

**EASTERN CARIBBEAN SUPREME COURT
FEDERATION OF ST. CHRISTOPHER AND NEVIS
NEVIS CIRCUIT**

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

SUIT NO: NEVHCV2013/0120

**In the matter of Sections 3, 8 and 9 of the Constitution
of Saint Christopher and Nevis**

And

**In the matter of an application by the Claimants,
Jovil Williams and Jason Campbell for Declarations,
Damages and other relief alleging a breach of their
rights under Section 3, 8 and 9 of the Constitution and
for redress pursuant to Section 18 of the Constitution.**

BETWEEN:

**Jovil Williams
Jason Campbell**

**1st Claimant
2nd Claimant**

And

**Attorney General of St. Christopher and Nevis
Chief of Police**

**1st Defendant
2nd Defendant**

Appearances:

Ms. Angelina Gracy Sookoo for the Claimants

Ms. Violet Williams for the Defendants

2015: December 16
2016: March 21

DECISION

[1] **WILLIAMS, J.:** The Claimants filed an Originating Motion, Statement of Claim, and Joint Affidavits in support of their claim on the 8th November 2013.

The claim is based fundamentally on the alleged infringement of the Claimants' unalienable property and privacy rights. The Claimants allege that their fundamental rights to protection of their personal privacy, the privacy of their property and from deprivation of property without compensation pursuant to Section (3) of the Constitution have been infringed. The Claimants further allege that their property was compulsory acquired contrary to Section 8 of the Constitution and their rights were thereby infringed.

[2] The Claimants also allege that their fundamental rights to protection from arbitrary search or entry pursuant to Section 9 of the said Constitution has been infringed.

[3] The Claimants therefore claim Damages including Aggravated and Exemplary Damages and Costs.

[4] The Defendants filed an Application for Extension of Time to file a Defence and on the 30th day of January 2014 the Claimants filed an Affidavit in response to the Application for Extension of Time.

[5] The Defendants filed an Acknowledgement of Service on the 12th day of February 2014 and an Acknowledgement of Service, Affidavit in Response, and Affidavit in Reply was served on the Claimants on the 14th February 2014.

[6] The said Application was heard by the Court on the 20th March 2014 and the Application for Extension of Time was disallowed by the Court for the following reasons;

(a) That the reasons for the delay in filing a Defence were frivolous and vexatious.

(b) The chances of the Defendants success were slim and almost non-existent.

(c) The Defendants have not shown that there would be prejudice to them.

(d) The Application and the Affidavits were defective, incurably bad and cannot be remedied by the Court.

[7] The Claimants then filed an Application for Summary Trial and by order of the Court dated 24th September 2015. The Claimants filed further affidavits in support of the Originating Motion filed on the 8th November 2013.

[8] The Motion was heard by way of a Summary Trial on the 16th December 2015 and the Court received oral evidence from both Claimants who were subject to cross examination by counsel for the Defendants.

[9] **Background Information and Facts**

The 1st Claimant is a citizen of St. Kitts and Nevis; the second Claimant is a permanent resident of Nevis originally from Jamaica.

The Claimants are jointly the owners, makers, and participants, of an intimate and sexually explicit video. In or around 2010 while the Claimants were involved in a relationship, they videotaped a very intimate sexual encounter within the privacy and confines of the 2nd Claimant's home.

This video featured in particular the visible face of the 1st Claimant and the nude bodies of both Claimants, with the 2nd Claimant's face being concealed.

[10] At all material times, the said sexually explicit video was the private property of the Claimants and prior to April 28th and 29th 2013, the said video was kept privately on the 2nd Claimant's Blackberry Bold smart phone and was never disseminated into the public domain in any form at all.

- [11] On or around the 28th April 2013 the 2nd Claimant was detained at the Charlestown Police Station where he was assisting the Police with an investigation into an alleged robbery.
- While at the said Police Station the Police officers on duty allegedly confiscated the 2nd Claimant's Blackberry Bold smart phone and according to the 2nd Claimant without reasonable cause and without the consent of either of the Claimants, searched the 2nd Claimant's Blackberry phone which phone allegedly contained the sexually explicit video of the Claimants.
- [12] According to the Claimants' Statement of Claim, The Police, without the 2nd Claimant's consent edited the said video and then disseminated it into the public domain via the use of telecommunication devices and the Internet, notwithstanding the very sensitive, intimate and private nature of the contents of the video and are in breach of the Claimants' constitutional rights to privacy and property.
- [13] In a fourth Affidavit deposed to by the Claimants' dated 8th November 2013, the 2nd Claimant avers that the Police without his consent took the memory chip from his mobile phone while in custody and inserted it into one Police Constable Maxine Henry's computer and searched the said chip where they discovered and viewed the sex video featuring the Claimants. The said video was then downloaded to the computer of Police Constable Maxine Henry and the phone of Police Constable Kevin Maynard which was then released or caused to be released into the wider public domain via Social Media.
- [14] As a consequence of the alleged actions of the Police officers, the Claimants claim that they have suffered tremendous embarrassment, humiliation and distress and have filed the Motion seeking Constitutional relief for breach of their rights to privacy, property and freedom from arbitrary search

as guaranteed under the Constitution. The particulars of Damage, Aggravated Damages and Exemplary Damages are set out in the Claimants' Statement of Claim dated 7th November 2013.

[15] The evidence of the Claimants was largely unchallenged and uncontroverted except that the Defendants submitted that the sex video was transmitted via Facebook and Telecommunication devices and not the Social media website "YouTube".

[16] **Issues to be determined by the Court**

(a) Whether the Claimants' fundamental rights to privacy and property and freedom from arbitrary search have been infringed by the Police officers of the Charlestown Police Station as Servants/ Agents of the Crown, as a consequence of the viewing, downloading and dissemination of the Claimants' sex video?

(b) Whether the Defendants are vicariously liable for the acts of the Police officers Maxine Henry and Kevin Maynard and other on duty officers for searching the 2nd Claimant's mobile phone, extracting and editing the video they found and disseminating it into the public domain?

(c) Whether the Defendants, their servants or agents breached the Constitutional rights of the Claimants, and if such rights were breached, what quantum of Damages should be awarded to the Claimants?

[17] The Court viewed the sex video in camera and requested of both Counsels whether there was a comparable private tort remedy which the Claimants could have pursued.

Counsel for the Claimant made oral submissions and referred the Court to the recent case out of Trinidad and Tobago of **Therese Ho vs Lendl Simmons**¹ where Solomon J explained that

¹ Claim No CV 2014-01949 Republic of Trinidad and Tobago High Court

“In Warrenwright vs Home Office ² the House of Lords held that there was no English domestic law of Tort of Invasion of Privacy and the English Court has not recognised a cause of action based upon personal privacy”.

[18] The Trinidad and Tobago court observed further that “According to Kodilyne there is no developed jurisdiction of the Tort of Misuse of Information in the Caribbean and while the fundamental provisions of some Constitutions allow for some measure of Constitutional protection of privacy, This remedy is only available in actions against the state and are not available against private citizens (my emphasis).

[19] Counsel for the Claimants’ Ms. Sookoo also referred the Court to the case of the Attorney General of Trinidad and Tobago vs Ramanooop ³ where the Court found that the Claimants were entitled to bring a Motion for Constitutional relief instead of Private Tort, because the Police officers’ conduct was quite appalling and represented a shameful misuse of the coercive powers with which the Crown had conferred on them.

[20] Counsel for the Defendants, Ms Violet Williams referred the Court to the dicta of Lord Nicholls of Birkenhead in Ramanooop when he stated at Paragraphs 18 & 19 as follows:

(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 compensation, but

² [2004] A.C 46

³ [2005] UK PC 15

this measure is no more than a guide because the award of compensation under Section 14 is discretionary and more 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, emphasise the importance of the constitutional right and the gravity of the breach and deter further breaches.”

The Claimants’ Case

[21] The Claimants’ Motion to the Court was filed pursuant to Section 18 of the Constitution of St. Kitts and Nevis which provides that a person who alleges that any provisions of Section 3 to 17 inclusive has been or is likely to be contravened in relation to him or her, they may without prejudice to any other action apply to the Court for redress.

According to the Claimants the Constitution therefore provides that Section 3 be a protected and enforceable fundamental right.

This issue was reinforced in the St.Kitts and Nevis case of **The Chief of Police & Attorney General vs Calvin Nias**⁴ where Rawlins JA (as he then was) referred to the learning of the Judicial Committee of the Privy Council in **Matadeen and another vs Pointu**⁵ where it was held that the

⁴ HCVAP2007/010

⁵ [2001] UK PC 11

rights recognized and declared to exist in Section 3 of the Constitution of Mauritius are enforceable rights, and that this section expressed a general justiciable principle of Equality.

Learned Counsel for the Claimants therefore contends that Section 3 of the Constitution of St. Kitts and Nevis although declaratory in nature was an enforceable right.

[22] Learned Counsel for the Claimants, Ms. Sookoo further submits that the evidence which is before the Court on a balance of probability amounts to an unlawful, arbitrary or excessive use of the Crown's coercive powers which contravene the Claimants inalienable rights to property and privacy. Therefore according to Counsel, the Claimants' evidence satisfies the factors required to prove a breach of their constitutional rights, and they are entitled to the fundamental protections conferred by Sections 3, 8 and 9 of the Constitution.

[23] Learned Counsel for the Claimants also submits that the breaches to the Claimants rights to privacy and property are grounded in the Constitution under Section 3 & 9.

Section 9 of the said Constitution provides that "No property of any description shall be compulsory taken possession of and no interest in or right over property of any description shall be compulsory acquired except for a public purpose.

According to learned Counsel in her written submissions, the evidence before the Court is that the sexually explicit tape of the Claimants indulging in sexual activity took place within the confines of the 2nd Claimant's home. The sex tape therefore was not in the public domain prior to the 2nd Claimant being taken into Police custody and that the release of the tape was done without the consent of the Claimants.

[24] Ms. Sookoo further submitted that neither of the Claimants consented to the search of the 2nd Claimant's mobile phone, the viewing of the sex tape, and the dissemination of the sex tape into the public domain, via Social Media and various telecommunication methods without lawful cause.

[25] Ms. Sookoo also contends that as a consequence of the named Police officers behaviour the Claimants' sex tape was viewed by an unquantifiable number of persons and that the sex tape became the topic of national discussion on the local radio stations. As a consequence the 1st Claimant had to be placed on Medical sick leave and prescribed medication (Exhibits J.W 3) after the said tape was put into the public domain.

Learned Counsel therefore contends that the actions of the Police amounted to an egregious contravention of the Claimants' rights to privacy and property, and seeks the Court's condemnation of such conduct.

[26] The Claimants therefore seeks Declarations that their constitutional rights under Section 3 & 8 of the Constitution have been infringed and seek further, an award of Compensatory Damages, Aggravated Damages and Exemplary Damages.

The Defendants Case

[27] Learned Counsel for the Defendants, Ms Violet Williams in her written submissions contended that Section 4 of the Crown Proceedings Act Cap 5:06 of the Laws of Saint Kitts and Nevis provides that "Subject to the provisions of this Act, the Crown shall be subject to all those liabilities in Tort to which, if it were a private person of full age and capacity, it would be subject

(a) In respect of Tort committed by its servants or agents provided that no proceedings shall be against the Crown by virtue of paragraph (a)

(b) In respect of any act or omission of the servant of the Crown, unless the act or omission would apart from the provisions of this Act, have given rise to a cause of action in Tort against that servant or agent of his or her Estate.

[28] Learned Counsel referred the Court to the case of **The Attorney General v Craig Hartwell**⁶ where Nicholls L.J stated that where a Police officer used a service revolver in pursuit of his own misguided personal aims, the Police officer had put aside his role as a Police Constable and had embarked on a personal vendetta of his own; that conduct falls wholly within the classical phrase of: “a frolic of his own”.

[29] Ms Williams also cited in support of her contention the case of **Clinton Bernard vs AG of Jamaica**⁷ where the learned Law Lords referred to the decision of the House of the Lords in **Lister vs Hesley Hall Ltd**⁸. In that case the Court reformed the law on vicarious liability by introducing the “close connection” test and stated that the use of a service revolver by a Policeman to do acts of abuse within the scope of his employment would without more make a Police Authority vicariously liable for his acts.

[30] Learned Counsel submits that in light of the law and the facts pleaded, the 2nd Claimant was lawfully detained at the Charlestown Police Station for questioning in relation to an alleged robbery and that his cell phone was taken and searched by the Police officer.

Learned Counsel contends that this act of the Police fell within the provisions of **The Police Act of Saint Christopher & Nevis Cap 19:07**. However, Counsel admits that the act of the Police officer in

⁶ UK PC NO 70/2002

⁷ NO 30/2003 UK PC

⁸ [2002] 1AC 215

taking information from the cell phone was not relevant to the investigation of the 2nd Claimant's alleged robbery, and that he was not acting within the scope of his duties as a Police officer.

[31] Ms Williams asks that the Court find that the Defendants are not vicariously liable for the acts of the Police officers in disseminating the sex video and to deem that they were on a "frolic of their own."

[32] Learned Counsel also referred the Court to the case of **Shankiell Myland vs Commissioner of Police et al**⁹ where the Police obtained a search warrant for the search and seizure of the Claimant's personal property, cell phones, computers and premises.

The Court in deciding the Claimant's matter considered Sections 1, 6, 7 of the Grenada Constitution (which are similar to Sections 3, 8 & 9 of the Constitution of St. Kitts and Nevis).

The Court stated at paragraph 86 of the judgment that;

"The Court acknowledges that like many other jurisdiction, there is no explicit right to privacy in the Grenada Constitution. However Courts have increasingly found a Constitutional basis for Privacy rights in the broad sense of freedom from interference in certain realms of personal life. In doing so, they have applied general constitutional provisions such as that set out in Chapter I Section I of the Constitution of Grenada"

At paragraph 97, the Court held that "It is satisfied that Section 1 & 7 of the Grenada Constitution which vest all individuals with the right to be free from unreasonable search and seizure as well as the relevant legislature provisions of the Code seek to strike an appropriate balance between the right to be free from state interference and the legitimate needs of Law enforcement. This balance is

⁹ GDAHCV 2012/0045

generally achieved in two main ways. **First the Police must obtain Judicial authorization for a search before they conduct it, usually in the form of a search warrant. Second an authorized search must be conducted in a reasonable manner, ensuring that the search is no more intrusive than is reasonably necessary to achieve its objective.**

[33] Learned Counsel in her submissions contends that the Police have the power to search, seize and retain property which may afford evidence of the commission of a crime and cites the case of **Francis vs Marston**¹⁰ in support of her submission; Counsel also contends that Section 44 of the Magistrate Code of Procedure Act and Section 5 of the Police Act provide a statutory basis for obtaining warrants to search and seize.

[34] However, learned Counsel concurs that while the 2nd Claimant was lawfully arrested and taken into custody by Police, the act of taking into custody his cell phone and searching and disseminating the contents of the said phone without a warrant was unjustifiable and an infringement of the 2nd Claimant's rights under Sections 3 & 9 of the Constitution.

[35] Learned Counsel also submits that although the 2nd Claimant's phone was unlawfully searched, his phone was returned to him after the search and therefore there was no infringement of Section 8 of the Constitution which provides for protection from deprivation of property. Therefore, he should not be granted Compensatory relief as he has claimed.

Court's Analysis and Conclusion

¹⁰ [1965] 8 W.L.R.313

[36] The Saint Christopher and Nevis Constitution Order 1983 at Section 18 (1) provides for the precluding of the exercise by the Court of its power to grant Constitutional redress if satisfied that adequate means of redress are otherwise available.

The section reads as follows:

(2) The High Court shall have original Jurisdiction –

(a) To hear and determine any application made by any person in pursuance of subsection (1) of this section; and

(b) to determine any questions arising in the case of any person which is referred to it in pursuance of subsection (3) of this section and may make such declarations or orders issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of Section 3 to 17 (inclusive) of their Constitution.

Provided that the High Court may decline to exercise its power under this subsection, if it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other Law – (emphasis mine)

[37] Therefore it is logical to conclude that this Court clearly has a discretion as to whether it should exercise its powers to grant relief.

[38] This provision has been reinforced by the decision of the Judicial Committee of the Privy Council in the case of **Jaroo vs Attorney General of Trinidad and Tobago (8th April 2003 unreported)** and **Attorney General of Trinidad and Tobago vs Ramanoop**¹¹ where the learned Law Lords declared

¹¹ [2006] 1 AC 328; [2008] UKPC47

that “ where there is a parallel remedy, 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; There must therefore be some feature which makes it appropriate to take that course; There must therefore be some feature which on a prima facie basis indicates that the means of legal redress otherwise available would not be suitable. To seek constitutional relief in the absence of such a feature would be a misuse or abuse of the Court’s process.

[39] In the case of **Attorney General of Trinidad and Tobago vs Ramanooop** the Privy Council opined that this case involved a shameful misuse of the coercive power of the State and accepted that the alternative means of legal redress were not adequate.

[40] Another special feature explained by the Privy Council is the preponderance of disputed facts. This Court is guided by the dicta in **Jaroo vs AG of Trinidad and Tobago** at paragraph 36 of the judgment:

“Their Lordships wish to emphasise that the originating motion procedure under Section 14 (1) is appropriate for use in cases where the facts are not in dispute and questions of Law only are in issue; It is wholly unsuitable in cases which depend for their decision on the resolution of disputes as to fact; Disputes of that kind must be resolved by using the procedures which are available in the ordinary courts under the Common Law.”

[41] The case at Bar involves a search of the 2nd Claimant’s cell phone when he was in custody and the unlawful search and disseminating of sexually explicit material which was contained on the cell phone. The Claimants allege an arbitrary misuse of the powers conferred upon the Police by the Crown resulting in the infringement of their constitutional rights.

- [42] The Court is therefore satisfied that on a prima facie basis, there is an arguable claim for constitutional relief. Further the Court finds that there are no troubling disputes of fact at issue and only questions of law are to be decided.
- [43] The Defendants have not filed a Defence to the Claimants' Originating Motion because they were precluded from doing so by the Court in earlier proceedings, when there was flagrant disobedience to comply with the orders of the Court.
- [44] Having considered all the issues involved in the case, the Court will exercise its discretion to consider the Claimants' claim for constitutional relief which was presented to the Court in legal submissions and at the oral hearing.
- [45] The uncorroborated evidence in this case at Bar is that the 2nd Claimant's cell phone was detained and searched without a search warrant and contained intimate and sexually explicit material involving both Claimants which were disseminated and put into the public domain by the Police while the 2nd Claimant was in the custody of the Police at the Charlestown Police Station.
- [46] The U.K case of **Shobna Gulah and Ors vs MGN**¹² submitted by Counsel for the Claimants is very instructive in the case at bar.
- That case concerned a consolidated claim based on infringements of the Claimants' privacy rights by the Defendants Media Company. The Defendants had hacked a number of persons' phones and in particular their voicemail, and then published numerous articles about the private information obtained as a result of the hacking. The Court stated that the difference of view as to what amounts to compensation in privacy rights cases was central to the determination of the case before it.

¹² [2015] EWHC 1482

[47] In the **Shobna Gulah case**, Justice Mann concluded that the following factors should be considered in awarding damages in a claim for breach of privacy:

- (a) Vindication to mark the infringement of the right to privacy
- (b) Gravity of the breach
- (c) Distress
- (d) Hurt feelings
- (e) Loss of dignity
- (f) Public outrage and deterrence

[48] Mann. J continued in his Judgment by stating that “the act of intruding on a person’s privacy may justify an award of Damages in its own right irrespective of whether any distress has been caused.

I shall therefore approach the consideration of quantum in this case on the footing that compensation can be given for things other than distress, and in particular can be given for the commission of the wrong itself so far as that commission impacts on the values protected by the right”.

[49] Justice Mann also opined that the case law demonstrates that the Court can and should take an approach which is appropriate to achieve the objective of a compensatory award to compensate the Claimant properly and fairly for the wrong that he/ she has sustained.

[50] **Breach of the right to privacy**

Counsel for the Claimants contended that Section 3, 8 & 9 of the St. Kitts & Nevis Constitution expressly granted the Claimants’ protection for their personal privacy, the privacy of their property and from deprivation of property without compensation.

[51] Learned Counsel Ms. Sookoo argued that the Claimants uncontroverted evidence at the Summary Trial where that

(a) They began receiving degrading and embarrassing comments and treatment from the general public.

(b) Their families were constantly harassed by the media for comments on the said sex tape.

(c) They became the subject of radio talk shows throughout the Federation for several days.

(d) The 1st Claimant had to seek medical attention and was placed on sick leave due to her experiencing constant and severe headaches from arguing over the said unlawful acts.

(e) The 1st Claimant had to be referred to a Psychologist for treatment of the Trauma she suffered.

(f) Both Claimants were forced into hiding due to the embarrassment they suffered as a result of the unlawful breach of their fundamental rights by the Police.

[52] In response, Counsel for the Defendants argued that a Court may award vindictory damages for breach of a constitutional right, and this has to be distinguished from compensation pure and simple and from exemplary or punitive damages at Common Law.

Counsel also contended that the sum to be awarded will depend upon the nature of the particular infringement and the circumstances relating to that infringement.

[53] Counsel for the Defendant argued that the extent of the publication of the video on Facebook was limited and that it was only the 1st Claimant's face and body in the nude which could have been seen having sexual intercourse with an unknown male. The face of the male was not shown in the video and there were no distinguishing features on his body; therefore no one could identify the 2nd Claimant from the video.

- [54] Counsel for the Defendants also contends that there is no evidence to prove that the 1st Claimant was harassed, and as a result she had to be given three weeks sick leave.
- [55] Learned Counsel for the Defendants also submitted that the Claimants never indicated that the officers acted out of malice towards them or that the purpose of the dissemination of the sex tape was to embarrass and shame them. Further Police Constable Maxine Henry had reached out to the 1st Claimant via Facebook to explain and apologize about the circumstances relating to the release of the sex video.
- [56] Counsel for the Defendants referred the Court to the case out of Dominica of **Marina Marshall vs Lenisha Augustine & Cressida Raymond**¹³ and the case out of Trinidad & Tobago of **Therese Ho vs Lendl Simmonds**¹⁴.
- [57] Counsel contended that the award of Damages for the 1st Claimant should be in the amount of \$65,000 and an additional award in the sum of \$30,000 as vindictory damages. In relation to the 2nd Claimant Counsel submitted that the award of Damages should be reduced significantly and a sum of \$20,000 should be awarded as compensatory damages and \$10,000 as vindictory damages since the video could not identify him.
- [58] In the case **Therese Ho vs Lendl Simmonds** Justice Frank Seepersaud of the High Court Trinidad and Tobago stated at paragraph 32 of his judgment
- “There can be no circumstance that is more private and confidential than where parties are engaged in consensual sexual activity in private; In such a scenario, it is unlikely to expect that there would be

¹³ DOMHCV 2001/0318

¹⁴ Claim No CV 2014-01949 HCT&T

an express agreement by the parties that their liaisons would be confidential, but in such a circumstance an obligation of confidentiality can and must be implied.

Consequently all photographs and recordings which capture sexual practices conducted in private should only be disseminated where the express consent of all the parties involved has been obtained.

The distribution of sexually explicit images including the uploading of such material unto the Internet, without the consent of the depicted subject cannot be condoned in a civilized society. (My emphasis)

[59] The Court endorses and adopts the aforementioned view by Seepersad. J and states further that the practice of sharing intimate photographs and sexual videos by electronic means, which inevitably causes damages, distress, and embarrassment to the parties involved must be reviewed and brought to a halt by the concerned parties. However this action by the Police in shaming the Claimants is an unspeakable wrong and a shameful misuse of the Crown's power.

I am of the view that alternative means of legal redress are not adequate in the circumstances.

The conduct of the Police officers was occasioned with the deliberate intent of causing embarrassment, distress, and humiliation to the Claimants, and it is therefore necessary to include in the award of compensation an appropriate quantum for Aggravated Damages for publication on the Internet a forum of unquantifiable users.

While the Police officers may have lawfully apprehended the 2nd Claimant they had no authority to search the 2nd Claimant's mobile phone without the appropriate warrant, and in so doing, infringed his constitutional rights to privacy and protection from arbitrary search. The Claimants are also

entitled to Exemplary Damages for the unlawful and unconstitutional acts of the Police in seeking cheap thrills.

[60] **Quantum**

Counsel for the Claimants referred the Court to the case of **Therese Ho vs Lendl Simmons** where the Court in Trinidad & Tobago awarded the sum of TT\$150,00 (equivalent to EC\$65,217.00) which was inclusive of Aggravated Damages.

Counsel submitted that this Award was very low and was based on the limited publication of the nude pictures of the Claimant by the Defendant.

[61] Learned Counsel submitted that the Dominica case of **Marina Marshall vs Lenisha Augustine et al** was more on par with this case at Bar in relation to the publication of the sexually explicit tape . In **Marshall**, an attachment depicting a woman in a sexually explicit pose engaging in sexual activity was superimposed on the Claimant's profile and circulated widely over the Internet and was the topic on one of the Radio Stations in Dominica. The Court considered the Defendants' actions as outrageous and awarded the Claimant damages in the sum of Five hundred and twenty five thousand dollars (\$525,000.00)

[62] In his oral evidence the 2nd Claimant stated that while his face was not identified and only his genitals were visible on the tape, he was identified locally as the male person in the tape and whose genitals were featured in the video.

The uncontroverted evidence from the Claimants is that the video was posted on the worldwide web via "Facebook" and also transmitted on mobile phones.

- [63] The Court is satisfied that having reviewed the totality of the evidence it is appropriate to award both Claimants compensation for the significant embarrassment, anxiety and distress they suffered as a result of the dissemination of their intimate sexually explicit tape.
- [64] In making this award I must note that although Counsel for the Claimants submitted that the 1st Claimant had to be referred to a Psychologist for treatment of the trauma she suffered. There was no evidence before the Court from a registered Psychologist that the publication of the sex video caused anxiety, embarrassment and distress to the 1st Claimant. Such evidence could only be admitted on the basis that it was allowed by the expert opinion rule. It is trite that expert opinion evidence will not be admissible if the subject matter of the opinion is such that a person without instruction or experience in the relevant area of knowledge or human experience would be able to form sound judgment on the matter.
- [65] There was no suggestion in the evidence that the 1st Claimant suffered from any recognised psychiatric disorder. In my view the 1st Claimant's reaction to the publication of the sex tape and the reasonableness of that reaction are matters within ordinary human experience. The Court can reach factual conclusion and make an award for compensatory Damages without reference to a Psychologist.
- [66] For the reasons that I have given above and I must reiterate the Court's strongest and most vociferous condemnation of the egregious actions of the Police officers who were at all material times the agents/ servants of the Crown and bore a close connection to the Defendants. The Attorney General & The Chief of Police are vicariously liable for the Police officers' actions since, their actions fall squarely within the ambit of Section 4 of the Crown Proceedings Act and would have

given rise to a cause of action in Tort against them by the Claimants. I do not consider that they were on a "Frolic of their own", but were acting within the scope of their employment albeit unlawfully.

This Court finds that this is one of the most outrageous, shameful and disgraceful acts of misuse of power by the Police who are the protective and coercive arm of the Crown.

[67] This Court hereby declares that the Claimants' fundamental rights to privacy and property as guaranteed by Section 3, 8 and 9 of the Constitution have been infringed by the named Police officers attached to the Charlestown Police Station when they unlawfully searched, viewed, downloaded, disseminated or cause to be disseminated the Claimants' sex tape, which was the Claimants' private property.

[68] I therefore make an award of Damages to Jovil Williams the 1st Claimant as follows:

(a) General Damages -	\$200,000
(b) Aggravated Damages -	\$100,000
(c) Exemplary Damages -	\$50,000
(d) Special Damages -	\$65.00 – Consultation fee for Dr. Leroy Richardson
	\$29.00 – Medication from Pharmcarre Ltd
Total	\$350,094.00

[69] I therefore make an award of Damages to Jason Campbell the 2nd Claimant as follows:

(a) General Damages -	\$75,000
(b) Aggravated Damages -	\$45,000
(c) Exemplary Damages -	\$30,000

Total **\$150,000.00**

[70] Costs are to be assessed if not agreed in accordance with Rule 65:12 of the CPR.2000.

[71] I thank Counsel on both sides for their assistance and helpful submissions on the matter.

Lorraine Williams

High Court Judge.