[2023] JMSC Civ 162

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2011HCV04459

BETWEEN	**DARWIN WILLIAMS**	**CLAIMANT**
AND	**THE TRANSPORT AUTHORITY**	**1ST DEFENDANT**
AND	**THE ATTORNEY GENERAL OF JAMAICA**	**2ND DEFENDANT**

IN OPEN COURT

Mrs. Jacqueline Cummings instructed by Archer, Cummings & Co. appeared for the Claimant.

Mr. Dale Austin instructed by The Director of State Proceedings appeared for the 1st and 2nd Defendants.

Heard: 18th December 2015

Delivered: 27th October 2023 in Chambers via Video Conference with leave of the Parties

Tort – Malicious Prosecution – Wrongful Interference with Chattels/Goods – Detinue – Conversion – Whether motor vehicle was wrongfully detained – Whether there was reasonable and probable cause – The Transport Authority Act section 13; 13A; 15 and 16A – The Road Traffic Act sections 61(4A) and 61(4B)

L. PUSEY J

[1] This matter came for hearing on the 18th of December 2015. At the trial, the Court had embarked on a pilot project with audio recording equipment in which matters were tried without the usual note taking by the judge, as the Parties would rely on an audio recording system. Aspects of the project did not live up to expectations which contributed to the inordinate delay in the delivery of this judgment. Additional unforeseen circumstances created various challenges which further prevented the timely delivery of this judgment. The Court regrets this inordinate delay and

sincerely apologizes to the Parties for the delay in the delivery of this judgment. Further, the Court wishes to indicate that it had sufficient material to decide upon this matter.

BACKGROUND

[2] The Claimant, Mr. Darwin Williams, was at all material times the owner of a Nissan Station Wagon motor vehicle registered 1463 FC ("the vehicle"). Mr. Williams brings an action for malicious prosecution and wrongful detainment of the vehicle against the Defendants to recover general and special damages with interest thereon for loss of use of the vehicle.

[3] The Claim began by way of Claim Form and Particulars of Claim ("originating documents") which were filed on the 12th day of July 2011. The Claimant sought the following Orders on the basis that he was maliciously prosecuted and his vehicle wrongfully detained:

1. The Defendants forthwith deliver and/or return to the Claimant his 2002 Nissan station wagon motor vehicle registered 1463 FC.
2. The Defendants do pay to the Claimant damages for the wrongful detention of his said motor vehicle.
3. The Claimant do have damages for malicious prosecution.
4. Costs and Interest
5. Such further and/or other relief as this Honourable Court deems just.

The Claimant's Case

[4] The Claimant avers that on the 14th day of January 2010, while he was traversing the Folly Main Road in the parish of Portland in the vehicle he was stopped by an employee of the 1st Defendant and the vehicle was seized and brought to the pound in Norwich, Portland. The Claimant avers that this was done unlawfully and without reasonable and probable cause.

[5] Thereafter, the Claimant was prosecuted in the Portland Resident Magistrate Court (now referred to as Portland Parish Court) for not having the proper documentation to operate a public passenger vehicle ("PPV"). The case was ultimately dismissed for want of prosecution by Her Honour Miss T. Reid on the 19th day of November 2010.

[6] Prior to the case being dismissed, on or about the 18th day of June 2010, it was ordered by Her Honour Miss T. Reid that the Claimant's motor vehicle be returned to him ("the release order"). The Claimant alleges that he applied to have this done pursuant to the release order, but the Defendants refused, and/or neglected and/or failed to return his motor vehicle. Further, the Claimant alleges that subsequent requests were made for the motor vehicle to be returned to him, but to no avail.

[7] As a consequence of this, the Claimant alleges to have suffered the loss of use of his motor vehicle, expenses, and damage and as such he has brought a Claim against the Parties.

The Defendant's Case

[8] In their Defence filed out of time on the 4th day of January 2012 with the consent of the Claimant, the Defendants, perhaps unsurprisingly, denied that the vehicle was wrongfully seized as they had reasonable and probable cause to seize it. Further, the Defendants aver that upon inspection of the vehicle documents, it was observed that the Claimant did not have the requisite license and insurance to operate a PPV.

[9] In fact, the Defendants aver that the employee of the 1st Defendant to whom the Claimant refers, a Travel Inspector, was on special operations along the Folly Main Road in the parish of Portland. It is alleged that the Claimant was observed picking up and letting off passengers who paid the Claimant for same. Further, that one of the alleged passengers confessed that she was a paying passenger in the vehicle.

[10] The Defendants further contend that the vehicle was brought to the pound in Norwich, Portland for safe keeping and that the Claimant did not seek to retrieve the vehicle until the 7th day of February 2011 when he first visited the 1st Defendant. The Defendants indicated that the Claimant was unable to retrieve the vehicle because he was unable to pay the storage fees pursuant to the release order.

[11] Subsequent to his visit, it is averred that the 1st Defendant contacted the Claimant and his Attorney-at-Law on multiple occasions via telephone and electronic mail, to advise the Claimant to retrieve the vehicle and he had not done so (up to the date of the filing of the Defence).

Changes in the Proceedings

[12] At the Case Management Conference ("CMC") on the 30th day of April 2014, the 2nd Defendant made an Application by way of Notice of Application for Court Orders filed April 30, 2014, to have the Claimant's case struck out against them. The 2nd Defendant sought the following orders:

1. That the Claim herein be struck out against the 2nd Defendant.
2. Costs to be costs in the Claim.
3. That the time for the Application be abridged.
4. Further or any other relief as may be deemed fit.

[13] The grounds on which the orders were sought are:

1. The statement of case of the Claimant fails to disclose a cause of action or reasonable grounds for bring a claim against the 2nd Defendant.
2. The Claimant's response to the 2nd Defendant's request for further information alleges that a Transport Inspector was acting as an agent and/or servant of the Crown. However, Transport Inspectors are not Crown Servants pursuant to the Crown Proceedings Act but rather are employee of the Transport Authority, a body corporate.

3. That Rule 26.3 of the said Supreme Court of Jamaica Civil Procedure Rules, 2002 gives this Honourable Court the discretion to strike out a party's statement of case.
4. That the granting of this Application is in fulfilment of the Overriding Objective, Rule 1.1 of the Supreme Court of Jamaica Civil Procedure Rules, 2002.

[14] The Application was granted in terms of orders 1 and 3 sought in the Notice of Application for Court Orders by Master Mrs. Bertram-Linton (Ag.), as she then was. Therefore, the 2nd Defendants are no longer parties to the substantive claim.

[15] Further, it was gleaned, upon perusal of the witness statement of the Claimant filed on the 13th day of July 2015 and the witness statement of Miss Arlene Smith filed on November 26, 2015, that subsequent to the filing of this Claim and prior to the trial, the Claimant had retrieved the vehicle in a state of disrepair sometime in 2012 from the Tower Isle Transport Authority branch. Therefore, the Court concludes that the 1st Order being sought in the originating documents is no longer relevant.

THE SUBMISSIONS

[16] Counsel in the matter made oral submissions on the liability of the Parties and on the quantum of damages to be awarded, if any, which the Court has duly considered in delivering this judgment. Their submissions will only be referred to as is necessary to explain the position of the Court on a particular issue.

ISSUES

[17] The substantive issues which ought to be determined in this matter are as follows:

(a) Whether the Claimant has established the elements of malicious prosecution to make out a case against the 1st Defendant; and

(b) Whether the Claimant has established the elements of conversion and/or detinue to make out a case against the 1st Defendant.

LAW AND ANALYSIS

Issue 1: ***Whether the Claimant has established the elements of malicious prosecution to make out a case against the 1st Defendant***

[18] The tort of malicious prosecution is committed where a defendant, in this case the agent of the 1st Defendant, commenced criminal proceedings against the Claimant, maliciously, and without reasonable and probable cause, and the case is determined in the Claimant's favour. The Claimant, however, must first prove that there was damage which was as a result of the malicious prosecution.

Proof of Damage

[19] In order for the Claimant to ground his claim for malicious prosecution, he must first establish that there was damage either to his reputation (that is, his fame or character), person or property (see: **Savile v Roberts** [1698] 1 Ld. Raym. 374 and **Berry v British Transport Commission** [1962] 1 QB 306). The Claimant need not prove damage to all three. Deckwerts LJ added, in **Berry v British Transport Commission** (supra), that proof of the expenses incurred by a Claimant to defend the charges against them is also sufficient to support an action for malicious prosecution.

[20] In the matter at bar, the Claimant has asserted that he incurred travelling expenses to appear in Court to defend the charges laid against him. Mr. Williams asserted that he paid Three Thousand Dollars ($3,000) per round trip on about four (4) occasions. The Claimant has failed to provide documentary evidence of this, but the Court understands that not in all circumstances receipts will be provided to prove travel expenses, especially in Jamaica.

[21] Nonetheless, the Court is satisfied that the Claimant did travel to Court on the said occasions to defend the charges against him and that the cost of the travelling is reasonable in the circumstances. Therefore, the Claimant has, on a balance of probabilities, proved that he incurred costs in relation to defending the Claim. The Court need not go further, to determine whether there was damage to the

Claimant's person, property or reputation (see: **Berry v British Transport Commission** (supra)).

Ingredients of the Tort of Malicious Prosecution

[22] Subsequent on proving that he suffered damage, the Claimant must now establish that the ingredients for the tort of malicious prosecutions are settled in this matter. Wooding CJ in the case of **Willis v Voisin** [1963] 6 WIR 50 indicates that the Claimant must prove that –

(a) the law was set in motion against him on a charge of a criminal offence;

(b) he was acquitted of the charge or that it was otherwise determined in his favour; and

(c) in setting the law in motion, the employee 1st Defendant did so without reasonable and probable cause (or that he was actuated by malice).

The Claimant must therefore prove that all three ingredients exist for his claim to be successful. The absence of any one ingredient would therefore mean that his case for malicious prosecution fails.

Reasonable and Probable Cause to Prosecute | Prosecution Actuated by Malice

[23] There is no dispute on the account of the Parties or on the evidence that it was the employee of the 1st Defendant who set the law in motion against the Claimant. Further, the Parties have not disputed that the Claimant was acquitted of the charge(s). The Parties' dispute therefore surrounds the third ingredient of the tort, that is that there was no reasonable or probable cause to prosecute the Claimant or that the prosecution was actuated by malice. Note the use of the word "or" which indicates that these are not conjunctive, the Claimant need only prove that one or the other existed to satisfy the third ingredient.

[24] However, it is unlikely that upon a conclusion that there is reasonable and probable cause to prosecute, that there can also be a simultaneous conclusion that the Defendant acted maliciously to prosecute or vice versa. Therefore, where the

Court concludes that there was reasonable and probable cause to prosecute it will arguably neutralise the existence of malice in the circumstances as the latter is contingent on the former. Hence, the two (2) appear intimate in most occurrences of malicious prosecution (see: **Marcia Ellington v The Attorney General** [2012] JMSC Civ 82).

[25] The House of Lords in **Herniman v Smith** [1938] AC 305 supported the pronouncement of Hawkins J's definition of reasonable and probable cause in **Hicks v Faulkner** [1878] 8Q BD 167. Hawkins J proclaimed at page 171 –

> *"…an honest belief in the guilt of the accused based upon a full conviction, founded upon reasonable grounds, of the existence of a state of circumstances, which, assuming them to be true, would reasonably lead any ordinarily prudent and cautious man, placed in the position of the accuser, to the conclusion that the person charged was probably guilty of the crime imputed."*

[26] Therefore, in order to find that there is reasonable and probable cause, the accuser must be aware of the existence of a state of circumstances which created an honest belief in the guilt of the accused and the crimes he is charged for (see: **Hicks v Faulkner** (supra) page 173). Further, the accuser's awareness of the circumstances may be the result of either his own perception or information received (see: **Hicks v Faulkner** (supra) page 173). The honest belief in the guilt of the accuser must be looked at in regards to reasonableness of the ordinary, prudent, and cautious man.

[27] The Claimant's evidence before the Court is that on the 14th day of January 2010, at the material time when he was stopped by the employee of the 1st Defendant on Folly Main Road, Portland, he was in the company of his girlfriend and an old lady who he looked after, with produce from his farm in the vehicle. He denies ever having any paying passengers in his motor vehicle.

[28] The 1st Defendant's evidence is that, Route Inspectors, employees of the 1st Defendant, was on operation in the environs of Folly Main Road on the 14th day of January 2010. Miss Francian Clarke, who was a Route Inspector present on the said day, indicated that she had unobstructed view of the Claimant's motor vehicle

and saw him pick up an adult male and female student passenger at Titchfield High School who entered the left rear of the vehicle. Miss Clarke further alleges to have seen the Claimant pick up another female adult passenger who was dressed in a blue blouse and blue skirt. Miss Clarke indicated that she saw when the passengers paid the Claimant and when he let them off at their respective stops.

[29] Miss Clarke indicates that it was after observing all of this, that the Claimant was stopped, informed of the observations, cautioned and his vehicle was seized. Further, Miss Clarke indicated that the student passenger and male passenger had revealed their identities and indicated that they had paid the Claimant as a taxi driver. Further, upon inspection of his documents, it was observed that the Claimant did not have the authority to operate a PPV.

[30] What is clear from both Parties' evidence is that the Claimant did not have the required license to operate a PPV. However, the Parties provide substantially different accounts for what happened on the date when the Claimant's motor vehicle was seized. This means therefore, that the determination of whether there was reasonable and probable cause will be dependent on the credibility of the witnesses.

[31] It is observed that the Claimant did not bring neither his girlfriend nor the old lady who was accompanying him on the date in question to give evidence on his behalf. He was his only witness despite being able to have two (2) witnesses for his case, pursuant to the CMC Orders made on 26th day of May 2014. This alone does not mean that the Claimant is lying or incapable of telling the truth. However, having another witness as to fact would have, in the Court's eyes, greatly assisted his assertions in this regard.

[32] Having examined the evidence of the Claimant and recalling his demeanour at trial, the Court forms the view that the Claimant was not being truthful about who was accompanying him in the vehicle on the date in question. Therefore, the Court

is of the view, that the Claimant has failed to prove on balance of probabilities that there was not a reasonable and probable to prosecute.

[33] Additionally, having examined the evidence of Miss Clarke and her demeanour at trial, the Court is of the view that the witness is being truthful, confident and resolute in her account of what happened on the 14th day of January 2010. Further, it is not lost on the Court that persons frequently operate their personal vehicles as PPVs which makes "robot taxis" a prevalent incidence in Jamaican society. The Court therefore finds, that the reasonable man observing what Miss Clarke had would have perceived the Claimant to be operating a PPV without any license to do so and have an honest belief that the Claimant was guilty of such a crime.

[34] Consequently, the employees of the 1st Defendant had reasonable and probable cause to prosecute the Claimant and the subsequent dismissal of the case for want of prosecution does not weaken the argument that on an objective assessment of the observations of Miss Clarke, there was a probability of guilt.

[35] This finding that there is a reasonable and probable cause extinguishes any Claim that the prosecution was actuated by malice. Further, the Claimant has not provided any evidence (or sufficient evidence) upon which the Court could make a determination that the prosecution was actuated by malice. Therefore, in the absence of any evidence to the contrary, the Claimant's case for malicious prosecution must fail.

Issue 2: ***Whether the Claimant has established the elements for conversions and/or detinue to make out a case against the 1st Defendant***

[36] The Claimant indicated in his Claim form that he claims damages for the wrongful detention of his motor vehicle. Though the Claimant did not explicitly state or use the words "conversion" or "detinue" in his Claim Form or its Particulars, the Court finds implicit in his arguments and pleadings that such relief is being sought.

Legal Background – Conversion

[37] The Court makes reference to the case of **The Commissioner of Police and The Attorney General v Vassell Lowe** [2012] JMCA Civ 55, where McIntosh JA, in giving the leading judgment of the Court of Appeal, defined conversion and comprehensively set out the law in relation to same. The portions of the Court of Appeal's judgment deemed to be relevant and important to this issue are set out below –

> *"[35] … The learned judge had placed reliance on the definition of conversion in the 21st edition of* ***Salmon & Heuston's Law of Torts****…*
>
> > *"A conversion is an act or complex series of acts of willful interference, without lawful justification, with any chattel in a manner inconsistent with the right of another, whereby that other is deprived of the use and possession of it."*
>
> *[36] In addressing the elements required to constitute conversion the learned authors provide…* ***that there are three distinct ways by which one man may deprive another of his property and so be guilty of a conversion, namely: "(1) by wrongly taking it; (2) by wrongly detaining it and (3) by wrongly disposing of it****". Historically, the authors state, the term conversion was originally limited to the third mode as merely to take another's goods, however wrongful, was not to convert them and merely to detain them in defiance of the owner's title was not to convert them. However, in its modern sense, the tort includes instances of all three modes and not of one mode only.* ***The authors point out that two elements combine to constitute willful interference: (1) a dealing with the chattel in a manner inconsistent with the right of the person entitled to it and (2) an intention in so doing to deny that person's right or to assert a right which is in fact inconsistent with such right*** *(see* ***Caxton Publishing Co v Sutherland Publishing Co*** *[1939] AC 178, 189 and* ***Penfolds Wines Pty Ltd v Elliott*** *(1946) 74 CLR 204, 229)… (emphasis mine)*
>
> *[37]* ***The courts have determined that in the absence of willful and wrongful interference there is no conversion even if by the negligence of the defendant the chattel is lost or destroyed*** *(see* ***Ashby v Tolhurst*** *[1937] 2 KB 242). Further, the authorities show that every person is guilty of a conversion who without lawful justification takes a chattel out of the possession of anyone else with the intention of exercising a permanent or temporary dominion over it because the owner is entitled to the use of it at all times (see* ***Fouldes v Willoughby****)… a mere taking unaccompanied by an intention to exercise dominion is no conversion. Further, the detention of a chattel amounts to conversion only when it is adverse to the owner or other person entitled to possession – that is, the defendant must have shown an intention to keep the thing in defiance of the owner or person entitled to possession. The usual way of proving that a detention is adverse within the meaning of this rule is to show that the party entitled demanded the delivery of the chattel and that the defendant refused or neglected to comply with the demand… (emphasis mine)*
>
> *…*

> *[39] … it is evident that the key to the establishment of the tort is wrongful interference or unjustifiable interference with the chattel so as to question or deny the owner's title to it (see **Kuwait Airways v Iraqi Airways** [2002] 2 AC 883)…*

Legal Background – Detinue

[38] The **Halsbury's Laws of England**, 3rd Edition Volume 38 page 64, defines detinue in the following way –

> *"Where a person has possession of goods of another and a valid demand is made for them by the owner, and an unqualified, unjustifiable refusal to deliver them up entitles the owner to sue in detinue…"*

[39] Waddington JA in **George and Branday Ltd. v Lee** [1964] 7 WIR 275 concluded that the following elements are required to establish the tort of detinue –

The Claimant must prove that:

(a) there was an *"unconditionally and specifically*" demanded return of the motor vehicle; and

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

[40] The above authorities therefore indicate that the Defendant's refusal to comply with the Claimant's request for their property must be categorical or unequivocal. However, if the refusal is qualified by a reasonable and valid purpose, in the absence of an explicit or implicit proclamation of ownership inconsistent with the Claimant's rights, the refusal to comply will amount to neither detinue nor conversion.

[41] The return of the vehicle in this matter does not mean that the action for detinue can no longer be maintained. Detinue is a continuous cause of action which accrues at the date of the wrongful refusal to deliver up the goods and continue until the goods are delivered up or judgment is obtained (see: **Rosenthal v Alderton and Sons Limited** [1946] 1 KB 374 and **The Attorney General and The Transport Authority v Aston Bure**y [2011] JMCA Civ 6). Therefore, the law is clear that an award hereunder should be made for the entire period of detention unless there are circumstances justifying a reduction.

[42] The distinction between conversion and detinue therefore, is that the former is a single wrongful act whose cause of action is manifested at the date of the conversion. Whereas, the latter is a continuous act whose cause of action accrues at the date of the wrongful refusal until the chattel is returned or there is judgment in an action for detinue.

Statutory Framework

[43] The **Transport Authority Act** ("TAA") and the **Road Traffic Act** ('RTA") gives the Transport Authority the power to seize motor vehicles. Section 13(1) of the TAA confers upon an Inspector employed at the Transport Authority the power to:

(a) stop and inspect any PPV to ensure that there is compliance with the terms of the terms of the Road Licence and relevant laws;

(b) **stop and inspect any vehicle which they reasonably suspected to be operating as a PPV contrary to the relevant laws**;

(c) monitor the frequency of PPVs on any route;

(d) inspect conductors and drivers of PPVs and licences held by them; and

(e) carry out such powers or duties in relation to the relevant laws as may be prescribed.

[44] Section 13(2)(a)(v) of the TAA indicates that an Inspector can seize any vehicle which is being operated and/or used as a PPV without having the requisite licences for such operation and/or use. Additionally, section 13(2)(b) gives the Inspector the power to take or cause to be taken to the nearest police station or to the nearest convenient place authorized by the police pursuant to subsection 3(a) any vehicle which is seized pursuant to section 13(2).

[45] Section 13(3) of the TAA indicates that –

> *"(3) Where under this section a vehicle is seized –*
>
> *(a) the vehicle may be stored by the police or the Authority in such place and in such circumstances as the police or the Authority consider appropriate;*

(b) storage fees shall become payable to such persons at such rates and in accordance with such conditions as may be prescribed under the Road Traffic Act; and

(c) if the vehicle remains in the possession of the police or the Authority for more than six months the vehicle may, subject to such conditions as may be prescribed under the Road Traffic Act, be sold by the police or the Authority to recover the cost of storage."

[46] Section 16A of the TAA provides the conditions under which a seized motor vehicle may be released. It states –

16A.--(1) Where a vehicle is seized in the circumstances specified in section 13 (2) (a) (i), (ii), (iii) or (iv), the Court may, on an application made by its owner, release the vehicle to the owner, or operator before the matter is determined if the owner has –

(a) paid to the Authority fees for the removal and storage of the vehicle; and
(b) submitted to the Court, a bond, with such sureties as the Court may determine, in an amount not less than the minimum fine prescribed in respect of an offence under section 61 (5) of the Road Traffic Act.

(2) Where the owner, driver or operator of a vehicle referred to in section 13 (2) (a) (i) to (iv) who is charged pursuant to section 61(5) of the Road Traffic Act –

(a) is acquitted of the charge, the amount paid under the bond and the fees paid associated with removal and storage shall be refunded to the owner; or

(b) is convicted of the charge and the amount paid under the bond is greater than the amount of the fine imposed, a refund of the difference shall be made to the owner."

[47] Section 61(4A) of the RTA states –

"Where a constable or an Inspector designated under section 12(1) of the Transport Authority Act has reasonable cause to believe that a person has used or caused or permitted a vehicle to be used in contravention of this sections, the constable or Inspector may seize the vehicle."

[48] Section 61(4B) of the RTA states –

"Subject to subsection 7(b), a vehicle shall be kept in the possession of the Police or the Transport Authority, as the case may be, until the licence required under this Part is obtained and produced to the Police or the Transport Authority."

[49] The statutory provisions clearly establish that a Transport Authority Inspector has the power to stop and inspect a motor vehicle they reasonably suspect to be operating as a PPV, and to seize said motor vehicle if it does not have the requisite license to be operating as a PPV.

[50] In order for the Court to conclude that the vehicle was unlawfully seized, the Claimant must prove, on a balance of probability, that there was no reasonable cause to take the vehicle. This should be distinguished from instances where the seizure amounted to no more than a suspension of the owner's rights (see: **The Commission of Police and The Attorney General v Vassell Lowe** (supra) paragraph [40]).

Reasonable and Probable Cause to Seize Motor Vehicle

[51] The Court has already determined that the 1st Defendant had reasonable and probable cause to prosecute. The Court is of the view, that a reasonable and probable cause to prosecute is evidence that there was a reasonable and probable cause to seize the vehicle in the circumstances pursuant to the TAA and the RTA. This does not mean however, that the two (2) are synonymous. However, the Court believes that the reasonable and probable cause to prosecute empowered the Inspectors (agents/employees of the 1st Defendant) to Act. Subsequently, the Court relies on the evidence and analysis of same at paragraphs [27] to [35] herein and concludes, on this point, that the Inspectors had reasonable and probable cause to seize the motor vehicle pursuant to their statutory duties under the RTA and TAA.

Has the Claimant Proven Detinue?

[52] The Court does not consider its finding that the vehicle was lawfully seized to be an automatic bar to the Claimant seeking damages for detinue. An action for detinue can be maintained if it is proven on a balance of probabilities that the 1st Defendant has lawfully seized the motor vehicle, but has manifested an intention to keep it in defiance of the Claimant's rights.

[53] The crux of an action for detinue is that there is wrongful detention of the motor vehicle which is proven by showing that there was (i) a demand for the return of the motor vehicle and (ii) that there was a refusal, after a reasonable time, to comply with the demand. These are conjunctive and the Claimant must prove that

both existed in order to be successful in his Claim for detinue. The absence of either one means that the Claim for detinue must fail.

[54] The law in relation to detinue indicates that the demand should be unconditional and specific. Further, if the seizure is lawful the Claimant should prove that the detention is adverse to and in defiance of his rights. Additionally, the Claimant must also prove that the refusal was categorical and unequivocal. If the refusal is qualified and for a legitimate purpose and there is no evidence that the detention is adverse to and in defiance of the Claimant's rights then it follows that an action for detinue (and in extension conversion) cannot be maintained.

Specific and Unconditional Demand for the Return of the Vehicle

[55] The evidence of Mr. Williams suggests that several demands were made for the return of the vehicle. The Claimant made an Application at the Parish Court for the release of the vehicle on the 18th day of June 2010. The Application was granted, however, the fees were not waived because of the substantive matter and as such the Claimant's evidence suggested that there was not a request to collect the vehicle on or around that time.

[56] The first demand made for the vehicle, according to Mr. Williams, was shortly after the 19th day of November 2010, when the matter was dismissed at the Parish Court for want of prosecution and he received a letter indicating same from the Parish Court ("exhibit 3"). The contents of that letter are as follows –

"…

TO WHOM IT MAY CONCERN

Re: 373-4/10: Regina vs. Darwin Williams for No Road Licence and No Insurance coverage

Please be advised that on the 19th day of November, 2010, the above mentioned matter came before the Resident Magistrates' Court for the parish of Portland held at Port Antonio.

On the said date, Her Hon. Ms. T Reid dismissed the said matter for want of prosecution.

Please be guided accordingly.

…"

[57] Mr. Williams noted that he visited the 1st Defendant and made the request by showing them exhibit 3. He noted that on this occasion, the 1st Defendant refused to release the vehicle unless the relevant fees were paid up. Mr. Williams noted that he tried several times after that to have the vehicle released, but to no avail as the 1st Defendant insisted that he pay the relevant fees. It was Mr. Williams' argument that since the case was determined in his favour, all the fees were to be waived.

[58] Further, Mr. Williams' Attorney-at-Law wrote to the 1st Defendant demanding the release of his vehicle. This letter is dated the 1st day of March 2011 and was admitted into evidence as exhibit 9. The relevant portions of this letter are as follows –

"…
Re: Return of Seized Motor Vehicle Registered 1463 FC

We act for Mr. Darwin Williams.

… He was given a summons to attend the Port Antonio Resident Magistrate's Court which he did on numerous occasions until the 19th day of November 2010 when his matter was dismissed for want of prosecution…

He then went to the pound at Norwich with a letter from the Clerk of the Court stating this and they have failed and/or refused and/or neglected to return his said motor vehicle to him. They have insisted that he pay for storage and wrecker fees before he can receive his vehicle.

As a consequence, we write to demand the return of our client's motor vehicle from your department as with the court case being resolved in our client's favour he is entitled to receive his motor vehicle from you without any charge or fee. In this regard we would appreciate if you would instruct your counterparts in the parish of Portland to return our client's motor vehicle to him without further delay.

…"

[59] This letter was made and sent approximately four (4) months after the initial demand made by the Claimant. The Court accepts that there is evidence that there were at least two (2) unequivocal and clear demand for the vehicle to be returned to Mr. Williams. Having determined this, the Court must now decide if the refusal to deliver up the vehicle was categorical and/or unequivocal.

Categorical and/or Unequivocal Refusal to Comply with Demand

[60] It is undisputed, that the vehicle was eventually released to the Claimant sometime in 2012, approximately one and a half (1½) years after the case was dismissed against Mr. Williams and after his initial demand to have the vehicle returned to him.

[61] This eventual release, does not extinguish the cause of action for detinue as the Court has accepted the Claimant's evidence that months prior to this release he had made specific and unconditional demands for the release of the vehicle. The Court now considers whether these demands were categorically and/or unequivocally refused by the 1st Defendant.

[62] Neither Party has disputed that the 1st Defendant has refused to release the vehicle to the Claimant after demands were made prior to the date of exhibit 9. Both Parties have accepted that the refusal was because of the Claimant's failure to pay the relevant fees. There is no evidence, on either Party's case, that after exhibit 9 was sent, there was any refusal by the 1st Defendant or any further demand sent by the Claimant or on his behalf.

[63] In relation to the refusal, the Court examines the evidence of Miss Arlene Smith. Miss Smith noted that the first request by the Claimant for the release of his motor vehicle was on or about the 7th day of February 2011. Miss Smith indicates that the Claimant was told that the vehicle would be returned to him after he paid the relevant fees in accordance with the Court Order of Her Honour Miss T. Reid dated the 18th of June 2010. Miss Smith indicated, that Mr. Williams left the vehicle at the pound as he was unable to pay the relevant fees.

[64] Miss Smith noted, that it was not until the 10th day of March 2011 that her attention was brought to exhibit 9 with a letter dated the 2nd day of February 2011 from the Portland Parish Court, admitted into evidence as exhibit 7. The relevant portions of exhibit 7 reads as follows –

"…

Re: Release of Darwin Williams's Blue 2002 Nissan Sunny Station Wagon Car bearing Registration Number 1463 from your Pound.

…

On the 18th day of June 2010, Mr. Williams applied to the Resident Magistrate's Court, Portland for the release of the said vehicle. On the said day, his application was granted as prayed by Her Honour, Ms. T. Reid. However, Her Honour ordered that his fees were not waived.

On the 19th day of November 2010, his charges… were dismissed by Her Honour, Ms. T. Reid for want of prosecution.

To date, Mr. Williams is yet to collect the said vehicle.

Please be informed that he is expected to pay your fees up to the 18th day of June 2010. However, since his charges were dismissed for want of prosecution there is a strong possibility that your office may be sued by him for the recovery of those fees.

…"

[65] Miss Smith indicated that this was the first time that the 1st Defendant received formal notification or any notification from the Parish Court that the charges against the Claimant were dismissed for want of prosecution. It was indicated by Miss Smith, that she immediately contacted the Claimant via telephone to advise him that his vehicle will be released without the payment of the relevant fees. Miss Smith noted that the Claimant still had not collected the vehicle and further communication was had with the Claimant and with his Attorney-at-Law on several occasions for the retrieval of the vehicle, but same still was not done.

[66] Miss Smith further noted that on the 28th day of November 2011, she contacted the Claimant's Attorney-at-Law with an aim of having her advising the Claimant that he could retrieve the vehicle. Nonetheless, the Claimant failed to do so and an email was subsequently sent on the 2nd day of December 2011 to the Claimant's Attorney-at-Law regarding their conversation on the 28th day of November 2011.

[67] Miss Smith noted that the Claimant finally collected the vehicle on or about August 20, 2012. She indicated that she signed the Release Form No. 038339 on the said date and the Claimant signed and dated the Transport Authority Vehicle Checklist.

[68] It is important to note, however, that the Claimant indicated that the 28th day of November 2011 was the first time he was informed that he could retrieve the vehicle form the 1st Defendant without paying the relevant fees. Therefore, he implied that the other attempts which Miss Smith spoke of did not happen.

[69] The Court is of the view, after a careful examination of the evidence, that the Claimant has failed to prove that there was an unequivocal and categorical refusal to deliver up the vehicle to him on any of the occasions that a demand was made.

[70] The Court is of the view that the refusals, however many, prior to the exhibit 9 being sent were conditional. The 1st Defendant indicated their willingness to release the vehicle, so long as the Claimant paid the relevant fees. In fact, exhibit 7 said as much, that the Claimant is liable for the relevant fees since the date of seizure up to the 18th day of June 2010. Save that, it also noted that the Claimant may sue to recover their fees. Hence, the 1st Defendant was willing to release the vehicle so long as the relevant fees were paid. The Court cannot therefore determine that such a refusal was unequivocal and categorical.

[71] The Claimant has also not offered any evidence that there was any refusal by the 1st Defendant after or in relation to exhibit 9. In fact, the witness for the 1st Defendant, Miss Smith, noted that she spoke with his Attorney-at-Law immediately upon exhibits 7 and 9 coming to her attention. Of course, the Attorney-at-Law was not a witness in this matter and as it was a telephone conversation, no proof was provided by the 1st Defendant.

[72] The Claim was filed in July 2011. This in the Court's mind is evidence that perhaps whatever communication Miss Smith had with the Claimant's Attorney-at-Law did not happen until after the filing of the Claim. As such, the Court is reluctant to find that Miss Smith was being truthful when she said she spoke with the Claimant's Attorney-at-Law in March of 2011.

[73] Nonetheless, even if the 1st Defendant was silent until the 28th day November 2011, when the Claimant indicated he first became aware that he could retrieve his vehicle, the Court is unable to determine that silence would amount to an unequivocal and categorical refusal to deliver up the vehicle. Perhaps one could call this silence between March 2011 and November 2011 a delay, which is not sufficient in these circumstances for a finding that there was a categorical and/or unequivocal refusal by the 1st Defendant to comply with the demand to release the vehicle.

[74] Consequently, the Court finds that the failure of the Claimant to prove that the refusal was categorical and/or unequivocal means that the action for detinue must fail and the Claimant is not entitled to damages under same.

Has the Claimant Proven Conversion?

[75] In order to determine whether the Claimant has proven conversion, the Court is tasked with first considering whether the Claimant has proven, on a balance of probabilities, that there was wilful and wrongful interference. This is done by showing that (i) the 1st Defendant dealt with the vehicle in a manner that was inconsistent with the Claimant's right; and (ii) that the 1st Defendant had an intention in so doing to deny that right or asserted a right which was in fact inconsistent with the right of the Claimant.

[76] The authorities indicate that it is paramount to a cause of action for conversion that the Claimant establish that there was wrongful or unjustifiable interference with the vehicle or the owner's title to it. The Court has already concluded that the inference with the vehicle (its seizure) was lawful and was done with reasonable and probable cause pursuant to the RTA and/or TTA.

[77] There is no evidence presented in this case that the 1st Defendant or its Inspectors questioned whether the Claimant really owned the vehicle or had an intention to deny the Claimant any rights which he has in the vehicle. Furthermore, the

evidence of the 1st Defendant has been accepted that the 1st Defendant was willing to deliver up the vehicle to the Claimant (if the Claimant pays the relevant fees) which means that there was no categorical and/or unequivocal refusal by the 1st Defendant to do so.

[78] It has not been proven by the Claimant that the damage to the Claimant's vehicle was wilfully or intentionally done by the 1st Defendant or any of its employee or agents. In fact, neither Party has presented any evidence which suggested at what point the vehicle became deteriorated, be it before it went into possession of the 1st Defendant or after. The Claimant has also not provided any evidence that had the vehicle been returned on the initial demand to deliver up the vehicle that it would not have been in a state of disrepair. Further, the delay between when the Claimant alleges to have first been aware that the he could retrieve his vehicle without paying the relevant fees and when he retrieved his vehicle was no fault of the 1st Defendant.

[79] It is obvious that, in this case, the seizure of the vehicle by the 1st Defendant was a mere suspension of the Claimant's rights to the vehicle and not an exercise of dominion or ownership by the 1st Defendant over the vehicle. Accordingly, a Claim for conversion must also fail.

CONCLUSION

[80] The Court has accepted the evidence of Miss Francian Clarke which lead to a finding that the vehicle was lawfully detained as there was reasonable and probable cause to prosecute and seize the vehicle. Additionally, the Court finds that though there were unconditional and specific demands by the Claimant for the 1st Defendant to deliver up the vehicle, the Claimant had not proven that there was a categorical and/or unequivocal refusal by the 1st Defendant to comply with the demand. The Court accepts that a conditional refusal and/or delay in communicating acceptance of the demand would not amount to a categorical and/or unequivocal refusal.

[81] Further, the Court was unable to find that the 1st Defendant or any of its employees acted in any manner inconsistent with the Claimant's rights to the vehicle, dealt with the vehicle in any manner inconsistent with the Claimant's rights and/ or that there was an intention to question or deny the Claimant's title to the vehicle. Therefore, the Court enters judgment in favour of the 1st Defendant against Claimant.

[82] Accordingly, the Court makes the following orders:

1. The Claimant's Claim for damages for the wrongful detention of the Nissan station wagon motor vehicle registered 1463 FC fails;
2. The Claimant's Claim for Malicious prosecution fails; and
3. Each Party to bear their own Costs.