



[2018] JMFC FULL 4

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CONSTITUTIONAL DIVISION

CLAIM NO. 2017HCV01084

(No 2)

**THE HONOURABLE MR JUSTICE BRYAN SYKES
THE HONOURABLE MR JUSTICE DAVID FRASER
THE HONOURABLE MR JUSTICE KIRK ANDERSON**

BETWEEN	MERVIN CAMERON	CLAIMANT
AND	ATTORNEY GENERAL OF JAMAICA	DEFENDANT

IN OPEN COURT

Hugh Wildman and Barbara Hines for the claimant

**Kamau Ruddock and Kimberly Clarke instructed by the Director of State
Proceedings for the defendant**

**Constitutional law – Violation of right to trial within a reasonable time – Order for
constitutional damages as compensation – Components and level of
compensation – Charter of Fundamental Rights and Freedoms, Sections 14 (3)
Time at which it is most appropriate for assessment to be undertaken**

September 4, 2018

SYKES J

- [1] I have read the reasons advanced by David Fraser J and concurred in by Kirk Anderson J. Both judges have concluded that in this case it would be better that the assessment of damages await the disposition of the matter. I am in agreement with this particularly for the reason that in this particular case, Mr Cameron is charged with an offence that, at the very least, attracts a substantial custodial sentence if convicted. He is charged with murder. There is not sufficient material in the evidence presented to know whether manslaughter would arise for consideration. I am not saying that there is no evidence of manslaughter and neither am I saying that there is. What I am saying is the evidence presented did not enable an assessment either way. If Mr Cameron is convicted of manslaughter, there is the possibility of a non-custodial sentence, depending on all the circumstances of the case. Even then, the normal sentence for manslaughter is a term of imprisonment.
- [2] From this court's experience the time spent by Mr Cameron in custody so far at this stage has not exceeded the normal range of custodial sentences for murder and so any damages over and above nominal damages, at this stage, would not be awarded. It must be noted that in saying this I am mindful that this case is not a false imprisonment claim but one for violation of the reasonable time of the Charter of Fundamental Rights and Freedoms. However, the reason for giving imprisonment such significance in this case is that it is a factor to be taken into account when determining the appropriate sum to be awarded because the failure by the state to abide by the constitutional standard may have resulted in Mr Cameron spending a longer time in prison than he would have, had the matter proceeded a timely way in accordance with the constitutional standard.
- [3] In light of the decision of the majority regarding the remedy for Mr Cameron and having regard to the possibility that Mr Cameron may be acquitted or convicted it would not be wise, at this stage, to assess the damages to which he may be entitled. If he is acquitted, then he is on quite good ground to argue that had the

matter proceeded in a timely way then his time in custody would have been greatly reduced and this may open the possibility to an award of damages that is more than nominal. On the other hand, if he is convicted of either murder or manslaughter, then it would be necessary to see whether the sentence imposed is such that his being in custody was inevitable and thus his time in custody in the context of a breach of the reasonable time requirement would not attract more than nominal damages. As Lord Dyson put in *R v (WL (Congo)) v Secretary of State for the Home Department (JUSTICE intervening)* [2012] 1 AC 245 if it was inevitable that the person would have been detained even if the law was properly applied then he or she would have suffered no substantial loss or damage as result of the violation and in those circumstances, only nominal damages are to be awarded.

- [4] All of what has been said is to support Fraser J's point that we do not have sufficient information, at this stage, to embark upon a proper assessment of damages beyond nominal damages and therefore the more prudent course is to await the final disposition of Mr Cameron's matter.

D. FRASER J

INTRODUCTION

- [5] The claimant brought a constitutional claim seeking declarations that his continued arrest without his being tried and the then ongoing conduct of a Preliminary Inquiry against him into charges of murder, constituted a breach of section 14(3) of the Constitution. Section 14(3) guarantees that every person who is arrested or detained in a criminal matter shall be tried within a reasonable time. He also sought an order staying the Preliminary Inquiry and requiring his release forthwith.
- [6] After hearing arguments on October 8, 2017, on March 22, 2018 this Court made the following Order in the claim:

- a) It is hereby declared that the claimant's constitutional right to be tried within a reasonable time under section 14(3) of the Constitution has been violated;
- b) By a majority (Sykes J dissenting):
 - i) In the event the claimant has to date been unable to take up the grant of bail, the bail offer is reduced to \$300,000 with one or two sureties. Claimant to report to the nearest police station to his place of abode, every Monday and Saturday between the hours of 6 a.m. and 8 p.m. Any travel document of the claimant to be surrendered to the police. Stop order in respect of the claimant to be placed at all air and sea ports;
 - ii) Pursuant to the powers granted to the Constitutional Court under section 19 of the Constitution, the claimant is awarded constitutional damages to be assessed, as compensation for the breach of his constitutional rights under section 14(3) of the Constitution. Written submissions on the quantum of damages should be filed by counsel for the claimant on or before April 13, 2018 and by counsel for the defendant in reply, on or before April 27, 2018;
 - iii) Unless there is earlier intervention by the Director of Public Prosecutions the Preliminary Inquiry must be completed and a determination made whether the claimant should be committed for trial on or before May 30, 2018, failing which, any trial of the claimant on the charges on which he is currently before the Parish Court shall be stayed;
 - iv) If the claimant is committed for trial or placed before the circuit court on a voluntary bill of indictment, his trial shall commence before the end of the Hilary Term 2019, failing which the trial of the charges shall be stayed unless the trial is delayed due to the fault of the defence. It is

recognized that this order may result in the claimant's case "leapfrogging" other matters. However, in the peculiar circumstances of this case, this order is necessary to prevent further breach of the rights of the claimant.

c) Costs awarded to the claimant to be agreed or taxed.

[7] The reasons are contained in the judgment ***Mervin Cameron v Attorney General*** [2018] JMFC FULL 1.

THE WRITTEN SUBMISSIONS ON DAMAGES

Counsel for the Claimant

[8] Counsel for the claimant submitted that the award of damages should reflect the extent of the aggravation suffered by the claimant at the hands of the state. Counsel maintained that the Attorney General did not challenge the assertions in the affidavit of the claimant. Counsel relied heavily on the case of ***Merson v Cartwright & Anor (Bahamas)*** 2005 UKPC 38 (13 October 2005). There the appellant was awarded damages for assault, battery and false imprisonment (\$90,000), malicious prosecution (\$90,000) and breach of her constitutional rights (\$100,000). On appeal, the Court of Appeal decided *inter alia* that the constitutional damages 'improperly and erroneously compensated twice for the same unlawful act'. The matter was further appealed to the Judicial Committee of the Privy Council (the Board).

[9] On the issue of duplication, the Board found that whilst there was some overlapping between the torts and the constitutional guarantees, there was no scope for the inference of duplication when the trial judge's judgment was read as a whole. The Board held that considering the authorities' contempt for the rule of law, it was a proper case for the award of vindictory constitutional damages.

[10] Lord Scott of Foscote writing for the Board, cited with approval the outline of the function of constitutional damages also by the Board in the earlier case of ***Attorney-General of Trinidad and Tobago v Ramanoop*** [2005] 2 WLR 1324. He then referred to the power granted by section 14 of the Constitution of Trinidad and Tobago to award remedies for contraventions of fundamental rights and freedoms, which is similar to section 19 of the Jamaican Constitution. He noted at paragraphs 19 - 20 that:

When exercising this constitutional jurisdiction the court is concerned to uphold, or vindicate, the constitutional right which has been contravened. A declaration by the court will articulate the fact of the violation, but in most cases more will be required than words. If the person wronged has suffered damage, the court may award him compensation. The comparable common law measure of damages will often be a useful guide in assessing the amount of compensation. But this measure is no more than a guide because the award of compensation under section 14 is discretionary and moreover, the violation of the constitutional right will not be coterminous with the course of action at law.

An award of compensation will go some distance towards vindicating the infringed constitutional right. How far it goes will depend on the circumstances, but in principle, it may well not suffice. The fact that the right violated was a constitutional right adds an extra dimension to the wrong. An additional award not necessarily of substantial size, may be needed to reflect the sense of public outrage, emphasize the importance of the constitutional right and the gravity of the breach, and deter further breaches...

[11] The Board found that under the comparable provisions of the Bahamian constitution these principles were applicable, and that an award of damages for constitutional redress should only be made where the circumstances of the complaint include some feature which makes it appropriate to adopt that course. In such an event, the nature of damages may be compensatory but should always be vindicatory of the right of the complainant, though its purpose was not punitive to teach the executive not to misbehave.

[12] Counsel for the claimant also relied on ***Inniss v Attorney General of Saint Christopher and Nevis*** [2008] UKPC 42, to demonstrate that constitutional

damages may properly be awarded, even where the constitutional contravention does not involve a fundamental right. *Inniss'* case was a claim for constitutional relief including damages, based on the appellant's contention that the letter which purported to remove her from office as Registrar was null and void, being in contravention of s. 83 (3) of the Constitution. The Board considering: 1) the distress that must have been caused by the summary nature of the dismissal which was devoid of reasons; 2) the risk of damage to the appellant's future employment prospects; and 3) the need to deter the executive from resorting to similar such future breaches, held that constitutional damages were required to adequately vindicate the appellant's constitutional rights.

[13] ***Devon White v Lenworth Cammock and the Attorney General*** Claim No HCV 787/2006 (jud. del. April 2, 2009) was the benchmark used by counsel for the claimant to ground his calculation of constitutional damages. The claimant was shot and injured by a police officer. He was detained for 27 days in hospital chained to his bed and on his release from hospital he spent a further 3 days in a police station lock up. Charges brought against him for several offences including separate charges of illegal possession of firearm and ammunition, shooting with intent, shop breaking and larceny were dismissed. He sued claiming damages, exemplary and aggravated damages for assault, false imprisonment, and malicious prosecution.

[14] The court found, amongst other things, that the claimant's liberty was restrained against his will and without lawful justification for 30 days. The award for false imprisonment was computed at \$90,000 for the first day and a further \$50,000 per day for the other 29 days, yielding a total of \$1,540,000. Using the Consumer Price Indices that award updated to April 2018 is just over \$2.74M. Extrapolating from that figure, counsel submitted that \$25 Million was fair compensation for the period of one year which he considered the claimant was falsely imprisoned. Counsel submitted that an extra \$10 Million should be added to emphasize the importance of the constitutional provision in question, given that the manner in which the preliminary enquiry was conducted demonstrated a wanton disregard

of the right of the claimant to have his trial within a reasonable time. A total award of \$35 Million was therefore sought.

Counsel for the Defendant

- [15] Counsel for the defendant submitted that Constitutional damages are in fact “public law” damages and as such based on the facts of each individual case, where appropriate, they may serve the three functions of compensation, vindication and deterrence¹. Counsel cautioned that in assessing such damages the court should seek to avoid overcompensation and to be mindful of issues of remoteness in respect of causation.
- [16] Counsel cited the case of ***Patrick Whitely v The Attorney General*** [2016] JMFC Full 6, where constitutional damages was sought to compensate for the sentencing to death of the claimant, in breach of section 29(1) of the Juveniles Act, in circumstances where he was under the age of 18 years at the time when the murder for which he had been convicted had occurred. Damages were also sought based on the fact that he was detained beyond the period of his likely release.
- [17] Counsel pointed out that at paragraph 81 of the judgment Hibbert J cited the case of ***Seepersad and Panchoo v A.G.*** [2012] UKPC 4 and quoted paragraph 38 as a general approach to the question of redress for a breach of constitutional rights as follows:

[81] An approach to the question of redress for a breach of constitutional rights is to be found at paragraph 38 of the decision of the Board in ***Seepersad and Panchoo v. A.G.*** It states:
“38. It is well established that the power to give redress under section 14 of the Constitution for a contravention of the applicant’s constitutional rights is discretionary: *Surratt v. Attorney General of*

¹ See generally Chapter 6 – Constitutional Damages Worldwide, K. Cooper-Stephenson

Trinidad and Tobago [2008] UKPC 38, para 13, per Lord Brown of Eaton-under Heywood. The rights protected by section 4 are, as Lord Bingham of Cornhill said in the first stage of the appeal before the Board in that case, at least in most instances, not absolute: *Surratt v. Attorney General of Trinidad and Tobago* [2007] AC 655, para. 33. There is no constitutional right to damages. [My emphasis]. In some cases a declaration that there has been a violation of the constitutional right may be sufficient satisfaction for what has happened: *Inniss v. Attorney General of St. Christopher and Tobago* [2008] UKPC 42, para. 21; *James v. Attorney General of Trinidad and Tobago* [2010] UKPC 23, para. 37. In others it will be enough for the court to make a mandatory order of the kind that was made in this case, when Madam Dean-Armorer ordered that the terms of the appellants' detention should be determined by the High Court. As Lord Kerr said in *James v. Attorney General of Trinidad and Tobago*, para. 36, to treat entitlement to monetary compensation as automatic where violation of a constitutional right has occurred would undermine the discretion that is invested in the court by section 14. It will all depend on the circumstances."

[18] From the above passage it should be noted that the court in *Seepersad* highlighted that:

- a) The power to give redress for a contravention of a constitutional right is discretionary;
- b) There is no constitutional right to damages; and
- c) Where there is a constitutional violation the appropriate remedy will depend on the circumstances.

[19] Counsel submitted that the starting point should be nominal damages with compensatory damages being awarded only if it was shown that the claimant has been detained for a longer period than he would have, had there not been a violation of his rights under section 14 (3) of the Constitution. This submission was based on the approach in *Everton Welch v The Attorney General of Antigua and Barbuda* [2013] UKPC 21 where at paragraph 13 it is stated:

It has also been accepted by the respondent that the appellant is entitled (at least) to nominal damages, in that he was detained under an order of the court that has been subsequently found to be invalid. **But compensatory damages beyond nominal**

compensation may only be awarded if it is shown that the appellant has been detained for a longer period than he would otherwise have been if the appropriate and lawful sentence had been passed. (Emphasis added).

[20] Counsel submitted that the evidence was that the claimant was arrested sometime in March 2013, the preliminary inquiry that subsequently commenced later stalled and the claimant was first offered bail in September 2017. Counsel argued that the detention of the claimant should be adjudged as 4 years, as once bail was granted, time could no longer run against the state. Having regard to the opinion of Sykes J (as he then was) that the trial should have concluded by January 2015 ², it was accepted by counsel for the defendant that the claimant would have been detained for a shorter period, had the proceedings in the criminal court been expeditious. In those circumstances, counsel submitted that it would be inappropriate to award nominal damages in this case.

[21] To determine the appropriate amount of compensatory damages, counsel submitted that as indicated in *Patrick Whitely* 1) the actions of the agents of the state as well as 2) the conduct of the claimant in particular whether he contributed to his own incarceration, were relevant considerations. Counsel argued that there was no evidence suggesting that agents of the state acted with malice or any improper motive. Rather, the delay was occasioned by a failure to manage the progression of the case, given the non-attendance of witnesses and the outstanding issues that should have been resolved by the investigating officer. Therefore, no punitive award of damages should be granted. See *Everton Welch v The Attorney General of Antigua and Barbuda* [2013] UKPC 21.

² See para 161 of the reasons for judgment in *Mervin Cameron v Attorney General* [2018] JMSC FULL

- [22] Counsel advanced that the court should be guided by the dictum of Lord Nicholls in *The Attorney General v Ramanoop* [2005] 2 WLR 1324 who stated at paragraph 19 that compensatory constitutional damages are designed, “...to reflect the sense of public outrage, emphasise the importance of the constitutional right and the gravity of the breach and deter further breaches.” The court in *Patrick Whitely* having acknowledged that Whitely was detained beyond the period of his likely release awarded Two Million Dollars for the breach of his constitutional rights. In that matter, despite making his application for a review of his detention on January 26, 2010, a process in which a decision ought to have been made within a few months, the application was not determined until January 24, 2012. Further, although ordered to be released on January 31, 2012, he was not released until March 13, 2012.
- [23] In the circumstances of this case counsel posited that a fair award for the breach of the defendant’s constitutional right to a fair hearing within a reasonable time, is no more than Five Million Dollars (\$5,000,000.00). This taking into account the importance of the right and the gravity of the breach, but in a context where there was no suggestion of malice or ill will on the part of the Crown.

ANALYSIS

- [24] It is necessary to point out at the start of this analysis what I consider to be errors in the written submissions advanced. At paragraph 13 the submissions of the claimant state that, “*In the judgment of Sykes J, with whom the other judges agreed, the Claimant would have been in custody unreasonably for one full year.*” In my majority judgment with which my brother Anderson J agreed, I stated at paragraph 266 that “...no benchmark or rough guidelines have yet been established as an approximate reasonable time for preliminary inquiries to be completed. It may be that the time lines suggested by Sykes J (see paras 154 - 162 ante) may be appropriate but in the absence of having the opportunity to examine and analyse available data, which were not put before us, I am not sure.”

[25] Counsel for the defendant also proceeded mindful of the time lines outlined by Sykes J in paragraphs 160 – 161. While it is understandable that counsel sought a defined timeline to aid their computation of damages, and the only such timeline was proposed in the judgment of Sykes J, the correct reflection is that the majority decision did not specifically stipulate a definitive date after which the reasonable time guarantee had been violated. What was intimated was that by any measure, in a circumstance where the preliminary inquiry as to whether or not a trial should be held was stalled after four years with no end in sight, it was manifest that the reasonable time guarantee had been breached. I will return to this point later.

[26] It is also important to note early, that neither counsel cited any authority, directly on point, that addressed the award of constitutional damages for breach of the right to trial within a reasonable time, either before a trial has commenced, as is the present situation, or after trial, whatever the outcome. Both counsel relied primarily on cases that concerned constitutional damages awarded in circumstances where there was also the commission of some underlying tort(s) such as false imprisonment, assault, battery or malicious prosecution, or the breach of the constitutional right was such that the result, outcome or final impact of the violation, was known, or could reasonably be assumed.

[27] False imprisonment involves the unlawful deprivation of liberty. Though the jurisprudential underpinnings of that tort are related to the issue of the breach of the constitutional right to trial within a reasonable time where an accused is on remand awaiting trial, the concepts are not susceptible of direct cross-application in every case. It is not an automatic conclusion once a point has been reached where pre-trial delay becomes unreasonable, that any period a defendant spends on remand thereafter, is one during which he would *ipso facto* be falsely imprisoned. This is particularly the case where a stay has not been granted and the possibility remains that the defendant may be convicted of an offence, the penalty for which will exceed the period the defendant spends on remand.

- [28] Here the analysis in *Everton Welch v The Attorney General of Antigua and Barbuda* will be useful to illustrate the point. In that case the appellant who was under eighteen at the time he committed the murder for which he was convicted was sentenced to be detained during Her Majesty's pleasure. The sentence having been challenged, it was held to be in breach of the constitutional separation of powers and that the words of the relevant act should be modified by substituting "the court's pleasure" for "Her Majesty's pleasure". The court further held that no award of damages was appropriate but that a review of his detention should be conducted. When this review was done by another court months later, his immediate release was ordered. On appeal, the Court of Appeal agreed there was no basis for an award of damages.
- [29] On further appeal the Judicial Committee of the Privy Council held that the claimant was entitled to at least nominal damages as he had been detained under an order of the court that was subsequently found to be invalid. However, the Board was of the clear view that the question of entitlement to compensatory damages was dependent on a determination of what sentence should have been passed had the constitution been observed. At paragraph 13 the Board said, "*...compensatory damages beyond nominal compensation may only be awarded if it is shown that the appellant has been detained for a longer period than he would otherwise have been if the appropriate and lawful sentence had been passed.*"
- [30] Of course the key distinctions between the case of *Everton Welch* and the instant matter is that in *Welch* the claimant had already been convicted and had spent 19 years in detention. Though there was no issue with the conviction, there existed a real possibility that the claimant would have been detained for a shorter time had the sentence been lawfully passed. In Cameron's case there is uncertainty if he will be convicted, however there is certainty that if he is convicted the sentence passed will greatly exceed the time he has already spent on remand.

[31] At paragraph 251 of the initial judgment in this matter I stated that:

I agree with Sykes J's consolidation of the questions (outlined at para 148 ante) that should be asked by the court in seeking to determine whether there has been a violation of a defendant's constitutional right to trial within a reasonable time. I have only one reservation. In respect of the remedy of compensation, I would not stipulate that compensation has to be assessed at the conclusion of the trial. The advantage of assessing compensation at the end of the trial is that all factors are then known. Post trial assessment of compensation would be the norm where compensation is seen to be an appropriate remedy. However, there may be rare circumstances where compensation can be properly awarded independent of the eventual outcome of the trial, in recompense for the infringement of the guarantee of trial within a reasonable time.

[32] Having considered the submissions from counsel I am now of the view that this case falls within the norm that should await post trial assessment. This is starkly demonstrated by the concession by counsel for the defendant at paragraph 15 of her written submissions that compensatory as opposed to just nominal damages would be appropriate as "*...it is accepted that the Claimant would have been detained for a shorter period had the proceedings in the criminal court been expeditious*". That however assumes an outcome of which we are yet unsure. That would have been the case if the proceedings had been more expeditious and the claimant had been acquitted. If on the other hand expeditious proceedings had led to his conviction, his detention would be ongoing for a long time yet and damages due would likely be nominal, especially if his sentence was reduced as a remedy, for the violation of section 14(3), over and above the required mathematical reduction of sentence by the time spent on remand³.

[33] I am still of the view that there may be cases where damages can be assessed prior to the resolution of the trial, primarily where a non-custodial sentence would

³ See in this regard cases such as *Callachand v The State* [2008] UKPC 49 (PC); *R v da Costa Hall* (2011) 77 WIR 66 (CCJ) (AJ); *Meisha Clement v R* [2016] JMCA Crim 26; (2016) 88 WIR 449 and *Richard Brown v R* [2016] JMCA Crim 29.

normally be imposed if there was a conviction. However, it may still prove problematic as postponing the assessment until after trial affords all parties concerned in the process the best opportunity to address the full damage suffered and the best way to effect compensation where that is appropriate. It now therefore appears, that for the reasons identified, it will only be in the most exceptional circumstances that it will be convenient for damages for breach of section 14(3) to be assessed ahead of the conclusion of a trial when the outcome would then be known and all factors that could touch and concern the issue of compensation are ascertained or reasonably ascertainable.

[34] The court appreciates that based on the initial judgment in this matter counsel were faced with the task of recommending a quantum of compensatory damages and justifying that recommendation. The court did acknowledge that the task would have been challenging. The court now concludes that on further consideration of the matter, an appropriate assessment of damages should await the determination of the criminal charges against the claimant in the Home Circuit Court. It is useful to highlight here that at paragraph 228 of the initial judgment, I quoted *in extenso* paragraph 24 of Lord Bingham's opinion in the case of ***Attorney General's Reference (No 2 of 2001)*** [2004] 2 AC 72 . It is only necessary now to quote aspects of paragraph 24. Referring to the appropriate way to address an established breach of the right to trial within a reasonable time Lord Bingham said,

If the breach is established before the hearing, the appropriate remedy may be a public acknowledgement of the breach, action to expedite the hearing to the greatest extent practicable and perhaps, if the defendant is in custody, his release on bail.

[35] He then went on to say later in the paragraph that:

If the breach of the reasonable time requirement is established retrospectively, after there has been a hearing, the appropriate remedy may be a public acknowledgement of the breach, a reduction in the penalty imposed on a convicted defendant or the payment of compensation to an acquitted defendant.

[36] I previously indicated my disagreement with Lord Bingham's omission of the possibility of damages being an appropriate remedy, where a breach is established before the hearing. I disagree, especially as one possibility is always the eventual acquittal of an accused, if a matter that has been the subject of unreasonable delay established prior to the trial, nonetheless proceeds, as some remedy other than a stay was granted. It should not be beyond the compass of the court to hold that damages are an appropriate remedy for the pre-trial proof of a violation of the right to a hearing within a reasonable time, but to stipulate that the quantum of damages be assessed when the outcome of the trial is known.

[37] There will no doubt be the contention that this approach devalues the section 14(3) right and the remedy afforded in this matter may be no more than an enhanced declaration, especially if the claimant is eventually convicted. I disagree. Though not the beneficiary of an immediate stay, which was his preferred remedy, the claimant in this matter in any event stands to reap significant benefit from the establishment of the violation of his section 4(3) right. Firstly, a stay is still a possibility if the crown does not meet the stipulated timeline and the defence is not at fault. Secondly if he is acquitted, compensatory as opposed to nominal damages would be due as he would have been liable to have been acquitted and released from custody earlier, had the conduct of the matter been more expeditious.

[38] This is where the jurisprudence on false imprisonment so heavily relied on by both parties would become relevant. There of course remains the issue of the date from which it is to be considered that a reasonable time expired. If there is no further jurisprudence on the matter at any time when a future assessment needs to be conducted, counsel will no doubt revert to the timelines suggested by Sykes J. However, by then, there may have been time for the fulsome analysis I indicated was necessary to properly inform time guidelines and acceptable standards of delay. If so, it would seem appropriate that such guidelines should then guide the relevant date for the purposes of assessment.

[39] A post-trial award of damages for violation of the constitutional right to trial within a reasonable time, was made in *Oatile v The Attorney General* 2010 (1) BLR 404 (HC), a case from Botswana. The claimant was acquitted on a charge of murder after a delay of over 12 years from the date of his arrest to the date of the commencement of his trial. In arriving at an award of P \$100,000, Dingake J reviewed a number of cases including *Merson v Cartwright and another* relying in particular on the analysis at paragraph 18 of that case. It is however significant that there appears to be a paucity of authority in this area.

ANDERSON J

[40] Having read a draft of the reasons for judgment as set out by my brother judge - Fraser, J., I agree with his reasoning and conclusion and have nothing useful to add.

SYKES J

ORDER

[41] The assessment of damages in this matter is deferred, pending the final determination of the criminal charges against the claimant in the Home Circuit Court. The assessment shall be conducted by a single judge, who shall manage that hearing, in such manner as may be deemed fit, in all the circumstances.