COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

COMMON LAW AND EQUITY DIVISION

2017/CLE/gen/01167

BETWEEN:

DOUGLAS NGUMI

Plaintiff

AND

THE HON. CARL BETHEL
(in his capacity as Attorney General of The Bahamas)

1st Defendant

AND

THE HON.BRENT SYMONNETTE
(in his capacity as Minister of Immigration)

2nd Defendant

AND

WILLIAM PRATT
(in his capacity as Director of Immigration)

3rd Defendant

AND

PETER JOSEPH
(in his capacity as Officer in Charge of Carmichael Detention Centre)

4th Defendant

Before: The Honourable Madam Justice Indra H. Charles

Appearances: Mr. Frederick R.M. Smith QC with him Mr. Crispin Hall and Ms. Kandice Maycock for the Plaintiff
Ms. Kenria Smith and Mr. Kenny Thompson for the Defendants

Hearing Dates: 11 February, 12 February, 17 April 2019

Torts – Arrest and Detention – False Imprisonment – Assault and Battery – Detinue – Breach of Constitutional Rights – Article 28(2) of the Constitution of The Bahamas – Damages – Special Damages – Aggravated Damages – Exemplary Damages – Vindicatory Damages – Award at discretion of trial judge - Costs – Full Indemnity – No egregious or contumacious conduct by Defendants – Costs on party to party basis

The Plaintiff, a Kenyan citizen, alleged that he was unlawfully arrested and falsely imprisoned by the Defendants from 11 January 2011 until 4 August 2017 at the Carmichael Road Detention Centre ("the Detention Centre"). During his time at the Detention Centre, the Plaintiff alleged that he suffered cruel, inhumane and degrading treatment and, on numerous occasions, was beaten and assaulted by Immigration and Defence Force Officers. The Plaintiff further alleged that the Defendants breached his fundamental rights under Articles 15, 17(1), 19, 25(1) and 26 of the Constitution of the Commonwealth of The Bahamas ("the Constitution").

As a result of the foregoing allegations, the Plaintiff claims aggravated, punitive, exemplary and vindicatory damages for what he alleged was his wrongful arrest and subsequent false imprisonment occasioned by the oppressive, arbitrary and unconstitutional conduct of the Defendants and its agents.

The Defendants appeared and were represented by the Office of Attorney General who did not call any witnesses or lead evidence but defended the action on the ground that the Plaintiff was lawfully arrested for overstaying and engaging in gainful occupation contrary to the provisions of the Immigration Act and accordingly detained at the Detention Centre prior to and after his conviction and sentence by the Learned Magistrate.

The Defendants also maintained that they encountered difficulties in deporting the Plaintiff as Mr. Ngumi refused to cooperate with Immigration officials to facilitate his return to Kenya and that because of National Security concerns the Plaintiff could not be released into the community.

Furthermore, the Defendants contended that the claims for constitutional redress for alleged breaches of the Constitution are an abuse of the process of the Court and in violation of the proviso to Article 28(2) of the Constitution.

HELD: The failure of the Defendants to charge and arraign the Plaintiff within the statutory period and to deport him within a reasonable time rendered his nearly 7 year detention unlawful, despite the fact that the arrest of the Plaintiff was lawful. The Defendants are therefore liable for false imprisonment, assault and battery of the Plaintiff and also for breaches of the Plaintiff's fundamental rights under the Constitution.

The Plaintiff is awarded damages in the global sum of $641,950.00 as compensation for aggravated, exemplary and vindicatory damages with interest and costs based on the following considerations:

1. The evidence and testimony of the Plaintiff was credible and for the most part unchallenged by the Defendants.

2. The Defendants failed and/ or refused to call any witnesses or lead evidence at the trial.

3. Immigration officers (like Police Officers) have statutory and common law powers to arrest without warrant on reasonable cause (section 9 of the Immigration Act) See: **Christie v. Leachinsky** [1947] A.C. 573. However, persons arrested by Immigration officers must be

charged and arraigned before the Magistrate Court no later than forty-eight (48) hours after arrest in accordance with section 18 Criminal Procedure Code. A failure to arraign a person suspected of committing an offence under the Immigration laws within forty-eight (48) hours after arrest renders any subsequent detention of the person unlawful.

4. In finding that the Plaintiff was beaten on several occasions by officers and or agents of the Defendants while at the Detention Centre the Defendants are therefore liable for the tort of assault and battery.

5. The Court also finds that several of the Plaintiff's Constitutional rights had been breached and damages awarded accordingly.

6. It is well established that the right to apply to the Supreme Court pursuant to Article 28 of the Constitution should be exercised only in exceptional cases where there is a parallel remedy. See: **Thakur Persad Jaroo v. The Attorney General of Trinidad and Tobago** [Privy Council No. 54 of 2000]; **Harrikissoon v. Attorney General of Trinadad and Tobago** [1981] 1 WLR 106 at pp. 111-112 and **Hinds v. The Attorney General** [2001] UKPC 56. The mere existence of an alternative remedy does not automatically warrant excluding constitutional proceedings under the proviso to Article 28(2). The crux is their adequacy. The power to decline jurisdiction arises only where the alternative means of redress is considered to be adequate. The Court finds that the bringing of the constitutional claims by the Plaintiff is not an abuse of the process as no parallel adequate remedy is available to the Plaintiff: **Coalition to Protect Clifton Bay and Zachary Hampton Bacon III v The Attorney General of the Commonwealth of The Bahamas et al** 2016/PUB/con/00016 [unreported] Judgment delivered on 2 August 2016, paras 247 to 252 relied upon.

7. In assessing damages, it is more appropriate for awards to be made under each head claimed: para 15 in **Merson v Cartwright and Another** [2005] UKPC 38 relied upon.

8. The *locus classicus* in this jurisdiction for long periods of wrongful detention is the Bahamian case of **Atain Takitota v The Attorney General and others** [2009] UKPC 11. Cases like **Merson v Cartwright and Another** [2005] UKPC 38 and **Tynes v Barr** (1994) 45 WIR 7 are not helpful when the court is dealing with a long period of wrongful detention.

9. Damages for false imprisonment, assault and battery are incapable of exact estimation and their assessment must necessarily be a matter of degree, based on the facts of each case: **Jamal Cleare v Attorney General and others** [2013] 1 BHS No. 64 at paras 47 to 49 considered.

10. The Bahamian courts should determine what they consider to be an appropriate figure to reflect compensation for long periods of wrongful detention taking into account any element of aggravation. In assessing the proper figure for compensation, the courts should take into account that any figure they might regard as appropriate for an initial short period, if extrapolated, should ordinarily be tapered. In other words, for subsequent days, the daily rate will be on a progressively reducing scale. Furthermore, the figures are not intended to be applied in a mechanistic manner: **Takitota** at para. 17 and **Alseran and others v Ministry of Defence** [2019] Q.B. 1251 at paras 885 to 887.

11. The Plaintiff has not provided any authority to convince this court that interest should be awarded from the date that the cause of action arose and not from the date of judgment.

The case of **Cara Chan v Wendall Parker** (1999) No. FP/88 (unreported) is distinguishable since it was a personal injury case.

12. In this case, the conduct of the Defendants cannot be regarded as "egregious or contumacious" to justify an order for indemnity costs against them. Costs are awarded to the Plaintiff on a party to party basis: **Sumner Point Properties Limited v (1) David E. Cummings (2) Bryan Meyran** [2012/CLE/gen/1399] (unreported) applied.

JUDGMENT

Charles J:

Introduction

[1] In the introductory paragraph of **Gilford Lloyd v Chief Superintendent Cunningham et al**, 2016/CLE/gen/0062 [unreported] Judgment delivered on 4 August 2017, this Court stated: *"Without liberty – a man is not a man. He has no dignity.*" These words have reverberated once again.

[2] The present case is also an unfortunate reminder of the case of **Atain Takitota v. The Attorney General and others** SCCivApp No. 54 of 2004. It is an action grounded in several torts (false imprisonment, assault and battery and detinue) in which Mr. Ngumi alleged that the servants and agents of the Defendants unlawfully arrested and falsely imprisoned him at the Carmichael Road Detention Centre ("the Detention Centre") for 6 years and 7 months. During his detention, Mr. Ngumi alleged that he was repeatedly beaten, degraded and kept in inhumane conditions resulting in breaches of his fundamental rights that are guaranteed to him and protected by the Constitution of The Bahamas ("the Constitution"). He seeks a miscellany of relief including damages against the Defendants for the torts and for compensation for the alleged breaches of his constitutional rights.

[3] Quintessentially, the Defendants maintained that the arrest of Mr. Ngumi on 12 January 2011(and not 11 January 2011 as alleged) was lawful and therefore his detention was justified. They also insisted that their efforts to deport Mr. Ngumi back to his homeland of Kenya were hindered and stifled by Mr. Ngumi's actions and non-cooperation.

[4] Additionally, the Defendants asserted that Mr. Ngumi's claim for constitutional redress is an abuse of the process of the Court and should be dismissed in accordance with the proviso to Article 28 of the Constitution.

[5] The Court is therefore asked to determine liability and, if the Defendants are found to be liable, to assess the appropriate quantum of damages and compensation.

Background facts

[6] Mr. Ngumi is a citizen of the Republic of Kenya. He was born in Nairobi on 7 September 1971. On 14 August 1997, he arrived in The Bahamas for the first time to visit a family friend who was said to be studying at the then College of The Bahamas. Immigration officials at the airport granted him a visa to stay in The Bahamas for 21 days which was subsequently extended for a further 2 months.

[7] Sometime in 1999 during a visit to New Providence, The Bahamas, Mr. Ngumi met Gricilda Vanessa Pratt, his Bahamian bride to be. They were married at the Office of the Registrar-General on 14 April 2000. Not long after the marriage, they became estranged. They are now separated but are not legally divorced.

[8] On 8 August 2005, Mr. Ngumi obtained a work permit which had expired on 17 June 2006. Prior to the expiration of the work permit, his employer applied to the Department of Immigration ("DOI") for an extension. By letter dated 12 September 2006, the DOI informed Mr. Ngumi's employer that the application for an extension was not approved and he should wind up his affairs and leave The Bahamas within 21 days.

[9] Mr. Ngumi alleged that in order to avoid any violation of the immigration laws of The Bahamas he would travel back and forth to The Bahamas through Cuba and the Turks & Caicos Islands.

[10] On 12 January 2011, officers from the DOI arrested Mr. Ngumi at his home and took him to the Detention Centre.

[11] On 18 January 2011, Mr. Ngumi was arraigned before Magistrate's Court No.1 on charges of (1) overstaying contrary to section 28(1) and (3) of the Immigration Act, Chapter 191 and (2) engaging in gainful occupation contrary to section 29(1) and (2) of the Immigration Act, Chapter 191. According to the Magistrate's notation on the Court's docket, Mr. Ngumi pleaded guilty to Count (1) and not guilty to Count (2). Count (2) was subsequently withdrawn by the prosecution. Mr. Ngumi was then acquitted and discharged on Count (2).

[12] With respect to Count (1) above, on 20 January 2011, Mr. Ngumi was sentenced by the learned Magistrate who recommended deportation to his homeland of Kenya.

[13] On 4 June 2013, Mr. Ngumi was arraigned before Magistrate's Court No. 8 on the charge of possession of dangerous drugs contrary to section 29(6) of the Dangerous Drugs Act, Chapter 228. According to the Magistrate's notation on the Court's docket, Mr. Ngumi pleaded guilty to the offence and was sentenced by the learned Magistrate who again recommended deportation. Evidently, it is a tautology to say that Mr. Ngumi is still here.

[14] On 20 July 2017, a Habeas Corpus Application was filed on Mr. Ngumi's behalf. Before that Application could have been heard in the Supreme Court, Mr. Ngumi was released from the Detention Centre on 4 August 2017.

The issues

[15] The key issues which arise for consideration are:

1. Was the arrest of Mr. Ngumi on 12 January 2011 and his subsequent detention unlawful giving rise to the tort of false imprisonment? If so, what is the appropriate measure of damages that he is entitled to?

2. Was Mr. Ngumi in fact assaulted and beaten (repeatedly) by agents and/or servants of the Defendants during his time at the Detention Centre? If so, what is the appropriate measure of damages that he is

entitled to?

3. Did the Defendants breach Mr. Ngumi's fundamental rights under the Constitution thereby entitling him to compensation and whether his claim for redress is an abuse of the process of the Court and in violation of the proviso to Article 28(2) of the Constitution?

4. Should aggravated, exemplary and vindicatory damages be awarded to Mr. Ngumi? If so, what is the appropriate quantum of damages?

5. Should the Court exercise its discretion and award costs on a full indemnity basis and certified fit for three counsel?

The trial

[16] The trial of this action was set for and lasted two days. Mr. Ngumi was the sole witness to testify on his own behalf. His evidence is contained in his witness statement dated 28 November 2018. He also gave viva voce testimony on 11 February 2019. He was cross-examined by learned Counsel for the Defendants over an intermittent two-day period.

[17] Although it remains the Court's position that the Rules of Court require all evidence in civil trials to be contained in witness statements, the Court, with some reservations and admonishment to learned Queen's Counsel, Mr. Smith QC, who appeared for Mr. Ngumi allowed him to "*re-tell his story*" on the witness stand.

[18] On the other hand and for reason(s) unbeknown to the Court, the Defendants did not file any witness statements nor did they seek leave subsequent thereto to call any witnesses to give evidence on their behalf at the trial. The Court found this extraordinary given the serious allegations of repeated physical abuse and inhumane and degrading treatment detailed by Mr. Ngumi in his pleadings and in his witness statement.

[19] In light of this and subject to certain observations by the Court as alluded to below I am constrained to accept Mr. Ngumi's evidence. Notwithstanding the laconic yet vigorous cross examination by Ms. Smith, Senior Crown Counsel for the Defendants, Mr. Ngumi's evidence remained uncontroverted and largely unchallenged.

The evidence

[20] Mr. Ngumi testified that he is currently unemployed and resides in a room at a residence located in Fox Hill. He alleged that he was a jitney driver in Nairobi, Kenya and had an unblemished police record there. He came to The Bahamas in 1997 as a visitor and some years later he married Gricilda Vanessa Pratt whom he met in the Turks & Caicos. He confirmed that they are no longer living together.

[21] Mr. Ngumi further stated that since his arrival in The Bahamas he would travel back and forth to other places including Cuba and the Dominican Republic in order to get his passport stamped and not to overstay his time. He also stated that his wife applied for a spousal permit for him but he was never granted one. However, he received a work permit in 2005 but it was not renewed after it expired.

[22] In January 2011, he was arrested by officers of the DOI who held him at the Detention Centre until August 2017. He suffered a lot of pain due to the oppressive conduct of the officers at the Detention Centre. He further stated that when he arrived at the Detention Centre all of his belongings were taken from him and thrown away.

[23] Mr. Ngumi also stated that on one occasion whilst at the Detention Centre he was taken from the dormitory into the kitchen by officials. There he was stripped naked, tied, handcuffed under the table and then beaten with a PVC pipe by the officers. He alleged that he received grave injuries to his back and the wounds got infected. The beating, according to him, went on for hours until someone told that officer "*we will call the police for you if you don't stop beating him*". He said that there

were about six (6) persons in the room looking on as the officer brutalized him until one of them (a lady) said "*that's enough" "don't beat him no more"*.

[24] Mr. Ngumi also testified that there were about 500 hundred persons of different nationalities living inside the dormitory which was only meant for 50 persons. As a result, he contracted diseases. He referred to one of the diseases as "*the scratching one*". He further stated that when he left the Detention Centre in August 2017 he went to the Carmichael Road Clinic and was diagnosed with tuberculosis. He was subsequently hospitalized for eight (8) months at the Princess Margaret Hospital. He also testified that during his time at the Detention Centre he was not allowed to use the telephone. He was also oppressed on another occasion by officials after a fight ensued with other detainees and himself. He was handcuffed, taken outside of the Detention Centre where no one was and beaten.

[25] Mr. Ngumi stated that there were several raids at the Detention Centre during his time there. Officers would come into the dormitory, take his and other detainees' bags and suitcases, throw the contents on the floor, step on them and throw water on them. Tear gas was often used on them during those raids.

[26] Mr. Ngumi asserted that the dormitory was never cleaned and that the toilet could not flush and they had to drink "*pump water*" that "*smells like iron and rust*".

[27] He said that he did some voluntary work around the Detention Centre. He assisted with serving food in the kitchen, washing government cars and placing signs on the outside for visitors. He did this because he wanted his freedom and had hoped that one day the officers would feel pitiful and release him.

[28] Mr. Ngumi further testified that after he was released from the Detention Centre he lived on the beach at Arawak Cay because he had no family, money or identification. During his testimony, Mr. Ngumi read a letter dated 13 October 2017 which he wrote to Mr. William Pratt, the Director of Immigration. It reads:

> **"My name is Douglas M. Ngumi and I am writing this letter to you requesting your assistance in solving my problem which is a basic**

> **need. I was released from the Detention Centre located on Carmichael Road on the 4th August, 2017. I was detained there from 11th January, 2011 where I would have been there for about six and half years. As you would know, most of the people who were friends would no longer be friends, out of sight out of mind. Therefore, I am asking if you would issue me with some paper writing which would have immigration allowance for me to have some income so as to provide to any employer that is willing to hire me temporarily. It will also assist me with police questioning. I would then be able to afford basic necessities e.g. food, clothes, hygienic products, housing. I also suffer from hypertension, so I would then be able to purchase the necessary medication. While I am trying to get a passport, I cannot afford to pay for one to come from Africa without any income via FedEx. Any assistance will be greatly appreciated."**

[29] He did not receive an acknowledgement or reply to this letter.

[30] Under cross-examination, Mr. Ngumi admitted that he pleaded guilty to overstaying in January 2011 before the Magistrate. He also admitted that he was deported to Cuba in the past but he returned to The Bahamas.

Factual findings

[31] This is a civil case (with constitutional considerations) wherein the burden of proof is based on a preponderance of evidence. As already mentioned, the Defendants led no evidence to challenge or undermine the credibility of Mr. Ngumi and/or the veracity of his evidence. This is unfortunate because it undoubtedly tips the scales in favour of Mr. Ngumi. That being said and having had the opportunity to see, hear and observe Mr. Ngumi in the witness box, over-emotional as he was, I have no other evidence to dispute what he was saying. For the most part, I also found his evidence to be consistent with his pleadings and witness statement. As such, I accept his evidence. His account of what he endured during the 6 years and 7 months at the Detention Centre is most unfortunate.

[32] Accordingly, I find as a fact that, although immigration officers had reasonable suspicion to arrest Mr. Ngumi without a warrant on 12 January 2011, he was not charged within the statutory period of 48 hours or 2 days. He was arraigned before the Magistrate Court on 18 January 2011 when he should have been arraigned

within 48 hours (or two days) after his arrest. I therefore find that he was unlawfully detained for four days.

[33] Additionally, I find that, following his arraignment and subsequent sentence on the 18 January 2011, Mr. Ngumi ought to have been deported as soon as was reasonably practicable as recommended by the learned Magistrate. This was not done. It resulted in a protracted unlawful detention which ended on 4 August 2017. There was some evidence by the Defendants that his passport was "lost" and it was impossible to repatriate him to Kenya. Again, this is unfortunate as the passport was "lost" during his detention at the Detention Centre.

[34] In the absence of any evidence from the Defendants, I further find that Mr. Ngumi was badly beaten on several occasions by officers at the Detention Centre. He was also subjected to cruel, inhumane and degrading treatment so much so that he developed health problems and, at some point, he contracted tuberculosis and scabies.

Discussion
Issue 1

Arrest, detention and false imprisonment

[35] Was the arrest of Mr. Ngumi on 12 January 2011 and subsequent detention until 4 August 2017 unlawful giving rise to the tort of false imprisonment? If so, then what is the appropriate quantum of damages that he is entitled to?

[36] The tort of false imprisonment is committed whenever any person is deliberately incarcerated against his will by any other person who has no legal justification for doing so. In **Meerings v. Grahame-White Aviation Co. Ltd.** (1919) 122 L.T. 44 p. 51 Duke LJ explained it this way:

> **"It is a matter of very great nicety to determine whether upon those facts there is sufficient to warrant a verdict that the person complaining was imprisoned. What constitutes imprisonment has been long ago defined. It is to be found in a work of very good authority in the application of the common law – namely, 'Termes de la Ley' – in these words: '<u>imprisonment' is no other thing, but the restraint of a man's liberty, whether it be in the open field, or in the</u>**

stocks, or in the cage in the streets' – referring to now obsolete methods of imprisonment – '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 whether he will without bail or mainprise or otherwise."

[37] The principle was further explained by Deyalsingh J in **Bostien v Kirpalani's Ltd** (1979) High Court of Trinidad and Tobago, No. 861 of 1975 [unreported] at page 13 where the learned judge said:

> **"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 plaintiff's movements or over his will, and it matters not what means are utilised to give effect to this intention…."**

[38] 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.*"

[39] It is beyond dispute that officers of the Immigration Department have the same powers of arrest without a warrant as police officers: section 9 of the Immigration Act, Ch. 191, Statute Laws of The Bahamas. However, a person arrested by an Immigration Officer for reasonable cause must be charged and brought before a Magistrate within 48 hours in accordance with section 18 of the Criminal Procedure Code. There appears to be no provision in the Immigration Act or the Criminal Procedure Code which allows an Immigration officer to extend the statutory 48 hour period.

[40] I am reminded of the statement of Blake J in **Jean and others v. Minister of Labour and Home Affairs and other** (1981) 31 W.I.R 1 at page 21:

> **"All the authorities go to show that when drastic powers are given to interfere with personal liberty, there must be the strictest compliance with the letter of the Law, be the person affected a subject by birth or naturalization, or a stranger within the gates."**

[41] So, Mr. Ngumi was unlawfully detained for four days before taken to the Magistrate Court (already a finding).

[42] As mentioned above, Mr. Ngumi admitted under cross-examination that prior to his arrest on 12 January 2011, he would often travel in and out of The Bahamas to avoid overstaying and also, at one point in the past, he was "deported to Cuba". With this in mind coupled with the fact that Immigration officers went directly to his home and arrested him for an offence to which he subsequently pleaded guilty, I would conclude that the officers had reasonable cause to arrest Mr. Ngumi on that date. Therefore, his arrest was lawful. However, he was detained at the Detention Centre for 6 years and seven months.

[43] The Learned Magistrate recommended deportation and one would have expected the Authority to act with some expediency to deport Mr. Ngumi to Kenya. I would consider three (3) months to be reasonable and sufficient to organize for his deportation. The Defendants suggested in their Defence that there was a failure to deport Mr. Ngumi because he refused to cooperate with Immigration officials to facilitate his return to Kenya and because of national security concerns, he could not be released in the community. I do not accept this. I would have been inclined to accept this position had the Defendants supported this assertion with evidence at trial. Moreover, during his testimony, Mr. Ngumi stated that he *"was never asked to sign any documents by Immigration officials during his time at the Detention Centre."* This was not challenged during cross-examination. I accept this as a fact. In the circumstances, I would also deem as an unlawful detention the time Mr. Ngumi spent in custody at the Detention Centre after the Magistrate's

recommendation of deportation (excluding 3 months which I consider to be sufficient time to organize and deport) which is 6 years and 4 months.

[44] My position on deportation within a reasonable time finds approval in the Privy Council case of **Tan Te Lam and others v Superintendent of Taio A Chau Detention Centre and another** [1996] 4 All ER 256 which was applied by the Bahamian Court of Appeal in the case of **Atain Takitota v. The Attorney General and others** SCCivApp No. 54 of 2004. Sawyer P stated:

> **"79. That case was about whether a number of persons of ethnic Chinese origin who were proven to have entered Hong Kong illegally could be legally detained pending removal from Hong Kong under section 13D of the Immigration Ordinance of Hong Kong.**
>
> **Their Lordships held that -**
>
> > **"(1) Where a statute conferred power to detain an individual pending his removal from the country, in the absence of contrary indications in the statute, it was to be implied that that power could only be exercised during the period necessary, in all the circumstances of the particular case, to effect that removal, that the person seeking to exercise the power of detention had to take all reasonable steps within his power to ensure the removal within a reasonable time and that, if it became clear that removal was not going to be possible within a reasonable time, further detention was not authorized. The courts would construe strictly any statutory provision purporting to allow the deprivation of individual liberty by administrative detention for unreasonable periods or in unreasonable circumstances."**
>
> **80. If it had been proven earlier on that the appellant had landed in The Bahamas illegally, such a decision would have justified the detention of the appellant for a "reasonable period of time" in order to return him to his homeland."**

[45] For all of these reasons, I find that the tort of false imprisonment has been proven to the requisite standard. Mr. Ngumi was falsely imprisoned for an aggregate of 6 years 4 months and 4 days and not 6 years and 7 months or 2,395 days as argued by Mr. Smith QC.

Issue 2: Tort of assault and battery

[46] I have set out above, Mr. Ngumi's evidence as he told it regarding the various

beatings, physical abuses and injuries he sustained while in custody at the hands of officers and/or agents of the Defendants.

[47] No evidence having been adduced by the Defendants to refute what Mr. Ngumi stated under oath, I therefore find, on a balance of probabilities, that Mr. Ngumi's claims for the tort of assault and battery have been made out.

Issue 3: Breaches of the Plaintiff's Constitutional Rights

[48] Article 17 of the Constitution provides that:

> **"17 (1) No person shall be subject to torture or to inhumane or degrading treatment or punishment.**
>
> **(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 authorize; the infliction of any description of punishment that was lawful in the Bahama Islands immediately before 10th July, 1973."**

[49] In light of the facts which have already been detailed above, I conclude that Mr. Ngumi endured cruel and inhumane treatment whilst at the Detention Centre and he is therefore entitled to damages.

[50] Further, Article 19(1),(3) & (4) provide:

> **"19. (1) no person shall be deprived of his personal liberty save as may be authorized by law in any of the following cases—**
>
> **(a) in execution of the sentence or order of a court, whether established for The Bahamas or some other country, in respect of a criminal offence of which he has been convicted or in consequence of his unfitness to plea to a criminal charge or execution of the order of a court on the grounds of his contempt of the court or of another court or tribunal;**
> **(b) in execution of the order of a court made in order to secure the fulfilment of any obligation imposed upon him by law;**
>
> **(c) for the purpose of bringing him before a court in execution of the order of a court;**
>
> **(d) upon reasonable suspicion of his having committed or being about to commit a criminal office;**

(e) in the case of a person who has not attained the age of eighteen years, for the purpose of his education or welfare;

(f) for the purpose of preventing the spread of any infectious or contagious disease or in case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his care or treatment or the protection of the community;

(g) for the purpose of preventing the unlawful entry of that person into The Bahamas or for the purpose of effecting the expulsion, extradition or other lawful removal from The Bahamas of that person or the taking of proceedings relating thereto; and without prejudice to the generality of the foregoing, a law may, for the purposes of this subparagraph, provided that a person who is not a citizen of The Bahamas may be deprived of his liberty to such an extent a may be necessary in the execution of a lawful order requiring that person to remain within a specified area within The Bahamas or prohibiting him from being within such area.

(2) ….

(3) Any person who is arrested or detained in such a case as is mentioned in subparagraph 1(c) or (d) of this Article and who is not released shall be brought without undue delay before a court; and if any person arrested or detained in such a case as is mentioned in the said subparagraph (1)(d) is not tried within a reasonable time he shall (without prejudice to any further proceedings that may be brought against him) be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary for trial

(4) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefor from that other person."

[51] Applying the law to the facts of this case, I find that Mr. Ngumi's rights under Article 19(1), (3) and (4) have been infringed and he is therefore entitled to compensation for the breach of his constitutional rights.

[52] For all the reasons stated above, I find that judgment as to liability on the specific torts and constitutional infringements addressed above should be entered in Mr. Ngumi's favour.

Article 28 of the Constitution

[53] Article 28 provides as follows:

> **"28 (1) if any person alleges that any of the provisions of Article 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 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 21 (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."**

[54] It is well established that the right to apply to the Supreme Court pursuant to Article 28 of the Constitution should be exercised only in exceptional cases where there is a parallel remedy: Lord Diplock at p. 268 in the Privy Council case of **Harrikissoon v Attorney General of Trinidad and Tobago** [1980] AC 265.

[55] The mere existence of an alternative remedy does not automatically warrant excluding constitutional proceedings under the proviso to Article 28(2). The crux is their adequacy. The power to decline jurisdiction arises only where the alternative means of redress is considered to be adequate. In this regard, the Courts have offered some guidelines in assessing the requirement of adequacy. One of these is that where there is a parallel remedy, constitutional relief is only appropriate where some additional "feature" presents itself, for example, arbitrary use of state power: **Attorney General of Trinidad and Tabago v Ramanoop**

[2005] UKPC 2005); unlawful imprisonment for 8 years: **Takitota v. Attorney General and others** [2009] UKPC 11 and breaches of multiple rights: **Belfonte v Attorney General** [1968] W.I.R 416. See also paras 247 to 252 of **Coalition to protect Clifton Bay and Zachary Hampton Bacon III v The Attorney General of the Commonwealth of The Bahamas** 2016/PUB/con/00016 [unreported] Judgment delivered on 2 August 2016.

[56] In the present case, Mr. Ngumi was wrongfully imprisoned at the Detention Centre for 6 years 4 months and 6 days (or 2,316 days) and during that time multiple breaches of his constitutional rights occurred as set out in detail above.

[57] Consequently, I find that Mr. Ngumi's claims for constitutional redress is not an abuse of the process as no parallel adequate remedy is available.

Assessment of Damages

[58] In assessing damages, Lord Scott of Foscote in **Merson v Cartwright and Another** [2005] UKPC 38 at para 15 indicated that it would be preferable in assessing damages for awards to be made under each head claimed.

> **"15, The learned judge did not identify in relation to the $90,000 award for assault and battery and false imprisonment what sum was being attributed to each tort. There were several events she had found proved each of which constituted in law the assault and battery tort. It was entirely reasonable, in their Lordships' opinion, for the judge to have made a single award to cover all of them. It would, however, have been preferable, in their Lordships' view to have had separate awards for the assault and battery damages and the false imprisonment damages. Nor did the learned judge identify in relation to any of the awards the element attributable to compensatory damages, including aggravated damages, on the one hand and the element attributable to exemplary damages, which are punitive in character, on the other. A reading of the judgment from the above cited passage to the announcement of the amount of the awards (pages 92 to 96) suggests, their Lordships think, that the learned judge, having directed herself impeccably as to the approach she should adopt, formed a view as to the totality of the damages that Ms Merson should receive and then divided the sum, in round figures, between the three headings under which the awards were made. Their Lordships do not wish to be unduly censorious of this approach but it does make difficult a critical review of the quantum of the awards. It is to be noted that in the Tynes case (referred to in para.4 above), in**

which Sawyer CJ (as the learned judge had become) was the trial judge and in which the same causes of actions as were found proved in the present case were found proved (but where, measured in degrees of outrageous behaviour, the facts were several degrees below those of the present case) the Court of Appeal said:

> **"We wish to indicate that it would be more appropriate for the damages to be awarded under each head. The award should indicate the amount of damages awarded for assault and battery. There should be an identifiable award for false imprisonment and similarly for aggravated damages and also for exemplary damages." (p. 14 of the judgment of Zacca P)**

Their Lordships respectfully concur."

[59] In the Writ of Summons filed on 27 September 2017, Mr. Ngumi sought damages under the following heads namely:

1. Damages;
2. Special damages; $950.00
3. Aggravated damages;
4. Exemplary damages;
5. Vindicatory damages;
6. The return of any and all his personal items;
7. Alternatively, damages in the value of his personal items;
8. Compensation under Article 19(4) of the Constitution;
9. Damages for breaches of his rights under Articles 15,17,19(1), 19(2), 19(3) and 27 of the Constitution;
10. Interest on each of the foregoing pursuant to statute;
11. Costs on full indemnity and solicitor and own client basis certified fit for three counsel and;
12. Such further or other relief as to the Court may think fit.

[60] In Mr. Ngumi's Submissions in Reply to Defendants' Submissions resisting liability and quantum, Mr. Ngumi urged the Court to measure damages as follows:

1. General Damages $3,000,000.00
2. Special Damages $ 950.00
3. Aggravated Damages $1,000,000.00

4.	Exemplary Damages	$5,000,000.00
5.	Constitutional damages by way of compensation and vindication	$2,000,000.00
6.	Interest on each of the foregoing	
	<u>TOTAL DAMAGES SOUGHT</u>	**<u>$11,000,950.00</u>**

False imprisonment, assault and battery
Submissions and analysis

[61] Mr. Ngumi is entitled to general damages for the torts of false imprisonment, assault and battery. The amount of such an award cannot be precisely measured. All that can be done is to award such sum, within the broad criterion of what is reasonable and in line with similar awards in comparable cases, as represents the court's best estimate of Mr. Ngumi's general damages to compensate him for what he has lost bearing in mind all the probabilities.

[62] As already mentioned, Mr. Ngumi was deprived of his liberty at the Detention Centre for 6 years 4 months and 6 days or 2,316 days (my computation). His evidence that he was kept in deplorable, inhumane and degrading conditions and he endured cruel and inhumane treatment whilst being housed at the Detention Centre remained uncontroverted. He was finally released when a Habeas Corpus application was issued.

[63] Mr. Smith QC submitted that instead of admitting the mistake and settling, the State defended these proceedings.

[64] Mr. Smith QC also submitted that, to this date, the State offered no apology. The Defendants remained unrepentant and defended Mr. Ngumi's claim even though they had no defence in law and had no evidence to present. I observed that the State did not aggressively challenge liability. In fact, they offered no evidence in this case. The State however served submissions on the law which I do not believe is the same as "defending the indefensible" since Mr. Ngumi is claiming very substantial damage.

[65] Mr. Smith invited the Court to make one global and compendious award for the torts of false imprisonment, assault and battery as was similarly done and accepted by the Privy Council in **Merson**. I agree.

[66] Mr. Smith QC relied on a plethora of authorities to support his contention that for this head of damage, Mr. Ngumi should receive $3,000,000.00. He submitted that in **Merson**, she was falsely imprisoned for more than two days. Her constitutional rights were breached but, in a way that can only be described as somewhat “tenderly” when compared to Mr. Ngumi’s treatment: there were also, in comparison, gentle elements of aggravation compared to Mr. Ngumi: she was awarded, in 1994, $190,000.00 for assault and battery, $90,000.00 for false imprisonment and $100,000.00 for breaches of her constitutional rights. She was also awarded special damages of $8,160.00 and $90,000.00 for malicious prosecution.

[67] Mr. Smith QC submitted that taking inflation into account from a Google search on the internet, that would be an award of approximately $324,000.00 in 2019 and divided by 2 days would equate to an award of $162,000.00 for each day. According to Mr. Smith QC, if this were a completely scientific calculation, Mr. Ngumi would be entitled to an award in the region of $387,990,000.00. He further submitted that that could be reasonably increased taking into account the many more aggravating factors in Mr. Ngumi’s case.

[68] Mr. Smith QC next submitted that even if the Court were to take only the damages awarded to Ms. Merson for false imprisonment, $90,000.00 (pre-inflation) $153,507.00 (with inflation) that would be $45,000.00 per day pre inflation and $76,500.00 (with inflation). Applied to Mr. Ngumi, with inflation, that would be $76,500.00 per day for 2,395 days (Mr. Smith’s computation) totaling $183,217,500.00. Taking out any factor for inflation, at $45,000.00 per day for 2,395 days (Mr. Smith’s computation) an award, just for assault and battery and false imprisonment would total $107,775,000.00.

[69] Added to that would be the other heads of damages for breaches of Mr. Ngumi's constitutional rights.

[70] Mr. Smith QC also argued that if the Court were to factor in exemplary and punitive damages to send a lesson to the State that this behaviour has to stop, the award would be truly astronomic.

[71] Mr. Smith QC acknowledged that this is not a purely scientific exercise and such figures may perhaps be regarded as fantastical. He surmised that if however there were jury trials in The Bahamas, damages in such amounts would not be out of the realm of possibility as happens in the United States to mark societies' condemnation of such State conduct. He referred to the case of **Matuszowicz v Parker** (1987) 50 WIR 24. In that case, Mr. Smith had urged the learned Chief Justice to pay some regard to the verdicts in Florida which the learned judge found unacceptable and unreservedly rejected: page 25 (e) to (f).

[72] I however agree with Mr. Smith QC, as the Privy Council remarked in **Scott v AG** [2017] UKPC 15, (a personal injury case) that:

> **"The Bahamas must likewise be responsive to the enhanced expectations of its citizens as economic conditions, cultural values and societal standards in that country change…. Guidelines from different jurisdictions can provide insight but they cannot substitute for the Bahamian courts' own estimation of what levels of compensation are appropriate for their own jurisdiction."**

[73] Given the astronomical escalation in kindred cases, the sanction in **Scott** becomes even more persuasive for us to develop our jurisprudence in this area of law.

[74] Mr. Smith QC also cited the case of **Tynes v Barr** (1994) 45 WIR 7 to support his quest for $3,000,000.00 in damages under this head. Tynes, a renowned attorney-at-law was falsely imprisoned for less than one day; his constitutional rights were breached and Mr. Tynes was awarded 115,000.00 for assault and battery and false imprisonment. This was in 1994.

[75] In **Takitota**, the Plaintiff was awarded a total of $600,000.00 of which $100,000.00 was awarded for exemplary damages. This was in 2005. He was falsely imprisoned for 8 years. Mr. Smith QC noted that Mr. Takitoka was not subjected to the same horrifying treatment as Mr. Ngumi. I disagree. Mr. Takitoka was incarcerated at Her Majesty's Prison at Fox Hill for more than 6 years, firstly, in the maximum security unit in an area called "the Bulkhead" (a cell of some 18' v 8' in area where some 18 or 19 other persons were also housed); secondly in the maximum security unit and finally at the Detention Centre from 1998. In all, Mr. Takitoka was detained for approximately 8 years and two months on the only ground stated in his detention order that he was "*an undesirable and his presence was not conducive to the public good*." He attempted to commit suicide on three occasions.

[76] I take judicial notice of the fact that Her Majesty's Prison is less satisfactory and comfortable than the Detention Centre for obvious reasons.

[77] Mr. Smith QC also referred to the case of **Lockwood v Department of Immigration and another** [2017] 2 BHS No. 120. In this case, Mr. Lockwood was unlawfully detained for 2 days. Mr. Lockwood got $50,000.00 representing aggravated and exemplary damages: para. 39 of the Judgment. He also received $10,000.00 as vindicatory damages for breach of his constitutional right under Article 19(1) of the Constitution and costs of $25,000.00.

[78] It is obvious that damages for false imprisonment, assault and battery are incapable of exact estimation and their assessment must necessarily be a matter of degree, based on the facts of each case. The Court of Appeal in **Jamal Cleare v Attorney General and others** [2013] 1 BHS No. 64 puts it in this way:

> **"47. The measure of and quantum of damages for unlawful detention would, of course, depend on the nature and circumstances of each case. There can hardly be one size fits all formula for the breach of such an important constitutional right as the right to personal freedom.**

48. Needless to say, in our view, it would be most invidious to put a price tag or tariff on the deprivation of personal liberty. But it is undoubted that the right to personal liberty is, next to the right to life, an elemental right on which the enjoyment of most, if not all, of the other rights guaranteed in the Constitution is dependent. Personal liberty truly *is* priceless.

49. It is for these reasons that we are unable to support the quantum of damages of seven hundred and fifty dollars ($750.00) awarded by the learned judge; nor for that matter do we think the measure of damages of two hundred and fifty dollars ($250) per day, used to arrive at that quantum, is justified or appropriate. As we have stated, we are convinced and satisfied that Takitota did not intend to lay down a *general tariff* for the unlawful detention of an individual. [Emphasis added]

[79] The Court of Appeal awarded the appellant the sum of $25,000.00 as both compensatory and vindicatory damages.

[80] As can be seen from the above cases, our courts have been struggling to find a suitable formula to compensate a plaintiff for torts of this nature. Some assistance, to my mind, can be gleaned from the case of **Alseran and others v Ministry of Defence** [2019] Q.B. 1251 where the English Court conducted a helpful review of the damages recoverable for the torts of false imprisonment, assault and battery and stated at paras. 876-880:

876. First of all, where a person is a victim of an assault or false imprisonment, the wrong itself—that is to say, the interference with the claimant's bodily integrity or liberty—is an injury for which the claimant is entitled to be compensated in English law whether or not the interference has resulted in any "actual harm" to the claimant. As Lord Rodger of Earlsferry said in *Ashley v Chief Constable of Sussex Police (Sherwood intervening)* [2008] AC 962, para 60: "battery or trespass to the person is actionable without proof that the victim has suffered anything other than the infringement of his right to bodily integrity." See also *Watkins v Secretary of State for the Home Department* [2006] 2 AC 395, para 68. Likewise it is well established that loss of liberty is itself an injury for which a claimant is entitled to be compensated apart from any damage which has resulted from the loss of liberty: see e g *R v Governor of Brockhill Prison, Ex p Evans (No 2)* [1999] QB 1043, 1060. This kind of injury which is inherent in the wrong itself is often referred to as "moral injury".

> **877. Second, an assault or false imprisonment may cause identifiable physical or psychiatric injury. In such circumstances damages are awarded in English law for what is conventionally referred to as "pain and suffering" and any loss of amenity.**
>
> **878. A third kind of injury is injury to feelings. This includes the distress, misery, humiliation, anger and indignation that such a tort may cause. The distinction between this kind of injury and what I am calling "psychiatric injury" is that psychiatric injury refers to a recognised medical condition (such as clinical depression or post-traumatic stress disorder) whereas injury to feelings refers to mental suffering which does not amount to such a medical condition. Each of these types of injury is a separate head of damage but in awarding damages where both are suffered it is obviously important to avoid double counting.**
>
> **879. Fourth, English law recognises that injury to the feelings of the victim of an assault or false imprisonment may be increased by the defendant's motivation in committing the tort if the defendant shows particular malice towards the victim, or by other particularly egregious features of the defendant's conduct in committing the tort or subsequent behaviour towards the victim: see *Rookes v Barnard* [1964] AC 1129, 1221; and the report of the Law Commission on *Aggravated, Exemplary and Restitutionary Damages* (Law Com No 247) (1997), pp 10–11, paras 1.1 and 1.4. As already mentioned, the damages which, in English law, may be awarded for such additional injury to feelings are referred to as "aggravated damages". Such damages, which are intended solely to compensate the claimant, must not be confused with "exemplary" or "punitive" damages, which in certain exceptional circumstances only may be awarded in English law in order to punish or make an example of the defendant.**
>
> **880. A fifth kind of injury which may be suffered is financial loss—consisting, for example, of the cost of medical treatment or loss of earnings if the assault or false imprisonment prevents the claimant from working.** [Emphasis added]

[81] Stripped to its bare essentials, the following principles emanate from **Alseran**:

1. Firstly, a victim of an assault or false imprisonment is entitled to be compensated whether or not the 'interference' has resulted in any "actual harm" to the plaintiff. Loss of liberty is itself an injury for which a plaintiff is entitled to be compensated apart from any damage which has resulted from the loss of liberty. This is referred to as "moral injury."

2. Second, an assault or false imprisonment may cause identifiable physical or psychiatric injury for which damages are awarded. This is conventionally referred to as "pain and suffering" and any loss of amenity.

3. There is a third kind of injury referred to as injury to feelings or mental suffering. This includes the distress, misery, humiliation, anger and indignation that such a tort may cause.

4. Fourth, English law (and indeed Bahamian law) recognizes that injury to the feelings of the victim of an assault or false imprisonment may be increased by the defendant's motivation in committing the tort if the defendant shows particular malice towards the victim, or by other particularly egregious features of the defendant's conduct in committing the tort or subsequent behavior towards the victim.

5. A fifth kind of injury which may be suffered is financial loss. For example, loss of earnings if the assault or false imprisonment prevents the plaintiff from working.

[82] Further in paragraphs 885 to 887, the English Court emphasized that:

> **885. There is no doubt that under English law the court has power to award damages as a remedy for each of the five kinds of injury identified above. Where the injury consists of financial loss, the assessment of damages simply involves calculating the amount of the loss and ordering the defendant to pay an equivalent amount to the claimant. But the other four kinds of injury mentioned are non-financial in nature. Damages awarded for such injuries are not capable of arithmetical computation. No sum of money is comparable to loss of liberty or to physical or psychiatric injury or mental distress. Nevertheless, given the ubiquity of money as a measure of value in modern society, awarding a sum of money is the best that a court can do by way of compensation. The aim is to award a sum which would generally be perceived as fairly reflecting the gravity of the injury suffered by the claimant.**
>
> **886. Of course, people will differ, often widely, in their perceptions of what sum of money would represent, or would be seen by fair-minded members of society to represent, appropriate compensation for any**

> **particular injury or kind of injury. In these circumstances it is important that judges should not simply award a sum of money which they think appropriate but should strive for consistency. As Lord Woolf MR, giving the judgment of the Court of Appeal in *Heil v Rankin* [2001] QB 272, para 25 said:**
>
> > **"Consistency is important, because it assists in achieving justice between one claimant and another and one defendant and another. It also assists to achieve justice by facilitating settlements."**
>
> **887. The doctrine of precedent requires English courts to try to ensure that the amounts of damages which they award are consistent with amounts previously awarded in factually similar cases. In addition, the consistency and predictability of damages awards have been markedly increased in recent times by the promulgation of various scales and guidelines. The most important and comprehensive of these are the *Guidelines for the Assessment of General Damages in Personal Injury Cases* published by the Judicial College (the "Judicial College Guidelines"), which are now in their 14th edition. These guidelines indicate appropriate levels of award across the whole range of physical and psychiatric injuries to the person.**

[83] Now, dissecting paragraphs 885 to 887, the following principles emanate from those five kinds of injury namely:

1. The court has power to award damages as a remedy for each of the five kinds of injury. Where the injury consists of financial loss, the assessment of damages simply involves calculating the amount of the loss and ordering the defendant to pay an equivalent amount to the claimant. But the other four kinds of injury mentioned are non-financial in nature. Damages awarded for such injuries are not capable of arithmetical computation. No sum of money is comparable to loss of liberty or to physical or psychiatric injury or mental distress. But the Court must award a fair and reasonable sum to compensate the victim.

2. It is important that judges should not simply award a sum of money which they think appropriate but should strive for consistency.

3. It is important that the courts try to ensure that the amounts of damages which they award are consistent with amounts previously awarded in factually similar cases.

4. As a guideline, a plaintiff who has been wrongly kept in custody for 24 hours would be entitled to an award (in England, about £3,000). For subsequent days the daily rate will be on a progressively reducing scale. The figures were not intended to be applied in a mechanistic manner. The assessment of damages should be sensitive to the facts of the case and the degree of harm suffered by the particular plaintiff.

5. **No two cases are the same; the shorter the period of unlawful imprisonment the larger can be the pro rata rate and the length of the lawful period of imprisonment is also a relevant factor.** [Emphasis mine]

[84] In **Takitota**, the Privy Council stated at para 16 of the Judgment that the local courts are very much better placed than the Board to say what is appropriate by way of damages, having regard to the conditions in the country concerned. At para 17, the Board stated:

> **"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 in 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.** [Emphasis added]

[85] No doubt, **Takitota** is the *locus classicus* in this jurisdiction dealing with lengthy periods of wrongful imprisonment. The principles emanating from it are helpful because the present case bears close affinity to **Takitota.** The cases of **Merson,**

Tynes and the litany of cases referred to by Mr. Smith QC dealt with short periods of imprisonment. As stated in **Alseran**, a plaintiff who has been wrongly kept in custody for 24 hours would be entitled to an award (in England, about £3,000). For subsequent days the daily rate will be on a progressively reducing scale. The figures were not intended to be applied in a mechanistic manner.

[86] So, what is a reasonable and fair compensation for a man who was deprived of his liberty for over 2,316 days and kept in deplorable, inhumane and degrading conditions whilst being housed at the Detention Centre? As I stated earlier, the Court takes judicial notice that the Detention Centre is more palatable than Her Majesty's Prison (now the Bahamas Department of Corrections).

[87] Besides the inhumane conditions that Mr. Ngumi found himself in whilst awaiting his deportation to his home country of Kenya, his liberty was also taken away from him for 2,316 days. If he were not detained, he might still have been gainfully employed, as he says, as a jitney driver, perhaps something better or something worse. It is too difficult to predict the future. Although he did not particularize the monthly salary which he used to receive as a jitney driver in Kenya, the Court takes judicial notice that a person working as a bus driver in Kenya typically earns around 49,500 Kenyan shillings monthly: www.salaryexplorer.com. This is the equivalent of $450.10 Bahamian dollars monthly. It is unfortunate that Mr. Ngumi did not provide this evidence. Anyway, this is nothing more than a surmise and therefore unhelpful to compensate a man for 2,316 lost days of his life.

[88] That said, Mr. Ngumi claims total compensation of $3,000, 000.00 under this head. Indeed, and in Mr. Smith's own words, such an astronomical amount is nothing more than a fantasy.

[89] In my opinion, even though the Court of Appeal in **Cleare** did not find favour with the $250.00 daily rate in **Takitota**, I still consider the daily rate of $250.00 to be fair and reasonable considering the socio-economic conditions in The Bahamas. I also took into account the aggravation suffered by Mr. Ngumi which was nothing short of cruel and inhumane. Therefore, for 2,316 days at $250.00 daily is equivalent to

$579,000.00. As the Privy Council noted at para 9 of **Takitota**, it is usual and proper to reduce the level of damages by tapering them when dealing with an extended period of unlawful imprisonment: **Thompson v Commissioner of Police of the Metropolis** [1998] QB 498, 515, per Lord Woolf MR. So I will reduce the quantum of damages by one-third which equals $386,000.00.

[90] For the torts of false imprisonment, assault and battery, I assess damages in the amount of $386,000.00.

Exemplary damages

[91] Mr. Ngumi seeks damages not only on a compensatory basis but also damages on an exemplary basis in the amount of $5,000,000.00.

[92] Exemplary damages are awarded when the state or government has taken oppressive, arbitrary or unconstitutional action: **Rookes v. Barnard** [1964] A.C. 1129 is the landmark case for this head of damage. At page 1221, Lord Devlin stated thus:

> **"Exemplary damages are essentially different from ordinary, damages. The object of damages in the usual sense of the term is to compensate. The object of exemplary damages is to punish and deter. It may well be thought that this confuses the civil and criminal functions of the law; and indeed, so far as I know, the idea of exemplary damages is peculiar to English law. There is not any decision of this House approving an award of exemplary damages and your Lordships therefore have to consider whether it is open to the House to remove an anomaly from the law of England.**
>
> **It must be remembered that in many cases of tort damages are at large, that is to say, the award is not limited to the pecuniary loss that can be specifically proved. In the present case, for example, and leaving aside any question of exemplary or aggravated damages, the appellant's damages would not necessarily be confined to those which he would obtain in an action for wrongful dismissal. He can invite the jury to look at all the circumstances, the inconveniences caused to him by the change of job and the unhappiness maybe by a change of livelihood. In such a case as this, it is quite proper without any departure from the compensatory principle to award a round sum based on the pecuniary loss proved.**

Moreover, it is very well established that in cases where the damages are at large the jury (or the judge if the award is left to him) can take into account the motives and conduct of the defendant where they aggravate the injury done to the plaintiff. There may be malevolence or spite or the manner of committing the wrong may be such as to injure the plaintiff's proper feelings of dignity and pride. These are matters which the jury can take into account in assessing the appropriate compensation. Indeed, when one examines the cases in which large damages have been awarded for conduct of this sort, it is not at all easy to say whether the idea of compensation or the idea of punishment has prevailed".

[93] The principles derived from **Rookes v Barnard** were adopted with approval in **Takitota**. At para. 12, Lord Carswell had this to say on exemplary damages:

> **"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. It serves, as Lord Devlin said in *Rookes v Barnard* [1964] AC 1129 at 1223, [1964] 1 All ER 801, [1972] 2 WLR 269, to restrain such improper use of executive power. Both Lord Devlin in *Rookes v Barnard* and Lord Hailsham of St. Marylebone LC in *Broome v Cassell & Co, Ltd* [1972] AC 1027 at 1081, [1972] 1 All ER 801, [1972] 2 WLR 645 emphasized the need for moderation in assessing exemplary damages. That principle has been followed in *The Bahamas* (see *Tynes v Barr* (1994) 45 WIR at 26), but in *Merson v Cartwright and the Attorney General* [2005] UKPC 38, [2006] 3 LRC 264 the Privy Council upheld an award of $100,000 exemplary damages, which they regarded as high but within the permissible bracket."**[Emphasis added]

[94] Mr. Smith QC relied on the following evidence to support the award for exemplary damages:

1. Mr. Ngumi was unlawfully arrested and falsely imprisoned by the Defendants for 6 years 4 months and 6 days and not 6 years and 7 months as alleged;

2. He was only released after Habeas Corpus proceedings were served. The Defendants did not even at that time seek to defend the legality of his

imprisonment;

3. Accordingly, defending the imprisonment now in this case is perverse and can only be explained that the State has determined to behave illegally regardless of the Constitution and the civil rights of the public and Court censure;

4. Mr. Ngumi was beaten severely on different occasions while being detained at the Detention Centre;

5. That the conditions at the Detention Centre were unsanitary, degrading and inhumane;

6. Mr. Ngumi contracted at least two communicable diseases while being detained at the Detention Centre namely scabies and tuberculosis;

7. His belongings were taken away by officers of the Detention Centre and never returned;

8. Mr. Ngumi was treated at the Princess Margaret Hospital for 7 months after his release to treat his tuberculosis;

9. Mr. Ngumi is still on an invisible leash and mandated to check in the Department of Immigration. Despite this trial, the Defendants have failed and/or refused to release him of this;

10. The Defendants have obstinately defended this case for 2 years and continue to do so. They refuse to even admit liability and allow an interim payment on judgment despite no evidence in defence and the dire financial straits of Mr. Ngumi. The State has failed to apologize.

[95] Accordingly, says Mr. Smith QC, an award of $5,000,000.00 meets the justice of this case and nothing less will cause the State to awaken from its endemic abuse.

[96] As outrageous as the acts of the State are, so also is the amount of $5,000,000.00 that Mr. Ngumi is claiming. There is not a single authority that can support his claim for such amount in the English-speaking Commonwealth. Learned Queen's Counsel Mr. Smith seemed to suggest that since the Bahamian societal expectations are more acculturated to Florida and the United States, damages should be reflective of the awards made in the courts of Florida. This is utterly preposterous. I adopt unequivocally what Georges CJ said in **Matuszowicz** at page 25:

> **"Although there may be superficial resemblances between this Commonwealth and the State of Florida, I do not think that their societal and industrial conditions can be said to be similar. Florida is a part of the USA, a superpower and one of the economic and industrial giants of the world. .. The Commonwealth…and its economy far more fragile."**

[97] As I stated previously, the instant case bears similarity to **Takitota**. The Court of Appeal, in 2006, did not reduce the sum of $100,000.00 by way of exemplary damages since that sum was awarded to show the strong disapproval of the courts for the conduct of the Defendants from the time of Mr. Takitota's arrest until his case was finally disposed of.

[98] For exemplary damages, I will make a similar award of $100,000.00 even though I am very conscious of the decline of the value of the dollar due to inflation. However, I make an award of the same amount even 14 years later because, in my considered opinion, the treatment meted out to Mr. Takitota by the State was more appalling than that endured by Mr. Ngumi. Furthermore, Mr. Ngumi was detained at the Detention Centre (a more satisfactory facility than Her Majesty's Prison) for a shorter period than Mr. Takitota.

Aggravated damages

[99] Mr. Ngumi seeks aggravated damages in the amount of $1,000,000.00. Aggravated damages are awarded when, among other things, the Defendant's conduct has caused or is capable of causing injury to feelings, for any indignity, disgrace, humiliation or mental suffering occasioned from the conduct.

[100] In **Merson and Takitota**, the Privy Council stated that aggravated damages form a quite distinct head of damage based on altogether different principles. This is how Lord Carswell puts it in **Takitota** at para11:

> **"In their reference to aggravated damages in para 94 of their judgment the Court of Appeal appear to have equated them with exemplary damages, whereas they form a quite distinct head of damage based on altogether different principles. In awarding compensatory damages the court may take account of an element of aggravation. For example, in a case of unlawful detention it may increase the award to a higher figure than it would have given simply for the deprivation of liberty, to reflect such matters as indignity and humiliation arising from the circumstances of arrest or the conditions in which the claimant was held. The rationale for the inclusion of such an element is that the claimant would not receive sufficient compensation for the wrong sustained if the damages were restricted to a basic award. The latter factor, the conditions of imprisonment, is directly material in the present case, and it would be not merely appropriate but desirable that the award of compensatory damages should reflect it. It may be that the Court of Appeal had it in mind when they expressed their intention in paragraph 90 to compensate the appellant "for the loss of more than 8 years of his life and for the misery which he endured by being treated in a less than humane way." They did not spell it out in their judgment, though they were not obliged to do so: see *Subiah v Attorney General of Trinidad and Tobago* [2008] UKPC 47, para 11. Their Lordships do not find it possible to ascertain with sufficient clarity whether the Court of Appeal included any element of aggravation in their calculation of the compensatory award, and if so, how much represents that element. Although they stated in para 93 of their judgment that the sum of compensatory damages "does not take into account any assessment for aggravated or exemplary damages", it is not possible to determine whether in reaching that figure they had in fact taken account of aggravating factors."**

[101] Mr. Ngumi seeks aggravated damages for the following:

1. The emotional distress in connection with the unlawful detention;
2. During his viva voce testimony, he appeared visibly emotionally traumatized by the event;
3. The distress from the non-return of his personal items especially his passport which created travel hurdles and eventually made deportation to his home country impossible as the State itself admitted;

4. The humiliation and indignity of having to perform duties with the hope of being released (i.e. washing government vehicles and kitchen duties);

5. Being exposed and contracting scabies and tuberculosis;

6. The distress and humiliation from having been released in the public with nothing and no provisions for Mr. Ngumi to earn a living or survive;

7. The particulars at para 39 of his Statement of Claim also relied upon.

[102] The State has denied liability but they offered no evidence to rebut the assertions by Mr. Ngumi. Having examined the cases which Mr. Smith QC submitted, awards for aggravated damages vary from case to case. In **Anthony Deveaux v The Attorney General** [2005] CLE/gen/FP/236, the learned Deputy Registrar awarded the sum of $10,000.00. In **Takitota**, as the Privy Council observed, the Court of Appeal appeared to have equated aggravated damages with exemplary damages so one global award was made under that head.

[103] In the present case, I opined that an award of $50,000.00 is reasonable. For the record, I should state that Mr. Ngumi abandoned the prayer relief at (k) for "further aggravated damages".

Damages for breaches of constitutional rights

[104] Mr. Ngumi abandoned his claim for damages under Articles 15 and 27 of the Constitution. He however seeks vindicatory damages and compensation for Articles 17,19(1), (2), (3) and (4) of the Constitution.

[105] The Court has already found, on a balance of probabilities, that there have been breaches of Mr. Ngumi's constitutional rights. The issue is the measure of damages.

[106] In addition to general damages, the Court may also award compensatory damages and vindicatory damages for breaches of Mr. Ngumi's constitutional rights. As the Privy Council said in **Merson** at para 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" (para 25 in Ramanoop) – <u>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 executive not to misbehave. The purpose is vindicate the right of the complainant, whether a citizen or a visitor, to carry out 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.</u>"**[Emphasis added]

[107] Also the guidance of Elias CJ in the New Zealand Supreme Court case of **Taunoa v. A-G** [2007] 5 LRC 680 at para 109 that:

> **"It [damages] should be limited to what is adequate to mark an additional wrong in the breach and, where appropriate, to deter future breaches. But where a Plaintiff had suffered injury through denial of a right, he was entitled to compensation for that injury, which might include distress and injured feelings as well as physical damage. "**

[108] In **Inniss v Attorney General of St. Christopher and Nevis** [2008] UKPC 42, the Privy Council reverberated this guidance. At paras 21 to 29, Lord Hope focused on the issue of whether an award of damages would be appropriate at all in the case. Ms. Inniss was the Registrar of the High Court and an Additional Magistrate in that jurisdiction when she was unceremoniously removed with immediate effect from that position. She received an award of $50,000.00 Eastern Caribbean currency (approximately Bah$20,000.00) for breach of her constitutional rights. That was twelve years ago.

[109] Here at home, **Merson** received $100,000.00 for breaches of her constitutional rights in the Supreme Court in 1987. She was a 29 year old school teacher from

the United States who came to The Bahamas to visit her father. She was falsely imprisoned and her constitutional rights under Articles 17 and 19 of the Constitution were infringed. The Court of Appeal set aside that award. On appeal to the Privy Council, it was held that:

> **"The sum appropriate to be awarded as vindicatory damages depends on the particular infringement and the circumstances relating to the infringement and is at the discretion of the trial judge."**

[110] The Privy Council held, at para 21, that on the extreme facts of the case, they regard the award of $100,000.00 by way of vindicatory damages as high but within the bracket of discretion available to the judge.

[111] In **Takitota**, the Privy Council ruled that the "*sum of $100,000.00 representing constitutional or vindicatory damages, should remain undisturbed*".

[112] This Court is considering an appropriate sum for constitutional or vindicatory damages at a time of a global pandemic. I need not say more on this. However, taking all matters in consideration, I am of the opinion that an appropriate award for vindicatory damages to Mr. Ngumi for breach of both Article 17 and 19 of the Constitution would be $105,000.00. The matters which I took into consideration are:

1. Mr. Ngumi's long struggle to secure his release or to comply with two deportation orders to repatriate him to his homeland of Kenya;

2. Mr. Ngumi was imprisoned in inhumane and degrading conditions;

3. Mr. Ngumi's health was severely affected while he was falsely imprisoned: Exhibit DMN-2: Letter from Dr. Bartholomew confirming Mr. Ngumi's tuberculosis diagnosis;

4. The Defendants did nothing to assist Mr. Ngumi upon his release. He was currently unemployed and resided in a room at Fox Hill during the trial.

[113] As indicated above, a fair and reasonable award for vindication and compensation for breaches of Mr. Ngumi's constitutional rights is $105,000.00.

Special damages

[114] In a detinue action, generally the relief that is claimed and awarded is the return of the property to a plaintiff. In this case, Mr. Ngumi pleaded and gave evidence that his clothing, jewellery and cash in the amount of $950.00 were taken from him upon his arrival at the Detention Centre. These items were never returned to him. There is no evidence from the Defendants refuting Mr. Ngumi's allegations.

[115] Mr. Ngumi will receive the sum of $950.00 as special damages which were specifically pleaded and proved.

Interest

[116] Mr. Ngumi seeks interest not only after judgment but from the date that the cause of action arose. He relied on the judgment in **Cara Chan v Wendall Parker** (1999) No. FP/88 [unreported], a personal injury case, to ground pre-trial interest. I do not find his argument to be convincing. I am cognizant that, in personal injuries cases, judges including myself have awarded interest from the date when the cause of action arose but I was not provided with any authority to make such an award in cases dealing with these torts and constitutional infringements.

[117] That said, I make an order that interest at the statutory rate of 6.25% pursuant to section 2(1) of the Civil Procedure (Award of Interest) Act 1992 as amended by the Civil Procedure (Rate of Interest) Rules, 1992 be awarded to Mr. Ngumi from today's date to the date of payment.

Indemnity costs

[118] Learned Queen's Counsel Mr. Smith seeks costs on a full indemnity solicitor own client basis. He submitted that given the manner in which this case was conducted by the Defendants, Mr. Ngumi seeks costs on a full indemnity solicitor own client basis and relied on the case of **R. v Christie Ex Parte Coalition to Protect Clifton Bay** 2013/PUB/jrv/0012 Ruling No. 2.

[119] In this vein, I can do no better than to rely on the rulings that I have done on this subject matter. I therefore quote extensively from one of those rulings which was delivered not so long ago on 21 September 2020: **Sumner Point Properties Limited v (1) David E. Cummings (2) Bryan Meyran** 2012/CLE/gen/1399 (unreported). In paras 8 to 18, I discussed the law on indemnity costs. I stated:

> **"The law on indemnity costs**
>
> **[8] There is no doubt that the court has the jurisdiction to determine whether indemnity costs ought to be ordered.**
>
> **[9] A good starting point is the case of E.M.I. Records Ltd v Ian Cameron Wallace Ltd and another [1983] 1 Ch. 59 where it was held that the court has power in contentious proceedings to order the unsuccessful party to pay the successful party's costs on bases other than party and party and common fund basis under rule 28 (UK) and those other bases included orders for costs on an indemnity basis as well as on the solicitor and client basis and the solicitor and own client basis.**
>
> **[10] E.M.I. Records Ltd was cited with approval by Sawyer CJ in Levine v Callenders & Co. et al [1998] BHS J. No 75 where she stated at pp. 2-3:**
>
>> **"As I understand that decision, the Vice Chancellor held, among other things, that the wide discretion set out in section 50 of the Supreme Court of Judicature (Consolidation) Act 1925, (England) which was continued under s.51 of the 1981 Act gives the High Court of that country, the power to make an order for costs on "an indemnity" basis in inter partes litigation, particularly in cases involving contempt of court proceedings. In addition, he equated such an order to an order for costs on solicitor and own client basis under Order 62, r 29(1) of the English Rules of the Supreme Court."**
>
> **[11] The test for the award of indemnity costs was said to be the process of "exceptional circumstances": Bowen-Jones v Bowen-Jones and others [1986] 3 All ER 163 and, in Connaught Restaurants Ltd v Indoor Leisure Ltd [1992] C.I.L.L 798, it is said to be the presence of factors that take the case outside the run of normal litigation. In that case the factor was litigation was fought "bitterly or unreasonably."**
>
> **[12] Upon considering an application for indemnity costs, Mr. Justice Rattee in Atlantic Bar & Grill Limited v Posthouse Hotels Ltd [2000] C.P. Rep. 32 referred to the decision of Knox J in Bowen-Jones v Bowen-Jones and others [1986] 3 All ER 163 in which Knox J cited a passage from the well-known judgment of Brightman L.J. (as he then**

was) in Bartlett v Barclays Bank Trust Co. Ltd. (No. 2)[1980] Ch. 515. Brightman L.J. had this to say at p.547:

> **"…It is not, I think, the policy of the courts in hostile litigation to give the successful party an indemnity against the expense to which he has been put and, therefore, to compensate him for the loss which he has inevitably suffered, save in very special cases. Why this should be, I do not know, but the practice is well-established and I do not think that there is any sufficient reason to depart from the practice in the case before me".**

[13] Mr. Justice Rattee continued:

> **"Knox J. applied that principle in the case before him. He relied also on the case of *Wailes v Stapleton Construction and Commercial Services Ltd and Unum Ltd. [1997] 2 L.L.R. 112,* in which Newman J said, at p.117:**
>
> **'The circumstances in which an order for indemnity costs can be made, while an open ended discretion so far as the rules are concerned, is obviously one which must be exercised on judicial discretion.'**

Having then cited various authorities his Lordship went on to say:

> **'In summary, the position appears to be that, where there are circumstances of a party behaving in litigation in a way which can be properly categorized as disgraceful, or deserving of moral condemnation, in such cases an order for indemnity costs may be appropriate.'**

Newman J. went on to say this:

> **'There may be cases otherwise, falling short of such behaviour in which the Court considers it appropriate to order indemnity costs. <u>The threshold of qualification which a party would appear to have to establish is that there has been, on the party to be impugned by such an order, some conduct which can be properly categorized as unreasonable, and I would add to that in a way which the Court is satisfied constitutes unreasonableness of such a high degree that it can be categorized as exceptional</u>. There are varying ways in which the course of litigation, parties to it could be categorized as having behaved unreasonably, but one would not, simply as a result of that, decide that they should pay costs on an indemnity basis.' [Emphasis added]**

[14] In Levine v Callenders & Co, Sawyer CJ echoed similar sentiments and stated at p. 4:

"<u>While I accept the general principle that the conduct of a party, in some cases, will justify an award of costs on an indemnity or solicitor and client basis, in my judgment conduct which would justify such an order would have to be egregious</u> –for example, a breach of an undertaking by a party (as in the case of a Mareva injunction mentioned earlier –which is itself a specie of contempt) and contumacious contempt of court. A failure to comply with the rules of pleading is not, in my judgment, in and of itself, a reason to award costs on an indemnity basis." [Emphasis added]

Discussion, analysis and conclusion

[15] The general rule is, in most cases, where the issue of costs arises, the court will award costs on a party to party basis. The court does so in the judicial exercise of its discretion and would only depart from this principle when there are exceptional circumstances to do so. Usually, an award for costs on an indemnity basis can be made in exceptional cases where the conduct of a party can be considered egregious or where the conduct of a party can be properly categorized as disgraceful or deserving of moral condemnation.

[16] A court, in making an order for indemnity costs, will have regard to conduct which is so unreasonable during the course of the trial to justify an order for indemnity costs. In this regard, I am guided by the dicta of Judge Peter Coulson QC in Wates Construction Ltd v HGP Greentree Allchurch Evans Ltd [2005] EWHC 2174. At [14], his Lordship stated:

"I do not believe that unnecessary or unreasonable pursuit of litigation must involve an ulterior purpose in order to trigger the court's discretion to order indemnity costs. I consider that to maintain a claim that you know, or ought to know, is doomed to fail on the facts and on the law, is conduct that is so unreasonable as to justify an order for indemnity costs."

[17] A useful approach to adopt is to be found in Cook on Costs 2015 at [24.9] under the heading "Culpability and abuse of process". The learned author said:

"Traditionally costs on the indemnity basis have been awarded only where there has been some culpability or abuse of process such as:
(a) deceit or underhandedness by a party;
(b) abuse of the courts procedure;
(c) failure to come to court with open hands;
(d) the making of tenuous claims;
(e) reliance on utterly unjustified defences;
(f) the introduction and reliance upon voluminous and unnecessary evidence; or
(g) extraneous motives for litigation.

> **What is clear is that the exercise of the court's discretion is best considered by reference to specific examples of where the court has made indemnity costs orders. It is one of those situations where it is hard to pinpoint specific conduct, but one knows it when one sees it!"**
>
> **[18] The concept of unreasonableness in Atlantic Bar & Grill Limited v Posthouse Hotels [supra] involves conduct which was outside the norm. This concept coupled with the list enumerated by Cook on Costs illustrate examples of circumstances where the court may make an award of costs on an indemnity basis."**

[120] Applying the legal principles emanating from the above authorities to the facts in the present case, I am not inclined to award costs on an indemnity basis as the conduct of the Defendants was in no way egregious or contumacious. The award of exemplary damages has already taken into account the need in bringing home to the Defendants that "*torts do not pay*".

[121] I will therefore order that the Defendants do pay reasonable costs to Mr. Ngumi on a party to party basis. I will order that Mr. Ngumi submits his Bill of Costs within 21 days hereof for it to be taxed if not agreed. If no agreement is reached, then both parties will submit submissions by electronic means to this Court by 31 December 2020. Costs will be taxed by this Court on 20 January 2021 at 2:30 in the afternoon.

Conclusion

[122] Accordingly, there will be judgment for Mr. Ngumi in the following sums:

1. Damages for false imprisonment, assaults and batteries	$ 386,000.00
2. Special Damages	$ 950.00
3. Aggravated Damages	$ 50,000.00
4. Exemplary Damages	$100,000.00
5. Constitutional damages by way of compensation and vindication	$105,000.00
TOTAL DAMAGES AWARDED	**$641,950.00**

[123] There will be interest at the statutory rate of 6.25% per annum from the date of judgment to the date of payment.

[124] Last but not least, I owe a great depth of gratitude to all Counsel particularly to Mr. Smith QC for his extensive research and formidable submissions. He has truly enlightened the Court on matters of this nature.

Dated this 27th day of November, A.D., 2020

Indra H. Charles
Justice