[2026] **JMSC CIV 116**

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. SU2025CV01025

IN THE MATTER of the Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act, 2011, sections 13(3)(f)(ii), (3)(h), (n), (r) and 16

BETWEEN	**JACQUELINE DAHLIA THOMPSON**	**CLAIMANT**
AND	**THE MNISTER OF NATIONAL SECURITY**	**1ST DEFENDANT**
AND	**THE ATTORNEY GENERAL OF JAMAICA**	**2ND DEFENDANT**

IN OPEN COURT

Mr. Neco Pagon instructed by The Law Offices of Peter Champagnie, K.C., Attorneys-at-Law for and on behalf of the Claimant

Mr. Janoi Pinnock instructed by The Director of State Proceedings, Attorneys-at-Law for and on behalf of the Defendants

Dates Heard: June 1, 2026 and September 17, 2026

CONSTITUTIONAL LAW – The Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act, 2011 – Chapter III Charter of Fundamental Rights and Freedoms – Sections 13(1) & (2) – The right to freedom of movement – The right to equitable and humane treatment by any public authority in the exercise of any function – The right not to be deprived of a passport except by due process – The right to due process as provided in section 16 – Sections 13(3)(f)(ii), (h), (n), (r), and section 16 – Quantum of damages – Whether the Claimant is entitled to an

award of compensatory damages – Whether the Claimant is entitled to an award of vindicatory damages

PALMER HAMILTON, J

BACKGROUND

[1] By way of a Fixed Date Claim Form filed on the 20th day of March, 2025, the Claimant seeks the following Orders:

> 1. *A declaration that the Claimant's constitutional rights under sections 13(3)(f)(ii), 13(3)(h), (n), (r) and 16 of the Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act 2011 have been and are being breached by the Passport Immigration & Citizenship Agency's detention and continued detention of the Claimant's Jamaican passport (numbered A6813534) without due process and or lawful cause.*
>
> 2. *Damages for breach of the Claimant's constitutional rights under sections 13(3)(f)(ii), 13(3)(h), (n), (r) and 16 of the Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act 2011.*
>
> 3. *A mandatory injunction requiring the Passport Immigration & Citizenship Agency and their servants and/or agents to forthwith deliver the Claimant's Jamaican passport (numbered A6813534) to the Law Offices of Peter C. Champagnie K.C. of Suites 3 & 21, 1 Stanton Terrace, Kingston 6 in the parish of Saint Andrew.*
>
> 4. *Costs to the Claimant against the Defendants.*
>
> 5. *Such further or other relief this Honourable Court shall deem just.*

[2] Order number 3 sought in the Fixed Date Claim Form was settled and the following Order was made by T. Johnson, J (Ag.) on the 4th day of July, 2025:

> *The Passport Immigration and Citizenship Agency (PICA) having returned the Claimant's Jamaican passport numbered A6813534 to the law offices of Peter Champagnie K.C., on July 3, 2025, order number 3 sought in the Fixed Date Claim Form filed on March 20, 2025 is settled as between the parties.*

[3] While the Defendants filed an Acknowledgment of Service on the 20th day of May, 2025, they did not file any affidavits in response. They were afforded an opportunity to apply for an extension of time, but no such application was forthcoming. In the

absence of any evidence from the Defendants, no questions were put to the Claimant in cross examination. The matter therefore proceeded on the Claimant's evidence, which remained unchallenged, subject to the Court's assessment of that evidence. The Defendants were, however, permitted to make submissions on quantum and the law on general and vindicatory damages.

THE AFFIDAVITS

[4] The Fixed Date Claim Form is supported by the Affidavit of the Claimant filed on the 20th day of March, 2025 and a Supplemental Affidavit of the Claimant filed on the 16th day of December, 2025.

[5] The Claimant deposed that she is a citizen of Jamaica and the holder of a Jamaican passport numbered A6813534. The Claimant stated that in or about 2020, while being a resident of the United States, she applied for a renewal of her Jamaican passport through the Jamaican Consulate in New York. She further stated that this process was completed in January of 2022. In March of that same year, the Claimant stated that she returned to Jamaica to reside and settled in Whitehouse in the parish of Westmoreland.

[6] The Claimant further deposed that on the 15th day of November, 2024, she made arrangements to have a medical procedure performed in Mexico and made her way to the Norman Manley International Airport pursuant to those arrangements. She stated that she was not permitted to travel and was removed from the aircraft in, *"a most embarrassing and humiliating manner."* She further stated that she was oblivious to the reasons for this action and was advised to attend the office of the Passport, Immigration and Citizenship Agency (hereafter referred to as 'PICA') at Constant Spring Road. On the said 15th day of November, 2024, the Claimant deposed that her passport was seized and she was provided with a receipt from a Field Officer.

[7] On the 18th day of November, 2024, the Claimant further deposed that she attended PICA's office where she was interviewed by the same Field Officer who

issued her the receipt. The Claimant further deposed that she was advised that a photograph bearing a resemblance to her was used on a previous application for a passport and she clearly expressed to the Field Officer that she was not aware of any such application. The Claimant stated that her passport was not returned at this time.

[8] On the 29th day of November, 2024, the Claimant once again deposed that she visited PICA's office for the purpose of verifying her identity and she was advised that she, *"would receive an update as to the progress of my matter within a few days."* The Claimant further deposed that, *"this ordeal has created severe inconvenience and embarrassment"* and she has also suffered financial loss.

[9] On the 9th day of January, 2025, the Claimant's Attorneys-at-Law wrote to PICA requesting a formal response and update on the matter, and they received no response. The Claimant stated that on the 15th of January, 2025 she had telephone conversations with the Field Officer and she was advised that a recommendation was made for the passport to be returned and she should collect same from PICA's office at Constant Spring Road. The Claimant on the 17th day of January, 2025 visited PICA's office to collect her passport but it was not returned. The Claimant's Attorneys-at-Law wrote to PICA again, which was sent via email on the 30th day of January, 2026 and served on the 11th day of February, 2025, but no response was received. The Claimant averred that she was not treated fairly by PICA and was not afforded due process to justify the continued detention of her passport.

[10] After the Claimant's passport was returned to her, she expressed that she attempted to travel overseas on the 8th day of July, 2025 and was removed from the plane by a PICA agent. She further deposed that she was removed in view of everyone on board which caused her, *"to be severely embarrassed once again."* She stated that after disembarking she contacted her Attorneys-at-Law and she insisted that she, *"would not go beyond the ramp at the plane door to avoid missing the flight."* She stated that after a few exchanges she was permitted to re-board the aircraft.

[11] The Claimant deposed that the, *"experience has caused me so much distress that I am utterly afraid of travelling again with my Jamaican passport, because I fear I might be placed in an embarrassing situation once more and, unfortunately, be prevented from moving freely in violation of my rights under the Constitution. Regrettably, I do not wish to return to Jamaica, and my attempt at re-establishing as a returning resident was met with great embarrassment."*

[12] The Claimant further deposed that she incurred the following expenses as a result of the breach of her rights:

(a) The sum of USD $474.00 for airline fees for flight from Kingston to Mexico on Arajet on November 15, 2024;

(b) The sum of USD $988.90 for accommodation booked at Occidental Costa Cancun in Mexico; and

(c) The sum of USD $1,300.00 for AirBnB/short-term rental in Kingston for the period May 17, 2025 to June 14, 2025.

SUBMISSIONS

[13] I wish to thank all Counsel for their helpful written submissions, which provided valuable assistance in determining the issues arising in this claim. All submissions and authorities were carefully considered, whether or not expressly referred to, and are addressed where relevant under the respective issues for determination.

ISSUES

[14] The following issues therefore arise for my determination:

(a) Whether PICA's seizure and retention of the Claimant's Jamaican passport contravened section 13(3)(f)(ii) of the Charter of Fundamental Rights and Freedoms;

(b) Whether PICA's conduct violated the Claimant's rights pursuant to section 13(3)(h) of the Charter of Fundamental Rights and Freedoms;

(c) Whether the conduct complained of by the Claimant amounted to a violation of her rights under section 13(3)(n) of the Charter of Fundamental Rights and Freedoms;

(d) Whether the Claimant's right pursuant to section 13(3)(r) and 16 of the Charter of Fundamental Rights and Freedoms was infringed; and

(e) What quantum of damages, if any, is appropriate in the circumstances?

LAW & ANALYSIS

[15] The applicable law is Chapter III of The Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act, 2011. The Claimant alleges infringements of several rights under Chapter III, each of which will be addressed in turn as it relates to the issues. It is therefore prudent to set out subsections (1) and (2) at this juncture.

> *13 (1) Whereas –*
>
> > *a. the state has an obligation to promote universal respect for, and observance of, human rights and freedoms;*
> >
> > *b. all persons in Jamaica are entitled to preserve for themselves and future generations the fundamental rights and freedoms to which they are entitled by virtue of their inherent dignity as persons and as citizens of a free and democratic society; and*
> >
> > *c. all persons are under a responsibility to respect and uphold the rights of others recognized in this Chapter,*
>
> *the following provisions of this Chapter shall have effect for the purpose of affording protection to the rights and freedoms of persons as set out in those provisions, to the extent that those rights and freedoms do not prejudice the rights and freedoms of others.*
>
> *(2) Subject to sections 18 and 49, and to subsections (9) and (12) of this section, and save only as may be demonstrably justified in a free and democratic society –*

> *a. this Chapter guarantees the rights and freedoms set out in subsections (3) and (6) of this section and in sections 14, 15, 16 and 17; and*
>
> *b. Parliament shall pass no law and no organ of the State shall take any action which abrogates, abridges, or infringes those rights.*

[16] Sections 18 and 19, together with subsections (9) and (12) of section 13, provide qualifications and limitations to the rights guaranteed under Chapter III. These provisions will be considered only insofar as they are relevant to the issues arising in this matter.

[17] The parties are largely *ad idem* as to the applicable legal principles governing constitutional matters. It is not in dispute that the Claimant has properly invoked the constitutional jurisdiction of the Court pursuant to section 19 of the Charter of Fundamental Rights and Freedoms. Section 19 provides that a person who alleges that any of the provisions of Chapter III has been, is being, or is likely to be contravened may apply to the Supreme Court for redress. I am therefore satisfied that the present proceedings were properly commenced.

[18] In determining the constitutional issues arising for my consideration, I am mindful that constitutional provisions protecting fundamental rights and freedoms are to be given a generous and purposive interpretation, having regard to the substance of the fundamental right at issue. This approach was affirmed in **Dale Virgo and Another v Board of Management of Kensington Primary School and Others** [2024] JMCA Civ 33, where the Court adopted the guidance from **Reyes v The Queen** [2002] UKPC 11; [2002] 2 AC 235.

[19] I am guided by Barnaby J in **Kevin Simmonds v The Minister of Labour and Social Security and The Attorney General of Jamaica** [2022] JMFC FULL 02 where she stated that:

> *[276] The foregoing provisions notwithstanding, the rights and freedoms guaranteed by the Charter should not be regarded as existing or operating in a vacuum. In any case where it is alleged that there has been a breach of any of the rights or freedoms guaranteed, the*

> *right or freedom invoked must first be shown to have be* [sic] *"engaged". By "engaged" I mean that matter of the complaint arguably falls within the scope of the right or freedom guaranteed and invoked. It is only on such a determination that the need for an enquiry into whether or not the right or freedom has been limited and if so, whether the limitation is demonstrably justified in a free and democratic society becomes necessary.*

[20] The approach to determining whether a Charter right has been infringed and, if so, whether the infringement is justified, is now settled law. The Claimant bears the burden of establishing, on the civil standard, that the impugned state action has been abrogated, abridged, or infringed on the constitutional right being relied on. Once an infringement has been established, the burden then shifts to the State to demonstrate that the limitation is reasonable and demonstrably justified in a free and democratic society. This is a positive duty that is cast on the State to prove constitutionality. While the standard of proof placed on the State is also the civil standard, it is at the higher end of the spectrum of proof. (see **Dale Virgo**, **Julian J Robinson v The Attorney General of Jamaica** [2019] JMFC Full 04, and **The Jamaican Bar Association v The Attorney General and The General Legal Council** [2020] JMCA Civ 37).

[21] In determining whether the State has discharged that burden, the Court must apply the proportionality test derived from **R v Oakes** [1986] 1 SCR 103, as adopted and applied in this jurisdiction. In **Julian J Robinson**, the test set out in **Oakes** was reformulated by Sykes CJ as follows:

> *(a) the law must be directed at a proper purpose that is sufficiently important to warrant overriding fundamental rights or freedoms;*
>
> *(b) the measures adopted must be carefully designed to achieve the objective in question, that is to say rationally connected to the objective which means that the measures are capable of realising the objective. If they are not so capable then they are arbitrary, unfair or based on irrational considerations;*
>
> *(c) the means used to achieve the objective must violate the right as little as possible;*
>
> *(d) there must be proportionality between the effects of the measures limiting the right and the objective that has been identified as*

> *sufficiently important, that is to say, the benefit arising from the violation must be greater than the harm to the right.*

[22] The Court must also bear in mind that the State has a duty to provide the Court with all the relevant information necessary to assess the justification advanced for limiting a constitutional right. Where the evidence concerning the infringement and the State's justification are evenly balanced, then the Claimant must succeed because of the presumption in favour of fundamental rights and freedoms. The State can only succeed where the limitation of the constitutional right is clearly justified. (see **Julian J Robinson**.)

[23] Learned Counsel for the Claimant submitted that on the evidence, the Claimant has plainly discharged the burden which lies on her, and that the State has neither led, nor in truth could lead, evidence sufficient to discharge the higher end civil burden it bears to justify what occurred. I recognize the merit in these submissions, however, I will consider each of the constitutional rights relied upon, determine whether the alleged violations have been established and whether the State has discharged its burden of proof.

[24] The absence of a Defence does not relieve the Court of its obligation to examine the merits of the Claimant's case. I must therefore assess the evidence before me and determine whether the Claimant has established that she is entitled to the reliefs sought.

(A) *Whether PICA's seizure and retention of the Claimant's Jamaican passport contravened section 13(3)(f)(ii) of the Charter of Fundamental Rights and Freedoms*

[25] Section 13(3)(f)(ii) of the Charter of Fundamental Rights and Freedoms provides the right to freedom of movement, that is to say, the right of every person lawfully in Jamaica, to leave Jamaica. Learned Counsel for the Claimant submitted that the factual matrix pleaded in the Fixed Date Claim Form and supported by the evidence, expressly identifies the prevention of the Claimant's travel from Jamaica on the 15th day of November, 2024. It was further submitted that the Court has already determined on facts materially identical to those in the present case,

namely, that detention at the airport on the strength of an invalid restriction on travel constitutes a contravention of a citizen's constitutional rights. Learned Counsel for the Claimant relied on the case of **Donald Panton v The Attorney General of Jamaica** (unreported) Supreme Court Civil Appeal No. 17/89 judgment delivered on May 8, 1991. It was contended that for approximately seven and a half months, the Claimant was unable to leave Jamaica and she could not travel to Mexico for the medical procedure she had scheduled. Further, the reason for her inability to leave was the action of an agency of the State in retaining her passport without lawful cause, without process and without explanation. Learned Counsel further contended that the contravention is sharpened by the events of the 8th day of July, 2025 where even though the Claimant's passport was returned she was once obstructed by the state agents at the airport while attempting to exercise her right to leave Jamaica. It was submitted that the Claimant's right under section 13(3)(f)(ii) to leave Jamaica, on the evidence, was repeatedly and substantively violated by State action.

[26] The decision in **Donald Panton** is instructive in considering the present issue. In **Donald Panton**, the appellant was prevented from departing Jamaica at the Norman Manley Airport by an Immigration Officer acting on the basis of a restriction which was previously quashed by the Supreme Court. The Court of Appeal held that there was no lawful basis for the officer's interference with the appellant's departure. Although the Court of Appeal found that the Immigration Officer had no legal basis for preventing the appellant from leaving Jamaica, they also found that the Constitution, as it then was, did not confer upon a citizen a constitutional right to leave Jamaica. The appellant's constitutional claim therefore failed, however, the Court of Appeal recognized that the appellant might have had a remedy through a separate civil claim for false imprisonment. That deficiency has since been remedied by the Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act, 2011. Accordingly, **Donald Panton** is relevant only to the extent that it addresses the lawfulness of State interference with a citizen's departure from Jamaica. I must go further and determine whether the

Claimant's right to leave Jamaica, now expressly protected by section 13(3)(f)(ii), was infringed and if so, whether the State has demonstrated that the interference was justified under section 13(2).

[27] Applying those principles to the first incident, the evidence before me is that on the 15th day of November, 2024 the Claimant attended the Norman Manley International Airport for the purpose of travelling to Mexico for a scheduled medical procedure. The Claimant was removed from the aircraft and directed to PICA's office where her Jamaican passport was seized and a receipt issued. The receipt was exhibited and it showed that the Claimant was issued a *"Passport Receipt"* on the 15th day of November, 2024 and it stated that she was required to attend the PICA Office on the 18th day of November, 2024 to *"facilitate investigation."* The Claimant returned on the 18th day of November, 2024, where she was interviewed and informed that a photograph resembling her was used on a previous passport application, to which she denied having any knowledge of. Significantly, no charge was laid against the Claimant arising from the allegation, yet PICA retained her passport for approximately seven and a half months.

[28] It is on those facts, that I am satisfied that there was a direct and substantial interference with the Claimant's right to leave Jamaica. The seizure and continued retention of the Claimant's passport deprived her of the practical means by which she could exercise that right. The Claimant's passport continued to be retained even though no update was provided to her, despite correspondence from her Attorneys-at-Law seeking its return, and notwithstanding that she was subsequently advised that a recommendation had been made for its return and that she should attend PICA to collect it. The Claimant attended PICA on the 17th day of January, 2025 but the passport was still not returned.

[29] There is no evidence before this Court from the Defendants explaining the legal basis upon which the passport was retained, the nature or duration of the investigation, or even why its continued retention was necessary. In those circumstances, the State has failed to show that the continued retention of the

Claimant's passport for approximately seven and a half months was demonstrably justified in a free and democratic society, as required by section 13(2) of the Charter. In particular, the Defendants have not demonstrated that the measure adopted was rationally connected to the objective pursued, that the right was impaired no more than reasonably necessary, or that a fair balance was struck between the Claimant's constitutional right and the interests of the State. Learned Counsel for the Claimant made substantive submissions concerning proportionality. However, in the absence of any evidence from the Defendants, I see no need to undertake that exercise. To do so would be speculative and ultimately futile as there is nothing before the Court to show that the Defendants have discharged the burden of establishing that the violation of the Claimant's rights were demonstrably justified in a free and democratic society.

[30] I must also consider the events on the 8th day of July, 2025, when the Claimant's passport had already been returned but she was again removed from the aircraft in the presence of other passengers. In my view, this amounted to a further infringement of the Claimant's right to leave Jamaica pursuant to section 13(3)(f)(ii) of the Charter. Although the Claimant's passport was returned only five days earlier, it was through her own insistence not to go beyond the ramp at the doors of aircraft and with the intervention of her Attorneys-at-Law that she was permitted to re-board the aircraft. There is no evidence from the Defendants explaining or justifying this violation.

[31] I therefore find that the Claimant's right under section 13(3)(f)(ii) was infringed on two separate occasions. Firstly, by the seizure and prolonged retention of her passport and, secondly, by the obstruction of her departure on the 8th day of July, 2025.

(B) *Whether PICA's conduct violated the Claimant's rights pursuant to section 13(3)(h) of the Charter of Fundamental Rights and Freedoms*

[32] Section 13(3)(h) of the Charter guarantees the right to equitable and humane treatment by any public authority in the exercise of any function. The authorities establish that the rights to equitable and humane treatment, although they are listed together, they are distinct concepts and not inextricably linked.

[33] Learned Counsel for the Claimant submitted that PICA, being an agency for which the 1st Defendant is responsible under the Passport Act, plainly falls within the meaning of a public authority exercising a public function. Learned Counsel relied on paragraph 274 in **Rural Transit Association Limited v Jamaica Urban Transit Company Limited** [2015] JMFC Full 4 and paragraphs 132 to 136 in **Dale Virgo** and submitted that the rights to equitable and humane treatment are not inextricably linked. It was submitted further that equitable is not synonymous with equal but does include an element of equality, and that fairness must be assessed having regard to all the facts and circumstances of the case. Learned Counsel contended that against that standard, the treatment of the Claimant was inequitable in several distinct respects, namely:

(1) Treatment without notice or particulars – Learned Counsel for the Claimant submitted that the Claimant was deprived of an indispensable document for over seven months on the strength of a suggestion which was never reduced to a formal allegation, never particularised, and never put to her in any form that allowed her to respond. It was further submitted that, *"to be treated by an organ of the State in that manner is the opposite of equitable,"* and *"it is the unilateral imposition of consequence without the discipline of process."*

(2) Treatment in defiance of correspondence from Claimant's Attorneys-at-Law – Learned Counsel submitted that a public authority owes a basic duty of responsiveness to a citizen who is acting through Counsel and seeking only

the information necessary to understand her own position. It was contended that sustained silence in the face of legitimate correspondence, in particular the two letters sent to PICA from Counsel, is a form of inequitable treatment.

(3) The misleading communication of January 15, 2025 – It was contended that directing a citizen to attend in person to receiver her passport and failing to return it without explanation is antithetical to equitable treatment.

(4) The events of November 15, 2024 and July 8, 2025 – Learned Counsel contended that the Claimant being publicly removed from an aircraft at the moment of travelling for healthcare falls beyond the inequitable and engages the second limb, that is the right to humane treatment. It was further contended that this point was sharpened by the events of July 8, 2025. It was submitted that PICA's actions falls squarely within the concept of inequitable and inhumane treatment.

[34] Learned Counsel further submitted that taken individually, each of these matters would amount to an infringement of section 13(3)(h) of the Charter and cumulatively, they form a pattern of treatment which no fair minded person, viewing the evidence could describe as equitable or humane. It is for those reasons that Learned Counsel for the Claimant submitted that the Claimant's rights under section 13(3)(h) have been infringed.

[35] I adopt the guidance provided by Brooks P in **Dale Virgo**, where he states that:

> *[132] The Concise Oxford English Dictionary, Eleventh Edition, defines "equitable" as "fair and impartial". It defines "humane" as "compassionate or benevolent". A definition of "fair" given by the same text connotes an element of equality. It states "treating people equally".*
>
> *[133] The concepts of equitable treatment and inhumane treatment cannot be considered as being inextricably linked. Treatment can be inequitable without being inhumane. Mr Hylton is correct that whereas the right to equitable and humane treatment are listed together in section 13(3)(h) of the Charter, the respective nature of these rights allows for the breach of either one or both.*

*[134] In **Rural Transit Association Limited v Jamaica Urban Transit Company Limited and others** a different interpretation of "equitable" was pronounced. McDonald J, at para. [197] stated that the words "equitable and inhumane" are to be read conjunctively. She further stated that "equitable" means "fair/just" and expressly pronounced that it does not mean equal. F Williams J, as he then was, in para. [274], examined the definition for the words "equitable" and "humane" and explained that, to determine what is fairness, one must consider the facts and circumstances of the case. He said:*

> *"…It is useful to state at this juncture as well that, as I understand the word 'equitable', it means: 'fair'. I accept the submission made on behalf of [Jamaica Urban Transit Company Limited] that it does not mean 'equal'. And fairness is a concept that must be decided having regard to all the facts and circumstances of a particular case. 'Inhumane' means 'without compassion for misery or suffering; cruel'."*

[135] He also agreed with McDonald J that the right is conjunctive (see para. [275]).

[136] Based on the definitions taken from the Oxford Concise Dictionary, and the cases cited below, it must, however, be said that whereas "equitable" is not synonymous with "equal", it does include the element of equality. The restriction given by the learned judges, with respect, cannot be accepted.

[150] Having disaggregated the rights to equitable treatment and humane treatment, it may quickly be said that there is no element of inhumane treatment in the present case. In The State v Williams (CCT20/94) [1995] ZACC 6; 1995 (3) SA 632; 1995 (7) BCLR 861 (CC) (9 June 1995) the Constitutional Court of South Africa, in para. [27], noted a definition of the term "inhuman [sic] *treatment". The court said:*

> *"The European Commission of Human Rights…described inhuman treatment as that which 'causes severe suffering, mental [or] physical which in the particular situation is unjustifiable…' The European Court of Human Rights …categorised degrading conduct as that which aroused in its victims feelings of fear, anguish and inferiority leading to humiliation and debasement and possible breaking of their physical and moral resistance." (Italics as in original)*

[36] I adopt and repeat the observations I made in **Sean W Harvey v Board of Management of Moneague College, Ministry of Education Youth and Information and Attorney General of Jamaica** [2018] JMSC Full 3, that:

> *[119] …The interpretation of equitable and humane treatment was given minimal treatment in the case of Rural Transit Association Limited v Jamaica Urban Transit Company Ltd., The Commissioner of Police and the Attorney General [2015] JMFC Full 4, in which C. McDonald, J stated that the words equitable and humane should be read conjunctively. I agree wholeheartedly with McDonald, J's interpretation that equitable does not mean equal, nor are they synonymous with each other. McDonald, J gives a clear definition of equitable to mean fair and just, however neither McDonald, J nor F. Williams J (as he then was), proffered an interpretation or definition of humane. Nonetheless I will adopt the definitions utilised by Counsel Mrs. Dixon-Frith and Ms. Tamara Dickens.* ***Simply put, humane means showing kindness towards other people and is often used in the context of the treatment of categories of persons such as the disabled.*** ***[emphasis mine]***

[37] It is clear from the authorities that in determining whether this right has been infringed, the Court must consider the circumstances in which the public authority exercised its function and the manner in which the Claimant was treated. The question is therefore, whether PICA's treatment of the Claimant, in the exercise of its public function, was fair and just and consistent with the requirement for humane treatment.

[38] I find considerable merit in Learned Counsel for the Claimant's submissions. I do not propose to reiterate the evidence already set out as the factual circumstances remain the same. In my view, the evidence establishes that the Claimant was not treated fairly or justly by PICA in the exercise of its function. The removal of the Claimant from an aircraft on two separate occasions, the continued retention of her passport, the absence of any updates to her, the failure to respond to her Attorneys-at-Law, the failure to return the passport notwithstanding the indication that it should be returned, taken together, amounted to inequitable treatment.

[39] I accept the Claimant's evidence that the removal from the aircraft caused her to be embarrassed and humiliated and further that it caused her much distress. It

must be noted that the second incident with her removal from the aircraft occurred only days after the return of her passport. Having regard to those circumstances, I am satisfied that the treatment of the Clamant was lacking in the compassion and consideration contemplated by the constitutional guarantee of humane treatment.

[40] There is no evidence before the Court from the Defendants to explain or justify the manner in which the Claimant was treated. Having established that the Claimant's rights were violated, the burden shifted to the Defendants to demonstrate that the interference was demonstrably justified in a free and democratic society pursuant to section 13(2). That burden has not been discharged. Accordingly, I find that PICA's conduct infringed the Claimant's rights under section 13(3)(h) of the Charter.

(C) *Whether the conduct complained of by the Claimant amounted to a violation- of her rights under section 13(3)(n) of the Charter of Fundamental Rights and Freedoms*

[41] Section 13(3)(n) of the Charter guarantees the right of every citizen of Jamaica to be guaranteed a passport and not to be denied or deprived thereof except by due process of law. The language of this section is significant as it does not merely recognise a right to obtain a passport, it expressly protects a citizen from being denied or deprived of a passport except by due process of law. The issue therefore is not simply whether PICA had a reason for taking the Claimant's passport, but whether the deprivation of it was effected in accordance with due process of law.

[42] I find the guidance of the Court of Appeal in **The Jamaican Bar Association v The Attorney General and The General Legal Council** [2017] JMFC Full 02 instructive where they observed that:

> *[277] The fundamental importance of deprivation of liberty only being sanctioned after due process is well expressed in the Guidance where it states at paragraph 26 that:*
>
> > *[W]here deprivation of liberty is concerned it is particularly important that the general principle of legal certainty be satisfied. It is therefore essential that the conditions for deprivation of liberty under domestic law be clearly defined*

> *and that the law itself be foreseeable in its application, so that it meets the standard of "lawfulness" set by the Convention, a standard which requires that all law be sufficiently precise to allow the person – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail.*

[43] Learned Counsel for the Claimant submitted that the *words "except by due process of law"* are not decorative and that they impose a substantive constitutional precondition. It was further submitted that it comprises notice of the case against the citizen, an opportunity to be heard in answer, a decision of a person or body authorised by law to make it, a reasoned outcome capable of being known by the citizen, and a defined time within which the process operates. It was contended that these are the same principles which underline section 16 of the Charter. Learned Counsel submitted that on the evidence before the Court none of those features are present. It was further submitted that when the Claimant's passport was retained for seven and a half months, no charge of any kind was laid against the Claimant; no formal notice was served on her identifying the allegation said to justify the detention of the passport; no determination was made and communicated to her in writing; no statuary power was identified to her, or to her Attorneys-at-Law, as justifying the continued detention; PICA did not respond to either of the formal letters from the Claimant's Attorneys-at-Law; and the Claimant was left to speculate on the basis of the continued detention of passport and consequently denied the right to due process and the freedom to leave the country. It was contended that the State's action is a deprivation and the deprivation was effected and maintained outside any process recognised by law as fair. It was also contended that PICA's own conduct in returning the document without ever having identified any lawful justification for the prior seizure, is itself self-evident of the beach and a powerful indicator that no justification existed.

[44] There is considerable merit to Learned Counsel for the Claimant's submissions. The Claimant's passport was seized and remained in PICA's possession for approximately seven and a half months. During that period the Claimant was not

charged with any offence arising from the allegations that her photograph was used on a previous application. She was not provided with any formal decision or explanation identifying the legal basis for the continued retention of her passport. Although the receipt stated that the passport was retained to *"facilitate investigations,"* that, without more does not establish that the deprivation vas effected by due process of law. Despite the Claimant's attendance at PICA and correspondence from her Attorneys-at-Law seeking its return, no response was provided. In the absence of any evidence from the Defendants, the burden placed on the Defendants has not been discharged. There is nothing before the Court to demonstrate that the Claimant's passport was deprived in accordance with due process of law. The Court cannot speculate as to the existence of a process which has not been placed in evidence.

[45] In the circumstances, I find that the Claimant was deprived of her Jamaican passport for approximately seven and a half months. In my view, the rights protected by sections 13(3)(n) and 13(3)(r) read with section 16, may properly be considered together, as the requirement for due process arises in relation to the same conduct. I will therefore consider the evidence and applicable principles in relation to both provisions before determining whether the Claimant's rights under either or both sections have been infringed.

(D) *Whether the Claimant's right pursuant to section 13(3)(r) and 16 of the Charter of Fundamental Rights and Freedoms was infringed*

[46] Section 13(3)(r) of the Charter guarantees the right to due process as provided in section 16. The Claimant is relying in particular on section 16(2) which states that:

> *In the determination of a person's civil rights and obligations or of any legal proceedings which may result in a decision adverse to his interests, he shall be entitled to a fair hearing within a reasonable time by an independent and impartial court or authority established by law.*

[47] Section 16(2) identifies certain features of the right to due process. Although the judgment was a dissenting one, Jackson-Haisley J in **Kevin Simmonds** adopted the guidance from the Caribbean Court of Justice. She stated that:

> *[31] A precise indication of the distinguishing features among these rights can be borrowed from a judgment of the Caribbean Court of Justice in its Appellate Jurisdiction on appeal from the Court of Appeal of Belize Solomon Marin Jr v The Queen [2021] CCJ 6 (AJ) BZ (not cited before us) where at paragraph 180 Anderson J articulated:*
>
> > *As used in the constitutional provision, 'Fair hearing' is mainly concerned with whether the parties were afforded a fair or reasonable opportunity to be heard. 'Reasonable time' is principally concerned with the period within which the hearing occurred and, particularly, whether there was inordinate and inexcusable delay. The 'independence and impartiality' of the tribunal is primarily concerned with questions to do with objectivity and inoculation from improper influence, whether from the state or some other source.*

[48] This approach finds further support in the majority judgment of Barnaby J in **Kevin Simmonds**. Her Ladyship recognised that the right to a fair hearing extends to administrative decisions which may result in a decision adverse to a person's interest. The right includes, *inter alia*, the right to be informed of and to challenge the reasons for an administrative decision and the fundamental right to be heard. Barnaby J noted that in considering the requirement that a hearing take place within a reasonable time, regard should be had to the length of the delay, the reasons for the delay, the conduct of the parties, including whether the affected person asserted the right, and the prejudice occasioned to the affected person as a result of the delay. Barnaby J emphasized that a fair hearing cannot be guaranteed in the absence of an independent and impartial court or authority established by law. In determining whether the right has been infringed, the Court must consider the circumstances in which the decision was made and the procedural safeguards afforded to the affected person.

[49] Learned Counsel for the Claimant submitted that PICA is not to be treated as an independent and impartial court or authority established by law within the strict

terms of the subsection, however, the Court is being invited to find that the values which section 16(2) captures were not honoured by PICA. Learned Counsel submitted that the values which section 16(2) captures, that is a fair hearing, within a reasonable time, by a body authorised by law to make the relevant decision, inform the consent of due process of law. It was contended that, there was no hearing at all, no notice of the case against the Claimant, no particulars, no opportunity to lead evidence in answer and no reasoned decision. It was further contended that there was no defined period within which the matter would be resolved; the seven and half months' retention had no end date communicated to the Claimant, and no review mechanism was brought to her attention. Learned Counsel for the Claimant further submitted that the decision to seize and retain the passport was the unilateral act of PICA, which was simultaneously investigator, decision-maker and *de facto* custodian of the document. Learned Counsel submitted that section 13(3)(n) and section 13(3)(r) read with section 16, reinforce each other and they do not stand in tension. Therefore, the conclusion is the same for both, the PICA's actions failed to meet the minimum content of due process of law.

[50] It is for me to determine whether the Claimant was afforded the procedural protections guaranteed by section 13(3)(r) provided by section 16(2). In my view, she was not. The continued unexplained retention of the Claimant's passport was in my opinion a decision that was adverse to her interests. Although the receipt given to the Claimant by PICA stated that the passport was being retained to *"facilitate investigations,"* there is no evidence that the Claimant was thereafter informed of the basis upon which its continued retention was justified. The Claimant was informed of the irregularity concerning a photograph said to be her being used on a previous passport application, but there is no evidence that any formal allegation was made against her, that the reasons for the continued retention were communicated to her, or that she was afforded an opportunity to respond or to challenge the decision. I am satisfied that the Claimant was not

afforded a fair or reasonable opportunity to be heard in relation to the continued retention of her passport.

[51] I also took into consideration the Claimant's subsequent efforts to obtain information to secure the return of her passport. She attended PICA's office as they requested and her Attorneys-at-Law wrote to them twice and never received a response. The Claimant was even advised that her passport was to be returned but when she attended PICA's offices, it was not. These circumstance reinforce the absence of any meaningful process by which the Claimant could understand or challenge the continued deprivation of her passport.

[52] The Claimant's passport also remained in PICA's possession for approximately seven and a half months. There is no evidence from the Defendants explaining the duration of the investigation, the steps taken during that investigation, or why the continued retention of the passport was necessary. The Claimant repeatedly sought information and the return of her passport, yet the matter remained unresolved. In the absence of any explanation for the delay, I cannot conclude that the matter was dealt with within a reasonable time.

[53] I find that on the facts of this case, the requirement for an independent and impartial court or authority was not engaged. That, however, does not affect my earlier findings. The rights under section 16(2) of the Charter are three separate and distinct rights. I am guided by Wolfe-Reece J in **Kerrie-Ann Dryden v Ministry of Economic Growth and Job Creation and Others** [2023] JMSC Civ. 152, where she stated that:

> *[56] It is well-established that the constitutional right to a fair hearing within a reasonable time before an independent and impartial court or tribunal consists of three separate and distinct rights. This is the approach seen in Solomon Marin Jr v The Queen [2021] CCJ 6 (AJ) (BZ); Darmalingum v The State [2000] 1 WLR 2303; and Porter and another v Magill [2002] 1 All ER 465. The rights can therefore be determined by the Court separately and independently. Based on this approach, there can be a breach of one aspect of the right which does not automatically amount to a breach of the other two aspects of the right. It is for the Court to make a determination of*

> *whether a particular right within the overarching right has been breached, based on the particular circumstances of the case, taking into consideration whether the other aspects have also been breached and on what grounds.*

[54] I therefore find that the Claimant was not afforded a fair hearing within a reasonable time in relation to the continued retention of her passport. Accordingly, the Claimant's right to due process under section 13(3)(r) as provided by section 16(2) of the Charter, was infringed. With there being no evidence from the Defendants, there is no basis for me to find that the infringements were justified under section 13(2) of the Charter. I also find that the Claimant's rights under section 13(3)(n) were infringed.

(E) *What quantum of damages, if any, is appropriate in the circumstances?*

[55] Learned Counsel for the Claimant submitted that this is a proper case for substantial constitutional damages, comprising compensatory and vindicatory components. Reliance was placed on the following cases: **The Attorney General of Trinidad and Tobago v Siewchand Ramanoop** [2005] UKPC 15; [2006] 1 AC 338, **Ernest Smith & Co (A Firm) and Others v The Attorney General of Jamaica consolidated with Hugh Thompson v The Attorney General of Jamaica** [2020] JMFC Full 7, and **Romauld James v The Attorney General of Trinidad and Tobago** [2010] UKPC 23. Learned Counsel for the Claimant submitted that damage need not be tangible and compensation for violation of a constitutional right provides redress for in personam damage suffered, but it also forms part of the vindication of the constitutional right itself, which is a broader concept than compensation for personal wrong. It was further submitted that the very fact of a constitutional infringement having occurred can inflict damage on the citizen. Learned Counsel for the Claimant contended that the sense of being wronged, the uncertainty over one's status, and the distress of having to resort to litigation in order to have a constitutional contravention exposed and corrected, are all forms of damage which the Court is entitled to recognise. It was further contended that the Claimant suffered immediate and material disadvantage; her freedom of movement under section 13(3)(f)(ii) was substantively curtailed for

approximately seven and a half months; she was twice publicly removed from an aircraft; her travel for a scheduled medical procedure was disrupted; she incurred quantifiable financial loss; and she was deprived of the document by which she exercises her constitutional right to leave Jamaica.

[56] Learned Counsel for the Claimant submitted that for general damages an award of $4,000,000.00 is appropriate as it reflects the distress, embarrassment, prolonged inconvenience and loss of the use of the passport over approximately seven and a half months, with public humiliation on two separate occasions. It was further submitted that this is broadly consistent with the daily rate comparable to false imprisonment cases, which, it was contended, was analogues to deprivation of liberty to leave the country. It was also submitted that an award of USD$2,762.90 (approximately JMD$440,000.00) is to be made for special damages plus the further monies expended in preparation for the medical procedure in Mexico, to be quantified by the Court.

[57] Learned Counsel for the Claimant also submitted that vindicatory damages are squarely available in this case. He relied on **Siewchand Ramanoop**, **Ernest Smith**, **Angela Innis v Attorney General of Saint Christopher and Nevis** [2008] UKPC 42, and **Tamara Merson v Drexel Cartwright and The Attorney General** [2005] UKPC 38. It was submitted by Learned Counsel for the Claimant that:

> *(1) The importance of the constitutional rights at stake: section 13(3)(n) is the only constitutional right which specifically names the document by which a Jamaican citizen exercises freedom of international movement, and section 13(3)(f)(ii) is the parent right to leave Jamaica. Both rights speak directly to citizenship and the relationship between citizen and State at the border;*
>
> *(2) The gravity of the breach: the seizure was effected at the airport, the retention was indefinite, the citizen was given no notice, no particulars, no hearing, no decision, no review and no end-date, and the document was released only under the pressure of these proceedings;*
>
> *(3) The persistence of the contravention: the conduct continued over approximately seven and a half months, and, as the events of 8 July 2025 demonstrate, had a continuing effect even after the document was restored;*

> *(4) The need for deterrence: as Lord Hope observed in **Inniss** (quoted in **Ernest Smith** at paragraph 57), "any award of damages for [the] contravention is bound, to some extent at least, to act as a deterrent against further breaches." An award here will signal to PICA, and to all border authorities, that the constitutional protection of a citizen's passport is not subject to silent executive override; and*
>
> *(5) A declaration is not sufficient: as Yvonne Brown J held in Ernest Smith at paragraph 66, where the contravention has been protracted and continuing, a declaration alone does not vindicate the right. So too here.*

It was submitted that an award of $6,000,000.00 would be appropriate, as this would reflect four named Charter rights, the active executive wrongdoing, and the need for deterrence in respect of border conduct.

[58] Learned Counsel for the Defendants submitted that an approach to the question of redress for a violation of constitutional rights is to be found at paragraph 38 of **Ian Seepersad and Roodal Panchoo v The Attorney General of Trinidad and Tobago** [2012] UKPC 4. Reliance was also placed on **Tamara Merson**, **Angela Innis**, **Ernest Smith**, and **Romauld James**. Learned Counsel for the Defendant contended that the declarations that the Claimant has sought as well as special damages pleaded are sufficient remedies. However, Learned Counsel for the Defendant also contended that if the Court does not find favour with the above submission then nominal damages ought to be awarded. It was further contended that $1,500,000.00 ought to be awarded in respect of the violation of the right to due process, right to leave Jamaica, and the right not to be deprived of a passport and $500,000.00 for the violation of section 13(3)(r) and section 16.

[59] The Court is empowered by section 19(3) to grant such remedies it considers appropriate in circumstances such as these. An award of damages is therefore one of the remedies available to Court, where the circumstances warrant it. Section 19(3) of the Constitution states that:

> *The Supreme Court…may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement of, any of the provisions of this Chapter to the protection of which the person concerned is entitled."*

[60] There is merit in Learned Counsel for the Claimant's submissions that an award of constitutional damages is not confined to compensation for tangible financial loss. The Court is concerned not merely with compensating the Claimant for loss in the conventional sense, but with upholding and vindicating the constitutional right which has been infringed. In **Siewchand Ramanoop**, which was adopted by the Court in **Ernest Smith**, the Privy Council explained that:

> *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.*

Wolfe-Reece J in **Ernest Smith** went further to say at paragraph 197 that an, *"… award should be…sufficient to illustrate disdain for the breach and mark in the mind of the judiciary and the public at large that the right is valuable."*

[61] It is therefore for the Court to determine the remedy appropriate to the circumstances of the particular case. In determining an appropriate award, I must have regard to the nature and importance of the rights infringed, the gravity and duration of the infringement, the consequences the Claimant suffered, and the circumstances in which the violations occurred. I adopt the words of McDonald-Bishop JA in **Talbert Smith v The Attorney General of Jamaica** [2024] JMCA Civ 39 at paragraph 32, where she states that, *"The measure of damages...should be a sum that is sufficient to vindicate the right and reflect the sense of public outrage at the breach. It should also be sufficient to act as a deterrent to future breaches…"*

[62] In light of the case law, I am of the view that the circumstances of this case requires me to make a global assessment of damages instead of fixing a rigid daily rate. Although the Claimant has established violations of multiple constitutional rights,

those violations arose substantially from the same course of conduct and there is an inevitable degree of overlap between them. In my view, the appropriate approach is to arrive at an overall award which adequately compensates the Claimant and if available, vindicates the constitutional rights infringed. I am guided by **Atain Takitota v The Attorney General, Director of Immigration and Minister of National Security** [2009] UKPC 11 **and Douglas Ngumi v The Attorney General of The Bahamas and others** [2023] UKPC 12, where the Privy Council cautioned against approaching damages for a continuing constitutional deprivation by rigid mathematical calculation. In **Douglas Ngumi**, which concerned damages arising from a lengthy period of unlawful detention, the Privy Council formed the view that damages should not ordinarily be assessed by dividing the award into separate periods or by fixing a rigid daily rate. Rather, compensatory damages should be assessed *"in the round"* and arrive at an overall sum which represents an appropriate global award of compensation having regard to the other sums awarded. This approach has been adopted in our jurisdiction. In **George Williams (By Next Friend Pamella Green) v The Attorney General of Jamaica** [2025] JMSC Civ 78, Wint-Blair J in assessing damages for prolonged violations of the claimant's constitutional rights, rejected the application of a rigid daily rate and found that a global award was more appropriate in all the circumstances of the case.

Compensatory & Vindicatory Damages

[63] The Claimant is seeking both compensatory damages and vindicatory damages. In **Talbert Smith**, the Court of Appeal recognised that compensatory damages may be awarded where the violation of a constitutional right has occasioned damage to the claimant, including, distress, injured feelings, and physical injury. The Court of Appeal cautioned, however, that the assessment should not proceed on the same basis as an award in tort. Rather, the award should also operate as an incentive to the State not to repeat egregious conduct and should ensure that the claimant does not feel that the award trivialises the violation. The Court of Appeal made it clear that vindicatory damages are not punitive or intended to

punish the State. In considering the purpose of a vindicatory award, the Court in **George Williams**, recognised that a compensatory award may go some distance towards vindicating a constitutional infringement, but may not always suffice. Although the two heads of damages are related, they serve distinct purposes. Compensatory damages are directed principally to the consequences suffered by the Claimant as a result of the infringement, whereas vindicatory damages are concerned with vindicating the constitutional right itself, having regard to its importance and the gravity of the infringement. The two are not mutually exclusive and, where the circumstances warrant, the Court may award compensatory damages and go further to make an additional vindicatory award.

[64] The rights infringed are fundamental constitutional rights. The right of a citizen to leave Jamaica is an aspect of the constitutional protection of freedom of movement, while section 13(3)(n) affords specific protection against being deprived of a passport except by due process of law. These protections are of particular significance because they regulate the relationship between the citizen and the State and constrain the circumstances in which the State may interfere with a citizen's ability to exercise their constitutional right to leave Jamaica. The gravity of the infringements is increased by the fact that the deprivation was not shown to have been accompanied by the procedural protections required by the Constitution. The Claimant was not given adequate notice of the basis for the retention, was not afforded an opportunity to challenge the reasons for the decision and was left without any effective mechanism by which the continued deprivation could be reviewed. Each right therefore protects a distinct constitutional interest, but their significance in the present case is also interconnected. The deprivation of the passport directly restricted the Claimant's freedom to leave Jamaica, while the absence of due process deprived her of the constitutional safeguards intended to protect her against such interference.

[65] The approach adopted in **Roshaine Clarke** is particularly instructive. In determining whether an award of vindicatory damages ought to be made and, if so, the appropriate quantum, the Court identified specific features of the State's

conduct which added to the constitutional wrong. These included the failure to inform the claimant of the reason for his detention as soon as reasonably practicable; the failure to bring him as soon as reasonably practicable before an officer authorised by law or a court; and the failure to release him for 26 days even after the Review Tribunal had recommended his release. Similarly, the Claimant in the case at bar was not informed of the reasons for the retention of her passport; she was not afforded an opportunity to challenge the reasons for the decision; and she was not provided with a defined period within which the deprivation would end or an effective mechanism by which the continued retention could be reviewed. The passport nevertheless remained in the possession of the State for approximately seven and a half months. This, in my view, supports the need for an award which adequately vindicates the rights infringed.

[66] I also considered whether the circumstances require an award to serve as a deterrent function. I bear in mind that vindicatory damages are not punitive and are not intended to punish the State. In the present circumstances, I consider that a vindicatory award is necessary to make clear that the State cannot indefinitely and arbitrarily retain a citizen's passport without providing the citizen with adequate information, an opportunity to challenge the basis for the deprivation and a meaningful means of securing its review.

[67] Having considered the evidence and the authorities, I am satisfied that an award of compensatory damages is warranted. The Claimant suffered consequences extending beyond any tangible financial loss. She was deprived of her passport for approximately seven and a half months, thereby materially interfering with her ability to exercise her constitutional right to leave Jamaica. She was twice removed from aircraft, her planned travel to Mexico for a medical procedure was disrupted, and she was subjected to prolonged uncertainty as to when, and on what basis, her passport would be returned. I also took into account the distress, embarrassment, inconvenience and sense of being wronged which flowed from the circumstances of the deprivation. In determining the compensatory award, I have not approached the assessment as though it were an ordinary claim in tort,

nor have I adopted a rigid daily rate. I considered the duration of the deprivation together with the nature of the interference, the effect upon the Claimant, the public circumstances in which she was removed from aircraft, the disruption to her planned medical travel, and the distress and inconvenience established by the evidence.

[68] There appears to be no Jamaican authority which is directly on all fours with the present case in which damages have been assessed for the prolonged deprivation of a passport in circumstances such as these. I accept the submission of Learned Counsel for the Claimant that, in the circumstances of this case, the interference was analogous to a deprivation of liberty**.** While the Claimant remained physically at liberty, her inability to leave the island for such a prolonged period constituted a substantial restriction upon her freedom of movement. I have therefore used the authorities concerning deprivation of liberty as useful comparators as they concern serious interference with the fundamental liberty of movement and provide guidance as to the assessment of substantial constitutional loss where a person is prevented from exercising a protected freedom for a prolonged period.

[69] In **Garren Braham v The Minister of National Security and Others** [2025] JMSC Civ 116, the Court awarded $3,000,000.00 in compensatory damages and $2,000,000.00 in constitutional/vindicatory damages for violations arising from the claimant's detention and interference with his liberty and freedom of movement. Those figures update to $3,192,334.50 and $2,128,223.00, respectively, using the Consumer Price Index for July 2026. The circumstances of that case were materially different from the present case, as the claimant was subjected to physical detention. Similarly, in **Roshaine Clarke**, the claimant was detained for a prolonged period and the Court awarded $12,000,000.00 in compensatory damages and $4,000,000.00 in vindicatory damages, together with aggravated and special damages. Those figures update to $15,044,334.98 and $5,014,778.33, respectively, using the Consumer Price Index for July 2026. I therefore regard **Garren Braham** and **Roshaine Clarke**, while materially

distinguishable, as useful comparators in assessing the substantial compensatory consequences of the interference with the Claimant's constitutional rights.

[70] I have considered the respective submissions of Learned Counsel as to quantum. In my view, the sum proposed by the Defendants is insufficient to provide adequate redress for the nature, gravity and duration of the infringements established. I am likewise of the view that the sum proposed by the Claimant does not sufficiently reflect the circumstances of the case. Taking those matters together, I consider that **$6,000,000.00** is an appropriate award of compensatory damages. I am also satisfied that the circumstances warrant a separate award of vindicatory damages. Having regard to the importance of the rights engaged, the gravity and duration of the infringements, the absence of adequate procedural safeguards, the manner in which the Claimant's passport was retained, the failure to afford her an opportunity to challenge the reasons for the decision, and the need to vindicate the constitutional rights which have been infringed, I consider that **$5,000,000.00** is an appropriate award for vindicatory damages. I am satisfied that this sum is sufficient to mark the seriousness of the constitutional wrong, emphasise the value of the rights infringed and provide the necessary vindicatory response, without becoming punitive.

Special Damages

[71] It is trite law that special damages must be specifically pleaded and proved. The Claimant has proved her claim for special damages, and this was not challenged by the Defendants. The Claimant is therefore awarded USD$2,762.90. interest on this sum shall run from the 12th day of November, 2024, being the date on which the Claimant was first removed from the aircraft. Learned Counsel for the Claimant submitted that at current rates the award for special damages is equivalent to JMD$440,000.00. While the Court may, where appropriate, take judicial notice of an exchange rate, the Court nevertheless has to identify the applicable rate and the relevant date for the purpose of the calculation. In the absence of any evidential basis for the sum advanced by Learned Counsel for the Claimant, I am not

prepared to simply adopt the said sum. Further, there is nothing before this Court which prohibits me from awarding the sum as pleaded.

CONCLUSION

[72] It is my judgment that this is a case in which a mere declaration would not provide adequate redress for the violations of the Claimant's constitutional right. The Claimant's rights under sections 13(3)(f)(ii), 13(3)(h), 13(3)(n) and 13(3)(r), provided by section 16, were infringed by the seizure and prolonged retention of her passport and by the failure to afford her the procedural safeguards to which she was constitutionally entitled. The violations were not merely technical. They resulted in a substantial interference with the Claimant's freedom to leave Jamaica and were compounded by the absence of notice, reasons, an opportunity to challenge the decision and any meaningful mechanism for review. The Defendants placed no evidence before the Court to establish that the impugned limitations of the Claimant's rights were demonstrably justified in a free and democratic society, as required by section 13(2) of the Charter. I consider that an award of damages, in addition to declaratory relief, is necessary and appropriate. The award is intended to provide redress to the Claimant, vindicate the constitutional rights which were infringed and mark the seriousness with which the Court regards their infringement.

[73] As to costs, I see no circumstances in this case which would justify a departure from the general rule that costs follow the event. The Claimant has succeeded in establishing infringements of her constitutional rights and is therefore entitled to her costs of the proceedings.

ORDERS & DISPOSITION

[74] In light of the forgoing these are my Orders:

(1) It is hereby declared that the Claimant's constitutional rights under sections 13(3)(f)(ii), 13(3)(h), 13(3)(n), 13(3)(r) provided by section 16 of The Charter

of Fundamental Rights and Freedoms (Constitutional Amendment) Act, 2011 were infringed.

(2) Damages are assessed in favour of the Claimant against the Defendants as follows:

(a) Compensatory damages in the sum of $6,000,000.00, with interest at a rate of 3% per annum from the 30th day of April, 2025 to the 17th day of September, 2026;

(b) Vindicatory damages in the sum of $5,000,000.00, with interest at a rate of 3% per annum from the 30th day April, 2025 to the 17th day of September, 2026; and

(c) Special damages in the sum of USD$2,762.90, with interest at a rate of 3% per annum from the 15th day of November, 2024 to the 17th day of September, 2026.

(3) Costs to the Claimant to be taxed if not agreed.

(4) Claimant's Attorneys-at-Law to prepare, file, and serve Orders made herein.