THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2021-02607

Between

EFFRIN MOHAMMED
INDIRA BISSONDATH
(Trading as E & I Transport Services)

Claimants

And

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

Claim No. CV2021-02608

Between

EFFRIN MOHAMMED

Claimant

And

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

Before the Honourable Mr. Justice R. Rahim

Date of delivery: March 18, 2024.

Appearances:

Claimants: G. Ramdeen instructed by D. Harripaul

Defendant: M. Davis instructed by N. Smart.

REASONS

1. These are the written reasons for the order of the court made February 27, 2024 as follows:

> *"1. It is declared that motor vehicle registration number TBW 3888 was unlawfully detained from February 24, 2022 to the date of delivery up on April 28, 2022.*
>
> *2. It is declared that motor vehicles registration numbers TCF 1616 and TBW 3887 were unlawfully detained from one month after the date of seizure namely March 10, 2020 to date of delivery up on April 28, 2022.*
>
> *3. The Defendant shall pay to the Claimants the following damages:*
>
> > *a. Damages for loss in value reduced on account of the general applicability of loss in value regardless of detention as follows:*
> >
> > > *i. RHD Nissan Dump Truck registration number TBW 3888 –nil*
> > >
> > > *ii. RHD Nissan Dump Truck registration number TBW 3887-$300,000.00.*
> > >
> > > *iii. RHD Nissan Dump Truck registration number TCF 1616-$200,000.00.*
> >
> > *b. Damages for loss of use when considered with the duty to mitigate:*
> >
> > > *i. RHD Nissan Dump Truck registration number TBW 3888 64 days x $3,500.00 per day in the sum of $224,000.00.*

ii. RHD Nissan Dump Truck registration number TBW 3887-365 days x $3,500.00 per day in the sum of $1,277,500.00.

iii. RHD Nissan Dump Truck registration number TCF 1616-365 days x $3,500.00 per day in the sum of $1,277,500.00.

c. The Defendant shall pay to the Claimants aggravated damages in the sum of $30,000.00.

d. The Defendant shall pay to the Claimants exemplary damages in the sum of $50,000.00.

4. The Defendant shall pay interest on the damages awarded at paragraph 3a above as follows;

a. On damages awarded in respect of RHD Nissan Dump Truck registration number TBW 3887 and RHD Nissan Dump Truck registration number TCF 1616 at the rate of 2.5% per annum from March 10, 2020 to April 28, 2022.

5. The Defendant shall pay interest on damages awarded at paragraph 3b hereof at the rate of 2.5% per annum from the date of filing the claim to the date of judgment.

6. The Defendant shall pay to the Claimants the prescribed costs of the claim."

2. The claim is a consolidated claim for detinue. In essence there were two matters which dealt with three different dump trucks. CV2021-02607 related to TCF 1616 owned by both claimants and CV2021-02608 related to two trucks TBW 3888 and TBW 3887 owned by Effrin Mohammed. It was the case for the claimants that the trucks were detained by the police

on February 10, 2020 and only released on April 28, 2022 upon the order of this court. The evidence demonstrated that the Police had in fact indicated after the court's case management conference in which the court made the order that the claimants were free to collect the vehicles on April 27, 2022, however same was not effected until April 28 because the claimant had to make the necessary arrangements. Having regard to the finding of the court that the vehicles were unlawfully detained by the police, owing to the conditions in which they were kept overtime, the need to make arrangements to have them started and towed was reasonable so that the court found that despite the alleged readiness by the police for them to be collected on the 27th of April, the effective date of release was the 28th it being no fault of the claimants that the vehicles had to be started and towed.

3. The vehicles having been detained charges were instituted for alleged illegal quarrying offences. Those charges were dismissed at the Magistrate's Court on February 24, 2022. It was the finding of the court that in relation to TBW 3887 and TDF 1616, that a period of one month after the vehicles had been detained was a sufficient period within which to investigate whether the vehicles were tampered with and also to photograph the vehicles for the purpose of the criminal charges. The issue of the exercise of the power to seize was not at issue in this case. The challenge was to the exercise of the power to detain only.

4. The court accepted that in relation to the issue of title, it was clear to the police that the claimants were the owners or at the least the ones entitled to possession of the vehicles having regard to their evidence of ownership and the evidence of the person who sold it to them Mr. Lincoln Thackorie. This evidence was not challenged by the defendant either in its pleaded

case or its evidence. Most of the cross examination of the defence concerned the issue of the title of trucks and whether the claimants had proven the amount claim per day by way of proof of contracts before this court. In the round the court found that although no evidence of contracts was produced the evidence of the claimants essentially was unanswered in that regard so that the court accepted the evidence of the claimants in the absence of evidence to the contrary their evidence been highly plausible in any event. It is well known in Trinidad and Tobago that commercial transport vehicles such as dump trucks are widely used in almost all areas of commerce.

5. Section 26 of the **State Lands Act Chap. 57:01** provides the police with the powers of seizure, as follows: -

> *26. (1) The Commissioner, a Deputy Commissioner or any constable may without warrant—*
>
> *(a) seize and detain any material which there shall be reasonable cause to suspect to have been dug, won, or removed from any State Lands without the prescribed licence;*
>
> *(b) seize and detain any vehicle, animal, or boat having, drawing, or carrying any such material;*
>
> *(c) arrest and detain any person who may be reasonably suspected of having been employed or engaged in digging, winning, or removing such material.*

(2) It shall be lawful to make the seizures, detentions, and arrests mentioned in this section whether the material, vehicle, animal, or boat, or the person suspected of being employed or engaged in the digging, winning or removing, is found within or without the limits of any State Land.

6. The Act does not provide assistance as to the powers of continued detention subsequent to the seizure. The starting point for the examination of the relevant principles governing the powers of seizure and detention of property and the limits of those powers is the decision of the English Court of Appeal in ***Ghani v Jones***[1] which was approved by the Judicial Committee of the Privy Council in ***Jaroo v The Attorney General of Trinidad and Tobago***[2] in the following terms: -

In Ghani v Jones [1970] 1 QB 693, 708 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 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:

[1] [1970] 1 QB 693
[2] [2002] 1 AC 871

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."

7. Lord Hope, for the Board in ***Jaroo,*** went on explain how these principles are to be considered alongside the constitutional right to the enjoyment of property that is enshrined in section 4 (a) of the Constitution. He stated;

> *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. As Roskill LJ said in Malone v Metropolitan Police Commissioner [1980] QB 49, 70, there is no general power in the police, when they have lawfully seized property which is thereafter not the subject of any charge and is clearly shown not to have been stolen, to retain that property as against the person entitled to possession of it against some uncertain future contingency. As he put it, 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.*

8. These common law principles must be read together the manner in which the subsidiary legislation in the form of the Police Standing Orders (PSO) had defined and limited the exercise of those powers. The PSO under clause 26 gives the discretion to the police to photograph the items seized and return same to the owners pending the hearing of the charges (except where there is a dispute as to ownership). The court therefore found that one month was a reasonable period so to do and that the vehicles being

obviously commercial vehicles with earning potential they ought to have been photographed and returned. In that case the claimants may have been required to enter into a bond to produce the vehicles at trial for inspection. Further that if they were found guilty and the State sought to exercise its right of forfeiture, the claimants would have in any event been duty bound to produce same to the court as set out in the bond.

9. Further the evidence from the charging officer Victory was that in relation to those two vehicles he had concluded the investigation but did not return them because he had been instructed to keep them. There was in the court's view no rational or reasonable basis to continue to detain them.

10. As a consequence the court found that the period of detention in respect of those vehicles was that of one month after detention to the date of release.

11. In relation to **TBW 3888** the position was different. There was an issue with the title of this vehicle as it appears that the number TBW 3888 was registered to a trailer and not to a truck. This was the evidence of checks made at the relevant state departments. It follows that the police could not have and ought not to have exercised the discretion to release same until the issue of the criminal charge had been determined one way or the other. When the charges were dismissed however, there no longer being the compulsion under the PSO, the "vehicle" or "chattel" ought to have been returned to the claimants. The period of detention was thus in the view of the court that from February 24, 2022 to the date of release.

Damages

Loss in value

12. In relation to loss of value of **TBW 3888**, it was clear to the court that for the period of what was essentially two months of unjustified detention there was no proof of loss of value. This was only two months and it may well have been the case that the vehicle deteriorated in value over the entire period of detention but the evidence did not satisfy the court of any loss such loss for that period hence a nil value was attributed. The valuation report shows that the vehicle was 17 years old at the time of the report so that there would have been a loss in value for a considerable period prior to the vehicle being purchased by the claimants in any event.

13. In relation to the loss in value of TBW 3887 and TCF 1616, the court accepted the evidence of loss of value provided in the valuation reports of Anthony Arjoon. In his evidence, he estimated the value of TBW 3887 to be $60,000.00 at the date of valuation and $80,000.00 in respect of TCF 1616. The evidence is that the claimants paid the sum of $1.2 million dollars for both **TBW 3888** and **TBW 3887** in the year October 2017. This when divided by two amounts to $600,000.00 per vehicle. Specifically, with regards to TBW 3887 therefore the court found that the claimants paid the sum of $600,000.00 for same in 2017. The court considered that with daily usage from October 2017 to the date of seizure in 2020, almost 3 years later there would have been loss in value as a matter of course. This figure was not precisely set out in the evidence and so the court considered that in respect of commercial vehicles value may be maintained for a longer period than in respect of the average car which ordinarily carries a period of 5 years value write off. The court admits that it has before it no such evidence but it was left in the position that it had

to do the best that it could in the circumstances before it. As a consequence the court found that from the time the vehicles were bought to the time they were seized, the vehicles would have suffered a loss in 40% of their value. This would have reduced the value of TBW 3887 to that of $360,000.00 at the date of seizure. Having regard to the evidence of Arjoon, TBW 3887 would have been worth 60,000.00 at the date of the report so that it would have depreciated to the tune of $300,000.00 while detained. Hence the court awarded the sum of $300,000.00 as loss in value.

14. In relation to TCF 1616, the position was slightly different. There is no evidence of how much was paid but they have stated that at the time of seizure the vehicle was worth $500,000.00. The court found this evidence to be somewhat unreliable as no proof whatsoever was provided to substantiate this. It noted that the vehicle was a newer vehicle than the others being 15 years old as is borne out by the registration's series. It does not follow as a matter of course however that the diminution in value would have been a lesser percentage. In that regard and considering the very factors set out above the court was of the view that a diminution of 40% at the date of detention based on the same purchase price as the others would have been reasonable. It follows that the court found that the vehicle was worth the sum of $360,000.00 at the date of seizure. When the evidence of Arjoon is factored in it means that considering the stated value of $80,000.00 when valued in May 2022, the loss in value as a result of detention would have been $280,000.00 and not $200,000.00 as set out by the court erroneously in its order.

Loss of use

15. In relation to loss of use of **TBW 3888** for the period of 64 days, the claimants claimed and proved the sum of $3,500.00 per day which was in fact allowed for the full period of unlawful detention as found by the court.

16. The court considered in making the order that although not specifically pleaded by the defendant there nonetheless existed a duty to mitigate on the part of the claimants in relation to **TBW 3887 and TCF 1616**. Thus, the court permitted loss of use at the rate claimed by the claimant for a period of one year being 365 days in respect of each. The claimants had sought in that regard damages for the period of 807 days each amounting to the sum of $2,804,500 in respect of each vehicle. The sum awarded was $1,277,500.00 each.

17. The court accepts that there was no obligation on the claimants to plead that they had mitigated their loss[3]. The court noted that rule 8.2 CPR UK includes a provision that requires the claimant to plead any facts relating to mitigation of loss or damage. There is no such equivalent in the CPR of Trinidad and Tobago. Even if there was in any event consistent with the ratio in ***Geest***, the rule cannot be interpreted so as to vest a duty on the claimant to plead mitigation. As set out by Sir John Donaldson MR in ***Sotiros Shipping Inc v Sameiet Solholt*** [1983] Lloyd's Rep 605 at 608:

> *"A plaintiff is a under no duty to mitigate his loss, despite the habitual use by the lawyers of the phrase 'duty to mitigate'. He is*

[3] ***Geest Plc v Lansiquot*** [2002] UKPC 48, an appeal from the EC Court of Appeal arising out a decision by the first instance court to reduce damages in account of failure of the Plaintiff to mitigate her damages by seeking further medical attention.

completely free to act as he judges to be in his best interests. On the other hand, a defendant is not liable for all loss suffered by the plaintiff in consequence of his so acting. A defendant is only liable for such part of the plaintiff's loss as is properly to be regarded as caused by the defendants' breach of duty."

18. The court therefore accepts that it may have erred in this respect as in any event, had other vehicles been acquired for the purpose of replacement during the period of detention that cost would have been awardable as a consequence of it being directly attributable to the actions of the defendant.

19. Further, the court accepts that for mitigation to have been considered by the court, the defendant ought to have pleaded same or at the least given notice to the claimant that it intended to rely on same. Neither could the court have applied the principle on its own motion[4]. As a consequence, the court accepts that it appears in law that the award ought to have been made for the full period of days of detention in respect of TBW 3887 and TCF 1616.

Aggravated damages

20. Des Vignes J in ***Ricardo Youk-See and Others v The Attorney General of Trinidad and Tobago***[5], at paragraphs 176 and 177 set out the applicable law in relation to an award of aggravated damages as follows:

[4] See the dicta of Lord Kerr in ***Terrance Calix v The Attorney General of Trinidad and Tobago*** [2013] UKPC 15 at paragraphs 19, 20 and 22.
[5] CV2011-04459

In the Privy Council decision of ***Subiah v The Attorney General of Trinidad and Tobago PCA No. 39 of 2007****, Lord Bingham stated as follows in relation to compensation for aggravated damages:*

> *'Such compensation will take account of whatever aggravating features there may be in the case, although it is not necessary and not usually desirable (contrary to the practice commended by the Court of Appeal of England and Wales for directing juries in Thompson v Commissioner of Police of the Metropolis [1998] QB 498, 516 D-E) for the allowance for aggravated damages to be separately identified. Having identified an appropriate sum (if any) to be awarded as compensation, the court must then ask itself whether an award of that sum affords the victim adequate redress or whether an additional award should be made to vindicate the victim's constitutional right. The answer is likely to be influenced by the quantum of the compensatory award, as also by the gravity of the constitutional violation in question to the extent that this is not already reflected in the compensatory award. As emphasised in Merson, however, the purpose of such additional award is not to punish but to vindicate the right of the victim to carry on his or her life free from unjustified executive interference, mistreatment or oppression."*

Paragraph 177 reads:

> '*According to Smith JA in* ***Merrick v The Attorney General of Trinidad and Tobago and Others Civ App No. 146 of 2009:***
>
> > *"28. Aggravated damages are an element of the compensatory damages awarded to a claimant to cater for*

an element of aggravation of the injury to the claimant. These damages are separate and distinct from exemplary damages which are in the nature of a punitive award of damages against a wrongdoer. An appropriate citation for the place of aggravated damages in unlawful detention/false imprisonment is from the case of Takitota v Attorney General and Others [2009] UKPC 11 where at paragraph 11 Lord Carswell stated: "In awarding compensatory damages the court may take account of an element of aggravation. For example, in a case of unlawful detention it may increase the award to a higher figure than it would have given simply for the deprivation of liberty, to reflect such matters as indignity and humiliation arising from the circumstances of arrest or the conditions in which the Claimant was held. The rationale for the inclusion of such an element is that the Claimant would not receive sufficient compensation for the wrong sustained if the damages were restricted to a basic award."

29. In Trinidad and Tobago, the accepted practice in cases of unlawful detention/false imprisonment is to include the award for aggravated damages in the award of general damages. (See de la Bastide C.J. in Thaddeus Bernard and Another v Nixie Quashie Civil Appeal 159 of 1992 at page 5 and the most recent endorsement of this practice by the Privy Council in Subiah v Attorney General of Trinidad and Tobago [2008] UKPC 47 at paragraph 11). Even though a court must indicate the basis upon which it proposes to

make an award for aggravated damages, there is no need to state such aggravated damages as a separate award."

21. In this case the evidence which has been left unchallenged and so accepted by the court is that the trucks were seized in the case of two of them for some two years causing financial hardship to the claimants in the face of letters sent to the police detailing the circumstances and seeking the return of the vehicles. Further, when released the vehicles appeared to be in dire need of repairs. The evidence of the diminution in value is grave. It follows that the vehicles, relatively expensive commercial vehicles were kept in conditions that were unfit for storage of such vehicles open to the elements without regard for the value thereof having regard to the condition of the vehicles when finally released. As a consequence, the court was of the view that this case was a fit one for the award of aggravated damages.

22. The court made the order that it did having regard to the dicta of Their Lordships in ***Douglas Ngumi v The Attorney General of the Bahamas***[6], a case relied on by the claimants. In this case the Appellant, a citizen of Kenya had been detained for the purpose of deportation for over 6 years. During his detention he was assaulted and subjected to appalling and degrading treatment. It was found at first instance that he was unlawfully detained after the period of three months from the date of deportation had elapsed. In treating with the structure of awards of this nature (the lower courts having awarded a global figure) Dame Ingrid Simler stated;

"75. The Board emphasises however, the importance in every case of the first instance judge setting out the factors taken into account

[6] [2023] UKPC 12

in making the assessment of damages for unlawful detention. The conditions, treatment and length of the detention will be of prime relevance. There may be other features of the detention that cause particular harm or suffering that are regarded as relevant to the level of damages awarded. If so, they should be identified. Thus, the award should indicate clearly the amount referable to assault and battery. There should be an identifiable award for false imprisonment and for both aggravated damages and exemplary or constitutional damages. As already stated, this is likely to impose a degree of discipline on what is a difficult evaluative exercise, and will enable the parties to understand why the assessment has been made at a particular level. It should provide sufficient detail and analysis to enable an appellate court to decide whether or not the assessment is legally sustainable in the case of an appeal."

Exemplary damages

23. Consistent with the principles set out in ***Aaron Torres v Point Lisas Industrial Port Development Corporation Limited***[7] the court was of the view that this was an apt case for the award of exemplary damages. The court found that the acts of the police were harsh, oppressive, unconstitutional and arbitrary. It also was of the view that the award was necessary therefore to impose a punishment as the sum awarded was in the courts' view inadequate to punish the police for its conduct in this case. In so doing the court considered that the claimants had been deprived of their property without due process from one month after TBW 3887 and TCF 1616 had been seized. The law permitted the return of the vehicles

[7] Civil Appeal No 84 of 2005

but the police refused to release same to the claimants. There were safeguards that could have been put in place both to protect the integrity of the case before the Magistrate and of the vehicles. The PSO provided for photographs to be taken of the vehicles. This would have been proof that these were the vehicles being used by the persons charged for illegal quarrying. The production of the actual vehicles was not reasonably required. This is quite simply the reason for the PSO 26 which acknowledges that there are cases where the balance lies in favour of release of the items seized. This may be the case where the police does not possess adequate storage facilities that are fit to protect the integrity of the item as was the case here.

24. Additionally, the claimants may have been ordered to enter into a bond to produce the vehicles at trial. This was not done. It would be as effective as detaining them. The evidence is that the police in particular Officer Victory was aware of this but his only answer as to why he employed none of those tools was that he was instructed to continue to detain the vehicles. This was unsatisfactory in the extreme. His evidence was clearly that he did not require the vehicles for any further investigation. This therefore was in a real sense the arbitrary detention of the two vehicles after the need to continue to detain no longer existed.

25. Further, despite the pleas by the Attorney for the claimants by several letters, the detention continued. Further the vehicles were only released upon direction of this court at a directions hearing when nothing prevented the release before that date and no reason was given for the non-release of the two vehicles between the period of the end of the Magistrates' Court proceedings and the directions hearing. None whatsoever.

26. The court was therefore satisfied that the sum awarded for exemplary damages in the circumstances as claimed by the claimants was justified.

Interest

27. In relation to interest the court applied the usual principles in relation to such a grant and the recommended rate by Their Lordships of the Court of Appeal. This was not in issue.

Ricky Rahim

Judge.