

**EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA**

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCv2009/0608

BETWEEN:

CLIVE OLIVEIRA

Claimant

and

THE ATTORNEY GENERAL

Defendant

Appearances:-

Dr. David Dorsett for the Claimant

Mrs. Carla Brooks-Harris for the Defendant

2017: November 16

2018: January 11

JUDGMENT

- [1] **CORBIN-LINCOLN, M.:** Mr. Clive Oliveira is no stranger to the court. Over the last few years he has been involved in a multitude of matters some of which have traversed every level of the court system. This is one such matter.

Background

- [2] The present claim stems from Mr. Oliveira's application to be registered as a citizen of Antigua and Barbuda. The "rich history" of this matter is fully set out in

the judgment of the Judicial Committee of the Privy Council (“the Privy Council”) .¹
A summary of the facts taken from the judgment of the Privy Council is as follows:

- (1) In April 2009 the appellant, Clive Oliveira, a native of Guyana, filed his application to be registered as a citizen of Antigua and Barbuda on the basis of his wife’s citizenship of Antigua and Barbuda and his subsisting marriage to her for more than three years as he was entitled pursuant to section 114(1)(b) of the **Antigua and Barbuda Constitution Order 1981** (“ the Constitution”) to do.
- (2) On 18 July 2011, nearly 27 months after his application for registration, Mr. Oliveira was so registered.
- (3) Mr. Oliveira complains that the time taken to register him as a citizen of Antigua and Barbuda was unnecessarily and unreasonably long. He claims that this was a breach of his constitutional rights pursuant to the Constitution Order, as well as being a matter for judicial review, and that he is entitled to damages as a consequence. He submits that his damages should include damages for his inability to work in the interim between application and registration.
- (4) At first instance, the learned trial judge rejected Mr. Oliveira’s claim. He held that although the circumstances of the case “*come perilously close to being a fetter on the claimant’s rights*” ultimately there was “*insufficient evidence to support the claimant’s contention that the period between the application for registration and the interview is unnecessarily long and unreasonable ...*” .
- (5) On appeal, the Court of Appeal by their judgment dated 10 March 2014 upheld that judgment. They held that a “*delay of nineteen months between application and possible registration ... may not, in the circumstances, be inordinate, even if it came - in the language of the trial judge - ‘perilously close to being a fetter on the [appellant’s] rights’*”

[3] Mr. Oliveira’s appeal to the Privy Council was allowed. The Privy Council held:

¹ [2016] UKPC 24

“In these circumstances, the Board concludes that the delay up to November 2010, which the trial court had to consider, was itself a breach of Mr. Oliveira’s constitutional rights, let alone any further inevitable delay post-interview. There was some dispute before the Board as to whether the ultimate delay of 27 months could be taken into account, or had been before the Court of Appeal as in issue. In the Board’s view this does not matter, but also it could properly be taken into account. At the time of the trial before Harris J, the ultimate period for registration lay in the future. At the time of the appeal, the Court of Appeal must have known of the date of registration, and the Board has been told that the Attorney General drew the court’s attention to it and that Dr. Dorsett had submitted that the court could take account of it. It has been relied on in the notice of appeal to the Board. The Board accepts that in such matters it can be appropriate to take account of the up to date position: see the *Engineers’ and Managers’ Association* case at pp 306G-H, 310F-G, 320F. But the Board’s conclusion rests on the fact that by the time of trial the delay occurring pending the forthcoming interview was already unreasonable.

48. For these reasons the Board will humbly advise Her Majesty that the appeal will be allowed with costs before the Board and in the courts below and that a declaration should be made declaring that Mr. Oliveira’s application for registration should have been concluded within 12 months from being made. Since the precise date of his application is unknown, the Board will name 15 April 2009 as the latest date of his application. Mr Oliveira’s claim should be remitted to the trial court in Antigua for it to assess the damages.”

- [4] Following the decision of the Privy Council Mr. Oliveira applied for directions for the assessment of damages and costs. The parties were directed to file affidavits and submissions. Mr. Oliveira relies on his affidavit and submissions. The defendant filed an affidavit of Gregson Gardiner and submissions. There was no cross examination of the witnesses.

The Claimant's Submissions

- [5] Counsel for Mr. Oliveira submits that the failure to register Mr. Oliveira's within 12 months of his application means that his constitutional right to citizenship as provided by Section 114 of the Constitution was breached and the breach was perpetuated for a period of at least 18 months 3 days. The right to citizenship is a most precious right and the denial of this right entitles Mr. Oliveira to substantial constitutional relief to include vindictory damages and damages for distress and inconvenience suffered. Mr. Oliveira also claims lost earnings of \$106,1110.00 for the period of 393 working days during which the breach of his rights persisted and he was unable to work.

QUANTIFICATION OF DAMAGES

Constitutional Relief

- [6] In **The Attorney General of Trinidad and Tobago v Ramanroop** ² Lord Nicholls Of Birkenhead stated:³

"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...

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**

² [2005] UKPC 15

³ *ibid* para 18

additional award... 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." (*emphasis mine*).

[7] In **Merson v Cartwright and another**⁴, The Privy Council held:

"If a case was one for an award of damages by way of constitutional redress the nature of the damages might be compensatory but should always be vindicatory: damages might exceed a compensatory amount. The purpose of a vindicative award was not a punitive purpose. The purpose was to vindicate the right of the complainant, whether a citizen or a visitor, to carry on his or her life ...free from unjustified Executive interference, mistreatment or oppression. The sum appropriate to be awarded to achieve that purpose would depend upon the nature of the particular infringement and the circumstances relating to the infringement. It would be a sum at the discretion of the trial judge.

[8] In **Angela Innis v The Attorney General of Saint Christopher and Nevis** ⁵ the claimant brought a constitutional motion and, the Privy Council, having taken into consideration the gravity of the constitutional breach awarded the appellant \$50,000 for contravention of her constitutional rights. Lord Hope of Craighead stated:

" The question ...is whether a declaration that there has been a contravention of s 83 (3) would be sufficient relief for the Appellant in the circumstances. 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

⁴ [2005] UKPC 38, [2006] 3 LRC 264

⁵ [2008] UKPC 42 Privy Council Appeal No. 29 of 2007

be so where the contravention has not yet had any significant effect on the party who seeks relief is likely to be so.”

- [9] After citing the above passage, Lorr Kerr in **Romauld James v the Attorney General of Trinidad and Tobago** stated:⁶

“ The very least that these statements make obvious is that there will be cases where the vindication of the constitutional right will be achieved by the making of a declaration. Where there has been no major impact on the claimant, a declaration is more likely than not to suffice. This has notable relevance for the present case. Although it was found that the appellant had been discriminated against, this does not appear to have affected him in any material way whatsoever. Despite having been denied the exemption, he was in fact promoted and continued and has continued in the rank of acting sergeant even after the error was detected...This is not, therefore, even a case such as that envisaged by Lord Hope of there not having been a significant effect yet; the appellant has not suffered nor will he, because of the declaration that has been made, suffer such an effect.”

- [10] Lord Kerr noted however that:⁷

“Enforcement of the protective provisions may require more than mere recognition that a violation of these provisions has occurred. As Lord Nicholls said in *Ramanoop*, “*when exercising this constitutional jurisdiction the court is concerned to uphold, vindicate the constitutional right which has been contravened*” (para 18). The constitutional dimension adds an extra ingredient. The violated right requires emphatic vindication. For that reason, **careful consideration is required of the nature of the breach, of the circumstances in which it occurred and of the need to send a clear message that it should not be repeated.** Frequently, this will lead to the conclusion that something beyond a mere declaration that there has been a violation will be necessary. This is not inevitably so, however. Nor

⁶ [2010] UKPC 23

⁷ *ibid* at paragraph 24

is it even the case that it will be required in all but exceptional circumstances. **Close attention of the facts of each individual case is required in order to decide on what is required to meet the need for vindication of the constitutional right which is at stake.**" (emphasis mine)

[11] Section 114 of **the Constitution** provides for the right of citizenship by registration. While this is not one of the fundamental rights and freedoms guaranteed by the Constitution it cannot in my view be disputed that it is an important right. The right not to be arbitrarily deprived of citizenship or to change citizenship is a universally recognised human right.⁸ Conference of citizenship establishes a legal relationship between an individual and a state and entitles an individual to enjoy certain benefits and privileges. This is not a case like **Romauld James** where it can be said that the contravention of the constitutional right did not affect Mr. Oliveira in any material way. His evidence is that the delay in processing his application meant that he could not work and provide for his family. I find that something more than a declaration is required to vindicate the constitutional right at stake.

[12] In all the circumstances I find that \$50,000 is appropriate compensation for the contravention of Section 114 of **the Constitution**.

Distress and Inconvenience

[13] Counsel for Mr. Oliveira submits that in addition to the constitutional relief, the court ought to make an award for the distress and inconvenience caused to Mr. Oliveira.

[14] Mr. Oliveira's evidence is that having regard to the Privy Council's decision he should have been granted citizenship no later than 12 months from the date of his application he was denied citizenship for at least 18 months 3 days. He was unable to work to support his family.

⁸ Article 15 of the Universal Declaration of Human Rights

[15] In **Fraser v JLS Commission** the Privy Council upheld the award of \$10,000 to the claimant for distress and inconvenience. The Privy Council stated:

“As to the \$10,000 awarded by Shanks J for distress and inconvenience, the Court of Appeal, in the light of its decision that the only remedy was contractual, set this award aside. Rawlings LJ referred to the limitations on the damages recoverable in contract recognised in *Addis v. Gramophone Co Ltd.* [1909] AC 488. But courts can and do award damages for distress and inconvenience in some other contexts (cf the tortious and statutory contexts mentioned in McGregor on Damages (17th ed.) para. 3-011). The Board is concerned with constitutional claims which involve different considerations to those arising in a contractual context. The Constitution empowers the court to “grant such remedy as it considers appropriate, being a remedy available generally ... in proceedings in the High Court” (s.105(3)).⁹ Interpreting the power to grant “redress” for constitutional wrongs which existed under s.14 of the Constitution of Trinidad and Tobago, the Board said in *Attorney-General of Trinidad and Tobago v. Ramanoop* [2005] UKPC 15, para 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 section 14 is apt to encompass such an award if the court considers it is required having regard to all the circumstances.”

The Board considers that s.105(3) of the present Constitution is in terms wide enough to permit of a similar construction. The Board sees no basis for criticising the level of the second limb of damages awarded by Shanks J.”

⁹ Equivalent to Section 119 (3) of the Antigua and Barbuda Constitution Order 1981 Cap. 23

[16] I find that an award for distress and inconvenience is appropriate in this case and award Mr. Oliveira the sum of \$10,000.00.

Lost Earnings

[17] Mr. Oliveira seeks \$106,110.00 for earnings lost during the period of 18 months 3 days that he was unable to work. His evidence in this regard is as follows:

- (1) Prior to court proceedings he worked in Antigua doing work as a baker, carpenter and construction worker. As a result of earnings from his work he and his wife were able to purchase property in Antigua and he was able to purchase a truck.
- (2) His last employment was at a construction project at Cocos in 2007 after he was released from prison. A number of luxury villas were being constructed. He was paid US\$100 cash per day the equivalent of EC\$1,350.00 per week.
- (3) In his affidavit and witness statement filed previously in this matter he stated that his earning capacity as a mason or carpenter was about \$1,200.00 or more per week and this was not challenged by the defendant.

[18] In response to Mr. Oliveira's evidence regarding his earnings from the construction project in Cocos and his earning capacity Mr. Gardiner states that no admission is made to those facts. Counsel for the defendant submits that there is no cogent evidence before the court that Mr. Oliveira worked at Cocos in 2007. Counsel submits further that Mr. Oliveira maintained throughout his affidavits in this matter that he was a self employed businessman and adduced no evidence regarding his earnings as a businessman "*but wishes the court to accept his bald assertion of his earnings as a worker on a construction project.*" Counsel for the defendant submits that the court should apply the minimum wage of \$7.50 and applying the minimum wage his lost earnings for the period would be \$21,600.00.

[19] A perusal of the affidavits filed by Mr. Oliveira in this matter¹⁰ show that he stated on several occasions that he was a self-employed businessman. Under cross

¹⁰ Affidavits filed on 15th October 2009, 17th November 2009 and 22nd February 2010.

examination at trial he stated that he had a restaurant, baker shop and a fishing boat but ceased operating his businesses around 2003/2004 when he was charged. He also asserted in several affidavits that: (a) he is a mason and carpenter and had done work of that nature in the past; and (b) he could earn \$1,200 or more per week working as a mason or carpenter.

[20] I can find no basis to reject Mr. Oliveira's evidence that he worked at Cocos in 2007 and earned \$1,350.00 per week. However, it does not follow that because he worked on a single project in 2007 for which he was compensated at a rate of US\$100.00 per day this is to be taken as the sum he would have earned for the 18 month period that he was unable to work. Further, his evidence that he could have earned \$1,200 or more per week working as a mason or carpenter suggests that he would have been consistently employed for the entire 18 month period. Construction work for tradesmen is usually intermittent. In this regard I note that Mr. Oliveira does not appear to have been able to find any other work as a mason or carpenter after his job in 2007. I cannot attribute this solely to his not having a work permit since the evidence shows that his last work permit was for the period of 2001-2002 but notwithstanding he sought and obtained work in 2007 at Cocos. Further, any legitimate earnings during that period would have been taxable.

[21] While I accept that Mr. Oliveira lost earnings during the period he was unable to work I am not satisfied that he suffered loss of earnings of \$106,110.00 as contended. In the absence of cogent evidence of his likely average net earnings I would award Mr. Oliveira a lump sum of \$50,000.00 for loss of earnings.

COSTS

[22] Mr. Oliveira seeks assessed costs of \$92,154.00 as follows:

| | DESCRIPTION | \$ |
|----|--|----------|
| 1. | To conference with client and accepting instructions to challenge delay in issuing citizenship which is due upon application | 350.00 |
| 2. | To drafting, settling and filing without Notice of Application | 3,500.00 |

| | | |
|-----|---|-----------|
| | leave to apply for judicial review, together with affidavit and draft order 15 th October 2 nd April 2013 | |
| 3. | To preparing affidavit of service | 50.00 |
| 4. | To preparing Notice of Hearing 23 rd October 2009 | 50.00 |
| 5. | To appearance before Harris J for initial hearing of application for leave to apply 26 th October 2009 | 750.00 |
| 6. | To review of affidavit of Juliet Simon opposing application for leave 29 th October 2009 | 500.00 |
| 7. | To appearance before Harris J for continued hearing of application for leave to apply 3 rd November 2009 | 750.00 |
| 8. | To drafting , settling and filing of Fixed Date Claim Form together with affidavit in support 17 th November 2009 | 2,500.00 |
| 9. | To preparing affidavit of service 24 th November 2009 | 50.00 |
| 10. | To review Acknowledgment of Service | No charge |
| 11. | To review of affidavit of Brenda Cornelius 16 th December 2009 | 1,000.00 |
| 12. | To appearance before Harris J for first hearing of application for an administrative order 22 nd January 2010 | 750.00 |
| 13. | To review of witness statement of Juliet Simon 12 th February 2010 | 1,000.00 |
| 14. | To review of witness statement of Brenda Cornelius 12 th February | 1,000.00 |
| 15. | To drafting, settling witness statement of Clive Oliveira 22 nd February 2010 | 1,500.00 |
| 16. | To drafting settling Pre-Trial Memorandum on behalf of Applicant 22 nd February 2010 | 1,500.00 |
| 17. | To reviewing Pre-Trial Memorandum on behalf of Respondent 22 nd February 2010 | 500.00 |
| 18. | To appearance before Harris J for pre-trial review 26 th February 2010 | 750.00 |

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| 19. | To supervision and preparation of trial bundle 10 th June 2010 | 500.00 |
| 20. | To review and analysis of respondent's submissions 10 pages 11 th June 2010 , 5 hours @\$500.00 /hour | 2,500.00 |
| 21. | To appearance at trial before Harris J 14 th June 2010 | 3,500.00 |
| 22. | To research and drafting of Applicant's submissions 18 pages, 19 authorities 36 hours @500.00/hour 15 th June 2010 | 18,000.00 |
| 23. | To drafting settling and filing without notice application for interim relief together with affidavit and draft order 25 th June 2010 | 3,500.00 |
| 24. | To correction and filing of submissions | No charge |
| 25. | To appearance for delivery of judgment | 12 th October 2010 |
| 26. | To reviewing judgment and advising on appeal | No charge |
| 27. | To drafting settling and filing Notice of Appeal 24 th November 2010 | 3,500.00 |
| 28. | To supervision and preparation of Record of Appeal 7 th June 2013 | 1,000.00 |
| 29. | To research and drafting of Appellant's submissions, 11 pages, 10 authorities, 22 hours @\$500.00/hour 28 th June 2013 | 11,000.00 |
| 30. | To review of Respondent's submissions 10 hours @\$500.00/hour | 5,000.00 |
| 31. | To research and drafting of Appellant's submissions in reply 2 pages, 2 authorities 4 hours @\$500.00/hour 10 th October 2013 | 2,000.00 |
| 32. | To appearance in the Court of Appeal for hearing of appeal 27 th November 2013 | 5,000.00 |
| 33. | To reviewing Court of Appeal judgment and advising on seeking leave from the Court of Appeal for further appeal 10 th March 2014 | No charge |

| | | |
|-----|--|--------------------|
| 34. | To drafting, settling and filing Notice of Application seeking conditional leave from the Court of Appeal to appeal to the Privy Council | 1,500.00 |
| 35. | To appearance in the Court of Appeal on application for conditional leave | 1,500.00 |
| 36. | To drafting settling and filing Notice of Application seeking final leave from the Court of Appeal to the Privy Council | \$1,500.00 |
| 37. | To appearance in the Court of Appeal on application for final leave | 1,500.00 |
| | Subtotal of Fees for counsel | 78,750.00 |
| | ABST 15% | 11,812.50 |
| 38. | Litigation Expenses : Court stamps (High Court - \$240.00, Court of Appeal - \$600.00; Record of Appeal (702.00) | \$1,592.00 |
| | Total | \$92,154.50 |
| | | |

[23] The defendant disputes the High Court costs listed at numbers 13-15 and the Court of Appeal costs listed at numbers 23-37. Counsel for the defendant submits that costs incurred in the Court of Appeal are to be calculated in accordance with Part 65:13 of the **Civil Procedure Rules 2000** ("CPR"). Further, costs incurred in seeking leave to appeal to the Privy Counsel are Privy Counsel costs and not costs to be determined by the court below.

[24] **CPR 65.2** states:

(1) If the court has a discretion as to the amount of costs to be allowed to a party, the sum to be allowed is –

(a) the amount that the court deems to be reasonable were the work to be carried out by a legal practitioner of reasonable competence;

and

(b) which appears to the court to be fair both to the person paying and the person receiving such costs.^[1]

[25] **CPR 65.2 (3)** sets out the matters to which the court shall have regard in determining what costs would be reasonable. The factors include the time reasonable spent on the case.

[26] In **Lownds v Home Office**¹¹ Lord Woolf CJ discussed the two stage approach to the assessment of costs. He stated:¹²

“...what is required is a two-stage approach. There has to be a global approach and an item by item approach. The global approach will indicate whether the total sum claimed is or appears to be disproportionate having particular regard to the considerations which CPR r. 44.5 (3) states are relevant. If the costs as a whole are not disproportionate according to that test then all that is normally required is that each item should have been reasonable. If on the other hand the costs as a whole appear disproportionate then the court will want to be satisfied that the work done in relation to each item was necessary and, if necessary, that the cost of the item is reasonable.”^[2]

[27] Having considered the circumstances including **CPR 65.2 (3)** I do not find the total sum claimed as High Court Costs to be disproportionate. Each item of cost must however be reasonable.

[28] The only items disputed by the defendants are the costs listed at numbers 13-15. I do not find that the cost of \$1000.00 amounting to two (2) hours is reasonable to review the witness statements of Juliet Simon. Equally, I do not find that the cost of \$1000.00 amounting to two (2) hours is reasonable to review the witness statement of and Brenda Cornelius. The costs of \$500.00 and \$1000.00 were claimed for reviewing affidavits of Juliet Simon and Brenda Cornelius filed earlier in the proceedings and listed at numbers 6 and 11 of the bill of costs. A review of

¹¹ [2002] 4 All ER 775

¹² *ibid* at 782

the witness statements of Ms. Simon and Ms. Cornelius both filed on 12th February 2010 for which the cost of \$1,000.00 each is being claimed discloses that there is very little difference in the content of these documents and the documents listed at numbers 6 and 11. In all the circumstances, including the nature and content of these documents and the fact that all that is stated to have been done was a review of these documents I find that no more than 15 minutes is reasonable to review these documents. I would therefore reduce each of those costs to \$125.00.

[29] With respect to the costs for drafting and settling the witness statement of Mr. Oliveira the sum of \$1,500 representing 3 hours work is claimed. Counsel for the defendant submits that the witness statement is not significantly different from Mr. Oliveira's previous affidavit filed on 17th November 2009. While some paragraphs in the witness statement are quite similar in content to the earlier affidavit the documents are not identical. Having considered the content of the witness I find that 2 hours is reasonable time for the preparation of this document and would therefore reduce this costs to \$1000.00.

[30] The High Court costs allowed are therefore as follows.

| | DESCRIPTION | \$ |
|----|--|----------|
| 1. | To conference with client and accepting instructions to challenge delay in issuing citizenship which is due upon application | 350.00 |
| 2. | To drafting, settling and filing without Notice of Application leave to apply for judicial review, together with affidavit and draft order 15 th October 2 nd April 2013 | 3,500.00 |
| 3. | To preparing affidavit of service | 50.00 |
| 4. | To preparing Notice of Hearing 23 rd October 2009 | 50.00 |
| 5. | To appearance before Harris J for initial hearing of application for leave to apply 26 th October 2009 | 750.00 |
| 6. | To review of affidavit of Juliet Simon opposing application for leave 29 th October 2009 | 500.00 |

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|-----|---|---------------------------------|
| 7. | To appearance before Harris J for continued hearing of application for leave to apply 3 rd November 2009 | 750.00 |
| 8. | To drafting , settling and filing of Fixed Date Claim Form together with affidavit in support 17 th November 2009 | 2,500.00 |
| 9. | To preparing affidavit of service 24 th November 2009 | 50.00 |
| 10. | To review Acknowledgment of Service | No charge |
| 11. | To review of affidavit of Brenda Cornelius 16 th December 2009 | 1,000.00 |
| 12. | To appearance before Harris J for first hearing of application for an administrative order 22 nd January 2010 | 750.00 |
| 13. | To review of witness statement of Juliet Simon 12 th February 2010 | 4,000.00 \$125.00 |
| 14. | To review of witness statement of Brenda Cornelius 12 th February | 4,000.00 125.00 |
| 15. | To drafting, settling witness statement of Clive Oliveira 22 nd February 2010 | 4,500.00 1,000.00 |
| 16. | To drafting settling Pre-Trial Memorandum on behalf of Applicant 22 nd February 2010 | 1,500.00 |
| 17. | To reviewing Pre-Trial Memorandum on behalf of Respondent 22 nd February 2010 | 500.00 |
| 18. | To appearance before Harris J for pre-trial review 26 th February 2010 | 750.00 |
| 19. | To supervision and preparation of trial bundle 10 th June 2010 | 500.00 |
| 20. | To review and analysis of respondent's submissions 10 pages 11 th June 2010 , 5 hours @\$500.00 /hour | 2,500.00 |
| 21. | To appearance at trial before Harris J 14 th June 2010 | 3,500.00 |
| 22. | To research and drafting of Applicant's submissions 18 pages, 19 authorities 36 hours @500.00/hour 15 th June 2010 | 18,000.00 |
| 23. | To drafting settling and filing without notice application for interim relief together with affidavit and draft order 25 th June | 3,500.00 |

| | | |
|-----|---|------------------|
| | 2010 | |
| 24. | To correction and filing of submissions | No charge |
| 25. | To appearance for delivery of judgment | 750.00 |
| | Total | 43,000.00 |

Court of Appeal Costs

[31] **CPR 65:13** states that costs of an appeal are to be determined in accordance with **CPR 65.5, 65.6 , 65.7** and Appendix B but the costs must be limited to two thirds of the amount that would otherwise be allowed.

[32] **CPR 65.5 to 65.7** deal with prescribed costs. The value of a claim for the purposes of determining prescribed costs is the amount agreed or ordered to be paid. The total sum awarded to Mr. Oliveira is \$110,000.00. The percentage to be allowed to under Appendix B is \$16,250.00.¹³ The matter having gone to trial Mr. Oliveira would have been allowed 100% of the prescribed costs of \$16,250.00 under Appendix C. Two thirds of the sum of \$16,250 is \$10,833.33.

[33] The costs of the appeal that are to be allowed are therefore \$10,833.33.

[34] The costs listed at numbers 34-37 relate to costs incurred in relation to the appeal to the Privy Council. These costs are not allowed as they are properly Privy Council costs to be determined in accordance with the Judicial Committee (Appellate Jurisdiction) Rules 2009 rather than by this court.

[35] The damages awarded are therefore as follows:

| | |
|--------------------------------|--------------------|
| (1) Constitutional Relief | \$50,000.00 |
| (2) Distress and Inconvenience | \$10,000.00 |
| (3) Lost Income | <u>\$50,000.00</u> |
| Total | 110,000.00 |

¹³ 15% of the first \$100,000.00 (\$15,000) + 12.5% of remaining \$10,000.00 (\$1,250.00)

[36] Costs are awarded as follows:

| | |
|---------------------------|-----------|
| (1) High Court Costs | 43,000.00 |
| (2) Court of Appeal Costs | 10,833.33 |
| (3) Disbursements | 1,592.00 |

Interest

[37] Mr. Oliveira is awarded interest at a rate of 3% per annum on the total damages awarded from the date of service of the claim to the date of judgment on liability by the Privy Council and thereafter at the statutory rate of 5% per annum.

Fidela Corbin Lincoln
Master

By the Court

Registrar