THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No.: CV2019 – 00858

IN THE MATTER OF A CLAIM BY

GLEN FITZROY ALVIAREZ FUENTES AND MARYURIS JOSE AVILEZ BARRIOS FOR JUDICIAL REVIEW UNDER PART 56 OF THE CIVIL PROCEEDING RULES (1998) (AS AMENDED) AND THE JUDICIAL REVIEW ACT, CHAPTER 7:08

AND

IN THE MATTER OF A FAILURE BY THE MINISTER OF NATIONAL SECURITY TO REVIEW HIS DECISION ON THE APPLICATIONS OF GLEN FITZROY ALVIAREZ FUENTES AND MARYURIS JOSE AVILEZ BARRIOS TO BE GRANTED THE STATUS OF RESIDENT OF TRINIDAD AND TOBAGO WITHIN A REASONABLE TIME

BETWEEN

GLEN FITZROY ALVIAREZ FUENTES

First Claimant

MARYURIS JOSE AVILEZ BARRIOS

Second Claimant

AND

MINISTER OF NATIONAL SECURITY

Defendant

Before the Honourable Madame Justice Margaret Y Mohammed

Date of Delivery 26 June 2020

APPEARANCES

Mr. Devvon Williams instructed by Mr Aaron Seaton Attorneys-at-law for the Claimants.

Ms. Coreen Findley instructed by Mr. Ryan Grant Attorneys-at-law for the Defendant.

JUDGMENT - DAMAGES

INTRODUCTION

1. On the 7 April 2020, I found that the Defendant had failed to perform his duty to make a decision on the Claimants' application to be granted the status of residents of Trinidad and Tobago within a reasonable time. I also declared that the documents requested by the Defendant in the letter dated 27 August 2018 were not unreasonable, irregular or an improper exercise of discretion. As a consequence, I directed the Defendant to make a decision on the Claimants application for residency status within 30 days of being provided with the Claimants response to the request for the documents.

2. In the claim for judicial review, the Claimants had asserted a claim for compensatory and vindicatory damages. The Claimants did not address their claim for damages in their closing submissions, however in their submissions in reply, Counsel argued that the Court should accept the uncontested evidence on quantum of damages or alternatively that it should be sent to a Master to be assessed. The Defendant reserved its position on the issue of damages, on the basis that the Claimant did not address it in the closing submissions. In light of the position articulated by the parties, I invited them to present further submissions on whether the Claimants are entitled to an award of damages and if so the quantum.

3. At paragraphs 5 to 7 in **Neil Bennett v The Defence Council and the Attorney General of Trinidad and Tobago**[1], I set out the law with respect to the granting of damages in judicial review matters which bear repeating here:

> "5. It was common ground that the law with respect to the granting of damages in judicial review proceedings was articulated by de la Bastide CJ in **Josephine Millette v Sherman McNichols**[2] as:

[1] CV 2009-01581
[2] Civ App No 155 of 1995 at page 14

"Damages are only recoverable in judicial review proceedings if they would have been recoverable in an ordinary action brought either by writ or by some other form of originating process eg. Constitutional motion."[3]

6. The principles laid down by de las Bastide CJ has been codified in section 8 (4) of the **Judicial Review Act**[4] which provides:

"(4) On an application for judicial review, the Court may award damages to the applicant if-

(a) The applicant has included in the application a claim for damages arising from any matter to which the application relates; and

(b) The Court is satisfied that, if the claim has been made in an action begun by the applicant at the time of making the application, the applicant could have been awarded damages."

7. Procedurally the Claimant must comply with Part 56.7 (3) and (4) (b) (ii) of the Civil Proceedings Rules 1998 as amended ("the CPR") which provide for the Claimant to file an affidavit with the Claim Form and he must state if he is seeking "damages, restitution or recovery of a sum due or alleged to be due setting out the facts on which such claim is based and where practicable, specifying the amout of any money claimed."

4. It was submitted on behalf of the Claimant that they have satisfied the conditions of section 8(4)(a) of the **Judicial Review Act** ("the JRA") as they made a claim for damages at paragraphs 4.4 and 4.5 of the Fixed Date Claim filed in the instant action.

5. It was also submitted that the Claimants have satisfied the conditions under section 8(4) (b) of the JRA because the failure by the Defendant to make a decision on their residency

[3] Supra at page 14
[4] Chapter 7:08

application in a reasonable time could have been the basis of a claim in negligence/ breach of statutory duty as the Defendant owed a duty of care toward the Claimants to make a proper decision within a reasonable time.

6. Counsel further submitted that the Claimants could have also brought a constitutional claim seeking damages as redress under section 14 of the Constitution of Trinidad and Tobago ("the Constitution") for breach of the right to protection of the law as they were unreasonably deprived by the Defendant of the fruits of their judgment obtained on the 13 June 2017 ("the 2017 Order") in CV2015 **-02471 Glen Fitzroy Alvarez Fuentes and anor v The Minister of National Security** ("the 2015 action).

7. Counsel for the Defendant did not dispute that the Claimants met the requirements of section 8(4) (a) and (b) as they had made a claim for both compensatory and vindicatory damages in their Fixed Date Claim. Counsel for the Defendant submitted that the Claimants' submissions on the basis and quantum of damages were limited to damages, which they may be entitled to on a constitutional motion and not for an ordinary claim.

8. I accept that Counsel for the Claimants stated in their submissions that the Claimants would have been entitled to damages in negligence and/or breach of statutory duty by the Defendant in an ordinary claim. However, I agree with the submissions on behalf of the Defendant, that the basis for any award for damages and the quantum submitted on behalf of the Claimants were limited to compensatory and vindicatory damages in a claim for breach of the constitutional right for protection of the law. Counsel for the Claimants did not make any detailed submission on any quantum or basis for an award of general damages for breach of a common law or statutory duty. For these reasons, I will address the Claimants claim for damages for breach of the constitutional right.

9. In the local judgment of **The Attorney General of Trinidad and Tobago v Selwyn Dillon**[5] the Court of Appeal cited with approval the following summary from Rampersad J regarding the applicable principles for the assessment of damages for constitutional breaches:

> "[20.] Rampersad J., at paragraph 53 of his judgment, carefully, correctly and comprehensively set out the evolution of the law and principles governing the consideration and assessment of damages for constitutional breaches. There is therefore no need to rehearse this history or the relevant authorities in this judgment. The main points in summary are as follows: (1) the award of damages is discretionary; (2) the nature of any award of damages is always with the intention and purpose of upholding and/or vindicating the constitutional right(s) infringed and in furtherance of effective redress and relief for the breaches; (3) whether an award of damages is to be made depends on the circumstances of the case, including consideration whether a declaration alone is sufficient to vindicate the right(s) infringed and whether the person wronged has suffered damage; (4) in determining the sufficiency of a declaration and/or the need for damages, the effect(s) of the breach on the party seeking relief is a relevant and material consideration; (5) compensation can thus perform two functions - redress for the *in personam* damage suffered and vindication of the constitutional right(s) infringed; (6) compensation *per se* is to be assessed according to the ordinary settled legal principles, taking into account all relevant facts and circumstances, including any aggravating factors; (7) in addition to compensation *per se*, an additional monetary award may also need to be made in order to fully vindicate the infringed right(s) and to grant effective redress and relief; (8) such an additional award is justified based on the fact that what has been infringed is a constitutional right, which adds an extra dimension to the wrong, and the additional award represents what may be needed to reflect the sense of public

[5] CA Civ P. 245/2012

outrage at the wrongdoing, emphasize the importance of the constitutional right and the gravity of the breach, and/or to deter further similar breaches; (9) the purpose of this additional award remains, as with compensation, the vindication of the right(s) infringed and the granting of effective relief and redress as required by section 14 of the Constitution, and not punish the offending party; and (10) care must be taken to avoid double compensation, as compensation *per se* can also take into account similar considerations, including relevant aggravating factors and is also intended to uphold and/or vindicate the right(s) infringed."

10. The Privy Council decision in the landmark case of **The Attorney General of Trinidad and Tobago v Ramanoop**[6] at paragraphs 17-19 explained the difference between compensatory and vindicatory damages under section 14 of the Constitution. The Court stated:

> "17. Their Lordships view the matter as follows. Section 14 recognises and affirms the court's power to award remedies for contravention of chapter I rights and freedoms. This jurisdiction is an integral part of the protection chapter I of the Constitution confers on the citizens of Trinidad and Tobago. It is an essential element in the protection intended to be afforded by the Constitution against misuse of state power. Section 14 presupposes that, by exercise of this jurisdiction, the court will be able to afford the wronged citizen effective relief in respect of the state's violation of a constitutional right. This jurisdiction is separate from and additional to ("without prejudice to") all other remedial jurisdiction of the court.
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> 18. When exercising this constitutional jurisdiction the court is concerned to uphold, or vindicate, the constitutional right which has been

[6] PC Appeal No 13 of 2004

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 co-terminous 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, emphasise 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. Although such an award, where called for, is likely in most cases to cover much the same ground in financial terms as would an award by way of punishment in the strict sense is not its object. Accordingly, the expressions "punitive damages" or "exemplary damages" are better avoided as descriptions of this type of additional award." (Emphasis added).

11. In **Alphie Subiah v the Attorney General of Trinidad and Tobago**[7] Lord Bingham described the approach the Court should take in making the award of compensatory damages under section 14 of the Constitution at paragraph 11 as:

> "11. The Board's decisions in Ramanoop, paras 17-20, and Merson, para 18, leave no room for doubt on a number of points central to the resolution of cases such as the present. The Constitution is of (literally) fundamental importance in states such as Trinidad and Tobago and (in Merson's case), the Bahamas. Those who suffer violations of their constitutional rights may apply to the court for redress, the jurisdiction to grant which is an essential element in the protection intended to be afforded by the Constitution against the misuse of power by the state or its agents. Such redress may, in some cases, be afforded by public judicial recognition of the constitutional right and its violation. But ordinarily, and certainly in cases such as the present (and those of Ramanoop, and Merson, and other cases cited), constitutional redress will include an award of damages to compensate the victim. Such compensation will be assessed on ordinary principles as settled in the local jurisdiction, taking account of all the relevant facts and circumstances of the particular case and the particular victim. Thus the sum assessed as compensation will take account of whatever aggravating features there may be in the case, although it is not necessary and not usually desirable (contrary to the practice commended by the Court of Appeal of England and Wales for directing juries in Thompson v Commissioner of Police of the Metropolis [1998] QB 498, 516 D-E) for the allowance for aggravated damages to be separately identified. Having identified an appropriate sum (if any) to be awarded as compensation, the court must then ask itself whether an award of that sum affords the victim adequate redress or whether an additional award should be made to vindicate the victim's constitutional right. The answer is likely to be influenced by the quantum of the compensatory award, as also by the gravity of the

[7] [2008] UKPC 47

constitutional violation in question to the extent that this is not already reflected in the compensatory award. As emphasised in Merson, however, the purpose of such additional award is not to punish but to vindicate the right of the victim to carry on his or her life free from unjustified executive interference, mistreatment or oppression." (Emphasis added)

12. More recently, Kokaram J (as he then was) in **Oswald Alleyne and 152 Ors v The Attorney General of Trinidad and Tobago**[8] reaffirmed and added to the guidelines on the assessment of damages for breach of constitutional rights at paragraphs 75 and 76 of the judgment as:

"(1) The award of damages is discretionary;

(2) he nature of any award of damages is always with the intention and purpose of upholding and/or vindicating the constitutional right(s) infringed and in furtherance of effective redress and relief for the breaches;

(3) Whether an award of damages is to be made depends on the circumstances of the case, including consideration whether a declaration alone is sufficient to vindicate the right(s) infringed and whether the person wronged has suffered damage;

(4) In determining the sufficiency of a declaration and/or the need for damages, the effect(s) of the breach on the party seeking relief is a relevant and material consideration;

(5) Compensation can thus perform two functions - redress for the in persona damage suffered and vindication of the constitutional right(s) infringed;

(6) Compensation per se is to be assessed according to the ordinary settled legal principles, taking into account all relevant facts and circumstances, including any aggravating factors;

[8] CV2018-00447

(7) In addition to compensation per se, an additional monetary award may also need to be made in order to fully vindicate the infringed right(s) and to grant effective redress and relief;

(8) Such an additional award is justified based on the fact that what has been infringed is a constitutional right, which adds an extra dimension to the wrong, and the additional award represents what may be needed to reflect the sense of public outrage at the wrongdoing, emphasise the importance of the constitutional right and the gravity of the breach, and/or to deter further similar breaches;

(9) The purpose of this additional award remains, as with compensation, the vindication of the right(s) infringed and the granting of effective relief and redress as required by section 14 of the Constitution, and not punish the offending party;

(10) Care must be taken to avoid double compensation, as compensation per se can also take into account similar considerations, including relevant aggravating factors and is also intended to uphold and/or vindicate the right(s) infringed.

(11) The award must be no more than necessary to give recognition to the value and importance to the constitutional rights and violation caused by their denial.

(12) The Court will require proof of damages, the burden of which lies on the Claimant. The award of compensation is fact sensitive. The quality of evidence required will depend on the facts and nature of the case.

(13) Any speculative loss does not automatically deprive the Claimant of his right to compensation so long as the Court can exercise its discretion to make an appropriate award having regard to the nature of the breach and the right that has been violated.

(14) Monetary compensation can be awarded by reference to comparable common law measures of damages as a guide.

(15) Where there is evidence of direct loss that is recoverable as a component of compensation. Another component of compensation is to address non-pecuniary matters such as distress and inconvenience.

(16) Another relevant factor in assessment is the seriousness of the breach. The gravity of the constitutional breach can be a factor which warrants an uplift in the award of compensation. Aggravating factors are also to be taken into account.

13. To place the aforesaid learning in **Oswald Alleyne and 152 Ors** in context it is useful at this juncture to briefly refer to the two judgments concerning **Oswald Alleyne** namely the Privy Council decision of **Alleyne and Ors v The Attorney General of Trinidad and Tobago**[9] and **Oswald Alleyne and 152 Ors** which was the assessment of damages by Kokaram J (as he then was).

14. In the Privy Council decision of **Alleyne and Ors,** Municipal Police Officers (MPOs) complained that for over a decade they had unjustifiably been treated less favourably than regular police officers particularly in terms of their remuneration. They claimed that their rights under the Constitution were violated. The issues on appeal to the Board were whether the Court of Appeal was right to set aside the trial judge's declaration relating to the lack of service regulations for MPOs; whether there should be an order for compensation, to be assessed; if so, whether it should or might include a separate "vindicatory" component; and whether the Court of Appeal was wrong to interfere with the judge's order for costs. The Board held that there was no satisfactory explanation given by the State for its failure to make regulations under section 60 of the Municipal Corporations Act regarding the governance of municipal police services, or in the meantime to make any of the Police Service Regulations applicable, contrary to the plain purpose of the statute. The Board took the position that the Statutory Authorities' Service Commission was under a duty to consider what regulations should be made and, if that

[9] [2015] UKPC 3

involved any significant delay, what parts of the Police Service Regulations should be applied until such regulations were made. This lamentable and longstanding state of affairs affected the constitutional rights of the municipal police officers. The Board found that the declaration of the trial judge was correct in law and she was right to make it. The Board held that it should have been open to the judge to award general (or vindicatory) damages, and the order of costs was within the judge's discretion. The appeal was allowed and the damages of the Appellants were remitted to the High Court to be assessed.

15. In **Oswald Alleyne and 152 Ors,** Kokaram J (as he then was) assessed the damages pursuant to the order of the Privy Council's decision. Kokaram J (as he then was) awarded compensatory, vindicatory and a separate lump sum as damages for each Appellant.

16. At paragraph 94 of the judgment in **Oswald Alleyne and 152 Ors** Kokaram J (as he then was), set out the scope of what compensation entails. He said as follows:

> "In my view, the notion of compensation encompass two streams of loss: the first, any direct provable loss or pecuniary loss and the second, any other intangible loss such as mental distress, inconvenience or aggravating circumstances which ought to be the subject of compensation. I have loosely referred to this as pecuniary and non-pecuniary loss in this judgment. The second stream is not to be confused with a purely vindicatory award which is an additional award necessary to give effect to vindicate the constitutional right. To that extent the Court must ensure it is necessary to do so and is not subject to an aspect of double counting, if not punishment by making an oppressive and disproportionate award." (Emphasis added).

17. The Claimants evidence to support their claim for damages were set out at paragraphs 36 to 39 of the affidavit of the First Claimant which was filed on the 2 May 2019 in support of the Fixed Date Claim which stated:

"36 The Respondent's continued failure to make a proper decision in a reasonable time has caused us so much loss. We are asking the Court to give us damages to recognise the ways they have caused us to lose.

37. We have lost our entire investment into Navieramar. In the financial year ending 2010 the company had an expenditure of $411,423 TTD. In the financial year ended 2011, the company had an expenditure of $774,047 TTD. During those respective periods Navieramar's income was the sundry income was $42 TTD and $31TTD. During that time I could not operate or perform any income generating activity without a work permit or grant of residency. Due to the fact the company sustained losses of 413,555 TTD in the year ending December 2010 and $776,520 TTD in the year ending December 2011.

38. We lost the income that both the Second Respondent and I would have been able to earn had the Respondent made a proper decision in a reasonable time.

39. We also feel that our right to a fair and just process has been and continues to be infringed and that our right ought to be vindicated by an award of damages. This situation is particularly embarrassing because my mother is a Trinidad and Tobago citizen by birth and it's only because she was female and married that I cannot get citizenship by right. Instead I asked the Minister for mere residency and even that is being denied and delayed."

18. The Claimants also annexed as GA6 to the First Claimant's affidavit filed on the 2 May 2019, two letters of offers of employment dated 1 October 2015 and 21 May 2018.

19. It was submitted on behalf of the Claimants that they are entitled to an award for both compensatory and vindicatory damages for the breach of their constitutional rights. With respect to compensatory damages, Counsel for the Claimants submitted that the failure by

the Defendant to make a decision in a reasonable time has caused them a loss of chance of employment. They relied extensively on the judgment of **Oswald Alleyne and 152 Ors**. They argued that the chance or probability of their applications for residency being successful is 90% and they submitted that the reasons given by the Defendant in the 2015 action for the rejection of the applications were proven untrue or irrelevant. They also submitted that in light of the high likelihood of success of their applications they were deprived of the ability to accept employment opportunities and based on the evidence provided they should be awarded the sum of $207,000.00.

20. In response, it was submitted on behalf of the Defendant, that no award should be made for pecuniary loss as there was no evidence to support any contention that the Claimants application for residency was likely to be 90% successful and that the Claimants reliance on the Court's reasons in the 2015 action for quashing the decision to refuse the applications for residency have no bearing in the instant matter. Counsel for the Defendant also submitted that the Court in the instant action found that the Defendant acted reasonably by seeking updated information and compiling a new report as part of its processes.

21. At paragraph 44 of **Oswald Alleyne and 152 Ors** Kokaram J (as he then was) said:

> "It is a general principle of the common law that if an injured party can establish a head of loss, which by reason of the wrongdoer's conduct it is difficult to quantify, the fact that there may be many speculative factors is not a reason for denying the assessment: see **Simpson v London and North Western Railway Co** (1876) 1 QB 274, 277, **Chaplin v Hicks** [1911] 2 KB 786, 792, **Davies v Taylor** [1974] AC 207, 212, **Gregg v Scott** [2005] 2 AC 176, paras 17 and 76-79, and **Parabola Investments Ltd v Browallia Cal Ltd** [2010] EWCA Civ Page 50 of 307 486, [2011] QB 477, paras 22-23."

22. At paragraph 111 , Kokaram J (as he then was) continued:

Lord Toulson pointed out that there are some forms of loss that are capable of being established with precision and other forms of consequential loss are not capable of similarly precise calculation because "they involve the attempted measurement of things which would or might have happened (or might not have happened) but for the defendant's wrongful conduct as distinct from things which have happened. In such a situation the law for not require a Claimant to perform the impossible nor does it apply the balance of probability test to the measurement of the loss. - **Parabola Investments Ltd and another v Browallia Cal Ltd and others (2011) QB 477** at paragraph 22".

23. As for the manner of quantification, Kokaram J (as he then was) stated at paragraph 120 in **Oswald Alleyne and 152 Ors** that:

> "Upon the Claimant establishing a substantive loss of chance, it is the duty of the Court to determine the value of the loss of chance in percentage terms. In **Vasiliou v Hajigeorgiou [2010] EWCA Civ 1475 Patten LJ** at paragraph 21 in his judgment stated:
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> > "In the classic loss of chance case the most that the claimant can ever say is that what he (or she) has lost is the opportunity to achieve success (e.g.) in a competition.....or in litigation.....The loss is by definition no more than the loss of a chance and, once it is established that the breach has deprived the claimant of that chance, the damage has to be assessed in percentage terms by reference to the chances of success....."

24. In determining the Claimants loss of chance of employment there are three issues to be decided namely the basis, the period and the quantum.

25. I accept that based on the letter dated 21 May 2018, there was a loss of chance of employment by the First Claimant. However, I agree with the submission on behalf of the Defendant that there is no evidence to support a loss of chance of employment of 90% by

the Claimants as the reasons, which the Claimants sort to rely on, did not form part of the instant case but was in the 2015 action. In the absence of any evidence but being satisfied that there was such a loss I am minded to award a lump sum based on 30% loss of chance.

26. The period of this loss was from May 2018, which was the date of the offer in the letter dated 21 May 2018 to August 2018, which was the date I found that the Defendant acted reasonably in requesting certain additional information. In my opinion, the Claimants failed to mitigate their loss by not providing the information, which was requested in August 2018.

27. In calculating the quantum, I have used the sum of $10,000.00 per month, which was set out in the letter dated 21 May 2018. I have worked out the period to be 3 ½ months which is $35,000.00. This sum is then discounted by 30%, which is $24,500.00 and then further discounted for taxes by 25% leaving a total of $18,375.00. Therefore, I award the sum of $18,375.00 for the Claimants pecuniary loss for loss of chance of employment.

28. With respect to the claim for non-pecuniary loss, Counsel for the Claimants submitted that they are entitled to the sum between $70,000.00- $100,000.00 for non-pecuniary loss. They argued that they applied for residence since 2010, they received the 2017 Order on the 13 June 2017 in the 2015 action, compelling the Defendant to properly reconsider their application and the reconsideration was not done in a reasonable time and during this period the Defendant's behaviour caused the Claimants humiliation, anguish, stress and embarrassment.

29. Counsel for the Defendants argued that no award should be made with respect to the claim for non-pecuniary loss due to the paucity of the evidence. Counsel submitted that the period to be considered is subsequent to the 2017 Order and the loss of investment, which the Claimants claimed, did not occur during that period and the Claimants did not seek nor did they obtain an award for damages in the 2015 action. As such, the relevant period of

time to be considered is 14 months. Alternatively if any award is to be made a suitable sum is $10,000.00.

30. In my opinion, the material period for any loss, which the Claimants suffered, is subsequent to the 2017 Order. In the instant action, the loss, which the Claimants set out at paragraphs 37 and 38, concerned loss incurred by the Claimants in 2011. Therefore, it was not loss suffered during the period after the 2017 Order.

31. Under this heading, the Claimants also sought damages for embarrassment suffered by the First Claimant on the basis that his mother was a citizen of Trinidad and Tobago. I accept that there was a lack of details in the evidence on how this embarrassment affected the First Claimant. However, this embarrassment was no doubt brought on by the Defendant. The only local case which was provided to the Court on an award for non-pecuniary loss for anguish caused by a delay was **Oswald Alleyne and 152 Ors** where Kokaram J (as he then was) awarded damages in the range of between $100,000.00 to $150,000.00 for a delay of 15 years. In my opinion, the delay in the instant case of 14 months (from the date of the 2017 Order until August 2018 when the Defendant requested certain information from the Claimants) was not as long as 15 years as in **Oswald Alleyne and 152 Ors**. In those circumstances, I award the more reasonable sum of $10,000.00 for non pecuniary loss for embarrassment suffered by the First Claimant.

32. I now turn to the claim for vindicatory damages. Counsel for the Claimants submitted that they are entitled to an award of vindicatory damages in the sum of $300,000.00 on the basis that: the Defendant failed for 10 years to properly consider and make a proper decision of the Claimants residency applications; the reasons for the delay by the Defendant in complying with the 2017 Order were flimsy; and the Court should show its disapproval of this action.

33. Counsel for the Defendant submitted that the sum to be awarded as vindicatory damages in the instant case should be significantly less than that awarded in **Oswald Alleyne and 152 Ors** as there were more serious breaches and a significantly lengthier period of delay in that case than in the instant case. Counsel submitted that the sum in the range of $20,000.00 -$30,000.00 is more appropriate.

34. In **Oswald Alleyne and 152 Ors** Kokaram J (as he then was) awarded $300,000.00 as vindicatory damages to mark the seriousness of the breach. The Court held that the State's treatment of the Claimants was characterised by an attitude that was indifferent and contemptuous as it took over 14 years to enact the regulations. The Court found that since 2000 the MPOs were making representations to the State to have regulations enacted; the High Court matter was filed in 2004 after absolutely no interest of the State was shown in treating their concerns; the Claimants made numerous representations and complaints to the State for redress and since 2002 it had promised to conduct a job evaluation for MPOs but failed to do so while conducting evaluations for other civil servants; the evidence of the State was that the Police Service Commission did not have personnel available to work out the MPOs terms and conditions of employment; Cabinet agreed that certain allowances be increased and MPOs were paid varying rates of arrears or meal and housing allowances between 2003-2011; the State could not satisfactorily explain why the Claimants were left in regulatory purgatory for all these years; up until the Privy Council appeal the State did not enact the regulations; eleven days after the Privy Council hearing, the State enacted the Municipal Police Service Regulations; the Privy Council did not consider that by the State enacting the said regulations, that the Claimants were not entitled to vindicatory damages or an additional award; and no explanation was given by the state for failing to adopt a short term option as a temporary measure.

35. Counsel for the Defendant agreed to an award for vindicatory damages at paragraphs 21 to 23 of her closing submissions. I have decided to make an award for vindicatory damages

in the lower sum of $20,000.00 in a range of $20,000.00 to $30,000.00 as the Defendant's action in not complying with the 2017 Order was blatant and the Court must show its disapproval in order to send the appropriate signal to public bodies that the timely compliance with Court Orders are necessary.

36. It was also argued on behalf of the Claimants that the delay in the instant action is akin to that in the matter of **Alleyne and Ors** where the Privy Council granted the Claimants an additional award. The Claimants submitted that an appropriate additional award is $20,000.00.

37. Counsel for the Defendants argued against a separate award being made in the instant case on the basis that the period of delay in the instant case is 14 months and the facts in **Alleyne and Ors** were peculiar.

38. In my opinion, **Alleyne and Ors** is not a precedent that an additional award ought to be given in each case. The peculiar facts in **Alleyne and Ors** did not exist in the instant action where the period of non-compliance was 14 months and the Claimants did not succeed on the entirety of their claim in the instant action.

ORDER

39. The Defendant to pay the Claimants compensatory damages in the sum of $ 28,375.00 and vindicatory damages in the sum of $20,000.00.

40. The Court will hear the parties on the costs of the assessment of damages on 17 July 2020 at 1:00pm virtual hearing.

Margaret Y Mohammed

Judge