was put to her that she harboured longstanding resentment toward the Claimant arising from disputes connected to the Community Centre, lack of community support, issues involving a container and matters involving her parents and rejected these suggestions.

[62] Ms. Pinto maintained that the report made against the Claimant was truthful. She testified that he reached over the dividing wall separating the properties and attempted to wrestle the cellular phone from her hand while she was recording the

smoke. She insisted that he squeezed and twisted her hand while trying to stop the recording, causing her injury. She acknowledged that there was a concrete wall topped in sections with barbed wire between the properties but maintained that the Claimant's hand crossed onto her premises during the incident. She denied suggestions that the Claimant merely used his hand to block the camera and that he never touched her.

- [63] Ms. Pinto denied that she maliciously caused the Claimant to be arrested or prosecuted. She maintained that she simply reported the incident to the Police after seeking medical attention for her injuries and asserted that decisions concerning arrest and prosecution were matters for the Police and the Crown rather than herself.

Cross-Examination of Althea Pinto by the 1st Defendant

- [64] In cross-examination, Ms. Pinto confirmed that her relationship with the Claimant had been cordial prior to the establishment of the Community Centre in or around 2008, but stated that it deteriorated thereafter due to ongoing disturbances associated with activities at the Centre. She recalled attending a meeting with the Parish Manager for the Parish Council during which concerns were raised regarding noise and burning on the premises and recommendations made for composting instead of extensive burning.

- [65] She affirmed that on December 24th, 2015, she observed heavy smoke emanating from the adjoining property and began recording the scene on her cellular phone while standing near the dividing wall. She stated that her hand, which held the phone, was positioned between strands of wire above the wall as she recorded the smoke. She maintained that the Claimant approached her and attempted to wrestle the phone from her hand, squeezing it in the process. She insisted that the phone never fell.

- [66] Ms. Pinto reiterated that she reported the incident to Cpl. Naron Brown on the same day and showed the Officer her injuries. She also followed the instructions

provided by the officer. She confirmed that she accompanied Police Officers to the Claimant's residence on the 26th and 27th of December 2015 for the purpose of identifying him and explained that she returned on the later date after learning that no arrest had been made on the earlier occasion.

[67] Ms. Pinto testified that she did not know either Cpl. Narona Brown or Cpl. Sadieann Griffiths prior to the matter and had no reason to believe the Officers were acting other than in the execution of their duties. She accepted that she queried whether it was customary for an accused person to transport himself to the station but maintained that she did not consider the Police Officers to be acting on her instructions when they escorted the Claimant in the police vehicle.

[68] She confirmed that she attended Court on several occasions and gave evidence in the criminal proceedings. She was uncertain as to which Officer recorded her statement or escorted the Claimant at the station but maintained that she identified him to Cpl. Sadieann Griffiths on December 27th, 2015.

[69] In response to a question from the Court seeking clarification of the physical layout of the boundary wall and barbed wire, Ms. Pinto explained that the wall was topped with Y-shaped metal supports from which three strands of barbed wire were strung across. She further indicated that there were gaps between the top of the wall and the first strand of wire, as well as between the successive strands.

[70] Ms. Pinto stated that, at the material time, she was holding her phone within one of these gaps, specifically between the top of the wall and the first strand of barbed wire, while recording the events occurring on the adjoining property.

ISSUE

[71] The core issues that arise for the Court's determination are as follows:

- i. Whether the 1st and 2nd Defendant falsely imprisoned the Claimant;
- ii. Whether the 1st and 2nd Defendant are liable for malicious prosecution;
- iii. Whether the Claimant was defamed by the 2nd Defendant; and

- iv. If the Claimant is successful on Issues 1 to 3, the quantum of damages, to which he would be entitled.

Issue 1 - Whether the 1st and 2nd Defendants falsely imprisoned the Claimant

Claimant's Submissions

[72] In submissions on the applicable law, Mr. Cochrane submitted that it is well established that false imprisonment arises where a person is unlawfully detained against his will without legal justification, the decision of ***Peter Flemming v Cpl. Myers and the Attorney General JM 1989 CA 171*** was cited in support of this position. Counsel submitted that while a Police Officer may arrest, without warrant, where he honestly and reasonably suspects that a crime has been committed, the Arresting Officer bears the duty of providing evidence of the grounds upon which the arrest was effected. Reliance was also placed on section 13 of the Constabulary Force Act and the decision in ***Desmond Prescott v The Attorney General, Claim No. 2006HCV00008 (unreported)***, which emphasized that both the subjective and objective bases for the arrest must be established by the Arresting Officer.

[73] Counsel further submitted that none of the Arresting Officers provided statements or testified in the criminal proceedings. Additionally, they were not identified in the 1st Defendant's pleadings or Witness Statements. Mr. Cochrane argued that the absence of evidence from the Arresting Officers, as to the basis for the consecutive arrests, left the 1st Defendant liable in damages for false imprisonment.

1st Defendant's Submissions

[74] Mrs. Jones submitted that, in order to establish the tort of false imprisonment, the Claimant must prove that he was imprisoned by the 1st Defendant and that such imprisonment was without lawful authority, the authorities of ***Geraldine Wright v Steve Burton & Anor. [2015] JMSC Civ. 237*** and ***Bryan Green v Sgt. Cochrane & Anor. [2012] JMSC Civ. 17*** were cited in this regard.

[75] Counsel argued that false imprisonment consists of the unlawful restraint of a person's liberty, whether by physical detention or conduct amounting to control over the individual's freedom of movement. She contended that the Claimant's liberty was never unlawfully restrained by its servants or agents. On December 26th, 2015, a patrol team attempted to locate the 2nd Defendant's address in order for her to point out the alleged assailant, but they were unsuccessful so there could not have been an arrest and detention as he claimed. On December 27th, 2015, the Claimant attended the Spanish Town Police Station, where he was pointed out by the 2nd Defendant, cautioned, arrested and subsequently granted bail within approximately twenty minutes. Mrs. Jones urged the Court to find that the station diary entries confirmed that the Claimant was taken into custody at 2:20 p.m. and granted bail at 2:40 p.m.

[76] Mrs. Jones further submitted that the arrest was supported by lawful authority, as Cpl. Naron Brown had received the 2nd Defendant's report, which was corroborated by a Medical Report showing that there was an injury. Counsel argued that in those circumstances, the Police had reasonable grounds to arrest and detain the Claimant pending the processing of bail.

[77] Mrs. Jones challenged the Claimant's allegations that he had been arrested at his home on both December 26th and 27th, 2015 and submitted that these assertions were unsupported by evidence. Counsel emphasized that the Claimant had failed to provide any evidence of the identity of the Officers allegedly involved, failed to explain the basis for his alleged detention and release on December 26th, 2015 and generally failed to discharge the burden of proof required to establish the tort of false imprisonment.

2nd Defendant's Submissions

[78] Mrs. Wallace Jackson submitted that the claim for false imprisonment was unsustainable in law, as liability can only attach to a person who directly authorizes, instigates, or participates in the unlawful detention of another. Counsel

relied on ***Marshall Fitzroy v Detective Corporal Thompson and the Attorney General*** (1979) 16 JLR 479, where the Court recognized that protection may extend to persons acting under an honest belief that their actions were lawful and justified.

[79] Mrs. Wallace Jackson argued that the 2nd Defendant merely made a complaint to the Police that she had been assaulted by the Claimant, which was supported by medical evidence. Counsel submitted that the arrest and detention of the Claimant were acts carried out independently by the Police in the execution of their duties. She highlighted the evidence of Cpl Sadieann Griffiths, who stated that she cautioned, arrested, charged and processed the Claimant in accordance with standard police procedure.

[80] Mrs. Wallace Jackson contended that the 2nd Defendant neither detained the Claimant nor exercised any authority or control over the Police Officers involved. She submitted that the decision to arrest and charge the Claimant was made solely by law enforcement officers acting on their own assessment of the complaint and supporting material. Accordingly, the 2nd Defendant could not properly be held liable for false imprisonment, as her involvement ended with the making of the report to the Police.

ANALYSIS

[81] In ***John Crossfield v Attorney General of Jamaica and Corporal Ethel Hamilton***, Claim No. CL E 219 of 2001, Morrison, J (Ag.), as he then was, provided guidance on the elements required for this tort when he stated that:

“For the tort of false imprisonment to triumph it must be shown that the Claimant was detained against his will without legal justification. The legal justification may be pursuant to a valid warrant of arrest or where by statutory powers a police officer is given a power of arrest in circumstances where he honestly and on reasonable grounds believes a crime has been committed.”

[82] The tort was also examined in **Bryan Green v Sgt. Cochrane & Attorney General of Jamaica** [2012] JMSC Civ. 17, where the Court stated at paragraphs 8 and 9 as follows:

"[8] The learned authors of Salmond on the Law of Torts, Fifteenth Edition, page 100; defines the tort of false imprisonment as follows;

"The wrong of false imprisonment consists in the act of arresting or imprisoning any person without lawful justification or otherwise preventing him without lawful justification from exercising his right of leaving the place in which he is."

[9] It is clear that there needs be no actual imprisonment, the taking possession or control of the person constitutes the essence of the tort. The control may be effected without physical contact The principle is aptly demonstrated in Bostien v Kirpalani Ltd an unreported decision of the High Court of Trinidad ao. 861 of 1975. (See Tort, Text, Cases & Materials by Gilbert Kodilinye, p 24), where Deyalsingh, J. says,

"It is clear from the authorities- that to constitute false imprisonment there must be a restraint of liberty...a taking control over or possession of the plaintiff or control of his will. The restraint of his liberty is the gist of the tort. Such restraint need not be by force or actual physical possession. It is enough if pressure of any sort is present which reasonably leads the plaintiff to believe that he is not free to leave, or if the circumstances are such that the reasonable inference is the plaintiff was under restraint There must, in all cases, be an intention by the defendant to exercise control over the plaintiff's movement or his will and it matters not what means are utilized to give effect to this intention."

[83] The right to personal liberty occupies a position of fundamental importance within our legal system, finding protection at both common law and under the Constitution of Jamaica. It follows that any complete restraint upon an individual's freedom of movement, however brief, will constitute false imprisonment unless it is shown to have been authorized or justified by law.

[84] The legal authors in the 14th edition of the text, **Clerks & Lindell on Torts**, at paragraph 681 define false imprisonment as **"complete deprivation of liberty for any time, however short, and without lawful cause."** In simple terms, it is the total restraint of a person's liberty without lawful justification. Under the

Constabulary Force Act, Police Officers are empowered to arrest without a warrant if they have an honest and reasonable suspicion that an arrestable offence (such as assault occasioning actual bodily harm “ABH”) has been committed.

- [85] For a private citizen, such as the 2nd Defendant, to be liable for false imprisonment, it must be proven that she did not merely provide information, but actively directed, commanded, or instigated the Police to make the arrest (*Flemming v Myers* [1989] 26 JLR 525).
- [86] In assessing the claim against the 1st Defendant, the central question is whether the Police Officers acted pursuant to lawful authority. More specifically, the Court must determine whether, at the time of the arrest, the Officers possessed an honest belief, founded upon reasonable grounds, that the Claimant had committed an arrestable offence, thereby bringing their actions within the protections afforded by the Constabulary Force Act.
- [87] The position of the 2nd Defendant stands on a different legal footing. As a private citizen, liability cannot attach merely because she reported an alleged offence to the Police. The Claimant must establish that the 2nd Defendant went beyond the provision of information and was actively instrumental in procuring, directing, or causing his detention. The law carefully distinguishes between a citizen who merely lodges a complaint and one who assumes responsibility for ensuing the deprivation of liberty of another.
- [88] The Court's analysis of this issue is necessarily informed by two distinct factual episodes, the alleged arrest of December 26th, 2015 and the undisputed arrest of December 27th, 2015. In resolving the competing accounts, the Court must evaluate the oral testimony, contemporaneous police records, and other objective evidence to determine whether the Claimant was unlawfully deprived of his liberty on these occasions and, if so, whether either Defendant bears legal responsibility for that deprivation.

The Alleged Arrest of December 26th, 2015

- [89]** The Claimant maintains that he was arrested at his home on December 26th, 2015 by Police Officers and transported to the Spanish Town Police Station. However, this assertion stands unsupported by any contemporaneous or independent evidence. No station diary entries, custody records, bail documents, or witness testimony were produced to corroborate the alleged arrest. Significantly, the Claimant was unable to identify any of the Officers allegedly involved in the detention or provide any persuasive explanation as to why no official record exists of such an arrest. It was also noteworthy that while the Officers went to the extent of ‘arresting’ him, he was allowed to drive himself to the station, never placed into a lockup and simply allowed to walk out of the station after being told to return on the 28th.
- [90]** In contrast, the evidence of Cpl. Naron Brown was supported by contemporaneous police records. Her station diary entries indicate that on December 26th, 2015 efforts were made by a patrol team to locate the relevant address for investigative purposes, but those efforts proved unsuccessful. There is no entry reflecting an arrest, detention, caution, transportation to the station, or release of the Claimant on that date. The absence of any official record is particularly significant given that police procedures ordinarily require the documentation of arrests and detentions.
- [91]** I also note that Cpl. Sadieann Griffiths had no knowledge of an arrest occurring on December 26th, 2015. The 2nd Defendant’s affidavit speaks of one arrest for which she candidly acknowledged being present, pointing him out and questioning his effort to drive himself to the Police Station. The Court notes that in cross examination she had given evidence which suggested that she may have visited his home with the police on the 26th of December as well.
- [92]** In evaluating whether this statement provides cogent support for the Claimant’s assertion of two arrests, and undermines what she had said in her statement, I

note that she qualified her answer by stating that this was 10 years ago and the dates are close but she believes that she went there. It is significant to note that even on this version of events, the Claimant was not arrested and this prompted her to return to the station on the 27th as she wanted to find out why this was so. While the account of the 2nd Defendant seems to have varied somewhat on this issue, the officers who gave evidence remained consistent throughout cross-examination and were not shaken on this point. The documentary evidence provided by them and reviewed by the Court confirms that there was no arrest for that day.

[93] Having seen the demeanour of Ms. Pinto and heard her uncertain response to the question as to the dates she visited the premises, I formed the view that while she appeared doubtful about the visit on the 26th, she had no such concerns about the 27th. In circumstances where the contemporaneous records and the evidence of multiple witnesses raise significant questions as to whether any arrest occurred on this date and the burden lies on the Claimant to provide evidence of such detention, I was unable to find that this threshold had been met by him.

[94] Having carefully considered the totality of the evidence, I find that the Claimant has failed to discharge the burden of proving that he was arrested or detained on December 26th, 2015. I find, on a balance of probabilities, that no arrest occurred on that date. Accordingly, no successful claim for false imprisonment can arise in relation to December 26th, 2015.

The Arrest of December 27th, 2015

[95] The position regarding December 27th, 2015 is materially different, as it is common ground that the Claimant was arrested on that date. The dispute concerns whether the arrest was effected pursuant to lawful authority.

[96] The station diary entries record that the Claimant was arrested and charged at approximately 2:20 p.m. and granted bail at approximately 2:40 p.m. The Claimant contends that his detention was substantially longer, extending to more than three

hours when the period of transportation is included. The precise duration of the detention is not determinative of liability, as accepting the Claimant's version of events at its highest, the essential question remains whether the arrest was lawfully justified.

[97] In weighing the case against the 1st Defendant, I accept the evidence of Cpl. Narona Brown and Cpl. Sadieann Griffiths as credible and reliable. Prior to the arrest, the Police had before them a formal complaint made by the 2nd Defendant alleging that she had been assaulted by the Claimant. That complaint was not unsupported. Cpl. Narona Brown personally observed physical injuries, namely a swollen wrist and a bloodshot thumbnail, shortly after the report was made. These observations were subsequently corroborated by a Medical Report confirming injuries consistent with blunt trauma and twisting of the hand.

[98] When the Court views the evidence in its totality, this information provided the Police with an objective and reasonable basis to arrive at a conclusion that an assault had been committed and that the Claimant was the perpetrator. The law does not require an Arresting Officer to possess evidence sufficient to secure a conviction. Rather, the Officer must hold an honest belief, founded upon reasonable grounds, that the person arrested may have committed the offence under investigation. I am satisfied that this threshold was met.

[99] Equally important is the role played by the 2nd Defendant. The evidence does not establish that she directed, controlled, or procured the arrest of the Claimant. Her involvement was confined to making a complaint, providing information to the Police, and identifying the individual whom she alleged had assaulted her. The decision to arrest, charge, detain and grant bail rested entirely with the police Officers acting in the exercise of their independent statutory powers. Indeed, the evidence elicited during cross-examination confirms that operational decisions remained solely within the discretion of the Police. Although the Claimant has sought to suggest that her questioning his right to drive himself was tantamount to her instructing and instigating the Police, the Court finds that this argument is

without merit as in the circumstances the Claimant having been taken into custody had no right to drive that she unlawfully sought to deprive him of and the final discretion as to how he was to be transported was ultimately that of the Police.

[100] In the circumstances, I am satisfied that the arrest and detention of the Claimant on December 27th, 2015 was supported by lawful authority and reasonable grounds and there is no evidence that either the 1st or 2nd Defendant unlawfully deprived him of his liberty. The Claimant has therefore failed to establish the essential ingredients of the tort of false imprisonment against either Defendant. Accordingly, the claim for false imprisonment against both the 1st and 2nd Defendants is dismissed.

[101] Before leaving this point, I have considered the role of the ‘arresting officers’ and whether it could reasonably be found that in taking the Claimant into custody they committed the tort of false imprisonment. Although the Court has already rejected that he was taken into custody on the 26th of December, it is noteworthy that, on his own account, he was allowed to make his way to the station, never placed in a lock up and allowed to leave as the officer was not on duty. Although he sought to say he was put in a dock like area, there is no information as to who placed him there or if he ever asked why he was being ‘taken’ to the station or placed in this area.

[102] In any event, the report had already been received and a police team dispatched on that very day for the lawful purpose of taking him into custody. As such, the officers doing so would have been duly authorized to act in this manner on the 26th of December. In relation to the 27th of December, the arresting officers would have been cloaked with the lawful authority to detain and transport him to the station as from the evidence of Corporals Brown and Griffiths a team had been dispatched to bring him in.

Issue 2 - Whether the 1st and 2nd Defendant are liable for malicious prosecution

Claimant's Submissions

[103] In arguments advanced in support of this head of damages, Mr. Cochrane acknowledged that by virtue of section 33 of the Constabulary Force Act, a Claimant must establish that the Defendant acted either maliciously or without reasonable and probable cause in order to prove this tort. Counsel relied on **Peter Flemming** *supra*, which recognizes that “**malice**” extends beyond spite or ill-will and includes any improper motive other than the bona fide desire to bring a criminal to justice. The decisions of **Shearer v Shields** (1914) A.C. 808 and **Brown v Hawkes** (1891) 2 Q.B. 77 were also cited, which make it clear that malice may be express or implied and may be inferred from the absence of reasonable and probable cause, or from circumstances suggesting an improper or indirect motive.

[104] Counsel argued that the evidence shows that the 2nd Defendant harboured animosity towards the Claimant, as her actions and statements evidenced a personal vendetta arising from disputes within the community, including issues relating to the Citizens' Association and personal grievances. It was submitted that the report made to the Police was false and motivated by a desire to “**get even**” with the Claimant, resulting in his arrest on consecutive days and subsequent prosecution.

[105] Counsel also commended to the Court the decision in **Martin v Watson** [1996] (H.L. (E) 74, as applied in **Warrick Lattibeaudiere v The Jamaica National Building Society Limited et al** [2010] JMCA Civ. 28, for the principle that a private complainant may be liable for malicious prosecution where they have falsely and maliciously set the law in motion by providing information that leads to prosecution, particularly where the facts are solely within their knowledge and no independent discretion is meaningfully exercised by the Police.

[106] Mr. Cochrane also relied on the decision of **Pandit Gaya Parshad Tewari v Sardar Bhagat Singh** (1908)24 T.L.R. 884, as cited in **Warrick Lattibeaudiere**

(*supra*), which distinguishes between merely providing information to the Police and actively misleading or influencing the Police to prosecute an innocent person. It was submitted that liability arises where a Complainant knowingly provides false information or instigates proceedings through improper means.

[107] The Court was asked to note the principles enunciated in **Warrick Lattibeaudiere** *supra*, wherein it was emphasized that a private citizen may be held liable where it is proven that they knowingly made a false report or created a situation that caused the Claimant to be arrested and charged. Counsel submitted that this principle applies to the 2nd Defendant, whose conduct went beyond mere reporting and amounted to actively instigating a malicious prosecution.

1st Defendant's Submissions

[108] Mrs. Jones submitted that, although the Claimant indicated an intention to pursue the claim for malicious prosecution principally against the 2nd Defendant, the Court should nonetheless consider the applicable legal principles, particularly as the evidence disclosed that the Police were responsible for laying the charge against the Claimant.

[109] Counsel cited the case of **Delroy Thompson v The Attorney General of Jamaica and Anor.** [2016] JMSC Civ. 78, which examined the established elements of malicious prosecution, namely; that the law was set in motion against the Claimant; that the proceedings terminated in his favour; that the prosecution was instituted without reasonable and probable cause or was actuated by malice; and that damage resulted. Mrs. Jones accepted that the Claimant had been charged and subsequently acquitted, thereby satisfying the first two elements. She maintained however that the principal issue for the Court was whether the prosecution had been instituted maliciously or without reasonable and probable cause.

[110] Counsel also referred to **Jerome Freckleton v The Attorney General of Jamaica and Anor.** [2018] JMSC Civ. 127, **Hicks v Faulkner** (1878) 8 QBD 167, and section 33 of the Constabulary Force Act and emphasized that the burden rested

on the Claimant to prove the absence of reasonable and probable cause. She submitted that reasonable and probable cause consists of an honest belief, founded on reasonable grounds, that the accused was probably guilty of the offence alleged. Mrs. Jones also cited the decisions, ***Rennon Walker v Deputy Superintendent Leon Clunis and Attorney General*** [2016] JMSC Civ. 84 and ***David Foster v The Attorney General of Jamaica and Anor.*** [2023] JMSC Civ. 83, where the Courts reaffirmed that an Investigating Officer need not determine guilt beyond reasonable doubt but must possess sufficient facts to form an honest and reasonable belief in the probable guilt of the accused.

[111] Counsel submitted that the circumstances confronting the Police were analogous to those considered in ***David Foster*** *supra* and ***Neville Williams v Janine Fender et al.*** (unreported Supreme Court Claim No. 2005HCV00126 delivered July 1, 2009), where the Courts found that the Investigating Officers had acted with reasonable and probable cause based on the material available at the time of arrest, notwithstanding subsequent discrepancies in the evidence. In the present matter, Cpl. Brown received the 2nd Defendant's complaint, observed visible injuries and obtained a Medical Report corroborating an assault occasioning bodily harm. Based on that information, directions were given for the Claimant to be arrested and charged.

[112] Counsel contended that it is evident that the Police acted upon an honestly held and objectively reasonable belief that the Claimant had committed the offence. She asserted that there was no evidence of malice on the part of the Investigating Officers and that any factual disputes arising thereafter were matters for determination by the Court hearing the criminal proceedings. Accordingly, the Claimant had failed to establish the absence of reasonable and probable cause or the presence of malice and his claim for malicious prosecution should not succeed.

2nd Defendant's Submission

[113] Mrs. Wallace Jackson submitted that the Claimant had failed to establish the essential elements of the tort of malicious prosecution which she agreed were aptly outlined in the decision of **David Foster** *supra*. Counsel submitted that while it was accepted that the criminal proceedings concluded in the Claimant's favour, the remaining elements were absent. The 2nd Defendant neither initiated nor controlled the prosecution but merely exercised her lawful right to report to the Police that she had been assaulted by the Claimant on December 24th, 2015.

[114] Mrs. Wallace Jackson relied on the evidence of Cpl Naron Brown, who observed swelling to the 2nd Defendant's wrist and a bloodshot thumbnail. Counsel submitted that based on those observations together with the report made, the complaint was credible and the 2nd Defendant was advised to seek medical attention.

[115] Counsel urged the Court to find that the decision to arrest and prosecute the Claimant was made independently by the Police and the Crown after their own assessment of the evidence and not at the direction or control of the 2nd Defendant. Mrs. Wallace Jackson contended that the 2nd Defendant acted in good faith, with reasonable and probable cause and without malice, having consistently maintained that she was assaulted by the Claimant.

[116] Counsel asked the Court to find that the Claimant had failed to adduce credible evidence demonstrating malice, improper motive, or abuse of the legal process by the 2nd Defendant. She argued that the subsequent acquittal of the Claimant did not retrospectively invalidate the legitimacy of the 2nd Defendant's complaint, nor render her liable for malicious prosecution merely because no conviction was ultimately secured.

ANALYSIS

[117] It is settled law that a Claimant seeking to establish the tort of malicious prosecution must satisfy four essential elements. These requirements were

succinctly articulated by Anderson J in **Delroy Thompson v The Attorney General of Jamaica and Ano.** *supra* and have been outlined in detail in the submissions of Mrs. Jones.

[118] In **Jerome Freckleton v The Attorney General of Jamaica and Ano.** [2018] JMSC Civ. 127, Brown J undertook a careful examination of the third element of the tort and stated at paragraphs 38, 39 and 40 as follows:

"[38] The case was fought on the third ingredient of the tort The claimant contended that the 2nd defendant did not have any reasonable or probable cause to prosecute him. Here the claimant must discharge the onerous burden, though on a balance of probability, of proving a negative. It is the claimant who must establish that the 2nd defendant had no reasonable and probable cause to commence the prosecution, not for the 2nd defendant to prove that he had. What does the law say is reasonable and probable cause?"

[39] The definition that has stood the test of time was pronounced by Hawkins J in his oft quoted judgment in Hicks v Faulkner (1878) 8 QBD 167, at page 171 and approved by the House of Lords in Herniman v Smith [1938] AC 305. Reasonable and probable cause was defined to be:

"an honest belief in the guilt of the accused based upon a full conviction, founded upon reasonable grounds, of the existence of a state of circumstances, which, assuming them to be true, would reasonably lead any ordinarily prudent and cautious man, placed in the position of the accuser, to the conclusion that the person charged was probably guilty of the crime imputed."

[40] For there to be reasonable and probable cause, the accuser must first be aware of the existence of a state of circumstances, which causes him to honestly believe that the accused is probably guilty of the crime he imputes. His awareness of the circumstances maybe the result of either his own perception or information received: Hicks v Faulkner, supra, at page 173. The litmus test of the reasonableness of the accuser's purported honestly held belief is the coincidence of that belief with that of the ordinarily prudent and cautious man." (Emphasis supplied)

[119] It is uncontroversial that **section 33 of the Constabulary Force Act**, is relevant to any consideration of this tort and states as follows:

"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 nonsuited or a verdict shall be given for the defendant."

[120] The relationship between **section 33 of the Constabulary Force Act** and the tort of malicious prosecution was considered by the Court in ***Rennon Walker v Deputy Superintendent Leon Clunis and the Attorney General*** *supra*. At paragraphs 17 and 18, the Court addressed the application of that statutory provision in the context of a claim for malicious prosecution in the following terms:

"The effect of Section 33 of the Constabulary Force Act is that the Claimant must prove that the prosecution was either malicious or without reasonable or probable cause. While not required to believe that the person is guilty, an officer must have an honest belief founded on reasonable grounds that the person charged may be guilty of the offence charged. There must be actual belief by the officer and that belief must be reasonable. However, the objective component of the test cannot be ignored. see Greg Martin v Detective Sergeant Halliman and the Attorney General of Jamaica Claim No 2007 HCV 01096 Judgment of Sykes J delivered 19 September 2011. (Emphasis supplied)"

[121] In ***David Foster v The Attorney General of Jamaica and Another*** *supra*, the Learned Judge undertook a careful analysis of the decision in ***Neville Williams v Janine Fender et al*** (unreported Supreme Court Claim No. 2005 HCV 00126 delivered July 1, 2009), a case in which a claim for malicious prosecution arising from an allegation of rape was unsuccessful against the complainant. In that case, the Court carefully scrutinized the information available to the Police at the material time and concluded that, notwithstanding certain perceived irregularities in the investigation and handling of the matter, there was no cogent evidence from which malice could be inferred.

[122] In both ***David Foster v The Attorney General of Jamaica and Another*** and ***Neville Williams v Janine Fender et al***, the Court concluded that, notwithstanding certain discrepancies and perceived irregularities in the evidence, the Prosecuting Officer possessed reasonable and probable cause to initiate criminal proceedings based on the information available at the material time. In ***Foster***, that information

included Witness Statements and medical evidence which lent support to the Complainant's allegation and provided an objective basis upon which the prosecution could properly be commenced. The position of the 1st Defendant in the instant case is comparable to that of the Officer in **Foster** as the actions of the Officers were thoroughly in line with standard policing.

[123] In addressing the Claimant's allegation of malicious prosecution against the 2nd Defendant, the Court notes that unlike the tort of false imprisonment, which concerns the lawfulness of the Claimant's detention, the gravamen of a claim for malicious prosecution lies in the alleged abuse of the criminal process. The tort is designed to protect individuals from being subjected to criminal proceedings instituted without reasonable and probable cause and motivated by malice.

[124] It is common ground that criminal proceedings were instituted against the Claimant and those proceedings terminated in his favour when he was acquitted. The central questions for determination are therefore whether the prosecution was commenced without reasonable and probable cause and whether the 2nd Defendant acted maliciously in setting the law in motion against the Claimant.

[125] In addressing those questions, the Court is mindful that an acquittal, by itself, is insufficient to establish malicious prosecution. The fact that a Criminal Court was not satisfied of guilt beyond a reasonable doubt does not automatically mean that the Complainant lacked reasonable grounds to believe that an offence had been committed. The Court must therefore examine the information available to the 2nd Defendant at the material time and determine whether the prosecution was founded upon an honest and reasonable belief in the Claimant's probable guilt, or whether it was actuated by an improper motive.

[126] This analysis requires a careful examination of the conduct of the 2nd Defendant and that of the Police Officers, despite the fact the Claimant is alleging malicious prosecution by the 2nd Defendant only. Any determination of whether the 2nd Defendant maliciously set the law in motion necessarily requires consideration of

the actions, knowledge, and decision-making of the Police Officers who investigated the complaint, arrested the Claimant and ultimately instituted the criminal proceedings. In relation to the 1st Defendant, the Court must determine whether the Investigating Officers acted upon information capable of grounding reasonable and probable cause. As it relates to the 2nd Defendant, the Court must consider whether her complaint represented a genuine report of an alleged assault or whether, as the Claimant contends, it was a deliberate fabrication motivated by personal animosity and intended to procure his prosecution.

[127] As it relates to the claim against the 1st Defendant, I find there is no evidential basis upon which malice could be attributed to the Police Officers involved in the investigation and arrest of the Claimant. During cross-examination, the Claimant candidly accepted that he had no prior relationship with the Officers and could identify no reason why they would harbour any ill will, spite, or improper motive towards him. This concession is significant, as malice cannot be presumed and must be established by cogent evidence.

[128] Having examined the evidence, the Court finds that the Police acted upon a formal complaint made by the 2nd Defendant, which was corroborated by contemporaneous observations of physical injuries made by Cpl. Naron Brown and medical evidence. The Officers therefore possessed objective material capable of supporting an honest belief that an offence had been committed. In these circumstances, the decision to arrest and charge the Claimant cannot be characterized as arbitrary, malicious, or lacking in reasonable and probable cause.

[129] In addressing the liability of the 2nd Defendant, the Claimant contends that the complaint was deliberately fabricated as part of a long-standing dispute involving the operation of the Community Centre and other disagreements. In essence, the 2nd Defendant knowingly made a false allegation against the Claimant in order to procure his arrest and prosecution.

[130] I have carefully considered the competing versions of events surrounding the incident of December 24th, 2015. While it is evident that there was pre-existing tension between the parties, the existence of animosity alone does not establish that the complaint was fabricated. The Court must examine whether the surrounding circumstances support the allegation that the report was knowingly false.

[131] In this regard, I had significant difficulty with the Claimant's account. He accepted that he was upset when he approached the 2nd Defendant and that there was a confrontation concerning her recording activities. Although he denied making physical contact, his explanation as to how her phone suddenly fell from her hand does not satisfactorily account for the injuries observed by Cpl. Naron Brown shortly after the incident, namely the swelling to the wrist and the bloodshot thumbnail. Those injuries were independently documented and confirmed by medical evidence which also indicated that they were consistent with having been caused by blunt force. This medical opinion is entirely in keeping with the 2nd Defendant's account that the Claimant grabbed her phone and tried to wrestle it from her grasp. Had the incident occurred as the Claimant stated that she had placed her hand through the chicken wire to record him and was pulling back her hand when the phone fell, one would have expected scratches and not swelling and a bloodshot injury.

[132] While the evidence given before the Parish Judge may not have been sufficient to satisfy the criminal standard of proof beyond a reasonable doubt, it lends substantial support to the 'genuineness' of her complaint and provides a basis on which she could properly form the view that an assault had been committed against her and should be reported.

[133] The fact that she sought medical attention the same day and reported the matter to the Police shortly after the incident was also significant. In the circumstances, the Court is satisfied that her conduct was consistent with that of a person who believed she had been assaulted and was seeking official intervention. There is no

evidence that she manufactured evidence, procured false witnesses, misled the Police, or otherwise manipulated the investigation and prosecution of his matter and the fact that there had been pre-existing tension between them did not undermine the evidence of an assault.

[134] Having considered the totality of the evidence, I am unable to conclude that the 2nd Defendant knowingly made a false complaint or acted from any improper motive. I am satisfied that in making her report it was her desire to inform the police of what she believed to be a criminal assault upon her person. Consequently, the essential elements of malice and absence of reasonable and probable cause have not been established and the claim for malicious prosecution against the 2nd Defendant must fail.

Issue 3 - Whether the Claimant was defamed by the 2nd Defendant

Claimant's Submissions

[135] Mr. Cochrane submitted that the Claimant has a cause of action pursuant to **section 8 of the *Defamation Act, 2013***, which provides that a person has a single cause of action for defamation in relation to the publication of defamatory matter, even where multiple imputations are contained within the same publication. Counsel further submitted that section 9 of the Act makes it clear that defamation is actionable without proof of special damage although this is subject to the statutory defences including truth, fair comment, innocent dissemination and qualified privilege.

[136] Counsel contended that the 2nd Defendant's defence amounted to a bare denial of the alleged defamatory statement, her Witness Statement is silent on the issue and contains no apology or retraction. Mr. Cochrane contended that paragraph 26 of her Defence wherein she described the Claimant as a liar and asserts that he should be locked up for assaulting her actually supports his case of defamation.

[137] Counsel asked the Court to find that the deterioration of the relationship between the Parties provided the basis for her subsequent defamatory remarks.

2nd Defendant's Submissions

[138] In rebutting the Claimant's assertions, Mrs. Wallace Jackson submitted that the Claimant had failed to establish the essential elements of defamation on a balance of probabilities. The decision of ***Terrence Williams v Det. Sgt. Patrae Rowe, Tameca Thomas*** [2024] JMSC Civ. 92, was cited in support of this point wherein the Court affirmed that a Claimant must prove that the defamatory words were uttered by the Defendant, referred to the Claimant, and were published to at least one third party. Counsel emphasized that these requirements must be established by credible and cogent evidence and cannot be inferred from mere allegation.

[139] Mrs. Wallace Jackson argued that the 2nd Defendant has consistently denied uttering the words attributed to her at the Spanish Town Police Station. She asserted that the Claimant failed to provide sufficient contextual details surrounding the alleged statements, including the circumstances in which they were allegedly made and the Court has been deprived of the necessary framework to determine whether the words were defamatory in meaning, or mere expressions made during a heated interaction.

[140] Counsel submitted that it was significant that the Claimant brought no independent or corroborative evidence that the statements were heard by any third party. She asked the Court to consider the decision of ***Rennon Walker*** *supra* which emphasized that publication is an essential element of the tort and proof is required that the alleged defamatory communication was conveyed to and understood by a third party. Counsel argued that the Claimant failed to identify any witness who heard the statements and understood them to bear a defamatory meaning.

[141] Mrs. Wallace Jackson submitted that taking these factors into account, the Claimant had failed to discharge both the evidential and legal burden in order to sustain a claim in defamation. Counsel urged the Court to treat the allegations with

caution, particularly as they rested solely on the Claimant's uncorroborated assertions and it would be unsafe to impose liability in the absence of reliable and independent supporting evidence.

[142] Mrs. Wallace Jackson posited that the Claimant failed to adduce credible or corroborative evidence that the alleged defamatory words were spoken or published to any third party. She described the allegations as vague, unsupported and insufficient to satisfy the legal requirements of publication and reputational harm and urged the Court to dismiss the claims against the 2nd Defendant in their entirety, with costs, on the basis that the evidence disclosed no actionable wrongdoing on her part.

ANALYSIS

[143] The tort of defamation is governed by the Defamation Act (as amended in) 2013 and is concerned with protecting reputations. A defamatory statement is one that is '*calculated to injure the reputation of another, by exposing them to hatred, contempt or ridicule*' (Parke B in **Parmiter v Coupland** (1840) 6 M & W 105) and which tends to '*lower the claimant in the estimation of right-thinking members of society.*' (Lord Atkins in **Sims v Stretch** [1936] 2 All ER 1237 (HL)). The essence of the tort is the communication of a disparaging statement about the Claimant to a third party.

[144] In order to succeed in a claim for defamation, a Claimant must satisfy the Court that:

- a. the words/statement must be defamatory;
- b. the words/statement must be about the Claimant; and
- c. the words/statement must be published.

[145] The term "**defamatory matter**" is defined as any matter published by a person that may be, or is alleged to be, defamatory of another person. Section 2 of the Defamation Act states that the term "matter" includes: -

“2. “matter” includes –

(a) an article, report, advertisement or other thing communicated by means of a newspaper, magazine or other periodical;

(b) a programme, report, advertisement or other thing communicated by means of television, radio, the Internet or any other form of electronic communication;

(c) a letter, note or other writing;

(d) a picture or visual image;

(e) a word, gesture or oral utterance; and

(f) any other method of communicating information.”

[146] The Act defines the term **“publisher”** as: -

“publisher” means a person who has published a matter that is, may be, or is alleged to be defamatory of another person and “publish” and “publication”, in relation to a statement, subject to the provisions of this Act, have the meaning they have for the purposes of the law relating to the tort of defamation.”

[147] In relation to the role of the Courts in defamation cases, the authority of **Ramsahoye v Peter Taylor & Co Ltd. [1964] LRBG 329** is instructive, in that matter, the Court placed particular emphasis on the dicta of Camacho CJ in **Woolford v Bishop [1940] LRGB 93**, where he stated:

“On this aspect of the case, the single duty which devolves on this court in its dual role is to determine whether the words are capable of a defamatory meaning and given such capability, whether the words are in fact libellous of the [claimant]. If the court decides the first question in favour of the [claimant], the court must then determine whether an ordinary, intelligent and unbiased person reading the words would understand them as terms of disparagement, and an allegation of dishonest and dishonourable conduct. The court will not be astute to find subtle interpretations for plain words of obvious and invidious import.”

[148] The test to be applied in determining the meaning of the words is what the words would convey to the ordinary man. Lord Reid in **Lewis v Daily Telegraph Ltd [1964] A.C. 234, 258 (HL)** explained it clearly when he stated:

“There is no doubt that in actions for libel the question is what the words would convey to the ordinary man: it is not one of construction in the legal

sense. The ordinary man does not live in an ivory tower and he is not inhibited by knowledge of the rules of construction. So he can and does read between the lines in light of his general knowledge and experience in worldly affairs. I leave aside questions of innuendo where the reader has some special knowledge which might lead him to attribute a meaning to the words not apparent to those who do not have the knowledge."

[149] In **Morgan v Odhams Press Ltd** [1971] 2 All ER 1156, Lord Reid expanded on his earlier remarks as follows:

"If we are to follow Lewis' case and take the ordinary man as our guide, then we must accept a certain amount of loose thinking. The ordinary reader does not formulate reasons in his own mind; he gets a general impression and one can expect him to look again before coming to a conclusion and acting on it. But formulated reasons are very often an afterthought."

"...I think it sufficient to put the test in this way. Ordinary men and women have different temperaments and outlooks. Some are unusually suspicious and some are unusually naïve. One must try to envisage people between these two extremes and see what is the most damaging meaning they would put on the words in question."

[150] In the case at bar, the Claimant contends that the 2nd Defendant, in the presence of Police Officers and other persons at the Spanish Town Police Station, referred to him as follows; **'You are a liar and thief and you are to be locked up, the community service is to be moved and you removed'** thereby injuring his reputation as a Justice of the Peace and Businessman. The 2nd Defendant denies making the statements alleged, save for acknowledging that she referred to the Claimant as a **"liar"** in the context of disputing his denial of the assault.

[151] Although the tort of defamation seeks to ensure the protection of an individual's reputation from unjustified attack, the burden rests squarely upon the Claimant to establish, on a balance of probabilities, that the defamatory words complained of were in fact spoken, that they referred to him and that they were published to at least one third party.

[152] The issue for determination is a narrow but important one, i.e., whether the Claimant has adduced sufficient and reliable evidence to establish that the 2nd Defendant uttered the words alleged and that those words were communicated to

third parties in a manner capable of lowering the Claimant in the estimation of right-thinking members of society.

[153] Essentially, the resolution of this issue depends largely upon an assessment of the credibility and reliability of the witnesses, the availability of corroborative evidence and whether the Claimant has discharged the evidential burden required to sustain a claim in defamation.

[154] The Claimant's case is that the 2nd Defendant uttered these words to him in the presence of Police Officers and members of the public at the Spanish Town Police Station. The evidence on this issue is notably sparse. The 2nd Defendant candidly admitted that during the course of the disagreement at the Police Station, she referred to the Claimant as a *"liar"* in response to his denial of the alleged assault. However, she unequivocally denied ever calling him a *"thief."* While there is nothing in law preventing a Court from accepting the testimony of a single witness, the Court must nonetheless assess such evidence against the surrounding circumstances and the availability of corroborative material.

[155] In this regard, the Claimant testified that Mr. Gary Bourne witnessed the alleged utterances. However, Mr. Bourne was not called to give evidence and no Witness Statement from him was placed before the Court. Of equal significance is the absence of evidence from the Claimant's wife, whom he alleged was present and would also have witnessed the incident. Given the Claimant's burden to prove his case for defamation, it was noteworthy that no explanation was offered for the failure to call either witness. While the Court draws no adverse inference merely because a witness is not called, the absence of readily available corroborative evidence and how it impacted their opinion of the Claimant inevitably affects the weight to be attached to the Claimant's account.

[156] Apart from the questions surrounding whether there had in fact been any publication of the words, the Claimant's own evidence introduced an internal conflict and raised questions as to his reliability on this point. This was seen in his

assertion for the first time during cross-examination that the 2nd Defendant had uttered these words or a version of them at his gate as well. He conceded that this did not appear in his Witness Statement and an examination of his Particulars of Claim confirm that it does not appear there either. These were factors which I find greatly undermined his reliability in this regard.

[157] Even if the Court accepts that the word **"liar"** was used by the 2nd Defendant, the context in which it was spoken is important. The parties were at a Police Station discussing a complaint of assault and the 2nd Defendant contends that the remark was made in the course of a dispute as to whether the alleged incident had occurred. Unlike the Claimant whose evidence changed during the course of the trial, the 2nd Defendant was unshakeable in her account on this point. While she appeared frustrated with the questions and suggestions, I was impressed by the fact that she did not seek to embellish or amend her responses but was consistent as to when, where and why the word **'liar'** would have been used. I am satisfied that the word appears to have been used as an expression of disagreement with the Claimant's version of events rather than as a deliberate attack upon his reputation and viewed in its proper context, does not give rise to an action for defamation.

[158] In respect of the allegation that the 2nd Defendant called the Claimant a **"thief,"** the very context of the Claimant's evidence called into question whether that word had been uttered at all. While it is entirely possible that he had been dubbed a **"liar"** for his denial of the abuse, I did not believe his assertion that he was called a **"thief"** as well. This was a situation in which, by his own account, the 2nd Defendant had been successful in having him arrested for assaulting her, any objective to belittle him in the eyes of onlookers would have been achieved by this fact. As his account was tested on this point, he was visibly annoyed and espoused the belief that the 2nd Defendant had sought to embarrass him. As I assessed his demeanour, I was left with questions whether this assertion was added to his allegation against the 2nd Defendant in order to have his revenge.

[159] In light of these concerns, I have significant doubts as to the reliability of the Claimant's account as to whether this word was actually spoken and I find that the Claimant has failed to establish on a balance of probabilities that they ever were. Accordingly, the claim for defamation against the 2nd Defendant is dismissed.

Issue 4 - If the Claimant is successful on Issues 1 to 3, the quantum of damages, to which he would be entitled.

Analysis

[160] While careful consideration was given to all submissions and authorities relied on by the Parties in the course of arriving at my decision, in light of my finding that the Claimant has failed to establish liability against either Defendant in respect of false imprisonment, malicious prosecution, and defamation, the issue of damages does not arise for my determination. An award of damages is contingent upon the successful establishment of a cause of action. In the absence of liability, there is no legal basis upon which compensatory, aggravated, exemplary, or special damages may be awarded.

[161] Accordingly, the Claimant is not entitled to any award of damages, whether general, aggravated, exemplary or special.

DISPOSITION

[162] For the foregoing reasons, judgment is entered for the 1st and 2nd Defendants. The Court orders as follows:

1. The claim against the 1st Defendant is dismissed.
2. The claim against the 2nd Defendant is dismissed.
3. Costs are awarded to the 1st and 2nd Defendants against the Claimant, to be taxed if not agreed.