**COMMONWEALTH OF THE BAHAMAS**
**IN THE COURT OF APPEAL**
**Const/SCCrApp No. 149 of 2024**

**B E T W E E N**

**THE ATTORNEY GENERAL**

**AND**

**THE DIRECTOR OF PUBLIC PROSECUTIONS**

**Appellants**

**AND**

**ANTHON LIGHTBOURN SR.**

**Respondent**

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**Const/SCCrApp No. 150 of 2024**

**ANTHON LIGHTBOURN SR.**

**Appellant**

**AND**

**THE ATTORNEY GENERAL**

**AND**

**THE DIRECTOR OF PUBLIC PROSECUTIONS**

**Respondents**

**BEFORE:** **The Honourable Mr. Justice Evans, P**
**The Honourable Sir Ian Winder, CJ**
**The Honourable Madam Justice Fraser, JA**

**APPEARANCES:** **Mr. Perry McHardy, Counsel for the Attorney General**
**Ms. Jacklyn Burrows, Counsel for the Director of Public Prosecutions**
**Ms. Christina Galanos, with Ms. Kristina Saunders, Counsel for Anthon Lightbourn Sr.**

**DATES:** **10 November 2025; 15 April 2026; 28 May 2026; 8 July 2026; 15 September 2026**
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*Criminal Appeal — Constitutional Appeal — Attempted rape charge — Right to a fair hearing within a reasonable time — Delay in criminal proceedings — Failure to transmit file for preparation of Information — Whether trial judge erred in finding a constitutional breach — Failure to assert constitutional right — Whether the State is responsible for the delay — Assessment of delay — Vindicatory and compensatory damages — Retention of passport — Appellate review of damages – Costs — Section 6(2) of the Sexual Offences and Domestic Violence Act — Article 20(1) of the Constitution of The Bahamas*

The Appellant was arrested and charged with attempted rape and committed for trial in the Supreme Court. The matter remained outstanding for several years. Although represented by

counsel, the Appellant made inquiries as to its status and later contacted the Office of the Director of Public Prosecutions (DPP) seeking to have the matter discharged. The file remained at the Magistrate's Court, was never transmitted to New Providence for preparation of an Information, and no Information was filed.

The Appellant commenced proceedings in the Supreme Court seeking, among other relief, a declaration that his constitutional right to a fair hearing within a reasonable time had been infringed and damages. The charge was subsequently withdrawn and his passport returned.

The learned judge found a breach of the Appellant's right to a fair hearing within a reasonable time, but considered that he had patiently waited before asserting his rights and awarded vindicatory damages only.

The DPP appealed this decision, contending that the learned judge was wrong to find a breach and that the Appellant had asserted his rights. The Appellant cross-appealed, challenging the adequacy of the damages and the costs order.

*Held:* DPP's appeal dismissed. Appellant's appeal allowed in part. The award of vindicatory damages of $10,000 was set aside and substituted with an award of $40,000, with an additional award of $10,000 in compensatory damages for the suffering, distress, anxiety, humiliation, and sting of the attempted rape charge. The Appellant shall have his costs to be taxed if not agreed.

The Appellant's failure to contact the prosecuting authorities did not exclude the period of delay from consideration. The relevant delay was the period after which he could reasonably have expected to be tried. The delay was inordinate and presumptively prejudicial, and was attributable to the State, as the file remained at the Magistrate's Court and was never transmitted for preparation of the Information.

The Appellant's failure to assert his rights could inform the assessment of damages but did not defeat his constitutional claim. His subsequent efforts to have the matter discharged constituted an assertion of his concern that the proceedings be brought to an end, notwithstanding that he sought a discharge rather than a trial.

The award of vindicatory damages was inadequate because the earlier period of delay had not been properly taken into account. The Court increased the award rather than remitting the matter for reassessment and further awarded compensatory damages for the suffering, anxiety, stress, humiliation and sting caused by the prolonged outstanding charge.

The complaints concerning the retention of the passport and costs were without merit. The learned judge was entitled to find that the Appellant could have applied for the return or use of his passport and was acting within her discretion in fixing costs.

*AG v Ramanoop* [2005] UKPC 15, considered
*Barker v Wingo* [1972] 407 US 514, applied
*Clemenza Ltd and anor. v AG and anor.* SCCivApp No. 28 of 2022; applied
*DPP v Reno Bethel* Const/CrApp. No. 39 of 2025, applied
*Dyer v Watson* [2002] UKPC D1, considered
*Gibson v A-G of Barbados* 76 WIR 137, applied
*Gibson v AG* [2018] 1 BHS J. No. 100, applied
*Rosario Zamorano v The State of Texas* No. 1442-00, considered
*Stubbs et al v Ferguson et al* [2015] 3 BHS J. No. 1, considered
*William Downie v Blue Planet Limited* SCCivApp & CAIS No. 188 of 2019, applied

## J U D G M E N T

**Judgment delivered by The Honourable Sir Ian Winder, CJ:**

### Introduction

**1.** These are separate appeals from the decision of Madam Justice Camille Darville-Gomez (the learned judge), delivered on 9 August 2024, in which she found that Anthon Lightbourn Sr.'s (Lightbourn) constitutional right to a fair hearing within a reasonable time had been breached. She awarded Lightbourn vindicatory damages in the sum of $10,000.

### Background

**2.** On 6 October 2004, Lightbourn was arrested and charged with attempted rape, contrary to section 6(2) of the Sexual Offences and Domestic Violence Act, Chapter 99. He was arraigned before Magistrate Crawford McKee in the Magistrate's Court, Marsh Harbour, Abaco, and granted bail in the sum of $7,000 on conditions that he surrender his passport and report to the Marsh Harbour Police Station twice weekly. He later applied for, and obtained, the removal of the reporting conditions on the ground that they interfered with his employment as a surveyor.

**3.** A preliminary inquiry commenced before Magistrate McKee, at which Lightbourn was represented by Attorney Godfrey Pinder. On 20 October 2025, Magistrate McKee committed Lightbourn to stand trial in the Supreme Court.

**4.** Between 2005 and 2019, Lightbourn remained represented by Attorney Godfrey Pinder. He says that, during that period, he contacted Mr. Pinder's office at least twice each year for updates and was told that the delay was due to a major backlog in the criminal justice system. Lightbourn accepted that he made no contact with, or inquiries of, the prosecuting authorities during those 14 years.

**5.** In or about 2019, Lightbourn says he mistakenly believed that his attorney had died and that he was no longer represented. He therefore began contacting the office of the Director of Public Prosecutions (DPP) directly.

**6.** Lightbourn says staff at the DPP's office repeatedly assured him that they would look into the matter and respond. By his fifth or sixth call, he was told that the virtual complainant no longer wished to proceed and that he would be summoned to court so the matter could be discharged.

**7.** Lightbourn further says he contacted the DPP's office and spoke with Sergeant Deveaux, who indicated that she was taking a withdrawal statement from the virtual complainant. He received no further update. On 17 June 2020, he wrote to the then DPP, Mr. Garvin Gaskin, requesting that the matter be discharged, but received no acknowledgment.

**8.** The depositions from the preliminary inquiry and the related file were not sent to the relevant authorities in New Providence for preparation of an Information, so that the matter could

proceed in the Supreme Court. Instead, the file remained at the Magistrate's Court in Marsh Harbour, and no Information was ever filed.

**9.** Lightbourn claimed that, after his arrest, he was suspended as a police reservist pending the outcome of the case. He also said that surrendering his passport restricted his enjoyment of life and limited his ability to pursue other opportunities.

**The Proceedings Below**

**10.** In January 2023, Lightbourn retained new counsel and commenced his action before the Supreme Court.

**11.** The claim was brought by an Originating Notice of Motion seeking relief as follows:

> **"(i) A declaration that Article 20(1) of The Bahamas Constitution which affords the Applicant the right to a fair hearing within a reasonable time by an independent tribunal established by law has been infringed;**
>
> **(ii) That the proceedings be stayed;**
>
> **(iii) An order directing the Respondents to return the Applicant's passport to him;**
>
> **(iv) Damages; …"**

**12.** At the first hearing before the learned judge, the DPP (which term includes the Attorney General) indicated that the charge against Lightbourn would be withdrawn. The charge was withdrawn on 1 March 2023, and Lightbourn's passport was returned on 13 March 2023. Lightbourn thereafter limited his claim to the following:

> **"(i) A declaration that Article 20(1) of The Bahamas Constitution, which affords the Applicant the right to a fair hearing within a reasonable time by an independent tribunal established by law, has been infringed; and**
>
> **(ii) Damages arising from the discharge of the Applicant and the return of the passport."** (See paragraph 5 of the learned judge's decision)

**13.** The evidence before the learned judge was taken on affidavits without any cross-examination of the deponents.

**14.** In her written judgment, the learned judge found that Lightbourn's Article 20(1) constitutional right to a fair hearing within a reasonable time had been breached. She reached that conclusion by applying a four-part test and stated:

> **"47. The Applicant argued that his right to a fair trial within a reasonable time has been infringed by the nineteen (19) year delay in the instant case.**

**48. It is undisputed that the right to 'speedy' trial was laid out in the seminal case of Barker v Wingo where a four-part balancing test was established and which case was cited with approval by then Senior Justice Stephen Isaacs in the Bahamian case of Taylor v AG. I must now consider these factors in view of the evidence tendered.**

**(i) Length of delay**

**49. At the outset, the Applicant admitted to having been represented by an attorney during the period 2005 through 2019. The following letters from his attorney were exhibited in the Applicant's affidavit filed on October 5, 2023:**

- **(i) letter dated August 22, 2005 from Godfrey 'Pro' Pinder to the Magistrate Crawford McKee requesting an adjournment in the matter.**
- **(ii) letter dated September 8, 2005 from Godfrey 'Pro' Pinder to the Magistrate Crawford McKee — requesting an adjournment in the matter.**
- **(iii) letter dated October 20, 2005 from Godfrey 'Pro' Pinder to the Magistrate Crawford McKee — requesting that the matter proceed on the scheduled date.**

**50. All of the communication exhibited from the Applicant's attorney were in 2005, there were no others post 2005.**

**51. I observed the following as it related to the actions of the Applicant:**

- **(i) he stated that he would follow up with his attorney 'at least twice per year so as to ascertain whether there were any updates in my matter'. During the times that I was able to reach Mr. Pinder, he always informed me that there was a major backlog in the criminal justice system and that he was aware of many matters that was committed to stand trial in the Supreme Court before 2005 that had not come up for trial as yet.'**
- **(ii) Sometime in May, 2019 he thought (albeit mistakenly) that his attorney had died and thereafter, he took an active role in pursuing and following up with the Respondents in relation to his matter, by telephone calls in the first instance, then by letter dated June 17, 2020. In his said letter dated June 17, 2020 to then DPP Gaskin, he requested that the matter be discharged due to the then, fifteen (15) year delay.**

**52. In view of the above observations, the question then becomes at what point did the time begin to run for the purpose of calculating the delay or, in other words, what is the 'operative period' as referred to by then Senior Justice Stephen Isaacs in Taylor v AG. Is it from the date when the Applicant was charged or committed to stand trial in the Supreme Court in 2005? Or, was it later, sometime after May, 2019 when the Applicant thought that he was no longer represented and had to take matters into his own hands?**

**53. The Applicant has submitted that the period of delay is nineteen (19) years.**

**54. The Respondents have not definitively addressed the length of the delay, however, they submitted that the Applicant did not complain about the matter until fourteen (14) years later, and they specifically took note of the Applicants letter dated June 17, 2020. Therefore, it would appear that the Respondents' position is that the delay was only five (5) years.**

**55. In Taylor v AG, there had been a passage of five years since the Applicant was arrested to the hearing of the application. Senior Justice Isaacs (as he then was) noted that:**

> **'On its face the period appears inordinate. However, I must determine the 'operative period', i.e., the time which must be used to calculate the length of the delay, before arriving at a conclusion that such period is in fact inordinate and amounts to a constitutional breach.'**

**56. Following the reasoning in Taylor v AG, <u>the operative period would be from the date when the Applicant was arrested until the date that the Applicant was discharged. Therefore, I concur with the Applicant, that it would be a period of nineteen (19) years</u>.**

**(ii) Reasons for the delay**

**57. The Respondents' proffered reason for the delay in prosecuting this matter related to the misplacement of the file and the resultant damage caused by Hurricane Dorian in 2019 to the Police Station and the Magistrates Court as contained in the Affidavit of Timothy Bailey filed on August 21, 2023.**

**58. It is obvious that none of these reasons can be attributed to the Applicant and further, I find them unsatisfactory and unreasonable in all of the circumstances.**

**59. The Applicant was committed to stand trial in 2005, some fourteen years prior to Hurricane Dorian. Further, the said Affidavit showed that the search for the file did not commence until after the Applicant had contacted the Respondents' offices:**

> **'4.That the Respondents note that the Applicant contacted the Offices of the Respondents between 2019 and 2020 seeking that the matter be discharged as particularly evidenced in the Applicant's letter dated 17th June, 2020.**
>
> **5. That the Office of the Second Respondent had subsequently sought out the Applicant's file. Searches were conducted at both its Offices in New Providence, as well as in Freeport, Grand Bahama, but to no avail.**
>
> **6. That the Marsh Harbour, Abaco, Police Station, as well as the Magistrates Court in Abaco were also contacted in an effort to locate the file. However, personnel from the Office of the Second Respondent were advised that the Police Station had sustained extensive damage as a result of hurricane Dorian, which occurred between the 24th of August, and the 10th of September, 2019, thus it was not able to copy of the file. Further, as it related to the Magistrate's Court, that the archives (based on the age of the matter) as well as filing cabinets were searched, and that the file could not be located.' [Emphasis added]**

**60. There was nary any evidence to demonstrate that the Applicant contributed to the length of delay in this matter despite being represented by attorney, Godfrey 'Pro' Pinder. There was one letter from his attorney to the Magistrate in which he requested and adjournment, however, there was nothing else tendered to show that he would have contributed to the significant length of the delay.**

**61. The Respondents sought to attribute the delay to the Applicant because if he had applied to vary his bail to have his passport returned, this would have alerted the authorities to look for his file and prompt them to pursue the matter earlier. While this may be true and I am inclined to agree that it may have had that effect, the onus is not on the Applicant to bring himself to trial. Barker v Wingo.**

**(iii) Assertion of the accused's right**

**62. The Applicant admitted that he did not contact the Second Respondent until 2019 because he believed that his**

**attorney Godfrey 'Pro' Pinder had died. Therefore, he began reaching out to the Second Respondent sometime in 2019 via telephone calls and again in June 2020 by way of letter addressed to the DPP, the contents of which were set out in paragraph 12.**

**63. The Applicant's belief that his attorney had died was mistaken and the Respondents in their Affidavit of Timothy Bailey filed on October 17, 2023 addressed this. The Applicant then admitted in his Affidavit filed on October 19, 2023 that he honestly believed that his attorney had died, however, he maintained that he only began reaching out directly to the Second Respondent after he had formed that 'genuine, mistaken belief'. I refer to his evidence as contained in his Affidavit filed on October 5, 2023:**

> **'4. Before I started contacting the Office of the Second Respondent, I was represented by Mr. Godfrey Alexander Pinder and between approximately 2005 and 2019, I called Mr. Pinder's Chambers at least twice per year so as to ascertain whether there were any updates in my matter. During the times that I was able to reach Mr. Pinder, he always informed me that there was a major backlog in the criminal justice system and that he was aware of many matters that was committed to stand trial in the Supreme Court before 2005 that had not come up for trial as yet. During this time, I didn't think that it was appropriate for me to contact the Office of the Second Respondent directly because I was represented by Counsel. The Supplemental Affidavit in Response of Timothy Bailey filed herein on 21st August, 2023 does indeed exhibit three letters from the Chambers of Mr. Pinder confirming his representation of me in 2005. For ease of reference. …**
>
> **5. On or about 20th May, 2019, Mr. Pinder died and so at that point, I no longer was represented by an Attorney and there was no one that I could have called other than the Office of the Second Respondent for an update. I therefore took the matter into my own hands and in 2019, the same year that my Attorney passed away, I started to contact the Office of the Second Respondent directly in search of answers (as Mr. Timothy Bailey confirmed in his evidence, which is outlined above). Initially when I made contact with the Office of the Second Respondent, it was with the objective of obtaining an update on the matter. I called the said office approximately four times within six months and I was constantly told by an agent in the said office that**

**they would look into the matter and get back to me. During my fifth or sixth call to the said office, I was informed that the virtual complainant no longer wished to proceed and as such, I would be served with a Summons to come to Court within a few short weeks and the matter would be discharged. Frankly, I was surprised that they finally did look into the matter for me and I was relieved that closure was being brought to this matter. My satisfaction was short-lived when I realized that another six months had passed and I still did not hear anything from the Office of the Second Respondent nor was I served with a Summons instructing me to appear before Court.'**

**64. The Respondents make the argument that because the Applicant took no steps to assert his rights between the years, 2005 through 2019, that it can be inferred that he was uninterested in being brought to trial. They placed reliance placed on Powell J, statements in Barker v Wingo which I set out in paragraph 32. However, I highlight a portion of his statement below which I find pertinent to this issue of the assertion by the Applicant of his rights:**

> **'<u>The more serious the deprivation, the more likely a defendant is to complain. The defendant's assertion of his speedy trial right, then, is entitled to strong evidentiary weight in determining whether the defendant is being deprived of the right. We emphasize that failure to assert the right will make it difficult for a defendant to prove that he was denied a speedy trial</u>.' [Emphasis added]**

**65. In addition, they relied upon Roasio Zamorana v the State of Texas No.1442-00 which cited with approval the principles from Barker which I set out in paragraph 33, however, I highlight the portion that I find most relevant to this issue:**

> **'Of course, the defendant has no duty to bring himself to trial; that is the State's duty. This does not mean that the defendant has no responsibility to assert his right to a speedy trial. Whether and how a defendant asserts his speedy trial right is closely related to the other three factors because the strength of his efforts will be shaped by them. Therefore, the defendant's assertion of his speedy trial right is entitled to strong evidentiary weight in determining whether the Defendant is being deprived of the right. Conversely, a failure to assert the right makes it difficult for a defendant to prove he was denied a speedy trial.' [Emphasis added]**

**66. The Applicant admitted that he did not reach out to the Office of the Second Defendant until after his attorney had died (albeit mistakenly) because he thought it was 'inappropriate to do so'. These efforts to reach out by calling and then later, writing a letter to the DPP in the terms as set out in paragraph 12 came after the passage of fourteen (14) years.**

**…**

**69. The Applicant has pellucidly identified the prejudice that he had experienced as a result of the delay. Further, the court in Barker v Wingo asserted that 'the more serious the deprivation, the more likely a defendant is to complain.'**

**70. Notwithstanding that, the Applicant never complained until after the expiration of fourteen (14) years and only because he thought his attorney had died. During the entire nineteen (19) year period of the delay, he was on bail and not incarcerated, however, he was without his passport. It appeared that his attorney's death made him feel that it was 'appropriate' to now reach out to the Office of the Second Respondent thereby, 'asserting his rights.'**

**71. The Applicant from his own evidence seemed to have 'accepted' the explanation of the delay in the matter being brought on for trial due to what his attorney termed 'a major backlog in the criminal justice system' for fourteen (14) years and thereby in my view acquiesced. I am fortified in this view by the Applicant's failure to (i) insist on his attorney writing a letter to urge the DPP to bring his matter on for trial; (ii) to express concern about the availability of any witnesses that he intended to rely upon; and (iii) to complain about the emotional distress or hardship he was suffering due to the delay.**

**72. Additionally and even more startling was the Applicant's failure to avail himself of the right to apply to vary his bail to have his passport returned. Perhaps, it may have been his fear that such an application may have done exactly what the Respondents have asserted, viz., alerted the relevant authorities that the matter was still outstanding and prompted an earlier search of the file because the bail variation application would have been the only thing that stood between the Applicant and the final determination of his matter.**

**73. In fact, the Applicant admitted to having made an application for variation of his bail to remove the sign-in conditions because it would have interfered with his ability to perform his job as a surveyor. <u>Therefore, the Applicant was fully aware of his right to make another application</u>**

**for the return of his passport which would have significantly minimized or indeed eliminate the prejudice or injury he claimed to have suffered as a result of it being surrendered.**

**74. I refer to Bain-Thompson v The Commissioner of Police where the Applicant's attorney had written on her behalf to the Deputy Chief Magistrate and copied the DPP for a date for the retrial of her matter and had made oral requests through multiple phone calls with the Chief Magistrate; all of which fell on deaf ears.**

**75. Further, I refer to the submissions of the Respondents with which I agree, that Barker v Wingo settled on the notion that there are defendants who are not interested in a speedy trial, and who would prefer to 'gamble' with the delay, for it might work in their favour. I cite the dicta of the Court at page 533:**

> **'Instead the record strongly suggests that while he hoped to take advantage of the delay in which he had acquiesced and thereby obtain a dismissal of the charges, he definitely did not want to be tried.'**

**76. In the instant case, the Applicant patiently' waited fourteen (14) years before he asserted his rights which the Court finds may similarly suggest that 'he hoped to take advantage of the delay in which he had acquiesced and thereby obtain a dismissal of the charges.'**

**(iv) Prejudice to the accused**

**77. The issue of prejudice would have arisen if the Applicant was proceeding to trial. As already noted, the Applicant is not being tried as his matter was withdrawn in March, 2023 by the Respondents.**

**78. In any event, I have considered the issue of prejudice under the previous heading entitled 'Assertion of an Accused's right', therefore, I will not address it again here.'" [Emphasis added]**

**15.** Having found that there was a constitutional breach, the learned judge went on to consider the issue of damages and awarded Lightbourn vindicatory damages of $10,000. She did not find that the circumstances warranted an additional award for suffering, distress, anxiety, or humiliation.

**The Appeals**

**16.** Both parties were dissatisfied with the decision of the learned judge, and each launched separate appeals to this Court.

**17.** The DPP launched its appeal, **Const/SCCrApp No. 149 of 2024,** against the whole of the judgment of the learned judge on the following grounds:

> **"(1) The Learned Justice erred in granting an Article 20(1) Declaration at paragraph 88(i) of the said Judgment, having regard to the earlier finding at paragraph 76 of the said Judgment, i.e.:**
>
> > **'In the instant case the Applicant 'patiently' waited fourteen (14) years before he asserted his rights which the Court finds may similarly suggest that 'he hoped to take advantage of the delay in which he had acquiesced and thereby obtain a dismissal of the charges'**
>
> **(2) The Leaned (sic) Justice erred in finding at paragraph 86 of the said Judgment that the Respondent 'asserted his rights' from 2019 to 2023, having regard to:**
>
> > **(a) the finding that the Respondent 'patiently' waited for fourteen 14 years, and**
> >
> > **(b) the fact that the Respondent sought out a 'discharge' for a matter which he deemed to be a 'cold case', which suggests that the Respondent was fully aware of the consequences of 'patiently' waiting.**
>
> **(3) The award of Vindicatory Damages is unreasonable having regard to (1) and (2) above, and is not meant for the purpose of punishing the Appellants/State; and**
>
> **(4) The award of Costs is erroneous based on all of the circumstances of the matter.'"**

**18.** Lightbourn launched his appeal, **Const/SCCrApp No. 150 of 2024**, against the whole of the judgment of the learned judge on the following grounds:

> **"(1) The Learned Judge erred when she came to the determination at paragraph 71 of the Judgement that:**
>
> > **'The Applicant from his own evidence seemed to have 'accepted' the explanation of the delay in the matter being brought on for trial due to what his attorney termed 'a major backlog in the criminal justice system' for fourteen 14 years and thereby in my view acquiesced.'**
>
> **(2) The Learned Judge erred when she engaged in speculation in paragraph 72 of the Judgment as follows:**
>
> > **'Additionally, and even more startling was the Applicant's failure to avail himself of the right to vary his bail to have his passport returned. Perhaps, it may have been his fear that such an application may have done exactly what the Respondents have**

**asserted, viz., alerted the relevant authorities that the matter was still outstanding and prompted an earlier search of the file because the bail variation application would have been the only thing that stood between the Applicant and the final determination of his matter.'**

**(3) The Learned Judge erred in the exercise of calculating the quantum of compensatory and/or vindicatory damages when she only considered the period where the Appellant 'asserted his rights', viz', from 2019 to 2023, the date he commenced this action' at paragraph 86 of the Judgment.**

**(4) The Learned Judge erred when she applied a wrong principle of law and failed to properly consider comparable awards in coming to her conclusion to award the Appellant (ALS) the inordinately low sum of $10,000.00 in vindicatory damages and no damages whatsoever for suffering, distress, anxiety and humiliation after determining that his constitutional right to a fair hearing within a reasonable time had been infringed as a result of the State failing and/or refusing to bring the Appellant's (ALS') matter on for trial for a period of approximately 20 years.**

**(5) The Learned Judge erred when she failed to give reasons for her failure and/or refusal to award ALS damages for the suffering, anxiety, stress and humiliation, which he clearly endured for 19 years.**

**(6) The Learned Judge erred in the exercise of calculating the quantum of vindicatory damages when she failed and/or refused to adequately consider the objectives of vindicatory damages in cases of this nature and when she failed and/or refused to award the Appellant a sum that is a reflection of the gravity of the breach in the instant case.**

**(7) The Learned Judge erred in the exercise of calculating the quantum of vindicatory damages when she failed and/or refused to adequately consider the objectives of vindicatory damages in cases of this nature and when she failed and/or refused to award the Appellant a sum that is a reflection of the gravity of the breach in the instant case. The Learned Judge erred in fact when she stated at paragraphs 67 and 68 of her Judgment as follows:**

> **'[67.]The Applicant alleged that the following occurred during the period of the delay due to his (sic) not having his passport:**
>
> **(i) he was unable to travel internationally;**
>
> **(ii) he was married twice and missed two honeymoons;**

**(iii) he missed taking his daughter to school and attending her graduation;**

**(iv) he was unable to obtain a business license;**

**(v) he was unable to open a bank account;**

**[68.] It is unclear from the evidence at what period during the nineteen (19) year delay did any of the items in (i) through (v) occurred, viz., whether it occurred during the fourteen (14) year period when the Applicant was represented of (sic) thereafter …'**

**(8) The Learned Judge erred when determined that 'Costs to the Applicant to be paid by the Respondent to be fixed, if not otherwise agreed.'**

**(9) The Judgment was in any event against the facts and the preponderance of the evidence before the Court below, which facts and evidence demonstrated that the Appellant (ALS) ought to have been awarded a sum significantly higher than $10,000.00 for vindicatory and/or compensatory damages and that the Appellant (ALS) ought to have been awarded a sum for suffering, distress, anxiety and humiliation, given the unique circumstances of this case.**

**(10) The Learned Judge did not support her decision with cogent reasons.'" [Emphasis added]**

**Analysis and Discussion**

**19.** These appeals may be distilled into 3 issues:

(1) Whether there has been a breach of Lightbourn's right to a fair trial within a reasonable time;

(2) Whether the award of damages was adequate; and

(3) Whether the cost order was appropriate.

***Whether there has been a breach of Lightbourn's right to a fair trial within a reasonable time.***

**20.** The substance of the DPP's appeal may be stated in two short propositions:

(1) The learned judge was wrong to find that Lightbourn's right to a fair hearing was breached in circumstances where she had already found that he "patiently" waited 14 years before he asserted his rights and that he was hoping to take advantage of the delay; and

(2) The learned judge was wrong to find that Lightbourn had asserted his rights from 2019 to 2023, as he was seeking to have the matter discharged as opposed to tried.

**21.** Lightbourn contends that: (1) the learned judge was wrong to find that he waited patiently for 14 years; and (2) it was not a prerequisite for him to assert his right to be tried in order to determine whether his right to be tried in a reasonable time was infringed.

**22.** In the recent decision of **DPP v Reno Bethel** Const/CrApp. No. 39 of 2025, this Court (differently constituted) succinctly outlined the proper approach to be undertaken in determining whether there has been a breach of the right to a fair hearing within a reasonable time. At paragraphs 22-25, Evans P. stated as follows:

> **"22. The proper approach to an alleged breach of the right to a hearing within a reasonable time is now well settled. The inquiry is not one of mere chronology. It is a contextual and evaluative exercise, requiring the court to consider the entirety of the circumstances in which the delay arose. In Barker, the court articulated the familiar fourfold test, 'length of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant.'**
>
> **23. That framework has consistently been applied and refined in Commonwealth jurisprudence. In Dyer v. Watson [2002] UKPC D1, Lord Bingham emphasised that the threshold for establishing a breach is not lightly crossed and that the court must undertake a detailed examination of the facts:**
>
> > **'…The threshold of proving a breach of the reasonable time requirement is a high one, not easily crossed. … it is necessary for the court to look into the detailed facts and circumstances of the particular case. … [including] the complexity of the case… the conduct of the defendant … and … the manner in which the case has been dealt with by the administrative and judicial authorities. …' [Emphasis added]**
>
> **24. Similarly, in Boolell, the Board made clear that the appellate tribunal must not adopt a narrow or mechanical approach:**
>
> > **'[36] … before dismissing his complaint of delay as a breach of his constitutional rights the appellate tribunal is obliged to look at the whole picture.' [Emphasis added]**
>
> **25. In Frank Gibson v. Attorney General [2010] CCJ 3 (AJ), it was reiterated that delay, even if lengthy, does not in itself conclude the inquiry:**
>
> > **'[58] … the mere lapse of an inordinate time will raise a presumption, rebuttable by the State, that there has been undue delay. Before making such a finding the court must consider, in addition to the length of the delay, such factors as the complexity of the case, the reasons for the delay and specifically the conduct both of the accused and of the State. …'" [Emphasis added]**

**23.** The guiding principle therefore is that the circumstances of the case must be considered, as a whole, in light of the four-fold test laid down in **Barker v Wingo** [1972] 407 US 514**.** No one limb of the test is dominant. I therefore adopt the views expressed by Cochran J in the Texas Court of Criminal Appeals decision in **Rosario Zamorano v The State of Texas** No. 1442-00, interpreting **Barker v Wingo,** where he stated**:**

> **"Under Barker v. Wingo, courts must analyze federal constitutional speedy trial claims by first weighing the strength of each of the above factors and then balancing their relative weights in light of 'the conduct of both the prosecution and the defendant.' None of the four factors is 'either a necessary or sufficient condition to the finding of a deprivation of the right of speedy trial.' Instead, they are related factors, which must be considered together along with any other relevant circumstances. No one factor possesses 'talismanic qualities,' thus courts must 'engage in a difficult and sensitive balancing process' in each individual case'" [Emphasis added]**

**24.** The DPP's contention that the learned judge was wrong to find that Lightbourn asserted his rights from 2019 to 2023 as he was seeking to have the matter discharged as opposed to tried, is, with respect, misconceived. It is true that Lightbourn only asserted his rights for the 1-year period 20 May 2019 to 20 June 2020 and not the entirety of the period 2019 to January 2023. However, the context of his exchanges with the office of the DPP is relevant. Lightbourn:

> (1) after May 20, 2019, commenced making direct contact with the Office of the DPP as to the status of his matter;
>
> (2) was assured by staff at the DPP's office that they would investigate the matter and revert;
>
> (3) after several calls was informed that the virtual complainant no longer wished to proceed and that he would be summoned to court so the matter could be discharged;
>
> (4) spoke with a Sergeant Deveaux, who indicated that she was taking a withdrawal statement from the virtual complainant and received no further update; and
>
> (5) on 17 June 2020, Lightbourn wrote to the then DPP, Mr. Garvin Gaskin, requesting that the matter be discharged but received no acknowledgment to his letter.

**25.** I accept that Lightbourn's request to the DPP in 2020 was that the matter be discharged, rather than tried. His reference to having the matter discharged, however, was informed by his communication with the office of the DPP, and the advice that the virtual complainant no longer wished to proceed. The communication was nonetheless clearly designed to bring the matter to a conclusion, and a complaint by him that the matter remains outstanding and hanging over his head.

**26.** Lightbourn complains about the learned judge's factual finding that he waited patiently for 14 years. It is, however, a settled position that appellate courts are loath to interfere with factual

findings of the lower court unless it can be said that they were plainly wrong. A concise statement of this principle is to be found in the decision of this Court (differently constituted) in **Clemenza Ltd and anor. v. AG and anor.** SCCivApp No. 28 of 2022 at paragraph 18:

> **"18. The issue of whether the trial judge's conclusions on primary facts should be interfered with by an appellate court was considered in Gabrielle Volpi and Anor v Matteo Volpi [2022] EWCA Civ 464. Lord Justice Lewison said the following at paragraphs 2, 4 and 5 of the Judgment:**
>
> > **'2. The appeal is therefore an appeal on a pure question of fact. The approach of an appeal court to that kind of appeal is a well-trodden path. It is unnecessary to refer in detail to the many cases that have discussed it; but the following principles are well-settled:**
> >
> > **i) An appeal court should not interfere with the trial judge's conclusions on primary facts unless it is satisfied that he was plainly wrong.**
> >
> > **ii) The adverb 'plainly' does not refer to the degree of confidence felt by the appeal court that it would not have reached the same conclusion as the trial judge. It does not matter, with whatever degree of certainty, that the appeal court considers that it would have reached a different conclusion. What matters is whether the decision under appeal is one that no reasonable judge could have reached.**
> >
> > **iii) An appeal court is bound, unless there is compelling reason to the contrary, to assume that the trial judge has taken the whole of the evidence into his consideration. The mere fact that a judge does not mention a specific piece of evidence does not mean that he overlooked it.**
> >
> > **iv) The validity of the findings of fact made by a trial judge is not aptly tested by considering whether the judgment presents a balanced account of the evidence. The trial judge must of course consider all the material evidence (although it need not all be discussed in his judgment). The weight which he gives to it is however pre-eminently a matter for him.**
> >
> > **v) An appeal court can therefore set aside a judgment on the basis that the judge failed to give the evidence a balanced consideration only if the judge's conclusion was rationally insupportable.**
> >
> > **vi) Reasons for judgment will always be capable of having been better expressed. An appeal court should not subject a judgment to narrow textual analysis.**

**Nor should it be picked over or construed as though it was a piece of legislation or a contract. …'"**

**27.** The finding of the learned judge that Lightbourn waited patiently for 14 years, is not plainly wrong. Lightbourn's own evidence was that he did not make any contact with the prosecuting authorities for a 14-year period. He may have reached out to his lawyer as to the status of the case, but absolutely no contact was made with the judicial system. Lightbourn's attorney, and he himself, ought to have appreciated that the period was inordinate, and therefore the judge was not wrong to conclude that he was content to 'let sleeping dogs lie'. The learned judge supported her belief that Lightbourn was content to sit and wait for time to elapse with her finding that Lightbourn knowingly did not apply for the release of his passport as he was aware that he could. It is therefore unarguable that Lightbourn did not assert his rights in that period and did not express any impatience.

**28.** What the learned judge could not do, however, in my view, was to extract this 14-year period from the computation of the *length of the delay* in bringing Lightbourn to trial. This is what the learned judge seems to have done in paragraph 71 of her judgment where she indicated that she would only consider the period after May 2019 in assessing damages.

**29.** Irrespective of how the learned judge treated the 14-year period, in relation to the award of damages, she considered the circumstances of the case as a whole in coming to a determination that Lightbourn's right to a fair trial within a reasonable time had been infringed. The learned judge found that the relevant period, as reflected in paragraph 56 of her judgment, was 19 years. It is clear, therefore, that the learned judge did not discount the period between 2005 and 2019, for the purposes of determining whether there was a breach of the right to a fair trial within a reasonable time.

**30.** The holding that Lightbourn's right to a fair hearing has been infringed, is a decision which could not be faulted.

**31.** In the Privy Council decision in **Dyer v Watson** [2002] UKPC D1, Lord Bingham stated:

> **"52. In any case in which it is said that the reasonable time requirement (to which I will henceforward confine myself) has been or will be violated, the first step is to consider the period of time which has elapsed. Unless that period is one which, on its face and without more, gives grounds for real concern it is almost certainly unnecessary to go further, since the convention is directed not to departures from the ideal but to infringements of basic human rights. <u>The threshold of proving a breach of the reasonable time requirement is a high one, not easily crossed. But if the period which has elapsed is one which, on its face and without more, gives ground for real concern, two consequences follow. First, it is necessary for the court to look into the detailed facts and circumstances of the particular case. The Strasbourg case law shows very clearly that the outcome is closely dependent on the facts of each case. Secondly, it is necessary for the contracting state to explain and justify any lapse of time which appears to be excessive.</u>" [Emphasis added]**

**32.** The first step therefore was for the learned judge to determine the period which elapsed. In the Supreme Court decision in **Gibson v AG** [2018] 1 BHS J. No. 100, Hilton J (as he then was) recognized that the breach of the right to a trial within a reasonable time began after a period in which someone could reasonably expect to have been tried. He stated at paragraph 38-39:

> **"38. I do not consider, on the facts of this case, that the indications by counsel for the Respondent or Applicant as to the time of commencement of the breach to be appropriate. In this case the Applicant was arrested on 9th November 2009 and his trial commenced in March 2017 and was completed on 20th April 2017.**
>
> **The Bahamas Legislature in matters relating to bail has enacted that a 'Reasonable Time' for the purposes of trial in the Supreme Court is 3 years. Section 4 (2A) of the Bail Act (as amended) specifies:**
>
> > **'Without Limiting the extent of a reasonable time, a period of three years from the date of arrest or detention of the person charged shall be deemed to be reasonable time.'**
>
> **39. In interpreting this section, President of the Court of Appeal, Dame Allen in the case of Hepburn v. The Attorney General S.C.Cr. App. No. 276 of 2014 stated at para. 22 and 23 as follows:**
>
> > **'22. The Applicant no doubt relies on the definition of what is a reasonable time in section 4 (2A) to show that the trial date of 19th June 2017 would make the time which will elapse from the time of his arrest to that date about three years.**
> >
> > **23. However, when one considers the authorities and indeed the wording of section 4 (2A), it is clear that what is a reasonable time must be determined on a case by case basis and without regard to hard and fast rules of mathematical formulae. Consequently, the deeming provision of section 4 (2A) must be construed as a marker and not a limitation of what is a reasonable time, and the court must still consider whether, in all the circumstances, the time which has elapsed or will elapse, between arrest and trial, is reasonable.'"**

**33.** In accordance with Hilton J's reasoning in **Gibson**, which I accept, the delay did not begin in 2005 but at a time when it was unreasonable that Lightbourn's case was not concluded. The delay therefore could not be the entire 19 years from the date of committal to the withdrawal of the prosecution, but a lesser period. In this case, I readily accept that it is difficult to individualize the commencement of the delay period, as the matter stalled after committal. In the circumstances, the learned judge ought to have accepted the default period set by the Bahamian legislature of 3 years. Lightbourn was arrested in October 2004, resulting in a delay period commencing after October 2007. The charge having been withdrawn in March 2023,

the period of delay was therefore more likely a period of 15 years and 6 months. A delay of 15 years and 6 months, by any measurable standard, is inordinate and presumptively prejudicial.

**34.** The explanation advanced by the State for the excessive lapse of time, is that the file was mislaid in the Magistrate Court in Marsh Harbour after Lightbourn was committed and never transported to New Providence for the preparation of the Information. The learned judge did not accept the circumstantial evidence advanced by the DPP, that a colleague of Lightbourn's had intentionally mislaid the court file. Whether the fault of the Magistrate's Court or the prosecuting authorities, that fault, albeit unfortunate, is attributable to the organs of the State.

**35.** Finally, by its own affidavit evidence, the DPP stated that in:

> **"… all of the circumstances surrounding the delay in this matter, the [DPP] does not intend to proceed with the prosecution of the same."**

This was an acknowledgement that the prosecution of Lightbourn was no longer viable because of delay.

**36.** I therefore agree with the submission of Lightbourn, that when one looks at the case in the round, the finding that his right to be tried within a reasonable time was infringed, was irresistible in all the circumstances of this case.

***Whether the award of damages was adequate***

**37.** The appeal challenges the learned judge's award of (or failure to award):

(a) Vindicatory damages;

(b) Damages for suffering, anxiety, stress and humiliation; and

(c) Damages for the retention of Lightbourn's passport.

*(a) Vindicatory Damages*

**38.** The DPP's case in the appeal is that the learned judge was wrong to make an order for vindicatory damages as: (a) she had found that he "patiently" waited 14 years before he asserted his rights and was hoping to take advantage of the delay; (b) she ought not to have found that Lightbourn asserted his rights from 2019 to 2023; and (c) she ordered vindicatory damages to punish the State.

**39.** Lightbourn contends that the award of vindicatory damages was too low because: (a) the learned judge limited her assessment to the period from 2019 to 2023, when he was said to have asserted his rights; (b) she failed to properly consider comparable awards; (c) she did not adequately address the objectives of vindicatory damages; and (d) she failed to award a sum reflecting the gravity of the breach.

**40.** I am satisfied that, in assessing damages, the learned judge ought not to have excluded the delay between 2004 and 2019. Her finding that Lightbourn may have been content **"to let sleeping dogs lie"** could properly inform the assessment, but it should not have led to that period being disregarded, as appears to have occurred.

**41.** In **Gibson v A-G of Barbados** 76 WIR 137 the Caribbean Court of Justice, in an appeal from the Republic of Barbados, discussed the circumstances where an award of damages would be appropriate for the breach of the right to be tried within a reasonable time. At paragraph 69 of the judgment, the Court stated:

> **"69. As to the issue of the propriety of an award of damages which was specifically raised in this case, we disagree with the court below that such an award could only have been warranted if Gibson had established proof of damage or if he had been unlawfully detained or abused. Depending on the circumstances an award of damages may be an appropriate remedy for breach of any of the fundamental rights including a breach of the right to be tried within a reasonable time. It would, however, be repugnant to the public conscience that such an award should be afforded to an accused for the breach of that latter right when there is still the possibility that the accused may be tried and convicted for the offence with which he has been charged. An award of damages for breach of the reasonable time guarantee should be considered as an appropriate remedy only where the accused will no longer be tried or has been tried and acquitted or where his conviction has been quashed. And even in those cases the making of such an award should not be regarded as automatic but would depend on the particular circumstances of each case. … " [Emphasis added]**

**42.** As the case against Lightbourn will no longer be tried, the DPP having discontinued the prosecution, it was open to the learned judge to consider an award of damages for breach of the reasonable time guarantee as an appropriate remedy.

**43.** In **AG v Ramanoop** [2005] UKPC 15, the Privy Council, on an appeal from the Republic of Trinidad and Tobago, considered the nature of the damages available for constitutional breaches. Lord Nicholls stated at paragraphs 15-20:

> **"15. In the present case Mr Dingemans on behalf of the Attorney General submitted that 'redress' in section 14 permits the court to make awards of damages but only by way of compensation. Damages for breach of a constitutional right should vindicate that right and are a matter for the court's discretion. But it is not appropriate to punish the state or an individual by way of constitutional relief and the court has no jurisdiction to do so.**
>
> **16. Their Lordships were helpfully referred to a number of authorities where courts in other countries have considered the scope of the remedies a court may order in respect of constitutional infringements. Of particular assistance is the New Zealand jurisprudence, notably observations of Cooke P in Simpson v Attorney General (Baigent's case) [1994] 3 NZLR 667, 678, and the judgment of Thomas J in Dunlea v Attorney General [2000] 3 NZLR 136, 152.**

**17. Their Lordships view the matter as follows. Section 14 recognises and affirms the court's power to award remedies for contravention of chapter 1 rights and freedoms. This jurisdiction is an integral part of the protection chapter 1 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.**

**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, 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 of retribution, punishment in the latter sense is not its object. Accordingly, the expressions 'punitive damages' or 'exemplary damages' are better avoided as descriptions of this type of additional award.**

**20. For these reasons their Lordships are unable to accept the Attorney General's basic submission that a monetary award under section 14 is confined to an award of compensatory damages in the traditional sense. Bereaux J stated his jurisdiction too narrowly. The matter should be remitted to him, or another judge, to consider whether an additional award of**

**damages of the character described above is appropriate in this case. '" [Emphasis added]**

**44.** In **Stubbs et al v Ferguson et al** [2015] 3 BHS J. No. 1, Stephen Isaacs J (as he then was) ordered an assessment of damages in two cases where he found that there was an unreasonable delay in:

(1) the prosecution of three defendants, Stubbs, Patton and Brice, who were subject to prosecution for sixteen (16) years before their case was stayed; and,

(2) the prosecution of McKenzie, who was subject to prosecution for thirteen (13) years before her case was stayed.

Deputy Registrar Meers assessed those damages at $32,000 in respect of Stubbs, Patton and Brice and $26,000 in respect of McKenzie. The Deputy Registrar noted that she did not have any precedent to base the decision upon and that none was provided to her. She did not separate the aspects of the award and made a global award for:

**"17. … the time that the Plaintiffs had to suffer, including their curfews and the fact that they were limited in what employment they could have obtained. In addition, their lives were put on hold to some degree."**

**45.** In **Gibson v AG,** Hilton J, had to determine an appropriate award for compensatory damages for breach of the right to a fair trial in a reasonable time. He stated at paragraphs 42 - 46 as follows:

**"42. I am of the view that the Applicant should be compensated for this breach by being awarded both a compensatory award and a vindicatory award and that the compensatory award should include all discernible losses the Applicant would have suffered and include any amount for aggravation if warranted.**

**THE LAW**

**43. Generally, in assessment of damages for breach of a person's constitutional rights, the nature of damages awarded may be compensatory but should always be vindicatory. The object in awarding damages for breach of the constitutional right to trial within a reasonable time broadly speaking are:**

**a) To vindicate the right of the Applicant.**

**b) To secure the protection of the constitutional right.**

**c) To compensate the Applicant for any proven injury or loss suffered both pecuniary and non-pecuniary.**

**d) To provide an incentive to the state to ensure that criminal trials are heard in a timely manner.**

**e) It is not for the purpose of punishment of the State.**

**44. As was stated by the Caribbean Court of Justice in Gibson v. A.G. 2010 CCJ3 (A.J.) at para: 48, 49 and 62:**

> **'[48] The Public have a profound interest in criminal trials being heard within a reasonable time. Delay creates and increases the backlog of cases clogging and tarnishing the image of the criminal justice system. Further, the more time it takes to bring a case to trial the more difficult it may be to convict a guilty person. For a variety of reasons witnesses may become unavailable or their memories may fade, sometimes seriously weakening the case of the prosecution which carries the burden of proof. Defendants released on bail for lengthy periods have an opportunity to commit other crimes if they are so disposed. The longer an accused is free awaiting trial, the more tempting becomes the opportunity to skip bail and avoid being tried. On the other hand, keeping remanded persons in custody for excessive periods increases prison populations and aggravates the evils associated with overcrowded jails. Moreover, there is a financial cost to the public in maintaining a person on remand.**
>
> **[49] Even more telling than the societal interests at stake are the consequences to an accused of a breach of the reasonable time guarantee. This is evident in the case of a defendant who is not guilty. That person is deprived of an early opportunity to have his name cleared and is confronted with the stigma loss of privacy, anxiety and stress that accompany exposure to criminal proceedings. But a defendant facing conviction and punishment may also suffer, albeit to a lesser extent, as he is obliged to undergo the additional trauma of protracted delay with all the implications it may have for health and family life. By deliberately elevating to the status of constitutional imperative the right to a trial within a reasonable time, a right which already existed at common law, the framers of the constitution ascribed a significance to this right that too often is underappreciated, if not misunderstood. (emphasis added).**
>
> **[62] ..... 'The fundamental objective of the reasonable time guarantee is not to permit accused persons to escape trial but to prevent them from remaining in limbo for a protracted period and to ensure that there is efficient disposition of pending charge. The guarantee is an incentive to the State to provide a criminal justice system where trials are heard in a timely manner." (emphasis added)**

**45. When considering what may be an appropriate award in any given case the court must exercise rationality and**

**proportionality, taking into account the seriousness of the breach, the impact of the breach on the Applicant, the seriousness of the State misconduct (if any) and the public interest in good governance.**

**The quantum awarded must be a reflection of the gravity of the breach in each case.**

**46. I have considered various case authorities (some of which were referred by counsel) which have dealt with damages for breach of various provisions of the fundamental rights and freedoms guaranteed by the constitution, and from which guidance can be gleaned as to the proper approach.'"**

**46.** Hilton J, after considering a significant number of authorities locally, regionally and across the Commonwealth, made the following award:

**"57. In the present case I also find that the vindicatory awards given in the Takitota and Merson cases (supra) of $100,000.00 for the breaches of Articles 17 and 19 of the Constitution are distinguishable both with regard to the extreme facts of those cases and for the specific Articles breached. A breach of the reasonable time guarantee, in my view, should not have the same consequences (in terms of amount of damages / compensation) as breaches of Article 17 and 19 with the consequential distress, loss and suffering inherent in their breaches. Just as a breach of Article 20 (1) (right to a fair hearing) will almost always result in a stay of a trial, whereas a breach of Article 20 (1) (right to trial within a reasonable time) will not usually do so, except in extreme cases; there must be a different value of the various rights (in terms of compensation) depending on the gravity of injury suffered for contravention of the various rights.**

**58. In the present case I have determined that the breach of the Applicant's right to trial within a reasonable time should be calculated from 1st December 2012 to 1st April 2017 (four years and four months).**

**59. In my discretion I find that a vindicatory award for this breach should be $25,000.00 and an additional $10,000.00, for aggravated damages taking into account the behaviour of the police force in negligently or deliberately withholding the results of the DNA tests from January 2012 right up to March 2017.**

**60. With respect to compensatory damages for the suffering, distress, anxiety, humiliation, and sting of the rape charge hanging over his head for such a long time, and resulting end of his contractual employment with the police force in June 2015 the Applicant is awarded a further $10,000.00.**

**61. With respect to the proven loss suffered by the Applicant as a result of the breach which he should be compensated I make the following awards.**

**a) Interest on his half-pay from 1st December 2012 up to his reimbursement.**

**b) Interest on his pension from June 2015 to the commencement of payment of his pension.**

**c) Interest on his bail amount of $10,000.00 from 1st December 2012 to 30th April 2017.**

**62. No further award for exemplary damages is warranted.**

**63. I do not find that it is appropriate to make any award for loss of Earnings or earning capacity.**

**64. I also award the Applicant his cost to be taxed if not agreed."**

**47.** The learned judge accepted the usefulness of **Gibson v AG** but sought to distinguish the case on its facts. She stated at paragraph 85:

> **"85. While I did find Gibson v AG helpful on the issue of these two heads of damages, I have found the facts distinguishable from the instant case. The common feature of both cases, however, was the charge of attempted rape in the instant action, and rape in Gibson v AG. The delay was seven (7) years however, during an approximate five (4) year period, Gibson periodically made inquiries both personally and through his counsel regarding the status of the matter thereby asserting his rights. Gibson had a long distinguished career as a police officer who was denied the ability to obtain a promotion, had been placed on administrative leave, interdicted and placed on half pay and had been unable to obtain steady gainful employment while the matter was still pending and had a wife and three minor children. In the instant case, the majority of the prejudice suffered by the Applicant was due primarily to having surrendered his passport as a condition of his bail. He remained gainfully employed and save for his inability to earn additional income as a Police Reservist which income he was did not provide any proof of, he did not allege any additional prejudice. Further, unlike Gibson, during the nineteen (19) year delay, he waited for fourteen (14) years before he took action or 'asserted his rights' per Barker v Wingo."**

**48.** Lightbourn harshly criticizes the learned judge's assessment on this issue, somewhat unfairly in my view. Other than the length of the delay, Gibson clearly suffered more severely because of the matter hanging over his head. Lightbourn's main gripe that of the absence of his passport, was a matter he could have easily remedied by an application. An application which, as the judge found, may also have alerted the authorities that his case was in abeyance.

**49.** In the exercise of her discretion, the learned judge made an award of $10,000 for vindicatory damages. A court of appeal will not interfere with the exercise of that discretion unless it can be shown that the judge took into account a matter or matters that she ought not to have taken into account or did not take into account matters that she should have taken into account or

that the decision is plainly wrong. As I have indicated, I am satisfied that the learned judge ought not to have confined herself to:

> **"… only consider the period where the Applicant 'asserted his rights', viz., from 2019 to 2023, the date he commenced this action."**

The true period of the delay was more likely 15 years and 6 months, of which during only a 1-year period, Lightbourn sought to assert his right to have his case determined. The learned judge therefore did not consider matters that she should have considered, and her award for vindicatory damages was lower than it ought to have been.

**50.** Rather than remit the matter to the learned judge to conduct a re-assessment, I would substitute a sum of $40,000 as a vindicatory award for this breach. This sum, in my view, takes into account the true period of the delay, vindicates the right of Lightbourn while recognizing his failure to assert his rights and providing an incentive to the State to ensure that criminal trials are heard in a timely manner.

*(b) Damages for suffering, anxiety, stress and humiliation*

**51.** In Lightbourn's appeal he complains that the learned judge erred when she failed to give reasons for her failure and/or refusal to award him damages for the suffering, anxiety, stress and humiliation which he says endured for 19 years.

**52.** The learned judge found that the circumstances of the case did not warrant an additional award for suffering, distress, anxiety and humiliation but did not provide reasons for so doing. At paragraph 85 of her judgment, she sought to distinguish the case of **Gibson** but did not link this to a denial of an award of compensatory damages for the suffering, distress, anxiety, humiliation, and sting of the charge hanging over Lightbourn's head for such a long time. She merely linked the distinguishing factors to a lower vindicatory award.

**53.** In **Gibson,** Hilton J had awarded a further sum of $10,000 in compensatory damages for the suffering, distress, anxiety, humiliation, and sting of the rape charge hanging over Gibson's head for such a long time and resulting in the end of his contractual employment with the police force.

**54.** It is therefore a valid complaint that the learned judge did not give reasons for not making an award of damages in circumstances where an award ought to have been made, she having found a breach of Lightbourn's right to a fair trial within a reasonable time and awarded vindicatory damages. In the absence of independent evidence, other than Lightbourn's impressions, I accept that the award is largely nominal. I am satisfied that Lightbourn is nonetheless entitled to a compensatory award for suffering, anxiety, stress, humiliation, and sting of the attempted rape charge hanging over his head for such a long time. It was therefore appropriate for the learned judge to have made such an award.

**55.** Lightbourn invites the Court to make a suitable award of damages rather than remit the matter to the learned judge to conduct an assessment. I would do so and award a sum of $10,000 as a compensatory award for this breach. This sum, albeit similar to the award for Gibson, takes into account that Lightbourn, unlike Gibson, was less assertive in pursuing his rights and did

not lose his substantive employment, but acknowledges that the delay in Lightbourn's case was longer.

*(c) Damages for the retention of Lightbourn's passport*

**56.** Lightbourn's case in the appeal is that the learned judge was wrong not to award him a sum for having had to surrender his passport while the case was pending. He says that this was a misunderstanding of the evidence which was reflected in paragraphs 67 and 68 of her judgment.

**57.** Paragraphs 67 and 68 of the judgment state:

> **"67. The Applicant alleged that the following occurred during the period of the delay due to his (sic) not having his passport:**
>
> **(i) he was unable to travel internationally;**
> **(ii) he was married twice and missed two honeymoons;**
> **(iii)he missed taking his daughter to school and attending her graduation;**
> **(iv)he was unable to obtain a business license;**
> **(v) he was unable to open a bank account;**
>
> **68. It is unclear from the evidence at what period during the nineteen (19) year delay did any of the items in (i) through (v) occurred, viz., whether it occurred during the fourteen (14) year period when the Applicant was represented or thereafter. This is relevant when considering whether and how a defendant asserts his right per Barker v Wingo: 'the strength of his efforts will be affected by the length of the delay, to some extent by the reason for the delay, and most particularly by the personal prejudice, which is not always identifiable, that he experiences.'" [Emphasis added]**

**58.** Lightbourn says that the learned judge's statement at paragraph 68 of her judgment, *that it is unclear* **"from the evidence at what period during the nineteen (19) year delay did any of the items in (i) through (v) occurred"**, is plainly wrong, as his Affidavit in Support of his Originating Motion reflected the period when **"the items in (i) through (v) occurred"**.

**59.** I accept that the learned judge's statement in paragraph 68 of her judgment was inaccurate. However, it was not a finding. The learned judge appears to have considered the claim for damages arising from the surrender of Lightbourn's passport to be unmeritorious, on the basis that he could have applied for its return or for permission to use it if he considered it necessary. He would have been aware of that option, having applied shortly after his arraignment to vary the signing conditions of his bail. At paragraph 72 of her judgment, the learned judge stated:

> **"72. Additionally and even more startling was the Applicant's failure to avail himself of the right to apply to vary his bail to have his passport returned. Perhaps, it may have been his fear that such an application may have done exactly what the Respondents have asserted, viz., alerted the relevant authorities that the matter was still outstanding and prompted an earlier**

> **search of the file because the bail variation application would have been the only thing that stood between the Applicant and the final determination of his matter."**

**60.** In my view, it was open to the learned judge to come to this finding. I therefore find that this complaint was without merit.

***Whether the costs order was appropriate***

**61.** Lightbourn complains that the learned judge was wrong to make an order that costs be fixed, rather than (what he describes as the usual order) for costs to be taxed if not agreed. He submits that:

> **"… in matters of this nature, the usual order is that costs are 'taxed' if not agreed. As the Learned Judge gave no reason why she determined that the costs should be 'fixed' instead of 'taxed', we submit that the Court ought to have followed the usual course, particularly in the circumstances of this matter, where ALS was constrained to commence proceedings in the Court below in order to resolve the criminal matter that was hanging over his head for 19 years."**

**62.** It is perhaps appropriate to set out the jurisdiction for the fixing of costs. This is aptly set out in the dicta of Sir Michael Barnett P in the case of **William Downie v Blue Planet Limited** SCCivApp No. 188 of 2019, and in my view are equally applicable to the task of summary assessment under the Supreme Court (Civil Procedure) Rules 2022 (the CPR). According to Sir Michael Barnett P at paragraphs 23 to 28:

> **"23. It is settled law that the court has a wide discretion as to costs. Section 30 of the Supreme Court Act provides:**
>
> > **30. (1) Subject to this or any other Act and to rules of court, the costs of and incidental to all proceedings in the Court, including the administration of estates and trusts, shall be in the discretion of the Court or judge and the Court or judge shall have full power to determine by whom and to what extent the costs are to be paid.**
>
> **24. Order 59 Rule 2 of The Rules of The Supreme Court provides:**
>
> > **(2) The costs of and incidental to proceedings in the Supreme Court shall be in the discretion of the Court and that Court shall have full power to determine by whom and to what extent the costs are to be paid, and such powers and discretion shall be exercised subject to and in accordance with this order (sic)**
>
> **25. These provisions give the court a wide discretion as to whether the costs are payable by one party to another; the amount of those costs; and when they are to be paid. This is specifically set out in the English Civil Procedure Rules Rule 44,**

**but in my judgment represent the law as expressed in the Supreme Court Act and the Rules of The Supreme Court.**

**26. As far back as Wilmott v Barber (1881) 17 Ch.D. 772 Jessell MR said:**

> **'The judge has a large discretion as to costs. He may make the defendant pay the costs of some of the issues in which he failed, although he may have succeeded on the whole action. Or he may say that both parties are wrong, but that he could not apportion the blame in a definite proportion, and therefore would dismiss the claim without costs. Or he might say that the plaintiff should have half the costs of the action, or some other aliquot part.**
>
> **Or he may follow the course which I sometimes adopt, and I generally find that the parties are grateful to me for doing so, namely, <u>fix a definite sum for one party to pay to the other</u>, so as to avoid the expense of taxation, taking care in doing so to fix a smaller sum than the party would have to pay if the costs were taxed. [Emphasis Added]**

**27. The judge has a wide power to fix a definite sum that one party pays the other party instead of ordering costs to be taxed.**

**28. This is provided for in Order 59 Rule 9 which states:**

> **9. (1) Subject to this Order, where by or under these Rules or any order or direction of the Court costs are to be paid to any person, that person shall be entitled to his taxed costs.**
>
> **(4) The Court in awarding costs to any person may direct that, <u>instead of taxed costs</u>, that person shall be entitled —**
>
> > **(b) to a gross sum so specified <u>in lieu of taxed costs</u>." [Emphasis Added]**

**63.** Under the CPR, the leaning towards fixing costs (or summary assessment) is far more acute, and the judge who hears the matter is encouraged to summarily assess costs rather than sending the matter to a detailed assessment. Rule 71.12 of the CPR provides:

> **"71.12 General rule: summary assessment.**
>
> **(1) As a general rule, a judge hearing an application will summarily assess the costs of that application immediately or as soon as practicable after the same is disposed of.**
>
> **(2) As a general rule, a judge conducting the trial will summarily assess the costs of the entire claim immediately after he has**

> **delivered judgment in respect of the same or as soon as practicable thereafter.**
>
> **(3) A judge may, instead of summarily assessing the costs under paragraphs (1) or (2), direct that the whole or any part of the costs payable shall be subject to a detailed assessment and he may, when making such direction, indicate which particular matters the Registrar may or shall take into account or exclude in relation to such detailed assessment."**

**64.** The general rule or the default is therefore the fixing of costs (now called summary assessment) rather than taxation (now called a detailed assessment). In the fixing of the costs, the learned judge was acting within her discretion and following the general rule. Where the judge follows the general rule, she could hardly be expected to give a reason for so doing. There is nothing to suggest that the judge took into account a matter or matters that she ought not to have taken into account, or that she did not take into account matters that he should have taken into account or that the decision is plainly wrong.

**65.** This complaint is therefore without merit.

**Disposition**

**66.** I am satisfied that the learned judge was correct to find that Lightbourn's right to a fair trial within a reasonable time had been breached. The DPPs appeal is therefore dismissed.

**67.** Lightbourn's appeal is allowed in part. The learned judge's award of vindicatory damages in the sum of $10,000 is set aside and substituted with an award of $40,000 for vindicatory damages. An additional award in the amount of $10,000 is made as compensatory damages, for the suffering, distress, anxiety, humiliation, and sting of the attempted rape charge hanging over Lightbourn's head for such a long time.

**68.** Lightbourn shall have his costs to be taxed if not agreed.

**The Honourable Sir Ian Winder, CJ**

**69.** I agree.

**The Honourable Mr. Justice Evans, P**

**70.** I also agree.

**The Honourable Madam Justice Fraser, JA**