



[2015] JMSC Civ. 203

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN CIVIL DIVISION
CLAIM NO. 2013 HCV 05312**

**BETWEEN DONOVAN MCMORRIS CLAIMANT
AND MAURICE BRYAN DEFENDANT**

IN CHAMBERS

Ruel Woolcock, instructed by Ruel Woolcock and Company, for the Claimant

Maurice Manning, instructed by Nunes, Scholefield, DeLeon and Co., for the Defendant

HEARD: July 15, and 31, 2015

FALSE IMPRISONMENT – MALICIOUS PROSECUTION – WHETHER CLAIMANT CAN BE HELD LIABLE AS A PRIVATE INDIVIDUAL WHO NEITHER ARRESTED, IMPRISONED, CRIMINALLY CHARGED, NOR DIRECTLY PROSECUTED THE CLAIMANT – APPLICATION TO STRIKE OUT CLAIMANT’S STATEMENT OF CASE

ANDERSON, K.J

[1] This matter concerns an application by the defendant, to strike out the claimant’s statement of case. On an application such as this, it is open to this court to strike out part of a statement of case.

[2] Since the claimant is no longer pursuing his claim for damages for assault, portions of para. 3 and para. 5(c) of the claimant’s statement of case, must be struck out, as those allegations disclose no reasonable basis for this claim against the defendant for damages for false imprisonment and malicious prosecution.

[3] The claim against the defendant, now only seeks damages for false imprisonment and, malicious prosecution.

[4] There are circumstances in which a complainant may properly be considered by a court in this jurisdiction, as having prosecuted a complaint made by him against someone else. It does not though, by any means, automatically follow that because a person makes a false complaint against another individual and because that complainant did so, solely activated by his malice towards the party against whom he has made that complaint, that the said complainant is to be treated as the 'prosecutor' of that complaint, for the purposes of the law governing malicious prosecution. The House of Lords' Judgment in **Martin v Watson** – [1996] 1 A.C 74 and some important subsequent decisions of the Court of Appeal of England, collectively address the complex question of who should be held responsible for initiating a prosecution when the police and public prosecutors act on information offered, or charges preferred by a private person. The judgment in **Martin v Watson** clearly establishes that the claimant must demonstrate that the defendant acted in such a manner as to be directly responsible for the initiation of proceedings. Thus, in order for a claim for damages for malicious prosecution to succeed as against a complainant, it must be alleged that the responsibility for initiating the prosecution, was that of the complainant, this as distinct from an independent judgment either on the part of the police to prosecute, or on the part of a legal officer of the Director of Public Prosecutions, or a legal officer such as a clerk of court, acting under the aegis of the Director of Public Prosecutions. Whilst such an allegation against a complainant, in a claim for damages for malicious prosecution, in which that complainant is named as a defendant, does not necessarily have to be specifically and directly so made, in the claimant's statement of case, there can be no doubt that the allegations in the claimant's statement of case would have to be such as could properly enable such an inference to be reasonable drawn by the trial court. The failure by a claimant to either directly and specifically so allege in his or her statement of case, or to allege facts, based upon which, the trial court could properly draw such a reasonable inference, would be fatal to the claimant's statement of case, seeking damages against that complainant, for malicious prosecution.

[5] This court entirely agrees with the legal observations as were made by Mr. Justice David Batts in the **City Properties Ltd. v New Era Finance Ltd. Case** – [2013] JMSC Civ. 23. The reasonable grounds for bringing a claim must be evident on a reading of the statement of case. The grounds for bringing the particular claim against the particular defendant, must be reasonable, as disclosed by the claimant's statement of case. See the ruling of Mr. Justice Bryan Sykes in **Sebol Ltd. and anor. v Ken Tomlinson (as the receiver of Western Cement Co. Ltd.) and anor.**, which was delivered on October 9, 2007 and which was upheld by the Court of Appeal – SCCA 115/2007.

[6] As such, the claimant's allegations against the defendant herein, as set out in the claimant's statement of case, must be sufficient to meet the requirements of the law, as set out in para. 4 above, of these written reasons for ruling. Otherwise, the claimant's claim against the defendant for damages for malicious prosecution, must be struck out, on the basis as applied for by the defendant, that being, that the claimant's statement of case discloses no reasonable ground or basis for bringing a claim against him personally, for damages for malicious prosecution.

[7] It will, of course, be useful to bear in mind what are the allegations made against the defendant by the claimant, which he is relying on to support this claim. Those allegations are set out in some detail below.

[8] The claimant had, by this claim, claimed damages against the defendant, for assault, false imprisonment and malicious prosecution. The claimant had amended his particulars of claim on October 8, 2013, but that amended document had only amended the original particulars of claim, by inserting therein, additional particulars of special damages. The particulars of claim though, are expected to be even further amended, albeit that such further amendment has not as yet occurred. The precise nature of that expected further amendment though, was made known to this court, when this matter came before me for hearing on July 15, 2015. It is, as I was then informed by the learned counsel for the claimant, that his client will no longer be pursuing his claim for

damages for assault, but in all other respects, the amended particulars of claim which was filed on October 8, 2013, will stand as is. Since no case management conference has, as yet, been held with respect to this claim, no leave of this court is required in order for the claimant to pursue those amendments. As such, this court has, at least for present purposes, accepted counsel's stipulation to this court, that his client – the claimant, is no longer pursuing his claim for damages for assault, even though there had not yet been filed, up until the time when this court's ruling on the claimant's application was delivered to the parties orally, a further amended particulars of claim, reflecting this latest, expected amendment.

[9] As such, the claimant's claims for damages to be paid by the defendant to him, if the court so orders, are now founded on the torts of false imprisonment and malicious prosecution.

[10] In deciding as to whether or not these claims should be struck out therefore, it inexorably follows that what this court must carefully consider and decide upon, is whether the claimant's statement of case has sufficiently disclosed information, based upon which this court would be enabled to properly conclude that it was the claimant, rather than a police officer, who initiated the prosecution of the defendant and that it was the claimant, rather than a police officer, who should be considered in law, as the person with the most direct and leading responsibility for having caused the defendant to be arrested and thus, 'imprisoned.'

[11] The claimant has alleged by means of that which will, for present purposes, be categorized as his further amended particulars of claim, that in or about February 13, 2008, the defendant had maliciously and without reasonable or probable cause, laid before members of the Jamaica Constabulary Force, information against the claimant, alleging that he had attempted to extort money from the defendant. It has been further alleged by the claimant that it was as a consequence of such information having been so provided, that the claimant was arrested/ 'imprisoned' by a member of the Jamaica

Constabulary Force, on February 13, 2008, following upon which, the claimant was charged with the criminal offences of extortion and conspiracy to defraud.

[12] The claimant has also alleged that he was detained at the Central Police Station's lockup, until on or about February 20, 2008, when he was brought before a Magistrate at the Half-Way-Tree Resident Magistrate's Court, whereupon, he was remanded and thus, remained in custody. He was eventually granted bail by the court, on or about April 1, 2008 and was released from custody and out of custody, on bail, while awaiting his trial, as of April 9, 2008. The claimant stood trial in the Half-Way-Tree Resident Magistrate's Court, on or about March 20, 2013 and at that time, the learned Resident Magistrate dismissed the said criminal charges and discharged the claimant. The claimant has contended that, as a result of his having been so falsely imprisoned and maliciously prosecuted by the defendant, he was unlawfully deprived of his liberty and has suffered mentally and physically, as well as loss and damage.

[13] For his part, in response to this claim, the defendant has filed a defence and therein, denied that, as specifically alleged by the claimant he acted either maliciously, or without reasonable or probable cause.

[14] It should thus be noted at this stage, that the issue as to whether or not the defendant acted maliciously, or without reasonable and/or probable cause in having, as is alleged, caused the defendant to have been arrested, charged and prosecuted for the offences of extortion and conspiracy to defraud, is not one which can properly be determined by this court either at this stage – where there is no trial ongoing, or upon an application such as this – that being, an application to strike out the claimant's entire statement of case. In fairness to the defendant and his counsel though, it should also be noted that the defendant has not at all, sought to strike out the claimant's statement of case, based on there being dispute as to that issue.

[15] The defendant has also averred that he had, prior to February 13, 2008, been the subject of an extortion racket, which had been reported to the police in January of 2008.

Thus, as he has specifically averred in para. 4 of his defence, *'the matter of extortion was the subject of ongoing investigation when the claimant made contact with the defendant on February 13, 2008, demanding money from the defendant.'*

[16] Whilst the defendant has admitted the claimant's allegation as to the outcome of the claimant's trial on the relevant criminal charges, the defendant's primary response to the claimant's claim against him, for damages, for false imprisonment and malicious prosecution is as above quoted as extracted from para. 4 of his defence, is also further expounded on, in para. 6 of the defendant's defence. It is thus, worthwhile, to quote that para. in full. It reads as follows:

'The defendant avers that he gave a statement to the police on February 19, 2008 in connection with the incident with the claimant, whose name and identity were still not known to the defendant. The defendant avers that the police exercised their own independent judgment after investigating the matter in respect of any arrest of the claimant. Save as aforesaid, the allegations contained in para. 4 of the amended particulars of claim are not admitted.'

[17] What has clearly emerged, therefore, both from the defendant's defence, in particular, that which he has alleged in paras. 4 and 6 thereof, as well as from the defendant's application to strike out the claimant's statement of case and the written submissions made by his counsel, in support of that application, is that the fulcrum of the defendant's application to strike out the claimant's entire statement of case, is founded on the defendant's contention that it was a member or members of the Jamaica Constabulary Force, acting in exercise of their or his own independent discretion, who had, following upon information having been provided to them or him (if there was one or more police officer (s) involved), caused the claimant to be arrested, charged and prosecuted for the relevant criminal offences.

[18] If indeed this is so, then the claim against the defendant cannot properly be maintained, much less, succeed in being proven, if this matter were to go to trial. As this matter though, is now being addressed by this court, following upon the defendant

having made an application to strike out the defendant's statement of case, what this court must consider, is not whether the claimant's claim has any realistic prospect of success at trial, but rather whether the claimant's statement of case has disclosed any reasonable basis for instituting the claim. The 'realistic prospect of success' issue, is one which can only properly be considered by this court, upon a summary judgment application whereas, the issue as to whether the claimant's statement of case discloses any reasonable ground for bringing the claim, is one which is appropriately to be resolved by this court, upon a striking-out application on. In this regard, see: **Gordon Stewart v John Issa** – Supreme Court Civil Appeal No. 16/09.

[19] As such, this court has paid careful regard to the claimant's statement of case, in deciding on the defendant's application to strike out the claimant's statement of case, The court had thus carefully noted that no reply has been filed by the claimant, in response to the defence. Accordingly, the claimant's statement of case is limited to his amended particulars of claim, which, as aforementioned, is to be taken as having been further amended, so as to withdraw the claim for damages for assault.

[20] The defendant did not need to even file a defence, in order to have properly enabled himself to pursue his present application, since the doing of the former, is not at all, a condition precedent for the making of the latter. This court had only referred to the defence therefore, for the purpose of better contextualizing the defendant's primary contention for the purposes of his present application.

[21] This court will therefore now turn its attention more closely to the law as regards who may be liable for false imprisonment and or malicious prosecution and what are the legal elements of each of these claims. It will only be if the claimant's statement of case has made specific allegations specifically constituting each of those legal elements, or at the very least, made allegations from which the inference can reasonably and properly be drawn by this court, that those elements form part and parcel of the claimant's statement of case.

[22] Before proceeding any further, it should be noted that the defendant was not, at the material time, a police officer, but rather, a sponsorship and promotions manager employed by Digicel, whereas the claimant was a painter and gambler. As the defendant was not a police officer at the material time and thus, did not personally arrest, imprison, charge or prosecute the claimant for any of the relevant criminal offences, the legal issues as to whether he can, under any circumstances, be held liable for false imprisonment or malicious prosecution and if so, what are those circumstances and whether the claimant has, in his statement of claim either made specific allegations constituting those circumstances, or made allegations from which those circumstances can reasonably be inferred, are stark.

[23] The elements of the tort of false imprisonment have been clearly established and reinforced by Jamaica's courts, on several occasions. One of the cases that reinforced same, is: **Egar Allen and Jamaica Public Service Co. Ltd. and Christopher Coke** – Claim No. 2006 HCV 5660. To put it simply, 'false imprisonment,' is 'the unlawful imposition of constraint on another's freedom of movement from a particular place. See: **Collins v. Wilcock** – [1984] 1 W.L.R. 1172, at p. 1178 – Thus, as stated in the text: Clerk and Lindsell on Torts (20th ed.) (2010) –

'The tort is established on proof of:

- (1) the fact of imprisonment; and*
- (2) the absence of lawful authority to justify the imprisonment. For these purposes, imprisonment is complete deprivation of liberty for any time, however, short without lawful cause. The prisoner may be confined within a definite space by being put under lock and key or his movements may simply be constrained at the will of another. The constraint may be actual physical force, amounting to a battery, or merely the apprehension of such force, or it may be submission to a legal process.'* (at para. 15.23 pp 998 & 999).

[24] It follows from the immediately aforementioned, that if a person is arrested, that person is prevented, while under arrest, from moving about freely, or in accordance with his own will and that said person is thereby, 'imprisoned.' If that imprisonment is

unlawful, then, the person who either carried out or is considered in law, as being directly responsible for that imprisonment, would be liable to pay damages, arising from that, 'false imprisonment.'

[25] In that context, if a party acts without any lawful authority in imprisoning another then, even if he does so, purportedly, under lawful authority, such as for instance, a court order, if it emerges that he had no such lawful authority to imprison anyone, or, if that court was made without jurisdiction, that party who imprisoned the other, or, who did no more than superintend the execution of process which led to the imprisonment of the other, would be liable in respect of the party who was so imprisoned, to pay to him, damages for false imprisonment. See: **Painter v. Liverpool Gas Co.** – [1836] 3A and E433; and **West v Smallwood** – [1838] 3M and W418 and **Houlden v Smith** – [1850] 14Q and B841. He will only incur that liability though, by participating in the very act of imprisonment itself, whether in terms of superintending the execution of same, or actually, physically executing same. This is to be distinguished from a situation in which he has merely taken the necessary formal steps in accordance with the procedure of the court, to set its officers in motion. See: **Cooper v Harding** – [1845] 7 Q and B 928.

[26] Police officers are considered in law, as being, 'ministerial officers' this as distinct from, 'judicial officers,' such as magistrates. There is an important distinction drawn by the law, as to liability for trespass, allegedly caused by a judicial officer who carried out a judicial function, this as distinct from a ministerial officer who carried out a ministerial function. Thus, as stated in Clerk and Lindsell on Torts (*op. cit*), at para. 15.42 - ... if a party is arrested without a warrant and taken before a magistrate, who thereupon remands him, he must seek his remedy for the first imprisonment in an action of trespass and for the imprisonment on remand, in an action for malicious prosecution.' See: **Lock v Aslton** – [1848] 12 Q.B. 871; and **Diamond v Minter** – [1941] 1 K.B. 656.

[27] This court will now specifically address the precise issue, as regards the claimant's claim against the defendant for damages for false imprisonment and the defendant's application to strike out that claim, which is as to whether the defendant can

be held liable, in circumstances wherein the claimant has alleged that he was arrested by a police officer for charges of extortion and conspiracy to defraud, as a consequence of information having been laid by the defendant, maliciously and without reasonable or probable cause, before members of the Jamaica Constabulary Force, alleging that the claimant had attempted to extort money from the defendant. The question can simply then be put – can the defendant, who as can clearly be discerned from the claimant's statement of case, did not carry out the claimant's arrest, nor superintend the execution of that arrest and in respect of whom, it has not been alleged in that statement of case, that he directed or requested or directly encouraged any police officer to arrest the claimant, be held liable for damages for false imprisonment? The simple answer to this question, is 'No.'

[28] The answer to that question is 'No,' not because the defendant did not actually carry out or superintend the arrest of the claimant, but because, as a matter of law, the defendant would not be considered as being responsible for the claimant's arrest. The mere laying of information which is false in nature and perhaps even maliciously so laid, before a police/ministerial officer, cannot serve to render the party who laid that information, liable to the party who is later arrested as a consequence of such false and or maliciously provided information, being liable to the party who was arrested, for damages for false imprisonment. Once the information was laid, it would have been for the police personnel to take such action based upon that information, as they see fit. See: **Ahmed v Shafique** – [2009] EWHC at (87), per Sharp J. and **Davidson v Chief Constable of North Wales** – [1994] 2 All E.R.597.

[29] Police personnel, it should be noted, can protect themselves from liability for false imprisonment, either by carrying out proper investigations prior to arresting or detaining anyone, this in order that such arrests/detentions are made on the basis of reasonable or probable cause, or alternatively, by obtaining an arrest warrant from a judicial officer, such as a justice of the peace or magistrate, prior to arresting or detaining persons – this of course though, in circumstances wherein the obtaining of that warrant, would be practical. Police measures to control crime and criminals,

sometimes has to be carried out extremely quickly, thereby rendering the obtaining of a warrant, prior to arrest of someone, as impractical. In such circumstances though, it is incumbent on police officers to arrest only on reasonable or probable cause. The mere provision of information to a police officer, by a complainant, will in most cases, be in and of itself, insufficient to constitute reasonable or probable cause for that arrest of any person.

[30] In the case at hand though, the defendant is, I reiterate, not a police officer. According to the claimant's statement of case, he falsely and maliciously laid information before police personnel, as a consequence of which, the claimant's was later arrested and criminally charged. Such an allegation as that, does not constitute a reasonable basis for bringing a claim against the person who gave that information to the police – that of course, being the defendant to this claim. Accordingly, the claimant's claim against the defendant, for damages for false imprisonment, must be and is, struck out.

[31] As far as the claimant's claim for damages for malicious prosecution is concerned, the elements to be proven by the claimant, if he is to succeed in proof of his claim, are as follows:

- i) the claimant must show that the law was set in motion against him, by the defendant, on a criminal charge, or in other words, that he was 'prosecuted' by the defendant, on a criminal charge; and
- ii) that the prosecution was determined in his favour; and
- iii) that it was without reasonable and probable cause; and
- iv) that it was malicious; and
- v) that as a consequence, the claimant suffered loss and damage.

[32] It has already been made clear that this court is not now considering whether or not the claimant's claim has a realistic prospect of success and also, since this matter has not yet reached the trial stage, it certainly is also not for this court, at this stage, to determine whether the claimant has prove his claim. What this court must instead now determine, is whether the claimant's statement of case discloses reasonable grounds

for bringing this claim. Accordingly, it is the claimant's statement of case which must set out allegations based upon which, each of the aforementioned elements of malicious prosecution can be readily discerned and, at a later stage, sought to be proven.

[33] Based on what has earlier been set out in these reasons, as to the claimant's statement of case, all of the aforementioned elements of malicious prosecution, are readily discernible, except for one. All of the elements though, are equally important. An allegation of malice, cannot be invoked to dispense with, or diminish the need to separately, also set out in the claimant's statement of case, allegations concerning each and every other element of the tort of malicious prosecution. See: **Martin v Watson** (*op. cit.*).

[34] The element of the tort of malicious prosecution which is not at all, readily discernible from the claimant's statement of case, is the element of the law having been set in motion against the claimant, by the defendant, on a criminal charge, or in other words, that he was 'prosecuted' by the defendant on a criminal charge.

[35] In carefully considering what the claimant needed to have set out in his statement of case, to enable this court to readily discern from the allegations made therein, that the claimant was, 'prosecuted' by the defendant, the court must consider two things – What constitutes a prosecution? Who is a prosecutor?

[36] To 'prosecute' is to set the law in motion, and the law is only set in motion by an appeal to some person clothed with judicial authority in regard to the matter in question, and to be liable for malicious prosecution, a person must at least, be actively instrumental in so setting the law in motion. This involves the taking of, 'active steps' to ensure that a prosecution results. See: **H v AB** – [2009] EWCA Civ. 1092. **Danby v Beardsley** – [1880] 43 L.T. 603 and **Mahon v Rahn (No. 2)** – [2000] 1 W.L.R. 2150; and **Ministry of Justice (sued as Home Office) v Scott** – [2009] EWCA Civ. 1215.

[37] All of the aforementioned cases, involved prosecutions by independent public prosecutors. Those cases make it clear, that the complainant will not be the prosecutor in such a case, unless the public prosecutor's direction is in some way manipulated or overborne by the complainant, or, as in the **Scott case** (*op.cit.*), if the defendant has 'procured' the prosecution. In effect, the allegations made against the defendant, must be of such a nature that it is readily discernible from the claimant's statement of case, that the prosecuting authority, being independent of the complainant and even, independent of the police officer who charged the defendant with a criminal offence, was unable to exercise its own independent discretion as to whether or not to prosecute the person who, at a later stage, with that prosecution having been determined in his favour, becomes the claimant in a claim for damages for malicious prosecution.

[38] Accordingly, in the case – **Evans v London Hospital Medical College (University of London)** – [1984] 1 WLR 184, it was held that forensic scientists who had prepared reports for the police and the Director of Public Prosecutions, as a result of which, the claimant was prosecuted for murder, could not be liable for malicious prosecution, for they had in no way, initiated those criminal proceedings. They had instead, merely provided information requested by those seeking to decide whether to set the law in motion.

[39] The question – 'Who is the prosecutor?' has been most definitively answered in the **House of Lords** case – **Martin v Watson** (*op. cit*), which has been applied in at least one prior Jamaican case. See: **Warrick Lattibeaudiere and Jamaica National Building Society and Catherine Brown and Joscelyn Campbell** – Claim No. 2005 HCV 01066 subsequent Court of Appeal cases from England, have interpreted, applied and to some extent, helped to clarify the law on this point, as was laid down in **Martin v Watson** (*op.cit*).

[40] On this area of law, this court thinks it best to quote extensively from the text – **Clerk and Lindsell on Torts** (*op. cit*), at paras. 16-16 to 16-22. This court will thus, do no more at this stage, than either quote some of those paras. or extracts from some of

those paras. and cite some of the cases referred to therein. This is done in the paras. of these reasons, which follow, immediately below.

[41] *'The decision of the House of Lords in **Martin v Watson** and some important subsequent decisions of the Court of Appeal, address the complex question of who should be held responsible for initiating a prosecution when police and public prosecutors act or information offered or charges preferred by a private person. The judgment in **Martin v Watson** clearly establishes that the claimant must demonstrate that the defendant acted in such a manner as to be responsible directly for the initiation of proceedings. The responsibility for initiating the prosecution must be his or hers, not the result of a truly independent judgment to prosecute on the part of the police, or other third party. In **Martin v Watson**, the parties had a long history of bad feeling. The defendant complained to the police that the claimant had indecently exposed himself to her. He was arrested and charged but ultimately the prosecution offered no evidence against him. It was found at first instance that the defendant had deliberately made a false allegation against the claimant intending that as a consequence of her allegation the police should launch a prosecution against him. Other separate complainants made by her to the police were not pursued by them. The majority of the Court of Appeal had concluded that the defendant was not the prosecutor. Deliberate deception of the police did not of itself constitute undertaking responsibility for the subsequent prosecution, nor was the defendant vicariously liable for the act of the police officers who decided on the basis of her information to prosecute the claimant on the charge of indecent exposure. There was no evidence that the police officers concerned were only prepared to go ahead with the prosecution if the defendant formally accepted responsibility for that decision. The House of Lords unanimously reversed the decision of the Court of Appeal.'* (para. 16-16)

[42] *'Their Lordships held that on the facts of **Martin v Watson**, the defendant was responsible for initiating the prosecution. She, not the police, was the prosecutor. This does not mean that a person who merely gives information to the police on the basis of which a decision to prosecute is made by the police or the Crown Prosecution service will be liable for malicious prosecution. The informant will not be the*

prosecutor. However, a complainant would be regarded as the prosecutor and liable for malicious prosecution if the following conditions are met:

- (1) The defendant falsely and maliciously gave information about an alleged crime to a police officer stating a willingness to testify against the claimant and in such a manner as makes it proper to infer that the defendant desired and intended that a prosecution be brought against the claimant.*
- (2) The circumstances are such that the facts relating to the alleged crime are exclusively within the knowledge of the defendant so that it is virtually impossible for the police officer to exercise any independent discretion or judgment on the matter.*
- (3) The conduct of the defendant must be shown to be such that he makes it virtually inevitable that a prosecution will result from the complainant. His conduct is of a nature that ‘... if a prosecution is instituted by a police officer the proper view of the matter is that the prosecution has been procured by the complainant.’*

The Court of Appeal finding in the defendant's favour, despite her false witness, was greatly influenced by policy considerations that to hold individuals liable in such cases would discourage members of the public from reporting criminal activity to the police. Victims of sexual offences which generally go unwitnessed by third parties would feel especially vulnerable. Priority should be given to the public interest in law enforcement. The House of Lords, finding against the defendant, responded that is such an argument of policy were to be conceded, the logical result ‘would be to stultify completely the tort of malicious prosecution since the rationale would apply not only to those giving information which resulted in a police prosecution but also to those who themselves signed the charge sheet or laid the information.’ In the absence of a claim in malicious prosecution, victims of unfounded and malicious accusations would be denied any remedy and such a result ‘would constitute a serious denial of justice.’ (para. 16-17) (Quoted extracts from **Martin v Watson** (*op. cit*) at pp. 86-87 and 89.

[43] *'Subsequent decisions of the Court of Appeal in **Mahon v Rahn (No.2)** – [2000] 1 WLR 2150, **H v AB** – [2009] EWCA Civ. 1092 and **Ministry of Justice (Sued as Home Office) v Scott** – [2009] EWCA Civ. 1215, have clarified the application of the approach in **Martin v Watson**. These cases involved prosecutions by independent public prosecutors. They make clear that the complainant will not be the prosecutor in such a case unless the public prosecutor's discretion is in some way manipulated or overborne by the complainant or, as in **Scott**, if the defendant has 'procured' the prosecution. This may be regarded as inherent in the second of the three points made in **Martin v Watson** and set out above: in effect, the prosecuting authority is unable to exercise its discretion. It has become clear that the range of cases in which this is the case will, however, be narrowed because weighing the persuasiveness of evidence is a normal part of the public prosecutor's role and a normal step towards the exercise of their discretion. It is also clear that if the complainant is not the prosecutor, then neither lack of truthfulness nor malice will be sufficient to ground an action' (para.16-18)*

[44] From a careful consideration of the legal material as quoted above and the caselaw referred to therein, what is clear, is that a claimant cannot simply allege that he has been 'maliciously prosecuted' by the defendant, this being as a consequence of that defendant having falsely and maliciously provided information to the police, following on which the claimant was later criminally charged and brought upon such criminal charge before a court of law, until, at some point in time, that criminal charge was terminated in a manner which was favourable to him.

[45] Based on what was earlier quoted as extracted from the claimant's statement of case in this particular claim, that is exactly what the claimant has placed before this court, in his statement of case and is exactly what constitutes the basis upon which the claimant's counsel has urged this court, not to strike out his client's statement of case, on the ground that the same discloses no reasonable ground for bringing the claim. This court has found itself though, in the circumstances, unable to accede to the claimant's counsel's urging, in that respect.

[46] The claimant's statement of case, if it were to have disclosed reasonable grounds for bringing the claim, would have had to, at the very least, alleged matters, based upon which, this court could, at the appropriate stage, properly draw the conclusion that the defendant – not being a public prosecutor, nor a police officer, had in some way, overborne the will of the public prosecutor, who would undoubtedly have been the one who, in exercise of his or her independent discretion, would have decided to prosecute the claimant upon the relevant criminal charges.

[47] To put it simply, whilst proof of the making of a false allegation to police personnel, against another person, may assist in proving that such false allegation was also made maliciously and whilst it is the case that proof of malice in 'prosecuting' a criminal complainant, is a necessary ingredient of the tort of malicious prosecution, it is nonetheless, only one such important ingredient. Proof of malice and equally, proof of falsehood, does not, either individually or collectively, convert the legal character of a complainant who acts maliciously in making a false allegation against another, to police personnel, or even to a independent prosecutor, or perhaps even directly to a Judge or Magistrate, into that of a 'prosecutor,' for the purpose of the law of malicious prosecution.

[48] In the circumstances, this court had earlier concluded that the claimant's statement of case must be struck out and the costs of the claim be awarded to the defendant, with such costs to be taxed, if not sooner agreed. This court had accordingly, so ordered, when it had orally on July 31, 2015, rendered its ruling on the defendant's application to strike out the claimant's statement of case.

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Hon. K. Anderson, J.