IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU
(Civil (Constitutional) Jurisdiction)

CONSTITUTIONAL CASE No. 11 of 2014

BETWEEN

GUY MARCEL ALAIN BENARD
and MARIE CELINE BENARD

APPLICANTS

-AND-

THE REPUBLIC OF VANUATU

RESPONDENT

Before Chetwynd J
Mr Guy Benard in person
Mr Napuati for Mrs Marie Benard
Ms Lahua for the Respondent

Judgment

1. In a judgment handed down on 8th July 2015 I found for the Applicants. That judgment followed a Minute published on 23rd April this year and a later Minute published on 8th June. In my judgment I unfortunately and wrongly said the former was dated 11th March. The 11th March was the date that the first Conference (as required by the Constitutional Applications Rules 2003 ("the Rules")) was held. On 11th March I did make orders, including one for the Conference to be adjourned to 23rd April and the first Minute published was after that hearing. In any event, I said in my written decision of 8th July that judgment should be entered for the Applicants with damages to be assessed. It is necessary, for the purposes of reaching a decision on damages, to look in detail at the circumstances and events in relation to this claim.

2. To start at the beginning, this is an application by Mr Guy Benard and Mrs Marie Benard. It is an application pursuant to Article 6 of the Constitution. The Article reads:

> *6. Enforcement of fundamental rights*
>
> *(1) Anyone who considers that any of the rights guaranteed to him by the Constitution has been, is being or is likely to be infringed may, independently of any other possible legal remedy, apply to the Supreme Court to enforce that right.*
>
> *(2) The Supreme Court may make such orders, issue such writs and give such directions, including the payment of compensation, as it considers appropriate to enforce the right.*

There is a similar provision set out in Chapter 8 of the Constitution at Article 53.

> *"53. Application to Supreme Court regarding infringements of Constitution*
>
> *(1) Anyone who considers that a provision of the Constitution has been infringed in relation to him may, without prejudice to any other legal remedy available to him, apply to the Supreme Court for redress.*
>
> *(2) The Supreme Court has jurisdiction to determine the matter and to make such order as it considers appropriate to enforce the provisions of the Constitution.*
>
> *(3) When a question concerning the interpretation of the Constitution arises before a subordinate court, and the court considers that the question concerns a fundamental point of law, the court shall submit the question to the Supreme Court for its determination."*

Any application, whether it is under Article 6 or 53 or both, is dealt with by the Supreme Court. The Application in this matter consists of a document which is headed Urgent Oral Constitutional Application. There is also a sworn statement by Mr Benard filed at the same time, 15th December 2014. There is no indication on the file that the matter was actually the subject of an oral application. The Rules do allow an oral application to be made in cases of extreme urgency (r. 2.2(3)). The same rule requires an oral application to be put into writing "*in accordance with Form 1*". Rule 2.2 (2) says that if the application is filed by the person seeking redress it will be valid "*no matter how informally made*". At the time the written version of the urgent application was filed, together with the accompanying sworn statement, both applicants were acting in person. For the sake of completeness, on 17th December Mr Napuati filed a notice of acting for Mrs Benard. It is not suggested the application was or is anything other than validly before the court.

3. The Applicants in the written version of their application [1] say their rights to the protection of the law (Article 5(1)(d) and equal treatment under the law (Article 5(1)(k) have been infringed.

4. When the court is dealing with a Constitutional Application the Rules provide an in built timetable requiring the first Conference to be fixed by the Court between 14 and 21 days after the filing date. The Application must also be served on the Attorney General within 7 days of filing. No complaint is made by any of the parties that the conference was late or that service was delayed. I do not know for sure but I anticipate the reason why the conference was set down late has something to do with the Christmas holidays and by my own delayed arrival in Port Vila.

5. In any event a Conference was held and as indicated above, orders were made on 11th March. The Respondent was ordered to file and serve a response by 30th March. The response was only filed and served on 23rd April at the adjourned Conference. It set out what the Respondent said was a history of the Applicants'

[1] Paragraph 4 of the Urgent Oral Constitutional Application filed the 15th December 2014

residence in Vanuatu. The basic complaint [2] was that from 1st February 2003 until citizenship was granted in December 2007 Mr Benard did not renew his residency permit and was therefore living in Vanuatu illegally. The Response went on to say for that reason Mr Benard had only been residing for 5 years before he was granted citizenship and not the 10 years required under the Citizenship Act [Cap 112] ("the Act"). For good measure there was a counterclaim for the unpaid fees for Residency permits.

6. In my Minute published on 23rd April I pointed out the provisions of section 12(8)(b) of the Act;

> *"(8) For the purpose of determining the period of residence in Vanuatu of any person –*
> *(a)* [Not relevant in this case];
> *(b)* a period ***shall not*** *be disregarded by reason only that the person resided in Vanuatu during that period without having complied with any law relating to immigration."*

On 5th May the Respondent filed another sworn statement which did not deal with the section 12(8)(b) issue but merely confirmed the usual process through which an application for citizenship was made. The sworn statement did not even acknowledge that the whole basis of the Respondent's complaint as set out in paragraph 1(d) and 1(e) of the Response was built on a false premise [3]. Even if it was true the Applicants had been living for a period in Vanuatu in breach if the laws relating to immigration section 12(8(b) says clearly that such period of time still counts. In the words of the section, such a period shall not be disregarded.

7. In my Minute of 23rd April I also noted that there was a history of executive action involving both Mr and Mrs Benard seemingly designed to drive them from the country. I find it very hard to believe that the members of the Commission were totally unaware of those past dealings with Mr and Mrs Benard. I find it even more incredible that the State Law Office apparently did not advise the Commission of what had gone on previously. I may be doing the State Law Office a dis-service because they might not have been approached by the Commission before it made its decision of 20th November 2014. However once proceedings had been issued I would have thought that someone from the State Law Office would have given the Commission some pertinent advice. Apparently they did not. It is perhaps appropriate at this stage to look at some of the history.

8. In the case of *Benard v Minister for Immigration* [2001] VUSC 20; Civil Case 030 of 1997 (16 March 2001) the judge said:

> *"I do find that the petitioner rights under article 5 (1) (b) and (d) have been infringed by the Government of Vanuatu and specifically by the Ministry of Foreign Affairs, the Principal Immigration Officer and the Commissioner of Police in that an Immigration Act Removal Order was made without good faith, it was unlawful on the face of it, it was not served on or shown to the petitioner as is required by statute, the time in which it was sought to be*

[2] Paragraphs 1(d) and 1(e) of Response filed 23/4/15
[3] See paragraph 5 above.

enforced was unlawful, an order for the arrest of the petitioner was made by the Principal Immigration Officer without good faith and without any foundation in law, in the light of this and acting upon these orders the petitioner was unlawfully arrested outside his home, his house was unlawfully searched and his wife and daughters in his sight made to stand outside in the rain in night clothes, he was handcuffed and unlawfully detained in a cell for approximately thirty hours in the circumstances he described."

It will of course be noted that these present proceedings are the second set where it has been found the State has infringed the Applicants' rights under Article 5(1) (d). At page 36 of the Applicants' bundle we have a reference to other litigation. There is a copy of a Writ of Summons in the Magistrates' Court (Civil case 58 of 2002) seeking an order from the Court directing the Principal Immigration Officer to renew the Applicants' residency permits. It would appear that in spite of, or perhaps because of, the case quoted above (CC 30 of 1997) the immigration officer would not renew the residency permits. Then there are the proceedings which are related to the illegal seizure, by the police, of antiques (including antique elephant tusks) and a spectacularly failed prosecution for illegally importing the antiques. Not only did the police unlawfully seize the Applicants' property, the subject of the failed prosecution, apparently they then lost it. It took six years for the Applicants to obtain some kind of redress (and even that is possibly still outstanding).

9. There was another Supreme Court case which arose from incidents in 1997 and 2000 involving Mrs Benard. Mention has been made of a Supreme Court Case 186 of 2002. I have not seen any of the court documents. It is said that the claim is for the value of jewellery allegedly stolen by the police during a search of the Applicants' home (possibly the same 1997 incident which led to Mr Benard's unlawful detention) and a claim for damages for the medical consequences of Mrs Benard's detention pending deportation in 2000.

10. It is not only litigation *per se*, because we can also see, set out in the documentation from page 39 of the Applicants' bundle, a situation of bewildering confusion. Page 39 is a letter from the then Attorney General dated 4th June 2002. It relates to the Magistrates' Court case and says the Principal Immigration Officer was being asked to reconsider his refusal to renew the residency permit.

11. If we then turn to page 47 we see dated 1st October 2002 a certificate issued by the Prime Minister. It is a certificate issued pursuant to the Diplomatic Privileges and Immunities Act [Cap 143] as then applied; stating Mr Benard and his family had the privileges and immunities set out in Schedule 3 of the Act. Astonishingly at pages 41 and 45 we see notices from the then Minister of Internal Affairs dated a month later (5/11/2002) saying he intended to remove the Applicants from Vanuatu. Thankfully someone must have realised how absurd it would be to remove persons who had the benefit of a certificate of Diplomatic Privileges and Immunities signed by the then Prime Minister because at page 44 The Minister of Internal Affairs issues a notice withdrawing his earlier notice.

12. The foregoing is not intended to be a complete list of the litigation or quasi litigious matters involving the Applicants and the State but it is sufficient to show what appears to be a trend involving an insidious campaign of harassment against

the Benards with particular regard to, at first, their residency in Vanuatu and then, their citizenship. The present case seems to be the latest manifestation of that trend. It is difficult to understand how it has come about. There is absolutely no doubt that the Citizenship Commission has an immensely important role to play. They are in the front line guarding against the abuse of an extremely valuable commodity, namely citizenship (and the passports issued as a result of the grant of citizenship). There is no doubt the Commission can:

> *"(b) to revoke a citizenship that has been granted if:*
>
> *(i) the citizenship was granted in a fraudulent manner; or*
> *(ii) the citizenship was granted contrary to the provisions of this act or the constitution; or*
> *(iii) the person after being granted citizenship is not complying with the restrictions provided in this act."* [4]

It is absolutely right that the Commission can and should revoke citizenship which is shown to have been obtained fraudulently or in some way contrary to law or which, following grant, has been abused. However, the Commission does not have free rein and it cannot act without regard to the rights guaranteed by the Constitution. There must be a process which allows a person to respond to allegations of fraud, illegality or abuse, to point out to the Commission some mistaken fact, assumption or error and which might cause the Commission to reconsider. That did not happen in this case. There was a summary decision taken which was then communicated to Mr Benard. Why the Commission chose to exercise the powers it has in the manner it did on this occasion is, as I say, difficult to understand.

13. It is made more difficult to understand when it becomes clear that the Commission took its decision without even having much of a file to look at. The Secretary General admits that is so in his sworn statement filed 4th May 2015 at paragraphs 7 and 20. The Commission's letter of 25th May repeats the admission. It is still not exactly clear to me what papers dating from 2006 the Commission had access to. It appears the Commission may not have had ***any*** records at all because the Secretary General says the Commission had no record of the application *"nor related documents"*. The dangers of making assertions without reference to relevant documentation is made plain by the Response and Counterclaim filed on 23rd April 2015. That Response and Counterclaim is riddled with factual errors and ignores a fundamental provision of the law.

14. Matters are made worse because the State defends its corner in complete disregard of the information that ***had*** by then been provided by Mr Benard. It was served with Mr Benard's sworn statement which had been filed in court on 15th December 2014. That had annexed to it a copy of his application for citizenship dated April 2006. Copies of correspondence relating to the application were also annexed to the sworn statement. There was even a copy of a letter referring to proceedings in the Supreme Court which were initiated because the Citizenship Commission held onto the application and did nothing about processing it for some

[4] See the Schedule to the *Citizenship (Amendment) Act 2013* amending section 5 of the Citizenship Act [Cap 112]

considerable time in 2006 and 2007. In other words, if there was a problem with residency permits between the date the application was made and the date when it was granted (December 2007) the problem was caused by the Respondent's unlawful actions in not dealing with the application in the first place.

15. Even if we ignore the obvious and accept, for the sake of argument, that when it made its decision the Commission's held the reasonable belief that there was some kind of flaw in the process by which Mr. and Mrs Benard obtained their citizenship, it could not continue ***reasonably,*** believing there was fraud after 5th May 2015. By then the Commission, through the State Law Office, had been served with the Applicant's bundle of documents. This was in addition to the sworn statement mentioned above. The bundle and the sworn statement contained copies of all the documentation the Commission needed to see to be able to confirm Mr Benard had residency permits or exemptions or diplomatic immunity, from his arrival in Vanuatu up until the date of the application for Citizenship in April 2006. What the Commission through the State Law Office continued to do was to insist that Mr Benard "*resided illegally in Vanuatu*" and that "*by circumstance of your illegal residency .....you are deemed of bad and/or of negative character*". That was what the State Law Office wrote to Mr Benard on 11th June 2015 [5]. Given that proceedings were needed to goad them into action in 2006 it is surprising that the Commission insist on the proper permits and permissions to cover the period between the application for citizenship in April 2006 and the grant confirmed in December 2007. As has been said already, it took the then Commission an inordinate amount of time to deal with the application and it seems as if they had to be persuaded to make a decision by the issue of proceedings in the Supreme Court.

16. Then we come to the next phase. On 25th May 2015 (after these proceedings had been filed) the Commission wrote to Mr Benard. He was informed "*That the Commission decision of 20th November 2014 to cancel your citizenship is revoked*". Unfortunately that was the only good news set out in the letter because it continued by saying Mr Benard was "advised" to provide copies of various documents within a three month period. As I have pointed out, most of the documents in the list also appear in a list drawn up by Mr Benard and set out in his letter to the Commission dated 28th September 2006. The Commission were aware of that letter because it is part of Annexure B to the sworn statement of filed (by Mr Benard) on 15th December 2014. Copies of many of the documents in the list were also part of annexure B. Copies of other documents in the Commission's list of 25th May were included in the Applicants' bundle filed on 5th May. One might wonder why the Commission wrote as it did on 25th May requiring copies of documents when it had been given the originals 9 years previously and when it had had copies served on it in these proceedings. Instead of the implied threat of "provide copies within 3 months or else" why did the Commission not admit its negligence in losing a complete file and ask politely for copies so it could reconstruct that file ? Where was the offer to reimburse Mr & Mrs Benard the costs of providing copies ?

17. On 8th June 2015 I published another Minute it said, at paragraphs 8 and 9:-

[5] See Annexure A to the document entitled Applicants Response to Respondent Allegations & COUR Injunctions filed 22nd June 2015

"8. At a previous conference this matter was set for trial on 8th July. When the case is called on, on 8th July it is proposed that judgment will be entered for the Applicants with damages to be assessed. That can be the only logical result following the Respondent's letter of 25th May 2015 and the "revocation" of the cancellation contained in that letter. Costs will be awarded against the Respondents on an indemnity basis. In accordance with section 6(2) of the Constitution, further orders will be made that the Applicants were granted citizenship in accordance with the Citizenship Act on 7th December 2007 and that Respondents are not to cancel or threaten to cancel the Applicant's citizenship granted on that date without first obtaining leave of the Court.

9. Those orders would have been made on 8th June except for the requirement in the Constitutional Applications Rules 2003 that such judgments are to be given in open court. If the Respondents want to make representations about the proposed order then they can do so in open court on 8th July."

17. As appears from my judgment of 8th July 2015 the parties all appeared but no further representations were made. It is clear that the Respondent has breached the Applicant's fundamental rights. I find that by adopting its summary approach the Respondent has denied the Applicants access to the law on the important question of the Applicants' citizenship. The oppressive action it has previously taken culminating in the present behaviour complained of has also breached the Applicants' right of equal treatment under both the law and administrative action. By summarily revoking citizenship and making the first named applicant stateless the Respondent has breached his fundamental right to freedom of movement. Whilst Mrs Benard's citizenship was not revoked her right to freedom of movement and her right to security were also breached. Whilst those breaches are not pleaded as such I am entitled to reach that conclusion on the evidence before me. Whilst the Solomon Islands Constitution is differently worded I find guidance on the breach of Mrs Benards right to freedom of movement (Article 5 (1) (i)) as a wife in the Solomon Islands High Court case *Hatilia v. AG* [2014] SBHC 125; HCSS-CC 456 of 2011 (13th October 2014). Whilst that case may not be on all fours with this case, it does demonstrate how the fundamental rights of a wife are linked inextricably with those of her husband and vice versa.

18. Having dealt extensively with the breaches of the Applicants' fundamental rights I now turn to the question of damages. The Respondent argues that the Applicants are not entitled to damages and refer to the case of *Willie V Public Service Commission.* I have to say that I am perplexed by the decision in *Willie* because it seems to me in that case; administrative law is being introduced to decide a Constitutional question. The Constitution is quite clear and unambiguous. Article 6 has been quoted in full at paragraph 2 above. The Supreme Court is entitled, ***without qualification***, to enforce a person's rights by making such orders, issuing such writs and giving such directions, including the payment of compensation as it considers appropriate to enforce the right. This is not an action in tort and neither is it a judicial review and it should not be treated as such. I am encouraged in that view by the different approach which was adopted in the later case of *Benard v Minister for Immigration* [2001] VUSC 20; Civil Case 030 of 1997 (16 March 2001). The approach in that case is to be preferred when dealing with the enforcement

provisions of Article 6. It is also right to mention that the law has moved on since the then Chief Justice made his decision in *Willie* and there is a vast area of law spanning many jurisdictions which deals with what has become known as Human Rights. The European Convention for the Protection of Human Rights and Fundamental Freedoms is just one such example. There are others and the spirit and motivating considerations behind such Conventions treaties and agreements is now world-wide. In Vanuatu the Government have recently set up the National Human Rights Committee (by Order 105 of 2014 under the Government Act [Cap 243]) to advise the Government on human rights and so I cannot believe that the Constitution in Vanuatu does not recognise the, "*Right to a remedy in relation to an arguable claim that a (convention) right has been breached as well as an effective remedy if such breach is established*" [6] as a remedy separate and apart from tort or common law.

19. In general terms compensation is simply that. Where English common law is concerned the word probably has its roots in the Roman law concept of *compensatio* which was a kind of set off by one party. Its ordinary English meaning though is the making of amends for a loss or injury and it is normally accepted that compensation requires a person to be put in the same position they were in before the wrong was committed against them. This is to ensure, as far as the law is able to, that the person is no worse off. Of course, it is equally important to note compensation in relation to breaches of fundamental rights is not intended to make a person better off. As can be seen from Coventry J's judgment referred to above, the compensation can be for pecuniary loss (where the Applicant establishes actual loss through incurring expenses) and non-pecuniary loss (the compensation).

20. As regards Mr Benard, there is no pecuniary loss to consider. With Mrs Benard there are pecuniary loses claimed. The Respondent has not disputed the consequences of Mrs Benard learning of her husband's loss of citizenship. What did happen is described by the Applicants' daughter Ms Candice Benard in her sworn statement filed 6th January 2015. She says that when her father told her mother that the State wanted to cancel his citizenship her mother lost consciousness and fell to the floor. (I appreciate the sworn statement actually says she lost conscience but I will view that as a linguistic slip.) After she came round Mrs Benard was put to her bed. The next day she was unable to remember anything and upon contacting a Doctor in Noumea Ms Candice Bernard was advised to get her mother to Noumea for specialist examination and treatment. That was done. The Doctor in Noumea advised further specialist investigation and treatment in France. Mrs Benard travelled to France, to Nice, in July 2015. Further examination showed that she was suffering from a cerebral aneurysm, a localized dilation or ballooning of a blood vessel in the brain. There appears to be no denial from the Respondent that Mrs Benard did need medical treatment for the reasons stated in her evidence. She is entitled to recover the costs she incurred.

21. Unfortunately I am in difficulty in calculating exactly what pecuniary losses flowed from Mrs Benard's medical condition. There are copies of receipts and other invoices but they are in different currencies with no conversion rates provided. I know from the daughter's sworn statement that the initial medical treatment and

[6] Klass v Germany (1978) 2 EHHR

associated expenses (in Noumea) amount to VT 534,399 but I have no idea what the total of the subsequent costs in France were. Mr Benard says that his wife is only claiming VT 2,000,000 but I do not know how those costs are calculated.

22. As far as I am able to ascertain from the sworn statements lodged the following expenses were incurred :-

Air fares	VT 31,400	= VT 31,400
	AUD 2,300	= VT 177,842
Accommodation	AED 480	= VT 14,404
Medical expenses	EUR 2217.60	= VT 274,213
	VT 80,000	= VT 80,000

Those expenses would only total VT 577,859. There must be other expenses but without a schedule setting them out it is impossible to say what they might be. In the circumstances I can only award pecuniary compensation in the sum of VT 1,112,258 (this is made up of the initial expenses of 534,399 and the later expenses of 577,859) to Mrs Benard.

23. Turning now to non-pecuniary compensation, as Coventry J comments in his 2001 decision referred to earlier, there is not much in the way of precedent to assist is assessing what compensation is required to enforce a breach of an individual's constitutional rights. He was guided by decisions dealing with unlawful arrest and detention. None of the decisions he considered were in relation to breaches of fundamental rights *per se.* He decided the damages payable were VT 1,500,000. He set out his reasons thus:-

> *"In the case before me I have found breaches of Articles 5 (1) b and d in that a Removal Order was issued by a Minister without good faith, it was unlawful on the face of it, it was not served on or shown to the petitioner as is required by statute, the time in which it was sought to be enforced was unlawful, an order for the arrest of the petitioner was made by the Principal Immigration Officer without good faith and without any foundation in law, in the light of this and acting upon these orders the petitioner was unlawfully arrested outside his home, his house was unlawfully searched and his wife and daughters in his sight made to stand outside in the rain in night clothes, he was handcuffed and unlawfully detained in a cell for approximately thirty hours in the circumstances he described.*
>
> *Doing the best I can in the circumstances I find that an amount of Vt. 1,500,000 is the correct figure, and I so award."*

24. Two questions spring to mind, first, are all breaches of fundamental rights equal and secondly, should allowance be made for inflation. Dealing with the second question first, I am of the view that inflation is a factor. The decision by Coventry J was 10 years ago. If I were today deciding a case with exactly the same facts and circumstances as found Coventry J in his case the award of compensation would have to be larger. However, I have not been addressed by anyone about the issue of

inflation. I will have to take a pragmatic approach and give an allowance for inflation to recognise that an award made now at the same level as one made in 2001 would be worth less.

25. As to the first question, it would be difficult to say all rights were equal in that the consequences of a breach of the fundamental right to life would likely be viewed as more serious that the breach of the fundamental right to freedom of expression. However, in my view it would be wrong to rank fundamental rights in that way when it comes to enforcement of the breach. It would be wrong to allocate a value to individual rights. The more important question is what is just and equitable compensation to enforce the breach. That involves consideration of the nature of the right and the consequences of the breach in the given the circumstances. In this particular case the summary removal of Mr Benard's citizenship was a serious interference with his life. It meant that for a time he was stateless person without the right to reside in any one country and yet unable to cross international borders either. Whilst he was deprived for a time of his citizenship he was not deprived of his freedom. I consider that the correct sum to compensate Mr Benard is VT 1,000,000. I will not add further sums for the enforcement of other rights which were breached. In other words I will not make multiple awards for multiple breaches. I do not think it is right in this case to assign a value to each right found to have been breached (see paragraph 17 above). A similar sum should be awarded to Mrs Benard as well.

26. The Applicants are seeking exemplary damages as well. This is an area of law which has been problematic in the past. There are still differences of legal opinion according to which jurisdiction you are looking at. The basis of an award of exemplary damages (otherwise known as punitive damages) is found in the case of *Rookes v Barnard* [7]. The decision was affirmed and further explained in the case of *Broome v Cassell & Co* [8]. Lord Devlin in *Rookes v Barnard* set out three situations in which damages are allowed to be punitive, i.e. with the purpose of punishing the wrongdoer rather than aiming simply to compensate the claimant. They were:

a) Oppressive, arbitrary or unconstitutional actions by the servants of government.
b) Where the defendant's conduct was 'calculated' to make a profit for himself.
c) Where a statute expressly authorises the same.

The reasoning behind Lord Devlin's decision was:

> *"Where one man is more powerful than another, it is inevitable that he will try to use his power to gain his ends; and if his power is much greater than the other's, he might, perhaps, be said to be using it oppressively. If he uses his power illegally, he must of course pay for his illegality in the ordinary way; but he is not to be punished simply because he is the more powerful. In the case of government it is different, for the servants of the government are also servants of the people and the use of their power must always be subordinate to their duty and service."*

[7] *Rookes v Barnard* [1964] UKHL 1
[8] *Broome v Cassell & Co* [1972] A.C. 1027

The doctrine has been accepted as a part of Constitutional law as well by the Privy Council decision in *Reynolds* [9]. In that case the Privy Council did not question the correctness of making an award of exemplary damages where unconstitutional action by a Governor (of a group of islands in the Caribbean) was found to have taken place.

27. In other cases the right to exemplary damages has also been found to exist where the oppressive, arbitrary or unconstitutional actions have been taken by the police and other officials rather than Crown servants *per se*. This was the approach adopted in *Broome v Cassell* and it means, in this case, the behaviour of the Citizenship Commission is relevant. There is no question the Citizenship Commission consists of government officials and so in the circumstances of this case I am sure that exemplary damages can be ordered. There is no doubt that both Mr and Mrs Benard have been subjected to oppressive, arbitrary or unconstitutional actions. In the particular circumstances of this case it is clear that behaviour has been sustained and particularly oppressive on the part of government and its officials. There is therefore a price to be paid. In the circumstances of this particular case I will order that the Respondent to pay exemplary damages to both Mr and Mrs Benard of VT 2,000,000.

28. In summary, pecuniary damages of VT 1,112,258 shall be paid to Mrs Benard. She will also be awarded non-pecuniary damages of VT 1,000,000 and exemplary damages of VT 2,000,000. The total in damages to be paid to Mrs Benard is VT 4,112,258. Non-pecuniary damages of VT 1,000,000 shall be paid to Mr Benard as well as exemplary damages of VT 2,000,000. The total in damages to be paid to Mr Benard is VT 3,000,000. The damages to both Mr and Mrs Benard shall be paid forthwith.

Dated 12th October 2015

Chetwynd J

REPUBLIC OF VANUATU COUR SUPREME COURT LEX LEX REPUBLIQUE DE VANUATU

[9] *Attorney General for St Christopher, Nevis and Anguilla v Reynolds* [1980] A.C. 637, PC