



# In The Supreme Court of Bermuda

## CIVIL JURISDICTION

2015: No. 127

IN THE MATTER OF SECTION 15 OF THE BERMUDA CONSTITUTION ORDER 1968

AND IN THE MATTER OF THE PAROLE BOARD ACT 1979

AND IN THE MATTER OF THE BERMUDA IMMIGRATION AND PROTECTION ACT  
1956

AND IN MATTER OF THE LEGALITY OF THE LAW RELATING TO FOREIGN  
HUSBANDS OF BERMUDIAN WOMEN, THEIR DEPORTATION AND ASSOCIATED  
PROCESSES

AND IN THE MATTER OF THE REFUSAL OF THE PAROLE BOARD TO RELEASE  
THE PLAINTIFF ON LICENSE UPON REACHING, OR AFTER, HIS PAROLE DATE

BETWEEN:

LEIGHTON GRIFFITHS

Applicant

-v-

(1) THE ATTORNEY-GENERAL OF BERMUDA

(2) THE CHAIRMAN OF THE PAROLE BOARD

(3) THE MINISTER OF NATIONAL SECURITY

(4) THE MINISTER FOR HOME AFFAIRS

Respondents

**JUDGMENT SUMMARY ISSUED BY THE SUPREME COURT OF BERMUDA**

**This summary is provided to assist in understanding the Judgment of the Court. It does not form part of the Judgment. The Judgment itself is the only authoritative document. The full Judgment is available at [www.judiciary.gov.bm](http://www.judiciary.gov.bm)**

1. The Applicant, a Jamaican national, sought various forms of relief under an Originating Summons issued on February 26, 2015. The Summons was issued under section 15 of the Bermuda Constitution. The Summons was heard on July 10, 2015 and judgment was reserved. On August 12, 2015 the Supreme Court circulated its Judgment to the parties.
2. The Applicant married a Bermudian on April 7, 2001. He is also the father of a Bermudian daughter born in 2006. On July 12, 2007, he was convicted of offences under the Misuse of Drugs Act 1972 and sentenced to a term of 14 years imprisonment. This sentence was reduced to one of 12 years imprisonment by the Court of Appeal on March 12, 2008. He was not released on parole after serving one-third of his sentence or at any time thereafter, and has been threatened with deportation when he completes his sentence. It was alleged that he would have served two-thirds of his sentence on or about July 10, 2015.
3. The Applicant primarily alleged that his constitutional rights had been infringed because as a foreign national he was denied the opportunity to be released on license after serving 1/3<sup>rd</sup> of his sentence even though he was otherwise qualified for such early release. Bermudians and persons with an unrestricted right to reside and work in Bermuda are able to obtain release on license in Bermuda. Nationals originating from some countries (such as the United Kingdom) are also able to obtain an early release on license because their Governments have agreed to supervise them on their return to their countries of origin.
4. The Applicant's country of origin had not agreed to accept prisoners released on license. As a result, the Applicant's was required to remain in prison for twice as long as those prisoners who were able to obtain parole. The Chief Justice upheld the complaint that the differential treatment the Applicant had received in terms of the unavailability of any form of early release contravened his rights not to be discriminated against by any law in violation of section 12 of the Bermuda Constitution. Section 12 of the Bermuda Constitution most significantly provides as follows:

***“Protection from discrimination on the grounds of race, etc.***

*12 (1) Subject to the provisions of subsections (4), (5) and (8) of this section, no law shall make any provision which is discriminatory either of itself or in its effect.*

*(2) Subject to the provisions of subsections (6), (8) and (9) of this section, no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.*

*(3) In this section, the expression "discriminatory" means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, place of origin, political opinions, colour or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description..."*

5. However, the Supreme Court rejected the complaint about the constitutionality of the Applicant's automatic loss of his special status spouse rights on the grounds that this was merely a consequence of his conviction and the operation of section 27A of the Bermuda Immigration and Protection Act 1956. The Chief Justice held that the Minister for Home Affairs retained the statutory discretion to recommend to the Governor that the Applicant should be deported.
6. The issue of what relief the Applicant should be granted for breach of his constitutional rights was adjourned to a date to be fixed.