

IN THE SUPREME COURT OF BELIZE A.D. 2007**Claim No. 224 of 2006****Between**

**Carlos Romero
Pacific Jewelry Belize Limited** **Claimants**

And

**The Attorney General
Belize Tourism Board** **Defendants**

Coram: HON JUSTICE SIR JOHN MURIA**7 November 2008**

*Fred Lumor S.C. for the Claimant
Mrs. Andrea McSweeney McKoy with Ms Pricilla Banner for the First Defendant
Dr. A. Kaseke for the Second defendant*

JUDGMENT

Claim under Part 56, CPR – Constitution – right to equal protection of law – right to work – damages payable for breach of constitutional rights in addition to other orders made – Constitution, sections 6, 15 and 20.

Muria J: This is a claim under Part 56 of the *Supreme Court (Civil Procedure) Rules 2005* (“CPR”) by the claimants against the defendants for redress pursuant to section 20 of the Constitution. The claim arises out of the actions of the Government of Belize (“GOB”) through the Comptroller of Customs, denying the second claimants customs duty free status. The

claimants' businesses are located at the lower Flat of the Wet Lizard Restaurant situate at No. 1 Fort Street, Belize City.

Brief background

The brief background to the dispute between the parties in this case can be best ascertained from the facts as agreed to by the parties pursuant to the direction by the Court at the pre-trial review conference. Those agreed facts are the following:

- 1. Fort Street Tourism Village Limited owns and operates the Belize Tourism Village which the Government of Belize (GOB) agreed to designate as the only official landing port in Belize District where day cruise ship passengers disembark and embark.***
- 2. The Government of Belize granted duty free or in-bond status to the Village and other stores and concessions in the village to sell their products free of customs duties to cruise ship passengers.***
- 3. Cruise ship passengers after disembarkation in the Tourism Village take a tour of Belize City or go on land or sea tours outside Belize City.***
- 4. The cruise ship passengers enter the property of the First Claimant, Wet Lizard Restaurant, from the Boardwalk erected along the shoreline of its property and the Tourism Village adjoining the northern bank of the Haulover Creek in the Fort***

George Area of Belize City. They also enter the Wet Lizard property from Fort Street in Belize City.

- 5. Pacific Jewelry Belize Limited rented the lower flat of Wet Lizard Restaurant from the First Claimant and built the eunder a modern jewelry store.*
- 6. Pacific Jewelry was formerly owned by Mike Williams and his wife, Greta Martha Williams.*
- 7. Mike and Martha Williams own Harbour View Restaurant and Michael Colin Gallery, a modern duty free jewelry store. The store also abuts the boardwalk and sells only to cruise ship passengers.*
- 8. In February, 2004, the Second Claimant, Pacific Jewelry, sought the guidance of the Comptroller of Customs as to the procedure and requirements necessary for the grant of a duty free status or in-bond licence for the lower flats of Wet Lizard and Harbour View.*
- 9. The Comptroller of Customs advised the Second Claimant that the licence can only be granted if the application is approved by the Minister of Finance. Pacific jewelry was therefore asked to make the application to the Minister.*
- 10. Pacific Jewelry applied for duty free licence for the two jewelry stores located in the lower flats of Wet Lizard and Harbour View.*
- 11. The Ministry of Finance (Revenue) refused the application on the grounds that –*
 - a. For proper management, efficiency and control, duty free shops are to be located in an enclosed designated area.*

b. It is not feasible for the “Government of Belize to grant duty free status to a single business in any location”.

12. Pacific Jewelry in a letter dated 17th March, 2004 protested the decision of the Ministry of Finance stating that two locations are in enclosed and secured areas as the Belize Tourism Village.

13. The Ministry of Finance refused to reconsider the decision in a letter dated 26th March, 2004 saying that the decision was taken in full consultation with the relevant authorities. The letter was copied to the Comptroller of Customs.

14. Subsequent to the refusal, the Comptroller of Customs granted duty free status to Michael Colin Gallery located in the lower flat of Harbour View. Eurocaribe Shipping Services Ltd. owns the jewelry store. The company is owned by Mike and Martha Williams.

15. Also after the refusal, the Comptroller of Customs granted a duty free status to Goldmark Jewellers located on Fort Street, Fort George Area, Belize City owned by Margaret Nunez.

16. The Comptroller of Customs, after the licence was refused to Pacific Jewelry granted duty free status to one “Regal Silver” jewelry store.

17. The Claimants became aware that the Defendants signed an Amended Agreement with Fort Street Tourism Village Limited dated 14th September, 2004 whereby the parties to the Agreement

- a) *Incorporated Section 65 of the Customs Regulation Act, Cap. 49 (duty free regulation) in the Agreement*
- b) *Agreed that under no circumstance will a duty free licence be granted to the First Claimant's Wet Lizard, at its present location or any other location in Belize.*
- c) *Agreed and identified the entities or persons that will be granted the duty free licence.*

The Comptroller of Customs is not a party to the Agreement.

In addition to background facts set out above, I need only add that the second claimant is a company incorporated under the laws of Belize in January 2004 with the objectives of wholesale and retails dealership in fine jewelry and precious metals. Relying on the official policy of the Government of Belize and the Belize City Council of *having all sectors of the community participating in the country's economic development*, the claimants invested large sums of money in developing their property and business which lie adjoining the Belize Tourism Village. They established a restaurant known as the West Lizard Restaurant, a bar and jewelry gift shops to cater for both foreign and local customers.

Following the completion of the Fort George Tourism Village, a number of things happened which led to the claimant's complaints. These include, being excluded from the extension of the dock, so that the claimants had no access to the boardwalk. That problem was later resolved following the Supreme Court Action No. 259 of 2003 between the claimants and Michael Feinstein and Belize Tourism Village Limited and later by the Court of Appeal in *Michael Feinstein and Belize Tourism Village Limited -v- Carlos Romero and Laura Thompson* (12 March 2004) Court of Appeal, Civil Appeal No. 10 of 2003. The passengers from cruise ships now have access to the claimants' business premises.

The complaint now by the claimants and one that has brought about these proceedings stems from the refusal by the Government of Belize to grant a duty free status or in-bond licence to the second claimant for its jewelry stores at the lower flats of Wet Lizard and Harbour View premises. The claimants case is that they sought advice and guidance from the Comptroller of Customs on the procedure for obtaining duty free licence for their jewelry business at the two mentioned premises. Having been advised to lodge their application with the Ministry of Finance, the second claimant lodged its application to the Ministry of Finance. On 5th March, 2004 the Ministry of

Finance refused the claimants' application. The second claimant protested against the refusal in a letter dated 17th march, 2004. Despite that protest, the Ministry of Finance confirmed its decision refusing duty free licence to the second claimant on 26th March, 2004.

Nature of the Government of Belize's Decision

It would be helpful to set out the nature of the decision made by the first defendant before proceeding further in this judgment. The first decision complained of was that made on March 5th, 2004, contained in the letter under the hand of Cresencio Sosa, Chief Executive Officer in the Ministry of Finance (Revenue). Addressed to Ms. Greta Martha Williams MBE, the then Owner/Managing Director of the second claimant, the letter marked CR-15 in first claimant's affidavit sworn to on 5th day of August 2005, reads:

"Dear Ms. Williams:

Thank you for your letter dated February 13, 2004, addressed to the Minister of Finance and Home Affairs, Honourable Ralph Fonseca.

We inform that for proper management, efficiency and control purposes, duty free shops are located in an enclosed

designated area. It is not feasible for the Government of Belize to grant duty free status to a single business in any location, as such action would undermine the revenue and set an undesirable precedence.

Consequently, the Ministry cannot support your request.

We hope you are understanding of our position.

Sincerely,

Cresencio Sosa

Chief Executive Officer”

The claimants took serious exceptions to the above letter and responded to it by a letter dated 17th March 2004, addressed to the Chief Executive Officer in the Ministry of Finance (Revenue). The claimants also requested that their application for duty free licence be reconsidered. So as to appreciate the claimants’ position in this dispute, I feel it would be helpful also to set out the contents of that letter which is marked CR-16 in the first claimant’s affidavit which reads:

“Dear Sir,

Re: Pacific Jewelry Belize Limited

We acknowledge receipt of your letter Ref. C/GEN/2/01/04

(54) dated the 5th of March, 2004.

We take very serious exception to the reasons given for the refusal of the duty free status to our company, Pacific Jewelry Belize Limited. Your letter states that –

“We inform that for proper management, efficiency and control purposes, duty free shops are located in an enclosed designated area.”

The above statement ignores the basic facts on the ground and is very general in nature.

(1) Pacific Jewelry Belize Limited, a state of the art jewelry store, with all modern amenities, is located in the Lower Flat of the Harbour View Restaurant, Old Customs House, Fort George Area, Belize City next to the Belize Tourism, Village, the designated landing area of all day cruise ship passengers coming on shore in Belize.

(2) The Lower Flat of the Harbour View Restaurant is in a location that is sufficiently enclosed and secured as the Village.

(3) The Jewelry Shop status abuts the boardwalk built along the shoreline which has direct access to the Belize Tourism Village.

(4) The owners of Pacific Jewelry Belize Limited, Mrs. Greta Martha Williams and Mr. Mike Williams, are the agents for the majority of cruise lines calling Belize that bring on shore cruise ship passengers, the potential market for the jewelry shop.

(5) We have indicated our readiness to comply with all Customs requirements

(6) necessary to ensure proper management, efficiency and control of the revenue. To that end, we have agreed to pay the Comptroller of Customs all expenses associated with the posting of Customs personnel in the jewelry shop and the posting of all bonds necessary to ensure full compliance with the Customs laws.

(7) We have also stated our readiness to ensure that all jewelry and other products purchased from our jewelry shop are delivered to the purchasers or passengers on the vessels at sea under the direct supervision of Customs.

In view of the foregoing, it is our firm belief that the refusal of the duty free status to our company has everything to do with the monopoly granted to one Diamond International located in the Fort Point Tourism Village next door to our shop. This company cannot continue to enjoy the exclusive privilege of selling jewelry and similar products at duty free

prices to cruise ship passengers. The owners of Pacific Jewelry Belize Limited are Belizeans nationals and the pioneers that worked hard over one decade to bring the cruise ship industry to Belize and contributed largely to what the industry is today.

We most respectfully and kindly ask that our application be reconsidered in view of the facts we reiterated above in the interest of the industry and our investment as early as possible.

Yours sincerely,

*Greta Martha Williams
Owner/Managing Director”*

The Chief Executive Officer responded on 26th March, 2004 to the claimants’ letter in the following terms CR-17:

“Dear Ms. Williams,

Pacific Jewelry Belize Limited

Thank you for your letter of 17th March 2004 on the above subject.

We inform that the decision taken was in full consultation with the relevant authorities.

Respectfully,

Cresencio Sosa
Chief Executive Officer

Cc: Comptroller of Customs
Legal Counsel”

That letter is simply a confirmation of the decision taken by the first defendant in the letter of 5th March, 2004. It is obvious that the contents of the above correspondence, highlight the nature of the dispute between the parties in this case.

Claimants' Case

The case for the claimants is that they have been singled out for discrimination and/or unequal treatment by the defendants. The basis for their claim are set out in the affidavit of the first claimant, sworn to on 5th August, 2005 and filed in support of the claimants' claim. Having perused the first claimant's affidavit, in summary, the claimants' case is that:

Along with the other business operators, in the Fort Street and Fort Street Tourism Village areas, Belize City, the claimants took

advantage of an economic Policy Plan initiated by the Government (GOB) and Belize City Council referred to as “2002-2010 Belize City and Beyond” contained in pamphlet known as “Metrovision,” and invested large sums of money to develop their business premises at the Wet Lizard Restaurant and Bar, and gift shops to cater for foreign and local customers. Their premises adjoins the Belzie Tourism Village.

Sometime in 2003, the claimants were denied access to the boardwalk on the Foreshore of their property by being excluded from the extension of the dock by the Fort George Tourism Village. This had the effect of limiting access by cruise ship passengers to the claimant’s business premises from the boardwalk along the North Bank of the Haulover Creek, in the Fort George Area, Belize City. The claimants, however, successfully challenged that denial in the Courts of Belize.

The Claimants’ tussle did not stop there, as demonstrated in the first claimant’s affidavit. The claimants applied for duty free licence for their jewelry shop at the lower flat of their Wet Lizard Restaurant.

The application was refused by the Government of Belize on 5th March, 2004. Despite the claimants' request for reconsideration of that decision, the Government of Belize re-affirmed its decision refusing to grant a duty free licence to the claimants.

On the other hand, the Government of Belize granted customs duty free or in-bond status to Fort Street Tourism Village Limited, which entitled all stores or concessions located in the Belize Tourism Village to duty free status, enabling them to sell their products to cruise ships passengers free of customs duties. One such business which enjoys the duty free status in the Belize Tourism Village is Diamond International which is a foreign company.

Apart from Diamond International and others who enjoy duty free status in the Tourism Village, another business, the Michael Colin Gallery, was granted duty free licence in the latter part of 2004. the Gallery is owned by Eurocaribe Shipping Services Limited and it is situated in the lower flat of the Harbour View Restaurant, abutting the Tourism Village to the West.

In respect of Michael Colin Gallery, the claimants' complaint is that in early (March) 2004 when that business was owned by the second claimant, the Government of Belize refused to grant duty free status to the second claimant, but when Eurocaribe (owned by Mike Williams and Greta Martha Williams) applied in the latter part of 2004, the Government of Belize granted it duty free status.

A further comparison narrated in the first claimant's affidavit is the business of "Regal Silver" owned by some Mexicans which has two stores and were located at Terminals 3 and 4 in the Belize Tourism Village, also has duty free licence to sell silver products (para. 47).

The other comparison referred to by the first claimant in paragraph 48 of his affidavit is the business of "Goodmark Jewellers" owned by one Margaret Nunez. Goodmark Jewellers is not located in the Tourism Village, nor abutting the boardwalk on the North Bank of the Haulover Creek. In other words, it is not "located in an enclosed designated area" which was one of the reasons for refusing the claimants' application for duty free status (paragraph 48 of first claimant's affidavit).

In the light of these circumstances, the claimants say that they have been given unequal treatment and/or discriminated against, thereby contravening their rights guaranteed under section 6(1) and 15(1) of the Constitution of Belize. They should therefore be compensated.

The above scenario is a fair précis of the claimants' case in this dispute.

The Defendants' Case

The case for the defendant can be gleaned from the affidavit of Mr. Gregory Gibson, Comptroller of Customs, sworn to on 9th January, 2006. In support of the decision refusing to grant duty free status to the claimants, Mr. Gibson deposed to in his affidavit that the grant of duty free licence is the discretion of the Government of Belize. In the present case, he said that the discretion was properly exercised and in accordance with principles and custom practices and procedures. Mr. Gibson reiterated the reasons for refusing the claimant's application for duty free licence were those set out in the letter dated March 5, 2004 from the Ministry of Finance (above).

The second defendant's case is set out in the affidavit of Therese Rath, the then Chairperson of BTB, sworn to on 29th December, 2005 and filed herein. In short the second defendant's position is that it is a statutory body charged with the duty to oversee all aspects of the development of tourism industry in Belize. For this reason it participated in the Agreement now complained of by the claimant.

With regard to the refusal of the claimant's application for duty free licence, the second defendant stated that it has no part in that decision since it has neither the capacity nor the power to issue such licence. It refers to the Amended Agreement of 14th September, 2004 in paragraph C that only the Government of Belize has the power to issue or refuse duty free licence.

Agreed issues

Pursuant to directions made at the pre-trial review conference, the parties having agreed to the facts, also agreed to two issues for the Court's determination in this case. The two issues are:

- 1. Whether the refusal by the Ministry of Finance to grant duty free licence to the Claimants contravenes the rights of***

the Claimants guaranteed to them under the provisions of Section 6(1) and 15(1) of the Belize Constitution.

2. *Whether the Amended Agreement dated 14th September, 2004 by virtue of which the Defendants agreed with the Fort Street Tourism Village Limited that under no circumstance will a duty free licence be granted to the Claimants contravenes the rights of the Claimants guaranteed to them under the provisions of Sections 6(1) and 15(1) of the Belize Constitution.*

These two issues emanate from the agreed facts which I have already set out earlier.

The Belize Tourism Board

The case law authorities have settled the legal position of a statutory body like the Second Defendant in this case. The Belize Tourism Board is a statutory body established under section 3 of the Belize Tourism Board Act (Cap. 275) with its powers and functions set out under Section 11 of the Act. It is a public body with coercive powers and as such amenable to an action under Section 20(1) of the Constitution. See *Maharaj –v- Attorney General of Trinidad and Tobago (No. 2)* [1978] A.C. 385; *Thornhill –v- Attorney General of Trinidad & Tobago* [1980] 2 W.L.R. 510; *Alonzo –v-*

Development Finance Corporation 1 BZLR 82; *Fort Street Tourism Village –v- Attorney General et al and Fort Street Tourism Village –v- Maritime Estates Ltd et al* (17 October 2008) Court of Appeal of Belize Civil Appeals Nos. 4 and 7 of 2008.

Sections 6(1) and 15(1) of the Constitution

The claimants’ case is mainly centered on sections 6(1) and 15(1) of the Constitution of Belize. These two provisions have been considered by the Courts of Belize on previous occasions. Before I refer to the cases in which the said provisions have been considered, let me set out the terms of the two provisions. Section 6(1) in the following terms:

“6(1) All persons are equal before the law and are entitled without any discrimination to the equal protection of law”

and Section 15(1) provides as follows”

“15(1) No person shall be denied the opportunity to gain his living by work which he freely chooses or accepts, whether by pursuing a profession or occupation or by engaging in a trade or business or otherwise.”

As pointed out by the Court of Appeal in the recent case of *Fort Street Tourism Village Case*, the enforcement of fundamental rights guaranteed in the Constitution can only be done if those rights and freedoms have been contravened by the state or a public authority endowed by law with coercive powers. Both Section 6(1) and 15(1) were considered in the *Fort Street Tourism Village case*.

I start first by considering Section 15(1) of the Constitution. That provision, as pointed out by the Court of Appeal in *Fort Street Tourism Village*, although often referred to as the right to work, speaks of an *opportunity* to work, as Mottley P. observed:

“Section 15(1) provides that no person shall be denied the opportunity to gain his living by work he freely chooses or accepts... The Constitution speaks of a denial of the opportunity to work. It is the opportunity that must not be denied to the citizen. If that opportunity is denied then fundamental right as guaranteed by the Constitution is infringed. While it is often referred to as the right to work, what is in fact guaranteed is not the right to work but the opportunity to work.”

His Lordship went on to point out that

“in order for Section 15(1) is to be breached in so far as a denial of the opportunity to work is concerned, legislation or some statutory instrument would have to provide that the claimants were not entitled to engagement in any business or in a particular type of business.”

Mr. Lumor S.C. made reference to the case of *Belize Petroleum Haulers Association –v- Daniel Habet & Ors* (24 June 2005) C A, Civil Appeal No. 20/2004, which was considered in the *Fort Street Tourism Village Case*. In the former case, the Supreme Court and confirmed by the Court of Appeal found that Section 19(1) and (2) of the *Belize Petroleum Haulers Association Act No. 28 of 2003* had the effect of interfering with the right of the applicants to be gainfully employed in the field of their choices by restricting the issuance of special licence by Department of Transportation to only those who were members of the Association and had been recommended by the Association.

In the present case, the complaint is that the defendants had breached the Claimants’ right under Section 15(1) of the Constitution by denying them

duty free licence while other business operators in the Fort Street Tourism Village and adjoining premises were accorded duty free status. The decision of the defendants was based on the *Amended Agreement* entered into between the Government of Belize, Belize Tourism Board and Fort Street Tourism Village Limited on 14 September 2004, in particular, *Exhibit A* attached to the *Amended Agreement* which is said to discriminate against the Claimants and the customs practices under the Customs Regulation Act (Cap. 49). For completeness, *Exhibit A* states that

“under no circumstance will a duty free licence be granted to the First Claimant’s Wet Lizard, at its present location or any other location in Belize”

a fact agreed to by the parties in this case. See para. 17 of the Agreed Statement of Facts (above.)

In so far as the right to work as provided under Section 15(1) of the Constitution is concerned, it is important to bear in mind that the provision stipulates two crucial elements in the right, namely the “opportunity to gain his living by work” and the “freedom to choose” whatever economic activity to gain or earn his living, be it in a professional calling or occupation or in a

trade or business or otherwise. I do not think that it can properly be said that a person who chooses or accepts to trade in a particular commodity and has been provided with the opportunity to earn his living by such trade, can plead that he has been deprived of his opportunity to work to gain his living.

Having considered the facts as agreed and the arguments advanced by Counsel for the Claimants and defendants, I come to the conclusion that despite the forceful argument by Mr. Lumor S.C. for the Claimants, no breach of Section 15(1) of the Constitution occurred in this case. There is no statutory provision nor is there any provision in the Amended Agreement preventing the Claimants from their gainful living by pursuing their choice of work or business, including dealership in jewelry and precious metals, in the port area. Cf *Belize Petroleum Haulers Association* (above). The Claimants continue to trade in jewelry business, which is the business of their choice, like other jewelry dealers in the port area. The only difference is that those others jewelry dealers have been granted duty free licence while the Claimants were not accorded with such duty free status. Such denial may well result in their products less favourable on the market and may also seem unfair on the Claimants. But that, in my respectful view, cannot amount to a breach of the Claimants' right to be afforded the opportunity to

gain their living by work or business which they freely choose or accept. That important element of choice and freedom in the work or business activity to gain or earn one's living cannot be said to be denied here. I hold therefore that Section 15(1) of the Constitution has not been contravened by the defendants in this case.

Section 6(1) of the Constitution presents a different consideration from that concerned in section 15(1) of the Constitution, especially in the light of the agreed facts in this case.

In so far as Section 6(1) is concerned, the Court of Appeal, in *Fort Street Tourism Village*, recognized that the complainant must show that the unequal treatment occurred as a consequence of application of a duty imposed by Statute or an administrative act of an official endowed by law with coercive power to enforce the Statute.

I consider that in the present case the Claimants have established that the acts complained of were those of public authorities in the official capacity of the Comptroller of Customs, endowed by law with coercive powers, namely the application and enforcement of provisions of the *Customs Regulation*

Act (Cap. 49) and Belize Tourism Board endowed by law to enforce the provisions of *Belize Tourism Board Act* (Cap. 275). The question, however, is whether the actions of the defendants contravene the fundamental rights of the Claimants as guaranteed by Sections 6(1) of the Constitution.

There is no dispute that the Claimants have unimpeded access to the boardwalk or that the cruise ship passengers have unimpeded access to the Claimants' business premises. Indeed as had been shown in the *Fort Street Tourism Village case*, there has been unimpeded access enjoyed by Wet Lizard premises which lead to the Complaint by Maritime and other claimants in that case. The second Claimant in the present case operates its jewelry store in the lower flat of the Wet Lizard premises.

The question, however, is whether in the light of the facts of the present case, the Claimants have been subjected to unequal treatment by the defendants. In determining this question I feel the cases referred to by Mr. Lumor S.C. provide useful guide. In *Smith and Another -v- L.J. Williams Ltd* (1980) 32 WIR 395, 411 Bernard J. observed, after considering Section 4 of the Constitution of Trinidad & Tobago, as follows:

“In so far as official acts are concerned, the nub of the matter is, in my view, that the section both guarantees and is intended to ensure that where parties are similarly placed under the law they are entitled to like treatment under the law. However, there is a presumption of regularity in the acts and conduct of officials. Consequently, the burden of proof is upon the aggrieved party to establish mala fides in the administration of the enactment. Of course, mala fides particularly in cases of this sort is not normally expressed. However, it can be and is usually to be implied from overt acts. In this connection it is not necessary, in my view, to prove “an evil eye” although I do not doubt that in some cases the evidence may be such that the act complained about can be seen to transcend both the concept of the “unequal hand” and an “evil eye” at the end of the day. In my opinion, so long as it can be shown that the act was a hostile act or an intentional and irresponsible act, i.e. an act done deliberately and without justification, that will be enough evidence to rebut the presumption of regularity.”

In *Mohanlala Bhagwandeem –v- Attorney General* (2004) 64 WIR 402, the Privy Council, an Appeal from Court of Appeal Trinidad & Tobago, said:

“A Claimant who alleges inequality of treatment or its synonym discrimination must ordinarily establish that he has been or would be treated differently from some other similarly circumstanced

person or persons, described by Lord Hutton in Shamoon vs Chief Constable of the Royal Ulster Constabulary [2003] UKHL 11, [2003]2 ALL ER 26 (at para. [71] as actual or hypothetical comparators. The phrase which is common to the anti-discrimination provisions in the legislation of the United Kingdom is that the comparison must be such that the relevant circumstances in the one case are the same or not materially different, in the other...”

It will be noted that intention or motive for the discrimination is not a necessary, condition of liability in a case of discriminatory exercise of powers under a statute. It is enough, if the complainant shows, that there was in fact discrimination on some particular ground. See *James –v- Eastleigh Borough Council* [1990] 2 AC 751.

In *Shamoon –v- Chief Constable of the Royal Ulster Constabulary* [2003] 2 All E.R. 26, Lord Hutton pointed out that for the purpose of demonstrating unequal treatment, the complainant has to show that “*the relevant circumstances in the one case must be the same, and not materially different in the other.*” Thus, Lord Hutton continued –

“Therefore, the question which arises is whether the decision of the tribunal that the chief inspectors in the other regions of the Traffic

Branch were proper comparators complies with the requirement laid down in art 7. Article 7 directs attention to the relevant circumstances in the complainant case. What are the relevant circumstances in a particular case will obviously depend upon the facts of that case, and in order to determine the relevant circumstances in the present case I think it is desirable to set out in full the paragraphs of the tribunal's decision describing the way in which the appellant carried out her role as a counseling officer in appraisals and the complaints of Constable Lowens and Constable Currie about her comments on them, ..”

In the present case, and on the evidence supported by the facts as agreed to by the parties, I have to agree with Mr. Lumor S.C. that the Claimants had been subjected to unequal treatment than their similarly circumstanced comparators. I do not need to repeat those comparators here. For the sake of brevity, I need only to point out that Michael Colin Gallery located in the lower flat of Harbour View Restaurant was refused duty free licence in March 2004 when it was owned by the Second Claimant whose proprietors then were Mr. & Mrs. Williams. Subsequently Eurocaribe Shipping Services Ltd which is owned by Mr. & Mrs. Williams applied for duty free licence for the Michael Colin Gallery and was granted. Like the second claimant, Michael Colin Gallery is located in a premises not in the Tourism Village but abutting the boardwalk.

Another comparator, “Goodmark Jewellers” owned by one Margaret Nunez was granted duty free licence after the second claimant’s application was refused by the Comptroller of Customs. “Goodmark Jewellers” was not located in the Tourism Village nor “located in an enclosed designated area” which was one of the reasons for refusing the second claimant’s application.

The other comparator, “Regal Silver” which is owned by Mexican Traders was granted duty free licence to two of its stores located at Terminal 3 and 4 in the Belize Tourism Village.

Lest it may still be unclear, the first defendant’s decision to deny the claimants duty free status had the support of all the parties to the Amended Agreement, including the second defendant and with whom the Comptroller had *consultation* before making his decision. Put the abovementioned comparators’ position along with the provisions of the *Amended Agreement* dated the 14th September 2004, in particular *Exh. A*. attached to the Amended Agreement, the conclusion is inescapable that the second claimant has been given unequal treatment or discriminated against by the defendants in the manner in which its application for duty free licence was dealt with. It

has been treated with inequality or its synonym, discrimination as against its similarly circumstanced comparators in the manner described in the cases referred to by Mr. Lumor S.C. That is a breach of Section 6(1) of the Constitution thereby denying the Claimant's right to equal protection of the law.

Before I conclude this judgment, I need to deal with two other points raised by Counsel on behalf of the Claimants. The first is to do with the exercise of the powers of the Comptroller of Customs. It is said that in this case, the refusal of the Second Claimant's application was a decision not made by the Comptroller but by the Ministry of Finance. It is said that Section 65 of the Customs Regulation Act (Cap. 49) does not confer on the Government or the Ministry of Finance power to decide who should get or should not get a duty free licence; the power or authority is given to the Comptroller of Customs alone. (See paras. 55 and 56 of Claimant's Skeleton Arguments).

I have read Section 65(1) to (8) of the Act, and I have to confess that, I do not find the Section to have anything to do with the power to issue customs duty free licence either by the Comptroller of Customs or by the Government or the Ministry of Finance. The section is very much to do with

designation of buildings or places as a private warehouse or customs area for storing goods without payment of customs duty and other matters relating to private warehouse or customs area. Section 65 of the Act does not help the Claimants' case.

In any case, the case advanced for the Claimants is presented on the basis that the Comptroller of Customs exercised his power to refuse the second Claimant's application for duty free licence in a manner contrary to sections 6(1) and 15(1) of the Constitution. This is an acceptance by the Claimants that the decision which they are challenging was that of the Comptroller.

The second point arises from the reliefs sought by the Claimants. In addition to the declaration and the restraining orders sought, the claimants also seek damages. Mr. Lumor S.C. in his submission in Court did not seek to place much concern with the issue of damages, rather the emphasis is on the other reliefs. This is not to say that the claimants are abandoning their claim for damages for breach of their constitutional rights. Clearly section 20(1) of the Constitution empowers the Court to "make such declaration, and 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 Sections 3 to 19 inclusive of this constitution.” An order for damages is clearly within the power of the Court to make in such a case as this.

Ms. Andrea McSweeney McKoy of Counsel for the first defendant, said that damages was not the main thrust of the claimant’s case. Counsel, however, submitted that if damages is awarded for breach of constitutional right, the Court must note that the claimants have not mitigated their loss as the second complainant still occupies the premises concerned. Ms. McKoy was frank enough to acknowledge that the parties in this case could have settled the matter, but for the repercussion of the *Amended Agreement* on both sides, the matter had to be placed before the Court. Ms. McKoy, in her submission finally, informed the Court that she had instructions from the Comptroller that the claimants could resubmit their application and that the Comptroller would consider it favourably.

Dr. Kaseke of Counsel for the Belize Tourism Board submitted that the claimants had no basis for claiming damages against the Board. Counsel further added that the claim of \$4,000.00 per day is not supported by evidence. Dr. Kaseke acknowledged that damages in cases such as this, is

general. I take that to mean “at large” which I accept as appropriate in cases of this nature. I also accept Dr. Kaseke’s submission that no evidence was led to show the \$4,000.00 loss per day as claimed by the Claimants.

Having considered the positions as taken by each party on the question of damages and having found that claimants’ right under section 6(1) of the constitution had been contravened, the claimants are entitled to a relief by way of damages also, in addition to the declarations sought as permitted under Section 20(1) of the Constitution.

In some jurisdictions, conventions have been established as to the amount of damages for breach of constitutional rights. In *Attorney General of St. Christopher, Nevis and Anguilla -v- Reynolds* [1980] 2 W.L.R. 171, the Court below awarded \$5,000.00 damages for wrongful detention. The Court of Appeal increased it to \$18,000.00 adding an element of ‘exemplary damages’ into the award. In *Jamakana -v- Attorney General* [1983] SILR 127; [1985] LRC (Const.) 569, the High Court awarded \$7,000.00 to the applicant for breach of his constitutional right to freedom of movement. In that case the Court considered *Anguilla case* and the discussions on damages for breach of constitutional right in *Maharaj case*. See also

Peters –v- Marksman & Anor [2001] 1 LRC 1; *Charles –v- Attorney General* [2001] 2 LRC 169.

In the present case, no guidance has been referred to by Counsel. So the Court is left to doing the best it can taking into account the circumstances of the case as presented. I shall also take into account the fact that in a case such as this where one is attempting to award compensation for breach of a constitutional right, it would be difficult to put an amount to some loss which an applicant has suffered. My task is to arrive at a reasonable compensatory sum to the Claimants, balancing the defendant's duties to preserve the law and Claimants' right not to have their constitutional rights violated.

In the circumstances and doing the best I can, I feel a reasonable sum as damages for breach of the claimants' right under Section 6(1) of the Constitution should be \$8,000.00. As no evidence of exemplary or aggravated damages has been shown to the satisfaction of the Court, no account of such exemplary or aggravated damages is included in this award.

Conclusion and orders

In the circumstances, the conclusion that this Court comes to is that the claimants have succeeded in establishing that their right to equal protection of the law under the Constitution had been contravened. The Claimants are entitled to the same or similar consideration as applied to others in similar circumstances with the Port area and should be favourably considered for a grant of duty free licence. In the circumstances, the Claimants should be accorded duty free status like those of similar circumstanced in the port area. The claimants are, therefore, entitled to the declarations as well as the other orders sought in the Application.

The order of the Court is as follows:

1. I declare and hold that the Amended Agreement does not contravene the rights of the claimant under section 15(1) of the Constitution. The defendants have not contravened the claimants' rights under section 15(1) of the Constitution.
2. I declare and hold that in so far as it relates to the Claimants, the Amended Agreement dated 14 September 2004 operates to deny them

of their rights to equal protection of the law under Section 6(1) of the Constitution.

3. I further declare that the consequent decision by the Comptroller of Customs denying duty free licence or duty free status to the Claimants while granting such licence to their comparators of similar circumstanced is a breach of the Claimants' rights under Section 6(1) of the Constitution.
4. It is therefore directed that a duty free licence be granted to the Claimants.
5. Having found the Claimants' rights under Section 6(1) have been breached, an order shall issue also to restrain defendants from further contravention of the said` rights of the Claimants.
6. Damages to the claimants in the sum of \$8,000.00 to be apportioned between the first and second defendants on a 60:40 basis
7. The costs of this case to be paid to the Claimants also on 60:40 basis between the first and second defendants, to be taxed if not agreed.

Sir John Muria

