

**IN THE HIGH COURT OF FIJI
(WESTERN DIVISION) AT LAUTOKA
CIVIL JURISDICTION**

CIVIL ACTION NO. HBC 53 of 2019

BETWEEN : **PERMAL REDDY** **PLAINTIFF**

AND : **DC 3788 OMENDRA GUPTA** **1ST DEFENDANT**

AND : **COMMISSIONER OF THE FIJI POLICE FOR** **2ND DEFENDANT**

AND : **ATTORNEY GENERAL OF FIJI** **3RD DEFENDANT**

BEFORE : Hon. Mr. Justice Mohamed Mackie

APPEARANCES : Mr. J. Reddy for the Plaintiff.
: Mr. S. Kant for the Defendants.

TRIAL HELD ON : 17th April 2024.

WRITTEN SUBMISSIONS : Not filed by the Plaintiff.
: Defendants filed on 15th May 2024.

DATE OF JUDGMENT : 20th November 2024.

JUDGMENT

A. INTRODUCTION

1. The Plaintiff on 13th March 2019 instituted these proceedings, by way of his Writ of Summons and the Statement of Claim (SOC), seeking reliefs , inter alia, Special & General Damages from the Defendants for the, alleged, Gross Negligence , Malicious Prosecution and Abuse of Process.

Statement of Claim:

2. The case of the Plaintiff, as per his SOC, is that:

- a. He was charged and produced before the Nadi Magistrate's Court on 10th May 2014 for one count of forgery, contrary to section 335(2) (b) of the Penal Code Cap 17, and one count of uttering forged document, contrary to section 343 (1) of the Penal Code Cap 17 (Charges).
- b. The Charges stemmed from an incident alleged committed between 16th February 2000 to 1st August 2000;
- c. The 1st and 2nd Defendants delayed the investigation against the plaintiff for 14 years;
- d. The Charges were before the Magistrate's Court until he was discharged on 11th August 2017 on the State's Application for withdrawal of Charges;
- e. The Charges were laid without proper and through investigation, therefore, the 1st and 2nd Defendants were **Grossly Negligent**;
- f. The Charges were laid without proper assessment of the complaint and merits thereof, without reasonable and probable cause and maliciously; therefore, the Charges tantamount to **Malicious Prosecution**;
- g. The 1st Defendant misused the judicial process to inflict unfairness upon him by making the criminal charges to proceed against him after 14 years of complaint, the conduct of the 1st Defendant had caused delay, which contradicts his constitutional rights to have the case determined within a reasonable time and thereby the 1st Defendant had caused erosion of public confidence in the administration of justice, for which act of the 1st Defendant, the 2nd and 3rd Defendants are liable and therefore, it tantamount to **Abuse of Process**.
- h. The aforesaid events and the 1st Defendant's conduct have caused vexation, oppression and unfairness to him, as a result his reputation has been harmed, and he suffered stress, anxiety, loss and damages. He seeks \$10,000.00 as special damages, general damages, punitive damages and interest at the rate of 5%.

Statement of Defence

3. By their Statement of Defence filed on 11th June 2019, the Defendants have denied the claim and stated as follows;
 - a. A complaint was made by one Rakesh Kumar Reddy ('Complainant') in the year 2013 that his signature on a Land Department Surrender dealing was forged ('Complaint').

- b. On receipt of the Complaint, the Nadi Police promptly began investigations and ascertained that the Plaintiff and one Ram Swamy Goundar ('Goundar') had signed on the Surrender dealing on 3rd July 2000.
- c. The Plaintiff and Mr. Goundar were caution interviewed and an Identification parade resulted in the Land Officer from the Land Department positively identifying Mr. Goundar as the person who signed on the Surrender dealing on 3rd July 2000 by impersonating the complainant.
- d. Though, the alleged fraud had occurred in the year 2000, the same had not been discovered by the Complainant Mr. Rakesh Kumar Reddy until the year 2013 and subsequently he reported to the Police.
- e. The Plaintiff and the Complainant are Brothers whose father Mr. Dorsamy Reddy ('the deceased') had passed away in 1996, for whose Estate the Plaintiff and the Complainant Mr. Rakesh Kumar Reddy were finally appointed as administrators under Letters of administration No-3313.
- f. Upon further investigation by the 1st Defendant, the Land Officer, namely Mr. Sui Prasad reported to the Police that on 3rd July 2000 the Plaintiff and a person purporting to be the Complainant, Mr. Rakesh Kumar Reddy, executed the surrender and transfer of the State leases under the deceased's estate.
- g. The 1st and 2nd Defendants having sufficient evidence against the Plaintiff following thorough investigation, the charges were laid against the Plaintiff on 27th June 2014 ;
- h. Finally, the Charges were caused to be withdrawn on the directives of the Director of Public Prosecution, resulting in the Plaintiff being discharged by the Nadi Magistrate's Court.

B. THE TRIAL

- 4. Prior to the trial, the parties at the PTC had recorded 4 agreed facts and raised 28 issues to be tried. At the trial held before me on 17th April 2024, the Plaintiff gave evidence for and on his behalf by marking documents from "Pex-1" to "Pex-5" from his Bundle of Documents, which were the Charge Sheet, his Record of Interview, Summary of facts, Petition of Appeal to High Court and the Judgment of the High court.
- 5. Subsequently, the 1st Defendant gave evidence on his and on behalf of other Defendants by marking documents "Dex-1" to "Dex-8", which were respectively, **Complainant's Statement, Travel History of the Complainant, Surrender document, Caution Interview recording of the Plaintiff, Caution Interview recording of Ram Swamy Goundar, Land Officer Sui**

Prasad's Statement, further record of Interview of Ram Swamy Goundar and the Charge Sheet .

C. EVIDENCE

6. Plaintiff's evidence in chief , inter alia, was that;

- a. He is a retired chef. A Police Officer came in 2014 and asked him to go to Police Station for an interview on a land issue. The 1st Defendant arrested him on a Sunday night in 2014 to be interviewed on the land issue. He and his brother, Rakesh Kumar Reddy, were joint Trustees of their Father's estate. Since he did not have transport, he went to the Land Department with his Uncle Ram Swamy Goundar, who was the initial Trustee of his Father's Estate. Mr. Goundar did not go inside the land Department and he remained outside. He met Mr. Sui Prasad the land officer at Land Department and signed the surrender. He was taken by the Police in 2014 despite the surrender being signed in the year 2000. He was charged for forgery and false signature and he did not forge any document.
- b. The case went on for 2-3 years and the Court dismissed the charges. Since he wanted an acquittal instead of dismissal, on Appeal to the High Court he was acquitted. He was stressed, faced financial hardships and embarrassment because of the investigation and prosecution. The 1st and 2nd Defendants were negligent and maliciously prosecuted him. Being a Police Officer, the 1st Defendant should have known whether they were right or wrong as they knew the law, therefore they abused the process.

Cross Examination:

7. Under his cross examination, the Plaintiff , inter alia, stated that;

- a. Mr. Rakesh Kumar Reddy, the complainant is his younger brother, he became as a Trustee of his Father's estate after the removal of Mr. Ram Swamy Goundar as the Trustee when his brother was leaving for USA in 1997 he had given him a full Power of Attorney. (He *admitted in evidence that the said Power of Attorney was not a part of his pleadings or documents*).
- b. He signed the surrender twice as told by the land officer Mr. Sui Prasad. He signed so for him and on behalf of the complainant, Rakesh Kumar Reddy, before Mr. Shiu Prasad at the Land Department. He signed for the complainant on the surrender dealing under the said Power of Attorney.
- c. The surrender dealing was provided by Mr. Sui Prasad on his reaching the land Department, and he did not come with the surrender dealing from Nadi. He had informed the Police about the Power of Attorney during the caution interview and also provided the original of it to the Police.

8. Notably, it is an admission in his evidence under cross examination that the Police Officers were merely doing their job in bringing the charges against him.

Defendants' Evidence:

9. On behalf of the Defendants, the 1st Defendant, investigation Officer gave evidence as aforesaid, which was convincing and withstood the cross examination by the Plaintiff's Counsel.
10. After the closure of the case, the parties were left at liberty of filing written submissions. But, the Plaintiff did not avail of the opportunity to file any submissions. The Defendants filed their written submissions as aforesaid. I shall not reproduce here any part of 1st Defendant's evidence, unless it is warranted.

D. ANALYSIS

Observation of the Court on the Plaintiff's Evidence:

11. It was observed during the trial, particularly, during the cross examination of the plaintiff, that the Plaintiff was not giving direct answers to the questions posed to him. He was evading the questions like as to, who signed for Rakesh Kumar Reddy. When he was specifically asked whether he told Mr. Gupta, the 1st Defendant investigating officer, at any time that he signed the Surrender as a Power of Attorney Holder for Rakesh Kumar, he did not give proper answer to it- Vide 3rd answer in page 18 and 2nd answer in page 19 of the transcript. He repeatedly, avoided giving specific and direct answers. It was further observed that he took long time to come out with answers, and was deliberately telling lies. Number of questions went unanswered and most of the times, he gave irrelevant answers. (Vide my notes).
12. For a plaintiff to succeed in an action for malicious prosecution he must show:
 - a. That the defendant prosecuted him;
 - b. That the prosecution ended in the plaintiff's favor;
 - c. That there was no reasonable or probable cause for the prosecution; and
 - d. That the defendant was actuated by malice. (***Tort Law by Nicholas J. MacBride & Roderick Bagshaw – 4th Edition, 2012 at page 706***).
13. The same principles were followed in the case of ***Khan V Khan [2016] FJHC 344; HBC037.2011 (29 April 2016)***.
14. The facts that that the plaintiff was prosecuted by the officers of the Fiji Police Force, and that he was initially discharged and subsequently acquitted by the High court are admitted. Thus, the court will now proceed to consider whether the plaintiff has been successful in satisfying the court on the grounds (c) and (d) above.
15. A prosecutor could be said to have had a reasonable and probable cause to prosecute a person for an offence if, when he brought the prosecution:

- a. He thought that the person prosecuted had probably committed that offence; and
- b. It was reasonable for the prosecutor to think this, given the evidence available to him at the time he prosecuted that person.

16. The following definition of reasonable and probable cause, given by **Hawkins J in Hicks v Faulkner (1878) 8 QBD 167 at 171** was quoted with approval by Lord **Atkin in Herniman v Smith [1938] AC 305 at 316**:

“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”.

17. In the instant case the police arrested the plaintiff and charged in the Magistrate’s Court of Nadi on a complaint made by, none other than his own brother **Mr. Rakesh Kumar Reddy**, that the plaintiff and another person, namely, Ram Swamy Goundar, had forged his signature in the Surrender dealing at the Land Department in respect of a Lease that was a subject matter of their late Father’s Estate.
18. It was revealed through further investigation that in the year 2000, said Ram Swamy Goundar had impersonated as Rakesh Kumar Reddy, when the Plaintiff signed the Surrender document at the land Department by presenting himself as Rakesh Kumar Reddy, while the said Rakesh Kumar was in fact still in the USA as revealed by the “Dex-2” Travel History obtained from the Fiji Immigration & Emigration Department.
19. Ram Swamy Goundar was positively identified by the Land Department Officer Mr. Shiu Prasad at the Identification Parade held, as the person came with the Plaintiff and placed the signature on the left side of the Plaintiff’s signature on the surrender document.
20. That the Plaintiff had caused said Ram Swamy Goundar, to impersonate as Rakesh Kumar Reddy and to place the signature of Rakesh Kumar Reddy.
21. The prosecution of the plaintiff at the Magistrate’s Court of Nadi was not initiated by the police on their own volition. It was the Plaintiff’s own brother, the Complainant **Rakesh Kumar Reddy**, who set the police and the Criminal prosecution machinery in motion and had him arrested. The police officers have only done their duty expected of them, by conducting due investigation, arresting the plaintiff, filing the charges and prosecuting him. There was an admission by the Plaintiff that he signed the Surrender in the year 2000. The land officer Mr. Shiu Prasad, had identified Ram Swamy Goundar as the person who, admittedly, accompanied the Plaintiff to the Land Department and placed the signature, as if **Rakesh Kumar Reddy** was signing.

22. Following immigration searches, the caution interviews and positive identification parade, there was sufficient and reasonable evidence to charge the Plaintiff and Mr. Goundar, who had initially left the Country, and was arrested on his subsequent arrival into the Country and the charges were framed accordingly.
23. The Plaintiff had not uttered a single word in his caution interview to the Police officer about the impugned Power of Attorney. The caution interview records of the Plaintiff and Ram Swamy Goundar were in the Plaintiff's agreed bundle of documents. Had the Plaintiff come up with the Power of Attorney during the investigation and caution interview, then the circumstances would have been different as affirmed by the 1st Defendant in his evidence. As the Plaintiff knew very well that the impugned Power of Attorney would not assist in this Court, it was neither pleaded in the SOC nor was made a part and parcel of his documentary evidence.
24. Though, the incident of forgery had taken place in the year 2000, it was revealed to the complainant only in the year 2013, on which he immediately made the complaint on 2nd July 2013. So, the allegation that the Defendants were negligent in conducting the investigation and in filing the case is unfounded. The Plaintiff in his caution interview had expressed his willingness for his brother, the complainant, to take back his land.
25. It is abundantly clear that the Plaintiff was only charged on the strength of sufficient evidence that was available against him, and therefore the allegation of negligence, malicious prosecution and the abuse of process against the Defendants are unfounded.
26. In my view, the police had reasonably believed that there was sufficient evidence to prosecute the Plaintiff. The initial discharge by the Magistrate and the subsequent acquittal by the High court from the charges alone is not sufficient for the court to conclude that the police did not have reasons to conclude that the plaintiff did not probably commit the offence.
27. The next question arises for determination is whether the Police officers were actuated by malice in prosecuting the plaintiff. The burden is on the plaintiff to establish that the prosecution was done maliciously. Malice here refers to the Defendant's motive, and includes any motive other than the desire to secure ends of justice.
28. ***Stevens v the Midland Counties Railway Company and Lander [1854] EngR 661, (1854) 10 Exch 352, (1854) 156 ER 480*** – Any motive other than that of simply instituting a prosecution for the simple purpose of bringing a person to justice, is a malicious motive on the part of the person who acts in that way.

29. ***Halsbury's Laws of England Volume 45(2)***: states that;

"A malicious prosecution is an abuse of the process of the court by wrongfully setting the law in motion on a criminal charge. To be actionable as a tort the process must have been without

reasonable and probable cause, must have been carried on maliciously and must have terminated in the claimant's favour”.

30. ***Gibbs v Rea [1998] UKPC 3; [1998] AC 786*** is a case of maliciously procuring a search warrant. A majority of the Privy Council felt to infer malice in a case where there was no evidence that the police officer in question had reasonable grounds for suspecting the plaintiff for any crime. If the defendant has persuaded a judge to issue a warrant by suggesting that there were grounds for suspicion when he knew there were none to procure the warrants in that state of mind was to employ the court process for an improper purpose.
31. In ***Keegan and Others v Chief Constable of Merseyside [2003] 1 WLR 936*** the police had information suggesting (wrongly) that a fugitive resided at an address. An armed raid followed, and the claimant occupant sought damages. It was held that the tort of malicious procurement of a search warrant required it to be established both, that there was no reasonable or probable cause for requesting the search warrant and that there was some improper motive.
32. In ***Glinski v Mclver [1962] AC 726, [1962] All ER 696*** the court considered the tort of malicious prosecution when committed by a police officer, saying, ‘But these cases must be carefully watched so as to see that there really is some evidence from his conduct that he knew it was a groundless charge. A charging officer is simply required to make an assessment of whether there is sufficient evidence to withstand examination in the course of a fair and impartial trial’.
33. The evidence adduced by the plaintiff does not show that the officers who arrested him on a complaint made by Rakesh Kumar Reddy, had any malicious intention to prosecute him. As I stated earlier, the officers had done what the law expected of them to do when a complaint is made to them by a citizen. Mere acquittal from the criminal proceedings is not sufficient to impute malice on the officers who prosecuted him. For these reasons the court is of the view that the plaintiff in this case has not been able to show the court that the officers of the police, who prosecuted him, were negligent, acted maliciously and abused the process of law.
34. There was reasonably sufficient evidence against the Plaintiff for the Defendant Police officers to have had acted by arresting the Plaintiff and filing charges against him , but for the reason best known to the Public Prosecutor and on his discretion , opted not to prosecute against the Plaintiff.

E. CONCLUSIONS:

35. The Plaintiff's claim of negligence must fail as the Plaintiff has failed to establish that there was a duty of care owed by the Defendants towards the Plaintiff in accordance with the test expounded in ***Anns v Merton London Borough Council [1978] AC 728***, which has been accepted by the Fiji Supreme Court in ***Lautoka City Council v Ambaram Narsey Properties Ltd-Civil Appeal No-CBV 0010 of 2014 (26 November 2014)***.

The Plaintiff's claim of malicious prosecution must also fail as the Plaintiff has failed to show that the Defendants acted maliciously without reasonable and probable cause, which is a crucial requirement for malicious prosecution as expounded in ***Rupeni Naisoro and Another v The Commissioner of Police and Another Civil Appeal No- ABU 0018 of 2017 (7 June 2019)***.

The Plaintiff's claim of abuse of process also fails as the Plaintiff has failed to prove that the Criminal proceedings against him was perverted or misused for an improper purpose subsequent to its initiation, as is required under the principles expounded in ***Thomas Bruce Cunningham v Graeme Clarke and others – CP . 93/88 (23 March 1990)***.

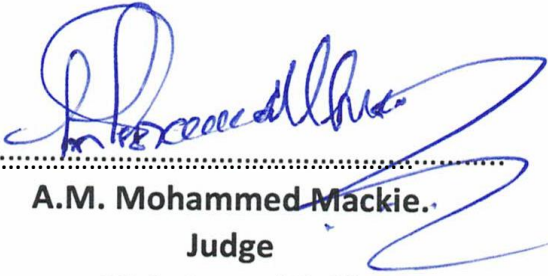
36. Accordingly, the Court makes the following orders.

F. FINAL ORDERS:

- a. The Plaintiff's claims fail.
- b. The action of the plaintiff is hereby dismissed.
- c. The plaintiff is ordered to pay the Defendants **\$ 750.00** each, totaling to **\$2,250.00** (Two Thousand Two Hundred and Fifty Fijian Dollars) as summarily assessed costs, within 14 days.

On this 20th day of **November, 2024** at the **High Court of Lautoka**.




A.M. Mohammed Mackie.
Judge
High Court (Civil)
Lautoka.

SOLICITORS:

For the Plaintiff – Messrs. Jiten Reddy lawyers – Barristers & Solicitors.
For the Defendants – Attorney General's Chambers.