

JAMAICA

IN THE COURT OF APPEAL

**BEFORE: THE HON MR JUSTICE F WILLIAMS JA
THE HON MRS JUSTICE V HARRIS JA
THE HON MR JUSTICE LAING JA (AG)**

SUPREME COURT CIVIL APPEAL NO COA2021CV00012

**BETWEEN THE ATTORNEY GENERAL OF JAMAICA APPELLANT
AND CLIFFORD JAMES RESPONDENT**

**Miss Kamau Ruddock instructed by the Director of State Proceedings for the
appellant**

Anwar Wright instructed by Wright Legal for the respondent

31 January and 3 March 2023

F WILLIAMS JA

[1] I have read in draft the judgment of Laing JA (Ag). I agree with his reasoning and conclusion and have nothing to add.

HARRIS JA

[2] I, too, have read the judgment of my learned brother Laing J (Ag). I agree with his reasoning and conclusion and have nothing useful to add.

LAING JA (AG)

[3] The appellant (being the defendant in the court below), appealed to the court against the judgment of K Anderson J (‘the learned judge’) delivered on 18 December 2020 following a trial (‘the judgment’).

[4] The details of the order appealed are:

- “1) The claimant is awarded general damages for false imprisonment, in the sum of one million, five hundred thousand dollars (\$1,500,000.00), with interest at the rate of 3% per annum, from February 29, 2016, to the date of judgment.
- 2) The claimant is awarded general damages for the breach of his constitutional right to protection from inhuman and degrading treatment, in the sum of three million dollars (\$3,000,000.00) with interest at the rate of 3% per annum, from February 29, 2016, to the date of judgment.
- 3) The Claimant is awarded vindictory damages for the breach of his constitutional right to protection from inhuman and degrading treatment, in the sum of four hundred and fifty thousand dollars (\$450,000.00), with interest at the rate of 3% per annum, from February 29, 2016, to the date of judgment.
- 4) ...”

The background

[5] The judgment was the result of a claim by the respondent in the court below for false imprisonment, aggravated damages, and vindictory damages for the violation of his constitutional rights to liberty, equality of treatment, non-discrimination, and protection from cruel and inhuman treatment.

[6] In his amended particulars of claim, the respondent averred that on 15 February 2014, at approximately 3:30 am, he was attacked by a security guard with a machete and suffered chop wounds which caused him to be hospitalised at the Kingston Public Hospital. While there, he was visited by police officers who handcuffed his right hand to the hospital bed and placed him under police guard. On 18 February 2014, he was discharged from the hospital and taken into custody at the Half-Way-Tree Police Station. There he spent seven days, during which he was referred to as a homosexual by the police and beaten by other prisoners who accused him of being “gay”. He was rescued

by police officers who placed him in another cell. He remained locked up at the police station until 25 February 2014, when he was released without being charged after no identification parade was held because the complainant failed to attend.

[7] The defence, as pleaded, was that the respondent and another man unlawfully entered premises located at Kings Creek Apartments at 9 Kingsway Avenue at approximately 3:30 am. The two men were armed and approached the security guard in a threatening manner. In fear for his life, the security guard grabbed his machete and chopped at them to defend himself from the impending attack.

[8] There was a struggle between the respondent and the security guard during which the respondent sustained injuries, and the second man ran away. The respondent also broke off a piece of board from the apartment fence and challenged the security guard. Then he escaped over the fence.

[9] It was admitted in the defence that the respondent was placed in custody but it was asserted that the police had reasonable and probable cause to do so based on the report received from the security guard, and the respondent was released after the security guard failed to identify him on the identification parade.

Grounds of appeal

[10] In summary, the appellant has challenged the quantum of damages awarded to the respondent under the three heads of damages in the amended notice and grounds of appeal filed on 5 March 2021. The appellant relied on five grounds of appeal as follows:

- “1. The award of the learned judge in respect of general damages for false imprisonment is inordinately excessive and no judge properly applying their mind to the evidence could reasonably have made such an award.
2. The award of the learned judge in respect of general damages for the breach of the Respondent’s constitutional right to protection from inhuman and degrading treatment is inordinately excessive and no

judge properly applying their mind to the evidence could reasonably have made such an award.

3. The learned judge erred in finding that the Respondent was entitled to vindictory damages for the breach of his constitutional right to protection from inhuman and degrading treatment in circumstances where the award for general damages for the breach of his constitutional right to protection from inhuman and degrading treatment was already made to compensate for any breach of his constitutional right.
4. The learned judge erred in making an award for both vindictory damages and damages for breach of constitutional right which are effectively the same award thereby compensating the Respondent twice, in circumstances where he did not have before him a claim for constitutional redress under Section 19 of the Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act, 2011.
5. The learned judge erred in awarding interest on the award of vindictory damages and general damages for breach of constitutional rights.”

Ground 1

The submissions

[11] Miss Ruddock, in arguing that the award for false imprisonment was inordinately excessive, relied on two cases. The first was **Steve Oddman and anor v The Attorney General of Jamaica and Sergeant Carwood** [2016] JMSC Civ 166, a decision of the learned judge delivered on 24 June 2016 in which he awarded the sum of \$250,000.00 for 10 days’ false imprisonment. The Consumer Price Index (‘CPI’) on that date was 88.5 and, updated to December 2020, would amount to \$327,683.62.

[12] The second was the case of **Wilson (Rayon) and Hassock (Howard) v The Attorney General of Jamaica and others** [Consolidated Claims] (unreported), Supreme Court Jamaica, Claim No 2006 HCV 3368, judgment delivered 18 May 2011 (**Wilson**) in which Mr Hassock was awarded the sum of \$350,000.00 by a judge of the

Supreme Court on 18 May 2011 for seven days' false imprisonment. The CPI on that date was 65.5, and this award, updated to December 2020, would amount to \$619,847.33.

[13] On the strength of these two cases, it was submitted that the sum of \$600,000.00 is a reasonable award for the 11 days of detention experienced by the respondent.

[14] Mr Wright, for the respondent, commended to the court the pronouncement of Lord Justice Greer in the case of **Flint v Lovell** [1934] All ER Rep 200, in which he referred to the general principle that the appellate court should be reluctant to interfere with an award of damages in the lower court. Mr Wright submitted that this principle has been reaffirmed by this court in a number of cases, including **Jamalco (Clarendon Alumina Works) v Lunette Dennie** [2014] JMCA Civ 29 and **Stephen Clarke v Olga James-Reid** (unreported), Court of Appeal, Jamaica, Supreme Court Civil Appeal No 119/2007, judgment delivered 16 May 2008, both of which were referred to in **The Attorney General v Peter Badoo** [2020] JMCA Civ 10.

[15] In advancing the position that the award of general damages for false imprisonment by the learned judge was not excessive, counsel placed heavy reliance on the case of **Devon White v Lenworth Cammock and the Attorney General** (unreported) Supreme Court, Jamaica, Claim No. 2006 HCV 787, judgment delivered 2 April 2009 and in particular pages 13 and 14 where Straw J (as she then was), in her usual meticulous style, examined the range of damages awarded for false imprisonment in nine cases. Straw J agreed with the application of the reducing scale approach which was utilised by Mangatal J in **Maxwell Russell v The Attorney General et al** (unreported) Supreme Court, Jamaica, Claim No 2006 HCV 4024, judgment delivered 18 January 2008 ('**Russell**') and made an award of \$90,000.00 for the first day and \$50,000.00 per day for the next 29 days which, if adjusted using the CPI for December 2020, (the month of delivery of the judgment) updates to \$184,398.50 for the first day and \$102,443.61 for each of the subsequent 29 days.

[16] Mr Wright also commended the case of **The Attorney General v Peter Bandoo (Bandoo)** to us, in which this court determined that on a claim for false imprisonment with aggravating factors, for a period of 23 days, a first day figure of \$250,000.00 and \$180,000.00 per day for the additional 22 days of detention resulting in an award of \$4,210,000.00, was reasonable in the circumstances.

[17] It was, therefore, submitted on the strength of the cases highlighted, that the learned judge did not vary from the accepted approach, and this would not amount to an erroneous assessment of damages so as to render the award for false imprisonment excessive, and which would invoke this court's jurisdiction to interfere with it.

Analysis

[18] The starting point of the analysis of the submissions on this ground is equally applicable to the approach to the other grounds. In exercising its appellate jurisdiction, this court will be slow to interfere with the award of damages made by the learned judge and will only do so if it is determined that certain specific circumstances are met in accordance with the authorities referred to below. In that regard, the case of **Flint v Lovell** commended to us by Mr Wright is apposite and in particular, the observations of Lord Justice Greer at page 202:

"But though the established rules with regard to appeals in cases tried with juries do not apply to appeals from the decisions of judges [trying] cases without the assistance of a jury, I think it right to say that this court will be disinclined to reverse the finding of a trial judge as to the amount of the damages merely because they think that if they had tried the case in the first instance they would have given a lesser sum.

To justify reversing the trial judge on the question of the amount of damages it will be necessary that this court should be convinced either that the judge acted on some wrong principle of law, or that the amount awarded was so extremely high or so very small as to make it, in the judgment of this court, an entirely erroneous estimate of the damages to which the plaintiff is entitled. The result is that the appeal will be dismissed, with costs."

[19] As Mr Wright rightly submitted, this principle has been reaffirmed by this court in a number of cases. It is not necessary to recite the various authorities and I will simply rely on paras. [74]-[76] of the judgment of F Williams JA in **Bando**, which clearly make the point as follows:

“[74] An appropriate consideration with which to commence this discussion is to be found in the dictum of Phillips JA, in the case of **Jamalco (Clarendon Alumina Works) v Lunette Dennie** [2014] JMCA Civ 29. At paragraph [60] of that case, the learned judge of appeal distilled from the discussion the principle that:

‘(1) The Court of Appeal is hesitant to interfere with an award of damages made in the lower court and will only do so in specific circumstances.’

[75] That principle is also reflected in **Stephen Clarke v Olga James-Reid** (unreported), Court of Appeal, Jamaica, Supreme Court Civil Appeal No 119/2007, judgment delivered 16 May 2008 (cited by the appellant). Harrison JA, at page 8 of the judgment, made the following observation:

‘We commence with the presumption that the decision on quantum made by the trial judge is a correct one. For the Appellate Court to vary the assessment of the trial judge it must be satisfied that the judge made a ‘wholly erroneous estimate of the damage’. This means that the damage has varied too widely from the maximum or minimum figures awarded in similar cases by the Courts and therefore the Court of Appeal must intervene to make the required adjustment to achieve a reasonable level of uniformity. The exercise of looking at decided cases with the necessary adjustments, having regard to inflation and any special features of the injury or other assessable factors of the particular case, is directed at achieving this uniformity.’

[76] Thus, to justify any interference with the quantum of damages awarded below, it must be demonstrated that there has been a completely wrong sum or erroneous estimate of damages having regard to awards in cases of a similar nature.”

[20] In determining the amount of damages for false imprisonment, the learned judge relied on two cases. The first is **Russell** and the second is **Jerry Foster v Attorney General and anor** [2017] JMSC Civ 53 (**Foster**). In **Russell**, the claimant Mr Russell was shot in the back and taken to the hospital, where he was handcuffed to his bed under police guard, in full view of patients and visitors which caused him embarrassment. He was subsequently removed from the hospital and placed in a jail cell where he was beaten by other prisoners. The learned judge noted that the court found that Mr Russell had suffered "quite a degree of humiliation, indignity, injury to his feelings, distress, depression and great discomfort". Mr Russell received an award of \$75,000.00 for the first day and a total sum of \$515,000.00 for false imprisonment for the period of 12 days. The learned judge indicated that these figures updated to \$175,437.64 and \$1,204,671.77 respectively.

[21] In **Foster**, the claimant Mr Foster was falsely imprisoned for 14 days, eight of which were spent in the hospital under police guard handcuffed to the bed. He was released after he was placed on an identification parade and was not pointed out. The court awarded him \$150,000.00 for the first day and \$80,000.00 for each of the next 13 days which the learned judge found updated to \$174,700.00 and \$93,175.00 respectively.

[22] I understand the learned judge's attraction to these cases having regard to the similarity of their facts with the circumstances suffered by the respondent.

[23] The court inquired of Miss Ruddock as to whether there were any compelling reasons why we should accept the cases of **Oddman** and **Wilson**, which she relied on as being more appropriate than those chosen by the learned judge or as being more appropriate than the numerous other cases which were commended to the court by Mr Wright. I did not find her response compelling, especially having regard to the fact that **Wilson** was decided in 2011.

Conclusion in respect of ground 1

[24] There have been numerous cases of false imprisonment in this jurisdiction, and this has resulted in a relatively wide range of awards. I found favour with the submissions of Mr Wright on this ground. He presented to the court numerous cases, some of which, although relevant, I did not find it necessary to specifically mention in this judgment. These cases, including the case of **Badoo** (which I acknowledge featured aggravating factors), demonstrate conclusively that the award of \$1,500,000.00 made by the learned judge for false imprisonment is not excessive, and the interference of the court with this award would be without any legal basis. Accordingly, there is no merit in ground 1.

Ground 2

The submissions

[25] Miss Ruddock submitted that the primary goal of constitutional damages is compensation, and being public law damages they serve the three functions of compensation, vindication, and deterrence. Counsel relied on para. 38 of the judgment in the case of **Seepersad v The Attorney General of Trinidad and Tobago** and **Panchoo v Same** [2013] 1 AC 659 (**Seepersad**) which was quoted by Hibbert J in the case of **Patrick Whitely v The Attorney General** [2016] JMFC Full 6, where it was stated that there is no constitutional right to damages for breach of an applicant's constitutional rights. Although that statement referred to a breach under section 14 of the Trinidad and Tobago Constitution, counsel submitted that the principle applied to the question of redress for breach of constitutional rights generally.

[26] Miss Ruddock also relied on the case of **The Attorney General v Ramanoop** [2005] 2 WLR 1324 (**Ramanoop**) at para. 19 in which Lord Nichols stated that the nature of constitutional damages is designed "... to reflect the sense of public outrage, emphasize the importance of the constitutional right and the gravity of the breach and deter further breaches...". Counsel posited that having regard to this principle the sum of \$3,000,000.00 awarded as general damages for breach of the respondent's constitutional right to protection from inhumane and degrading treatment is excessive and that a more reasonable sum is \$500,000.00.

[27] Counsel also submitted that the learned judge erred in considering the case of **Doris Fuller (Administratrix Estate Agana Barrett deceased) v The Attorney General** (unreported), Court of Appeal, Jamaica, Supreme Court Civil Appeal No 91/1995 judgment delivered 16 October 1998 ('**Agana Barrett**') as a basis for arriving at the sum of \$3,000,000.00 because the facts in that case are not comparable in the least with the respondent's case. In that case, the deceased was one of 18 men imprisoned in a tiny cell in the Constant Spring Police lockup, which resulted in his death, whereas the harm suffered by the respondent stemmed from what were considered by him to be insults and derogatory slurs.

[28] Mr Wright, in response, argued that the learned judge did not equate the circumstances of the respondent to that suffered by the person imprisoned in **Agana Barrett**. Counsel argued that this is evidenced by the fact that the learned judge calculated the award in **Agana Barrett** to be an updated figure of \$5,716,577.54 but significantly discounted that figure and only awarded \$3,000,000.00 to the respondent.

[29] Mr Wright submitted that the figure awarded by the learned judge was reasonable in the circumstances. Counsel also noted that in the case of **Industrial Chemicals Co (Jamaica) Ltd v Ellis** 35 WIR 303, the Privy Council held that where there is evidence before a judge upon which he could have come to the conclusion he did, the Court of Appeal should not interfere unless it can be shown that he was clearly wrong. It was further submitted that there was no other remedy at law that could serve to adequately compensate the respondent for the inhumane treatment meted out to him and the learned judge was correct in awarding general damages in the quantum he found to be appropriate.

Analysis

[30] The learned judge expressly indicated at paras. [63] - [65] that he would not adjudge the appellant liable for damages for the alleged violation of the respondent's constitutional right to liberty. He stated that the law of tort adequately protected the respondent in that respect, and that is why he would make an award of damages for false imprisonment in favour of the respondent. The learned judge at para. [65] stated as follows:

“[65] There is nothing outrageous about the way in which the loss of the claimant's liberty came about, that would serve to justify an award being made to the claimant, arising from the alleged violation of the claimant's constitutional right to liberty.”

[31] The learned judge also concluded that the respondent's claim for damages for violation of his constitutional right to equality of treatment or non-discrimination was without any merit.

[32] In examining the respondent's complaint as to the various acts which he alleged resulted in a breach of his right to protection from cruel and inhumane treatment, the learned judge accepted at para. [111] that there was one particular aspect of the treatment and/or conduct meted out to the respondent by the police personnel which constitutes inhuman treatment. The learned judge indicated that he was unable to accept that any other aspects, either alleged or advanced in closing submissions by the respondent's counsel, amounted to such a breach. The conduct he found to constitute a breach of the respondent's right to protection from cruel and inhumane treatment was based on his acceptance of the uncontradicted evidence that the respondent was ridiculed by police personnel on the basis that he was deemed by them to be a homosexual.

[33] The learned judge accepted that the respondent did not give any evidence to confirm or deny whether he was a homosexual. However, the learned judge concluded that that was immaterial. At para. [104] he opined as follows:

“[104] To subject someone to ridicule, or dislike by anyone else, or to disclose someone's personal, sexual orientation, so

as to expose someone to the likelihood of ridicule, in circumstances where it is wholly unnecessary, to do so, as a police officer, is to my mind, inhumane. It is inhumane because it is significantly worse than anything which can properly be considered as even, barely decent. In other words, such treatment was so bad, that it would only serve to outrage standards of decency. See paragraph 30 of the Privy Council's judgment in **Reyes v R** (op. cit), per Lord Bingham of Cornhill."

[34] The appellant has not complained about the learned judge's analysis and ultimate conclusion in this regard, and for that reason, it is not necessary to interrogate this issue any further.

[35] In respect of the breach of the respondent's right to protection from inhuman and degrading punishment the learned judge, at para. [137] stated the following:

"[137] The [respondent], who will obtain adequate redress, via this court, for false imprisonment, has also raised certain allegations as regards his inhuman and degrading treatment, which, this court has accepted as proven. That treatment, was not, and cannot properly be accounted for, in the award to be made in favour of the [respondent], for damages for false imprisonment. The court does find that monetary compensation is applicable in the circumstances, as there is no other remedy, at law, which could serve to adequately compensate the [respondent] for the inhuman treatment meted out to him, which the court has accepted."

[36] It is noteworthy that the learned judge did not indicate on what basis he arrived at the conclusion that a monetary award was the only remedy that could serve to adequately compensate the respondent for the inhumane treatment meted out to him. Such a statement would have been of assistance to us having regard to the nature of the breach, which the respondent asserted were words directed at him, accusing him of being a homosexual and which he considered to be insulting.

[37] In this regard, but it is instructive to consider the case of **Seepersad v AG**, in which the Board concluded that the appellants' rights under certain provisions of the Constitution of the Republic of Trinidad and Tobago were breached by the failure to

review their sentences and detention during the period while they were detained at the state's pleasure. On those facts the Board was of the view that monetary compensation was appropriate, and the order of the judge at first instance that there be an assessment of damages was restored. It was stated at page 678 as follows:

“**38** It is well established that the power to give redress under section 14 of the Constitution for a contravention of the applicant's constitutional rights is discretionary: *Surratt v Attorney General of Trinidad and Tobago* [2008] UKPC 38 at [13], per Lord Brown of Eaton-under Heywood. The rights protected by section 4 are, as Lord Bingham of Cornhill said in the first stage of the appeal before the Board in that case, at least in most instances, not absolute: *Surratt v Attorney General of Trinidad and Tobago* [2008] AC 655, para 33. There is no constitutional right to damages. In some cases a declaration that there has been a violation of the constitutional right may be sufficient satisfaction for what has happened: *Inniss v Attorney General of St Christopher and Nevis* [2008] UKPC 42 at [21]; *James v Attorney General of Trinidad and Tobago* [2010] UKPC 23 at [37]. In others it will be enough for the court to make a mandatory order of the kind that was made in this case, when Dean-Armorer J ordered that the terms of the appellants' detention should be determined by the High Court. As Lord Kerr of Tonaghmore said in *James*, para 36, to treat entitlement to monetary compensation as automatic where violation of a constitutional right has occurred would undermine the discretion that is invested in the court by section 14. It will all depend on the circumstances.”

[38] Having found that monetary compensation was appropriate in the circumstances of the case, the learned judge considered the case of **Agana Barrett** in an effort to determine what might be considered an appropriate quantum for an award of damages to the respondent under this head of damages. The facts in **Agana Barrett** arguably represent the historical low watermark of inhumane and degrading treatment by the state of nationals of this country and, as Downer JA noted, the facts of the case generated enormous concern and publicity. Agana Barrett and 17 other men were placed in an 8 feet by 7 feet cell at the Constant Spring Police Station on Thursday 22 October 1992. The cell had a metal door, and there was little ventilation. It was extremely hot and the

sweltering heat was exacerbated by result of the congested cell. The men were not given water to drink despite constantly banging on the metal cell door and complaining of thirst. On the morning of Saturday, 24 October 1992, when the door of the cell was finally opened, Agana Barrett and two other men did not emerge. They had succumbed to suffocation in the torturous conditions.

[39] I agree with Ms Ruddock that other than the fact that there was a successful claim in **Agana Barrett** for breach of fundamental rights of protection from inhumane and degrading treatment, that case could offer no real guidance to the learned judge on the issue of the appropriate quantum to be applied to the respondent's case. In our view, the two cases are polar opposites. In the instant case the breach found by the learned judge was primarily verbal insults. Constitutional damages for the breach of an individual's fundamental rights to protection from inhumane and degrading treatment will be on a continuum and influenced by the circumstances and the relative severity of the breach in each case.

[40] The use of the case of **Agana Barrett** skewed the result, and the discount applied by the learned judge to account for the more egregious breach in that case cannot be considered to be a reasonable exercise of his discretion.

[41] Breaches of constitutional rights can take a variety of forms. This court in recent history, has had to consider claims by persons for breaches of their constitutional right to a fair trial within a reasonable time which arose from delays in the hearing of their appeals consequent upon the unavailability of the transcript of the proceedings which were the subject of their appeals. In some of these cases, this court found that the declaration of the breach of the appellant's right was an adequate remedy. This of course was based on a multiplicity of factors including the total length of delay, and the length of the delay as a fraction of the length of the sentence which the offender was ordered to serve. It seems to me, that, although the breach of a constitutional right to protection from cruel and inhuman treatment is different in form from a breach of a constitutional right to a fair trial within a reasonable time, it would be at least arguable that a declaration that

the respondent's constitutional rights had been breached may have been a sufficient and more appropriate relief to be granted to the respondent in this case.

[42] In any event, the submission of Miss Ruddock is that a nominal sum is appropriate and she has urged us, without any authority by way of comparison to award a sum of \$500,000.00.

Conclusion in respect of ground 2

[43] I find that the sum of \$3,000,000.00 awarded to the respondent for breach of his constitutional right to protection from inhuman and degrading treatment, arising from what he considered to be verbal insults and inappropriate epithets to be grossly excessive and unsupported by any comparative authority. The level of discount of the updated award in **Agana Barrett**, as determined by the learned judge was not achieved by a judicious consideration of the differences between that case and that of the respondent. Consequently, I have found the decision of the learned judge in arriving at the figure of \$3,000,000.00 to be aberrant. Whereas I make no finding which is to be extended generally to other cases, that \$500,000.00 may be considered to be nominal damages, I accept the submissions of Miss Ruddock that the sum of \$500,000.00 is an appropriate award in all the circumstances considering the nature of the breach suffered by the respondent. Accordingly, I would propose that the award of damages under this head be varied to reflect the sum of \$500,000.00.

Grounds 3 and 4

The submissions

[44] These grounds were dealt with together by both counsel for convenience and I have adopted the same approach.

[45] The essence of Miss Ruddock's submissions on these two grounds was that in light of the award to the respondent for the breach of his constitutional right to protection from inhuman and degrading punishment, the learned judge erred in awarding an additional sum for vindicatory damages, since this amounted to double compensation. In

support of these submissions, counsel relied on **Ramanoop** an appeal from Trinidad and Tobago in which the Privy Council examined the purpose of constitutional and vindicatory damages in that jurisdiction, analysis which counsel submitted applied equally to Jamaica.

[46] Counsel also relied on the case of **Merson v Cartwright and another** [2005] UKPC 38, an appeal before the Privy Council from the Bahamas in which the Board set aside an additional award of BAH\$100,000.00 to Mrs Merson for vindicatory damages and held that it was a duplication of the BAH\$90,000.00 awarded to her for false imprisonment and other torts.

[47] Mr Wright also relied on **Ramanoop** and argued that the award of vindicatory damages by the learned judge was appropriate to vindicate the constitutional right that had been contravened.

Analysis

[48] In **Ramanoop**, the Board offered the following view which I find to be of assistance in this case at paras. 17 - 19:

- “17. Their Lordships view the matter as follows. Section 14 recognises 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 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.
18. When exercising this constitutional jurisdiction the court is concerned to uphold, or vindicate, the constitutional right which has been contravened. A declaration by the court will articulate the fact of the violation, but in most cases more will be required than words. If the person

wronged has suffered damage, the court may award him compensation. The comparable common law measure of damages will often be a useful guide in assessing the amount of this compensation. But this measure is no more than a guide because the award of compensation under s 14 is discretionary and, moreover, the violation of the constitutional right will not always be co-terminous with the cause of action at law.

19. An award of compensation will go some distance towards vindicating the infringed constitutional right. How far it goes will depend on the circumstances, but in principle it may well not suffice. The fact that the right violated was a constitutional right adds an extra dimension to the wrong. An additional award, not necessarily of substantial size, may be needed to reflect the sense of public outrage, emphasise the importance of the constitutional right and the gravity of the breach, and deter further breaches. All these elements have a place in this additional award. 'Redress' in s 14 is apt to encompass such an award if the court 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."

[49] There is no dispute and no issue was joined between counsel as to the right of the court to award vindicatory damages in an appropriate case. There were, however, contrasting positions in respect of the appropriateness of such an award in this case.

[50] I am of the view that although the fact that the right violated in this case was a constitutional right, there is no need for additional compensation for the breach of that right, by way of vindicatory damages. I have found that the breach of the respondent's right to protection from cruel and inhumane punishment can be adequately compensated by an award of \$500,000.00. I am convinced that there is no need for an additional award to "reflect the sense of public outrage, emphasise the importance of the constitutional

right and the gravity of the breach and deter further breaches”, as would be the case where there was a “deplorable abuse of power”. As was indicated in **Merson v Cartwright**, what is important in determining whether an award of vindictory damages is appropriate is the nature of the breach and the circumstances related thereto. Each case must, therefore, be considered on its own unique facts and be viewed relative to the range of ways in which the particular constitutional right involved may be infringed. I do not wish to be misunderstood to be minimizing the gravity of the breach which was suffered by the respondent, and the seriousness with which he viewed it, but I am of the opinion that when it is considered in the round, it does not require an additional award of vindictory damages.

Conclusion in respect of grounds 3 and 4

[51] For the stated reasons, I accept the submissions of the appellant and find that there is merit in the appeal in respect of these grounds. Accordingly, I would propose that the award of \$450,000.00 for vindictory damages be set aside.

Ground 5

The submissions

[52] The brief submission of Miss Ruddock on this ground was that an award of interest is designed to compensate a claimant for being kept out of money to which he was entitled for the period during which he was deprived of its enjoyment. In support of this proposition counsel relied on **General Tyre and Rubber Co v Firestone Tyre and Rubber Co Ltd** [1975 2 All ER 173.

[53] Counsel argued that since there is no constitutional right to damages for a breach of a constitutional right, then there was no basis in law for an award of interest on the damages awarded for breach of the constitutional right to protection from inhuman and degrading punishment and the vindictory damages awarded as a consequence thereof.

[54] Mr Wright, in an equally brief response, submitted that the appellant’s submissions were misconceived because section 3 of the Law Reform (Miscellaneous Provisions) Act

gave the power to the learned judge to award interest in his discretion. Counsel submitted further, without providing any authorities in support, that for over a decade the Supreme Court has been awarding interest at the rate of 3% per annum on constitutional damages.

Analysis

[55] In the text Remedies for Torts and Breach of Contract (Third Edition) the learned author, Andrew Burrows, in discussing why interest should be awarded, stated at pages 347 – 348 that:

“The answer to this is typified by Robert Goff J’s statement in *BP Exploration Co (Libya) Ltd v Hunt (No 2)*:

‘The fundamental principle is that interest is not awarded as punishment but simply because the plaintiff has been deprived of the use of the money which was due to him.’

The money due to the claimant comprises either the money that the claimant would have but for the defendant’s wrong, or where the wrongful loss was not of money, the damages themselves which it is felt the defendant should have paid to compensate the loss as soon as it occurred. In commercial cases it is then generally assumed that as a result of being deprived of that money the claimant has had to borrow it, whereas in non-commercial cases the assumption is simply that the claimant has lost the interest from investing that money.”

[56] In **General Tyre and Rubber**, on which the appellant relied, Lord Salmon made the following statement in relation to the award of interest at page 192, with which there can be no disagreement in principle:

“... Interest is not awarded as punishment against a wrongdoer for withholding payments which should have been made. It is awarded because it is only just that the person who has been deprived of the use of the money due to him should be paid interest on that money for the period during which he was deprived of its enjoyment”

[57] In respect of constitutional damages, the compensatory principle of the award arguably does not strictly follow the rules which govern damages as compensation for torts and breach of contract. There does not appear to be a consistent approach in courts of the Commonwealth to the award of interest on constitutional damages. For example, in the case of **Econo Parts Ltd v Comptroller of Customs and Excise: Mr Parts Ltd v Comptroller of Customs & Excise** (2019) 96 WIR 321, the Court of Appeal of the Eastern Caribbean Supreme Court did not award interest on constitutional damages arising from seizure of the claimants' containers with various parts. In **Minister of Home Affairs and another v Williams** (2016) 88 WIR 213, the Court of Appeal of Bermuda no interest was awarded on the damages awarded to the respondent who had been indirectly discriminated against because his place of origin was Jamaica. In **Agana Barrett** the court of appeal, by majority, did not award interest on the compensation for constitutional redress.

[58] However, there is precedent for the award of interest on constitutional damages. In the case of **Maharaj v Attorney General of Trinidad and Tobago** (2015) 86 WIR 537, (**'Maharaj'**), the Court of Appeal of Trinidad and Tobago increased the award for a breach of the appellant's constitutional rights and ordered that the award will carry interest at a rate of 6% per annum from the date of service of the claim form to the date of judgment.

[59] There is also precedent provided by the Privy Council case of **Gairy (as administratrix of the estate of Gairy, deceased) v The Attorney General of Grenada** [2001] UK PC 30, (**'Gairy'**) at para. [30], which concerned a claim by the late Sir Eric Gairy, continued by his administratrix, for breach of his fundamental rights and freedoms, guaranteed by the constitution of Grenada, in particular the right to protection from deprivation of property by the state without compensation. The Government led by Prime Minister Gairy, was overthrown by a coup. The People's Revolutionary Government, which took over, purported to suspend the Constitution and enact a law to confiscate and vest in the government certain real properties belonging to former Prime

Minister Gairy. At issue in the appeal before the Board was the power or duty of the courts to grant an effective remedy to the appellant, against the state, for such a violation.

[60] The Board concluded that the appellant was entitled to the relief sought. In para. 30 of the judgment, it was stated that the Board on 1 May 2001, were informed that the sum due to the appellant on that date was EC\$2,792,540.10. It was expressly acknowledged that this was understood to be an agreed figure, inclusive of accrued interest. The Board indicated that it would humbly advise Her Majesty that the appeal should be allowed and included the following order:

“...that the Minister of Finance shall take all steps necessary to procure that payment be made to the appellant forthwith of EC\$2,792,540.10 plus interest at the rate of 6% per annum on the principal sum outstanding (forming part of that total) from 1 May 2001 until payment of the full sum outstanding. Both parties will have leave to apply to a judge of the High Court. If any issue arises on the calculation of interest, it shall be determined by the judge.”

[61] It is clear from the directions of the Board that there was no issue raised as to the availability of interest on an award of constitutional damages.

Conclusion in respect of ground 5

[62] Given the award of interest on the damages for constitutional breaches in the cases of **Maharaj** and **Gairy**, I am, accordingly, of the opinion that there is nothing in the compensatory principle which forms the basis for constitutional damages which prevents an award of interest. The award of interest in this case was, therefore, properly within the discretion of the learned judge and accordingly this ground of appeal has no merit.

[63] For the preceding reasons, I would propose that the following orders be made:

1. The appeal is allowed in part.
2. The award of general damages for false imprisonment in the sum of \$1,500,000.00 with interest at the rate of 3%

per annum from 29 February 2016 to the date of judgment is affirmed.

3. The award of general damages for breach of the constitutional right to protection from inhuman and degrading punishment, in the sum of \$3,000,000.00 with interest at the rate of 3% per annum from 29 February 2016 to the date of judgment is set aside and substituted therefor is an award of \$500,000.00 with interest at the rate of 3% per annum from 29 February 2016 to the date of judgment.
4. The award of vindicatory damages for breach of the constitutional right to protection from inhuman and degrading punishment, in the sum of \$450,000.00 with interest at the rate of 3% per annum from 29 February 2016 to the date of judgment is set aside.
5. All other orders made by the learned judge are affirmed.
6. There is no award as to costs of the appeal having regard to the constitutional issues raised on the appeal.

F WILLIAMS JA

ORDER

1. The appeal is allowed in part.
2. The award of general damages for false imprisonment in the sum of \$1,500,000.00 with interest at the rate of 3% per annum from 29 February 2016 to the date of judgment is affirmed.

3. The award of general damages for breach of the constitutional right to protection from inhuman and degrading punishment, in the sum of \$3,000,000.00 with interest at the rate of 3% per annum from 29 February 2016 to the date of judgment is set aside and substituted therefor is an award of \$500,000.00 with interest at the rate of 3% per annum from 29 February 2016 to the date of judgment.
4. The award of vindictory damages for breach of the constitutional right to protection from inhuman and degrading punishment, in the sum of \$450,000.00 with interest at the rate of 3% per annum from 29 February 2016 to the date of judgment is set aside.
5. All other orders made by the learned judge are affirmed.
6. There is no award as to costs of the appeal having regard to the constitutional issues raised on the appeal.