

IN THE SUPREME COURT OF BELIZE, A.D. 2008

CLAIM NO. 738 of 2008

JOSE COYE

CLAIMANT

AND

ALFRED SCHAKRON

DEFENDANT

Hearings

2010

20th January

21st January

11th February

2nd March

Dr. Elson Kaseke and Mr. Anthony Sylvestre for the Claimant.

Mr. Rodwell Williams SC and Mr. Michel Chebat for the Defendant.

LEGALL J.

JUDGMENT

1. In the heart of Belize City, opposite the internationally renown and majestic Princess Hotel which overlooks the waters of the expansive and comely Caribbean Sea, sits a piece of land owned by the Government, with no buildings thereon, comprising an area of 1349.540 (square metres) situate at Newtown Barrack Road, Belize

City, more fully described as Kings Park, Registration Section Block 45, Parcel 1057 (the land).

2. The beauty of the area is readily discernible from the location of the land which once housed a bar, called the Put Put bar. Not far away from the land, about 100 yards or so, a new building to house a hotel is in construction; and immediately opposite the construction is a recreational park used for relaxation and social events. There are also, in close proximity to the land, a restaurant, a night club and the famous Pickwick Club.
3. It is not surprising that the defendant, a businessman in the money lending business, was enchanted by the land and wanted to purchase it from the Government to establish an arts and crafts market. His wish was granted when the land was sold to him on 27th December, 2007, by the Government for BZ\$18,917.10 which included payment of stamp duty and certificate fees.
4. The claimant who had recommended to the Ministry of Lands and National Resources the sale of the land to the defendant, was himself the Minister of Health in the then Government. He was also the representative in the legislature for the constituency called Caribbean Shores Division, in which constituency the land was located. The political party that formed the government in which the claimant held the ministerial position of Minister of Health, lost the general elections that were held on 7th February, 2008, and a new government came to power. The new government appointed a new Minister of

Lands and Natural Resources, Mr. Vega, and a caution was placed on the land by the new government. The caution, according to section 130(2) of Registered Land Act Chapter 194 has the effect of forbidding the registration of dispositions, and making of entries, with respect to the land.

5. The new Minister Mr. Vega, according to the evidence of the defendant, told the defendant that if he wanted the caution lifted he would have to tell him how he got the land for the price of \$18,917.10. The defendant, not surprisingly, made a declaration dated 23rd March, 2008, in which he narrated how he got the land. The declaration makes an allegation of greed and corruption. I think it would be advisable to quote the declaration in extenso:

I, Alfred Schakron of No. 4552 Youth For The Future Drive, Belize City, DO SOLEMNLY AND SINCERELY DECLARE as follows:

- (1) Sometime in or around June of 2007 I was informed by one Cornel Flowers then driver of the former Minister of Health Jose Coye that the land on which Put Put bar is situated was for sale.
- (2) I expressed my interest in acquiring same for an Arts and Crafts market for homemade jewelry and other souvenirs.
- (3) I later received a phone call from Mr. Jose Coye who relayed to me that he liked the plan and told me that he

wanted \$275,000.00 for said property and that the stamp duties were separate and same would be an additional payment.

- (4) About 2 days later Mr. Jose Coye sent Mr. Cornel Flowers to collect the \$275,000.00 from me.
- (5) Mr. Cornel Flowers came to my business place to collect same and informed me that there were other persons interested in the property and that these persons were willing to pay more for same and that his boss wanted more money for the property. I gave him the \$275,000.00.
- (6) At various times Mr. Flowers would come back to property and I would disperse various sums to him in sums of \$50,000.00 and \$75,000.00 respectively. These payments were dispersed between the periods of June 2007 through December 2007. All payments made to Mr. Cornel Flowers totaled \$575,000.00.
- (7) Mr. Cornel Flowers called me sometime on or around the 10th day of December, 2007 directing me to pay stamp duties along with the registration and certificate fee for the said property in the sum of \$18,917.10 to the Lands Department in Belize City. I attached a copy of said receipts which is marked and labeled "AS 1, AS2 and AS3."
- (8) I went personally to pay same and received the title to the property in the latter part of December, 2007.
- (9) The property in question is located in the King's Park Registration Section

at Block 45 being Parcel 1077. I attached a copy of said title which is marked and labeled "AS4".

- (10) In late February Mr. Cornel Flowers came to me and handed an envelope containing \$300,000.00.
- (11) At all material times Mr. Cornel Flowers passed himself off as the agent of Mr. Jose Coye. I had no reason to believe that this was not so since he was Mr. Coye's official driver."

- 6. Around March, 2008, the defendant was contacted by the Belize Police Department and informed that the police was investigating the claimant. The defendant gave on 24th April, 2008 a statement, tendered in evidence, to Superintendent of Police James Magdaleno. I quote the statement to the police in extenso:

"I am a businessman and I reside at No. 4633 Seashore Drive, Belize City. Sometime in the month of June, 2007, I was informed by Mr. Cornel Flowers the then driver of the former Minister of Health Mr. Jose Coye that the land on which Put Put Bar is situated was for sale. I expressed my interest in acquiring the land to erect an Arts and Crafts market for home made jewelry and other souvenirs. Sometime after the date I cannot recall I received a phone call from Mr. Jose Coye who informed me that he would like to see the plan for the Craft Market, and he also told me he wanted the sum of \$275,000.00 Belize Currency for the property and that the stamp duties would be

separate and it would be an additional payment. About two days later Mr. Coye send Mr. Cornel Flowers to collect the \$275,000.00 from me which I paid in cash. On, or around the 10th December, 2007, I visited the Lands Department in Belize City where I paid a total sum of \$18,917.10 Bz Cy for which I received Government of Belize receipts No's LSD-BZ-00049900, LSD-BZ-C00049898 and LSD-BZ-C-00049899 all dated 17th December, 2007. After I paid the \$18,917.10. I was issued with a Land Purchase Approval Form dated 14th December, 2007. On the 27th December, 2007, the Land Certificate was issued to me. The property in question is located in Kings Park Area No. 1349540 S.M. Block 45 parcel 1077 all the transactions was done by Mr. Flowers as an agent for Mr. Coye. I had no reason to believe that this was not so since he was the official driver of Mr. Coye. When I hand over the sum of \$275,000.00 to Mr. Flowers I did not receive any receipt up to this moment. I was only promised to get a receipt after I received the title.”

7. The claimant was arrested by the police on 25th April, 2008 and charged for the offences of theft and obtaining property by deception. The claimant's driver Mr. Cornel Flowers was also charged for the said offences.

8. The claimant appeared before the magistrate's court in Belize City to answer the charges on the said 25th April, 2008. The claimant was put on bail and the case was adjourned to 10th July, 2008. On 19th June,

2008, officer James Magdaleno wrote a report with respect to the charges to the Director of Public Prosecutions indicating that since there was no receipt showing payment by the defendant to the claimant or Flowers, there was no evidence to substantiate the charges. The report stated that the defendant indicated verbally to Supt. Magdaleno that he, the defendant, to use the words of the report, “was no longer interested in the case between himself, Mr. Coye and Mr. Flowers as he is being threatened. His attorney will write to the Commissioner of Police officially that he is withdrawing the charges.”.

9. On 20th June, 2008, the defendant presented a letter to Supt. Magdaleno signed by the defendant and witnessed by a Justice of the Peace which stated that he did not wish to proceed with the complaint against the claimant. On the 24th July, on the directive of the Director of Public Prosecutions, the charges against the claimant and Flowers were dismissed.
10. The claimant on 5th November, 2008, brought a claim against the defendant for:
 1. Damages, including aggravated and exemplary damages, for malicious prosecution of the claimant for the offence of theft and obtaining property by deception.
 2. Damages, including aggravated and exemplary damages for libel.
 3. Special Damages

4. Costs
5. Interest.”.

11. Before the hearing of the claim, the defendant applied on 17th February, 2009, to the court for orders to strike out paragraphs of the claimant’s statement of claim which grounded the claim for libel. The application was heard by my sister Arana J who, in a written decision dated 12th May, 2009, struck out the paragraphs which sought the remedy of libel on the grounds that the paragraphs failed to comply with Part 68(4) of the Supreme Court (Civil Procedure) Rules 2005. Remaining after that decision was the sole claim against the defendant for malicious prosecution.
12. The claimant in his statement of claim sets out the basis of his claim against the defendant for malicious prosecution. The claimant states that the defendant said to the police the following, which, according to him, resulted in his arrest and prosecution:

“Sometime in the month of June, 2007 I was informed by Mr. Cornel Flowers the then driver of the former Minister of Health, Mr. Jose Coye that the Land on which “Putt Putt Bar” is situated was for sale. I expressed my interest in acquiring the Land to erect an Arts and Crafts market for home made jewelry and other souvenirs.

Sometime after the date I cannot recall I received a phone call from Mr. Jose Coye who informed me that he would like to see

the plan for the Craft Market, and he also told me he wanted the sum of \$275,000.00 Belize Currency for the property and that the stamp duties would be separate and it would be an additional payment. About two days later Mr. Coye send (sic) Mr. Cornel Flowers to collect the \$275,000.00 from me which I paid in cash.”

13. In essence the claimant’s case against the defendant is that the defendant maliciously told the police that he and his driver Flowers unlawfully took \$275,000 from him as payment for the land, which resulted in him being arrested, charged and prosecuted for theft and obtaining property by deception, when the defendant knew that what he told the police was not true. The claimant asserts that he never solicited, received, took or demanded any monies from the defendant as payment for the sale of the land, and that the matters stated to the police by the defendant were false, baseless and malicious. He said that Flowers never gave him any money allegedly received from the defendant for the purchase of the land.
14. The defendant gave a different story of what occurred. The defendant’s version of the events is as stated in his witness statement dated 8th December, 2009 admitted as Exhibit A.S. 1, which is similar to his declaration and statement to the police quoted above. It states:
 1. That sometime around June of 2007 I was informed by one Cornel Flowers then driver of the former Minister of

Health Jose Coye that the land on which Put Put bar is situated was for sale.

2. That I expressed my interest in acquiring same for an Arts and crafts market for homemade jewelry and other souvenirs.
3. That later I received a phone call from Mr. Jose Coye who relayed to me that he liked the plan and told me that he wanted \$275,000.00 for said property and that the stamp duties were separate and same would be an additional payment.
4. That I was told by Jose Coye that he would send Mr. Cornel Flowers to collect the \$275,000.00 from me and 2 days later he did so.
5. That Mr. Cornel Flowers came to my business place to collect same and informed me that there were other persons interested in the property and that these persons were willing to pay more for same and that his boss wanted more money for the property. I gave him the \$275,000.00.
6. That sometime on or around the 10th day of December, 2007, Mr. Cornel Flowers called me directing me to pay stamp duties along with the registration and certificate fee for the said property in the sum of \$18,917.10 to the Lands Department in Belize City. I attached a copy of said receipts which is marked and labeled "AS#1, AS#2 and AS#3."
7. That I went personally to pay same and received the title to the property in the later part of December 2007.
8. The property in question is located in the King's Park Registration Section at Block 45 being Parcel 1077. I attached a

copy of said title which is marked and labeled "AS#4."

15. One of the main task in this case is to decide whom to believe. The task has been made more difficult because only two witnesses were called in the case – the claimant and the defendant. The police officer who investigated the case; the driver of the claimant Mr. Flowers who allegedly received the money; the minister of government who allegedly got information from the defendant concerning the payment of the money, and the five witnesses mentioned in the report to the D.P.P. by Supt. Magdaleno, from whom the police recorded statements, were surprisingly not called to testify in this case, nor was their absence explained. In the end the court is unenviably left to decide which one of the witnesses in this case is speaking the truth.
16. In order to carry out this task the evidence of both the claimant and the defendant has to be examined. The oral testimony of the claimant in cross-examination does not do very much to strengthen his credibility. I give below some examples.

- (a) "I came to know the defendant when I commenced politics. ...I cannot say that I knew the defendant for more than 10 years. I know the defendant for some period of time between 1989 to when this matter occurred. I know the defendant for more than 1 year. I cannot say for sure I know him for more than 5 years. It is possible I

know the defendant for more than 4 years.”.

(b) “It is a possibility that I spoke to the defendant on other occasions. It is very likely I spoke with him on other occasions.”.

(c) “I assumed it was the applicant’s name on the form. I saw the applicant name on the form. Alfred Schakron name is on the form.”.

(d) “I do not recall any hostility between the defendant and me. There was no hostility.”.

17. In addition to the above, the claimant said in cross-examination that he did not do any business for the defendant company J.E.C. as an accountant, not that he knew of. He also said that it was possible that J.E.C. drew a cheque in his name for \$10,000.

18. Apart from the above evidence of the claimant in cross-examination, he made certain admissions in his evidence, which show he played a role in the defendant’s purchase of the land from the government. The defendant wanted the land for the establishment an arts and craft market and he obtained a plan for the project which was seen, inspected and supported by the claimant who subsequently recommended to the then Ministry of Lands and Natural Resources that the defendant be allowed to purchase the land. The recommendation is made as part of an official government form which

is named Application for Lease and Purchase of Land, and it is addressed to the Minister of Natural Resources and Lands.

19. The claimant said that the application form was submitted to the Minister for approval after which the defendant would be informed of the price and stamp duty to be paid. Once the payments are made to the government, the title is issued. The claimant admitted that the defendant got title to the land after payment of \$18,917.10. The claimant admitted that it was possible that his then driver, who was also charged by the police for theft, took his recommendation on the application form to the defendant. The claimant also said that he could not recall whether his driver took the form to the defendant.
20. It is the claimant's evidence that when he recommended the defendant to purchase the land from the government, the defendant was no stranger to him, because he had contact with the defendant perhaps around 2000 – 2002 concerning other lands. The claimant said that the recommendation was important, but not necessary. He said that the price of \$18,917.10 for the land was not exceptionally low bearing in mind the way government was selling land in the division.
21. The claimant made it clear that at no time was he involved in buying and selling land, nor was he involved with any company to buy and sell land. He testified that at no time did he call the defendant and demanded \$275,000 for the land nor did he receive any money from the defendant or from his driver Flowers for the land. At no time, the

claimant states, did he send the said driver to the defendant for money for the land.

22. As the political representative for the Caribbean Shores constituency, which is one of sixteen constituencies in the whole of Belize, he has an office in his constituency and he meets people on a daily basis who have problems. The campaign manager in the office would advise him who are the people to be met. As I understand the claimant's evidence, as a political representative of the district in which the land was situated he supported the idea of the establishment of an arts and crafts market in the district because it was a project for the development of the district. This was the reason why he supported the plan for the project and recommended that the defendant be allowed to purchase the land from the government.
23. He said that he prepared recommendations for other persons as well and it was possible that his driver carried all the recommendations including the defendant's to the Ministry. The claimant said that at no time did he have any input into the decision of the then Minister of Lands to allow the defendant to purchase the land.
24. In addition to the declaration, the statement to the police and the witness statement of the defendant, material parts of which were quoted above, the defendant gave oral evidence in which he said that he had an oral agreement with the claimant to pay \$275,000 for the land, and he paid the money to him, through his driver because the claimant could facilitate him in getting the land. When asked in

cross-examination why he paid the money knowing that the claimant did not own the land, he said he paid the money because he knew the claimant could facilitate him in getting the land.

25. The defendant said he gave the cash to Cornel flowers and he did not request a receipt. When pressed in cross-examination for the reason for paying such a large sum of money and not requesting a receipt, he said that “the deal was straight cash, no receipt nor nothing.” But it must be remembered that the defendant in his statement to the police said, as we saw above, “I was only promised to get a receipt after I received Title.” There are credibility issues with respect to the defendant as well.
26. Moreover, as shown in the declaration dated 23rd March, 2008 quoted above, the defendant said he paid in total \$575,000 to Mr. Flowers for the claimant for the land. In paragraph 10 of the said declaration the defendant said that Flowers gave him an envelope containing \$300,000 in late February. But in his statement quoted above to the police in this matter made on 24th April, 2008 there is no mention that the total of \$575,000 was ever paid to him and that there was a return of the \$300,000. When asked in cross-examination why he did not mention in his statement to the police the \$575,000, the defendant said that the policeman, Mr. Magdaleno, told him that he did not have to include the \$575,000 in the statement. The defendant’s word stands alone, as officer Magdaleno was not called to give evidence in this matter. It was also put to the defendant that no one saw him give the money to Flowers and there is no other evidence to prove any phone

call from the claimant to the defendant, to which the defendant agreed. It must also be remembered that the defendant, having given the statement to the police and after the claimant was charged, wrote a letter, as we saw above, requesting that the charges be withdrawn. But the defendant said he did that because he was threatened.

27. The question is who is speaking the truth? I am entitled to accept a portion of a witness testimony and reject another portion. I have seen and heard both the defendant and claimant when they gave their evidence. I have considered their evidence. I saw the claimant give his evidence. I observed his demeanour. I saw his hesitation in answering questions. I observe his lack of frankness and his answers in cross-examination, some of which are quoted above. I also saw and observed the demeanour of the defendant and how he answered questions in the witness box. I consider also discrepancies in his evidence. I do not believe the claimant when he said he did not receive \$275,000 from the defendant nor do I believe him when he said he did not send his driver to collect the money from the defendant. I believe he received the money which was given to the driver, in order to use his influence as Minister of the government at the time to facilitate the defendant to get title to the land. I believe the defendant is speaking the truth when he said that he paid \$275,000 to the claimant, through his driver, to facilitate the purchase by the defendant of the land.
28. It is clear from the authorities that in order for the claimant to succeed in an action for damages for malicious prosecution it must be

established that the claimant was prosecuted on a criminal charge by the defendant who instituted and carried on the proceeding maliciously and in the absence of reasonable and probable cause for the proceedings: see *Halsbury laws of England Fourth Edition* Volume 45 paragraph 1348 and 1349 and *Leslie v. Olivierre 2003 66 W.I.R. 186 at p. 189*. Since as I have found above, the defendant reported to the police the truth of the payment, he acted without malice and on reasonable and probable cause. In my judgment, the defendant gave to the police information of the payment, which was true and without malice; and therefore he cannot be liable for malicious prosecution. This is enough to dispose of the case.

29. But there is one particular submission which was made to the court and upon which I think the court should express its view. It was submitted that the claimant was not prosecuted by the defendant who did nothing improper, designed to cause the police to take a course it would otherwise not have taken. In other words, the defendant was not the prosecutor because he did nothing improper, designed to cause the prosecution of the claimant. The claimant has submitted on the other hand, that the defendant actively set the criminal law in motion against him by a false accusation against him to the police.
30. I think the submissions on both sides raise an issue important to the jurisprudence of Belize. Under what circumstances would private citizens be liable for malicious prosecution where they have reported possible unlawful activity to the police? In an attempt to answer this question, a fundamental fact must at once be appreciated. Private

citizens should be prevented or discouraged from using the police and the criminal jurisdiction of the courts for wrongfully causing embarrassment or harm to others or to settle personal vendettas. But, on the other hand, private citizens should not be prevented or discouraged from reporting offences and crimes to the police because of fear of civil action for malicious prosecution, if the report proves to be unfounded. The law ought to strike a reasonable balance between these two positions and set required standards.

31. In my view, the courts should consider, on the facts of the particular case, whether the report made to the police by the private citizen was a report which was true or which he believed to be true; or whether the report was known by the reporter to be false. Basten JA in *Johnston v. Australia and New Zealand Banking Group Ltd. 2006 NSWCA 218*, quoting The American Law Institute Restatement of the Law, Torts 1977 said:

“A private person who gives to a public official information of another’s supposed criminal misconduct, of which the official is ignorant, obviously causes the institution of such subsequent proceedings as the official may begin on his own initiative, but giving the information or even making an accusation of criminal misconduct does not constitute a procurement of the proceedings initiated by the officer if it is left entirely to his discretion to initiate the proceedings or not. When a private person gives to a prosecuting officer information that he believes to be true, and the officer in the

exercise of his uncontrolled discretion initiates criminal proceedings based upon that information, the informer is not liable under the rule stated in this section even though the information proves to be false and his belief was one that a reasonable man would not entertain. The exercise of the officer's discretion makes the initiation of the prosecution his own and protects from liability the person whose information or accusation has led the officer to initiate the proceedings.

If however, the information is known by the giver to be false, an intelligent exercise of the officer's discretion becomes impossible, and a prosecution based upon it is procured by the person with responsibility for the initiation of proceedings by a public official, it must therefore appear that his desire to have proceedings initiated, expressed by direction, request or pressure of any kind, was the determining factor in the official's decision to commence the prosecution, or that the information furnished by him upon which the official acted was known to be false.”

32. The above principles were accepted by Lord Keith in *Martin v. Watson* below as valid in English law. In the absence of any authority to the contrary I see no reason why the principles should not be accepted as valid in Belize law. In *Olivierre* above which was a claim for malicious prosecution that had its genesis over a dispute with respect to the sale of a musical instrument, the Court of Appeal

considered whether there was a false report and held that “in the absence of any allegation of the use of a false or malicious story on which the proceedings were based, there was no possibility that the case would fall within the boundaries of malicious prosecution.”.

33. The issue of whether a police officer had an honest belief in the truth of the charge brought by him against the claimant is also relevant in determining whether malicious prosecution is established. Where the evidence shows that the police officer brought the charge while holding an honest belief in the truth of the charge, it may be difficult to prove he acted without reasonable and probable cause. In *Glinski v. McIver 1962 AC 728*, where the claimant brought an action for malicious prosecution against a police detective for charging him for conspiracy to defraud and obtaining goods by false pretence, from which charges the claimant was acquitted by the direction of the court, the question arose whether the detective honestly believed that the claimant was guilty of the offences when he brought the charges. Lord Radcliffe in the House of Lords said:

If the prosecutor can be shown to have initiated the prosecution without himself holding an honest belief in the truth of the charge he cannot be said to have acted upon reasonable and probable cause. The question is whether the prosecutor was motivated by what presented itself to him as reasonable and probable cause, though mere belief in the truth of the charge would not protect him if the circumstances would not have led an ordinarily prudent and cautious

man to conclude that the person charged was probably guilty.”

34. Where the defendant in an action for malicious prosecution is proven by the evidence to have provided to the police officer evidence which was false, malicious, and without reasonable and probable cause and which he did not honestly believe to be true, it would be difficult for such a defendant to successfully defend the action. In *Martin v. Watson 1996 1 AC 74* where the defendant, a woman, made a complaint to a detective constable that her neighbour, the claimant, had exposed himself to her, the constable laid an information before the justices and a warrant was issued for his arrest on a charge of indecent exposure. At the trial, the prosecution offered no evidence and the charge was dismissed. The claimant sued the defendant for malicious prosecution. The judge at first instance gave judgment for the claimant, but on appeal, the Court of Appeal by majority held that although the claimant had been prosecuted on the basis of a false allegation made by the defendant to a police officer, the defendant had not taken part in the decision to prosecute and was therefore not liable for malicious prosecution. On an appeal by the claimant to the House of Lords, their Lordships allowed the appeal and held that:

“Where a complainant had falsely and maliciously given a police officer information indicating that a person was guilty of an offence and the facts relating to the alleged offence were solely within the complainant’s knowledge, so that the officer

could not have exercised any independent discretion, the complainant although not technically the prosecutor, could properly be said to have been the person responsible for the prosecution having been brought by having been actively instrumental in setting the law in motion, and as such could be sued for malicious prosecution by the individual wrongfully charged and that, accordingly, since the plaintiff had proved that the defendant had been in substance the person responsible for the prosecution having been brought and that she had done so maliciously and without reasonable and probable cause the defendant was liable in damages for malicious prosecution.

35. In *Hernand v. Smith 1938 AC 305* the House of Lords approved the definition of the phrase “reasonable and probable cause” given by Hawkins J in *Hick v. Faulkner 1878 8 Q.B.D. 167 at p 171*, as 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 ordinary 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.”
36. In the Privy Council decision of *Pandit Gaya Parshad Tewari v. Sardar Bhagat Singh 1908 24 Law Times Report 884* the defendant had made a false report to the police that the plaintiff had taken part in

a riot and the plaintiff was prosecuted. The evidence revealed that there had been no riot at all and the prosecution was unsuccessful. On an appeal by the plaintiff against the dismissal of his action for malicious prosecution, the Privy Council allowed the appeal. Sir Andrew Scoble gave the reasons:

“If, therefore, a complainant did not go beyond giving what he believed to be correct information to the police and the police, without further interference on his part (except giving such honest assistance as they might require), thought fit to prosecute, it would be improper to make him responsible in damages for the failure of the prosecution. But, if the charge was false to the knowledge of the complainant, if he misled the police by bringing suborned witnesses to support it, if he influenced the police to assist him in sending an innocent man for trial before the magistrate, it would be equally improper to allow him to escape liability because the prosecution had not technically been conducted by him.”

37. Lord Keith in *Martin v. Watson* above expressed similar views which were accepted by Lord Justice Wall in *Hunt v. A B 2009 EWCA 1092* at paragraph 71 as follows:

“Where an individual falsely and maliciously gives a police officer information indicating that some person is guilty of a criminal offence and states that he is willing to give evidence in court of the

matters in question, it is properly to be inferred that he desires and intends that the person he names should be prosecuted. Where the circumstances are such that the facts relating to the alleged offence can be within the knowledge only of the complainant, as was the position here, then it becomes virtually impossible for the police officer to exercise any independent discretion or judgment, and if a prosecution is instituted by the police officer the proper view of the matter is that the prosecution has been procured by the complaint.”

38. In *Brown v. Hawks 1891 2Q.B 718* the Court of Appeal was of the view that if there was evidence that the defendant honestly believed the charge which he made against the claimant, then malicious prosecution is not established, unless there is distinct evidence to prove malice, such as that the defendant did not make proper enquiries as to the facts of the case before laying the charges.
39. It seems to me that where it could be shown by the evidence that a private citizen gives to a police officer a complaint which was false, malicious and without an honest belief in the truth of the charge or the complaint, an action for malicious prosecution ought to succeed against the citizen.
40. But if a private citizen goes to the police and gives the police an accurate, honest and truthful account of circumstances which had occurred and he reasonable believed the account to be true, without

malice, I have no doubt that the citizen had reasonable and probable cause for the prosecution and an action on those facts for malicious prosecution ought to fail. If a police officer holding an honest belief in the truth of a complaint made to him, and without malice, lays a charge against an accused and there is present, according to the facts, reasonable and probably cause for the prosecution or that there is probable and reasonable cause to bring the accused to a fair and impartial trial, an action on those facts for malicious prosecution ought not to succeed.

41. On the facts of this case before me, I believe that the defendant was truthful when he said that he received a call from the claimant who said he wanted \$275,000 for the land. I believe on a balance of probabilities, that the claimant sent Mr. Flowers for the money which the defendant paid. I believe from the facts and circumstances of this case and on a balance of probabilities that the claimant received the money from Mr. Flowers, his driver. The defendant therefore acted without malice and on reasonable and probable cause when he reported the matter to the police
42. I therefore make the following orders:
 1. The claim against the defendant for malicious prosecution is dismissed.

2. Claimant to pay costs to the defendant, to be agreed or taxed.

Oswell Legall
JUDGE OF THE SUPREME COURT
2nd March, 2010