

**EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE**

ANTIGUA AND BARBUDA

CLAIM NO. ANUHCV2019/0306

In the matter of the Antigua and Barbuda Constitution Order 1981 Cap. 23

and

In the Matter of an Application by KENNETH RONALD WYRE alleging a breach of his rights under section 15 of the Antigua and Barbuda Constitution Order 1981 Cap 23. and for redress pursuant to section 18 of the Antigua and Barbuda Constitution Order 1981 Cap. 23

BETWEEN:

KENNETH RONALD WYRE

Claimant

and

THE ATTORNEY GENERAL OF ANTIGUA AND BARBUDA

Defendant

CONSOLIDATED WITH CLAIM NO. ANUHCV2019/0386

In the matter of the Antigua and Barbuda Constitution Order 1981 Cap. 23

and

In the Matter of an Application by ROWAN BAILEY alleging a breach of his rights under section 15 of the Antigua and Barbuda Constitution Order 1981 Cap 23. and for redress pursuant to section 18 of the Antigua and Barbuda Constitution Order 1981 Cap. 23

BETWEEN:

ROWAN BAILEY

Claimant

and

THE ATTORNEY GENERAL OF ANTIGUA AND BARBUDA

Defendant

Appearances:

Hugh Marshall for the claimants

Carla Brooks-Harris with Alicia Aska for the defendant

2019: November 5

2020: January 9

JUDGMENT

- [1] **ACTIE, J:** The claimants, Kenneth Ronald Wyre and Rowan Bailey respectfully, filed originating motions alleging infringement of their fundamental rights for a fair trial within a reasonable time and not to be subject to inhumane or degrading punishment or treatment as guaranteed under **Sections 15(1)) and 7 of the Antigua and Barbuda Constitution Order 1981, CAP. 23**, respectively.
- [2] The claimants' applications, filed on 30th May 2019 and 17th July 2019 respectively, were consolidated as they seek similar reliefs in the following terms:
1. A declaration that their right to a fair hearing within a reasonable time under section 15 (1) of the Antigua and Barbuda Constitution Order 1981 Cap.23 has been breached.
 2. A declaration that their rights not to be subject to inhumane or degrading punishment or treatment as guaranteed by section 7 of the Antigua and Barbuda Constitution Order 1981 Cap. 23 has been infringed.
 3. An order that the proceedings in relation to their sentencing be stayed pending the determination of this suit.
 4. An order that they be released from custody either unconditionally or on bail.
 5. An order of restitution for the return of property taken from them under freeze orders obtained on 25th August 2010 and 25th July 2017 respectively.
 6. Damages for breach of their constitutional rights.
 7. Costs.

Background

- [3] On or about 21st August 2010, the claimants were arrested by officers from the Office of National Drug Control and Money Laundering Control Policy [ONDCP]. They were charged with (1) possession of cocaine (2) being concerned in the supply of cocaine (3) possession of cocaine with intent to supply (4) possession of cocaine with intent to transfer and (5) drug trafficking under the **Misuse of Drugs Acts CAP 283**. The claimants were arraigned sometime in January 2012 and indicted on 12th January 2015, some three years after the arraignment. The claimants appeared in court on 13th January 2015 and pleaded not guilty to the charges.
- [4] Freeze orders were obtained on 25th August 2010 and on 25th July 2017 in relation to real and other property in the name of Kenneth Wyre and Rowan Bailey, respectively.
- [5] The claimants were subsequently tried on three of the five charges namely: (1) possession of a controlled drug/cocaine (2) possession with intent to supply and (3) drug trafficking. The claimants' trial took place on 23rd February 2019, eight years and six months after their initial arrest and charge. They were convicted on 7th March 2019. The originating motions were filed on 30th May 2019 and 17th July 2019, respectively.
- [6] By order dated 9th July 2019, the High Court Judge in the Criminal Division stayed the sentencing proceedings pending the determination of the present applications. The claimants were granted bail on 19th July 2019.
- [7] The remaining issues to be decided on the originating motions have been reduced to (i) whether there was an infringement of the claimants' rights to a fair trial within a reasonable time and not to be subject to inhumane or degrading punishment or treatment (ii) whether there should be restitution/return of property taken under freeze orders and (iii) Damages (iv) Costs.

Was the claimants' right to a fair trial within a reasonable time infringed?

- [8] **Section 15 (1) of the Antigua and Barbuda Constitution, (1981) Cap. 23 ["the Constitution"]** provides:

“If any person is charged with a criminal offence then unless the charge is withdrawn, he shall be afforded a fair hearing within a reasonable time by an independent and impartial Court established by law.”

[9] **Section 15 (1) of the Constitution** imposes three elements namely: (1) an accused charged must be afforded a fair hearing; (2) that hearing must take place within a reasonable time; and (3) the hearing must be by an independent and impartial court established by law. The applicants’ applications rest on the 2nd limb, namely, that the hearing was not heard within a reasonable time.

[10] The Courts have developed guidelines in determining reasonableness of timelines for the disposal of matters for the fair hearing provision of the Constitution¹. In the Court of Appeal decision in **Rashid A. Pigott v The Queen**², Thom JA, adopting the guidelines set by the Privy Council states:

“In determining whether there was inordinate delay such as would constitute an infringement of section 15(1), the legal authorities such as **Boolell v The State** and **Joseph Stewart Celine v The State of Mauritius**, have identified the following as factors to be considered being, (i) the complexity of the case, (ii) the conduct of the appellant and (iii) the conduct of the administrative and judicial authorities”.

Complexity of the case

[11] The complexity of the case may concern questions of fact as well as legal issues. The nature of the facts, number of accused persons and witnesses, joinder of the case to other cases and intervention of other persons can determine the complexity of the case.

[12] The claimants’ trial lasted eight (8) days whereby three witnesses testified on behalf of the Crown. The case, although brought against the two co-defendants, was not complex with voluminous amounts of evidence.

¹ **Prakash Boolell v The State** [2006] UKPC 46; **Joseph Stewart Celine v The State of Mauritius** [2012] UKPC 32

² **ANUHCRA2009/0009**

[13] It is necessary to set out the proceedings and the conduct of the parties in some detail.

Conduct of the applicants

[14] The extent to which the claimants are responsible for certain periods of delay is a necessary consideration. It is the claimants' duty to show diligence in carrying out the relevant procedural steps, to avail themselves for the proceedings and to refrain from using delaying tactics.

[15] It is the evidence that several adjournments were due to the absence of the claimants' legal practitioner and Mr. Rowan Bailey, one of the co-accused.

- i. Three adjournments were made on behalf of Mr. Rowan Bailey to enable him to participate in a competition to row across the Atlantic Ocean. The first adjournment was during the period of July 2015 to February 2016. Mrs. Shannon Jones-Gittens, Crown Counsel, states that the DPP was ready to proceed with the trial, however Mr. Bailey bail conditions were varied to allow him to travel to participate in the Talisker Whiskey Atlantic Challenge.
- ii. The trial came on for hearing on 22nd September 2015. Counsel for Mr. Bailey requested and was granted an adjournment to the January 2016 Assizes.
- iii. The matter was again adjourned in January 2016 to April 2016 Assizes and further adjourned to July 2016.
- iv. Mrs. Jones-Gittens said that the trial date of 18th July 2016 had to be adjourned as the Assizes were set to close on 20th July 2016, which would not have been sufficient time to complete the trial.
- v. The trial was set for 10th April 2018 but was again adjourned as the legal practitioner for Mr. Wyre's was absent due to his involvement in a matter in the civil court.
- vi. The trial set for 23rd April 2018 was adjourned to 12th November 2018 as a result of a note sent to the court by the legal practitioner for Mr. Wyre informing that he was in Barbados.

- vii. There was a further adjournment to 3rd December 2018 at which time Mr. Bailey made the 2nd request to travel to participate in the swim competition. There was not any objection to the adjournment by the Crown as two of the prosecution's witnesses were out of the jurisdiction.
- viii. The final request for adjournment to enable Mr. Bailey's travel was made and granted on 11th February 2019.

Conduct of the administrative and judicial authorities

- [16] A special duty is set upon the court to ensure that all those who play a role in the proceedings do their utmost to avoid any unnecessary delay.
- [17] It is the evidence that two major trials (a fraud and a murder trial) in the period between 2010 and 2011 before the single judge in the criminal division contributed to the significant backlog and delay during that period.
- i. Between 2012 and 2015, the High Court was plagued with disruptions due to bomb threats, sewage problems, water issues, as well as poor air quality which affected the health of the court staff which further contributed to the delays. Several re-trials and murder trials had to be conducted between 2010 and 2015.
 - ii. Mrs. Jones-Gittens in her affidavit states that prior to 2014, there was only one Criminal Court functioning in Antigua which created a significant backlog of criminal cases until a second judge was added in 2014.
 - iii. The creation of the Sexual Offences Court in November 2014 caused a further delay as there was a prevalence of these cases in society with approximately 31 matters listed and given priority by the court.
 - iv. It is the evidence that the claimants' matter was not brought before the court at the commencement of the September 2016, January 2017, April 2017 or January 2018 Assizes.
 - v. The trial date of 23rd April 2018 had to be vacated as the trial judge fell ill on 18th April 2018 and remained on sick leave until 8th May 2018. Several

other matters consumed the court's attention including a murder case which occurred in 2009.

- vi. As indicated previously, the date of 18th July 2018 had to be vacated and the matter was traversed to the September 2018 Assizes.
- vii. In January 2019, the trial judge was on vacation leave until 31st January 2019. The trial eventually commenced on 23rd February 2019.

[18] Counsel for the defendant accepts that a delay of eight (8) years gives cause for concern but states that the claimants have failed to show that the trial was not heard within a reasonable time. Counsel further submits that the delay was not attributable to any serious misconduct by the judicial and administrative authorities

Analysis

[19] The State is obliged to organize its legal system to ensure compliance with the guaranteed right under **Section 15(1) of the Constitution** for a fair and speedy trial. The answer to the question of whether an accused is tried within a reasonable time is inherently case-specific.

[20] The evidence shows that part of the delay was attributable to the adjournments requested by the co-accused, Rowan Bailey to participate in the swimming tournament and the unavailability of the legal practitioners for the claimants. However, the court notes that the major part of the delay within the first five years after the charge, stemmed from systematic and institutional problems occasioned by inadequate resources and insufficient number of judges in the Criminal Division of the High Court.

[21] Counsel for the defendant admits that there was only one Criminal Court functioning in Antigua which created a significant backlog of criminal cases until a second judge was added in 2014. The defendant also admits that the untenable conditions further contributed to the delay with several re-trials and murder trials having to be conducted between 2010 and 2015.

- [22] The State is responsible for the provision of facilities and staff to see that accused persons are brought to trial within a reasonable time. The lack of institutional facilities can never be used as a basis for rendering the right to a fair trial without delay guaranteed by the constitution inconsequential.
- [23] Counsel for the defendant states that claimants waived their rights to a speedy trial. Counsel admits that the DPP requested adjournments but submits that the claimants did not oppose any of the applications as they were content in not having their matters proceed. The defendant also contends that Kenneth Wyre never objected to the request for adjournments made by the co-accused, Rowan Bailey, to travel to compete in the swim tournament.
- [24] The claimants in response state that the adjournments requested were wholly reasonable as it is Crown who brought the criminal proceedings and was duty bound to make sure that the cases were managed effectively to ensure a speedy trial.
- [25] A waiver by an accused of his rights to a speedy trial will justify delay. However, the waiver to be valid must be informed, unequivocal and freely given. In **Selwyn Charles v. The Attorney General**³, Floyd J. stated the following with respect to the wavier of the rights of the accused under 15(1) of the Constitution;
- “since rights enshrined in the Constitution are fundamental to them individual, any waiver of those rights must be clear & unequivocal. It is not up to the accused to vigorously assert his right to trial within a reasonable time. It must be shown that the accused understood this right & specifically waived it”*
- [26] The Supreme Court of Canada in **R. v. Morin**⁴ provides guidance as to what constitutes a wavier where section 11(b) of the Charter of Rights, is in similar terms to section 15 (1) of the Constitution states:

³ **Claim No. ANUHCv 2011/0069**

⁴ **[1992] 1 S.C.R. 771_at paragraphs 37 and 38,**

“in order for an accused to waive his or her rights under s. 11 (b), such waiver must be clear and unequivocal, with full knowledge of the rights the procedure was enacted to protect and of the effect that waiver will have on those rights... Waiver requires advertence to the act of release rather than mere inadvertence. If the mind of the accused or his or her counsel is not turned to the issue of waiver and is not aware of what his or her conduct signifies, then this conduct does not constitute waiver. Such conduct may be taken into account under the factor "actions of the accused" but it is not waiver. As I stated in Smith, supra, which was adopted in Askov, supra, consent to a trial date can give rise to an inference of waiver. This will not be so if consent to a date amounts to mere acquiescence in the inevitable.”

- [27] The issue of waiver is to be considered within the context of the conditions that existed at the time in issue. The administrative issues were well known by all parties in the jurisdiction especially the legal practitioners in the criminal division of the High Court. Further, it appears that even if the claimants had insisted upon their rights, the institutional limitations could not have been avoided as there was only one sitting judge in the criminal division. It is the evidence that priority had been given to the more complex trials and sexual offences which had plagued the jurisdiction. Any earlier date could only have been accomplished at the expense of other accused persons awaiting trial for longer periods than the claimants.
- [28] A waiver should not be inferred from the claimant's silence. The defendant has not, in my view, proved that the claimants have by their non-objection to the adjournments unequivocally waived their rights to a speedy trial as guaranteed by the Constitution.
- [29] It was also mentioned that the DPP's office had some level of control as to how the matters were listed for trial. This in my view should never have been encouraged as the case management and listing of matters are within the control of the court and not parties.

[30] The court accepts that both the prosecution and the claimants contributed to the delay in the trial of this matter. The reasonable time' requirement contained in the constitution begins by ascertaining the moment the person was charged. The court is of the view that the major part of the delay following the charge stemmed from institutional problems outside the control of the claimants. The claimants were charged in 2010, arraigned sometime in January 2012, and indicted on 12th January 2015, some three years after the arraignment. The matter was first listed for trial in 2015, five years after the charges were laid. A delay period of five years before trial is unreasonable and in breach of the Section 15(1) of the constitutions. Even when the trial came on for hearing in 2018, there were several adjournments occasioned by the defendant.

[31] The administrative issues that resulted in the delay in the case at bar were similar to the issues faced in **Charles Joseph v. The Attorney General and the Director of Public Prosecutions** from the Antigua and Barbuda jurisdiction. In **Charles Joseph**, the claimant was charged in June 2012 with serious indecency, indecent assault and soliciting for an immoral purpose. In 2013, he was committed to stand trial and remained on remand. On 8th August 2016, the claimant filed a constitutional motion and obtained a declaration that his right to a fair hearing within a reasonable time as guaranteed by section 15 of the Constitution was infringed. The delay period in **Charles Joseph** was less than the case at bar. However, **Charles Joseph** had not been tried and was on remand unlike the claimants in this extant case were on bail and has since been tried and convicted and are now awaiting sentencing.

[32] The inherent institutional challenges due to lack of resources, judges and other systemic issues were the main causes for the protracted delay in the claimants' trial. The State has a constitutional obligation to commit sufficient resources to prevent unreasonable delay in the administration of justice.

[33] The Caribbean Court of Justice case, in The **Queen v. Gilbert Henry**⁵ states

.....

⁵ [2018] CCJ 21 (AJ)

The fundamental objective of the reasonable time guarantee is not to permit accused persons to escape trial but to prevent them from remaining in limbo for a protracted period and to ensure that there is efficient disposition of pending charges. The guarantee is an incentive to the State to provide a criminal justice system where trials are heard in a timely manner.

- [34] A delay of eight years and six months is manifestly excessive and unreasonable. The case was not of such complexity or inherently difficult to justify such a lengthy delay. Taking all in the relevant facts into consideration, I am satisfied and makes a declaration that there was an infringement of the claimants' right to a fair trial within a reasonable time as guaranteed by Section 15 (1) of the Constitution.

Whether the claimants right not to be subject to inhumane and degrading punishment was infringed?

- [35] The claimants' application also sought a declaration that their right not to be subject to inhumane and degrading punishment as guaranteed by section 7 of the constitution was infringed. However, counsel for the claimants did not elaborate on that point. When prompted at the hearing, counsel stated that the bail conditions, freezing order, restriction to bank accounts and other properties and the threat of a trial looming over their heads constituted inhumane and degrading punishment.
- [36] The court notes that the claimants did not lead any evidence in support of the application for the alleged breach of Section 7 of the Constitution and it appears that the issue is not being pursued.

What is the appropriate remedy?

- [37] The claimants state the lengthy delay resulted in substantial and serious prejudice which solidifies the position that the appropriate remedy for the breach of their constitutional rights is to quash the convictions and stay the proceedings. Counsel for the applicants asserts that this course of action would properly vindicate the breach.

[38] My first observation is that the quashing of the convictions was not one of the reliefs sought in the claimants' applications which were filed on 30th May 2019 and 17th July 2019, respectively, after their conviction in January 2019. It was only at the hearing and in written submissions that the claimants are now seeking to quash the convictions.

[39] Parties are reminded that claims are to be pleaded in the statement of case and not in submissions. The court cannot entertain any matter not pleaded in the statement of case but now being raised for the first time in submissions.

[40] In any event, the issue of quashing of convictions has been the subject of many decisions in constitutional matters alleging breach of fair hearing by reason of delays. In the **Attorney General's Reference case [2004] 2 AC 72**, in the context of the equivalent provisions of Section 15(1) of the Constitution. Lord Bingham, said:

"24. If, through the action or inaction of a public authority, a criminal charge is not determined at a hearing within a reasonable time, there is necessarily a breach of the defendant's Convention right under article 6(1). For such breach there must be afforded such remedy as may (section 8(1)) be just and appropriate or (in Convention terms) effective, just and proportionate. The appropriate remedy will depend on the nature of the breach and all the circumstances, including particularly the stage of the proceedings at which the breach is established. **If the breach is established before the hearing, the appropriate remedy may be a public acknowledgement of the breach, action to expedite the hearing to the greatest extent practicable and perhaps, if the defendant is in custody, his release on bail. It will not be appropriate to stay or dismiss the proceedings unless (a) there can no longer be a fair hearing or (b) it would otherwise be unfair to try the defendant.** The public interest in the final determination of criminal charges requires that such a charge should not be stayed or dismissed if any lesser remedy will be just and proportionate in all the circumstances. The prosecutor and the court do not act incompatibly with the defendant's Convention right in continuing to prosecute or entertain proceedings after a breach is established in a case where neither of conditions (a) or (b) is met, since the breach

consists in the delay which has accrued and not in the prospective hearing. ***If the breach of the reasonable time requirement is established retrospectively, after there has been a hearing, the appropriate remedy may be a public acknowledgement of the breach, a reduction in the penalty imposed on a convicted defendant or the payment of compensation to an acquitted defendant. Unless (a) the hearing was unfair or (b) it was unfair to try the defendant at all, it will not be appropriate to quash any conviction.*** Again, in any case where neither of conditions (a) or (b) applies, the prosecutor and the court do not act incompatibly with the defendant's Convention right in prosecuting or entertaining the proceedings but only in failing to procure a hearing within a reasonable time.

- [41] The Board in the Privy Council case of **Tapper v Director of Public Prosecutions** affirmed the law as stated in **The Attorney General's Reference case, [2004]**⁶ and as summarised in **Boolell**. The Board states:

“Although those judgments were not directed specifically at the effect of delay pending appeal, the same approach applies. It follows that even extreme delay between conviction and appeal, in itself, will not justify the quashing of a conviction which is otherwise sound. Such a remedy should only be considered in a case where the delay might cause substantive prejudice, for example in an appeal involving fresh evidence whose probative value might be affected by the passage of time”.

- [42] The issue of the quashing the convictions not being pleaded is merely academic at this point. Even if it was pleaded, the claimants have not established that the inordinate delay resulted in an unfair trial to justify the quashing of their convictions.

Whether an order of restitution for the return of the property in the freeze orders

- [43] The claimants seek for the return of property taken under the freeze orders made on 25th August 2010 and 25th July 2017 respectively. The **Proceeds of Crime Act**⁷ as amended

⁶ **2 AC 72**

governs the process for forfeiture or confiscation of property shown to have been used, derived or obtained from the commission of a crime. The Act also provides for the variation of freeze orders.

- [44] **Section 14 (1) of the Proceeds of Crime Act** provides for the automatic discharge of a forfeiture order on appeal or on quashing a conviction. This section reads:

“(1) Where the Court makes a forfeiture order against property in reliance on a person's conviction of a scheduled offence and the conviction is subsequently quashed, the quashing of the conviction discharges the order.”

- [45] The issue of quashing of the conviction is non-issue at this point and therefore the court does not have the jurisdiction to grant such the relief claimed by the claimants.

Damages

- [46] The claimants seek damages for breach of their constitutional right. The issue as to whether an award of damages is an appropriate remedy in addition to a declaration for the State's violation of constitutional rights has been the subject of many cases. In the Court of Appeal decision in **Econo Parts Ltd v Comptroller of Customs & Excise**⁸, Pereira CJ states at paragraph 27:

“The principles on which the question of damages is to be considered in cases of breach of constitutional rights have been usefully analysed by the Privy Council in the case of Attorney General of Trinidad and Tobago v Ramanoop.¹⁵ Lord Nicholls stated that:

“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

⁷ **No. 13 of 1993**

⁸ SLUHCVP201710019

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.

The purpose of the award, whether it is made to redress the contravention or as relief, is to vindicate the right. It is not to punish the Executive. But vindication involves an assertion that the right is a valuable one, as to whose enforcement the complainant herself has an interest. Any award of damages for its contravention is bound, to some extent at least, to act as a deterrent against further breaches. The fact that it may be expected to do is something to which it is proper to have regard."

[47] The answer to the question of whether an award of damages should be granted is inherently case-specific. The court is required to do a balancing of facts and circumstances of each case to determine whether a mere declaration will suffice or whether it is appropriate to make an award of damages. The length of delay, the conduct of the prosecution and accused, the availability of institutional resources and systemic delays in the court system are all relevant considerations. The existing court backlog together with the social and economic conditions existing at the time are also issues to be considered.

[48] In deciding what should be an appropriate award, the Privy Council in **Romauld James v The Attorney General of Trinidad and Tobago**⁹ states

"The circumstances in which such an award will be appropriate were clearly outlined by Lord Nicholls in para 19 of Ramanoop: -

"An additional award, not necessarily of substantial size, may be needed to reflect the sense of public outrage, emphasise 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 s 14 is apt to encompass such an award if the court

⁹ [2005] UKPC 15, [2006] 1 AC 328

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 an award by way of punishment in the strict sense of retribution, punishment in the punishment in the latter sense is not its object.”

[49] Lord Scott in **Merson v Cathwright et al**¹⁰ states

“The sum appropriate to be awarded to achieve that purpose would depend upon the nature of the particular infringement and the circumstances relating to that infringement. It would be a sum at the discretion of the trial judge. In some cases declaration might suffice to vindicate that right; in other cases an award of damages, including substantial damages might seem to be necessary”.

[50] In **Selwyn Charles v Attorney General of Antigua and Barbuda**¹¹, the claimant was held in custody from the time of his arrest in 2007 until he filed a constitutional claim in 2011. The institutional and systemic issues, backlog of cases and insufficient number of judges, as in this case, contributed to the delayed trial. The court ruled that the claimant’s right to a fair trial within a reasonable time as required by Section 15 (1) of the constitution had been violated. He was released from custody; charges were dismissed and damages awarded in the amount of \$25,000.00.

[51] The **Selwyn Charles** case is distinguishable from the case at bar in that the claimants have already been tried, convicted and are now awaiting sentencing. The claimants unlike **Selwyn Charles** were granted bail after being charged.

[52] Counsel for the claimants did not lead much evidence on quantum of damages as his arguments were focused on the quashing of the convictions. Any award of damages is to emphasize the importance of the constitutional guarantee to fair trial without delay and to act as a deterrence for future breaches. While it is accepted that that the delay in trial was excessive, it is also the evidence that the claimants especially Rowan Bailey contributed to

¹⁰ [2005] UKPC 38

¹¹ ANUHCv 2011/0069

the further delay when the matter eventually came on for trial in 2018. It also noted that the extant applications were filed months after the claimants had been convicted of the offences and now awaiting sentencing. The claimants did not lead any evidence of hardship other than the delay and the freeze orders. I am of the view that additional award, though not of substantial, should be awarded to deter the possibility of further breaches of similar character. Accordingly, I award the sum of \$5000.00 to Ronald Bailey and the sum of \$7500.00 to Kenneth Wyre, respectively.

[53] The claimants were convicted on the charges and their sentencing was stayed pending the decision of the extant applications. The criminal matters are to be remitted to the Criminal Court Division for sentencing.

Order

[54] In summary it is ordered and declared as follows:

- (1) A declaration is granted that the claimants, Kenneth Ronald Wyre and Rowan Bailey, right to a fair hearing within a reasonable time under section 15 (1) of the Antigua and Barbuda Constitution Order 1981 Cap.23 was infringed.
- (2) Damages are awarded as follows: \$5000.00 to Ronald Bailey and \$7500.00 to Kenneth Wyre.
- (3) The claimants are not entitled to reliefs 2 to 5 in their applications by way of originating motion.
- (4) No order as to costs

Agnes Actie
High Court Judge

By the Court

Registrar