

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law & Equity Division

Claim No. 2018/CLE/gen/01255

BETWEEN

GAMELI AGBOTUI

Claimant

AND

THE ATTORNEY GENERAL OF THE COMMONWEALTH OF THE BAHAMAS

1st Defendant

AND

THE COMMISSIONER OF POLICE

2nd Defendant

AND

THE MINISTER OF IMMIGRATION

3rd Defendant

DIRECTOR OF IMMIGRATION

4th Defendant

Before: The Honourable Chief Justice Sir Ian R. Winder

Appearances: Doneth Cartwright with Lavar Ferguson for the Claimant
Keith Cargill with Rayshon Deleveaux for the Defendants

Hearing date(s): 17 June 2025, 30 September, 2025 and 30 June 2026

JUDGMENT

WINDER, CJ

This is the claim of the Claimant (Agbotui) for damages for false imprisonment, assault and battery and breach of his constitutional rights arising out of his arrest in November 2016 in Freeport Grand Bahama.

Background

[1.] Agbotui's claim was commenced by Writ of Summons filed on 3 November 2017. The Statement of Claim, which has been subsequently amended, seeks relief as follows:

False Imprisonment

[2.] Agbotui's pleaded case, in his Amended Statement of Claim, with respect this allegation of false imprisonment, is:

- (1) He was arrested in his hotel room at the Grand Lucayan Hotel in Freeport around 3:00 a.m. on November 2, 2016 by officers of the Royal Bahamas Police Force, allegedly without a warrant or reasonable cause. One of the officers were female and the other was male, who demanded to know where the money was. He handed over cash from his backpack, which the officers confiscated.
- (2) In searching the bag, they discovered a broken Bahamas Government stamp that Agbotui had previously found in Nassau and forgotten about. Despite his explanation that he had picked it up carelessly and forgotten it was there, the officers placed the stamp back in the bag, arrested him without caution or explanation, and took him partially dressed to the Freeport Central Station.
- (3) While detained at the Freeport Central Station, Agbotui was denied access to a phone and to legal counsel. He was interrogated for hours about a murder and later a double murder, despite insisting he had no knowledge of the matter. During this time, he was deprived of food and water, intimidated, and physically mistreated by officers who pushed him against walls and dragged him by his collar while handcuffed.
- (4) He was eventually placed in a dark, unsanitary cell with no windows, a concrete bed without sheets, and urine on the floor. His personal items were confiscated, and he was given only one meal after more than 20 hours without food. Overnight, he had no access to a bathroom and was forced to urinate in a bottle. Days later, he was taken to the Drug Enforcement Unit, fingerprinted, photographed, and questioned about drugs, but still not told the reason for his arrest. His phone and backpack were searched again, and the broken government stamp was seized.
- (5) After five days in custody, another detainee, Marvin Johnson, approached him claiming he had been sent by police to inquire about the confiscated money. Marvin suggested that Agbotui's release depended on paying additional sums, but when Agbotui's

associate Marcia Pestano refused to pay, nothing further came of it. Marcia eventually flew from Nassau to Freeport and retained a lawyer to assist Agbotui.

- (6) On November 9, 2016, He was told he would be taken before the Court and was allowed to meet with counsel the evening before. His lawyer advised him to plead guilty and pay a fine, warning that a not-guilty plea could result in a lengthy remand. When asked what charge he faced, he was told it was possession of an immigration stamp.
- (7) After being charged with conspiracy to defraud by an instrument, Agbotui was fined \$3,000, which he paid, and was released by the court. However, as he exited, an individual suggested to police that his immigration status be checked. Immigration officers then approached, demanded his papers, and confiscated his passport and belongings. He was returned to the station cell, where he remained for three more days.
- (8) On November 12, 2016, he was flown to Nassau, handcuffed, and taken to the Carmichael Detention Centre. Conditions there were overcrowded and unsanitary, with detainees sleeping on floors, including bathroom floors, and toilets in deplorable condition. After two weeks, he was escorted in handcuffs to the airport, checked onto a WestJet flight to Toronto, and accompanied by three immigration officers until he boarded the plane.
- (9) He was unlawfully detained for seven days before being taken to court, where on November 9 he was released after paying a fine. However, instead of being freed, he was again unlawfully imprisoned for an additional two weeks at the Carmichael Detention Centre.

Assault and Battery

[3.] Agbotui says that in arresting and subsequently detaining him at the Station he was verbally intimidated and was physically abused by the police and immigration officers acting as agents for the Defendants individually or collectively, from 2 November 2016 to 18 November 2016 and the police. The particulars are as follows:

- (1) Arrest and Transfer: Agbotui alleges he was forcefully handcuffed, taken from his hotel room while partially dressed, and brought to the Station before later being transferred to the Carmichael Detention Centre.
- (2) False Imprisonment: Agbotui alleges he was unlawfully detained by police officers at the Station from November 2–9, 2016, and then by immigration officials until November 18, 2016.
- (3) Physical Threats and Abuse: Agbotui alleges he was repeatedly threatened, pushed, and beaten by police officers, causing him to fear imminent violent contact.
- (4) Search and Bathroom Escort: Agbotui alleges he was aggressively searched and escorted to the bathroom under guard in a manner that made him fearful for his safety.
- (5) Fingerprinting – Agbotui alleges that his fingerprints were taken involuntarily while detained at the Station.

- (6) Airport Transfer: Agbotui claims immigration officers forcibly handcuffed him and pushed him into a vehicle when taking him to the airport in November 2016.

Detinue

[4.] Agbotui claims that the police officers searched and confiscated cash in the amount of \$7,500 from him. Upon his release on 18 November, 2016, the police failed to return, misplaced or lost the cash in the amount of \$7500.00. The particulars are as follows:

- (1) On 18 November 2016 Agbotui was released without the \$7500 cash that was taken from him upon being imprisoned.
- (2) Even after investigations were completed the funds were not returned to Agbotui who was told by the police that the money was with the Magistrates Court. He contacted the magistrate's court and was advised that the money was still with the police.
- (3) The police officers acted in purported performance of their duties as members of the Royal Bahamas Police Force. The monies were never returned to Agbotui or anyone else associated with the funds.

Breach of Constitutional Rights

[5.] Agbotui contends that his arrest, detention, treatment in custody, denial of legal access, confiscation of property, and eventual deportation collectively breached multiple constitutional rights—particularly those protecting liberty, humane treatment, due process, property, and equality claims in breach of his constitutional rights to liberty and security (Articles 15, 19, 17, 20, 25(1) of the Constitution of The Bahamas).

[6.] Agbotui contends that while detained at the Police Station he was confined in a dark, unsanitary cell without bedding, forced to urinate in a bottle, and later held at the Carmichael Detention Centre in overcrowded and unsanitary conditions. These circumstances are said to constitute cruel, inhumane, and degrading treatment contrary to Article 17(1) of the Constitution.

[7.] Agbotui asserts that he was deprived of his liberty for six days without lawful justification, denied prompt access to legal representation, and not brought before a court without undue delay, contrary to Articles 19(1)–(3) of the Constitution. He further claims that after paying his fine and being released by the Court on November 9, 2016, he was arbitrarily rearrested by immigration officers for three additional days without explanation, also in breach of Article 19(3) of the Constitution.

[8.] Agbotui alleges that police and immigration officers searched him and confiscated \$7,500 in cash, amounting to a violation of his rights under Articles 15 and 21 of the Constitution.

[9.] Agbotui claims he was subjected to cruel and degrading treatment while in custody, including being shackled and brought to court in a heavily armored vehicle under excessive force, in breach of Articles 15 and 17(1) of the Constitution.

[10.] Agbotui further alleges that after pleading guilty to an offence he did not commit, he was detained at the Carmichael Detention Centre for another seven days before being unlawfully expelled from The Bahamas. Conditions at the Centre are said to have been harsh and degrading, again in breach of Article 17(1) of the Constitution.

[11.] Agbotui contends that his treatment amounted to discrimination, contrary to Articles 15 and 26 of the Constitution.

[12.] Finally, Agbotui alleges that on November 18, 2016, he was forcibly taken to the airport and expelled from The Bahamas, in breach of his constitutional rights.

Damages Claimed

General, Compensatory, Aggravated, and Exemplary/Punitive Damages

[13.] Agbotui seeks general, compensatory, aggravated, and exemplary damages arising from his alleged wrongful arrest, false imprisonment, confiscation and conversion of property, malicious prosecution, unlawful detention, and inhuman and degrading treatment. The Grounds for Damages were noted as follows:

- (1) Unlawful Arrest and Detention: Plaintiff asserts he was arrested without warrant or reasonable cause on November 2, 2016, and falsely imprisoned until November 9, 2016.
- (2) Mistreatment in Custody: He alleges assault, battery, threats, and degrading treatment while detained, including oppressive searches and harsh conditions.
- (3) Property Confiscation: Agbotui claims police and immigration officers arbitrarily seized \$7,500 despite his explanation of its source.
- (4) Extended Detention and Expulsion: Agbotui contends that he was unlawfully held for over 21 days in inhumane conditions and then expelled from The Bahamas after release by the Court.

[14.] The Defendants deny Abgotui's claim in their Amended Defence. They say:

- (1) Agbotui was lawfully arrested on 4 November, 2016 at Royal Island Resort, Freeport, Grand Bahama, on suspicion of possession of forged instruments and proceeds of crime. He was cautioned, interviewed, and later appeared before Magistrate Charlton Smith on 9 November, 2016, where, in the presence of counsel, he pleaded guilty to possession of forged instruments under section 369(2) of the Penal Code.
- (2) They deny allegations of mistreatment, insisting Agbotui was properly fed, allowed bathroom access, fingerprinted, photographed, and interviewed in the presence of attorneys. They maintain that his arrest, detention, and deportation were lawful, and that his rights under Article 19(2) were explained to him. At Court Agbotui was fined \$3,000, which he paid, and was then lawfully handed over to Immigration.

- (3) The Defence also contend that the confiscated funds were lawfully detained under the Proceeds of Crime Act as suspected criminal proceeds pending investigation.
- (4) The Defence also contends that Agbotui's own guilty plea before a competent court, entered with the advice and presence of legal counsel, conclusively establishes his commission of the offence. As such, the allegations in his claim are said to be misconceived and without merit. Agbotui is therefore put to strict proof of all matters alleged, given that he admitted guilt and was duly convicted and fined.
- (5) On November 9, 2016, Immigration Officer Naphali Cooper collected Agbotui from the Garnet Levarity Justice Centre Freeport, Grand Bahama and transported him to the Department of Immigration. Two days later, on November 11, Agbotui was transferred to New Providence and committed to the Carmichael Road Detention Centre. Subsequently, on November 18, 2016, Agbotui was deported to Canada aboard a WestJet flight.
- (6) On December 29, 2016, after deportation, Agbotui was again found at Lynden Pindling Airport and detained as an illegal immigrant.

[15.] At trial Agbotui gave evidence in support of his case. The Defendants called Vonetta Darling Flowers (Darling-Flowers) as a witness in their case.

Agbotui's Evidence

[16.] Agbotui filed a witness statement on 14 May 2019, a supplemental witness statement on 5 August 2022 and a second supplemental witness statement on 2 September 2022. He was subject to cross examination and re-examination.

[17.] The evidence in Agbotui's supplemental witness statements, incorporated his original witness statement. A summary of that evidence is as follows:

[18.] He is a citizen of Ghana and Canada, residing in Toronto. He was a frequent visitor to The Bahamas, previously holding a work permit, and at the time of arrest possessed a Bahamian driver's license. He worked as a self-employed salesman selling Cuban cigars and entered The Bahamas with his son on 24 October, 2016, admitted for 30 days. He carried \$7,500, mostly belonging to a friend for a vehicle purchase.

[19.] On 2 November, 2016, while in Freeport, he was followed by police, questioned, and later released. On 4 November, police officers entered his hotel room, confiscated his money, and discovered a broken immigration stamp. He was taken to the Freeport Police Station, interrogated about a double murder, denied access to a lawyer, and subjected to intimidation and physical abuse. He was held in unsanitary conditions, deprived of food and water, and forced to urinate in a bottle. His backpack was searched multiple times, and the broken seal was seized. A man named Marvin

Johnson, allegedly acting on behalf of police, solicited money for his release, which alerted his friend Marcia Pestano, who then retained counsel.

[20.] On 9 November, 2016, he was brought to court under heavy security and media attention. Advised by counsel, he pleaded guilty to possession of a forged instrument and was fined \$3,000. He paid the fine but was immediately rearrested by immigration officers, his passport confiscated, and returned to custody. He was later transferred to Nassau and detained at the Carmichael Detention Centre in overcrowded, unsanitary conditions. On November 18, 2016, he was deported to Canada under escort. He maintains he never used the broken seal and that his treatment was inhumane and excessive.

[21.] Agbotui states his confiscated funds were never returned despite inquiries. He describes conditions at both the Freeport cell and Carmichael Detention Centre as degrading, with no bedding, showers, or proper sanitation. He asserts he was denied communication until Marcia intervened with a lawyer. He disputes police records of his interviews, denies smuggling cigars, and insists he lawfully imported them. He continued to travel to The Bahamas after deportation, including several trips in late 2016 and 2017, but was again detained briefly in December 2016. He believes his arrest and prosecution were based on mistaken identity and unlawful conduct by police and immigration officers.

[22.] When cross examined Agbotui stated as follows:

[23.] He became a Canadian citizen in 2019, after the events in question. He accepted that he previously had a Bahamian work permit for over 10 years, and that by the time of the 2016 incident, his work permit had expired. The defence put to him that he was working illegally by selling cigars in The Bahamas in 2016 which he denied. His evidence was that, although he had previously sold cigars when living and working lawfully in The Bahamas, during the 2016 visit he was not living or working in The Bahamas and had gone as a visitor. He said he had no cigars on him when arrested in Freeport.

[24.] Agbotui accepted that he was initially detained by police officers on suspicion of murder but was later charged only with possession of the immigration instrument. He said the police stopped him because they said he was “a murderer.” He maintained that, during the detention, the police were repeatedly accusing him of killing “two brothers,” asking how much money he had been paid, and who had sent him.

[25.] The defence put to Agbotui that he was never treated unfairly by the police or immigration officers. He alleged that he was pushed against a wall, beaten, thrown on the floor, kicked while handcuffed, and beaten with a ruler.

[26.] Agbotui gave evidence about a person named Marvin Johnson who he said came to his cell, took him to a room, and told him that “the big boys” wanted \$5,000 and would let him go if it was paid. Agbotui said he explained that the money was not his and told them whose money it was. Agbotui said he was denied a lawyer and denied a phone call.

[27.] Agbotui accepted that he was charged with possession of an immigration stamp or instrument, pleaded guilty, and paid a fine of \$3,000 rather than serve 12 months in prison. However, he said he was not aware of the charge until court because, before then, the focus had been on allegations that he had murdered two brothers. He said the lawyer told him that if he pleaded not guilty, he would be remanded and would have to keep coming back to court; he pleaded guilty because he wanted to leave and because his son had been left in Nassau while he was detained.

[28.] He also maintained that the stamp was a retired or damaged stamp and that he had simply found it on the ground and kept it as a souvenir, not knowing it was an immigration stamp. He denied using it for illegal affairs.

[29.] Agbotui’s evidence is that, after he paid the fine, the Magistrate’s Court said he was free to go. He said he was then told he had to go back to the police station to collect his belongings, but he was instead handed over by police to immigration officers outside the court. The defence put to him that the court had indicated he was to be deported. He denied that, saying the court checked his passport, confirmed he was legally in The Bahamas, and released him once the fine was paid.

[30.] Agbotui said he was kept in unsanitary and cold detention conditions. He said he lay on concrete, had no blanket, was extremely cold, and had to urinate in a bottle because he could not access a bathroom. He also said the air conditioning was extremely cold, allegedly to kill germs, and that the cell had a very bad smell because detainees could not use the bathroom and urine went on the floor.

[31.] The defence challenged his statement that he was unlawfully imprisoned “for over a week,” putting to him that 4 November to 11 November was not over a week. Agbotui responded that he became confused about dates because he was detained in conditions where every day felt the same, he could not see outside, and food came at irregular times. He also accepted that, after the court proceedings, he was sent to the Carmichael Road Detention Centre for a further 14 days before expulsion/deportation, although the defence’s position was that this was lawful detention for deportation following conviction.

[32.] Agbotui said that after the incident he returned to The Bahamas several times without issue. He said he had written to the Director of Immigration and was told there was no crime known to immigration that would stop him coming to The Bahamas. He said only later was he denied entry.

The defence put to him that he was denied entry because of his conviction, not because he had filed the Writ. He said he was not aware of that and maintained that, from what he knew, the Director had said he could come and that he did not have a criminal record in relation to the damaged stamp.

[33.] In re-examination, he clarified that between 2014 and 2016 he was not living in The Bahamas; he came as a visitor. At the time of arrest, he said he had come to Freeport for a concert and was employed at a car factory in Canada. He clarified that the treatment from arrest until release was unfair. He said he first spoke with a lawyer only a few hours before court. He further stated that he was never served with a deportation order.

Darling-Flowers' Evidence

[34.] Darling-Flowers filed a witness statement on 28 April 2025. She was subject to cross examination and re-examination.

[35.] The evidence in Darling Flowers' witness statement was as follows:

[36.] On 4 November, 2016, Agbotui was taken into custody at the Royal Islander Hotel, Freeport, after failing to satisfy police officers about his immigration status. His backpack was searched, and a portion of an immigration stamp was found. He admitted to having picked it up in Nassau. He was questioned about a double homicide but not charged in relation to it.

[37.] On 9 November, 2016, Agbotui was arraigned before Magistrate Charlton Smith on a charge of possession of a forged instrument under section 369(2) of the Penal Code. Represented by attorney Carlson Shurland, he pleaded guilty, was fined \$3,000, and ordered to be turned over to Immigration.

[38.] Immigration Officer Naphtali Cooper collected Agbotui from the Garnet Levarity Justice Center and transported him to Immigration Headquarters. Agbotui confirmed he had entered The Bahamas on 24 October, 2016, with leave to remain for 30 days.

[39.] Immigration records showed his prior employment history in The Bahamas as a salesman for Cuban cigars, with his last work permit expiring in 2011 and renewal refused. He was admitted in October 2016 as a visitor until 23 November, 2016.

[40.] Following his conviction and fine, Agbotui was lawfully transferred to Immigration custody, arrangements made for his detention at Carmichael Detention Centre, and instructions given for his removal from The Bahamas.

[41.] The Defence asserts that his detention until deportation on 18 November, 2016 was reasonable, due to operational requirements and deportation arrangements. It is stated that he was provided with basic needs including food, shelter, clothing, water, and access to counsel.

[42.] Immigration records confirm he was detained for seven days at Carmichael Detention Centre, and officials deny that he was violated or mistreated during his detention.

[43.] When cross examined Darling-Flowers stated as follows:

[44.] Darling-Flowers said that she was a Superintendent Immigration Officer. She accepted that she had been a Chief Immigration Officer for over 29 years, from 1 October 1996, and that she should be knowledgeable about immigration policies, procedures, and departmental operations.

[45.] Darling-Flowers accepted that she was not directly involved when Agbotui was initially arrested in Freeport, Grand Bahama. She also accepted that she was not present when he was interrogated by police. Her knowledge that Agbotui was initially arrested by the Royal Bahamas Police Force came from Officer Cooper's report, not her own personal knowledge but from documents/reports rather than personal observation.

[46.] Darling-Flowers said she had no personal knowledge of Agbotui's entry into Freeport or whether he entered with a passport. She said immigration status can be retrieved from the Department's IDMS system, and that the usual procedure is for police to contact Immigration to verify a person's status.

[47.] Darling-Flowers gave evidence that, as a matter of Immigration policy, when a foreign national commits a criminal offence and is convicted, the time granted to remain in The Bahamas is automatically cancelled by the Director of Immigration. Agbotui first came into the custody of the Immigration Department on 11 November 2016, at the detention centre in Nassau.

[48.] Darling-Flowers said she could not recall whether she personally interacted with him at the detention centre. She was cross-examined concerning the conditions at the Carmichael Rd. Detention Centre and whether it was overcrowded while Agbotui was detained. When asked about the overall population at the time, she said there may have been about 200 to 230 persons total, including women and men. She explained that the beds were bunk beds, with roughly 20 on each side, top and bottom, giving about 80 sleeping spaces in a dorm. She also said there were multiple "housing" sections in the detention centre.

[49.] Darling-Flowers disagreed with the suggestion that more than 200 males were sharing only 40 to 50 beds, and said every detainee had a bed. Darling-Flowers clarified that there were multiple housing areas and ultimately said the detention centre could hold between 200 and 250, and later

up to 300. She denied seeing anyone sleeping on the floor and said that, to her knowledge, no male was sleeping on the floor during that period.

[50.] Darling-Flowers said there was construction or renovation work at the detention centre at the relevant time, including windows, pavement, and possibly roofing. Darling-Flowers' witness statement concluded that Agbotui's rights were not violated. She said the department's mandate at the detention centre was to ensure that the human rights of all nationals were adhered to. She said the detention centre received no complaint from Agbotui saying his human rights were violated or that he was overcrowded in his dorm.

[51.] When asked whether it was typical for a detainee to complain to the officers holding him in custody, Darling-Flowers said she walked around the detention centre, sought to ensure detainees' rights were respected, and that complaints would be handled if raised.

[52.] Darling-Flowers' witness statement said that the holding of Agbotui until departure was reasonable due to operational activities, construction, movement of other nationals, and arrangements connected with expulsion or deportation proceedings. When asked to explain the delay specifically in Agbotui's case, she initially spoke generally about travel routes, airlines, visas, and different nationalities. When pressed not to speculate, she accepted that she did not know exactly what caused any delay in his case. She denied the suggestion that the department could have simply sent Agbotui home on his ticket but chose to keep him at the detention centre. She said there were procedures, including notifying his consulate through the Ministry of Foreign Affairs.

[53.] On re-examination, Darling-Flowers said there was adequate housing for all detainees and that Agbotui was deported within a reasonable time.

Law Analysis and Disposition

The Evidence

[54.] I should begin by indicating that while Darling-Flowers' evidence was limited and much of the Defendants' case was supported by the agreed documentary evidence, I preferred her evidence to that of Agbotui. Having observed Agbotui as he gave his evidence and assessed him, I did not find him to be a truthful witness and has otherwise embellished his evidence to support his claim. In addition to my own assessment, I also did not find that his version of the evidence always accorded with otherwise verifiable and contemporaneous material. By way of examples:

- (1) Agbotui's pleaded case and his initial witness statements referred to events at the Grand Lucayan Hotel. All of the contemporaneous material suggests that he was in fact arrested at the Royal Isander Hotel and on the morning of 4 November 2016. Agbotui's closing submissions subsequently accepted that this earlier account was inaccurate.

- (2) Agbotui says that he did not have access to a lawyer until 3 hours before court on 9 November 2016. His lawyer Carlson Shurland met with him at 10:30am on 6 November 2016 and at 5:30pm on 6 November 2016. Attorney Laquay Laing met with him at 12:30 on 7 November 2016 and Attorney Ashley Carrol at 1:30pm and 5:30pm on 7 November 2016. Ashley Carrol attended an interview later on 7 November 2016.
- (3) He says that he did not know what he was arrested for but, nonetheless admitted that he was told that he was being arrested for the offence of murder and questioned about the money in his possession.
- (4) Agbotui asserted that he was denied food when initially arrested, a fact which is contradicted by the detention record. He was fed lunch at 2pm, dinner at 8pm, breakfast the following morning at 7am. He was fed regularly each day according to the detention record.
- (5) Agbotui asserted that he was never questioned about the immigration stamp until 7 November however he asserts that at the hotel his backpack was searched and the stamp was recovered and when questioned he told officers he had forgotten he had it. The report of Sgt 534 Bannister stated that he questioned Agbotui on 4 November 2016 at the offices of DEU at 10:00pm about his possession of the Immigration stamp. In the record of interview which took place at 10:30pm, Agbotui signed answers to questions about his possession of the immigration stamp.

[55.] I also could not accept his incredible story of happening to find the imitation immigration stamp, wrapped in white paper, on the road at the airport. If true, the question which flows is what would be his reason for retaining the stamp, and what use would he expect to have of it? The suggestion but he kept it as a souvenir is incredible.

[56.] I also rejected his claim to having only admitted before the Magistrates Court to the offence, on his lawyer's advice, so that he could be released. He stood before Magistrate Charlton Smith and admitted to the facts outlined in the charge. I take note of the fact that no effort was taken to call as a witness any of the several attorneys who saw him while he was in custody and who attended his interview. There is no record of, or evidence given by him of any complaint concerning the conditions which he now complains.

[57.] I consider that Agbotui was a person of questionable character, cautioning myself that not because he may have been lawless in other matters he is being untruthful here. Agbotui admitted to, was found guilty of, and convicted of being in possession of an imitation immigration stamp. This is a stamp which purports to illegally authorize the landing of persons in The Bahamas. Agbotui's work permit to remain and engage in gainful occupation in the Bahamas had been denied in 2011 but he admitted to the police authorities, during his record of interview (which I accept) to engaging in the commercial activity of selling cigars in The Bahamas. He said this was the reason for his frequent trips to The Bahamas. He indicated, in response to a question during the interview

that he smuggles cigars not humans. He admitted at the trial of this action to engaging in the sale of cigars to Bahamian in the Bahamas, essentially working in the bahamas without permission. He had already been in The Bahamas three times for the year leading to this incident (March, May and August) and was somehow at the time facilitating the sale of a vehicle in The Bahamas between Nassau residents. According to the record of interview, which I accept, Agbotui claimed to have come to Freeport for a concert but was unable to say who the headliner for the concert was.

False Imprisonment

[58.] Agbotui's case of false imprisonment was that he was subjected to two separate false imprisonments when he was arrested without a warrant:

- (1) In police custody, on 4 November 2016 until his release from court on 9 November 2016 (alternatively, until he was informed of the charge against him on or about 7 November 2016); and
- (2) In immigration custody on 9 November 2016 until his deportation on 18 November 2016.

The 4 November 2016 arrest and detention by the Police Authorities

[59.] Agbotui's says that he was wrongfully arrested and subsequently imprisoned on 4 November 2016:

- (1) He was not informed of the charges when he was arrested.
- (2) He was arrested on suspicion of involvement in the double murder but there were no grounds for a reasonable suspicion of his involvement in those murders and no records or documents have been produced that might establish grounds for a 'reasonable suspicion' in relation to the murders he was initially accused of having committed.
- (3) Force was used in his arrest in that, inter alia, a gun was drawn and used in his arrest, and he was hand-cuffed when that was not necessary or reasonable;
- (4) He was not told that he was suspected of being in possession of a forged instrument until 7 November 2016 more than 3 days after his arrest.
- (5) The Defence therefore establishes that he was arrested on suspicion of murder but does not disclose the grounds for the suspicion. Neither does the evidence of Darling-Flowers.
- (6) No scintilla of evidence (or even unevidenced assertion) has been presented, which suggests there was any reasonable grounds for suspecting that Mr. Agbotui was guilty of murder when he was arrested or at all.
- (7) It is clear from the facts that the un-uniformed officers came to his hotel room as a result of having discovered that he had a substantial amount of cash and was a foreign national. The cash was the first thing the police mentioned upon entering the hotel room. The evidence regarding Marvin (the Police wanted the money) supports this. The

money has never been returned. Mr. Agbotui at all times gave a full explanation for why he had the money.

- (8) Agbotui was only interviewed about the stamp on 7 November and was charged with possession of a forged instrument on the 8th of November 2016. Accordingly, he was wrongfully arrested on 4 November 2016 because the arresting officers had no reasonable suspicion that Mr. Agbotui has committed any offence, and they used unreasonable force when arresting him and failed to tell him what he was being arrested for.

[60.] The Defendants says that Agbotui was lawfully arrested on 4 November 2016, lawfully detained and properly taken before the Court on 9 November 2016.

[61.] This is a submission which I accept.

[62.] Every detention in the name of State is prima facie a breach of Article 19(1) of the Constitution, which must be justified. Every arrest and every imprisonment is prima facie tortious as well. The protection conferred by the law in this regard is not, however, absolute. One of the exceptional circumstances in which a person may be deprived of their liberty under authority of law is if they are lawfully arrested on the basis that they were reasonably suspected of having committed a criminal offence. This is the case both under Article 19(1)(d) of the Constitution and under the common law.

[63.] Section 31(2)(a) of the **Police Force Act, 2009** permits a police officer to arrest without a warrant any person he reasonably suspects of having committed an offence. The legislation provides:

- (2) Without prejudice to the generality of the foregoing or any other provision of this Act, a police officer may, without a warrant, arrest a person –
(a) he reasonably suspects of having committed an offence.

[64.] The most recent discussion on the power of the police to arrest and detain is to be found in the Privy Council decision in **The Estate of Claudia Edwards Bethel (Respondent) v Attorney General of The Bahamas and another (Appellants) (The Bahamas)** [2026] UKPC 26. At paragraph 31 the Court states:

31. But while section 9 of the Immigration Act requires reasonable cause to suspect that the person arrested has committed an offence under the Act or the regulations, it is not necessary for the arresting officer to have a specific statutory provision in mind. In this respect, the Board respectfully disagrees with the reasoning of Crane-Scott JA (see para 24 above) stressing that the appellants had to prove that the arresting officer had reasonable cause to suspect that Mrs Bethel had committed a specific offence under the Page 10

Immigration Act. In *Betaudier v Attorney General of Trinidad and Tobago* [2021] UKPC 7; [2021] 5 LRC 155, the Board considered a similar issue relating to a statutory provision which allowed an officer to arrest without warrant a person suspected of having committed an arrestable offence. The Board expressed the view that: “

... while it is not sufficient that an officer has suspicion of some general unlawful conduct, neither under section 3(4) nor at common law is it necessary to establish that an arresting officer had in mind specific offences or statutory provisions.”

This followed the approach identified by Bingham LJ in *Chapman v Director of Public Prosecutions* (1988) 89 Cr App R 190, at p 197:

“It is not of course to be expected that a police constable in the heat of an emergency, or while in hot pursuit of a suspected criminal, should always have in mind specific statutory provisions, or that he should mentally identify specific offences with technicality or precision. He must, in my judgment, reasonably suspect the existence of facts amounting to an arrestable offence of a kind which he has in mind.”

In the same way, section 9 does not require the arresting officer to identify infringement of a specific statutory provision under the Immigration Act. However, it does require the officer to have in mind the nature of the suspected offence and a factual basis for suspecting it.

[65.] Prior to his arrest and detention, Agbotui’s vehicle was stopped by police on the evening of 2 November 2016. The passenger in his vehicle suspiciously jumped out of the vehicle and ran away from the police. At that time, Agbotui was discovered to have a large sum of cash on his person. Agbotui, who purported to be a visitor, did not have his passport with him on the island and only a Bahamian driver’s license. Agbotui was nonetheless permitted to leave.

[66.] Shortly thereafter, at 7:00am on the morning of 4 November 2016, the police went to Agbotui’s hotel room, they say, on the suspicion that he may have been involved in a proceeds of crime offence and a homicide in Grand Bahama. The police say that they went to his hotel room with the intent of arresting him on that suspicion. No evidence has been brought as to the nature of the suspicion for the murder offence but there was evidence but that he was in possession of a large amount of cash, on the basis of his earlier encounter with the police.

[67.] On the night of the arrest on 4 November 2016, Agbotui was interviewed under caution at the Drug Enforcement Unit at 10:50pm. The caution read:

It is alleged that you on Friday November 4th 2016 were found in possession \$7569.38 dollars which is suspected of being proceeds of criminal conduct. I wish to put some questions to you about the offence that you are suspected of. You are not obliged to say

anything unless you wish to do so but what you say may be put into writing and given in evidence.

Agbotui was asked whether he understood the caution and answered yes. He signed the caution and the record of interview. During the interview he was questioned about the immigration stamp, the large amount of cash he had on him and the murder investigation.

[68.] Even if there may have somehow been some concern as to the extent of the Police's suspicion of Agbotui's involvement in any murder or proceeds of crime offence, he was found when arrested, to be in possession of an imitation immigration stamp. The stamp which is a stamp which purports to authorize the landing of persons in The Bahamas. The possession of the stamp constituted a criminal offence for which Agbotui was eventually charged and for which he pleaded guilty, was convicted and fined. He was questioned about the stamp and gave an innocuous answer about finding it in the streets.

[69.] The fact that he was arrested on suspicion of a proceeds of crime offence is supported by the detention record which records, in the *Reasons for Arrest* section, the words murder and proceeds of crime. The word murder appears to be crossed out leaving the words proceeds of crime.

[70.] Agbotui's arrest and detention for possession of a forged instrument is supported by an affidavit of Inspector Darrell Weir dated 5 November 2016, filed in support of an application for an order extending the period in which Agbotui could be held. In that affidavit Weir indicated that Agbotui was arrested for possession of the illegal stamp. He indicates that extension is needed to (1) have further investigations done with [Agbotui] so as to find out the authenticity of the stamp, (2) find out the true identity of [Agbotui] and status in the country and (3) have the file prepared for court. The order for the extension was granted by the Magistrate.

[71.] In my view, the Police was empowered to arrest and detain Agbotui for the initial period of 48 hours. Thereafter, his continued detention was authorized by an extension obtained from the Magistrates Court to detain him for an additional 72 hours without charge. Agbotui was charged at 12:55pm on 8 November 2016 and taken before the Magistrate on 9 November 2016.

9 November 2016 arrest and detention by the Immigration authorities

[72.] Agbotui says that he was wrongfully arrested and subsequently detained on 9 November 2016 until 18 November 2016 by the immigration authorities:

- (a) He was again unlawfully arrested on 9 November 2016 immediately after he was released by the Court. He was unlawfully imprisoned until he was unlawfully deported on 18 November 2016.
- (b) The power to arrest without a warrant in relation to immigration offences is contained in s.9 of the Immigration Act. There is no power to arrest unless:

- (1) The arresting officer has reasonable cause to suspect that an offence has been committed under the Immigration Act or its Regulations; and
- (2) Immediate arrest (i.e. without obtaining a warrant) appears to the arresting officer to be necessary in order to secure that the ends of justice for the purposes of the Immigration Act are not defeated.

Agbotui committed no offence under the Immigration Act or its Regulations, and it is not understood that there has ever been any suggestion that he did commit such an offence. Mr. Agbotui legally landed in the Bahamas on 24 October 2016 and had not overstayed.

- (c) Accordingly, there was no reasonable cause to suspect that he had. In any event, even if he had, there was no justification for his immediate arrest.
- (d) The law requires due process to be followed. Due process would have involved a deportation order being made and served on him giving him adequate notice and a right to appeal within 7 days. No Deportation Order was made. No Deportation Order was served on Agbotui. He was not given 7 days to appeal. He was afforded no right to appeal. Instead, all of his rights were trampled on. He was thrown in jail for 9 days and was then forcibly removed from The Bahamas.

[73.] The Defendants asserts that Agbotui was lawfully arrested and lawfully detained pending his removal from The Bahamas. I am satisfied that Agbotui, having regard to his conviction before the Magistrate's Court for possession of the unauthorised imitation immigration stamp, and having admitted to the police to engaging in commercial activities in The Bahamas for gain, was lawfully arrested by the immigration authorities. I am not satisfied however, that notwithstanding the period of detention was short, the authorities did all that was necessary to have him removed within a reasonable time.

[74.] Agbotui had been refused the renewal of his work permit since 2011 but continued to renew his Bahamian driver's licence. He admitted to the police authorities, during his record of interview, to engaging in the commercial activity of selling cigars within The Bahamas, notwithstanding he was not permitted to engage in any gainful occupation. He had been in The Bahamas three times already for the year and was somehow facilitating the sale of a vehicle in The Bahamas. Agbotui had just been convicted to being in possession of an imitation immigration stamp, a stamp which could unlawfully purport to authorize the landing of persons in The Bahamas. The possession of the stamp constituted a criminal offence for which he was eventually charged and for which he pleaded guilty, was convicted and fined.

[75.] Section 9 of the **Immigration Act** provides:

9. If any Immigration Officer or police officer has reasonable cause to suspect that any person, other than a citizen of The Bahamas or a person who is a permanent resident, has

committed an offence under this Act or any regulations and if it appears to him to be necessary to arrest such person immediately in order to secure that the ends of justice for the purposes of this Act shall not be defeated, he may arrest such person without warrant whereupon the provisions of section 18 of the Criminal Procedure Code Act shall apply in every such case.

[76.] Section 40 of the **Immigration Act** provides:

40. (1) If at any time after a person, other than a citizen of The Bahamas or a permanent resident, has landed in The Bahamas, it shall come to the knowledge of the Minister that such person — (a) has landed or remained in The Bahamas contrary to any provisions of this Act; (b) has been convicted of any offence against this Act or of any other offence punishable on indictment with death or imprisonment for two years or upwards; or (c) is a person whose presence in The Bahamas would in the opinion of the Board be undesirable and not conducive to the public good, the Minister may make an order (hereinafter referred to as a “deportation order”) requiring such person to leave The Bahamas within the time fixed by the deportation order and thereafter to remain out of The Bahamas.

[77.] Agbotui was charged with the offence of Possession of a Forged Instrument, contrary to section 369(2) of the **Penal Code**. Section 369(2) of the **Penal Code** provides:-

369. Whoever —

- (1) forges any stamp, whether impressed or adhesive, used for postal or revenue purposes by the Government, or by the Government of Great Britain, or of Northern Ireland, or of any other country of the Commonwealth or by any foreign prince or state;
- (2) without lawful excuse (the proof whereof shall lie on him) makes or has knowingly in his possession any die or instrument capable of making the impression of any such stamp;...

shall be liable to imprisonment for five years.

Section 369 is an offence punishable by imprisonment for five years and is therefore a basis for the Minister to make a deportation order requiring Agbotui to leave The Bahamas.

[78.] It seems to me that the Immigration authorities must have the power to take into custody a person, such as Agbotui who, in addition to the other issues raised in paragraph 68 and 74 above, was just convicted of a relevant offence and was to be the subject of deportation order. As indicated, Agbotui’s work permit to remain and engage in gainful occupation in The Bahamas had been denied in 2011 but he admitted to the police authorities, during his record of interview to engaging in the commercial activity of selling cigars in The Bahamas to Bahamians. He said this

was the reason for his frequent trips to The Bahamas. No deportation order was made but a committal order was made for Agbotui's detention at the Carmichael Road Detention Centre and ultimately a Repatriation Order made for his return to Canada.

[79.] Whilst I am satisfied that the initial power to arrest and detain Agbotui existed, his continued detention became unlawful when he was held beyond a period which was reasonable. Agbotui submitted that:

[N]otwithstanding his ability to verify his Canadian residency status, Ms. Flowers testified that she did not allow him to pursue his pre-arranged travel plans. She stated that "a lot was going on" and that she was engaged in other procedures, including communication with his consulate. However, rather than facilitating his timely and lawful departure using the means already available to him, Ms. Flowers instead chose to initiate contact with authorities in Ghana—Mr. Agbotui's country of origin but not his country of residence. This decision caused his ticket to lapse, resulting in extended detention. The decision was not only unnecessary but also prejudicial, as it disregarded his legal status, ignored his ties to Canada, and subjected him to a prolonged loss of liberty without justification.

[80.] I accept this submission. Agbouti came into the custody of immigration officials on 9 November 2016 when he was arrested in Freeport. He had a ticket to depart to Canada for 1:30pm on 11 November 2016, a fact I am satisfied that the immigration officials were aware of. No deportation order was made before Agbouti was eventually permitted to leave on the same WestJet flight to Canada, the following week on 18 November 2016. Had the Immigration authorities acted promptly Agbotui could have been permitted to leave as he eventually did, but one week earlier.

[81.] I am satisfied therefore that he was detained for 7 days beyond what could be considered a reasonable period for his detention before repatriation. Darling-Flowers could not explain what the delay was and was left to speculate as to a reason which could have caused it.

Assault and battery

[82.] Agbotui says between 4 and 9 November, the Defendants, and / or Officers who were acting in the course of their employment wilfully and without reason assaulted and battered him. As indicated, I did not accept Agbotui as a truthful witness and did not accept his evidence as to being assaulted while in the custody of the police beyond what was ordinarily necessary to detain him. No evidence was produced as to any medical impact of the alleged abuse or of any contemporaneous complaint to his then attorney, to the court or to the police or immigration authorities.

Detinue

[83.] Agbotui says that on entering his hotel room on the morning of 4 November 2016, Police Officers searched and confiscated cash in the amount of \$7,500 from him and that upon his release on 18 November 2016, the police failed to return or had misplaced, lost the cash in the amount of \$7,500.

[84.] I am satisfied that this claim has been made out, as there is no evidence that the moneys confiscated have ever been returned to Agbotui.

Breach of constitutional rights

[85.] Agbotui's written submissions assert, at paragraphs 76 to 81 as follows:

76. The first defendant caused Mr. Agbotui to be locked in a cold and unsanitary cell at the Station contrary to the provisions of Article 17(1) of the Constitution which states "No person shall be subjected to torture or to inhuman or degrading treatment or punishment".
77. Agbotui while in custody at the Station was manhandled and handcuffed, by officers of the Police Force contrary to the provisions of Article 17(1) of the Constitution.
78. Agbotui was unlawfully imprisoned between November 4, 2016, and November 9, 2016, Freeport Grand Bahama in breach of his rights under Articles 15, 19, 17, 20 and 25 (1) of the Constitution.
79. At the Police Station, Mr. Agbotui was locked in a dark, insanitary cell without any or proper bedding to sleep on, contrary to the provisions of Article 17 (1) of the Constitution.
80. On the night of 5 November 2016 while in the cell at the Freeport Police Station, Mr. Agbotui was forced to urinate in a bottle during the night.
81. At the Detention Centre, Mr. Agbotui was locked in a large, overcrowded cell dorm with a number of other detainees without any proper bedding to sleep on provisions of Article 17 (1) of the Constitution.

[86.] I did not accept Agbotui's evidence as to the underlined allegations and therefore was not satisfied that his claims to any breach of his constitutional rights were supported, save for the delay in returning him to Canada. I was also not prepared to take any judicial notice of complaints relative to other persons claiming that the conditions at the detention centre were inhumane and degrading.

Damages

[87.] The defendants have helpfully distilled some of the relevant cases and the awards in paragraphs 99-109 their submissions.

99. In *Cleare v Attorney General* 2013 1 BHS No. 64, the Court of Appeal awarded the sum of \$25,000 for both compensatory and vindictory damages for 3 days of wrongful detention (c. \$8,333 per day).

100. In *Farquharson v The Attorney General* [2015] 1 BHS J. No. 84, the Court of Appeal awarded the appellant \$25,000 for his unlawful arrest and detention for less than two hours.

101. In *Lockwood v Department of Immigration* [2017] 2 BHS J. No. 120, in a judgment dated 20 November 2017 in which Justice Rhonda P. Bain thoroughly reviewed the applicable authorities, she awarded the plaintiff compensatory damages of \$10,000 for false imprisonment over two days (\$5,000 per day)(at [40]).

102. In *Gilford Lloyd v Chief Superintendent Cunningham* [2017] 2 BHS J. No 76, by an order dated 27 February 2018 Charles J. awarded the plaintiff \$30,000 for assault, unlawful arrest and false imprisonment (for c. 30 minutes). The traumatic circumstances of the arrest, and the public and humiliating nature of the detention no doubt weighed with the Judge in awarding such a sum in the circumstances of such a short period of detention.

103. In *Antoine Russell v The Attorney General* [SCCivApp. No. 186 of 2017], in a judgment given on 26 June 2018, the Court of Appeal awarded the plaintiff \$10,000 for wrongful arrest and false imprisonment for a period of 31 hours (c. \$7,740 per day) (at [81]).

104. In *Robert Kane v The Attorney General* [2011/CLE/GEN/FP 00170], in a judgment given on 24 July 2019, Senior Justice Estelle G. Gray Evans awarded the plaintiff \$30,000 for unlawful arrest and false imprisonment for 67½ hours (just under 3 days)(c. \$10,666 per day)(at [99] – [100]).

105. In *Kevin Ronaldo Collie v The Attorney General* [2017/CLE/ GEN/00916], in a judgment given on 24 June 2020, Justice G. Diane Stewart awarded the plaintiff \$35,000 for unlawful arrest and false imprisonment for a period of 32 hours (c. \$26,250 per day)(at [92] to [93]).

106. In *Anthony Dames v The Attorney General* [2019/CLE/gen/ FP/00111] at the plaintiff was awarded \$25,000 for false imprisonment for a period of 5 days (\$5,000 per day)(at [37]);

107. In *Daleon Brown v Commissioner of Police*, the plaintiff was awarded \$45,000 for false imprisonment for a period of 9 days (\$5,000 per day)(at [36]);

108. In *Rod Bethel v Commissioner of Police* [2017/CLE/ GEN/00825], in a judgment given on 19 March 2021, Justice G. Diane Stewart awarded the plaintiff \$60,000 for unlawful arrest and false imprisonment for a period of 72 hours (3 days) (\$20,000 per day).

109. In *Michael Martin v COP et al* Acton No. 2019/CLE/gen/01530 [Tab17] in a decision dated August 31, 2021, the plaintiff who had been falsely imprisoned for two and a half days and was forced to urinate in a plastic bottle and sleep on the floor using his shoes for a pillow, was awarded damages of \$20,000 for unlawful arrest and false imprisonment. s

[88.] Having considered these authorities, I am satisfied that the sum \$65,000 would be an adequate award of compensation for Agbotui's false imprisonment and the breach of his constitutional rights arising therefrom, for the 7-day period.

[89.] Agbotui also seeks an award of compensatory damages, exemplary damages and vindictory damages for breaches of his constitutional rights. He relies on the dicta in the Privy Council decision in **Merson v Cartwright** 1994 BHS J. No. 54 at paragraph 18:

“[In] 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... the nature of the damages awarded may be compensatory but should always be vindictory and, accordingly, the damages may, in an appropriate case, exceed a purely compensatory amount. The purpose of a vindictory 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 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”.

[Emphasis Added]

[90.] In the circumstances of this case, I am not satisfied that this is a proper case for the award of exemplary damages. The period of detention, albeit unreasonable, was relatively short and there was no evidence of malice or ulterior motive other than the suggestion of administrative inefficiencies.

[91.] In respect of vindictory damages, I am satisfied that a declaration that Agbotui's rights have been infringed would suffice.

Conclusion

[92.] I make the following awards in favour of Agbotui:

- (1) Damage for false imprisonment while in the custody of the Bahamas Department of Immigration in the amount of \$65,000
- (2) Damages for Detinue in the amount of \$7,500

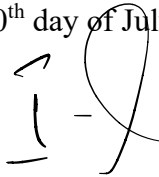
These sums shall bear interest at the rate of 3% per annum from the date of the Amended Statement of Claim to the date of this judgment and shall bear interest at the statutory rate thereafter.

[93.] I declare that Agbotui's legal and constitutional rights have been infringed by his unlawful detention in the custody of the Immigration authorities between 11 November 2016 and 18 November 2016.

[94.] Agbotui's claim for wrongful arrest, assault and battery at the hands of the police and immigration authorities and allegations of inhumane and degrading treatment are hereby dismissed.

[95.] I will hear the parties as to the appropriate order for costs by written submissions within the next 21 days.

Dated this 30th day of July 2026

A handwritten signature in black ink, appearing to be 'I. Winder', with a large loop at the end.

Sir Ian. Winder
Chief Justice