

THE EASTERN CARIBBEAN SUPREME COURT
FEDERATION OF ST CHRISTOPHER AND NEVIS
ST KITTS
AD 2018

IN THE HIGH COURT OF JUSTICE

SKBHCV2017/0295

IN THE MATTER of Section 8(1), 8 (2) (a) and 9 (a) the Constitution of the Federation of St.
Christopher and Nevis

AND

IN THE MATTER of an Application for declaration and Compensatory relief by the Claimants
pursuant to Section 18 (1) and (2) of the Constitution of Saint Christopher and Nevis.

BETWEEN:

FREDRICIA HODGE
MIKHAIL WARDE
OWEN WARDE
PHYLLIS HODGE-RICHARDS
SHERON WARDE

FIRST NAMED CLAIMANT
SECOND NAMED CLAIMANT
THIRD NAMED CLAIMANT
FOURTH NAMED CLAIMANT
FIFTH NAMED CLAIMANT

AND

FRANCES-ANN BUTLER
COMMISSIONER OF POLICE
ATTORNEY GENERAL OF ST. CHRISTOPHER & NEVIS

FIRST NAMED DEFENDANT
SECOND NAMED DEFENDANT
THIRD NAMED DEFENDANT

Appearances:

Mr. Jason Hamilton for the Claimants

Mrs. Nisharma Rattan Mack and Mrs. E. Hendrickson-Johnson for the Defendants

ON WRITTEN SUBMISSION

2019: April, 10
2020: April, 8

Judgment

Burnett, M. (Ag.):

Background

- [1] The claimants filed a Fixed Date Claim on the 17th day of October, 2017, seeking the following reliefs:
- a) A Declaration that the confiscation and deprivation of their property for the period of one (1) month and four (4) days without investigation or charge in relation to the commission of any offence was unreasonable and unconstitutional.
 - b) A Declaration that the confiscation and deprivation of their property for a period of one (1) month and four (4) days without investigation or charge in relation to the commission of any offence violated their constitutional rights to protection from deprivation of property without compensation and was in contravention of the provisions of section 8(1) of the Constitution of St. Christopher and Nevis.
 - c) Special Damages in the sum of \$25,000.00 for loss of earnings for the period during which the claimants and specifically Warde & Sons Electrical Ltd were deprived of property used in the course of business.
 - d) Special Damages in the sum of \$25,000.00 for loss and damage incurred by claimants, being unable to complete certified Management Accountant Course.
 - e) Special Damages in the sum of \$25,000.00 for loss and damage, for loss of earnings for Beautiful Beginnings.
 - f) Special Damages in the sum of \$25,000.00 for loss and damage incurred by claimants, being unable to complete thesis MBA programme.
 - g) An order that the claimants be awarded damages for unconstitutional deprivation of their property.
 - h) Exemplary Damages.
 - i) Aggravated Damages
 - j) Such further or other reliefs as may be just.
- [2] On the 30th day of October, 2018, His Lordship Mr. Justice Eddy Ventose granted a declaration that the confiscation and deprivation of the property of the claimants without compensation contravened section 8(1) of the Constitution of St. Christopher and Nevis and that damages be assessed.
- [3] The matter is before this Court for an assessment of damages.

SPECIAL DAMAGES

- [4] The claimants have claimed the sum of \$100,000.00 as Special Damages.
- [5] The law on Special Damages is that for one to succeed on such a claim, special damages must be specifically pleaded and proved by the best available evidence.
- [6] The claimant relied on the case of **Cosmos Williams v The Comptroller of Customs**¹.

¹ Claim No SLUHCv2006/0259

- [7] In that case, the Court awarded damages in the sum of \$50,000.00 for loss of earnings in the absence of documentary evidence.
- [8] **Vaugh Richards v The Attorney General of Saint Christopher and Nevis**² In that case, a taxi operator was awarded \$27,712.50 for loss of use and earnings of a motor vehicle on the oral evidence of a number of witnesses although no receipts were submitted to evidence loss.
- [9] The defendants relied on the case of **Dale James et al v Eason Gibbons**³ where the Court stated “the loss occasioned by the claimant in the absence of documentary evidence turns on the creditability of the claimants and their witnesses.....
- [10] The service provided by the claimants is of a commercial nature and should have at least been substantiated by a modicum of documentary evidence..... I take into consideration that there wasn't any other independent evidence to conform the evidence of the claimants or their witnesses... The claimants are asking the Court to place reliance on the oral evidence and witness statements of self-serving parties.”
- [11] The claimants aver that the loss of the computers caused set back and inconvenience to the claimants as follows:
- 1) The fifth named claimant, the third named claimant and second named claimant were unable to create and send out invoices and quotations for the family business.
 - 2) Wedding planning business, Beautiful Beginnings, was on hold as the fifth named claimant had no access to any information pertaining to it, as she was unable to access facebook, respond to emails, and post pictures for events.
 - 3) The fifth named claimant, who was pursuing an MBA in Business Administration from Arden University formerly named University of Wales who was at the thesis stage when her computer was taken. The fifth named claimant contends that all her research and course work were on her laptop and were lost for the period of time.
 - 4) As a result, the fifth named claimant had to defer for the period of time for completion of her thesis and had to pay an additional £250.00 to facilitate deferral.
 - 5) The first named claimant was pursuing a course leading to a CMA. The first named claimant was scheduled to sit exams in October, 2015. The first named claimant used the Dell Inspiron to access her online study material and to do practice exams in preparation.
 - 6) The first named claimant used the laptop to retrieve archived information as a backup. The first named claimant also had to defer her exam dates as a result of the inconvenience caused, due to the confiscation of the computer and was forced to pay \$652.00 to facilitate deferral.
 - 7) The computers seized contained two (2) business plans that the fifth named claimant was formulating to take to the bank for financing, these plans were aborted.

² Claim No SKBHCV2016/0271

³ DOMHCV2014/0236

ANALYSIS OF SPECIAL DAMAGES

- [12] It is accepted that the Court in making an award for Special Damages, those Special Damages must be specifically pleaded and strictly proved.
- [13] It therefore places an obligation on the claimants to particularize the claim for damages and to prove that loss, including the quantum.
- [14] The Claimants submitted that the Court should rely on the **Cosmos Williams's** case to make an award.
- [15] While the defendants contended that the Court should make an award only on damages that have been proved or in the alternative, nominal damages.
- [16] The Court accepts that the claimants have a difficulty in establishing the specific loss suffered. In the premises, the Court is minded to assess what evidence is available in arriving at an award for the claimants.
- [17] The Court relies on the Privy Council Case of **Greer v Alston's Engineering Sales and Services Ltd**⁴ which concluded that when the necessary evidence is not provided but the circumstances warrant it, it is open to the Court to give consideration to an award of nominal damages.
- [18] In McGregor on damages, 17th Edition at paragraph 10-004: "Nominal damages may be awarded where the fact of the loss is shown but the necessary evidence as to its amount is not given.
- [19] This is only a subsidiary situation, but it is important to distinguish it from the usual case of nominal damages awarded where there is a technical liability but no loss. In the present case, the problem is simply one of proof, one not of absence of loss but of absence of evidence of the amount of loss."
- [20] McGregor sums up the present case before this Court.
- [21] In arriving at an amount for Special Damages; the Court strives to make an award not out of scale, and though not reaching the amount claimed by the claimants the Court deemed a sum of \$40,000.00 as adequate; having reviewed all the authorities submitted and applying the law to the facts and evidence before the Court. Therefore, special damages are awarded to the claimants in the sum of \$40,000.00.

COMPENSATORY DAMAGES

The Claimant Submission

- [22] Mr. Jason Hamilton Counsel for the claimants rely on the Privy Council's case of the **Attorney General of Trinidad & Tobago v Ramanoop**⁵ at paragraph 18, which concluded that when Courts

⁴ (2003) 63 WIR Para 7, 8 & 9

⁵ [2005] UKPC32 (2005) 66 WIR 334 at para 18

undertook to determine the measure of Compensatory Damages for Constitutional infringement it may glean guidance from the relevant common damages.

[23] Counsel grounded his claim on the proposition that the measure of damages is “to put the injured party in the same position he would have been had he not been wronged”⁶.

[24] Mr. Hamilton further submitted that this was illustrated by the Court of Appeal in **Attorney General of the Commonwealth of the Bahamas and another v Atlantic Ocean View Ltd**⁷. In their assessment of the appropriate damages to be awarded for an unlawful three (3) months detention of two (2) vehicles by law enforcement. Paragraph 47 of the judgment states that where the property cannot be defined as “profit making chattels” the assessment may reasonably be based on the factors such as the inconvenience caused by detention.

[25] Mr. Hamilton also relied on **Kuwait Airways Corporation v Iraqi Airways Co (Nos. 4 and 5)** 2000 2 WLR 1353 regarding the law as it relates to wrongful interference of goods. These observations are as follows:

67. “The aim of the law, in respect of the wrongful interference with goods, is to provide a just remedy. Despite its proprietary base, this tort does not stand apart and command awards of damages measured by some special and artificial standard of its own. **The fundamental object of an award of damages in respect of this tort, as with all wrongs, is to award just compensation for loss suffered. Normally (“prima facie”) the measure of damages is the market value of the goods at the time the defendant expropriated them. This is the general rule, because generally this measure represents the amount of basic loss suffered by the plaintiff owner. He has been dispossessed of his goods by the defendant.** Depending on the circumstances some other measure, yielding a higher or lower amount, may be appropriate. The plaintiff may have suffered additional damage consequential on the loss of his goods. Or the goods may have been returned.

69. How, then, does one identify a plaintiff’s “true loss” in cases of tort? This question has generated a vast amount of legal literature. I take as my starting point the commonly accepted approach that the extent of a defendant’s liability for the plaintiff’s loss calls for a twofold inquiry: whether the wrongful conduct casually contributed to the loss and, if it did, what is the extent of the loss for which the defendant ought to be held liable. The first of these inquiries, widely undertaken as a simple “but for” test, is predominantly a factual inquiry.”

72. The need to have in mind the purpose of the relevant cause of action is not confined to the second, evaluative stage of the twofold inquiry. It may also arise at the earlier stage of the “but for” test. This guideline principle is concerned to identify and exclude losses lacking a causal connection with the wrongful conduct. **Expressed in its simplest form, the principle poses the question whether the plaintiff would have suffered the loss without (‘but for’) the defendant’s wrongdoing. If he would not, the wrongful conduct was a cause of the loss.** If the loss would have arisen even without the defendant’s wrongdoing, normally it does not give rise to legal liability. Of course, even if the plaintiff’s loss passes this

⁶ Lord Blackburn in *Livingstone v Rawyards Coal Co* 1880 5 App. Cas 25 at page 39

⁷ 2007 1 BHS J no. 59

exclusionary threshold test, it by no means follows that the defendant should be legally responsible for loss.”

DEFENDANTS SUBMISSION

COMPENSATORY DAMAGES

- [26] The defendants aver that a proper starting point for the assessment of damages in relation to an infringement of constitutional right was clearly expressed in the Privy Council decision of **Maharaj v Attorney General of Trinidad and Tobago**⁸ where Bereaux JA stated: “The grant of redress under s 14 (pari materia of section 18 of the Constitution of Saint Christopher and Nevis) of the Constitution is discretionary. The Court, in its constitutional jurisdiction, is concerned to uphold or vindicate the right which has been contravened. ‘Vindication’ applies in both the wide sense to recompense for the inconvenience and distress suffered and the narrow sense to reflect the sense of public outrage, emphasize the importance of the constitutional right and the gravity of the breach and deter further breaches. Whilst an additional award to vindicate the constitutional right is well settled, it is difficult to conceive of the need to award an additional sum to vindicate the right, when in virtually every case, the gravity of the constitutional violation will already have formed part of the compensatory award. Such an additional award has more than just a suggestion of double counting, if not of punishment.”
- [27] The defendants aver that a declaration has been granted that the confiscation and deprivation of the property of the Claimants in relation to a number of computers owned by the claimants and that contravenes Section 8 (1) of the Constitution, thus, the claimants are entitled to a compensatory award for this breach. However, the defendants wish to highlight the learning expressed in the case of **Fuller (Doris) v Attorney General**⁹ Patterson JA, which stated: “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 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 trivialized. 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.”
- [28] Judicial Committee in **James v Attorney General of Trinidad and Tobago**¹⁰ at paragraph 36 “to treat entitlement of monetary compensation as automatic where violation of a constitutional right has occurred, would undermine the discretion that is invested in the Court by section 14 of the Constitution”.
- [29] The award of Vindictory Damages was discussed in the Privy Council case of **Dennis Graham v Police Service Commission and the Attorney General of Trinidad and Tobago**¹¹

⁸ 2015 86 WIR 537

⁹ (1997) 56WIR 337

¹⁰ [2010] UKPC 23

¹¹ [2011] UKPC 46

VINDICATORY DAMAGES

- [30] The award of vindicatory damages for breach of a constitutional right in the law of Trinidad and Tobago has been considered in a number of authorities of the Judicial Committee. It is to be distinguished both from compensation pure and simple, and from exemplary or punitive damages at common law; and it is by no means required in every case of constitutional violation. So much appears from what was said by Lord Nicholls of Birkenhead in *Ramanoop* (supra):

“18. When exercising this constitutional jurisdiction the Court is concerned to uphold or vindicate, the constitutional right which has been contravened. A declaration by the Court will articulate the fact of the violation, but in most cases, more will be required than words. If the person wronged has suffered damage, the Court may award him compensation. The comparable common law measure of damages will often be a useful guide in assessing the amount of this compensation. But this measure is no more than a guide because the award of compensation under Section 14 is discretionary and, moreover, the violation of the constitutional right will not always be co-terminous with the cause of action at law.

19. An award of compensation will go some distance towards vindicating the infringed constitutional right. How far it goes will depend on the circumstances, but in principle it may well not suffice. The fact that the right violated was a constitutional right, adds an extra dimension to the wrong. An additional award, not necessarily of substantial size, may be needed to reflect the sense of public outrage, emphasize the importance of the constitutional right and the gravity of the breach, and deter further breaches. All these elements have a place in this additional award. ‘Redress’ in section 14 is apt to encompass such an award if the Court considers it is required, having regard to all the circumstances. Although such an award, where called for, is likely in most cases to cover much the same ground in financial terms as would award by way of punishment in the strict sense of retribution, punishment in the latter sense is not its object. Accordingly, the expressions ‘punitive damages’ or ‘exemplary damages’ are better avoided as descriptions of this type of additional award.”

ANALYSIS OF VINDICATORY DAMAGES

- [31] Section 8 (1) of the Constitution of St. Christopher and Nevis states “no property of any description shall be compulsorily taken possession of and no interest in or right over property of any description shall be compulsorily acquired except for a public person and by or under the provisions of a law that prescribes on which and the manner in which compensation therefore is to be determined and given”.
- [32] Section 18(1) of the said Constitution provides that: “If any person alleges that any of the provisions of Section 3 to 17 (inclusive of section 8 my emphasis) has been is being or is likely to be contravened in relation to him (or, in the case of a person who is detained, if any other person alleges such a contravention in relation to a detained person) then, without prejudice to any other action with respect to the same matter that is lawfully available; that person (or that other person) may apply to the High Court for redress.

- [33] Lord Scott in **Merson v Cartwright** speaking of damages as a relief in public law matter said:
“If the case is one for an award of damages by way of constitutional redress..... the nature of the damages awarded may be compensatory but should always be vindictory and, accordingly the damages may, in an appropriate case, exceed a purely compensatory amount. 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.....In some cases a suitable declaration may suffice to vindicate the right, in other cases an award of damages, including substantial damages, may seem to be necessary.”¹²
- [34] An analysis of this and the case of Ramanoop relied on by the parties makes it clear that it is not all public cases where it has been found that there was an infringement of a constitutional right which will justify an award of vindictory damages.
- [35] I have considered all of the circumstances of this case and I conclude that this case is fit for vindictory damages to recognize the claimants right for the following reasons:
1) The actions of the Royal St. Christopher and Nevis Police Force caused the claimants distressed and embarrassment.
2) The claimants had to delay educational and business pursuits.
3) The claimants were deprived of their property for one (1) month and four (4) days and were deprived of communication with business and prospective clients.
- [36] Having considered all the authorities submitted, the Court considers an award of \$25,000.00 as vindictory damages to be adequate.

AGGRAVATED DAMAGES

- [37] The law relating to aggravated damages is stated in part in Winfield & Jolowicz Tort as follows:
....”The claimant is entitled to substantial award for the wrong against him....Part of the award in these cases will reflect the injury to the claimants’ feelings and the mental distress he has suffered as well as the need to vindicate his rights. The injury to hurt feelings and distress may however, be increased by the bad motives or willful behavior of the defendant and it is then possible to make a corresponding increase in the award as aggravation of damages. Such aggravated damages, unlike exemplary damages are compensatory in nature.”
- [38] In assessing the evidence in this case I did not conclude that the defendants acted with malice, spite or oppression with respect to the claimants. I am also not satisfied that an award under this head should be awarded over and above what I have considered in making the award for deprivation of property which I conclude as adequate compensation in the circumstances.
- [39] Consequently, no award is made for aggravated damages.
- [40] I wish to thank Counsel for their assistance rendered to the Court in this matter. I also apologise for the unusual delay in delivering this decision.

¹² [2005] UKPC 38 at [18]

ORDER

It is hereby ordered for the claimants as follows:

1. Special Damages in the sum of \$40,000.00 together with interest at the rate of 3% per annum from date of the incident to date of judgement.
2. Vindictory Damages in the sum of \$25,000.00 with interest at the rate of 6% per annum from date of judgment until date of payment.
3. Prescribed cost pursuant to C.P.R. 65.5 to the claimants on the Global figure to be paid by the defendants.

**Rickie Burnett
MASTER (Ag.)**

By the Court

Registrar