

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

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

NEVHCV2019/0033

BETWEEN

Franchette Davis

claimant

-AND-

**The Attorney General
Randolph Diamond**

defendant

Before: His Lordship Justice Ermin Moise

Appearances:

Mr. Eustace Nisbett of counsel for the claimant

Ms. Rivi Lake of counsel for the defendant

2022: April, 8th

JUDGMENT

[1] **Moise, J:** This is an application for an assessment of damages. The claimant filed an originating motion claiming a breach of various rights under the constitution. The defendants filed no response to the claim and by consent, the court entered judgment on 1st October 2020 with leave for the claimant to apply for an assessment of his damages. The parties attempted to resolve the matter amicably but could not arrive at a resolution. An application for assessment was therefore filed by the claimant to have his damages assessed by the court.

The Facts

[2] Mr. Davis states that on 7th November, 2013 he was employed with Tamarind Cove Development. Whilst at work he was arrested by the police on suspicion of house breaking and larceny. He was taken from his place of employment to the Charlestown Police Station where he was placed in a

holding cell until 12th November, 2013. He was charged for the offences of burglary and larceny on 11th November, 2013 and brought before the magistrate the following day where he was denied bail.

- [3] It is Mr. Davis' evidence that during his stay at the Charlestown Police Station he was confined to a small cell and forced to sleep on the cold concrete floor. The lighting was inadequate during the day and he was deprived of any opportunity to get fresh air or exercise. He was forced to use lavatory facilities which were filthy. He claims that it was nearly impossible to even breathe under those conditions.
- [4] Upon being denied bail, he was taken to the Basseterre Police Station in St. Christopher. He arrived there on 12th November, 2013 and was stripped naked in front of two males and one female police officer. He was placed in a cell with 21 to 23 other prisoners and again had to sleep on the floor. At times other prisoners would walk over or step on him. He states that he felt humiliated and degraded during this experience. Mr. Davis was eventually granted bail on 11th March, 2014 with two sureties. He was placed on a curfew between the hours of 9pm and 6:30am. He also had to report to the Charlestown Police Station twice weekly.
- [5] Mr. Davis' affidavit does not speak to him ever having been removed from the Basseterre Police Station after having been initially denied bail. It does not appear to me to be customary for an individual to be kept in custody at a police station once he has been placed on remand. I take it from the evidence therefore that he was kept at the Basseterre Police station until he was eventually granted bail on 11th March, 2014. That is an extended period of time within which to remain at a police station, which is not necessarily suitable for long to medium term incarceration. This is a fact which the court will take into account in assessing the damages to which he is entitled.
- [6] As it relates to the actual charges against him, Mr. Davis states that the he, along with Ibal Tyson, was accused of breaking and entering into the dwelling house of Bernard Liburd on 7th November, 2013. He was also accused of jointly stealing the sum of \$6,685.00EC in cash and a Blackberry Bold 8900 valued at \$1,100.00EC. However, the accusation was that 3 masked men entered Mr.

Liburd's house. Mr. Liburd apparently identified Mr. Davis as one of the 3 men due to the fact that he was not wearing any shoes and that he had seen Mr. Davis earlier in the day without shoes on.

- [7] Mr. Davis contends that this was the only evidence which was used in order to charge him for the offence and that this could not have been sufficient for there to be reasonable cause to suspect that he had committed this crime. He further contends that he had provided an alibi to the police which was not investigated. He agreed to provide intimate samples of his DNA which was taken by the police and the results were never revealed to him.
- [8] From the evidence presented it is apparent that the trial did not take place until May, 2017. At the close of the prosecution's case the court was informed that the charges against Mr. Davis would be withdrawn. Mr. Davis said that he was present during cross examination when the investigating officer admitted that there was insufficient evidence against him. He is therefore aggrieved that it took 125 days in police custody and 1,164 days of delay in commencing this trial to realize that the evidence against him was insufficient.
- [9] Mr. Davis goes on in his evidence to state that prior to his arrest he worked with Tamarind Cove as a labourer for \$500.00EC per week for the previous 3 years. He was also forced to forgo his vacation pay which amounted to \$1,500.00EC. He states that due to his arrest he lost his job. He states that he was unable to find employment until November, 2014 as people had heard of the allegations against him and concluded that he was dishonest. Despite this claim in his affidavit, he did not plead special damages or loss of income as a remedy in his originating motion and his counsel did not address it in closing submissions.
- [10] As I have indicated earlier, the parties agreed that judgment should be entered for Mr. Davis and declarations of breach of his constitutional rights have already been granted. All that is left to consider are the damages that he is entitled to.

Damages

- [11] Although this area of law has been said to be developing, a number of cases of our high court and court of appeal are beginning to emerge and provide guidance as to the manner in which the court should go about assessing damages in cases such as the present. However, I wish to make the

point that in being able to properly assess the cases and the consistency in what has been determined by the court, counsel would be in a better position to agree on reasonable compensation even without the intervention of the court. However, one of the issues which is of concern to this court, is that the amount of damages being claimed in such cases may be becoming somewhat inflated. In a case like the present, the parties could not have arrived at a settlement and when one examines the submissions of counsel for the claimant I do express this concern. Counsel would wish for a daily rate of compensation and other damages which appear to me to be outside of what the court has been willing to award, even when taking the peculiar facts of the case into account. Perhaps such issues are to be expressed so as to encourage a different approach in the future.

[12] In the recent case of ***Attorney General v. Anthony Henry et al***¹ our own Chief Justice sought to place the award of damages in such cases into focus. She notes firstly, that the primary purpose of compensation in such cases is to vindicate the breach of the constitutional right. It must be observed that at times even the very declaration is a form of vindication in its own right and damages are not necessarily a matter of course. Secondly, The Chief Justice noted that the purpose of the award must take into account all of the relevant circumstances of the case. Thirdly, the Chief Justice noted the following:

“...in assessing the heads of damages which may be awarded, the court may award compensation for actual losses suffered by a claimant, exemplary damages in relation to any oppressive, arbitrary or unconstitutional actions by servants of the government, and may, by its award, reflect a sense of public outrage, emphasise the importance of the constitutional right and the gravity of the breach, and deter future breaches...”

[13] However, there is one very important principle which must be observed at all times and it is that the damages awarded in such cases must be reasonable. At paragraph 130 of her judgment Pereira CJ noted that ***“in quantifying the amount of damages to be awarded, the Court must also ensure that the relief awarded is reasonable and does not exceed what is necessary to***

¹ SLUHCVP2020/0004

vindicate the constitutional right.” In making this comment the Chief Justice relied on the case of ***Doris Fuller v Attorney General***² where Patterson JA stated as follows:

“Where an award of monetary compensation is appropriate, the crucial question must be what is a reasonable amount in the circumstances of the particular case. The infringement should be viewed in its true perspective, an infringement of the sacrosanct fundamental rights and freedoms of the individual and a breach of the supreme law of the land by the State itself. But that does not mean that the infringement should be blown out of all proportion to reality, nor does it mean that it should be trivialised. In like manner, the award should not be so large as to be a windfall nor should it be so small as to be nugatory.”

[14] This is an important principle as the court must on one the hand ensure that an individual’s right to personal liberty and the various other rights alleged to have been breached in this case are not taken lightly. Even a few days in custody can ruin someone’s life by taking away his employment and damaging his reputation. However, on the other hand the purpose of the award is not designed to be a windfall and the breach itself should not be blown out of proportion. Compensation in such cases is not to punish the state but rather to discourage the practice of wrongful arrest and detention and excessive delays in bringing a matter to trial.

[15] What does concern me however, is that a number of heads of damages are emerging in this area of law, all designed to compensate for the same issues in circumstances where counsel is arguing for compensation under each head as a matter of right. Whilst it is true that there may be a number of breaches of the constitution on one set of facts, it appears to me that the overlap in compensation is becoming all the more glaring and needs to be addressed. In this case the claimant seeks the sum of \$35,000.00EC in damages for the initial shock of his arrest. He seeks a further \$62,400.00EC in compensation for the fact that he was not brought before a magistrate within 72 hours and further compensation at a rate of \$800.00EC per day for the remaining 125 days in which he was incarceration, amounting to a further \$104,800.00EC. All of that is claimed in addition to damages for both aggravating and exemplary damages and a separate award for the

² (1997) 56 WIR 337

delay in this matter proceeding to trial. I express concern with the overlap in compensation under each head and further express a need for caution in ensuring that this area of law does not become unnecessarily convoluted. In addition, at least some of the submissions put forward by counsel are unsupported by any precedent which this court has established.

[16] Whilst there is an encouragement in claims where the number of days of wrongful detention is ascertainable, to employ a daily rate for compensatory damages, the question is what are these damages designed to compensate for? In the case of *Merson v Cartwright and Anor*³ Lord Scott stated as follows:

“The purpose is to vindicate the right of the complainant, whether a citizen or a visitor, to carry on his or her life in the Bahamas free from unjustified executive interference, mistreatment or oppression. The sum appropriate to be awarded to achieve this purpose will depend upon the nature of the particular infringement and the circumstances relating to that infringement.”

[17] In the case of *Subiah v The Attorney General of Trinidad and Tobago*⁴ Lord Bingham also weighed in on this issue and stated that:

“Such compensation will be assessed on ordinary principles as settled in the local jurisdiction, taking account of all the relevant facts and circumstances of the particular case and the particular victim. Thus the sum assessed as compensation will take account of whatever aggravating features there may be in the case, although it is not necessary and not usually desirable... for the allowance for aggravated damages to be separately identified.”

[18] To my mind, it seems that the compensation awarded in such instances already incorporates the concept of vindication and the aggravating circumstances are already taken into account. Therefore, an additional award for vindictory or aggravated damages is not automatic but can be awarded in circumstances where there is that additional feature which warrants such an award.

³ [2005] UKPC 38

⁴ [2008] UKPC 47

That much was expressed by Lord Nicholls in the case of **Attorney General v. Ramanoop**⁵ where he also warned that the award of vindictory damages need not necessarily be substantial in size. The court should therefore be cautious in ensuring that the damages claimed and awarded do not amount to additional compensation for the same issues in circumstances where it is not warranted or perhaps is significantly inflated. Aggravated and exemplary damages as claimed in this case also fall within this consideration.

Compensation

[19] As has been noted in a number of cases, the award of damages for wrongful arrest, or breach of constitutional rights to liberty under section 5 of the Constitution is assessed in two phases⁶. The first is to set an appropriate award for the initial shock of the arrest and the second is to go on to consider an appropriate daily rate for the remainder of the period of detention.

[20] As the court stated in the case of **Wakeem Guishard v. the Attorney General**⁷, ***“the approach is not one in which the court is to set an exorbitant hourly rate for the first period of detention. The courts have adopted a more general approach in fixing a reasonable sum for this period and then to go on to set a daily rate for the remainder of the time which the claimant had spent in custody.”***

[21] Lord Wolf also highlights the approach to be taken in the case of **Thompson v. Commissioner of Police of the Metropolis**⁸, where he states that ***“a plaintiff who has been wrongly kept in custody for – hours should for this alone normally be regarded as entitled to an award of about £3,000. For subsequent days the daily rate will be on a progressively reducing scale.”***

[22] In the case of **Everett Davis v. the AG**⁹, Ramdhani J, having examined the facts of that case stated ***“that for the initial period of detention, this claimant is entitled to at least EC\$20,000.00 for the initial act of detention, and a sum of EC\$500.00 per day for each day of***

⁵ 2005 UKPC 15 see paragraph 18

⁶ see Millette v. McNicolls Civil Appeal No. 14 of 2001 and Everett Davies v. the AG SKBHCV 2013/0220

⁷ BVIHCV2018/0006

⁸ [1998] QB 498

⁹ SKBHCV 2013/0220

detention beyond the initial act of detention.” The sum of \$20,000.00EC for the initial shock was also recently awarded by in court in the case of **Caldre Chapman v. the AG**¹⁰. In the case of **Dustin Lapsey v. The Attorney General**¹¹ the court awarded the sum of \$30,000.00EC for the initial shock. That award took into account the fact that the claimant had been released after being incarcerated for a number of days and then rearrested immediately upon release. He also spent a total of 8 days in police custody before being formally remanded by a magistrate.

[23] In this case, counsel for Mr. Davis seeks an award of \$35,000.00EC for the initial shock of his detention. Counsel relies on the court of appeal decision in the case of **Wakeem Guishard v. the Attorney General**¹² for the submission that the sum of \$20,000.00EC was not a standard award in such cases. However, whilst it is true that the court ought to take into account the peculiar circumstances of each case, **Wakeem Guishard** also reinforced the notion that the court should as much as possible seek to ensure that some certainty is brought to this area of law. Whilst the awards are not binding, they nonetheless provide a guide to the court. It must also be observed that the challenge with the case of **Wakeem Guishard** was that it was a decision in the only territory of the Eastern Caribbean Supreme Court which uses the US dollar as its main currency. It is therefore difficult to simply use the award in that case as a guide without taking into account the peculiar circumstances of it. Quite apart from the currency issue, Wakeem Guishard was arrested at his home by police officers all alighting from a motor vehicle with guns blazing. These are not similar circumstances to the present case.

[24] In the other jurisdictions of the ECSC the region of \$20,000.00EC has been acceptable giving due regard to the peculiar circumstances of each case. As in the case of **Dustin Lapsey**, I accept that the claimant in this case had spent more time before being brought to a magistrate than he needed to spend. That certainly adds to the initial shock if he is not afforded the judicial supervision of his detention within the time required by law. However, I also take into account the manner of his arrest and the circumstances outlined in his affidavit. It is somewhat distinct from what occurred in **Wakeem Guishard** and **Caldre Chapman** for example. In my view however the sum of \$25,000.00EC is sufficient compensation for the initial shock of the claimant’s arrest and detention, taking into account the number of days spent before being brought before a magistrate.

¹⁰ NEVHCV2018/0086

¹¹ NEVHCV2019/0086

¹² BVIHCVAP2018/0006

[25] Before considering the daily rate, counsel for Mr. Davis seeks to submit that an additional award should be made for the fact that he was not brought before the court within 72 hours. Counsel refers to the case of **Hopeton White Elvis “Kenny” Chance et al v Edward Croft** and argues that the award of \$50,000.00EC made by the learned master can be translated into a figure of \$870.00EC per hour for a period of 57 hours which that claimant spent in custody. He therefore seeks to justify a claim of \$62,640.00EC as an award to Mr. Davis in addition to the initial shock and the daily rate of compensation normally awarded in such cases. However, two observations can be made from the master’s decision in **Hopeton**. Firstly, the master did not conduct an exercise of separating the initial shock from the remaining period of incarceration. That was obviously because the period of incarceration was rather brief and the exercise conducted in that case is not similar to what is being conducted here. Secondly, the master took the peculiar facts of that case into account and came to a conclusion in the round. This does not stand as an authority on which the court can rely to justify an award which is separate and apart from the initial shock and the daily rate provided to the claimant. The fact that Mr. Davis spent more than 72 hours before being brought to a magistrate is a factor which the court will take into account in fixing the compensation for the initial shock and the daily rate, but it does not warrant a separate award.

[26] As it relates to the daily rate to apply for the remaining period of Mr. Davis’ detention, his counsel has submitted that the sum of \$800.00EC is reasonable in the circumstances. The claimant again seeks to rely on the decision of the court of appeal in the case of **Wakeem Guishard**. He argues that this was the first instance in which the court of appeal had considered an appropriate daily rate for such an award and submits that although the court upheld the rate applied by the master, the judge delivering the judgment was of the view that he would have awarded a higher amount had he examined the case in the first instance.

[27] However, I must repeat that the issue in **Wakeem Guishard** was an appropriate rate to be awarded in US currency and taking into account the peculiar facts of that case. The decision does not stand as one in which the court of appeal sought to make any comment about the appropriateness of the sum of \$500.00EC as a reasonable award in jurisdictions where the Eastern Caribbean Currency is used. An assessment of the decision of the master in that case places the issues into context. A direct conversion of the \$500.00EC daily rate to US currency was said to be too low for the BVI

jurisdiction. An assessment of the award in the case of *Takitota v. the Attorney General* underscored that reality. Both the master and the court of appeal accepted that. What Ferrara JA pointed out however, was that as far as he was concerned, he would have awarded \$400.00US per day in that case as opposed to the \$300.00US which the master awarded. However, given that the award was a matter for the discretion of the master, the court of appeal would not interfere with it. There is nothing in this decision which can be interpreted to mean that \$500.00EC per day is not an acceptable sum for compensation in such cases. It all amounts to the peculiar circumstances of the case.

[28] The court of appeal has more recently underscored the fact that compensation in such instances is not designed to be a windfall and the sum awarded must at all times be reasonable. One has to consider the difference in currency and purchasing power parity of the British Virgin Islands and note that it would be difficult to simply rely on *Wakeem Guishard* as a guide for a natural and dramatic increase from the region of \$500.00EC per day for such an award without the peculiar circumstances of the case being taken into account.

[29] In fact it may very well be that an assessment of the facts of the case may show that it warrants a lower amount of compensation than that which had previously been awarded in other cases. When one examines the peculiarities of the case of *Everett Davies* and *Dustin Lapsey* for example, it may very well be argued that the circumstances of the present case are inherently less egregious and should warrant a daily rate which is lower and not higher than what was awarded in those cases. It is not that the court wishes to minimize Mr. Davis' ordeal, but this court cannot find any occasion in which our jurisdiction has ever sanctioned a daily rate of \$800.00EC even where the circumstances of the case have been more severe.

[30] As the courts have consistently reinforced, the awards of similar cases are merely guides. The court must consider each case on its merits whilst at the same time maintaining a certain measure of consistency in the awards which it makes. When examining the circumstances of this case, I am not persuaded that the sum of \$800.00EC is reasonable in the circumstances. In fact, I am of the view that the facts of a case may have to be somewhat particularly egregious to warrant an award of \$800.00EC per day as that is not a reasonable amount to be awarded; especially in light of the fact that the claimant also seeks aggravated damages in addition to this compensation.

[31] Having examined Mr. Davis' affidavit, I do accept the ordeal which he had been through, however, save for his allegations of having been stripped naked in the presence of a female police officer and spending beyond 72 hours before being brought before a magistrate, the facts are not as egregious as what was experienced by **Wakeem Guishard** and certainly not even close to what was experienced by **Everette Davis**. The court never wishes to minimize the unlawful interference with a citizen's liberty, but damages in such instances must be reasonable and some measure of consistency must be brought to the process.

[32] I believe the sum of \$500.00EC a day is reasonable in the circumstances. By my calculation, the remaining period of detention amounts to 125 days in custody. Whilst the court is to consider an incremental reduction in the daily rate, this period of detention is not as long as others which the court has considered. I would therefore award the sum of \$500.00EC per day for the period of 125 days amounting to a total of \$62,500.00EC.

Torture and Inhuman Punishment

[33] Counsel for Mr. Davis submits that he is entitled to compensation for the breach of his rights against inhuman and degrading treatment or punishment. However, counsel did not come across any case in his own research on which this measure of damages is to be based. He therefore invites the court to consider an appropriate award in the circumstances. On the other hand, counsel for the defendant refers to a number of authorities from this jurisdiction in which claims of inhuman and degrading treatment was denied. The difficulty however, is that the parties had agreed that judgment should be entered in favour of the claimant in its entirety. The court therefore takes it that there was a concession that he was subject to inhuman and degrading treatment.

[34] However, when one examines the factors to be taken into account in arriving at an appropriate award for breach of his right to personal liberty, these include the general experience which the claimant would have had whilst in custody and the manner in which he was treated and the suffering he endured while his liberty was curtailed. In addition to that, the claimant also claims exemplary and aggravating damages (which I have combined into an award for vindictory damages), which would inherently also take these factors into account. Therefore, to give additional compensation under this head may amount to double compensation. I do also agree that when one

examines Mr. Davis' affidavit, that the treatment which was meted out to him does not rise to the level of what obtained in *Everette Davies*, *Caldre Chapman* and *Dutin Lapsey*, sufficient for there to be an additional award under this head. I would therefore decline to make such an award.

Breach of a right to a fair trial within reasonable Time

[35] Counsel for Mr. Davis claims an additional award for the delay in bringing his matter to trial. This amounts to a total of 1,146 days. Counsel argues that the claimant, though on bail, still had some aspects of his liberty curtailed as a result of the delay. He had to report to a police station twice weekly and was placed on a curfew between the hours of 9:00pm and 6:30am. For that the claimant seeks a daily rate of \$800.00EC discounted to \$33.33 per day amounting to a total of \$38,200.00EC. However for my part I am unable to appreciate how counsel has arrived at his figures.

[36] Counsel for the defendant disputes this award and argues that these are in fact "slumbering hours" and the claimant has provided no evidence of how this curfew actually affected his movements. The argument is that he has not discharged the burden of showing the need for compensation under this head.

[37] Whilst I generally agree with the submissions of counsel for the defendant I do accept that a curfew is a form of curtailment of one's liberty. His inability to make any decisions to leave home at nights will inherently affect his rights in some way. What I do not agree with however, is that the sum claimed by his counsel is reasonable in the circumstances. Without much of an authority on the issue I am not of the view that a daily rate is necessary. Inherently the claimant was free to go about his business during the course of the day and spent his evenings at home as opposed to a prison cell. A nominal figure taken in the round will be sufficient to vindicate the breach of this right. I am of the view that the sum of \$15,000.00EC is adequate compensation for this.

Exemplary and Aggravating Damages

[38] The claimant also claims both exemplary and aggravated damages. Under each of these counsel submits that the claimant should be awarded \$45,000.00EC and \$30,000.00EC respectively.

However, I refer to the case of ***Takitota v. The Attorney General***¹³, where the Privy Council noted that both vindictory and aggravated damages ought not to be awarded. Although Mr. Davis has couched his claim as one for exemplary and aggravated damages, a similar situation arises. There is an effective overlap between the factors which give rise to both of these and it would be wrong to make such an award in both. As this area of law continues to develop it is becoming clear that there is a tendency to attempt to inflate the awards as much as possible. This must be avoided as issues such as the mental distress referred to by Mr. Davis' counsel are all factors already taken into account when considering the appropriate award for compensation. The courts have appeared to be prepared to give an additional award to vindicate the breach of the claimant's rights, but not necessarily to create an overlap between that which was already awarded. I will therefore consider the awards normally made in cases of this nature to cover the vindictory damages which the claimant may be entitled to.

[39] In ***Everette Davis***, Ramdhani J took all of the factors of that case into consideration and awarded the sum of \$30,000.00EC in vindictory damages. The claimant in that case spent much more time in custody and was arrested and charged for a far more serious offence. He was arrested more than once for the same offence. Similarly, in the case of ***Dustin Lapsey v. the Attorney General***, the court granted the sum of \$50,000.00EC in vindictory damages. However, in that case, the claimant spent much more time in custody than Mr. Davis and the court also had to take into account the numerous orders for disclosure which were flouted by the prosecution in that case. To my mind, the facts of this case now before me, though serious, do not rise to the level of the circumstances presented in ***Everett Davis*** and ***Dustin Lapsey***. I take into account the circumstances of his incarceration as outlined in his affidavit; especially the fact that he was stripped naked in the presence of a female officer. Counsel for the defendant recommends the sum of \$10,000.00EC in damages under this head. However, I am of the view that \$25,000.00EC appears to me to be reasonable in the circumstances of this case to vindicate Mr. Davis' rights which had been breached and the aggravation caused as a result.

Special Damages

¹³ [2009] UKPC 11

[40] The first observation which I wish to make here is that Mr. Davis did not plead any special damages in his originating motion. He claims in his affidavit in support to have been employed with Tamarind Cove where he earned \$500.00EC a week as a labourer. He also claims that he was not able to obtain employment until November, 2014. However, he never specifically requested special damages or loss of earnings as a remedy. In closing submissions Mr. Davis' counsel requests the sum of \$8,000.00EC paid in legal fees, \$1,600.00EC in sustenance provided by his mother and \$990.64EC for the loss of a Courts account. Even his counsel therefore does not seek to claim any loss of earnings. I will therefore refrain from making such an award as none has been requested.

[41] In addition, as this court noted in the case of *Dustin Lapsey*, the benevolent assistance provided by the claimant's mother during his time of incarceration are not recoverable. In the affidavit of Hildred Davis, she merely states that she brought clothes, toiletries, food and money to him and estimate this to be valued at \$1,600.00EC. No doubt Mr. Davis would have had to eat and clothe himself if he was not incarcerated. This is not enough evidence to justify such an award.

[42] Further, I also agree with counsel for the defendant where she states that insufficient evidence of any legal fees has been presented to this court. The evidence does not substantiate this loss. I do however accept that the defendant had to proceed to trial on a matter which appeared to have very little evidence against him, if any at all. I will be prepared to provide a nominal award to him for representation in the magistrate's court during this ordeal. However, \$8,000.00EC appears to me to be exaggerated legal fees for a summary court matter which was merely withdrawn by the prosecution. I would award the sum of \$2,000.00EC as reasonable costs for representation in the magistrate's court.

[43] I also agree with counsel for the defendant that the evidence presented in relation to the loss suffered with the courts account does not appear to me to be adequate. Mr. Davis does appear to have been delinquent in his obligations to that institution before his arrest. I would decline to make such an award.

Conclusion

[44] In conclusion the defendant is to pay the following to the claimant:

- (a) The sum of \$87,500.00EC in compensatory damages for breach of his right to personal liberty.
This includes the sum of \$25,000.00EC for the initial shock of his incarceration and \$62,500.00EC for the remaining period at a rate of \$500.00EC per day;
- (b) The sum of \$15,000.00EC as compensation for a breach of his right to a fair trial within reasonable time;
- (c) The sum of \$25,000.00EC in vindictory damages;
- (d) the sum of \$2,000.00EC representing reasonable legal fees before the magistrate's court;
- (e) Interest on damages at the statutory rate; and
- (f) Prescribed Costs in accordance with the CPR but discounted at a rate of 45% given the fact that no defence had been filed.

**Ermin Moise
High Court Judge**

By the Court

Registrar