



[2021] JMSC Civ 20

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2013HCV06463

BETWEEN	RICHARD MORRISON	CLAIMANT
AND	THE MINISTER OF JUSTICE	1ST DEFENDANT
AND	THE ATTORNEY GENERAL OF JAMAICA	2ND DEFENDANT

Assessment of Damages – Extradition order made pursuant to the Extradition Act 1870 – Claimant’s Writ of Habeas corpus application dismissed by the Full Court – Claimant filed notice of intention to appeal to the Privy Council – No such right of appeal existing under the Extradition Act – No appeal ever filed – Minister of Justice unaware of the notice due to administrative error and Claimant extradited without it being heard – Efforts by Jamaican Government to have Claimant returned to Jamaica unsuccessful – Claimant prosecuted on charges not on the extradition order – Doctrine of Specialty – Judgment entered on admission against the 2nd Defendant in respect of negligence and breach of constitutional rights – Claimant seeking general damages, aggravated and/or exemplary damages and vindictory damages

Richard Morrison self-representing

Susan Reid instructed by the Director of State Proceedings on behalf of the 2nd Defendant

Heard on December 4, 2019 and February 4, 2021

PALMER, J

Background

[1] Richard Morrison filed a claim on November 21, 2013, seeking against the Defendants, jointly and/or severally for breach of his Constitutional Rights, Negligence, Misfeasance and/or Nonfeasance in facilitating and/or allowing him to be extradited to the US in breach of the Extradition Treaty between the United States of America (US) and Jamaica. Prior to being sent to the US, he had filed a notice of an intended application for leave to appeal to the Privy Council ('the notice'), but never pursued the appeal. He claims that the entire process was in breach of the Extradition Act and his constitutional rights and that his conviction arising out of the process was unlawful. Mr. Morrison served a prison sentence in the US and states in the claim that his imprisonment caused him personal injury, distress, loss and damage.

[2] On November 30, 2016, Judgment on admission was given for the Claimant against the 2nd Defendant in respect of negligence and breach of his constitutional rights. At the hearing for the assessment of damages, Mr. Morrison gave evidence and an order was made for the parties to file written submissions. When the matter commenced in 2013 Mr. Morrison had the benefit of Counsel, but by the time of the assessment hearing had opted to represent himself and filed his own submissions accordingly.

Case for the Claimant

[3] The sequence of events leading up to the filing of Mr. Morrison's claim are largely undisputed. He recounted that on July 4, 1990, the Central Police Station detained him pending an identification parade on charges of alleged illegal possession of firearms and shooting with intent. No identification parade was ever held but on or about July 6, 1990, the US authorities presented an extradition request to the Jamaican. He remained in custody consequent upon that request.

[4] Following an extradition hearing at the Resident Magistrate's Court at Sutton Street in Kingston, on or about February 19, 1991, the Court made an extradition order relating to Case No. 88-0652-Cr-Gonzales and Mr. Morrison was kept in custody to await

surrender to the US for specific charges in the Southern District of Florida. The order related to the following:

- i. Conspiracy to distribute and possess with intent to distribute cocaine and marijuana;*
- ii. Murder;*
- iii. Attempted Murder; and*
- iv. Conspiracy to commit murder as contained in an indictment.*

[5] On or about March 5, 1991, Mr. Morrison filed an application for Writ of Habeas Corpus in the Supreme Court of Judicature of Jamaica, which was heard and dismissed by the Full Court on April 19, 1991. On or about April 29, 1991, Mr. Morrison filed a Notice of his intended application for leave to appeal to the Privy Council against his extradition.

[6] He stated that on June 5, 1991, a warrant for his surrender was executed and the then Director of Public Prosecutions (DPP), apparently unaware of the pending notice of intention, informed the then Minister of Justice that the Claimant had no pending notice of intention to appeal to the Privy Council. Jamaican authorities surrendered Mr. Morrison to US authorities, which the then Minister of Justice said he would not have done he there been knowledge of the pending notice. On June 13, 1991, the Ministry of Foreign Affairs advised the US Embassy in Kingston by diplomatic note of the premature surrender of Mr. Morrison to their custody, and requested his immediate return to Jamaican authorities. Further to those efforts he said, on June 14, 1991, the Jamaican government presented a letter to the then US Attorney General, requesting Mr. Morrison's return to Jamaica to complete his appeal.

[7] According to the claim, on June 14, 1991 at the Claimant's detention hearing in the US, the Jamaican government made representation through their Attorney-at-law, Peter E. George, seeking the return of the Claimant to Jamaica forthwith and a stay of the criminal proceedings in view of the filing of the notice. Notwithstanding these efforts, Mr. Morrison stated that the Jamaican Government's attorney did not object to the Fort Myers

District Court's exercise of jurisdiction over him, in violation of the Doctrine of Specialty relating to the US/Jamaica extradition treaty, but only asked for a stay of the criminal proceedings.

[8] He also stated that on June 19, 1991, the then Government of Jamaica, filed an Emergency Petition for Writ of Habeas Corpus in the US seeking injunctive and declaratory relief and ultimately for the Claimant's immediate return to Jamaica. (See ***Government of Jamaica v. United States***, Middle District of Florida Case No. 2:91-157-CIV-FTM-98D). Mr. Morrison expressed his view that witnesses who gave evidence in support of the petition were a part of this collusion by failing to mention in their testimony that he was not extradited for any Middle District case and that the US is in violation of the rule of specialty. On April 6, 1995, he stated, the then Jamaican government also lodged a formal protest to the US Department of State pertaining to the breach of the rule of specialty.

[9] Mr. Morrison submitted that the Jamaican Government had no legal authority to consent or make any deal with the US after he left the jurisdiction of Jamaica, as the extradition treaty had no consent clause to allow for him to be tried for a crime other than that for which he was ordered extradited. He intimated that the Jamaican Government had improper motives in failing to take further steps to have his conviction overturned and have him repatriated.

[10] Despite his assertion of a suppression of the fact that he was being prosecuted for offences other than those in the extradition order, Mr. Morrison acknowledged that the then Senior Assistant Attorney General gave evidence that the only case for which he was extradited was case No. 88-0652-Cr-Gonzales not case No. 89-57-Cr-FTM-13, a clear contradiction of that assertion.

[11] Mr. Morrison recounted that on September 24, 1994, the US District Attorney for the Southern District of Florida, filed a motion to dismiss indictment No. 88-0652-Cr-Gonzales, for lack of evidence. He stated that the Dual Criminality Clause of the US/Jamaica extradition treaty required that the evidence presented by the US for his

extradition, be strong enough to prosecute him under Jamaican law, had the crime been committed in Jamaica. This finding in the US, he submitted, demonstrated that the requirements of the Dual Criminality Clause were totally ignored by the judge at the Sutton Street Magistrate Court in the making of the extradition order. He submitted that this amounted to gross negligence and resulted in damage to him.

[12] Mr. Morrison submitted that he relies on the following to ground his claim of damages for negligence:

- a. Stating that the he did not have a Notice of Intention to apply to Her Majesty in Council pending;*
- b. Failure to search their offices, or at all, or adequately, to discover the Notice of Intention to the Privy Council which had been served on their offices;*
- c. Failure to keep the Notice of Intention to apply to the Privy Council in a safe and proper place;*
- d. Failure to keep any or any proper records, having been served with the said Notice;*
- e. Failure to retain competent Counsel to represent them and by extension the Claimant's interest in the United States of America;*
- f. Failure to instruct or properly instruct the law firm Holland and Knight to represent the Claimant's interest by putting all relevant matters in a full chronology to the Court;*
- g. Failure to challenge the Fort Myers District Court's exercise of personal jurisdiction as conferred by the Doctrine of Specialty of the US/UK/Jamaica extradition treaty;*
- h. Failure to inform the US that it was in breach of the Doctrine of Specialty of the US/UK/Jamaica extradition treaty.*

[13] He submitted that he relied on the following as being evidence of a breach of his Constitutional Rights to Due Process of Law and enshrined right to liberty:

- a) *Suppression of the material fact that he was not extradited for the Fort Myers indictment;*
- b) *Instructing the law firm Holland and Knight to omit the violation of the Doctrine of Specialty from any submissions to be made in the Middle District of Florida, US District Courts;*
- c) *Failure to take care that he was surrendered to the Southern District of Florida District Court (Miami);*
- d) *Failure to inform the United States that it lacked personal jurisdiction over him pursuant to Article 7, the Doctrine of Specialty term of the US/UK/Jamaica extradition treaty;*
- e) *Failure to act or act sufficiently to ensure his safe return to Jamaica;*
- f) *The improper filing of a Writ of Habeas Corpus and Request for Injunctive and Declaratory relief seeking the Claimant's immediate return to Jamaica in the Middle District of Florida which lacked personal jurisdiction over the Claimant, as conferred by Article 7, the Doctrine of Specialty a term of the US/UK/Jamaica extradition and US Supreme Court opinion in United States v. Rauscher.*

[14] He also submitted that he places reliance on the following in support of his claim that the Defendant is in breach of international law, US law and Jamaican law:

The Jamaican Government violated international law by not protecting its own citizen and conspired and colluded with the US to illegally hold the Claimant in custody depriving him of his enshrined right to liberty under international law from June 14, 1991, until January 13, 2013, in violation of the Principle of Specialty long recognized in international law, US law and Jamaica. The US/UK/Jamaica extradition treaty is considered Supreme law of the land in both the US and Jamaica, from August 6, 1962 until July 8, 1991.

[15] Mr. Morrison submitted that the damages sought in his claim were for the Twenty-two and a half (22 ½) years spent in federal prison, from which he was not liberated until January 31, 2013. He adds that he will be stigmatized for the rest of his life for the label of being a leader of the "Shower posse" gang, an allegation which he has always denied.

He asserted that he was extradited for crimes associated with this label and though the related charges were dismissed for lack of evidence, the label remains, and has put his and his family's lives at risk for fear of reprisals from enemies of the gang.

Government's Breach of Claimant's right to Due Process

[16] Mr. Morrison submitted that there was a suppression of the fact that the US was in breach of the doctrine of specialty and that the Jamaican Government colluded with the US to have him prosecuted. Mr Morrison submitted that the Court has power to review and intervene on matters of foreign affairs to ensure constitutionality of executive action. He referred to the Canadian authority of ***Canada (Prime Minister) v. Khadr***, case #33289 where a Canadian intelligence official obtained evidence from a Canadian citizen, Omar Khadr, under "oppressive circumstances" and shared that evidence with US officials. Khadr, filed a lawsuit against the Canadian government, arguing that the government violated international law by not protecting its own citizen and conspired with the US in its abuse of their citizen. He submitted that similarly, the Jamaican Government violated international law by not protecting him, and conspired with the US from June 14, 1991 until January 13, 2013, to keep him in several US Federal Prisons, in breach of international law. It bears noting at this point that beyond Mr. Morrison's suspicion in this regard, no evidence is before the Court that would form a basis for this contention.

[17] Therefore, he submitted, this Court has the jurisdiction and the duty to determine whether the prerogative power asserted by the Crown, was exercised in accordance with Article 7 of the US/Jamaica extradition treaty. He invites this Court to determine whether the Jamaican government acted in accordance with the doctrine of specialty, a term of the treaty, or did Jamaica government act arbitrarily and capriciously and actively participate in a process contrary to its international obligations to protect him. He submitted that the Jamaican government contributed to the Claimant's illegal detention from June 14, 1991 to January 31, 2013, so as to deprive him of his right to liberty and security of his person guaranteed by Article 7 of the US/Jamaica extradition treaty and not in accordance with the principles of fundamental justice.

[18] He referred to the decision of ***United States v. Rauscher***, 119 U.S. 407, 7 S.Ct.234, 30 L.Ed. 425. (1886), where the US Supreme Court discussed whether the Webster-Ashburton Treaty of 1842, 8 stat.572, 576, which governed extradition between the UK and the US, prohibited the prosecution of the defendant Rauscher for a crime other than that for which he had been extradited. Whether this prohibition, known as the doctrine of specialty, was an intended part of the treaty, has been disputed between the two nations for some time, he submitted. Justice Miller delivered the opinion of the Court and stated:

A person surrendered can in no case be kept in custody or brought to trial in the territories of the High Contracting Party to whom the surrender has been made for any other crime or offence, or on account of ANY other matters, than those for which the extradition shall have taken place, until he has been restored, or has had an opportunity of returning, to the territories of the High Contracting Party by whom he has been surrendered.

[19] The US Supreme Court held that because Raucher, had been brought within the jurisdiction of the Court under an extradition treaty, he could only be tried for the offence with which he had been charged in the extradition proceedings. Therein applying the doctrine of specialty, the US Supreme Court concluded;

"While the Court did have jurisdiction to find the indictment, as well as of question involved in such indictment, it did not have jurisdiction of the person at the time, so as to subject him to trial," 'd. at 432, S.Ct. at 247, 30 L.Ed. at 433-34.

"The principle of specialty long recognized in international law, provides that the requisitioning state may not, without the permission of the asylum state try or punish the fugitive for crimes committed before the extradition except the crimes for which he was extradited." See Friedmann, Lissitzyn & Pugh, international Law 493 (1969). See generally 1 Moore, Extradition 194-259 (1981). In deciding, Raucher the US Supreme Court established the rule of domestic law, that the Courts of this country will not try a defendant from another country on the basis of a treaty obligation for a crime not listed in the treaty. while this determination might appear to be limited to circumstances

indicating a possible evasion of the treaty, the principle has been extended to bar prosecution for crimes listed in the treaty but for which extradition, for whatever reason, was not granted. See Johnson v. Browne, 205 U.S.309,27 S.Ct.539,51 Ed. 816 (1907); Greene v. United States, 154 F.2d 401,407-08 (5th Cir. 1907); See generally 1 Moore, Supra, at 245-256,478 F.2d. at 905.

Government's negligence

[20] Mr. Morrison submitted, relying on the authority of **Link v. Wabask R. Co.**, 370 U.S. 626,634 (1962), an authority from the US Supreme Court, where it held that;

"under our system of representative litigation, each party is deemed bound by the acts of his lawyer."

In deciding **Government of Jamaica v. United States** 770 F. Supp. 627, the Federal District Court held;

"As contracting party to extradition treaty, Jamaica had standing to assert its claim that treaty had been violated."

And further that:

"Standing of defendant extradited from Jamaica to seek habeas corpus relief was derivative of Jamaica's rights under extradition treaty, to which it was a contracting party."

[21] Therefore, he submitted, if Jamaica failed to assert that the doctrine of specialty under the extradition treaty was breached, he could not effectively challenge the Fort Myers District Court's exercise of jurisdiction as a defence to his prosecution in the criminal case. He reiterated that he nonetheless strenuously objected to the jurisdiction of the Fort Myers District Court to hear any proceedings as he regarded this to be in violation of the extradition treaty.

[22] Mr. Morrison's position is that the after the US court had determined that they were possessed of the requisite jurisdiction to continue the criminal proceedings, that the Jamaican government acted negligently in not seeking a final decision from a higher

Court. On June 20, 1991, the Claimant filed proceedings challenging the jurisdiction of the Fort Myers District Court's, which was refused. Due to the lack of due process at all stages, he regarded all proceedings in the US courts to be a nullity.

[23] Mr. Morrison made reference in his claim to several news articles in which the Jamaican authorities acknowledged that his extradition may have been in breach of the existing extradition treaty while vowing to honour future extradition requests from the US. He states that locally, there was a bipartisan effort to cover up the illegal and unconstitutional action by the governments of Jamaica and the US, to deny him his rights under international law. He states that while the US is the primary source of the deprivation of his right to liberty, the negligence of the Jamaica government officials, contributed to his illegal detention.

Assessment of damages

[24] On the issue of assessment of damages Mr. Morrison referred to an article published in the Canadian Bar Review Vol. 62 (1984) 517 for the proposition that the purpose of awarding damages in constitutional matters should not be limited to simple compensation. Such an award, the article suggests, ought in proper cases to be made with a view to deterring a repetition of breach or punishing those responsible for it or even for securing effective policing of the constitutionally enshrined rights by rewarding those who expose breaches of them with substantial damages.

[25] Mr. Morrison submitted that substantial damages should be awarded to him, for exposing outrageous governmental misconduct, with the view of deterring a repetition of breach or punishing those responsible for it. Further, he submitted, where an award of monetary compensation is appropriate the crucial question must be as to what would be a reasonable amount in the circumstances of the particular case. The infringement, he submitted, should be viewed in its true perspective as an infringement of the sacrosanct fundamental rights and freedom of the individual and a breach of the supreme law of the land by the State itself. Notwithstanding, he argued, an effort should be made to achieve balance such that the infringement should not be blown out of all proportion in relation to

reality nor does it mean that it should be trivialized. In like manner, the award should not be so large as to be a windfall nor should it be so small as to be nugatory.

[26] Mr. Morrison submitted the following as appropriate awards for violations he alleged were committed in Jamaica:

- a. The sum of Ten Million Jamaican Dollars (\$10,000,000.00) for negligence;
- b. The sum of Ten Million Jamaican Dollars (\$10,000,000.00) for breach of constitutional right to liberty;
- c. The sum of Ten Million Jamaican Dollars (\$10,000,000.00) for breach of protection of the law.

[27] For violations he alleged were committed in the US he claimed the following:

- a) Ten million US dollars (US\$10,000,000.00) or the equivalent in Jamaican dollars on January 13, 2013 - for negligence resulting in breach of a duty of care which results in damages;
- b) Ten million US dollars (US\$10,000,000.00) or the equivalent in Jamaican dollars on January 13, 2013 - for breach of constitutional rights to Due Process of Law;
- c) Ten million US dollars (US\$10,000,000.00) or the equivalent in Jamaican dollars for breach of the protection of International Law guaranteed rights to liberty and breach of the US/UK/Jamaica extradition treaty, Article 7, failing to observe the doctrine of specialty..

[28] He added that he claims damages, aggravated and/or exemplary damages and vindicatory damages. He also seeks interest on the said damages pursuant to Section 3 of the Law of Reform (Miscellaneous Provisions) Act, costs and such further and or other relief as this Honourable Court deems just.

Case for the Defendant

[29] The Defendants filed an amended Defence on the May 21, 2015 outlining their defence as follows:

- a) The claim relating to due process would not arise under the Constitution at the material time;
- b) Any right under the constitution could not accrue to the Claimant while he was in the US or to any court action while he was in the US or any action of the US government;
- c) There was no right of appeal to the Court of Appeal or Privy Council at the time;
- d) The Government of Jamaica (GOJ) did not breach the Treaty;
- e) On the February 19, 1991 His Honour John Moodie, signed the Warrant of Committal for the Claimant to be committed to custody to await his Extradition under the Extradition Acts of 1870 and 1873;
- f) The Minister of Justice signed a Warrant for Mr. Morrison's surrender;
- g) Section 11 (2) (b) forms a part of the Extradition Act of 1991 which was not the law at the time the Claimant was extradited;
- h) The proceedings before the Full Court were criminal proceedings in respect of which there was no right of appeal at the time;
- i) Holland and Knight filed a petition on behalf of the Government of Jamaica (GOJ) in the US District Court, Middle District of Florida and submitted that the Claimant's Extradition was the result of a mistake on the part of the Jamaican authorities and that the Claimant ought to be returned to Jamaica;
- j) The Claimant joined the motion and adopted the submissions by Holland and Knight;
- k) The Claimant did not assert breaches on the part of the GOJ that caused him to be extradited or that the US was in breach of the rule of specialty.

[30] Judgment on Admission was entered against the 2nd Defendant on the November 30, 2016 in respect of negligence and breach of constitutional rights. Notwithstanding, on the issue of liability, certain salient aspects of their Defence remain relevant to a consideration of the amount of damages to be awarded to the Claimant.

[31] The allegations against the Claimant that led to his indictment by a Federal Grand Jury related to his alleged involvement with the 'Shower Posse'. He was indicted along with Lester Coke on counts that included conspiracy to distribute cocaine and marijuana, five (5) counts of murder and another for attempted murder.

[32] At the Full Court, Counsel for the Claimant and for his co-accused, Lester Coke, sought to challenge the admissibility of certain documents presented before the Resident Magistrate on the bases, inter alia, that certain documents were not validly certified, were photocopies and that each page of each document had to be authenticated.

[33] Langrin J., on a review of the Extradition Act and relevant authorities, found that the documents were validly certified and/or authenticated. The learned judge rejected the arguments as being "pregnant with technicalities without seeking to apply principle and common sense", and the application was dismissed. (See ***Lester Coke and Richard Morrison v The Superintendent of Prisons and the Attorney General*** (1991) 28 JLR 365).

[34] The Defendants accepted that a mistake was made when the then Justice Minister was not informed that the Claimant had served notice of his intention to appeal the decision of the Full Court. This mistake resulted in the Claimant's extradition before he could pursue his intention to appeal. The Defendants, however, stated that any damages payable to the Claimant ought to be nominal and, in any event, not based on the length of his imprisonment in the US.

[35] The Defendants rely on the following facts in making it submissions on the quantum of damages, if any, to be awarded in the instant case in respect of either the claim in negligence or for breach of constitutional rights:

- i. *The Claimant was ordered extradited by a Resident Magistrate;*
- ii. *The Claimant filed a Writ of habeus corpus in the Supreme Court which was heard by three (3) judges of the Full Court and dismissed;*
- iii. *It was an unfiled Notice of Intention to Appeal which was served on the 2nd Defendant;*
- iv. *There is no record of an Appeal having been filed with the Privy Council;*
- v. *Even if filed, the appeal was not pursued by the Claimant;*
- vi. *At the relevant time there was no right of appeal to Court of Appeal or the Privy Council;*
- vii. *The Defendants on discovering the error, made diplomatic efforts to have the US authorities return the Claimant when the mistake was discovered;*
- viii. *The Defendants made efforts, through retaining Counsel in the US, to apply to the Courts for the release of the Claimant but this was unsuccessful;*
- ix. *The Defendants had no coercive authority over the US authorities in forcing the return of the Claimant;*
- x. *The Claimant having been extradited; the Defendant had no coercive authority in respect of the indictment which the US authorities would try him on;*
- xi. *Even if the Claimant had been properly extradited to the US; the US authorities could still have tried him on a different indictment;*
- xii. *Notwithstanding the circumstances in which the Claimant was extradited to the US, the fact that the Claimant was convicted meant that the US court was satisfied beyond a reasonable doubt, on the basis of the evidence presented, that the Claimant was guilty of the offence charged, and;*
- xiii. *The Claimant was imprisoned for the relevant period pursuant to a judicial action, that is, by a decision of a judge;*

- xiv. *Ultimately, the Claimant spent twenty-two (22) years in prison because he was tried before a judge and found guilty of committing the offences for which he was charged and sentenced by the court;*
- xv. *The Defendants have admitted to negligence, however, the effect of this negligence is merely that it may have caused the Claimant to be extradited sooner than he would have been.*
- xvi. *In any event, there being no right of appeal, it is submitted that the Claimant would have been informed of this in short order and at the Privy Council.*

The relevant period

[36] In relation to the relevant period which ought to be considered, the Defendants relied on the case of ***Kelvin Singh v The Attorney General of Trinidad and Tobago*** Claim No. CV 2007- 03035. In ***Singh***, the Claimant alleged a breach of his constitutional rights due to the failure of the Commissioner of Prisons to present his Notice of Appeal for filing in time to the Court of Appeal. As a result, The Court did not hear his appeal on sentencing. The Claimant claimed damages for breach of his constitutional rights simpliciter, loss of chance and loss of liberty.

[37] His loss of chance was the lost opportunity to have benefitted from the Court of Appeal's review of the correctness of the Magistrate's decision. In assessing loss of chance, the Court was asked to look at the likelihood of the Court to vary his sentence. In awarding damages, the Master considered that Mr. Singh would most likely have succeeded on appeal and his sentence would have been reduced (See ***Singh*** paragraph 21).

[38] The Defendants submit however that at the relevant time, there was no right of appeal to the Court of Appeal or to the Privy Council. There was therefore, it was submitted, no possibility of a successful appeal.

No right to appeal to the Privy Council

[39] The Defendants submit that there was no right to appeal to the Privy Council and placed reliance in that submissions to the authorities of ***Morgan v the Attorney General*** SCCA (delivered on the 6th December, 1988); ***Dave Antonio Grant v The Commissioner of Corrections*** [2004] UKPC 27 and ***Walker and Another v R and Another*** (1993) 4All ER 789. At page 8 of the judgment, Forte JA in ***Morgan v the Attorney General*** stated:

*"The Procedure complained of relates to the extradition proceedings which were conducted under the Extradition Act of 1870 which preceded the coming into effect of the Constitution, and to which section 26(8) of the Constitution applies. In addition the very sections of the Constitution which are alleged to have been breached recognise (as I stated before) that any law makes provision for the lawful detention of an individual for the purposes of extradition and anything done under such law, will not be in contravention to these particular protections. The fact that the appellant failed to obtain remedy from the Full Court on his application for writ of habeus corpus, suggests a finding by that Court that he was justly held. The fact that he does not have the right to appeal to the Court of Appeal or to the Judicial Committee of the Privy Council would not in my opinion, affect that conclusion and is in keeping with the words of Lord Diplock in the ***Maharaj*** case that "when there is no higher court to appeal to, then none can say that there was error."*

[40] Consequently, it was submitted, the Claimant suffered no loss as a result of the 'mistake' of the Minister in extraditing the Claimant despite his having filed a Notice of Intention to Appeal as he had no further right of appeal.

Effect of judicial order

[41] The Claimant was incarcerated firstly, due to the extradition warrant and then due to the respective court orders, locally and then in the US. ***McGregor on Damages*** 19th ed. page 40-021 provides authority for the proposition that an action cannot lie for false imprisonment once that imprisonment was caused by the action of a judicial officer. This principle, Counsel submitted, is also applicable in these circumstances where damages

are being sought for negligence/breach of right to liberty as it is based on the concept of causation/remoteness of damage.

"Just as an action for false imprisonment will not lie against one who has procured another's imprisonment by obtaining a court judgment against him, even if the judgment is in some way irregular or invalid, so any continuation by a judicial officer of an imprisonment initiated by the Defendant setting a ministerial order is too remote. A court of justice, unlike a ministerial officer of the law such as a constable, cannot be the agent of the defendant since it acts in the exercise of its own independent judicial discretion, and thus by acting introduces a new cause which relieves the defendant of liability for further damage."

21. The cases of **Lock v Ashton** (1848) 12 QB 871 and **Diamond v Minter** [1941] 1 KB 656 relied on in the judgment also dealt with remand by decisions of a judge/magistrate. In **Lock v Ashton** the plaintiff was arrested by a police officer on a felony charge and taken before a magistrate who remanded him. On a claim for false imprisonment, it was held that no damages could be awarded for the period that he was ordered remanded by the magistrate as that had been the result of an independent judicial action.

22. In **Diamond v Minter** (relied on in **Keane Madden v AG of Jamaica and Others** [2014] JMSC Civ 23) the plaintiff was arrested and detained by a police officer at a police station and thereafter remanded in custody by a magistrate. Cassells J. stated:

I do not award damages for the plaintiffs detention in Braxton prison, for that, as I have said, was the result of a judicial decision. The breaking of causation was dealt with by Scrutton L.J. In Harnett v Bond (1), where the Lord Justice said:

"But it appears to me that when there comes in the chain the act of a person who is bound by law to decide a matter judicially and independently, the consequences of his decision are too remote for the original wrong which gave him a chance to decide."

...'

[42] In the instant case the Defendants submit that no damages for negligence could lie based on the period of imprisonment of the Claimant. Further having regard to the foregoing the Claimant suffered no damages as a result of being extradited.

Breach of Constitutional Rights

[43] The Claimant also claims for breach of his constitutional rights pursuant to section 14(4) and 16(1) of the Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act 2011, to due process and liberty, respectively. The Defendants submitted that at the relevant time, the 2011 Charter was not yet enacted and there was no constitutional right to due process as asserted. The Defendants submitted further that the alleged section 14(4) breach is without merit and state that even if there were such breaches as alleged, the fact that there was no right to appeal, meant that the Claimant would be entitled to nominal if any damages.

Vindictory damages for breach of constitutional rights

[44] The concept of vindictory damages for breach of constitutional rights was enunciated by the Privy Council in ***The Attorney General of Trinidad and Tobago v Ramanoop*** [2005] UKPC 23.

"When exercising the constitutional jurisdiction the court is concerned to uphold or vindicate the constitutional right which has been contravened. A declaration by the court will articulate the fact of the violation, but in most cases more will be required than words. If the person wronged has suffered damage, the court may award him compensation. The comparable common law measure of damages will often be a useful guide in assessing the amount of the compensation. But this measure is no more than a guide because the award of compensation under section 14 is discretionary and, moreover, the violation of the constitutional right will not always be coterminous with the cause of action in law."

[45] Reliance was placed on ***John Planter v The Attorney General of Jamaica*** [2015] JMSC Civ. 185 (pages 11-15), ***Nicole Ann Fullerton v The Attorney General*** Claim No.

2010 HCV 1556 (del. March 25, 2011) (pages 18-23). It has been established that it is not in every case that an award for vindictory damages ought to be made even in a case where a breach has been established. (See ***Dennis Graham v Police Service Commission and The Attorney General of Trinidad and Tobago*** [2011] UKPC 46 at pages 16 - 17 of the judgment).

"Plainly the statement that "the nature of the damages... should always be vindictory" does not imply a rule that a distinct vindictory award should be made in every case of constitutional violation ..."

Applying the learning to the present case, their Lordships are satisfied that no additional award of vindictory damages was called for. The constitutional breach found by Deyalsingh J was in the nature of a want of procedural fairness — a failure to accord a right to be heard. There was no question of bad faith or deliberate wrongdoing. By contrast, as Mendonça JA observed (paragraph 95), the judge's finding suggested no more than administrative error. The PSC, moreover, twice backdated the appellant's seniority, though not to the extent for which he contended. And on 16 March 2004 they indicated that consideration would be given to his "relative seniority when next promotions to the office of Assistant Commissioner of Police are being made". In all these circumstances, the Board finds no error of principle in the response of the Court of Appeal to the claim for an additional award, and rejects the appellant's submission to the contrary."

Conduct of the Defendant

[46] The conduct of the Appellant is one of the factors that was taken into account by the court in considering whether an award of vindictory damages ought to be awarded, and the quantum of any such award. The Defendants relied on the authority of ***Dennis Graham v Police Service Commission and The Attorney General of Trinidad and Tobago*** supra, thus:

"Applying the learning to the present case, their Lordships are satisfied that no additional award of vindictory damages was called for. The constitutional breach found by Deyalsingh J was in the

nature of a want of procedural fairness — a failure to accord a right to be heard. There was no question of bad faith or deliberate wrongdoing. By contrast, the judge's finding suggested no more than administrative error."

[47] In the instant case, the negligence/breach on the part of the Defendants was similarly caused through an error, it was argued. Upon realizing the error, the Defendants took several steps to remedy the error to include requesting the Claimant's return to the jurisdiction and engaging Counsel in Florida towards that end.

Nominal Damages

[48] In ***Walumba Lumba v The Secretary of State for the Home Department/Kadian Mighty v The Secretary of State for the Home Department*** [2011] UKSC 12 the Appellants were detained pending deportation and thereafter pursuant to an unpublished 2006 deportation policy which almost applied a blanket ban on release. They challenged their continued deportation pursuant to the policy. Lord Dyson at paragraph 93 of the judgment, stated:

"I agree that the plaintiff was entitled to be put in a position in which he would have been if the tort of false imprisonment had not been committed ...

"The question here is simply whether, on the hypothesis under consideration, the victims of the false imprisonment have suffered any loss which should be compensated in more than nominal damages. Exemplary damages apart, the purpose of damages is to compensate the victims of civil wrongs for the loss and damage that the wrongs have caused. If the power to detain had been exercised by the application of lawful policies ... it is inevitable that the applicants would have been detained. In short, they suffered no loss or damage as a result of the unlawful exercise of the power to detain. They should receive no more than nominal damages."

[49] After an exploration of the different categories of damages, Lord Kerr concluded at paragraph 256:

"Since the Appellants would have been lawfully detained if the published policy had been applied to them I agree no more than a nominal award of damages is appropriate in their cases."

[50] Batts J. in ***David Chin v The Attorney General*** [2014] JMSC Civ. 20 considered the issue of an appropriate award for breach of the Claimant's constitutional rights when the police allowed US officials to search the Claimant's boat. The Court found that the search was unlawful and considered that the Claimant said that the search hurt his national pride. The learned judge awarded the sum of Five Hundred Thousand Dollars (\$500, 000.00). At paragraph 36 of the judgment he stated:

Insofar as General Damages are concerned, the Claimant objected to foreign forces on his vessel even while making it clear he had no objection to a search by Jamaican forces. His sense of national pride was clearly offended. His national pride was hurt. In these circumstances, the Crown submits that nominal damages are appropriate as no harm was done in the end. Is this really so? I was very nearly convinced by the submission until I asked myself: what price does one place on National pride? An inadequate analogy may be found in the assessment of one's loss of expectation of life. There the courts selected a conventional figure meaning it is applicable to all. It is not nominal neither is it excessive. In the circumstances for the injury to national pride, I award \$500,000.00 in damages.

[51] In ***Natoya Swaby and Andrew Green v Southern Regional Health Authority and the Attorney General*** [2012] JMSC Civ. 151 Mr. Justice K. Anderson considered whether nominal damages could be awarded in circumstances where a judgment on admission was made, but where no actual liability was found on the facts. He ruled that they could be and awarded nominal damages of Twenty Thousand Dollars (\$20,000.00) to the Second Claimant (See paragraphs 10 and 11 of the Judgment).

[52] Having regard to the foregoing Counsel for the Defendants submitted the following propositions in conclusion:

- i. The Claimant would not have suffered any loss or damage and would only be entitled to nominal damages, if any;*

- ii. *In respect of the constitutional claim, the right to liberty is also speculative as it based on the Claimant's loss of a chance to have the Privy Council review the Full Court decision. Considering the state of the law the Privy Council would not have heard the appeal;*
- iii. *The Defendants maintain that the right to due process was not a constitutional right at the relevant time and in any event, in relation to the right to due process, the Claimant would similarly only be entitled to nominal damages.*

ISSUES

[53] What is the effect of the fact that on the date that the Claimant was extradited, that is June 12, 1991, Jamaica's Extradition Act was still the Extradition Act, 1870 that the current Extradition Act came into operation on the 8th of July, 1991?

[54] What is the effect of the fact that the Claimant under cross-examination admitted that he did not have an appeal filed at the Privy Council and that what he had was a Notice of Intended Application for Leave to appeal, and that an actual appeal was never filed or pursued?

[55] What is the effect of the proceedings in the US?

[56] In what manner should the Claimant be compensated, if at all?

DISCUSSION

Extradition Act

[57] On the date that the Claimant was extradited, the relevant legislation was the Extradition Act 1870 (33 & 34 Vic. C. 52). That Act bestows a right to make a habeas corpus application; a right that the Claimant exercised along with Lester Coke in April 1991. (See ***Lester Coke and Richard Morrison v The Superintendent of Prisons-General Penitentiary and The Attorney General*** 1991 28 JLR 365). The habeas corpus application failed, and there was no right of appeal provided by law at that time whether to the Court of Appeal or the Judicial Committee of the Privy Council.

[58] On July 8, 1991, approximately three (3) weeks after the Claimant was extradited, the 1991 iteration of the Act came into force. Section 11(2)(b) of the 1991 Act (on which the Claimant places some reliance) provides:

"11(2) A person committed to custody under section 10(5) shall not be extradited under this Act-

(a).....

(b) if an application for habeas corpus is made in his case, so long as proceedings on the application are pending.

[59] This right of appeal from an adverse ruling in a habeas corpus application in extradition matters was introduced by the 1991 Act and there was no such provision in the 1870 Act. Furthermore, the 1991 legislation provided for an appeal to the Jamaican Court of Appeal and not the Judicial Committee of the Privy Council.

[60] In the case of ***Dave Grant v Director of Correctional Services and Another*** [2004] UKPC 27, which involved a Petition for special leave to appeal, the question of the effect of section 21A of the Judicature (Appellate Jurisdiction) Act, inserted by the Judicature (Appellate Jurisdiction) (Amendment) Act 1991 was considered. Section 21 A of that Act provides as follows:

"21 A (1) An appeal shall lie to the [Court of Appeal]-

(a) In any proceedings upon application for a writ of habeas corpus in a criminal cause or matter against the refusal to grant the writ;

(b) In any proceedings upon an application for an order of certiorari, mandamus or prohibition, in a criminal cause or matter, against the grant of the order as well as against the refusal of such an order.

(2) For the purpose of disposing of an appeal under this section the court may exercise any powers of the court below or remit the case to that court

(3) The decision of the court in any appeal under this Part shall be final. "

[61] Consequently, the right that Mr. Morrison has been asserting in this matter; a right of appeal to the Privy Council that he claims to have been denied the opportunity to pursue, was illusory. The Jamaican Government cannot under the circumstances be said to have breached the Claimant's right to pursue an appeal to the Privy Council, when no such right existed at the time of his said notice, or at all.

[62] What is of concern is that the Claimant was prosecuted in the US for the charges other than those contained in the extradition order. This appears to have been a breach of the doctrine of specialty that requires the extradited person be tried on the charges for which he was ordered extradited and not others. However, the Government of Jamaica cannot be held liable for the actions of US authorities as it does not have coercive power over American authorities in their own territory.

[63] Furthermore, the cases referred to herein are authorities for the principle that there can be no liability for false imprisonment, where the Claimant was detained pursuant to a judicial order. It is irrefutable that the Claimant was subject to judicial orders at all material times, both in Jamaica and in the US. There is no evidence that there was any breach of the doctrine of specialty on the part of the Jamaican Government, but there is evidence that it made attempts to have the Claimant returned to Jamaica. The rule was not expressly referred to in the affidavit of Lennox Campbell, then the Senior Assistant Attorney General, but he stated thus:

"3. That the records disclose that the US requested the extradition of the said Richard Morrison on an Indictment coming out of the US District Court Southern District of Florida and bearing case No. 88-0652CRGonzales.

4. That Richard Morrison was ordered to be extradited to the US by the Jamaican Courts on the 19th day of February, 1991 on a warrant of committal of his being accused of crimes of (a) conspiracy to distribute and possess with intent to distribute cocaine and marijuana (b) murder (c) attempted murder (d) conspiracy to commit murder in violation of US Criminal Code.

5. That the only case for which the US requested Richard Morrison's extradition is case No. 88-0652 CR-Gonzales and specifically there was no order for extradition on case No. 89-57-CR-FTM-13 (c) which was never included in the request for his extradition. "

29. Further, in affidavit of The Honourable K.D. Knight, then the Minister of National Security, he stated:

"6. That on April 29, 1991, Richard Morrison filed in the Supreme Court notice of his intention to lodge a Petition to Her Majesty in Council for leave to appeal against the decision of the Supreme Court of Jamaica, which notice should have stayed the extradition proceedings,

7. The filing of the notice referred to in paragraph 6 was not brought to the attention of the then Minister of Justice, and on June 5, 1991, he issued a Warrant for Surrender of Fugitive to the Keeper of the General Penitentiary, Kingston, to deliver Richard Morrison into the custody of persons appointed by the Government of the US of America to receive him, on the ground of his being accused in the aforesaid indictment of the crimes of (a) conspiracy to distribute and possess with intent to distribute cocaine and marijuana (b) murder (c) attempted murder (d) conspiracy to commit murder recited in the US request for extradition in paragraph numbered 2 above and in the Warrant of Committal in paragraph numbered 3 above.

8. That Richard Morrison was released to agents of the US in reliance on the Warrant for Surrender of Fugitive in paragraph numbered 6 above and extradited to the United States of America.

[64] It is therefore debatable as to whether or not the mistake regarding the fact that the Minister of Justice at the time was not made aware of the Notice, actually caused the Claimant any loss, given the fact that there was no such right of appeal. Any loss would be in the nature of the loss of a chance to actually file the appeal and get a response from the Judicial Committee of the Privy Council before he was extradited. It is noted however that there is no evidence that the Claimant's lawyers were working on an appeal, between April 29, 1991 when the aforesaid Notice was filed and June 12, 1991 when Mr. Morrison

was finally extradited and it was his evidence that his Attorneys-at-Law never filed an appeal.

[65] With no right of appeal to the Privy Council, had Mr. Morrison pursued his intention to apply for leave to appeal to the Privy Council, his extradition may have been delayed, at best. That the Government bears responsibility for the administrative error that led to the then Justice Minister not being correctly informed as to the status of the Claimant's Notice, is not denied by the Defendants. In ***Kelvin Singh v The Attorney General of Trinidad & Tobago***, there was an assessment of damages for breach of constitutional rights simpliciter, pursuant to a consent order which read:

i) That the failure and/or neglect and/or omission of the State more particularly the Commissioner of Prisons, his servants or agents to transmit for filing to the Clerk of the Peace, Sangre Grande Magistrates Court, the Claimant's Notice of Appeal on or before the expiration of the seventh day after the order for his sentence and conviction was made on the 9th May 2001 by Her Worship Magistrate Ms. Blake was unconstitutional and in breach of the Claimant's fundamental rights as guaranteed and enshrined under section 4 (a), (b) and 5(2) b of the Constitution of Trinidad and Tobago.

[66] The Master examined the Claimant's case under the heading of Loss of Chance and opined inter alia at paragraph 5:

"Loss of chance refers to the actual loss suffered by the claimant through the failure of the defendant's servants or agents to deliver the notice of appeal within the prescribed period. It is a general principle of recovery of loss in private law. It was submitted that the claimant is entitled to damages for his "loss of chance" as the omission or inaction of the prison officers caused the claimant to lose his opportunity to pursue his appeal and so benefit from the Court of Appeal reviewing the correctness of the decision of the magistrate'

[67] In assessing the loss of chance, the court was asked to have regard to the following:

The claimant would have been successful in having his sentence varied by the Court of Appeal if he was given the opportunity to pursue his appeal as the appeal was against the severity of the 'sentence' only, not conviction. Before this court, the claimant must prove that his sentence would be varied on a balance of probability."

[68] The finding of the Master is that Mr. Singh's appeal of his sentence would have been successful; to have consecutive sentences replaced with concurrent sentences, is decidedly different from the Claimant likelihood of success in the instant case, as he had no right of appeal. The learned Master went on to consider the principles regarding Loss of Liberty and stated:

"The issue to be determined by this court, therefore, is what is the appropriate quantum of damages due to the claimant for his loss of liberty and all consequential losses flowing from a breach of his constitutional rights."

...

"Under the Constitution, a claimant may recover damages for the loss of liberty and any other direct consequential loss. This is unlike under the common law in a private law action where damages are at large (such as with false imprisonment where a claimant may recover damages for injury to his reputation). Under the Constitution, the damages are circumscribed to compensating for breach of the right simpliciter."

[69] The Court accepted the submissions of the Claimant in that case, and found that the Claimant was denied a chance to have his appeal heard before the Court of Appeal and that was a breach of his rights. That Claimant suffered loss of access to the appellate process and an opportunity to have his sentence varied and there was sufficient evidence of the distress and inconvenience suffered by him in having his prison experience prolonged by the inaction or omission of the prison authorities.

[70] Further guidance with regard to damages in constitutional matters can be found in the case of ***The Attorney General of Trinidad and Tobago v Siewchand Ramanoop***

PC Appeal No. 13 of 2004. Lord Nicholls of Birkenhead stated at paragraphs 18 and 19 of the judgment:

"When exercising this constitutional jurisdiction the court is concerned to uphold, or vindicate, the constitutional right which has been contravened. A declaration by the court will articulate the fact of the violation, but in most cases more will be required than words. If the person wronged has suffered damage, the court may award him compensation. The comparable common law measure of damages will often be a useful guide in assessing the amount of this compensation. But this measure is no more than a guide because the award of compensation under section 14 is discretionary and, moreover, the violation of the constitutional right will not always be coterminous with the cause of action at law.

An award of compensation will go some distance towards vindicating the infringed constitutional right. How far it goes will depend on the circumstances, but in principle it may well not suffice. The fact that the right violated was a constitutional right adds an extra dimension to the wrong. An additional award, not necessarily of substantial size, may be needed to reflect the sense of public outrage, emphasize the importance of the constitutional right and the gravity of the breach, and deter further breaches. All these elements have a place in this additional award. "Redress" in section 14 is apt to encompass such an award if the court considers it is required having regard to all the circumstances. Although such an award, where called for, is likely in most cases to cover much the same ground in financial terms as would an award by way of punishment in the strict sense of retribution, punishment in the latter sense is not its object. Accordingly, the expressions "punitive damages" or "exemplary damages" are better avoided as descriptions of this type of additional award. "

[71] **Ramanoop** makes it clear that an award of constitutional damages pursuant to the "redress" section is discretionary, not necessarily of substantial size and not intended to be punitive. It is an additional award to reflect public outrage and emphasize the importance of the Constitutional right.

[72] ***Denese Keane-Madden v The Attorney General of Jamaica***, [2014] JMSC Civ 23, a decision of Edwards J. (as she then was), at paragraphs 60 to 63 of the judgment she referred to ***Ramanoop*** in discussing whether the Court had the jurisdiction to grant exemplary damages for breaches of human rights provisions in the Trinidadian Constitution. The Privy Council recognised the need for a remedy additional to the declarations and compensatory damages already provided for as a measure to discourage future breaches of the same kind.

[73] The circumstances of Mrs. Keane-Madden were quite different from that of Mr. Morrison, in that she contended that the remedies she sought were for the arbitrary exercise of power by servants of the state that denied her certain constitutionally protected rights. The servants of the states assumed she was a drug courier and created false positive tests to bolster accusations and failed on several occasions to attend Court to ensure her continued detention. In the case of ***Ian Seepersad and Roodal Panchoo v The Attorney General of Trinidad and Tobago*** [2012] UKPC 4 at paragraph 38 there is a further reminder that the power to give redress under section 14 of the Constitution for a contravention of the applicant's constitutional rights is discretionary, and that there is no constitutional right to such award of damages.

[74] The case at bar is indeed distinguishable from ***Ramanoop*** and ***Denese Keane-Madden*** for several reasons. All judicial procedures were followed in Jamaica and while he submits that the decision of the Resident Magistrate Court to order him extradited was not supported by the evidence, the order was made in accordance with appropriate judicial procedure. He sought redress before the Full Court which was also unsuccessful. While the Defendants do not deny the administrative error that caused inaccurate information to be conveyed to the then Minister of Justice, despite his suggestion to the contrary, there is absolutely no evidence to support his contention that the actions of the Jamaican government was part of any collusion to have him locked away.

[75] The evidence shows that Mr. Morrison did not lose a chance at an appeal, as the existing legislation did not provide such a remedy. It has formed a part of the myths throughout the years but other than Mr. Morrison's strident view in that regard, he has

presented no evidence to support it. In fact the evidence is that the Jamaican government promptly, upon discovery of the error, made efforts diplomatically and through the US Court system, to have Mr. Morrison returned to pursue the appeal process that he had given notice of an intention to commence.

[76] The then Minister of Justice, in his affidavit in support of the proceedings to have Mr. Morrison returned, stated that the filing of the notice to his intention to lodge a Petition to Her Majesty in Council for leave to appeal against the decision of the Supreme Court, would have stayed the extradition proceedings. The Defendants submitted that an award of damages for a Constitutional breach is in the court's discretion. The Defendants submit a discretionary sum of Three (3) Million Dollars while the Claimant submits figures substantially higher.

[77] What is clear on the authorities is that the basis of a claim for compensation as sought by the Claimant, must be founded in the Constitution. The Constitution of Jamaica at the time of the Claimant's extradition in 1991, did not yet afford him the protection of the Charter of Fundamental rights and freedoms until 2011 when it came into effect and included in section 16, the right to due process, and under section 14, the right not to be deprived of his liberty.

[78] The Claimant was owed a duty of care by the Defendants in how they treated with his extradition matter. Mr. Morrison was entitled to be protected from negligence on the part of the Defendants in the discharge of that duty, aside from any constitutional rights. According to ***Halsbury's Laws of England*** (Volume 29 (2019)) para 408

“(1) *GENERAL PRINCIPLES*

(i) *Compensatory Function*

408. *The compensatory function of damages in tort.*

Brexit note:

Damages in tort are in general compensatory: they aim (subject to the rules of remoteness and mitigation) to make the claimant whole,

but no more. This applies not only to negligence and similar torts, but also to torts such as conversion and deceit. In all cases the aim is to put the claimant in the position he would have occupied had the tort not been committed.”

[79] What did the Claimant lose as a result of the Defendant’s failure then? It is the view of this Court that perhaps he may have been permitted to file his appeal but the Extradition Act 1870 did not allow for an appeal, the effect of the lost chance would result in nominal damages only. Furthermore, the provision for such an appeal that later became available at section 11(2)(b) of the 1991 Act, was to the Court of Appeal and not the Privy Council where his notice indicated that he had intended to appeal.

[80] It was therefore irrelevant that the Claimant had an intention to appeal as he did not have that right. He, himself admitted in Court that this was not even a case of an extradition pending appeal. It was therefore a minimal loss that the Claimant suffered as a result of this administrative oversight. The Court therefore agrees with the Defendants’ submission that given the facts, the Claimant did not suffer any loss of liberty or opportunity as a result of the administrative error, but a minimal loss of chance.

[81] The Claimant in **Singh** had a substantial likelihood of success in his claim based on his loss of chance. Other than serving notice of this intention, Mr. Morrison did not in fact appeal. Had he filed an appeal in accordance with his intention, he would have had a very low likelihood of success as there was no right of appeal to the Privy Council. The Court awarded the Claimant in **Singh** nominal damages for breach of constitutional rights as well as general damages inclusive of aggravated damages, with interest and exemplary damages. Here, there was no breach of any constitutionally enshrined right that existed in 1991 but in view of the remark by the Minister of Justice that his knowledge of the notice would have acted to stay the extradition proceedings, I am prepared to make a nominal award of damages under this head of \$300,000.

Vindictory Damages

[82] In ***Graham v Police Service Commission and another*** [2011] UKPC 46 Sir John Laws said at paragraphs 15-17:

VINDICATORY DAMAGES

*[15] The award of vindicatory damages for breach of a constitutional right in the law of Trinidad and Tobago has been considered in a number of authorities of the Judicial Committee. It is to be distinguished both from compensation pure and simple, and from exemplary or punitive damages at common law; and it is by no means required in every case of constitutional violation. So much appears from what was said by Lord Nicholls of Birkenhead in **Ramanoop** (supra):*

“18 When exercising this constitutional jurisdiction the court is concerned to uphold, or vindicate, the constitutional right which has been contravened. A declaration by the court will articulate the fact of the violation, but in most cases more will be required than words. If the person wronged has suffered damage, the court may award him compensation. The comparable common law measure of damages will often be a useful guide in assessing the amount of this compensation. But this measure is no more than a guide because the award of compensation under section 14 is discretionary and, moreover, the violation of the constitutional right will not always be coterminous with the cause of action at law.

19 An award of compensation will go some distance towards vindicating the infringed constitutional right. How far it goes will depend on the circumstances, but in principle it may well not suffice. The fact that the right violated was a constitutional right adds an extra dimension to the wrong. An additional award, not necessarily of substantial size, may be needed to reflect the sense of public outrage, emphasise the importance of the constitutional right and the gravity of the breach, and deter further breaches. All these elements have a place in this additional award. 'Redress' in section 14 is apt to encompass such an award if the court considers it is required having regard to all the circumstances. Although such an award, where called for, is likely in most cases to cover much the same ground in financial terms as would an award by way of punishment in the strict sense of retribution, punishment in the latter sense is not

its object. Accordingly, the expressions 'punitive damages' or 'exemplary damages' are better avoided as descriptions of this type of additional award."

[16] It is helpful also to have in mind the judgment of the Board delivered by Lord Scott of Foscote in **Merson** in which, citing **Ramanoop** the learned judge stated:

These principles apply, in their Lordships' opinion, to claims for constitutional redress under the comparable provisions of the Bahamian constitution. If the case is one for an award of damages by way of constitutional redress – and their Lordships would repeat that 'constitutional relief should not be sought unless the circumstances of which complaint is made include some feature which makes it appropriate to take that course' (para 25 in Ramanoop) – the nature of the damages awarded may be compensatory but should always be vindicatory and, accordingly, the damages may, in an appropriate case, exceed a purely compensatory amount. The purpose of a vindicatory award is not a punitive purpose. It is not to teach the executive not to misbehave. The purpose is to vindicate the right of the Complainant, whether a citizen or a visitor, to carry on his or her life in the Bahamas free from unjustified executive interference, mistreatment or oppression. The sum appropriate to be awarded to achieve this purpose will depend upon the nature of the particular infringement and the circumstances relating to that infringement. It will be a sum at the discretion of the trial judge. In some cases a suitable declaration may suffice to vindicate the right; in other cases an award of damages, including substantial damages, may seem to be necessary."

[83] Applying the learning to the present case, their Lordships are satisfied that no additional award of vindicatory damages was called for. The constitutional breach found by Deyalsingh J was in the nature of a want of procedural fairness – a failure to accord a right to be heard. There was no question of bad faith or deliberate wrongdoing. By contrast, as Mendonça JA observed (para 95), the judge's finding suggested no more than an administrative error. The PSC, moreover, twice backdated the Appellant's seniority, though not to the extent for which he contended. On March 16, 2004 they indicated that consideration would be given to his "relative seniority when next promotions

to the office of Assistant Commissioner of Police are being made". In all these circumstances, the Board found no error of principle in the response of the Court of Appeal to the claim for an additional award, and rejected the Appellant's submission to the contrary.

[84] Mr. Morrison has not demonstrated that the Government did otherwise than their best once they realised that he was extradited without consideration for his intention to appeal, though he admitted that they tried. They were powerless to retrieve him from the US justice system due to the judicial determination that the US Courts were vested with the requisite jurisdiction.

[85] The Claimant was tried and convicted for crimes not included in the extradition order, in apparent breach of the doctrine of speciality. Any breach of the speciality doctrine was not in my view something was not occasioned by any negligence of the Jamaican authorities. Treaty obligations are executed in good faith and it was far too remote for the Jamaican authorities to anticipate that to give effect to an extradition request could lead to a breach in the doctrine of speciality. A delay in his extradition, pending his intended pursuit of an ill-fated appeal, would not have prevented him being prosecuted for different charges .

[86] The Court cannot accept allegations of conspiracies without evidence. Given the lack of evidence of wilful wrongdoing on the part of the Jamaican government and given the fact of the administrative error, no award will be made under the head of vindictory damages. Though awarded in ***Singh***, as was seen in ***Graham*** it is generally accepted that the aim of vindictory damages is to express outrage and not to punish the Defendants in constitutional compensation cases and is not appropriate to the facts of this case.

Aggravated damages

[87] According to Halsbury's Laws of England (Volume 32 (2019)) paragraph 686:

686. Aggravated damages

Where the injury to the claimant has been aggravated by the conduct of the defendant, the claimant may claim aggravated damages. Such damages are part of, or included in, the sum awarded as general damage and are, therefore, at large. Where a claimant seeks aggravated damages he must include in the particulars of claim a statement to that effect and the grounds for claiming such damages.”

[88] The court is aware of this principle as considered in the case of ***Rookes v Barnard*** [1964] AC 1129. It has not been proven that the Defendant’s conduct aggravated the injury, if any, that was done to the Claimant. The only injury suffered in our case was a chance to be heard in an appeal where he had not accrued such a right, due to an administrative error. The Jamaican Government did their best to retrieve Mr. Morrison afterwards but was unsuccessful. I therefore find that there is no basis for an award of aggravated damages.

Conclusion

[89] Based on the foregoing, judgment is given as follows:

- (1) General Damages awarded to the Claimant in the sum of \$3,000,000 as follows:
 - (a) \$300,000.00 for the constitutional breach;
 - (b) \$2,700,000.00 for negligence.
- (2) Interest awarded at 3% from December 5, 2013, the date of service of the claim, to the date of this judgment;
- (3) Costs to the Claimant to be taxed if not agreed.