

JAMAICA

IN THE COURT OF APPEAL

**BEFORE: THE HON MR JUSTICE BROOKS P
THE HON MISS JUSTICE SIMMONS JA
THE HON MR JUSTICE LAING JA (AG)**

SUPREME COURT CIVIL APPEAL NO COA2021CV00018

BETWEEN	RICHARD ORVILLE MORRISON	APPELLANT
AND	THE MINISTER OF JUSTICE	1ST RESPONDENT
AND	THE ATTORNEY GENERAL OF JAMAICA	2ND RESPONDENT

Richard Morrison appearing in person

**Mrs Taniesha Rowe-Coke instructed by Director of State Proceedings for the
1st and 2nd respondents**

13 December 2022 and 22 March 2024

Constitutional Law – Fundamental rights and freedoms – Applicant filing notice of intention to appeal refusal of *habeas corpus* application – Applicant extradited despite notice – Whether appeal allowable from *habeas corpus* applications - Whether applicant’s constitutional rights to liberty and due process breached – Damages for breach

Extradition – Specialty doctrine - Fugitive extradited despite filing a notice of intention to appeal refusal of *habeas corpus* application – Requesting state trying and convicting fugitive on charges other than those set out in the request for extradition – Whether requested state responsible to fugitive for requesting state’s breach of specialty doctrine – Extradition Act 1942, section 2 – Extradition Act (UK) 1870, section 10

BROOKS P

[1] Mr Richard Morrison has appealed from an award of damages made, on 4 February 2021, by Palmer J (alternatively, ‘the learned judge’) to him against the Attorney General

of Jamaica. The award totalled \$3,000,000.00 and was for negligence and a breach of his constitutional rights. The learned judge also awarded interest on that sum at a rate of 3% from 5 December 2013, that is, the date of the service of the claim form to 4 February 2021, the date of the judgment, with costs to Mr Morrison to be agreed or taxed. Mr Morrison asserts that the award is woefully inadequate.

Background

[2] On 4 July 1990, Mr Morrison was detained at the Central Police Station on suspicion of having committed firearm offences and was awaiting an identification parade in respect of those matters. The identification parade was not held. Neither were any charges laid against him.

[3] On 6 July 1990, while he was still in custody, the Government of the United States of America ('United States') requested that Mr Morrison be extradited to the United States on indictment No 88-0652-Cr-Gonzales from the United States District Court for the Southern District of Florida. The indictment charged him with several offences but the extradition request was in respect of the counts on the indictment which charged him with murder, attempted murder and conspiracy to distribute, and possess, with intent to distribute, cocaine and marijuana. The extradition request relied on portions "of the Extradition Treaty between the United States and the United Kingdom of December 22, 1931, continued in force between the United States and Jamaica by exchange of notes on August 7 1962" (pages 2 and 3 of the extradition request).

[4] The Minister of Justice at the time signed the relevant documentation to facilitate the extradition hearing at the then Resident Magistrate's Court for the parish of Kingston. On 19 February 1991, the learned Resident Magistrate found that Mr Morrison had not shown any cause why he should not have been extradited. The learned Resident Magistrate, therefore, ordered that Mr Morrison should remain in custody until he was extradited to the United States, as outlined in the extradition request. On 5 March 1991, Mr Morrison applied to the Supreme Court for a writ of *habeas corpus*. However, on 19 April 1991, the Full Court of the Supreme Court dismissed the application. Mr Morrison

stated that on or about 29 April 1991, he filed, in the Supreme Court Registry, a notice of intention to apply for leave to appeal to Her Majesty in Council and served a copy on the Attorney General. A copy was not served on the Director of Public Prosecutions. However, Mr Morrison took no further action in respect of that notice.

[5] The judgment of the District Court of the Middle District of Florida, at para. 5, states that Mr Morrison's "notice of intent to appeal was mistakenly placed in the file of an individual by the name of Lester Coke", a co-accused on indictment No 88-0652-Cr-Gonzales.

[6] On 5 June 1991, after being advised by the Director of Public Prosecutions (upon information gleaned from the Supreme Court Registry) that there was no pending appeal from the order of the Full Court, the then Minister of Justice signed a "warrant to surrender", which authorised the extradition of Mr Morrison to the United States. He was extradited to the United States on 12 June 1991. Two days later, on 14 June 1991, the Jamaican Government informed the United States Government that Mr Morrison was improperly extradited and requested that he be returned to Jamaica to complete his pending appeal to the Privy Council. (Unless otherwise stated, where the term 'Government' is used, it is to be interpreted as referring to the Jamaican Government.)

[7] On the latter date, there was a detention hearing for Mr Morrison in the Fort Myers District Court in the Middle District of Florida in the United States. At that hearing, Mr Morrison argued that he was improperly extradited and requested that the matter be stayed so that he could return to Jamaica to complete his appeal. Counsel for the Jamaican Government also argued for Mr Morrison's return to Jamaica. However, the District Court refused the applications. On 31 July 1991, a judge of that District Court denied petitions for *habeas corpus* by the Jamaican Government and Mr Morrison for Mr Morrison's release. The judge found that there had been no wrongdoing on the part of the United States and no violation of Jamaican law in the extradition process. Mr Morrison says that he unsuccessfully challenged the decision.

[8] Mr Morrison was tried in that court in case No 89-57-Cr-FTM-13, in which he was charged with “knowingly, intentionally and unlawfully possessing with intent to distribute in excess of five (5) kilograms of cocaine hydrochloride”. In his witness statement filed in this case, he asserted that on 24 April 1992, he was found guilty and sentenced to 24 years and six months in prison. He further asserted that in that court, there were no charges of murder, attempted murder, or any of the other charges for which the United States had requested his extradition, in indictment No 88-0652-Cr-Gonzales.

[9] He says that, on 11 May 1992, he was taken before the District Court for the Southern District of Florida on indictment No 88-0652-Cr-Gonzales, but that on 24 September 1994, the charges in that indictment were dismissed.

[10] As a result of the process mentioned above, Mr Morrison was imprisoned in the United States from 12 June 1991 to 31 January 2013, when he was deported to Jamaica.

[11] Mr Morrison argued that the entire process, including his incarceration, caused him to suffer personal injury, distress, loss and damage. On 21 November 2013, he filed a claim form in the Supreme Court against the Minister of Justice and the Attorney General (they will collectively be referred to as ‘the respondents’). In his claim, he sought damages for, among other things, breaches of his constitutional rights, negligence, misfeasance and/or nonfeasance in allowing him to be extradited to the United States in contravention of the Extradition Treaty between Jamaica and the United States. No issue has been taken with the fact that he did not utilise a fixed date claim form for claiming constitutional relief (as required by rule 56.9 of the Civil Procedure Rules, 2002 (‘CPR’)).

[12] On 30 November 2016, judgment on admission was entered against the Attorney General for negligence and breach of Mr Morrison’s constitutional rights. The matter then went before the learned judge for assessment of damages.

The learned judge’s findings

[13] On 4 February 2021, the learned judge ordered that the Attorney General pay Mr Morrison the sum of \$300,000.00 for the breach of his constitutional rights and

\$2,700,000.00 for negligence. The learned judge noted that the relevant legislation at the time that Mr Morrison was extradited was the Extradition Act, 1870 ('the Act'). He further noted, in para. [57], that the Act permitted *habeas corpus* applications, but it did not contemplate a right of appeal. The right of appeal, the learned judge acknowledged, came into effect with the passage of the new Extradition Act that took effect on 8 July 1991. Additionally, the right of appeal is only to the Court of Appeal; not to the Privy Council. The learned judge therefore concluded, at para. [61], that Mr Morrison did not have a right of appeal to the Privy Council. Consequently, he found that the respondents had not breached Mr Morrison's right to appeal, since no such right existed at the time Mr Morrison was extradited.

[14] The learned judge accepted that Mr Morrison was tried on charges that were not included in the extradition order. However, he concluded that the respondents cannot be held responsible for that deviation since that was an act of the United States Government and the Jamaican Government could not coerce the United States in that country's territory. Additionally, the learned judge determined that there can be no claim for false imprisonment where Mr Morrison was detained under a judicial order.

[15] In the circumstances, the learned judge found that the loss that Mr Morrison suffered was a "loss of chance to actually file the appeal and get a response from the Judicial Committee of the Privy Council before he was extradited" (see para. [64] of the learned judge's judgment). The learned judge recognised that the respondents accepted that the then Minister of Justice did not know that Mr Morrison had filed a notice of intention to appeal but questioned the relevance of that administrative error in the light of the fact that he had no right of appeal. This relevance, he said is further questioned in the context that Mr Morrison and his attorneys were not actively pursuing the appeal between 29 April 1991 and 12 June 1991, when Mr Morrison was extradited. The learned judge also added that once the Jamaican Government recognised the error, it quickly sprang into action to seek to address the issue in an attempt to have Mr Morrison returned to Jamaica. The result, therefore, the learned judge reasoned, was that Mr Morrison's

extradition may only have been delayed. In the result, the learned judge found that Mr Morrison's loss of chance to appeal yielded only nominal damages as a result of the Jamaican Government's administrative oversight.

[16] The learned judge noted that when Mr Morrison was extradited in 1991, the Charter of Fundamental Rights and Freedoms in the Constitution ('the Charter') did not exist and so Mr Morrison was not, at the time, afforded the protection under the Charter (see para. [77] of his judgment). The learned judge, however, ruled that considering the then Minister of Justice's indication, that if he had been aware of Mr Morrison's notice of appeal, he would have stayed the extradition proceedings, he awarded Mr Morrison the sum of \$300,000.00 as nominal damages for the failure to stay the extradition proceedings (see para. [81] of his judgment).

[17] The learned judge found that Mr Morrison did not produce sufficient evidence that the Jamaican Government engaged in "wilful wrongdoing" against him. Instead, the learned judge found that the Government tried its best to retrieve Mr Morrison. He ruled that the issue resulted from an administrative error and accordingly determined that there should be no award for vindictory or aggravated damages (see paras. [86] and [88] of his judgment). The learned judge noted that the purpose of vindictory damages is to express outrage, not to punish the defendants. He awarded the sum of \$2,700,000.00 for negligence. Ultimately, the learned judge ordered the total sum of \$3,000,000.00 for general damages as mentioned in para. [1] above.

The grounds of appeal

[18] Mr Morrison is dissatisfied with the award and filed this appeal. He has represented himself in these proceedings. His notice of appeal contained six grounds of appeal:

- "(a) If, [Mr Morrison's] grounds are accepted as factual which they are, does it amount to a continuous breach for 22½ years of [his] fundamental rights and in particular the protection provided for in sections 15 and 16 of the then Constitution of Jamaica.

- (b) If [Are?], the Supreme [Court's], findings that [Mr Morrison] failed to provide evidence of any unlawful actions and [wilful] wrongdoings by then government of Jamaica correct, even in the face of the then government of Jamaica acting in contravention of the then Extradition Act, the then Extradition Treaty and in contravention of this Court of [Appeal's] precedent Morgan v. Attorney General.
- (c) If [is], the Supreme Court's denial of vindictory damages for lack of evidence of negligence, unlawful actions and wilfull [wrongdoings], on the part of the then [Jamaican] government correct, even after the Federal District Court held that the government of Jamaica, had standing to challenge the breach of the treaty and the then government of Jamaica [wilful] declination to challenge the breach in Federal District Court.
- (d) If, due to the reinterpretation of the then Extradition Act section 10, by the current Supreme Court, can the Court now be characterized as a ... Court ... which intentionally disregards the court's legal or ethical obligations to abide by Jamaica jurisprudence and this Court of Appeal case laws.
- (e) If, the reinterpretation of the Extradition Act section 10, is an under-handed tactic by the Supreme Court, to once again for a second time, first in 1991, and now in 2021, an attempt to deny [Mr Morrison] the only redress available, a monetary compensation.
- (f) If, [Mr Morrison] was ever held under any legal judicial order, in Jamaica or in the United States in accordance to the then Extradition Act or Extradition Treaty."

[19] At the end of his skeleton submissions, Mr Morrison also set out grounds of appeal ('additional grounds'), which are more consistent with those submissions. The additional grounds stated as follows:

- "(a) If [Mr Morrison] was extradited on June 12, 1991 in violation of the Extradition Act was [sic] [his] rights under Section 15 and 16 of the then Constitution of Jamaica violated.

- (b) If [Mr Morrison's] rights under Section 15 and 16 of the then Constitution of Jamaica was ONLY restored when [he] was liberated on his return to Jamaica on January 31, 2013, IF so is the government liable for compensation for lost [sic] of liberty and lost [sic] of immunity from expulsion from Jamaica, from June 12, 1991, until January 31, 2013.
- (c) Is the then Government of Jamaica liable for negligence causing damage to [Mr Morrison's] reputation and health, because of the stigma place [sic] on his name for charges he was never charged for, BUT was extradited for and the stroke [he] evidently suffered in 2017, because of the years of stress from being incarcerated illegally in breach [of] the treaty, in the United States. Given the fact that, United States law gave the then Jamaica government standing and grounds to challenge the treaty breach and had [sic] [Mr Morrison] released, BUT, instead the government openly displayed a 'DON'T CARE' attitude, which under Jamaican Law constitute breach of a duty to/of care which resulted in irreparable damage to [Mr Morrison]." (Upper case text as in original)

[20] This court has discerned the following issues from his grounds of appeal and additional grounds of appeal:

- i. whether Mr Morrison's constitutional rights, rights under the Extradition Act and Extradition Treaty were breached (grounds (a), (b), (d), (e) and (f) of the original grounds and grounds (a) and (b) of the additional grounds);
- ii. whether the learned judge erred in failing to award vindictory damages in favour of Mr Morrison (ground (c) of the original grounds and ground (c) of the additional grounds); and
- iii. whether the learned judge erred in failing to award damages to Mr Morrison for his incarceration in the

United States (grounds (c) and (e) of the original grounds).

It will consider the appeal by assessing these issues in sequence.

The court's approach

[21] In reviewing the decision of Palmer J's findings, this court is mindful of its function as an appellate court. It will only disturb his exercise of discretion if he misunderstood or misapplied the law or the facts in a manner that is demonstrably wrong or if his decision is so plainly wrong that no judge, having regard to his duty would have so acted (see para. [20] of **The Attorney General of Jamaica v John Mackay** [2012] JMCA App 1). Additionally, where this court is reviewing the award of damages, it will only disturb the judge's findings if he/she applied the incorrect principle of law or if the amount of damages was so high or so low that the assessment is erroneous (see **Cadet's Car Rentals and another v Pinder** [2019] UKPC 4 at para. 7).

A preliminary issue

[22] Mr Morrison raised a preliminary issue that Palmer J should not have presided over the assessment of damages since the Attorney General's Chambers, where Palmer J previously worked, is a party to the claim. Accordingly, Mr Morrison asserted, Palmer J did not execute his judicial duty impartially. He highlighted that Palmer J recused himself from another case involving the Attorney General's Chambers on 18 January 2022. In the circumstances, Mr Morrison contended that the proceedings were irregular.

[23] However, Mr Morrison has not presented any evidence of bias or that the proceedings were irregular. It also cannot be said that there was any perception of bias on the part of Palmer J. The test of bias is outlined in **Porter v Magill** [2001] UKHL 67, as "whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased". There was nothing to suggest that Palmer J was employed to the Attorney General's Chambers at the time that Mr Morrison had filed his claim, or that Palmer J was exposed to Mr Morrison's file

or had any engagement with the matter while he was at those chambers, which could engender a possibility of bias in his mind. The fact that Palmer J recused himself from some other case does not automatically require him to do so in every case involving the Attorney General's Chambers. The circumstances of each case dictate the correct course. Mr Morrison's complaint, in this regard, is untenable.

Whether Mr Morrison's constitutional rights, rights under the Extradition Act and Extradition Treaty were breached (grounds (a), (b), (d) (e) and (f) of the original grounds and grounds (a) and (b) of the additional grounds)

Submissions

[24] Mr Morrison submitted that the Jamaican Government's conduct amounted to a breach of his constitutional rights, the Extradition Act, the Extradition Treaty as well as the rights identified in **Morgan v Attorney General** (unreported), Court of Appeal, Jamaica, Supreme Court Civil Appeal No. 9/1988, judgment delivered 6 December 1988. More particularly, he submitted that the Government breached his rights as set out in sections 15 and 16 of the Constitution (which predated the promulgation of the Charter) as he was deprived of his liberty and right of immunity from expulsion from Jamaica when he was illegally extradited. Mr Morrison argued that, because he was detained, he was denied the opportunity to seek constitutional redress until he was released in 2013.

[25] He acknowledged that section 15 of the Constitution recognises that extraditions existed before the Constitution but averred that while the Jamaican Government must honour its treaty obligation, it must exercise a balancing act to ensure that citizens' constitutional rights are not breached. Additionally, Mr Morrison asserted that the Resident Magistrate's extradition order was invalid since the learned Resident Magistrate misinterpreted the Act and the Extradition Treaty, which stated that evidence was required before the magistrate could issue an order. Mr Morrison further asserted that no such evidence was presented.

[26] He argued that section 10 of the Extradition Act provides that where an individual is to be extradited, there must be evidence to substantiate the offence in accordance with

the law in England or Jamaica. If the evidence is insufficient, the judicial officer should order that the individual be discharged. He, therefore, advanced that the Resident Magistrate should have ordered that he be discharged as there was no evidence to fulfil the requirements of the Extradition Act.

[27] Mr Morrison advanced that the United States should not, without Jamaica's consent, have him stand trial or punish him for crimes allegedly committed before the extradition, except for the offences outlined in the extradition request. He argued that the actions of the United States acted in breach of the specialty doctrine. Mr Morrison insisted that the Jamaican Government colluded with the United States Government to have him extradited.

[28] Mrs Rowe-Coke, on behalf of the respondents, submitted that Mr Morrison's right to liberty was never breached. She asserted that he was initially detained pursuant to an extradition request from the Government of the United States, which preceded an extradition order from a Resident Magistrate. Mrs Rowe-Coke submitted that the learned judge was correct in finding that the Jamaican Government did not breach Mr Morrison's right to liberty and accordingly, Mr Morrison was not entitled to an award of damages for loss of his right to liberty.

[29] Learned counsel argued that the rights that Mr Morrison alleged that he had, that is, the right to appeal to the Privy Council and the claim that he was denied the chance to appeal to the Privy Council were illusory. Mrs Rowe-Coke insisted that the Jamaican Government cannot be said to have breached Mr Morrison's right to appeal because that right never existed. Mrs Rowe-Coke argued that the learned judge was generous in his award of \$2,700,000.00 for negligence as there is no evidence that Mr Morrison suffered actual loss because of the Government's action.

Discussion & analysis

[30] Mr Morrison, in his particulars of claim, relied on sections 14(4) and 16 of the Charter to advance that his constitutional rights had been breached. The relevant portion of his particulars of claim say:

“[Mr Morrison] will rely on the above facts in support of his claim for the following breach of his Constitutional Rights:

- (a) Breach of [Mr Morrison’s] right to due process of law contrary to Section 16(1) of the Charter of Fundamental Rights and Freedom (Constitutional Amendment) Act, the proceedings against him not having been stayed in order to await the outcome of his appeal pursuant to section 11(2)(b) of the Extradition Act [1991].
- (b) Breach of [Mr Morrison’s] right to liberty contrary to section 14(4) of the Charter of Fundamental Rights and Freedom (Constitutional Amendment) Act. [Mr Morrison] had not been charged with any offence in Jamaica since the 6th day of July 1990.”

[31] Although Mr Morrison referred, in error, to sections of the Charter in his particulars of claim, he correctly referred to sections 15 and 16 of the pre-Charter Constitution in his notice of appeal. His reference to the Charter was erroneous because the Charter did not exist at the time of his extradition.

[32] Section 15 of the pre-Charter Constitution provided that a person should not be deprived of their liberty, except under certain circumstances. It stated, in part:

“15 (1) No person shall be deprived of his personal liberty save as may in any act of the following cases be authorised by law—

...

- (b) in execution of the sentence or order of a Court, whether in Jamaica or elsewhere in respect of a criminal offence of which he has been convicted; or

...

- (f) upon reasonable suspicion of his having committed or of being about to commit a criminal offence; or

...

- (j) for the purpose of preventing the unlawful entry of that person into Jamaica, or **for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Jamaica** or the taking of proceedings relating thereto; or

..." (Emphasis supplied)

[33] Section 16 of the pre-Charter Constitution stipulates that a person should not be deprived of his freedom of movement within Jamaica, nor should a person be expelled from Jamaica, save for the specific reasons outlined in the section. It stated, in part, that:

"(1) No person shall be deprived of his freedom of movement and for the purposes of this section the said freedom means the right to move freely throughout Jamaica, the right to reside in any part of Jamaica, the right to enter Jamaica and **immunity from expulsion from Jamaica.**

(2) **Any restriction on a person's freedom of movement which is involved in his lawful detention shall not be held to be inconsistent with or in contravention of this section.**

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

...

- (e) **for the removal of a person from Jamaica to be tried outside Jamaica for a criminal offence** or to undergo imprisonment outside Jamaica in execution of the sentence of a court in respect of a criminal offence of which he has been convicted." (Emphasis supplied)

[34] Sections 15 and 16 of the pre-Charter Constitution clearly recognised Mr Morrison's right to liberty and immunity from expulsion from Jamaica. However, the pre-Charter Constitution also indicated that there are exceptions by which those rights may be curtailed. Accordingly, if Mr Morrison's deprivation of liberty falls within any of those

exceptions, his rights, recognised by sections 15 and 16, would not have been unlawfully breached. Additionally, section 26(8) of the pre-Charter Constitution provided that nothing done under the authority of any law pre-existing the Constitution would be unconstitutional. It reads:

“Nothing contained in any law in force immediately before the appointed day shall be held to be inconsistent with any of the provisions of this Chapter; and nothing done under the authority of any such law shall be held to be done in contravention of any of these provisions.”

[35] Mr Morrison’s deprivation of liberty was done under the authority of a, then existing, law. He was detained in accordance with the Act, which was a statute that pre-existed the pre-Charter Constitution.

[36] A slight diversion is required to explain the provenance of the Act. Although it is an English statute, the Act was incorporated into Jamaican law by the Extradition Act, 1942, which remained in force until 8 July 1991. Section 2 of the latter Act states:

“All powers vested in, and acts authorized or required to be done by, a Police Magistrate or any Justice of the Peace in relation to the surrender of fugitive criminals in the United Kingdom, under the Extradition Acts 1870 to 1932 (United Kingdom), are hereby vested in, and may in this Island be exercised and done by, any Resident Magistrate in relation to the surrender of fugitive criminals under the said Acts.”

[37] Section 10 of the Act provides:

“In the case of a fugitive criminal accused of an extradition crime, if the foreign warrant authorising the arrest of such criminal is duly authenticated, and such evidence is produced as (subject to the provisions of this Act) would, **according to the law of [Jamaica], justify the committal for trial of the prisoner if the crime of which he is accused had been committed in [Jamaica], the [Resident Magistrate] shall commit him to prison, but otherwise shall order him to be discharged.**

In the case of a fugitive criminal alleged to have been convicted of an extradition crime, if such evidence is produced as (subject to the provisions of this Act)

would, according to the law of [Jamaica], prove that the prisoner was convicted of such crime, the [Resident Magistrate] shall commit him to prison, but otherwise shall order him to be discharged.” (Emphasis supplied)

[38] Section 26 of the Act provides some clarification of the terminology by defining “fugitive criminal”. It states:

“The term ‘fugitive criminal’ means any person accused or convicted of an extradition crime committed within the jurisdiction of any foreign state who is in or is suspected of being in some part of [Jamaica]...”

[39] The words “Jamaica” and “Resident Magistrate” have been substituted in the last two quotations, for the words “England” and “police magistrate”, respectively, as stipulated by section 43 of the Interpretation Act. That section states:

“Where any United Kingdom Act is in force in the Island, such Act shall be read with such formal alterations as to names, localities, courts, officers, persons, moneys, penalties and otherwise as may be necessary to make it applicable to the circumstances.”

[40] With that explanation of the applicability of the Act, it is established that Mr Morrison’s detention, in order for the extradition hearing to be conducted, was not in breach of his pre-Charter constitutional rights to liberty and immunity from expulsion from the island.

[41] It must next be explained that the extradition hearing and the judicial process thereafter, were also conducted according to law.

[42] The reported case of **Lester Coke and Richard Morrison v The Superintendent of Prisons- General Penitentiary and The Attorney General** (1991) 28 JLR 365 provides some assistance with this element. It reports the Full Court’s decision on Mr Morrison and Mr Lester Coke’s *habeas corpus* application. The report states that, after the Resident Magistrate ordered Mr Morrison and another person, Mr Lester Coke, to be extradited, they applied to the Full Court of the Supreme Court for orders of *habeas corpus* to overturn the extradition order and release them from custody. In that

case the challenge to the orders for extradition was on a very narrow basis. Their counsel challenged the authenticity of the documents that formed part of the United States' extradition request. There was no complaint then, as Mr Morrison does now, that the evidence was insufficient to warrant extradition. The Full Court found that the documents were properly authenticated and certified and so were admissible for the Resident Magistrate to have considered them under the Extradition Act. There being no other challenge to the order for extradition, it must be taken as having been made properly and according to law.

[43] There was no appeal to this court from that decision of the Full Court. It will be explained below, why there could be no such appeal.

[44] There is, at common law, no automatic right to appeal. Appellate courts generally only have the authority to hear appeals as are permitted by legislative sources. For this reason, it is said that this court has no inherent jurisdiction. It relies on the Constitution, the Judicature (Appellate Jurisdiction) Act and other statutory provisions for its jurisdiction. Morrison P, in **Paul Chen-Young and Others v Eagle Merchant Bank Jamaica Limited and Another** [2018] JMCA App 7, dealt extensively with the competing views in various cases on the point and concluded that this court could only hear appeals that were authorised by legislative sources. He said in para. [39]:

“On the basis of these authorities, and keeping in mind first principles, it seems to me to be possible to harmonise any apparent differences in view on the inherent jurisdiction of this court in the following way. As Duffus P pointed out in **Re D C, An infant**, '[n]o person has an automatic right of appeal from a court'. This court therefore derives its general jurisdiction as an appellate court from the provisions of the Constitution, the [Judicature (Appellate Jurisdiction) Act] and any other statute which specifically confers jurisdiction upon it. It is in this sense that the court's jurisdiction can properly be said to be confined to those matters which it is empowered by statute to hear and determine; or, put shortly, that the jurisdiction of the court is purely statutory. While the [Judicature (Appellate Jurisdiction) Act] is, of course, the court's principal source of jurisdiction, there are various other

statutes which also provide that an appeal will lie directly to the court in certain specified circumstances.” (Bold as in original)

[45] It is in that context that it must be said that Mr Morrison had no right of appeal from the decision of the Full Court of the Supreme Court. The Act did not grant a person, who had been ordered extradited under section 10, any right to appeal. None of the other Extradition Acts passed between 1870 and 1932 (all incorporated by the Extradition Act, 1942), did so either. Neither the pre-Charter Constitution nor the Judicature (Appellate Jurisdiction) Act, at the time of Mr Morrison’s extradition, granted a right to appeal. There was no automatic basis for appealing the decision of the Full Court. This court had no jurisdiction to hear such an appeal.

[46] This reasoning is supported by the judgment of the Privy Council in **Grant v Director of Correctional Services & Anor (Jamaica)** [2004] UKPC 27. Their Lordships said, in part, in para. 5:

“...Before the enactment of section 21A [of the Judicature (Appellate Jurisdiction) Act] **there was no right of appeal to the Court of Appeal against refusal to grant a writ of habeas corpus** or to make a prerogative order, although the Board had power to grant special leave to appeal. Section 1 of the Judicial Committee Act 1844 (7 & 8 Vict c 69) empowered Her Majesty by order in council to hear appeals from any court within a British colony. This power was not confined to appeals from courts of appeal: see *In re Barnett* (1844) 4 Moo PC 453....” (Emphasis supplied, italics as in original)

[47] That quote also shows that the Privy Council had the power to grant special leave to appeal to a person who wished to appeal to the Sovereign from a *habeas corpus* decision. The question that arose in this case, in this context, is whether Mr Morrison qualified to benefit from the Privy Council’s jurisdiction, for the purposes of the process of law, in order to prevent his extradition.

[48] The learned judge, at para. [57] ruled that in respect of the *habeas corpus* application, Mr Morrison had no right of appeal to the Court of Appeal or the Privy Council.

The learned judge said that, in any event, Mr Morrison did not have an appeal pending since he did not actually file an appeal to their Lordships. Mr Morrison had filed a "Notice of Intended Application for Leave to Appeal the decision of the Court of Appeal to the Judicial Committee of the Privy Council" (see para. 12 of Mr Morrison's witness statement filed 23 June 2016). Additionally, the notes of the assessment of damages hearing contain an admission by Mr Morrison that he had not filed an appeal to the Privy Council. It is recorded, on page 53 of the record of appeal, that during the cross-examination of Mr Morrison, he said:

"Q. Also in 1991 there was a section 21A 1 (a) added to the Judicature (Appellate Jurisdiction) Act it shows that this right [to appeal a decision in *habeas corpus* cases] did not accrue until this amendment...Although you thought you had a right it was not so

A. I accept what you said. Even if I had a right I did not file an actual appeal I filed a notice. All I had was an intent. I was not saying I was extradited pending appeal."

[49] In the absence of a grant of special leave to appeal, it cannot be properly said that Mr Morrison had a pending appeal to the Privy Council when he was extradited. Mr Morrison filed the notice of intention but, between the time of filing the notice and the date of his extradition, neither he nor his attorneys-at-law applied for special leave or did anything else in respect of pursuing an appeal to their Lordships. Mr Morrison argued that if Mr Coke had a right of appeal, then so did he. However, that assertion cannot be accepted as valid. Neither had a right of appeal. If the Privy Council heard an appeal from Mr Coke, it would have been by a grant of special leave. In the absence of such a grant, Mr Morrison could not be said to have had an appeal to the Privy Council pending when he was extradited.

[50] Notwithstanding that situation, the learned judge made an award in favour of Mr Morrison for the loss of a chance of appeal.

[51] Mr Morrison relied on the case of **Morgan v The Attorney General**, however, it does not assist him. The case considered various sections of the pre-Charter Constitution and in particular, sections 15 and 16, but did not identify any rights other than those set out in that Constitution. In that case, Mr Morgan was accused in the United States of possessing marijuana with intent to distribute. He fled to Jamaica, but the matter was tried and he was convicted in his absence in the United States District Court for the South District of Mississippi. However, the sentence was postponed. The Government of the United States requested his extradition from Jamaica. The then Resident Magistrate for the parish of Kingston ordered his extradition under section 10 of the Act. Mr Morgan applied to the Full Court for a writ of *habeas corpus*. That application was refused.

[52] He later applied to the Constitutional Court on the basis that the Resident Magistrate and the Full Court misinterpreted the word, "conviction", as used in the Act. He applied under section 25 of the pre-Charter Constitution seeking numerous declarations including that his rights under sections 15 and 16 of that Constitution had been breached, the Supreme Court's decision refusing *habeas corpus* infringed his constitutional rights, and that he was not a convicted person within the meaning of the Act, among others. The respondent, the Attorney General, raised a preliminary objection that Mr Morgan had an alternative remedy and so did not need to seek constitutional redress. The Constitutional Court accepted the preliminary point and refused Mr Morgan's application. He then appealed to this court. It is to be noted that the appeal was not from the refusal of the *habeas corpus* application.

[53] In its judgment, this court found that the rights under sections 15 and 16 are limited in the public interest, so that others may also enjoy them. Downer JA stated that Mr Morgan's liberty was restrained due to an order of the court because of a criminal offence, of which he was convicted (see page 24). The court determined that since the Act was in force before the Constitution came into effect, section 26(8) of the Constitution (quoted in para. [34] above) was applicable (see page 26). On page 28, Downer JA ruled that the Act was immune from constitutional challenge:

“It must be reiterated that the preliminary objection in law taken by the respondent that the seven declarations ought to have been refused was on the basis of the averments in the Originating Motion and the affidavit of the applicant, and so presented, the Supreme Court was entitled to rely on section 26(8) of the Constitution to determine that the Extradition Act was immune from scrutiny if it were alleged that the lawful arrest, detention and extradition from Jamaica were breaches of section of 15 of the Constitution. Moreover extradition of the applicant to undergo imprisonment outside Jamaica in execution of the sentence of a court in respect of a criminal offence of which he has been convicted cannot be scrutinised on the ground that it was in contravention of section 16 of the Constitution, since such extradition was done under the authority of a pre-existing law. I would, therefore, uphold the preliminary objection in law on this basis.”

[54] This means that anything done under that law did not contravene the rights under sections 15 and 16 of the pre-Charter Constitution (see pages 16, 17 and 24 of the judgment). Forte JA, as he then was, held that since Mr Morgan’s *habeas corpus* application was unsuccessful, his detention was valid. Forte JA, in dealing with whether Mr Morgan had an alternative remedy to seeking constitutional redress from the decision of the Full Court refusing his application for *habeas corpus*, noted that Mr Morgan did not have a right of appeal to the Court of Appeal or the Privy Council. Downer JA expressed a nuanced view. He said, at page 25, that an appeal could possibly lie to the Privy Council from a Full Court’s decision, on the basis of a miscarriage of justice. This view must be doubted given their Lordships’ pronouncement in **Grant v Director of Correctional Services & Anor (Jamaica)**.

[55] In Mr Morgan’s appeal to the Privy Council, their Lordships found (**Junious C Morgan v The Attorney General (Jamaica)** [1990] UKPC 28) that the purpose of the Act is “to enable a country where a criminal offence has been committed to try the accused and punish the guilty”. Their Lordships ruled that Mr Morgan was tried and found guilty and so he should be extradited to be punished. They dismissed the appeal (see page 2 of their Lordships’ judgment). Their Lordships also stated that in this context, there was no need to consider the constitutional points raised.

[56] Returning, for a moment, to the judgment of this court in **Morgan v The Attorney General**, it is noted that Forte JA, on pages 11 – 12 of the judgment, quoted Lord Diplock, in **Maharaj v Attorney General of Trinidad and Tobago (No 2)** [1978] 2 All ER 670, as asserting that judicial decisions do not generally constitute breaches of fundamental rights and freedoms. Lord Diplock said, in part, on page 679:

“In the first place, no human right or fundamental freedom recognised by Chapter I of the Constitution [the equivalent of the pre-Charter Chapter III] is contravened by a judgment or order that is wrong and liable to be set aside on appeal for an error of fact or substantive law, even where the error has resulted in a person's serving a sentence of imprisonment. The remedy for errors of these kinds is to appeal to a higher court. When there is no higher court to appeal to then none can say that there was error. The fundamental human right is not to a legal system that is infallible but to one that is fair. It is only errors in procedure that are capable of constituting infringements of the rights protected by s 1(a) [the equivalent of section 13(a) of the pre-Charter Constitution], and no mere irregularity in procedure is enough, even though it goes to jurisdiction; the error must amount to a failure to observe one of the fundamental rules of natural justice. Their Lordships do not believe that this can be anything but a very rare event.”

[57] Section 21A of the Judicature (Appellate Jurisdiction) Act would also not assist Mr Morrison since it came into effect after he was extradited. That point was made in the quote, in para. [46] above, from **Grant v Director of Correctional Services & Anor (Jamaica)**.

[58] Mr Morrison's reliance on the Extradition Treaty also does not assist him, in this context. The Extradition Treaty allowed for his extradition provided the learned Resident Magistrate was satisfied with the evidence that Mr Morrison had committed crimes in the United States that appeared in a listing in Article 3 of the Extradition Treaty. That satisfaction has already been addressed. The challenge to the extradition order, by way of the *habeas corpus* application to the Full Court, has also been addressed.

[59] The last of Mr Morrison's complaints in respect of this issue is that the United States tried him for offences other than those for which he had been extradited. That, as the learned judge properly found, is not a breach of his constitutional rights by the Jamaican Government. The relevant provisions of the Extradition Treaty are Articles 1 and 9. They respectively state:

"Article 1

The High Contracting Parties engage to deliver up to each other, under certain circumstances and conditions sated in the present Treaty, those persons who, being accused or convicted of any of the crimes or offences enumerated in Article 3, committed within the jurisdiction of the one Party, shall be found within the territory of the other Party.

...

Article 9

The extradition shall take place only if the evidence be found sufficient, according to the laws of the High Contracting Party applied to, either to justify the committal of the prisoner for trial, in case the crime or offence had been committed in the territory of such High Contracting Party, or to prove that the prisoner is the identical person convicted by the courts of the High Contracting Party who makes the requisition, and that the crime or offence of which he has been convicted is one in respect of which extradition could, at the time of such conviction, have been granted by the High Contracting Party applied to."

[60] The fact that Articles 1 and 9 were satisfied, has already been addressed. Article 7, which will be quoted below, concerns actions by the United States in the United States. Those actions concern a breach of the specialty doctrine to which Mr Morrison referred. They will be addressed in assessing the next issue.

[61] On the above analysis, Jamaica did not breach Mr Morrison's pre-Charter constitutional rights, the Act, the Extradition Treaty or any other law, since Mr Morrison was extradited under a valid extradition order. Accordingly, the learned judge was generous in his award of \$300,000.00 for a constitutional breach. There is no counter-

notice of appeal by the Attorney-General against that award and, accordingly, it must stand.

[62] Mr Morrison's complaints about the learned judge's finding in this context are untenable. These grounds of appeal fail.

Whether the learned judge erred in failing to award vindictory damages in favour of Mr Morrison (ground (c) of the original grounds and ground (c) of the additional grounds)

Submissions

[63] Mr Morrison claimed that he was entitled to vindictory and aggravated damages as the Jamaican Government's conduct amounted to an egregious breach of his constitutional rights which resulted in him being imprisoned in a federal prison for 22½ years and later suffering a stroke because of the circumstances he underwent in prison.

[64] Mr Morrison strongly submitted that the Jamaican Government colluded with the United States Government to breach Article 7 of their Extradition Treaty, which encapsulated the specialty doctrine, and that he should be awarded damages for the injury and suffering that flowed from that breach.

[65] The learned judge assessed those claims. As mentioned before, he awarded Mr Morrison damages for Mr Morrison's loss of chance caused by the administrative error that led to the Minister of Justice not being correctly informed as to the existence of Mr Morrison's notice of appeal. The lost chance, the learned judge found, only entitled Mr Morrison to nominal damages. The loss of liberty, he found, was not caused by the administrative error.

[66] He considered the principles behind awarding vindictory damages and found that vindictory damages were not warranted as there was no evidence of wilful wrongdoing on the part of the Jamaican Government (para. [86] of his judgment).

[67] Similarly, the learned judge considered the rationale for aggravated damages. He found, at para. [88], that the administrative error did not justify aggravated damages, particularly in the face of the Jamaican Government doing its “best to retrieve Mr. Morrison afterwards” from the United States.

[68] He dealt with the specialty doctrine issue by stating that any breach of the Extradition Treaty could not sound in damages to Mr Morrison. The learned judge said at paras. [85] and [86]:

“[85] [Mr Morrison] was tried and convicted for crimes not included in the extradition order, in apparent breach of the doctrine of specialty. Any breach of the specialty 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 specialty. 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*, [**Kelvin Singh v The Attorney General of Trinidad and Tobago** Claim No. CV 2007- 03035] as was seen in *Graham* [**Dennis Graham v Police Service Commission and The Attorney General of Trinidad and Tobago** [2011] UKPC 46] 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.” (Bold and italics as in original, underlining for emphasis)

[69] Mrs Rowe-Coke submitted that the learned judge assessed the relevant principles governing vindictory and aggravated damages and properly determined that there was no basis for making these awards in Mr Morrison’s favour. She highlighted that:

- a. in relation to the extradition order, the correct judicial procedures were followed in Jamaica;
- b. there is no evidence supporting Mr Morrison's position that the Jamaican Government colluded with the United States Government to detain him;
- c. to the contrary, the Jamaican Government attempted to have Mr Morrison returned to Jamaica;
- d. the respondents accepted that there was an administrative error on their part but that did not cause Mr Morrison to lose his right of appeal, since at that time the right did not exist;
- e. if there was any breach of the doctrine of specialty, it was not due to any negligence by the Government of Jamaica;
- f. there was no evidence of wilful wrongdoing by the Jamaican Government.

Discussion & analysis

[70] **Cadet's Car Rentals and another v Pinder** has already been cited above as the guide for an appellate court's approach to an award of damages given by a judge of first instance.

[71] On the issue of vindictory damages, their Lordships, in **The Attorney-General v Siewchand Ramanoop** [2005] UKPC 15 (**'Ramanoop'**), distilled the principles governing such awards. In that case, their Lordships were considering section 14 of the Constitution of Trinidad and Tobago. Their Lordships in **Ramanoop** pronounced that:

"17. Their Lordships view the matter as follows. Section 14 recognises and affirms the court's power to award remedies for contravention of chapter 1 rights and freedoms. This jurisdiction is an integral part of the protection which chapter I of the Constitution confers on the citizens of Trinidad and

Tobago. It is an essential element in the protection intended to be afforded by the Constitution against misuse of state power. Section 14 presupposes that, by exercise of this jurisdiction, the court will be able to afford the wronged citizen effective relief in respect of the state's violation of a constitutional right. This jurisdiction is separate from and additional to ('without prejudice to') all other remedial jurisdiction of the court.

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

[72] At Mr Morrison's detention hearing on 14 June 1991, Mr Peter George, counsel who appeared on behalf of the Jamaican Government submitted that Mr Morrison was extradited because of a clerical issue and asked that the court stay the detention proceedings to allow for the process of a request that had been made to the Government of the United States to return Mr Morrison to Jamaica immediately. This is recorded on page 3 of the transcript of the detention hearing:

"...Mr. Morrison, was extradited because of a clerical error in the proceedings in Jamaica. It is my understanding from a diplomatic letter sent by the Government of Jamaica to the United States that, in fact, Mr. Morrison still has an appeal pending with respect to extradition before the Constitutional Court, and therefore, under the extradition treaty, he should not have been extradited.

The Government of Jamaica is requesting that the Government of the United States, through the State Department and the Department of Justice, to return [Mr Morrison] to Jamaica forthwith." (Emphasis supplied)

[73] In these circumstances, it has not been shown that there was any ill will toward Mr Morrison or want of procedural fairness. The actions or inactions of the Jamaican Government do not support Mr Morrison's claim for vindictory damages. The inaction is in the form of a clerical error. The Jamaican Government sought to correct the error. All this was in the context of there being no existing right of appeal to the Privy Council. Following the principles set out in **Dennis Graham v Police Service Commission and The Attorney General of Trinidad & Tobago** [2011] UKPC 46, cited in the judgment of the learned judge, the test of an award of vindictory damages has not been satisfied. There is no need for an additional award to demonstrate public outrage or emphasise the importance of constitutional rights in these circumstances since there had been no breach of the Constitution, the Extradition Act or the Extradition Treaty (at least from the standpoint of the Jamaican Government).

[74] The issue of the specialty doctrine should now be addressed. Their Lordships in the Privy Council gave a clear explanation of the doctrine in **Jack Austin Warner v Attorney General of Trinidad and Tobago** [2022] UKPC 43. They said at paras. 65 through 67:

“65. Specialty is a rule of extradition law that is intended to ensure that the person extradited is not dealt with in the requesting state for any offence other than that for which he was extradited. The rule has been widely relaxed so that the requesting state may be permitted to deal with the defendant for offences other than those for which he was returned which are disclosed by the facts upon which the surrender was based and may be permitted to seek from the requested state its consent to try the defendant for another offence not covered by its original request provided the offences are extraditable (*The Law of Extradition and Mutual Assistance 3rd edition* (2013) para 5.73).

66. It is implicit in the specialty rule that there is a level of comity between the nations involved such as to ensure that the rule will be observed. It serves the further purpose of protecting the rights of the person being returned not to be exposed in the requesting state to allegations of offences other than those for which the requested state has returned him or her.

67. It follows, therefore, that it is desirable that there should be a sufficient degree of particularity about the extent, if any, to which the person returned is exposed to offences other than those for which that person has been extradited. In the case of a dualist country the extradition statute establishes the specialty rule implemented by that territory. In the case of a monist jurisdiction, such as the [United States], the specialty rule is likely to be set out in the treaty.” (Italics as in original)

[75] Article 7 of the Extradition Treaty addresses the specialty doctrine. It states:

“A person surrendered can in no case be kept in custody or be 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.

This stipulation does not apply to crimes or offences committed after the extradition.”

[76] Mr Morrison was not tried in the United States District Court for the offences for which the extradition request was made. Nor was he tried, at least in the first instance, on the indictment for which he was extradited. He was not returned to Jamaica before he was tried on the matters for which he was not extradited. Article 7 was breached. However, that breach was not committed by the Jamaican Government. Despite Mr Morrison’s scathing castigation of the Jamaican Government and its representatives at the various court proceedings, he has exhibited in the “bundle of authorities” an affidavit of Mr Lennox Campbell, representing the Attorney General, in which Mr Campbell clearly states that Mr Morrison was not extradited for the case for which he was initially tried. It is true that Mr Campbell did not specifically mention the specialty doctrine, but its import was clearly implied. Para. 5 of the affidavit states:

“That the only case for which the United States requested Richard Morrison’s extradition is case No. 88-0652CR-Gonzales and specifically there was no Order for extradition on case No. 98-57-CR-FTM-113 (C) which was never included in the request for his extradition.”

[77] The complaints about the award of damages cannot succeed.

Whether the learned judge erred in failing to award damages to Mr Morrison for his incarceration in the United States (grounds (c) and (e) of the original grounds)

[78] The various statements made above concerning the protection given to defendants by the fact that actions were taken by judicial officers is also applicable in this context. The Attorney General is entitled to rely on the fact that Mr Morrison was detained and imprisoned in the United States as a result of judicial action.

[79] The learned judge was also correct in finding that once Mr Morrison was in the United States, the Jamaican Government had no prerogative power that it could exercise. He said in para. [84] of his judgment:

“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.”

[80] It is worth reiterating at this stage that it was a judicial act of the United States District Court for the Middle District of Florida, which kept Mr Morrison in the United States. That court held that Mr Morrison was properly before it and denied the *habeas corpus* application, filed by the Government of Jamaica, for him to be returned to Jamaica.

[81] In **Diamond v Minter and others** [1941] 1 KB 656 (cited by the learned judge), Cassells J, on page 663, correctly expressed the law in the case before him:

“...I think that the periods of detention which I have to consider are the period during which the plaintiff was in the custody of the two defendants, Miller and Campbell, and the period during which he was detained at Bow Street police station before he went into the Court. **What happened after that, with regard to his being remanded in custody, was the result of a judicial act by the learned Chief Magistrate, and no liability can attach to the police officers for that....**” (Emphasis supplied)

[82] Mr Morrison’s complaints on this issue also fail.

Breach of case management orders

[83] At the case management hearing, a judge of this court ordered that the respondents were to file and serve written submissions and a bundle of authorities on or before 18 November 2022. The respondents did not file their written submissions until 6 December 2022 and the bundle of authorities were not filed until 7 December 2022. Their

failure to comply with the orders was castigated by Mr Morrison, although for reasons that we do not share.

[84] The explanation for the failure, however, is that counsel who was charged with the preparation and filing of the submissions was ill. However, the Attorney General's Chambers possess more human resources than a sole practitioner. That explanation is not reasonable. Furthermore, no application was made beforehand for an extension of time within which to file the document. The late filing deserves a sanction, which this court has consistently warned that it will impose for disobedience of deadlines for filing documents. Accordingly, the 2nd respondent should only receive three-quarters of the costs to which it is entitled as being the successful party in the proceedings.

Conclusion

[85] Mr Morrison has not demonstrated that the learned judge was palpably wrong in his assessment. The learned judge correctly found that the respondents had not breached Mr Morrison's constitutional rights, the Act, or the Extradition Treaty. He also correctly found that Mr Morrison did not have a right of appeal to the Privy Council. In these circumstances, the learned judge was on good ground for refusing to make an award for vindictory damages. The court will not disturb his award of damages.

[86] The court apologises for the delay in the delivery of this judgment.

SIMMONS JA

[87] I have read the judgment in draft of my learned brother Brooks P. I agree with his analysis and conclusions.

LAING JA (AG)

[88] I too have read the draft judgment of my learned brother Brooks P and I agree with his analysis and conclusions. I have nothing that I can usefully add.

BROOKS P

ORDER

1. The appeal is dismissed.
2. The judgment and orders of Palmer J made on 4 February 2021 are affirmed.
3. The Attorney General shall have three-quarters of his costs to be agreed or taxed.