IN THE COURT OF APPEAL OF BELIZE AD 2016
CIVIL APPEAL NO 5 OF 2013

ATTORNEY GENERAL Appellant

v

CHERYL SCHUH
ARTHUR SCHUH Respondents

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BEFORE

The Hon Mr Justice Sir Manuel Sosa	President
The Hon Madam Justice Minnet Hafiz-Bertram	Justice of Appeal
The Hon Mr Murrio Ducille	Justice of Appeal

N Hawke and L Duncan for the appellant.
H Panton for the respondent.

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15 March 2016 and 4 November 2016

SIR MANUEL SOSA P

[1] I have had the privilege of reading, in draft, the judgment of Hafiz Bertram JA and I concur in the reasons for judgment given, and the orders proposed, in it.

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SIR MANUEL SOSA P

HAFIZ BERTRAM JA

Introduction

[2] This is an appeal against the judgment of Legall J dated 11 December 2012, in which he granted declarations and an order against the appellant ('the Attorney General') in relation to monies seized by the Belize Police Department from Cheryl Schuh and Arthur Schuh ('the respondents'). The Court heard the appeal on 15 March 2016, and reserved its decision.

[3] By a fixed date claim form dated 28 November 2011, the respondents commenced a claim for the following relief:

> 1) A declaration that the agents or servants of the Commissioner of Income Tax and the Police Department fraudulently seized S$80,000.00 (eighty thousand dollars) from the respondents on or about 23 May 2005, and that such seizure is null and void and of no effect;
>
> 2) A declaration that the Commissioner of Income Tax failed to comply with the provisions of the Income and Business Tax Act in purporting to lawfully seize monies from the respondents and as such the decision of the Commissioner of Income Tax was fraudulent and/or mistaken;
>
> 3) An order that the said monies be returned to the respondents together with interest and costs.

Notice of application to strike out

[4] On 24 January 2012, the Attorney General applied to the court pursuant to Rule 26.3(1)(b) and (c) of the Supreme Court (Civil Procedure) Rules, 2005, for the claim be dismissed and/or struck out on two grounds:

> 1) the claim is an abuse of the process of the court and the claimants have no reasonable grounds for bringing the claim since **the limitation period** for the claim had expired;

2) the claim is an **abuse of the process** of the court, as the claimants have delayed in proceeding with the claim and they failed to exhaust all their remedies pursuant to the Income and Business Tax Act.

[5] The application was supported by an affidavit sworn on 24 January 2012 by Nigel Hawke, senior crown counsel (as he was then) who deposed that the claim failed to disclose any reasonable grounds for bringing the claim. He deposed as to the assessment made by the Income Tax Department as shown at paragraphs 4 to 7 of his affidavit. He further deposed that the respondents did not appeal the assessment made by the Commissioner of Income Tax.

[6] Mr. Hawke further deposed that the claim was an abuse of the process of the court as it was initiated after the one year statutorily prescribed limitation period.

The evidence for the respondents/claimants

[7] The claim was supported by the affidavit of Cheryl Schuh sworn on 15 November 2011, ('the first respondent') who deposed that on 23 May, 2005 agents of the Belize Police department illegally entered into and searched the home of herself and her husband ('the second respondent') at Vista del Mar without a warrant under the pretext that they were looking for weapons and/or drugs. Further, that neither drugs nor weapon were found on the premises.

[8] She deposed that the Belize Police Department fraudulently and unlawfully seized about US$30,000.00 (thirty thousand dollars) along with a laptop computer which was found in her residence. The respondents were arrested and taken to the police station where Inspector Alford Grinage, issued receipts in the sum of US$30,106,00 for the monies which were seized.

[9] At paragraph 8 of her affidavit, she deposed that on the following day the police and servants of the Income Tax department took the respondents back to their home where they seized an additional US$59,300.00. Thereafter, an officer of the Income Tax department issued to the second respondent a notice of assessment pursuant to

section 111(3) of the Income and Business Tax Act for the period of January 2005 in the sum of BZ$64,200.00. The said officer issued a receipt in the name of the first respondent for BZ$54,400.00 under the said Act.

[10] The first respondent further deposed that the police seized US$10,000.00 from an employee (of the second respondent) who had retrieved the money from their home on the instructions of the second respondent.

[11] The respondents along with Thomas Schuh were taken to the Magistrate's Court and pleaded guilty to the offence of "failure to comply with the conditions of a visitor's permit and as a result they were deported back to the United States of America (USA) in June 2005.

[12] The first respondent deposed that she was given US$10,000.00 to pay fines and plane tickets for herself and Thomas Schuh. She further deposed that she asked Inspector Grinage to return the monies and the laptop which was taken from her residence but they were not given to her.

[13] At paragraph 14 of her affidavit, the first respondent deposed that she believed that the Commissioner of Income Tax did not receive all the monies seized from their residence since the Commissioner of Income Tax said they received BZ$64,000.00.

[14] The first respondent further deposed that her husband and herself were never employed in Belize and as such did not earn any monies which were seized from them. As such, she sought that the sum of US$89,300.00 which was fraudulently seized under the Income and Business Tax Act be returned to them.

[15] In a second affidavit sworn on 17 September 2012, the first respondent deposed that no assessment was necessary in the case of herself and the second respondent as they did not earn the money in Belize.

[16] In a third affidavit sworn by the first respondent on the 1 October 2012, she deposed that before she and her husband left the USA, they held shares in various companies which they cashed before moving to Belize. She exhibited from paragraph 4 to paragraph 13, copies of the transaction showing the sale of shares. At paragraph 14,

the first respondent deposed that the total amount of monies which they received from the sale of shares held in the various companies was US$169,027.23. Further, that she and the second respondent had not earned any income during their stay in Belize.

[17] Mr. Dean Lindo, Attorney-at-law, swore to an affidavit on 2 April 2012, on behalf of the claimants/respondents in support of the claim. He deposed that he wrote numerous letters to the Commissioner of Income Tax and the Police Department on behalf of the claimants in order to ascertain the sums of monies seized by the said departments. On 10 November 2005, he received a response from the Commissioner of Income Tax who stated that he did not retain US$70,000.00 from the claimants.

[18] Mr. Lindo deposed that he wrote again to the Commissioner of Income Tax on 16 March 2011 to resolve the matter without the need for litigation. He received a response on 13 April 2011 by which he was informed that BZ$64,000.00 was collected and that the respondents owed the Department BZ$18,000.00.

[19] He further deposed that on perusal of the file and the correspondences between himself and the Commissioner of Income Tax and the Police Department, he discovered that a fraud was committed by those Departments and that the actual date the fraud was committed was 13 April 2011, the date when the Commissioner of Income Tax informed him that the Department had only received less than half of the actual monies seized from his clients.

The evidence for the Attorney General

[20] On 16 April 2012, Spt. Alford Grinage of the Queen Street Police Station ('police station'), swore to an affidavit in response to the respondents' affidavit on behalf of the Attorney General. He deposed that in 2005, he was Inspector at the Criminal Intelligence Unit (CIU), at the police station.

[21] At paragraph 5 of his affidavit, Mr. Grinage deposed that about May 2005, the Belize Police department had received information from the Regional Security Office at the USA Embassy that a US fugitive may have been residing in Belize, namely Mr. Arthur Schuh, the second respondent, who was allegedly wanted for "Conspiracy to

distribute Cocaine". He exhibited a copy of the warrant as "AG-1". He further deposed that on 23 May 2005 at about 2.00 am, after a week of surveillance, the CIU including himself conducted a search of a house at 894 Vista Del Mar, Ladyville where it was revealed that the US fugitive, Arthur Schuh, his wife, Cheryl Schuh and his brother Thomas Schuh were present and occupying the house.

[22] Spt. Grinage deposed that on the said morning whilst conducting the search in the presence of both respondents, a large amount of US currency was found in the pockets of a jeans jacket that was hanging in a closet in the house. The currency was in fourteen individual rolls, the total amount being US$32,000.00. The police thereafter enquired from the first respondent as to how he got the money and he refused to give an account for same. The respondents and Thomas Schuh were then escorted out of the home and detained at the CIU office. The money was also taken to the CIU office.

[23] At paragraph 12 of his affidavit, Spt. Grinage deposed that on the date of the detention of the respondents, the Income Tax Department was called to make an assessment. This was done in the presence of himself and both respondents and a Notice of Assessment was issued to the second respondent. The Notice is exhibited as "AG-2". The notice of assessment issued pursuant to the Business Tax Act section 111(3), for the period January 2005 shows the following:

Tax	$32,000.00
Penalty	$36,800.00
Total assessed	$68,800.00
Payment	$64,200.00
Balance due and payable	$ 4,600.00

[24] Spt. Grinage further deposed at paragraph 13 of his affidavit that on the 23 May 2012, he questioned the first respondent whilst she was in detention and she disclosed to him that there was another large amount of US currency at the residence in Vista del Mar. As a result, himself and several officers escorted the first respondent back to her

residence where she pointed to a foot stand of a sofa set and indicated that there was money hidden there. He search the stand in the presence of the first respondent and found a large amount of US one hundred dollar notes. He deposed that he did not count the money found in the foot stand. He placed all of the money in a plastic bag in the presence of the first respondent which he tied and gave to her. The police then escorted the first respondent with the bag of money to the Income Tax department.

[25] He deposed that upon arrival at the Income Tax Department on 24 May 2005, he briefed the Income Tax officer of the money found and this was done in the presence of the first respondent who handed over the plastic bag with the money to the said officer at the Income Tax department. The Income Tax officer assessed the first respondent and issued her a Notice of Assessment which is exhibited as "AG-3". The notice of assessment issued pursuant to the Business Tax Act, section 111(3), for the period February 2005 shows the tax to be $54,400.00 and the payment in the same amount.

[26] Spt. Grinage further deposed that at no time prior to the assessment, he nor the Income Tax Officer remove the large amount of money found in the presence of the first respondent.

[27] He also deposed that the police investigation revealed that the respondents who were US nationals had entered Belize through Mexico in January of 2004 and remained in Belize since that time. They lived in san Pedro and thereafter moved to Vista del Mar where they rented houses in the price range of BZ$800.00 per month. He deposed that there was no evidence of the respondents working.

[28] Kent Clare, Commissioner of Income Tax, swore to an affidavit on 30 August 2012, on behalf of the Attorney General. He deposed as to the assessments made on the respondents having read the fixed date claim form, the affidavit evidence of the first respondent and reviewed the files at the Income Tax Department.

[29] Mr. Clare deposed that the Income and Business Tax Act, Chapter 55 ("the Act") provides for regular rates of Business Tax as contained in the Ninth Schedule of the Act. The most commonly used rate is 1.75% reserved for "Other Trade or Business". The Act also provides for late filing penalties and interest in section 109(3). Further,

section 111(3) provides for a tax rate of 50% where a person has failed to disclose his income properly.

[30] He deposed that based upon his review of the files at the Income Tax department, it would appear that the assessments of the respondents were as a result of an Inter Department Cooperation between the Police Department and the Income Tax Department. Mr. Young of the Income Tax Department invoked section 110(1)(b) of the Act, which provides that where a taxpayer had not filed returns the Commissioner or his representative can use his best judgment to assess such person. The second respondent was assessed and the sum of $64,000.00 was seized from him. The electronic database at the department showed that the said sum had been paid to the account of the second respondent. He exhibited a print out of the electronic database which is exhibited and marked "KC-1".

[31] He deposed that Mr. Schuh was further assessed a sum of $54,400.00 pursuant to section 111(3) of the Act. This is in relation to the US$27,200. that the first respondent took to the Income Tax Department.

[32] Mr. Clare deposed that he was contacted by Mr. Lindo who queried the amount seized by the Department of Income Tax and he informed him that BZ$64,000.00 had been collected. However, when he conducted a further research he saw that it was actually BZ$118,400.00. That his earlier search may have yielded the result of BZ$64,000.00 due to a typographical error.

[33] In relation to the claim that US$80,000.00 was seized from the claimants on the 23 May 2005, he deposed that he was unaware as to how much cash was found on the premises of the claimants. However, he was aware that the second respondent was assessed and the sum of $68,200.00 was found payable in the first instance and $54,400.00 in the second instance. The sums of $64,000.00 and $54,400.00 were paid to the Income Tax Department.

[34] In a second affidavit sworn on 3 October 2012, Mr. Kent Clare replied to the evidence given by the first respondent. He stated that in addition to reviewing the

income tax files at the office he recalled discussing the assessments with Mr. Young when he returned from his leave on 6 June 2005.

[35] Mr. Clare deposed that Mr. Schuh was assessed pursuant to Part III of the Income and Business Tax Act by Mr. Steve Young who interviewed the second respondent and did not accept his explanation that the money was brought into the country personally and was not generated in Belize. The respondents were unable to certify that they had declared that amount to the Customs Department upon entering Belize or show proof that they had a reliable source of income from abroad. Further, the respondents admitted that they were in Belize for over a year and were in possession of BZ$4,000. Which indicated that there were some conversions of foreign currency or the generation of local business activity. He deposed that the respondents were sought by the USA for allegedly distributing cocaine. However, whether the respondents had obtained moneys from illegal conduct was not considered. The respondents had nothing to support their assertions that the moneys were generated from outside of Belize. As such, whether legal or illegal the moneys were generated in Belize.

The Order of the trial judge

[36] By an order dated 18 January 2013, Legall J after hearing the parties, made the following order:

> 1. A declaration granted that the seizure of US$59,200.00 owned by the claimants by members of the Belize Police Department is unlawful and void;
>
> 2. A declaration granted that the seizure of US$59,200.00.00 received by the Commissioner of Income Tax as business tax under the Business and Income Tax Act is unlawful, null and void;
>
> 3. An order that the Attorney General shall return or cause to be returned the amountof US$59,200.00 or BZ$118,400.00 to the respondents on or before the 1 March 2013;

4. Attorney General to pay the respondents interest and cost.

The Appeal

[37] The Attorney General appealed the whole decision of the trial judge and sought to set aside the orders made by him on the following grounds:

1. The trial judge misconstrued the law when he found that the claim was not statute barred;
2. The trial judge erred when he found that the issue for determination was whether the search of the respondents residence was legal;
3. The judge erred in law when he misconstrued the evidence that the monies were sent to the respondents who collected the monies from sale of shares and this rebutted the inference that the money found was income generated in Belize;
4. The trial judge erred in law when he found that the search was not authorised by law. Therefore, the monies obtained by virtue of the search were unlawfully detained;
5. The judge erred in holding that there was no lawful basis for the retention of the monies seized by the police and paid to the Commissioner of Income Tax.

The point on whether the claim against the Attorney General was statute barred

[38] It was submitted by the Attorney General in the court below that the claim in this matter arose in May 2005 when the respondents' residence was searched by the police and the monies were found. Further, the respondents brought the claim on 28 November 2011, more than six years after the cause of action arose which is contrary to section 27(1) of the Limitation Act, Chapter 170 ('the Act').As such, the claim was an abuse of process and should be struck out. Section 27(1) states:

> "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 does not apply, or to any criminal proceeding."

[39] The trial judge considered the application by the Attorney General to strike out the claim from paragraphs 6 to 10 of his judgment. The trial judge applied the principles in the Privy Council decision of **Gordon (Lemuel) v. AG 1997 51 WIR 280**, and refused the application since it was his view that "*the search and the taking of the monies on an arrest warrant for income tax purposes appeared to be an abuse of the powers of the police; and therefore was not done in pursuance of their public duty or authority."* The trial judge made this finding after stating the following at paragraph 8:

> "But the claimants, on the basis of the Privy Council decision of **Gordon (Lemuel) v. AG 1997 51 WIR 280**, state that "the period of limitation only arises in actions done lawfully." It was submitted that since the search by the police was unlawful, the limitation period did not apply. In **Gordon,** the claimant alleged that police officers in the course of their duty, maliciously and without reasonable cause, killed the son of the claimant. The Attorney General applied to strike out the claim on the ground that it was not commenced within one year of the occurrence of the cause of action as required by section 2(1)(a) of 7 the Public Authorities Protection Act (UK). The action was struck out at first instance, which was upheld by the Court of appeal. On a further appeal to the Privy Council, it was held, allowing the appeal, that since the statement of claim had raised two issues, namely whether the police officers had been acting *bona fide* in the execution of their duty, and, if they had not, whether the Crown was nonetheless liable for their action, that neither issue could be resolved without a trial, and accordingly, the writ should not have been struck out.

> In the course of the judgment, the Privy Council had to consider the meaning of the words "*act done in pursuance, or execution or intended execution … of any public duty*," as appeared in section 2(1) of the UK Act, which words also appear in section 27(1) of the Act; and held that "*The Act necessarily will not apply if it is established that the defendant had abused his position for the purpose of acting maliciously, in that case he has not been acting within the terms of the statutory or other legal authority; he has not bona fide endeavouring to carry it out … he has abused his position for the purpose of doing a wrong, and the protection of this Act, of course, never could apply to such a case*": per Lord Lloyd of Berwick at page 282 quoting Lord Finlay in **Newell v. Starkie (1919) 83 JP** 113 at page 117."

[40] The Attorney General in their submissions before this Court distinguished **Gordon** from the facts of the instant appeal, on the basis that the police had not abused their position and acted maliciously. Further, that the test of whether the police officers were acting *bona fide* in the execution or intended execution of their duties involves the examination of a subjective element, which is the belief of the public official. As such, the trial judge erred when he failed to take the subjective element into consideration since he ought to have considered the mental state of Spt. Grinage and what he honestly and reasonably believed at the time of the arrest, search, and seizure.

[41] Learned counsel, Mr. Panton for the respondents submitted that the **Limitation Act** and the **Public Authorities Act** do not apply to the instant case. Firstly, the Public Authorities Protection Act did not apply since the Attorney General carried out acts on behalf of the State outside the legal confines of the statute. He relied on the principles in **Gordon.** Secondly, the respondents satisfied the requirements of section 32 of the Limitation Act which provides for postponement of limitation period in case of fraud or mistake, since they were unaware that a fraud had occurred. That the fraud was discovered in 2011 when Mr. Lindo (the attorney at the time) got a response in relation

to the amount that was in custody of the Income Tax Department. As such the period commenced at that date.

[42] Mr. Panton further submitted that this matter continues to be an ongoing offence as the monies that was seized continues to be withheld from the respondents. Counsel contended that the monies were seized unlawfully, rendering it to be an ongoing action.

Knowledge of the respondents of the alleged fraud

[43] The evidence without a doubt shows that the respondents had knowledge of the seizure of the monies by the Police Department and the assessment done by the Commissioner of Income Tax. The first respondent was present when the assessment was done and was aware of this fact. The back and forth of correspondences between Mr. Lindo and the Commissioner of Income Tax in relation to the exact amount seized is no valid reason for not commencing the action at the time when the money was seized. The claim for the fraud was based on the entire amount seized and not a portion. As such, I am not in agreement with Mr. Panton that the fraud was discovered in 2011 when Mr. Lindo received a response from the Commissioner of Income Tax.

[44] The learned trial judge at paragraph 7 of his judgment accepted that the first respondent knew about the seizure of the money in May 2005 which formed the basis of the claim for fraud. He referred to her evidence in which she testified that in May 2005 the police took her to the Income Tax Department and she was given notices of assessment. Further, that the first respondent gave no evidence of any subsequent date of discovery of the alleged fraud. The trial judge in my view was correct in his assessment of the evidence in relation to the knowledge of the respondents of the seizure and assessments.

Was the seizure a continuing action?

[45] Mr. Panton argued that the seizure is a continuing action, thus bringing the respondents within the proviso of section 27 of the Limitation Act. In my view, the seizure of the monies by the police and the assessment done by the Income Tax

Department were completed acts. There was no repetition of the seizure and as such the acts cannot be viewed as continuous.

Did the police abuse their powers by the search and seizure of the monies?

[46] The trial judge relied on **Gordon** and ruled in favour of the respondents on the basis that "*the period of limitation only arises in actions done lawfully."* He refused the application to strike out on the basis that the search and taking of the moneys on an arrest warrant from the US for the second respondent for income tax purposes in Belize appeared to be an abuse of the powers of the police. As such, the actions of the police were not done in pursuance of their pubic duty or authority.

[47] In my view, the case of **Gordon** is distinguishable from the instant case. The police officers in **Gordon,** in the course of their duty had acted maliciously and without reasonable and probable cause when they arrested the deceased and fatally shot him in the head. In this instant case, there is no evidence of abuse of process or that the police had acted maliciously and without reasonable and probable cause. This is borne out by the evidence of Spt. Grinage.

[48] It is not disputed that the Belize Police Department in this case had a written arrest warrant from the US for the second respondent which they received through the Attorney General. The police had no search warrant from the US or from Belize to search the residence of the respondents. But, protection under the Act cannot be denied merely on this basis. There must be an examination of the evidence to determine whether the actions of the police officers were "done in pursuance, or execution, or intended execution of any Act or other law, or of any public duty or authority," (see section 27(1) of the Limitation Act).

[49] The evidence of Spt. Grinage shows that the police conducted one week surveillance of the respondents' residence before arresting them and conducting the search on the residence. The search revealed that the respondents had large amount of monies and the second respondent refused to tell the police where he got the money. There was no evidence that the respondents were working in Belize. This resulted in the assessment by the Income Tax Department. The second set of money was

discovered as a result of information given to Spt. Grinage by the first respondent. The police went back to the house along with the first respondent to retrieve that money. There is no evidence that the police barged into the residence a second time to do a search. The police did a search the first time and did not find the monies which were in the foot stand of a sofa set. The second set of money was also taken to the Income Tax Department where the respondents were assessed.

[50] Spt. Grinage testified under cross-examination that he was entitled to search based on the arrest warrant which shows that the alleged offence committed was drug related. At the time, the police were given statutory powers pursuant to the **Firearms Act**, **Chapter 143** to search for firearms without a search warrant. It was during this search, that the moneys were discovered. Spt. Grinage further testified that his mind was fixed on drugs when he did the search. He was not looking for unlawful money and he had no knowledge that money was in the residence. He testified that:

> "...My mission is not based on solely the warrant. My mission is to execute a warrant but that comes with certain responsibility of myself as an officer to ensure that I do my job properly as well which I include to conduct the search before I left the premises.

[51] When Spt. Grinage was asked by Mr. Lindo under cross-examination as to what was the problem with three American Citizens having American currency in their possession, he replied:

> "You see that me as an investigator I look at it not just as three Americans having the money, but when you look at the warrant with the drugs the drugs warrant and other issues and the investigation you know it was a continuity of an investigation that we were doing with the US Embassy as well. So based on the information then we conducted the search."

[52] The above evidence, in my view, shows that the police was acting *bona fide* in the execution of their duties. Spt. Grinage was under the honest belief that he had statutory powers to conduct the search without a warrant and seize the moneys. Even if Spt. Grinage was mistaken about his powers, this alone cannot amount to an abuse of

powers. In **Gordon,** the police officers, in the course of their duty, maliciously and without reasonable and probable cause shot the son of the claimant in his head. In that case, the court applied the case of **Newell Starkie** (see paragraph 39 above). At page 328, of Newell, Lord Finlay said:

> "the Act necessarily will not apply if it is established that the defendant has abused his position for the purpose of acting maliciously. But it cannot be maintained that the plaintiff, by alleging that the defendant had done something of that kind, could deprive the defendant of the right of pleading the Act, and showing that he had only acted honestly in the course of his duty, and of availing himself of the protection given by the Act."

Lord Atkinson concurred with Lord Findlay. He said at page 330:

> "I quite concur with my noble and learned friend who has preceded me on this question about the Public Authorities Protection Act. It is perfectly true that a public official acting in the exercise of a statutory or other authority cannot be protected under that Act if he acts maliciously. He may, however, be protected if he acts mistakenly, but honestly, in the bona fide belief that he is carrying out the powers which he fancies himself endowed with; but it is impossible to presume malice from the fact that he is mistaken, A man is entitled to protection if he bona fide considers that he is carrying out the authority conferred upon him." (emphasis added)

[53] The trial judge refused to strike out the claim on the basis that the police had only an arrest warrant and not a search warrant. The judge did not examine the evidence to determine the belief of the police. The evidence in this case does not show that the police abused their position for the purpose of acting maliciously and without reasonable and probable cause. Accordingly, the learned trial judge erred in refusing the application of the Attorney General to strike out the claim pursuant to **section 27(1)** of the **Limitation Act.** The respondents brought the claim more than six years after the cause of action arose which is contrary to section 27(1) of the Limitation Act.

Disposition

[54] For reasons given above, I would allow the appeal on the first ground and set aside the orders made by the learned trial judge in its entirety. I would further order that each party bear its own costs. I would further order that (a) the cost order is provisional in the first instance but becomes final after 10 working days from the date of delivery of this judgment, unless any party shall file an application for a contrary order within the ten days and (b) that in the event of the filing of such application, the matter of costs be determined on the basis of written submissions to be filed and delivered in 14 days from the filing of the application.

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HAFIZ-BERTRAM JA

DUCILLE JA

[55] I am in total concurrence with the judgment of Hafiz- Bertram JA and do not wish to anything further.

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DUCILLE JA