THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

FEDERATION OF SAINT CHRISTOPHER AND NEVIS
SAINT CHRISTOPHER CIRCUIT

(CIVIL)

CLAIM NO. SKBHCV2016/0074

BETWEEN:

JERMAINE BROWNE

Claimant

and

1. THE ATTORNEY GENERAL OF SAINT CHRISTOPHER AND NEVIS
2. THE DIRECTOR OF PUBLIC PROSECUTIONS

Defendants

Appearances:

Dr. Henry Browne Q.C., with him, Mr. O'Grenville Browne for the Claimant
Mrs. Rivi Lake and Ms. Eshe Hendrickson-Johnson for the Defendants

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2018: October 23
(Written Closing Submissions filed on 30 October 2018 and 1 November 2018)
November 19

JUDGMENT

[1] VENTOSE, J.: The Claimant on 3 March 2016 filed a Fixed Date Claim in which he claims: (1) a declaration that his arrest and detention for a period of 3 years and 3 months without trial was unreasonable; (2) that the delay of 3 years and 3 months without trial violated his constitutional right to personal liberty and breached section 5(5) of the Constitution of Saint Christopher and Nevis; and (3)

an order that he is entitled to compensatory relief and damages for the unconstitutional deprivation of his liberty.

[2] The Claimant was arrested on 28 February 2012 on suspicion of committing burglary. There was some dispute about the actual date on which the Claimant was arrested. At trial, he stated he could not remember the exact date, although he swore on affidavit that he was arrested on 27 February 2012. The evidence as recorded in the Sandy Point Station Diary is that the Claimant was arrested on 28 February 2012. On 1 March 2012, the Claimant was charged with breaking and entering a dwelling house on 24 February 2012 with the intent to commit rape (the "First Charge"). He was arrested on 2 March 2012 and charged with breaking and entering a dwelling house between 24 and 25 February 2012 with the intent to commit rape (the "Second Charge"). On 2 March 2012 the Claimant was charged with breaking and entering a dwelling house between 27 and 28 February 2012 with the intention to steal (the "Third Charge").

[3] It must also be pointed out that the Claimant escaped lawful custody on 3 March 2012 and was recaptured the same day. He was subsequently convicted and sentenced on 18 May 2012 to 3 months imprisonment for escaping lawful custody. He was also convicted and sentenced to 30 days imprisonment for malicious damage. Therefore 4 months must be subtracted from the period of 3 years 3 months detention of the Claimant to give 2 years 11 months. The Claimant was unrepresented at the time of his arrest, charge, and committal and claimed that the presiding magistrate rejected his numerous oral requests for bail.

[4] The evidence is not clear on the exact timelines for the Preliminary Inquiries on each of the three charges. What is clear is that the Preliminary Inquiries for all three charges took place between 4 January 2013 and 11 October 2013. On the latter date, the magistrate committed the Claimant to stand trial on all three charges in the High Court in early 2014. On 14 January 2014, the Claimant pleaded not guilty to the three charges and stood trial on 25 February 2014. The trial judge directed the jury to return a verdict of "not guilty" in respect of the First

Charge. The Claimant was then remanded to prison to await trial on the Second and Third Charges.

[5] The Director of Public Prosecutions, in a letter to the Registrar of the High Court dated 4 June 2015, advised that the Crown did not wish to proceed against the Claimant in relation to the Second and Third Charges. However, the Claimant was released nine (19) days later on 23 June 2015.

The Supplemental Affidavit

[6] The Respondents filed an application to have the Claimant's statement of claim and affidavit struck out for failure to comply with Civil Procedure Rules 2000 and an order that the statement of claim be struck out as an abuse of process. In addition, the Respondents submitted that Part 56.7(4) (a) – (e) prescribes, in mandatory terms, the contents of the supporting affidavit. The Respondents argued that the Claimant's affidavit did not conform to these mandatory requirements; in particular, the affidavit did not disclose any provisions of the Constitution alleged to have been contravened. Ward J in Browne v Attorney General of St. Kitts and Nevis et al. (SKBHCV2016/0074 dated 13 November 2017) accepted those arguments and ordered the Claimant to file a supporting affidavit to cure that defect.

[7] Pursuant to the order of the court, the Claimant filed on 20 November 2017 a supplemental affidavit that merely states:

> I hereby definitively state that my constitutional rights in section 5(1)(e), 5(3)(a) & (b), 5(4), 5(5) & (6) and Section 7 of the Constitution of St. Kitts and Nevis have been violated.

[8] I hold that there is no breach of section 5(3)(a) and (b) of the Constitution because, as stated above, the applicant was arrested on 28 February 2012 and was brought before a court in any event not later than seventy-two (72) hours after his arrest or detention (2 March 2012). In addition, there is no breach of section 5(1)(e) because the arrest and detention of the Claimant was done for the purpose of bringing him before a court in execution of the order of a court. The warrants for the arrest and detention of the Claimant were properly issued by order of the

magistrate. Similarly, there is no breach of section 5(4) of the Constitution because the continued detention of the Claimant was pursuant to orders of the magistrate and the High Court judge. The Claimant concedes this point in his evidence when he states that: (1) "I was remanded weekly to [Her Majesty's Prison] by the local Magistrates in District "A" awaiting my Preliminary Inquiry and eventual trial"; and (2) after his acquittal on the First Charge he "was again remanded to [Her Majesty's Prison] to await trial for [his] other two charges".

[9] The other provisions, section 5(5) – unreasonable delay before trial, and section 7 – protection from inhuman treatment, will be considered below. However, I must first deal with alleged unlawful arrest without good cause.

Unlawful Arrest Without Good Cause

[10] The first of the three orders that the Claimant seeks relates to his "arrest and detention" without trial for 3 years and 3 months, which he alleges was unreasonable. The second relates to his "detention and/or arrest" without trial for a period of over three years, which he alleges is in breach of his right to personal liberty and section 5(5) of the Constitution. The Claimant was arrested on 28 February 2012 and on 25 February 2014 he was found not guilty on the First Charge. Contrary to his assertion that he was arrested and detained without trial, the evidence does not support that assertion in relation to the First Charge. He was nonetheless detained without trial on the Second and Third Charges.

[11] As formulated, the application for constitutional relief using, as it does, "unreasonable" to characterize the "arrest and detention" and specifically mentioning section 5(5) of the Constitution that speaks of trial within a reasonable time, one would be forgiven for thinking that the subject matter of both reliefs was unreasonable delay, which engages directly section 5(5) of the Constitution. However, the Claimant avers that his arrest was unlawful and without good cause, spending some three paragraphs of his affidavit in support of his application by way of originating motion explaining why he believes this to be the case. In other words, the Claimant alleges indirectly a contravention of section 5(1)(f) of the Constitution.

[12] The immediate difficulty with this is that the two arguments are diametrically opposed because an infringement of section 5(5) of the Constitution is premised on there being reasonable suspicion that a person has committed, or is about to commit, a criminal offence under any law. In other words, the arrest must arguably be lawful and for good cause to bring section 5(5) of the Constitution into play.

[13] Section 5(3) of the Constitution provides that:

> (3) Any person who is arrested or detained
>
> (a) for the purpose of bringing him or her before a court in execution of the order of a court; or
>
> (b) upon reasonable suspicion of his or her having committed, or being about to commit, a criminal offence under any law
>
> and who is not released, shall be brought before a court without undue delay and in any case not later than seventy-two hours after his or her arrest or detention. (emphasis added).

[14] Section 5(5) provides that:

> (5) If any person arrested or detained as mentioned in subsection (3)(b) is not tried within a reasonable time, then, without prejudice to any further proceedings that may be brought against him or her, he or she shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he or she appears at a later date for trial or for proceedings preliminary to trial, and such conditions may include bail so long as it is not excessive. (emphasis added)

[15] In addition, section 5(1)(f) states that:

> 5. Protection of right to personal liberty.
>
> (1) A person shall not be deprived of his or her personal liberty save as may be authorised by law in any of the following cases, that is to say,
>
> (f) upon reasonable suspicion of his or her having committed, or being about to commit, a criminal offence under any law;

[16] In order to prove a breach of section 5(1)(f) of the Constitution, the Claimant must adduce sufficient evidence to show that his arrest and detention was not based upon reasonable suspicion of his having committed a criminal offence under any

law. If the claimant succeeds on this point, there is a breach of section 5(1)(f) of the Constitution. Section 5(5) of the Constitution incorporates section 5(1)(f) indirectly by referring to section 5(3(b). Does this mean that if Claimant succeeds on his claim for a breach of section 5(1)(f) of the Constitution he cannot also argue a breach of section 5(5) of the Constitution? I think not. It cannot be the case that if a person is arrested upon reasonable suspicion of his having committed a criminal offence under any law, he can apply to be released pursuant to section 5(5) of the Constitution but cannot do so if the arresting officers have no reasonable suspicion of his having committed a criminal offence under any law. It may be that once a contravention of section 5(1)(f) is found, it arguably makes it unnecessary to go on to consider a breach of section 5(5) of the Constitution. However, I will not explore the various alternatives since it is not strictly necessary for the decision in this case.

[17] Moreover, the Claimant did not specifically allege, in his application by way of originating motion, that there was a breach of section 5(1)(f) of the Constitution. The Claimant was specifically ordered by the court to amend his affidavit to plead the constitutional provisions on which he sought to rely. The Claimant did not include section 5(1)(f) of the Constitution in the provisions listed in his supplemental affidavit. As a result, the Claimant is precluded from relying on this section in his application for constitutional relief. In the event that I am wrong on this point, I shall proceed to examine the alleged constitutional violation to determine if it has any merit.

[18] The Claimant avers that there was no evidence against him in relation to any of the three charges and that the prosecution abused its powers and/or was reckless in the delay in bringing the matter to trial. The Claimant submits that in order to perform a lawful arrest, the arresting officer must have reasonable grounds for: (1) suspecting that the Claimant was guilty of committing the offence(s) for which he was arrested; and (2) that objectively there are reasonable grounds upon which the arresting officer was justified in suspecting the Claimant's guilt. The Claimant continues that the evidence of the Respondents does not provide any basis for

finding there were reasonable grounds to suspect that the Claimant was guilty of having committed the offences for which he was arrested.

[19] The Respondents aver that the Claimant was arrested because there was reasonable and probable cause to suspect him to be guilty of the allegations against him in relation to repeated breaking and entering a house in Sandy Point. Specifically, Police Constable Garfield Charles avers that: (1) on 24 February 2012 at around 4:20 hours a report was made to Sandy Point police station that the Claimant broke into the house belonging to the virtual complaint and that he was not invited by her into the house; (2) one of the witnesses identified the Claimant by his voice after he called her name; (3) on 25 February 2012 a report of a break in was made and one of the witnesses identified the Claimant as the person who broke in and stated he had done so previously; (4) the Claimant was seen by the virtual complainant attempting to exit a window in her house; and (5) there was a prima facie case against the Claimant upon which the magistrate committed the Claimant to stand trial.

[20] In Everette Davis v The Attorney General of St. Kitts and Nevis (SKBHCV 2013/0220 dated 30 June 2014) Ramdhani J (Ag.) stated:

> The Power to Detain, Arrest and Charge on Reasonable Suspicion
>
> [12] The law gives the police the right to detain and or arrest anyone upon reasonable and probable cause that that person has or is about to commit an offence. The test as to whether there is reasonable and probable cause is both subjective and objective. The perceived facts must be such as to allow the reasonable third person and actually cause the officer in question to suspect that the person has committed or is about to commit a crime. It does not matter if the information available to the police leads equally or more to a view that the person may be innocent of the offence, once it leads reasonably to a conclusion that he may have committed, or is about to commit the offence, that is sufficient to ground the arrest. The reasonable police officer is assumed to know the law and possessed of the information in the possession of the arresting officer, and would have believed that the claimant was guilty of the offence for which he was arrested. The term 'reasonable suspicion' relates to the existence of facts at the time. It does not relate to a perception on the state of the law.

[21] The affidavit evidence does not provide as much of the detail as one would have preferred in this type of inquiry. However, the evidence of Police Constable

Garfield Charles shows that the evidence mentioned above caused the arresting officer to suspect that the Claimant had committed a criminal offence. In addition any reasonable third person, knowing the evidence as outlined above, would have suspected that the Claimant had committed a criminal offence. Consequently, I find that the arresting officer did have reasonable suspicion that the Claimant had committed a criminal office. Since section 5(1)(f) of the Constitution was not infringed, the Claimant is not entitled to compensation under section 5(6) of the Constitution.

Protection of the Right to Personal Liberty

[22] Section 5(1) of the Constitution provides that a person shall not be deprived of his or her personal liberty. This is subject to cases where that deprivation may be authorised by law in any of the following cases, inter alia, (b) in execution of the sentence or order of a court, whether established for Saint Christopher and Nevis or some other country, in respect of a criminal offence of which he or she has been convicted. However, section 5(5) commands that:

> (5) If any person arrested or detained as mentioned in subsection (3)(b) is not tried within a reasonable time, then, without prejudice to any further proceedings that may be brought against him or her, he or she shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he or she appears at a later date for trial or for proceedings preliminary to trial, and such conditions may include bail so long as it is not excessive.

[23] The effect of section 5(5) of the Constitution is to mandate the release either unconditionally or upon reasonable conditions any person who is not tried within a reasonable time after his or her arrest. The concern of the drafters of this section was to prevent prolonged incarceration before trial. Importantly, underlying prohibition against unreasonable delay has long been recognized since the Magna Carta that: “To no one will we sell, to no one deny or delay right or justice.”

[24] Section 5(5) of the Constitution is a corollary of section 10(1) of the Constitution which provides that:

> If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall **be afforded a fair hearing within a reasonable time** by an independent and impartial court established by law.

[25] Both of these provisions promote the speedy administration of criminal justice in the Federation of Saint Christopher and Nevis. Section 5(5) seems to relate to circumstances where the person has not yet had a trial. If a reasonable time has elapsed and the accused person not been tried then the accused must be released either unconditionally or upon reasonable conditions to ensure that he or she appears at a later date for trial or for proceedings preliminary to trial. Under section 10(1) of the Constitution, the following must be afforded: (1) the trial must take place within a reasonable time; (2) the hearing must be fair; (3) the court must be independent and impartial; and (4) the court must be established by law. If a person has not yet been tried and is still in custody, he or she can bring an application by way of originating motion under section 5(5) to be released either unconditionally or upon reasonable conditions to ensure that he or she appears at a later date for trial or for proceedings preliminary to trial and/or for any other remedy including damages (**Maharaj v Attorney-General of Trinidad and Tobago (No 2)** (1978) 30 WIR 310).

[26] In the case at bar, we are solely concerned with a breach of section 5(5) of the Constitution. The question that arises is whether the delay of 2 years and 11 months during which the Claimant was detained without trial on the Second and Third Charges infringes section 5(5) of the Constitution.

Unreasonable Delay

[27] Chief Justice Sir Dennis Byron in **Gooderidge v The Queen** (Cr Ap. No 13 of 1997 dated 11 December 1997) borrowed the analysis of the Supreme Court of the United States in **Barker v Wingo** [1972] 407 US 514, noting that it is a leading case, of persuasive not binding authority in our courts, on the sixth amendment to the United States Constitution which provides the right to a speedy and public trial by an impartial jury in all criminal trials. Justice Powell in **Barker** explained (at p. 530) as follows:

> A balancing test necessarily compels courts to approach speedy trial cases on an ad hoc basis. We can do little more than identify some of the factors which courts should assess in determining whether a particular defendant has been deprived of his right. Though some might express them in different ways, we identify four such factors: Length of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant.

[28] The factors that are to be taken into account include: (1) the length of the delay; (2) the reasons for the delay; (3) the responsibility of the Claimant for asserting his rights; and (4) the prejudice to the Claimant. The Court of Appeal in Gooderidge applied these factors to a case that concerned section 8(1) of the Constitution of St. Vincent and the Grenadines, which is similar to section 10(1) of the Constitution of Saint Christopher and Nevis. However, some of the factors considered by the Court of Appeal in Gooderidge are applicable to an analysis under section 5(5) of the Constitution. Ward J in Wallace v Smithen and the Attorney General of Saint Christopher and Nevis (SKBHCV2016/0074 dated 22 May 2018) used the same Gooderidge approach to a section 5(5) analysis.

[29] The Caribbean Court of Justice in Gibson v Attorney General of Barbados [2010] CCJ 3 (at [58]) stated that:

> Before making … a finding [that there has been unreasonable delay in bringing the accused to trial] the court must consider, in addition to the length of the delay, such factors as the complexity of the case, the reasons for the delay and specifically the conduct both of the accused and of the State.

[30] The factors outlined by the Caribbean Court of Justice in Gibson mirror closely those set out in Gooderidge. It must be noted that the Caribbean Court of Justice was dealing, in Gibson, with a breach of section 18(1) of the Constitution of Barbados, which is similar to section 10(1) of the Constitution of Saint Christopher and Nevis.

The Length of the Delay

[31] As noted above there was a period of approximately two (2) years before the trial of the Claimant on the First Charge. In relation to the Second and Third Charges, there was a delay of approximately three (3) years and three (3) months before the

Claimant was eventually released without any trial on those two charges. During the periods just mentioned, the Claimant served sentences for escaping lawful custody (three (3) months imprisonment) and for malicious damage (30 days imprisonment). As a result, the Claimant actually spent 1 year and 8 months on remand before trial on the First Charge, and 2 years and 11 months awaiting trial on the Second and Third Charges. These time periods were not disputed in any of the affidavits filed on behalf of the Respondents although the Claimant failed to mention his two convictions in his affidavit in support of his application by way of originating motion. I agree with the Defendants that the period of 2 years and 11 months is the applicable time period in relation to the Second and Third Charges. Ward J in Wallace stated (at [63]):

> The court is entitled to view this period of delay in the context of local conditions relating to the justice system in St. Kitts and Nevis and to assess whether in the circumstances of this case such a period is presumptively prejudicial. It is therefore necessary to examine the reasons for the delay.

[32] Similarly here, the court must be minded to approach this issue in the context of the local justice system. However, local conditions cannot trump the fundamental rights or freedoms enshrined in the Constitution. Unreasonable delay before trial cannot become so commonplace that it is accepted as orthodoxy contrary to the provisions in the Constitution. The constitutional rights guaranteed by section 5(5) (or even section 10(1)) will become a thing writ in water if those conditions become the norm and constitutional infringements go unchecked. The Privy Council in Pratt and Morgan v Attorney General of Jamaica [1994] 2 AC 1 did not hesitate in holding that "in any case in which execution is to take place more than five years after sentence there will be strong grounds for believing that the delay is such as to constitute 'inhuman or degrading punishment or other treatment'". Similarly, the courts should not hesitate in relation to section 5(5) of the Constitution.

[33] There is no question that the Constitution is supreme and the courts are the guardians of the Constitution. Chief Justice Sir Hugh Wooding in Collymore v Attorney General of Trinidad and Tobago (1967) 12 WIR 5 where stated that he

was in no doubt that the Supreme Court had been constituted, and is, the guardian of the Constitution, so it was not only within its competence but also its right and duty to make binding declarations, if and whenever warranted, that an [an act is unconstitutional] because it abrogates, abridges or infringes or authorises the abrogation, abridgment or infringement of one or more of the rights and freedoms recognised and declared by section 1 of the chapter relating to fundamental rights and freedoms (at 9).

[34] The Caribbean Court of Justice in Gibson stated (at [49]) that:

> By deliberately elevating to the status of a constitutional imperative the right to a trial within a reasonable time, a right which already existed at common law, the framers of the Constitution ascribed a significance to this right that too often is under- appreciated, if not misunderstood.

[35] The Caribbean Court of Justice (at [62]) continued that:

> The fundamental objective of the reasonable time guarantee is not to permit accused persons to escape trial but to prevent them from remaining in limbo for a protracted period and to ensure that there is efficient disposition of pending charges. The guarantee is an incentive to the State to provide a criminal justice system where trials are heard in a timely manner.

[36] The Caribbean Court of Justice is emphasizing the need to pay due respect to the constitutional reasonable time guarantee before trial, and that the rationale is to prevent delay and promote an efficient disposition of charges against accused persons. The words of the constitution must have some meaning and are not mere surplusage. The courts as guardians of the constitution must give effect to the meaning of those words that promote respect for and obedience by the State of the commands of the Constitution.

The Reasons for the Delay

[37] None of the affidavits filed on behalf of the Respondents provided any explanation for the delay of 1 year 8 months for the Claimant to be tried on the First Charge or why the Claimant remained in custody for a total of 2 years and 11 months without trial on the Second and Third Charges. There was no explanation in the affidavits filed by the Defendants why the Claimant was not tried on the Second and Third

Charges at the same time as the First Charge. The Respondent sought impermissibly to justify the length of period in closing submissions filed after trial by contending "the Claimant's matters were dealt with in a timely manner according to the heavy demands of the Court system". The Claimant did not and perhaps could not provide reasons for the delay either. Chief Justice Sir Dennis Byron in Gooderidge stated (at [17]) that:

> The law seems to be that the burden to show the unreasonableness of the delay is primarily on the person who alleges contravention of his rights, although in some cases the extent of the delay may be sufficient to discharge that burden at least prima facie.

[38] I am of the view that this is the correct approach. The time period must be looked at together with all the surrounding circumstances in which it arises. Delay may arise for good reason, for example, the need to obtain forensic evidence from overseas. However, unreasonable delay that goes beyond what should happen in the ordinary course of things can never be constitutionally justified. The Caribbean Court of Justice in Gibson stated (at [58]) that:

> A finding that there has indeed been unreasonable delay in bringing the accused to trial must be made on a case by case basis. It cannot be reached by applying a mathematical formula although the mere lapse of an inordinate time will raise a presumption, rebuttable by the State, that there has been undue delay.

[39] The evidence of the Claimant was that the trial lasted two days and upon direction from the court the jury returned a verdict of not guilty. None of the affidavits filed on behalf of the Respondents show that this was a complicated matter requiring a significant time for investigation and preparation of the case for trial.

The responsibility of the Claimant for asserting his rights

[40] The responsibility for preventing any delay in the period before trial rests squarely on the State through the persons on whom the responsibility for the administration of criminal justice in Saint Christopher and Nevis rests. In Barker, Justice Powell explained (at pp. 531-532) that:

> Whether and how a defendant asserts his right is closely related to the other factors we have mentioned. The strength of his efforts will be

> affected by the length of the delay, to some extent by the reason for the delay, and most particularly by the personal prejudice, which is not always readily identifiable, that he experiences. The more serious the deprivation, the more likely a defendant is to complain. The defendant's assertion of his speedy trial right, then, is entitled to strong evidentiary weight in determining whether the defendant is being deprived of the right. We emphasize that failure to assert the right will make it difficult for a defendant to prove that he was denied a speedy trial.

[41] I entertain grave doubts as to whether this can at all be significant in the context of constitutional litigation in the Commonwealth Caribbean where ordinary citizens may not be aware of the plentitude of rights afforded to them under the Chapter on Fundamental Rights and Freedoms found in Commonwealth Caribbean constitutions. While this aspect might be useful in the American context, it may very well be inapplicable to the Caribbean reality and may have the effect of preventing effective enforcement of constitutional rights on the basis that the Claimant, by not asserting his right before the constitutional claim is brought, has somehow waived or could be seen to have waived his constitutional rights. I do not agree with the Defendants' submission that it matters that the only time the Claimant sought to assert his rights was when he filed the application by way of originating motion and that the Claimant has provided no evidence to show that he made any express request for his matters to be considered by the court and was so refused.

[42] In any event, the Claimant averred that he was not represented at the time of his arrest, charge, and committal and the presiding magistrate rejected his numerous oral requests for bail. The Respondents did not dispute this. It is of interest to note that section 5(5) of the Constitution provides that if a person arrested has not been tried within a reasonable time then he must be "released either unconditionally or upon reasonable conditions" to ensure that he or she appears at a later date for trial or for proceedings preliminary to trial and that "such conditions may include bail so long as it is not excessive" (emphasis added).

Prejudice to the Claimant

[43] As intimated earlier, not all the factors outlined by Justice Powell in **Barker** are applicable to a section 5(5) analysis that is based on the assumption that there has not been any trial. It simply directs that where there is unreasonable delay a person should be released either unconditionally or upon reasonable conditions to ensure that he or she appears at a later date for trial or for proceedings preliminary to trial. The prejudice to the claimant is directly relevant to section 10(1) of the Constitution where the unreasonable delay might affect the fairness of the trial. It is also of significance that neither the evidence of the Claimant nor that of the Respondents shows that the Claimant was at all at fault or contributed significantly or in any way to the delay of which he complains.

[44] The state cannot have it both ways. It can keep the accused person in detention for good reason before trial but it must try him within a reasonable time to avoid contravening section 5(5) of the Constitution. If it cannot guarantee a trial within a reasonable time, then, it must release the accused person either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he or she appears at a later date for trial or for proceedings preliminary to trial, and such conditions may include bail so long as it is not excessive in accordance with section 5(5) of the Constitution.

[45] Based on the evidence before the court, I find that the length of the delay of 2 years and 11 months before trial on the Second and Third Charges is sufficient to discharge the burden on the Claimant. In respect of the Second and Third Charges, the delay was unreasonable. However, in relation to the First Charge, there was a delay but this delay cannot in all the circumstances be regarded as unreasonable. The Claimant is therefore entitled to a declaration that his constitutional right under section 5(5) was breached when he spent 2 years and 11 months awaiting trial in respect of the Second Charge and the Third Charge. The Claimant is not entitled to such a declaration in relation to the First Charge on which he was tried and acquitted on 25 February 2014.

The Nolle Prosequi

[46] The Claimant avers that his liberty was finally restored when he was released from prison 19 days after the written notice from the DPP to the Registrar of the High Court. The procedure by which the Director of Public Prosecutions (the "DPP") exercises his constitutional right under section 65(2)(c) of the Constitution to discontinue criminal proceedings against any person is found in section 17 of Criminal Procedure Act CAP 4.06 of the Laws of Saint Christopher and Nevis which provides as follows:

> 17. Right of Director of Public Prosecutions to enter nolle prosequi.
>
> (1) At any time after the receipt of the copy of the documents mentioned in section 12, and either before or at the trial and at any time before verdict, the Director of Public Prosecutions may enter nolle prosequi either by stating in Court or by informing the Court in writing addressed to the Registrar that the Crown intends that the proceedings shall not continue, and, thereupon, the accused person shall be at once discharged in respect of the charge for which nolle prosequi is entered, and if he or she has been committed to prison, shall be released, or if he or she is on bail, his or her recognizance shall be discharged, but his or her discharge shall not operate as a bar to any subsequent proceedings against him or her on the same facts.
>
> (2) If the accused person is not before the Court when nolle prosequi is entered, the Registrar shall cause notice in writing of the entry to be given to the keeper of the prison in which the accused in detained, and also to the Magistrate of the district in which he or she was committed for trial, and the Magistrate shall forthwith cause a similar notice in writing to be given to any witnesses bound over to give evidence at the trial and to the accused and his or her sureties if he or she has been admitted to bail.

[47] Once the DPP is satisfied that he wishes to enter a nolle prosequi, he writes to the Registrar to this effect. If the accused person has been committed to prison he shall be released. The Registrar must then cause a notice in writing to be given to the keeper of the prison in which the accused person is detained. The notice that was exhibited by the Respondents in this case was signed by the DPP not the Registrar as required by section 17. Section 17 of the Criminal Procedure Act does not expressly state the period of time within which the Registrar must act after

being informed by the DPP in writing that the Crown intends that the proceedings shall not continue against the accused person.

[48] Some guidelines are necessary to fill in that lacuna. If the accused person is in court, section 17(1) states that he "shall be at once discharged in respect of the charge for which [the] nolle prosequi is entered, and if he or she has been committed to prison, [he] shall be released". Where the accused person is not before the court, section 17(2) provides that "the Registrar shall cause notice in writing of the entry to be given to the keeper of the prison in which the accused in detained" (emphasis added). Although no specific time period is stated in relation to a person who is not before the court, it seems sensible that the Registrar acting pursuant to section 17(2) should act *speedily and without delay*. Once the DPP writes to the Registrar, he or she should act without delay and should ensure that the accused person is released immediately or at the latest the close of business on the same day on which the DPP informs the court, through the Registrar, of his decision. A delay of 19 days is unacceptable since the effect of the nolle prosequi is to remove the lawful basis for detaining the accused person. Therefore, in the period after 4 June 2015, the Claimant was detained without lawful authority contrary to section 5 of the Constitution.

Conditions at Her Majesty's Prison

[49] The Claimant provides a vivid picture of the state of the prison cells in which he was incarcerated and the conditions under which he was kept in prison during that three (3) year three (3) month period. He states that he was kept in the "lockdown" cell with an average of 5 other inmates including some who were awaiting trials and condemned criminals. The Claimant states that he spent six (6) months in "lockdown". The cell was approximately 8 feet by 10 feet and contained a tank-less toilet and an area known as the shaft (a washing area). He states that while in the cell he had to sleep on the floor with only a blanket for bedding and that the cell door is metal with an opening slot big enough to enable food to pass through. In addition, the ventilation was poor because there was only one window, which was

covered by shutters. He states that he was not provided with any toiletries and his family provided him with personal items such as toothbrush and body soap.

[50] The Claimant states that during other periods he stayed in "general population" where he lived in a cell with 21 other men, and slept at the bottom of a bunk bed. He was then moved to "condemn block" for about five (5) months where he shared a cell without a bed with three other men. The Claimant states he received daily recreation for a discretionary period and the lights in "condemn block" were always on, which limited his sleep at nights.

[51] The Claimant avers that during the period of time in prison, the prison officials did not allow him daily visits by his family and that his diet was not nutritious or balanced. He claimed that in order not to fall ill from starvation, he was forced to eat porridge or rice, stale bread and bush tea daily with the occasional serving of milk once per month. The Claimant also states that he was also given half-cooked chicken to eat as his only source of protein.

[52] Assistant Superintendent of Prisons Alton Liburd (ASP Liburd) avers all prisoners were treated in the same manner and the Claimant was not treated any differently from the other prisoners who were on remand, especially during the periods in which the Claimant was held solely on remand. ASP Liburd continues that the Claimant while imprisoned never complained about the conditions of the prison or made any complaints about anything whatsoever. In addition, he claims that the Claimant was never "caged" in any cells, but was in fact housed in various cells during his time on remand and during the periods in which he was serving his sentence. ASP Liburd avers that for security and control reasons all prisoners whether convicted or on remand are housed together in various cells; and that tank-less toilets are placed in all cells, all of which have a constant supply of water.

[53] ASP Liburd avers that prisoners are only placed in "lockdown" for bad behavior and denies that the Claimant was ever placed in "lockdown". He claims the administrators of the prison have a wide discretion to change the location where a prisoner is housed for security reasons. ASP Liburd states that cells are no smaller than 8 feet by 13 feet. He continues that all prisoners are given daily recreational

time, except on Sundays and that they are allowed out of the cells only to receive their ration. ASP Liburd avers that the Claimants allegations concerning the time periods he spent in "condemn block" are false.

Conclusions on the Conditions at Her Majesty's Prison

[54] It is notoriously difficult to determine such questions solely on affidavit evidence where the parties present such polarizing views on the state of the conditions at Her Majesty's Prison where the Claimant was kept for three (3) years and three (3) months. The Defendants did not cross-examine the Claimant on the conditions that he claimed obtained during his time in prison, relying at trial on the affidavit evidence of ASP Liburd. There was no cross examination of any of the witnesses on this issue at trial that would have enabled the court to form an assessment based on the view of the demeanor of the persons who presented the affidavits.

[55] In Thomas and Hilaire v Baptiste [1999] UKPC 13, [2000] 2 AC 1, the appellants argued that the conditions in which they were held in prison amounted to cruel and unusual punishment. Lord Millet for the majority of the Privy Council stated that:

> 42. The appellants were detained in cramped and foul-smelling cells and were deprived of exercise or access to the open air for long periods of time. When they were allowed to exercise in the fresh air they were handcuffed. The conditions in which they were kept were in breach of the Prison Rules and thus unlawful. It does not follow that they amounted to cruel and unusual treatment. (It is rightly accepted that they did not amount to additional punishment).
>
> 43. The expression is a compendious one which does not gain by being broken up into its component parts. In their Lordships view, the question for consideration is whether the conditions in which the appellants were kept involved so much pain and suffering or such deprivation of the elementary necessities of life that they amounted to treatment which went beyond the harsh and could properly be described as cruel and unusual. Prison conditions in third world countries often fall lamentably short of the minimum which would be acceptable in more affluent countries. It would not serve the cause of human rights to set such demanding standards that breaches were commonplace. Whether or not the conditions in which the appellants were kept amounted to cruel and unusual treatment is a value judgment in which it is necessary to take account of local conditions both in and outside prison. Their Lordships do not wish to seem to minimise the appalling conditions which the appellants endured. As the Court of Appeal

> emphasised, they were and are completely unacceptable in a civilised society. But their Lordships would be slow to depart from the careful assessment of the Court of Appeal that they did not amount to cruel and unusual treatment.

[56] Lord Millet's statements although made in the context of specific facts of Thomas and Hilaire have some general application. There he emphasized that: first, the essential question is whether the conditions in which the prisoners were kept involved so much pain and suffering or such deprivation of the elementary necessities of life that they amounted to treatment which went beyond the harsh and could properly be described as torture or as inhuman degrading punishment or other like treatment. Second, whether or not the conditions in which the prisoners were kept amounted to torture or to inhuman degrading punishment is a value judgment in which it is necessary to take account of local conditions both in and outside prison. Lord Millet continued that:

> 45. It would be otherwise if the condemned man were kept in solitary confinement or shackled or flogged or tortured. One would then say: "enough is enough".

[57] However, the actual decision of Thomas and Hilaire was based on its specific facts. First, the assessment was done on affidavit evidence without any cross-examination of the witnesses. This is the case here too but with one critical difference in that the court was able to view first hand the conditions in which prisoners are kept at Her Majesty's Prison. Second, the Privy Council accepted the view of the Court of Appeal of Trinidad and Tobago that the conditions that obtained in Thomas and Hilaire were "completely unacceptable in a civilised society". When this is juxtaposed with the statement by the Privy Council that "[p]rison conditions in third world countries often fall lamentably short of the minimum which would be acceptable in more affluent countries", does this mean that prisoners in third world countries do not deserve some minimum standards while they are serving their time in prison? I have no doubt that the Privy Council in Thomas and Hilaire did not intend to suggest that they do not, noting that it "would be slow to depart from the careful assessment of the Court of Appeal that they did not amount to cruel and unusual treatment."

[58] I must now undertake that careful assessment on the question of whether the conditions experienced by the Claimant at Her Majesty's Prison amounted to torture or to inhuman degrading punishment or other like treatment in contravention of section 7 of the Constitution. On 9 November 2018, the court, the Claimant and Counsel for the parties visited Her Majesty's Prison. The Claimant spent some time in cell number 15 in the part of the prison known as general population. In that section, the cell is 14 feet wide by 21 feet long. The front of cell is a thick wrought iron gate and there is a florescent bulb on the outside that illuminates the room through a window next to it. There are 5 small bunk beds in the cell that sleep 10 prisoners. Some of the cells in general population have up to 12 prisoners. There is a bathroom to the far left side of the room where the prisoners shower with a small concrete washbasin to the right of the shower. The room was dark and clothes and personal items littered the floor. There are some shelves placed at random parts of the cell and clotheslines are found all over the ceiling.

[59] There was a strong stench emanating from the cell as I entered with little natural light to enable the prisoners to read anything. The floor to the back of the cell next to the shower was wet and there *might* be some evidence of mold on the walls of the cell. There is a television in the cell that provides some entertainment for the prisoners.

[60] The Claimant also spent some time in what is called "condemn block" where two or three inmates share a cell. The cell is admittedly much brighter than the cells in general population. The cell, which measured 8 feet wide by 13 feet long, was clearly built for one person as it contains one concrete slab that functions as a bed. On the concrete slab was some bedding on which a prisoner was sleeping at the time. The other prisoner was sleeping on the some light bedding strewn on the concrete floor. The prisoners shower in a location outside the cell. The cell contains a lavatory and a washbasin similar to that found in the cells in the general population. The prisoners hang their clothes in the same way as those in the cells in general population – on makeshift clotheslines found across the ceiling. The

florescent light is also located on the outside the cell, and a television set is placed on a wall opposite the cell. The Claimant also spent some time in a part of the prison called "lockdown". On approaching the area one is hit with a pungent smell. No light enters the room, as the door is made of steel with only one area only marginally bigger than a letter hole in which the prisoners are fed.

[61] Based on the affidavit evidence presented by the Claimant, the affidavit evidence of the Respondents and the prison visit conducted by the court, I am of the firm view that the conditions outlined by the Claimant in his application by way of originating motion do not meet the threshold required for a breach of section 7 of the Constitution. There should be and there is a minimum standard that every civilized society should meet, even a third world country, and it is my view that the conditions in the Her Majesty's prison only *marginally* meet that standard. However, that does not mean that the conditions in which the Claimant was detained amounts to torture or to inhuman degrading punishment or other like treatment. I agree with view expressed by Lord Millet in Thomas and Baptiste that to fall foul of the constitutional prohibition against cruel and inhuman treatment, it must be shown that "the conditions in which [the Claimant was] kept involved so much pain and suffering or such deprivation of the elementary necessities of life that they amounted to treatment which went beyond the harsh and could properly be described as cruel and unusual".

[62] The court is of the considered view that although the conditions outlined by Claimant were less than ideal they do not reach the threshold required for a infringement of section 7 of the Constitution, which provides that a person shall not be subjected to torture or to inhuman degrading punishment or other like treatment. It is correct that the threshold for *this* constitutional infringement is set extremely high since the words of the constitution must have some meaning – "torture", "inhuman" or "degrading" are all ordinary English words, which should be given their plain meaning. The Oxford Advanced Learner's Dictionary 1993 defines: (1) torture as "infliction of severe bodily pain, esp. as a punishment or means of persuasion"; (2) inhuman as "brutal; unfeeling; barbarous"; and (2)

degrading as "1 humiliate, dishonour. 2 reduce to a lower rank." To contravene section 7 of the Constitution, the conditions of the prison must be such that severe bodily or mental pain is inflicted on the prisoner, or the prisoner is subject to conditions that are brutal, barbarous or conditions that would tend to humiliate or debase him.

[63] It is no surprise that such a constitutional prohibition found its way in Commonwealth Caribbean constitutions given our history with the barbarism associated with centuries of the slave trade and slavery. No doubt the drafters of section 7 of the Constitution had in mind the types of punishments meted out to slaves for over 300 years. I am reminded of the remarks of Lord Millet in Thomas and Baptiste that '[i]t would not serve the cause of human rights to set such demanding standards that breaches were commonplace". The conditions experienced by the Claimant during his time in prison fall far short of the threshold required to establish a contravention of section 7 of the Constitution.

The Appropriate Constitutional Remedy

[64] The Claimant was arrested in February 2012 and was tried and acquitted on the First Charge in February 2014. He was kept in custody awaiting trial on the Second and Third Charges for 2 years and 11 months. That trial never took place and for reasons already explained he was released in May 2015. As explained above, the period of 1 year 8 months while the Claimant remained in custody awaiting trial on the First Charge does not amount to unreasonable delay.

[65] Section 5(6) of the Constitution provides that:

> (6) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefor from that other person or from any other person or authority on whose behalf that other person was acting:
>
> Provided that a judge, a magistrate or a justice of the peace or an officer of a court or a police officer acting in pursuance of the order of a judge, a magistrate or a justice of the peace shall not be under any personal liability to pay compensation under this subsection in consequence of an act performed by him or her in good faith in the discharge of the functions of his or her office and

> any liability to pay any such compensation in consequence of any such act shall be a liability of the Crown.

[66] This provision mandates that any person who is unlawfully detained by any person shall be entitled to compensation. Sections 5(1) to (5) provide the circumstances where arrest and detention shall be lawful. Any detention that falls outside these provisions is unconstitutional and any person so detained in breach thereof is entitled to compensation under section 5(6) of the Constitution.

[67] As held above, the delay of 2 years 11 months pending trial during which the Claimant was detained breached section 5(5) of the Constitution. The Claimant is therefore entitled to compensation under section 5(6) for that breach. However, the Claimant cannot be compensated for the period during those 2 years and 11 months while he was detained pending trial on the First Charge. While it cannot be disputed that the Claimant had to wait 2 years and 11 months before trial on the Second and Third Charges, it is also correct that he spent a reasonable period of 1 year and 8 months properly awaiting trial on the First Charge. It seems incongruous, for the purposes of awarding compensation under section 5(6) of the Constitution, to include the period during which the Claimant was in lawful custody awaiting trial on the First Charge and for which there was no constitutional contravention. Therefore, for the purposes awarding compensation under section 5(6) of the Constitution I will deduct the time period on remand on the First Charge from the 2 years and 11 months, which leaves a total period of one year and one month.

[68] In answering the question whether exemplary damages may be awarded by way of redress for contravention of the human rights provisions enshrined in the Constitution of Trinidad and Tobago, the Privy Council in **Attorney General of Trinidad and Tobago v Ramanoop** [2006] 1 AC 328 stated that:

> 18 When exercising this constitutional jurisdiction the court is concerned to uphold, or vindicate, the constitutional right, which has been contravened. A declaration by the court will articulate the fact of the violation, but in most cases more will be required than words. If the person wronged has suffered damage, the court may award him compensation. The comparable common law measure of damages will often be a useful

> guide in assessing the amount of this compensation. But this measure is no more than a guide because the award of compensation under section 14 is discretionary and, moreover, the violation of the constitutional right will not always be coterminous with the cause of action at law.
>
> 19 An award of compensation will go some distance towards vindicating the infringed constitutional right. How far it goes will depend on the circumstances, but in principle it may well not suffice. The fact that the right violated was a constitutional right adds an extra dimension to the wrong. …

[69] The Privy Council went on to consider whether an additional award is sometimes needed – what is now termed "vindicatory damages" – and with which we are not here concerned. The principles enunciated by the Privy Council in Ramanoop were applied in Merson v Cartwright [2006] 3 LRC 264. In Takitota v Attorney General of the Bahamas [2009] 4 LRC 807, the Privy Council explained that:

> [18] The court should determine what they consider to be an appropriate figure to reflect compensation for the long period of wrongful detention of the appellant, taking into account any element of aggravation they think proper, reflecting the conditions of his detention and, in their own words, the misery which he endured. In assessing the proper figure for compensation for such long-term detention, they should take into account that any figure they might regard as appropriate for an initial short period, if extrapolated, should ordinarily be tapered, as their Lordships have pointed out at para [9], above. The final figure for compensatory damages should therefore amount to an overall sum representing appropriate compensation for the period of over eight years' detention, taking account of the inhumane conditions and the misery and distress suffered by the appellant.

[70] In Subiah v Attorney General of Trinidad and Tobago [2009] 4 LRC 253, the Privy Council summarized the applicable principles as follows:

> [11] The Board's decisions in [Ramanoop and Merson leave no room for doubt on a number of points central to the resolution of cases such as the present. The Constitution is of (literally) fundamental importance in states such as Trinidad and Tobago and (in Merson), the Bahamas. Those who suffer violations of their constitutional rights may apply to the court for redress, the jurisdiction to grant which is an essential element in the protection intended to be afforded by the Constitution against the misuse of power by the state or its agents. Such redress may, in some cases, be afforded by public judicial recognition of the constitutional right and its violation. But ordinarily, and certainly in cases such as the present (and those of Ramanoop, Merson, and other cases cited), constitutional

> redress will include an award of damages to compensate the victim. Such compensation will be assessed on ordinary principles as settled in the local jurisdiction, taking account of all the relevant facts and circumstances of the particular case and the particular victim. Thus the sum assessed as compensation will take account of whatever aggravating features there may be in the case, although it is not necessary and not usually desirable … Having identified an appropriate sum (if any) to be awarded as compensation, the court must then ask itself whether an award of that sum affords the victim adequate redress or whether an additional award should be made to vindicate the victim's constitutional right. The answer is likely to be influenced by the quantum of the compensatory award, as also by the gravity of the constitutional violation in question to the extent that this is not already reflected in the compensatory award. As emphasised in Merson, however, the purpose of such additional award is not to punish but to vindicate the right of the victim to carry on his or her life free from unjustified executive interference, mistreatment or oppression. …

[71] In other words, damages under the redress clause or, in this case, under section 5(6) of the Constitution, are to compensate for constitutional infringements. In fact, section 5(6) expressly provides for *compensation* to be provided for breaches of section 5 of the Constitution. Any compensation payable should take into account any aggravating factors found to exist. The court must then ask itself whether the compensation payable provides adequate redress for the constitutional breach or whether an additional award should be made to vindicate the applicant's constitutional rights. This additional award has been termed "vindicatory damages". In answering this question, the court may consider the gravity of the constitutional breach itself if it is not already reflected in the compensatory award and the court may be influenced by the quantum of the compensatory award. The rationale for the award of vindicatory damages is not to punish the State but to vindicate the right of the applicant "to carry on his or her life free from unjustified executive interference, mistreatment or oppression".

The Assessment of Damages

[72] The question that next arises for determination is the method of calculating the compensation to which the Claimant is entitled under section 5(6) of the Constitution. The Claimant in his application by way of originating motion applied for an order that he is entitled to compensatory relief and damages for the

unconstitutional deprivation of his liberty. Nothing is added by claiming "compensatory relief" for it is well established that one of the aims of an award of damages for constitutional infringements is to compensate an applicant for the wrong suffered.

[73] The Claimant submits that damages, like the compensation contemplated under section 5(6) of the Constitution, is to be assessed on ordinary principles as settled in our local jurisdiction, taking account of all the relevant facts and circumstances of the particular case and the particular victim. The Claimant contends that in determining the appropriate sum, it is prudent to examine a number of cases, some of which were related to damages for the common law tort of wrongful imprisonment, citing the decision of Ramdhani J (Ag.) in Davis, a case from this jurisdiction. The Claimant seeks an award of: (1) $60,000.00 for the initial act of detention; and (2) $1,500.00 per day for each day of detention inclusive of exemplary damages, taking into account his loss of liberty, the humiliation he would have suffered on being charged and thrown in prison where he spent 1212 days.

[74] The Claimant also seeks an award of special damages for the loss of his daily income as a self-employed painter prior to incarceration of $115.00 per day. The Claimant also seeks an award of exemplary damages for what is termed the "oppressive, arbitrary or unconstitutional action by the servants of the government". The Claimant therefore sought the following:

(1) General damages inclusive of Exemplary Damages: ($1500.00 x 1212days) $1,818,000.00;

(2) Compensatory Damages under Section 5 (6) of the Constitution $74,000.00;

(3) Damages for initial shock of arrest: $60,000.00; and

(4) Special Damages (Loss or earnings at $575.00 per week for 158 weeks total $90,932.00)

Total Award: $2,042,932.00

[75] For reasons already explained there was no breach of section 5(3) of the Constitution so compensation in the sum of $60,000.00 is unnecessary and is not

awarded. I agree with the Defendants that to succeed on a claim for special damages, special damages must be specifically pleaded and more importantly proved with the best evidence possible. The Claimant did not provide any evidence of loss of earnings during the period of detention so that amount as special damages cannot be awarded. In any event, I doubt very much that any such amount could be awarded since there would be an element of double counting since the court would make an award for compensation generally. The Claimant is therefore not entitled to the award of $90,932.00 as special damages.

[76] The Claimant also claims compensatory damages under section 5(6) of the Constitution in the sum of $74,000.00 but does not explain how this figure is arrived at or the manner in which it is different from his claim for "general damages including exemplary damages". Compensation claimed under section 5(6) and under section 18(1) is duplication and is therefore not awarded.

[77] What therefore is the compensation to which the Claimant is entitled? The Claimant seeks general damages inclusive of exemplary damages, calculated at a rate of $1,500.00 per day for 1,212 days giving a total of $1,818,000.00. I will address first the inclusion of exemplary damages in the head of damages claimed. In Takitota, the Privy Council, after quoting from Ramanoop and Merson, explained that:

> [13] The award of exemplary damages is a common law head of damages, the object of which is to punish the defendant for outrageous behaviour and deter him and others from repeating it. One of the residual categories of behaviour in respect of which exemplary damages may properly be awarded is oppressive, arbitrary or unconstitutional action by the servants of the government, the ground relied upon by the Court of Appeal in the present case.
>
> [14] The award of damages for breach of constitutional rights has much the same object as the common law award of exemplary damages. …
>
> [16] Their Lordships consider that it would not be appropriate to make an award both by way of exemplary damages and for breach of constitutional rights. When the vindicatory function of the latter head of damages has been discharged, with the element of deterrence that a substantial award carries with it, the purpose of exemplary damages has largely been achieved. To make a further award of exemplary damages, as the

> appellant's counsel sought, would be to introduce duplication and contravene the prohibition contained in the proviso to art 28(1) of the Constitution.

[78] Applying the remarks of the Privy Council in Takitota to the case at bar, the Claimant is not entitled to an award of exemplary damages in addition to an award of damages for breach of his constitutional rights.

[79] The Claimant is entitled to damages for the breach of his constitutional rights for the deprivation of his liberty. In Davis, the court held that the applicant's arrest and detention on a charge of murder for a period of 230 days violated his constitutional right to personal liberty and was in contravention of the provisions of section 5(5) of the Constitution of St. Christopher and Nevis. The trial judge examined various cases from Countries and Territories served by the Eastern Caribbean Supreme Court and other decisions including the decision of the Privy Council in Merson. I agree with the trial judge that the cases do not provide any specific guidance on how the final figures are arrived at except that, in Merson, the Court of Appeal approached the matter by deciding on a figure of $250.00 per day. However, this begs the question why $250.00 as opposed to $350.00 or $500.00 per day?

[80] In the end, it is a matter of judicial discretion based on what the trial judge believes to be justified in compensating the applicant for the constitutional infringements. In Davis, the trial judge determined that the sum of EC$500.00 per day was appropriate and to ensure consistency in the determination of such awards for wrongful deprivation of liberty in contravention of section 5 of the Constitution, I would also use the sum of EC$500.00 per day for the reasons stated by Ramdhani J (Ag.) in Davis. It is not entirely clear how the Claimant arrived at the sum of $1,500.00 per day when he cites in support the decision of Davis where the trial judge, in this jurisdiction, used the sum of EC$500.00 per day. The Claimant was acquitted on 25 February 2014 and released on 25 June 2015, a total of 484 days. He is therefore entitled to compensation for a period of 484 days, not 1,212 as he claims.

[81] Consequently, the Claimant is entitled to compensation in the sum of EC$242,000.00 for contravention of section 5 of the Constitution. In this regard,

compensation is awarded and included in the total sum for the period 4 June 2015 and 25 June 2015 during which the Claimant remained in detention notwithstanding the nolle prosequi entered by the DPP. The award of the sum of EC$242,000.00 for contravention of the Claimant's fundamental right not be deprived of his personal liberty guaranteed by section 5 of the Constitution is sufficient to vindicate the infringement of his constitutional right. An additional award, termed vindicatory damages, is not necessary to reflect the sense of public outrage, emphasize the importance of the constitutional right and the gravity of the breach and to deter further breaches. In Takitota where such an award was made the court was confronted with the inhumane conditions in which the applicant was detained for 8 years. The Privy Council in Takitota quoted (at [4]) from the judgment of the trial judge who described the conditions in the following way:

> The plaintiff was made to sleep on a filthy floor with only a single blanket in which to cover himself or attempt to make a bed. Conditions were hot and steamy in the summer. There was a bad mosquito problem. The plaintiff testified that sometimes he was so hot that he had to put water on the floor and lay in it. There was no running water in the facility. The plaintiff was obliged to urinate and defecate in a bucket. He said the stench was such that it made him vomit on countless occasions causing him to lose his appetite. There were four buckets of urine and faeces in an 18 by eight foot room filled with twenty to thirty-five people at any given time. The evidence of the Superintendent of Prison, Mr. Culmer, confirmed these conditions. The plaintiff had to endure these conditions for roughly eight (8) years while sealed in a room at Maximum Security Prison with hardened criminals in Fox Hill. He said and I am satisfied that it must have happened, that he had been assaulted and attacked and taken advantage of by prisoners and was afraid to use the bucket provided by the authorities and so sometimes he urinated and defecated himself.

[82] The conditions in which the Claimant was detailed do not come in any way close to those in which the applicant in Takitota was detained to justify the additional award by way of vindicatory damages.

Disposition

[83] For the reasons explained above, I make the following orders:

(1) A Declaration is granted that section 5(5) of the Constitution was contravened

when the Claimant was detained for two (2) years and 11 months without trial on the Second and Third Charges.

(2) The Declaration is granted that section 5 of the Constitution was contravened when the Claimant continued to be detained after the Director of Public Prosecutions entered the *nolle Prosequi* on 4 June 2015.

(3) A Declaration is granted that section 7 of the Constitution was not contravened because of the conditions in which the Claimant was detained at Her Majesty's Prison.

(4) The Claimant is awarded compensatory damages for breach of his constitutional right to personal liberty in the sum of EC$242,000.00.

(5) The Claimant is awarded prescribed costs together with interest at the rate of 6% on the judgment sum from the date of judgment until the said sum is fully paid.

[84] I wish to thank Counsel for the Parties for their timely and helpful submissions.

Eddy D. Ventose
High Court Judge

By the Court

Registrar