



[2026] JMSC Civ. 35

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. SU2022CV00561

BETWEEN	RAY MORGAN	CLAIMANT
AND	CLERK OF COURT, KINGSTON & ST. ANDREW PARISH COURT	FIRST DEFENDANT
AND	JUDGE OF THE PARISH COURT, KINGSTON & ST. ANDREW	SECOND DEFENDANT
AND	TOWER STREET ADULT CORRECTIONAL	THIRD DEFENDANT
AND	THE ATTORNEY GENERAL FOR JAMAICA	FOURTH DEFENDANT

IN OPEN COURT

Mr Terrence Williams, KC, Ms Celine Deidrick & Mr Ronzoni Rainford instructed by John Clarke for the Claimant

Ms Lisa White, Deputy Solicitor General instructed by the Director of State Proceedings for the Defendant

Heard: November 11 & 21, 2015 and March 19, 2016

**CONSTITUTIONAL LAW – ASSESSMENT OF DAMAGES FOR UNLAWFUL
DETENTION OF 2,504 DAYS – FAILURE OF MACHINERY FOR TIMELY APPELLATE
REVIEW – NO RECORD OF APPEAL PRODUCED - CLAIMANT SERVED SIX YEARS
EIGHT MONTHS IN EXCESS OF SENTENCE AS A RESULT – DUE PROCESS
RIGHTS BREACHED – PRIVY COUNCIL REMITS FOR REHEARING ON SENTENCE
– TAPERED RATE – VINDICATORY DAMAGES AWARDED**

WINT-BLAIR J

Introduction

- [1] This claim concerns the constitutional consequences of a failed criminal appellate process. The question of compensation under the head of constitutional redress is the only issue before this Court. King's Counsel, Mr Williams, has very helpfully narrowed that issue further to one of an assessment. Ms White takes no issue with that position, and the matter proceeded thus.
- [2] I begin with the Privy Council judgment in **Ray Morgan v The King**,¹ in which the Board set out the introduction to their decision in this way:

“1. This appeal is a challenge to the judgment of the Court of Appeal of Jamaica which held that it would not hear and determine the appeal of Ray Morgan (“the appellant”) against the consecutive sentences imposed on him on 7 February 2011 in the Resident Magistrate’s Court, amounting in total to 12 years’ imprisonment.

2. On the same day that the appellant was convicted and sentenced, he gave a valid verbal notice of appeal against both conviction and sentence in accordance with section 296(1) of the Judicature (Resident Magistrates) Act (“the Resident Magistrates Act”). Thereafter, and within 21 days after the date of the judgment, he was obliged to file grounds of appeal with the Clerk of the Courts, who is an officer of the Resident Magistrate’s Court. The appellant failed to file grounds of appeal in relation to his appeal against conviction. However, due to an administrative error by the prison authorities, and despite the appellant personally doing everything reasonably possible, his grounds of appeal against sentence were not filed with the Clerk of the Courts. Rather, the grounds were sent in error by the prison authorities to

¹ [2023] UKPC 25

the Registrar of the Court of Appeal. Accordingly, they were not filed with the Clerk of the Courts with the consequence, pursuant to section 296(1) of the Resident Magistrates Act, that the appellant was deemed to have abandoned his appeal against sentence.

3. The appellant, who made several requests over many years for his appeal against sentence to be heard, was first informed of this administrative error in 2017. However, he was not then informed that because his grounds of appeal against sentence had not been filed with the Clerk of the Courts, under section 296(1) of the Resident Magistrates Act, he was deemed to have abandoned the appeal. Furthermore, he was not then informed that under the proviso to section 296(1) (“the proviso”), the Court of Appeal may, in any case for good cause shown, hear and determine the appeal notwithstanding that the grounds of appeal were not filed within the prescribed time of 21 days.

4. By 7 June 2021, the date upon which his appeal eventually came before the Court of Appeal, the appellant had been released from custody having served the sentences of imprisonment. Moreover, given the time that had then passed, efforts to obtain the record of the proceedings in the Resident Magistrate’s Court had proven unsuccessful.

5. The Court of Appeal (Brooks P, Straw and Edwards JJA), in its judgment dated 21 June 2021 ([2021] JMCA App 15), held that by virtue of section 296(1) of the Resident Magistrates Act, the appellant was deemed to have abandoned the appeal as the grounds of appeal had not been filed with the Clerk of the Courts within 21 days. The Court of Appeal determined that it should not exercise its discretion, under the proviso, to hear and determine the appeal notwithstanding that the grounds of appeal were not filed within 21 days, in essence for two reasons. First, the Court of Appeal considered that the appeal against sentence was “an academic exercise” given that the appellant “essentially, has already served those sentences”. Second, that

“[it] would not be in the interests of the administration of justice, bearing the time that has passed since his case was determined in the court below, to attempt to unearth [the record] from that court ...”.

6. On 13 October 2021, the Court of Appeal refused the appellant’s application for leave to appeal to Her Majesty in Council. The appellant then sought special leave to appeal, on the basis, amongst others, that the Court of Appeal erred in its approach to the exercise of discretion under the proviso. On 14 December 2022, His Majesty, on the advice of His Privy Council, granted the appellant permission to appeal in so far as the appeal related to the sentences imposed on the appellant.”

- [3] The Privy Council remitted this matter to the Court of Appeal for the Court of Appeal to hear and determine the claimant’s appeal against sentence, identifying that a serious miscarriage of justice had occurred in all the circumstances. The Court of Appeal heard the matter and declared that there had been breaches of sections 16(1) and 16(8) of the Charter.
- [4] In this Court, the claimant also advances a broader liberty argument. The breach of the right to liberty has not been challenged by the Attorney General (“AG”), represented ably by Ms White. I agree that there can be no challenge to that infringement as it is plain that the machinery of appellate review malfunctioned, and this had a direct consequence for the claimant’s liberty. Additionally, the record of proceedings was never produced, further exacerbating the injustice of this case.
- [5] The submissions before this court were based on the premise that, following the later appellate intervention, the correct sentence was 4.5 years, and that the claimant had served a period of imprisonment from February 7, 2011, to April 30, 2021, or approximately 10.2 years, resulting in excess imprisonment of about 2,504 days or 6.8 years. King’s Counsel has only pursued compensatory and vindictory damages for 2,504 days of lost liberty. The Attorney General does not dispute that number of days.

[6] I proceed on that basis because the Privy Council, when it examined the matter, held that any constitutional redress would be guided by “the difference between the period the appellant was in prison and the period that he would have been in prison if he had not been deprived of his Constitutional right to have his sentence reviewed by the Court of Appeal.” That direction is the starting point for the present assessment.

Damages

[7] Mr Williams, KC, submitted that compensatory damages should be in the sum of \$180,000,000.00 based on a daily rate as applied in the authorities of **Patrick Whitely v the Attorney General**² and **Roshaine Clarke the Attorney General**.³ A daily rate should be the starting point, as was done in **Thompson v Commissioner of Police of the Metropolis Hsu v Same**.⁴ The court should then taper the award, citing **Takitota v Attorney General of The Bahamas**.⁵

[8] Further, that vindicatory damages in the sum of \$60,000,000.00 should be awarded in reliance on the updated figures in **Roshaine Clarke** as well as **Takitota, Attorney General v Ramanoop**⁶ and **AG of Trinidad & Tobago v JM**.⁷ The claimant also claims special damages for legal fees and costs in reliance on the case of **Naresh Boodram v Attorney General**.⁸

[9] The Attorney General’s case, on quantum, rejects a rigid daily-rate calculation and instead relies on the Privy Council’s preference for a broad, global, and tapered assessment, such as set out in **Takitota, Douglas Ngumi v Attorney General of**

² [2016] JMFC Full 6

³ [2022] JMFC Full 3

⁴ [1998] Q.B. 498

⁵ [2009] UKPC 12

⁶ [2005] UKPC 15

⁷ [2022] UKPC 54

⁸ [2022] UKPC 20

The Bahamas⁹ and **Anthony Henry v Attorney General of Saint Lucia**.¹⁰ The Attorney General's submissions propose a much lower compensatory figure and contend that the court should avoid an award that becomes punitive in substance.

[10] Against that background, the issue is what relief, including damages and costs, should follow.

Assessment

[11] The law on constitutional damages is well settled. In **Ramanoop**, Lord Nicholls explained that an award may be necessary both to afford a redress for the wrong suffered and to vindicate the constitutional right that has been contravened. In **AG v JM**, the Board reaffirmed that vindicatory damages are not punitive but may be required where compensation alone would not adequately reflect the gravity of the breach and the importance of the right.

[12] On methodology, the starting point is that damages for unlawful detention are commonly informed by false imprisonment awards. A long period of unconstitutional detention cannot sensibly be calculated by applying a daily rate, and the authorities consistently reject a rigid daily-rate approach.

[13] In **Thompson**, Lord Woolf MR said that after the initial period, damages should be on a "reducing scale" and that for later days the rate should be "progressively reducing."

[14] The Full Court in **Roshaine Clarke** cited **R v Governor of Brockhill Prison ex parte Evans**,¹¹ in which Lord Woolf, MR, said:

"We accept that an award of £2,000 is well below the appropriate figure for 59 extra days of imprisonment. We increase the award to £5,000. This is a

⁹ [2023] UKPC 12

¹⁰ [2023] UKPC 41

¹¹ [1999] QB 1043

global figure. We recognise that it is possible to work out a daily, weekly, or monthly figure from this amount for the approximately two months extra imprisonment of this case but we discourage such an exercise. No two cases are the same. The shorter the period the larger can be the pro rata rate. The longer the period the lower the pro rata rate.”

[15] In **Takitota**, the Privy Council put the matter beyond debate; it was a case from the Bahamas, in which the Board considered the issue of compensatory and exemplary damages for a long period of unlawful detention. The claimant was a Japanese national who brought a claim for damages for wrongful detention and breach of his fundamental rights under the Bahamian Constitution. He was arrested for an immigration matter, but was never charged or brought before a court. During his long period of more than eight years of unlawful detention, he was detained in various facilities, including maximum-security, and subjected to degrading and inhumane conditions. These conditions drove him to attempt suicide on three separate occasions. The judgment of the Board said:

“55. The Court of Appeal of The Bahamas assessed damages in the total sum of \$500,000, of which \$400,000 was compensatory damages and \$100,000 was exemplary damages. The award of compensatory damages was arrived at using a daily rate of \$250 multiplied by the number of days in detention which resulted in the total sum of \$730,500. This was then significantly discounted on a patently wrong basis relating to lump sum awards in personal injury compensation. Moreover, the Court of Appeal arrived at the daily rate figure of \$250 by dividing the sum of \$1,000 awarded by the trial judge for the initial shock of detention and false imprisonment, by the number of days for that period, wrongly calculated as four days. In fact the Privy Council concluded on the available evidence that the initial period of detention was actually six rather than four days, so that the daily rate was much lower. The total sum of \$730,500 arrived at was then reduced by \$330,500, producing a final award of \$400,000, on the basis that the claimant would be receiving a lump sum award.

56. *The only issue on appeal to the Privy Council was the correctness of the amount of the total award. The Board declined to disturb the exemplary damages award. However, in light of the errors identified above, the Board held that the award of compensatory damages was not “sufficiently securely based on the facts and the law”. The Board declined to revise the amount of the award itself, holding in line with its established practice, that local courts are better placed than the Board to say what is appropriate by way of damages, having regard to the conditions in the country concerned. This part of the award was therefore remitted to the Court of Appeal for reassessment. Lord Carswell gave the following guidance on the approach to this reassessment:*

“17. The court should determine what they consider to be an appropriate figure to reflect compensation for the long period of wrongful detention of the appellant, taking into account any element of aggravation they think proper, reflecting the conditions of his detention and, in their own words, the misery which he endured. In assessing the proper figure for compensation for such long-term detention, they should take into account that any figure they might regard as appropriate for an initial short period, if extrapolated, should ordinarily be tapered, as their Lordships have pointed out in para 9 above. The final figure for compensatory damages should therefore amount to an overall sum representing appropriate compensation for the period of over eight years’ detention, taking account of the inhumane conditions and the misery and distress suffered by the appellant.” In the event the Court of Appeal did not conduct a subsequent reassessment because the parties compromised the claim in an agreed sum of \$500,000 for compensatory damages, saying it is “usual and proper to reduce the level of damages by tapering them when dealing with an extended period of unlawful imprisonment.”

[16] The Privy Council put it this way in **Ngumi**:

“73. But damages in these cases should not ordinarily be assessed by dividing the award into separate periods or by fixing a rigid daily rate to be awarded for each day of incarceration and multiplying it by the number of days spent in unlawful detention. Rather, as the Board held in Takitota at paragraph 17, compensatory damages should be assessed in the round. The appropriate figure should “reflect compensation for the long period of wrongful detention ... any element of aggravation ... the conditions of his detention and ... the misery which he endured” and accordingly, the “final figure for compensatory damages should therefore amount to an overall sum representing appropriate compensation for the period of [lengthy] detention, taking account of the inhumane conditions and the misery and distress suffered”. That is the correct approach.”

[17] The Privy Council has repeatedly cautioned against daily rate arithmetic in long-detention constitutional claims. **Takitota** requires the court to make a broad global assessment. **Ngumi** and **Anthony Henry** reaffirm that the assessment must be contextual, proportionate, and, where appropriate, tapered. I will therefore adopt a global compensatory assessment.

[18] The difference between the period the appellant was in prison and the period that he would have been in prison if he had not been deprived of his Constitutional right to have his sentence reviewed by the Court of Appeal is the measure. I account for the fact that the claimant was lawfully sentenced to a period of imprisonment by the Court of Appeal, which is a separate matter from the time served in custody in excess of that sentence.

[19] Therefore, the starting point is the period of unconstitutional imprisonment, which is agreed at 2,504 days. Taking that into account, and bearing in mind the moderation required by **Takitota** and the structured proportional approach

endorsed in **Ngumi** and **Anthony Henry**, I fix a baseline compensatory figure at \$50,000,000.00.

- [20] The second step is to assess the quality of the harm suffered. The affidavit filed in support of the Fixed Date Claim Form in this matter does not assist the court in identifying any of these considerations. In considering the aggravating constitutional factors, this was not merely a technical breach but comprised what must have been a significant loss of liberty, involving the additional burden of unwarranted imprisonment, the loss of daily life, the stigma, and the emotional distress of not knowing the outcome of the appeal for many years. These are factors that are not in an affidavit but which would be common in every case of unlawful detention.
- [21] I also examine the context, as the excessive detention resulted from a failure in the State's appellate machinery, and the administration of justice failed the claimant. The mishandling and inaction regarding the appeal materials, the denial of the right to have his sentence reviewed within a reasonable timeframe, the factors identified by the Privy Council in its judgment and the outcome of years of imprisonment beyond the appropriate period. These factors warrant a moderate constitutional uplift of \$25,000,000.00 for a global sum of \$75,000,000.00.
- [22] The next step is to taper the rate. The initial shock and indignity attract the highest rate as set out in **Ngumi**. It is now well established that the initial shock of unlawful arrest and imprisonment may attract a higher notional element than a later period of detention, as people tend to adjust to their changed circumstances and the initial shock generally gives way to adaptation and resignation, though this may not always be the case.
- [23] In assessing compensation for any subsequent period of unlawful detention, any loss of reputation, loss of enjoyment of life, or normal experiences foregone ought to be considered alongside the obvious factors of the duration, conditions, and

treatment during detention. However, there is no evidence of these factors before this Court from the claimant's affidavit.

[24] Assessing compensatory damages in these cases demands careful consideration. The cases do not set a strict scale; rather, they offer guidance on the appropriate approach. Daily rate awards in cases of short detention are useful as benchmarks, but they ought not be rigidly applied to detention periods spanning many years. For periods of extended detention, the cases speak to significant tapering in arriving at a fair overall figure.

[25] **Patrick Whitely** is relevant but only within its specific context. The claimant was detained for 43 days, and the Full Court awarded damages at \$75,000.00 per day, totalling \$3,225,000.00. This case illustrates that a high daily rate can be justified for a short period of unconstitutional detention. However, it is not authority for the application of a high daily rate over a much longer duration.

[26] The more instructive local authority on the method is **Roshaine Clarke** in which \$90,000.00 per day had been submitted as a starting point. The Full Court observed that such a figure was at the high end of the scale and held that applying it across the whole period of detention "would not be the correct approach". The court held that, in a lengthy detention case, the daily rate must be applied on a "progressively reducing scale" and that a "global figure" should be awarded for the entire period. For 225 days of detention, the court awarded JA\$12,000,000.00 as compensatory damages.

[27] That approach accords with the principle set out in **R v Governor of Brockhill Prison, ex parte Evans**, cited with approval in **Clarke**. Lord Woolf MR stated that the shorter the detention, the higher the pro rata rate may be, and the longer the detention, the lower the pro rata rate should become. The Privy Council in **Takitota** approved the same principle, stating that it is "usual and proper" to reduce the level of damages by tapering them where the period of unlawful imprisonment is extended.

- [28] Mr Morgan's case, however, was not a case of initial shock in the usual sense in which that consideration might influence awards for false imprisonment or unlawful short detention. The claimant was tried, convicted and sentenced to a period of imprisonment. The claimant was already serving a custodial sentence. The constitutional wrong did not occur because he was suddenly deprived of his liberty and placed in detention. It arose from the failure of the relevant state authorities to ensure the due prosecution of his appeal; he remained detained for a period far exceeding what the law permitted. The compensable injury is therefore the prolonged and unlawful extension of detention, not the immediate shock associated with an initial arrest or incarceration. That distinction is significant and highlights the need for caution when relying on comparisons with cases involving short periods of detention.
- [29] The unconstitutional detention in the present case is 2,504 days. That period is extraordinary. It plainly calls for a substantial award. At the same time, the authorities require that the effective daily rate be materially reduced from the rates seen in cases of detention for a short duration.
- [30] In my judgment, a compensatory award of \$60,000,000.00 properly reflects that requirement. Spread over 2,504 days, it yields an average of approximately \$23,962.00 per day. That effective rate is markedly below the \$75,000.00.00 per day used in **Whitely** and also materially below the effective average reflected in **Clarke**. It therefore gives real effect to the tapering principle mandated by the Privy Council cases, while remaining substantial enough to compensate for the extended loss of liberty.
- [31] I arrived at that figure not by applying a rigid formula, but by following the method the cases require. **Whitely** provides the upper range for cases of short duration, and **Clarke** demonstrates that, once detention becomes lengthy, the court must move away from daily rates and arrive at a fair overall sum by the application of a substantial reduction. **Brockhill** and **Takitota** stand for the principle that the pro rata rate must materially diminish as the period lengthens. Standing back and

assessing the matter in the round, I am satisfied that \$60,000,000.00 represents a fair and proportionate measure of compensation for the claimant's prolonged unconstitutional detention.

Vindictory Damages

- [32] To demonstrate how highly the law values liberty, I also award vindictory damages. The award is not meant to be punitive. It was submitted by Mr Williams, KC, that **Takitota** served one year longer than the instant claimant. Takitota was ill-treated and fell ill in prison, received no medical treatment, and this worsened his illness. In the instant claim, there is no evidence to ground any of these personal factors.
- [33] However, this case concerns not just the loss of liberty but also the integrity of the justice system, which failed to uphold the claimants' right to due process. The award must reflect the gravity of the breach and deter future breaches. A purely compensatory award would not sufficiently mark the constitutional significance of what occurred. The question of vindictory damages arises because compensation alone may not always suffice to mark the gravity of a constitutional wrong.
- [34] In **Ramanoop**, the Privy Council explained that an additional award may be required where compensation does not adequately reflect the sense of public outrage, emphasise the importance of the constitutional right, nor mark the gravity of the breach. Such an award is not punitive. Its function is to vindicate the right.
- [35] In **Whitely**, the Full Court granted a separate sum of JA\$2,000,000.00 as vindictory damages. In **Clarke**, the Full Court awarded JA\$4,000,000.00. Those decisions confirm that a separate vindictory award may properly be made where the constitutional dimension of the wrong is not fully captured by compensation for loss of liberty alone.

- [36] In the present case, the need for vindication is plain. The breach was not technical, or procedural in any sense. It resulted in the continued deprivation of the claimant's liberty for 2,504 days beyond the period that could lawfully be justified. The case, therefore, engages, in a particularly grave way, the constitutional guarantees of liberty, due process, and meaningful appellate review. A merely compensatory award would not sufficiently mark the gravity of this failure by the machinery of the State that had so severe and sustained an effect upon the claimant's fundamental rights.
- [37] At the same time, the vindicatory award must remain proportionate. It must not duplicate the compensatory sum, nor must it assume a punitive character. Its purpose is different. It serves to affirm the importance of the infringed rights and to register the court's disapproval of the violation. Having regard to **Ramanoop**, and to the separate vindicatory awards made in **Whitely** and **Clarke**, I consider that JA\$10,000,000.00 is appropriate in the circumstances of this case. That sum is sufficient to vindicate the constitutional rights infringed, to mark the seriousness of the breach, and to do so without overcompensation.
- [38] The claimant seeks \$9,000,000.00 as special damages for legal fees incurred in vindicating his constitutional rights. King's Counsel cited **Young v United Kingdom**¹² for the principle that costs reasonably incurred in vindicating rights may be recoverable. On the basis on which the claim has been presented, and based on the ordinary requirement of proof and reasonableness, I award \$9,000,000.00 as special damages.

¹² (1983) 5 EHRR 201

Costs

[39] Costs will follow the event. In **Naresh Boodram v Attorney General**,¹³ the Privy Council reaffirmed that the ordinary rule remains applicable in constitutional litigation unless there is a good reason to depart from it. There is none here.

[40] Orders

1. Judgment is entered for the Claimant.
2. The Claimant is awarded the following sums:
 - a) Compensatory Damages of \$60,000,000.00,
 - b) Vindictory Damages of \$10,000,000.00,
 - c) Special Damages of \$9,000,000.00.
3. The Claimant shall have his costs, to be agreed or taxed.

Wint-Blair J

¹³ [2022] UKPC 20