



[2026] JMSC Civ 99

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. 2016 HCV 01273

BETWEEN CARLENE KING

CLAIMANT

AND THE ATTORNEY GENERAL OF JAMAICA

DEFENDANT

IN OPEN COURT

Mr. Sean Kinghorn instructed by Kinghorn & Kinghorn for the Claimant

Mr. Niholai Beddassie instructed by the Director of State Proceedings for the Defendant

Heard: 24 and 25 February, and July 29, 2026

Constitutional Law - Breach of Fundamental Rights - Sections 13 and 14 of the Constitution of Jamaica (Charter of Fundamental Rights and Freedoms) - Unlawful detention - Right to be brought before a court - Right to be informed of reasons for detention - Whether detention from April 2010 to November 2010 was unlawful - Whether claimant was before the court during that period - Stop order - Credibility of witness - Burden of proof

WILTSHIRE J.

Background

[1] The claimant, Carlene King, brings this constitutional claim against the Attorney General of Jamaica alleging, that her fundamental rights under sections 13 and 14

of the Constitution of Jamaica were breached by the State. The gravamen of her complaint is that in April 2010, she pleaded guilty to the offence of possession of ammunition before Her Honour Ms. Anne-Marie Nembhard (as she then was) in the Spanish Town Resident Magistrate's Court (as it then was), was fined \$100,000.00 or twelve months imprisonment, and paid the fine on that same day. Notwithstanding the payment of the said fine, she avers that she was further incarcerated at the Fort Augusta Adult Correctional Centre (hereinafter called Fort Augusta), where she remained until November 2010, when she was eventually released. She contends that her continued detention from April 2010 to November 2010, without being brought before the court, constituted a breach of her constitutional rights under sections 13 and 14 of the Constitution.

- [2] The claimant also complains that by order of the court, a stop order was placed against her freedom to leave the country and that, despite the resolution of her matter before the court, the said stop order remains in effect, thereby restricting her freedom of movement. She claims aggravated, exemplary and vindictory damages.
- [3] The defendant denies that the claimant's constitutional rights were breached. The defendant asserts that the claimant's incarceration between April 2010 and November 2010 was not in relation to the sole charge of illegal possession of ammunition for which the fine was paid. Rather, the defendant contends that on 25 March 2010, the claimant was remanded in custody on a separate charge of obtaining money by false pretences, and that her detention under judicial remand for this charge continued until 5 November 2010 when she was sentenced by Her Honour Mrs. Marcia Dunbar-Green (as she then was) and released on the same date on the grounds of time served.

The claimant's case

- [4] The claimant's case is set out in her Claim Form and Particulars of Claim filed on 30 March 2016. Her Witness Statement, signed on 8 July 2025, was permitted to

stand as her evidence-in-chief. The Claimant gave viva voce evidence via Zoom on the 24 and 25 February 2026 and was subjected to cross-examination. She asserts that on 27 April 2010, she appeared in the Spanish Town Resident Magistrate's Court before Her Honour Ms. Anne-Marie Nembhard, where she pleaded guilty to the offence of possession of ammunition. She was fined \$100,000.00 or twelve months imprisonment. On that same day, she claims she paid the fine of \$100,000.00 to the Government of Jamaica.

- [5]** In her evidence-in-chief, the claimant stated that when Her Honour Ms. Nembhard announced the \$100,000.00 fine, she held up her hand and told the learned judge that she had the money. The judge asked how she knew she was going to be fined, and the claimant responded that she did not know, but was advised to carry money in case it was a fine. The claimant testified that she looked around at two ladies who were assisting her, and they had the money. The claimant asserts that she was instructed to take the money across to the Court's office, and while there, she had to wait as there was no electricity. She is adamant that the fine was paid on the said date, 27 April 2010. She testified that the receipt was pen-written and she took it with her to Fort Augusta.
- [6]** The claimant stated that after paying the fine, the judge told her to leave, but a Mr. Clive Blair interrupted and said that the claimant could not leave because further investigations were pending against her. She asserted that she was then taken to Fort Augusta prison on the said 27 April 2010 and that she did not leave the prison again until 5 November 2010. She specifically denied being before the Spanish Town Resident Magistrate's Court on 30 April 2010, 15 June 2010, 20 July 2010, 27 July 2010, and 11 August 2010. When asked whether she recalled being at court on any of those dates, she responded, "Not there. I never left the prison."
- [7]** In her Particulars of Claim, the claimant also asserts that by order of the court, a stop order was placed against her freedom to leave the country, and that despite

the resolution of her matter, the said stop order presently exists against her, restricting her freedom of movement.

The defendant's case

- [8]** The defendant's case is that the Claimant was not detained in relation to the ammunition charge after the fine was paid, but rather that she was on remand for a separate charge of obtaining money by false pretences. The defendant relies heavily on the court proceedings recorded by the Resident Magistrate, i.e the court sheets and other documentary evidence, disclosed and tendered by consent.
- [9]** The defendant called Inspector Sadarka Russell as a witness. Inspector Russell's witness statement was permitted to stand as her evidence-in-chief. She testified that she conducted an investigation into the matter and reviewed the relevant court documents. Her evidence was that the claimant could not have been released on the day she was convicted of possession of ammunition, as the fine was not paid until 4 May 2010, and she was remanded on other matters.
- [10]** The defendant relies on the following documents:
- i. Copy Court Sheet dated 5 March 2010 showing that the claimant was sentenced on four counts of obtaining money by false pretences to serve two years imprisonment suspended for two years on each count, to run concurrently;
 - ii. Copy Court Sheet dated 25 March 2010 showing that trial for the matter on (a) Information 5143/08 was set for 30 April 2010 and the accused was remanded in custody;
 - iii. Copy Commitment record dated 27 April 2010;
 - iv. Copy Court Sheet dated 30 April 2010 showing that the claimant appeared before Her Honour Mrs. Dunbar-Green (as she then was) where she pleaded

guilty to obtaining money by false pretences and sentencing set for 12 May 2010, and the accused remanded in custody;

- v. Copy Court Receipt outlining payment of \$100,000.00 in relation to the offence of illegal possession of ammunition on Information 4870/08 being made on 4 May 2010; vi. Copy Body Receipt dated 15 June 2010;
- vii. Copy Court Sheet dated 15 June 2010 showing postponement of sentence to 20 July 2010, and the accused remanded in custody;
- viii. Copy Court Sheet dated 20 July 2010 showing postponement of sentence to 27 July 2010, with the notation "ANBC", to which the parties agree means "Accused Not Before the Court";
- ix. Copy Court Sheet dated 27 July 2010 showing the sum of \$50,000.00 being paid in court to the complainant. Sentence adjourned until 11 August 2010, and the accused remanded in custody;
- x. Copy Court Sheet dated 11 August 2010 showing the sum of \$50,000.00 being paid in court, and sentencing adjourned to 21 September 2010. The accused was remanded in custody;
- xi. Copy Court Sheet dated 5 November 2010 showing that the accused was sentenced to nine months imprisonment at hard labour, time already served.

[11] The defendant contends that the above Copy Court Sheets demonstrate that the claimant appeared before the court on numerous occasions between April 2010 and November 2010 in relation to the single count of obtaining money by false pretences, and that her detention was lawfully pursuant to judicial remand for that charge.

The Law on Constitutional Claims

- [12] The claimant brings this claim under Section 19 of the Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act, 2011. Section 19(1) provides that any person who alleges that any of the provisions of the Charter has been, is being or is likely to be contravened in relation to him may apply to the Supreme Court for redress.
- [13] Section 13 of the Constitution acknowledges and guarantees certain fundamental rights and freedoms. Section 14, in particular, deals with the protection of the right to personal liberty. Section 14(1) provides that no person shall be deprived of his or her personal liberty save as may be authorised by law in certain specified circumstances. One such circumstance is when a person is detained pursuant to a court order. Detention under judicial remand is lawful. In **Leon Stephenson v The Bank of Nova Scotia and The Attorney General of Jamaica** [2025] JMSC Civ 114, Wint-Blair J stated at paragraph 89: "There is an authority of some vintage that states, 'No action can lie for false imprisonment for a period of detention resulting from a court order'." The court also held at paragraph 90 that judicial action can operate as a novus actus interveniens - a new intervening act that breaks the chain of causation – thereby providing an independent lawful basis for detention.
- [14] The Privy Council in **Attorney General of Trinidad and Tobago v Siewchand Ramanoop** (2005) 66 WIR 334 established that, where constitutional rights have been contravened, the court is concerned to uphold or vindicate the constitutional right. A declaration 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 compensation. That principle, however, only comes into play where a breach has first been established.

[15] In a claim of this nature, the burden of proof rests on the claimant. It is for the Claimant to satisfy the court, on a balance of probabilities, that the acts complained of constitute a contravention of her constitutional rights. The Full Court in **Roshaine Clarke v The Attorney General [2022] JMFC Full 3** stated at paragraph 58:

"a) Mr. Clarke must establish on a balance of probabilities that his charter rights have been abrogated, abridged or infringed."

The two-stage test for constitutionality is by now well settled. The court must first determine whether the law or state action abrogates, abridges, or infringes a guaranteed right. Only then, if the answer is yes, does the burden shift to the State to prove that the infringement is demonstrably justified in a free and democratic society (or reasonably justified, as the case may be).

[16] The issues for determination by this court are as follows:

- i. Whether the claimant's detention at Fort Augusta from April 2010 to November 2010 was in relation to the possession of ammunition charge for which she paid a fine, or in relation to separate charges of obtaining money by false pretences for which she was on judicial remand.
- ii. Whether the claimant has proved, on a balance of probabilities, that her constitutional rights under Sections 13 and 14 of the Constitution were breached by the State.
- iii. Whether the claimant is entitled to any damages or other redress.
- iv. Whether the claimant is entitled to any relief in respect of the alleged stop order.

Analysis

Credibility of the claimant

- [17]** Before addressing the substantive issues, it is necessary to assess the claimant's credibility. I found the claimant to be an unsatisfactory and unreliable witness. Her evidence was riddled with inconsistencies and contradictions, and her recollection of events was, at best, selective and self-serving. In her Particulars of Claim, the claimant focused solely on the offence of illegal possession of ammunition. She made no mention whatsoever of any other charges or of being before the court for any other matter during the material time. The clear impression given by her pleaded case was that she was incarcerated solely because of the possession of ammunition charge and that she had been, as she puts it, "lost in the system" after she had paid her fine.
- [18]** However, under cross-examination, the claimant was forced to confront the Court Sheets, which told a very different story. When shown the Court Sheet dated 5 March 2010, the claimant admitted that she saw her name on the document and that it was in relation to her. She admitted that she saw the word "sentenced" and "2 years imprisonment on each count suspended". When asked if she still maintained that she was not sentenced, she responded, "I'm saying that I did not get a sentence. I don't understand. I don't remember". When pressed whether she understood what a suspended sentence is, the Claimant responded that "Miss Nembhard explained to me when she suspended the sentences for one year."
- [19]** This response is telling. The Court Sheet is clear and unambiguous. The Claimant was sentenced on 5 March 2010 for four counts of obtaining money by false pretences. Her inability or unwillingness to accept this reality undermines her credibility significantly.
- [20]** The claimant admitted under cross-examination that she was arrested on 23 December 2009 for absconding bail and that she had been in custody since then. She said, "I was at Central Village first. I had just gave birth on the 7th of November 2009 and arrested on the 23rd of December 2009 for absconding bail."

This admission is critical as it aligns with the claimant's admission under cross-examination that the matter of obtaining money by false pretences had been before the court since 2008, for which she was on bail until same was revoked, and she was arrested on 23 December 2009.

[21] Perhaps most damaging to the claimant's case was her evidence regarding the fine payment. In her evidence-in-chief, she insisted that she paid the \$100,000.00 fine on 27 April 2010, the same day she appeared before Her Honour Ms. Nembhard. However, the documentary evidence, specifically the Committal Receipt and the Court Receipt with number 216-169, both show that the \$100,000.00 payment for the ammunition charge was made on 4 May 2010. When this was put to her in cross-examination, and she was asked whether she agreed that the Committal Receipt and the receipt received by her were one and the same, she responded, "No, sir, that is not the original receipt that I got."

[22] Importantly, the claimant did not produce any receipt of her own and admitted under cross-examination that she had not provided the receipt she claimed to have received. The claimant was unable to produce any documentary evidence to support her assertion that the fine was paid on 27 April 2010. The only evidence before the court on this point is the official court records showing payment being made on 4 May 2010.

[23] The approach to assessing credibility in a case such as this must be grounded in a careful comparison of the witness's testimony against the objective documentary evidence. In **Leon Stephenson v The Bank of Nova Scotia and The Attorney General of Jamaica** (supra), the court quoted with approval the dictum of Robert Goff LJ in **Armagas Ltd v Mundogas SA (The Ocean Frost)** [1984] EWCA Civ J1018-2:

"...I have found it essential... when considering the credibility of witnesses, always to test their veracity by reference to the objective facts proved independently of their testimony, in particular by reference to the

documents in the case, and also to pay particular regard to their motives and to the overall probabilities..."

[24] Applying that approach here, the claimant's testimony that she paid the fine on 27 April 2010 is directly contradicted by the official court receipt. Her assertion that she never left prison between 27 April 2010 and 5 November 2010 is also contradicted by the Copy Court Sheets, which I accept, show her presence on 30 April, 15 June, 27 July, 11 August, and 5 November 2010. I therefore find that the Claimant's evidence on the core factual issues is unreliable and I reject it.

Whether the claimant's detention was unlawful

[25] The central question in this case is whether the claimant's detention from April 2010 to November 2010 was unlawful. The claimant asserts that she was detained in relation to the ammunition charge after paying her fine. The defendant argues that she was detained on judicial remand for a single count of obtaining money by false pretences.

[26] Having carefully examined the Copy Court Sheets and other documentary evidence tendered, I am satisfied that the defendant's version is correct, and the events unfolded as follows:

- i. On 5 March 2010, the claimant was sentenced on four counts of obtaining money by false pretences to two years' imprisonment, suspended for two years on each count. A fifth count (Information No. 5143/08) was not determined and was transferred to Her Honour Mrs. Dunbar-Green's court for trial.
- ii. On 25 March 2010, the matter on Information 5143/08 was set for trial on 30 April 2010, and the claimant was remanded in custody.
- iii. On 27 April 2010, the claimant appeared before Her Honour Ms. Nembhard and pleaded guilty to illegal possession of ammunition (Information No.

4870/08). She was fined \$100,000.00 or twelve months imprisonment. The fine was not paid on that day, but instead was paid on 4 May 2010. iv. On 30 April 2010, the Claimant appeared before Her Honour Mrs. DunbarGreen on Information 5143/08, pleaded guilty to the single count of obtaining money by false pretences, and was remanded in custody for sentencing on 12 May 2010.

- v. No Copy Court Sheet dated 12 May 2010 was presented to the court.
- vi. On 15 June 2010, the Claimant was before the court for sentencing. The Claimant was remanded in custody and sentencing was adjourned to 20 July 2010.
- vii. On 20 July 2010, the Copy Court Sheet indicated "ANBC" – which was agreed to mean "Accused Not Before the Court". Sentencing was adjourned to 27 July 2010, and a writ was ordered to issue.
- viii. On 27 July 2010 the Claimant appeared in court and \$50,000.00 was paid in court to the complainant. The claimant was remanded in custody and sentencing adjourned to 11 August 2010.
- ix. On 11 August 2010, the Claimant appeared in court and a further \$50,000.00 was paid in court to the complainant. The claimant was remanded in custody and sentencing adjourned to 21 September 2010.
- x. No Copy Court Sheet dated 21 September 2010 was presented to the court.
- xi. On 5 November 2010, the Claimant appeared in court before Her Honour Mrs. M. Dunbab Green and was sentenced to nine months imprisonment at hard labour, time already served.

- [27] The Court Sheet dated 27 July 2010 (Doc 9) records that the claimant's record was perused by the court regarding the ammunition matter and other suspended sentences. This notation demonstrates active judicial oversight, whether prompted by the claimant's request or the court's own volition, the court enquired into the detention of the claimant. This directly contradicts her assertion that she was "lost in the system." The court did not merely remand her; it examined her record and verified the lawfulness of her continued custody.
- [28] This evidence conclusively demonstrated that the claimant was not being detained in relation to the ammunition charge after 4 May 2010, when the fine was paid. The ammunition matter concluded on that date. The claimant's continued detention from 4 May 2010 to 5 November 2010 was pursuant to judicial remand on the charge of obtaining money by false pretences.
- [29] The Full Court in **Omar Guyah v Devon Rowe and Others** [2022] JMFC Full 04 (at paras 362-366) confirmed that detention pursuant to a court-issued warrant of commitment is lawful. The constitutional court will not review the order of a judicial officer in a claim under section 19 of the Charter. The claimant's assertion that she was unlawfully detained must fail, as the court sheets demonstrate that she was repeatedly remanded by order of a competent court on the separate charge of obtaining money by false pretences.
- [30] The claimant's assertion that she was not taken before the court between April 2010 and November 2010 is demonstrably false. The Copy Court Sheets show that she was before the court on 30 April 2010, 15 June 2010, 27 July 2010, 11 August 2010, and 5 November 2010. While the Copy Court Sheet for 20 July 2010 shows that she was not before the court on that date, that is a single occasion. The claimant was before the court on multiple occasions during the relevant period. One notation of absence does not prove absence on all other dates.
- [31] The claimant also argued that there was no evidence of a writ being issued to bring her from prison to court. Inspector Russell conceded under cross-

examination that she did not check the records at Fort Augusta for the period in question. However, the Copy Court Sheets themselves are evidence of the proceedings that took place. They record the claimant's appearances and the orders made by the Resident Magistrates. I accept the Court Sheets as the accurate and credible record of sittings and the proceedings relevant to the Claimant.

Breach of Constitutional Rights

[32] Having found that the claimant's detention from April to November 2010 was lawful pursuant to judicial remand on the obtaining money by false pretences charge, it follows that there was no breach of her constitutional rights under sections 13 and 14 of the Constitution in respect of that detention. The claimant was not arbitrarily detained. She was detained by order of a court of competent jurisdiction after pleading guilty to a criminal offence. The court had the power to remand her in custody pending sentencing. The fact that the matter took several months to conclude does not, without more, amount to a constitutional breach. The claimant has not provided any evidence that the delay was unreasonable or that she made any application to the court for an expedited hearing or for bail.

[33] Regarding the ammunition charge, the court accepts the evidence that the fine was paid on 4 May 2010 and there is no evidence that the claimant was detained in relation to that charge after that date. The claimant's right to be brought before a court was not breached. She was before the court on numerous occasions. Her right to be informed of the reasons for her detention was not breached. Under cross examination, the claimant admitted to being aware of the matter of obtaining money by false pretences and when asked whether she knew a Christie Horridan (the Complainant in that matter), she said "No Sir, the first time I heard the name was in court. I saw the person. I told Her Honour Mrs. Dunbar-Green that I took the money from him to pass on to somebody else". It was then put to her that it was to the said Mr. Horridan that she had made restitution, to which she rebuffed,

saying, "No Sir, 2008 when we went to court, I told the court he was lying, hence I did not plead guilty as I was not going alone..."

- [34]** The claimant therefore, by her own admission, demonstrated that she knew of the pending 2008 charge of obtaining money by false pretences and had knowledge of the alleged complainant in the matter. She was brought before the court repeatedly. I accept that the claimant's right to be informed of the reasons for her detention was not breached. She knew why she was before the court. She had pleaded guilty to obtaining money by false pretences and was awaiting sentence.

The Stop Order

- [35]** The claimant also complains about a stop order that she says was issued against her freedom to leave the country. The defendant admits that a stop order was placed against the claimant by order of the court and that it presently exists. The defendant says that upon the resolution of a court matter for which a stop order is imposed, it is the responsibility of the accused person to obtain a letter from the relevant court's office addressed to the Passport, Immigration and Citizenship Agency for the discontinuance of the stop order. Further, the defendant asserts that it is the claimant who has failed and/or neglected to comply with the said procedure. This procedure for the removal of the stop order was not challenged by the Claimant.

- [36]** The claimant's evidence on the stop order was lacking in detail. She admitted under cross-examination that she has traveled outside Jamaica in 2014, although she said she was initially stopped and had to make a phone call before being allowed to proceed. She agreed that she did not indicate in her witness statement anything about calling anyone to facilitate her travel. I am not satisfied that the claimant has established any breach of her constitutional rights in relation to the stop order. The stop order was imposed by order of the court. There is a procedure for its removal. The claimant has not provided any evidence that she has taken

steps to comply with that procedure. There is no evidence that the stop order presently exists for any improper reason or that the State is refusing to remove it upon proper application.

Whether the claimant is entitled to damages

[37] Having found that there was no breach of the claimant's constitutional rights, the question of damages does not arise. The claimant has failed to prove her case on a balance of probabilities. In any event although the claimant asserts that her remand caused stress and other medical issues she has made no claim for special damages arising from any medical treatment she may have received. In her evidence, she made vague references to being on medication and still being on medication, but she did not produce any medical report, any prescription, any receipt for medication, or any evidence from a medical practitioner. When asked in cross-examination whether there was any medical evidence of stress or other injury before the court, she admitted, "If it's not there, it's not." The law is clear that special damages must be specifically pleaded and strictly proved. In the absence of any documentary or other admissible evidence of medical treatment or the cost thereof, there is simply no basis upon which any award for special damages could be made. I therefore make no award under this head.

Conclusion

[38] The claimant has failed to establish, on a balance of probabilities, that her constitutional rights under sections 13 and 14 of the Constitution were breached by the State. Her detention from April 2010 to November 2010 was lawful and was related to separate charges of obtaining money by false pretences for which she had pleaded guilty and was awaiting sentence. Her assertion that she was not brought before the court during this period is contradicted by the documentary evidence. Her claim that she paid the fine on 27 April 2010 is unsupported by any evidence and contradicted by the official court records.

[39] I find that the Claimant was not a credible witness. Her evidence was inconsistent and unreliable. She sought to present a picture of being "lost in the system" when, in fact, she was actively participating in court proceedings for a separate criminal matter. I do not accept her evidence.

The claim for breach of constitutional rights fails.

Disposition

[40] For the reasons set out above, I make the following orders:

1. Judgment is entered for the Defendant.
2. The Claimant's claim for breach of her constitutional rights under sections 13 and 14 of the Constitution of Jamaica is dismissed.
3. Costs are awarded to the defendant to be taxed if not agreed.

Wiltshire J.

Puisne Judge