

IN THE HIGH COURT OF BELIZE, A.D. 2023

Claim No. 640 of 2021

BETWEEN

**GABRIEL POU
KIANDRA POW
BERISFORD HAUZE
MARK NEAL**

**1st CLAIMANT
2nd CLAIMANT
3rd CLAIMANT
4th CLAIMANT**

AND

**PC 2061 MARIO LEAL
CPL 603 REYMUNDO REQUENA
CPL 194 KENDIS HUMES
SC JASON CUELLAR
INSP AARON ZUNIGA
INSP AMILCAR MILIAN
SUPERINTENDENT ROCHELLE CHAN
ACP ALDEN DAWSON
COMMISSIONER OF POLICE
BELIZE POLICE DEPARTMENT
ATTORNEY GENERAL OF BELIZE**

**1st DEFENDANT
2nd DEFENDANT
3rd DEFENDANT
4th DEFENDANT
5th DEFENDANT
6th DEFENDANT
7th DEFENDANT
8th DEFENDANT
9th DEFENDANT
10th DEFENDANT
11th DEFENDANT**

Before the Honourable Madam Justice Geneviève Chabot

Trial Dates: November 16th to 18th, 2022

Date of Last Written Submissions: December 21st, 2022

Appearances:

Nazira Uc Myles, for the Claimants

Samantha Matute and Jorge Matus, for the Defendants

JUDGMENT

Introduction

1. Mark Neal is the owner of Body 2000, a well-known gym in Belize City. Gabriel Pou, Kiandra Pow, and Berisford Hauze were arrested by officers of the Belize Police Department after having been found inside Body 2000 during a period of lockdown related to the COVID-19 pandemic. All four were charged and prosecuted with COVID-19 related infractions. The charges were dismissed by the Chief Magistrate.
2. The Claimants filed a Claim against the Defendants seeking damages for false imprisonment and malicious prosecution, as well as special damages and costs. The allegations of false imprisonment were filed out of time under the *Limitation Act*.¹ That part of the Claim is statute-barred.
3. The Court finds that the Claimants were maliciously prosecuted. The Claimants were charged with offences under the *Belize Constitution (Emergency Powers) Regulations, 2020* (Statutory Instrument No. 65 of 2020). The charges were dismissed. The charging officer, PC Leal, did not have an honest belief in the guilt of the Claimants, and the charges were laid for a motive other than bringing the Claimants to justice.
4. The Claimants are each awarded \$10,000 in general damages and \$2,000 in aggravated damages. The Claimants are also awarded \$5,000 in special damages.

Background

5. On May 5th, 2020, Mr. Pou, Ms. Pow, and Mr. Hauze were inside the Body 2000 gym, located on Coney Drive in Belize City.
6. At around 8:00 a.m., officers of the Belize Police Department arrived on site and requested entry. After being admitted inside Body 2000, the officers proceeded to arrest Mr. Pou, Ms. Pow, and Mr. Hauze. The three of them were taken to the Precinct 4 police station. Mr. Neal met them there a few minutes later.
7. Mr. Pou and Ms. Pow were charged with the offence of being “Unable to provide a reasonable explanation or proof for movement outside of curfew”. Mr. Hauze and Mr. Neal were charged with the offence of “Keeping an establishment opened when required to be closed”. Both offences stem from the *Belize Constitution (Emergency Powers) Regulations,*

¹ Cap. 170.

2020 (Statutory Instrument No. 65 of 2020) (the “*Regulations*”). The validity of the *Regulations* is not contested by the Claimants.

8. The Claimants were all arraigned at the Magistrate’s Court in Belize City on May 6th, 2020. They were granted bail. The charges against all Claimants were dismissed by the Chief Magistrate on August 30th, 2021.
9. The Claimants seek general, aggravated, and exemplary damages for false imprisonment and malicious prosecution. They also claim \$5,000 in special damages, interests, and costs.
10. The Defendants say that they had a reasonable suspicion, and reasonable and lawful cause and authority to arrest, charge, and prosecute the Claimants for breaches of the *Regulations*. The Defendants also argue that this Claim is out of time under section 27 of the *Limitation Act*.²

Questions for determination

11. The following questions must be determined to resolve this Claim:
 - a. Whether the Claim, or part thereof, is statute barred.
 - b. Whether the Defendants are liable for the tort of false imprisonment of the Claimants resulting from their arrest on May 5th, 2020.
 - c. Whether the Defendants are liable for the tort of malicious prosecution for prosecuting the charges against the Claimants.
 - d. What remedies, if any, are the Claimants entitled to?

Evidence

12. On the morning of May 5th, 2020, Mr. Pou, Ms. Pow, and Mr. Hauze were inside the Body 2000 gym. One Mr. Delroy Herrera, as well as another female, Ms. Kim Williams, both of whom are not part of these proceedings, were also inside the gym at the time.
13. Mr. Pou is a police officer. Prior to taking a leave due to medical complications, Mr. Pou was a Detective Constable attached to the Gang Suppression Unit. In his witness statement, Mr. Pou alleges that he experienced an issue around mid-2020 with the Belize Police Department in relation to the documentation of his medical leave. Mr. Pou alleges that this issue led to “disagreements” between the Commissioner of Police and himself. Mr. Pou is

² Cap. 170, Rev. Ed. 2020.

currently a personal bodyguard for the Minister of Home Affairs and New Growth Industries.

14. Ms. Pow is Mr. Pou's sister. According to Mr. Pou and Ms. Pow, on the morning of May 5th, 2020, they went together to Body 2000 to retrieve a vacuum and equipment for the car wash run by Mr. Pou in the same compound as Body 2000. The equipment was stored inside Body 2000, in a room formerly used as a sauna. Mr. Neal confirmed that he gave Mr. Pou permission to store his equipment in the gym.
15. Mr. Hauze, the manager of Body 2000, as well as Mr. Herrera were also in the gym at the time. The Claimants' evidence is that Mr. Hauze and Mr. Herrera were on site to repair and maintain the exercise machines. Mr. Neal, the owner of Body 2000, was not present at the gym at the time.
16. Also present at the gym was Ms. Kim Williams. Mr. Neal testified that Ms. Williams was in the gym on May 5th, 2020, to rent some of the machines from the gym since they were not in use due to the COVID-19 lockdown. Mr. Neal had asked Mr. Hauze to hand over the machines to Ms. Williams the next day, after servicing was completed.
17. The Defendants testified that on May 5th, 2020 at about 5:00 a.m., ACP Dawson called OC Chan to instruct him to send a team to Body 2000, as neighbours complained the gym was being utilized while it was required to be closed. OC Chan called Insp. Zuniga, Cpl Requena, and Insp. Milian. At some point between 6:00 a.m. and 7:00 a.m., Insp. Zuniga called Cpl Humes to relay the information received from OC Chan. Cpl Humes, Cpl Requena, PC Leal, and SC Cuellar, who were on two mobile patrols at that time, conducted checks at the gym. They noted that the shutters and front door were padlocked. Cpl Humes took pictures of the closed shutters and posted them on a police blog used to share information. They returned to the station.
18. Approximately an hour later, the officers received further information that persons were working out inside Body 2000. On the instructions of Insp. Zuniga, PC Leal, Cpl Requena, SC Cuellar, and Cpl Humes, along with Insp. Zuniga and Insp. Milian, returned to the Body 2000 gym.
19. According to the witnesses for the Defendants, OC Chan arrived at the Body 2000 gym a few minutes after the mobile patrols and stayed outside. In his witness statement, OC Chan recounts what he saw inside the gym. However, in cross-examination, OC Chan admitted that he never went inside the gym and that this part of his witness statement was false. This Court cannot give any weight to OC Chan's witness statement, as OC Chan was not truthful to the Court.

20. Cpl Humes testified that ACP Dawson also attended the scene, but arrived approximately 20 minutes later in his personal truck and remained in his vehicle. In cross-examination, PC Leal, Cpl Requena, and Insp. Zuniga all denied that ACP Dawson ever attended the scene. ACP Dawson did not testify in these proceedings. This Court finds that ACP Dawson never attended the scene.
21. When the officers returned to Body 2000 around 8:00 a.m., the front door and shutters were still padlocked. They could hear some noise consistent with exercise equipment being used coming out of the gym. The officers went to the back door of the building, where Insp. Zuniga knocked and asked for the door to be opened. Mr. Pou opened the door to the officers and allowed them inside. Mr. Pou alleges that when the officers entered the gym, he was holding a hose in his hand. Mr. Pou testified that he was allowed to bring his equipment to his car, and was accompanied by Cpl Humes as he did so. This was denied by Cpl Humes.
22. The Defendants testified that all of the Claimants were wearing gym clothes and were sweating. However, there is no direct evidence that any of the Claimants were actually exercising in the Body 2000 gym on May 5th, 2020. All of the Claimants testified that no one was exercising. None of the Defendants saw any of the Claimants exercise in the gym. While both PC Leal and Cpl Requena testified that Ms. Williams declared: “officer I wah tel u the truth a me wah exercise”, Ms. Williams is not part of these proceedings and could not be cross-examined.
23. The Defendants all testified that the Claimants were asked for a justification for being at the Body 2000 gym, but their evidence is inconsistent. Cpl Humes testified that Insp. Zuniga asked the persons in the gym what they were doing there. In a Police Report dated May 26th, 2020,³ Insp. Zuniga wrote that PC Leal spoke to the persons inside the gym. Cpl Requena and Insp. Milian also testified that it was PC Leal who spoke to them. However, in his witness statement, PC Leal testified that it was Cpl Humes who asked the persons in the gym what their purpose was. Yet, in his Statement recorded on May 22nd, 2020, PC Leal writes that *he* asked the Claimants what their purpose at the gym was. Given these inconsistencies, the evidence is unclear as to who asked the Claimants for their purpose at the gym.
24. There is, however, evidence that the question was asked. In cross-examination, Mr. Hauze admitted that the officers asked why they were at the gym, and that he responded he was there to do maintenance. Mr. Pou, Ms. Pow, and Mr. Hauze all testified that they attempted to explain the reason for being inside Body 2000, but the officers did not listen and insisted they had to be taken to the police station. While PC Leal denied that Mr. Pou had indicated

³ Witness Statement of Mario Leal dated September 8th, 2022, Exhibit ML-1.

that he was there to retrieve a hose, this is in contrast with the testimony of Cpl Humes, who in cross-examination admitted that Mr. Pou stated that he was there to retrieve a hose.

25. According to Cpl Humes, Insp. Zuniga informed the group that they would be taken to the police station. PC Leal testified that it was he who informed the Claimants that they would be detained. This was confirmed by Insp. Zuniga's Police Report dated May 26th, 2020, in which he states that PC Leal informed the persons inside the gym that they would be detained. In cross-examination, PC Leal admitted that he made the decision to detain the Claimants because they were wearing exercise clothes. Yet, he admitted that this type of clothing can be used for other occasions.
26. Once at the station, Mr. Hauze called Mr. Neal to inform him of the situation. Mr. Neal attended at the station. Both Mr. Hauze and Mr. Neal testified that Mr. Neal attempted to explain that the Body 2000 gym was closed, but the officer indicated that the matter was "out of his hands" and that he "couldn't do anything" because the instructions came from "higher up". Cpl Humes confirmed that while at the station, the Claimants explained that the purpose of their being at Body 2000 was to service the machines and retrieve a hose.
27. Mr. Pou and Ms. Pow were charged with the offence of being "Unable to provide a reasonable explanation or proof for movement outside of curfew" under the *Regulations*. Mr. Hauze and Mr. Neal were charged with the offence of "Keeping an establishment opened when required to be closed" under the *Regulations*. The Claimants were granted bail at the station.
28. The Claimants' case is that PC Leal charged them on instructions of the Commissioner of Police and ACP Dawson. This was denied by PC Leal. Neither the Commissioner of Police nor ACP Dawson testified in these proceedings despite being named Defendants. In cross-examination, Cpl Humes admitted that PC Leal was instructed by OC Chan to charge the Claimants. According to Cpl Humes, OC Chan made the decision to charge the Claimants, and PC Leal carried out the instructions. While OC Chan's testimony was that he "guided" PC Leal in charging the Claimants, this Court is mindful that OC Chan was not truthful in his witness statement.
29. On May 6th, 2020, the Claimants were arraigned and granted bail by the Magistrate's Court. Subsequent to their arraignment, the Claimants returned to Court on approximately 10 to 12 adjournments. Each time, they had to stand by Regent Street in front of the Court.
30. The prosecuting officer, PC Leal, created a case file and submitted it for review to the Deputy Commander of the Precinct 4 police station on May 26th, 2020. Upon review of the case file, the Deputy Commander wrote the following "Submission" to the Prosecution Branch:

“After perusal of this file I noted:

- (1) I noted they were no proof that persons inside were exercising.
- (2) Their purpose there was not confirmed
- (3) The building was not found open or opening

Forward for your decision” (*sic* throughout)

31. On August 30th, 2021, the charges against all Claimants were dismissed by the Chief Magistrate. According to the Claimants, on that day the charging officer, PC Leal, addressed the Court. PC Leal testified that on May 5th, 2020, the Body 2000 gym was closed, that he did not see any of the Claimants using the machines to exercise, and that he had failed to ask the Claimants for an explanation for their presence in the gym. PC Leal also confirmed that he had received specific orders from the Commissioner of Police and ACP Dawson to proceed with the arrests and the charges against the Claimants. Mr. Pou stated that the notes of evidence before the Magistrate’s Court were not provided to him despite his request. Interestingly, the witness statement of PC Leal contains no information as to what transpired at the Magistrate’s Court.
32. However, in cross-examination, PC Leal admitted that he told the Chief Magistrate that he charged the Claimants because he received instructions from the Commissioner of Police and ACP Dawson to do so. This is corroborated by Cpl Humes, who stated on cross-examination that PC Leal had informed him that the charges against the Claimants had been dismissed because PC Leal had testified that he had laid the charges on instructions and had never seen the Claimants exercising.
33. Mr. Pou testified that he was a “target” of the Commissioner of Police, and had informed PC Leal of such. In his witness statement, Mr. Pou alleges that on May 1st, 2020, a few days before the events at issue in this Claim, he was approached by officers with firearms out and ready while purchasing from the corn tortilla factory on Central American Boulevard. Mr. Pou alleges that he and his apartment were searched. He was not detained for any offence then. This evidence was unchallenged by the Defendants. In cross-examination, Mr. Pou resisted the Defendants’ suggestion that he was not arrested because of disagreements with the Commissioner of Police and ACP Dawson. Mr. Pou responded that the charges said differently.

Determination

Whether the Claim, or part thereof, is statute barred

34. The Claim in relation to the tort of false imprisonment is statute-barred, as it was brought more than one year after the cause of action arose.
35. Section 27 of the *Limitation Act* provides as follows:

27.-(1) No action shall be brought against any person for any act done in pursuance, or execution, or intended execution of any Act or other law, or of any public duty or authority, or in respect of any neglect or default in the execution of any such Act or other law, duty or authority, unless it is commenced before the expiration of one year from the date on which the cause of action accrued,

Provided that where the act, neglect or default is a continuing one, no cause of action in respect thereof shall be deemed to have accrued, for the purposes of this subsection, until the act, neglect or default has ceased.

(2) This section shall not apply to any action to which the Public Authorities Protection Act, Cap. 31 does not apply, or to any criminal proceeding.

36. The Claimants were arrested and briefly detained on May 5th, 2020. They were granted bail the same day. This Claim was filed on October 19th, 2021, more than one year after the cause of action for false imprisonment arose. The Claimants concede that the part of their Claim related to the tort of false imprisonment is statute-barred. This Court agrees and finds that part of the Claim to be statute-barred.
37. The Claimants submit that the part of their Claim related to the tort of malicious prosecution, special damages, interest and costs is not statute-barred. This is not disputed by the Defendants. That part of the Claim is not statute-barred and will therefore be considered on its merits.

Whether the Defendants are liable for the tort of false imprisonment of the Claimants resulting from their arrest on May 5th, 2020

38. Given the Court's conclusion that this part of the Claim is statute-barred, it is unnecessary to consider this question.

Whether the Defendants are liable for the tort of malicious prosecution for prosecuting the charges against the Claimants

39. This Court finds that the Claimants were maliciously prosecuted. The Claimants were charged with offences under the *Regulations*. The charges were dismissed. The charging officer, PC Leal, did not have an honest belief that proper charges could be laid against the Claimants. The charges were laid for a motive other than bringing the Claimants to justice.

Legal Framework

40. For the tort of malicious prosecution to be established, the Claimants must prove the following elements on the balance of probabilities:

- a. Proceedings were initiated by the Defendants;
- b. The proceedings terminated in favour of the Claimants;
- c. The absence of reasonable and probable cause; and
- d. Malice, or a primary purpose other than that of carrying the law into effect.⁴

41. In addition, as with any tort, the Claimants must prove that they suffered damages.⁵

42. The first two elements of the tort of malicious prosecution are straightforward. To succeed, the Claimants must show that they have been prosecuted, and that the prosecution did not result in a conviction.

43. With respect to the third element, the absence of reasonable and probable cause, the applicable test has been accepted as being the following:

[...] an honest belief in the guilt of the accused based upon a full conviction, founded on reasonable grounds, of the existence of a state of circumstances, which, assuming them to be true, would reasonably lead any ordinarily prudent and cautious man, placed in the position of the accuser, to the conclusion that the person charged was probably guilty of the crime imputed.⁶

44. This test has been interpreted as containing both a subjective and an objective element. There must be both actual belief on the part of the prosecutor, and that belief must be reasonable in the circumstances.⁷

⁴ *Nelles v. Ontario*, [1989] 2 S.C.R. 170 at 193 [*Nelles*].

⁵ *Sharim Baeza v Superintendent Eugene Fuentes et al.*, Claim No. 351 of 2015 at para. 7 [*Baeza*].

⁶ *Nelles*, *supra* at 193, citing *Hicks v Faulkner* (1878), 8 Q.B.D. 167, at p. 171. See also *Baeza*, *supra* at para. 9.

⁷ *Nelles*, *supra* at 193. See also *Baeza*, *supra* at para. 10.

45. As for the element of malice, various definitions have been offered over the years. What these definitions have in common is that malice, in the legal sense, does not necessarily denote ill-will, but refers to the dominant motive for the prosecution as being wrong or improper.⁸ In other words, “it has to be shown that the prosecutor’s motive is for a purpose other than bringing a person to justice”.⁹
46. As noted by Young J. in *Baeza*, the onus of proving that the prosecutor acted without reasonable and probable cause and that the prosecution was actuated with malice rests on the Claimants. The innocence of the Claimants alone does not suffice; “one must [...] consider not only the circumstances leading up to the prosecution but also the material that was available to the prosecutor at the time. The query becomes ‘was all the material carefully collected and objectively assessed’”.¹⁰

Analysis

47. It is not disputed that the first two elements of the test have been met. Proceedings were initiated against the Claimants. Mr. Pou and Ms. Pow were charged with the offence of being “Unable to provide a reasonable explanation or proof for movement outside of curfew” under the *Regulations*. Mr. Hauze and Mr. Neal were charged with the offence of “Keeping an establishment opened when required to be closed” under the *Regulations*. The proceedings terminated in favour of the Claimants. The charges against all Claimants were dismissed by the Chief Magistrate on August 30th, 2021.
48. The crux of the issue is whether the Defendants had a reasonable and probable cause to charge the Claimants, and whether the decision to charge the Claimants with the above-noted offences was actuated by malice. In order to resolve the issue, this Court does not have to consider whether the Claimants actually breached the *Regulations*. The test is whether PC Leal, as the charging officer, had an honest belief that a proper case could be laid against the Claimants (the subjective element), and whether there were reasonable grounds to support this belief (the objective element).
49. The third element of the test has been met. The Defendants had no reasonable and probable cause to charge and prosecute the Claimants because the charging officer did not have the honest belief that a proper case could be laid against the Claimants.
50. In *Williamson v Attorney General of Trinidad and Tobago*,¹¹ Lord Kerr explained that “the honest belief required of the prosecutor is a belief not that the accused is guilty as a matter

⁸ See for instance *Nelles*, *supra* at 193; *Trevor Williamson v The Attorney General of Trinidad and Tobago*, [2014] UKPC 29 at paras. 11-13 [*Williamson*]; *Brown v Hawkes* [1891] 2 QB 718 at 722; *Stevens v Midland Counties Rly Co* (1854) 156 ER 480 [*Stevens*].

⁹ *Williamson*, *supra* at para. 12, citing *Stevens*, *supra* at 356.

¹⁰ *Baeza*, *supra* at para. 12.

¹¹ *Supra* at para. 14.

of certainty, but that there is a proper case to lay before the court”. As recently noted by Farnese J. in *Benjamin Cantun et al. v PC 1870 Roje Espinosa et al*, that belief must be arrived at after due inquiry. The Court must consider what the charging officer knew at the time the charges were laid.¹²

51. There is no evidence that PC Leal carried out a meaningful inquiry to satisfy himself that proper charges could be laid against the Claimants. Mr. Pou and Ms. Pow were charged under s. 5 of the *Regulations*. Under sections 5(1) and 5(5) of the *Regulations*, a person who is stopped and questioned between 5:00 a.m. and 7:59 p.m. “in any public place” or “on any public road” by an officer must be given an opportunity to “reasonably explain or prove that his reasons for movement fall within the reasons set out in subregulation (2)” before being charged with an offence.
52. Since the *Regulations* do not define a “public place”, it is not clear whether Body 2000 falls within this category. In addition, the evidence does not support that the Claimants were given a reasonable opportunity to explain or prove the reason for their presence at Body 2000. While there is some evidence that the Claimants were asked why they were at Body 2000 on the morning of May 5th, 2020, the evidence of the Defendants was inconsistent as to who asked the Claimants to explain themselves. It is also unclear whether all of the Claimants, individually, were asked to provide an explanation for their presence in the gym, and whether they were given a meaningful chance to respond before being detained and taken to the police station, where they were hastily charged.
53. Similarly, Mr. Hauze and Mr. Neal were charged under section 10(c) of the *Regulations*. Yet, the evidence of all of the police officers who attended the scene was that Body 2000 was closed to the public on May 5th, 2020, with its front door and shutters padlocked. While the evidence is clear that persons were found inside the gym, there is no evidence that Mr. Hauze and Mr. Neal were given an opportunity to explain why these persons were there. In fact, it was Cpl Humes’ evidence that the decision to charge the Claimants was made *before* Mr. Neal was called to attend the police station, and before he had an opportunity to explain why persons were inside the gym at that time.
54. In addition, this Court finds that the decision to charge the Claimants was not actually made by the prosecuting officer, PC Leal. While the notes of evidence from the Magistrate’s Court are unfortunately not available,¹³ all four Claimants testified that PC Leal took the stand and testified that the gym was closed, that he did not see any of the Claimants using any of the exercise machines, and that he had failed to ask for an explanation for the

¹² *Benjamin Cantun et al. v PC 1870 Roje Espinosa et al.*, Claim No. 603 of 2021 at para. 39.

¹³ If, as alleged by Mr. Pou, the request for the notes of evidence was made, this Court is troubled by the Magistrate’s Court’s unresponsiveness to this request. Evidence of proceedings before the Magistrate’s Court is regularly needed to resolve civil claims. These legitimate requests must be honoured in the interest of the good administration of justice.

Claimants' presence in the gym. PC Leal also testified that there was no reasonable cause for arresting the Claimants, but that he had received specific orders from the Commissioner of Police and ACP Dawson to proceed with the arrests and charge the Claimants.

55. The Claimants' testimony was corroborated by PC Leal himself. While PC Leal's witness statement is short on details as to what transpired at the Magistrate's Court, under vigorous cross-examination he admitted that he told the Chief Magistrate that he did not see the Claimants exercising, and that he charged the Claimants because he was instructed to do so by the Commissioner of Police and ACP Dawson. The Claimants' testimony is further supported by the testimony of Cpl Humes, who admitted that PC Leal had told him the charges against the Claimants had been dismissed after PC Leal testified that he had laid them on instructions by the Commissioner of Police and ACP Dawson, and by the testimony of OC Chan, who admitted in cross-examination that he had "guided" PC Leal in charging the Claimants.
56. In light of the evidence, this Court finds that the decision to charge the Claimants was not made by the charging officer on the basis of an investigation, but upon instructions from the Commissioner of Police, ACP Dawson, and OC Chan. Neither of these individuals were present inside the Body 2000 gym on May 5th, 2020. None of them interacted with any of the Claimants at all, let alone investigated the circumstances of the alleged offences. As a result, this Court concludes that PC Leal, as the charging officer, had no honest belief that a proper case could be laid before the court.
57. Not only did PC Leal not have an honest belief that a proper case could be laid before the court at the time he charged the Claimants, he also could not have subsequently formed such a belief. In her "Submission" to the Prosecution Branch, the Deputy Commander noted the lack of evidence that the gym was open and that persons were exercising inside the gym. She also noted the fact that their purpose for being at the gym had not been confirmed. Yet, the charges were not withdrawn, and PC Leal waited until more than a year after the alleged offences to disclose that charges had been laid on instructions from his superiors.
58. Based on the above, this Court also finds that the fourth element of the test for malicious prosecution has been met. As noted by the Privy Council in *Williamson*, in certain circumstances, malice can be inferred from a lack of reasonable and probable cause:

[13] Malice can be inferred from a lack of reasonable and probable cause—*Brown v Hawkes* [1891] 2 QB 718 at 723. But a finding of malice is always dependent on

the facts of the individual case. It is for the tribunal of fact to make the finding according to its assessment of the evidence.¹⁴

59. In the circumstances of this case, this Court finds such an inference to be warranted. The evidence is that the charging officer was instructed to charge the Claimants by superiors who did not attend the scene, and therefore did not themselves have any evidence to support the laying of the charges. Once the charges were laid, the prosecuting officer failed to withdraw the charges after the Deputy Commander of the Precinct 4 police station found that the elements of the offences were not present. It took more than a year, and between 2 and 3 appearances before the Magistrate's Court, for PC Leal to admit that he charged the Claimants not on the basis of an honest belief that they should be charged, but on instructions by the Commissioner of Police and ACP Dawson. In the circumstances, this Court has no difficulty finding that the charges were laid for a motive other than bringing the Claimants to justice.

What remedies, if any, are the Claimants entitled to?

60. The Claimants seek damages, including aggravated and exemplary damages, for malicious prosecution. The evidence is that the Claimants were not handcuffed or placed in a cell at the police station on May 5th, 2020. However, on May 6th, 2020, Mr. Pou, Mr. Hauze, and Mr. Neal were briefly detained in a cell while awaiting to be granted bail by the Magistrate's Court. Ms. Pow was allowed to sit on a bench.

61. The Claimants returned to the Magistrate's Court on approximately 10 to 12 adjournments. Each time, they had to stand by Regent Street, in front of the Magistrate's Court, where vehicular traffic constantly passes. The Claimants testified that they felt embarrassed to be seen waiting to be called by persons who knew them. In addition, their arrest was reported in the media. The Claimants allege that this led to a loss of their reputation, but provided no evidence to support such a loss.

62. The Claimants were charged with regulatory offences in relation to the restrictions put in place in response to the COVID-19 pandemic. Such offences do not carry the same stigma as criminal offences. That being said, the Claimants must be compensated for their brief detention, the inconvenience of attending the Magistrate's Court on multiple occasions, and their feeling of embarrassment caused by their presence as accused around the Magistrate's Court facilities.

63. Damages for malicious prosecution range widely in this jurisdiction. In *Thomas Greenwood Jr. v Attorney General et al*,¹⁵ Abel J. awarded \$30,000 in damages for malicious prosecution where the claimant made several appearances at the Magistrate's Court and

¹⁴ *Williamson, supra* at para. 13.

¹⁵ Claim No. 611 of 2013.

trial was actually conducted. In a recent case, Farnese J. awarded \$1,000 in damages for malicious prosecution, in a case where the Claimants' allegations of humiliation, loss of dignity, and insult had already been compensated in the award for false imprisonment. The Defendants submit that an award of \$2,500 would be reasonable in the circumstances of this case. Taking into consideration the factors noted in paragraphs 60 to 62, this Court will award \$10,000 to each of the Claimants as general damages for malicious prosecution.

64. To this, the Court will add \$2,000 to each of the Claimants in aggravated damages. Aggravated damages are awarded where the manner with which the wrong was committed deserved special reprobation. As noted by Young J. in *Eduardo Magana v Attorney General of Belize et al*:

For this award the behavior of the Defendant is called into question and there must be something found about this behavior which would demand an award beyond what he has received for the unlawful arrest and false imprisonment. *Richardson v Howie* [2004] EWCA 1127 quoting from *Rookes v Barnard* [1964] AC 1129 explains that “*the manner in which the wrong was committed was such as to injure the plaintiff’s proper feelings of pride and dignity or gave 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 personality.*”¹⁶

65. In *Magana*, Young J. awarded the claimant, a police officer, \$1,500 in aggravated damages for the humiliation caused by being detained and transferred four times in rapid succession. Here, the fact that PC Leal waited more than a year, and appeared 2 to 3 times in the Magistrate’s Court before admitting that he did not see the Claimants exercise in the gym and charged the Claimants on instructions by his superiors, caused the Claimants unnecessary inconvenience and embarrassment, and deserves reprobation. The Court finds sufficient justification to award aggravated damages in these circumstances.
66. There is, however, no justification to award exemplary or punitive damages. While reproachful, the Defendants’ conduct was not so egregious as to deserve additional condemnation on top of the award for aggravated damages already granted.
67. The Claimants also claim special damages in the amount of \$5,000. The Claimants testified that they hired counsel to represent them at the Magistrate’s Court. They introduced into evidence an unidentified receipt dated August 19th, 2020 showing payment received from

¹⁶ *Eduardo Magana v Attorney General of Belize et al*, Claim No. 833 of 2019 at para. 18 (“*Magana*”).

“Gabriel Pou et al.” for “Magistrate Court Crim Case” for a sum of \$5,000. The Defendants argue that this receipt could have been made by anyone and is a fabrication.

68. This Court can award special damages even in the absence of evidence supporting such damages. As noted by James J. in *Ashton Martin v Attorney General of Belize et al*:

Special damages are meant to be specifically pleaded and proven. It was reasonable that the Claimant would have obtained legal counsel. I agree with Madam Justice Young in *Eduardo Magana* that a pro forma invoice is not a receipt but that doesn't prevent the Court from awarding a reasonable sum for legal services. I do find that it was reasonable for the retention of an Attorney and the evidence was that the Claimant had two attorneys. In this regard I would award the sum of \$1,500.00 for legal expenses.¹⁷

69. In this case, the Court finds that an amount of \$5,000 is not unreasonable for the retention of an attorney to represent the four Claimants all the way up to the trial of this matter, including 10 to 12 appearances at the Magistrate's Court for adjournments. The evidence is that PC Leal took the stand on the first day of trial. While the charges were dismissed early in the proceedings, it is likely that the attorney prepared extensively in anticipation of the Claimants' trial.

IT IS HEREBY ORDERED THAT

- (1) Judgment is entered for the Claimants.
- (2) The Defendants shall pay to the Claimants general and aggravated damages in the sum of \$12,000 each.
- (3) The Defendants shall pay the Claimants the sum of \$5,000 in special damages.
- (4) The Defendants shall pay interest on the sums at the rate of 6% pursuant to section 176 of the *Senior Courts Act, 2022*.
- (5) Costs are awarded to the Claimants on the prescribed basis.

Dated March 29th, 2023

Geneviève Chabot
Justice of the High Court

¹⁷ *Ashton Martin v Attorney General of Belize et al*, Claim No. 819 of 2019 at para. 26.