

NAICS

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE FULL COURT

SUIT NO. M 059 OF 1994

CORAM: THE HON. MR. JUSTICE RATTRAY, C.J. (AG.)
THE HON. MR. JUSTICE PANTON
THE HON. MR. JUSTICE REID

REGINA V. COMMISSIONER OF INLAND REVENUE
EX PARTE PERCIVAL THOMAS

IN THE MATTER OF AN APPLICATION FOR AN
ORDER OF MANADAMUS

B. Frankson for the applicant
Lennox Campbell and O'Neil Brown
for the respondent

Heard: December 6, 1994

PANTON, J.

At the conclusion of the hearing of this application for an order of mandamus, we dismissed it with costs to the respondent and promised to put in writing our reasons for so doing. This we now do.

The applicant sought an "Order of mandamus to compel the Commissioner of Inland Revenue to register motor vehicle registration 1990 260 SE Benz, chassis number WDB1260202A472261, engine number 01394122013302 in the name of the applicant."

In his affidavit filed in this Court, the applicant states that he is the owner of the motor vehicle referred to above and that it was stolen by one Caroline Warren who not only fraudulently caused her name to be entered as the registered owner but also subsequently fraudulently transferred it to Carland Investments Limited which in turn transferred title to Bryad Engineering Ltd.

On September 17, 1992, Caroline Warren pleaded guilty to the offence of larceny of the said motor vehicle, the particulars of the charge alleging that the car is the property of the applicant.

The Resident Magistrate, before whom the plea of guilty was entered, ordered that the motor vehicle which was in the custody of the police should be returned to the applicant. On the basis of this order, the applicant wrote to the Collector of Taxes, Kingston 5, on the 5th May, 1994, requesting the transfer

of the motor vehicle from Bryad Engineering Ltd. to the applicant. This request has not been granted.

The Resident Magistrate's order forms the basis of the application that is before this Court.

Before dealing with the effect of the Resident Magistrate's order, it is useful to set out some unchallenged facts which the applicant apparently did not see fit to bring to our attention but which seem to be relevant considering the nature of the complaint that is being made against the Commissioner of Inland Revenue. These details are set out in affidavits that were filed on behalf of the respondent.

In March, 1989, the applicant approached one Leyman Strachan, a chartered accountant, "with the interest of purchasing a Mercedes Benz motor vehicle". Mr. Strachan, through his relatives overseas, paid monies to Mercedes Benz Ltd., London, England, for the car to be shipped to the applicant. The latter experienced difficulties in obtaining the necessary import licence from the Trade Board in Jamaica. One Barrington Warren, the husband of Caroline (referred to earlier), came to the applicant's rescue. He had in his possession a licence in his name to import a similar car. That licence was apparently amended to facilitate the applicant. The car was duly imported in the name of Caroline Warren.

There was a money transaction between the Warrens and Strachan. According to Strachan, "an agreement of \$70,000 US was finalised between the Warrens and myself regarding the using of their licence on Mr. Thomas' behalf." Certainly, even if this agreement was not illegal, it would seem that the applicant would be tainted by its apparent uncleanness.

The relevant documents were handed over to the Warrens by Strachan on the instructions of the applicant. The vehicle arrived from the United Kingdom on the 14th December, 1989. Two months later, according to Strachan, Mrs. Warren informed him that "Customs was investigating the vehicle as they were of the opinion that it is stolen." In April, 1990, Strachan wrote to Mrs. Warren demanding the full amount of money "paid to her and for the vehicle." Mrs. Warren has repaid nothing.

The vehicle remained uncleared on the wharf up to the 20th August, 1992, when the Warrens approached the managing director of Carland Investments Ltd. and offered the car for sale. Over a period of four months, Carland paid to Mrs. Warren in excess of one million dollars in respect of the car, which was delivered on the instructions of the Commissioner of Customs to Mrs. Warren on the 11th March, 1993. Mrs. Warren then handed it over to Carland Investments Ltd.

It is our view that there are questions relating to the ownership of the vehicle to be determined. Indeed, Bryad Engineering Ltd has filed a suit in the Supreme Court against Carland Investments Ltd. in respect of title to the said vehicle. This Court ought not to anticipate the decision in that matter. Nor should the Commissioner of Inland Revenue.

As the matter now stands, the registered owner of the motor vehicle is Bryad Engineering Ltd. Before there can be a registration of the vehicle in the name of the applicant, there has to be a transfer to the applicant. Regulation 33 of the Road Traffic Regulations, 1938, provides for the surrender of the existing licence by the transferor, the signification by the transferee of his acceptance of the transfer, and the recording of the transfer by the Licensing Authority. There is a proviso to that regulation. It reads thus:

"Provided that where the registered owner of such motor vehicle has died or has left the island, or refuses or neglects to make such application to the Licensing Authority as required by this regulation, the Licensing Authority on proof of ownership and on being satisfied that the provisions of this regulation in so far as they relate to licence duties and the transfer fee have been complied with, may transfer the registration, issue a substitute registration book if the original is not available and re-licence the vehicle in the name of the new owner."

In the instant situation before us, where the ownership of the vehicle is in dispute and there is a pending Court action, it was clearly wise for the Licensing Authority to await the outcome of that action.

As mentioned earlier, the learned Resident Magistrate's order formed the basis of the applicant's request. There is no doubt that a Resident Magistrate has the authority to order restitution of goods upon the conviction of a person for larceny of such goods. Section 66(1) of the Larceny Act reads thus:

"If any person guilty of any such offence as is mentioned in this Act, in stealing, taking, obtaining, extorting, embezzling, converting, having in his possession, or disposing of, or in knowingly receiving, any property, is prosecuted to conviction by or on behalf of the owner of such property, the property shall be restored to the owner or his representative."

Subsection (2) gives the Court before whom the offender has been convicted, the power "to award from time to time writs of restitution for the said property or to order the restitution thereof in a summary manner."

These provisions indicate that the Resident Magistrate's power is conditional on there being evidence of ownership. In addition, it has to be remembered that the offence of larceny of which Mrs. Warren was convicted, she having pleaded guilty, is an offence against possession - not ownership. It follows that the complainant whose name appears in the particulars of offence in an indictment for larceny is not necessarily the owner.

In the instant case, the facts that were before the learned Resident Magistrate did not establish proof of ownership in Percival Thomas. It is indeed doubtful whether even possession was established in Percival Thomas. This latter consideration is, however, not a matter for debate or determination before us.

It is due to the foregoing that we had no hesitation in saying that the Commissioner of Inland Revenue, in refusing to register the motor vehicle in the name of the applicant, has not behaved in any manner that may be described as unjust, oppressive, or in breach of the rules of natural justice as claimed by the applicant.