

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

MONTserrat

CLAIM NO. MNIHCV 2012/0036 (2012/33 and 2012/34 consolidated)

BETWEEN:

(1) CLEO CASSELL
(2) WARREN CASSELL
(3) CASSELL & LEWIS

Claimants

AND

(1) POLICE COMMISSIONER
(2) JESSICA SWEENEY
(3) TYRONE FENTON
(4) ATTORNEY GENERAL
(5) DIRECTOR OF PUBLIC PROSECUTIONS

Defendants

Appearances:

1st and 2nd Claimants in person

Ms. Lovetta Silcott for the 3rd Claimant

Mr. Fitzroy Buffonge assisted by Ms. Cednicia Shiell and Mr. Oris Sullivan - Acting Director of Public Prosecutions for the defendants

2016: May 13th 2015

May 5th 2016

JUDGMENT

- [1] **COMBIE MARTYR, J. (Ag.):** On February 16th 2012, the 2nd and 3rd named claimants were convicted in the High Court of two counts of conspiracy to defraud, nine counts of procuring a valuable security contrary to Section 225 (2) of the Penal Code and one count of Money Laundering, contrary to Section 118 (1) of the Proceeds of Crime Act 2010. The claimants were sentenced on February 23rd 2012 and the 2nd claimant was incarcerated at Her Majesty's Prison in Brades Montserrat.

- [2] The defendants state in their submissions filed May 20th 2015, that on the date of sentencing - the 23rd February 2012, an application for a Confiscation Order was made to the court by the prosecution, the hearing of which application was adjourned.
- [3] An application was made to a Judge of the High Court by the 2nd defendant a Detective Sergeant of the Royal Montserrat Police Service, for a Search and Seizure warrant which was issued by the court on the 9th March 2012, for the purpose of ascertaining the assets owned by the 2nd and 3rd claimants.
- [4] The warrant was executed on the premises of the claimants on the 12th March 2012 and certain items owned by the 2nd and 3rd claimants were seized to wit: (1) One Apple I Pad (2) one Nikon Camera (3) one external Hard Drive (4) one Apple Mac Book Pro Computer and (5) accessories. Additionally, in respect of law books, a list was taken.
- [5] On the 24th September 2012 at the hearing of the claimants' application for leave to file the Originating Motion for an Administrative Order, the items seized by the police were returned by the defendants to the claimants with consent of the parties, by order of the court.
- [6] By Fixed date claim filed on the 5th October 2012, the claimants sought redress for alleged contravention of their fundamental and other rights guaranteed under Section 9 and 17 and the false Imprisonment or unlawful detention of the 1st claimant under Section 6 of the Montserrat Constitution Order 2010. In support thereof, the affidavits of the 1st and 2nd claimants, Warren Cassell sole Director of the 3rd claimant and Warren Cassell Jr. filed on the 5th October 2012, 8th October 2012 and 10th March 2015.
- [7] In response, affidavits of the 1st, 2nd and 3rd defendants were filed on the 14th November 2012 and 31st March 2014.

Preliminary Issue with respect to the 5th defendant

- [8] At the trial, the claimants raised a preliminary issue regarding the failure of the 5th defendant to file an Acknowledgement of Service and/or a Defence. Mr. Warren Cassell submitted that the Acknowledgement of Service filed by the Chambers of the Attorney General on the 16th October 2012, affidavits in response and previous representation by Mr. Buffong were on behalf of the 1st to 4th defendants. Mr. Cassell stated further that as a consequence, the claimants are entitled to Judgment being entered against the 5th defendant.
- [9] In response, Mr. Buffong asserted that he as counsel for the Attorney General appears and represents the 5th defendant before this court. Counsel stated that the claim was never served on the 5th defendant or the office of the 5th

defendant. Counsel argued that in any event pursuant to the Crown Proceedings Act Cap 2.06 Revised Edition of the Laws of Montserrat, the Attorney General and not the 5th defendant is the proper party in this claim and that the affidavits were filed on behalf of the Attorney General and the defendants.

- [10] In the instant case as it relates specifically to the 5th defendant, the claimants seek 'a declaration that *the 5th defendant was negligent and/or reckless in advising the 1st to 3rd defendants or either of them, that they could proceed with the search*'. Whilst the Crown Proceedings Act may well be applicable as the allegation relates to the alleged tortious act of the 5th defendant for which the Declaration is sought, and in accordance with CPR 56.9 (2) a claim form seeking constitutional redress must be served on the Attorney General.
- [11] This does not however preclude other persons and in the case at bar, the Director of Public Prosecutions, from being joined as a defendant and on whom the Fixed date claim must be served in accordance with CPR 56.9 (1).
- [12] The court's attention is drawn to the mandatory provisions contained in *CPR 56.9 (2)* for service on the Attorney General and *CPR 56.9 (4)* which require the claimants to file an affidavit not less than seven days **before** the date fixed for the first hearing, setting out the names and addresses of all defendants served, with details of the dates and places of service, as well as a statement regarding any defendants not served and the reason for lack of service.
- [13] The court noted that the claimants themselves failed to comply with that provision and that the affidavit of service of the claim on the 5th defendant was only filed on the 13th May 2015, the date of trial, which probably led to the insistence by counsel for the defendants that the 5th defendant was not in fact served with the claim.
- [14] The claim before this court, an originating motion seeking constitutional redress and declaratory orders, made by way of a Fixed date claim, does not permit the entry of a judgment in default of acknowledgment of service or of defence against the 5th defendant.¹ At the Case Management Conference/Pre trial review on the 19th December 2014, the defendants' (**all five**, my emphasis) were represented by Ms. Sheree Jemmotte-Rodney, Counsel from the Attorney General's chambers.
- [15] Furthermore at that hearing, no attempt was made by the claimants or at any subsequent hearing before the trial, which should have been done, to raise that preliminary issue, nor was an application made for the court to treat any such hearing as a trial, if the claimants considered that the case against the 5th defendant was not defended and for the claim to be dealt with summarily in accordance with CPR 27.2 (3).

¹ CPR 12.2

- [16] The court took the view that this matter coming on for trial, was a clear indication that the court was to consider the claim against the 1st to 5th defendants, based on the defence by way of the affidavit evidence before it. The hearing of the matter proceeded with the court so ruling and thereafter to determine based on all the evidence before it, whether the declarations sought by the claimants with respect to all the defendants, should be granted.
- [17] The issues to be determined by this court summarized from the skeleton arguments filed on the 28th April 2014, the affidavits in support and in response filed by the parties, oral submissions at trial and written submissions filed on the 20th and 26th May 2015, are as follows:
- (1) Whether the warrant issued was properly and/or lawfully issued;**
 - (2) Whether the search was illegal;**
 - (3) Whether there was contravention of Sections 9 and 17 of the Montserrat Constitution Order 2010;**
 - (4) Whether the 1st claimant was wrongfully detained or falsely imprisoned and as such a contravention of Section 6 of the Montserrat Constitution Order 2010;**
 - (5) Whether the claimants are entitled to damages and the other remedies sought.**

ANALYSIS OF THE ISSUES, EVIDENCE, SUBMISSIONS OF THE PARTIES AND APPLICATION OF THE LAW

- (1) Whether the warrant issued was properly and/or lawfully issued;**
 - (2) Whether the search was illegal;**
- [18] The Proceeds of Crime Act No. 1 of 2010 of Montserrat (POCA) provides inter alia the legislative framework for the recovery of criminal property for which a Confiscation Order can be made after a conviction has been obtained.
- [19] Part 7 of POCA which is entitled 'Investigations', provides for a number of investigative powers into the extent and whereabouts of the proceeds of crime, such as Search and Seizure and powers to apply for Production Orders and Disclosure Orders, prior to a Confiscation Order being made.
- [20] The court is mindful that the investigative powers under POCA may be extremely intrusive and in particular, search and seizure warrants constitute interference with the privacy of a person and property. This accordingly places an obligation on police officers authorized under section 138 (1) of POCA, in the exercise and operation of those powers of investigation and in the case at bar, to ensure that the application for a warrant is fully and clearly justified.

- [21] Section 139 (1) (b) (2) of POCA provides that: *On an application made under Section 138 for a search and seizure warrant, a Judge may issue a search and seizure warrant, if he is satisfied that there are reasonable grounds for suspecting that in the case of a criminal recovery investigation, the person specified in the application for the warrant has benefited from his criminal conduct; and that the conditions specified in Section 139 (3) or Section 139 (4) are fulfilled.*
- [22] In the instant case, an application for a search and seizure warrant against the property of the 2nd and 3rd claimants, pursuant to Section 138 (1) and (2) and 139 (1) (b) (1) (2) (1) and (3) (4) of POCA was made by Jessica Sweeney, Detective Sergeant of Police authorized by Paul Morris Deputy Commissioner of Police, to a High Court Judge. The facts deposed to are as set out in application filed on the 9th March 2012 which application this court had the opportunity to peruse, although not included in the trial bundle.
- [23] At the date of application for the search and seizure warrant, the 2nd and 3rd claimants were convicted of and sentenced in respect to two counts of conspiracy to defraud, nine counts of procuring execution of valuable security and one count of money laundering, criminal conduct from which the 2nd defendant would have had reasonable grounds for suspecting that the 2nd claimant had benefitted.
- [24] The court does not accept the submissions of the claimants that an application for a Production Order is a necessary pre-requisite for the search and seizure warrant to be issued, as the application was made under section 139 (1) (b). Furthermore subsections 139 (1) (a) and (b) are disjunctive. In any event, the evidence which was not controverted, is that the Production Order granted on March 9th 2012, was served on financial and other institutions in Montserrat with which the 2nd and 3rd claimants allegedly did business.
- [25] The claimants further contend that in their application for the warrant, the 2nd defendant stated that "there are reasonable grounds for suspecting that Warren Cassell has benefited from criminal conduct and is subject to a 'criminal recovery investigation'. According to the claimants it is a condition precedent to obtaining a warrant, that the reasonable grounds should be stated.
- [26] In response to that contention, your lordships in ***Attorney General v Danhai Williams and others (Jamaica) 1997 UKPC 22*** had this to say: *'Although the courts may sometimes feel frustrated by their inability to go behind the curtain of the recital that the Justice was duly satisfied and to examine the substance of whether reasonable grounds for suspicion existed..... it would be wrong to try to compensate by creating formal requirements for the validity of a warrant which the statute itself does not impose'.*

- [27] Pursuant to an application under the provisions of POCA and not Section 24 (1) of the Criminal Procedure Code as alleged by the claimants, a search and seizure warrant was issued by the Judge of the High Court. Of significance in respect of the search and seizure warrant issued is that, at the date of execution of the warrant, the 2nd and 3rd claimants were convicted of the 12 counts as aforementioned, details of which were set out in the application.
- [28] The court is of the view that in order to determine whether the warrant was properly or lawfully obtained, the court would have to consider the following: (1) whether there was compliance by the 2nd defendant with the statutory provisions of Sections 138 and 139 of POCA (2) whether the representations made to the Judge were shown to be untrue and (3) whether proper disclosure was made of the information placed before the Judge granting the warrant to personally satisfy him that there are reasonable grounds for suspicion justifying the grant of the warrant sought. *R (on the application of Golfrate Property Management Ltd and Adam) v Southwark Crown Court* applied ².
- [29] More specifically the court has perused the affidavits filed on behalf of the claimants and notes the allegation that the issuance of the warrant was unlawful, unreasonable and for an improper purpose or that the 2nd and 3rd defendants conducted an illegal search of the home of the 1st and 2nd claimants, was unsubstantiated by evidence from which this court can draw those conclusions.
- [30] Section 138 (3) of POCA provides that a search and seizure warrant is a warrant authorizing a senior police officer or the applicant for the order –
- (a) to enter and search the premises specified in the application for the warrant; and
 - (b) to seize and retain any material found there which is likely to be of substantial value, whether by itself or together with other material, to the investigation for the purposes of which the application is made.
- [31] As stated in *Attorney General v Danhai Williams and others supra* "Any inquiry into the formal validity of the warrant must start from the undoubted fact that the section does not prescribe any form at all. The language of the warrant must be such as plainly to authorize the acts of which complaint is made, but any further requirements as to form can only arise by implication".
- [32] Unlike the Criminal Procedure Code³ which in Section 26 provides that 'every search warrant **shall be** in the form set out in Schedule 1', POCA does not prescribe nor is it contained in a schedule to the act nor in regulations, the form

² [2014] EWHC 840

³ Cap 4.01 Revised Edition of the Laws of Montserrat

of warrant to be issued pursuant to Section 138 (3) and as a consequence, the defendants crafted/drafted a warrant to be used in pursuance of the section.

- [33] Pursuant to Section 138 (3) (a) the warrant issued on the 9th March 2012, described the same premises specified in the application, being the 'premises' of Cleo and Warren Cassell situated at Olveston. The evidence is that the premises comprise two buildings, one being the home of Cleo and Warren Cassell and the other is occupied by the offices of the 3rd defendant on lands owned by the 1st claimant.
- [34] The court notes also that the warrant details the items that the 2nd defendant was authorized to seize and the items in fact seized fell within the list of items so authorized.
- [35] The 2nd claimant contends that as the sole Director of the 3rd claimant his attendance at the search of the 3rd claimant's offices should have been sought. The court has observed that although the statutory provisions in POCA relating to the issue of the warrant do not so stipulate, it is the practice that the warrant should be executed in the presence of the occupier and if absent, in the presence of an adult.
- [36] In the instant case whilst the 2nd claimant was absent, the search of the offices of the 3rd claimant was executed in the presence of the 1st claimant who had control of and keys to the premises and who assisted the 2nd and 3rd claimants with administrative and office duties and according to the 1st claimant, even more so, since the conviction of the 2nd claimant. The 1st claimant was in attendance and agreed to witness the search of the premises.
- [37] The claimants contend that no reference to POCA was made on the warrant. The court finds no specific requirement that the reference to POCA must be so stated. That notwithstanding, the application for the issue of the warrant was made to the Judge in the very clear terms that it was made pursuant to POCA.
- [38] In *Reg. v Inland Revenue Commissioner, ex parte Rossminster [1980] AC 952*, Lord Diplock said at page 1009 "Even though the statute may not strictly so require (a matter on which I express no concluded opinion) the warrant ... ought to state upon its face the statutory authority under which it has been issued". That notwithstanding, the court notes that the form of warrant in *Schedule 1 of the Criminal Procedure Code*, makes no reference either, to the statutory authority under which it has been issued.
- [39] In *Attorney General v Danhai Williams and others supra*, paragraph 43 states: *Their lordships agree that it is highly desirable for the warrant to contain an express statement of the statutory authority under which it was issued. If it does not, the householder might reasonably think that it was not based upon any authority and resist entry. But this does not mean that in a case in which the*

warrant was in fact issued under proper authority and there was no resistance to entry, the warrant should be treated as invalid particularly when it is clear from the terms of the warrant that it was issued under section ..."

- [40] The claimants contend that the warrant was issued in the form prescribed in schedule 1 to the Criminal Procedure Code. They assert that at the time of the search there was no reason to believe that the 2nd claimant had committed an offence of money laundering as stated in the warrant. Further that no arrest has been made since the search and that the 2nd claimant has not been brought before a Magistrate's Court.
- [41] In ***Energy Financing v The Director of the SFO [2005] EWHC 1626*** it was held that "the wording must be clear.....However, as is necessary in every kind of order, it is necessary to craft it to suit the particular circumstances of the case....." The court accepts that the warrant could have been better drafted in clearer and more precise terms, consistent with the particular circumstances of the purpose of this warrant as set out in Section 138 (3) (b). The court must consider whether the failure to do so and the use of the words "*that the court is satisfied by information on oath that there is reasonable suspicion of the commission of the offence of money laundering.*" affect the formal validity of the warrant.
- [42] In his submissions counsel for the defendants pointed out that the circumstance of the instant case is the undisputed fact that at the date of application to the Judge for the issue of the warrant and at the date of execution of the warrant, the 2nd and 3rd claimants, the persons specified in the warrant, were not just 'suspected' of the 'commission' but were 'convicted' of offences including a *Money Laundering Offence* and that it is to Section 139 of POCA that one must look. Additionally, the court notes that although there was hesitation by the 1st claimant, but there was no 'resistance to entry'.
- [43] In that regard it would be clear to the householder the 1st claimant from the words used, that the warrant was issued in that connection, she having admitted in her evidence that her husband the 2nd claimant resided in the premises prior to his '*conviction*'.
- [44] It is the court's view that the other words used in the warrant to wit" ...that there are articles essential to the inquiry (*or investigation* my emphasis) into the said offence in or upon the premises of Cleo and Warren Cassell" this warrant is to authorize and require you to enter upon and search the said premises and to take possession of the said articles..." conforms with the definition of a warrant provided in Section 138 (3) (b).
- [45] Having considered the words used, the court does not think that the words used constitute a defect in the warrant, but simply errors of drafting for which it would be wrong to invalidate a warrant for which no form is prescribed by statute. This

court holds a view similar to the lordships in *Attorney General v Danhai Williams and others* supra when the court stated 'that in a case like this in which the defendants have caused little or no prejudice to the claimants, it would be wrong to treat these errors (my emphasis) as punishable by invalidity of the entire search'.

- [46] Further support for that finding can be found in Section 41 of the Interpretation Act⁴ which provides that: *Where a form is prescribed, deviations from the form, not affecting the substance or calculated to mislead, do not invalidate the form used.* The obvious inference therefore in the instant case is that, where no form of warrant has been prescribed by POCA and the defendants had to craft a warrant in order to achieve the objectives under POCA in pursuance of a Confiscation Order, this court is of the view that the learned Judge was satisfied that the defendants had met the standard necessary and had complied with the statutory requirements under POCA both in the form and substance of warrant which was lawfully issued by the court.
- [47] Accordingly, this court is not persuaded by the evidence or submissions of the claimants to hold a contrary view. The court is satisfied on the facts as set out in the application made on oath, that the representations to the Judge were not on the evidence shown to be untrue. Further that the defendants gave proper disclosure and that the statutory requirements for the issue of the warrant necessary to personally satisfy the Judge that there are reasonable grounds for suspicion justifying the grant of warrant sought and properly and lawfully granted, were fulfilled. The warrant being valid and lawfully issued conferred on the 2nd defendant the lawful authority to enter and search the premises and retain any material or assets of the 2nd and 3rd claimants to include the items listed in the warrant essential to the inquiry or investigation.
- [48] The claimants' contention that the 2nd and 3rd defendants made a careless and disrespectful search, callously violated their privacy or that the behavior of the 2nd and 3rd defendants was outrageous, highhanded, insulting, malicious and oppressive and intended to humiliate the 1st claimant and her children, was not substantiated or sufficiently supported by any evidence from which this court can draw that conclusion.
- [49] With respect to the declaration sought against the 5th defendant in particular, the court has perused all the affidavit evidence before it which relates to the 5th defendant. This court notes that the only evidence regarding the 5th defendant (Kathy Ann Pyke) with respect to her alleged negligence or recklessness, is that she instructed either by telephone or in person that a search and seizure warrant for the property of Warren and Cleo Cassell in Oleveston was to be obtained, pursuant to Section 138 of POCA, in order to support an application for a Confiscation Order in relation to Warren Cassell's conviction of money laundering

⁴ No. 12 of 2011 of the Revised Laws of Montserrat

offences on February 16th 2012 and her subsequent follow up email of March 8th 2012. That statement in of itself in no way gives rise to negligence or recklessness on the part of the 5th defendant.

Seizure of Privileged Material

- [50] The claimants submit that the seizure of the 2nd claimant's laptop was unlawful in that it was 'Privileged Material' and rely on sections 139 (8) and 133 (1) (b) of POCA. 'Privileged material' is defined in Section 133 (which refer to solicitor/client communications) and *Section 139 (8)* which states that '*a search and seizure warrant does not confer the right to privileged material*'.
- [51] The claimants' support for that allegation is on the basis that the 1st claimant stated in her evidence that the laptop belonged to the 2nd claimant. Critically the evidence is that the laptop was not taken from the offices of the 3rd claimant but that an Apple Mac Book laptop owned by the 2nd claimant was taken from a bedroom from which the obvious inference to be drawn is that neither the laptop nor the information contained therein is Privileged Material'.
- [52] The court however has no reason to engage in making a determination regarding the seizure of the laptop as save as stated, no other evidence relating to the alleged 'Privileged Material' as defined in Section 133 of POCA was presented by the claimants to the court from which an analysis and determination can be made. Moreover, while the laptop might contain digital information which might be classed as 'Privileged Material', the laptop itself could not be treated as 'Privileged Material'.

Exercise of discretion of the Judge

- [53] In respect to the alleged exercise of discretionary power of the learned Judge to issue the search warrant based on an alleged mistaken view of the relevant facts and allegedly taking into account irrelevant considerations and /or failing to take into account relevant considerations, save that the reference was made to the exercise of the Judge's discretion in skeleton arguments filed by the claimants, no evidence was presented by the claimants to the court regarding same, upon which this court can grant the declaration sought.

(3) Whether there was contravention of Sections 9 and 17 of the Montserrat Constitution Order 2010.

- [54] The claimants sought a declaration that the execution of the search warrant was unlawful and unconstitutional and made in contravention of the claimants' right not to be subjected to arbitrary search of property in breach of *Section 9 of the Montserrat Constitution Order 10* (the Constitution).

Protection of private and family life and privacy of home and other property.

[55] **Section 9 of the Constitution states as follows:**

- (1) *Every person has the right to respect for his or her private and family life, his or her home and his or her correspondence.*
- (2) *Except with his or her consent, no person shall be subjected to the search of his or her person or property or the entry by others on his or her premises.*
- (3) *Nothing in any law or done under its authority shall be held to contravene this section to the extent that it is reasonably justifiable in a democratic society—*

(c) for the prevention or detection of offences against the criminal law or the customs law; or

(e) to authorise, for the purpose of enforcing the judgment or order of a court, the search of any person or property by order of a court or the entry on such premises by such order.

[56] With respect to Section 9 (2) of the Constitution which provides for the *protection of a person from search of his property or the entry by others on his or her premises*, Section 9 (3) (c) and (e) of the Constitution set out circumstances in which the Constitution acknowledges that a warrant lawfully obtained authorizes the entry and search of premises as being reasonably justifiable in a democratic society. Accordingly, the execution of the search warrant *shall not be held to contravene section 9* of the Constitution and consequently constitutional redress is precluded.

[57] The court agrees with the submissions of Counsel for the defendants that the 2nd and 3rd defendants, furnished with a valid and lawfully issued warrant cannot be said to have arbitrarily searched the premises stated in the warrant.

[58] **Section 17 of the Constitution - Protection from deprivation of property states:**

(1) No property of any description shall be *compulsorily taken possession of*, and no interest in or right over property of any description shall be *compulsorily acquired*, except in accordance with a law applicable to that taking of possession or acquisition and where the following conditions are satisfied, that is to say—

(a) the taking of possession or acquisition is in the public interest; and

(b) there is a reasonable justification for the causing of any hardship that may result to any person having an interest in or right over the property; and

(c) provision is made by a law applicable to the taking of possession or acquisition—

(i) for the prompt payment of adequate compensation; and

(ii) securing to any person having an interest in or right over the property a right of access to the High Court, whether direct or on appeal from any other authority, for the determination of his or her interest or right, the legality of the taking of possession or acquisition and the amount of any compensation to which he or she is entitled, and for the purpose of obtaining prompt payment of that compensation.

- (2) No person who is entitled to compensation under this section shall be prevented from remitting, within a reasonable time after he or she has received any amount of that compensation, the whole of that amount to any country of his or her choice outside Montserrat.
- (3) Without prejudice to the generality of the expression "in the public interest" in subsection (1), nothing in any law or done under its authority shall be held to contravene this section to the extent that the law makes provision for the taking of possession or acquisition of any property, interest or right—
- (a) for the purpose of controlling its use in accordance with the general interest;
 - (b) **as a consequence of a breach of the law,**
 - (c) To secure the payment of taxes or other like impositions; or
 - (d) for the administration or enforcement of the law regulating the civil rights and obligations of persons as between themselves in respect of property.
 - (e) Provisions for periods of public emergency.

[59] Section 138 (3) of POCA and Section 17 (3) of the Constitution, authorize an entry and search of premises and taking possession of any property, in this case by way of seizure and retention of items listed in a warrant as set out therein.

[60] Like *Section 9 (3) (c) and (e)* of the Constitution, Section 17 (3) of the Constitution makes provision that a warrant lawfully obtained, authorizes the retention or taking possession of the property so seized under its authority as *a consequence of a breach of the law and such action* shall not be held to contravene this section. The court accordingly sees no need to further address this issue.

(4) Whether the 1st claimant was wrongfully detained or falsely imprisoned and as such a contravention of Section 6 of the Montserrat Constitution Order 2010;

[61] The court will adopt the submission of Counsel for the defendants as it relates to the definition and proof required to establish the tort of False Imprisonment. The first hurdle for the claimants is that the evidence before this court in no way substantiates the fact of imprisonment of the 1st claimant by the 2nd and 3rd defendants. It is clear to the court that the 1st claimant voluntarily made herself

available to witness the search which she was entitled so to do and to give the defendants access to the premises. Additionally, the 1st claimant had the opportunity to and did consult with legal counsel during the search.

[62] The court is not persuaded that the 1st claimant was not free to move about the premises as she pleased. Having reviewed the conflicting accounts of the evidence and in particular the evidence of the 1st claimant, the court does not believe that the 1st claimant was 'detained like a criminal during the entire gruelling' search'. The court is satisfied that the claimants have not presented any evidence in support of the allegation of the 1st claimant from which the court can review and assess that the 1st claimant was deprived of her personal liberty and accordingly, the court declines to make the declaration sought.

(5) ***Whether the claimants are entitled to damages and the other remedies sought.***

[63] In considering making an award of damages to the claimants, the court is guided by the case of ***Attorney-General of Trinidad & Tobago v Ramanoop 66 WIR 334, Privy Council Appeal No. 13/2004*** in which the Privy Council states '...When exercising this constitutional jurisdiction, the court is concerned to uphold or vindicate the constitutional right which has been contravened... An award of compensation will go some distance towards vindicating the constitutional right which has been contravened...'

[64] In ***Inniss v The Attorney -General of Saint Christopher & Nevis [2008] UKPC 42***, it was stated at paragraph 21: "The function that the granting of relief is intended to serve, is to vindicate the constitutional right. In some cases, a declaration on its own may achieve all that is needed to vindicate the right. This is likely to be so where the contravention has not yet had any significant effect on the party who seeks relief."

[65] The court is guided by the principles established in the above authorities however the court is unable to make an award as the court holds the view that the declarations, orders and other remedies sought by the claimants cannot be granted.

CONCLUSION

For the reasons stated above, the court declines to grant the declarations, orders and other remedies sought by the claimants and makes no order as to costs.



Cynthia Combie Martyr
High Court Judge (Ag)