

IN THE HIGH COURT FOR ZAMBIA  
AT THE PRINCIPAL REGISTRY  
HOLDEN AT LUSAKA  
(Civil Jurisdiction)

2019/HP/0834

BETWEEN:

JEROME OKEKE

AND

ATTORNEY GENERAL



PLAINTIFF

DEFENDANT

Before Honourable Mrs. Justice M. Mapani-Kawimbe on the 14<sup>th</sup> day of April 2020.

For the Plaintiff: Ms. M. Banda, Messrs KBF & Partners

For the Defendant: Ms. J. Mazulanyika, Assistant Senior State Advocate, Attorney  
General's Chambers

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## J U D G M E N T

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### Cases Referred To:

1. *Ginski v Mciver* (1962) ALL E.R. 696
2. *Hermiman v Smith* (1938) A. C. 305
3. *Claude Samuel Gaynor v Cyril Robert Cowley* (1971) Z.R. 50 (H.C)
4. *Attorney General v Kakoma* (1975) Z.R. 212 (S.C)
5. *Nyambirai v National Social Security Authority and Another* (1985) (2) ZLR 1 (S)  
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### Legislation Referred To:

1. *Narcotic Drugs and Psychotropic Substances Act, Chapter 69*
2. *Evidence Act, Chapter 43*
3. *Constitution (Amendment) of Zambia Act No. 1 of 1991*

### Other Works Referred To:

1. *Halsbury's Laws of England 4<sup>th</sup> Edition, Volume 11 (1)*
2. *The Black Law's Dictionary by Brian A. Garner, 9th Edition, Thomson West  
Publisher, USA 2009*

1. **Introduction**

1.1 The plaintiff travelled to Windhoek, Namibia on 3<sup>rd</sup> November 2018 through Kenneth Kaunda International Airport (KKIA). However, before he could board his flight, he was randomly searched by Drug Enforcement Commission (DEC) officers. They suspected him of carrying narcotic drugs and after a search, nothing was found on him. Upon his return to Lusaka on 21<sup>st</sup> November 2018, through KKIA, the plaintiff averred that he was searched again by DEC officers at the terminal building.

1.2 The search lasted for 4 hours and he was exposed to two body x-ray scans. Nothing was found on him and he was released. Aggrieved by the searches, he filed a complaint at the DEC office in Lusaka but nothing was done. Since then, he lived in fear of arbitrary searches, wrongful implication and arrest and came to Court to seek remedies against the DEC officers actions.

1.3 Arising from the facts, what the Court distills for determination are the following issues: *whether the plaintiff was subjected to an illegal search, which amounted to a violation of his right to privacy; whether the plaintiff's freedom of movement was violated, and if the action amounted to false imprisonment?; whether the plaintiff is entitled to an award of damages for inconvenience, harassment and assault?;*

*and whether the Court can restrain DEC officers from conducting searches on the plaintiff?*

2. **Pleadings**

2.1 The plaintiff instituted this suit on 3<sup>rd</sup> June 2019, by way of summons and statement of claim seeking the following orders:

- “(i) Damages for inconvenience, harassment and assault.*
- (ii) Damages for infringement of the plaintiff’s rights to privacy and freedom of movement.*
- (iii) Damages for false imprisonment.*
- (iv) An order to restrain the defendant from such misconduct against the plaintiff, by themselves or their agents.*
- (v) Interest*
- (vi) Any other relief the Court may deem fit.*
- (vii) Costs.”*

2.2 The plaintiff pleaded that on 3<sup>rd</sup> November 2018, whilst exiting the country through Kenneth Kaunda International Airport (KKIA) to Windhoek, Namibia, he was randomly searched by DEC officers. They suspected him of carrying narcotic drugs and after the search, they found nothing on him. He was however, not told of the outcome and he proceeded with his travel. Upon his return on 21<sup>st</sup> November 2018, he was accosted by DEC officers who detained him at the KKIA terminal building for 4 hours while they searched him.

2.3 The plaintiff was further exposed to two body x-ray scans and released without explanation. Perturbed by the searches, he filed a

complaint at the DEC office in Lusaka on 17<sup>th</sup> January 2019 and it was acknowledged on 31<sup>st</sup> January 2019. An assurance was given to the plaintiff this his matter would be investigated. However, at the time he instituted his suit, he had not received a response. The plaintiff further pleaded that he had been living in fear of arbitrary searches, wrongful implication and arrest and on that basis, urged the Court to grant him the orders sought against the defendant.

- 2.4 In response, the **defendant** entered appearance and filed a defence into Court on 24<sup>th</sup> June 2019. It admitted that DEC officers searched the plaintiff but on the basis of a warrant of search and seizure. The defendant averred that the DEC officers actions were lawful and denied that it ignored the plaintiff's letters. What the plaintiff wanted was an apology from DEC and an undertaking that its officers would never search him contrary to the law. In concluding, it asked the Court to dismiss the plaintiff's case.

### 3. Trial course

- 3.1 The matter came up for trial on 25<sup>th</sup> February and 2<sup>nd</sup> March 2020. The plaintiff (**PW's**) testimony was no different from what was alleged in his statement of claim on the events that took place on 3<sup>rd</sup> November 2018 as he was travelling to Windhoek, Namibia through KKIA. He amplified that the DEC officers physically searched his

bags and placed them on a scanner. Thereafter, he was subjected to a body search and allowed to proceed to the check in counter. However, whilst awaiting his turn, an unidentified woman searched his bags again in full view of other passengers and conspicuously tailed him much to the amusement of other passengers until he boarded his flight.

3.2 It was PW1's evidence that when he returned to Lusaka on 21<sup>st</sup> November 2018, an unidentified man pursued him from the aircraft to the arrivals hall. After he collected his bags, a customs officer directed him to the declaration of goods exit, where the unidentified man searched his bags. Afterwards, PW left the terminal building and went to the car park where the unidentified man and woman followed him and dragged him back to the arrivals hall in full view of other passengers.

3.3 PW testified that he was subjected to another search and exposed to two body scans by the officers and another called Sydney. They did not find anything on him and was released without an official explanation. He in turn demanded an assurance from the officers that they would not search him in the future but they ignored him. Discomposed by their actions, PW lodged a complaint at the DEC in Lusaka but he did not receive a response.

3.4 When **cross-examined**, PW reiterated that he did not know the officers who searched him but assumed that they were DEC officers from the way they handled him. He was subjected to two body scans at an office at KKIA, while his bags were searched at the arrivals hall. He was held from about 11.18 hours and denied that he refused to sign a warrant of seizure and search. PW stated that he was not prohibited from entering and exiting the country on the dates of his travel.

3.5 In **re-examination**, PW responded that he arrived at KKIA from Namibia at 11.18 hours and was detained by the DEC officers until 18.00 hours.

3.6 That marked the close of the plaintiff's case.

3.7 In response, the defendant's only witness, **Wesley Haundu (DW)** an Assistant Investigations officer at DEC testified that he was on duty at KKIA on 21<sup>st</sup> November 2019 and was operating at the arrivals hall. At about 11.00 hours he randomly picked PW for a routine drugs test and searched his bags but PW was uncooperative. Because of PW's protest, DW asked his colleague Ms. Melai Nyambose to witness the search. They only found food and personal items in PW's bags and nothing of interest. According to the witness, the officers introduced themselves to PW and warned him about the search. Thereafter, a

warrant of seizure and search was issued and its contents explained to PW who understood their mission but refused to sign the warrant.

3.8 DW conceded that PW was taken to the DEC office at KKIA for a body scan but was only exposed to one. The search lasted from 11.18 hours to 13.00 hours and not 4 hours. DW denied that he and his colleagues dragged PW from the car park into the arrivals hall nor that he met PW on 3<sup>rd</sup> November 2018. He went on to explain that random searches were part of the DEC operating procedures at KKIA and at least 10 or more passengers on each flight would be selected for a random drugs search. DW added that PW's bags were searched in an enclosed bay at the arrivals hall, where access was restricted. Further, the purpose of the search was to check whether PW had narcotic drugs or psychotropic substances on him but nothing of interest was found.

3.9 In **cross-examination**, DW testified that he searched some passengers randomly on the material day but did not issue warrants of seizure and search in all cases. He insisted that he showed PW the warrant of seizure and search and never followed him to the car park. He denied that his supervisor, Mr. Sydney Mukelabai conducted PW's body scan but was present in the room. DW averred that he was authorized to conduct searches on passengers at KKIA and did

not have to harbor reasonable suspicion because it was standard practise.

3.10 DW was not aware that body scans could only be conducted by medical officers. He went on to aver that he first administered a verbal short caution to PW before issuing a warrant of seizure and search at the search bay. DW conceded that at the time of conducting the search, PW was under his authority but denied that his colleague Ms. Melai Nyambose instigated the search. DW asserted that PW knew who he was because his identity card was clearly displayed as per staff requirements at KKIA.

3.11 DW further testified that he prepared a report on PW's case, which was submitted to the officer in charge at KKIA. He did not know how his supervisor handled it neither that PW lodged a complaint to DEC nor that his advocates asked for his report. In response to a question on the KKIA arrivals procedure, DW explained that after passengers disembarked from an aircraft, they were first met by G4 security officers and then proceeded to immigration desks. The next point was baggage collection followed by customs inspection where Zambia police and DEC officers operated from.

3.12 In **re-examination**, DW testified that the purpose of the short caution was to inform PW of his interest before he issued a warrant of seizure



and search. He added that he prepared his report on PW at the end of the material day.

4. **Submissions**

4.1 Learned counsel for the parties filed written submissions into Court on 10<sup>th</sup> and 20<sup>th</sup> March 2020 respectively, for which I am indebted. I shall not reproduce them save to state that I will refer to them in the judgment.

5. **Determination**

5.1 Having considered the pleadings, evidence adduced, submissions and authorities cited therein, it is not in dispute that on 3<sup>rd</sup> November 2018, the plaintiff travelled to Windhoek, Namibia through Kenneth Kaunda International Airport (KKIA). He was randomly searched by DEC officers, whose interest was to check if he was carrying narcotic drugs. They did not find anything on the plaintiff and he proceeded with his travel. Upon his return on 21<sup>st</sup> November 2018, he entered the country through KKIA and was searched by DEC officers and exposed to a body x-ray scan. Again nothing of interest was found on him.

5.2 The plaintiff went home aggrieved by the searches and filed a complaint at the DEC office in Lusaka on 17<sup>th</sup> January 2019. He was

assured that his complaint would be investigated but did not receive a response and decided to institute this suit.

5.3 The issues for determination are the following:

- (i) **Whether the plaintiff was subjected to an illegal search, which amounted to a violation of his right to privacy?**
- (ii) **Whether the plaintiff's freedom of movement was violated, and if the action amounted to false imprisonment?**
- (iii) **Whether the plaintiff is entitled to an award of damages for inconvenience, harassment and assault?**
- (iv) **Whether the Court can restrain DEC officers from conducting searches on the plaintiff?**

5.4 **Whether the plaintiff was subjected to an illegal search, which amounted to a violation of his right to privacy?**

5.5 In support of his case, the plaintiff argued that his right to privacy and freedom from search had been violated. He was humiliatingly searched in front of other passengers at the airport terminal and dragged back to the arrivals hall when DW had no reasonable belief to suspect that he had illegal property.

5.6 To fortify the assertion, his counsel referred the Court to section 25 of the Narcotic Drugs and Psychotropic Substances Act, which reads:

**“25 (1) A drug enforcement officer or a police officer may search, or cause to be searched, any person who has on his person any property liable for seizure or forfeiture under this Act, any article necessary for investigations under this Act.”**

5.7 She added that for a search to be legal, an officer had to harbour reasonable belief or suspicion that a person had illegal property. She called in aid the learned authors of Halsbury's Laws of England 4th Edition, Volume 11 (1), who define reasonable ground or belief at pages 490-496 as follows:

**“...the exercise of the power to stop and search requires reasonable grounds for suspicion that articles of a particular kind are being carried. Reasonable suspicion does not require certainty that an unlawful article is being carried; nor does the officer concerned have to be satisfied of this beyond reasonable doubt. Reasonable suspicion in contrast with a mere suspicion must be founded on fact....There must be some concrete basis for the officer's suspicion, related to the individual person concerned, which can be considered and evaluated by an objective third person. Mere suspicion, on the other hand, is a hunch on instinct which cannot be explained or justified to an objective observer.”**

5.8 Counsel further cited the learned authors of Halsbury's Laws of England, (supra) to elucidate the procedure on conducting a lawful search as follows:

**“Where an officer has reasonable grounds for suspicion necessary to exercise a power of stop and search, he may detain the person concerned for the purposes of, and with a view to searching him. There is no power to stop or detain a person against his will in order to find grounds for a search. Before carrying out a search, the officer may question the person about his behaviour or his presence in circumstances which gave rise to the suspicion, since he may have a satisfactory explanation which will make a search necessary. A constable may search any person for stolen or prohibited articles and may detain a person for the purpose of such a**

search. This does not, however, give a constable power to search a person unless he has reasonable grounds for suspecting that he will find stolen or prohibited article.”

5.9 She argued that DW exceeded his authority because he did not comply with the section 25 of the Act. Further, the x-ray search on PW was illegal because DW was not a medical officer and referred the court to section 25 (2) of the Narcotic Drugs and Psychotropic Substances Act, which reads:

**“(2) A search of a person under this Act may extend to a medical examination of his body, both externally and internally, by a medical practitioner.”**

5.10 It was further submitted that the caution, warrant of seizure and search was an afterthought disguised to fit DW1’s evidence because he did not avail it to the plaintiff earlier. Counsel argued that the document produced in Court was not an original copy and could not be relied on in terms of section 3(2) (b) of the Evidence Act, which states:

**“Notwithstanding that the original document is not produced, if in lieu thereof there is produced a copy of the original document or of the material part thereof certified to be a true copy in such manner as may be specified in the order or as the court may approve, as the case may be.”**

5.11 The plaintiff argued that he proved that his right to privacy was infringed by the illegal searches contrary to Article 17(1) of the Constitution, which says:

**“Except with his own consent, a person shall not be subjected to the search of his person or his property or the entry by others on his premises.”**

5.12 In response, the **defendant** contended that the plaintiff’s search was lawful and conducted under a warrant of seizure and search issued pursuant to section 25(1) of the Narcotic Drugs and Psychotropic Substances Act. Further, DEC officers operated on the concept of reasonable belief or suspicion that some passengers entering the country could be in possession of illegal drugs. Thus, random searches were part of the standard operating procedures and the fact that the plaintiff refused to sign the warrant of seizure and search did not invalidate the actions of the DEC officers.

5.13 Counsel for the defendant fortified the assertion by referring the court to the case of **Ginski v Mciver**<sup>1</sup>, where the House of Lords held that:

**“In order for the plaintiff to succeed on the issue of reasonable and probable cause, he must prove one or other of the following: first, that the defendant did not believe that the plaintiff was probably guilty of the offence. In this regard, evidence should be given by the plaintiff of some fact or facts which either inherently or coupled with other matters proved in evidence, would permit the inference that the defendant did not believe that plaintiff’s guilt. Second, that a person of ordinary prudence and caution would not conclude, in the light of the facts in which he honestly believed, that the plaintiff was probably guilty.”**

5.14 She went on to aver that the power of DEC officers to conduct investigations including searches at KKIA was discretionary. The fact that the plaintiff was randomly selected for a search by the DEC officers did not amount to a violation of his right to privacy.

5.15 After reflecting on the rival positions, I find it necessary to state from the outset that the DEC officers' power of search and seizure as rightfully pointed out by the parties is contained in section 25 of the Narcotic Drugs and Psychotropic Substances Act which reads:

**"25(1) A drug enforcement officer or police officer may search any person whom he has reason to believe has on his person any property liable to seizure or forfeiture under this Act, or any article necessary for the purpose of any investigation under this Act."**

5.16 Flowing therefrom, an officer from DEC or police officer can search any individual who is suspected of carrying prohibited drugs or illegal property. On the face of it, the power is discretionary but when exposed to scrutiny, it must meet the test of objectivity. It is worth stating that section 25(2) of the Act provides for searches by medical practitioners as follows:

**"A search of a person under this Act may extend to a medical examination of his body, both externally and internally, by a medical practitioner."**

5.17 In the Court's view, a search by a medical officer is supplemental to the power of search that a DEC or police officer is bestowed with under section 25(1) of the Act. In other words, the law does not presume that a body scan at the airport should be conducted by a medical officer. Rather, a person who is suspected of carrying drugs may be subjected to a search at the airport and another scientific one by a medical officer. Thus, counsel for plaintiff's argument that a

body scan under the Narcotic Drugs and Psychotropic Substances Act can only be conducted by a medical officer is misleading and rejected. In any case, her submissions are not evidence; and not therefore, binding on the Court.

5.18 Be that as it may, the issue for determination is whether the plaintiff's search by the DEC officers was illegal and a violation of his right to privacy. In this regard, the plaintiff vociferously argued that the manner in which he was searched at KKIA was illegal because the DEC officers had no reason to believe that he had illegal drugs or property. In addition, nothing of interest was found on his person or belongings. On the other hand, the defendant contended that DEC officers were entitled to conduct random searches as part of their standard operating procedures at KKIA. Further, DEC officers operate on the principle of reasonable suspicion that some passengers arriving at KKIA may be selected for random drugs search. Hence, there was nothing unusual or unlawful about the plaintiff's search and his case was wrongly before Court.

5.19 The Court is grateful to counsel for the respective parties for citing useful authorities on reasonable suspicion and instances where law enforcement officers can rely on the principle of law of reasonable suspicion. The Court is additionally drawn to the case of **Hermiman**

v **Smith**<sup>2</sup>, which in its view, sets out correct and sound principles on the law on reasonable suspicion, which are applicable in our jurisdiction. In that case, the English Court of Appeal adopted the definition of reasonable and probable cause cited in the case of *Hicks v Faulkner (1878) Q.B.D 161* as follows:

**“Reasonable or probable cause is an honest belief in the guilt of the accused based upon full conviction founded upon reasonable grounds of the existence of a state of circumstances which assuming them to be true would reasonably lead any ordinarily prudent and cautious man, placed in the position of the accuser to the conclusion that the person charged was probably guilty of the crime imputed.”**

5.20 Put in another way, a party relying on the principle of reasonable and probable suspicion must demonstrate:

- (i) honest belief that a person is probably guilty of committing an offence; and
- (ii) an existence of circumstances that would lead a prudent or cautious man into believing that a person was probably guilty of the accusation.

5.21 In the circumstances of this case, it is indisputable that the law empowers DEC and police officers under section 25 of the Narcotic Drugs and Psychotropic Substances Act to conduct searches on persons in this country. As already stated, the power of law enforcement officers to search individuals is discretionary and not



subject to control or direction of any body including a court. Therefore, the judgment call of when a search can be conducted by a law enforcement officer, squarely rests on those shoulders. In the circumstances of any case, my view is that a cautious or prudent man working at KKIA would also have seen the need to randomly select persons for a drug search under the DEC standard operating procedures. In my view, the element of reasonable suspicion is implied in the work of drug enforcement officers. Thus, searches are the only lawful means by which they can investigate whether a person is carrying prohibited drugs or not. In consequence, I find that DW's search of the plaintiff was lawful and performed under routine duty at KKIA.

5.22 In addition, DW issued a warrant of seizure and search on 21<sup>st</sup> November 2018, to the plaintiff, which conferred him with the requisite authority to conduct a search. The plaintiff however, seemed to suggest that since he was not shown the warrant of seizure and search, the search was illegal. In the Court's view, the argument is quite inconsequential given that section 25 of the Act vests DW and police officers the power to conduct searches. On that basis, the Court cannot render DW's search of the plaintiff unlawful just because he was disgruntled. I also wish to state that counsel for the plaintiff's argument that the warrant of seizure and search was an

afterthought and not produced as an original copy in Court in terms of the Evidence Act is immaterial. If she had any objection, she should have raised it at the time that the document was introduced in Court and not in submissions.

5.23 During cross-examination, counsel for the plaintiff asked DW to explain the procedures of arrival at the airport from the time that passengers disembarked an aircraft up to the time that they exited the airport. He also explained that searches at the terminal building were conducted in an enclosed bay, which was not accessible to other passengers. The Court takes judicial notice that the airport procedures were as explained by DW and the plaintiff's claim that his bags were searched at the arrivals hall in front of other passengers was inconceivable and is rejected.

5.24 In his pleadings, the plaintiff conspicuously averred that the searches by DEC officers on him were detrimental to his business reputation as an eminent person in society. I could not therefore, help but assume that there were people at the airport who knew him and saw him being searched. Surprisingly, he did not call any witnesses to prove the allegation or other evidence to support his claim. I therefore, find that it lacks merit and the DEC officers' search of his person and belongings did not violate his right to privacy.

5.25 **Whether the plaintiff's freedom of movement was violated and if the action amounted to false imprisonment?**

5.26 On the claim of freedom of movement and false imprisonment, the plaintiff contended that he was illegally detained at the DEC offices at KKIA for 4 hours. His counsel cited the case of **Claude Samuel Gaynor v Cyril Robert Cowley**<sup>3</sup>, on false imprisonment where it was held that:

“(i) In an action for false imprisonment, it is necessary for the plaintiff to prove nothing but the imprisonment itself; it is then for the defendant to discharge the onus of justifying it.”

5.27 She also cited the case of the **Attorney General v Kakoma**<sup>4</sup>, where the Supreme Court inter alia held that:

“(i) The fact of detention having been established, the onus was on the defendant to justify such detention, on the facts, manifestly this onus had not been discharged.”

5.28 In response, the defendant denied the allegations averring that the plaintiff was only kept for 2 hours and for the purposes of a search. Further, a warrant of seizure and search was issued by DW which the plaintiff refused to sign. As such, the plaintiff was not hindered in movement or falsely imprisoned.

5.29 It is trite law that the right to freedom of assembly and association is encapsulated in Article 21 of the Constitution as follows:

- “21. (1) Except with his own consent a person shall not be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form or belong to any political party, trade union or other association for the protection of his interests.**
- (2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this Article to the extent that it is shown that the law in question makes provision-**
- (a) that is reasonably required in the interests of defence, public safety, public order, public morality or public health;**
  - (b) that is reasonably required for the purpose of protecting the rights or freedoms of other persons;**
  - (c) that imposes restrictions upon public officers; or**
  - (d) for the registration of political parties or trade unions in a register established by or under a law and for imposing reasonable conditions relating to the procedure for entry on such a register including conditions as to the minimum number of persons necessary to constitute a trade union qualified for registration; and except so far as that provision or, the thing done under the authority thereof as the case may be, is shown not to be reasonably justifiable in a democratic society.”**

5.30 In other words, the right to freedom of assembly affords a person a right to freely move within and out of jurisdiction. It is not absolute and can be limited either by the consent of an individual or by the law. The grounds of limitation under Article 21(2) of the Constitution include:

- (a) interests of defence, public safety, public order, public morality or public health;
- (b) protecting the rights and freedoms of others;
- (c) imposing restriction on public officers; or
- (d) where the registration of political parties or trade unions is concerned after taking into account the requirements of the law.

5.31 In the case of **Nyambirai v National Social Security Authority & Another**<sup>5</sup>, the Zimbabwean Supreme Court guided courts that when faced with the question of whether or not a limitation is justified in the sense of not being arbitrary or excessive, it must answer the following tier questions that is whether:-

- (a) the objective is sufficiently important to justify limiting a fundamental right;
- (b) the measures designed to meet the legislative object are rationally connected to it;
- (c) the means used to impair the right or freedom are no more than is necessary to accomplish the objective.

5.32 Stated differently, therefore, any limitations on the right are supposed to be reasonable and must not take away completely or eliminate the essential core of the right.

5.33 I have gone to great lengths to explain the contents of Article 21(1) of the Constitution to demonstrate that freedom of movement is not absolute and can be limited in other circumstances where a person does not give consent. Having determined that the plaintiff was legally searched by the DEC officers, I find that his freedom of

movement was not violated because the search demanded his physical presence and was within the law.

5.34 Moving on, the **Black's Law Dictionary 9<sup>th</sup> Edition** defines false imprisonment as:

**“A restraint of a person in a bounded area without justification or consent. False imprisonment is a common law misdemeanor and a tort. It applies to private as well as government detention.”**

5.35 A proper understanding of this tort implies that a person's detention is without his/her consent or justification. In the present case, the defendant does not deny that it detained the plaintiff under a warrant of seizure and search on 21<sup>st</sup> November 2018 and the Court has determined that the search was legal. Inevitably, the plaintiff had to be detained when he was searched because his body was required. The plaintiff claimed that he was detained for 4 hours but did not produce any satisfactory evidence to prove his allegation. It would therefore, be too farfetched for this Court to find that he was falsely imprisoned but instead that his detention between 11.00 - 13.00 hours at the DEC office was justified.

5.36 **Whether the plaintiff is entitled to an award of damages for inconvenience, harassment and assault?**

5.37 The plaintiff contended that he was harassed, assaulted and inconvenienced by the DEC officers. They dragged him out of the car park and manhandled him. He asked the Court to award him damages for the defendant's illegal actions. In response, the defendant argued that the DEC officers did not drag the plaintiff from the car park to the arrivals hall, harass or assault him. Instead, he was randomly selected for a drugs search at the arrivals hall but was uncooperative.

5.38 Having determined that the plaintiff was not falsely imprisoned, the claim of inconvenience lacks merit. I find that the plaintiff did not produce any medical report or other evidence to prove that he was assaulted by DEC officers and the claim of harassment was not supported by any evidence. Accordingly, the Court finds no merit in the plaintiff's claims.

5.39 **Whether the Court can restrain DEC officers from conducting searches on the plaintiff?**

5.40 In one of the reliefs, the plaintiff asked the Court to restrain DEC officers from ever searching him.

5.41 The short response of the Court is that it has no power to prevent an investigative body such as the DEC from conducting searches or any

other investigations. Therefore, the relief sought by the plaintiff is not only contrary to the law but inconceivable and is dismissed.

5.42 Ultimately, I hold that the plaintiff's case against the defendant lacks merit and fails.

6. **Final Orders**

6.1 These are the final orders of this Court:

- (1) The plaintiff's case is dismissed.
- (2) Costs are awarded to the defendant to be taxed in default of agreement.

Dated the 14<sup>th</sup> day of April 2020.



M. Mapani-Kawimbe  
**HIGH COURT JUDGE**