

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

SAINT LUCIA

CLAIM NO.: SLUHCV2008/0580

BETWEEN:

[1] RICHARD FREDERICK
[2] LUCAS FREDERICK

Claimant

and

[1] THE COMPTROLLER OF CUSTOMS
[2] THE ATTORNEY GENERAL

Defendants

APPEARANCES:

Mr. Horace Fraser for the Claimant

Mr. George Charlemagne and Kurt Thomas for the Defendants

2017: March 29th; April 13th;
2017: May 25th

JUDGMENT

[1] **SMITH J:** At the conclusion of the hearing of this matter on 29th March 2017, I granted declarations that the arrest and detention of the Defendants and the seizure of their motor vehicles which occurred on 18th June 2007 were unconstitutional and that the Defendants were liable to pay damages. I said that the written judgment would follow later and directed the parties to file submissions on the quantum of damages on or before 13th April 2017. This is the written judgment.

- [2] On the 17th June 2008, the Claimants, who are brothers, filed a fixed date claim against the Defendants alleging that their arrests and the detention of their respective vehicles on 18th June 2007 were in breach of their constitutional rights to protection from deprivation of property and to personal liberty. They sought declarations that their rights were breached, orders for the return of their vehicles, compensation for the period the vehicles were detained, the value of any depreciation on the vehicles and damages for their unlawful arrest and detention.
- [3] The filing of the claim led to a little contretemps. On 16th July 2008, an acknowledgment of service was filed by the Comptroller denying the claim. Then on 29th July 2008, legal practitioners for the Attorney General filed an acknowledgment of service, which admitted the claim. Paragraph 9 of the acknowledgment of service asked the following question: *“If so what do you admit?”* The following admission was written in as the response to that question: *“Unlawful detention of the vehicles, compensation for unlawful arrest”*. The acknowledgment was signed by “V. Jude” of the law chambers of Montplaisir & Co, the legal practitioners for the Attorney General.
- [4] The Claimants filed an application for entry of judgment pursuant to CPR 27.2 (3) on the ground that the acknowledgment of service filed by the Attorney General was out of time, admissions had been made and no defence had been filed. Legal practitioners for the Attorney General then filed a notice of withdrawal of their acknowledgment of service of 29th July 2008 and stated that the Comptroller’s acknowledgment of service was to stand. On 23rd September 2008, the Comptroller filed, out of time, an affidavit in answer to the Claimants’ affidavits, which were presented for filing by him “in person”.
- [5] By a written decision dated 12th November 2008, the learned judge refused the application for “summary judgment” and held that no leave was required to withdraw an acknowledgment of service, the Comptroller had capacity to defend the action and the defence of the Comptroller was effectively that of the Attorney General.
- [6] On appeal by the Claimants, the Court of Appeal, by a majority, held that: (1) an acknowledgment of service is not strictly necessary in civil proceedings of this specie, that is, administrative actions; (2) the leave of the Court is required to withdraw an acknowledgment of service which has been

filed; (3) an admission contained in an acknowledgement of service of a non-money claim, and more specifically a claim in an administrative action made under Part 56, is to not to be treated as an admission for the purpose of Part 14 entitling a party to obtain judgment on admissions pursuant to Part 15; (4) a fixed date claim in the nature of a constitutional motion does not permit the entry of a judgment in default of acknowledgment of service or in default of a defence or for the entry of summary judgment; (5) dealing with a claim summarily under CPR 27.2 does not mean entering summary judgment but requires a trial of the issues between the parties to be conducted in a summary manner. The Claimant must still prove that he is entitled to the relief sought.

[7] The Court of Appeal then directed that the matter proceed to case management for the giving of directions in accordance with CPR 56.1. Following the delivery of the Court of Appeal's decision of 6th July 2009, the parties agreed a Consent Order dated 20th October 2009 that the seized vehicles would be returned to the Claimants. The vehicles had been detained for a period of two years and four months. The matter finally came on for hearing before this court on 29th March 2017.

[8] At the time of the hearing before this Court, the Attorney General had not made application for permission to withdraw the acknowledgment of service containing the admission. This throws up a juristic paradox. On the one hand, the Comptroller, who is an agent of the state and who could only have filed his defence in his capacity as an agent of the state for actions he did in that capacity, has denied liability. On the other hand, the state's Attorney General, through his legal practitioners, has admitted liability.

The Amplification Point

[9] At the start of the hearing, counsel for the Defendants, Mr. Charlemagne, moved a written application (filed on 25th July 2016) to amplify the witness statement of Callixtus Andy Fenelon (dated and filed on 5th January 2015), the new Comptroller of Customs who replaced Terrance Leonard, the Comptroller who caused the Claimants' arrest and the seizure of their vehicles.

[10] This application had certain curious features. It sought to amplify a witness statement that was not properly before the Court. Counsel for the Claimants objected that the witness statement of

Callixtus Andy Fenelon had never been served on them and neither was there any affidavit of service filed confirming such service. The Defendants did not dispute this. Mr. Fraser stated that the trial bundle had been served on the Defendants on 3rd June 2015 and they had made no objection to the absence of that witness statement. The Defendants did not deny this either. The Court notes that indeed that witness statement does not appear in the trial bundle. Mr. Fraser also pointed out that, in any event, the witness statement was not filed within the case management deadlines and would have required leave of the Court which had not been obtained.

[11] Even more curiously, the nature of the amplification sought was the introduction of an “Amplified Witness Statement” of Callixtus Andy Fenelon with certain exhibits attached. The exhibits were documents which the Defendants hoped to rely on to prove that the Claimants had sought to evade customs duties. The amplification sought was therefore the introduction of an amended witness statement to replace a witness statement that was not properly before the Court. I do not think this is permissible under CPR 2000.

[12] Part 29.9 of the CPR provides that:

“A witness giving oral evidence may with the permission of the court –

- (a) amplify the evidence as set out in her witness statement if that statement has disclosed the substance of the evidence which the witness is asked to amplify;*
- (b) give evidence in relation to new matters which have arisen since the witness statement was served on the other parties; or*
- (c) comment on evidence given by other witnesses.”*

[13] Firstly, Callixtus Andy Fenelon is not a witness before this Court. Secondly, even if he were a witness, his witness statement dated 5th January 2016, which he seeks to amplify, did not disclose the substance of that which he sought to amplify, that is, certain documents obtained through mutual legal assistance. Since the witness statement was never served on the other parties, Part 29.9 (b) has not been satisfied; and neither can he come with Part 29.9 (c) since what is sought is the introduction of documents and not to comment on evidence given by other witnesses. In any event, the introduction of such new evidence at this juncture would have been greatly prejudicial to the Claimants.

[14] In this regard, I find the following statement in **R v Morelli**¹, a case from the Supreme Court of Canada, *apropos*:

“[42] It is important to reiterate the limited scope of amplification evidence, a point well-articulated by Justice LeBel in Araujo. Amplification evidence is not a means for the police to adduce additional information so as to retroactively authorize a search that was not initially supported by reasonable and probable grounds. The use of amplification evidence cannot in this way be used as “a means of circumventing a prior authorization requirement”

[15] It is difficult to resist the conclusion that the amplification evidence sought to be introduced by the Defendants was an *ex post facto* fig leaf designed to cure the absence of information supporting reasonable grounds for the arrest of the Claimants at the time they were arrested. I therefore had no hesitation in refusing the application for amplification of the witness statement at the start of the trial of this matter on 29th March 2017.

The Judicial Admission Point

[16] Turning now to the substance of the case, Mr. Fraser contends that the admission contained in the acknowledgment of service is a judicial admission under the **Civil Code of Saint Lucia** and therefore the Defendants could not now deny the claim. It does not appear that this point had been raised before the Court of Appeal.

[17] The **Civil Code** provides that:

“1172: An admission is extra-judicial or judicial. It cannot be divided against the party making it.

1173: An extra-judicial admission must be proved by writing or the oath of the party against whom it is set up, except in the cases in which according to the rules of this Chapter, proof by oral testimony is admissible.

1174: A judicial admission is complete proof against the party making it.
It cannot be revoked unless made through an error of fact.”

¹ 2010 SCC 8, [2010] 1 S.C.R. 253

- [18] No learning was put before the Court elucidating what is a judicial admission under the **Civil Code of Saint Lucia** and what the effect of it is, especially in light of the principle that a summary judgment cannot be obtained in constitutional proceedings. Neither have I been able thus far to find any authorities on the point. The Court of Appeal has said that the admission contained in an acknowledgement of service in an administrative action made under Part 56, is to not to be treated as an admission for the purpose of Part 14 entitling a party to obtain judgment on admissions pursuant to Part 15. It has also said that the permission of the Court is required in order to withdraw an acknowledgment of service that has been filed. In this case, the acknowledgment of service has not been withdrawn, so how am I to treat the admission contained in the acknowledgement of service filed on behalf of the Attorney General?
- [19] In his affidavit filed in opposition to the constitutional claim, Terrance Leonard, Comptroller of Customs, states at paragraph 14 that: *“Upon enquiring of the Solicitor General I was informed that the Chambers would not be filing a defence in this matter.”* At paragraph 21 he deposed that: *“....I received a copy of a filed acknowledgment of service filed by the firm of Monplaisir and Co. indicating the intention of the Defendants to admit to the allegations of the Claimants and to agree to pay compensation. I concluded that the intention was to admit that the state had acted unconstitutionally toward the Claimants and were further agreeing to pay compensation for breach of their constitutional rights.”*
- [20] I consider that a judicial admission under the **Civil Code** is a formal statement in court proceedings by party or counsel that concedes any element of a claim or defence. Its intended effect is to determine the issue admitted conclusively and to dispense entirely with the need for further evidence on that point. I find this to be entirely consistent with the overarching objective of the CPR 2000, namely, the achievement, in every case, of a just, speedy and inexpensive determination.
- [21] Article 1174 of the **Civil Code** states that an admission is complete proof against the party making it and cannot be revoked unless made through an error of fact. The Attorney General has not sought to say that the admission was made through an error of fact. Neither has he applied to the

Court to withdraw it. The question of judgment on admissions does not arise since we are at the trial stage. On the affidavit evidence before me, I am satisfied that the Claimants have made out a case that they are entitled to relief. The Defendants do not deny the facts upon which the claim is predicated. I do not see how the Attorney General can hope to rely on a defence to the claim in the face of his judicial admission. The state had every opportunity to apply to withdraw the acknowledgment or to put in evidence that it was filed in error. It did not avail itself of either of these options.

- [22] That, in my view, is enough to dispose of the claim, except for the matter of the relief sought. Nevertheless, in the event that I am wrong on the interpretation and effect of a judicial admission under the **Civil Code**, I will go on to succinctly consider whether the Comptroller breached the Claimants right to personal liberty and to protection from deprivation of property.

Whether Breach of Right to Protection from Deprivation of Property

- [23] The Defendants' contention is that the actions of the Comptroller fell within the ambit of section 6 of the Constitution of Saint Lucia. Reliance was placed specifically on the proviso at section 6 (6) (vii) which provides for the seizure of the vehicles once they are subject to a lawful investigation.

- [24] Section 6 (1) provides as follows:

"6. Protection from deprivation of property

(1) 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 purpose and except where provision is made by a law applicable to that taking of possession or acquisition for the prompt payment of full compensation."

- [25] Section 6 (6) provides that:

"(6) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1)—

(a) to the extent that the law in question makes provision for the taking of possession or acquisition of any property, interest or right—

(i) in satisfaction of any tax, rate or due,

- (ii) *by way of penalty for breach of any law or forfeiture in consequence of breach of any law,*
 - (iii) *as an incident of a lease, tenancy, mortgage, hypothec, charge, bill of sale, pledge or contract,*
 - (iv) *in the execution of judgments or orders of a court in proceedings for the determination of civil rights or obligations,*
 - (v) *in circumstances where it is reasonably necessary so to do because the property is in a dangerous state or likely to be injurious to the health of human beings, animals or plants,*
 - (vi) *in consequence of any law with respect to the limitation of actions, or*
 - (vii) *for so long only as may be necessary for the purposes of any examination, investigation, trial or inquiry or, in the case of land, for the purposes of the carrying out thereon of work of soil conservation or the conservation of other natural resources or work relating to agricultural development or improvement (being work relating to such development or improvement that the owner or occupier of the land has been required, and has without reasonable excuse refused or failed, to carry out),*
and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society; or
- (b) *To the extent that the law in question makes provision for the taking of possession or acquisition of any of the following property (including an interest in or right over property), that is to say—*
- (i) *enemy property,*
 - (ii) *property of a deceased person, a person of unsound mind or a person who has not attained the age of 18 years, for the purpose of its administration for the benefit of the persons entitled to the beneficial interest therein,*
 - (iii) *property of a person adjudged bankrupt or a body corporate in liquidation, for the purpose of its administration for the benefit of the creditors of the bankrupt or body corporate and, subject thereto, for the benefit of other persons entitled to the beneficial interest in the property, or*
 - (iv) *property subject to a trust, for the purpose of vesting the property in persons appointed as trustees under the instrument creating the trust or by a court or, by order of a court, for the purpose of giving effect to the trust.*

[26] The Claimants' vehicles were seized under notices of seizure issued by the Comptroller dated 18th June 2008. The relevant question I must ask myself is whether the seizure of the Claimants' vehicles done under the authority of a law that made provision for the taking of possession of a thing for so long only as may be necessary for the purposes of any examination, investigation, trial

or inquiry. That seems to be what is required by section 6 (1) read along with section 6 (6) of the Constitution.

- [27] The Defendants' case is that the seizures were effected under the authority of sections 130 (1) and (2) of the **Customs (Control and Management) Act**, Cap. 15:05 of the Revised Laws of Saint Lucia ("the Act") and therefore the seizures were effected in strict conformity with the law, which provides as follows:

"130. Detention, seizure and condemnation of goods

(1) *Anything which is liable to forfeiture is seized or detained by any officer or police officer.*

(2) *Where anything which is liable to forfeiture is seized or detained by a police officer, that thing shall be delivered to the Comptroller within 7 days unless—*

- a) *such delivery is not practicable; or*
- b) *that thing is or may be required for use in connection with any proceedings to be brought otherwise than under a customs enactment.*

(3) *Where, by virtue of subsection (2), anything seized or detained by a police officer is not delivered up to the Comptroller within 7 days, notice in writing of the seizure or detention, containing full details of the thing seized or detained, shall be given to the Comptroller, and any officer shall be permitted to examine and take account of that thing at any time while it remains in the custody of the police.*

(4) *Schedule 4 has effect in relation to appeals against the seizure of anything seized as liable to forfeiture under any customs enactment, and for proceedings for the condemnation as forfeited of that thing.*

(5) *Although something seized as liable to forfeiture has not been condemned as forfeited, or considered to have been condemned as forfeited, the Comptroller may at any time if he or she sees fit—*

- a) *deliver it up to any claimant upon the claimant paying to the Comptroller such sum as the Comptroller thinks proper, being a sum not exceeding that which in the Comptroller's opinion represents the value of the thing, including any duty chargeable thereon which has not been paid; or*
- b) *if the thing seized is a living creature or is in the Comptroller's opinion of a perishable nature, sell or destroy it.*

(6) *The restoration, sale or destruction under subsection (5) of anything seized as liable to forfeiture is without prejudice to any right of appeal against its seizure."*

[28] Having examined the sections 130 (1) and (2) and indeed the entire Act, including the schedules dealing with the procedure for seizure and condemnation, I find that the seizure of the Claimants' vehicles was unconstitutional for the following reasons:

- (1) Section 6 (6) of the Constitution of Saint Lucia allows for the taking possession of a thing under the authority of a law that *"makes provision for the taking of possession ...for so long only as may be necessary for the purposes of any examination, investigation, trial or inquiry..."*
- (2) The **Customs (Control and Management) Act** fails to make any provision for the taking of possession of a thing only for so long as may be necessary for the purposes of any investigation, as is required by section 6 (6) of the Constitution. The Act provides for the taking of possession of things but says nothing at all about how long a thing might be detained. It does not say that a thing may be seized and detained for such time as might be reasonable necessary to allow for investigation. It is completely open-ended. This has led to the prevalent practice of the Customs Department detaining or seizing things for years without activating the condemnation proceedings that should follow seizure.
- (3) Further, and in any event, the right to seize or detain property under section 130 of the Act is dependent on that property actually being liable to forfeiture. This turns on the objectively ascertained facts and not on the beliefs or suspicions of the Comptroller, however reasonable.
- (4) When the Comptroller issued the notices of seizure, there is nothing before this Court to show that he was acting on objectively ascertained facts, rather than on beliefs and suspicions. The evidence before the Court suggests that it was only after the seizure that there was an attempt to put evidence together. That continued up to the date of this trial, almost ten years later, with an attempt to put in fresh evidence to make out a case that the seizure was predicated on the objectively ascertained fact of under-invoicing.

Whether Breach of Right to Personal Liberty

[29] The Claimants were both arrested on 18th June 2007 around the same time of day but at different locations in Saint Lucia. The First Claimant was detained at Gros Islet Police Station for seven

hours. The Second Claimant was detained at the Vieux Fort Police Station for eight hours and spent one hour and fifteen minutes of that period of detention in a holding cell. They were both released that same day.

[30] The Defendants say that under sections 116 and 97 of the Act, the Comptroller is empowered to arrest persons concerned in fraudulent evasion of customs duties and that therefore the arrest and detention of the Claimants were not carried in breach of section 3 of the Constitution of Saint Lucia.

[31] Section 3 of the Constitution provides:

“3. Protection of right to personal liberty

(1) *A person shall not be deprived of his or her personal liberty save as may be authorized by law in any of the following cases, that is to say—*

- a) in consequence of his or her unfitness to plead to a criminal charge or in execution of the sentence or order of a court, whether established for Saint Lucia or some other country, in respect of a criminal offence of which he or she has been convicted;*
- b) in execution of the order of the High Court or the Court of Appeal punishing him or her for contempt of the High Court or the Court of Appeal or of another court or tribunal;*
- (c) execution of the order of a court made to secure the fulfillment of any obligation imposed on him or her by law;*
- (d) for the purpose of bringing him or her before a court in execution of the order of a court;*
- (e) upon a reasonable suspicion of his or her having committed, or being about to commit, a criminal offence under any law;*
- (f) under the order of a court or with the consent of his or her parent or guardian, for his or her education or welfare during any period ending not later than the date when he or she attains the age of 18 years;*
- (g) for the purpose of preventing the spread of an infectious or contagious disease;*
- (h) in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his or her care or treatment or the protection of the community;*
- (i) for the purpose of preventing his or her unlawful entry into Saint Lucia, or for the purpose of effecting his or her expulsion, extradition or other lawful removal from Saint Lucia or for the purpose of restraining him or her while he or she is being conveyed through Saint Lucia in the course of his or her extradition or removal as a convicted prisoner from one*

country to another; or

- (j) *to such extent as may be necessary in the execution of a lawful order requiring him or her to remain within a specified area within Saint Lucia, or prohibiting him or her from being within such an area, or to such extent as may be reasonably justifiable for the taking of proceedings against him or her with a view to the making of any such order or relating to such an order after it has been made, or to such extent as may be reasonably justifiable for restraining him or her during any visit that he or she is permitted to make to any part of Saint Lucia in which, in consequence of any such order, his or her presence would otherwise be unlawful.*

(2) *Any person who is arrested or detained shall with reasonable promptitude and in any case no later than 24 hours after such arrest or detention be informed in a language that he or she understands of the reasons for his or her arrest or detention and be afforded reasonable facilities for private communication and consultation with a legal practitioner of his or her own choice and, in the case of a minor, with his or her parents or guardian.*

(3) *Any person who is arrested or detained—*

- (a) *for the purpose of bringing him or her before a court in execution of the order of a court; or*
- (b) *upon reasonable suspicion of his or her having committed, or being about to commit, a criminal offence under any law, and who is not released, shall be brought before a court without undue delay and in any case not later than 72 hours after such arrest or detention.*

(4) *Where any person is brought before a court in execution of the order of a court in any proceedings or upon suspicion of his or her having committed or being about to commit an offence, he or she shall not be thereafter further held in custody in connection with those proceedings or that offence save upon the order of a court.*

(5) *If any person arrested or detained as mentioned in subsection (3)(b) is not tried within a reasonable time, then without prejudice to any further proceedings that may be brought against him or her, he or she shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he or she appears at a later date for trial or for proceedings preliminary to trial, and such conditions may include bail so long as it is not excessive.*

(6) *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:*

Provided that a judge, a magistrate or a justice of the peace or an officer of a court or a police officer shall not be under any personal liability to pay compensation under this subsection in consequence of any act performed by him or her in good faith in the discharge of the functions of his or her office and any liability to pay any such compensation in consequence of any such act shall be a liability of the Crown.

(7) *For the purposes of subsection (1)(a) a person charged before a court with a criminal*

offence in respect of whom a special verdict has been returned that he or she was guilty of the act or omission charged but was insane when he or she did the act or made the omission shall be regarded as a person who has been convicted of a criminal offence and the detention of a person in consequence of such a verdict shall be regarded as detention in execution of the order of a court.

[32] Section 116 of the Act provides that:

“116. Fraudulent evasion

- (1) Without prejudice to any other provision of any customs enactment, if any person—
- (a) knowingly acquires possession of any of the following goods, that is to say—
 - (i) goods which have been unlawfully removed from a warehouse or a customs warehouse, or
 - (ii) goods which are chargeable with a duty which has not been paid, or
 - (iii) goods with respect to the importation, exportation or carriage coastwise of which there is any prohibition or restriction in force; or
 - (b) is in any way knowingly concerned in carrying, removing, depositing, landing, harbouring, keeping or concealing or in any manner dealing with any such goods, and does so with fraudulent intent, he or she commits an offence and is liable to a fine of \$10,000, or 3 times the value of the goods, whichever is the greater, or to imprisonment for 5 years, or to both, and may be arrested, and the goods in respect of which the offence was committed are liable to forfeiture.
- (2) Without prejudice to any other provision of any customs enactment, if any person is, in relation to any goods, in any way concerned in a fraudulent evasion or attempt at evasion—
- (a) of any duty chargeable on those goods; or
 - (b) of any prohibition or restriction with respect to the importation, exportation or carriage coastwise of those goods under or by virtue of any enactment,
- and is so concerned with fraudulent intent, he or she commits an offence and is liable to a fine of \$10,000, or to 3 times the value of the goods, whichever is the greater, or to imprisonment for 5 years, or to both, and may be arrested, and the goods in respect of which the offence was committed are liable to forfeiture.”

[33] Section 97 of the Act provides as follows:

“Power to Arrest

Subject to subsection (2) any officer or a police officer may arrest any person who has committed, or whom there are reasonable grounds to suspect of having committed, any offence for which he or she is liable to be arrested under any customs enactment.”

- [34] It will be seen from the above that the constitutional requirement is that the arrest be based on a reasonable suspicion that an offence has been committed or is about to be committed. The power to arrest under the Act must be exercised upon a reasonable suspicion that an arrestable offence under the said Act had been committed.
- [35] The test as to whether there is reasonable suspicion is both subjective and objective. The perceived facts must be such as would cause a reasonable Comptroller and actually caused the arresting Comptroller to suspect that the Claimant had committed an offence. Once the information in the possession of the Comptroller leads reasonably to a conclusion that the Claimants may have committed an offence, that is sufficient to ground the arrest. The Comptroller does not have to be in possession of admissible evidence at the time of the arrest in order to ground the arrest.
- [36] The difficulty for the Defendants is that the Comptroller never provided any evidence in his affidavit as to the information in his possession which formed the basis for his reasonable suspicion that an offence had been committed. The suspicion was that the Claimants had sought to evade customs duties by making false declarations, but the Comptroller never stated what information that suspicion was based on. Almost eight years later, on the morning of the trial, there is an attempt to introduce into evidence certain information that supposedly grounded the suspicion that there had been under-invoicing. Without knowing what that information was, since the documents could not properly be admitted, it is difficult to conclude that the suspicion was a reasonable one.
- [37] For the following reasons, I find that at the time that the Claimants were arrested – 18th June 2007 – there was no reasonable suspicion that an offence had been committed.
- (1) There is no evidence before the Court as to what information was available to the Comptroller to ground his reasonable suspicion at the time of making the arrests. Nowhere in his affidavit evidence does the Comptroller say what was the information he possessed at the time of the arrest that grounded his reasonable suspicion that an offence had been committed.

- (2) The Defendants sought to introduce certain information that would have grounded their reasonable suspicion by applying to amplify a witness statement that was not properly before the court.
- (3) No charges were ever lodged against the Claimants. A memorandum from the Attorney General dated 12th June 2008 and exhibited to the affidavit of Terrance Leonard noted that: “*To date, twelve (12) months later, no criminal charges have been laid against Hon. Richard Frederick and the vehicles remain under seizure.*”
- (4) No information was ever put to the Claimants at the time of their arrest which indicated that the Defendants had any basis for the alleged suspicion and at no time were the Claimants shown or given any document corroborating the alleged reasonable suspicions of evasion of customs duties.
- (5) The Claimants were detained for approximately seven hours and eight and a half hours, respectively before being released with no charges being lodged against them and the criminal process was totally abandoned.

The Approach in Awarding Damages

- [38] What is the function of an award of damages where constitutional rights have been infringed? The approach to awarding damages for contraventions of constitutional rights was set out in **Attorney General of Trinidad and Tobago v Ramanoop**²:

“17. Their Lordships view the matter as follows. Section 14 recognizes and affirms the court’s power to award remedies for contravention of chapter I rights and freedoms. This jurisdiction is an integral part of the protection chapter I of the Constitution confers on the citizens of Trinidad and Tobago. It is an essential element in the protection intended to be afforded by the Constitution against misuse of state power. Section 14 presupposes that, by exercise of this jurisdiction, the court will be able to afford the wronged citizen effective relief in

² [2005] UKPC 15.

respect of the state's violation of a constitutional right. This jurisdiction is separate from and additional to ("without prejudice to") all other remedial jurisdiction of the court.

- ii 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.*
- iii 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 an 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."*

[39] The *Ramanoop* principles were applied by the Privy Council in **Merson v Cartwright & Anor**³

³ [2005] UKPC 38.

“18. *These principles apply, in their Lordships' opinion, to claims for constitutional redress under the comparable provisions of the Bahamian constitution. If the case is one for an award of damages by way of constitutional redress – and their Lordships would repeat that "constitutional relief should not be sought unless the circumstances of which complaint is made include some feature which makes it appropriate to take that course" (para 25 in Ramanoop) – the nature of the damages awarded may be compensatory but should always be vindicatory and, accordingly, the damages may, in an appropriate case, exceed a purely compensatory amount. The purpose of a vindicatory award is not a punitive purpose. It is not to teach the executive not to misbehave. 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. It will be a sum at the discretion of the trial judge. 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.*”

[40] I am therefore required to consider an appropriate award of damages to compensate the Claimants for the wrong they have suffered at the hands of the executive. Thereafter I must go on to consider whether an additional sum should be awarded as a vindication of the Claimants' constitutional rights.

The Measure of Damages

[41] As regards the Claimant's entitlement first to compensatory damages, the question is what would be an appropriate and reasonable sum?

[42] In **Fuller (Doris) v Attorney General**⁴, Patterson JA stated:

⁴ (1997) 56 WIR 337.

“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 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”

- [43] Some of the factors that the Court might look at in this kind of case was discussed in **Everette Davis v Attorney General of St. Christopher and Nevis**⁵:

“In fixing the compensation the court should consider a number of factors including, the loss of liberty, the loss of reputation, humiliation and disgrace, pain and suffering, loss of enjoyment of life, loss of potential normal experiences, such as starting a family, other foregone development experiences, loss of freedom and other civil rights, loss of social intercourse with friends, neighbours and family, whether the claimant suffered assault in prison, the fact that he had to be subjected to prison discipline, and accepting and adjusting to prison life, and what effects the unlawful detention might have had on his life. In any given case some of these may not be relevant whilst some may have a greater effect on the eventual sum.”

- [44] A *tour d’ horizon* of select cases in the region reveals no uniformity in assessing what is a reasonable sum for deprivation of personal liberty. The sum awarded appears to vary widely from jurisdiction to jurisdiction and from case to case.

- [45] In **Everette Davis**, a 2014 case from Saint Christopher and Nevis, the Court found that the arrest and charge for murder and the detention of Mr. Davis for a period of 230 days violated his right to personal liberty. After considering all the relevant factors, Ramdhani J found that the claimant was entitled to EC\$20,000 for the initial act of detention and a sum of EC \$500.00 per day for each day

⁵ Saint Christopher and Nevis, Claim No. SKBHCV 2013/0220

of detention beyond the initial act of detention. A further sum of EC\$30,000 was awarded to vindicate the claimant's constitutional right.

- [46] In **Danny Severin v the Attorney General**,⁶ a 2011 judgment from Saint Lucia, a the claimant who was detained in custody for more than 24 hours was awarded EC \$8,000.00 for false imprisonment by Belle J. In **Raymond Warrington and Karl Peters v Cleville Mills and the Attorney General of Dominica**⁷, the court awarded the first claimant \$20,000.00 for six hours false imprisonment and \$25,000.00 to the second defendant for nine hours false imprisonment.
- [47] In **Elihu Rymer v The Commissioner of Police et al**⁸, the OECS Court of Appeal, in 1999, awarded the claimant \$20,000.00 for three hours of unlawful detention where none of the charges against the claimant had been pursued before the magistrate.
- [48] In **Nicole Fullerton v The Attorney General**⁹, the Jamaican High Court in 2010 awarded the claimant the approximate equivalent of EC \$20,000.00 for 28 hours of unlawful detention.
- [49] It appears that in **Takitota v The Attorney General**¹⁰ the claimant who had been unlawfully deprived of his liberty for a period of eight years was awarded damages that approximated to about \$166.99 per day. This approach of fixing a daily rate was used in **Malcolm Payne v The Chief Magistrate et al**¹¹ where the claimant was awarded the sum of \$3,333.33 for every hour that he had been detained.
- [50] At the time of his arrest, the First Claimant was a sitting member of parliament, minister of government and attorney-at-law. He was arrested in open view of the public and statements were made in the press regarding the matter. The seized vehicles had been imported into Saint Lucia in 2004 and 2005, respectively. The arrest of the First Claimant and the seizure of the vehicles occurred years later in 2007. Under these circumstances, the First Claimant undoubtedly suffered

⁶ Saint Lucia, SLUCHCV 2008/0973

⁷ Dominica, Claim No. DOMHCV of 1997.2006/0038

⁸ BVI Civil Appeal No. 13

⁹ Claim No. 2010 HCV1556

¹⁰ Privy Council Appeal No. 71 of 2007.

¹¹ Claim No. ANUHCV 2001/0261

loss of personal liberty, public humiliation and disgrace and loss of reputation. The Second Claimant's business premises was searched, in addition to having his vehicle seized, being arrested and locked in a cell for over an hour of the eight and a half hours he spent in detention. He too undoubtedly suffered loss of personal liberty, public humiliation and disgrace and loss of reputation.

[51] Taking these factors into consideration, and noting that the bracket of discretion in this region ranges widely from the "low end" of \$8,000.00 for 24 hours unlawful detention to the "high end" of \$20,000.00 for three hours of unlawful detention, I award the First Claimant EC \$20,000.00 as compensation for the deprivation of his personal liberty for seven hours. I award the Second Claimant EC \$30,000.00 as compensation for the deprivation of his personal liberty for eight and a half hours, one hour of which was in a cell.

[52] I must now go on to consider whether that award of compensatory damages affords the Claimants adequate redress or whether an additional award should be made to vindicate their constitutional rights. I keep in mind the *Ramanoop* principles that the purpose of a vindictory award is not a punitive purpose; it is not to teach the executive not to misbehave. The purpose is to vindicate the right of the complainant, to carry on his or her life in the Saint Lucia free from unjustified executive interference. I remind myself that 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. 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."

[53] Given that the Claimants were released the same day; no charges were proffered against them; they were not mistreated apart from their unlawful detention; they suffered no assault and were able to return to the enjoyment of normal life in Saint Lucia, I consider that the declaration made along with the award of compensatory damages is sufficient to vindicate their rights.

[54] The Claimants in their written submissions on damages claimed certain sums for loss of use of their respective vehicles while those vehicles were seized. They had also claimed compensation for diminution in value of their vehicles. However, neither Claimant particularized nor adduced any

evidence whatsoever to support their respective claims for loss of use or for diminution in the value of their vehicles. I therefore make no award in relation to this.

[55] I therefore make the following orders:

- (1) The Claimants are granted a Declaration that their arrest and the seizure of their vehicles which occurred on 18th June 2007 were in breach of their right to personal liberty and to their right to protection from deprivation of property.
- (2) The First Claimant is awarded compensatory damages for breach of his personal liberty in the sum of EC\$20,000.00.
- (3) The Second Claimant is awarded compensatory damages for breach of his personal liberty in the sum of EC\$30,000.00.
- (4) The Claimants are awarded prescribed costs together with interest at the rate of 6% on the judgment sum from the date of judgment until the said sum is fully paid.

**JUSTICE GODFREY SMITH
HIGH COURT JUDGE**

BY THE COURT

REGISTRAR