[2026] JMSC Civ 30

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2017HCV02062

BETWEEN	**JERMAINE LINDSAY**	**CLAIMANT**
AND	**THE ATTORNEY GENERAL**	**DEFENDANT**

IN OPEN COURT

Mr Raymond Samuels instructed by Samuels Samuels for the Claimant

Ms Nicola Richards instructed by the Director of State Proceedings for the Defendant

Heard: April 28, 29, 2025 & March 9, 2026

CONSTITUTIONAL RELIEF – MALICIOUS PROSECUTION – CHAIN OF CUSTODY – NO CASE SUBMISSION UPHELD – PROSECUTION'S CASE MADE OUT ON EVIDENCE – PROPER CASE TO LAY BEFORE THE COURT DESPITE FINDING OF PARISH COURT

WINT-BLAIR J

[1] The claimant seeks damages from the defendant for malicious prosecution and for breaches of his constitutional rights arising from his being shot, detained and prosecuted for the offence of unlawful wounding, all of which were carried out by police officers acting as agents of the Crown.

[2] At the commencement of the trial, counsel for the defendant raised the preliminary point that the claim for assault and false imprisonment was statute-barred. Upon review of the authorities, counsel for the claimant agreed with counsel for the

defendant and conceded, as a consequence, those claims were dismissed. The Court proceeded to try the remainder of the amended claim on the torts of malicious prosecution and the alleged constitutional breaches.

[3] The claimant is Mr Jermaine Lindsay, a labourer and farmer. He testified that on or about February 15, 2010, at approximately 1:00 p.m., he took a shortcut from his worksite to Miami Lane, St Thomas, to buy lunch. While standing at a shop, a police vehicle arrived, two uniformed officers alighted, one of whom accosted him. That unknown male officer did not introduce himself and grabbed him by the collar, ripping his shirt without explanation. Mr Lindsay stated that he became frightened because he had done nothing to warrant such treatment and ran, with both officers in pursuit.

[4] He leapt over a barbed-wire fence. One officer attempted to do the same and was injured by the barbed wire. After some time, having lost his shoes, he stopped running. The police caught up with him and drew their guns. He pleaded with them not to shoot. He was shot in the right leg, causing him extreme pain. He testified that he had been apprehended and posed no threat at the time he was shot. The officer pressed the firearm against his chest in an attempt to shoot him again, but the bullet missed when he took evasive action.

[5] He was placed in a police vehicle with a piece of cardboard under his bleeding leg and transported to the Princess Margaret Hospital in St Thomas. Upon arrival, one of the officers threatened to take him to jail without treatment, which made him fearful. He was nevertheless treated for the gunshot wound. He was later visited by a female police officer who introduced herself and cautioned him. He was charged with unlawful wounding and handcuffed to the hospital bed. He was placed under police guard for seven days.

[6] On February 22, 2010, he was taken to the Kingston Public Hospital for further treatment. A plaster cast was applied to his right leg, and he purchased crutches as advised. He was returned to Princess Margaret Hospital under guard until his

discharge on February 24, 2010 and released to attend court in Yallahs, St Thomas on March 3, 2010. He testified that he remained in police custody for nine days and felt embarrassed, humiliated and depressed.

[7] He attended court from March 3, 2010, until January 23, 2015, when the matter was dismissed following a no-case submission. He stated that during the proceedings a knife said to have been used to wound Constable Glenville Henry was tested for DNA and no evidence of the claimant's blood was found. He maintained that the chain of custody of the knife was not properly kept and that there was no medical evidence of the alleged injury to the officer. Despite this, the prosecution persisted.

[8] He gave evidence that as a result of the gunshot wound, he sustained a comminuted fracture of the tibia and fibula, fracture secondary to gunshot injury, leg shortening of two centimetres on the right side, continued pain in the right ankle, and a permanent impairment assessed at five percent whole person. He was unable to return to work for two years and had been earning approximately $6,000 per week. He claimed special damages including loss of income, transportation expenses, medical reports, consultation fees, X-ray costs, legal expenses and the cost of a shoe raise.

[9] Following the incident, he experienced fear, anxiety, humiliation and damage to his reputation within the community. He continues to experience persistent pain and stiffness in his right leg and is unable to perform heavy site work as before lifting and moving material.

[10] Detective Corporal Nordia Rance testified that on or about February 15, 2010, she was stationed at Morant Bay CIB. She received information from her supervisor and was taken to a location in Miami Lane. She interviewed several officers, including Constable Glenville Henry, who reported that he had been unlawfully wounded. She observed a wound to his right elbow that appeared to be dressed. Based on his report and her observation of his elbow, she commenced

investigations into a case of unlawful wounding against Jermaine Lindsay, also known as Claude Parry and Singing Melody.

[11] She received a nine-inch black-handled knife with a silver blade from Detective Constable Palmer, which she sealed and labelled. She visited Princess Margaret Hospital, identified herself to the claimant, cautioned and informed him that he was a suspect. On February 17, 2010, she charged the claimant with unlawful wounding. He made no comment.

[12] She transported the firearms of the officers involved to the Government Forensic Laboratory and later obtained forensic certificates. In January 2014, a DNA reference sample was collected from Constable Glenville Henry. She received certificates, including FL#91/2014, reference 619/2010/620/2010, and handed them to the Clerk of Court. She was later advised that the matter was dismissed on January 23, 2015.

[13] In cross-examination, she admitted that she did not witness the incident, did not see the claimant with a knife, did not collect fingerprints or a DNA sample from the claimant, did not obtain a medical report in respect of the complainant's injury before laying the charge and did not investigate the claimant's denial that he was in possession of a knife or that he had attacked the officer. She maintained that she acted on the statement of Constable Henry and her observation of his injury and that she had sufficient grounds to charge him.

[14] In submissions, which without intending any disrespect I will not reproduce, counsel for the claimant relied on **Maharaj v Attorney General**,[1] **Attorney General v Ramanoop**,[2] **Gairy v Attorney General of Grenada,**[3] **Talbert Smith v The Attorney General of Jamaica West Indies Alumina Company,**[4]

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[1] [2022] UKPC 26
[2] [2005] UKPC 15
[3] [2002] UKPC 27
[4] [2024] JMCA Civ 39

Roshaine Clarke v Attorney General of Jamaica,[5] **Merson v Cartwright and the Attorney General of the Bahamas**,[6] **Patrick Whitely v The Attorney General**,[7] **Glinski v McIver**,[8] **Montique, Charles v Constable Audrey Smith, Attorney General and Detective Constable Tashana Hinds**,[9] **Roderick Cunningham v The Attorney General for Jamaica**,[10] **Attorney General of Jamaica v Peter Bandoo**[11] and **John Crossfield v Attorney General of Jamaica and Corporal Ethel Hamilton**.[12]

[15] Counsel for the defendant relied on **Delroy Thompson v The Attorney General of Jamaica and Another**,[13] **Denese Keane-Madden v The Attorney General of Jamaica and Another**,[14] **Glinski v McIver,[15] Attorney General of Jamaica v Gary Hemans**,[16] **Keith Bent v The Attorney General of Jamaica**,[17] **Attorney-General of Trinidad and Tobago v Ramanoop**,[18] **Andre v Dre La Motta v Radio Jamaica Limited and RadioJamaicanewsonline.com**[19] and **Rohan Fisher v Attorney General of Jamaica and Assets Recovery**.[20]

[16] Issues

i. Whether there was reasonable and probable cause to prosecute the claimant.

ii. Whether the prosecution was actuated by malice.

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[5] [2022] JMFC Full 3
[6] [2005] UKPC 38
[7] [2016] JMFC Full 6
[8] [1962] AC 726
[9] [2024] JMSC Civ. 117
[10] [2014] JMSC Civ. 30
[11] [2010] JMCA Civ
[12] [2016] JMCA Civ 40
[13] [2016] JMSC Civ. 78
[14] [2014] JMSC Civ 23
[15] [1962] AC 726
[16] [2015] JMCA Civ 63
[17] Suit Nos 1998/B 330, 304 and 385 a decision of the Honourable Brooks, J. (as he then was) made on December 19, 2006
[18] [2005] UKPC 15
[19] [2022] JMSC Civ 134
[20] [2021] JMFC Full 04

iii. Whether the defendant is liable to the claimant in damages.

iv. Whether the claimant is entitled to constitutional relief

v. If liability is established against the defendants, what is the quantum of damages, if any, to which the claimant is entitled.

[17] 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.

[18] It is undisputed that the prosecution was initiated on February 17, 2020 and terminated in favour of the claimant on January 23, 2015, following a no case submission.

[19] A Parish Judge is guided by the Practice Note issued by the Divisional Court [1962] 1 All ER 448, which clearly sets out when a submission of "no case" may properly be upheld, namely.

> *"(a)* ***when there has been no evidence to prove an essential element of the alleged offence****; or (b) when the evidence adduced by the prosecution has been so discredited as a result of cross-examination, or is so manifestly unreliable, that no reasonable tribunal could safely convict on it."*

Findings of Fact

[20] 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, which will underpin the application of the law. The resolution of the factual disputes depends entirely on the credibility of the witnesses. Having observed the witnesses and considered the evidence, I make the following findings:

1) There is no dispute that the claimant was shot in the leg by a policeman during an incident on February 15, 2010.

2) The firearms of the officers involved were seized for testing.

3) I accept the medical evidence upon which the claimant relies as establishing the nature and extent of the injury the claimant received in the incident.

4) At the time the charge was laid, no medical certificate had been obtained, and none was placed before the trial court.

5) The statement of Cst Henry's statement contained an insufficiency of evidence to constitute his receipt of a wound, i.e., one which broke the continuity of the skin.

6) The evidence that a wound within the meaning of the law could be inferred as having been inflicted came from the evidence presented by the prosecution:

    a) The statement of Cst Henry said the claimant stabbed him.

    b) The exclamation in Constable Henry's statement to Constable Thomas that the claimant nearly killed him.

    c) The statement of Dist. Cst Morris, who said he saw the claimant stab Cst Henry and that the latter's elbow was bleeding.

    d) The investigating officer observed in her statement that Cst Henry wore a 'dressing' on his elbow.

    e) A knife said to have been recovered from the accused claimant was taken to the Forensic Laboratory ("the Lab") by Det Cpl N. A. Gordon. The agreed Forensic Certificate, FL #620/2010, states that on February 23, 2010 the Lab received from the said officer "one sealed envelope marked 'C' containing one black synthetic handle knife allegedly taken from accused Claude Parry".

f) The DNA analysis of the swabs purportedly taken from the blood on the knife tested positive for the presence of human blood in Forensic certificate FL#620/2010. The Forensic certificate stated that DNA analysis was pending a reference sample from the complainant.

g) The knife remained at the Forensic Laboratory.

h) The buccal swabs taken from the complainant, Cst Henry, were not taken to the Forensic Laboratory until on or about the end of 2013, as the DNA typing results were completed on January 21, 2014.

i) The buccal swabs taken from Cst Henry and transported to the Forensic Laboratory were compared with the swabs taken from the knife submitted on February 23, 2010.

j) The conclusion of the analyst was that the blood sample found on the swab matched the DNA profile of Cst Henry, who could not be excluded as the source of the blood on the swabs taken from the knife. The relevant DNA case summary was dated January 21, 2014

7) This was evidence which required the accused to be called upon to answer, as there was a prima facie case made out on the evidence despite the absence of a medical certificate.

8) The prosecution continued for five years. The defence was not called upon to answer at trial.

9) The indictment in evidence shows that the claimant was arraigned on September 17, 2013, with adjournments to October 15, November 12, December 10, 2013 and January 21, 2014 for the prosecution's case. The complainant and investigating officer were both bound over on December 9, 2011 and again on June 12, 2012.

10) The claimant was discharged at the no case stage, and the defendant cannot speak to the basis for this decision. The claimant was acquitted; this is a determination in his favour, and he has no criminal record.

Discussion

Whether the defendants are liable for malicious prosecution

[21] It is trite that in an action of malicious prosecution, the plaintiff must show first that he was prosecuted by the defendant, that is to say, that the law was set in motion against him on a criminal charge; secondly, that the prosecution was determined in his favour; thirdly, that it was without reasonable and probable cause; fourthly, that the prosecutor was actuated by malice (see **Wills v Voisin**).[21]

[22] 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 (see **Leon Stephenson v Attorney General**).[22]

[23] The Privy Council in **Trevor Williamson v the Attorney General of Trinidad and Tobago**,[23] set out the law on 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*

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[21] (1963) 6 WIR 50
[22] [2025] JMSC Civ 114
[23] [2014] UKPC 29

launch of the proceedings. This requires the proof of a negative proposition, normally among the most difficult of evidential requirements. Secondly, malice must be established. A good working definition of what is required for proof of malice in the criminal context is to 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."

[24] 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.

[25] In the Privy Council case of **Kevin Stuart v Attorney General of Trinidad and Tobago**,[24] the Board considered the correct test of the police officer's state of mind in a claim for malicious prosecution. Their Lordships made the following observation at paragraph 26:

"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

[24] [2022] UKPC 53

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

[26] The essential feature of malicious prosecution is the abuse of the court's process. The claimant has submitted without any supporting evidence to demonstrate that an improper and wrongful motive was the driving force behind the prosecution.

[27] His assertions constitute insufficient material from which to infer that the prosecution intended to manipulate the legal system or to prosecute the claimant for an extraneous and improper motive. The case of **Williamson** holds that the prosecutor's motives must be shown to be other than bringing the person to justice. The prosecutor's motives are not in evidence; therefore, no assessment can be made. Malice has not been proven.

Whether there was reasonable and probable cause

[28] In order to establish reasonable and probable cause, the individual bringing a prosecution, whether a police officer or a private citizen, must be satisfied that there is a proper case to lay before the court.

[29] In **Gervan Bennett v Sergeant Devon Grant and The Attorney General**,[25] 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**).[26]

[30] The court recognises that, for a police officer to have reasonable and probable cause, there is no requirement that the evidence be such as would necessarily secure a conviction, or that the police officer satisfy himself that there is no valid defence to the charges (see **Glinski v McIver**).[27] 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.

[31] I accept that while Det. Cpl Rance may have subjectively believed that she had a proper case to lay before the court, as the statements in her case file demonstrated at the time of charging the claimant that:

1) There was no fabrication of an incident involving the claimant, as he had been shot.

2) The firearms of the officers involved were taken for testing.

3) She observed that the officer who complained wore a 'dressing' on his elbow.

4) The statements taken from the officers involved suggested that Cst Henry was stabbed with a knife wielded by the claimant. In particular, the statement of Dist. Cst. Morris said he observed the attack by the claimant with the knife on Cst Henry, which led to a wound that bled.

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[25] 2007 HCV 02493 (delivered on May 16, 2011)
[26] HCV 00126/2005, (delivered on July 1, 2009)
[27] (1962) AC 726 at 742-745 and 769)

5) The knife was recovered and sent for forensic testing.

[32] The offence of unlawful wounding requires that the prosecution prove:

1) That the complainant suffered a wound which bled.

2) That the claimant did the act which caused the injury,

3) He was acting consciously, knew what he was doing and realised that he had no lawful justification for the act.

4) No specific intention need be proved by the prosecution on a charge of unlawful wounding.

[33] The claimant submitted that at the time of the charge, there was no medical certificate, no evidence of a wound, no forensic evidence to tie the claimant to the weapon, no recovery of a weapon from the claimant, the knife did not bear the fingerprints of the claimant as it was never fingerprinted, and that the investigating officer had not made any enquiries in the community or spoken with anyone at the shop that day. Further, there was the unexplained four-year delay in taking the complainant's sample for comparison with the blood found by the Forensic Lab to be on the purported weapon used. Additionally, there was a broken chain of custody, which means the offence could not have been proven.

[34] The defendant argued that the first two elements of the malicious prosecution test were satisfied. However, the claimant did not prove that the law was initiated without reasonable and/or probable cause, nor that the prosecutor acted with malice once the law was set in motion. The defendant contended that the claimant was shot in self-defence of Cst Henry, whom the claimant had stabbed. The particulars of malicious prosecution claimed raise questions for the court to decide, not the police, whose role was simply to present a proper case before the court.

[35] In looking at the evidence, the purported recovery of a knife from the claimant is important because the officers' accounts state that the claimant had a bulge in his waist, which is what drew their attention to him while he was walking. This formed the basis of their reasonable suspicion.

[36] They did not lose sight of him during the chase, and he allegedly used the knife recovered to inflict the wound on Cst Henry. Those same officers apprehended the claimant. The recovered knife was given to Cst Thomas, who was a part of the police party, and it was he who had placed the claimant under arrest.

[37] The investigating officer, Cst Rance, said in her statement that she sealed and labelled the said knife she received from Det Cst Palmer of the Technical Services Division. Cst Rance also gave it to Det Cpl Gordon to take to the Forensic Laboratory, who did so.

[38] The knife taken to the Lab by Det Cpl N. A. Gordon was described by the analyst as a black synthetic handle steak knife with a blade measuring approximately 14.5 cm and marked “JAPAN” received with the blade broken and bent at the tip.

[39] The said knife allegedly taken from claimant satisfies the definition of a dagger being 6.5 cm longer than the weapon defined as a dagger in the Offensive Weapons Prohibition Act:

> *"dagger" means a sharp pointed stabbing instrument, ordinarily capable of being concealed on the person and having –*
>
> > *(a)* ***a flat blade, exceeding eight centimetres in length****, with cutting edges (whether or not serrated) along the length of both sides;*
> >
> > *(b) a needle-like blade, the cross-section of which is elliptical or has three or more sides, but does not include instruments such as swords or and bayonets;”*

[40] The allegation of a broken chain of custody is immaterial in this context. The inconsistencies related to the chain of custody are also immaterial. According to Romilly J, at para 65 in **R v Larsen**[28]:

> *"… If there is a gap in continuity and if the trier of fact is not satisfied beyond a reasonable doubt that substances taken from the accused were the substances analysed, the evidence may still be admissible but the weight given to the exhibit and the evidence would be affected ..."*

[41] In **Easton Blake v R**,[29] the Court of Appeal extensively discussed the chain of custody and issues raised by the defence as follows:

> *"[127] The rationale for the requirement to establish a chain of custody, for biological or, what may be termed generic crime scene evidence, by the party desiring to adduce that evidence, is the preservation of the integrity of the item. In Chris Brooks v R, this court accepted and adopted, the following declaration of the law by Baptiste JA in Damian Hodge v R (unreported), Court of Appeal, British Virgin Islands, HCRAP 2009/001, judgment delivered 10 November 2010):*
>
> > *"The underlying purpose of testimony relating to the chain of custody is to prove that evidence which is sought to be tendered has not been altered, compromised, contaminated, substituted or otherwise tampered with, thus ensuring its integrity from collection to production in court. The law tries to ensure integrity by requiring proof of the chain of custody by the party seeking to adduce the evidence.* ***Proof of continuity is not a legal requirement and gaps in continuity are not fatal to the Crown's case unless they raise a reasonable doubt about the exhibits integrity.****" Romilly J in R v*

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[28] 2001 BCSC 597
[29] [2021] JMCA Crim 40

Larsen, at paras 61 to 66, which was cited in both Chris Brooks v R and R v Grazette, makes the same point.

[128] The more important, or rather, indispensable, part of the chain of custody is from collection to transportation to the forensic laboratory. This much is clear from the language of Romilly J in R v Larsen, at para 62. After commenting on the burden on the prosecution to prove that the substance alleged to be in the possession of the accused, is the same charged in the information, he said: "… Undoubtedly, then, continuity of possession of the substance from the accused to the law enforcement officer to the analyst is crucial ..." Equally, Morrison JA (as he then was) in Chris Brooks v R, intimated a similar position when, at para [46], he said: "… the purpose of establishing the chain of custody of the envelope containing the swabs taken from the appellant was to demonstrate its integrity, so that the court could be satisfied that the sample which was examined by the analyst was that which was taken from him..."

[129] Therefore, if, subsequent to its testing, the item is destroyed or otherwise lost, the probative value of the evidence obtained is not, by that token, whittled away. In R v Jadusingh after the analyst issued his certificate attesting that the vegetable matter resembling ganja, recovered from the home of the appellant, was in fact ganja, skulduggery substituted ordinary grass. In face of that "rascality", relying on the appellants' admission that the vegetable matter was ganja and the chain of custody, this court held that there was sufficient evidence to support the magistrate's finding that the vegetable matter was ganja.

[130] When this ground of appeal is viewed against the background of the authorities referred to above, with all due deference to Mr Fletcher, it becomes clear that, as framed, it is misconceived. ***What the interests of justice demand is preservation of the integrity of the exhibits and not so much the integrity of the chain of custody. Hence, the presence of***

> ***gaps or imperfect recordkeeping, characterized as "continuity" in R v Larsen, do not result in an automatic acquittal of the accused. Therefore, we find ourselves quite unable to agree with Mr Fletcher that the integrity of the exhibit is inextricably bound with the paper trail, in the absence of which, the integrity of the exhibit cannot be guaranteed."***

[42] In assessing these factors, I find that the officer based her honest belief on a subjective assessment of evidence that indicated there was a proper case to present before the court.

[43] However, on an objective basis, whether the prosecution can be inferred to be malicious is a question of fact. If there was absolutely no basis for suspicion, especially where that was accompanied by an apparent reluctance to proceed with the charge, one might draw such an inference. But that was not remotely the position here.

[44] There was no failure of Constable Henry to appear on the various occasions that the claimant came before the Court based on the evidence of both the complainant and the investigating officer being bound over, and in any event, there is no evidence sufficient to allow the inference to be drawn that his intention was to manipulate the legal system or to pursue the prosecution for a wholly extraneous and improper motive. It is for the tribunal of fact to make a finding on the question of malice; the facts in this case do not support such a finding.

[45] I find that it cannot be said that there was no proper case to lay before the court, as in the absence of a medical certificate, the evidence of a wound could have been inferred. In **Glinski v McIver**, it was established that the prosecutor must have reasonable grounds for belief. It presupposes the existence of a factual and evidential substratum capable of supporting a viable prosecution. The trial began and continued for a number of dates. The prosecution mounted a case against the claimant. There was an adequate evidential foundation in the case at bar. An

ordinarily prudent, cautious investigating officer would have ensured that the ingredients of the offence could have been made out, and the investigating officer had a duty to do so. The evidence supports the finding that there was a proper case to lay before the court and the presence of reasonable and probable cause.

[46] This court is not concerned with reviewing the correctness of the ruling made by the court at the no-case stage. It is concerned with the tort of malicious prosecution, which has not been proven by the claimant. Based on the foregoing, I find that the claimant has failed to establish all of the ingredients of the tort of malicious prosecution. The alleged constitutional breaches are dismissed in light of this conclusion.

[47] Orders:

1. Judgment for the Defendant.
2. Costs to the Defendant to be agreed or taxed.

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Wint-Blair J