COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

COMMON LAW AND EQUITY DIVISION

2017/CLE/GEN/00916

BETWEEN

KEVIN RENALDO COLLIE

Plaintiff

AND

THE ATTORNEY GENERAL

Defendant

Before:	**The Hon. Madam Justice G. Diane Stewart**
Appearances:	**Mr. Wayne Munroe Q.C and Mr. Alex Morley for the Plaintiff**
	Mr. Kirkland Mackey and Mr. Kenny Thompson for the Defendant
Hearing Dates:	**27th, 28th March 2019**
Judgment:	**24th June, 2020**

Civil – Unlawful Arrest – Reasonable Suspicion – Power to arrest without a warrant - False Imprisonment – Deprivation of Liberty – Unlawful Search – Defunct Search Warrant - Tort - Breach of Constitutional Rights – Damages – Compensatory Damages – Vindicatory Damages

The Plaintiff, a Customs Officers within The Bahamas Customs & Excise Department was arrested while on duty at the Bahamas Customs Marine Unit on the morning of 11th August, 2016 by officers of the Royal Bahamas Police Force (the "Force") and held at the Central Detective Unit (CDU) and Cable Beach Police Station for questioning until the evening of 12th August 2016. The police officers claimed that they had a reasonable suspicion that the Plaintiff had published a song about the former Prime Minister of The Bahamas, the Right Honorable Perry G. Christie, his family and cabinet ministers, the contents of which allegedly constituted an intentional libel. The Plaintiff claimed, but which was denied by the Defendant, that his arrest and subsequent detention were both unlawful as there could be no reasonable suspicion for his arrest. He also claimed that he was handcuffed and not informed of the reason of his arrest and that there was an unlawful search of his property. The Plaintiff sought damages for breach of his

constitutional rights pursuant to Articles 19, 20, 21 and 25 of The Constitution of The Bahamas.

HELD: [1] The Plaintiff's arrest and subsequent detention were both unlawful and the Plaintiff is awarded compensatory damages in the amount of $35,000.00. The information received from senior officers on The Force was not sufficient information for the arresting officers to form the reasonable suspicion that the Plaintiff could have been responsible for the publishing of the song.

[2] The evidence of the Defendant's witnesses was contradictory and unreliable. The officers failed to follow the proper procedure in relation to the arrest and detention of a suspect.

[3] The Plaintiff's constitutional rights pursuant to Articles 19, 21 and 25 of the constitution were breached and the Plaintiff is awarded vindicatory damages in the sum of $25,000.00. The Plaintiff's rights not to be subjected to a search of his property and to a fair hearing were breached when the officers searched his home with a warrant which did not relate to the offence suspected and when he was finger printed despite being charged or convicted of any offence.

JUDGMENT

1. By a Writ of Summons filed 8th August, 2017 **("WOS")** and Amended Statement of Claim filed 17th January, 2018 **("ASOC")**, Mr. Kevin Renaldo Collie **("the Plaintiff")** claimed damages for his unlawful arrest and false imprisonment by members of the Force starting on the morning of 11th August, 2016 through the evening of 12th August, 2016. As a result, the Plaintiff sought:

   1.1 Damages for false imprisonment and unlawful detention;

   1.2 Damages for breach of constitutional rights;

   1.3 Exemplary damages;

   1.4 Interest on the said damages pursuant to the Civil Procedure (Award of Interest) Act 1992;

   1.5 Such further or other relief; and

   1.6 Costs.

2. The Plaintiff alleged that on the morning of 11th August, 2016 at around 10:30 a.m. the Plaintiff while at work at The Bahamas Customs Marine Unit located on West Bay Street **("Customs Marine Unit")** was approached by a female officer of the Force who asked him to exit the building. Once outside, she along with seven other police officers conducted a search of the Plaintiff's Mercedes Benz motor vehicle without informing him of the reason for the search nor his arrest and removed his personal belongings from his vehicle.

3. At about 11:00 a.m. the Plaintiff was transported to CDU where he was made to enter handcuffed and placed in a room for thirty minutes. He was then escorted to another room where he met and was questioned by Chief Superintendent Clayton Fernander **("Chief Supt. Fernander")** about a song that was recorded about the then Prime Minister, the Hon. Perry Gladstone Christie, his family and other cabinet ministers **(the "audio recording")**.

4. The lyrics of the song are vile, and extremely derogatory and do not bear repeating but clearly refer to the then Prime Minister. I do not have to make any finding as to whether in fact the song constituted a libel for the purposes of this action.

5. The handcuffed Plaintiff was then transported by six police officers to his home, where they searched and subsequently removed his laptops and a tablet. He claimed that while at CDU and during the search of his home he was never told that he was under arrest.

6. After the search was completed, the Plaintiff was taken back to CDU, fingerprinted, photographed and informed of the reason for his arrest, more than three hours after he was initially arrested by the officers. He was questioned by police officers about the names of the members of a PLP WhatsApp group - Liberal Caucus. Thereafter, he was placed in a cell until about 7:00 p.m. The Plaintiff was then transported to the Cable Beach Police Station, placed in a cell and remained in police custody until Saturday, 12th August, 2016 when he was released at 7:00 p.m.

7. The Defendant, by way of Amended Defence filed 5th April, 2018 claimed that the Plaintiff was lawfully arrested at the Customs Marine Unit as he was informed that he was being arrested with respect to the offence of intentional libel but denied removing any personal belongings from the Plaintiff's vehicle and handcuffing the Plaintiff to be transported to CDU. The Defendant claimed that the Plaintiff was interviewed by Assistant Superintendent Mark Barrett **("D/ASP Barrett")** and D/Sgt 1492 Strachan under caution and questioned about the audio recording.

8. The Defendant admitted that a warrant was obtained, to search the Plaintiff's home which resulted in the removal of certain items from his home. Thereafter he was again detained at CDU and questioned about the PLP WhatsApp Group but was not asked to reveal the names of the group's members.

9. The Defendant additionally claimed that the investigation was completed within the forty eight hours provided to them in accordance with the laws of The Bahamas and denied that the Plaintiff was entitled to exemplary damages as the officers carried out their duties in accordance with the laws of The Bahamas.

10. By the Agreed Statement of Facts & Issues both parties agreed that:-

    10.1 The Plaintiff is a customs officer by profession;

    10.2 The Defendant is sued pursuant to section 12 of the Crown Proceedings Act;

    10.3 The Plaintiff was taken by police officers on the 11th August, 2016 from work to CDU without any reasons; and

    13.4 The Plaintiff complied with all instructions given by police officers.

11. The agreed issue is whether the Plaintiff was unlawfully arrested and falsely imprisoned by police officers on the 11th August, 2016.

EVIDENCE

12. The Plaintiff, a Grade II Customs Officer, in his evidence in chief swore that on 11th August 2016, while at work, police officers entered the work building around 10:30 a.m. and asked to speak to the most senior officer on shift, who in turn informed him that the police officers wished to speak to him. A female inspector asked the Plaintiff to accompany her outside, where a search of his vehicle was requested. He questioned the search, but co-operated without being given a response and his Kindle Fire and two other tablets were removed from his vehicle by the police officers.

13. The police officers then asked him to go to CDU for questioning as he was not under arrest. Before the Plaintiff was taken by the police officers to the patrol car he asked his visibly upset coworkers to contact his parents. The patrol car had three other officers inside of it and a police van which had six more officers accompanied the patrol car.

14. Upon his arrival at CDU the Plaintiff was taken through the front of the building instead of the back which caused him embarrassment after hearing someone say "that customs officer lock up, I wonder what he did". The Plaintiff was held in a waiting area with twelve officers and then questioned by Chief Supt Fernander and D/ASP Barrett. He was shown a photo of a man whom he identified as Navardo Saunders, someone he only knew from Facebook **("Mr. Saunders")**. Thereafter, Chief Supt. Fernander told the Plaintiff that he was at CDU because of information received that he and Mr. Saunders had distributed an audio recording which was derogatory of the Prime Minister and his family. The Plaintiff denied distributing the audio recording and added that he was a PLP who defended the party all the time and that Bernadette Christie was his cousin.

15. The Plaintiff was then asked to put his hands behind his back to be handcuffed and he was told that if he did not comply he would be forcibly handcuffed as it was standard procedure. He was then taken to his home by a police van, forced to enter the home handcuffed and his room was searched and his laptop confiscated. Once the Plaintiff was returned to CDU he was fingerprinted, photographed and again interviewed about the audio recording. At about 5:00 p.m. he was again placed in a holding cell. During this time Attorney Alex Dorsett **("Mr. Dorsett")** and Attorney Camille Gomez **("Ms. Gomez")** were allowed to speak with him however Ms. Gomez was not allowed to privately speak with him.

16. The Plaintiff was then transferred to the Cable Beach Police Station and held in an unusually cold cell without a blanket or a pillow being provided to him by the police officers. The next day his parents were allowed to bring him breakfast and his attorneys were again allowed to speak with him.

17. The Plaintiff described his ordeal as a terrible one and claimed that he was deprived of knowing his accuser along with being deprived of the protection of his constitutional rights and consequently he suffered immeasurable harm to his dignity. He further stated that he now suffers from post-traumatic stress as he is now afraid to be in small spaces and he also had to take three weeks' vacation to recover from the ordeal which cost him overtime revenue.

18. Under cross examination the Plaintiff initially testified that while he had the recording in his possession, he was not the person who shared the recording in the WhatsApp group, however after further probing, he testified that he did recall sharing the recording to the WhatsApp group. He also stated that while his friend Mr. Reno Pratt was allowed to bring him food, he and other customs officers were not allowed to see him.

19. Ms. Mckinney, the mother of the Plaintiff swore that on 11th August, 2016 she attended CDU as a result of a call she received from the Plaintiff's co-worker,

where she had to wait for some time before being allowed to see the Plaintiff. The Plaintiff informed her that he was detained for the audio recording but denied creating it. D/ASP Barrett told her that he was only in custody for questioning and would be released once the questioning was completed. Another officer informed her that they needed to search the Plaintiff's room. Ms. Mckinney observed that there was one marked patrol car with four police officers and a marked police bus with about six police officers who brought the Plaintiff, handcuffed, to her home to conduct the search of the Plaintiff's room. Ms. Mckinney and her husband were shown what was purportedly a search warrant before the police officers confiscated the Plaintiff's computers, cell phones and tablets.

20. Ms. Mckinney further stated that later that evening she took a blanket and pillow to the Plaintiff at the Cable Beach Police Station and the following day, 12th August, 2016 around 6:30 p.m. she collected the Plaintiff from the Cable Beach Police Station where she and the Plaintiff were told by D/ASP Barrett that he had nothing to do with the audio recording and nothing was in the Plaintiff's confiscated devices to suggest that he was.

21. The Defendant's first witness Mr. Tony Adderley, an officer with the Force stationed at CDU **("Officer Adderley")** swore that on Thursday, 11th August, 2016 around 11:15 a.m. he received information with respect to a wanted suspect, which resulted in he and other police officers attending the Bahamas Customs Marine Unit to arrest the Plaintiff. He stated that the Plaintiff's vehicle was searched with the consent of the Plaintiff and that he was cautioned and informed that his arrest was with respect to intentional libel and he was then taken to CDU for further investigation. Officer Adderley stated that a search warrant was obtained to search the Plaintiff's room and as a result the Plaintiff's black Asus Laptop S/N AR5B95, a black Compaq laptop S/N 5CB1507012 and a LG Ipad S/N 402CQ2P0434877 were confiscated and handed over to cybercrime personnel.

22. Under cross examination Officer Adderley testified that it was proper procedure to take an arrested suspect to the nearest police station to create a detention record however, this was not done with the Plaintiff who was taken directly to CDU. Officer Adderley stated that he acted on information which consisted of the Plaintiff's name along with the offence he was wanted for however, he was not given any particulars concerning the matter. He further testified that he along with about three or four other officers took the handcuffed Plaintiff to his home, acting on a warrant that he had briefly perused. Officer Adderley said that while the Plaintiff was potentially being charged with the offence of intentional libel, it was usual for a warrant to include the offences of stolen property, dangerous drugs or firearms as police officers never knew what could be found during a search. Officer Adderley initially stated that they had taken a statement from the former

Prime Minister, however he changed his testimony to state that he in fact did not have a written statement from the former Prime Minister.

23. The Defendant's second witness, D/ASP Barrett, an Officer in Charge of the South Central Division of the Force swore that on Thursday, 11th August, 2016 around 11:15 a.m. they attended the Bahamas Customs Marine Unit to arrest the Plaintiff who was cautioned and arrested and told he was being arrested for the offence of intentional libel. The Plaintiff was taken to CDU, where he was questioned and then transported to the Cable Beach Police Station for safe keeping. After continued investigation the Plaintiff was released from custody pending further investigation.

24. Under cross examination D/ASP Barrett testified that the complaint against the Plaintiff came to Chief Supt. Fernander from the Office of the Commissioner, the virtual complainant being the former Prime Minister.

25. D/ASP Barrett further stated that as a certified expert on investigations via the internet, he and his team suspected Mr. Saunders of publishing the audio recording which led to the arrest of Mr. Saunders who had named the Plaintiff as being involved. D/ASP Barrett's evidence was however contradicted by the Force's case diary which stated that officers first spoke with the Plaintiff on 11th August 2016 and then spoke to Mr. Saunders on the 12th August 2016. D/ASP Barrett said that the Plaintiff was being investigated because what was insinuated in the audio recording constituted intentional libeland had caused the Prime Minister to fear for his life and that there were embedded threats in the song.

ISSUES

26. The issues for this Court to determine are:

    26.1 Whether the Plaintiff was unlawfully arrested and if so what remedy is available?

    26.2 Whether the Plaintiff was unlawfully imprisoned and if so what remedy is available to him and

    26.3 Whether the Plaintiff's constitutional rights were violated? Whether the Plaintiff had a claim for constitutional redress or had an alternative remedy.

1. UNLAWFUL ARREST

27. The Plaintiff relies on section 12 of the Crown Proceedings Act, which governs actions involving inter alia the Crown or its officers. The section states:-

> **"12. (1) Civil proceedings by or against the Crown shall be instituted by or against the Attorney-General. (2) No proceedings instituted in accordance with this Part of this Act by or against the Attorney-General shall abate or be affected by any change in the person holding the office of Attorney-General."**

28. The Plaintiff contended that it was the usual and proper process during an arrest, for a detention record to be made up for a suspect after taking the suspect to the nearest police station. The suspect would then be invited to sign the detention record. In this matter however, there was no detention record nor did the Defendant produce any detention record. If a detention record did exist it would have shown that the Plaintiff was made aware of the reason for his arrest. The Plaintiff relied on **Shavargo McPhee v R (2016) UKPC 29** to emphasize the significance of a detention record. As a result of the departure from this procedure, the Plaintiff submits that his evidence is to be preferred. Lord Hughes stated:-

> **".....it is to the dangers of informal interviews that the requirement for a record is in large part directed. The significance of these interviews cannot be gauged simply because of the lack of record....."**

29. The Plaintiff further contended that the arresting officer could not rely on Section 31(2) of the Police Act as he did not have any information he could use to reasonably suspect the Plaintiff of having committed an offence.

30. Section 31(2) of the Police Act states:-

> **"Without prejudice to the generality of the foregoing or any other provision of this Act, a police officer my, without a warrant, arrest a person –**
>
> **(a) he reasonably suspects of having committed an offence;"**

31. In **O'Hara v Chief Constable of the Royal Ulster Constabulary (1996) UKHL 6** it was unanimously held that the individual arresting officer must have information upon which the mind of an independent observer must be able to avert her mind and determine that the suspicion is reasonable. Lord Steyn stated:-

> **".....In Civil Liberties & Human Rights in England and Wales, (1993), Professor Feldman lucidly explained the difference between two classes of statutes, at p. 199;**

> **"Where reasonable grounds for suspicion are required in order to justify the arrest of someone who turns out to be innocent, the [Police and Criminal Evidence Act 1984] requires that the constable personally has reasonable grounds for the suspicion and it would seem to follow that he is not protected if, knowing nothing of the case, he acts on orders from another officer who, perhaps, does have such grounds (emphasis). On the other hand, under statutes which require only the objective existence of reasonable grounds for suspicion, it is possible that the officer need neither have the reasonable grounds nor himself suspect anything; he can simply follow orders."**

32. Lord Hope of Craighead stated:-

> **"My Lords, the test which section 12 (1) of the Act of 1984 has laid down is a simple but practical one. It relates entirely to what is in the mind of the arresting officer when the power is exercised. In part it is a subjective test, because he must have formed a genuine suspicion in his own mind that the person has been concerned in acts of terrorism. In part also it is an objective one, because there must also be reasonable grounds for the suspicion which he has formed. But the application of the objective test does not require the court to look beyond what was in the mind of the arresting officer. It is the grounds which were in his mind at the time which must be found to be reasonable grounds for the suspicion which he has formed. All that the objective test requires is that these grounds be examined objectively and that they be judged at the time when the power was exercised."**

33. The Defendant however maintained that the police officers had reasonable and probable cause to arrest the Plaintiff after they had received certain information regarding the Plaintiff. The Defendant stated that the 'Record of Interview' showed that the arresting officer(s) had more information that just the Plaintiff's name and the purported offence. The Defendant also submitted that the Plaintiff was informed of the grounds of his arrest, interviewed and released after police investigation within the statutory perimeters of the law and relied on the **Christie v Leachinsky [1947] A.C. 573, H.L.** and **Section 31 (2) of the Police Act.**

34. In Christie (supra) it was held that:-

> **"it is a condition of lawful arrest that the party arrested should know on what charge or on suspicion of what crime he is arrested, and, therefore, just as a private person arresting on suspicion must acquaint the party with the cause of his arrest, so must a policeman arresting without warrant on suspicion state at the time [emphasis added] (unless the party is already acquainted with it), on what charge the arrest is being made or at least inform him of the facts which are said to constitute a crime on his part. Even if circumstances exist which may excuse this it is still his duty to give the information at the first reasonable opportunity after the arrest. The exigency of the situation which justifies or demands arrest without a warrant cannot justify or demand either a refusal to state the reason of arrest or a misstatement of the reason."**

35. The Defendant also argued that a police officer should perform any duty as the Commissioner may have directed pursuant to section 31 (3) of the Police Act and

additionally relied on Sections 18 and 19 of the Criminal Procedure Code **(CPC)** which gives a police officer the right to make an arrest without a warrant and to take or send the person arrested before a magistrate within 48 hours unless the person is released earlier.

36. Sections 18 and 19 of the CPC states:-

> **"18. A peace officer making an arrest without a warrant, in exercise of any powers conferred upon him by the Penal Code, the Police Act or any other law for the time being in force, shall, without unnecessary delay and not later than forty-eight hours after such arrest, take or send the person arrested before a magistrate appointed to preside in a magistrate's court having jurisdiction in the case, unless the person arrested be earlier released on bail by a police officer having power in that behalf under the provisions of section 32 of the Police Act.**
>
> **19. (1) Notwithstanding section 18 or any other law, a police officer of at least the rank of inspector may make an ex parte application to a magistrate, to have any person arrested for any offence specified under the First Schedule to the Bail Act detained for a further period not exceeding forty-eight hours where the inquiry into that offence is incomplete and where the police officer —**
>
> **(a) has to secure or preserve evidence relating to the offence;**
> **(b) has reasonable grounds for believing that the person arrested will interfere with or harm the evidence connected with the offence or interfere with or cause physical injury to other persons;**
> **(c) has reasonable grounds for believing that the persons arrested will alert other persons suspected of also having committed the offence who have yet to be arrested; or**
> **(d) has reasonable grounds for believing that the person arrested will hinder the recovery of any property obtained as a result of the offence. (2) Subject to subsection (1), where further detention is authorised the person arrested —**
>
> **(a) shall be told the reason for such further detention; and**
> **(b) the reason shall be noted on his custody record."**

37. The Defendant also relied on **Ms. Chandrawtee Ramsingh (Appellant) v The Attorney General of Trinidad & Tobago (Respondent) Privy Council Appeal No 0111 of 2010** which it submitted, affirmed the legal principles surrounding police arrests. In Ramsingh the question that the Board had to answer was whether the appellant's detention was lawful or unlawful and amounted to the tort of false imprisonment. The appellant was detained in a police station on suspicion of assault for over five hours while the police waited for a medical report on the condition of the victim. The victim was alleged to have been beaten by the appellant and while there was no blood visible the victim appeared to be in a semi-conscious state, which gave the officer, in his mind, reasonable grounds to arrest her. After receipt of the medical report the appellant was released without being questioned and charged. The Board held that the Appellant's arrest was not unlawful, there was no false imprisonment and no breach of her

constitutional rights and that the police acted reasonably in detaining the appellant until medical information was available. The appellant was released once the medical information was received.

38. The Defendant contended that the test for reasonable suspicion was both a subjective and an objective one as it related to what was in the mind of the arresting officer when the power is exercised as established in **O'Hara v Chief Constable (supra).**

39. The Defendant submitted that it satisfied its burden of proving that reasonable suspicion existed, as held in **Dryburgh v Galt 1981 JC 69 at 72**:

> **"Suffice it to say that the fact that the information on which the police officer forms his suspicion turns out to be ill-founded does not in itself necessarily establish that the police officer's suspicion was unfounded. The circumstances known to the officer at the time he formed his suspicion constitute the criterion, not the facts as subsequently ascertained. The circumstances may be either what the police officer has himself observed or the information which he has received."**

and maintained that the Plaintiff was informed of the reason for his arrest and the crime he was suspected of and accordingly his arrest and detention were lawful.

DECISION

40. There are several statutory provisions which give members of the Force the power to lawfully arrest an individual without a warrant. Section 31(2) (a) of the Police Force Act, 2009 is one of them.

41. Section 18 of the CPC states:-

> **"A peace officer making an arrest without a warrant, in exercise of any powers conferred upon him by the Penal Code, the Police Act or any other law for the time being in force, shall, without unnecessary delay and not later than forty-eight hours after such arrest, take or send the person arrested before a magistrate appointed to preside in a magistrate's court having jurisdiction in the case, unless the person arrested be earlier released on bail by a police officer having power in that behalf under the provisions of section 32 of the Police Act."**

42. In **Christie and another v Leachinsky,** Viscount Simon laid out the test for what was considered to be reasonable suspicion, where he stated at page 584:

> **".....The test as I understand it is, what was the state of mind of the police at the time of the arrest. Why did they arrest him? If they arrested him because they believed he had committed a felony and there were reasonable grounds for so believing, they do not lose the protection of the law."**

43. The Privy Council in **Shabaan Bin Hussein and others v Chong Fook Kam [1970] A.C. 942** further considered what suspicion meant in relation to the statutory power given to police officers to arrest an individual without a warrant. At page 948 the Board stated,

> **".....Suspicion in its ordinary meaning is a state of conjecture or surmise where proof is lacking: "I suspect but I cannot prove." Suspicion arises at or near the starting-point of an investigation of which the obtaining of prima facie proof is the end. When such proof has been obtained, the police case is complete; it is ready for trial and passes on to its next stage. It is indeed desirable as a general rule that an arrest should not be made until the case is complete. But if arrest before that were forbidden, it could seriously hamper the police. To give power to arrest on reasonable suspicion does not mean that it is always or even ordinarily to be exercised. It means that there is an executive discretion. In the exercise of it many factors have to be considered besides the strength of the case. The possibility of escape, the prevention of further crime and the obstruction of police inquiries are examples of those factors with which all judges who have had to grant or refuse bail are familiar. There is no serious danger in a large measure of executive discretion in the first instance because in countries where common law principles prevail the discretion is subject indirectly to judicial control. There is first the power, which their Lordships have just noticed, to grant bail. There is secondly the fact that in such countries there is available only a limited period between the time of arrest and the institution of proceedings; and if a police officer institutes proceedings without prima facie proof, he will run the risk of an action for malicious prosecution. The ordinary effect of this is that a police officer either has something substantially more than reasonable suspicion before he arrests or that, if he has not, he has to act promptly to verify it"**

44. As stated in O'Hara the test for reasonable suspicion is a simple but practical one and relates entirely to what is in the mind of the arresting officer at the time of the arrest. It is partly subjective, because the arresting officer must have formed a genuine suspicion in his own mind that the Plaintiff has been concerned with the act he is accused of. It is also partly objective, because there must also be reasonable grounds for the suspicion formed which goes no further than what was in the mind of the arresting officer at the time of the arrest.

45. The next step an arresting officer should take to ensure that an arrest is lawful, is to ensure that the person being arrested is informed of the reason for his arrest at the first possible opportunity. In **Christie v Leachinsky (supra)** Viscount Simon at page 587 stated,

> **"(1.) If a policeman arrests without warrant upon reasonable suspicion of felony, or of other crime of a sort which does not require a warrant, he must in ordinary circumstances inform the person arrested of the true ground of arrest. He is not entitled to keep the reason to himself or to give a reason which is not the true reason. In other words a citizen is entitled to know on what charge or on suspicion of what crime he is seized.**

(2.) If the citizen is not so informed but is nevertheless seized, the policeman, apart from certain exceptions, is liable for false imprisonment.

(3.) The requirement that the person arrested should be informed of the reason why he is seized naturally does not exist if the circumstances are such that he must know the general nature of the alleged offence for which he is detained.

(4.) The requirement that he should be so informed does not mean that technical or precise language need be used. The matter is a matter of substance, and turns on the elementary proposition that in this country a person is, prima facie, entitled to his freedom and is only required to submit to restraints on his freedom if he knows in substance the reason why it is claimed that this restraint should be imposed

(5.) The person arrested cannot complain that he has not been supplied with the above information as and when he should be if he himself produces the situation which makes it practically impossible to inform him, e.g., by immediate counter-attack or by running away. There may well be other exceptions to the general rule in addition to those I have indicated, and the above propositions are not intended to constitute a formal or complete code, but to indicate the general principles of our law on a very, important matter. These principles equally apply to a private person who arrests on suspicion. If a policeman who entertained a reasonable suspicion that X. has committed a felony were at liberty to arrest him and march him off to a police station without giving any explanation of why he was doing this, the prima facie right of personal liberty would be gravely infringed. No one, I think, would approve a situation in which when the person arrested asked for the reason, the policeman replied "that has nothing to do with you: come along with me."

46. Accordingly, an arrest is unlawful if:-

46.1 the arresting officer has not sufficiently satisfied himself that a suspect is responsible for the commission of an offence and therefore arrests a suspect without reasonable suspicion; and/or

46.2 the arresting officer does not inform the suspect of the reason for his arrest as soon as practicable.

47. Officer Adderley testified that he was given the Plaintiff's name and his intended charge but was not given the particulars of the offence. He also testified that it was usual for the charges on a warrant to differ from the actual charges that would be laid against a suspect. I do not believe that Officer Adderley, as the arresting officer, had sufficiently satisfied himself that the Plaintiff was responsible for the offence complained of or what the complaint actually entailed when he arrested the Plaintiff. He never stated that he had any knowledge of the offence complained of, other than what was told to him. An officer with the power to deprive a private citizen of his liberty should not do so just because he is told to do so. He should exercise his powers of arrest only if his belief is based on accurate, verified information that would cause him to believe that there is a chance that the person has actually committed an offence. While the Defendant relies on the case of **Ramsingh**, the facts in that case differ from the Plaintiff's

case. The arresting officer in **Ramsingh** saw the Appellant's alleged victim and was able to form the opinion that something had happened to the victim by the actions of the Appellant. However, in the Plaintiff's case the arresting officer was not given sufficient information to form a reasonable suspicion in order to arrest the Plaintiff and deprive him of his liberty.

48. In applying the subjective test as established in **O' Hara**, Officer Adderley was only given the Plaintiff's name and intended charge. He had no further information or knowledge. In my mind this could not have caused him to form a reasonable suspicion that the Plaintiff was indeed guilty of intentional libel.

49. In applying the objective test, as he was only given the Plaintiff's name and intended charge, that information would not have been sufficient to constitute reasonable grounds for the Plaintiff's arrest without more.

50. D/ASP Barrett, testified that he was an expert at conducting internet searches and as a result of this expertise discovered that the Plaintiff was a person of interest in the publishing of the audio recording due to the Plaintiff sharing the audio recording in a WhatsApp group. While being cross- examined the Plaintiff briefly denied sharing the video recording but both in his pleadings and evidence in chief, he did not deny the same. He explained that he had only shared it in a PLP WhatsApp group to share with the members of that group what was being said about their Prime Minister. However, in the officers' case diary it is noted that after the Plaintiff was released other individuals were arrested for the offence and one of the arrested, admitted to creating the audio recording.

51. The Plaintiff stated that when the officers came to his job site around 10:30 a.m. to search his vehicle and arrest him he was not informed of the reason for the search and arrest. He further stated that he was only informed of the reason for his detention after he had been taken to CDU and questioned.

52. The Plaintiff's mother also testified that she did not find out why the Plaintiff was being arrested until she got to CDU. Had the Plaintiff been informed of the reason for his arrest while the police officers were initially arresting him, it is reasonable to assume that the Plaintiff would have asked his co-worker to pass that information on to his mother when he asked for her to be contacted.

53. In the Agreed Statement of Facts and Issues the Defendant actually agreed that the Plaintiff was not given the reason for his arrest prior to being taken to CDU, however, the Defendant later maintained that the Plaintiff was informed of the reason for his arrest. There are several additional facts which cast doubt on the accuracy of the Defendant's evidence, namely:

53.1 The officers did not take the Plaintiff to the nearest police station which is the usual practice as confirmed by Officer Adderley;

53.2 The officers did not create a detention record for the Plaintiff or if one was created, did not produce it during discovery or at trial;

53.3 The search warrant relied on to search the Plaintiff's home was not for a charge of intentional libel but for stolen property, dangerous drugs and firearms;

53.4 D/ASP Barrett testified that the Plaintiff was arrested based on information received from Mr. Saunders in Freeport however, the entries in the case diary show that the Plaintiff was arrested and contacted before Mr. Saunders;

53.5 No written statement was taken from the Prime Minister at the time of the Plaintiff's arrest or after; and

53.6 After releasing the Plaintiff, the officers arrested and questioned another individual who admitted to creating the audio recording.

54. Additionally, counsel for the Defendant submitted that the Plaintiff was arrested for suspected intentional libel, as well as threats or harm and threats of death. In turn, counsel for the Plaintiff submitted that throughout the Plaintiff's ordeal there was no mention made of the latter two offences and if this were so there would be no doubt that the Plaintiff's arrest was unlawful because there was no evidence whatsoever to suggest that he was informed that he was arrested for threats of death or threats or harm.

55. For the reasons set out above, the evidence of the Plaintiff is to be preferred to that of the Defendant whose evidence appears to be an attempt to bolster the wrong doing of the police officers involved. I find therefore that the Plaintiff was unlawfully arrested and is entitled to damages to be assessed.

2. FALSE IMPRISONMENT

56. The Plaintiff submitted that he was handcuffed without reason contrary to section 11(2) of the Criminal Procedure Code which mandates that no greater force is to be used than necessary when arresting an individual and relied on **Prosecutor v Peter Cullen (2014) 3 IR 30** where the Court held that:-

"because police must only use such force as was reasonable in the circumstances, the automatic use of handcuffs in an arrest without considering the nature of the offence, the prevailing circumstances, the personality, character, behavior and demeanor of the

arrested person, was unlawful which rendered the arrest unlawful and also amounted to false imprisonment."

57. The Plaintiff further submitted that Section 18 of the CPC did not give a police officer the power to hold a suspect "for 48 hours" but instead gave a police officer the power to hold a suspect without charge "without unnecessary delay". Additionally he argued that because his initial arrest was unlawful then every other action that flowed from it was also unlawful. The 48 hours is the outside limit allowed provided there is no unnecessary delay.

58. Section of the CPC states:

> **"18. A peace officer making an arrest without a warrant, in exercise of any powers conferred upon him by the Penal Code, the Police Act or any other law for the time being in force, shall, without unnecessary delay and not later than forty-eight hours after such arrest, take or send the person arrested before a magistrate appointed to preside in a magistrate's court having jurisdiction in the case, unless the person arrested be earlier released on bail by a police officer having power in that behalf under the provisions of section 32 of the Police Act."**

59. The Defendant relied on of **Ramsingh** (above) to support its position that the Plaintiff was not falsely imprisoned. In Ramsingh, the Privy Council held that the Appellant was not falsely imprisoned by the officers who detained the Appellant until they were in receipt of medical information which would have either confirmed or denied the officer's suspicion that the victim had been assaulted by the Appellant.

60. In **Gilford Lloyd v Chief Superintendent Cunningham and others [2017] 2 BHS J. No. 76**, Charles J held that an unlawful arrest is a false imprisonment. In that case, the Plaintiff was handcuffed during an unlawful arrest and ordered to stand handcuffed in the presence of onlookers for 30 minutes. He was never informed of the reason behind the unlawful entry of his residence, his arrest or false imprisonment. The Court found that he was deprived of his liberty while handcuffed and falsely imprisoned. Charles J helpfully discusses this tort and refers to several authorities which describe its nature which I adopt. She stated:-

> **"37 False imprisonment is defined by *Clerk and Lindsell on Torts*, 17th ed. (1995) pp. 592-593, para 12-17 as *"complete deprivation of liberty for any time, however short, without lawful cause." The work then quotes the "Termes de la Ley": "Imprisonment is no other thing but the restraint of a man's liberty, whether it be in the open field, or in the stocks, or in the cage in the streets or in a man's own house, as well as in the common gaols; and in all the places the party so restrained is said to be a prisoner so long as he hath not his liberty freely to go at all times to all places whither he will without bail or mainprise or otherwise".***
>
> **38 The principle was explained by Deyalsingh J In Bostien v Kirpalani's Ltd (1979) High Court of Trinidad and Tobago, No. 861 [unreported], per Deyalsingh J: see page 13 in this way:**

"It is clear from the authorities that to constitute false imprisonment there must be restraint of liberty...a taking control over or possession of the plaintiff or control of his will. The restraint of liberty is the gist of the tort. Such restraint need not be by force or actual physical compulsion. It is enough if pressure of any sort is present which reasonably leads the plaintiff to believe that he is not free to leave, or if the circumstances are such that the reasonable inference is that the plaintiff was under restraint even if the plaintiff was himself unaware of such restraint. There must in all cases be an intention by the defendant to exercise control over the plaintiffs movements or over his will, and it matters not what means are utilised to give effect to this intention...."

39 False imprisonment as a form of trespass to the person is actionable *per se.* In Murray v Ministry of Defence [1988] 1 W.L.R. 692 at 703-704, H.L. overruling *Herring v Boyle[1834]1 C.M. & R. 377*, Lord Griffiths stated that "the law attaches supreme importance to the liberty of the individual and if he suffers a wrongful interference with that liberty it should remain actionable even without proof of special damage."

40 No doubt, an unlawful arrest is a false imprisonment, and if the requirements of the law as to making it clear to the arrested person that he is under lawful restraint, or informing him promptly of the grounds of his arrest, or taking him before the appropriate authorities within a reasonable time are not complied with, an arrest which might otherwise have been justified will be unlawful and ground an action for false imprisonment."

61. The Plaintiff claimed that he was handcuffed while entering CDU and when he was taken to his home in front of his mother. His mother confirmed that he was handcuffed when he and the police officers arrived at his home. Officer Adderley also confirmed that he was handcuffed when taken to his home. During the time that he was not handcuffed he maintained that he was still falsely imprisoned as he was held in a closed cell and unable to freely walk out of CDU or the Cable Beach Police Station until the police officers allowed him to do so.

62. I am satisfied that an unlawful arrest is a false imprisonment. This Plaintiff was falsely imprisoned.

63. The Plaintiff's arrest was also excessive when one considers the factors set out in **Prosecutor v Peter Cullen** which stated that police officers must only use such force as is reasonable in the circumstances. I agree with the Plaintiff that the automatic use of handcuffs was not reasonable during the Plaintiff's arrest because:-

63.1 there was no evidence given which suggested he was unco-operative and resisted the arrest;

63.2 there was no evidence that there was any physical violence towards the virtual complainant. The nature of the offence of intentional libel does not involve a physical attack on the alleged victim but a written attack on the alleged victim's character, the ingredients of which the police officers

should know. Sections 316 and 317(1) of the Penal Code states what constitutes the offence of intentional libel.

63.2.1 **"316. A person is guilty of libel who, by print, writing, painting, effigy or by any means otherwise than solely by gestures, spoken words, or other sounds, unlawfully publishes any defaming matter concerning another person either negligently or with intent to defame that other person.**

317(1.) Matter is defamatory which imputes to a person any crime or misconduct in any public office, or which is likely to injure him in his occupation, calling or office, or to expose him to general hatred, contempt or ridicule."

There is no element of physical violence involved in the commission of this offence.

63.3 Although the Defendant denied in the pleading that the Plaintiff was handcuffed Officer Adderley admitted under cross examination that he was handcuffed; and

63.4 Given the evidence of the Defendant's witness there was no way they could have reasonably believed that the Plaintiff was actually guilty of the offence.

64. Accordingly, I find that the Plaintiff was indeed handcuffed when he was taken into CDU and also when he was taken to his home when it was searched. He was deprived of his liberty. As I have previously found that the Plaintiff was unlawfully arrested his subsequent detention was also unlawful and he is entitled to damages to be assessed for his false imprisonment.

BREACH OF CONSTITUTIONAL RIGHTS

65. The Plaintiff contended that his constitutional rights pursuant to Article 19 (deprivation of his liberty), Article 21 (right not to be subjected to search of his person or property) and Article 25 (freedom of movement) were breached.

66. He contended that the search warrant issued by a Justice of the Peace was and only could have been obtained after D/Sgt 2218 Ferguson swore that there was cause to suspect that the Plaintiff had stolen property, dangerous drugs or firearms at his residence which resulted in D/Sgt Ferguson perjuring himself to receive the warrant when in fact the only "offence" was intentional libel. In the circumstances, he submits that the search was unlawful and a breach of Article 21 of the Constitution which protects his right not to be subjected to search of his person, property and vehicle by an invalid warrant.

67. The Defendant further submitted that the Plaintiff had an adequate remedy to rely on under the common law instead of applying for constitutional redress and relied on **Article 28 of the Constitution** and of **Bain-Thompson v. the Commissioner of Police [2017] BHS J No. 88**.

68. In **Bain-Thompson**, Charles J stated that,

> **"18 The second category of cases is illustrated by Jaroo. The appellant filed a constitutional motion seeking relief for infringement of certain of his rights. The Privy Council held that a parallel remedy was available to the appellant to enable him to enforce his right to the return of the vehicle. He could have pursued an action for delivery in detinue. The Privy Council reverberated its salutary warning that the right to apply to the High Court under the Constitution should be exercised only in exceptional circumstances where there is a parallel remedy."**

69. This Court's jurisdiction to hear an application for constitutional relief is embodied in Article 28 of the Constitution. This jurisdiction should only be invoked where no parallel remedy is available to the applicant. Article 28 states:

> **"28. (1) If any person alleges that any of the provisions of Articles 16 to 27 (inclusive) of this Constitution has been, is being or is likely to be contravened in relation to him then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the Supreme Court for redress.**
>
> **(2) The Supreme Court shall have original jurisdiction — (a) to hear and determine any application made by any person in pursuance of paragraph (1) of this Article; and (b) to determine any question arising in the case of any person which is referred to it in pursuance of paragraph (3) of this Article, and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of the said Articles 16 to 27 (inclusive) to the protection of which the person concerned is entitled: Provided that the Supreme Court shall not exercise its powers under this paragraph if it is satisfied that adequate means of redress are or have been available to the person concerned under any other law."**

70. In **Atain Takitota v Attorney General and others [2009] UKPC 11** the Privy Council clearly stated that if adequate means of redress were available to an aggrieved person, invoking the Court's jurisdiction to award a litigant damages for constitutional relief would be an abuse. Lord Carswell stated,

> **[13] The award of damages for breach of constitutional rights has much the same object as the common law award of exemplary damages. The relevant provisions of the Bahamian Constitution are art 17 (inhuman or degrading treatment) and art 19 (deprivation of personal liberty). The basis of the jurisdiction to award such damages was set out in *Attorney General of Trinidad and Tobago v Ramanoop* [2005] UKPC 15, [2006] 1 AC 328, [2005] 2 WLR 1324. Lord Nicholls of Birkenhead, giving the judgment of the Board, said at paras 17 – 20:**

"17 Their Lordships view the matter as follows. Section 14 recognises and affirms the court's power to award remedies for contravention of chapter I rights and freedoms. This jurisdiction is an integral part of the protection chapter I of the Constitution confers on the citizens of Trinidad and Tobago. It is an essential element in the protection intended to be afforded by the Constitution against misuse of state power. Section 14 presupposes that, by exercise of this jurisdiction, the court will be able to afford the wronged citizen effective relief in respect of the state's violation of a constitutional right. This jurisdiction is separate from and additional to ('without prejudice to') all other remedial jurisdiction of the court.

18 When exercising this constitutional jurisdiction the court is concerned to uphold, or vindicate, the constitutional right which has been contravened. A declaration by the court will articulate the fact of the violation, but in most cases more will be required than words. If the person wronged has suffered damage, the court may award him compensation. The comparable common law measure of damages will often be a useful guide in assessing the amount of this compensation. But this measure is no more than a guide because the award of compensation under section 14 is discretionary and, moreover, the violation of the constitutional right will not always be co-terminous with the cause of action at law.

19 An award of compensation will go some distance towards vindicating the infringed constitutional right. How far it goes will depend on the circumstances, but in principle it may well not suffice. The fact that the right violated was a constitutional right adds an extra dimension to the wrong. An additional award, not necessarily of substantial size, may be needed to reflect the sense of public outrage, emphasise the importance of the constitutional right and the gravity of the breach, and deter further breaches. All these elements have a place in this additional award. 'Redress' in section 14 is apt to encompass such an award if the court considers it is required having regard to all the circumstances. Although such an award, where called for, is likely in most cases to cover much the same ground in financial terms as would an award by way of punishment in the strict sense of retribution, punishment in the latter sense is not its object. Accordingly, the expressions 'punitive damages' or 'exemplary damages' are better avoided as descriptions of this type of additional award.

20 For these reasons their Lordships are unable to accept the Attorney General's basic submission that a monetary award under section 14 is confined to an award of compensatory damages in the traditional sense . . . ."

"[15] 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."

71. Damages for breaches of an individual's constitutional rights therefore can only be awarded along with damages for the tort of unlawful and false imprisonment, if there is some aspect of the constitutional right breached that does not fall under the tortious right.

72. The Plaintiff seeks damages for breaches of his constitutional rights as protected by Articles 19, 20, 21 and 25 of the Constitution.

73. Article 19 of the Constitution states,

> **"19. (1) No person shall be deprived of his personal liberty save as may be authorised by law in any of the following cases —**
>
> **(d) upon reasonable suspicion of his having committed, or of being about to commit, a criminal offence;**
>
> **(2) Any person who is arrested or detained shall be informed as soon as is reasonably practicable, in a language that he understands, of the reasons for his arrest or detention and shall be permitted, at his own expense, to retain and instruct without delay a legal representative of his own choice and to hold private communication with him; and in the case of a person who has not attained the age of eighteen years he shall also be afforded a reasonable opportunity for communication with his parent or guardian.**
>
> **(4) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefor from that other person."**

74. Article 20 of the Constitution reads,

> **"20. (1) 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.**
>
> **(2) Every person who is charged with a criminal offence —**
>
> **(a) shall be presumed to be innocent until he is proved or has pleaded guilty."**

75. Article 21 provides,

> **"21. (1) Except with his consent, no person shall be subjected to the search of his person or his property or the entry by others on his premises.**
>
> **(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this Article to the extent that the law in question makes provision —**
>
> **(a) which is reasonably required —**
>
> **(i) in the interests of defence, public safety, public order, public morality, public health, town and country planning, the development of mineral resources, or the development or utilisation of any other property in such a manner as to promote the public benefit....."**

76. Article 25 provides,

> **"25. (1) Except with his consent, no person shall be hindered in the enjoyment of his freedom of movement, and for the purposes of this Article the said freedom means the right to move freely throughout The Bahamas, the right to reside in any part thereof,**

the right to enter The Bahamas, the right to leave The Bahamas and immunity from expulsion therefrom.
(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this Article to the extent that the law in question makes provision —
(a) which is reasonably required —
(i) in the interests of defence, public safety, public order, public morality, public health, town and country planning or the prevention of plant or animal diseases; or (ii) for the purpose of protecting the rights and freedoms of other persons....."

77. There is no doubt that there has been a breach of the Plaintiff's constitutional right to;

77.1 be informed as soon as reasonably practicable of the offence the police officer intended to charge him with,

77.2 not be deprived of his personal liberty (unlawful arrest and false imprisonment),

77.3 not be subjected to the search of his property and deprived of his personal property (search of his home without a valid search warrant),

77.4 be presumed innocent until proven guilty (fingerprinted without charge); and

77.5 enjoy his freedom of movement.

78. However, I have previously found that the Plaintiff was unlawfully arrested and falsely imprisoned as torts. It would therefore be duplicitous to award the Plaintiff damages for the Defendant's breach of his right to be informed as soon as reasonably practicable of the intended offence, as well as his right not to be deprived of his personal liberty and his right to freedom of movement.

79. It is only necessary to consider whether there was a breach of the Plaintiff's constitutional rights pursuant to Article 20 (fingerprinted without conviction) and Article 21 (unlawful search of property).

80. In **Tynes v Barr 1994 45 WIR 7,** Sawyer J held that:-

"an individual could only be fingerprinted if he was lawfully in custody and that the taking of fingerprints for quasi-criminal allegations before trial were outside the constitutional presumption of innocence protected by Article 20(2)(a)."

In this case, the Plaintiff claims that he was fingerprinted while under unlawful arrest.

81. Since Sawyer J's decision in Tynes v Barr, the Police Force Act, 2009 has replaced the former Police Act. In the former act, Section 38 made it lawful for any police officer to take the fingerprint of an individual who was in lawful custody. The present Act gives a police officer the discretion to take the fingerprint of an individual who is in custody provided that the fingerprints be destroyed if the individual has no previous conviction or no charges are instituted against him or such person is discharged or acquitted by the court.

Section 38 of the Police Force Act, 2009 states:

> **(1) "A police officer may take and record, for the purposes of identification, measurements, photographs and fingerprints and palm impressions of any person in custody.**
> **(2) Where measurements, photographs, fingerprints and palm impressions are taken of a person who has not previously been convicted of a criminal offence and criminal proceedings are not instituted against such a person or such person is discharged or acquitted by court, all such photographs, fingerprints and palm impressions shall be destroyed.**
> **(3) ....."**

82. In the existing Act the word "lawful" is removed as qualifying the nature of the custody. This does not in my opinion give any wider right to the police than that which existed under the prior legislation. The right to take an arrested individual's fingerprints is now discretionary provided he is in lawful custody. In this Plaintiff's case I have found that his arrest and subsequent detention were unlawful, because there was no reasonable suspicion that he had committed the offence. He was not in lawful custody. As such his constitutional right to the presumption of innocence as protected by Article 20 (2)(a) has been infringed by the taking of his fingerprints.

83. In **International Investors Group Ltd. v. Miller - [2001] BHS J. No. 5**, the late Isaacs J (Acting), as he then was, held that it was important that officers be bound by the terms of the warrant because an individual's right to privacy as protected by the Constitution could possibly be impacted and should only be impacted in exceptional circumstances as set out in Article 21(2) above. He stated:-

> **"19 I looked at the search warrants notwithstanding there was no challenge to their validity; but because I had to determine whether or not the police extended the authority vested in them by the warrants when they executed said warrants on the two premises; I had to examine the terms therein.**
>
> **22 The warrants are signed by one "M. Stubbs J.P.". The warrants are pre-formatted. Some parts thought to be irrelevant have been deleted in the 328 Bay Street warrant, e.g., "were feloniously stolen, taken and carried away from". The London Terrace search warrant, also pre-formatted, reads the same as the first except it refers to the premises of Dennis Sutton. What is significant, is that in this warrant, the words "were feloniously stolen, taken and carried away from" have not been deleted.**
> **23 Mr. Gaskin attributes the inclusion of these words in the London Terrace warrant to an error. Be that as it may, the Respondents are bound by the terms of the warrant.**

This is one of the dangers of using form documents in matters that require great care. The principles of the right of privacy and the inviolability of a man's home are the issues here and courts must be at great pains to ensure that those principles are not trampled underfoot in purported pursuit of wrongdoers. W/Sgt. 1562 Miller's Supplemental Affidavit, at paragraph 5, clearly indicates that she had no suspicion that the documents taken from Mr. Sutton's home related to forged documents, stolen or otherwise. She states "that the passports of the second Applicant was taken for purposes of due and proper identification of the said Applicant". This was not the ground upon which the warrant was issued nor is it justified under the common law principle of reasonable suspicion of the items seized being connected to some other offence. I note no mention is made of the other documents including personal documents, e.g., the power of attorney referred to by Mr. Sutton in his affidavit. In the premise I find that the seizure of the documents at Mr. Sutton's residence was not authorised by the search warrant; nor was such seizure supported by the common law. The documents therein seized are to be returned to Mr. Sutton forthwith. I am unable to state with any degree of specificity the documents and items to be returned for the reason above-mentioned."

84. The warrant provided by the Defendant was issued by a Justice of the Peace because D/SGT. 2218 Ferguson swore that he had reasonable cause to suspect that dangerous drugs, stolen property and firearms were concealed in the premises of the Plaintiff. Conversely, the Plaintiff and Defendant throughout the proceedings claim that the Plaintiff was arrested and detained for questioning for acts which potentially amounted to intentional libel and the goods confiscated from the Plaintiff's home were his personal goods and not stolen property. The warrant authorized a search for stolen property or illegal drugs and/or firearms, not personal property. Never was there any suspicion of dangerous drugs or firearms, despite the weak attempt by Officer Adderley to claim that the song had imbedded threats of violence in it, hence the need for such a warrant. I do not accept his explanation and find that it is a poor attempt to explain away the invalidity of the warrant. No drugs, stolen property or firearms were found. Only personal property of the Plaintiff was seized. In the circumstances, the search of the Plaintiff's room which was premised on the warrant was unlawful and a breach of the Plaintiff's right not to be subjected to a search of his property and home as protected by Article 21 of the Constitution.

85. I therefore find that there has been a breach of the Plaintiff's constitutional rights pursuant to Articles 20, 21 and 25 of the constitution and he is entitled to damages to be assessed, and order that all items which were seized from the car and the home be returned to the Plaintiff. Further I order that the fingerprints taken be destroyed.

3. DAMAGES

86. The Plaintiff submitted that he was entitled to damages both under the common law inclusive of exemplary damages, in the amount of $50,000.00.

87. In **Atain Takitota v Director of Immigration and Minister of National Security (2009) UKPC** Lord Carswell stated:-

> **"[15] 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. They are of the opinion that the sum of $100,000 is justifiable on the facts of the case as an award of constitutional or vindicatory damages."**

88. Likewise, the Plaintiff sought a vindicatory award in the amount of $65,000.00 and relied on **Tamara Merson v Drexel Cartwright and Attorney General (2005) UKPC 38** in support of the relief sought where the Board referred to **AG v Ramanoop** and held:-

> **"[17] As to the first issue, the function of constitutional damages has been reviewed recently by the Privy Council in *A-G v Ramanoop* [2005] UKPC 15, [2005] 4 LRC 301. The case involved (at [2]) claims for damages for 'quite appalling misbehaviour by a police officer'. A police officer had, quite unjustifiably, roughed up, arrested, taken to the police station and locked up for some few hours the unfortunate Mr Ramanoop. Mr Ramanoop instituted proceedings against the Attorney General for constitutional redress, including exemplary damages. He did not claim damages for the nominate torts that had certainly been committed. Counsel for the Attorney General submitted that constitutional redress, in so far as it took the form of an award of damages, should be confined to compensatory damages. The Privy Council dealt with this submission (at [17]–[20]) inclusive of the advice delivered by Lord Nicholls of Birkenhead:**
>
> > **'[17] Their Lordships view the matter as follows. Section 14 recognises and affirms the court's power to award remedies for contravention of Ch I rights and freedoms. This jurisdiction is an integral part of the protection Ch I of the Constitution confers on the citizens of Trinidad and Tobago. It is an essential element in the protection intended to be afforded by the Constitution against misuse of state power. Section 14 presupposes that, by exercise of this jurisdiction, the court will be able to afford the wronged citizen effective relief in respect of the state's violation of a constitutional right. This jurisdiction is separate from and additional to ("without prejudice to") all other remedial jurisdiction of the court.**
> >
> > **[18] When exercising this constitutional jurisdiction the court is concerned to uphold, or vindicate, the constitutional right which has been contravened. A declaration by the court will articulate the fact of the violation, but in most cases more will be required than words. If the person wronged has suffered damage, the court may award him**

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

[19] An award of compensation will go some distance towards vindicating the infringed constitutional right. How far it goes will depend on the circumstances, but in principle it may well not suffice. The fact that the right violated was a constitutional right adds an extra dimension to the wrong. An additional award, not necessarily of substantial size, may be needed to reflect the sense of public outrage, emphasise the importance of the constitutional right and the gravity of the breach, and deter further breaches. All these elements have a place in this additional award. "Redress" in s 14 is apt to encompass such an award if the court considers it is required having regard to all the circumstances. Although such an award, where called for, is likely in most cases to cover much the same ground in financial terms as would an award by way of punishment in the strict sense of retribution, punishment in the latter sense is not its object. Accordingly, the expressions "punitive damages" or "exemplary damages" are better avoided as descriptions of this type of additional award.

[20] For these reasons their Lordships are unable to accept the Attorney General's basic submission that a monetary award under s 14 is confined to an award of compensatory damages in the traditional sense. Bereaux J stated his jurisdiction too narrowly. The matter should be remitted to him, or another judge, to consider whether an additional award of damages of the character described above is appropriate in this case. Their Lordships dismiss this appeal with costs.'

[18] These principles apply, in their Lordships' opinion, to claims for constitutional redress under the comparable provisions of the Bahamian Constitution. If the case is one for an award of damages by way of constitutional redress (and their Lordships would repeat that 'constitutional relief should not be sought unless the circumstances of which complaint is made include some feature which makes it appropriate to take that course': see *A-G v Ramanoop* [2005] 4 LRC 301 at [25]) the nature of the damages awarded may be compensatory but should always be vindicatory and, accordingly, the damages may, in an appropriate case, exceed a purely compensatory amount. The purpose of a vindicatory award is not a punitive purpose. It is not to teach the Executive not to misbehave. The purpose is to vindicate the right of the complainant, whether a citizen or a visitor, to carry on his or her life in The Bahamas free from unjustified Executive interference, mistreatment or oppression. The sum appropriate to be awarded to achieve this purpose will depend upon the nature of the particular infringement and the circumstances relating to that infringement. It will be a sum at the discretion of the trial judge. In some cases a suitable declaration may suffice to vindicate the right; in other cases an award of damages, including substantial damages, may seem to be necessary."

89. The Defendant however submitted that the Plaintiff should not be awarded exemplary damages because the Defendant's conduct did not fall within the following categories pronounced in **Rookes v Barnard [1964] AC 1129** namely;

89.1 Oppressive, arbitrary or unconstitutional actions by the servants of government;

89.2 Where the defendant's conduct was 'calculated' to make a profit for himself; or

89.3 Where a statute expressly authorizes the same.

90. As previously stated, an unlawful arrest is a false imprisonment. Therefore, it is only necessary to award one sum for both torts. In **Robert Kane v Attorney General and Others SC No. 170 of 2011**, Gray-Evans Sr. J. considered the factors to take into account when awarding damages for unlawful arrest and false imprisonment where she stated;

> **"83. An unlawful arrest is a false imprisonment and false imprisonment and unlawful detention are both the deprivation of ones liberty for a time, however, short, without lawful cause, for which the plaintiff is entitled to be compensated in damages. The learned authors of McGregor on Damages at para 37-011:**
>
> > **"The details of how the damages are worked out in false imprisonment are few: generally it is not a pecuniary loss but a loss of dignity and the like, and is left much to the jury's or judge's discretion. The principal heads of damage would appear to be the injury to liberty, i.e. the loss of time considered primarily from a non-pecuniary viewpoint, and the injury to feelings, i.e. the indignity, mental suffering, disgrace and humiliation, with any attendant loss of social status and injury to reputation. This will all be included in the general damages which are usually awarded in these cases; generally no breakdown appeared in the cases.""**

91. There is no formula prescribed to follow when considering the amount to be awarded for the tortious breaches but the factors which must be taken into consideration in determining a reasonable amount of damages include the circumstances of the detainment, the length of time and the treatment by officials of the detainee while in the custody of the state. The court must also consider the fact that the liberty and freedom of movement of this Plaintiff has been infringed by the state executive and he is entitled to damages to vindicate these rights.

92. The Plaintiff claims that he was unlawfully arrested and falsely imprisoned by the officers from about 11:00 a.m. on 11th August, 2016 to 7:00 p.m. on 12th August, 2016. The Defendant claims that the Plaintiff was lawfully arrested from 11:15 a.m. on 16th August, 2016 to 6:00 p.m. on 17th August, 2016. The differences in time are minimal but given the inaccuracies of the Defendants evidence, the timeline of the Plaintiff is to be preferred. In that regard, the Court finds that the Plaintiff was unlawfully arrested and falsely imprisoned for thirty-two (32) hours. During his arrest, he was humiliated in front of his peers, his mother and members of the public which no doubt caused much embarrassment to him. His unlawful arrest was excessive as he was not only unreasonably handcuffed but

was unnecessarily guarded by about eight – ten officers at various times. In the circumstances, damages are awarded to the Plaintiff and assessed at $35,000.00 as compensation for the torts of unlawful arrest and false imprisonment.

93. Additionally, damages are awarded and assessed at $25,000.00 for breaches of the Plaintiff's rights as protected by Articles 20 and 21. As damages are awarded in vindication of the Plaintiff's constitutional rights, to award exemplary damages would be duplicitous and therefore they are not awarded.

94. Judgment is granted to the Plaintiff in the sum of $60,000.00 together with interest at the statutory rate pursuant to the Civil Procedure (Award of Interest) Act and the Defendant shall pay the Plaintiff's costs fit for two counsel to be taxed if not agreed.

Dated the 24th day of June 2020.

G. Diane Stewart
Justice