

IN THE EASTERN CARIBBEAN SUPREME COURT

ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO.: ANUHCV2024/0436

BETWEEN:

[1] WAYNE WORRELL

Applicant

And

**[1] COMMISSIONER OF POLICE
[2] SUPERINTENDENT OF PRISONS
[3] THE ATTORNEY GENERAL**

Respondents

Appearances:

The Applicant in person
Mrs. Shannon Jones-Gittens for the Respondents
Mr. Wendel Alexander-amicus

2024: December 3rd
2025: January 23rd (written submissions)
2026: February 23rd

JUDGMENT

Introduction

[1] **WILLIAMS, J.:** This is an application for the issue of a Writ of Habeas Corpus and constitutional relief filed on 31st October 2024 pursuant to sections 3, 5 and 18 of the Constitution of Antigua and Barbuda and Rule 57.2 of the Civil Procedure Rules (Revised Edition) 2023. In short, the Applicant argues that his continued

detention without being brought before a Magistrate is unlawful as it is not in compliance with **section 239** of the **Magistrates Code of Procedure Act**.¹

[2] The Applicant therefore seeks the following:

- (a) An order for the immediate release.
- (b) Any other orders, the court deems fit and proper in the circumstances
- (c) Costs

[3] The Applicant is an inmate of His Majesty's Prison. The Respondents are the Superintendent of Prisons, the Commissioner of Police and the Attorney General respectively. The matter came for hearing on 3rd December 2024. The Applicant was self-represented whilst the Respondents were represented by Ms. Shannon Jones-Gittens, the then acting Director of Public Prosecutions. Attorney-at-Law Mr. Wendel Alexander agreed to act as amicus to assist with the issue of what remedies the Applicant would be entitled to.

[4] At the conclusion of the hearing, the Court made the following order:

1. The Applicant shall be forthwith brought before a Magistrate either virtually or in person in accordance with section 239 of the Magistrates Code of Procedure Act.
2. The parties shall by 18th December 2024 file written submissions on the issue of what remedies the Applicant may be entitled to in light of the non-compliance with section 239 of the Magistrates Code of Procedure Act.
3. A decision on the appropriate remedy in these circumstances shall be delivered on a date to be notified by the court office.
4. The Respondents shall have carriage of this order.

Background

[5] Some background is necessary at this stage. The largely undisputed facts are as follows:

¹ Cap. 255 Revised Laws of Antigua and Barbuda

1. The Applicant was arrested on 1st August 2024 for a serious offence. He was subsequently charged with the offence on 2nd August 2024.
2. He was brought before a Magistrate on 7th August 2024 and remanded into custody until 14th August 2024.
3. For the period 14th August to 8th October 2024, the Applicant was never brought before a Magistrate to be further remanded.
4. On 9th October 2024 the Applicant was brought before a Magistrate and further remanded until 16th October 2024.
5. Although remand warrants were signed by Magistrates, the Applicant was actually never seen by a Magistrate during the period 17th October to 3rd December.
6. The Applicant commenced these proceedings on 31st October 2024.
7. The Applicant was brought before a Magistrate on 4th December 2024 in compliance with an order of this Court.

[6] It is necessary to examine **section 239** of the **Magistrates Code of Procedure Act** which provides as follows:

“If at any time during any proceedings before a Magistrate it shall become necessary to adjourn the hearing of the same the Magistrate may from time to time adjourn the case to a certain time and place to be then appointed in the hearing of the parties, or their counsel or solicitors, and if the defendant is in custody he may admit him to bail as in this Act provided, or by his warrant remand him to prison for any time not exceeding eight clear days, and if such remand shall not be for longer than three clear days the Magistrate may verbally order the peace officer in whose custody the defendant may be to keep him in custody and to bring him up for further examination on the day appointed for the adjourned hearing:

Provided that the Magistrate may order the defendant to be brought up to attend such further hearing as aforesaid at any time prior to the expiration of the time for which he was remanded and the officer in whose custody he shall be, shall duly obey such order.”

[7] On 3rd December 2024 the court ruled that **section 239** of the **Magistrates Code of Procedure Act** required that the Applicant be physically brought before a Magistrate. At the hearing of 3rd December 2024, it was conceded that although remand warrants had been signed in respect of the Applicant he had only been physically brought before a Magistrate on two occasions since arrest, namely on 7th August and 9th October 2024.

[8] In **Sharman Rosemond v. PC 190 Charles et al**² Justice Edwards examined the equivalent provision in the Saint Lucia's Criminal Code and stated at paragraph 104 of the decision as follows:

“The Magistrates should not regard their statutory duty as merely an administrative duty, it is not. The law contemplates that the Magistrate or proper officer will see the accused every 8 days to inquire into his welfare while he is in custody and to make sure that there is an avenue open for him to complain about any abuse or concern he has.”

[9] At paragraph 112 of the **Sharman Rosemond**³ decision Justice Edwards continued:

“As to what effect the Magistrate's procedural illegality has on the present remand status of Mr. Rosemond, in my opinion that illegality has been cured by the subsequent further remands made by a Magistrate in full compliance with the law. Mr. Rosemond was in lawful custody on the 27th of January, 2004 when I heard this claim.”

[10] In light of this authority, the parties accepted that the Applicant's appearance before the Magistrate on 9th October 2024 had cured the previous illegality. The Court is therefore concerned with the Applicant's detention between 17th October 2024 when the period of remand expired and 3rd December 2024.

Alleged breach of section 5(2)

[11] **Section 5(2)** of the **Constitution of Antigua and Barbuda** provides that: *“Any person who is arrested or detained shall be informed as soon as reasonably practicable and, in any event, not later than forty-eight hours after such arrest or*

² SLUHCV 2003/0985 decision delivered 16th June 2004 (unreported)

³ Ibid

detention, in writing, in a language that he understands, of the reasons for his arrest or detention.” The Applicant contends that this provision was breached on the basis that he was not informed in writing of the reason for his arrest or continued detention.

- [12] That claim however is only formally pleaded in the Amended Fixed Date Claim Form filed on 11th December 2024 which was after the hearing and without the leave of the Court. A statement of case may not be amended after the First Hearing without the Court’s permission.⁴ In the circumstances, the amended pleading was irregular and the Court therefore declines to grant any relief in respect of the alleged breach of **section 5(2)** of the **Constitution**. Even if I am wrong, the evidence establishes that the Applicant was charged within forty-eight hours of his arrest on 2nd August 2024. Accordingly, there was no breach of section 5(2) in any event.

Issues

- [13] The issue for determination is what relief is appropriate in the present circumstances for non-compliance with **section 239** of the **Magistrates Code of Procedure Act**?

Right to Liberty

- [14] **Section 5(1)(e)** of the **Constitution of Antigua and Barbuda** provides for the Right to Liberty as follows:

“(1) No person shall be deprived of his personal liberty save as may be authorized by law in any of the following cases, that is to say-

.....

(e) For the purpose of bringing him before a court in execution of the order of a court.”

- [15] **Section 5(7)** of the **Constitution** also states:

⁴ See SLUHCVP2010/0021 Attorney General v. Darrel Montrope decided 9th July 2020 at paragraph 24 (unreported)

“Any person who is unlawfully arrested or detained by any other person, shall subject to such defences as may be provided by law, be entitled to compensation for such unlawful arrest or detention from the person who made the arrest or effected the detention, from any person or authority on whose behalf the person making the arrest or effecting the detention was acting or from them both:

Provided that a judge, magistrate...shall not be under any personal liability to pay compensation under this subsection in consequence of any act performed by him in good faith in the discharge of the functions of his officer any liability to pay any such compensation in consequence of any such act shall be a liability of the Crown.”

[16] The redress section of the Constitution, **Section 18(1)** states:

“If any person alleges that any of the provisions of section 3 to 7 (inclusive) of the Constitution has been, is being, or is likely to be contravened in relation to him (or, in the case of a person detained, if any other person alleges such a contravention in relation to the detained person) then, without prejudice to any other action with respect to the same matter that is lawfully available, that person (or that other person) may apply to the High Court for redress.”

[17] Due to the admitted non-compliance with section 239 of the **Magistrates Code of Procedure Act**, the Applicant’s detention during the relevant period was not detention “in execution of the order of a court” for the purposes of **section 5(1) (e)** of the Constitution. The issue is therefore what relief the Applicant is entitled to pursuant to **section 18(1)** of the Constitution.

Habeas Corpus

[18] Since the Applicant has now been brought before a Magistrate in compliance with an order of this court, habeas corpus does not lie to secure immediate release. The appropriate relief lies in declaratory redress and damages.

Compensatory Damages

[19] In **Maharaj v. Attorney General (No. 2)**⁵ the Privy Council examined equivalent to section 18(1) in the Trinidad and Tobago Constitution then in force. Lord Diplock stated:

“What then was the nature of the "redress" to which the appellant was entitled? Not being a term of legal art it must be understood as bearing its ordinary meaning, which in the Shorter Oxford English Dictionary, 3rd ed. 1944 is given as: "Reparation of, satisfaction or compensation for, a wrong sustained or the loss resulting from this." At the time of the original notice of motion the appellant was still in prison. His right not to be deprived of his liberty except by due process of law was still being contravened; but by the time the case reached the Court of Appeal he had long ago served his seven days and had been released. The contravention was in the past; the only practicable form of redress was monetary compensation.”

[20] In **AG v. Ramanoop**⁶ the Privy Council further outlined the principles of constitutional redress. Lord Nicholls stated:

“17. Their Lordships view the matter as follows. Section 14 recognises and affirms the court's power to award remedies for contravention of chapter 1 rights and freedoms. This jurisdiction is an integral part of the protection chapter 1 of the Constitution confers on the citizens of Trinidad and Tobago. It is an essential element in the protection intended to be afforded by the Constitution against misuse of state power. Section 14 presupposes that, by exercise of this jurisdiction, the court will be able to afford the wronged citizen effective relief in respect of the state's violation of a constitutional right. This jurisdiction is separate from and additional to ("without prejudice to") all other remedial jurisdiction of the court.

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

⁵ [1979] AC 385, 398

⁶ (2005) 65 WIR 334

- [21] As previously observed, once there had been non-compliance with **section 239** of the **Magistrate's Code of Procedure Act**, the Applicant's detention became unlawful. Accordingly, it is appropriate to grant a declaration that the Applicant was unlawfully detained from 17th December to 3rd December 2024 in breach of section 5 of the Constitution of Antigua and Barbuda.
- [22] The question is therefore whether a declaration alone will suffice, or whether "more is required than just words" in the sense articulated in Ramanoop⁷. In resolving that issue, the purpose of section 239 must be examined. In Sharman Rosemond⁸, Edwards J explained that the procedure enables the Magistrate to inquire into the prisoner's welfare while in custody and ensures that there is an avenue available for the detainee to raise any complaint of abuse or other concern.
- [23] This Court would add that the mandatory production of a detained person before the court serves the broader constitutional function of maintaining judicial control over the remand process and securing compliance with **section 5** of the Constitution. **Section 239** of the **Magistrates Code of Procedure Act** further empowers the Magistrate to consider the question of bail, thereby providing a substantive safeguard against unlawful or unjustified detention rather than a merely formal or procedural protection.
- [24] In these circumstances, a compensatory order is justified. The failure to comply with **section 239** of the **Magistrates Code of Procedure Act** deprived the claimant of the substantive safeguards inherent in judicial oversight of detention, including the opportunity for a welfare inquiry and the timely consideration of bail. Accordingly, the Applicant is entitled to compensation pursuant to **section 5(7)** of the **Constitution**.

⁷ [2005] UKPC 15

⁸ SLUHCV2003/0985 decision delivered 16th June 2004 (unreported)

[25] The parties have referred to the key principles regarding the assessment of damages for a violation of the Constitution in their written submissions, but neither side has suggested the appropriate quantum of such an award. Mr. Alexander, acting as amicus, argues that the Applicant should receive substantial compensatory damages. Conversely, the Respondents contend that only a nominal award is appropriate, though they have not proposed a specific figure. Nonetheless, the court will assess damages by applying the relevant principles and considering the available evidence.

[26] In **Ngumi v Attorney General of the Bahamas**⁹, the Privy Council distilled the relevant principles governing the assessment of compensatory damages for unlawful detention. The Board emphasised that the evaluative exercise is inherently imprecise and admits of no rigid formula or mathematical approach. The assessment must be sensitive to the particular facts of the case and the degree of physical and mental harm suffered, while maintaining a reasonable proportionality with awards made in comparable cases and with personal injury awards, given the recognised parallels between the two. The initial shock of unlawful arrest and detention may attract a higher notional element than a later period of detention, reflecting the tendency of detainees to adjust to their circumstances over time, though this will not invariably be so. The manner of arrest, any attendant publicity, and the conditions and treatment in detention are all relevant considerations, together with any loss of reputation, loss of enjoyment of life or normal experiences foregone.

[27] The Board further cautioned that damages should not ordinarily be assessed by dividing the period of detention into discrete segments or by fixing a rigid daily rate and multiplying it by the number of days of unlawful detention. As explained in **Takitota**¹⁰, compensatory damages must be assessed “in the round”, so that the final figure represents an overall sum reflecting the length of the wrongful detention, any element of aggravation, the conditions of detention, and the misery

⁹ [2023] UKPC 12 at paragraphs 72 to 74

¹⁰ [2009] UKPC 11

and distress endured. While there may be cases where a notional sum for the initial shock of detention is appropriate, this is not required in every case. Where a daily or initial rate is used as a reference point, it must not be mechanically extrapolated and should ordinarily be tapered to reflect the adaptive effect identified by the Board.

[28] In **Anthony Henry v Attorney General of Saint Lucia**¹¹, the Privy Council further clarified that the court should conduct a counterfactual analysis. The proper inquiry is what would likely have occurred had the applicant not been subjected to the unlawful detention, and the compensatory award must be calibrated to reflect the loss occasioned by the deprivation of liberty when measured against that lawful alternative.

[29] The first issue to be considered is the length of detention. This court has already found that the relevant period runs from 17th October to 3rd December 2024. It is not disputed that the Applicant was not brought before a Magistrate as required by **section 239** of the **Magistrates Code of Procedure Act** until 4th December 2024.

[30] In this case there is no basis to make an award for initial shock of detention. This is as the Applicant had been in lawful custody since 1st August 2024. Thus, the issue of initial shock does not arise.

[31] In terms of the second aspect of compensation for the Applicant's unlawful detention, the Respondents have urged the court to conduct the counterfactual analysis as in accordance with the Privy Council's guidance in **Anthony Henry v. Attorney General of Saint Lucia**¹². I agree with the Respondents that the proper question is what would have occurred had the Applicant been brought before a Magistrate every eight days in accordance with the law.

¹¹ [2023] UKPC 41

¹² Ibid

[32] At paragraph 95 of **Lumba v. Secretary of State for the Home Department**¹³, Lord Dyson explained that the central question is whether the victims of false imprisonment have suffered any loss warranting compensation beyond nominal damages. His Lordship stated:

“Exemplary damages apart, the purpose of damages is to compensate the victims of civil wrongs for the loss and damage that the wrongs have caused. If the power to detain had been exercised by the application of lawful policies, and on the assumption that the Hardial Singh principles had been properly applied ... it is inevitable that the appellants would have been detained. In short, they suffered no loss or damage as a result of the unlawful exercise of the power to detain. They should receive no more than nominal damages.”

[33] In **Anthony Henry v. Attorney General of Saint Lucia**¹⁴ the Privy Council made it clear that this is also applicable to determine the quantum of damages for breach of constitutional rights. A counterfactual analysis by its nature is inherently speculative. However, in this case it is undisputed that the Applicant was charged with a serious offence. Further at court and in the submissions made on his behalf, the Applicant was candid that he had been previously charged with other serious offences. Thus, it is very likely that even if he were brought before a Magistrate, he would have been remanded in custody during the relevant period. There is simply no guarantee that the Applicant would have been granted bail.

[34] In light of the counterfactual analysis set out above, the Court is satisfied that the Applicant has not established any material loss flowing from the unlawful detention beyond the infringement of the right itself. In the circumstances and applying the approach articulated in **Lumba**, the appropriate relief is an award of nominal

¹³ [2011] UKSC 12

¹⁴ [2023] UKPC 41

damages. Accordingly, the Applicant is awarded nominal damages of \$5000.00 for breach of section 5(1) of the Constitution.

Vindictory Damages

- [35] The court will now go on to consider whether an award of what is usually termed “vindictory damages” is necessary in this particular case. In **Attorney General v. Ramanoop**¹⁵ the Privy Council stated the purpose of such damages as follows:

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

- [36] The Respondents do not give any reason for not bringing the Applicant before a Magistrate in compliance with **section 239** of the **Magistrates Code of Procedure Act**. The affidavit of Helen De Silva on behalf of the Superintendent of Prisons simply notes that remand warrants were signed every eight (8) days during the relevant period. However, her affidavit notes it was only on 9th October 2024 that the Applicant was taken to court. However, as previously observed, the

¹⁵ (2005) 65 WIR 334

legislation requires that the Magistrate should actually observe the prisoner and not merely sign the remand warrant.

[37] The Applicant for his part notes that prior to the Covid-19 Pandemic a Magistrate would visit the prison to conduct remands. However, this practice was discontinued during the pandemic. He notes that despite the lifting of the state of emergency the practice has continued where a Magistrate will sign the remand warrants and send them to the prison. In the absence of an explanation by the Respondents, I accept the Applicant's version of events concerning how the practice arose.

[38] In the circumstances the court considers it appropriate to make a separate vindicatory award. The non-compliance with the Magistrates Code of Procedure Act was repeated across successive remand cycles, thereby undermining a core constitutional safeguard. Thus, confining the redress to the nominal sum previously awarded would risk trivialising the breach. At the same time, the evidence does not suggest bad faith on the part of the authorities, and the award is therefore calibrated to mark the seriousness of the failure without attributing any punitive element.

[39] In **Mark Smith and Andy Sharpe v. Attorney General**¹⁶ the authorities had breached section 239 of the Magistrates Code of Procedure in relation to the Claimants. In that case, the Claimants were not brought before a Magistrate for a period of more than five months. At paragraph 36 of the decision Justice Remy stated:

“While financial resources in many of our islands in the region may well prevent our prisons from being “adequate” and, while no one will ever compare a prison with a five-star hotel, it is totally unacceptable that persons detained are allowed to be victims of “procedural errors” or omissions, due to either the gross negligence, carelessness or sheer incompetence of those in authority.”

¹⁶ ANUHCV0521/2010 decision delivered 26th July, 2012 (unreported)

[40] Taking the above into consideration, Justice Remy made a vindictory award of \$5000.00. Although the period of detention under consideration is much shorter, a similar award is just and proportionate in the circumstances. Accordingly, the Applicant will be awarded \$5000.00 as vindictory damages.

Total Award

[41] In light of the foregoing, the total damages awarded to the Applicant are:

Head	Amount
Nominal damages	\$5,000.00
Vindictory damages	\$5,000.00
Total	\$10,000.00

Costs

[42] Costs follow the event. The Applicant is therefore entitled to costs to be assessed if not agreed within twenty-one (21) days of this order.

Order

[43] The court therefore orders as follows:

1. The Application for the issue of a Writ of Habeas Corpus is hereby dismissed.
2. It is declared that the Applicant's detention from 17th October 2024 to 3rd December 2024 was unlawful and in breach of section 5 of the Constitution of Antigua and Barbuda.
3. The Respondents shall pay the Applicant nominal damages of EC\$5,000.00 and vindictory damages of \$5000.00.
4. The Respondents shall pay the Applicant interest at a rate of 3% per annum from 3rd December 2024 until the date of judgment on the award of nominal damages only.
5. The Respondents shall pay post judgment interest on the total award of damages at the rate of 5% per annum from the date of judgment until payment.

6. In the event that the Applicant remains incarcerated at the date of payment, the damages awarded herein shall be paid into court and held to the Applicant's credit, to be released only upon the written directions of the Applicant addressed to the Registrar of the High Court or upon further order of the Court.
7. All other claims for relief are hereby dismissed with no order as to costs.
8. The Respondents shall pay the Applicant's costs of these proceedings, to be assessed if not agreed within twenty-one (21) days of this judgment.

Postscript

- [44] The court takes notice that an amendment¹⁷ to the Magistrates Code of Procedure Act was enacted in March 2025. This amendment adds a new section 239A to the Magistrates Code of Procedure Act which expressly provides for remand hearings to be held virtually. This amendment may assist in reducing the recurrence of issues of the kind raised in these proceedings.
- [45] The Court also takes the opportunity to apologize for the delayed delivery of this judgment which is regretted. I also take the opportunity to thank counsel for their very helpful submissions.

Rene Williams
High Court Judge

By The Court

Registrar

¹⁷ Act No. 2 of 2025

