

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2020-01234

Between

**IN THE MATTER OF THE CONSTITUTION OF TRINIDAD AND TOBAGO And IN THE
MATTER OF AN APPLICATION FOR REDRESS PURSUANT TO SECTION 14 OF THE
CONSTITUTION ALLEGING THAT THE PROVISIONS OF SECTION 4(A) AND 4(B)
THEREOF HAVE BEEN, ARE BEING AND ARE LIKELY TO BE INFRINGED OR
CONTRAVENED**

NICHOLAS LEWIS

Claimant

And

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

Appearances:

Claimant: Roshan Ramcharitar instructed by Acacia K.L. Lewis

Defendant: Mary Davis instructed by Nairobi Smart

Before the Honourable Mr. Justice Devindra Rampersad

Date of delivery: 14 December 2021

JUDGMENT

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Introduction

1. In this matter, the claimant contends that his rights to the enjoyment of property and protection of the law as guaranteed under sections 4(a) and 4(b) of the Constitution have been contravened and or infringed as a result of a refusal and or delay of the Transport Commissioner in granting permission to re-stamp a corroded chassis number of the maxi taxi and for a continuing failure to complete the authorisation process by the non- issuance of a Chassis Licensing Office (“CLO”) number for the said maxi taxi.
2. The evidence on behalf of the claimant comprises his principal affidavit filed in support of this claim, a supplemental affidavit filed on 8 October 2020 and an additional affidavit of Terry Murrell filed on 8 October 2020. The defendant filed 5 affidavits in response on 19 November 2020 deposed to by the present Transport Commissioner Clive Clarke, Jason Clarke, Motor Vehicle Officer I and Acting Driver Licensing Examiner, Neil Beharry, Motor Vehicle Inspector I; Glen Boney, Motor Vehicle Inspector II; and Garvin Jones, Acting Motor Vehicle Officer II. The claimant filed an affidavit in reply to all 5 of the defendant’s affidavits on 7 December, 2020.
3. The following reliefs are being sought by the claimant:
 - 3.1. A declaration that the claimant’s right to the enjoyment of property and the protection of law as guaranteed by sections 4 (a) and 4 (b) of the Constitution have been and or are being contravened or infringed as a result of the refusal and delay by the Transport Commissioner to grant permission to re-stamp the corroded chassis number of motor vehicle HAX 1221.
 - 3.2. A declaration that the claimant’s right to the enjoyment of property and the protection of the law under sections 4 (a) and 4 (b) of the Constitution continue to be infringed and or contravened by the Transport Commissioner’s failure to complete the process of re-

stamping which includes the issuing of the CLO number for motor vehicle HAX 1221.

- 3.3. Compensatory damages including loss of earnings during the period August 2017 to 20 November 2019 as a result of the contravention of the claimant's constitutional rights.
- 3.4. Vindictory damages.
- 3.5. Interest pursuant to section 25 of the Supreme Court of Judicature Act Chapter 4:01.
- 3.6. Costs and;
- 3.7. Such other reliefs, orders, directions, declarations and writs as the Court considers just in the circumstances pursuant to section 14 of the Constitution for the purpose of enforcing and protecting or securing the enforcement and protection of the claimant's said rights.

Facts and Timeline

4. The claimant was the owner of a Yellow Band maxi taxi HAX 1221 at the material times. He says that he attended the licensing office on 14 November 2016 with the previous owner of the maxi taxi, Carlton Daisley, to transfer the maxi taxi to him. At that time, he said the chassis number of the vehicle was engraved in two locations – under the driver's seat and under the front passenger seat. The former was corroded and the latter was clearly visible. He was directed to apply for a Chassis Licensing Office Number (hereinafter referred to as a "CLO")¹. He was not told then that he would not be able to renew the Inspector's Certificate unless he was granted that CLO by the Transport Commissioner.

¹ As will be discussed later on, this is the process by which the Transport Commissioner authorizes the re-stamping of a chassis number as described in the affidavit of Clive Clarke, Transport Commissioner, in these proceedings

5. He applied for the CLO by letter dated 23 March 2017. The receipt of that letter was acknowledged and stamped as having been received that very same day. Almost one year later, by 7 March 2018, he had still received no response and therefore he penned a letter to the Transport Commissioner. He said he met Mr. Wayne Richards, the then Transport Commissioner, in or around 12 March 2018 together with a Transport Officer Jason Clarke, who at the time, was assigned in the maxi taxi and school bus unit of the licensing division. He was told by Wayne Richards that a decision had been made to no longer grant the registered owners of motor vehicles a CLO as a result of which permission to do so could not be granted. He was told at that meeting that *“the Maxi Taxi could not be identified and to “scrap” it”* which he took to mean that he had to have it destroyed which he refused to do. Mr. Richards did not give evidence in this matter but Mr. Clarke did and he did allude to the fact that there was a meeting between the claimant and Mr. Richards in his presence. The latter indicated the problem that the Licensing Division was experiencing with respect to the re—issuing of chassis numbers to maxi taxis and a decision was taken not to re-stamp chassis numbers for maxi taxis. This conflicted with the evidence given by the current Transport Commissioner at paragraph twenty-two of his affidavit in which he said:

“... there appear (sic) never have been any such decision or policy enforced, not to duly regularize chassis numbers.”

6. In the meantime, the Inspector’s Certificate for the maxi taxi that was issued on 5 August 2016 expired on 4 August 2017 and from 5 August 2017, the claimant could no longer lawfully operate the vehicle. The CLO could was not granted and therefore the Inspector’s Certificate could not be issued.
7. On or about 23 July 2018, the claimant took his maxi taxi for inspection to have the chassis number re-stamped. The vehicle was inspected by Neil Beharry, Motor Vehicle Inspector 1. He said that he examined the vehicle and observed that none of the characters were at all visible as a result of which he could not do the inspection. He said then that he needed the assistance of a Forensic

Analysis report to assist him with the true identity of the vehicle. He went on to say that he informed the claimant of the need to have the chassis number examined by the Forensic Science Centre. He reported his findings by way of memorandum dated 23 July 2018 to the Transport Commissioner. He then said that the claimant left with instructions to go to the Forensic Centre. Mr. Beharry then went on in his affidavit to say that the next time he saw the claimant was on or about 11 September 2018. He said that the claimant had not yet presented the maxi taxi to the forensic centre for examination as a result of which he issued the claimant with memorandum number A25872 directing him to take the vehicle to the Forensic Science Centre.

8. On or around 2 November 2018, Mr. Jason Clarke received a Certificate of Analysis Report dated 4 October 2018 from the claimant and forwarded same to the Assistant Transport Commissioner Technical, Mr. Narinesingh for his attention. It stated, in part, the following:

“The chassis number stamped under the right front seat of the Nissan Caravan motor vehicle was obscured. I observed deterioration of the metal surface resulting in the obscured view of the chassis number. The surface was chemically treated and five (5) original characters of the chassis number were restored ` Chassis number C,J,,*,*,*,*,0*,3,0 Where * represents an unrestored character”*

9. After no response from the Transport Commissioner, the claimant then made his complaint via letter dated 23 January 2019 to the Director of Legal Services, Ministry of Works and Transport, to which the Transport Commissioner was carbon copied. He detailed the history of the matter including his visits to the licensing division up until 16 January 2019 where the vehicle was again inspected and annexed all the documents in his possession. He further stated the effect on him that *“these actions and/ or omissions have caused me significant debt and loss of earnings as the maxi taxi is my only vehicle and my primary means of income. I am unable to use it freely (for commercial gain or*

otherwise) as it is illegal to operate a vehicle without a valid inspection which causes me much anxiety and distress.” However. There was no response.

10. A pre action protocol letter dated 2 April 2019 was thereafter sent to the Transport Commissioner and the Minister of the Ministry of Works and Transport seeking permission for the CLO and information on the decision of the Transport Commissioner to no longer grant CLOs in general to vehicle owners. However, there was no response from the Minister.
11. Wayne Richards was then succeeded by Transport Commissioner Basdeo Gosine who responded by letter dated 5 April 2019 refusing to grant the permission to re stamp the chassis number on the basis that the Forensic Certificate of Analysis, *“could not verify the chassis numbers of the vehicle (only five (5) of twelve (12) characters were identified and was thus inconclusive)...”* *“The Transport Division will only authorise chassis number to be re-stamped when it is proven that the vehicle for which the request is made is the same vehicle that was originally registered.”*
12. By letter dated 6 June 2019, the claimant appealed the decision of the Transport Commissioner to the Trinidad Transport Board pursuant to section 3(3) of the Motor Vehicle and Road Traffic Act and was successful in this regard. The recommendation of the Board was that the chassis number be re-stamped and by Memorandum dated 2 October 2019, this was duly conveyed to Basdeo Gosine.
13. However, the Transport Commissioner did not authorise the re-stamping and the claimant filed judicial review proceedings against the Transport Commissioner for his refusal to grant permission to the claimant on 30 October 2019.
14. By letter dated 14 November 2019, the Permanent Secretary of the Ministry of Works called on TC Basdeo Gosine to comply with the decision of the Transport Board and permit the chassis number to be re-stamped. There was also a request for evidence of this compliance by 18 November 2019.

15. On 19 November 2020, the claimant was contacted and thereafter visited the Licensing Division where Motor Vehicle Inspector II, Mr. Glen Boney inspected the maxi taxi upon instructions from the Transport Commissioner. Glen Boney was given instructions by Basdeo Gosine to have the vehicle's chassis number re-stamped "as is" without a CLO number.
16. In or around 20 November 2020, the court matter was adjourned and the claimant re-stamped the chassis number. On 2 December 2020, a valid inspection certificate was issued.
17. By letter dated 2 December 2019, the claimant requested tangible evidence to confirm that the re-stamping was satisfactory and by letter dated 3 December 2019, it was stated that the inspection certificate would not have been issued if the re-stamping was not done to satisfaction.
18. By notice of withdrawal dated 10 December 2019, the claimant withdrew his application for leave to apply for judicial review of the Transport Commissioner's decision not to grant permission to re-stamp the chassis number.
19. By letter dated 9 March 2020 the claimant sought compensation for the breach of his constitutional rights and for policies and proper procedures to be implemented at the licensing division.
20. The claimant attempted to transfer the maxi taxi to a third party, Mr. Keron Thomas, but was informed that the re-stamping was incomplete without a CLO number.
21. The claimant stated that from August 2017- December 2019, as a direct consequent of not granting permission to re-stamp the chassis number, the maxi taxi had no valid inspection certificate and therefore was inoperable. The claimant was unable to access any services of the licensing such as change of engine or transfer of registration.

22. As a result of the initiation of the instant claim and by order dated 23 July 2020 the CLO number was stamped on 29 July 2020 and the registration of the maxi taxi was subsequently transferred on 4 August 2020.

Discussion

23. In his memorandum to the Transport Commissioner dated 23 July 2018, he stated:

“I hereby recommend that this Maxi Taxi be sent to the Forensic Science Centre to ascertain whether or not the chassis number was tampered with or if any of the numbers can be recovered.”

24. There was no mention in that memorandum of him having told the claimant to do so. Further, his recommendation to the Transport Commissioner seems to suggest that he did so for the Transport Commissioner to make the decision whether or not to accept the recommendation. Why else would he use the word “recommend” which gives the impression that the final decision for that to be ordered or directed was not supposed to come from him.
25. The court notes, however, if what Mr. Beharry said is true as to what transpired on 23 July 2018, then it is rather strange that he did not issue a memorandum on that date rejecting the inspection and referring the claimant to obtain a forensic report on that occasion but did so instead on 11 September 2018. It was obviously possible to have given a contemporaneous document setting out his instructions but, remarkably, did not do so at the first instance but rather at the second instance. There is no mention whatsoever in his affidavit of any sign of astonishment or surprise or indignation that the claimant had brought the maxi taxi for inspection again without what he said was the requested forensic report.
26. One would expect that a motor vehicle inspector would view many vehicles over the course of a year so that it is difficult to accept that he remembered what he said on 23 July 2018 as he made no mention whatsoever of having

made a contemporaneous note. The only contemporaneous note was that made on 11 September 2018 in the said memorandum.

27. On the other hand, for the first time, the claimant said that, despite the several meetings that the claimant had, the Transport Commissioner issued a memorandum on 11 September 2018 rejecting the issuance of an inspection certificate on the basis that the chassis number was rusted and a forensic report was requested on that chassis number. The report was done on 4 October 2018 and that was delivered to Mr. Jason Clarke. Mr. Clarke accepted that he received it in an affidavit filed in the proceedings. However, despite several calls, he said that there was no response so a follow up letter was sent off on 23 January 2019.
28. A pre-action letter was sent off on 2 April 2019 and a response was sent by letter dated 5 April 2019. In that letter, the Transport Commissioner refused to grant permission to re-stamp the chassis number on the basis that the Forensic Certificate of Analysis “could not verify the chassis numbers of the vehicle (only five (5) of twelve (12) characters were identified and was thus inconclusive)...The Transport Division will only authorise chassis numbers to be re-stamped when it is proven that the vehicle for which the request is made is the same vehicle that was originally registered.”. No mention of the process to Appeal the decision.
29. The decision to refuse the re-stamping was appealed to the Trinidad Transport Board (“TTB”) on 6 June 2019.
30. By letter dated 20 January 2020, the Transport Commissioner was noted as having decided at the meeting of the TTB on 17 July 2019 that: “... *there is nowhere in [Motor Vehicle and Road Traffic Act Chapter] 48:50 which compels or authorizes the Transport Commissioner to allow, permit or instruct persons to re-stamp chassis numbers.*”
31. The TTB communicated its decision to the Transport Commissioner by memorandum dated 2 October 2019 – that the claimant was successful in his appeal and the chassis should be re-stamped. However, the Transport

Commissioner failed to act on it and the claimant commenced Judicial Review proceedings as a result of which the Transport Commissioner finally conceded and granted permission to re-stamp the chassis number on 19 November 2019. The court notes that the letter was sent from the Permanent Secretary in the Ministry of Works and Transport dated 14 November 2019 and endorsed as having been received on 15 November 2019 and was couched in very strong terms setting out the following:

“By memorandum dated 2nd October 2019, the Trinidad Transport Board indicated that subsequent to the review of an appeal.... its final and conclusive recommendation made at its 854th meeting held on 7th August 2019 was that the chassis number be re-stamped on Maxi Taxi – HAX 1221. Section 3(3) of the Motor Vehicle and Road Traffic Act, Ch. 48:50 states that:

“The Board shall hear and determine any appeal submitted by any aggrieved person against any order or decision of the Licensing Authority or of an Automotive Licensing Officer, and the Board’s decision thereon shall be final and conclusive.”

As Transport Commissioner, you are immediately called upon to comply with the decision of the Trinidad Transport Board to permit that chassis number be re-stamped on Maxi Taxi – HAX 1221. I also request that you provide evidence of such compliance with the Ministry’s Legal Services Unit by Monday 18th November, 2019 so that the appropriate instructions can be forwarded to the Attorney General’s Office.”

Discussion

32. This was an obviously stinging rebuke to the then Transport Commissioner who, despite the memorandum from the TTB, was still refusing to re-stamp the chassis number. It was an obvious show of indignation coming from the Minister through his Permanent Secretary in light of the Judicial Review proceedings.

33. The chassis was re-stamped on 20 November 2019 and a valid inspection certificate was issued on 2 December 2019. Glen Boney, Motor Vehicle Inspector II gave evidence in this regard. He said that on 19 November 2019, he inspected the claimant's maxi taxi upon the instructions of the then Transport Commissioner Mr. Gosine. In his affidavit he stated as follows:

"... The Transport Commissioner's instructions were given based upon directions/instructions from the Transport Board to re-issue the chassis number of the Claimant's maxi taxi. I was given instructions by the TC to have the vehicle's chassis number re-stamped "as is". I found the instructions a bit unusual and had a conversation with the Transport Commissioner on the matter. However, he insisted that the vehicle chassis number be stamped without a Chassis Licensing Office (hereinafter CLO) number, that is, the chassis number "as is". The Transport Commissioner indicated that this was to be done as it was the Transport Board's directions or instructions. As such, the Transport Commissioner did not issue to me a CLO number to re-stamp the chassis on the vehicle."

Discussion

34. This is indeed rather strange. The memorandum from the TTB to the then Transport Commissioner informed him that "*... the Board recommends that the chassis number be re-stamped.*"
35. Any further decision with respect to the issuance of a CLO would have to come from the Transport Commissioner himself according to the evidence from this very witness, Mr. Boney. The TTB could not give such direction so that it seems that there was a deliberate decision taken by the then Transport Commissioner to do the re-stamping without a CLO knowing fully well that this may cause problems in the future when the owner tries to transfer the vehicle. No valid reason was given for this "as is" re-stamping.

36. On 13 February 2020, the claimant attempted to transfer the Maxi Taxi to one Keron Thomas. That was refused and notified to the claimant by one Transport Officer Garvin Jones on 16 March 2020 that the transfer could not occur since no CLO number from the Transport Commissioner had been received as evidence that an authorized re-stamping was completed.
37. There was no assistance from anyone.
38. These proceedings were commenced on 27 May 2020 and, following the first hearing before this court on 23 July 2020, a CLO number was issued on 29 July 2020 and the vehicle transferred on 4 August 2020.
39. It is clear from the evidence before the court that the current Transport Commissioner who was appointed after the fact on 21 January 2020 and who was not able to provide proper records from any notes made by the previous Transport Commissioners – Mr. Richards and Mr. Gosine - could not speak to the facts presented by the claimant where it diverged from his (the claimant's) account. The claimant himself, on the other hand, was corroborated throughout his story not only by his own correspondence but by the documentary evidence that was before the court and even the evidence given by the defendant's witnesses.
40. Even though there was no cross examination, it is clear that the claimant had been trying to effect the very same remedy that he eventually got in its totality in 2020. With respect to his request to have the re-stamping done so that he could obtain an Inspector's Certificate in order to operate the vehicle, the constant delays and administrative rigmarole meant that he was unable to lawfully use the vehicle from 5 August 2017 until 2 December 2019 despite his initial request for the CLO to be allowed to re-stamp the vehicle on 23 March 2017.

Findings and Discussion

41. In summary, therefore, it has to be said that the Transport Commissioner, whether by himself or through his agents:
 - 41.1. Knew of the corroded chassis number **since 14 November 2016** when the claimant attempted to transfer the vehicle to himself. No guidance was given to the claimant as to how this could be done or what he had to do;
 - 41.2. Received the request for a CLO by letter dated **23 March 2016** and failed to respond. Again, no written acknowledgment or indication as to the proper procedure or what the claimant should expect;
 - 41.3. Did not conduct an inspection of the vehicle until **23 July 2018** - more than two years after the written request mentioned in the preceding paragraph with no explanation whatsoever for the delay other than to say that CLOs were put on hold because of problems being encountered with other maxi taxi owners. That was not confirmed as a reason by the current Transport Commissioner but was corroborated as having been told to the claimant by one of the defendant's witnesses;
 - 41.4. Did not make a proper or written request for a forensic report until **11 September 2018** despite the inspection almost 6 weeks before;
 - 41.5. Received the forensic report on **4 October 2018** and did nothing in respect of it until his hand was forced by a pre-action protocol letter following which he formally, and in writing, **rejected** the application for the CLO and the re-stamping on 5 April 2019 – just over six months later;
 - 41.6. Refused to do the re-stamping until **19 November 2019** despite the claimant's successful appeal before the TTB which was intimated to him officially by memorandum dated 2 October 2019;

- 41.7. Finally authorized the re-stamping but without the issuance of a CLO on 19 November 2019 after the commencement of Judicial Review proceedings and only after a stinging rebuke and ultimatum from the Permanent Secretary of the Ministry of Transport and Works;
- 41.8. Refused to issue a CLO until 29 July 2020 - after the commencement of these proceedings - without giving a reason for that.
42. The court is left with the distinct impression of administrative inefficiency, inexcusable delay, apparent incompetence and downright vindictiveness. That the process had to extend from the initial contact in November 2016 until its resolution in totality on 29 July 2020 is a testament to this impression.
43. The defendant has suggested that this court ought not to entertain this claim because there were alternative remedies open to him and therefore this action amounts to an abuse of process. The court disagrees. If ever there is one matter which requires the court to step in to pronounce against the contravention of constitutional rights in an inexcusable series of events which seemed intended to frustrate the claimant by abusing the system and offices and denying his rights it is this one.
44. This failure to assist the taxpayer is not a novel one. It pervades the public service in Trinidad and Tobago with all too common frequency as has been manifest in several cases before this court have shown.
45. In this court's decision in CV 2007 – 02565 ***Norma Smith v Lancelot Smith & Ors***, this court expressed the following view:

*“86. This court is of the view that **there is a duty upon the State to inform the citizenry of the processes and procedures for accessing its services in a clear and comprehensible manner. There ought to be no mystery or magic in the way that state agencies or authorities operate or the processes or procedure for accessing the services of those agencies or authorities. These agencies and authorities operate, to my mind, for the benefit of the citizenry and the State.***

87. *There is a constitutional right under section 4 (d) of the Constitution which provides as follows:*

“(d) the right of the individual to equality of treatment from any public authority in the exercise of any functions;”

Consequent upon that right is a prohibition under section 5 of the Constitution which provides that Parliament cannot deprive a person of the right to such procedural provisions as are necessary for the purpose of giving effect and protection to the aforesaid rights and freedoms.

88. *If that is the intention of the framers of the Constitution, to allow every individual the right to equality of treatment from a public authority, then every individual must know how that public authority exercises its functions so that he/she can determine whether his/her treatment has been fairly dispensed. **It ought not to be shrouded in secrecy so that only those who are able to unravel the layers of procedural and bureaucratic fortifications by some mysterious knowledge, known only to a privileged few, should have access to the public authority's functions.** Equality of treatment necessitates equality of information.*

89. *To my mind, it ought to be the duty of every State agency and authority to provide assistance to individuals seeking to access its services on a one-to-one basis via personnel dedicated to answering questions relating to procedural and general matters along with brochures and information packages and, where appropriate, Internet access to all of this information. Public officers....., ought to be accessible to the public, whether directly or indirectly to answer their questions and address their concerns in a timely manner. ...”*

46. There is no doubt in this court's mind that the State and its agencies are trustees of the resources of the Republic of Trinidad and Tobago on behalf of its citizens and that fact ought not to be forgotten.

47. In this case, it is clear that the claimant was existing in a twilight zone of darkness and non-information created by an almost insensitive and uncaring façade of a public service provider in a matter that was clearly affecting him financially and otherwise. What else can explain this failure to act? This failure to act in a timely manner? This failure to act compassionately? Basic humanity does not require rules to be implemented to enforce compassion. It ought to be readily apparent when one human being interacts with another. Strangely enough, though, this lack of compassion crossed the barrier of three Transport Commissioners as the claimant's nightmare crossed the span of years.
48. There is no doubt that the claimant purchased a maxi taxi in November 2016 which had an issue in relation to the chassis number. There was an established remedy available – the issuance of a CLO and the permission to have the number of re-stamped.
49. Counsel for the defendant argued that the delay was as a result of the claimant's own fault as he delayed in obtaining a forensic analysis report. The court cannot accept that. The evidence that the court has is that the claimant was always willing to comply with orders, inspections etc once it was requested of him. There was absolutely no idleness on his part to do so – which made the apparent vindictiveness of the Transport Commissioner even more obvious. As discussed above, the court is not satisfied with the evidence put forward by Mr. Beharry in relation to whether the claimant was informed about that requirement at the inspection done on 23 July 2018. Mr. Clive Clarke said in his affidavit that the claimant ought to have known that a forensic report was required. Yet they both spoke about a memorandum issued to the claimant that was only done on 11 September 2018. Prior to that, the only documentary evidence in place was an internal memorandum between Mr. Beharry and the then Transport Commissioner. Unless the claimant was privy to that memorandum – and there is no evidence that he was – how would he have known or how ought he to have known that a forensic report is required? As mentioned, the interoffice memorandum was a

recommendation which obviously had to be acted upon by the then Transport Commissioner to make a decision. There was no indication that Mr. Beharry had the authority to order a forensic report and even if that were the position, the memorandum speaks for itself. Therefore, the only cogent and compelling evidence of the claimant's rejection was the memorandum of 11 September 2018 and there is no doubt that there was no undue delay by the claimant in obtaining the forensic report less than a month thereafter on 4 October 2018.

50. Prior to that incident, there was no inspection of the Maxi taxi so that there was no due process which had been engaged in order to lead up to a decision. One may argue, possibly, that the claimant ought to have commenced judicial review proceedings for a mandamus compelling the Transport Commissioner to respond to his letter of 23 March 2017. Why it took from that letter of 23 March 2017 until 23 July 2018 to have the inspection done is beyond this court's understanding since no explanation was given for that extended and unreasonable delay.
51. So that for the entire period from 23 March 2017 until the grant of the permission to re-stamp the chassis on 19 November 2019 - a period of thirty-two months – the only time the only real delay on the part of the claimant was the period of less than one month after the production of the forensic report upon request. Therefore the court rejects the defendant's suggestion that the claimant was at fault for the delay in getting the forensic report.
52. Further, as mentioned, with respect to the meeting with Mr. Richard who indicated that some sort of policy decision had been made not to grant any CLOs, there is the hint of a suggestion that the claimant could have appealed that refusal. Firstly, that refusal is not in writing and it is a policy which, even though touted by the then Transport Commissioner, was rejected as an official policy by the current Transport Commissioner. In any event, there is absolutely no evidence that the claimant was informed of any right to appeal that "decision". As this court discussed in *Norma Smith* supra, notwithstanding the adage that ignorance of the law is not a defence, the citizen requires

information to assist him or her to determine what the relevant procedures are and not everyone has the where withal to run to a court for assistance at every turn. Here was a man who was not working because his source of income was severely affected by the inability to operate the maxi taxi lawfully as a taxi. And here he was speaking to the Transport Commissioner directly who told him what he told him. The court deeply appreciates his position.

53. So that not only was there delay but there was the failure to explain the procedure – a situation discussed in *Virgil Wharton*² and in *Vijai Bhola*³ where the court of appeal in Vijay Bhola settled the position that the failure by the second defendant to inform the applicant in writing of his right to appeal its decision to the Public Service Appeal Board was a breach of the right to protection of law.. Yet, notwithstanding all of that, even when the claimant did what he was asked, the defendant failed to act – first of all with alacrity, then at all, until pushed by third parties i.e. the Permanent Secretary aforesaid and litigation through the judicial review proceedings and these proceedings. Counsel for the defendant suggested that it was the claimant who had failed to act but that suggestion is rejected. As pointed out, the only time he was called upon to do something in response to his requests was for the production of the forensic report which he did in less than a month. The rest of the time, as is expressed in the common parlance, he was “danced around” and told one thing and then the other – there was a policy stopping all CLOs (which was untrue) and then also downright inaction and lethargy.
54. From the information before this court on affidavit from Mr. Clive Clarke, it is clear that Mr. Richardson’s oral refusal in 2018 due to a pretended policy decision was not only untrue but also a clear deception practiced on the claimant since there was no such policy. Therefore that decision was a clear deprivation of the claimant’s rights under sections 4 (a) and (b) of the Constitution. He was not only deprived of due process but that decision then

² H.C.A 495 of 2005, paragraph 44

³ CV2010-03410

deprived him of his rights to the protection of the law. At that time, not only was there no request for a forensic report but there was also no inspection of the vehicle so that a decision was made without the benefit of either.

55. Similarly, the decision to reject the claimant's application as intimated in the letter dated fixed for April 2019 was also done in similar manner. On this occasion, the Transport Commissioner, Mr. Gosine, had the forensic report and the inspection and still refused the re—stamping and CLO. One can argue, however, that a public officer can make an error in his or her judgment which can be corrected upon appeal and that was done. However, once again, the claimant was not advised of his right to appeal thereby breaching his right to the protection of the law.
56. And then, even after the successful decision by the TTB in the claimant's favour, Mr. Gosine, the then Transport Commissioner, continued not only to delay in implementing the decision but also to do so on a wrongful basis as mentioned by Mr. Boney i.e. re-stamping without the CLO on an "as is" basis. It is that this stage that the actions of the Transport Commissioner turned towards apparent vindictiveness and irrationality as there was no basis to deprive the claimant of the CLO in the circumstances. The refusal to grant one continued under the purview of the current Transport Commissioner, Mr. Clarke who, again, required the intervention of the court in directly to prompt the issuance of the CLO in July 2020.
57. Clearly, the claimant's rights have been breached, and egregiously so. The next question is whether the claimant is entitled to compensatory and other damages.
58. Essentially, the defendant suggests that the claimant is not entitled to any compensatory damages because he has failed to provide any evidence to show his earnings from the operation of the maxi taxi. Particularly, reference was made to the fact that he did not provide returns submitted to the Board of Inland Revenue to support his claim.

59. The claimant provided no hard evidence in terms of receipts or documents. Instead, he provided evidence of the route that he ran, the number of runs that he made and his expenses to show income and, ultimately, profit. He provided no bank statements to show money going in or out. Instead, to support his claim, he provided evidence from another maxi taxi operator, Terry Murrell, on the same route. Neither of them were challenged and the court therefore has their uncontroverted evidence as to their income.
60. The claimant sought compensatory damages at an estimated loss of \$702,000 being lost earnings for at least 702 days from 24 August 2017 to 20 November 2019 at \$1000 per day. Obviously, this is a gross figure as confirmed by Terry Murrell. That is also a maximum figure. The claimant himself said that his earnings run between \$600-\$1000 per day. According to Mr. Murrell, approximately \$150 was used per day for diesel, which conflicts with the claimant's alleged monthly average of \$1200 which roughly translates to about \$50 per day. The court must also take into account other expenses for the vehicle such as loan instalments, maintenance and other expenses for the vehicle. The claimant alleges that he has since sold the maxi taxi for \$100,000 although the reason for doing so that he quoted in his affidavit were not clear. That reason he said was because of the decisions of the Transport Commissioner and its effects but that was not elaborated upon and the court was left to infer what he means by that. If he had not sold it, arguably, he could still have operated the vehicle at a profit.
61. The problem that the court had was trying to determine what the claimant's loss of profit would be since that would be the compensation he would be entitled to. Without the expenses for the vehicles – loan payments that apply to the vehicle, tires, insurance, mechanic and other maintenance fees, etc. - the court is seriously handicapped in making that determination. Obviously, the court has to take the income, deduct the expenses from it and make

allowance for taxes⁴, if applicable, before making an order for compensatory damages. The court cannot speculate on that.

62. However, it would be unfair to the claimant, after having suffered for so long, to be deprived further of what ought to be his right to compensatory relief by reason of the State's treatment of him and its denial of his rights. As a result, the court considered referring that issue to the Master in Chambers for further assessment. Considering all of the circumstances, and the nature of the matter before this court, the court was of the respectful view that it should deal with the issue of compensation once and for all. In that regard, the court thought it best to request further evidence from the claimant to put a proper perspective on the unchallenged evidence that the court has as to his gross income. Obviously, it would be unfair to grant that gross income as a measure of his loss of profit. In the interest of justice, and further to the overriding objective, the court gave the claimant an opportunity to present information on the deductions that ought to be made so that the court so that the court could make a fair order.
63. The defendant raised the issue that the claimant had not provided evidence of his tax returns to support and corroborate his claim for his level of income. The court agrees. In this case, the court allowed the evidence to be presented and, obviously, once taxable, that tax would be deducted from the award made.
64. There is no doubt in the court's mind that it ought to make an award for vindictory damages in light of the clear failure on the Transport Commissioner's part to properly, efficiently and impartially carry out his duties to the public. However, the \$300,000-\$400,000 window advanced on behalf of the claimant is clearly disproportionate since the vehicle itself was only valued \$100,000 at the end of the day. Bearing in mind the authorities relied upon,

⁴ See *British Transport Commission v. Gourley* (1956) AC 185; and this court's discussion of the issue of taxation of judgments in *Edsel Reid v Walter Marshall & Ors* HCA No. 3023 of 1995

the court is of the respectful view that it should award the claimant \$60,000 as vindicatory damages.

The supplemental affidavit

65. By order dated 15 October 2021, permission was granted to the claimant to file and serve a supplemental affidavit on the specific issue of compensatory damages and loss of profits.
66. There was no objection from the defendant in this regard. By email dated 03 December 2021, it was indicated to the court that the defendant did not intend to file an affidavit in reply, a statement of objections, or cross examine the claimant.
67. The claimant set out his expenses relating to the operation of the maxi taxi which included insurance, diesel, maintenance expenses (oil and filter changes) and repairs and the monthly loan payments for the purchase and upgrade of the maxi taxi.
68. As it relates to the insurance, the claimant stated that he made several payments to Bankers' Insurance Company to maintain coverage for the maxi taxi under the Insurance Policy #M055574 over the insurable period 3 May, 2018 to 25 December 2019. It was stated that the maxi taxi was always insured but he was unable to locate or retrieve the receipts for the period before May 2018. These payments totalled to \$7,234 for which the claimant exhibited 5 copies of receipts from Bankers Insurance Company.
69. As it relates to the cost of diesel, the claimant submitted that he spent approximately \$2,200 per month before he stopped operating the maxi taxi in August 2017. At that time the cost for diesel was subsidised by the government and was approximately \$2.30 per litre. However, the price for diesel significantly increased over the period October 2017 to 2019 to approximately

\$3.41 per litre.⁵ Additionally, the claimant annexed receipts for maintenance and repairs to the maxi taxi to keep it functioning while it was not being operated. The estimated figure for oil and filter changes was based on a receipt from Automotive Supplies Company dated 26 June 2019 in the sum of \$416.10. The estimation the frequency of oil and filter changes was for every 3 months.

70. The claimant set out an estimated table of expenses for the maxi taxi for the periods 24 August 2017 – 20 November 2019 when the Transport Commissioner refused to give permission to re stamp the chassis number and the maxi taxi was not operating:

70.1. For the period 24 August 2017 to 31 December 2017, expenses for the maxi taxi was estimated at \$31,197.20.

70.2. For the period 1 January 2018 to 31 December 2018 expenses for the maxi taxi was estimated at \$62,036.40.

70.3. For the period 1 January 2019 to 20 November 2019, expenses for the maxi taxi was estimated at \$52,863.03.

71. Thus, the total amount of expenses calculates to \$146,096.63.

72. At a further hearing held on 7 December 2021, the attorney at law for the parties submitted further on the issue of compensatory damages and loss of profits for the period that the claimant was barred from operating the maxi taxi.

73. Ms. Davis, attorney at law for the defendant indicated that there was no definitive final evidence as it relates to compensatory damages that the claimant is entitled to take into account. She also reiterated that the court ought to take into account that no tax returns were filed on behalf of the claimant. However, the defendant's attorney did not challenge the claimant's totality of evidence in this regard.

⁵ The claimant annexed an extract of the budget statement 2018 that was published by the Ministry of Finance.

74. The attorney at law for the claimant submitted on the evidence of the claimant's estimated loss of earnings based on actual earnings during the period he operated it. This evidence was also supported by the evidence of a fellow maxi taxi operator, Mr. Terry Murrell, who worked the same route as the claimant. The chargeable fares on which the estimates are based on a tariff sheet fixed by the Maxi Taxi Association. The claimant suggested that the court could safely use an average of \$800 per day for the 6 day work week based on what was previously submitted by the claimant that his profits ranged between \$600-\$1000 per day.
75. The estimation of income calculated at \$800 per day for a 6 day work week are as follows:
- 75.1. For the period 24 August 2017 to 31 December 2017, estimated at \$88,800.
- 75.2. For the period 1 January 2018 to 31 December 2018 estimated at \$249,600.
- 75.3. For the period 1 January 2019 to 20 November 2019, estimated at \$221,600.
76. Thus, the total amount of income calculates at \$560,000 less total expenses of \$146,096.63= \$413,903.37.
77. The claimant stated that he did not file tax returns to the Board of Inland Revenue during the time he operated the maxi taxi but accepted that he was still within the statutory period for the filing of those returns and gave an undertaking to do so.
78. Therefore, as it relates of the compensatory damages that the claimant is entitled to, the court awards \$413,903.37 but will reduce the same by 25% to take into account the taxation factor. This amounts to an award of \$310,427.53 and the court awards interest thereon at the rate of 2.5% per annum from 20 November 2019.

The Order

79. The court therefore declares that the Claimant's rights to the enjoyment of property and the protection of law as guaranteed by sections 4(a) and 4(b) of the Constitution have been contravened and infringed as a result of the refusal and delay by the Transport Commissioner to grant permission to re-stamp the corroded chassis number of motor vehicle HAX 1221;
80. The court grants the claimant vindicatory damages in the sum of \$60,000.00;
81. The defendant shall pay to the claimant compensatory damages in the sum of \$310,427.53 with interest thereon at the rate of 2.5% per annum from 20 November 2019 to date;
82. The defendant shall also pay the claimant's costs of the claim to be quantified by the Registrar of the Supreme Court in accordance with Part 67.12 of the CPR in default of agreement.

/s/ D. Rampersad J.

Assisted by
Shalini Debideen
Attorney at Law
Judicial Research Counsel