

**IN THE SUPREME COURT OF BELIZE A.D. 2022**

**Claim No. 29 of 2022**

**Between**

**The Honourable Hugo Patt**

**Claimant**

**And**

**Edmund Andrew Marshalleck Jr.**

**1<sup>st</sup> Defendant**

**Luke Martinez**

**2<sup>nd</sup> Defendant**

**Marcello Blake**

**3<sup>rd</sup> Defendant**

**Attorney General of Belize**

**4<sup>th</sup> Defendant**

**BEFORE THE HONOURABLE MADAM JUSTICE LISA SHOMAN**

**HEARING DATE: April 6<sup>th</sup> 2022**

**WRITTEN SUBMISSIONS:**

**Claimants: May 1<sup>st</sup>, April 1<sup>st</sup>, and March 14<sup>th</sup>, 2022.**

**Respondents: March 30<sup>th</sup>, 2022.**

**APPEARANCES**

**Rt. Hon Dean O. Barrow SC & Mr. Adler Waight for the Claimant**

**Godfrey Smith SC and Mr Hector Guerra for 1<sup>st</sup> - 3<sup>rd</sup> Defendants**

**Douglas Mendez SC & Ms. Iliana Swift for the 4<sup>th</sup> Defendant**

## **JUDGEMENT ON CLAIM 29 OF 2022**

1. By Fixed Date Claim Form dated 25<sup>th</sup> February 2022, the Claimant, the Honourable Hugo Patt challenged the validity of the Findings and Report of the Commission of Inquiry (“the COI”) of which the first three Defendants were members, claiming that his right to equal protection under law was infringed.
2. The Respondents did not resist the Application for grant of leave to bring this claim for Judicial Review which was heard on February 15, 2022. On that date, a Consent Order was issued giving directions for the hearing of this Claim along with Claim Number 33 of 2022.
3. After detailed discussions, the parties were able to arrive at an agreed position and were prepared to consent to the following orders:
  - a. A declaration that the 1<sup>st</sup> through 3<sup>rd</sup> Respondents infringed the Claimant’s right to be heard by failing to issue a Salmon letter, disclose certain documents and provide the Claimant with the opportunity to respond to material that could cast an unfavourable light on him;
  - b. An order of certiorari quashing those parts of the Report of the Commission of Inquiry into the Sale of Government Assets dated the 6<sup>th</sup> January, 2022, more particularly highlighted in red in a copy of the Report attached hereto;
  - c. A declaration the Claimant’s constitutional right to the protection of the law has been infringed;
  - d. An order that damages, if any, be assessed and paid by the 4<sup>th</sup> Respondent to the Claimant;
  - e. An order that the costs of the Claim be paid by the 4<sup>th</sup> Respondent to the Claimant.

4. The Parties sought approval of the Court for the Order, which was granted, and therefore the remaining issue for this Court is that of damages for the admitted breach of the Claimant's right to natural justice and the Claimant's constitutional right to protection of the law.
5. The Claimant is entitled to an award of \$95,000.00 Belize Dollars for compensatory damages and \$50,000.00 Belize Dollars in vindicatory damages, as well as costs to be agreed or assessed, for the reasons provided below.

### **DAMAGES – THE LAW**

6. The Claimant claims compensation for the injury to his reputation caused by the publication of parts of the COI Report which concern him and for the distress and inconvenience experienced; and also claims an award of vindicatory damages.
7. Any person who alleges that any of the fundamental rights provisions of the Constitution has been contravened in relation to him or her is entitled to apply under section 20<sup>1</sup> for “redress”.
8. An order for the payment of compensation is a form of redress to which a victim of a violation of constitutional rights is entitled. Thus, a person whose right to natural justice or protection of the law is infringed (such as was admitted by the 1<sup>st</sup> to 3<sup>rd</sup> Claimants in this case) is arguably entitled to monetary compensation for such violation and infringement, and in this claim, such damages are by consent to be paid by the 4<sup>th</sup> Defendant.
9. The written submissions provided by the Claimant <sup>2</sup> in reply to the 4<sup>th</sup> Defendant's submissions on Damages state clearly that the Claimant has “...<sup>3</sup> no quarrel with the

---

<sup>1</sup> The Constitution of Belize, Section 20

<sup>2</sup> Claimant's Written Submissions Reply to the 4th Defendant's Submissions dated April 1, 2022

<sup>3</sup> Ibid, Paragraph 3

principles of law set out by the Attorney General governing the award of damages for breach of Constitutional rights”.

### **DAMAGES – THE FACTS**

10. The Claimant does however dispute the application of the law by the 4<sup>th</sup> Defendant to the facts in this claim.<sup>4</sup>
  
11. In written submissions provided by Counsel for the Attorney General, submits that “...the Claimant is entitled to an award of compensation for the distress and inconvenience suffered as a consequence of the failure to accord him a right to answer the criticisms levelled at him.”<sup>5</sup> It is conceded that the “...level of distress he experienced is no doubt influenced by the reputational damage he suffered”<sup>6</sup>. It is at this juncture that the views of parties diverge.
  
12. Counsel for the AG submits that the Claimant “...has provided very little by way of evidence of the distress and injury to feelings which he has suffered.”<sup>7</sup> and that “it is to be noted that the Claimant nowhere seeks to refute the underlying findings of fact on which the criticisms are based”<sup>8</sup>. According to the AG’s submissions, “the Claimant premises his claim on the assumption that he has answers to these criticisms which he would have provided had he been asked, but he does not actually provide those answers”.<sup>9</sup>
  
13. The submissions for the AG urge that “that the Claimant said very little to explain the distress and injury to feelings he has suffered. His evidence reads like a pleading. There is very little

---

<sup>4</sup> Ibid, Paragraph 4

<sup>5</sup> Ibid, Paragraph 16

<sup>6</sup> Ibid

<sup>7</sup> Ibid, Paragraph 15

<sup>8</sup> Ibid, Paragraph 16

<sup>9</sup> Ibid

for this court to go on. The paucity of evidence must affect the level of the award he is entitled to.”<sup>10</sup>

14. The response of Counsel for the Claimant to these contentions is important. Counsel for the Claimant points out that the Claimant’s Second Affidavit lists “the several, serial ways in which the Commission’s Report devastated him; the public and media negative bombardment that the accusations of money laundering and wholesale corruption caused him; the shame and embarrassment brought upon him and his family; his ostracism by his village neighbors, also his political constituents.”<sup>11</sup>

15. These are, in the words of the Claimant, as follows:

*“3. I was devastated to find out that the Report accused me of money laundering, bribery and other corrupt acts. I was further distressed by the suffering that the publication of the Report caused my family and friends.*

*4. There were people in my village that started avoiding me and I felt that my good reputation and character had been destroyed.*

*5. I was also bombarded with phone calls from media personnel, making clear that the Commission’s findings had exposed me to great public prejudice.*

*6. I was especially grieved by the Commission’s having done such irremediable harm to me without giving me a chance to defend against its Report.”<sup>12</sup>*

16. The Claimant also states at Paragraph 6 of his Second Affidavit, that he knew that although the Commission was not a court of law, that it “clearly fixed me with criminal wrongdoing though, and referred its findings to the Director of Public Prosecutions”<sup>13</sup>

---

<sup>10</sup> Ibid

<sup>11</sup> Claimant’s Submissions in Reply, Paragraph 11.

<sup>12</sup> Claimant’s Second Affidavit dated February 25, 2022, Paragraphs 3 to 6

<sup>13</sup> Ibid, Paragraph 7

17. Counsel for the Claimant also submits that in his First Affidavit dated January 18, 2022, the Claimant referred “to the Commission’s recommendation that its Report be sent to the Director of Public Prosecutions for possible criminal charges to be brought against the Claimant; and to the recommendation that the National Assembly consider going to Court to remove the Claimant as a Member of the House of Representatives.”<sup>14</sup>
18. That First Affidavit of the Claimant at Paragraph 22 states, ““*I was in shock and terror from the threats that I might go to jail and lose my seat in the House.*” Further, that “*...nothing had prepared me for the Commission’s wholesale indictment of me; it’s destruction of my character; its portrayal of me as corrupt and immoral in the extreme.*”<sup>15</sup>
19. Counsel for the Claimant submits further “at Paragraphs 23 and 24 the Claimant spoke to his family’s devastation in consequence of the Report, the (negative) way in which his neighbors began to treat him and the fact that the Report “severely prejudiced” him with his constituents.”<sup>16</sup>
20. The Claimant’s Second Affidavit also states that “the Report painted me as some criminal mastermind and puppet master that used the Ministry to enrich myself”<sup>17</sup> and says’ “*I have personally been much harmed by all this. I am also worried by the lasting effect it may have on my political career.*”<sup>18</sup>; and that “*Even if I succeed in my Claim to quash the Report, that will not erase the damage done to my standing as a career politician and Representative for the Corozal North Constituency.*”<sup>19</sup>

---

<sup>14</sup> Claimant’s Written Submissions in Reply at paragraph 12

<sup>15</sup> Ibid at paragraph 13

<sup>16</sup> Ibid at paragraph 14

<sup>17</sup> Second Affidavit of Hugo Patt dated 25 February, 2022

<sup>18</sup> Ibid at Paragraph 12

<sup>19</sup> Ibid at Paragraph 13

21. The plain and unambiguous words of the Claimant in this regard are persuasive. They were also unchallenged. Short of producing a metaphorical violin, and playing it, it is difficult to see how this Claimant could have been more forthcoming about the effect of the Report on him.
22. I accept the contention of the Claimant's Submissions that it is not for the Claimant in seeking damages for the hurt caused to have to provide answers to the Report's conclusions and allegations. That is no part of the exercise of assessment of damages before this Court and is roundly rejected as misconceived.
23. During this exercise, there is no onus in law which is placed on the shoulders of the Claimant to oblige him to provide answers, whether in denial or in confirmation to the very Report issued by a Commission which the 4<sup>th</sup> Defendant has already accepted breached the Claimant's constitutional rights.

### **DAMAGES – THE MEASURE**

24. Both sides agree, serendipitously, on the AG's submission that:

*“...it is a fundamental principle of fair assessment of damages that awards made in any case should bear a reasonable relationship to awards made in comparable cases.”<sup>20</sup>*

25. The Claimant also accepts the AG's submission that awards made in defamation cases may be used as a guide. But that is where the serendipity ends, and the deepities begin to creep in.

---

<sup>20</sup> Written Submissions of the Attorney General at Paragraph 18

26. The Claimant does not offer any authorities different from those quoted by the Written Submissions of the AG. It is the application of the authorities that differ.
27. Both sides agree that the recent Belizean case of **Bevans v. Briceño**<sup>21</sup> is applicable and that the award in that case is instructive and could serve this Court as a guideline in terms of an award to the Claimant for compensation under the head of distress and injury to feelings.
28. The Claimant urges that at a minimum, the award as compensation under this head cannot be less than the \$90,000.00 Belize Dollars awarded in the Bevans case. I agree.
29. I do not agree that there is in this claim such “weakness in the Claimant’s evidence” as to justify an award in the range of \$25,000.00 to \$50,000.00 Belize Dollars.
30. Given the Claimant’s evidence, the nature and extent of the distress and injury, as well as to the stature and standing of the Claimant in Belize, I therefore award the Claimant the sum of \$95,000.00 Belize Dollars under this head.

### **VINDICATORY DAMAGES**

31. Vindictory damages are largely discretionary and depend on the particular circumstances of a case. The Claimant does not provide this Court with authorities which differ from that of the AG in this claim in respect of vindictory damages.
32. The Claimant relies heavily on the recent CCJ case of **Titan International Securities Inc. v Attorney General of Belize**<sup>22</sup> and in particular paragraph 59 of the judgment which

---

<sup>21</sup> Claim 771 of 2020

<sup>22</sup> [2018] CCJ 28 (AJ)



states that “*The approach is therefore to assess the nature of the breach in terms of the particular facts of the case and to decide whether an additional award was required which would not only vindicate the rights of the party but would also deter the authorities from engaging in such conduct.*”

33. The Court in the Titan Securities case cited with approval **Attorney General of Trinidad and Tobago v Ramanooop**, (2005) 66 WIR 334; stating that in that case, the Privy Council laid out the correct approach to the grant of damages for the breach of a constitutional right:

“18. 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 this 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 always be coterminous with the cause of action at law.

19 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. All these elements have a place in this additional award. “Redress” in section 14 is apt to encompass such an award if the court considers it is required having regard to all the circumstances...”

34. This is excellent guidance in this case, and when applied, means that this Court will award the Claimant vindicatory damages. It must be noted that even though the breach was grave, given all the attendant circumstances of this case; the manner and form in which the 4<sup>th</sup> Defendant has chosen to respond to this claim has been commendable. I will exercise the

discretion, and I will award the sum of \$50,000.00 Belize Dollars as vindictory damages, which I believe meets the justice of the case.

## **COSTS**

35. The Claimant is awarded costs to be paid by the 4<sup>th</sup> Defendant, as agreed or assessed

## **ORDERS**

36. The following Orders are made:

1. The Claimant is awarded compensatory damages to be paid by the 4<sup>th</sup> Defendant in the sum of \$95,000.00 Belize Dollars;
2. The Claimant is awarded vindictory damages to be paid by the 4<sup>th</sup> Defendant in the sum of \$50,000.00 Belize Dollars; and
3. The 4<sup>th</sup> Defendant shall pay the Claimant's costs as agreed or assessed.

**DATED JUNE 23, 2022**

**LISA M. SHOMAN**

**JUSTICE OF THE SUPREME COURT OF BELIZE**