

IN THE COMMONWEALTH OF THE BAHAMAS  
IN THE SUPREME COURT  
Common Law and Equity Division  
2018/CLE/gen/01283

**BETWEEN:**

**SONETTE JOSEPH**

**Claimant**

**AND**

**THE HON. BRENT SYMONETTE**  
**(In his capacity as Minister of Immigration)**

**AND**

**MR. CLARENCE RUSSELL**  
**(In his capacity as Director of Immigration)**

**AND**

**MR. TELLIS BETHEL**  
**(In his capacity as the Commodore of the Royal Bahamas Defence Force)**

**AND**

**THE ATTORNEY-GENERAL OF THE COMMONWEALTH OF THE BAHAMAS**

**Defendants**

**Before:** Acting Registrar Renaldo Toote

**Appearances:** Doneth Cartwright with Lavar Ferguson of Counsel for the Claimant  
Luana Ingraham of Counsel for the Defendants

**Hearing date(s):** 19<sup>th</sup> February, 2025

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**RULING**

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***Toote, Registrar (Acting)***

[1.] This matter comes before the Court for assessment of damages arising from the Claimant's constitutional claim against the Defendants for breach of her fundamental rights under Articles 17 and 19 of the Constitution of The Bahamas. The breach stems from the unlawful arrest and detention of the Claimant by Officers from the Bahamas Immigration Department on 6 July 2018 during an immigration raid, which resulted in the Claimant being detained without being informed of the reason for her arrest or brought before a court within a reasonable time.

[2.] Liability having been determined in the Claimant's favour, the sole issue for determination is the quantum of damages, inclusive of general, aggravated, and exemplary damages.

***Background and Summary of Facts***

[3.] The Claimant, Ms. Sonette Joseph, was born in Nassau, The Bahamas on 21<sup>st</sup> September 1988 to undocumented Haitian immigrants. At some point during her childhood, she was taken to Haiti by her mother, where she resided until adulthood.

[4.] On 22 May 2017, Ms. Joseph returned to The Bahamas with the stated intent to apply for Bahamian citizenship. While she testified that she was actively engaged with the Department of Immigration and exhibited an original copy of her Bahamian birth certificate found attached at the Claimant's bundle of documents; no evidence was led during the assessment to clarify the circumstances under which she re-entered the country, or whether her return was effected through lawful immigration channels. The Court makes no findings on that issue, noting that the lawfulness of her re-entry was not a matter pleaded or fully ventilated in the proceedings.

[5.] Ms. Joseph's partner, Mertilien Ducas, who was arrested alongside her assisted in her communication with immigration officials because Ms. Joseph does not fluently speak English; indeed, she speaks very little English. This language barrier became particularly relevant during the assessment hearing.

[6.] Upon inquiry by the Court, it became immediately apparent that Ms. Joseph could neither identify nor understand the contents of the English-language statement purportedly made on her behalf. Counsel for the Claimant failed to provide a Creole-translated version of Ms. Joseph's witness statement. As a result, the Court declared the statement inadmissible and directed that Ms. Joseph proceed to give viva voce evidence under oath, with the assistance of a Court-appointed Creole interpreter.

[7.] On 6 July 2018, the Claimant was arrested while at home by Immigration Officers. Despite producing her birth certificate, she was taken into custody and detained for 30 days, and transported to the Carmichael Road Detention Centre. Her release was eventually secured through a habeas corpus application and subsequent legal intervention.

[8.] During her detention, the Claimant alleges that she experienced degrading and inhumane conditions, was denied access to legal representation, and suffered emotional distress, embarrassment, and reputational harm. The Defendants deny that the Claimant was subjected to any inhumane or degrading treatment and maintain that her detention was carried out pursuant to immigration powers under the Immigration Act. They further contend that any constitutional breach was minimal, unintentional, and not of the nature to justify aggravated or exemplary damages.

### ***Issues for Determination***

[9.] The Court is required to determine:

- i. The appropriate quantum of general damages for the unlawful detention and breach of constitutional rights;
- ii. Whether the Claimant is entitled to aggravated damages;
- iii. Whether the conduct of the Defendants justifies an award of exemplary damages;
- iv. The applicability of interest and costs.

### ***Submissions of the Parties***

#### *Claimant's Submissions*

[10.] Counsel for the Claimant submits that her detention was a flagrant violation of Articles 17 and 19 of the Constitution, infringing her rights to protection from inhumane and degrading treatment, protection from arbitrary arrest and detention, the right to a fair hearing within a reasonable time, and the right to fair hearing by an independent and impartial court. Ms. Joseph asserts that the manner of her arrest, her treatment during detention, and the failure of the state to act lawfully and with due regard to her rights, warrant an award of general, aggravated, and exemplary damages.

[11.] Counsel stressed that the Claimant's testimony remained consistent and credible, notwithstanding the emotionally charged nature of the events she recounted. During cross-examination, Ms. Joseph clarified discrepancies candidly. Although her pleadings initially indicated that she was handcuffed, she acknowledged in oral evidence that she was not, and that the distress she described stemmed from observing her boyfriend's hands turn blue from tightly applied handcuffs, prompting her to console him emotionally. This clarification, counsel argues, strengthens rather than weakens her credibility.

[12.] Ms. Joseph further testified that she was physically assaulted by Immigration Officers. She recounted that she was slapped and pushed around by officers and later made to stand outside in the sun.

[13.] On the issue of sanitary supplies and facility hygiene, Ms. Joseph informed the court under cross-examination that she was not provided with sanitary supplies when needed. While Mr. Peter Joseph, the Commanding Detention Officer at the time, testified that care packages were distributed, the Claimant's account was not meaningfully challenged.

[14.] Further, she testified that during her entire period in the dormitory, she only observed professional cleaners once. Mr. Joseph himself admitted that cleaning was only occasional, and that detainees were largely responsible for the upkeep of their own living spaces.

[15.] Counsel contends that the Claimant's un rebutted and credible testimony supports a finding that her detention extended beyond the lawful statutory period, that she was subjected to physical abuse and humiliation, and that her treatment by state agents amounted to degrading and inhumane treatment. The absence of a formal complaint or video evidence, Counsel argues, does not negate the Court's duty to assess and weigh the totality of the circumstances, including the power imbalance inherent in immigration detention and the fear and disorientation of a person detained without lawful cause.

[16.] Accordingly, the Claimant seeks the following:

**\$125,000.00 for compensatory and vindicatory damages;**

**\$40,000.00 for assault and battery;**

**\$30,000.00 in aggravated damages;**

**\$75,000.00 for constitutional breaches;**

**Total Damages Claimed: \$270,000.00.**

#### *Defendants' Submissions*

[17.] The Defendants submit that the Claimant was lawfully detained pursuant to statutory powers under the Immigration Act. Even if a breach occurred, they argue it was technical, unintentional, and arose from the Claimant's failure to produce the necessary documentation for lawful status. They deny that she endured inhumane or degrading treatment and contend that her allegations are uncorroborated, inconsistent, and unproven on a balance of probabilities.

[18.] The Defendants emphasize that no medical, psychiatric, or independent witness evidence has been provided to substantiate the alleged psychological or physical injuries. There is no record of trauma-related treatment, post-detention therapy, or expert evidence to

corroborate the extent of harm claimed. Accordingly, any award of damages, if made at all, must be moderate and strictly limited.

[19.] Specifically, the Claimant alleged that she was slapped several times by immigration officers while detained. However, this claim was not substantiated. Mr. Peter Joseph, a senior officer at the Detention Centre, testified that immigration officers do not enter the dormitories except during feeding times or medical escorts, both of which occur outside of the CCTV surveillance. The Centre is equipped with cameras positioned around the external areas; therefore, any abusive conduct would likely have been captured on video, and officers are fully aware of that monitoring. The Claimant made no contemporaneous complaint of abuse to any officer or medical personnel over a 30-day period, nor is there a record of such an incident.

[20.] Regarding medical care, the Claimant stated in her witness statement that she was not seen by a doctor and suffered constipation for approximately 12 days. However, during live testimony, she contradicted this by acknowledging that she did in fact see a doctor, received medication, but claimed they made her feel worse. The Defendants contend that this contradiction casts doubt on her overall credibility. No medical record or prescription was presented to support either version.

[21.] As to the constipation complaint, when cross-examined, the Claimant testified that she did not seek further medical assistance due to a lack of financial means, despite the fact that clinic attendance is nominal in cost. She did not testify that she feared detention or denial of access to care. Instead, she claimed to have made bush medicine, which allegedly helped further weakening the allegation of prolonged physical distress or neglect.

[22.] On the issue of lack of basic toiletries, including toothpaste, soap, or sanitary products, Mr. Joseph testified that care packages are routinely distributed to all detainees, containing those items. Sanitary pads are provided, and a contracted company collects and disposes of them using a dedicated disposal bin. The Claimant provided no documentary evidence or witness support to contradict this or establish that she was denied such items.

[23.] In totality, the Defendants submit that the Claimant has not, on a balance of probabilities, proven any of her allegations of inhumane treatment or degrading conditions. Her testimony was inconsistent, and when confronted with contradictions between her oral evidence and witness statement, she denied the written statements, raising serious concerns about her credibility and knowledge of her own evidence.

[24.] Accordingly, the Defendants argue that the Court cannot accept the Claimant's version of events, and that her allegations of physical abuse, lack of care, and degrading treatment

should be rejected in their entirety. They submit that no award for aggravated or exemplary damages is warranted, and that general damages if awarded at all should be modest and reflective of mere procedural failure rather than serious constitutional harm.

### ***Findings of the Court***

[25.] The Court finds that the Claimant, Ms. Joseph, was unlawfully detained on or about 6 July 2018, having (i) not been charged, (ii) brought before a court, or (iii) presented with a deportation order. Her detention occurred despite her representations that she had applied for citizenship, produced a Bahamas birth certificate, and was in communication with the Department of Immigration regarding her intent to obtain a Haitian passport as part of her application process.

[26.] The Defendants argued that the Claimant's documentation was insufficient to establish her legal status and that her detention was a procedural necessity under the Immigration Act.

[27.] I agree.

[28.] However, the Court must emphasize that detention without charge, without court appearance, and without due diligence in verifying immigration status is contrary to Articles 17 and 19 of the Constitution. Whether or not the Claimant had perfected her entitlement to Bahamian citizenship, she was entitled to due process, including judicial review within 48 hours, pursuant to Section 9 of the Immigration Act and Article 19(3) of the Constitution.

[29.] In ***Ramon Lop v Attorney General*** [BS 2022 SC 84], the Supreme Court held that a detention becomes unlawful where the Immigration authorities fail to bring the detainee before the court within a constitutionally permissible timeframe, and where detention is not supported by an operative deportation order. *Madam Senior Justice Charles* found that even where nationality is unclear or documentation incomplete, the State's power to detain is strictly limited to the period required for deportation processing and must be exercised in full compliance with the law. The State cannot lawfully hold a person indefinitely or arbitrarily, even where deportation is anticipated.

[30.] The Court further adopts the holding in *Atain Takitota v The Attorney General and others* [2009] UKPC 11 and *Jean v Minister of Labour* (1981) 31 WIR 1, that where laws drastically interfere with personal liberty, there must be strict compliance with statutory and constitutional safeguards. In the present case, Ms. Joseph was never brought before a court, never formally charged, and never served with a deportation order. Her detention,

therefore, was jurisdictionally flawed and constitutionally offensive from its inception, notwithstanding the unresolved status of her citizenship application.

[31.] While the Claimant has alleged degrading treatment and physical abuse, the Court acknowledges the Defendants' detailed rebuttal, including the testimony of Mr. Joseph that sanitary products were provided, care packages distributed, and surveillance cameras were active throughout detainee movement areas. The Court also accepts the Defendants' position that no medical evidence was submitted, and that several key claims were contradicted under cross-examination. The absence of contemporaneous complaints or medical reports significantly weakens the evidentiary basis for aggravated or exemplary damages.

[32.] Nevertheless, the constitutional violation stands. The Claimant was arrested and detained without judicial review, in the absence of a lawful deportation framework, and without the minimal procedural checks mandated under the Immigration Act. That breach alone, consistent with the jurisprudence in *Ramon Lop (supra)*, *Takitota*, and *Farquharson v AG [2016] 5 LRC 1*, entitles her to a measured award of general damages and a modest award for aggravated harm, reflecting the indignity and distress occasioned by the state's failure to follow its own legal process.

#### *General Damages*

[33.] In *Takitota*, the Court of Appeal upheld an award of \$500,000.00 for unlawful detention spanning eight years. While the present case involves a shorter detention, the constitutional breach is of the same character. In *Farquharson*, less than two hours' detention resulted in a declaration and moderate damages.

[34.] Taking into account the unlawful detention, the public humiliation, and the disregard for due process, I award \$20,000.00 in general damages.

#### *Aggravated Damages*

[35.] Although the Court has found that the Claimant's detention was unlawful, the treatment she experienced during detention does not rise to the level of aggravated harm typically warranting significant additional compensation. The allegations of inhumane or degrading treatment such as lack of sanitary supplies, abusive conduct by officers, and poor detention conditions were strongly disputed by the Defendants, and were not corroborated by independent or medical evidence.

[36.] The Court does, however, acknowledge the nature of her arrest, the verbal assault she claims to have endured, and the State's failure to conduct any meaningful verification of her immigration status prior to detaining her caused additional emotional distress and harm

beyond that inherent in unlawful detention. As such, and in keeping with the principles in *Tynes v Barr* (1994) 45 WIR 7 and *Takitota v AG*, a modest award of aggravated damages in the amount of \$5,000.00 is warranted.

#### *Exemplary Damages*

[37.] The Court is mindful that exemplary damages are awarded in rare cases to mark judicial disapproval of conduct that is oppressive, arbitrary, or unconstitutional, as established in *AG of Trinidad and Tobago v. Ramanoop* [2006] 1 AC 328 and affirmed in *Takitota*. However, in the present matter, while the detention was unlawful, the Court does not find sufficient evidence of deliberate or systemic abuse of authority, nor does the record support a finding of intentional misconduct or malice by immigration officials.

[38.] The Court accepts that institutional failures existed, particularly the lack of timely judicial review and poor procedural safeguards. Yet these alone, without proof of targeted oppression or repeated institutional disregard, do not justify an award of exemplary damages.

[39.] Accordingly, no award of exemplary damages will be made in this matter.

#### *Summary of Award*

[40.] The Claimant is awarded the following:

General damages: \$20,000.00  
Aggravated damages: \$5,000.00  
Exemplary damages: *Nil*  
**Total: \$25,000.00**

[41.] Interest is awarded at the statutory rate of 6.25% per annum from the date of filing until the date of judgment and thereafter at the statutory judgment rate until payment.

#### *Cost Award*

[42.] The Claimant sought a global sum of \$270,000.00 under multiple heads of damage. However, the Court has awarded only \$25,000.00, representing approximately 9.2% of the total sum claimed. While the Claimant succeeded in establishing the unlawfulness of her detention and securing an award for constitutional breaches, the Defendants were successful in substantially resisting the quantum of damages, including the rejection of the exemplary damages claimed, and in highlighting inconsistencies in the Claimant's testimony and the absence of medical or independent corroboration.



[43.] In determining the appropriate order for costs, the Court is guided by the principle that costs follow the event, but also retains a broad discretion to apportion or adjust costs based on the degree of success achieved by each party and the reasonableness of the amount claimed. Given the significant discrepancy between what was claimed and what was awarded, and the Defendants' partial success in materially reducing the quantum, the Court finds it appropriate to depart from a full costs award.

[44.] Costs are awarded to the Claimant, but such costs shall be reduced to reflect the Defendants' success on the issue of quantum. Therefore, a fixed sum of **\$10,000.00** is awarded for cost.

Dated this 9<sup>th</sup> day of May, 2025

*[Original signed & sealed]*

Renaldo Toote  
Registrar (Acting)