

ANTIGUA AND BARBUDA

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

CLAIM NO ANUHCv2011/0109

BETWEEN:

GEORGE WILLIAMS

Claimant

AND

[1] POLICE OFFICER ROLAND CUFFY

[2] POLICE OFFICER CHERYL ALLEN

[3] COMMISSIONER OF POLICE

[4] ATTORNEY GENERAL OF ANTIGUA AND BARBUDA

Defendants

Appearances

Mr John Fuller for the Claimant

Ms Alicia Aska for the defendants

.....
2015: December 14; 21;

2016: January 19; November 16
.....

JUDGMENT

INTRODUCTORY AND BACKGROUND

- [1] **LANNS, J [Ag]:** At issue in this case is whether the Defendants contravened the Claimant's right enshrined in section 5(3) of the Constitution of Antigua and Barbuda by denying the Claimant the opportunity of making a call to his lawyer and communicating with him/her privately.
- [2] The Claimant was on the 17th day of August 2010, at about 2:20pm, arrested by Police Officer Cheryl Allen # 54, on a defective Warrant issued out of the Magistrate's Court in St John's. The Warrant commanded "All of the Peace Officers of the State" to bring the Claimant before the Magistrate's Court sitting in St John's 'forthwith' to answer the Information contained therein.

The 'Information' concerned the alleged failure of the Claimant to comply with the order of court dated the 12th October 2004 requiring him to pay \$75.00 to JOSEPHINE ELOI for maintenance of their male child named "George" born on the 10th October 2006¹. The 'Information' further alleged that the Claimant was now 15 weeks in arrears, in the amount of \$1,125.00. According to the Warrant, "The Complainant prays that a warrant be issued for the arrest of the defendant to show cause why he should not be committed to Her Majesty's Prison for his contempt of court."

- [3] As learned counsel for the Claimant has quite correctly pointed out, the Warrant discloses that it is bad on its face in that it states that the Claimant was in arrears of maintenance of a child born two years after the maintenance order was made. But I remind myself that that is not the case brought by the Claimant, and in any event, I doubt whether peace officers could /would be held responsible for arresting an individual in obedience to a defective warrant issued by a Magistrate.
- [4] The Claimant's case is that upon his arrest, he requested permission to make a telephone call with his cell phone to his lawyer and Officer Allen refused to allow him to do so. He stated that he was taken to St John's Police Station where he again made requests of the police officers at the guard desk for a telephone call to his lawyer, but the officers refused to allow him to make the telephone call. His last request was made specifically to Officer Roland Cuffy who angrily responded "You want phone call? Come for ya phone call." Whereupon Officer Cuffy took him from the holding area at the back of the guard desk to one of the dungeons at the back of the police station and locked him up there. The Claimant said that the dungeon or cell at the back of the police station smelled like a latrine.
- [5] He was released from custody at about 6:30 pm the same day and told to go and pay the maintenance arrears the next day. He was never taken to the Magistrate's Court at any time. He subsequently caused his lawyer to write to the Commissioner of Police concerning unprofessional conduct of Officer Allen, the mistreatment meted out to him, and the breach of his constitutional right, but the Commissioner failed to respond. He prayed for the following reliefs:

¹ On its face, the Warrant is bad by reason that it purports to state that the Claimant Was in arrears of maintenance of a child yet unborn - two years after the maintenance order was made. The date of birth of the child is obviously a mistake, and the name of the child is incomplete. Nothing turns on this.

- (1) A declaration that his constitutional right under section 5(3) of the Constitution of Antigua and Barbuda to consult with and instruct his lawyer after detention by police officers had been infringed by the Defendants
- (2) Damages
- (3) Exemplary damages
- (4) Costs
- (5) Such further or other relief that the Court deems just.

[6] The gist of the case for the Defendants is that the Claimant never made a request to call his lawyer, and in any event he was given an opportunity to make contact with someone outside the police station. They say that the Claimant was released from police custody at approximately 6:30 pm on the 17th August 2010 on certain instructions given to Officer Cadette by one of his Superior Officers.

THE LAW

[7] Section 5 (3) of the Constitution reads as follows:

"Any person who is arrested or detained shall have the right, at any stage and at his own expense, to retain and instruct without delay a legal practitioner of his own choice, and to hold private communication with him."

[8] Following from that provision, it was clearly the right of the Claimant to have access to a lawyer without delay, that is to say, as soon as he was arrested, or as soon as was reasonably practicable, and it was a right that should be recognised by all peace officers, without delay, and in this case, before the peace officers proceeded to transport the Claimant to St John's Police Station and or before they proceeded to lock up the Claimant in an unsanitary cell. It was also clearly the right of the Claimant and the duty of the police officers to take the Claimant before a Magistrate forthwith. But this point is also irrelevant to the issue before the court.

DID THE DEFENDANTS CONTRAVENE THE CLAIMANT'S CONSTITUTIONAL RIGHT UNDER SECTION 5(3) OF THE CONSTITUTION OF ANTIGUA AND BARBUDA?

[9] This issue turns on whether the Claimant did in fact make a request of Officers Cheryl Allen and Roland Cuffy to make a telephone call to his lawyer, and if so was he denied such request? This question in turn depends on the credibility of the witnesses, particularly Claimant and Officers Allen and Cuffy.

[10] For the reasons given below, I find and hold that Officers Cheryl Allen and Roland Cuffy failed in their duty to facilitate the Claimant's request for a telephone call to his lawyer; so that he can have private communication with him or her, and or they failed in their duty to give the Claimant an opportunity of telephoning a lawyer; and such failures amounted to an infringement of the Claimant's section 5 (3) rights under the Constitution.

EVIDENCE OF THE CLAIMANT

[11] The Claimant gave evidence that on the 17th August, 2010, at about 2:20 pm, he was arrested at his workplace by Police Officer Cheryl Allen who told him that she had a warrant for his arrest. to take him before a Magistrate. At the time of his arrest, he requested permission to make a call with his cell phone to his lawyer, but Officer Allen refused to grant such request. She also refused to take him before a Magistrate. Instead, she took him to the St John's Police Station where he was placed behind the guard desk for a short period. At the Police Station, he asked Officer Cuffy to allow him to make a call and he too refused. First, Officer Cuffy told the Claimant that he could only get a call after 3:00 pm. The significance of this time frame, asserted the Claimant is that Officer Cuffy would have finished his duties for the day, and the maintenance cashier at the Magistrate's Court would have been closed. When he continued to protest his being brought to the St John's Police Station and to request a phone call to his lawyer, Officer Cuffy proceeded to transfer him from behind the guard desk to a holding cell in the yard at the back of the Police Station. The Claimant described it as 'one of the dungeons' .He asserted that throughout his detention, he was never allowed a telephone call to his lawyer. He was released at about 6:30 pm. without being taken before a Magistrate, and advised to settle the arrears of maintenance the following day. He avers that he spent at least four hours under arrest from about 2:20 pm to 6:30 pm.

[12] During cross-examination by Ms Aska, the Claimant maintained that he asked Officers Allen and Cuffy to allow him to make a call to his lawyer. It was put to him that he requested a call to his boss whereupon the Claimant countered that this could not be true because his boss was overseas at the time, so it was impossible for him to call his boss. He also denied that Officer Cadette met him behind the guard desk when he reported to duty at 3pm, or that he had a conversation with him. He says that when Officer Cadette reported to duty, he (the Claimant) was already transferred to the cell in the yard of the Police Station. He denied that he asked Officer Cadette to make a call for him. He also denied giving Officer Cadette a telephone number for Mr. Samir Doumith, (one of the owners of the Claimant's workplace, and the brother of his boss) for the purpose of making a telephone call to him on his (Claimant's) behalf. The Claimant said he could not have given Officer Cadette a telephone number because he did not know the number offhand, and could not have made contact with Mr Doumith or anyone without the help of his cell phone which had contact numbers therein, but which was confiscated by the police. He said that it was not true that he was released as a result of any telephone call he caused to be made on his behalf to Mr Doumith.

That was the case for the Claimant.

OFFICER CHERYL ALLEN'S EVIDENCE

[13] Officer Allen gave evidence that on the 11th August 2010, she arrested the Claimant on a Warrant issued on the 16th August 2010 by the District Magistrate. Officer Allen denied that the Claimant indicated at the time of his arrest that he wanted to call his attorney. She stated that persons are not usually allowed to make calls during an arrest. However, if requested, they would be allowed to make a call to their attorney once they arrive at the police station. The Claimant would not have been denied that right, Officer Allen stated. She stated that the Claimant was correctly placed in the cell in the yard because it is a holding cell for persons who have been arrested for questioning, or waiting to go before the Magistrate, or until they receive bail. Officer Allen deposed that at the time of the arrest, it was almost 3:00pm and the Magistrate would have already left for the day, hence the reason why the Claimant was taken to the St John's Police Station to be taken before the Magistrate the following morning.

- [14] Officer Allen was subject to rigorous cross examination by Mr Fuller. During cross examination, Officer Allen maintained that the Claimant never asked to make a telephone call to his lawyer. She admitted that she arrested the Claimant at this workplace. Asked if anyone was with her, Officer Allen replied that she was accompanied by a driver and two other police officers.
- [15] Asked whether she was aware that the information on the Warrant was in relation to a child born after the maintenance order was made, the officer replied that she was not aware because she did not read the Warrant. Asked further whether she knew what was in the Warrant, Officer Allen said she knew that it was a Warrant in respect of maintenance. As I have said, in this case as pleaded, nothing turns on the issue of the defective Warrant.
- [16] Officer Allen admitted that she took the Claimant's cell phone away from him. She admitted too that she did not attend at the Magistrate Court with the Claimant before she took him to the Police Station. The following exchange then took place.

BY MR FULLER

Sugg: You have stated that persons are not allowed to make phone calls during their arrest

A: When they reach at the station then they can make a phone call. They are not allowed to make phone calls when they are arrested.

Sugg: The law is that at any stage a person is allowed to make phone call

A: I did not realize that.

Q: Why did you take his phone away from him?

A: That is the procedure when arrested

Q: Did you realize that you were supposed to take him to a Magistrate immediately?

A: The court was closed at that time.

Put: The Defendant requested a telephone call to his lawyer and you refused

A: No.

BY THE COURT

Q: Did the Claimant upon being arrested at his workplace request that he make a telephone call to his Attorney with his cell phone?

A: No.

B: Did he not make such request upon arriving at the police station?

A: No. If he did he would have been allowed to make a call.

Q: Did you take the Claimant to the Magistrate's Court upon arresting him?

A: No. I took him straight to the Police Station.

Q: Did you try to find out if the Magistrate was in office?

A: No.

OFFICER CUFFY'S EVIDENCE

[17] Officer Cuffy's evidence was that the Claimant did not indicate that he wanted to make a phone call to his attorney; nor did he request legal representation. He stated that he told the Claimant to take a seat behind the guard desk but he refused to sit, and kept standing and shouting that he should not be there and he needed to make a telephone call. After he started to misbehave, he was removed from the guard desk and placed in one of the holding cells in the yard and he was released from custody at about 6:30pm on the instructions of the Assistant Commissioner Samuel. Officer Cuffy admitted that the Claimant was never taken before a Magistrate.

[18] Under cross examination, Officer Cuffy maintained that the Claimant did not say he wanted to make a phone call to his lawyer. He said he did not have any direct knowledge as to whether the Claimant requested of Officer Allen and/or Officer Duberry to make a phone call. He acknowledged that the Claimant repeated several times that he wanted to make a phone call. He stated that the Claimant did not say to whom he wanted to make the call, and he did not ask him. He said he knew that the Claimant was to be taken to the Magistrate's Court but the Magistrate's Court closed at 2:00pm that day. Officer Cuffy said he made no enquiries as to whether the

Magistrate's Court was closed; nor did he try to find out if the Magistrate was in office. He stated that he knew that the Claimant was entitled to talk to his lawyer at any stage.

[19] Officer Cuffy was reexamined by Ms Aska, and during the course of re-examination, the following exchange took place:

BY MS ASKA

Sugg: You said you removed him [Claimant] from behind the guard desk

A: Yes. Because he was misbehaving, shouting "I am not supposed to be here, officer. I need a phone call."

Q: How long you had him behind the guard desk?

A: As soon as he came in he was placed behind the desk in the guard room, and he said he did not want to sit; he wanted to stand.

Q: The Claimant said he was placed in a dungeon; do you have dungeons at the Police Station.

A: No.

Q: Where was he placed?

A: He was placed in a holding cell in the yard of the police station. There are four holding cells in the yard.

Q When the Claimant indicated that he wanted to make a phone call what is the approximate time he said that?

A He came at 2:15 pm and after he was searched and his property taken away from him; then he started to misbehave.

Q Would you have given him a phone call on that day?.

A: I would have allowed him if he had kept quiet.

OFFICER CADETTE'S EVIDENCE

[20] Officer Cadette gave evidence that he reported to duty at 3:00pm on the 17th August 2010, and saw the Claimant behind the guard desk. He had a conversation with him during which, the Claimant requested a telephone call. The Claimant gave him the number to call. It was the number of a man who he believed to be a friend of the Claimant to tell him that the Claimant was arrested. He stated that the Claimant did not make any request to call an attorney or anyone

else. After making the call on behalf of the Claimant, he (officer Cadette) received a call from Assistant Commissioner Samuel, and as a result of his conversation with the Assistant Commissioner, he released the Claimant from custody.

[21] Under cross examination, Officer Cadette stated that he started duty at 3:00 pm on the 17th August 2010. He maintained that the Claimant requested a phone call and he made that call for him. The Claimant was not allowed to make the call. He asked the Claimant whether it was to his lawyer or to someone else, whereupon the Claimant gave him a number and he made the call. He called the number and he told the gentleman who answered that the Claimant was in custody. He did not know who the gentleman was, but the Claimant told him it was not a lawyer that he wanted to call. Asked whether he knew what the word 'forthwith' meant, Officer Cadette replied that it could mean 'immediately' --'now for now'. He did not see the Warrant that brought the Claimant to the Police Station. He did not know that the Claimant was to be taken before the Magistrate forthwith.

[22] The Defendants called two other witnesses in the persons of Samir Doumith and Wilhelm Samuel, but in my view, they add nothing to the issue in this case, except that Mr Doumith confirmed that he received a call from an unnamed person who said he was a police officer who told him that the Claimant was arrested.

SKELETON ARGUMENTS/ SUBMISSIONS

[23] The skeleton arguments² filed on behalf of the Claimant were simply a repetition of the facts of the Claimant's case. In his written post hearing submissions, Mr Fuller pointed out that both Officer Allen and Officer Cuffy admit that the Claimant requested a phone call, but after requesting the call several times, the Claimant was placed in what is known as 'the dungeon' having been transferred thereto from behind the guard desk. He also pointed out that the Claimant was never taken to the Magistrate as commanded by the Warrant. Counsel submitted that the defence that the Claimant did not ask to call his lawyer cannot be accepted having regard to the evidence of both Officer Allen and Officer Cuffy that he requested to make a phone call Counsel urged the court to find for the Claimant.

² Filed in December 2013

[24] In her skeleton arguments,³ Ms Aska on behalf of the Defendants also set out briefly the pleaded case of the Claimant and the Defendants. Counsel also identified the main issue for the Court's consideration i.e. whether the Defendants contravened the Claimant's right under Section 5(3) of the Constitution. This determination, counsel quite correctly submitted depended on whether the Claimant had made a request to contact his attorney. After analysing the affidavit evidence, which was before the court at that point and time, counsel concluded that the evidence clearly establish that the Defendants did not contravene the Claimant's constitutional rights under section 5 (3) of the Constitution, as the Claimant was never denied the opportunity to call an Attorney. The court did not have the benefit of counsel's post hearing /closing submissions, as she failed to comply with the order of the court requiring the parties to file and serve same within 14 days of the date of the completion of the trial. The trial concluded on 21st December 2015. So the submissions were to be filed not later than the 5th January 2016. On the 14th November 2016 after the court had completed the judgment, and had requested of the clerk of court that she inform the parties that the judgment would be delivered on the 16th November 2016, the court was informed that counsel for the Defendants had on the said day filed the closing submissions on behalf of the Defendants. The court declined to pay any regard to the submissions which the Defendants filed at that late stage, by reason that to do so, would have potentially cause further delay in delivery of the judgment.

DISCUSSION AND DECISION

[25] The right to counsel is one of the most familiar, and one of the most important rights afforded in the Constitution of Antigua and Barbuda. Pursuant to section 5(3) of the Constitution, upon arrest or detention, any person has a right to retain and instruct counsel without delay. What does "without delay" mean?

[26] The term 'without delay' when referring to a person's right to retain and instruct counsel does not necessarily translate into an absolute right to speak with a lawyer the moment after he or she is arrested or detained. The courts have held that it is reasonable for the police officer to delay a person's right to speak with a lawyer for the purpose to search the arrestee/detainee for weapons to ensure the immediate safety of the officers and others, or to preserve evidence. Also, if there is no telephone available when the arrest is made, this may temporarily delay the arrestee's right to

³ Filed in November 2012

speaking with a lawyer. However, as soon as a telephone is available, the police must provide the arrestee with an opportunity to speak with a lawyer.⁴

[27] In this case, the Claimant said he indicated to Officers Allen and Cuffy that he wished to make a telephone call to his lawyer and he was denied. I believe him. He had his cell phone with him at the time of his arrest. It was taken away from him. Case law has held that the opportunity to contact counsel does not simply arise at the Police Station. In certain cases, where a phone is immediately available upon arrest, and there are no compelling reasons to delay access, police must allow the arrestee/detainee to use the phone.

[28] As I have said, the Claimant was not allowed to use his cell phone at the time of his arrest. None was made available to him at the Police Station, to enable him to telephone his lawyer and speak privately with him or her. The police were under a duty to allow the Claimant to make a telephone call to his lawyer either using his own cell phone or a phone made available to him by the police at the Police Station, together with a phone book/telephone directory to try to locate his lawyer to assist him. Removing the Claimant from the holding area behind the guard desk and locking him up in an unsanitary holding cell at the back of the police station does not afford the Claimant an opportunity to make a telephone call to his lawyer; nor does it afford him an opportunity to answer the information contained in the Warrant; or to show cause why he should not be committed to prison for his alleged contempt. His lawyer would have likely assisted him in answering the questions which the Magistrate would likely have asked.

[29] Officer Cadette's evidence is that when he took up duty at 3:00pm, he had a conversation with the Claimant as to the reason why he was arrested. The Claimant denies this. He said that he would have been in the cell in the police station yard when Officer Cadette assumed duties. This bit of evidence is consistent with Officer Cuffy's affidavit evidence at paragraph 7 thereof, where he stated that the Claimant was 'quickly moved to the holding area at the back of the yard'. Curiously under cross examination, Officer Cuffy stated that the Claimant came to the Police Station about 2:15 pm.. The Claimant stated that he was never taken from the cell until about 4:00pm. So the inescapable inference is that Officer Cadette was not speaking the truth when he said that he met

⁴ See *Rv Manninen* [1987] S.C.R. 1233, which interpreted section 10 of the Canadian Charter of Rights and Freedoms which is similar in part to section 5 (3) of the Constitution of Antigua and Barbuda.

the Claimant behind the guard desk when he took up duties, and had a conversation with him as to why he was there. Indeed, I find it mind boggling that Officer Cadette would take up duty without being briefed by Officer whom he was relieving; or without checking the Report and Station Diary for the information which he sought and purportedly elicited from the Claimant. In any event, Officer Cadette ought to have known that he must refrain from eliciting information from an arrestee or detainee until the arrestee/detainee has spoken to a lawyer. Officer Cuffy stated that he would have allowed the Claimant to **make a call**, but for the allegation that the Claimant was misbehaving by shouting that he should not have been there. Should he have been there?

[30] The Warrant directed the peace officers to bring the Claimant before the Magistrate forthwith. What does 'forthwith' mean. Officer Cadette was of the view that it means 'immediately' --'now for now'. Counsel Mr Fuller seemed to agree with him as he did not doubt him, or offered any comment.

[31] The meaning of the word 'forthwith' was considered in the Privy Council case of **Abdul Wahab Mohammed Sameen v. Palliyaguruge Vithanage Sumanawathie Abeyewickrema and others**⁵

"In Their Lordship's opinion, it is not right to construe the word 'forthwith' as meaning on the same day. ... Their Lordships do not propose to attempt to define 'forthwith' The use of the word connotes that the notice must be filed as soon as reasonably practicable, but what is practicable, depends on the circumstances of each case."

[32] In the particular context/circumstances of this case, I would say that the Claimant ought to have been taken before a Magistrate 'as soon as reasonably practicable'

[33] To date, in disobedience to the Warrant issued by the District Magistrate, and apparently by some sort of machination, the Claimant has not been taken before a Magistrate. The reason given by both Officers Allen and Cuffy was to the effect that the Magistrate's Court was closed and the

⁵ Civil Appeal No 48 of 1961 (Ceylon), page 4

Magistrate was unavailable at the time This is how Officer Allen puts it in her Affidavit sworn to and filed on 17th February 2012:

'11. ... At the time of the Claimant's arrest, it was almost 3:00pm and the Magistrate would have already left for the day; therefore, the Claimant would have to be taken before the Magistrate at the most reasonable opportunity which would have been the following day."

[34] This bit of evidence is most telling. It is readily apparent from the language used that Officer Allen knew that the Magistrate would be unavailable to hear the Claimant on that day, given the time of the arrest. So the intention from the beginning seem to have been to detain the Claimant at the police station until next day. Indeed, she left him there at the police station and went off duty, without allowing him a telephone call to his lawyer even though she testified that arrestees are allowed to make a call to their lawyer upon arrival at the police station.

[35] Officer Allen told the court that she did not call the Magistrate's Court to find out if the Magistrate was in office. She also told the court that she did not drive the Claimant to the Magistrate's court upon his arrest; yet, when asked by Mr Fuller in cross examination if she was aware that the Claimant was to be taken to the Magistrate's court, Officer Allen replied that the court was closed at that time.

[36] Officer Cuffy on the other hand, said the Claimant was brought to the Police station at about 2:15 pm. Clearly this time frame is inconsistent with Officer Allen's evidence that it was almost 3:00pm when the Claimant was arrested. It is also inconsistent with the Claimant's evidence that he was arrested about 2:20 pm on the day in question. Officer Cuffy said he knew that the Claimant was to be taken to the Magistrate's court but the Magistrate's court closed at 2:00pm that day.

[37] Notably, officer Cuffy acknowledged that he knew that the Claimant was entitled to talk to his lawyer at any stage. It must be remembered that he also stated that the Claimant said he needed to make phone call. It was the evidence of Officer Allen and Cuffy that arrestees are permitted to call and speak with their lawyers, but if they needed to call anyone else, the police

would have to make the call for them. Why else then would the Claimant ask to make a telephone call then if not to his lawyer. The court rejects the evidence of Officers Allen, and Cuffy that the Claimant did not request to make a telephone call to his lawyer. Officer Cuffy in particular must be taken to have known that the Claimant was entitled to telephone his lawyer, but he refused to allow him to do so. In Officer Cuffy's own words, "I would have allowed him [a call] if he had kept quiet." Allowed him a call to whom? According to Officer Cuffy and Allen, he could only be allowed to call his lawyer. It was his right to call his lawyer, and that right is not conditional upon the Claimant's choosing to stand, when told to sit; or upon the Claimant making repeated requests to make a phone call to his lawyer. I find as a fact that the Claimant requested of Officers Allen and Cuffy a telephone call to his lawyer and they both denied him such request.

[38] In my opinion, taking the Claimant to a cell with an offensive odor in the back yard of the police station, without his cell phone, because he was adamant that he should not have been there, (at the police station) and because he kept on pleading that he needed to make a call does not afford the Claimant an opportunity to call a lawyer to speak with him privately. This is totally unreasonable and unacceptable.

[39] Taking the evidence as a whole, (on the issue before the court), and having observed the demeanor of the witnesses, especially Officer Cuffy who prevaricated, had this off-putting manner of smiling during his testimony), I accept as true, the evidence of the Claimant in preference to that of the Defendants wherever there is conflict on the stated issue, because the Claimant seemed more honest, forthright, consistent, frank and positive in his answers; accordingly I find as a fact and that the Claimant did request of Officers Allen and Cuffy a telephone call to his lawyer, and they refused him such call.

[40] In my judgment, Officers Cheryl Allen and Roland Cuffy failed in their duty to facilitate the Claimant's request for a telephone call to his lawyer; so that he can have private communication with him or her; and/or they failed in their duty to give the Claimant an opportunity of telephoning his lawyer; and such failure amounted to an infringement of the Claimant's section 5 (3) rights under the Constitution.

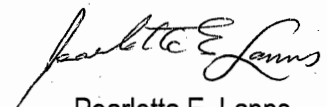
DAMAGES

[41] The Claimant is entitled to damages for breach of his constitutional right under section 5 (3) of the Constitution. The quantum is left to be determined. Counsel for the parties have not assisted the court with any case authority whatsoever in this case.. They had previously filed skeleton arguments way back in 2012 by order of Remy J. No authorities were cited therein. This Court, at the end of the trial on 21st December 2015, ordered the parties to file post hearing submissions, but only counsel for the Claimant complied; however, counsel did not cite any authorities to assist the court. As regards the issue of quantum, the extent of Mr Fuller's assistance was to suggest an award of damages "in the lower five figure amount". This suggestion is not very helpful to the court at all. What is required for the court's assistance and guidance is for the parties to canvass the issue of damages citing/presenting firstly, local case authorities, if any, and then cases further afield if necessary.

CONCLUSION

[42] In the foregoing premises, I give judgment for the Claimant in an amount to be decided by the court on assessment.

[43] Counsel for the parties are required to file and serve submissions and authorities on the issue of quantum within 21 days of the date of delivery of receipt of a sealed copy of this judgment, unless a consent order as to quantum of damages is sooner filed.


Pearletta E. Lanns
High Court Judge [Ag]