

**IN THE HIGH COURT OF BELIZE, A.D. 2022**

**Claim No. 73 of 2021**

**BETWEEN**

**NORMAN ANTHONY**

**CLAIMANT**

**AND**

**COMMISSIONER OF POLICE  
ATTORNEY GENERAL OF BELIZE  
INSP. SANTIAGO GONGORA**

**1<sup>st</sup> DEFENDANT  
2<sup>nd</sup> DEFENDANT  
3<sup>rd</sup> DEFENDANT**

**Claim No. 80 of 2021**

**BETWEEN**

**DAVID CHI**

**CLAIMANT**

**AND**

**COMMISSIONER OF POLICE  
ATTORNEY GENERAL OF BELIZE  
INSP. SANTIAGO GONGORA**

**1<sup>st</sup> DEFENDANT  
2<sup>nd</sup> DEFENDANT  
3<sup>rd</sup> DEFENDANT**

**Before** the Honourable Madam Justice Geneviève Chabot

**Dates of Hearings:** June 16<sup>th</sup> and 17<sup>th</sup>, and August 10<sup>th</sup>, 2022

**Dates of Written Submissions:** September 30<sup>th</sup> and October 25<sup>th</sup>, 2022

**Appearances**

Misty Marin and Kia Diaz-Tillett, for the Claimants

Agassi Finnegan and Jorge Matus, for the Defendants

## JUDGMENT

### Introduction

1. On September 9<sup>th</sup>, 2018 in the evening, an illegal aircraft landed near the Northern Community Airstrip, in the Blue Creek area of Belize. The aircraft was later found to have transported 26 bales of cocaine, for a total of 552.9955 kg.
2. The Claimant in Claim No. 73 of 2021, Norman Anthony, was driving in the area when he was stopped and detained by the 3<sup>rd</sup> Defendant, Insp. Santiago Gongora, on suspicion that he was involved in the illegal landing of the aircraft. Several other individuals were also arrested that night, including Peter Friesen who provided statements implicating Mr. Anthony and the Claimant in Claim No. 80 of 2021, David Chi, in the illegal landing.
3. Mr. Anthony and Mr. Chi were charged with two offenses each, namely conspiracy to abet the crime of importation of a controlled drug, and abetting the crime of causing an aircraft to land in any place other than an aircraft licenced or Government aerodrome. They were detained for approximately eight days before being released on bail. They were subsequently prosecuted, but were found not guilty of the offences following a No Case Submission which was upheld by the Magistrate of the Orange Walk Magistrate Court. The Claimants allege that they were falsely imprisoned and maliciously prosecuted.
4. I find that the Claimants were not falsely imprisoned. In all of the circumstances, Insp. Gongora had a reasonable suspicion that Mr. Anthony had committed or was about to commit an offence. The Claimants were not subsequently falsely imprisoned because the charges laid against them were lawful. The Claimants did not discharge their burden of proving that they were maliciously prosecuted. The Defendants had a reasonable and probable cause to suspect that the Claimants were involved in the illegal landing of the aircraft, and there is no evidence to support any malice on the part of the Defendants.

### Background

5. The Claimant in Claim No. 73 of 2021, Norman Anthony, filed on February 5<sup>th</sup>, 2021 a claim for aggravated and exemplary damages for false imprisonment and malicious prosecution, as well as special damages, against the Defendants. The Claimant in Claim No. 80 of 2021, David Chi, filed on February 10<sup>th</sup>, 2021, a similar claim. As both claims stem from the same events, the two matters were consolidated and tried together.
6. On or about September 9<sup>th</sup>, 2018, an aircraft landed illegally in the Blue Creek area of Belize. Mr. Anthony, a police constable, was driving in the area of the landing when he came upon a police checkpoint. The 3<sup>rd</sup> Defendant, Insp. Gongora, proceeded to detain Mr.

Anthony. Mr. Anthony was transported to the Queen Street Police Station in Belize City, where he was released on September 10<sup>th</sup>, 2018 in the evening. The next day, he was suspended from his position as a police constable for his suspected involvement in the illegal landing of the aircraft.

7. Mr. Chi, a Superintendent of Police, was also suspected of being involved in the illegal landing of the aircraft, and was placed on 5 days leave during the investigation.
8. On September 12<sup>th</sup>, 2018, both Claimants were charged with the following offences:
  - a. “Conspiracy to abet the crime of importation of a controlled drug” contrary to section 23(1) of the *Criminal Code*, Chapter 101 of the Substantive Laws of Belize read along with section 5(3) of the *Misuse of Drugs Act*, Chapter 103 of the Substantive Laws of Belize;
  - b. “Abet the crime of causing an aircraft to land in any place other than an aircraft licenced” contrary to section 23(1) of the *Criminal Code*, Chapter 101 of the Substantive Laws of Belize read along with section 20 of the *Civil Aviation Act*, Chapter 239 of the Substantive Laws of Belize.
9. The Claimants were imprisoned at the Belize Central Prison before they were released on bail on September 20<sup>th</sup>, 2018.
10. The Claimants were prosecuted for both charges in cases No. 414/19 and No. 825/18. By order of the Orange Walk Magistrate Court dated February 13<sup>th</sup>, 2020, a No Case Submission was upheld for both of the Claimants.

## **Legal Framework**

### *False Imprisonment*

11. For the tort of false imprisonment to be established, two elements must be proven on the balance of probabilities:
  - a. The fact of imprisonment; and
  - b. Absence of lawful authority to justify the imprisonment.<sup>1</sup>

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<sup>1</sup> *Thomas Greenwood Jr. v Attorney General et al.*, Claim No. 611 of 2013 at para. 74 [*Greenwood*].

12. Once a claimant has proven the fact of the imprisonment, the burden shifts on the defendant to prove a justification for the imprisonment.<sup>2</sup>
13. Section 5(1)(3) of the *Constitution of Belize* provides the circumstances under which a person may be deprived of their personal liberty:

5.- (1) A person shall not be deprived of his personal liberty save as may be authorised by law in any of the following cases, that is to say: -

[...]

(e) upon a reasonable suspicion of his having committed, or being about to commit, a criminal offence under any law;

14. A person may be deprived of their personal liberty “as authorised by law”. Generally, police officers derive their power of arrest from the *Police Act*.<sup>3</sup> Under section 42 of the *Police Act*, it is a lawful for a police officer to arrest without warrant a person whom the officer has good cause to suspect of having committed, or is about to commit, an offence:

42.–(1) It shall be lawful for any police officer, and for all persons whom he may call to his assistance, to apprehend without warrant in the following cases–

[...]

(b) any idle and disorderly person whom he finds between sunset and six in the morning lying or loitering in any street or other public place, and not giving a satisfactory account of himself, or whom he has good cause to suspect of having committed, or being about to commit any felony, misdemeanour or breach of the peace;

[...]

15. Under section 44 of the *Police Act*, a police officer may take into custody without warrant a person found to have been committing an offence:

44.–(1) Every person found committing any offence punishable either upon indictment in the Supreme Court, or as a petty misdemeanour upon summary conviction–

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<sup>2</sup> *Greenwood, supra* at para. 75, citing *Abu Bakr v Attorney General and Commissioner of Police*, TT 2013 HC 151 at para. 42. See also *Shane Harris v Attorney General of Belize et al.*, Claim No. 90 of 2020 at para. 21; *Mark Phillips v Attorney General of Trinidad and Tobago*, CV2017-03766 at para. 21 [*Phillips*].

<sup>3</sup> Cap. 138, Rev. Ed. 2020.

(a) may be taken into custody without a warrant by any police officer and by any persons whom he may call to his assistance; or

[...]

16. Given the facts of this matter, the Defendants rely on other legislation to support their power of arrest. They rely on section 13 of the *Crime Control and Criminal Justice Act*,<sup>4</sup> pursuant to which “Security Forces”<sup>5</sup> members may conduct arrests “in a special area”<sup>6</sup> without warrant in the following circumstances:

13.-(1) In a special area, any member of the Security Forces may, without warrant, and using such force (if any) as may be reasonably justified in the circumstances—

[...]

(c) arrest any person upon reasonable suspicion of his having committed or of being about to commit an offence;

[...]

17. They also rely on section 26(1) of the *Misuse of Drugs Act*,<sup>7</sup> which allows “a member of the Belize Police Department [to] arrest without warrant any person who has committed or is about to commit, or whom a member of the Belize Police Department, with reasonable cause, suspects to have committed or is about to commit, an offence under this Act”.
18. In *Attorney General v Margaret Bennett et al.*<sup>8</sup> the Belize Court of Appeal noted that police officers also enjoy a common law power to arrest without warrant any person whom they reasonably suspect to have committed a felony, whether a felony has in fact been committed or not. This common law power of arrest is reflected in section 5(1)(e) of the *Constitution of Belize*.
19. Whether at common law or conferred through legislation, the power of a police officer to deprive a person of their personal liberty is limited to circumstances where the officer has a reasonable suspicion that an offence has or is about to be committed. The standard is

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<sup>4</sup> Cap. 102, Rev. Ed. 2020.

<sup>5</sup> Defined at section 11 as including the Belize Police Department.

<sup>6</sup> Defined at section 11 as “any area of Belize not exceeding one square mile in which the provisions of this Part have effect by virtue of an Order made under section 12”.

<sup>7</sup> Cap. 103, Red. Ed. 2020.

<sup>8</sup> Civil Appeals No. 48, 49, 50 of 2011 at para. 31, citing *Irish v Barry* (1965) 8 WIR 177, 180 and *Dallison v Caffery* [1964] 2 All ER 610 at 619.

interchangeably described as a reasonable and probable cause for the arrest. The reasonableness of the officer's suspicion, or cause for the arrest, is highly contextual, but courts have provided guidance as to how to assess this standard.

20. The test to assess the reasonableness of an officer's cause of arrest has been described by Diplock L.J. in *Dallison v Caffery*<sup>9</sup> as an objective one:

The test whether there was reasonable and probable cause for the arrest or prosecution is an objective one, namely whether a reasonable man, assumed to know the law and possessed of the information which in fact was possessed by the defendant, would believe that there was reasonable and probable cause.

21. The application of the objective test does not require the reviewing court to look beyond what was in the mind of the arresting officer; "it is the grounds which were in his mind at the time which must be found to be reasonable grounds for the suspicion which he has formed".<sup>10</sup> To have a reasonable suspicion, an officer does not need to possess evidence amounting to a *prima facie* case.<sup>11</sup> Evidence based on hearsay, including evidence provided by other officers, can be relied upon to form a reasonable suspicion. Whether the information turns out to be false is of no relevance to the analysis, as the reviewing court is only concerned with what was in the mind of the officer at the time of the arrest.<sup>12</sup>
22. As noted in *Francis v Nixon*,<sup>13</sup> a lawful arrest is not rendered unlawful by reason of the fact that the person who was arrested is later released without being charged; "where a police officer exercises his power of arrest without a warrant on the ground that he honestly believes that he has a reasonable cause to suspect that an arrestable offence has been committed, he may release the person arresting without charging him before a court with any offence where his investigation, although diligently pursued, fails to produce *prima facie* proof which must be in the form of evidence that would be admissible in a court of law".<sup>14</sup>
23. In *Thompson et al. v Attorney General et al.*,<sup>15</sup> Hafiz J., as she then was, endorsed the following passage from *Archbold: Criminal Pleadings, Evidence and Practice* in which the authors provide some helpful nuances, emphasising the distinction between "reasonable" and "mere" suspicion:

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<sup>9</sup> [1964] 2 All ER 610 at 629.

<sup>10</sup> *O'Hara v Chief Constable of the Royal Ulster Constabulary* [1997] 1 All ER 129 at 138-139 [*O'Hara*]. See also *Phillips*, *supra* at para. 26.

<sup>11</sup> *Ibid.* See also *Shabaan bin Hussein v Chong Fook Kam* [1970] AC 942 at 948.

<sup>12</sup> *O'Hara*, *supra* at 134.

<sup>13</sup> (2001) Supreme Court, The Bahamas, No. 113 of 1998 (unreported), Carilaw BS 2001 SC 39.

<sup>14</sup> *Francis v Nixon*, *supra* at para. 41.

<sup>15</sup> Claims No. 530, 531, 532 of 2010.

Reasonable suspicion does not require certainty. The officer does not have to be satisfied beyond a reasonable doubt. Reasonable suspicion in contrast to mere suspicion must be founded on fact. There must be some concrete basis for the officer's suspicion related to the individual person concerned, which can be considered and evaluated by an objective third person. Mere suspicion, in contrast, is a hunch or instinct which cannot be explained or justified to an objective observer. Reasonable suspicion may arise from suspicious behavior of the person concerned or those with him. Reasonable suspicion cannot be supported on the basis simply of a higher than average chance that the person has committed or is committing an offence.<sup>16</sup>

### *Malicious Prosecution*

24. 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 defendant;
  - b. The proceedings terminated in favour of the claimant;
  - c. The absence of reasonable and probable cause; and
  - d. Malice, or a primary purpose other than that of carrying the law into effect.<sup>17</sup>
25. In addition, as with any tort the claimant must prove that they suffered damages.<sup>18</sup>
26. The first two elements of the tort of malicious prosecution are straightforward. To succeed, a claimant must show that they have been prosecuted, and that the prosecution did not result in a conviction. 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.<sup>19</sup>

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<sup>16</sup> *Ibid* at para. 27.

<sup>17</sup> *Nelles v. Ontario*, [1989] 2 S.C.R. 170 at 193 [*Nelles*].

<sup>18</sup> *Sharim Baeza v Superintendent Eugene Fuentes et al.*, Claim No. 351 of 2015 at para. 7 [*Baeza*].

<sup>19</sup> *Nelles, supra* at 193, citing *Hicks v Faulkner* (1878), 8 Q.B.D. 167, at p. 171. See also *Baeza, supra* at para. 9.

27. 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.<sup>20</sup>
28. 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.<sup>21</sup> In other words, “it has to be shown that the prosecutor’s motive is for a purpose other than bringing a person to justice”.<sup>22</sup>
29. 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 claimant. The innocence of the claimant 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’”.<sup>23</sup>

## Evidence

30. Mr. Anthony was detained on two occasions: the first on September 9<sup>th</sup>, 2018 when he was placed in the back of Insp. Gongora’s vehicle and taken to the area where there was an illegal aircraft landing, then to the Queen Street Police Station in Belize City where he remained for a little less than 48 hours (the “Initial Detention”). Mr. Anthony was released and detained a second time on September 12<sup>th</sup>, 2018 when he was charged, and thereafter imprisoned for eight days at the Belize Central Prison before being granted bail on September 20<sup>th</sup>, 2018. Mr. Chi was also detained on September 12<sup>th</sup>, 2018 and taken to the Queen Street Police Station where he was charged, and thereafter imprisoned at the Belize Central Prison before he was released on bail on September 20<sup>th</sup>, 2018 (the “Subsequent Detention”).

### I. The Initial Detention

31. It is common ground that Mr. Anthony was detained on September 9<sup>th</sup>, 2018. Mr. Anthony was the officer in charge of the Blue Creek Police Station in the Orange Walk District and he lived on the second floor of the station with his wife. He testified that on September 9<sup>th</sup>, 2018 at about 7:30pm he received a call from Mr. Chi, who was the Superintendent of

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<sup>20</sup> *Nelles*, *supra* at 193. See also *Baeza*, *supra* at para. 10.

<sup>21</sup> 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*].

<sup>22</sup> *Williamson*, *supra* at para. 12, citing *Stevens*, *supra* at 356.

<sup>23</sup> *Baeza*, *supra* at para. 12.



Police and Commander of the Orange Walk Police Formation, to go investigate an information he received in the Blue Creek area.

32. Mr. Anthony testified that he had just removed his uniform shirt when he received the call, and in his haste to go investigate the information he proceeded with his civilian shirt. He was however wearing his uniform pants and boots.
33. According to Mr. Anthony, he was on his way to investigate the information when he met Insp. Gongora at a checkpoint in the Blue Creek area. Insp. Gongora asked Mr. Anthony what he was doing there, to which Mr. Anthony replied that he was there to investigate an information. Insp. Gongora replied “that no sound correct” and proceeded to detain Mr. Anthony in the back of Insp. Gongora’s vehicle, a pickup truck. Insp. Gongora took Mr. Anthony’s phone and firearm. Shortly thereafter, they heard the sound of an aircraft landing and proceeded towards the direction of the aircraft. Once the aircraft landed, the officers on site exchanged shots with the passengers of the plane. Mr. Anthony testified that during this time, he was in the back of the pickup truck, completely exposed. This was confirmed by Insp. Gongora in cross-examination.
34. Mr. Anthony testified that about 45 minutes later, the vehicle in which he had been placed was driven and parked under the wing of the aircraft. That is when he was handcuffed. One of the officers on site took a picture of Mr. Anthony, which was later published on Facebook. Mr. Anthony also testified that a BDF officer slapped him by his left ear, and one of his fingers hit his eye resulting in pain to the eye to this day.
35. According to Mr. Anthony, Mr. Chi attended the scene and asked the Commissioner of Police, who was at the scene, why Mr. Anthony was detained. Mr. Chi informed the Commissioner of Police that Mr. Anthony had been sent on his instructions. In cross-examination, Insp. Gongora confirmed that he heard this conversation, but recognized that he did not set Mr. Anthony free at that time.
36. Mr. Anthony was then taken to the Blue Creek Police Station where he and his living quarters were searched. He was then returned to the site of the aircraft landing, where he was detained until the next morning.
37. The next morning, Mr. Anthony was transported to the Queen Street Police Station in Belize City, where he alleges to have been coerced into giving a statement. He was thereafter detained in the cell block where he was not provided with any drink or food until he was released within the 48-hour time limit. He was immediately suspended, despite not being formally arrested at that time.
38. Mr. Anthony’s testimony is inconsistent with his contemporaneous account of the events that took place on September 9<sup>th</sup>, 2018. In his statement given to the police on September

10<sup>th</sup>, 2018, Mr. Anthony stated that he received the call from Mr. Chi at 8:30pm, not 7:30pm. In cross-examination, Mr. Anthony confirmed that the call came in at around 8:30pm. In his statement to the police, Mr. Anthony has a different account of his conversation with Insp. Gongora at the checkpoint. According to the statement, the following conversation took place:

[Inspector Gongora] approached my vehicle as he reached close to me I heard him say to me “you involve can a this same rass ya”. I then replied to him “Mr. Gongora what are you talking about?” and he replied “illegal aircraft landing”. I then said to him “if I knew something like this was happening I would not have come out here like Sylvester Stallone”.

39. Mr. Anthony’s testimony is also inconsistent with his Reply to the Defence. In their Defence, the Defendants state that when Insp. Gongora asked Mr. Anthony why he was there, Mr. Anthony responded that he was going to check on an information he had received “with an informant”. Insp. Gongora then asked why he, as the head of the Special Branch in Orange Walk, was not informed of the information. According to the Defence, Mr. Anthony responded that he did not have Insp. Gongora’s phone number. This was not denied by Mr. Anthony at paragraph 3 of the Reply to the Defence. In his Reply, Mr. Anthony added that he was not provided an opportunity to call his informant to speak to Insp. Gongora because his phone had been taken away, nor was he asked or provided an opportunity to explain who the informant was or why he was there. Yet, in his cross-examination, Mr. Anthony categorically denies telling Insp. Gongora about an informant.
40. Detective Constable (now Cpl.) Teofilo Rejon testified on behalf of the Defendants that on September 9<sup>th</sup>, 2018, he received information that an illegal aircraft was headed in the direction of the Northern Community Airstrip, and that suspicious activities had been recorded in the area, including two vehicles seen speeding in the direction of the Airstrip. DC Rejon testified that he called Insp. Gongora to relay the information to him. Two teams of Special Branch officers and BDF soldiers were dispatched to investigate.
41. According to DC Rejon, shortly after his team headed by Insp. Gongora saw a low flying aircraft circling in the area, they encountered Mr. Anthony driving his personal vehicle towards the area of the illegal landing. They questioned Mr. Anthony who told them he was in the area to get information from an informant.
42. Both DC Rejon and Insp. Gongora testified that they had a suspicion that Mr. Anthony was involved in the illegal landing because they were discreet in their operation, and they found it odd that one police officer would show up to intercept an illegal aircraft. They also found it suspicious that Mr. Anthony was in civilian clothing, and in his personal vehicle. Both denied that Mr. Anthony received any information from Sr. Supt. Vidal or DC Rejon.

43. In a police statement given on September 19<sup>th</sup>, 2018, the 3<sup>rd</sup> Defendant, Insp. Gongora, stated that he asked Mr. Anthony what he was doing in the area and that Mr. Anthony responded that he was “going to check an information with an informant”. Insp. Gongora asked Mr. Anthony why he had never called him to tell him about any information, to which Mr. Anthony responded that he did not have his number. When he asked Mr. Anthony to step out of his vehicle and saw that he was wearing a civilian shirt, Insp. Gongora proceeded to detain Mr. Anthony.
44. In cross-examination, Insp. Gongora acknowledged that he could not say with certainty whether Mr. Anthony had any instructions from any superior to investigate an information in the area at that time, but was adamant that he asked Mr. Anthony what information he was checking on. That is despite the absence of any reference to this question being asked in his witness statement. He also acknowledged that the Blue Creek Police Station, where Mr. Anthony was stationed, was the closest police station from the site of the aircraft landing, and that if a crime was to be committed in that area, the officer at the Blue Creek Police Station would be informed and dispatched. Insp. Gongora also confirmed that Mr. Anthony had never called him in the past when he had an information, which he found suspicious given where both are situated in the chain of command.
45. Insp. Gongora acknowledged in cross-examination that he was “discouraged” and found it “disconcerting” that his superior, Mr. Chi, did not recognize his effort to intercept the illegal aircraft that night, but rather appeared to be only concerned about Mr. Anthony’s well-being.

## II. The Subsequent Detention & Prosecution

46. Mr. Anthony testified that the day after he was released from the Initial Detention, he received a call that the police were looking for him. He proceeded to the Police Station, where he was formally arrested and charged. He was then imprisoned at the Belize Central Prison before he was released on bail on September 20<sup>th</sup>, 2018.
47. Mr. Chi testified that he arrived at the site of the illegal landing after the aircraft had landed and Mr. Anthony had been detained. Earlier in the day, he attended a horse racing event in Burrell Boom. Around 4pm, he received a call from the Commissioner of Police to dispatch a Quick Response Team to the San Estevan area based on information received by the Commissioner of Police regarding a suspected illegal aircraft landing in progress. Mr. Chi then called Cpl. Vidal Cajun to assemble the Quick Response Team. Mr. Chi testified that he left the horse racing event around 6pm.
48. According to Mr. Chi, around 7:30pm he received another call from the Commissioner of Police asking him to ask the Quick Response Team to proceed to the Blue Creek area to

assist the police and the BDF. Mr. Chi testified that he called both Cpl. Cajun and Mr. Anthony at that time.

49. As noted above, Mr. Chi arrived at the site of the illegal aircraft landing after the aircraft had been intercepted. He advised the Commissioner of Police, who was at the scene, that Mr. Anthony had been sent on his instructions. Mr. Chi was told that “he [Mr. Anthony] was doing something else”. Mr. Chi then returned to Orange Walk.
50. On September 11<sup>th</sup>, 2018, Mr. Chi’s house and office were searched without a warrant. Mr. Chi was placed on 5 days leave based on the plane landing investigation. On September 12<sup>th</sup>, 2018, Mr. Chi was charged with the two above-noted offences. Mr. Chi testified that at no time was he questioned or asked anything concerning the charges made against him. No statement was taken from him. Mr. Chi alleges that he was not cautioned, read his rights, or told why he was detained. He was taken to the Belize Central Prison, where he remained until he was released on bail on September 20<sup>th</sup>, 2018.
51. It is noteworthy that the Claimants did not call as witnesses either Cpl. Cajun or the Commissioner of Police, which Mr. Chi alleges he spoke to on September 9<sup>th</sup>, 2018 with regard to the illegal aircraft landing. There is no evidence corroborating any of the conversation Mr. Chi alleges having had on that day with persons other than Mr. Anthony, the other Claimant in this Claim.
52. According to Insp. Gongora, during the operation at the site of the illegal aircraft landing, a civilian who was later identified as Mr. Peter Friesen was found by the BDF team. Mr. Friesen claimed that he was there to assist the police, which Insp. Gongora found suspicious. Mr. Friesen was detained for questioning. Insp. Gongora testified that Mr. Friesen informed the police that he had asked Mr. Anthony if he would be willing to get Mr. Chi to assist in the landing of the illegal aircraft, to which he agreed. Mr. Friesen explained the role of both Claimants in the operation and explained that they exchanged phone calls and text messages. Insp. Gongora testified that it is because of the information provided by Mr. Friesen that the Claimants were arrested and charged.
53. Three statements provided by Mr. Friesen were entered into evidence as exhibits to Mr. Chi’s witness statement. Assistant Superintendent and Deputy Commander for Operations for the Corozal Police Formation, Mr. Wilfredo Ferrufino, recorded a statement dated September 11<sup>th</sup>, 2018. In cross-examination, Mr. Ferrufino specified that he recorded an open statement and that he did not personally caution Mr. Friesen before recording the statement. Two statements were recorded the day before, on September 10<sup>th</sup>, 2018. One statement was recorded by Mr. Alejandro Cowo, A.S.P., at 4:10pm, and one by Ms. Sandra Bowden, Ag. Sr. Supt. at 5:24pm. The statement recorded by Mr. Cowo, the first statement recorded after Mr. Friesen’s arrest, was a caution statement. All three statements given by

Mr. Friesen directly implicate Mr. Chi in, and provide ample details about, the illegal aircraft landing. Only the statement recorded by Mr. Ferrufino implicates Mr. Anthony.

54. Attached as an exhibit to the witness statement of Insp. Gongora is a report from BTL dated June 10<sup>th</sup>, 2019, providing “the name of the registered owners of the cellular numbers 610-8067, 600-6635 and 615-3949” and well as “the transcripts of all text messages to and from”, and the “phone records of all calls to and from” those cellular numbers “during the period 31<sup>st</sup> August 2018 to 13<sup>th</sup> September 2018”. The Claimants did not object to this report being entered into evidence. However, this Court finds this report to have little probative value. The Claimants were charged on September 12<sup>th</sup>, 2018. The BTL report had not been produced at that time, and therefore was not part of the evidence considered by the Defendants in deciding to charge the Claimants. While the BTL report may have been relevant to the criminal trial, in these proceedings this Court is asked to opine on whether the Defendants had a reasonable and probable cause to prosecute the Claimants. The decision to prosecute the Claimants was made on or around September 12<sup>th</sup>, 2018. The Court must therefore only consider the information that was available to the Defendants at that time.

## **Analysis**

### *Whether the Claimants were falsely imprisoned*

55. The first prong of the false imprisonment test, the fact of the imprisonment, has been met. There is no dispute that the Claimants were detained. Mr. Anthony was detained on two occasions; once for less than 48 hours on September 9<sup>th</sup> and 10<sup>th</sup>, 2018, and again when he was charged with two offences and imprisoned at the Belize Central Prison for eight days before being released on bail on September 20<sup>th</sup>, 2018. Mr. Chi was detained once, when he was charged with two offences and imprisoned at the Belize Central Prison for two weeks before also being released on bail on September 20<sup>th</sup>, 2018. The burden now shifts to the Defendants to prove on the balance of probabilities that the imprisonment was lawful.
56. I find that the Defendants have met their burden of proving that the imprisonment was lawful. With respect to the Initial Detention, I am satisfied that Insp. Gongora had a reasonable suspicion that Mr. Anthony had or was about to commit an arrestable offence. At the time of the Initial Detention, Insp. Gongora was aware that a low-flying aircraft had been detected in the area and was about to perform an illegal landing. Insp. Gongora had assembled the team that was sent to intercept the illegal aircraft, and he knew that Mr. Anthony was not part of the team. Insp. Gongora was also aware that suspicious activities had been observed in the area, including two vehicles seen speeding in the direction of the illegal landing. Mr. Anthony’s vehicle was seen travelling in the direction of the illegal aircraft landing. When Mr. Anthony arrived at the checkpoint, he was observed alone in his personal vehicle and in a civilian shirt. According to Insp. Gongora, he found it “odd that

one police officer would show up to intercept an illegal aircraft” and “very unlikely he would have received the information I received from Sr. Supt. Vidal and DC Rejon”.

57. While these facts can individually be explained, as Mr. Anthony has sought to do in his submissions, it is Mr. Anthony’s failure to provide a credible account of himself that, in combination with the facts listed above, provided a reasonable suspicion to Insp. Gongora. Throughout these proceedings, Mr. Anthony has been very vague as to what “information” Mr. Chi had asked him to “check on” in the area. It is unclear whether he was asked to check on an information related to the illegal aircraft landing, or something else. In fact, Mr. Anthony testified that he was himself not given more details than that, merely stating in his witness statement that he “received an instruction from the Superintendent of Police, Mr. David Chi, to go to investigate an information he received in the Blue Creek area”. In cross-examination, Counsel for the Defendants asked Mr. Anthony whether Mr. Chi had explained why he needed him to go check an information. Mr. Anthony responded that Mr. Chi asked him to go “just to see if there is something out there”. It strains credulity that Mr. Chi would instruct a police officer to go investigate, alone and at night, an unspecified “information” in a general location without providing any more details. That is especially so given Mr. Chi’s testimony that he knew an illegal aircraft was on its way to the Blue Creek area.
58. I am unable to find any reliability in Mr. Anthony’s account of his conversation with Insp. Gongora when he reached the checkpoint. Mr. Anthony provided three different accounts of this conversation, each significantly different than the others: one in his Reply to the Defence, one in his witness statement, and one in the police statement given on September 10<sup>th</sup>, 2018. In light of Mr. Anthony’s general vagueness on this point, I prefer Insp. Gongora’s account of the conversation, which is consistent with DC Rejon’s. Both testified that Mr. Anthony said that he was in the area to check an information with an informant. None of the witnesses, including Mr. Anthony himself, testified that Mr. Anthony referred to any instructions from Mr. Chi, the nature of the information he was investigating, or the identity of the informant. It is hard to believe that, upon the threat of being detained by his colleagues, Mr. Anthony would not volunteer any specific information that would explain his presence in the area.
59. I find that on the facts as established before this Court, Insp. Gongora had a reasonable suspicion that Mr. Anthony was involved in the illegal landing of the aircraft. With respect to the Initial Detention, the test for false imprisonment has not been met.
60. With respect to the Subsequent Detention, there is no dispute that the first prong of the test is met. The Claimants were detained from September 12<sup>th</sup> to September 20<sup>th</sup>, 2018. The Claimants were detained as a result of charges laid against them on September 12<sup>th</sup>, 2018. The detention is lawful if the charges were lawfully laid. It is therefore necessary at this

juncture to consider the Claimants' claim that they were maliciously prosecuted. If it is established on the balance of probabilities that the Claimants were maliciously prosecuted, the Subsequent Detention is unlawful and the claim for false imprisonment will be made out.

*Whether the Claimants were maliciously prosecuted*

61. It is not disputed that the first two elements of the test to establish malicious prosecution have been met. Criminal proceedings were initiated by the Defendants against the Claimants. These proceedings terminated in favour of the Claimants when a No Case Submission was upheld by the Magistrate Court on February 13<sup>th</sup>, 2020.
62. I find that the third element of the test was not met. The Defendants had a reasonable and probable cause to believe that the Claimants had committed the offences with which they were charged. In addition to the facts leading to the detention of Mr. Anthony on September 9<sup>th</sup>, 2018, the Defendants were also in possession of statements by Mr. Friesen, who was himself involved in the events, when they made the decision to charge Mr. Anthony and Mr. Chi on or around September 12<sup>th</sup>, 2018. As previously mentioned, Mr. Friesen provided three statements, two on September 10<sup>th</sup>, 2018 implicating Mr. Chi, and one on September 11<sup>th</sup>, 2018, implicating both Mr. Chi and Mr. Anthony.
63. The Claimants argue that the circumstances under which the incriminating information provided by Mr. Friesen was obtained were unlawful, and therefore that the Defendants had no lawful authority to justify the charges and imprisonment. The Claimants' contention rests on the fact that on September 12<sup>th</sup>, 2018, the date the Claimants were charged, the Deputy Commissioner of Police spoke to Mr. Friesen at the police station, while Mr. Friesen was in police custody and before Mr. Friesen provided his open statement incriminating both Mr. Anthony and Mr. Chi. The Claimants note that after the open statement was provided by Mr. Friesen, all charges against him were dropped.
64. The Claimants' contention is not supported by the evidence. According to Insp. Gongora's police statement dated September 19<sup>th</sup>, 2018, the conversation between the Deputy Commissioner of Police and Mr. Friesen occurred on September 12<sup>th</sup>, 2018. However, the statement recorded by Mr. Ferrufino, to which Insp. Gongora refers, is dated "11/10.87". This was an error and on the version of the statement attached to Mr. Chi's witness statement, this date is crossed out and replaced by "11/9/18". In addition, both the witness statements of Mr. Ferrufino, who recorded the open statement, and of Mr. Andrew Godfrey, a Justice of the Peace who attended the recording of the statement, state that the open statement was given on September 11<sup>th</sup>, 2018, not on September 12<sup>th</sup>, 2018. The evidence therefore does not support that the Deputy Commissioner of Police spoke to Mr. Friesen before he gave his open statement.

65. While the Claimants' submission that Mr. Friesen's statements were self-serving is acknowledged, the evidence does not establish if and when any "deal" according to which the charges against Mr. Friesen would be dropped if he testified against the Claimants was reached. In addition, I agree with the Defendants' submission that the level of detail provided by Mr. Friesen in his statements about Mr. Chi and Mr. Anthony, their relationship, and the alleged plot to land the aircraft suggests that Mr. Friesen did not manufacture the information. The details provided by Mr. Friesen showed that he had actual knowledge of certain facts, which provided the Defendants with reasonable and probable cause to suspect that the Claimants were involved.
66. The Claimants' contention that the information obtained was unlawful also rests on the fact that Mr. Ferrufino admitted to stopping the video recording of Mr. Friesen's open statement to make "corrections", resulting in the statement not being lawfully obtained. With respect to the "corrections" made by Mr. Ferrufino, both Mr. Ferrufino and Mr. Godfrey acknowledged that the recording was stopped on a few occasions. However, Mr. Ferrufino's evidence is that Mr. Friesen had pre-written his statement and that he, Mr. Ferrufino, read it on video. The video was stopped twice to make minor corrections: replacing the words "senior" by "junior" and "they" with "them". Mr. Ferrufino testified that Mr. Friesen then watched the video, including the corrections, and signed the written statement. Under cross-examination, Mr. Ferrufino resisted any suggestion that the corrections were in fact more extensive and that he had told Mr. Friesen what to write. As I found Mr. Ferrufino to be a credible witness, there is no evidence before this Court to support that Mr. Ferrufino dictated the content of Mr. Friesen's open statement.
67. The Claimants allege, without any evidentiary support, that Mr. Friesen was not fairly treated while in police custody, and therefore that any statement made by Mr. Friesen cannot be relied upon to show that the Defendants acted upon reasonable suspicion in detaining the Claimants. They also allege that no evidence has been provided by the Defendants to show that the information obtained from Mr. Friesen was given voluntarily, of his own free will, independent or in any event truthful. In this civil trial, the burden is on the Claimants to prove what they allege. Mr. Friesen provided three statements to the police on September 10<sup>th</sup>, 2018 and September 11<sup>th</sup>, 2018. One statement was a caution statement. All three statements were signed by Mr. Friesen. Without more, this Court is unable to conclude that these statements were in any way coerced such that the Defendants could not rely on them in their investigation.
68. The Claimants point to a number of other flaws in the procedure followed by the Defendants in building their criminal case, including the absence of corroborative evidence, the absence of the money allegedly given to the Claimants for their role in the illegal aircraft landing, and DC Rejon's testimony at the criminal trial that he failed to follow certain procedures. All of these facts may be critical in establishing whether or not the



Claimants were guilty of the offences for which they were charged beyond a reasonable doubt. However, in this civil trial the burden is on the Claimants to show on a balance of probabilities that the Defendants had no reasonable and probable cause to believe that the Claimants were guilty of the offenses. Considering that Mr. Anthony was found near the site of the illegal aircraft landing under suspicious circumstances and that he implicated Mr. Chi, and given the three statements provided by Mr. Friesen implicating both Mr. Chi and Mr. Anthony in the commission of the offences, I am satisfied that the Defendants had a reasonable and probable cause to charge the Claimants. The third element of the malicious prosecution test has not been met.

69. Even if I am wrong about the third element, the fourth element of the test, the presence of malice, is also not met. The burden of proving malice rests on the Claimants. The main argument advanced by the Claimants on this point is that Insp. Gongora was “upset by the reaction of his boss on his interception [of the aircraft]”, and that he was upset that “instead of calling him, the special branch officer, [Mr. Chi] called on PC Anthony”. The Claimants also submit that malice can be inferred from the circumstances under which Mr. Friesen’s statements were obtained.
70. The Claimants have not discharged their burden of proving malice. First, when Insp. Gongora heard the reaction of Mr. Chi to his interception of the aircraft, Mr. Anthony was already detained on suspicion that he was involved. Secondly, Insp. Gongora was not involved in the recording of any of Mr. Friesen’s statements. The statements were each recorded by police officers who were not involved in the interception of the illegal aircraft. Since the charges were only laid once the statements implicating Mr. Anthony and Mr. Chi had been recorded, even if Insp. Gongora was “upset” by the behaviour of either Claimant, there was reasonable and probable cause to impugn the Claimants. Malice, if any, was therefore not the driving factor being the decision to charge Mr. Anthony and Mr. Chi.
71. Because the Claimants failed to meet the burden of proving malicious prosecution, the Subsequent Detention was lawful. The Claimants have failed to prove on the balance of probabilities that they were falsely imprisoned and/or maliciously prosecuted. The Claims must therefore be dismissed.

**IT IS HEREBY ORDERED**

- (1) Both Claims are dismissed.
- (2) Costs in the amount of \$5,000 are awarded to the Defendants.

Dated December 29<sup>th</sup>, 2022

Geneviève Chabot  
Justice of the High Court