

THE EASTERN CARIBBEAN SUPREME COURT:

**IN THE HIGH COURT OF JUSTICE
CIVIL DIVISION**

SAINT LUCIA

CLAIM NOS. SLUHCV2024/0128 formerly SLUHCV2018/0487
SLUHCV2024/0212 formerly SLUHCV2018/0523

BETWEEN:

**[1] ANTHONY HENRY
[2] FRANCIS NOEL**

Claimants

-and-

THE ATTORNEY GENERAL OF SAINT LUCIA

Defendant

Before the Honourable Mr. Justice Alvin Shiva Pariagsingh.

Appearances:

Mr. Anand Ramlogan, S.C. leading Mrs. Lydia B. Faisal instructed by Mr. Jared Jagroo for the Claimants.

Mr. Seryozha Cenac, Solicitor General and Ms. Kimberley K. Williams for the Defendant.

2025: November 03 – Trial
December 30 – Claimants’ Submissions
2026: February 02 – Defendant’s Submissions
March 13 – Claimants’ Submissions in Reply
April 28 – Decision.

Constitutional law – fundamental rights – breach of right to personal liberty – lawful vs unlawful detention – damages – assessment of damages – quantum – compensatory damages – vindicatory damages – Privy Council guidance – counterfactual analysis – mental health law – unfit to plead – psychiatric detention – prison conditions – therapeutic regime – systemic failure – institutional neglect – prolonged detention.

JUDGMENT

INTRODUCTION:

[1] **PARIAGSINGH, J:** - This matter comes before the Court for the assessment of damages following the decision of the Judicial Committee of the Privy Council in **Henry and another v Attorney General of Saint Lucia**¹.

[2] The Board held that the Claimants' constitutional right to personal liberty under section 3(1) of the Constitution of Saint Lucia was breached and remitted the matter to this Court for a fresh assessment of quantum on a proper basis.

[3] The task before this Court is therefore not to revisit liability, but to determine, in accordance with the principles laid down by the Privy Council, what monetary award constitutes appropriate compensation for the unlawful deprivation of liberty suffered by each Claimant.

The nature of the breach:

[4] It is necessary at the outset to be clear about the character of the wrong. The Privy Council made plain that the Claimants' detention was unlawful from the outset, not merely because they were held in prison rather than a mental hospital, but because there was a "failure to ensure that a regime directed specifically to providing correct care and treatment... was put in place."²

[5] This was therefore not a technical irregularity. It was a prolonged and systemic failure of the State to operate the statutory and constitutional framework governing persons found unfit to plead. As the Claimants submit, they were effectively "forgotten within the criminal justice system for decades"³. That characterisation is, in substance, borne out by the findings of the Board.

[6] The duration of detention, approximately 24 years in the case of Mr Henry and over 32 years in the case of Mr Noel, is without parallel in this jurisdiction and places this case at the most serious end of the spectrum of constitutional violations.

¹ [2023] UKPC 41.

² See paragraph 42 of the JCPC judgment.

³ Paragraph 66 of the Claimants' Submissions in Reply.

THE GOVERNING PRINCIPLES:

[7] The Court's approach is dictated by the Privy Council. The following principles emerge clearly:

1. First, damages must not be assessed by applying a fixed daily rate. The Board held that such an approach is "wrong in principle" and that the award must instead be assessed "in the round."⁴
2. Secondly, the award must be tapered. As explained in **Takitota v Attorney General**⁵ and reaffirmed in **Ngumi v Attorney General**⁶, figures appropriate for short periods of detention cannot simply be extrapolated over long periods without reduction.⁷
3. Thirdly, the assessment must be sensitive to the "unique facts" of the case while maintaining proportionality with comparable awards.⁸ The Claimants properly relied on **Ngumi**, **Takitota**, and **JM v Attorney General of Trinidad and Tobago**⁹ in this regard, though the Court must be cautious not to treat those authorities as providing a formula.
4. Fourthly, and critically, damages must be assessed by reference to the counterfactual position, namely, what would have occurred had the State acted lawfully.¹⁰ This principle, drawn from **R (Lumba) v Secretary of State for the Home Department**¹¹, is central to the present case.

EVIDENCE:

[8] Pursuant to the Privy Council's direction, the parties were granted leave to adduce fresh evidence on the assessment of damages. Four witnesses gave evidence: one on behalf of the Claimants and three on behalf of the Defendant.

⁴ Paragraph 66 of the JCPC judgment.

⁵ [2009] UKPC 11.

⁶ [2023] UKPC 12.

⁷ Paragraph 66 of the JCPC judgment.

⁸ Paragraph 66 of the JCPC judgment.

⁹ [2022] UKPC 54.

¹⁰ Paragraph 68 of JCPC judgment.

¹¹ [2012] 1 AC 245.

Dr. Dominic Nwokolo:

[9] Dr. Nwokolo was called as an expert in psychiatry on behalf of the Claimants. His evidence identified systemic deficiencies in psychiatric care, including gaps in treatment, inconsistent medication management, failure to monitor side effects, and the absence of meaningful reassessment of fitness to plead. He further suggested that there were periods during which appropriate intervention might have led to trial or release.

[10] I accept Dr. Nwokolo's evidence insofar as it demonstrates systemic inadequacies in the psychiatric care provided and the absence of a structured regime of treatment and review. However, his conclusions as to causation and the likelihood of recovery or earlier release are less persuasive. They are based largely on record review rather than direct examination, and in some instances involve speculative or generalized assertions not firmly supported by the evidence. His evidence is therefore treated as probative of systemic failure, but of limited weight on the issue of likely outcomes.

Dr. Hazel Othello:

[11] Dr. Othello, who gave evidence for the Defendant, adopted a more measured and structured approach. She accepted that prison conditions did not replicate a therapeutic hospital environment and that a mental health facility would have offered advantages in terms of observation, therapy, and rehabilitative focus. At the same time, she maintained that the Claimants received ongoing medical attention, particularly after their transfer to Bordelais, and that their clinical outcomes may not have differed materially in a hospital setting given the severity and persistence of their conditions.

[12] I accept Dr. Othello's evidence. Her methodology, grounded in record review and familiarity with local institutional practice, was balanced and consistent with the broader evidential record. Her conclusions align with the Privy Council's observation that the practical differences between lawful and unlawful detention were not clearly established. Her evidence supports the finding that, while a hospital setting would have been qualitatively different, it would not necessarily have produced significantly improved clinical outcomes.

Dr. Philipsien:

[13] Dr. Philipsien's evidence is of limited assistance. Although he served as Chief Medical Officer at Bordelais, he is not a psychiatrist and had no direct involvement in the Claimants' care during the relevant period. His evidence was derived from secondary sources, including interviews with staff, the notes of which were not disclosed.

[14] In these circumstances, I attach limited weight to his evidence. It is accepted only insofar as it provides general background on the availability of medical services at Bordelais. It is not relied upon for conclusions relating to psychiatric care, diagnosis, or the adequacy of treatment.

Mr. John Samuel:

[15] Mr. Samuel, a factual witness from the prison system, described the conditions in which the Claimants were detained. His evidence confirms the absence of dedicated psychiatric facilities, the mixing of mentally ill detainees with the general prison population, and the lack of structured therapeutic programmes.

[16] I accept his evidence on these matters. It is consistent with the documentary record and within his competence. However, I attach no weight to any opinions he expressed on medical treatment or psychiatric outcomes.

The Claimants' approach:

[17] The Claimants, for their part, emphasise the profound differences between prison and hospital detention. They point to the absence of therapeutic programming, the lack of periodic review, and the missed opportunities to reassess fitness to plead. They submit that these failures deprived them not only of appropriate care, but of the possibility of recovery, trial, and reintegration into society.

[18] The Court accepts that these are real and significant differences. The counterfactual is not merely a change of location, but a change in purpose, from containment to treatment. The Claimants were entitled to a regime that actively addressed their mental illness and kept their continued detention under review.

[19] In my view, however, the Claimants' analysis overstates the position. It tends to assume that, had such a regime been in place, it would likely have resulted in substantially earlier release. That proposition is not borne out by the evidence. The medical evidence, including that relied upon by both parties, indicates that both Claimants suffered from serious and persistent mental illness over many years. The Privy Council itself observed that their conditions continued throughout the relevant period.¹²

[20] The Court must therefore proceed with caution. The counterfactual cannot be constructed on optimistic assumptions unsupported by the evidence.

The Defendant's approach:

[21] The Defendant submits that the practical differences between these two forms of detention would have been limited, and that the Claimants in fact received medical treatment during their incarceration. On that basis, it is said that the damages should be modest.

[22] There is some force in the submission that the Claimants were not wholly deprived of medical attention. The evidence shows that, particularly from 2003 onwards, they were seen by psychiatrists and received medication. The Privy Council also accepted that their mental health was in fact reviewed by appropriate doctors.¹³

[23] In my respectful view, however, the Defendant's argument ultimately rests on an inaccurate comparison. It reduces the counterfactual exercise to a narrow comparison of medication regimes. As the Claimants correctly submit, the law required far more than the intermittent provision of psychiatric treatment. It required a structured environment in which treatment, review, and rehabilitation formed part of a coherent legal and medical framework. A prison, even one in which doctors visit periodically, cannot be equated with such a regime in my view.

¹² Paragraph 49 of the JCPC Judgment.

¹³ Paragraph 51 of Privy Council Judgment.

Overall Findings on the Evidence:

[24] The evidence establishes that the Claimants received some level of psychiatric care, particularly in the later years of their detention. However, that care fell materially short of a lawful therapeutic regime. It lacked the structure, continuity, and review mechanisms required by the statutory framework.

[25] On the counterfactual, the Court finds that detention in a mental health facility would have provided a more appropriate therapeutic environment and regular review.

[26] However, as identified by the Privy Council, the “the practical differences between such (lawful) detention and the unlawful detention they in fact experienced were not established in evidence”.¹⁴ This observation is of considerable importance in my view.

[27] That evidential gap was not cured by the fresh evidence placed before this Court on the assessment of damages. It means therefore that the Court does not have a clear evidential basis to determine:

1. how much earlier, if at all, the Claimants would have been found fit to plead.
2. whether they would have been tried within a reasonable time.
3. whether they would have remained detained under mental health legislation for comparable periods; or
4. the extent to which their mental condition would have improved in a therapeutic setting.

[28] In these circumstances, the Court must avoid speculation. The counterfactual analysis must be grounded in what can reasonably be inferred from the available evidence, not what might optimistically have occurred.

¹⁴ Paragraph 69 of the JCPC Judgment

Counterfactual Analysis:

[29] The assessment of damages in this case turns on the proper application of the counterfactual analysis mandated by the Privy Council. The Court must determine the Claimants' loss by reference to the position they would have been in had the State acted lawfully, rather than by reference solely to what they in fact endured.

[30] On the evidence, the Claimants would not have been at liberty. The applicable statutory framework required that persons found unfit to plead be detained in a mental health facility for care and treatment, subject to periodic review. As the Privy Council observed, such detention could properly have been in conditions of considerable security, given the nature of the offences involved.

[31] The lawful counterfactual therefore involves continued detention, but within a materially different framework: a therapeutic environment directed toward treatment and rehabilitation, accompanied by regular medical and legal review, and the possibility, though not certainty, of progression toward fitness to plead and eventual resolution of their cases.

[32] The compensable loss must be understood in that context. It is not the loss of liberty in its entirety, but the difference between unlawful prison detention and lawful therapeutic detention. That difference is qualitative and significant. It encompasses the absence of a structured treatment regime, the lack of periodic review, and the denial of mechanisms by which the Claimants' continued detention could have been meaningfully assessed.

[33] At the same time, the evidence does not establish that lawful detention would have resulted in substantially earlier release or materially different clinical outcomes. Both Claimants suffered from serious and persistent mental illness over many years. While a proper regime would have provided real opportunities for review and potential progress, the extent of any such progress remains uncertain on the evidence.

[34] The Court must therefore avoid speculation. The counterfactual cannot be constructed on optimistic assumptions unsupported by the record. Rather, it requires a balanced

assessment which recognises both the existence of real lost opportunities and the likelihood that some form of detention would have continued for a significant period.

[35] Accordingly, the counterfactual operates as a moderating factor in the assessment of damages. It requires the Court to discount the value of complete loss of liberty, while giving substantial weight to the qualitative deficiencies in the regime to which the Claimants were subjected and to the loss of procedural safeguards inherent in a lawful system.

ASSESSMENT:

[36] The Court now turns to the assessment of damages. This is not a mechanical exercise. The authorities establish that damages for constitutional breaches arising from long periods of detention **must be assessed in the round**, with careful regard to the particular facts of the case, the counterfactual position, and the need for overall proportionality. Comparable awards may provide guidance, but they are not to be applied arithmetically; rather, they serve as points of reference in the Court's evaluative judgment.

The Claimants' proposed awards:

[37] The Claimants advance a detailed and structured model for the assessment of compensatory damages. They propose awards of approximately EC\$2,945,550.00 for Mr Henry and EC\$3,920,100.00 for Mr Noel, derived from what is described as a "tiered" or "tapered" daily rate methodology. In addition, they seek separate vindictory damages in the sums of EC\$350,000.00 and EC\$500,000.00 respectively.

[38] The Court accepts that the model reflects a legitimate attempt to incorporate the principle of tapering and to account for the extraordinary duration and seriousness of the Claimants' detention. The Claimants also properly emphasise the qualitative deficiencies in their treatment, including the absence of a therapeutic regime and the lack of periodic review.

[39] However, the difficulty lies in the methodology itself. Notwithstanding its tiered structure, the model remains, in substance, a rate-based calculation. For the reasons already

given, this is inconsistent with the requirement to assess damages in the round rather than by extrapolation from daily rates.

[40] A further and more fundamental difficulty is the treatment of the counterfactual. The proposed figures proceed on the implicit basis that the entirety of the Claimants' detention represents compensable loss of liberty. That assumption cannot be sustained. On the evidence, the Claimants would have remained subject to lawful detention within a mental health framework, potentially for lengthy periods. The true measure of loss is therefore the difference between unlawful prison detention and lawful therapeutic detention, which the Claimants' model does not adequately reflect.

[41] While comparative authorities such as **Ngumi** and **Takitota** provide useful guidance, they do not support the extrapolation undertaken. The principle of tapering exists to prevent awards from increasing in direct proportion to duration, particularly in cases of very long detention.

[42] In these circumstances, the Court is unable to adopt the Claimants' proposed figures. Although they properly reflect the gravity of the case, they are derived from a methodology that is inconsistent with the governing principles and insufficiently responsive to the counterfactual analysis.

The Defendant's proposed awards:

[43] The Defendant proposes significantly more modest awards than those advanced by the Claimants, namely approximately EC\$1,131,500.00 for Mr Henry and EC\$1,022,000.00 for Mr Noel. It is further acknowledged that these figures would be subject to deductions for interim payments already made. These figures are advanced as global assessments grounded in the counterfactual position.

[44] The Court accepts that the Defendant's approach correctly emphasises that the Claimants were not deprived of liberty in the full sense, and that they would have remained subject to lawful detention within a mental health framework. It also properly recognises that the Claimants received some level of psychiatric care, particularly in the

later years of their detention, and that the evidence does not establish that they would have been released significantly earlier.

[45] However, the Defendant's analysis gives insufficient weight to the qualitative differences between unlawful prison detention and lawful therapeutic detention. The breach identified by the Privy Council was not merely the absence of treatment, but the failure to establish a structured regime of care, review, and rehabilitation. That distinction is not adequately reflected in the figures proposed.

[46] Further, the Defendant's approach does not sufficiently account for the extraordinary duration of the Claimants' detention or the systemic nature of the failure. Even allowing for the counterfactual, the length of time during which the Claimants were subjected to an unlawful regime remains a matter of substantial weight.

[47] When viewed against comparable authority, the proposed figures are unduly conservative and do not adequately reflect the seriousness of the breach in its full context.

[48] Accordingly, while the Defendant's submissions provide an important corrective to an over-expansive approach, the Court does not consider the figures proposed to represent an appropriate measure of damages.

Gravity of the Breach:

[49] This case falls within the most serious category of constitutional violations. The Claimants were detained for extraordinarily long periods, approximately 24 years in the case of Mr Henry and in excess of 32 years in the case of Mr Noel, under a regime that failed to comply with the statutory and constitutional framework governing persons found unfit to plead.

[50] The breach was systemic and sustained. It involved not merely an initial failure, but a continuing omission on the part of the State to establish and operate a lawful framework for detention, including proper placement, treatment, and periodic review. The right

engaged, that is, the right to personal liberty, is fundamental. Its prolonged infringement in this manner strongly supports a substantial award.

The Counterfactual Constraint:

[51] The Court must, however, approach the assessment through the lens of the counterfactual. The Claimants would not have been free persons. On the evidence, each would likely have been detained in a secure psychiatric facility for a significant period, and possibly throughout the relevant timeframe.

[52] The compensable loss is therefore not the fact of detention itself, but the difference between the detention actually experienced and that which would lawfully have occurred. This distinction is central. It requires a substantial moderation of the award, while recognising that the absence of a lawful regime, treatment, review, and structured progression, represents a real and significant deprivation.

Conditions and Treatment:

[53] The Court accepts that, for a substantial period, the Claimants were detained in conditions inconsistent with a proper therapeutic environment. There was no structured programme of care and no effective system of review. However, this is not a case of total neglect.

[54] From approximately 2003 onwards, the Claimants received psychiatric attention and medication. While this fell short of a lawful therapeutic regime, it represents a material distinction from cases in which no care at all was provided.

[55] The Court therefore treats this case as one of serious and prolonged systemic inadequacy, rather than complete deprivation of care. This distinction bears directly on the appropriate level of compensation.

Comparative Authority:

[56] The Court has derived considerable assistance from the decision in **The Attorney General of Trinidad and Tobago v Selwyn Dillon**¹⁵. Those authorities concern claimants detained at the President's pleasure in circumstances closely analogous to the present case.

[57] In **Dillon**, the claimant was detained for approximately 20 years in a prison environment without meaningful psychiatric care, without periodic review, and in conditions wholly inconsistent with the statutory framework governing such detention.

[58] Rampersad J at first instance¹⁶ found that these failures rendered the detention unconstitutional in its entirety. The Claimant was never treated as a mentally ill person in accordance with the law, and the absence of review compounded the breach over time. He awarded TT\$2.5 million in compensatory damages together with TT\$500,000.00 in vindictory damages. The Court of Appeal later reduced the amount for vindictory damages to TT\$200,000.00.

[59] This is the only case in the Caribbean that the Court was referred to where an award was made for prolonged detention in excess of two decades. The facts in **Dillon**, as recited in the first instance judgment, reflects a case at the most severe end of the spectrum, characterised by complete therapeutic neglect, absence of review, and harsh and inappropriate custodial conditions.

[60] The present case shares important features with **Dillon**, including the systemic failure to implement a lawful regime and the prolonged absence of proper review. However, there are also material differences which must inform the Court's assessment.

[61] First, the duration of detention in the present case is significantly longer. That factor would, taken alone, justify a higher award.

¹⁵ Civil Appeal No. P 245 of 2012 (Unreported) – Judgment of Jamadar, JA with whom Pemberton and des Vignes, JJA agreed.

¹⁶ HCA No. 3498 of 2003, HCA No. 1094 of 2004 and HCA. No. 1090 of 2004 (unreported) delivered on 27 September 2012.

[62] Secondly, the level of care differs. In **Dillon**, there was effectively a complete absence of psychiatric care throughout the period of detention. In the present case, the Claimants did receive psychiatric attention and medication from approximately 2003 onwards. While inadequate, this nonetheless reduces the severity of the breach.

[63] Thirdly, although the Claimants were detained in inappropriate custodial conditions, the Court is not satisfied that those conditions reached the same level of severity as those described in **Dillon**.

[64] These differences are significant. The Court therefore approaches **Dillon** as highly persuasive, rather than as a figure to be replicated or scaled. I am cognisant of the guidance of the Privy Council in **Scott v Attorney General & Anor**¹⁷ where it was held that it would be wrong to apply an unchanging uplift of an award by a different jurisdiction without evidence of an actual, as opposed to a presumed, difference in the cost of living between jurisdictions.

Duration and the Evolving Nature of the Loss:

[65] The length of detention is a dominant factor. However, the Court recognises that the nature of the loss evolves over time. In the earlier years, the divergence from the lawful position was at its most acute, reflecting the absence of any proper regime. In the later years, the introduction of some psychiatric care, coupled with the increasing likelihood that lawful detention would have continued, reduces the relative weight of the loss, though it does not eliminate it.

[66] These considerations inform the Court's overall evaluation but do not lend themselves to precise calculation.

Evidential Uncertainty:

[67] The Court must also take into account the limits of the evidence. It is not possible to determine with precision when, if at all, the Claimants would have been found fit to plead, or whether they would have been released earlier under a lawful regime.

¹⁷ [2017] UKPC 15

[68] While a real opportunity for review and progression was lost, its extent cannot be quantified. This uncertainty operates as a moderating factor.

Proportionality:

[69] The Court has considered the relevant authorities, including **Ngumi**, **Takitota**, and **Dillon**. These demonstrate both the seriousness of such breaches and the need to avoid purely arithmetical reasoning.

[70] The award must reflect the exceptional duration and gravity of the present case, while remaining proportionate in light of the counterfactual position and the comparative jurisprudence.

[71] While the Court has had regard to authorities such as **Takitota** and **Ngumi**, it must be emphasised that awards of damages for unlawful detention are necessarily sensitive to the economic and social conditions of the jurisdiction in which they are made. The levels of compensation awarded in The Bahamas reflect local conditions and cannot be transposed directly to Saint Lucia without adjustment. Consistent with the guidance of the Privy Council, such authorities serve as illustrative benchmarks rather than tariffs, and their principal value lies in providing a broad check on proportionality rather than a basis for numerical comparison.

[72] In the present case, the Court has placed greater reliance on **Dillon**, while recognising that even that case cannot be applied mechanically. The figures ultimately arrived at reflect an evaluative assessment of what constitutes fair and reasonable compensation within this jurisdiction, taking into account local economic conditions, the exceptional duration of the detention, and, importantly, the moderating effect of the counterfactual position.

QUANTIFICATION:

[73] In arriving at its figures, the Court has taken the award in **Dillon** as a useful point of reference, while recognising that it cannot be applied directly. The Court has therefore undertaken an evaluative adjustment, having regard to the similarities and differences between that case and the present and tapering given the long period of detention.

[74] On the one hand, the longer periods of detention in the present case would justify an award on the higher end of the scale. On the other hand, the fact that the Claimants received some psychiatric care from 2003 onwards requires a downward adjustment.

[75] In addition, the Court has given significant weight to the counterfactual position. The Claimants would, in any event, have been detained, likely for lengthy periods, in a secure psychiatric setting. The compensable loss is therefore confined to the difference between that lawful detention and the detention actually experienced. It was accepted that, in the lawful counterfactual, both Claimants would have benefitted from round-the-clock nursing care at a psychiatric hospital. However, the evidence also indicates that the materially better living accommodation, together with occupational and psychological therapy, would have been of particular benefit to Mr Henry. This operates as a substantial moderating factor, particularly in the case of Mr Noel, because the evidence does not establish that lawful detention in a psychiatric hospital would have differed as materially from his actual conditions as it would have in Mr Henry's case.

[76] The Court has not sought to ensure that award is proportionate by reference to time. Such an approach would be inconsistent with the guidance of the Privy Council. Instead, the Court has adjusted the award upward to reflect duration, and downward to reflect the mitigating features identified that are unique to this case in the context of this jurisdiction.

[77] Taking all these factors into consideration and assessing the matter in the round, the Court determines the appropriate awards as follows:

1. In the case of Mr Henry: **EC\$1,250,000.00**
2. In the case of Mr Noel: **EC\$1,500,000.00**

[78] In the Court's view, these figures represent a fair and proportionate measure of compensation, reflecting: the gravity and duration of the constitutional breaches, the guidance provided by the Board and comparative awards particularly **Dillion**, the material differences in conditions and treatment, and the central importance of the

counterfactual position and the tapering over time if daily rates were used and extrapolated.

VINDICATORY DAMAGES:

[79] The Claimants seek, in addition to compensatory damages, separate awards of vindicatory damages in the sums of EC\$350,000.00 for Mr Henry and EC\$500,000.00 for Mr Noel. The Defendant submits that such awards are either unnecessary or should be minimal. It is therefore necessary to consider the purpose of vindicatory damages and whether this is an appropriate case for such an award.

The purpose of vindicatory damages:

[80] The purpose of vindicatory damages is well established. As explained in **Maharaj v Attorney General (No. 2)**¹⁸ and subsequent authorities, including **JM**, such awards serve to vindicate the constitutional right which has been infringed and to mark the gravity of the breach. They may also reflect the need to signal the Court's disapproval of conduct which results in a failure to secure fundamental rights. They are not punitive but are directed to ensuring that the remedy granted adequately reflects the constitutional dimension of the wrong.

[81] Whether vindicatory damages are required depends on whether compensatory damages alone are sufficient. In determining that question, the Court considers the nature of the breach, including whether it was systemic, prolonged, and reflective of institutional failure.

[82] In the present case, compensatory damages, while substantial, do not fully capture the constitutional significance of the breach. The Claimants were detained for decades under a regime which failed to comply with the legal framework governing their treatment and review. This was not an isolated error, but a sustained failure across the relevant institutions to give effect to fundamental rights.

¹⁸ [1979] AC 385

[83] Further, the Claimants were particularly vulnerable. As persons found unfit to plead, they were dependent on the proper functioning of the system for the protection of their rights. The absence of any meaningful mechanism of review over extended periods underscores the seriousness of the breach at a constitutional level.

[84] In these circumstances, the Court is satisfied that an additional award is required to vindicate the right to personal liberty and to mark the gravity of its infringement.

[85] The remaining question is the appropriate level of such an award. Care must be taken to avoid duplication. Many of the factors relevant to vindication, including duration and conditions of detention, have already been reflected in the compensatory awards. The vindictory element must therefore be calibrated to serve a distinct purpose.

[86] Having regard to the need for proportionality, and to awards in comparable cases, the Court considers that the sums proposed by the Claimants are excessive. At the same time, a meaningful additional award is required to reflect the systemic nature of the breach.

[87] Balancing these considerations, the Court awards EC\$100,000.00 to Mr Henry and EC\$120,000.00 to Mr Noel. The higher award in Mr Noel's case reflects the longer duration of his detention and the corresponding gravity of the breach.

ORDER:

[88] For the reasons above, I make the following orders:

1. The Defendant shall pay to the First Claimant, Anthony Henry, compensatory damages in the sum of EC\$1,250,000.00.
2. The Defendant shall pay to the Second Claimant, Francis Noel, compensatory damages in the sum of EC\$1,500,000.00.
3. The Defendant shall pay to the First Claimant, Anthony Henry, vindictory damages in the sum of EC\$100,000.00.

4. The Defendant shall pay to the Second Claimant, Francis Noel, vindictory damages in the sum of EC\$120,000.00.
5. The Defendant shall be entitled to deduct from the sums awarded herein any payments already made to the Claimants on account of damages.
6. The remainder of the sums awarded at paragraphs 1 and 2 above to be paid to the Claimants shall carry interest at the statutory rate of 6% per annum from the date of this judgment until the sums are paid.
7. The Defendant shall pay the Claimants' costs to be assessed if not agreed within 21 days.

**Alvin Shiva Pariagsingh
High Court Judge**

By the Court,

Deputy Registrar of the High Court