



[2016] JMSC Civ. 84

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. 2010 HCV 02110

BETWEEN	RENNON WALKER	CLAIMANT
AND	DEPUTY SUPERINTENDENT LEON CLUNIS	1ST DEFENDANT
AND	ATTORNEY GENERAL	2ND DEFENDANT

Mr. Sean Kinghorn instructed by Messrs. Kinghorn and Kinghorn Attorney-at-law for the Claimant

Ms. Marlene Chisholm instructed by the Director of State Proceedings for the Defendants

Heard: 12th February & 27th May 2016

Malicious Prosecution – Police Officer – Evidence in witness statement of reasonable and probable cause in respect of an offence – Alternative offence charged on instructions of Director of Public Prosecution – Effect of instructions of the Director of Public Prosecutions -

LAING, J

[1] The Claimant claims against the Defendants seeking damages for malicious prosecution. He avers that on or about the 10th day of November 2008, the 1st Defendant, being a member of the Jamaica Constabulary Force, acting or purporting to act in the execution of his duties, unlawfully, maliciously and without reasonable and/or probable cause prosecuted the Claimant by proffering two false charges against the Claimant, which charges were dismissed by the Senior

Resident Magistrate for the parish of Saint Catherine on the 22nd day of April 2010 following a submission that there was no case to answer.

Background- The Claimant's Version

- [2] The evidence of the Claimant is that in October 2008 he was a member of the Jamaica Constabulary Force and was then assigned to the Spanish Town Mobile Patrol Team. On 2nd October 2008 at about 8 p.m. he went to the intersection of St. John's Road and Jobs's Lane in the parish of St. Catherine where he met with other police personnel. He received a report that a man whose name was Jason Nelson and a woman named Lorraine Guthrie ("Ms Guthrie") were held while travelling in a Toyota Corolla motor car ("the Corolla") bearing registration plates numbered and lettered 5060 EU. These registration plates were identical to the registration plates of a motor vehicle owned by Special Corporal Rowell Riley who was the person who spotted this inexplicable anomaly.
- [3] Ms. Guthrie advised the Claimant that she was with Mr. Nelson when he received the Corolla from a man in Kitson Town, St. Catherine, named "Ranger". The Claimant commenced investigations and arrested Mr. Nelson and Ms. Guthrie. He was accompanied by Mr. Nelson to premises in Spanish Town where Mr. Nelson pointed out a man named Dwayne Downer who he said was his brother and the owner of the Corolla, he being the person who had given him the money to purchase it. Mr. Downer denied being Mr. Nelson's brother but said he worked on a ship and admitted that he had been sending money to Mr. Nelson over a period of time to purchase a car. He was not however in a position to confirm whether the Corolla was the car that was purchased with the money he sent because Mr. Nelson had not officially handed over a car up to that time.
- [4] The Claimant conducted additional enquiries which are not germane to the claim. What is to be noted is that Mr. Nelson was charged by Constable S. Elliot for unlawful possession of property but Mr. Dwayne Downer was not charged with a criminal offence nor was Ms. Guthrie. The Claimant explained that Ms. Guthrie

was cooperative and had agreed to accompany the Police to Kitson Town the following day to identify the location at which the person called "Ranger" could be found. What is quite peculiar is that the Claimant said that as a consequence of this co-operation he no longer suspected that she was involved in the case that he was investigating.

[5] The following day the Claimant driving service vehicle N13 with Constable Anderson as his observer, both dressed in uniform, went to Eltham Park, Spanish Town, the home of Ms. Guthrie and her mother Ms. Octavia Guthrie ("Ms. Octavia"). In the Claimant's witness statement he said that on his arrival he spoke to Ms. Octavia and at the end of that conversation she then walked back into her yard. Shortly afterwards he heard the screeching of a car and felt an impact at the front of the car in which he was seated. He walked to the front of service vehicle N13 and saw a white Honda motor car ("the Honda") that had crashed into the front of service vehicle N13. He pulled his service pistol "*out of caution*" and went to the left front door of the Honda. He pulled on the door but it was locked and no one came out. He then went to the side of service vehicle N13 and took cover. He pointed his service pistol at the Honda and shouted loudly to the occupant(s) to exit the vehicle. He then heard a loud explosion behind him and saw a man with a firearm in his hand. He decided to run to a house across the street to take cover since the man was in an advantageous [tactical] position.

[6] The Claimant's account is that while running he saw a [Toyota] Probox motor car drive around the corner with the windows wound down and saw a hand with a gun pointing at him. He heard explosions and saw Constable Anderson lying on the ground beside service vehicle N13. He said he was afraid because he thought they were being ambushed by thugs. He ran and hid in a garden and heard a man saying "*If him get shot we have to put him gun inna him hand and fire it*". He was taken inside a house by a man. He subsequently heard of the allegation that he had fired shots at members of the Anti Corruption Branch and that he ran away with \$8,000.00. He contacted his attorney who accompanied

him to the Spanish Town Police Station where he handed over his service pistol and his hands were swabbed.

The Defence's Version

[7] The account the 1st Defendant in relation to the incident at Eltham is unsurprisingly, completely different to that of the Claimant. The 1st Defendant states that on 3rd October 2008 he was an Inspector of Police assigned to the Anti-Corruption Branch which has as its mandate the investigation of acts of corruption by members of the JCF and its auxiliaries. He was then in charge of the Proactive Unit within the Branch responsible for carrying out surveillance and sting operations whenever a report is made.

[8] His evidence was that on 3 October 2008 he spoke on the telephone to a lady who gave her name as Octavia Guthrie (previously referred to as "Ms. Octavia" in this judgment) who advised him that there was an incident the night before involving two policemen stationed at the Spanish Town Police Station and the payment of money by a civilian to the police in order to prevent the civilian and her Daughter Lorraine Guthrie from being arrested as co-conspirators to an alleged crime. He said she told him that they would be coming to her home that afternoon to collect a balance of eight thousand dollars (\$8,000.00) from her.

[9] The 1st Defendant assembled a team for a sting operation at Eltham and placed a secret mark on eight notes each of a thousand dollar denomination, which were given to Ms. Octavia. At approximately 6:00 p.m. service vehicle N13 arrived at Eltham with 2 men aboard who were dressed in police uniform. The vehicle stopped at the gate of Ms. Octavia and the horn was sounded. Ms. Octavia went to the driver's side of service vehicle N13 and handed something to the driver. She spoke to the driver and returned to her premises.

[10] Service vehicle N13 was then blocked in the front and rear by vehicles being driven by 2 members of the sting operation. The 1st Defendant and Corporal Lewis were approaching service vehicle N13 when the driver alighted with a

pistol in his hand. The 1st Defendant's evidence is that he identified himself as an inspector of police from the Anti-Corruption Branch and instructed the policeman to put down his firearm. He did not comply but instead he continued to point the firearm in a menacing manner at member of the team including the 1st Defendant and shouted "*a who dem man yah bout dem a police, bout dem come from Anti Corruption Branch*".

- [11] As the 1st Defendant and Corporal Lewis advanced towards the policeman who had his firearm pointed at them, the 1st Defendant heard an explosion and took cover. He instructed the policeman to surrender but he kept pointing the firearm at them. The 1st Defendant said that he discharged one warning shot in the air from the service pistol he was carrying and the policeman ran away. He was chased by the 1st Defendant and Corporal Lewis but was not caught.
- [12] On the 1st Defendant's return to where N13 and the other vehicles were parked, he observed Constable Anderson in the custody of the police. Sergeant Lewis who was a member of the team searched N13 and found the notes between the drivers' seat and the front passenger's seat.
- [13] On 9th October 2008 an identification parade was in respect of the Claimant and Constable Anderson. Constable Anderson was pointed out by one of the witnesses but the Claimant was not. It may be reasonably inferred from all the evidence that the police officer which whom the 1st Defendant interacted was the Claimant.
- [14] On or about the 13th day of March 2008, the Claimant was charged on 2 informations with breaches of the corruption Prevention Act

The Law

- [15] The law relating to the elements of Malicious are well settled in this jurisdiction and are distilled in the judgment of Brooks J (as he then was) in **Keith Nelson v**

Sergeant Gayle and the Attorney General of Jamaica Claim No. 1998/N as follows;

“In an action for malicious prosecution, in order to succeed, the claimant must prove on a balance of probabilities the following:

(i) That the law was set in motion against him on a charge for a criminal offence;

(ii) That he was acquitted of the charge or that otherwise it was determined in his favour;

(ii) That when the prosecutor set the law in motion he was actuated by malice or acted without reasonable or probable cause;

(iv) That he suffered damage as a result”.

[16] In this case it is the question as to whether the Claimant has established that the 1st Defendant was actuated by malice or acted without reasonable or probable cause which is the subject of controversy and which will occupy the bulk of the Court’s time. This is so because there is not much difficulty finding that the Claimant has easily satisfied the other requirements.

[17] 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.

[18] The approach to be adopted is contained in the often quoted judgment of Lord Denning in **Glinski v Mclver [1962] 1 All E.R. 696 at 710 F as follows:**

Finally, even if the jury answers: “Yes, the defendant did honestly believe the accused was guilty,” it does not solve the problem. Honest belief in guilt is no justification for a prosecution if there is nothing to found it on.

His belief may be based on the most flimsy and in adequate grounds, which would not stand examination for a moment in a court of law. In that case he would have no reasonable and probable cause for the prosecution. He may think he has probable cause but that is not sufficient. He must have probable cause in fact. In this branch of the law, at any rate, we may safely say with Lord Atkin that the words "if a man has reasonable cause" do not mean "if he thinks he has": see Liversidge v Anderson

- [19] The Claimant was charged with 2 acts of corruption contrary to section 14(1) of the Corruption Prevention Act as follows:

Information 7594

You being a Public servant to wit: a member of the Jamaica Constabulary Force on Thursday 2nd October 2008 you corruptly accepted the sum of \$23,000.00 dollars directly from Dwayne Downer being a gift for himself or another person to do an act in the performance of your public function to wit: for not prosecuting the said Dwayne Downer and others for fabricated offences.

Information 7595

You being a Public servant to wit: a member of the Jamaica Constabulary Force on Friday, the 3rd October 2008 you corruptly accepted the sum of \$8,000.00 dollars directly from Octavia Guthrie being a gift for himself or another person to do an act in the performance of your public function to wit: for not prosecuting Lorraine Guthrie and others for fabricated offences.

- [20] The evidence of the 1st Defendant as contained in his witness statement is stated as follows:

"21. Although the Claimant was not pointed out on the identification parade, I had reasonable cause to believe that he had corruptly solicited the sum of money from Dwayne Downer, Lorraine Guthrie and Octavia Guthrie. Further I was present along with other members of the team and witnessed the events that unfolded on the evening of October 3, 2008 and placed Claimant at the scene during the sting operation.

22. The decision to prosecute the Claimant under the Corruption Prevention Act was done only after the ruling issued by the Office of the Director of public Prosecutions dated November 6, 2008.

- [21] The 1st Defendant was entitled to rely on information he obtained in determining whether there was a reasonable and probable cause for charging the Claimant. In the case of **Peter Flemming** the Court made the following observations:

I must comment on one aspect of the trial. In an endeavour to show that the police had reasonable and probable cause for the arrest, learned counsel for the respondents (who appears also in this court) sought to adduce hearsay evidence of what the investigating officer told the witness, his colleague in course of the investigation. But upon objection being taken, the learned judge disallowed the question. I think the judge was wrong. The hearsay evidence was admissible not as proof of the truth of the contents but to explain his state of mind. It was necessary in that case for the officer to show that he had reasonable and probable cause for the arrest. See Subramaniam v Public Prosecutor (1956) 1 W.L.R. 965 for the general proposition. But in my view, there was sufficient evidence capable of showing the reason for the prosecution viz. A statement made by an eye-witness who in the event, did not attend the preliminary examination.

[22] In the Privy Council case of **Hussein v Chong Fook Kam** [1970] AC 942 their lordships also expressed the view that suspicion can take into account matters that could not be put in evidence at all.

[23] Section 14(1)(a) of the Corruption Prevention Act provides as follows:

“14.-(1) A Public servant commits an act of corruption if he –

(a) corruptly solicits or accepts, whether directly or indirectly, any article or money or other benefit, being a gift, favour promise or advantage for himself or another person for doing an act or omitting to do any act in the performance of his public functions:..”

[24] It has been submitted on behalf of the Claimant that the 1st Defendant in his witness statement said that he had reasonable cause to believe that the Claimant had corruptly “solicited” the sum from the complainants. Counsel argues that this does not support the charge in the informations which was corruptly “accepting” a gift. Counsel posits that these are separate offences under the relevant charging section. By extension, it was submitted that the 1st Defendant saying there was evidence of “soliciting” does not answer the assertion that he had no reasonable cause to charge the Claimant with corruptly “accepting” a gift. Accordingly the Court was urged to find that the 1st Defendant had charged the Claimant with an offence which he had no reasonable cause to believe that the Claimant had committed.

- [25] The Claimant's Counsel submitted that this conclusion is supported by the case of **Robert Salmon v Superintendent Elan Powell and the Attorney General of Jamaica** Claim No. 2007HCV1090 delivered on the 15th of February, 2012 in which the officer charged the Claimant with failing to comply with a condition attached to his Road licence to operate a stage carriage contrary to section 63(15) of the Road Traffic Act. The Claimant however had no licence to operate anywhere on the date that he was charged and the Court naturally found that he could not properly have been charged with that offence. The Court found that the officer's "*belief in the guilt of the Claimant was not founded on reasonable grounds and as such he acted without reasonable or probable cause when he laid the charges against him and seized his mini bus*".
- [26] Counsel for the Defendants submitted that in the case before this Court, the 1st Defendant had reasonable cause to believe that the Claimant had committed "*an offence*" under the Corruption Prevention Act and accordingly this was sufficient.
- [27] Whereas I agree fully with the reasoning and judgment in **Robert Salmon**, I do not find it to be of much assistance in resolving the issues in the instant case. In **Robert Salmon** an essential (and obvious) ingredient of the charge, namely the requirement that the offender be the holder of a Road Licence was missing. The charge was therefore stillborn and bound to fail. The possibility of the officer having had a reasonable cause to believe that the offence had been committed was non-existent.
- [28] In this case, the issue in respect of which **Robert Salmon** is offered in aid is, whether the 1st Defendant's evidence that he had reasonable cause to believe that the Claimant had corruptly "*solicited*" money when taken together with the evidence of the ruling of the Director of Public Prosecutions ("DPP"), is sufficient to provide a defence in these circumstances where the charge laid against the Claimant, albeit under the same section of the act, was specifically in respect of the Claimant "*accepting*" money.

- [29] Counsel for the Claimant submitted that the ruling of the DPP that the Claimant was to be charged could not as a matter of law and fact, impute into the mind of the 1st Defendant “an honest belief founded on reasonable grounds that the person charged or about to be charged may be guilty of the offence charged or about to be charged.” Counsel further submitted that these rulings have no legal effect, they are internal communication between prosecutors and have no bearing on the legal issue of reasonable and probable cause. The case of **the Police Federation et al v The Commissioner of Independent Commission of Investigations and the Attorney General of Jamaica** [2013] JMFC Full 3 is relied on for this point and it was submitted that the Constitutional Court put to rest any argument that a ruling of the DPP could substitute for the requirement that an officer must have reasonable and probable cause to charge a citizen.
- [30] It is my view that the **Police Federation** case cited by the Claimant does not provide any definitive support of the position Counsel asserts in this case. The Police Federation case addresses, *inter alia*, the issue of whether the failure to obtain a ruling from the DPP before charging a member of the police force contravened the constitution and deprived such member of a legitimate expectation derived from the custom and practice of the DPP that such member would not be charged in the absence of such a ruling. The Court traced the history of the practice and held that there was no legitimate expectation and no other legal requirement to a prior ruling of the DPP before charges are laid against police personnel. Implicit in the judgment is the conclusion that a police officer may form an opinion without the input of the DPP, but the case does not address the issue of the relationship between the ruling of the DPP and the charging officer’s state of mind
- [31] A full analysis of the interplay between legal advice and the prosecutor’s state of mind was done in the case of **Glinski v Mclver** (*supra*) which was referred to by both Counsel in their arguments. The analysis of the court is helpful well worth quoting rather extensively. At page. 700 letter I, Viscount Simmonds said:

*“A more difficult question arises when the issue is whether the prosecutor honestly believes in the guilt of the accused, where the facts are complicated and a question of law arises. This is, particularly the case where in the administration of criminal justice the information is laid by a particular police officer who is in charge of the prosecution and is responsible if it is held to be malicious, but it is, as a matter of police organization obvious that he must act on the advice and often on the instructions of his superior officers and the legal department...What My Lords is the position of a public officer in such as case? Perhaps it is best first to see what has been said about the position of a private prosecutor (a term that I use not perhaps very accurately to distinguish his case from that of police prosecution). Can he rely on the legal advice given to him? He believes the facts and is advised that they constitute an offence. He prosecutes accordingly, but the accused is acquitted either because the advice is wrong or incomplete or because some unexpected is revealed. On this question there is little direct authority and none I think of this House. The Clearest statement is that of Bayley J's in *Ravenga v Mackintosh* [(1824) 2 B & C 693 at p. 697]. He said*

“if a party lays all the facts of his case fairly before counsel, and acts bona fide upon the opinion given by that counsel (however erroneous that opinion may be) he is not liable to an action of this description.A party however may take the opinions of six different persons, of which three are one way and three another. It is therefore a question for the jury , whether he acted bona fide on the opinion , believing that he had a cause of action”

...I would, however suggest to your Lordships that, subject to the qualification which Bayley, J. no doubt thought it unnecessary to state that the counsel whose advice is taken and followed is reputed to be competent in that branch of law, the opinion of that learned judge is sound and should be adopted by your Lordships. It appears to me that just as the prosecutor is justified in action on information about facts given by reliable witnesses, so he may accept advice on the law given to him by a competent lawyer. That is the course that a reasonable man would take and, if so, the so called objective test is satisfied. Applying this principle to the case of a police officer this principle to the case of a police officer who lays an information and prefers a charge and at every step acts on competent advice, particularly perhaps if it is the advice of the legal department of Scotland Yard, I should find it difficult to say that officer acted without reasonable and probable cause. I assume throughout that he has put all the relevant facts known to him before his advisers.”

[32] With regard to police prosecutions in particular Lord Radcliffe, at p. 708 F said:-

"To put it shortly, I do not think that the elucidation of the law upon the tort of malicious prosecution is likely to be assisted by hypothesising the instance of a prosecutor who believes in the existence of certain undisputed facts but has no personal opinion or belief as to whether they constitute a legal offence or not. I should like to come across an actual

case of that nature before taking a view about it. For if the man has prosecuted, though unsuccessfully and has been acting merely for a sense of public duty, then he is not guilty of malice, so there has been no malicious prosecution; whereas, if he has prosecuted for some reason other than a desire to vindicate justice and so has been malicious. I see no compelling reason why the law should give any protection to him on the ground of the alleged neutrality of his attitude. If we fine the matter down to police prosecutions, I think that the rights and wrongs may well depend on the nature of the explanation, if any, offered by the prosecutor in his evidence. I dare say that he may say that, having satisfied himself as to the existence of certain facts, he took action either on the strength of legal advice given to him or in accordance with the orders of some official superior. If his belief is said to rest on legal advice, I think that the court is entitled to know positively, not merely by inference, what that advice was and on what instructions it was obtained" (emphasis supplied).

- [33] In **Abbott v Refuge Insurance Co. Ltd 1962 1 All E.R. 1074** the Court of Appeal (UK) also stated that the taking of legal advice is evidence of reasonable and probable cause but that it is not conclusive.

The Lorraine Guthrie Information

- [34] As it relates to the Lorraine Guthrie information, the Claimant has failed to prove on a balance of probabilities that the 1st Defendant was actuated by malice or acted without reasonable or probable cause in charging him. I have found on a balance of probabilities that the account of the 1st Defendant is more credible and that the presence of the Claimant at Eltham on the evening of 3rd October 2008 was further to an arrangement he had made with Ms. Octavia to collect the balance of \$8,000.00 from her, pursuant to an unlawful solicitation. I find that the presence of the 1st Defendant and his team at Ms. Guthrie's house is explained only by the fact that the 1st Defendant did receive a report from Ms. Octavia of the soliciting of funds by the Claimant. I also find that the Claimant did accept the marked Jamaican currency notes and ran from the 1st Defendant and his team after they had clearly identified themselves to him as police officers. I find that he ran not because he was fearful that he was being confronted by gunmen but rather, out of a realization of guilt, when he recognized that his illegality had been discovered. He had been caught in the act and that "the jig was up".

[35] It is my conclusion that in relation to the Lorraine Guthrie information, there was more than ample evidence from which the 1st Defendant could have reasonably concluded that the Claimant had committed the offence of “soliciting” and/or “obtaining” and that the Claimant did form that opinion as he stated in his evidence. The fact that the 1st Defendant was of the view that the offence committed and for which the Claimant was to be charged was “*soliciting*” but that he instead on the advice of the DPP laid a charge of “*obtaining*” is not sufficient to establish that the 1st Defendant was actuated by malice or acted without reasonable or probable cause.

[36] The Court fully appreciates that the 1st Defendant did not specifically say that on receiving the advice of the DPP he then formed the view that the Claimant may also have been guilty of the actual offence for which the DPP directed that he be charged. Nevertheless, it is clear that the 1st Defendant in laying the charge recommended by the DPP was “*acting merely for a sense of public duty*” and was not possessed of any malice in respect of the Lorraine Guthrie Information.

The Dwayne Downer Information

[37] As it relates to the Dwayne Downer Information, Counsel for the Claimant submitted that the Defendants have failed to present any evidence showing that the 1st Defendant had an honest belief in the guilt of the Claimant. Further if the 1st Defendant did have an honest belief, the Defendants have failed to show any evidence that this honest belief was founded on reasonable or probable cause in fact.

[38] As Sykes J put it in **Greg Martin v Det. Sgt. Halliman and The Attorney General of Jamaica** Claim No 2007 HCV 02096, “*there must be a method or analytical device available to test whether the belief is honestly held*”. This is consistent with the view of Lord Radcliffe in **Glinki and Mclver**, (supra at p. 708-09, referred to earlier). In the case before the Court, no evidence has been led as to the basis on which the 1st Defendant arrived at the conclusion that the

Claimant had solicited or obtained money from Dwayne Downer, which could have properly grounded the Dwayne Downer information. The Court was not given the benefit of the information provided to the DPP (such as the contents of the investigator's file) which was considered by the DPP and which would have formed the basis of the instructions to the 1st Defendant s to which charge to lay. As a consequence of this omission the Court was unable to independently assess the bald assertion of the 1st Defendant as to the belief that he held or the cogency of the opinion and advice of the DPP. The Court was therefore deprived of the opportunity to test the reasonableness of the 1st Defendant's belief. As a consequence the Defence fails in respect of the Dwayne Downer Information in the face of the Claimant's case as pleaded and presented.

- [39] Counsel for the Claimant submitted that it is settled law that if the claimant in a claim for damages for malicious prosecution was indicted on more than one charge, it is sufficient for him to show that there was no reasonable and probable cause for one or more of the charges in the indictment, although there may have been cause for others. (see **Sutton v Johnstone** (1768) 1 Term Rep 510). Counsel submitted that in order to succeed on the claim the Claimant need only prove that there was no reasonable and probable basis on one of the two informations. I accept these submissions as a correct statement of the law and accordingly find for the Claimant on the claim.

Damages

A. *Special Damages*

- [40] Counsel for the Claimant submitted that the Claimant if successful should recover on his claim for legal fees as special damages in the sum of \$400,750.00 inclusive of General Consumption Tax. This position was not challenged by the Defence and this sum is awarded as special damages.

B. *General Damages*

[41] It was also submitted by the Claimant's counsel on the strength of the **Greg Martin** case, that the sum of \$1,000,000.00 is an appropriate award for damages for malicious prosecution in the circumstances. Counsel for the Defendants relied on the case of **Maxwell Russell v The Attorney General** an unreported judgment delivered 18th January 2008 in support of her submission that a sum of \$500,000.00 would be appropriate. Counsel for the Defendants argued that in this case the prosecution lasted approximately a year and five months while in the **Maxwell Russell** case, the prosecution lasted for nearly a year and the Claimant in that case was awarded \$250,000.00, which when updated using the Consumer Price Index for January 2016 updates to \$484,296.48.

[42] The length of time for which the Claimant faced prosecution is a very relevant consideration. It is noted that in the **Greg Martin** case the Claimant faced prosecution for approximately 19 months before the last charge against him was dismissed. I have also considered the case of **Salmon v Supt. Elan Powell and The AG** 2009 HCV 02800, judgment delivered 31 May 2013, in which Batts J awarded \$450,000.00 to the Claimant who faced prosecution for approximately 7 months. In all the circumstances having reviewed these authorities I am of the view that an award of \$900,000.00 is reasonable to compensate the Claimant for malicious prosecution.

(1) Aggravated Damages

[43] Counsel for the Claimant submitted that the Claimant should also receive an award for aggravated damages as compensation for the injury to the Claimant's feelings and dignity. He gave evidence of having been through a lot of stress and embarrassment because of the fabricated charges and malicious prosecution. The case of **Sharon Greenwood-Henry v The Attorney General of Jamaica** delivered on 26th October 2005 was relied on in support of the submission that an award of \$1,500,00.00 would be an appropriate award under this head of damages. In the **Sharon Greenwood Henry** case the Claimant received an

award of \$700,000.00 which when revised using the December 2015 CPI amounts to \$1,724,390.24.

[44] Counsel for the Defendants submitted that the Claimant has not proved that the 1st Defendant behaved in a high handed, insulting, malicious or oppressive manner that would justify the award of aggravated damages and accordingly no award should be made under this head.

[45] Guidance on the award of aggravated damages is contained in case of **Thompson & Another v The Commissioner of Police for the Metropolis [1998] QB 498** (Court of Appeal UK), which has been quoted with approval repeatedly in this jurisdiction. At page 516 Lord Wolfe expressed the view that:

“Aggravated Damages are awardable where there are aggravating features of the case which would result in the plaintiff not receiving sufficient compensation for the injury if the award were restricted to the basic award”

[46] In **Richardson v Howie [2004] EWCA 1127** Thomas LJ offered the following analysis in relation to aggravated damages at paragraph 16:

*“It is necessary to begin with the judgment of Lord Devlin in **Rookes v Barnard [1964] AC 1129**; rather than refer to the various passages in his speech at pages 1221-1232, it is convenient to adopt the helpful summary in the Law Commission consultation paper on Aggravated, Exemplary and Restitutionary Damages (1993) at paragraph 3.3 which counsel were agreed represented an accurate summary of his speech and the conclusions drawn from it:*

*‘In **Rookes v Barnard** Lord Devlin said that aggravated awards were appropriate where the manner in which the wrong was committed was such as to injure the plaintiff’s proper feelings of pride and dignity or give rise to humiliation, distress, insult or pain ...It would therefore seem that there are two elements relevant to the availability of an aggravated award, first exceptional or contumelious conduct or motive on the part of the defendant in committing the wrong and second, intangible loss suffered as a result by the plaintiff, this is injury to his personality’.*

[47] The facts of this case are clearly distinguishable from cases such as **Sharon Greenwood-Henry v The Attorney General** CL G 116 of 1999 (unreported decision of Sykes J) and **The Attorney General v Hemans** Supreme Court Civil Appeal No 60/2013 in which the Court awarded aggravated damages. I do not find that there has been any “*exceptional or contumelious conduct or motive on the part of the [First] Defendant in committing the wrong*” in this case and by extension I have found no aggravating features of this case which would result in the plaintiff not receiving sufficient compensation for the injury if the award were restricted to the basic award. There is clearly some degree of embarrassment which anyone, including a police officer, charged with an offence against the Corruption Prevention Act will face. However the circumstances of this case do not reveal any aggravating feature arising from the conduct of the Defendants other than the fact of the charge itself. I have been provided with no authority nor have I been able to locate any which suggests that a police officer charged with an offence as in this case is automatically entitled to aggravated damages. Accordingly, I will not award any damages under this head.

(2) Exemplary Damages

[48] The principles governing an award of exemplary damages were set out in the case of **Rookes v Barnard 1964 AC 1129** and have been applied in numerous cases in this jurisdiction. It is therefore settled law that exemplary damages may be awarded, *inter alia*, where there is oppressive, arbitrary or unconstitutional acts by servants of the Government,(the potentially applicable ground based on the facts of this claim).

[49] No such egregious conduct having been found by this Court, I find that this is not an appropriate case for an award of exemplary damages.

[50] In the premises I will make the following orders:

1. Judgment for the Claimant.

2. Special damages awarded in the sum of \$400,750.00 together with interest at the rate of 3% per annum from 10th November 2008 to the date of this judgment.
3. General Damages awarded in the sum of \$900,000.00 plus interest at the rate of 3 % per annum from 28 April 2010 to the date of this judgment.
4. Costs to the Claimant to be taxed if not agreed.