

IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE COMMONWEALTH OF DOMINICA
IN THE HIGH COURT OF JUSTICE
(CIVIL)

CASE NO.DOMHCV 2019/0188

BETWEEN:-

ROLSTON GEORGE

Applicant

And

[1] THE SUPERINTENDENT OF PRISONS

[2] THE ATTORNEY GENERAL

Respondents

Appearances:

Miss Dawn Yearwood Stewart for the Applicant

Mrs. Jo-Anne Xavier Cuffy, State Attorney for the Respondents

2020: January 17

February 17

May 15

RE-ISSUED JUDGMENT

This judgment has been corrected pursuant to Part 42:10 of CPR as there was an accidental omission made regarding the contents of the claimant's affidavit which omission has been corrected. This correction does not affect the Order of the court emanating from the judgment delivered. There were some typographical errors which were also corrected to the judgment as issued.

- [1] **STEPHENSON J.:** “The discretionary remedies of certiorari and prohibition were employed primarily for the control of inferior Courts, tribunals and administrative or other public authorities. It is a form of judicial review whereby the acts of theses Courts, tribunals or public authorities could be quashed if it was found that they had acted outside of their mandate or unfairly even within their mandate or jurisdiction”¹
- [2] By a fixed date claim form filed on 14th day of October 2019 the claimant sought and order Certiorari to quash a decision of the Superintendent of Prisons to continue his confinement at the State Prison at Stock Farm for more than 6 months from the date of his arrest and incarceration on multiple warrants of committal all issued on different dates but executed on the same day.
- [3] Being aggrieved by the decision of the Superintendent of Prison the claimant applied for leave to issue Judicial Review of the Superintendent’s decision. The claimant also sought a writ of Habeas Corpus to challenge the validity of his continued incarceration.
- [4] After the leave was duly granted the claimant found himself incarcerated as a result of different proceedings and was due to be released on the 28th January 2020 and was duly released shortly thereafter based on the consent order of this court for him to be released pending the ruling on his application for certiorari.
- [5] This is a case where a determination needs to be made on whether the sentences which the applicant has to serve based on warrants for civil debts should run concurrently or consecutively to one another. If they are to run concurrently, the sentences will overlap and be served at the same time. If they are to run consecutively the sentences, on the other hand, require one to finish before the other begins. Counsel for the claimant has urged upon this court that the applicant

¹ Per D P Bernard CJ in the Application of Aubrey Norton – JCCJ 5932 of 1997 (GY)

should serve a single term that is, the terms of sentence should run concurrently and counsel for the respondent submits that the terms should run consecutively.

- [6] Generally, it's up to the court to determine whether or not the sentences will be concurrent or consecutive.

The Undisputed Facts:

- [7] The Claimant was arrested and presented to the State Prisons and is in fact serving sentences passed as a result of failure to pay compensation orders consequent to criminal conviction and for default of multiple maintenance orders issued pursuant to section 9 of the **Maintenance Act**².

- [8] The warrants were issued on different dates and executed on the same date. What is clear to the court is that the applicant was out of State and upon his return to Dominica he was arrested at the airport placed into custody and handed over to the State Prison on the basis of the 10 outstanding maintenance warrants and 2 outstanding warrants to pay compensation upon criminal conviction of theft neither of which he obeyed.

- [9] It was submitted by Counsel Dawn Yearwood Stewart that what is being challenged is the claimant's continued incarceration consecutively based on the outstanding warrants that were issued on different days but executed on the same day as counsel is of the view that the claimant's continued incarceration is unlawful. The issue is whether or not the decision by the Superintendent of Prisons was right when he determined that the claimant should serve consecutive terms of imprisonment based on the many warrants issued in default of him paying maintenance as ordered by the Court. It is the submission of Counsel on behalf of the claimant that what is being questioned is the ambiguity as to the length of the term that the claimant is expected to serve.

² Chapter 35:61

[10] It was submitted on behalf of the Claimant that these sentences should be served concurrently and not consecutively for the following reasons:

- a. That the Superintendent of Prisons could only take guidance from the warrants as issued by the Magistrate and that the warrants in issue did not state that the sentences should be served consecutively;
- b. That since the terms of imprisonment are in default of payment of a civil debt they should not run consecutively, that the terms of imprisonment on the warrants is to enforce payment and not to punish the claimant for crimes committed.
- c. That the six month terms imposed is in default of compensation orders arising out of a criminal matter which falls under the "Summary Jurisdiction (Criminal) of the **Magistrate's Code of Procedure Act**³ and in the circumstances of this case the Superintendent of Prisons should not look beyond the warrant to determine the terms of the warrants.

[11] Learned Counsel Yearwood Stewart has submitted to this court that the Superintendent of Prisons cannot decide that the terms of imprisonment based warrants presented in the instant case are to run consecutively. That the time to be served by the applicant is to run concurrently unless otherwise stated on the face of the warrant. Counsel further submitted that the six weeks term of imprisonment began to run when the applicant was received by the prison on every single warrant. Learned Counsel relied on the **Desmond Carroll –v- The Governor of Mount Joy Prisons**⁴ in support of her submissions.

[12] It was further submitted that it is not for the Superintendent of Prisons to judicially determine the length of the term of imprisonment as to do so would usurp the functions of the magistrate whose remit it is to determine the terms of

³Chapter 4.20 of the Revised Laws of the Commonwealth of Dominica

⁴ (2005) IEHC 2

incarceration. The superintendent's role is limited to looking at the date the claimant came into his custody and to calculate the sentence from that date.

[13] Learned counsel on behalf of the claimant made reference to and relied on the Canadian Case of **Rex –v- Stevens Exparte Richard**⁵ in support of her contention that the terms of imprisonment based on the warrants which were executed on the same day should run concurrently. Having reviewed this case in its entirety this case really in my respectful view does not apply to the case at bar as the court was dealing with an entirely different factual circumstance, in that the applicant in that case was found guilty of multiple offences based on the same evidence at a single sitting of the court. The magistrates in that case found the applicant guilty of the multiple offences and passed sentence on each of the offences as charged and in default of each fine the applicant was ordered to be imprisoned for a term of three months for each offence. Having failed to pay the fines on each of the convictions, committals were issued for each of the convictions and the applicant was incarcerated on each of the committals in default of paying the fines imposed.

[14] It is noted that the terms of imprisonment which the claimant in the case at bar is serving is not an "original punishment, but a term of imprisonment as a means of enforcing payment of compensation order and in default of paying maintenance as ordered by the court. It is an imposition of a term of confinement subsidiary to the enforcement of payments of fines as ordered by the court.

[15] Learned Counsel Yearwood Stewart submitted on behalf of her client that the life of all of the warrants ran together in the six months window which is the longest term of imprisonment under one of the warrants and that in the circumstances of the case the claimant should be discharged.

[16] On behalf of the respondents it was submitted that based on the facts adduced in the case that where the warrants were duly executed on the same day in the

⁵ 1914 Canlii 643 (NB CA)

absence of an indication on the warrants whether the terms of imprisonment should be consecutive or concurrent, that there is a presumption of concurrency which should be applied.

[17] Learned counsel Xavier Cuffy on behalf of the respondents relied on the case of **Jake Freeman –v- The Governor of Wheatfield Place of Detention**⁶. In that case Mahon J stated⁷ “... *in the absence of such direction (whether the sentence should run concurrently or consecutively)*⁸ *a presumption of concurrency applies*”. To support the court’s finding in this regard the learned judge cited and relied on the decision in **Blackall –v- Mangar** (1952) 87 ITR and **Carroll –v- Governor of Mountjoy Prison** [2005] 3 IR 292.

Considerations by Court:

Warrants

[18] A warrant is a command issued by the court to the executive branch of the state to arrest an individual or person and to bring him or her before the court or to lodge that person into lawful custody of the prison authorities.

[19] The claimant was arrested based on the issuance of warrants signed by the Magistrate to serve time in default of a compensation order (in two parts) and in default of orders to pay maintenance for his children. Warrants serve a twofold purpose:

- a. When a person who is sentenced is still at liberty this enables the court through the police to apprehend and detain the person;
- b. To inform the prison authorities of the identity of the prisoner, the offence for which he is convicted and the duration of his sentence.

⁶ [2017] 1 IR 314

⁷ Ibid at paragraph 31 of the judgment

⁸ My words

Imprisonment for civil debts:

[20] The civil justice system provides the process by which individuals can enforce their judgments and obtain payment of monies that are owed.

[21] It has been said that owing money is not a crime and imposing any form of punishment is not permitted by law. Imprisonment for nonpayment of civil debt should only be used as a last resort. In **Re: R-v- Leicester Justices ex parte Wilson**⁹ Laws J in delivering the court's judgment said that when exercising the jurisdiction to enforce payment of civil debts the Courts should have "*well in mind the distinction between imprisonment as punishment which is one of the functions of the criminal court and committals are ... a means of enforcing the payment of a (statutory) debt*"

[22] The two concepts are quite distinct, to have a judgment debtor serve a committal warrant is punitive at best. In **R (on the application of Woolcock) v Bridgend Magistrates' Court**¹⁰ the court was called on to review the imprisonment of an applicant who was committed under a civil debt. In this case the court said:

"First, the power to commit is intended to be used to extract payment of the debt not to punish the debtor. Secondly, it is clear from the terms of the regulation that the magistrates' court must conduct a means inquiry in the presence of the debtor and must consider whether the failure to pay is the result of willful default or culpable neglect. Thirdly, an order may be made if, but only if, the debtor is guilty of culpable neglect or willful default. The means inquiry will need to consider the period or periods in respect of which liability is due in order to determine, amongst other things, whether non-payment is the result of culpable neglect. Further, the means inquiry will need to consider the present position of the debtor to enable the magistrates' court to determine whether the debtor is in a position to pay the debt and the magistrates' court will need to consider what enforcement options are available to it to secure payment of the debt: see

⁹ CO/3343/93 (16 December 1993)

¹⁰ [2017] All E R (D) 139 (Jan)

the observations of King J. in **R (Wandless) v Halifax Magistrates' Court and others** [2009] EWHC 1857 (Admin.) at paragraphs 24 to 28".

[23] Likewise our Magistrates under the **Magistrates Code of Procedure Act** ("the **MCPA**") are clothed with the power to order terms of imprisonment for nonpayment of civil debt.

[24] The Following sections of the **MCPA** address this:

"130. Every judgment or order may be enforced by sale of the goods and chattels of the defendant or by attachment of moneys due to him by any third party.

131. No judgment or order or order for the payment of any costs awarded shall be enforced by imprisonment except as prescribed in section 132.

132. (1) Where any defendant makes default in the payment of any judgment debtor of any sum ordered to be paid or any installment or any costs and he either has or has had since the date of the order the means to pay the same and has refused or neglected or refuses or neglects to pay the same, the Magistrate may commit him to prison for any period not exceeding six weeks or until payment of the sum due, and may issue all necessary warrants in that behalf.

(2) An order made under subsection (1) shall be made in open court.

(3) No imprisonment under this section shall operate as an extinguishment of the debts or grounds of claim or deprive any person of the right to obtain a writ of execution for the satisfaction of the debt.

(4) Proof of the means of the person making default may be given in such manner as the Magistrate may think just, and such person and any witness may be summoned and examined on oath as other witnesses may be summoned and examined under this Act."

[25] This court is satisfied that the learned magistrate based on the evidence adduced in the case at bar was clothed with the jurisdiction to issue the committal warrants in default of the payments being made by the applicant as ordered.

[26] This court is also satisfied in the face of these authorities that where the warrants legally issued by the magistrate and executed at the same time there is to be a

presumption of concurrence which should be applied and in the case at bar the claimant would have therefore served the committal sentences concurrently with the sentences he served for the failure to pay the compensation as ordered by the magistrate.

[27] Therefore the judgment of the court is that the terms of imprisonment stated on the warrants is to be served concurrently and the claimant is to be duly released as having spent the time committed under the committal warrants which are accordingly spent.

[28] I would allow the claimant's application and it is declared that the Superintendent of Prison's decision that the claimant should serve the time as indicated on the committal warrants for the arrears of maintenance duly issued by the Magistrate and executed on the same day consecutively is null and void on the grounds that in the absence of words appearing on the face of the warrant indicating whether the sentences should be served concurrently or consecutively is to be served concurrently. An order of certiorari is therefore granted to quash the decision of the Superintendent of Prisons.

The question of Damages to be awarded to the claimant:

[29] Counsel on both sides quite correctly drew to the court's attention that they have addressed the issue the claimant's entitlement to damages due to him being illegally incarcerated at the state prison. For that I am grateful.

[30] Both counsel for the claimant and respondents agree that the claimant is entitled to an award of damages and they differ as to the quantum which should be awarded.

[31] In her further submissions filed with the leave of this court on the 17th January 2020 learned counsel Yearwood Stewart relied on Section 3(6) of the Constitution which provides “*Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefor from that other person or from any other person or authority on whose behalf that other person was acting*”

[32] **Counsel** contended that the length of the unlawful incarceration endured by her client was 54 days. **Counsel** submitted that her client is entitled to damages and cited and relied on the Privy Council decision in **Takiota –v- AG** ¹¹when it was stated that “*An award will go some way towards understanding the infringed constitutional right*”

[33] Counsel also relied on the case of **Merson –v- Cartwright & The Attorney General** ¹² which stated “*the purpose of the redress is not to teach the executive not to misbehave but to vindicate the rights of the claimant.*”

[34] Counsel further relied on the judgment of Ventose J in the St Christopher & Nevis case of **Jermaine Browne –v- The Attorney General** ¹³ where the learned judge Ventose J followed the Ramdani J judgment in the **Everette Davis –v- The Attorney General of St Kitts Nevis (SKNHCV 2013/0220)** where the multiplicand used was \$500.00 per day.

[35] In her submissions Learned Counsel Yearwood Stewart submitted that her client was wrongfully incarcerated for 54 days and in the circumstances of the case based on the authorities cited would be entitled to \$27,000.00 with interest from the date of judgment to the date of payment plus costs.

[36] In her submissions filed on the 25th November 2019 Learned Counsel Xavier Cuffy on behalf of the defendants accepted that should the court find that the claimant

¹¹ (2009) UKPC 11 @ para 19

¹² (2005) UKPC 38

¹³ (SKBHCV) 2016 /0074

was wrongfully incarcerated as a result of the decision of the Superintendent of Prisons that the defendant is entitled to damages.

[37] In the claim at bar the claimant has succeeded in his challenge of the lawfulness of his detention, and an order Certiorari has been ordered quashing the decision of the Superintendent of Prisons.

[38] The question is has the claimant suffered loss or damage as a result of his detention? If he has and in what quantum? The questions arises therefore was the claimant placed in a situation of distress? Is there any basis established by the claimant that on a balance of probabilities he is entitled to compensatory damages?

[39] Learned Counsel Xavier Cuffy submitted on the factors which the court should take into consideration when making an award for breach of a constitutional right and noted clause 3(6) of the Constitution as mentioned by Counsel Yearwood Stewart on behalf of the claimant. Counsel Xavier Cuffy submitted that “the court should consider:

- (1) Whether a declaration is sufficient to remedy the breach of the right;
and
- (2) If the first question is answered in the negative then the court must consider the amount of compensation to be awarded”¹⁴

[40] Learned Counsel quoted and relied on the guidance to be gleaned from the case of **Takiota –v- The Attorney General of Bahamas**¹⁵ in arriving at what would be an appropriate award to be made as follows:

¹⁴ Paragraph 10 of the Written submissions filed on behalf of the defendants on the 25th November 2019

¹⁵ [2009] 4 LRC 807, [2009] UKPC 11

“The court should determine what they consider to be an appropriate figure to reflect compensation for the long period of wrongful detention of the Appellant, taking into account any element of aggravation they think proper, reflecting the conditions of his detention and, in their own words, the misery which he endured. In assessing the proper figure for compensation for such long-term detention, they should take into account that any figure they might regard as appropriate for an initial short period, if extrapolated, should ordinarily be tapered, as their Lordships have pointed out in para 9 above. The final figure for compensatory damages should therefore amount to an overall sum representing appropriate compensation for the period of over eight years’ detention, taking account of the inhumane conditions and the misery and distress suffered by the Appellant.”¹⁶

[41] Learned Counsel Xavier Cuffy also referred to the decision of Ventose J in the **Jermaine Browne Case** where an award of \$500 was made per day as compensation for the breach of the right to the infringement on the claimant’s personal liberty. In the Browne Case Justice Ventose undertook a careful assessment on the question of the conditions experienced by the claimant in the matter before him. There was evidence and counter evidence placed before the court by the parties before the court even though the evidence was not tested, but it was there. This court has no such evidence adduced by counsel on either side.

[42] Learned Counsel on behalf of the defendants submitted that the claimant spent a period of fifty two days in prison and that in the case at bar there is nothing in the pleadings to warrant an additional award based as an additional award of on the deplorable or egregious conditions and suggested that an award of \$200.00 a day would be more reasonable in the case at bar.

¹⁶ Ibid at paragraph 17

Court's Consideration on the issue of damages:

[43] The question for determination is whether the claimant can make a claim for damages pursuant to the breach of his constitutional right as claimed by his counsel in her written submissions to the court.

[44] The first duty of the court is to determine whether it has the jurisdiction to grant this claim for damages. Because the claim was brought as a judicial review claim seeking certiorari and for an order of Habeas Corpus. In these circumstances this court feels it necessary to address whether or not the claimant is entitled to damages on his claim as presented in his Fixed Date Claim and affidavit in support.

[45] It is now well established law that damages are recoverable in Judicial Review proceedings if they would have been recoverable in an ordinary action. With the introduction of new rules of procedure such as Civil Procedure Rules 2000 ('CPR') there is no need to start fresh proceedings, separate or new proceedings as happened in the past.

[46] That being said, Part 56 of CPR deals with applications in Administrative Law.

[47] Part 56.8 states

56.8 (1) The general rule is that, where permitted by the substantive law, an applicant may include in an application for an administrative order a claim for any other relief or remedy that – (a) arises out of; or (b) is related or connected to; the subject matter of an application for an administrative order.

(2) In particular the court may, on a claim for judicial review or for relief under the Constitution award – (a) damages; (b) restitution; or (c) an order for return of property to the claimant; if the –

(i) claimant has included in the claim form a claim for any such remedy arising out of any matter to which the claim for an administrative order relates; or

(ii) facts set out in the claimant's affidavit or statement of case justify the granting of such remedy or relief; **and**

(iii) court is satisfied that, at the time when the application was made the claimant could have issued a claim for such remedy.

(Emphasis mine)

...

(3) The court may however at any stage – (a) direct that any claim for other relief be dealt with separately from the claim for an administrative order; or (b) direct that the whole application be dealt with as a claim and give appropriate directions under Parts 26 and 27; and (c) in either case, make any order it considers just as to costs that have been wasted because of the unreasonable use of the procedure under this Part.

[48] It is therefore clear that the Court is clothed with the power to award damages in Judicial Review matters subject to there being compliance with the requirements of CPR Part 56.8

[49] A good place to start would be a perusal of the statement of case before the court in the case at bar.

[50] The claimant on the 14th October 2019 filed a Fixed Date Claim form having obtained leave to file for judicial review for:

- a. "An order Certiorari to quash a decision by the Superintendent of Prisons to continue the confinement of the claimant beyond 6 months at the Stockfarm State Prison;
- b. A writ of Habeas Corpus to challenge the validity of the continued incarceration of the claimant;

- c. Such further or other relief as may be just; and
- d. Costs”¹⁷

[51] This fixed date claim form was accompanied by an affidavit in support setting out the basis of the claimant’s claim.

[52] The claimant has not made a claim for damages in his Fixed Date Claim. A perusal of the affidavit indicates that the claimant did in fact make a claim for damages in his affidavit in support of his claim. In the initial issue of the judgment this court said that there was no claim which was not so and I wish to clear this up now and apologise to counsel for the error therein.

[53] **In the Application of Josephine Millette** ¹⁸ Hossein JA in analyzing Order 53 Rule 7 of the Trinidad CPR which is in similar terms to the ECSC CPR noted that “there were three conditions for the award of damages in judicial review proceedings viz:

- a. There must be a claim for damages included in the statement of case
- b. The claim for damages must arise from the same matter that forms the basis for the application for judicial review
- c. If the Applicant brought an action for damages at the time when he made his application for judicial review, he could have been awarded damages ...”¹⁹

In commenting on the provision the learned Court of Appeal judge went on to say “*There is power to award damages in judicial review proceedings subject to the fulfillment of the three conditions examined earlier in the judgment*”²⁰

[54] In the **Ashby –v-The Registrar of the Industrial Court**²¹ Mosai J in considering the award of damages in Judicial Review Proceedings said that “Part 56 of the

¹⁷ Fixed Date Claim Form filed dated and filed on the 14th October 2019

¹⁸ Civil appeal no 155 of 1995 (TT)

¹⁹ Ibid pages 7-8

²⁰ Ibid page 16

Civil Proceedings Rules (“CPR”) deals with the procedural rules governing claims for judicial review, including where the claimant is seeking damages, restitution or recovery of a sum due or alleged to be due (CPR56.7). Thus a claim for damages may be included in a claim for judicial review. Such a claim may, however, only be awarded to the claimant if the two conditions set out at section 8 (4) JRA have been satisfied.”²²

[55] **In the application of Ronnie Samaroo**²³ it was held that in order for the Applicant to be awarded damages in judicial review proceedings the three pre conditions contained in the Civil Proceeding Rules must be satisfied.

[56] The court must ensure that the provisions of the CPR are complied with. The court must also resist attempts to circumvent these rules by what appears to be a concession by the defendants. It must be emphasised that the provisions of part 56.8.2 of the CPR is mandatory in that all three requirements as stated must be complied with²⁴ before the court’s jurisdiction can be excited.

[57] Having reviewed the Fixed Date Claim, the affidavit in support filed on the 14th October 2019 and the affidavit in reply filed on the 6th November 2019 this court is in a legal position to make an award of damages in the Judicial Review Claim as there has been compliance with requirements of CPR 56.8.2.

[58] The claimants claim before this court is for an order of certiorari which has been granted.

[59] It is noted there is no claim for constitutional redress. This was introduced by Counsel for the claimant in her additional closing submissions. There is no

²¹ High Court of Trinidad and Tobago 1626 of 2004, July 14, 2010 at page 14

²² CPR 56.7 of the Trinidad CPR is the same as the ECSC CPR

²³ HCA No. S CV 536 of 1998 (TT)

²⁴ In the application of Josephine Millette Civil Appeal No 155 of 1995 (TT) Per Hosein JA at pages 16

evidence adduced before this court to support a claim of damages that will assist or enable this court to assess the damage to be awarded to the claimant for breach of his constitutional right as has been asserted in his counsel's submissions.

[60] A reading of the authority relied on by Learned Counsel Yearwood Stewart²⁵ reveals that there was a claim by the claimant for damages for breach of his constitutional rights and extensive evidence was adduced by the claimant including a visit to the prisons by the court which would clearly have allowed the learned Judge to make an informed assessment and to assist the learned Judge to make what he found was a fair award to the claimant.

[61] In the case of **Gairy –v- Attorney General of Grenada**²⁶ the Privy Council held that having found that there was a breach of a Gairy's constitutional right, the court is clothed with the power to grant an effective remedy or to fashion a new remedy if necessary to give effective relief to the claimant (appellant).

[62] In the case at bar, learned counsel Xavier Cuffy on behalf of the defendants has not challenged the claimant's claim for constitutional damages, it would therefore be wrong of this court to disallow the award of compensation for the breach the claimant's constitutional rights in these circumstances.

[63] There can be an award for payment of damages for the breach of a right protected under the fundamental rights and freedom provisions of the Constitution. In the **Maharaj Case**²⁷ there was a breach of the claimant's right to liberty which came up for consideration after he had already served the term of imprisonment handed down. The Privy Council held that the only practicable form of redress available to Maharaj was monetary compensation.

²⁵ The Jermaine Browne Case Op Clt

²⁶ [2001] 3 WLR 779]

²⁷ Re: Ramesh Lawrence Maharaj –v- The Attorney General of Trinidad & Tobago NO 2 [1978] 30 WIR 310

[64] In the case at bar the claimant is entitled to an award of damages as is provided by section 3(6) of the Constitution²⁸.

[65] What is the measure of damages to be used to make this award? Lord Diplock in the **Maharaj No 2 Case** stated

“The claim is not a claim in private law for damages for the tort of false imprisonment (under which the damages recoverable are at large and would include damages for loss of reputation). It is a claim in public law for compensation for the deprivation of liberty alone. Such compensation would include any loss of earnings consequent on the imprisonment and recompense for the inconvenience and distress suffered by the appellant during his incarceration”²⁹.

[66] It is noted that the Privy Council remitted that case to the High Court in Trinidad and Tobago for assessment of damages which to this court clearly means that there must be some evidence placed before the court upon which the court can assess damages.

[67] This court reiterates the fact that there has not been any attempt on behalf of the claimant to place any evidence before the court to support of his claim for damages.

[68] Faced with this dilemma, this court is no position to make an assessment of damages to which the claimant would be entitled to.

[69] It is well established law that a court makes and award of damages in respect of any consequences reasonably arising from any breach complained of. The claim for damages as averred must be specifically proved. This certainly is not the situation in the case at bar.

²⁸ Op cit

²⁹ 30 WIR at pages 321 to 322

[70] Taking into account the claimant's entitlement based on the constitutional provision, the Overriding Objective to do justice to the parties before it and what the court considers to be the defendants' agreement to his entitlement to damages this court is obliged in the circumstances to do its best on the basis of the lack of evidence adduced in support of the quantum demanded.

[71] Damages awarded for the breach of a constitutional right should indicate the right has been contravened and is a matter of the court's discretion.

[72] The constitutional provision referred to above clearly recognises and affirms the court's power to award remedies for the contravention of an individual's right not to be unlawfully detained. It preserves an integral part of the protection that the Constitution offers persons within the state of the Commonwealth of Dominica. This section empowers the court to afford the wronged person relief in respect of the states violation of his constitutional right.

[73] In the fact of the breach of the constitutional right, the court is concerned to uphold or vindicate the constitutional right which has been violated. A declaration by the court will address and speak to the violation; the award of damages will go towards vindicating the infringed right. The quantum awarded will depend on the entire circumstances of the case.

[74] Considering the fact that the claimant has not established any specific loss or damage which he may have suffered, this court is obligated to do it's very best in arriving at a sum considering the entire factual circumstances available to it to recompense the claimant. In the case of **Carlton Greer –v- Alston's Engineering Sales Services Ltd**³⁰ the necessary evidence was not provided and it was held that nominal damages could be awarded in those circumstances. It

³⁰ *Privy Council Appeal No. 61 of 2001*

was decided that nominal damages, in this context, did not mean small damages but meant damages that were substantial provided they were not out of scale.

[75] This decision on nominal damages in the absence of evidence to support quantum was referred to and applied in Privy Council case of **The Attorney General of Antigua and Barbuda v The Estate of Cyril Thomas Bufton and another**³¹ and in the St Lucia Case of **Cosmos William –v- The Comptroller of Customs and the Attorney General**³²

[76] It has been decided that cases of false imprisonment are of constitutional importance and will normally be serious enough in their own right to require an award of more than a nominal sum in compensation.³³ In **Merson –v- Cartwright**³⁴ it was held inter alia that “The sum appropriate to be awarded as vindictory damages depends on the particular infringement and the circumstances relating to the infringement and is at the discretion of the trial judge.” (Emphasis mine)

[77] This court has taken into account all the circumstances of this case and in exercising its discretion this court is of the opinion that an appropriate award for the contravention of section 3(6) of the Constitution in the absence of any evidence whatsoever to guide and assist the court would be \$12,000 plus costs to the claimant in the sum of \$2,400.00

[78] Based on the reasons stated above the order of Court in this case is therefore:

- a. That the decision of the Superintendent of Prisons is removed to this court and is hereby quashed;
- b. Pursuant to the mandate laid down in Article 3(6) of the Constitution of the Commonwealth of Dominica the claimant is awarded damages in the sum of \$12,000.00
- c. Costs to the claimant in the sum of \$2,400.

³¹ CIVIL APPEAL NO. 22 OF 2004 (Antigua & Barbuda)

³² Claim No. SLUHCV 2006/0259

³³ Halsbury’s Laws of England Volume 29 (2019) paragraph 320

³⁴ (2005) 67 WIR 17 (P.C)

[79] This court records its gratitude to counsel for their assistance rendered in the form of their submissions and once again apologises for the fact that the contents of the claimant's affidavit was overlooked, this was entirely an accident on my part.

M E Birnie Stephenson
High Court Judge

SEAL

BY THE COURT

REGISTRAR