

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL**

MONTSERRAT

MNIHCVAP2021/0011

BETWEEN:

KESTON RILEY

Appellant

and

**[1] HONOURABLE ATTORNEY GENERAL
[2] DIRECTOR OF PUBLIC PROSECUTIONS**

Respondents

Before:

The Hon. Dame Janice M. Pereira, DBE
The Hon. Mde. Margaret Price-Findlay
The Hon. Mr. Eddy Ventose

Chief Justice
Justice of Appeal
Justice of Appeal [Ag.]

Appearances:

Mr. Hugh Marshall for the Appellant
Ms. Sheree Jemmotte-Rodney for the Respondents

2023: September 20.

Civil Appeal – Tort of misfeasance in public office - Application to file additional evidence - Whether judge failed to provide adequate written reasons to justify his ruling that the appellant failed to prove misfeasance in public office - Claim to compensation under section 7(13) of the Montserrat Constitution Order 2010 - Whether judge failed to address and make findings of fact on the appellant’s claim to compensation – Costs – Whether Court should award costs where appellant made mixed claims for administrative orders and for damages for tort of misfeasance

REASONS FOR DECISION

[1] **PEREIRA CJ:** On Wednesday 20th September 2023, the Court heard the appeal of Keston Riley (“the appellant”) against the judgment of Stanley J dated 22nd

July 2021 as well as an application brought by the respondents to file additional evidence. The Court decided to dismiss the appeal as being wholly unmeritorious and refused the fresh evidence application. The Court also promised to provide, at a later date, written reasons for its decision and to consider and determine the incidence and quantum of costs. We now do so.

Chronology of Proceedings

Background

- [2] On 24th October 2016, the appellant was indicted on three counts of conspiracy to defraud, four counts of fraudulent evasion of customs duty and two counts of theft (“the first indictment”). On 20th March 2017, the day of the trial, the Director of Public Prosecutions (“DPP”) filed a second indictment in which there was three counts of conspiracy to defraud and two counts of theft, but no count in relation to fraudulent evasion of customs duty (“the second indictment”). The transcript of the criminal proceedings in the court below records that there was also an exchange between the Bench and Bar which began with the judge asking then counsel for the appellant, Mr. David Brandt (“Mr. Brandt”) what was the appellant’s defence to the fraudulent evasion of customs duty charge. Counsel responded that, to his recollection, the offence was deleted from the first indictment to which the judge responded that it was still on the indictment.
- [3] There was further discussion with a view to working out, in the words of the judge, ‘the right way forward’. The judge reminded Mr. Brandt of the consequences flowing from each offence if the matter proceeds to trial and the appellant is convicted. The judge stated that there is a maximum of 2 years imprisonment for fraudulent evasion as opposed to 10 years or life for conspiracy to defraud. The court then rose allowing Mr. Brandt to confer with the appellant on the plea possibilities. When the court resumed, Mr. Brandt indicated that the appellant would plead guilty to one count of fraudulent evasion on the first indictment. This count was put to the appellant whereupon he pleaded guilty. The DPP informed the court that he would not be proceeding with the second indictment. The matter was then adjourned to 10th April 2017 for a sentencing hearing.

- [4] Following a sentencing hearing on 10th April 2017, the appellant was sentenced to 2 months imprisonment.¹
- [5] The appellant, by his new counsel Mr. Warren Cassell (“Mr. Cassell”), appealed against his conviction and sentence on the ground of abuse of process. His case was that there was a case management conference at which Mr. Cassell, then counsel for his co-accused had pointed out that conspiracy to defraud and fraudulent evasion of customs duty could not co-exist; that subsequently, the DPP gave an undertaking to not proceed with the fraudulent evasion charge; that owing to the undertaking, the second indictment was filed on the day of the trial and it did not reflect any count for fraudulent evasion of customs duty; and that notwithstanding the DPP’s undertaking to withdraw the fraudulent evasion of customs duty charge, the appellant was convicted for that offence which the DPP undertook to withdraw.
- [6] The appeal was heard by the Court of Appeal on 17th April 2018. The appellant in support of his contention of abuse of process had placed before the Court affidavit evidence in support of his contention of an undertaking given by the DPP. The transcript of the Court of Appeal hearing does not reflect any evidence being put forward, either by way of affidavit or otherwise, on behalf of the DPP on the issue of the alleged undertaking. The Court accepted the appellant’s contention and as a consequence, quashed the appellant’s conviction and sentence. At the time of the Court of Appeal’s decision, the appellant had been imprisoned for 6 weeks.

Constitutional Action before the Lower Court

- [7] The upshot of this turn of events is that on 14th June 2018, the appellant by, his counsel Mr. Cassell, commenced, by way of fixed date claim form, mixed claims for: (a) constitutional relief on the basis that his fundamental rights and freedoms guaranteed by section 6(1) of the **Montserrat Constitution Order 2010** (“the **Constitution**”)² were breached, and he was therefore entitled to compensation by virtue of section 7(13) of the **Constitution**; and (b) for damages for the tort of

¹ Regina v Keston Riley MNIHCR2016/0016 (delivered 10th April 2017, unreported).

² Cap 1.01 of the Revised Laws 2013.

misfeasance in public office by the DPP. The appellant in his claim form set out 8 heads of relief as follows:

- “(1) A declaration that the Claimant is entitled to damages pursuant to section 7(13) of the Montserrat Constitution Order 2010 (“the Constitution”) for having suffered a punishment (i.e. 6 weeks in prison) due to a miscarriage of justice;
- (2) An order that the Defendants do pay compensation to the Claimant who having been convicted of an offence and had that conviction reversed on the ground that there was a miscarriage of justice such compensation in the form of damages, and to include vindictory damages, to be assessed;
- (3) A declaration that pursuant to section 6(1) of the Montserrat Constitution Order 2010 (“the Constitution”) that the Claimant is entitled to compensation for breach of his right not to be deprived of his personal liberty;
- (4) An order that the Defendants do pay compensation to the Claimant for breach of his right not to be deprived of his personal liberty such compensation in the form of damages, and to include vindictory damages, to be assessed;
- (5) A declaration that the second Defendant as a public officer has been guilty of misfeasance in public office by sustaining and pursuing a charge against the claimant for which he had undertaken to withdraw and did in fact withdrew (sic);
- (6) An Order that the Second Defendant do pay damages to include exemplary damages to the Claimant for the said misfeasance in public officer (sic); and
- (7) Costs pursuant to CPR 200 r. 56.13(5) or as otherwise agreed.
- (8) Any other relief that the court deems.”³

[8] Mr. Cassell informed the court in his closing submissions⁴ that he was no longer pursuing the reliefs which related to section 6(1) of the **Constitution**. The court was accordingly left to consider and determine the reliefs and grounds related to section 7(13) of the **Constitution** and the tort of misfeasance in public office.

³ Page 2 of the Record of Appeal, Bundle 2.

⁴ Page 6 of the Record of Appeal, Bundle 3 at paragraph 26.

- [9] The judge delivered his decision dated 22nd July 2021, although the written reasons appear not to have been delivered until around 21st November 2021. In his written reasons the judge noted the evidence led; he referred to the submissions furnished by the parties; he recounted the history and factual matrix of the matter; and he set out the applicable law. The judge considered various authorities and went into great detail in explaining the various principles and ingredients of the tort of misfeasance in public office. Upon conclusion of the judge's analysis, he stated that his view was that the appellant failed to establish an entitlement to any of the relief sought as the evidence he put forward fell short of proving misfeasance by the DPP. Accordingly, the judge dismissed the claim and made no order as to costs.

The Appeal

- [10] The appellant filed a notice of appeal on 29th November 2021, which was clearly out of time in keeping with CPR 62.5(1)(c). More than a year later, on 23rd January 2023, the appellant applied for an extension of time to file his notice of appeal. The Court granted the extension of time on the basis that the respondents did not raise an objection to the application, and consequently, the notice of appeal was deemed properly filed.
- [11] The appellant advanced 5 grounds of appeal which are as follows:
- (i) the judge failed to address the numerous issues put before him by the appellant;
 - (ii) the judge failed to make findings of fact on essential elements of misfeasance;
 - (iii) the judge erred in failing to make findings of fact as it regards the issue on whether the appellant suffered incarceration due to a miscarriage of justice and was therefore entitled to compensation under section 7(13) of the **Constitution**;
 - (iv) the judge failed to analyse the facts justifying his ruling on the issue of misfeasance in public office. The entire judgment is devoid of any legal reasoning; and

- (v) the learned judge failed to give adequate reasons for his decision as it regards the issue of misfeasance.

[12] On 24th January 2022, the first respondent made an application to strike out the notice of appeal pursuant to CPR 62.4(6) (“the strike out application”) on the basis that the grounds outlined in the notice of appeal did not disclose reasonable grounds for bringing an appeal. However, on 26th January 2023, the Court dismissed the strike out application and made no order as to costs.

Notice of Application to file Additional Evidence

[13] On 18th August 2023, the Attorney General and counsel for the respondents, Ms. Sheree Jemmotte-Rodney (“the Attorney General” or “Ms. Jemmotte-Rodney”) filed an application seeking to introduce before the Court of Appeal, what they called ‘additional evidence’ (“the additional evidence application”) that being, the affidavit of Sherasmus Evelyn, Crown Counsel. The additional evidence application was dealt with first at the hearing of the appeal. Ms. Jemmotte-Rodney submitted that the purpose of this additional evidence was to show that there were preliminary discussions which took place between the judge and counsel prior to the start of the substantive hearing, which would explain, in essence, why the learned judge did not address the section 7(13) relief in his written decision. She stated that this issue was raised at the hearing of the strike out application. She also stated that the issue was mentioned in the respondents’ written submissions that the judge enquired prior to the trial as to what precisely was the appellant’s cause of action, as the constitutional infringement complained of did not fall within section 7(13), because the conviction must have been reversed on the ground of some new or newly discovered fact which showed conclusively that there was a miscarriage of justice and no averment or facts were pleaded in making out the infringement complained of. Ms. Jemmotte-Rodney was essentially of the view that the Court should have the benefit of the full picture of what transpired at the lower court.

[14] The appellant’s new counsel Mr. Hugh Marshall (“Mr. Marshall”) opposed the additional evidence application on 14th September 2023. At the hearing,

Mr. Marshall stated that the notes of evidence were available in the early part of 2022 and the respondents had every opportunity to raise that issue at an earlier date but had failed to do so. The appellant however, in his response affidavit did not dispute that discussions took place between the Bench and counsel before commencement of the substantive hearing but was unable to say what was the nature of those discussions. Ultimately, the Court was of the view that the grounds of appeal relating to the alleged section 7(13) breach could be dealt with adequately on the state of the pleaded case, without the admission of the additional evidence and consequently, dismissed the application. However, the Court acknowledged the effort of the Attorney General in seeking to assist the Court in providing a fuller picture of what transpired in the matter below.

Issues in the Appeal

[15] An important preliminary observation as evident from the grounds of appeal⁵ is that the appellant does not squarely challenge the decisions of the judge as being decisions that are wrong in law, rather, when one looks at what the appellant is saying, the crux of his challenge concerns the adequacy of the judge's written reasons. As such, the issues to be addressed are framed in the following way: (i) whether the judge failed to provide adequate written reasons to justify his ruling that the appellant failed to prove misfeasance in public office ("issue 1"); and (ii) whether the judge failed to address and make findings of fact on the appellant's claim to compensation under section 7(13) of the **Constitution** ("issue 2").

[16] Grounds (ii), (iv) and (v) will be addressed together as these relate to issue 1, and grounds (i) and (iii) will be addressed together as these relate to issue 2.

Issue 1 – Misfeasance in public office and failure to provide adequate reasons.

[17] The appellant had two sets of written submissions; one set filed on 11th January 2022 by his then counsel Mr. Cassell and the second set filed by Mr. Hugh Marshall on 3rd January 2023. Mr. Marshall indicated at the hearing that the

⁵ At paragraph 11.

appellant would be relying on those submissions. In summary, the appellant's position on these grounds was that even though the judge set out the ingredients for the tort of misfeasance in public office, there was no proper application of the law to the facts so as to identify whether the tort was made out, neither was there reference to any particular evidence in the judge's analysis. He complained that there was essentially no indication as to how the judge arrived at the conclusion contained in the last four lines of his judgment.

- [18] On 20th June 2022, the respondents filed their written submissions. The Attorney General also indicated that the respondents would be relying on those submissions. In response to Mr. Marshall's arguments, she stated that there was no need for the judge to recite and regurgitate every fact or factor alluded to or relied on by the parties in their submissions. The judge would have been privy to all the relevant transcripts, the evidence of the various witnesses, and having examined them, he satisfied himself having regard to the relevant authorities that the evidence did not meet the threshold for establishing misfeasance in public office.

Discussion

- [19] Written reasons are important to the litigant as well as the appellate court. They must provide sufficient analysis to enable an appellate court to decide whether the judgment is sustainable and they must enable the parties to know why the court decided the matter in the way it did.⁶ This does not mean that every factor which weighed with the judge in their assessment of the evidence must be identified and explained. This Court in **Wakeem Guishard v The Attorney General of the Virgin Islands**⁷ held that:

“...a judge is not required in his decision to slavishly recite or regurgitate each and every fact or factor from the evidence which has been alluded to or relied upon by the parties in their submissions, nor is a judge required to state every principle of law upon which the parties have relied in their argument. It is also not the task of a judge to conduct a detailed analysis of all the evidence he has heard or which has presented at the trial or relied on in the submissions made by the parties. What is of the utmost importance is for the judge to render a decision which is clear and well-reasoned, and upon which the parties can be certain as to why

⁶ Re F (Children) [2016] EWCA Civ 546 at paragraph 22.

⁷ BVIHCVAP2018/0006 (delivered 2nd October 2020, unreported) at paragraph [47].

they won or lost, and which will enable an appellate court to decide whether or not the decision is sustainable.”

[20] Even in circumstances where a judge could have elaborated more in their written reasons for completeness, a miscarriage of justice is not caused if it is clear on what facts and legal principles the judge based their finding. Even in circumstances where the written reasons are not on their own sufficiently clear, a judgment must be read as a whole having regard to its context and structure⁸ which may give life to the judgment and enable an understanding as to why the judge wrote the judgment the way they did. “Full allowance is to be afforded to the trial judge who has heard the evidence and has been exposed to the parties and the detail of each case over an extended period.”⁹

[21] It may be fairly stated that in this case the judge came to his conclusion with extreme brevity. However, he referred to a plethora of authorities¹⁰ which explain the legal principles underpinning the tort of misfeasance in public office. The judge would have also quoted from Lord Steyn’s landmark judgment in **Three Rivers District Council v Bank of England**,¹¹ which identified the ingredients of the tort as the unlawful or unauthorised conduct in the purported discharge of public duties specifically intended to injure the claimant or undertaken in the knowledge that the public officer has no power to do the act complained of, or reckless as to whether that is the case, resulting in the claimant suffering loss or damage.¹²

[22] Apart from the legal authorities, the judge would have had fresh in his mind, the evidence led at the trial and in particular, the transcript of the criminal proceedings instituted in 2016 against the appellant, which is the gravamen in assessing the question of whether the DPP’s actions constituted the tort of

⁸ Re F (Children) [2016] EWCA Civ 546.

⁹ In re H-N; In re H; In re B-B; In re T [2022] 1 WLR 2681 at paragraph 76.

¹⁰ The Attorney General v Marin Sr. and Coye [2009] Claim No. 41 of 2009 Belize Supreme Court at para [3]; S.A. de Smith, Lord Woolf and J. Jowell, Judicial Review of Administrative Action 5d ed (Sweet and Maxwell, 1995), 784; Three Rivers [1996]; Florencio Marin and Jose Coye v Attorney General of Belize 2011 CCJ 9 (AJ); Vivienne Harwood, Modern Tort Law (7th Edn, Routledge 2009); Markensinis and Deakin’s Tort Law (6th Edn Clarendon Press 2008).

¹¹ [2003] 2 AC 1, [2000] 3 All ER 1, HL.

¹² Three Rivers District Council v Bank of England (No 3) [2003] 2 AC 1, [2000] 3 All ER 1, HL.

misfeasance in public office. From the transcript of the 2016 criminal proceedings, the judge would have been privy to the circumstances leading up to the appellant's imprisonment, that being:

- (1) there were preliminary discussions on the day of the trial between the Bar and Bench;
- (2) the appellant was not a lay person left to his own devices, he was adequately represented by competent counsel, Mr. Brandt;
- (3) the DPP responded in the negative when asked by the judge whether the counts of fraudulent evasion of customs duty had been removed from the first indictment;
- (4) a second indictment was filed by the DPP on the day of the trial but it was subsequently withdrawn;
- (5) the judge explained the penalties attached to the offences in the indictment to the appellant in the presence of his counsel;
- (6) the court rose so as to allow Mr. Brandt to confer with the appellant on plea possibilities; and
- (7) when court resumed the appellant pleaded guilty to one count of fraudulent evasion on the first indictment.

[23] Given the foregoing evidence, it was reasonable for the judge to conclude that there was no malice, bad-faith, or recklessness on the part of the DPP. Though it may have been desirable for the judge to elaborate in his reasons, given the context in which the judgment was written, that is, against the backdrop of evidence which shows that the appellant willingly accepted the indictment on advice of his counsel, he was not required to do so. For these reasons grounds (ii), (iv) and (v) failed.

Issue 2: Failure to address and make findings of fact on the claim to compensation under section 7(13) of the Constitution

- [24] Mr. Marshall submitted that he would be relying solely on the written submissions filed. The position of the appellant as garnered from the written submissions is that the judge confined his thoughts to determining whether a case of misfeasance in public office had been made out. The judge failed to consider the evidence central to the constitutional relief being sought, for example, the evidence of the appellant's experience during his 6-week incarceration and the concomitant effects that it had on him and his family.
- [25] The Attorney General in line with her written submissions stated that section 7(13) is clear that compensation turns on a new or newly discovered fact which shows conclusively that a person has suffered a miscarriage of justice. The evidence shows that the decision to set aside the conviction was not on the basis of a newly discovered fact; it was because there was the issuance of a second indictment. Also, the newly discovered fact must show that the person is innocent of the crime, and this did not fit the present case, because the appellant had pleaded guilty.

Discussion

- [26] This issue can be dealt with briefly. The purpose of section 7(13) of the **Constitution** is to provide entitlement to compensation to a person who has been convicted and punished for a crime that they did not commit. The section states that:

“When a person has by a final decision been convicted of a criminal offence and when subsequently his or her conviction has been reversed, or he or she has been pardoned, on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non- disclosure of the unknown fact in time is wholly or partly attributable to him or her.”

- [27] Interestingly, it is notable that the appellant in setting out his claim under this head omitted to recite key words contained in section 7(13) of the **Constitution**. All the appellant stated is that he is entitled to damages pursuant to section 7(13)

‘for having suffered a punishment (i.e. 6 weeks in prison) due to a miscarriage of justice’. He jettisons the requirement that his conviction be reversed or pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice. Whether this omission was deliberate or inadvertent is not known.

[28] Lord Phillips SCJ in **R (on the application of Adams) v Secretary of State for Justice; Re MacDermott and another**¹³ stated that the subsidiary object of the section was that compensation should not be paid to a person who has been convicted and punished for a crime that they *did* commit. The learned judge went on to say it is not satisfactory to make the mere quashing of a conviction the trigger for the payment of compensation.¹⁴ The section is clear in that it requires that the conviction be reversed on the ground of a newly discovered fact which shows conclusively that there has been a miscarriage of justice.

[29] In the Court’s view, the single fact which precludes the appellant from maintaining any claim under section 7(13) is that his conviction was set aside on the basis of the Court of Appeal’s finding that there was an abuse of process. The Court of Appeal said:

“...And having considered the affidavit evidence on oral testimony of Mr. Bennet Roach and the Appellant and critically having considered that the Learned Director of Public Prosecutions filed an indictment on the very morning of the hearing which reflected that there was no count for fraudulent evasion in the second indictment which carried a separate and a new number from the original indictment we are of the view that by proceeding with the Appellant pleading guilty to the offence which was included in the first indictment and excluded in the second and to which the Learned DPP had given an undertaking we found, having regard to the circumstances, that such an undertaking was given by the Learned DPP to the court in the presence of the Appellant and his counsel. In those circumstances we find that there was an abuse of process and in the circumstances the conviction and the sentence cannot be upheld.”¹⁵

[30] In essence, there was no newly discovered fact which showed conclusively that there was a miscarriage of justice. Indeed no new fact whatsoever was pleaded

¹³ (2011) 31 BHRC 71 at paragraph [37].

¹⁴ *ibid.*

¹⁵ Page 99 of the Record of Appeal, Bundle 2.

or alluded to in his claim or his evidence in support thereof. In this case the appellant in fact did commit the crime for which he proffered an unequivocal guilty plea and for which he was sentenced to a term of imprisonment. On that basis alone, section 7(13) cannot be triggered and consequently, grounds (i) and (iii) also failed.

Costs

[31] The Court finds itself in a peculiar position because the appeal is grounded in claims for relief in the tort of misfeasance in public office as well as for administrative orders. Mr. Marshall invited the Court to consider that the tort in question is of an administrative character as it concerns an administrative person performing an administrative function. Mr. Marshall added that the Court should not exercise its discretion to award costs because the appellant was entitled to explore the remedies available to him and he had done no more than that. The Attorney General was of the view that the Court should make a costs order in favour of the respondents in the sum of XCD\$1,000.00.

[32] For avoidance of doubt, the tort of misfeasance in public office is indeed an unusual tort. It is generally regarded as the common law's only truly public tort¹⁶ because the only people who can commit it are those holding public office, and the only occasions on which it can be committed are those in which public office holders misuse their public power.¹⁷ Notwithstanding what one can call the public law flavour of the tort, it is nonetheless at its core, a tort, and actionable in the private law realm. Therefore, the Court does not take the view that the appeal has an entirely administrative character. The Court finds that the appeal is an admixture; where the appellant claimed damages for the tort of misfeasance in public office which sits within the realm of private law, and also for administrative orders.

[33] It is trite that in deciding which party, if any, should pay the costs of a matter heard by the court, the general rule is that the unsuccessful party must pay the

¹⁶ *Pyrenees Shire Council v Day* (1998) 192 CLR 330, 376 [124] (Gummow J); Robert J Sadler, 'Liability for Misfeasance in a Public Office' (1992) 14 Sydney Law Review 137, 138–9.

¹⁷ *Three Rivers District Council v Bank of England (No 3)* [2003] 2 AC 1, 235 (Lord Millett).

costs of the successful party. CPR 65.11(2) as well as CPR 64.6(1) sets out this well accepted principle. CPR 64.6(5) further states that in deciding who should be liable to pay costs the court must have regard to all the circumstances, and subrule 6 sets out the particular circumstances that the court must have regard to, that being:

- “(a) the conduct of the parties both before and during the proceedings;
- (b) the manner in which a party has pursued –
 - (i) a particular allegation;
 - (ii) a particular issue; or
 - (iii) the case;
- (c) whether a party has succeeded on particular issues, even if the party has not been successful in the whole of the proceedings;
- (d) whether it was reasonable for a party to –
 - (i) pursue a particular allegation; and/or
 - (ii) raise a particular issue; and
- (e) whether the claimant gave reasonable notice of intention to issue a claim.”

[34] Generally however, in administrative law matters the court is reluctant to make an order for costs. This is reflected in CPR 56.13(6), which adumbrates the general rule that no order for costs may be made against an applicant for an administrative order unless the court considers that the applicant has acted unreasonably in making the application or in the conduct of the application. Notwithstanding the general rule, costs are ultimately in the discretion of the court. As such, subsection (4) goes on to say that the court may make such orders as to costs as appear to be just.

[35] Of particular relevance in the Court’s consideration is the manner in which the appellant has pursued this matter. The Court notes that the appellant was informed by the judge of the consequences of pleading guilty and upon conferring with his counsel at the time, willingly accepted the indictment. The injury that the appellant claims to have suffered due to being imprisoned by way of the imposition of a sentence is as a consequence of his unequivocal guilty plea. The Court was left with the uneasy feeling that the appellant was seeking to take advantage of his success in having his conviction quashed, albeit for a reason wholly unrelated to his admission of the commission of the offence for which he, represented by counsel unequivocally pleaded guilty.

- [36] It must be observed that section 7(13) of the **Constitution** is not a playground for litigants who willingly plead guilty; are convicted and sentenced and then owing to some procedural mishap succeeds in having their sentence set aside. The object of section 7(13) is to compensate those litigants who have been convicted and punished for a crime they did not commit. In the Court's view, it is disingenuous and unreasonable in the circumstances of this case that the appellant would ground a claim for compensation under section 7(13).
- [37] Lastly, the Court wishes to highlight that the pursuit of justice is not a game. Mr. Marshall rightfully pointed out that a litigant has a right to pursue all remedies available to them. This is true, but rights are not open ended; with every right is a correlative responsibility and a litigant's right to access justice does not axiomatically give them the liberty to exploit the court's limited time and resources. A litigant approaching the court must be reasonable, rational, fair, candid, and they must act in good faith.
- [38] Having regard to all the circumstances, the Court is of the view that a costs order is warranted. The Court accepts the sum of XCD\$1,000.00 proposed by the respondents. Accordingly, the appellant shall pay the costs of this appeal fixed in the sum of XCD\$1,000.00 to the respondents within 21 days of the date hereof.

I concur.
Margaret Price-Findlay
Justice of Appeal

I concur.
Eddy Ventose
Justice of Appeal [Ag.]

By the Court

Chief Registrar