

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

SAN FERNANDO

Claim No. CV2015-02220

Between

AFIBA MCDONALD

Claimant

And

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

Before The Hon. Madam Justice Eleanor J. Donaldson-Honeywell

Appearances:

Mr. Robin Ramoutar, Attorney-at-Law for the Claimant

Ms. Daniella Boxhill and Ms Kezia Redhead, Attorneys-at-Law for the Defendant

Delivered on February 21, 2017

JUDGMENT

A. Introduction

1. Afiba McDonald, [“the Claimant”] was one of a number of persons driving on the Mosquito Creek, Oropouche Road on the morning of on Old Year’s day December, 31st 2013 who were directed by officers of the Trinidad and Tobago Police Service to stop their vehicles. This occurred during a road traffic “road block” exercise in the course of which certain Officers including one Corporal Fitzbert Ford searched his vehicle.

2. The vehicle the Claimant was driving was detained by Corporal Ford and driven to the Oropouche Police Station where the Claimant was also taken to give a Statement. The Claimant alleges that he was given no reason for these actions. He further claims that he was kept at the Police Station for more than five hours and that the vehicle was detained without reasonable and/or probable cause for five weeks, sustaining damage while in detention and then returned to him on February 8th, 2014.
3. In these circumstances the Claimant, having filled the instant Claim against the Attorney General of Trinidad and Tobago [“the Defendant”] pursuant to the **State Liability and Proceedings Act Chapter 8:02**, seeks the following reliefs:
 - a. Damages for unlawful conversion, damages and consequential loss suffered as the result of the seizure of the Claimant’s motor vehicle PBH 9551 [“the Vehicle”] on the 31st December, 2013 by members of the Trinidad and Tobago Police Service, the servants and/or agents of the Defendant.
 - b. Compensation for the actual physical damage inflicted upon the Claimant’s vehicle whilst being unlawfully detained by the servants of the Defendant
 - c. Damages for unlawful detention of the Claimant from 10:30 a.m. to 6:00 p.m. on the 31st December 2013.
 - d. Aggravated and/or exemplary damages.
 - e. Interest pursuant to **section 25 of the Supreme Court of Judicature Act Chap 4:01** at such rate and for such period as the Honourable Court deems just.
 - f. Costs.

B. Background Facts

4. The factual background taken into account in the determination of this Claim includes the pleadings on both sides, witness statements filed by the Claimant and by two Defence witnesses, Corporal Ford and Constable Lewis and all documents filed therewith. The oral testimony under cross and re-examination of these witnesses on 7th December, 2016 and 19th January, 2017 also forms part of the factual matrix as does the summary of the evidence provided by Counsel on both sides in written closing submission exchanged on January 27th, 2017 and the Claimant’s submissions in Reply filed on February 7, 2017.
5. The Claimant alleges that although his ownership of the vehicle has not yet been certified, he had purchased it from his father some two months before the incident, in September, 2013. The Claimant, though not in possession of ownership documents for

the vehicle or even a receipt for payment to his father, sought to support that he was the owner by evidence of his having taken steps to have the colour change and a change from hired to private usage registered at the Licensing Department. He says that after purchasing it he was carrying out repairs until December, 2013, which had just been completed when the vehicle was detained on old Year's day, December 31, 2013. He was stopped for a random vehicle check around 10.30 a.m. at Mosquito Creek where he saw that a Police Exercise in progress.

6. It is not in dispute that the Claimant cooperated and presented all documents relating to his vehicle to the officer who stopped him. His vehicle was then inspected by Corporal Ford, an officer of over 21 years' experience, trained in the forensic science of identifying engine and chassis numbers that have been tampered with. Corporal Ford is now retired.
7. It is the case for the Defence that Corporal Ford on examining the chassis number of the vehicle found that "*it appeared that the firewall of the vehicle had been cut out and replaced. There was filler around the chassis number as if it had been welded into place and this was suspicious.*" According, to the Defendant this was indicative of a stolen vehicle. The Claimant says further that Corporal Ford took a knife to the fire wall to scrape off some paint.
8. This aspect of the examination was not particularised in the witness statement of Corporal Ford however, under cross-examination he confirmed that he did scrape the surface but not the entire area under suspicion. Corporal Ford said he would not have done more scraping because the vehicle had to be examined by the Forensic Science Centre which would issue a Certificate of Analysis as to any testing done as well as the results.
9. Under cross-examination, the Claimant gave details of questions put to him by Corporal Ford during the roadside inspection. He said he was asked whether he had made modifications to the vehicle and "*where you get this shell*". In response to this he indicated that he had recently purchased the vehicle from his father and not yet transferred it and that he had only a few days prior received the vehicle back from the garage where body work was done on the vehicle.
10. According to the Claimant, Corporal Ford did not say anything to him about the chassis number but said that when he noticed some paste on the shock heads he said the vehicle had to go to forensics. Despite this, the Claimant's testimony was that Corporal Ford

never told him why the vehicle was being taken to the Police Station and he didn't know why he was taken to the station.

11. While the Claimant's vehicle was examined by Corporal Ford it is not in dispute that the papers relating to same were examined by another officer who has not been identified or called to give evidence. Constable Kerron Lewis, another of the officers who participated in the road traffic exercise that day, gave evidence for the Defendant and confirmed that he heard this other officer say that the Claimant's papers were in order. According to both of the Defence witnesses the fact that the papers presented by the Claimant may have been in order was not determinative as to whether the vehicle was stolen. Inspection of the chassis number and/or an on the spot data base check could still lead to suspicion of theft as occurred when the Claimants vehicle was examined.
12. After the inspection the Claimant was, on his account, ordered into a marked police vehicle, detained and taken to the police station where after giving a statement he was released at 4:30 p.m. The case for the Defence differs in that it is contended that the Claimant was asked to give a Statement addressing the suspicions of Corporal Ford. Customarily, statements are not taken at the roadside during police exercises, so on being asked to go with the police to the station the Claimant travelled in the police vehicle voluntarily.
13. Under cross-examination the Claimant admitted he was not told that he was under arrest. One of the Defence witnesses, Constable Lewis, supported the Claimant's case, that he was in fact detained in that he could not have refused to enter the police vehicle to go to the station and once in the police vehicle he could not have gotten out.
14. The Claimant says that while his vehicle was being examined at the roadside and while he was at the station he repeatedly asked Corporal Ford and other officers why he and his vehicle were being detained. He claims that in response he was subjected to obscene language by Corporal Ford who accused him of having a bad attitude. Corporal Ford denies this and his evidence is that he informed the Claimant of his suspicions about the chassis number having been tampered with and asked him whether he would like to give a statement. The vehicle was conveyed to the station and the Claimant was told by Corporal Ford that it would be kept to be further examined by the Forensic Science Centre.
15. The length of time that the Claimant spent at the station waiting to give his statement is in dispute but the Defence witnesses were unable to refer to any written record as to

the time he left. The Defence witnesses also gave different accounts as to which one of them took the statement. They both felt they had done so but the Station Diary recorded Corporal Ford as having taken the statement.

16. In all the circumstances, the Claimant's account that he was kept for around five and a half hours commencing with his alleged detention at the roadside and ending around 4.30 p.m. is accepted. The Defence witnesses say the time spent waiting was due to the fact that other persons also had to be attended to. In any event, the Claimant under cross-examination admitted that he was free to go after he gave his statement but waited some time until his father came to collect him.
17. The Claimant further contends that after leaving that evening he made numerous enquiries at the Oropouche Police Station but was not given any information about the vehicle. He was informed that they had no investigations pending relating to his vehicle. As early as January 3, 2014, just three days later, the Claimant reported the matter to the Police Complaints Authority seeking help to get information on his vehicle and redress for his alleged ill-treatment at the hands of the Police. A copy of his report is attached to his witness statement. Furthermore, the Claimant says he sought the assistance of television personality Ian Alleyne to publicize his complaint on the Crime Watch programme. Under cross-examination he explained that after Crime Watch he went to the station and told them "*I came for my vehicle.*"
18. The Claimant was never charged with an offence arising from the detention of his vehicle and it was not until February 8, 2014 that the vehicle was returned. According to the Claimant, the vehicle remained under a tree at the Oropouche Station for the duration of the detention. The Claimant complains that when the vehicle was returned he noticed that "*the door rubbers that were around the two front doors were missing, there were digs and scrapes around the entire inside of the door wells to the two front doors where the rubbers were ripped out and the panels. The firewall in the engine had been scraped away and the paint was missing and the metal began to rust. The right rear fender was also damaged*". He disclosed in evidence pictures of the vehicle before and after the detention as well as invoices for repairs totalling Nine Thousand, Eight Hundred and Seventy Dollars (\$9,870.00).
19. The Defence has presented no evidence that the vehicle was ever sent for forensic inspection or that any other investigation was conducted in the interim. In fact it is the evidence of Corporal Ford was that he was neither responsible for sending the vehicle to the Forensic Science Centre nor for any investigation. Under cross-examination he

stated further that he would not know whether or not the vehicle was examined by forensics.

20. On another aspect of the case, the Claimant has presented no evidence with regard to damages for loss of use of his vehicle arising from its alleged conversion. He pleads, however, that without the vehicle for thirty-nine days he had to spend One Hundred and Fifty Dollars (\$150.00) per day on alternate transport. Thus a total of Five Thousand, Eight Hundred and Fifty Dollars (\$5,850.00) is claimed. In closing submissions Counsel for the Defendant addressed at length whether any general damages could be awarded for conversion of the vehicle. However, on the submissions of Counsel for the Claimant the only general damages pursued were for alleged false imprisonment of the Claimant himself.

C. Issues

21. The main issues arising for determination include those concerning material facts in dispute identified by the Defendant at paragraph 4 of their closing submission. Those disputed facts are:
- a. Whether Corporal Ford had reasonable and probable cause to seize and detain the Claimant's vehicle;
 - b. Whether the Claimant was detained by the police officers and if so whether it was lawful in that there was reasonable and probable cause for his detention; and
 - c. Whether the Claimant's vehicle was in worse condition when he collected it in February, 2014 than when it was detained.
22. In addition to the foregoing, the issue as to whether the length of the detention of the Claimant's vehicle was reasonable is also to be determined. The facts relevant to this issue, though not identified by the Defendant as among the facts not in dispute, must in my view be treated with as such since there was no evidence presented by the Defendant to account for the length of time that the vehicle was detained.
23. Finally, the measure of damages must be assessed as it relates to any area of liability established on the claim.

D. Law

Conversion/Unlawful detention of the vehicle and consequential damage/loss thereto

24. The claim with regard to the seizure and detention of the vehicle is pleaded in the Claimant's statement of case as one seeking damages for conversion. The principles of law governing a claim of this nature are well settled as reflected in the closing submissions of the Defendant. The primary fact that must be established by a Claimant seeking damages for conversion is possessory title. In this regard the Defendant cites paragraph 559 of Volume 45(2) of the **Halsbury's Laws of England**, Fourth Edition Re-issue where it is stated that:

“to sue in conversion a Claimant must show that he had either possession, or an immediate right to possession, of the chattel at the time of the act in question...An owner whose right to possession is merely suspended or deferred at the critical time cannot sue in conversion because his right of possession is not immediate.”

25. The Defendant in closing sought to persuade the Court that it was the Claimant's father who had a subsisting right to possession since the vehicle had not yet been transferred. Therefore they contend, the Claimant could not sustain a claim based on possession of the vehicle which he alleged had been sold to him by his father. Instructive in this regard is the case of **Costello v Chief Constable of Derbyshire Constabulary [2001] EWCA Civ 381, [2001] 3 All ER 150, [2001] 1 WLR 1437**. In that case the police seized a motor car which they believed was stolen and retained it as its owner was unknown. The person from whom it had been taken raised an action against the Chief Constable for delivery up and damages for unlawful detention of the car. It was held by the Court of Appeal that, save so far as legislation otherwise provided, possession, whether obtained lawfully or not, vested in the possessor a possessory title which was good against the world save anyone setting up or claiming under a better title.

26. Accordingly, it is clear that once “the Claimant's right to possession - his “possessory title” has not been rebutted by evidence of superior title by anyone else”¹ he has the requisite locus standi for a Claim seeking damages for unlawful seizure, conversion and detention of the vehicle by the police.

27. Another factor to be considered in a conversion claim is exactly what property is the subject matter of the Claim for relief. Stollmeyer J as he then was, delivering the 2005 judgment in **H.C.A. CV 431 of 1997 Gerard Mootoo v The Attorney General of Trinidad and Tobago** explained at pages 3-4 that in a case where the vehicle itself has been returned, as in the instant Claim, “no claim in conversion for it can be sustained.” Accordingly what

¹ CV 2012-02695 Emraan Ali v The Attorney General of Trinidad and Tobago at para 145

was being considered in that case was whether damages should be awarded for the cost of replacement of missing parts when the vehicle was returned, for loss of use of the vehicle and for its depreciation. Stollmeyer J explained that,

“Conversion is a purely personal action for pecuniary damages resulting in judgment for a single sum, generally measured by the value of the chattel at the date of judgment together with any consequential damage flowing from the conversion which is not too remote.

Where conversion cannot be directly proved, it may be inferred from proof of a demand for the item and the refusal to hand it over.

Detinue is more in the nature of an action in rem because the Plaintiff seeks the return of the item or payment of its value assessed at the date of judgment, together with damages for its detention. This effectively gives a defendant a choice of whether to return or pay for the item. ”

28. Although the Claimant used the term Conversion in his prayer for relief it was clear from the facts pleaded as well as the closing submissions of his Attorney that the compensation sought was not for the value of the vehicle which had been returned but for loss sustained as a consequence its detention by the Police.
29. More recently in **CV 2012-02695 Emraan Ali v The Attorney General of Trinidad and Tobago** delivered on March 20, 2014 Rajkumar J as he then was cited the guidance given by the Privy Council in **Jaroo v the Attorney General of Trinidad and Tobago [2002] UKPC 5** in relation to police detention of a motor vehicle suspected to have been stolen, as follows:-

.. [26] In Ghani v Jones [1970] 1 QB 693, [1969] 3 All ER 1700, 708 of the former report Lord Denning MR said that the freedom of the individual, whose privacy and possessions were not to be invaded except for the most compelling reasons, had to be balanced against the interests of society at large in finding out wrongdoers and repressing crime. He then set out at p 708-709 of the former report the following propositions which explain where the balance is to be struck:

“Balancing these interests, I should have thought that, in order to justify the taking of an article when no man has been arrested or charged, these requisites must be satisfied:

First: The police officers must have reasonable grounds for believing that a serious offence has been committed – so serious that it is of the first importance that the offenders should be caught and brought to justice.

Second: The police officers must have reasonable grounds for believing that the article in question is either the fruit of the crime (as in the case of stolen goods) or is the instrument by which the crime was committed (as in the case of the axe used by the murderer) or is material evidence to prove the commission of the crime (as in the case of the car used by a bank raider or the saucer used by a train robber).

Third: The police must have reasonable grounds to believe that the person in possession of it has himself committed the crime, or is implicated in it, or is accessory to it, or at any rate his refusal must be quite unreasonable.

Fourth: The police must not keep the article, nor prevent its removal, for any longer than is reasonably necessary to complete their investigations or preserve it for evidence. If a copy will suffice, it should be made and the original returned. As soon as the case is over, or it is decided not to go on with it, the article should be returned.

Finally: The lawfulness of the conduct of the police must be judged at the time, and not by what happens afterwards.”

Their Lordships consider that these observations explain what is meant, in the circumstances of this case, by the constitutional guarantee of due process. It means that the following requisites had to be satisfied by the police in order to justify their continued detention of the motor car. First, they must have had reasonable grounds when they insisted on detaining it for believing that it was a stolen vehicle. Second, they had to be in a position to show that its continued detention was reasonably necessary to complete their investigations or to preserve it for evidence., the police who wish to continue to detain the property must be able to justify their retention of it upon some ground which is clearly ascertainable.”

30. In summary, in order to succeed in this Claim the Claimant had to establish firstly, that he had possessory title to the vehicle when it was seized, secondly, that at the time of its detention the police had no reasonable grounds for believing a serious offence such as larceny of the vehicle had been committed and that the Claimant in possession of it committed the crime, thirdly, he had to prove that he made a demand for the vehicle's

release and finally his claim as to the unjustified length of the time the vehicle was detained had to be substantiated by proving that keeping it was not reasonably necessary to complete any investigations.

Unlawful detention/ False Imprisonment of Claimant

31. The elements of the Tort of False Imprisonment and the circumstances where under Police Officers can lawfully detain individuals are set out in the Defendant's closing submissions at paragraphs 30 to 32. As to False Imprisonment, the judgment of Pemberton J as she then was in **CV2006-03721 Skinner v The Attorney General of Trinidad and Tobago** is cited where at page 11 elements to be established to prove such a claim were itemized as:

- i. The Claimant's freedom of movement was completely restricted in every direction, with no reasonable means of escape;
- ii. Such restriction was unlawful; and
- iii. The Defendant intended to exercise control over the Claimant's movement or will.

32. The burden of proving the imprisonment of the Claimant was justified rests on the Defendant.

33. As to the power of lawful detention Police officers have a statutory power to arrest without warrant anyone who is suspected, with reasonable cause, to be guilty of an indictable offence: **ss 3(3) and (4) of the Criminal Law Act Chp 10:04**. Reasonable suspicion is established once there is sufficient material from which the Court could draw an inference that the police officer had reasonable grounds for suspicion. Such material must be viewed objectively: **Kowlessar, Joyce; Kowlessar Keith v The Attorney General of Trinidad and Tobago²**

E. Analysis of Evidence

34. In making a determination, following the guidance of the Privy Council in **Horace Reid v Dowling Charles and Percival Bain PC App. 36 of 1987**, my impression of the credibility of evidence presented on both sides was formed by assessing any inconsistencies between the parties' pleadings and their evidence, inconsistencies between the evidence of the two witnesses for the Defence, failure of the parties to present relevant supporting contemporaneous documents and failure of the Claimant to bring supporting witnesses as

² CA Civ 167 of 2005

to some aspects of the Claim. Additionally, I considered the inherent probability and improbability of the rival contentions.

35. Taking these matters into consideration I found that the witnesses for the Defendant gave credible evidence as to reasonable and probable cause for detention of the vehicle and for having taken the Claimant to the Station to give a Statement. The Claimant was also a credible witness in all respects except for his contention that he was neither told nor did he have any knowledge as to why he and his vehicle were taken to the Police Station. His evidence in that regard defied logic in the context of the conversation he admitted he had with Corporal Ford who after scraping the vehicle questioned him about “where he got this shell”.
36. It is my finding that the Claimant knew that Corporal Ford suspected that the vehicle was stolen and that that was why it was seized during the road-block. He also knew that was why he had to give a statement. The Defendant’s version of events that Corporal Ford told the Claimant that the chassis number of the vehicle appeared to be tampered with and asked him to go to the station and make a statement is supported by the consistent evidence of two witnesses. It is also far more logical than the Claimant’s version in that even on the Claimant’s account of the questions Corporal Ford was asking him it followed that logically he would then have been informed of his suspicions and asked to give a statement.
37. Corporal Ford, a retired gentleman, attended Court and gave evidence in a calm, respectful and compelling manner. It is my finding that Corporal Ford informed the Claimant of his suspicions that the vehicle’s chassis number had been tampered with. He then asked him to go to the station to make a statement and he asked this without using obscene language.
38. As it relates to unreasonable length of time of the detention of the Claimant’s vehicle, it is my finding that the evidence of the Defendant did not provide any basis to contradict the evidence of the Claimant that it was unjustified. On the other hand the Defence witnesses, even without having any record as to the time the Claimant’s statement was taken and when he left the Station, gave credible evidence as to the reasonable length of less than five hours that he was kept at the station for investigations.
39. The Claimant’s and Defendant’s submissions as to the evidential strengths and deficiencies of the respective cases provide a useful starting point for analysis of the evidence. An aspect of the evidence highlighted by Counsel for the Defendant was the absence of proof by the Claimant of his ownership of the vehicle. The Defendant submitted that

“under cross examination the claimant stated that he purchased the vehicle from his father for Fifteen Thousand Dollars (\$15 000.00) and did not collect a

receipt. He knew his father to have had the car nine years prior. He confirmed that he is still on speaking terms with his father and he would be able to confirm the purchase payment was made. He also stated that his father was also present when he returned home with the vehicle after it was released to him. Further to this despite it being almost three years since the seizure of the vehicle and him purchasing it from his father, it has not yet been transferred and remains in his father's name on the certified copy. Under cross examination he confirmed this."

40. Counsel for the Claimant in his Reply submission comprehensively rebutted the Defendant's arguments that sought to shed doubt on the *locus standi* of the Claimant. He explained as follows:

- “1. *The issue of Locus and/or Possession has been raised in the Defendant's submissions. No evidence has been led nor any cross examination brought to contest the issue. The Defendant's filed Defence amounts to a bare denial at best on this issue as they have simply stated that they neither admit nor deny the allegation of ownership and put the Claimant to proof.*
2. *The Claimant's unequivocal evidence in chief is that he purchased the vehicle from his father and that his father remained the registered owner. Further to this the Claimant was in actual physical possession of the vehicle in question and also demonstrated dominion and control over the chattel by effecting substantial repairs on same which was demonstrated by the receipt from Wayne Brothers Automotive dated 18th December, 2013 which was signed by the Claimant.*
3. *Further to this is the fact that the Claimant caused a change in colour of the said vehicle. This change was registered by the Claimant with the regulatory authority as is demonstrated by the receipt from the Ministry of Works and Transport, Transport Division, San Fernando dated 15th November, 2013.*
4. *A further change was the reclassification of the said vehicle from "H" to "P" by the Claimant. This change was registered by the Claimant with the regulatory authority as is demonstrated by the receipt from the Ministry of Works and Transport, Transport Division, San Fernando dated 20th November, 2013.*

5. *These documents have been tendered into evidence without objection by the Defendants by way of the Hearsay Notice dated 28th September, 2016 to which no Counter Notice was filed.*
6. *All of these items of conduct show dominion and control of the chattel sufficient to demonstrate possessory title of the Claimant. Furthermore none of these facts were challenged or disputed by the Defendant in their evidence in chief nor was it challenged in cross examination.*
7. *The Claimant's unequivocal evidence remains that he purchased the vehicle from his father, which is a fact not in dispute. Further, there is the clear evidence of dominion and control exercised by the Claimant over the said chattel."*

41. It is my finding that the Claimant's right to possession based on his oral evidence of purchase, his actual possession and his other acts evidencing dominion over the vehicle as set out above has not been rebutted by any evidence of superior title by anyone else including his father. Accordingly, he had sufficient locus standi to bring this claim and recover damages for consequential losses following the detention of the vehicle.
42. Another issue based on which the Defendant sought to discredit the Claimant's case is whether any formal demand was made for the vehicle. This submission is however without merit as there is clear evidence of enquiries having been made with regard to the vehicle as set out at paragraphs 8 to 10 of the Claimant's witness statement.
43. Under-cross examination the Claimant was able to give clarity on the timing of one of the oral demands at the police station which he said was after he appeared on the Crime Watch programme. There was also clear documented corroboration of his enquiries in the contemporaneous document disclosed to his statement, namely the January 3, 2014 report to the Police Complaints Authority. The statement at paragraph 23 of the Defendant's submission that the Claimant responded "no" when asked whether he did not request the vehicle is not set in the full context of his evidence under cross examination. It is clear from a full consideration of his testimony that he was saying that he did ask for it to be returned. In all the circumstances it is my finding that the Claimant demanded the return of his vehicle as early as January 3, 2014, just after the New Year's holiday period when his vehicle was seized.
44. As it relates to the issue regarding whether Corporal Ford had reasonable and probable cause to seize and detain the Claimant's vehicle, as aforementioned, it is my finding that he did have such cause. Corporal Ford's evidence is uncontroverted that he, in the

execution of his duty did not seize the claimant's vehicle without first carrying out checks to the inside of the engine and chassis as confirmed by the Claimant.

45. In **Emraan Ali v The Attorney General CV 2012-02695**, cited by Counsel for the Defendant, Rajkumar J, at paragraph 21 of the judgment found that with respect to the seizure of the vehicle the police were entitled, in light of the suspicion that the chassis number had been tampered with, to seize the vehicle as evidence.
46. On another critical aspect of the case the Defendant failed to produce any evidence whether by way of witness statements, oral testimony or contemporaneous documents as to why the vehicle was detained for approximately five weeks after being seized. Although Corporal Ford testified that the vehicle was kept because it had to be sent to the Forensic Science Centre for examination, there is no evidence that that was ever done. Further as submitted by Counsel for the Claimant "*the Claimant's uncontested and uncontroverted evidence is that his vehicle never left the position it was parked in on the date it was seized before being returned to him. There is no evidence that the stated reason for the detention of the Claimant's vehicle ever took place to validate the said detention.*" Accordingly, it is my finding that the length of time for which the vehicle was detained after it was lawfully seized was unjustified and the Claimant must be compensated in damages for any consequential loss suffered.
47. Although I find as a fact that the Claimant was not free to go when he was taken to the Police Station it is not my finding that he was unlawfully detained or falsely imprisoned. The explanation given for length of time he was kept at the station was credible and it is my finding that he was only kept there for as long as was needed to reach his turn among others present there to give a statement. This was justified as part of reasonable investigations into a suspected serious crime of larceny of a motor vehicle.
48. In light of my findings set out above, the Claimant is only entitled to damages for the unreasonable length of time of the detention of his vehicle and any consequential loss. The Defendant in closing submissions seeks to shed doubt on whether the Special Damages claimed in this regard have been adequately supported by documentary evidence. Firstly, they argue that there is insufficient proof that the vehicle was damaged at all since the photographs presented by the Claimant are unclear as to any damage and also are not dated.
49. These photographs as well as the oral evidence of the Claimant, supported by invoices for repairs he presented did however establish, prima facie, that there was some damage. It is the Defendant that has failed to rebut this evidence by proof that they had in any way checked the condition of the vehicle when it was released as against its condition when it

was seized. In all the circumstances it is my finding that the claim as to quantum of damages for repairs has been adequately substantiated.

50. The claim for loss of use is not supported by either evidence in the Claimant's witness statement or documentary proof. Instead the estimated daily transport cost pleaded in the Statement of Case is put forward in closing submissions as reasonable. The basis for this submission is that the Court can take judicial notice of the fact that the usual cost for daily rental of a vehicle is \$250 and the Claimant seeks less than that amount in his Claim. Counsel for the Claimant at paragraph 5 of his submissions argues that lack of supporting evidence is not necessarily detrimental to the claim. In this regard he cites the dicta of Mendonca, J.A. in Civil Appeal No: 121 of 2008 **THE GREAT NORTHERN INSURANCE COMPANY LIMITED –v- JOHNSON ANSOLA** where he states -:

“it seems clear that the absence of evidence to support a plaintiff's viva voce evidence of special damage is not necessarily conclusive against him. While the absence of supporting evidence is a factor to be considered by the trial Judge, he can support the plaintiff's claim on the basis of viva voce evidence only. This is particularly so where the evidence is unchallenged and which, but for supporting evidence, the Judge was prepared to accept. Indeed in such cases, the Court should be slow to reject the unchallenged evidence simply and only on the basis of the absence of supporting evidence. There should be some other cogent reason.”

51. There is no evidence to support the pleaded claim of \$150 per day for loss of use. However, the quantum pleaded is sufficiently minimal to be awarded as nominal damages. It is my finding that the Claimant has proven his Special Damages claim in the amount of \$9,870.00 and his claim further merits an award of \$5850.00 in nominal damages for loss of use. Thus an award of Fifteen Thousand, Seven Hundred and Twenty Dollars (\$15,720.00) in damages will be granted.

52. The Claimant further seeks Aggravated and Exemplary damages. The said claims are largely based on the alleged unlawful nature of the initial seizure of the vehicle in relation to which my finding is that there was no failing on the part of Corporal Ford. Though the full period of the vehicle's detention is unaccounted for, the five weeks it was kept is not so long that a compensatory award will not suffice to meet the interest of justice herein. Further there was no compelling evidence to establish on a balance of probabilities any

high-handed or abusive conduct on the part of Corporal Ford as alleged. Accordingly, there is no basis in the instant case for an award of aggravated or exemplary damages.

F. Decision

IT IS ORDERED THAT:-

- i. The Claimant is awarded damages in the amount of Fifteen Thousand, Seven Hundred and Twenty Dollars (\$15,720.00) with interest at 2.5% in the sum of Nine Hundred and Fifty Six Dollars and Fifty Six Cents (\$956.56) thereon from September 15, 2014 to date for actual physical damage to the vehicle PBH- 9551 and consequential loss suffered during the 39 unreasonably extended days of its detention.
- ii. The Claim for damages for unlawful detention of the Claimant is dismissed.
- iii. The Defendant is to pay to the Claimant costs in the sum of Five Thousand and Two Dollars and Ninety Six Cents (\$5002.96) on the basis prescribed by the Civil Proceedings Rules for a claim in the amount of the award at (i) above.

Delivered By:

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Eleanor Joye Donaldson Honeywell
Judge