

IN THE COURT OF APPEAL OF BELIZE A.D. 2021
CIVIL APPEAL NO. 3 OF 2017

**IPC CORPORATE SERVICES INC.
CORNERSTONE CORPORATE SERVICES LIMITED
CARDEA CORPORATE SERVICES LIMITED
PALADIN TRUST SERVICES LIMITED**

APPELLANTS

v

THE ATTORNEY GENERAL OF BELIZE

RESPONDENT

BEFORE

The Hon. Sir Manuel Sosa (retired)	- President
The Hon. Mr. Justice Samuel Lungole Awich	- Justice of Appeal
The Hon. Mr. Justice Murrio Ducille	- Justice of Appeal

L Mendez with H Guerra for the appellants.
S M Tucker, Deputy Solicitor General (Ag) for the respondent.

12 March 2019 and 2 June 2021

AWICH JA

[1] I concur in the judgment of the Court prepared by my learned brother Ducille JA.

AWICH JA

DUCILLE JA

[2] On the 9th September, 2014 agents of the state entered the offices of the Appellants and conducted a search and seizure exercise pursuant to a Search Warrant. All documents, equipment and assets of the Appellants were removed from the property. In response the Appellants commenced an action seeking

constitutional relief for breaches of their constitutional right as a result of what they argued was an unlawful search and seizure.

[3] On the 18th January, 2017 Justice Courtenay Abel delivered an oral decision wherein he ordered (1) that the search and seizure exercise executed by the state on the 9th September, 2014 contravened the Appellants' (then Claimants) constitutional rights by seizing property, other documents and information (in hard copy and electronic form) relating to the claimant and (2) Costs to the Respondent (the Defendant) in the sum of BZ \$60, 000.00.

[4] The full ruling of Abel, J begins at page 130 of the transcript there he concluded as follows :-

“I think the Court’s position has come out largely in argument and this Court is prepared to make the declaration in the form that was formulated that the search and seizure exercise carried out by the State on the 9th September 2014 against the Claimants contravened the Claimants constitutional rights by seizing property other than documents and information (in hard or soft copy or electronic form) relating to the Claimants. And obviously I think the Court is prepared to make those declarations because I think the evidence is clear that the State did carry out a search and seizure on 9th September, 2014 of the Claimants property which were in excess of that which ought to have taken place. It was indiscriminate, it should have complied with the terms of the warrant and it wasn’t. And you know, there is nothing else one can say.

In view of the way the whole claim has developed, it is clear that this Court is not able to grant any damages. There is no basis or no evidence on which the Court can properly assess any damages and that was conceded by Counsel for the Claimants. **And the claim for vindicatory damages this Court declines to make, because to cut a long story short, there is clear evidence that the search and seizure of the property in question, the Claimants’ premises, could properly be carried out; it was authorized by a warrant and the warrant was in very broad terms but on the evidence it is clear that** – and I made it clear in a previous decision of Titan that State actors are required (and I hope

they learnt from that experience) that they are required to be far more focused and discipline when they carry out these searches and seizures. But to grant damages for vindication of the breach of the rights **I have no basis on which I can properly assess those damages and I am not going to make an Order to that effect.**

Looking at the case as a whole it's clear that the Claimants have succeeded to the extent that they have gotten a declaration albeit in significantly narrower terms than those sought or in the specific way that it is being granted or the terms in which it is being granted. Frankly I see the success is purely academic and real success would have been if significant damages or the damages sought had been granted and to that extent the Claimants have not succeeded and they are going to be penalized in costs for that.

In considering the costs I have considered all the facts and circumstances of the case of the case including the fact that security for costs was deliberately fixed at that figure at an earlier hearing albeit without all the evidence and everything else and I have taken into account the fact of that and discounted the extent to which the Claimants have not succeeded and taken that into account in looking at the costs and I think it is fair and reasonable and just exercising my discretion in relation to costs that \$60,000.00 is not an inappropriate sum. So that is the Order that I made in relation to costs. The Claimant will prepare the order and I will sign it.”

[5] On the 17th February, 2017 the Appellants filed 10 grounds of appeal challenging the decision of Abel, J. Of the 10 grounds filed the Appellants, chose to pursue only three grounds of appeal; they are as follows:-

- i. The learned trial judge erred in law and misdirected himself in not awarding vindicatory damages and any damages for the breach of the Appellants' Constitutional Rights;
- ii. The judgment is against the weight of the evidence; and
- iii. The learned trial judge erred in law and or misdirected himself in ordering costs against the Appellants.

GROUND 1: DAMAGES

- [6] Under Ground 1, as set out above, the Appellants contend as follows:
- a. The decision of the Court fails to appreciate the Court's wide discretion when providing constitutional redress;
 - b. The Court erred in considering that the somewhat nebulous method on which to assess vindictory damages could justify not granting said damages; and
 - c. The approach to redress after having found that there is a violation of a constitutional right is determining the appropriate relief to enforce the right breached, not simply determining whether any loss has been proven.

[7] In support of its arguments the Appellants relied on *Attorney General of Trinidad and Tobago v Ramanoop* [2006] UKPC 15, *Department of Welfare v Kate* [2006] SCA 46 (RSA) citing *Fose v Minister of Safety and Security, Taunoa v Attorney General* [2007] 5 LRC; *Durity v Attorney General of Trinidad and Tobago* [2009] 4 LRC; *Maya Leaders Alliance and others v Attorney General of Belize* [2015] CCJ 15; *Tamara Merson v Drexel Cartwright and AG (Bahamas)* [2005] UKPC 38; *Vancouver City v Ward* [2010] SCC 27; *James v Attorney General of Trinidad and Tobago* [2010] UKPC 23.

[8] The Appellants posited that in various ways the cases establish that (i) the Court has a wide discretion when exercising its jurisdiction to grant constitutional relief; (ii) the jurisdiction of the court is designed to enable the court to fashion remedies which effectively respond to the particular breach; (iii) a declaration, alone, is likely to be insufficient to properly remedy a constitutional breach; and (iv) given the adaptability of the court's discretion, no particular remedy exists as of right. The question is one of appropriateness.

[9] In light of the position reflected in the cases the Appellants contend in their written Submissions that:-

- a. The existence of the search warrant should not be used to excuse the actions of the state agents, particularly in circumstances where there was no attempt to confine the search within the parameters of the warrant.
- b. The Court failed to give due consideration to the import of the constitutional rights of the Claimants and the need to provide a remedy that reaffirms the supremacy of the Constitution and the seriousness with which any breach of the rights protected thereunder will be treated.
- c. In the circumstances of the case the declaration alone served no purpose as (i) it did not clarify any particular area in the law and/or statute and (ii) provided no meaningful remedy to the Appellants as all of their businesses have since ceased to operate and as such is not a remedy that offers any protection for the future.
- d. The Court did not adequately consider the damage done to the right itself and the need to repair the damage done to the society.
- e. The Court placed undue weight on the exclusion of the affidavit of Mr. Claude Burrell when considering the appropriateness of an award in damages.
- f. The difficulty in assessing vindicatory damages should not dissuade or prevent the courts from awarding the same in appropriate cases.

[10] The Respondent supports the decision of the learned judge in its entirety and argues in its written submissions that in Constitutional claims an award of damages is not an automatic remedy but rather a discretionary one that should only be awarded on a case by case basis. The Respondent asserts that at trial the Appellants claimed constitutional relief and for loss and damages caused to the Appellants companies as a result of the unlawful search and seizure of their documents and equipment. At trial the Appellants were unable to provide proof of their loss and as such the Appellants abandoned its submissions for the award of compensatory damages. On this basis the learned judge was correct and indeed

had no other option open to him than to rule that the Appellants had failed to prove any loss suffered as a consequence of the search and seizure.

[11] The Respondent further avers that as held in *Attorney General and the Financial Intelligence Unit v Titan International Securities Inc. Civil Appeal No. 6 of 2016* an award for aggravated or vindictory damages cannot be awarded to a Company. The Respondent further posits under this ground that the declaration alone is a sufficient remedy to vindicate the Appellants' rights as it was not the search and seizure itself that caused damage to the Appellants' companies as contended but rather it was the suspension of their business licence which prevented the Appellants from conducting their business. On these bases, the Respondent's argue, the learned judge's decision not to award compensatory or vindictory damages was sound.

GROUND 2: EVIDENCE

[12] Under this ground the Appellants argue that there was indisputable evidence before the judge to support an award for compensatory and vindictory damages and directed the Panel's attention to the Affidavits of Andrew Godfrey and Clodine Anderson which were before the Court below and both describe the sweeping nature of the search and seizure. Mr. Godfrey states at paragraph 32 of his affidavit that, "*so complete and sweeping was the seizure of items from the premises of the Claimants that only the carpet on the floor, the empty filing cabinets, desks and chairs were left behind. Some personal items and equipment owned by employees were also taken.*" Ms. Anderson, a file clerk for the Appellants, states at paragraph 8 of her affidavit, "*They took my personal poems, book, and some pictures of my son and I that I had on my desk. They took everything including the garbage bin from under my desk.*" Ms. Anderson then states at paragraph 13 "*At no time did the police conduct any search of the documents at the office. They just seized everything.*"

[13] In the Appellants' view the aforementioned evidence was uncontested and accepted by the learned trial Judge the learned trial judge erred when he stated that there is no basis to grant vindicatory damages.

[14] On this ground the Respondent simply reiterates its contention that there was no evidence before the Court to make an award for damages in favour of the Appellants.

GROUND 3: COSTS ORDER

[15] The Appellants submit that the learned judge's decision to order costs against the Appellants particularly in light of the decision not to award damages to the Appellants further undermines the weight of the declaration made in the Appellants' favour. The Appellants contends that the finding of a breach of one of the fundamental rights and freedoms ought not to be marked by an award of costs against the Appellants. Such a finding the Appellants claim was a breach of Part 56.13 of the Supreme Court Civil Procedure Rules ("**CPR**") which provides that, "no order for costs may be made against an applicant for an administrative order unless the court considers that the applicant has acted unreasonably in making the application or in the conduct of the application."

[16] The Respondent contends that the decision of the learned judge to award the Respondent costs in the sum of \$60, 000.00 aligned with Rule 63.6(2) of the CPR which provides that, "... the Court may however order a successful party to pay all or part of the costs of an unsuccessful party or may make no order as to costs."

DISCUSSION

[17] It is well established that Section 20 of the Constitution of Belize confers on the Court extensive powers to provide redress, at the Court's discretion, for breaches of Sections 3 to 19. The Section provides as follows:-

“(1) If any person alleges that any of the provisions of sections 3 to 19 inclusive of this Constitution has been, is being or is likely to be contravened in relation to him (or, in the case of a person who is detained, if any other person alleges such a contravention in relation to the detained person), then, without prejudice to any other action with respect to the same matter which is lawfully available, that person (or that other person) may apply to the Supreme Court for redress.

*The Supreme Court shall have original jurisdiction-
a) to hear and determine any application made by any person in pursuance of subsection (1) of this section...
and may make such declarations 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.”*

[18] The Caribbean Court of Justice in *Maya Leaders Alliance and others v Attorney General of Belize* [2015] CCJ 15 clearly and succinctly determined that in order for damages to be awarded in a constitutional claim, the claimant must show:-

- a. a specific constitutional right;
- b. a contravention of the right; and
- c. that a monetary award is appropriate in the circumstances.

[19] In considering the issues before me I find paragraphs 44, 47, 48, 58, 59 and 60 of *Attorney General and the Financial Intelligence Unit v Titan International Securities Inc Civil Appeal No. 6 of 2016* very instructive. At those paragraphs, Justice of Appeal Hafiz-Bertram clearly states as follows:

“44. [t]he trial judge in the instant case, correctly stated the law, under the heading of “The Law in relation to Damages”, that an award of damages may be awarded for a contravention of constitutional rights, but such award is discretionary. Also, that damages must be proven.

...

...

47. *In Maharaj v Attorney General of Trinidad and Tobago (no. 2) [1978] 2 All ER 670, the Appellants who had been imprisoned for seven days for contempt of court had applied to the High Court for redress for the contravention of his constitutional rights not to be deprived of his liberty except by due process of law. Lord Diplock explained the meaning of redress at paragraph 679 of the judgment as thus:*

‘What then was the nature of the ‘redress’ to which the Appellants was entitled? Not being a term of legal art it must be understood as bearing its ordinary meaning, which in the Shorter Oxford Dictionary is given as: ‘Reparation of, satisfaction or compensation for, a wrong sustained or the loss resulting from this.’

48. *As a result of that definition, the Privy Council for the first time made an award of damages by way of constitutional relief. However, this is not the only form of redress. The CCJ in the Maya Leaders Alliance case at paragraph 61 discussed this issue and relied on the case of James v Attorney General of Trinidad and Tobago [2010] UKPC 23. The CCJ said that the Privy Council in the latter case “underscored that to treat entitlement to monetary compensation as automatic where violation of a constitutional right had occurred would be to undermine the discretion that was invested in the court by section 14 of the Trinidad and Tobago Constitution (the equivalent of section 20) and would run directly counter to jurisprudence in the area. In that case the Board stopped at the award of a declaration and did not award monetary compensation because the applicant had suffered no material disadvantage from the violation.*

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58. *The trial judge, as shown from the above awarded pecuniary damages to Titan, being the value of its business. It is without a doubt that he was faced with a very difficult task since there*

were many factors before him which he had to consider. In the end, it is my view, that he erred in awarding pecuniary damages since the business could no longer lawfully continue its operation.

Was Titan entitled to non-pecuniary damages?

59. *Damages under this heading was not awarded by the trial judge and this was not sought by Titan. However, I will briefly discuss it, since the issue of damages for emotional stress was raised during the hearing of the appeal.*
60. *The police officers had a lawful warrant but conducted the search and seizure on Titan's premises excessively. They acted in a very high-handed manner during the operation. The officers of Titan were not given a copy of the warrant and no list of the properties that were sized had been provided to them. It is obvious that Titan's employees must have suffered some emotional distress during the search and seizure. The question is whether Titan, a company, was entitled to damages for emotion distress. The authorities show that damages for emotional distress are available only to individuals (natural persons) but not legal persons." *Emphasis mine.**

[20] It is clear from the transcript of the proceedings and the oral ruling of the trial judge that the sole reason the Appellants were not granted compensatory damages in addition to the declaration was simply because the evidence provided by the Appellants to base such an assessment was not provided in accordance with an earlier Court Order relating to the same; as such the evidence was inadmissible. On this basis Counsel's submissions in support of the same were abandoned by Counsel for the Appellants in the Court below.

[21] The Appellants did not challenge the determination that the evidence was inadmissible, neither was any further evidence provided nor at the very least an estimate given to assist the Court in quantifying the damages claimed. While I do agree, as the cases clearly show, that a court has a wide discretion in constitutional cases it is incumbent on any claimant to provide a basis for the assessment and quantification of any damage for which compensation is claimed. It is not sufficient to merely state, for example that the business' reputation was damaged or to direct the court to instances in the evidence where damage is purported to occur. The

learned trial judge expressly concluded that he could not make an award for vindictory damages as he had, "... no basis on which [to] properly assess those damages and I am not going to make an Order to that effect." I am not persuaded that the learned judge's conclusion, based on the evidence before him, was plainly wrong in the circumstances and as such Grounds 1 and 2 must fail.

[22] I do, however, agree with the Appellants' contention that the learned trial judge's decision to award the Respondent costs in the sum of \$60, 000.00 on the basis that the Appellants' success was purely academic and that any real success would have been if significant damages or the damages sought had been granted undermines the function and weight of the declaration that the search and seizure was a violation of the Appellants' constitutional rights.

[23] The learned judge opined in his oral ruling that, "the evidence is clear that the State did carry out a search and seizure on 9th September, 2014 of the Claimants property which were in excess of that which ought to have taken place. It was indiscriminate, it should have complied with the terms of the warrant and it wasn't. And you know, there is nothing else one can say." Proving to a Court that a declaration of a breach of a fundamental right based in an indiscriminate search and seizure is warranted is not and cannot be deemed an academic exercise simply because monetary damages were either not established by the Appellants or awarded by the Court. A declaration is a sufficient and valid source of constitutional relief, to make such an award and then grant costs against a claimant for the reasons aforementioned detracts from the weight and power of the declaration and in my view is plainly wrong.

[24] I have considered Parts 56.13 and 63.6(2) as put forward by the Appellants and Respondent respectively, the conduct of the parties at the hearing below and shown in the transcript, the ruling of the learned trial judge and the dicta of Sachs, J in the *Biowatch Trust v Registrar: Genetic Resources and Others [2009] ZACC 14* which I find illuminating and consider that the learned judge ought to have ordered each party to bear their own costs.

[25] In the premises I would allow the appeal in part, the order by the trial judge granting costs to the Respondent is set aside. The declaratory order of the trial judge that, “the search and seizure exercise carried out by the State on the 9th September 2014 against the Claimants contravened the Claimants constitutional rights by seizing property other than documents and information (in hard or soft copy or electronic form) relating to the Claimants” along with the decision not to grant vindicatory damages should be upheld.

[26] Each party shall bear its own costs of the hearing below and the appeal.

DUCILLE JA