



[2023] JMSC CIV 211

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2016HCV00364

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| BETWEEN | CLAUDETTE ELLIS | CLAIMANT |
| AND | THE TRANSPORT AUTHORITY OF JAMAICA | DEFENDANT |

IN OPEN COURT

Mr. Travis Ebanks instructed by Kinghorn & Kinghorn for the Claimant

**Mrs. Kimberly Reynolds-McDermott instructed by McDermott Reynolds McDermott
for the Defendant**

Heard: April 19, July 14, and November 3, 2023

**Tort – Detinue – Motor vehicle documents seized by the servant and/ or agent of
the Transport Authority of Jamaica – Motor vehicle documents misplaced while in
the custody of the servants and/or agents of the Transport Authority of Jamaica –
Constitutional Claim - Vindictory Damages – Exemplary Damages**

WONG-SMALL, J (Ag.)

INTRODUCTION

[1] By way of a Claim Form and Particulars of Claim filed on January 29, 2016, the Claimant commenced a claim in detinue against the Defendant to recover the following:

- 1) Damages;
- 2) Loss of Earnings (\$28,000.00 per day for 140 days) in the sum of \$3,920,000.00;

- 3) Transportation Costs in the sum of \$10,000.00;
- 4) Attorney's costs in the sum of \$150,000.00;
- 5) Exemplary Damages;
- 6) Vindictory Damages;
- 7) Interest thereon for such rate and for such period as this Honourable Court deems just pursuant to the Law Reform (Miscellaneous Provisions) Act;
- 8) Costs; and
- 9) Such further and/or other relief as this Honourable Court deems just.

[2] At the close of the Claimant's case, Counsel for the Defendant made a no case submission. The basis for that submission was that the Claimant had failed to satisfy the elements necessary to establish the tort of detinue. Subsequent to this, the Court determined that there was a case to answer, and Counsel for the Defendant elected to rest on her submissions.

BACKGROUND

[3] The Claimant alleged that on or about January 19, 2015, members of the Transport Authority of Jamaica unlawfully, maliciously and/or without reasonable and/or probable cause seized the motor vehicle documents for her motor vehicle registered PF 6365. She further alleged that to date the said motor vehicle documents have not been returned to her.

[4] The Claimant averred that between January 19, 2015 to June 8, 2015, she made numerous requests to the Defendant for the return of her motor vehicle documents but up to the latter date, the servants of the Defendant failed to return her motor vehicle documents or provide her with documentary evidence that they had misplaced the aforementioned documents. Consequently, she was unable to operate her motor vehicle to earn an income.

- [5] In the Defence filed on March 23, 2016, Mr. Donald Foster, the then Managing Director of the Defendant, stated that the Defendant had no knowledge or record of any documents for motor vehicle registered PF 6365 being seized on January 19, 2015 or on any other occasion by any of the servants and/or agents of the Defendant.
- [6] Mr. Foster admitted that requests were made by the Claimant through her Attorneys-at-Law for the return of her motor vehicle documents. However, he denied the allegations that the Defendant failed to return the documents and/or admitted that it had misplaced the Claimant's motor vehicle documents.
- [7] Mr. Foster further stated that by way of a letter dated March 30, 2015, the Defendant wrote to the Claimant's then Attorneys-at-Law and denied the allegations that the Defendant seized and detained the said motor vehicle documents. Notwithstanding this denial, as a gesture of goodwill, the Defendant advised the Claimant's then Attorneys-at-Law that the Defendant would be willing to replace the Claimant's log book and reprint the Claimant's road licence. As a further gesture of goodwill, by way of a letter dated June 8, 2015, the Defendant wrote to the Tax Administration Jamaica and requested that the motor vehicle registration certificate for the motor vehicle in question be reissued.

THE ISSUES

- [8] The issues which arise for the court's determination are as follows:
1. Whether the Defendant had reasonable and probable cause to seize the Claimant's motor vehicle documents;
 2. Whether the Claimant has proven Detinue; and
 3. Whether the Claimant is entitled to constitutional redress
 4. Quantum of Damages, if any, to be awarded to the Claimant.

LAW AND ANALYSIS

[9] In this matter, the Claimant commenced a suit against the Defendant for damages for detinue; as such, the burden of proof lies with the Claimant to prove her case in keeping with the standard of proof required in civil claims which is on a balance of probabilities. In considering whether the Claimant has proven her case, the court must examine the evidence given by the Claimant as well as her witness Mr. Cardinal Warren.

Whether the Defendant had reasonable and probable cause to seize the Claimant's motor vehicle documents

[10] The evidence before the court indicates that the Claimant was not present at the time when the motor vehicle documents were purportedly seized by Mr. Julian Edwards, an Inspector who was at all material times employed to the Defendant. The Claimant's evidence in this regard is based on the information that she received from her driver, Mr. Cardinal Warren.

[11] Mr. Warren's evidence in this respect was that on January 19, 2015, he was travelling along Spanish Town Road in the vicinity of Denham Town in the parish of St. Andrew, when he was pulled over by persons employed to the Defendant. According to his evidence, he was informed that the conductor was not properly attired in his uniform; therefore, a summons would be issued to the conductor. The documents for the motor vehicle were then requested, and they were handed over to a Mr. Edwards.

[12] While the documents were being checked, he left the conductor and the documents with Mr. Edwards while he proceeded to the bus park to drop off the passengers who were inside of the bus. Following this, he stayed at the bus park to wait for the conductor to return. On the conductor's return, he was informed that Mr. Edwards required him to go back to collect the motor vehicle documents. However, when he returned to the location where the Defendant's employees had

been standing, he observed that they had already left. He then drove towards Spanish Town on the hope that he would see them, but he did not. He asserted that the next day he saw Mr. Edwards on duty and he was informed that the documents had been given to a Ms. Malcolm at the Defendant's office.

- [13] It is noted that Counsel for the Defendant chose not to cross-examine Mr. Warren. In addition, the Claimant's evidence in relation to the seizure of her motor vehicle documents was not challenged under cross-examination. Thus, in respect of this issue, the credibility of neither witness was tested. I therefore accept the evidence given by Mr. Warren regarding the circumstances surrounding the seizure of the motor vehicle documents and find that on the day in question, Mr. Julian Edwards, an employee of the Defendant, seized the Claimant's motor vehicle documents without reasonable cause.

Whether the Claimant has proven Detinue

- [14] In **George and Branday Ltd. v Lee** (1964) 7 WIR 275, Waddington JA at page 278 stated the principles in relation to the tort of detinue. The Learned Judge enunciated:

“The gist of the cause of action in detinue is the wrongful detention, and in order to establish that, it is necessary to prove a demand for the return of the property detained and a refusal, after a reasonable time, to comply with such demand. The authorities establish that a demand must be unconditional and specific...” (Emphasis mine).

- [15] In **Carol Campbell v The Transport Authority of Jamaica** [2016] JMSC Civ 148, McDonald J adopted the abovementioned dicta of Waddington JA in **George and Branday Ltd. v Lee** (supra). At paragraphs 24 to 26, the Learned Judge stated the elements that are necessary to constitute the tort of detinue as follows:

“[24] In other words, if the Claimant's motor vehicle was lawfully acquired, detention alone does not become a wrong in the absence of some manifestation of intent to keep it adversely or in defiance of the Claimant's rights

[25] It seems to me that to establish that the detention has become adverse and in defiance of her rights, the Claimant must prove that—

(i) she “unconditionally and specifically” demanded return of the motor vehicle (per *George and Brandy Ltd*); and

(ii) the Defendant refused to comply after a reasonable time.

[26] With regards to (ii) the Defendant’s refusal to comply with the Claimant’s request, there is authority to suggest that such a refusal must be categorical or unequivocal; if qualified for a reasonable and legitimate purpose, without expressing or implying an assertion of dominion inconsistent with the Claimant’s rights, it amounts to neither detinue nor conversion.” (Emphasis mine).

[16] In differentiating between the torts of conversion and detinue, Diplock LJ at page 317 of **General and Finance Facilities Ltd. v Cooks Car (Romford) Ltd** [1963] 2 All ER 314 postulated:

*“There are important distinctions between a cause of action in conversion and a cause of action in detinue. The former is a single wrongful act and the cause of action accrues at the date of the conversion; **the latter is a continuing cause of action which accrues at the date of the wrongful refusal to deliver up the goods and continues until delivery up of the goods or judgment in the action for detinue.**” (Emphasis mine)*

[17] I have found that the Claimant’s motor vehicle documents were unlawfully seized by the servant and/or agent of the Defendant. Nevertheless, that alone is not sufficient to prove the tort of detinue. In accordance with the dicta of Waddington JA in **George and Brandy Ltd. v Lee** (supra), the Claimant must prove that (i) she unconditionally and specifically demanded the return of the motor vehicle documents and (ii) the Defendant refused to comply after a reasonable time. Furthermore, the dicta of Diplock LJ in **General and Finance Facilities Ltd. v Cooks Car (Romford) Ltd** (supra) indicates that the cause of action of detinue accrues at the date of the wrongful refusal to deliver up the goods concerned.

Whether there was an unconditional and specific demand by the Claimant that her motor vehicle documents be returned to her.

- [18] The Claimant's evidence was that on the day after the seizure of the said documents, she and Mr. Warren attended the Defendant's office located at 119 Maxfield Avenue in the parish of Kingston and made checks for Ms. Malcolm. However, they did not see her. The Claimant asserted that on one visit to the office, she was informed that Ms. Malcolm was no longer employed to the Defendant, but she should leave her contact information and someone would contact her when the documents were located.
- [19] She further stated that as her visits to the Defendant's office had proven futile, she made a report at the Spanish Town Police Station. Thereafter, she attended the Defendant's office on other dates to no avail. Consequently, she retained the services of an Attorney-at-Law employed to Kinghorn and Kinghorn. Further, that a letter was sent to the Defendant from an Attorney employed to that firm.
- [20] It is noted that by way of a letter dated February 20, 2015 from Garth E. Lyttle & Co. to the Defendant, a formal demand was made for the return of the following documents: certificate of fitness, registration certificate, rural stage carriage licence and log book. In addition, by way of a letter dated March 13, 2015 from Ms. Annmarie Jordan, Legal Officer for the Defendant, to Garth E. Lyttle & Co., the then Attorneys-at-Law for the Claimant, she was advised that the matter was being investigated and a follow up letter would be sent on the completion of their investigation.
- [21] In light of the foregoing, it is undisputed that the Claimant made oral and written demands to the servants and/or agents of the Defendant as well as the Defendant for the return of her motor vehicle documents.

Whether there was a categorical or unequivocal refusal by the Defendant to comply with her demand

[22] Counsel for the Claimant submitted that the Claimant visited the Defendant's office on numerous occasions; however, her motor vehicle documents were not returned to her. Furthermore, there was an occasion when she visited the office, she was advised to leave her telephone number and someone would contact her. She complied but that did not happen. Counsel argued that the conduct of the Defendant's servants and/or agents amounted to the Defendant's refusal to return the Claimant's motor vehicle documents. To buttress that submission, reliance was placed on **Marlon Parker v Inspector R. M. Hepburn and the Transport Authority** [2022] JMSC Civ 160, which is being appealed.

[23] In that case, Wint-Blair J found, which I accept, that as it concerns the tort of detainment, a refusal did not have to take the form of a statement or document but that conduct could amount to a refusal. At paragraph 70 of the said judgment, the Learned Judge stated:

"... the claimant was sent from one place to another as the vehicle was not at any of the ones he was sent to. He was never sent to 107 Maxfield Avenue. This was a woeful dereliction of duty on the part of the agents of the second defendant. I find that this casual handling of the claimant's demand, sending him hither, thither and yon without regard for his time or the expense of doing so is tantamount to a denial of the return of the vehicle upon demand."

[24] The question then is whether the conduct of the Defendant in this matter could amount to a refusal. In examining the Claimant's evidence, it is noted that she stated that she made several trips to the Defendant's office. However, I find her evidence in relation to these trips to be largely vague. Be that as it may, I accept that she mentioned an occasion on which an employee of the Defendant asked for her contact information for someone to contact her after the documents were located. I also accept her evidence that on February 16, 2015 she and her driver attended the Defendant's office and spoke with a Ms. Fosset, a Supervisor

employed to the Defendant. The Claimant also stated that on February 17, 2015 she again visited the said office and spoke with Ms. Fosset and she was asked to wait while a search was conducted. Thereafter, she was informed that the documents could not be located.

[25] By virtue of a letter dated March 30, 2015, Mr. David Foster, the then Managing Director of the Defendant, informed the then Attorneys-at-Law for the Claimant of the findings of the investigation into the matter. In that letter, Mr. Foster stated that Inspector Edwards denied taking any motor vehicle documents from “Mr. Cornel Wallace or handing any documents to Inspector Denise Malcolm.” The letter also stated that after receipt of Counsel’s letter dated February 20, 2015, a thorough search was conducted, and the subject motor vehicle documents were not unearthed. The letter indicated that after the resignation of Inspector Malcolm, they were unable to make contact with her regarding the Claimant’s allegations. Nonetheless, the Defendant would be willing to replace the Claimant’s log book and reprint her road licence.

[26] Additionally, by way of a letter dated June 8, 2015 from the said Mr. Foster to Tax Administration Jamaica, the Defendant made a request to Tax Administration Jamaica for the reissuance of a motor vehicle registration certificate for the motor vehicle in question. The Defendant also advised Tax Administration Jamaica that it may renew the licence for the said motor vehicle.

[27] In **Clayton v Le Roy** [1911-13] AER Rep. 284, Fletcher Moulton LJ found that in detinue claims, case law indicates that time is allowed for an investigation to be conducted into the Claimant’s title to the property in question. Therefore, it is not unlawful to refuse to give up said property prior to conducting an investigation into the ownership of same.

[28] At page 286 of **Clayton v Le Roy** (supra), Fletcher Moulton LJ stated:

*“It is therefore very important that the owners of chattels should know what is sufficient in law to constitute a cause of action in detinue. **I think it would be mulcting the real owner of his rights if the law did not insist that***

there should be some deliberate act of withholding the chattel in order to afford a good cause of action.” (Emphasis mine).

[29] Having considered the above-cited authorities and assessed the evidence before this court, on a balance of probabilities, I accept the Claimant’s evidence and find that the documents were handed over to then Inspector Malcolm by Inspector Edwards. Thereafter, the documents were misplaced while in the custody of the servants and/or agents of the Defendant. I also find that the Defendant took time to conduct an investigation into the allegations made by the Claimant and thereafter, she was provided with a response.

[30] However, while I accept that the Claimant made more than one trip to the Defendant’s Maxfield Avenue office, it cannot be said that the conduct of the Defendant was in any way similar to that impugned in **Marlon Parker** (supra). In particular, in her evidence the Claimant agreed that the Defendant co-operated with her and assisted her.

[31] In addition, the Claimant has put forward no evidence to prove that any servant and/or agent of the Defendant refused to hand over her motor vehicle documents. The authorities stipulate that there must be a categorical or unequivocal refusal to comply with the Claimant’s demand for the return of her property. There must also be a deliberate act of withholding the Claimant’s property. Against that background, I do not find that misplacing the motor vehicle documents constitutes a refusal to comply with the Claimant’s demand to release same or a deliberate act of withholding them. Therefore, the Claimant has failed to prove the tort of detinue.

Whether the Claimant is entitled to constitutional redress.

[32] In further submissions dated April 20, 2023, Counsel for the Claimant indicated that it should be noted that in her Particulars of Claim, the Claimant also claimed Exemplary Damages on the ground that the actions of the members of the Transport Authority of Jamaica in seizing, detaining and losing the documents for her motor vehicle were oppressive, arbitrary or unconstitutional. In addition, a claim

was made for Vindictory Damages on the basis that the actions of the members of the Transport Authority of Jamaica deprived the Claimant of her property in breach of the Constitution of Jamaica.

- [33] It was argued that based on her pleadings and evidence it was established that the Claimant's constitutional rights were breached when the Transport Authority seized her documents and rendered her motor vehicle inoperable for the purpose it was licensed. Notwithstanding any findings of the Court on the No Case Submission, the claim for exemplary and vindictory damages remained and had not been abandoned by the Claimant.
- [34] In submissions filed in response on September 5, 2023 at the instructions of the Court, Counsel for the Defence dismissed the Claimant's argument as a last ditch attempt to clutch at straws in the face of the recognition that she had failed to prove her case in detinue. It was pointed out firstly that the Claimant seemed to be arguing that Exemplary Damages is a cause of action capable of being adjudicated on in the event that detinue fails. She cited the authority of **Atain Takitota v Attorney General and others** [2009] UKPC 11 in which it was stated that the award of exemplary damages was a common law head of damages, the object of which was to punish the Defendant for outrageous behaviour and deter him and others from repeating it. It followed from this that the tort or behaviour to be punished must have been proven on a balance of probabilities.
- [35] This was not an appropriate case for the award of exemplary damages as the Claimant had failed to prove that the Defendant had committed any tort in which there was outrageous behaviour which requires punishment and deterrence. In addition, the case did not fall within any of the three well known categories of cases set out by Lord Devlin in **Rookes v Barnard** [1964] 1 All ER 367 at 408.
- [36] As it relates to vindictory damages, it was noted that a distinction was to be made between a claim in which an award for vindictory damages was sought as a relief and a claim for constitutional redress under the Constitution. The former was a

type of award the purpose of which was to vindicate the right of the complainant to carry on his or her life, free from unjustified executive interference, mistreatment and oppression as stated by the Privy Council in **Mershon v Drexel Cartwright and the Attorney General of Bahamas** [2005] UKPC 38, while the latter was a specific cause of action arising under section 19 of the Constitution and brought under procedural rules set out in Rule 56.9 of the Civil Procedure Rules which could stand on its own.

- [37] It was argued that the Claimant could not properly maintain that she can still be awarded vindicatory damages where as in this case, she failed to successfully prove that the Defendant committed a tort and that the tortious conduct breached her constitutional rights. It was further pointed out that there was no material before the court to ground a finding that there was a breach of the Claimant's constitutional rights and that an award of vindicatory damages should be made. The most the Claimant has asserted is negligence in the handling of her documents and there was no such cause of action before the court.
- [38] There is a distinction between a claim in which an award for vindicatory damages was sought as a relief and a claim for constitutional redress under the Constitution. The question for the court was which was applicable to the instant case.
- [39] Upon examination of the Particulars of Claim filed January 29, 2016, it is stated at paragraph 8;

8. The Claimant claims Vindicatory Damages on the ground that by the action of the said members of the Transport Authority deprived the Claimant of her property in breach of the Constitution of Jamaica.

Having examined the pleadings, I find that there is a claim for constitutional redress which the Defendant expressly recognized and denied at paragraph 7 of the Defence filed on March 23, 2016.

[40] The procedure for seeking constitutional redress is set out in Rule 56.9(1) of the CPR. This rule requires the Claim to be by way of Fixed Date Claim Form and that it should identify whether relief is being sought under the Constitution. Further, Rule 56.9(2) and (3) respectively require that affidavit evidence must be filed by the Claimant and indicate what this affidavit should contain. Particularly, Rule 56.9(3)(c) requires the Claimant to state the constitutional provision she alleges has been, is being or is likely to be breached.

[41] It is clear that the Claimant in the instant case has not followed the procedural requirements but there is authority that this is not fatal to her claim. In **Dawn Satterswaite v Asset Recovery Agency and Terrence Allen v Asset Recovery Agency** [2021] JMCA 28, a consolidated appeal, the Court of Appeal gave guidance as to how claims which involve or call for a consideration of constitutional rights should be dealt with. At paragraphs 134 and 138, it was stated that:

[134] It seems to us that, when confronted with a claim that is not, on the face of it, one by way of originating summons seeking redress for breach of constitutional rights, but which involves or calls for a consideration of such rights, a judge of the Supreme Court is by no means constrained by the rules to take the straight-jacketed approach of refusing the application for reason that the correct originating document or procedure has not been used. Rather, these provisions bestow on such a judge a discretion to deal with matters that might not, strictly speaking, conform with procedural requirements, in such a way as to achieve the ends of the overriding objective of dealing with cases justly.

[138] In the result, based on the guidance given in the authorities, it is very important for a party who perceives that a breach of their constitutional rights has occurred, or that questions have arisen in relation to their constitutional rights, to decide how they wish to properly access the court, and to make such adjustments as are legally appropriate in the process through the courts. In any event, we share the view put forward by the Attorney General, that a court need not be constituted as a “Constitutional Court” and a claim need not come before the court, as an originating motion, for a judge of the Supreme Court to determine questions arising, which relate to a party’s constitutional rights, so far as is applicable and necessary, in cases where the main relief sought is not constitutional redress.

[42] In **Kurt Mitchell v Attorney General of Jamaica** [2023] JMSC Civ 110, Pettigrew-Collins J, considered the above stated dicta of the Court of Appeal and opined:

[27] Based on that pronouncement of the Court of Appeal, the trial judge has a discretion to entertain a claim for constitutional relief, where the main relief sought is not constitutional relief, although the format of the claim is not in keeping with the procedural rules regulating the bringing of a constitutional claim.

Against this background, I accept that the claimant has made a claim for constitutional relief which I have a discretion to consider and determine.

[43] Although the Claimant failed to indicate the specific provision of the Constitution that is alleged to have been breached, an allegation regarding the deprivation of property is implicitly connected to property rights. Therefore, section 15 of the **Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act (the Charter)** is relevant. That section guarantees the right to protection of property and further stipulates that no property of any description shall be compulsorily acquired unless some compensation is given for that property. However, this right is not absolute as section 13(2)(a) of the Charter indicates that while this right is guaranteed, there may be exceptions where it is demonstrably justified in a free and democratic society.

[44] In section 15(2), the Charter sets out the circumstances in which these exceptions would arise. These include where the taking of possession is as a penalty for breach of the law either under civil proceedings or after conviction for criminal offences, in the execution of judgments or orders of the court, or for as long as necessary for purposes of examination, investigation, trial or inquiry. They also include circumstances where there is an attempt to unlawfully move property into or outside of Jamaica.

[45] With respect to the rights conferred by section 15 of the Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act, Pettigrew-Collins J at

paragraph 199 of **Rohan Fisher v Assets Recovery Agency and the Attorney General of Jamaica** [2021] JMFC Full 04, stated:

“A citizen of Jamaica has the right to protection from being deprived of property by virtue of the fundamental rights and freedom guaranteed by the Constitution. That right, like all other constitutional rights is not absolute. Constitutional rights are guaranteed to the extent that those rights and freedoms do not prejudice the rights and freedoms of others. There may also be derogation from those rights to the extent that such derogation may be demonstrably justified in a free and democratic society. (See section 13(2) of the Constitution).”

[46] Counsel has submitted that there was no material before the court to ground a finding that there was a breach of the Claimant’s constitutional rights and that an award of vindicatory damages should be made. However, the Defendant has not challenged the evidence of the Claimant’s witness as it relates to the circumstances of the taking of the documents and therefore has not put forward that there was reasonable and probable cause for doing so or that in keeping with section 15(2) of the Charter, the seizure of the documents was demonstrably justified.

[47] I have determined that the Claimant’s motor vehicle documents were unlawfully seized by the servant and/or agent of the Defendant while said person was acting in the course of his duties and thereafter, said documents were misplaced while in the custody of the servants and/or agents of the Defendant. Further, the Defendant delayed in providing the Claimant with the necessary documentation of the loss of the documents which would have allowed her to have them replaced and resume the lawful operation of her public passenger vehicle. As a result, I find that the Defendant is liable for the breach of the Claimant’s right to protection of property rights under section 15 of the Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act and the Claimant is entitled to redress.

[48] In **Attorney-General v Siewchand Ramanoop** [2005] UKPC 15, the Privy Council considered section 14 of the Constitution of Trinidad and Tobago which is in substantially the same terms as section 19 of the Jamaican Constitution, in looking at the issue of whether an award of exemplary/vindictory damages could be made by the court as part of the redress to which the Appellant was entitled for breaches of constitutional rights. At paragraphs 17 to 19 of the judgment, the Privy Council 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 I rights and freedoms. This jurisdiction is an integral part of the protection chapter I 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 s 14 is discretionary and, moreover, the violation of the constitutional right will not always be co-terminous with the cause of action at law.*

***[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."

[49] In the circumstances of this case, I find that the Claimant is entitled to an award of compensation vindicating her infringed constitutional right and I also must consider whether there should be an additional award to reflect the considerations set out in **Ramanoop** (supra).

[50] In **Takitota v Attorney General and others** (supra), Lord Carswell at paragraphs 12, 13 and 15 of the judgment pronounced:

*"[12] The award of exemplary damages is a common law head of damages, the object of which is to punish the Defendant for outrageous behaviour and deter him and others from repeating it. One of the residual categories of behaviour in respect of which exemplary damages may properly be awarded is oppressive, arbitrary or unconstitutional action by the servants of the government, the ground relied upon by the Court of Appeal in the present case. It serves, as Lord Devlin said in **Rookes v Barnard** [1964] AC 1129 at 1223, [1964] 1 All ER 367, [1964] 2 WLR 269, to restrain such improper use of executive power. Both Lord Devlin in **Rookes v Barnard** and Lord Hailsham of St Marylebone LC in **Broome v Cassell &***

Co Ltd [1972] AC 1027 at 1081, [1972] 1 All ER 801, [1972] 2 WLR 645 emphasised the need for moderation in assessing exemplary damages. That principle has been followed in *The Bahamas* (see **Tynes v Barr** (1994) 45 WIR at 26), but in **Merson v Cartwright and the Attorney General** [2005] UKPC 38, [2006] 3 LRC 264 the Privy Council upheld an award of \$100,000 exemplary damages, which they regarded as high but within the permissible bracket.

[13] The award of damages for breach of constitutional rights has much the same object as the common law award of exemplary damages. The relevant provisions of the Bahamian Constitution are art 17 (inhuman or degrading treatment) and art 19 (deprivation of personal liberty). The basis of the jurisdiction to award such damages was set out in *Attorney General of Trinidad and Tobago v Ramanoop* [2005] UKPC 15...

[15] Their Lordships consider that it would not be appropriate to make an award both by way of exemplary damages and for breach of constitutional rights. When the vindicatory function of the latter head of damages has been discharged, with the element of deterrence that a substantial award carries with it, the purpose of exemplary damages has largely been achieved. To make a further award of exemplary damages, as the Appellant's counsel sought, would be to introduce duplication and contravene the prohibition contained in the proviso to art 28(1) of the Constitution. They are of the opinion that the sum of \$100,000 is justifiable on the facts of the case as an award of constitutional or vindicatory damages."

- [51] Having considered the dicta of Lord Carswell and applied it to the circumstances of this case, I find that an award under the head of vindicatory damages is sufficient to compensate the Claimant for the deprivation of her motor vehicle documents. I do not however find it appropriate to make a separate award for exemplary damages in the circumstances.

CONCLUSION

[52] It is hereby ordered as follows: -

Judgment in favour of the Claimant.

The Claimant has not proven her case in detinue.

There will be no award of exemplary damages.

The Claimant is awarded the sum of \$1,500,000.00 for the breach of her constitutional rights.

Costs to the Claimant to be agreed or taxed.