

**EASTERN CARIBBEAN SUPREME COURT
SAINT CHRISTOPHER AND NEVIS
(NEVIS CIRCUIT)**

**IN THE HIGH COURT OF JUSTICE
(CIVIL)**

Claim Number: **NEVHCV2020/118**

Between **Orniello Scott**

Claimant

-and-

The Attorney General

Defendant

Before: His Lordship The Honourable Justice Ermin Moise

Appearances:

Mr. Eustace Nisbett of counsel for the Claimant

Mr. Leslie Roberts of counsel for the defendant

2022: March, 22.
October, 17

Judgment

- [1] **Moise, J:** This is a claim for damages for false imprisonment, wrongful arrest and unlawful search and seizure. The claimant asserts that on 23rd October, 2020, members of the Royal Saint Christopher and Nevis Police Force, as well as members of the Defence Force, searched his premises and confiscated certain items from him with no legal justification. He also complains that there were no grounds upon which he ought to have been detained and arrested by the police after the search was conducted. Having given due consideration to the evidence presented and the submissions filed by counsel for both parties, I have determined that, save for the confiscation of his passport, the claimant has not made out his case. Judgment is therefore entered in his favour only insofar as it relates to the unlawful seizure of his passport. All other aspects of the case have been dismissed. The reasons for my decision are as follows.

The Facts

- [2] The claimant, Mr. Orniello Scott, is a Jamaican national who resides in Nevis. He states in his statement of claim that he is a level 2 certified construction worker, having been so certified in his native land Jamaica. Mr. Scott states that in October of 2020 he was employed as a mason and earned an average of \$200.00EC per day. More particularly, he states that he was employed with Flamingo Construction Services and earned \$1,000.00EC per week. He also earned an additional \$400.00EC by doing “side jobs” on weekends. He maintains that he has lived an honest life and is not involved in any criminal activity. However, he states that the events of 23rd October, 2020 have damaged his reputation.
- [3] Mr. Scott states that at the time he resided in rented accommodation located at Brazier’s Estate in Saint John’s Parish, Nevis. I understand from the evidence that he also resided there with his brother, Marlon Scott. There also appears to be a number of other apartments on the premises and persons living in close proximity to the residence.
- [4] Mr. Scott states that on 23rd October, 2020 at approximately 5:00am he was asleep at home when he heard a banging on the door and saw lights peering through his window. He states that he was initially reluctant to open the door. After enquiries he was informed that it was the police. He insists that he had to ask 3 times who was at the door before the police revealed themselves. Though he was only clothed in his underwear, he asked the police to allow him to get his keys, which was in the bedroom. He then opened the door and allowed the police to enter. In his initial pleading he asserted that a total of 10 police officers and members of the Defense Force entered his home with guns blazing. In addition, he also asserted that the police were accompanied by police dogs. However, he later conceded that there were no dogs present and stated that this assertion was merely an error on his part. At one point during oral testimony he also stated that 5 police officers entered the apartment. On another occasion he said that 10 officers and defence force members entered the house.
- [5] Mr. Scott described himself as being scared and wondered what this was about. He states that he recognized one Officer Mills among the members of the police force who were present at the time. He also recognized an Officer Charles who informed him that the police were in possession of a

warrant to search for drugs, guns and ammunition. Mr. Scott states that only after he had asked for the warrant did Officer Mills hold it up for him to see. He states further, that he was unable to see what was on the warrant but was told that it was a warrant to search the premises of Jermaine and Marlon Scott.

- [6] As stated before, Marlon Scott is the claimant's brother, who was not at home at the time. Although the claimant initially claimed not to have known any Jermaine Scott, it is accepted by the parties at the end of trial that the name Jermaine Scott was thought by the police at the time to be the claimant's name. From the concessions made at trial and in the legal submissions from the claimant's own counsel, it is accepted that the warrant was duly issued by a Magistrate to search the premises of the claimant and his brother, notwithstanding the discrepancy as to the name which was in fact stated in the warrant. Though the claimant continues to take issue with certain facts relating to the execution of the warrant, its authenticity is not in question.
- [7] During oral testimony, Mr. Scott stated that Sgt. Charles did not inform him of any crime he was thought to have committed. Neither was he informed of any reason he was thought to be in possession of drugs. Mr. Scott's counsel presented him with the witness statement of Sgt. Charles, where it stated that a confidential informant had given information regarding his potential involvement in drug trafficking. He responded to this by saying that before that day Sgt. Charles did not contact him or question him on any of those matters. Sgt. Charles did not tell him who the informant was. I express some doubt about the veracity of some of what Mr. Scott had said. Indeed, he indicated in his very own witness statement that the police had informed him of the purpose of the warrant. It would seem clear to me, even based on his own evidence, that he was aware of the purpose of the search.
- [8] Having then secured entry into the claimant's premises, the police conducted a search. Mr. Scott complains that nothing of a criminal nature was in fact found on the premises. He stated that the police confiscated olive oil, lavender oil, frankincense and his Jamaican passport. In the witness box Mr. Scott stated that in conducting the search, the police took out all of his clothes from his drawer, closet and suitcase and threw them on the ground. They allegedly took him to the next room and turned over the bed. They turned over his couch and searched behind the television. They went into the bathroom and shifted the curtain. They also looked behind the sink. Even the

fridge was searched. Grocery items were taken from the fridge. In addition to all of that, it was asserted that Mr. Scott was instructed to take down his underwear for searching. He was then strip searched and nothing of substance was found on his person. He conceded in cross examination that this body search was only witnessed by the police.

- [9] Mr. Scott states that he was questioned by the police regarding his immigration status. He was then informed that verification was needed to ascertain whether he was lawfully resident in Nevis. Mr. Scott indicated that at that point he was informed that he was under arrest for possession of cocaine. It was also at that point that he was asked to strip naked in order to undergo a search of his person. He questioned why that was necessary, given that he was already in his underwear. He informed the police that he was uncomfortable in having to do so. However, Mr. Scott asserts that the police repeated this demand whilst also using expletives. He then obliged and a search of his person was conducted in the nude.
- [10] Mr. Scott stated that he was then placed in handcuffs and taken to the Charlestown police station. He was taken out of the police vehicle in handcuffs and there were members of the public present to witness this. He was placed in a cell and left there without any communication regarding his arrest. Mr. Scott states that his cellphone was seized and only returned to him upon his release. He was eventually allowed to communicate with his sister after begging for this privilege for some time. He claims that he was not offered anything to eat until after 2pm. He refused the meal which was offered. Eventually his friend brought him some food to eat, which he found acceptable.
- [11] Mr. Scott then goes on to say that he was released from custody at 7:30pm on 23rd October, 2020. That was the same day of his arrest. His cell phone was returned to him and his passport and some other items seized from his residence were returned to him on 26th October, 2020.
- [12] The state led evidence from Police Sergeant Kishorn Charles in its defence. Sgt. Charles stated that on 10th October, 2020 he received information from a confidential informant that Mr. Scott and his brother were involved in the trafficking of illegal drugs and that he was in possession of an illegal firearm. He carried out investigations which eventually led to him concluding that there was sufficient cause to instruct Officer Mills to seek a search warrant from a Magistrate. The search warrant was duly issued. Once that was obtained the police set about executing the warrant by searching the claimant's premises.

- [13] It was conceded by the defence that the contingent of officers present on that morning also included members of the defence force. However, Sgt. Charles was adamant that only members of the police force actually entered the apartment. The defence force officers remained on the outside. They arrived at Mr. Scott's residence at approximately 5:30am. Sgt. Charles stated that he was the officer who knocked on the door of the residence and that he did in fact announce that it was the police on the premises. Mr. Scott then opened the door. Sgt. Charles insisted that he showed Mr. Scott the search warrant which was obtained and read it to him. He also told him that the police were there to conduct a search of the premises. At some point in his evidence, Sgt. Charles also asserted that Mr. Scott was allowed to read the warrant himself.
- [14] Having examined Sgt. Charles' evidence and oral testimony, I accept that only police officers entered the apartment. Mr. Scott's own wavering on the issue causes me to doubt the extent of his testimony. His initial insistence that there were police dogs present also calls into question some of what he had to say. This does not appear to me to be a fact one would include in a claim in error. In essence I accept that the police were armed with a duly executed warrant and that they announced themselves when knocking on the door to Mr. Scott's premises.
- [15] Sgt. Charles went on to state that Mr. Scott did not resist entry into the property and was "padded down" by one of the police officers in order to ensure there were no guns and ammunition on his person. He indicated that he supervised the execution of the warrant and that Constables Mills and Stephens executed the search of the premises. Sgt. Charles stated that while the search was going on he observed that Mr. Scott was behaving in a nervous manner. He described Mr. Scott as being fidgety and not staying in one place. Sgt. Charles stated that he had to remind him on a number of occasions to remain still while the search was going on. Whilst I accept that Sgt. Charles' observations of Mr. Scott would have raised some measure of suspicion, one must also observe that the search of a person's premises by the police may very well cause a natural anxiety in anyone. It is a factor which the court is entitled to consider.
- [16] Sgt. Charles' evidence was that during the search of the apartment, PC Mills had found a hard white substance. Based on his experience, Sgt. Charles formed the view that the substance resembled crack cocaine, due to its crystal like manner. He went on to state that the substance was

also found in two transparent bottles of liquid in Mr. Scott's bedroom. Mr. Scott was questioned about the substances and he replied that it was frankincense which he used for headaches. He was then informed by the police that the items would be confiscated and tested for confirmation as to whether it was in fact frankincense. The substance and the bottles were then placed in an exhibit bag in Mr. Scott's presence.

- [17] I note here that Mr. Scott disputes one key element of this evidence. He concedes that the substance was found and that it was crystal like in nature. However, he asserts that the substance was brownish in colour and not white as the police have insisted. In cross examination he modified this assertion somewhat by stating that the colour is not fully brown but more "creamish" in colour. He also stated that there were red streaks on it.
- [18] During the search, Mr. Scott's passport was also found. He was then informed that the passport would be retained in order to carry out investigations regarding his immigration status. At that point, Sgt. Charles instructed PC Mills to arrest Mr. Scott on suspicion of possession of illegal drugs. Mr. Scott conceded that he was informed of the reasons for his arrest. In his own witness statement he attested to the fact that he was told that he was being arrested on suspicion of being possession of cocaine. He was allowed to get dressed and taken to the Charlestown Police Station. Sgt. Charles stated that he never observed anyone looking at the claimant on the outside of his apartment while being escorted to the police vehicle. He was arrested without any resistance.
- [19] At the police station in Charlestown, Mr. Scott was held pending further investigations. According to Sgt. Charles, he was offered the station ration at 12.30pm. In his witness statement, Sgt. Charles stated that Mr. Scott had accepted the ration. However, Mr. Scott disputes this and places the timing of the ration to have been somewhat later in the day. Sgt. Charles stated that sometime later one Fherene Claire brought some food for Mr. Scott, which he was allowed to consume. However, I make the observation here, that even if Sgt. Charles was correct in terms of the timing and substance of the meal offered to Mr. Scott, there is cause for concern. The evidence is that the police turned up at Mr. Scott's residence between 5:00 and 5:30 in the morning. They searched his premises and arrested him thereafter. Offering him a meal at 12:30pm meant that he was effectively in police custody for over 7 hours at that point. One can reasonably assume that at 5:30am a person may not even had a meal for the day. Not being offered something to eat until

lunch time does not come across to me as an adequate approach to the wellbeing of one who is in police custody. These are factors which the police and the state should take into account if they are to properly exercise their powers whilst observing the basic standards of dignity which anyone in police custody should enjoy.

[20] Sgt. Charles stated that following further investigations on that day, Mr. Scott was released without charge. He was however informed that the crystal like substance had been sent to the lab for testing. Upon his release, Mr. Scott had his cellular phone returned to him. His passport was returned to him on a subsequent date.

[21] On 15th November, 2020, Sgt. Charles was informed by PC Mills that the test results were negative for cocaine. Sgt. Charles then tried to contact Mr. Scott so that the substance can be returned to him. He stated however, that he was unsuccessful in doing so. However, he later received a letter from Mr. Scott's attorney requesting a return of the substance. He states in his evidence that the attorney was informed that the substance would be left at the police station for collection. However, Mr. Scott did visit the station but refused to collect the item. Mr. Scott for his part insisted that the substance is something which he ingests and that he was no longer interested in taking possession of it as he did not know what had happened to it while it remained in the possession of the police.

[22] Sgt. Charles also stated that at all times during the execution of the warrant Mr. Scott was treated with dignity and decency. He was not subjected to any oppressive or high handed behavior. He was always informed of the reasons for his arrest and the confiscation of the items. He stated that the purpose behind the investigation was to follow up on a legitimate report that the claimant might be involved in criminal activity. That was the reason for obtaining the warrant and it was also the reason for ensuring that the substance found in the apartment was seized and sent for testing. During the course of his oral testimony, Sgt. Charles largely stuck to the account already outlined in his witness statement.

[23] As will be apparent from a reading of this judgment, I have largely accepted the evidence of Sgt. Charles. In fact, it can perhaps be said that much of the evidence of either party is not in dispute. However, quite apart from my comments regarding the time in which it took the police to offer a meal to Mr. Scott, I would also criticize the need for him to have been strip searched. Although Sgt. Charles speaks of Mr. Scott being treated with dignity and decency, I accept Mr. Scott's complaint

that he was already in his underwear and had been padded down upon the police entering the premises. There would have been no need for him to have been stripped naked by the police in order to search his person. This appears to me to have been completely unwarranted.

The Issues

- [24] The court is called upon to consider two main issues. The first is whether there are reasonable grounds to justify the arrest and detention of Mr. Scott. The second issue for consideration is whether there were reasonable and lawful grounds to seize the items which were taken during the search. If one or both of the first two issues are decided in his favour, then the court would have had to consider the question of whether Mr. Scott is entitled to damages and the amount to be awarded to him.

The Law and Analysis

- [25] The law on the issues of arrest and detention are not novel. Section 5 of the Constitution guarantees a person's right to personal liberty. However this right as contained in the constitution is not absolute. In section 5(1) the Constitution outlines certain qualifications upon which the state is entitled to curtail the personal liberty of the citizen. In particular, subsection (f) states that a person's right to liberty may be curtailed "***upon reasonable suspicion of his or her having committed, or being about to commit, a criminal offence under any law.***" This is a qualification which had been known to the common law even before the constitution itself was drafted. As counsel for the defendant points out, the **Police Act** itself establishes the duty of the police force to detect crime and maintain law and order¹. A critical tool in fulfilling this obligation is the powers of arrest and detention, with or without a warrant.

- [26] The test for determining what constitutes reasonable cause was outlined by Wooding CJ in the case of ***Irish v. Barry***² where he stated as follows:

¹ See section 5 of the Police Act

² [1965] 8 WIR 177

What is important is that in such a case as this, no person should exercise the power of arrest unless he had proper and sufficient grounds of suspicion. If he does, then he is acting hastily and/or ill advisedly. In all cases, therefore the facts, known personally and/or obtained on information ought to be carefully examined.

[27] This dictum from Wooding CJ outlines one aspect of the test. It calls upon the court to consider what the Police Officer actually believed, based on the facts and information he had personally obtained. It is the officer's duty to assess the information he has in order to determine whether there are reasonable grounds to suspect that the individual had either committed a crime or was about to commit one. After considering what the officer actually determined the court should then go on to consider whether the objective elements of the test have been met. In that regard as Lord Diplock noted in the case of ***Dallison v. Caffrey***³ the test is “... ***whether a reasonable man, assumed to know the law and possessed the information which in fact was possessed by the defendant, would believe that there was reasonable and probable cause.***”⁴

[28] Insofar as it relates to the information possessed by the police the case of ***Buckley and others v. Chief Officer of Thames Valley Police***⁵ states that “***an arresting officer may rely on what he had been told by others who may be civilian informants, reliable or unreliable, or other officers, providing that the information provides reasonable grounds for suspicion.***” I note at this stage that counsel for Mr. Scott would wish for the court to place particular emphasis on the last portion of the sentence in this dictum. The information from an informant must no doubt provide reasonable grounds for suspicion. However I make the point at this stage, that whilst the police had relied on a confidential informant for the purpose of obtaining the search warrant, the same cannot necessarily be said for the actual arrest of Mr. Scott. Here in the Buckley case, the court is stating that information from an informant may be sufficient to justify an arrest providing that the information provides reasonable grounds for suspicion. However, Sgt. Charles' evidence is that this information led to the obtaining of a warrant. It is, for the most part, the coupling of this information with what was in fact found on the premises during the search which was relied upon as reasonable grounds to suspect that an offence had been committed by Mr. Scott. The two factors must be taken in

³ [1963] 2 All ER 610

⁴ [1963] 2 All ER 610

⁵ [2009] EWCA Civ. 356

conjunction with each other. On the one hand a Magistrate had been satisfied that the test had been met to issue a warrant. On the other a crystal like substance which, to Sgt. Charles, resembled crack cocaine was found during the search.

[29] In the case in *Buckely* the court also went on to note that if ***“when challenged, the suspect provides an explanation then the officers should take this into account in deciding whether their initial suspicion can be maintained based on reasonable grounds.”*** In the circumstances of this case, Mr. Scott did provide an explanation after the substance was found. In fact, upon testing his explanation turned out to be true. It certainly is the case that the police are entitled to take the arrested person’s own explanation into account to determine whether there are reasonable grounds to suspect that a crime had been committed. However, it must be noted that this is a factor to be taken into account and not decisive of the issue in general. One would expect that a reasonable man will take all of the facts into account in coming to an informed decision; and so should the police.

[30] In our own jurisdiction, the case of *Everette Davis v. The Attorney General of Saint Kitts and Nevis*⁶ is often cited for Ramdhani J’s rather insightful exposition on the application of these principles in Saint Christopher and Nevis. He states as follows:

“The perceived facts must be such as to allow the reasonable third person and actually cause the officer in question to suspect that the person has committed or is about to commit a crime. It does not matter if the information available to the police leads equally or more to a view that the person may be innocent of the offence, once it leads reasonably to a conclusion that he may have committed, or is about to commit the offence, that is sufficient to ground the arrest. The reasonable person is assumed to know the law and possessed of the information in the possession of the arresting officer, and would have believed that the claimant was guilty of the offence for which he was arrested. The term ‘reasonable suspicion’ relates to the existence of facts at the time. It does not relate to a perception on the state of the law.”

⁶ SKBHCV 2013/0220

[31] Therefore, what this court must consider is whether the police officers had reasonable grounds to suspect that Mr. Scott had either committed an offence or was about to do so. The court makes that assessment by examining the information which the police actually had in their possession and then consider whether that reasonable man, armed with that information and with knowledge of the law, would have a similar suspicion. Counsel for Mr. Scott also refers to the case of ***Lord Hanningfield Chesterford v Chief Constable of Essex Police***⁷ where it was stated that the arrest must have been necessary to facilitate an urgent investigation.

[32] In my view, having considered the authorities on the issue, I am satisfied that, based on the information available to the police, there were reasonable grounds upon which Mr. Scott was arrested. I am satisfied that this fictitious, reasonable and objective third party would have come to a similar position as the police. Firstly, the police entered Mr. Scott's apartment seized with a duly executed search warrant. As indicated earlier, a concession had been made during the course of submissions that the warrant itself was not improper in any way. In fact, even Mr. Scott's own counsel referred to the case of ***The Attorney General v Cecil Toussaint***⁸ where at paragraphs 60 to 62 the court of appeal upheld the validity of a search warrant. The police had satisfied a Magistrate that there were reasonable grounds to suspect that a search would have revealed that Mr. Scott and/or his brother were involved in criminal activity. The fact that the police relied on a confidential informant was not disputed and I see no reason based on the facts of this case to go behind the warrant and what was presented to the Magistrate. Before this court Sgt. Charles swore to the fact that confidential informants had provided information to satisfy him that a search of the premises was warranted and I see no reason to doubt this.

[33] Having conducted the search, a hard crystal like substance was found on the premises. A similar substance was found soaking in water. Mr. Scott and his counsel were persistent in arguing that the very colour and texture of the substance was such that it was unreasonable to assume that it was cocaine. There was in fact some debate as to the actual colour of the substance which was not available for the court to scrutinize. However, as I have already indicated, Mr. Scott was not particularly consistent in his own description of the substance. That it was a hard and crystal like

⁷ [2013] EWHC 243 (QB)

⁸⁸ SLUHCVP2018/0029

substance was not in dispute. But he vacillated somewhat on whether it was actually brown or cream like in colour.

[34] I accept the evidence of Sgt. Charles when he states that having found the substance he suspected that it was crack cocaine and I am of the view that the evidence of the texture of the substance was enough for even the reasonable man to suspect that Mr. Scott had in fact committed the offence of possession of an illegal drug. He admitted that the substance was his, but merely disputed what it was. The fact that he was later proven to be correct in the items being frankincense does not mean that the police had no reasonable grounds to believe that it was not at the time. The test is not whether a crime had actually been committed or was in the process of being committed. What is necessary is for there to be reasonable cause for the suspicion. The evidence at this stage need not even be admissible evidence but enough for the limited nature of the test to be met.

[35] Counsel for Mr. Scott argued that the fact that the items were sent for testing meant that there was no urgent need to arrest and detain Mr. Scott pending this investigation. In his submissions counsel takes issue with a number of the facts as outlined by Sgt. Charles. He contends that Mr. Scott was not adequately informed of the terms of the warrant prior to the search. He also questions whether Mr. Scott was adequately informed of the reasons for his arrest after the substance was found. Counsel took issue with the fact that there was some discrepancy as to whether Officer Charles used the term cocaine as opposed to crack cocaine when informing Mr. Scott of the reasons for his arrest.

[36] However, despite these discrepancies and, having examined the evidence in full, I do not accept that Mr. Nisbett's submissions are an adequate reflection of Sgt. Charles' evidence. From the evidence presented I am satisfied that Sgt. Charles had informed Mr. Scott that there was a warrant to search the premises. He states in his evidence that he also read out the terms of the warrant to Mr. Scott. He stated that it was not customary to simply hand the warrant over to the person whose premises was being searched but that he did in fact allow Mr. Scott to read the warrant himself. Mr. Scott himself in his own witness statement said that he was informed that the warrant authorized the police to search for drugs, guns and ammunition. For my part, I am satisfied that Sgt. Charles was speaking the truth and that Mr. Scott was adequately informed that a warrant had been issued by the Magistrate empowering the police to search his premises.

[37] As it relates to the arrest of the claimant, I am also satisfied that this arrest took place after the crystal like substance was found and that Mr. Scott was adequately informed at his residence as to the reasons for his arrest. He would have been aware that he was arrested on account of the substance found and that further investigations were going to take place. The fact that a reference was made to cocaine as opposed to crack cocaine does not lead to the conclusion that the arrest was invalid.

[38] I am also of the view that the fact that the substance was sent for testing does not invalidate the reasonable suspicion upon which Mr. Scott was arrested. Suspicion of being in possession of cocaine is not a minor issue. In fact, one would have found it odd that the police could have suspected that Mr. Scott had been in possession of an illegal drug of this nature and simply leave the premises without initially detaining him pending further inquiries. Sgt. Charles was satisfied that the defendant needed to be detained to conduct these investigations. He states that during the course of the day a decision was taken to release Mr. Scott pending the outcome of the testing of the substance. This was done, according to Sgt. Charles, after initial investigations were complete on that day. I see no fault in this course of action being pursued. To have found what was believed to be cocaine in premises was sufficient to have provided grounds for an arrest. It was not unreasonable for Sgt. Charles to have made the subsequent decision to release the defendant after a few hours of further investigation.

[39] I find therefore that the conclusions drawn by the police were reasonable and, by extension, there was cause sufficient to arrest and detain Mr. Scott pending further investigation. I am of the view therefore, that Mr. Scott's arrest and detention was lawful. I am also of the view that the seizure of the frankincense and by extension the oils, in order to facilitate its testing was also lawful and was the reasonable course of action to pursue. Insofar as it relates to the cell phone, I accept the evidence of Sgt. Charles that the phone was collected from Mr. Scott as is customary for a prisoner in custody. I do not accept that there is sufficient evidence to find that the cell phone itself was ever searched or accessed by the police. In fact, although this was pleaded in the statement of claim, Mr. Scott's own evidence raised nothing sufficient to ground any allegation that the phone was ever searched. Sgt. Charles denies this and I accept his evidence as being the truth.

[40] Insofar as it relates to the passport however, though I have some reservations of my own, I am prepared to find in favour of the claimant. Counsel for Mr. Scott refers to the case of ***Lihua Tian et v the Attorney General et al***⁹ where the court found that there was no provision in legislation which allowed for the confiscation of a passport or citizenship document. The court there found that this was a breach of the claimants' constitutional rights. Although the current claim is not brought under the constitution, I do agree that there is very little to no justification here for the seizure of Mr. Scott's passport. Unlike the frankincense which had to be tested to determine whether it was in fact crack cocaine, there is no need for the seizure of the passport to ascertain Mr. Scott's immigration status. In fact, immigration issues can hardly be said to be reflective of the type of crime which was envisaged on the search warrant.

[41] However, insofar as it relates to this issue, I make just one observation in order to express my own reservation. Whilst the case referred to by counsel for Mr. Scott addresses the issue of the confiscation of a passport in constitutional proceedings, I have a reservation about whether there is a sufficient proprietary interest in a passport to ground a civil claim by the holder of the passport. As I understand it, a passport at all times remains the property of the issuing government. It therefore begs the question as to whether a civil claim can be legitimately lodged by the holder of the passport in circumstances where it has been confiscated by the police, albeit unlawfully. The question is whether the holder of the passport has sufficient proprietary interest in it so as to argue that he was unlawfully deprived of his own property as Mr. Scott has argued in this case. In the case of ***Lihua Tian et v the Attorney General et al*** what was seized by the immigration officers were more than just passports. They also included citizenship documents. That may very well be a useful distinction.

[42] However, be that as it may, I will leave open for now those reservations as the case does seem to provide some justification for a civil remedy for the unlawful seizure of a passport. I am of the view that there was no justification and I am satisfied that the seizure of the passport was unlawful. I understand that there may have been other documents contained within the passport when it was seized. I would take those into account and find in favour of Mr. Scott in that regard.

⁹ ANUHCv2016/0039

[43] I conclude therefore that the claimant's case that he was unlawfully arrested and detained is to be dismissed. I also conclude that there was no unlawful search and seizure of his cellphone, frankincense, lavender and olive oils. Whilst I have criticized certain aspects of the actions of the police, I do not find that these actions were overall oppressive as claimed. The search of one's premises is naturally going to result in some disturbance. I also agree with the submission of counsel for the defendant where he states that there is no pleading here of assault by the claimant. However, I find that the confiscation of his passport and what was contained in it was unlawful and for that he is entitled to damages and costs.

Damages

[44] As it relates to damages for the unlawful seizure of Mr. Scott's passport, there is little authority and guidance as to the assessment of damages. In the case of *Lihua Tian et v the Attorney General et al*¹⁰ the Master had awarded the sum of \$4,000.00EC for this particular breach. In an appeal to the court of appeal that decision was upheld on the ground that it was entirely within the discretion of the master. The court of appeal saw no basis to interfere with the exercise of that discretion. In that case, the circumstances of the seizure of the passport and citizenship documents were more aggravated. It was coupled with a breach of the claimants' right to liberty to the extent that a writ of habeas corpus was issued. In the instant case, I have found that Mr. Scott was lawfully detained. His passport was returned to him within days of his arrest. There is not much by way of evidence to suggest that this had a significantly adverse effect on him. In my view a nominal sum of \$3000.00EC in damages is sufficient to vindicate the wrong which had been done. For the avoidance of any doubt I am also of the view that there is no basis for a separate award of vindictory or aggravated damages as claimed in the statement of claim.

¹⁰ ANUHCv2016/0039

Order

[45] Judgment is therefore entered in favour of Mr. Scott on the sole claim for the unlawful seizure of his passport. All other claims are dismissed. The defendant is to pay the sum of \$3,000.00EC in damages for this breach. The defendant will also pay prescribed costs on the awarded sum and interest at the statutory rate from the date of this judgment.

**Ermin Moise
High Court Judge**

By the Court

Registrar