ANGUILLA

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

(CIVIL)

CLAIM NO. AXAHCV2008/0012

BETWEEN:

SHAYNE RICHARDSON

Claimant

AND

THE ATTORNEY GENERAL OF ANGUILLA

EDSON CHARLES

Defendants

Appearances:

Ms. Paulette Harrigan for the Claimant

Mr. Ivor Greene for the Defendants

2009: May 18, July 7

JUDGMENT

[1] **SMALL DAVIS J (Ag):** The Claimant filed suit against the Defendants claiming damages for the 2nd Defendant's wrongful and unlawful assault upon the Claimant at the Cove Road in the island of Anguilla whilst in the purported performance of his duties as a police constable of the Royal Anguilla Police Force.

[2] At the start of the trial, the Claimant's counsel launched a well prepared surprise attack on the Defendants. In reliance on CPR 29.11, the Claimant sought an order preventing the Defendants from calling their witnesses. It was a preemptive strike. The Claimant's Counsel did not wait for the

Defendants to make an application at the trial for permission to call the witnesses. Indeed, it became quite clear in a few short minutes that the Defendants were wholly unprepared either to make the requisite application under CPR 29.11 (2) or to fend off the Claimant's attack.

[3] The basis of the Claimant's application was that the Defendants had failed to comply with the case management order of 21 July 2008 by which the parties were to file and serve their witness statements on or before 22 August 2008. The Defendants filed three statements of their intended witnesses Cons. Edson Charles, the 2nd Defendant, Cons. Maurice Bryson and Cons. Roger Phillips on 25th August, 9th September and 25th September 2008 respectively.

[4] The Claimant's Counsel pointed out that under CPR 26.1 (2)(k) the Defendants were required to seek an extension of time to file and serve the witness statements and they were also required to seek relief from sanctions under CPR 26.8. The sanction for non compliance in serving a witness statement within time is that the witness may not be called unless the court permits. The Claimant's counsel referred to the fact that the matter had come before the court on two occasions, 30 March and 22 April 2009 for pre trial review and no application was made then or since.

[5] The Claimant's counsel placed heavy reliance on the judgment of Barrow J (as he then was) in **Kenton Collinson Bernard v A G of Grenada**[1]. The stringency of the regime introduced by the Civil Procedure Code as it relates to non compliance with trial timetable was laid out with absolute clarity in the judgment:

> "The setting of a fixed sanction for non-compliance results in the elimination of the wide discretion of old and this last is completed by limiting the court's ability to grant relief from sanction. The court can only consider granting relief, at the trial, if the defaulting party gives good reason for not having previously applied for relief. A tight

[1] Grenada, GDAHCV1999/0084, 6th April 2003

structure is therefore established to deal with non-compliance. However convincing may be the explanation for non-compliance the court cannot even start to consider it, far less allow itself to be affected by any explanation, unless the defaulter has a good reason for not having made a formal application for relief from sanctions. The effect of rule 29.11 is that a defaulter may have a good explanation for non-compliance but no good reason for having failed to previously apply for relief from sanction and in that event the defaulter must suffer the sanction.

[10] Rules 26.7 and 26.8 express the central idea that the fixed sanction for non-compliance will take effect unless there is a prompt application for relief supported by evidence on affidavit. The requirement underscores the imperative that the defaulter must act. The defaulter cannot sit by until the day of the trial, as was the old practice, because not even an excuse of superior merit can save the defaulter if he does not act promptly to seek relief from sanction. It is mandatory that such an application must be made promptly because if an application for relief could be made any old time there would be no certainty to trial dates since these would need to be vacated to accommodate late compliance that had been permitted upon late applications. The companion requirement to promptitude, that there must be evidence on affidavit, emphasizes the weightiness of satisfying the stated conditions and eliminates the old practice of counsel merely trotting out an excuse from the bar table."

[6] In response to this application for the sanction to be meted out to the Defendants, their Counsel offered an explanation for the late service of the witness statements: that all the officers had been off island and the witness statements were prepared upon their return, which was on dates after the date fixed for service. The reason for failure to apply for relief from sanctions was inadvertence. Neither explanation, but particularly the one offered for failure to apply for relief from sanctions, was good. In fact they were wholly inadequate. Moreover, CPR 26.8(1) mandates that the application for relief

must be made on evidence by affidavit and made promptly. In the circumstances, the court had no discretion, its discretionary powers not having been given a breath of life by a good reason for having failed to formally apply for relief against sanctions, a point which the Defendants' counsel conceded.

[7] The rigidity of the rule was relaxed to some degree by the Court of Appeal in **Treasure Island Company Ltd. and another v Audubon Holdings Limited and another**[2] in which Saunders JA reserved an exceptional discretion where special circumstances exist that could entitle a court to dispense with strict compliance with CPR 29.11. In the **Treasure Island** case, the claimants had also filed and served their witness statements long before the trial date, albeit outside the date fixed for doing so. However in that case, the claimants had consented to a later date for exchange of the witness statements at the request of one of the defendants. The Court of Appeal found that the late filing of the witness statements to accommodate one of the defendants coupled with the nature of the special relationship between all three defendants created special circumstances that could establish a good reason for not promptly seeking relief under CPR 26.8.

[8] The Defendants could not identify any special circumstances to resuscitate the Defendants' situation.

[9] In the result, the Defendants were not permitted to call their witnesses and the trial proceeded with the Defendants having very limited ability to challenge the Claimant's case.

The Claimant's case

[10] The Claimant relied on the evidence of Mr. Traverne Greene and Mr. Julian Richardson, Rufus Richardson and Kelly Ann Richardson-Wilson. He also gave evidence.

[2] ECCA, BVI civil Appeal No. 22 of 2003, 20th September 2004

[11] His case was that at around 8pm on 28th November 2007 he and his two cousins Traverne Greene and Julian Richardson were sitting under a tree by the side of the road. He said he saw a vehicle approaching, which then stopped in front of them. The Claimant said he recognized it as a police vehicle used by the Police Task Force. Its windows were fully wound up and the glass was tinted. The driver side window was rolled down. It was the 2nd Defendant. He said he was going to search the three young men. The Claimant responded "Boy why you don't move from here and stop harassing people." The Claimant said he also told the 2nd Defendant "who he supposed to be looking for he is not looking for".

[12] The 2nd Defendant and two other officers got out of the jeep. They were in the Task Force uniform. The Claimant said he smelled alcohol on the 2nd Defendant's breath. The 2nd Defendant confronted him and told him to stand. He replied "boy why you don't stop harassing people." The 2nd Defendant grabbed him by his shirt sleeve and pulled him up to a standing position. The 2nd Defendant then tapped his two front trouser pockets and let him go. The 2nd Defendant returned to the jeep and remarked to the Claimant that he should take a page out of Julian's book, apparently referring to the fact that the other two young men had turned out the pockets for the other two officers. The Claimant said the 2nd Defendant swore at him. The Claimant said he answered the 2nd Defendant by swearing back at him. The 2nd Defendant then jumped out of the vehicle came towards him, grabbed his shirt sleeves and pulled him to his feet and began to choke him. The 2nd Defendant then flung him against the jeep and grabbed his left arm and spun him put into the road.

[13] The Claimant said he called his father who immediately came onto the scene from just across the road. When his father arrived he listened to the Claimant's account of what had just happened and then confronted the officers. In the meantime, the Claimant went by the driver door and spoke to the 2nd Defendant telling him "it was not going to go like that and don't try that again". He repeated these words to the 2nd Defendant. The Claimant said by

these words he was putting the 2nd Defendant on notice that he was going to take legal action against him. The 2nd Defendant got out of the jeep and went up in his father's face and told him to tell the Claimant "to get out of his face or else". The Claimant said the 2nd Defendant hit his own head with both his hands and started banging the side of the vehicle with his two hands and then got back in. According to the Claimant, the 2nd Defendant behaved in a crazy manner. All three policemen got into the jeep and drove off.

[14] The Claimant admitted that he was annoyed when the police vehicle first pulled up to a stop by the side of the road. He said he felt this way because he had done nothing wrong and the 2nd Defendant was interfering with him instead of looking for real criminals. In his oral evidence, the Claimant said two weeks prior to this incident, the police had wrongfully searched him and then brought him to court for months until the case was dismissed for lack of evidence. There is an internal inconsistency in this statement. The Claimant was unable to recall whether the incident occurred two weeks before this incident and whether the case was dismissed before or after this incident, when further questions were asked of him to clarify the chronology.

[15] The Claimant's two eye witnesses gave an account similar to the Claimant's except that Julian Richardson did not speak of the 2nd Defendant first using bad language to the Claimant in the exchange that immediately preceded his jumping back out of the vehicle and returning to haul the Claimant up.

[16] I was not impressed with the oral evidence of the Claimant and his two eyewitnesses. For the most part, they were unable to give adequate answers to questions either from the Claimant's or Defendants' lawyer or the court. They had a lot of difficulty recalling matters which were in their witness statements and on which they were being asked further questions.

[17] Rufus Richardson and Kelly Ann Richardson-Wilson, the Claimant's father and sister, gave evidence of their interaction with the police officer after arriving at the scene at the Claimant's summons. Their account is similar to

that given by the Claimant of the later events immediately preceding the 2nd Defendant and the other officers' departure from the scene.

Was the search unlawful?

[18] Section 8 of the **Anguilla Constitution Order** guarantees protection from arbitrary search of one's person. That guarantee is not inconsistent with any law that provides for such search to take place in the interests of public order and for the purpose of the detection or prevention of crime.

[19] Section 24 (2) of the **Drugs (Prevention of Misuse) Act** gives police officers authority to search a person and detain him for the purpose of searching him if the police officer has reasonable grounds to suspect that person is in possession of a controlled drug. "Reasonable grounds to suspect" is not defined in the Act.

[20] A search of one's person involves an affront to the dignity and privacy of the individual and is really a restraint on the freedom to which he is entitled. Before exercising such power, at minimum the officer should inform the individual why that search is being carried out. The police can only do so on reasonable grounds: **Brazil v Chief Constable of Surrey**[3]. The Constitution protects the citizens from having their freedom interfered with unless it would be lawful to do so.

[21] It must be that the test for whether the 2nd Defendant had reasonable grounds to suspect the Claimant of being in possession of a controlled drug is an objective one. In **Cedeno v O'Brien**[4] Wooding CJ said those words imposes the condition that "there must in fact exist reason to suspect known to the officer, and not merely speculation or conjecture or even suspicion harboured or entertained by him, before he can validly exercise the authority". The test must relate to the standards of a reasonable man and not whether this police

[3] [1983] 3 ALL ER 537

[4] (1964) 7 WIR 192

officer believed he had reasonable grounds for suspicion, since as experience tells us, some people's suspicions are easily aroused.

[22] In **Eversley Thompson v R**[5] the Court of Appeal ruled that sections 76 and 78 of the English Police and Criminal Evidence Act (PACE) and the Codes thereunder, modified as necessary, has been specifically imported into the Laws of St. Vincent and the Grenadines and is applicable where there are no provisions in the Laws of St. Vincent and the Grenadines which regulate the determination of questions relating to the admissibility of evidence. This opinion was rendered in construing various statutory provisions in St. Vincent and the Grenadines and in particular section 3 of the Evidence Act 1988, which provided that whenever any question relating to the admissibility of evidence arose in any criminal or civil proceedings, the law and practice as administered in England shall apply where no provision is made in that Act. The Court of Appeal's judgment was upheld by the Judicial Committee of the Privy Council except that the Privy Council expressly ruled out the applicability of Code C[6].

[23] Neither the **Anguilla Police Act** nor the **Police Regulations** set out the procedure or guidelines for a police officer exercising his stop and search power. Section 47 of the **Criminal Procedure Act** provides that "*All other matters of procedure not herein nor in any other Act expressly provided for shall be regulated, as to the admission thereof, by the law of England, and the practice of the Superior Courts of criminal law in England.*" I therefore consider it helpful to turn to the English Police and Criminal Evidence Act and the subsidiary Code of Practice for the Exercise by: Police Officers of Statutory Powers of Stop and Search ("Code A").

[24] Code A sheds some further light on the meaning of "reasonable grounds to suspect". At paragraph A2.2 the guidance offered tor police officers is that :

[5] ECCA, 21st July 199

[6] [1998] 52 WIR 203

"Reasonable grounds for suspicion depend on the circumstances in each case. There must be an objective basis for that suspicion based on facts, information, and/or intelligence which are relevant to the likelihood of finding an article of a certain kind.....Reasonable suspicion can never be supported on the basis of personal factors alone without reliable supporting intelligence or information or some specific behaviour by the person concerned. For example, a person's race, age, appearance, or the fact that the person is known to have a previous conviction cannot be used alone or in combination with each other as the reason for searching that person. Reasonable suspicion cannot be based on generalizations or stereotypical images of certain groups or categories of people as more likely to be involved in criminal activity.

A.2.3 Reasonable suspicion can sometimes exist without specific information or intelligence and on the basis of some level of generalization stemming from the behaviour of a person. For example, if an officer encounters someone on the street at night who is obviously trying to hide something, the officer may depending on other surrounding circumstances) base such suspicion on the fact that this kind of behaviour is often linked to stolen or prohibited articles being carried."

[25] In practice, I would think that ordinarily it is very difficult to prove that a police officer did not have reasonable grounds for suspicion which lead him properly to stop and search a citizen. However in this case, no explanation being available from the Defendants, the Claimant had an easier task in establishing on a balance of probabilities that the 2nd Defendant did not have reason to suspect that he was in possession of a controlled substance.

[26] I take into account the evidence that the police vehicle drove up and stopped at the side of the road where the Claimant and his companions were sitting.

The vehicle windows were rolled up until they were lowered by the 2nd Defendant in order to inform the three young men that he wanted to search them. It would therefore have been difficult, if not impossible for the police to have smelled anything that would give rise to a suspicion that the Claimant was in possession of a controlled substance.

[27] I accept the Claimant and his witnesses' evidence that the 2nd Defendant did not inform them of the purpose of the search or the grounds of his suspicion. I also take into account that the search of the Claimant was fairly perfunctory, having been conducted by the 2nd Defendant simply by a single tap to the outside of each of the Claimant's front trouser pockets. There is no evidence before the court that could establish that the 2nd Defendant had any reasonable grounds for suspecting that the Claimant was in possession of a controlled substance. I find therefore that the 2nd Defendant was not lawfully exercising his statutory power to stop and search the Claimant and that the search of the Claimant's person was therefore unlawful.

Was the Claimant assaulted?

[28] I also accept that the evidence that the 2nd Defendant pulled the Claimant to his feet by his shirt sleeve and that the 2nd Defendant held him by the throat against the tree and then spun him out into the road. I find that the 2nd Defendant assaulted the Claimant.

[29] The result is that the Claimant is entitled to damages for the unlawful search and the assault. The Claimant seeks damages for assault and battery, aggravated damages for the public humiliation and embarrassment and exemplary damages for the oppressive, arbitrary and unconstitutional action by the Government's servants.

Assessment of Damages

General Damages

[30] In assessing the appropriate level of award to compensate the Claimant for the discomfort and inconvenience, I take into account that it is not necessary

for there to have been any physical injury since the tort of trespass to the person is actionable *per se*. The Claimant had been silent in his evidence in chief as to any physical injury or discomfort as a result of the assault. However, it was elicited in cross examination that he did suffer some pain, though no bruising or other physical sign of trauma to his neck and throat or any other part of his body.

[31] I have been guided by the awards made in this jurisdiction, in particular, **Leon Cherry v. Charles Leriche**[7] in which EC$5,000 was awarded to a claimant compensating him for injury to his eyes and face after the defendant had thrown acid on him, and **Edread Stoutt** v **The Commissioner of Police**[8] in which the claimant was awarded general damages of US$2,000 for assault by a police officer with his gun, and US$7,000 for damages for false imprisonment and malicious prosecution. Damages for the assault and unlawful search are assessed at EC$6,000. In arriving at this figure, I have taken into account the decrease in purchasing power of the dollar in the last two years.

Aggravated and Exemplary damages

[32] The Claimant said he was humiliated and embarrassed by the 2nd Defendant's treatment of him. He said he felt like a common criminal and any member of the public passing by would have formed the impression that he had done something wrong. The evidence of Julian Richardson was that the only persons present were the three of them being searched and the three police officers. He said there were no passers by or anyone else present on the road at the time.

[33] Aggravated damages is a category of award made by a court which are additional compensation for the injury to a claimant's proper feelings of pride and dignity and the consequence of his being humiliated. See Rookes v

[7] St. Lucia, SLUHCV2006/0204, 13th November 2007

[8] BVIHCV 2001/0119, 30th May 2003

Barnard[9] and **Thompson v Commissioner of Police**[10]. The aggravation of the damage arises from the features of the defendant's conduct which would result in the claimant not receiving sufficient compensation by way of basic general damages. In considering whether to award aggravated damages the 2nd Defendant's conduct must be examined to see if it shows that he was acting with malevolence or spite or that he behaved in a high-handed, malicious, insulting or aggressive manner. It has been said that the injury to a claimant is made worse when the offender is a police officer whose malicious motives, spite or arrogance is all the more difficult to excuse[11].

[34] Exemplary damages are an exceptional remedy[12]. It goes beyond compensation of the injured party and is considered to be a measure of punishment for the defendant's actions. As stated by Singh JA in **Superintendent of Prisons v Attorney General of St. Vincent and the Grenadines**[13] "the fundamental ends sought by an award of exemplary damages are punishment and disapproval. It is a question of punishing a wrong and publicly indicating that it is not acceptable." In **Rookes v Barnard**, Lord Devlin, with whom on this point other members of the House agreed, having considered early cases concluded:

> "These authorities clearly justify the use of the exemplary principle; and for my part I should not wish, even if I felt at liberty to do so, to diminish its use in this type of case where it serves a valuable purpose in restraining the arbitrary and outrageous use of executive power."[14]

In his speech Lord Devlin, differentiated between aggravated and exemplary damages and pointed out that:

[9] ([1964] AC 1129 per Lord Devlin at p 1221

[10] [1997] 2 All ER 762

[11] Rookes v Barnard

[12] See Thompson v Commissioner of Police, infra

[13]St. Vincent and the Grenadines, Civil Appeal No. 9 of 1999, 25 September 2000

[14] At page 1223

> 'There are certain categories of cases in which an award of exemplary damages can serve a useful purpose in vindicating the strength of the law, and thus affording a practical justification for admitting into the civil law a principle which ought logically to belong to the criminal.'[15]

One of these categories is oppressive, arbitrary or unconstitutional action by the servants of the government. Lord Devlin gave the apt reminder that "the servants of the government are also the servants of the people and the use of their power must always be subordinate to their duty of service."

[35] Exemplary damages should be awarded over and above compensatory damages where those damages are still inadequate to show disapproval and to deter the defendant from repeating it: **Cassell & Co. Ltd. v Broome**[16]. Everything which aggravates or mitigates the defendant's conduct is relevant. If the conduct of the claimant provoked the assault, the provocation is relevant to the question whether to award exemplary damages[17].

[36] I do not believe that there was any injury to the Claimant's proper feelings of pride and dignity. Thankfully there was no one to witness the incident save for his cousins, who themselves were undergoing the same search. The Claimant's conduct before, after and during the incident is not suggestive of embarrassment or humiliation.

[37] I consider that the 2nd Defendant's assault upon the Claimant was in reaction to the Claimant's own conduct. Neither of the other two young men present behaved rudely and neither of them complained of the manner in which the police subsequently conducted the search by effectively allowing them to turn out their own pockets. The Claimant was extremely rude and aggressive towards the police from the very outset. His language was demeaning of the 2nd Defendant both personally and in his office as a policeman. It was

[15] At page 1226

[16] [1972] AC 1027

[17] Lane v Holloway [1968] 1 QB 379

inexcusable and it appeared to be unwarranted, certainly as directed to the 2nd Defendant and the other policemen present that night, given that there was no history between the two sides and that it erupted from the Claimant immediately as the police vehicle came to a stop in front of him and his associates. Unless such conduct on the part of the general citizenry is condemned, it can only lead to a swifter breakdown in law and order deterioration of the respect that is properly due to the police force.

[38] In my view, the 2nd Defendant's conduct in reacting to the Claimant with violence was unsatisfactory and unacceptable as he is under a duty by virtue of his office to exercise greater restraint and control even in the face of provocation. However, I do not believe that the 2nd Defendant was actuated by malice or ill-will or that he behaved in an insulting or aggressive manner or that his conduct was a calculated abuse of power. Furthermore, any such conduct on the part of the 2nd Defendant was outweighed by the Claimant's own conduct and disrespectful verbal attack upon the police party, repeatedly referring to them as "boy" and telling them to move from there. Any aggravated damages that the Claimant could have been entitled to are erased by his own conduct.

[39] The evidence in the case, even on the Claimant's unchallenged evidence does not support an award for exemplary damages. I share the view that exemplary damages are reserved for 'truly outrageous or appalling conduct'. The 2nd Defendant's assault on the Claimant was provoked by the Claimant and the unlawful search of the Claimant's person has been adequately compensated for by the award for general damages.

Breach of constitutional rights

[40] The Claimant's counsel also submitted that the court should award damages for the breach of the Claimant's constitutional right not to be arbitrarily searched. No specific claim for damages for breach of constitutional rights was made in the Claim Form or Statement of Claim. However I accept that damages for breach of constitutional rights are at large and it is open to the

court to make an award on this head as the underlying facts and their relationship to the constitutional protection were pleaded.

[41] Section 16(1) of the **Anguilla Constitution Order** provides:

> "If any person alleges that any of the provisions of sections 2 to 15 (inclusive) of this Constitution has been, or is being, contravened in relation to him (or, in the case of a person who is detained, if any other person alleges such a contravention in relation to the detained person), then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the High Court for redress.

[42] In **Attorney General v Siewchand Ramanoop**[18] the Privy Council delivered a judgment on an appeal by the Attorney General of Trinidad and Tobago against a decision of the Court of Appeal which held that there was no limit on the redress available under the Constitution to a person whose rights had been infringed by a police officer in arresting, detaining and assaulting him. The Judicial Committee upheld the Court of Appeal's decision stating that the term "redress" encompassed an award of damages in an appropriate case. In the **Ramanoop** case, the claimant had been in a bar where he had an altercation with a man. After he had returned home that night, he received a visit from a uniformed policeman and the man with whom he had had the altercation. The policeman began to beat him about his face and neck, handcuffed him and then continued to beat him for several minutes. He was taken to the police station in his underwear and there he was handcuffed to an iron bar. Meanwhile the policeman continued to berate and abuse him and physically assaulted him. He was taken home several hours later. He brought a constitutional motion seeking relief for the breach of his constitutional right to liberty and security of the person. Section 14 of the Trinidad and Tobago Constitution permits action for redress for infringement of constitutional rights in similar terms to the Anguilla Constitution Order section 16.

[18] (2005) 66 WIR 334

[43] Their Lordships expressed their view that the provision for the enforcement of infringement of constitutional rights and freedoms extends to the award of remedies and stated that:

> "[17] .....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 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.
>
> ...
>
> [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 to 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. "

[44] I hold the view that disapproval of the 2nd Defendant's unlawful search of the Claimant should be shown. As stated above, I do not believe that he formed a reasonable suspicion that the Claimant was in possession of a controlled

substance. The 2nd Defendant was in the company of at least one more senior police officer. I recall the evidence of Mr. Rufus Richardson and Ms. Kelly Ann Richardson-Wilson who said that immediately before departing the scene, one of the other officers was heard to remark "Boys I told you all that this was not going to be good. Let's go from down here." The police officers, who have been given coercive powers and are expected to themselves act lawfully in carrying out their duties to prevent and detect crime and to keep the community safe, will do themselves no favour if they make it a practice to act arbitrarily in the exercise of those powers.

[45] Accordingly I hold that an award for breach of the Claimant's constitutional right not to be unlawfully searched is appropriate to signal to the Defendants that such conduct will not be condoned and that they will be held accountable for their actions carried out in the name of the state. I assess the appropriate level of damages in the sum of EC$2,000.

Conclusion

[46] The order of the court is therefore:

(1) Judgment is entered in favour of the Claimant against the Defendants.

(2) The Defendants are to pay damages to the Claimant as follows:

(a) General damages for assault and unlawful search in the sum of EC$6,000;

(b) Damages for breach of constitutional right in the sum of EC$2,000.

(3) The Defendants shall pay the Claimant's prescribed costs under CPR 65.5 in the sum of EC$2,400.

Tana'ania Small Davis
High Court Judge (Ag)