

**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE COURT OF APPEAL**

**Civil Appeal No. P178 of 2022**

**Claim No. CV 2020-01538**

**Between**

**THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO**

**Appellant**

**And**

**EDASCO LIMITED**

**Respondent**

**PANEL:**

**A. Mendonça J.A.**

**J. Aboud J.A.**

**Date of delivery: May 23, 2023**

**Appearances:**

**Mr. Sanjeev Lalla, Mr. Sanjiv Sookoo and Ms. Chelvi Ramkissoon instructed by  
Ms. Nisa Simmons appeared on behalf of the Appellant**

**Mr. Gerald Ramdeen instructed by Ms. Dayadai Harripaul appeared on behalf of  
the Respondent**

## **JUDGMENT**

**Delivered by A. Mendonça J.A.**

1. The Respondent, who is the claimant in the court below, commenced these proceedings against the Appellant claiming damages for the wrongful detention and/or conversion of its dump truck registration number TCY 8281 (“the dump truck”). The Appellant filed a defence which was later amended. The Respondent applied for an order striking out the amended defence and for permission to enter judgment against the Appellant for the relief claimed in its statement of case. The High Court Judge (the Judge) granted the application. She accordingly struck out the amended defence and gave the Respondent permission to enter judgment against the Appellant for the relief claimed. The Appellant now appeals. The Appellant contends that the Judge erred in striking out the amended defence and seeks an order of this Court setting aside the Judge’s order and reinstating the amended defence.
2. These proceedings were commenced by claim form and statement of case, which were both filed on June 25, 2020, against the Appellant who is sued by virtue of section 19(2) of the State Liability and Proceedings Act. The Respondent’s claim as set out in its statement of case, for the purposes of this appeal, may be briefly summarised.
3. The Respondent claimed that it was at all material times entitled to possession of the dump truck, having purchased it in 2015 from the registered owner, and that the dump truck without lawful justification was removed and carried away by a police officer on July 16, 2019 and detained at the army base in Cumuto. By letter dated July 26, 2019 the Respondent demanded the return of the dump truck. By letter in reply (wrongly dated July 11, 2019) the police refused to deliver up the dump truck claiming that it was part of an ongoing investigation pursuant to section 26(1) of the State Lands Act.

4. The Respondent pleaded that it was the duty of the Appellant to return the dump truck immediately upon a reasonable time having expired for the completion of the police investigations but the Appellant has failed and/or neglected and/or refused to return the dump truck and continues to retain same unlawfully. Accordingly, the Respondent claimed, inter alia, damages including exemplary damages for the conversion and/or detention of the dump truck.
5. In the amended defence filed on November 11, 2020 the Appellant averred:
  - (1) That the dump truck was lawfully detained by the police further to an investigation into illegal quarrying and continues to be detained pursuant to the State Lands Act; and
  - (2) The dump truck is currently in the possession of the Magistrates' Court and is no longer in the possession of the Appellant's servants or agents.
6. The Appellant relied on the following matters pleaded in its amended defence in support of those two averments:
  - i. Acting on information received, a group of police officers, among whom was PC Gordon, travelled to the Wallerfield area on July 16, 2019 and there observed an excavator digging material from the ground and loading it onto the dump truck which appeared fully loaded with aggregate;
  - ii. There were two men in the dump truck and one man on the excavator. One of the men in the dump truck was one Mr. Pitt ("Pitt");
  - iii. When questioned, the men ultimately admitted that they were not in possession of a licence, permit or any documentation permitting them to lawfully carry out quarrying in the area;

- iv. PC Gordon contacted the State Lands Department which confirmed that the area where the digging was taking place was State lands to be used for agriculture and that no person had permission to conduct quarrying in that area;
- v. The men were informed by PC Gordon that he had reason to believe they were engaged in illegal quarrying, which is an offence. They were arrested and conveyed to the Cumuto police station;
- vi. The dump truck was seized and arrangements were made for it to be conveyed to Camp Cumuto for safekeeping. The dump truck was ultimately taken and stored at Camp Cumuto;
- vii. In an interview of Pitt conducted by the police on July 18, 2019 he stated that he worked for the Respondent as a truck driver and that the dump truck was owned by the Respondent. He further stated that he normally transported material which he got from National Quarries and was not supposed "to go and get material anywhere else". When he got home the day before (i.e. July 15, 2019) he called a partner to get some material and was told he could get the material from where the men were found by PC Gordon. When asked why he chose to get the material there, Pitt stated:

"I normally pay \$450.00 for a load in the legal place but there is \$50, and that \$450.00 is for ten yards and my truck is 25 yards so I take ah chance."
- viii. PC Gordon continued investigations. An Inspector of State Lands visited the lands where the men were found and provided certain information and documents. A letter dated July 19, 2019 from the Land Management Division, Commissioner of State Lands, identified the lands where the men were quarrying as being State lands;

- ix. On July 19, 2019 PC Gordon charged the men for the offence of mining in a non-mining zone without a licence under section 45(1)(b) of the Minerals Act;
  - x. During the period July 19, 2019 to September 30, 2019 PC Gordon liaised with and received assistance in investigating the case from the Illegal Quarrying Unit of the Criminal Investigations Department, which investigates any disturbances and illegal and/or unlawful activity on State lands;
  - xi. On September 30, 2019 after further investigations and on instructions of the Director of Public Prosecutions the men were charged under the State Lands Act with the offence of mining without a licence under section 25 of the State Lands Act (which, at the time that the defence was amended, remained pending before the Magistrates' Court). The dump truck forms part of the prosecution's case and is considered evidence; and
  - xii. As a result of the charges under the State Lands Act, the dump truck is no longer in the possession of the Appellant, its servants or agents but is now in the possession of the Magistrates' Court.
7. In view of the above, the Appellant asserted at paragraph 12 of its amended defence that:

"The detention and continued detention of the [dump] truck is lawful and justified and that the [dump] truck is now in the custody of the [Magistrates'] Court. The [Appellant] further avers that the Court is entitled to retain possession of the [dump] truck until the Magistrate discharges the [dump] truck from the proceedings as it is within their sole discretion."

(See also paragraphs 4, 4(xiv), 6, 7 and 13 where instances of the same plea are to be found).

8. The Appellant also pleaded that the Respondent had an alternative and adequate remedy pursuant to section 27 of the State Lands Act in order to recover the dump truck (see paragraph 14). However, from the Appellant's submissions before us, the Appellant contends that the State Lands Act provides an exclusive remedy for the recovery of possession of the dump truck.
9. It is to be noted that no charges were ever laid against the Respondent arising out of the events of July 16, 2019 referred to above.
10. On August 6, 2021 the Respondent filed its notice of application to strike out the amended defence and for permission to enter judgment for the relief claimed on the ground that the amended defence discloses no ground for defending the claim. By the time the notice of application was filed, the charges against the men referred to in the amended defence were dismissed due to the non-appearance of the complainant, PC Gordon. They were dismissed on May 7, 2021. The complainant has appealed to the Court of Appeal from the dismissal of the charges. That appeal is now pending.
11. Further, before the Respondent's application could be determined by the Judge, the dump truck was returned to the Respondent. The dump truck was returned on September 15, 2021.
12. Therefore, by the time the Respondent's application to strike out the amended defence was heard and determined by the Judge, the question before the Court was whether the amended defence disclosed any ground for defending the Respondent's claim for detention of the dump truck for the period when it was first seized and detained on July 16, 2019 to when it was eventually returned to the Respondent on September 15, 2021.
13. The Judge considered the question under three discrete periods of time. The first, from the date the dump truck was seized on July 16, 2019 to September 30, 2019 (being the date the charges were laid under the State Lands Act); the

second, from the date the charges were laid to when they were dismissed on May 7, 2021; and the third, from May 7, 2021 to when the dump truck was returned to the Respondent on September 15, 2021.

14. In relation to the first period, the Judge noted that the charges were laid against Pitt and the other two men under the Minerals Act for carrying out mining without a licence on July 19, 2019 shortly after the men were arrested and the dump truck seized and detained. However, the Minerals Act, unlike the State Lands Act, does not contain a power to seize and detain a vehicle that might have been used in connection with the offence. In those circumstances, the Judge concluded:

“In the absence of the statutory power to seize and detain when offences under the Minerals Act have been laid, the defence as to the legality of the seizure and the detention that followed between the periods 16 July - 30 September [2019], is in my view doomed to fail.”

15. With respect to the second period, from September 30, 2019 to May 7, 2021 (being the dates the charges under the State Lands Act were laid to when they were dismissed), the Judge stated that the main argument of the Appellant was that the Magistrates’ Court and not the police had jurisdiction over the dump truck. The Judge did not accept that argument and said that “the defence of [the Appellant’s] inability to return the [dump truck] because it was under the jurisdiction of the Magistrate is therefore rejected.”

16. The Judge also addressed the argument of the Appellant that the State Lands Act provided an exclusive remedy to obtain possession of the dump truck, which according to the Appellant was for the owner to apply to the Magistrate to secure the release and obtain possession of the dump truck. The Judge did not agree with that submission and held that the State Lands Act did not grant *locus* to the owner of the dump truck to go before the Magistrates’ Court to secure its release unless the owner was charged under the State Lands Act so

that he is a defendant or a witness whose evidence is to be received at an appropriate stage before the Magistrates' Court.

17. The Judge also expressed the view that the charge of "mining" which was laid against the three men under the State Lands Act was not contemplated by that Act and were invalid. In those circumstances, the Judge was of the opinion that the State Lands Act could not be relied upon to justify the seizure and detention of the dump truck under the State Lands Act.
18. In relation to the third period, from the date of the dismissal of the charges to the date when the dump truck was returned, the Judge stated that on her reading of the Appellant's submissions, the Appellant accepted that the detention subsequent to the dismissal of the charges was not justifiable. There was no defence to the claim for unlawful detention of the dump truck for this period.
19. Accordingly, the Judge granted the Respondent's application and made the following orders:
  - a. The amended defence filed by the Appellant on 20 November 2020, is hereby struck out;
  - b. The Appellant is to pay the costs of these applications, to be assessed by the Registrar in default of agreement;
  - c. Permission is hereby granted to the Respondent to enter judgment against the Appellant for the reliefs sought in the Claim Form and Statement of Case filed 25 June 2020;
  - d. Judgment is to be entered for the Respondent against the Appellant with damages to be assessed;
  - e. The Registrar do fix a date for the assessment of damages that are to be paid by the Appellant to the Respondent before a Master; and



- f. The Appellant do pay the Respondent's costs of the claim to be quantified on the Prescribed Basis upon the quantification of damages.
20. Mr. Lalla for the Appellant submitted that the power to strike out should be used only in plain and obvious cases where it would be pointless to have a trial. This, he submitted, was not such a case. Accordingly, he submitted that the Judge erred in striking out the amended defence. He addressed the three time periods in this way.
21. In relation to the first period (i.e. July 16, 2019 to September 30, 2019), Mr. Lalla submitted that the Judge was wrong to focus only on the fact that the Minerals Act did not contain a power to seize and detain the dump truck. He argued that section 26 of the State Lands Act is also relevant and so too are the powers of the police of seizure and detention of goods under the common law.
22. Under section 26 (1) (b) of the State Lands Act, he argued that a constable may seize and detain any vehicle having, drawing, or carrying any material which he reasonably suspected was dug, won, or removed from State Lands without a prescribed licence. It was submitted that there were facts pleaded that supported that the dump truck was properly seized and detained pursuant to that section of the State Lands Act.
23. With respect to the common law, Mr. Lalla submitted that a police officer may seize and detain any item which he reasonably suspected may have been connected to the commission of any offence whether that item was the fruit of the crime, the instrument by which the crime was committed or was material evidence to show the commission of the offence. There too, there were facts pleaded that justified the seizure of the dump truck under the common law powers of the police.
24. In relation to the second period (i.e. September 30, 2019 to May 7, 2021), being the dates the charges were laid under the State Lands Act to when they

were dismissed, Mr. Lalla submitted that the detention of the dump truck for the duration of the magisterial proceedings was justified under the State Lands Act. However, although the police had effected the initial seizure of the dump truck, the possession, jurisdiction and control of the dump truck moved from the police to the Magistrates' Court once the charges were laid. He submitted that detinue and conversion lay against the person who is in possession of the goods and who on proper demand fails or refuses to deliver them up without lawful excuse. After the charges under the State Lands Act were laid, the person in possession of the dump truck was the Magistrate and not the police. It followed therefore that the claim in detinue and conversion during this period did not lie against the Appellant and that the Appellant therefore has a viable defence to the claim.

25. It was further argued by Mr. Lalla that the provisions of the State Lands Act provided an exclusive remedy for the owner of the dump truck to go before the Magistrate to secure its return while the charges are pending. A claim in detinue will only lie subsequent to the determination of the charges.

26. In relation to the third period (i.e. the period from the dismissal of the charges on May 7, 2021 to the date the dump truck was returned on September 15, 2021), Mr. Lalla in his written submissions argued that there was no pleading in the statement of case that covered this period and further he was not given an opportunity to re-amend the defence to address this period which only arose after the filing and service of the amended defence. Furthermore, he also submitted that it may not have been possible to return the dump truck immediately on dismissal of the charges, and even if the detention during this period was wrongful, it would not be for the entire period.

27. In his oral submissions on this period, however, Mr. Lalla's position vacillated. At first, he conceded that the charges having been dismissed, the dump truck should have been returned to the Respondent within a reasonable time.

Ultimately, he submitted that if the appeal from the Magistrates' dismissal of the charges were to succeed, the Appellant would be entitled to again seize the dump truck and return it to the possession of the Magistrates' Court.

28. Mr. Ramdeen for the Respondent submitted that the decision of the Judge is correct and ought to be upheld. He generally supported the Judge's conclusion and reasoning. He also submitted that in relation to the second period, a claim in detinue was not barred by the provisions of the State Lands Act and the Respondent was free to initiate and maintain a claim in detinue even while charges under that Act were pending. Further, he argued that the submission of the Appellant that after the charges under the State Lands Act were laid the dump truck was in the possession of the Magistrates' Court and not the police is unsustainable.

29. With respect to the third period, Mr. Ramdeen submitted that there was no authority or justification for the detention of the dump truck once the charges were dismissed and a refusal to return it on the dismissal of the charges was unlawful.

30. The Respondent's application in the court below sought two orders, namely the striking out of the amended defence and permission to enter judgment against the Appellant for the relief claimed in the statement of case. If the amended defence is struck out, permission to enter judgment against the Appellant in the circumstances of this case should follow naturally.

31. With respect to the striking out of the amended defence, the Respondent's application was made under rule 26.2(1)(c) of the Civil Proceedings Rules 1998 ("the CPR"). This rule provides that the court may strike out a statement of case or part of a statement of case if it appears to the court that the statement of case or the part of the statement of case to be struck out discloses no ground for bringing or defending a claim. Under rule 2.3 of the CPR "statement of case" is defined to include a defence.

32. The power to strike out is limited to plain and obvious cases where there is no point in having a trial. In **Civil Appeal P078 of 2017 Maharaj 2002 Limited v Pan American Life Insurance Company of Trinidad and Tobago Limited** the Court of Appeal observed at paragraph 19:

“The rule enables the court to dispose of cases that do not need full investigation at trial. This is an aspect of the court’s jurisdiction and duty to actively manage cases by deciding which cases need full investigation and accordingly disposing summarily of the others (see rule 25.1 of the CPR). It is important however to emphasise that the rule is discretionary; the court “may” strike out a statement of case. In *Real Time Systems Limited v Renraw Investments Limited & anor* [2014] UKPC 6 Lord Mance at paragraph 17 speaking on behalf of the Privy Council focussed on that aspect of the rule and noted that the court must consider any alternative to striking out the statement of case and that rule 26.1(1)(w) enables the court to “give any other direction or make any other order for the purpose of managing the case and furthering the overriding objective”. The court therefore should only strike out a statement of case where it is certain that the claim or defence is bound to fail.”

33. The rule clearly gives the court a discretion to strike out a defence. This appeal therefore is an appeal from the Judge’s discretion and this court will only interfere with the exercise of that discretion if it is satisfied that the Judge has gone plainly wrong. Circumstances where it may be said that the Judge was plainly wrong include where she misdirected herself in law, or where the Judge took into account irrelevant considerations, or failed to take into account relevant considerations, or gave insufficient weight to them, or that the decision cannot be supported having regard to the evidence or is otherwise fundamentally wrong.

34. In considering whether the Judge went plainly wrong in this case, we will address each of the periods in turn. Before doing so, we will make brief comments as to the law of detinue and conversion and set out the relevant provisions of the State Lands Act.

35. Detinue lies at the suit of a person who has an immediate right to the possession of the goods against a person who is in possession of them and who on proper demand fails or refuses to deliver them up without lawful excuse (see **Civil Appeal 105 of 2000 Rattansingh v The Attorney General of Trinidad and Tobago & another** and **Alicia Hosiery Ltd v Brown Shipley & Co Ltd [1969] 2 All ER 504, 510**).

36. In relation to conversion, in **Lancashire and Yorkshire Rail Co. & others v MacNicoll [1918-19] All ER Rep 537** conversion was described as converting to one's own use the goods of another without any real excuse. More fully, in the judgment of Atkin J (as he then was) it was stated:

"It appears to me plain that dealing with goods in a manner inconsistent with the right of the true owner amounts to a conversion, providing it is also established that there is an intention on the part of the defendant in so doing to deny the owner's right or to assert a right which is inconsistent with the owner's right."

(See also **Rattansingh v The Attorney General of Trinidad and Tobago & another** (supra)).

37. In **General and Finance Facilities Limited v Cooks Cars (Romford) Limited [1963] 2 All ER 314** Diplock LJ (as he then was) pointed to the following distinctions between a cause of action in detinue and a cause of action in conversion. He said this (at pp 317 to 318):

"There are important distinctions between a cause of action in conversion and a cause of action in detinue. The former is a single wrongful act and the cause of action accrues at the date of the conversion; the latter is a continuing cause of action which accrues at the date of the wrongful refusal to deliver up the goods and continues until delivery up of the goods or judgment in the action for detinue. . . Demand for delivery up of the chattel was an essential requirement of an action in detinue and detinue lay only when at the time of the demand for delivery up of the chattel made by the person entitled to possession the defendant was either in actual possession of it or was estopped from denying that he was still in possession. Thus, if there had been an actual bailment of the chattel by the plaintiff to the

defendant the latter was estopped from asserting that he had wrongfully delivered the chattel to a third person or had negligently lost it before demand for delivery up and the plaintiff could sue in detinue notwithstanding that the defendant was not in actual possession of the chattel at the time of the demand . . . Alternatively the plaintiff could sue in conversion for the actual wrongful delivery of the chattel to the third person, though not for its loss. On the other hand, an unqualified refusal to comply with a demand for delivery up of a chattel made by the person entitled to possession may also amount to conversion, but only if the defendant at the time of the refusal was in actual possession of the chattel . . . But even where, as in the present case, the chattel is in the actual possession of the defendant at the time of the demand to deliver up possession, so that the plaintiff has alternative causes of action in detinue or conversion based on the refusal to comply with that demand, he has a right to elect which cause of action he will pursue (see *Rosenthal v Alderton & Sons Ltd* ([1946] 1 All ER 583 at p 585; [1946] 1 KB 374 at p 379)) and the remedies available to him will differ according to his election.

The action in conversion is a purely personal action and results in a judgment for pecuniary damages only. The judgment is for a single sum of which the measure is generally the value of the chattel at the date of the conversion together with any consequential damage flowing from the conversion and not too remote to be recoverable in law . . .

On the other hand, the action in detinue partakes of the nature of an action *in rem* in which the plaintiff seeks specific restitution of his chattel. At common law it resulted in a judgment for delivery up of the chattel or payment of its value as assessed, and for payment of damages for its detention”

38. The following are the provisions of the State Lands Act that are relevant to this appeal:

**25.** Any person who digs or wins or removes, or is in any way concerned in the digging, winning, or removing of, material on or from any State Lands in Trinidad and Tobago without a licence in the prescribed form is liable—

(a) where the material dug, won, or removed is asphalt, on first conviction to a fine of three hundred thousand dollars and imprisonment for a term of three years, and on subsequent

conviction to a fine of five hundred thousand dollars and imprisonment for a term of five years;

(b) where material other than asphalt is dug, won, or removed, on first conviction to a fine of one hundred and twenty thousand dollars and imprisonment for a term of one year, and on subsequent conviction to a fine of three hundred thousand dollars and imprisonment for a term of three years.

**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.

**27.** Unless the person—

(a) from whom any material has been seized and detained; or

(b) whose vehicle, animal, or boat having, drawing, carrying, or removing any material has been seized and detained, or the owner thereof; or

(c) who has been arrested as a person suspected of having been engaged or concerned in the digging, winning, or removing of material from State Lands without the prescribed licence,

proves to the satisfaction of a Magistrate—

(d) that the material so seized and detained was not dug, won, or removed from State Lands without a licence in the prescribed form; or

(e) that any material for the having, carrying, or removing of which such vehicle, animal or boat has been seized and detained was not dug, won, or removed from State Lands without a licence in the prescribed form; or

(f) that he was not in truth and in fact engaged or concerned in the digging or removing of material from State Lands, or that he had a licence in the prescribed form,

the proof of all which shall be on the person charged, such Magistrate shall declare—

(g) all such material, vehicles, animals, or boats forfeited to the State, and shall order the same to be sold by the Commissioner; and the proceeds arising from such sale shall be paid into public funds for the use of the State; and

(h) that the person so arrested on suspicion as having been concerned in the digging, winning, or removing of material is guilty of an offence against this Act,

and the person shall be punished accordingly as provided by section 25.

39. It is clear from section 25 of the State Lands Act that anyone who digs, wins or removes or is anyway concerned in the digging, winning or removing of material on or from any State lands in Trinidad and Tobago without a licence in the prescribed form commits an offence and is punishable as provided for in that section. Section 25 creates a summary offence and a Magistrate may hear or determine any charge under section 25 of the State Lands Act.

40. Section 26(1)(a) deals with the seizure and detention of the material dug, won or removed from any State lands without a prescribed licence. Section 26(1)(b) deals with the seizure and detention of, inter alia, any vehicle having, drawing or carrying any such material and is of special importance to this appeal. The material referred to in section 26(1)(a) means such material reasonably suspected to have been dug, won or removed from any State lands without the prescribed licence.



41. The power to seize and detain a vehicle is expressed in discretionary terms: “may without a warrant seize and detain”. The power is given by section 26(1)(b) to the Commissioner of State Lands, a Deputy Commissioner, or any constable. It is a power that is exercisable without a warrant and arises where there is reasonable cause to suspect that the material has been dug, won or removed from any State lands without the prescribed licence and the vehicle has such material or was drawing or carrying any such material.
42. The discretion given by the provisions of the State Lands Act to seize and detain a vehicle may be exercised where the owner of the vehicle has not been charged for any offence under section 25. This is evident from section 26 that allows for the seizure of any vehicle having, drawing or carrying material reasonable suspected to have been dug, won or removed from State lands without the prescribed licence. Further, **Magisterial Appeal 79 of 1981 Archie v Headley** provides an example of where the vehicle was seized and detained although the owner of it was not charged.
43. In the **Archie** case, the defendant and another person were charged under the State Lands Ordinance (now the State Lands Act) with removing gravel from State lands to which they pleaded guilty. A truck in which the gravel was found was seized and detained. The owner was not charged. The magistrate imposed a fine on the defendant and ordered the forfeiture and sale of the truck which was operated by the other person charged. The appellant appealed. He said that he did not appreciate the guilty plea might result in the forfeiture and sale of the vehicle. The Court of Appeal noted that in the defendant’s statement to the magistrate he had made it clear that he was not the owner of the vehicle, and that he was operating the truck on the day in question on business in which the owner was neither engaged nor with which he was concerned. The Court of Appeal allowed the appeal to the extent that it set aside the magistrate’s order for forfeiture and sale of the truck. The Court of Appeal stated at page 6:

“...the evidence showed that the respondent was justified in seizing and detaining the truck under section 27(1)(b) of the Ordinance (now section 26 (1)(b) of the Act) because the “truck had gravel in it,” and that the Magistrate was justified in convicting the appellant and imposing a fine as he did, the appellant discharged the onus which is cast upon him by section 28 of the Ordinance (now section 27 of the Act) to show that the owner of the truck was ‘not concerned in the digging or removing’ of the material.”

(See also **Magisterial Appeal 50 of 2006 Bola v Mc Kenzie**).

44. In this matter there is no dispute that the Respondent was at all material times the owner of the dump truck and/or entitled to possession of it. A demand was made for delivery up of the dump truck on July 26, 2019 but the Appellant refused to comply until September 15 2021 when the dump truck was returned to the Respondent. In those circumstances, the Respondent’s cause of action in detinue or conversion was sustainable within a reasonable time of the demand being made for the delivery up of the dump truck (see **Rattansingh v The Attorney General of Trinidad and Tobago & another [2004] UKPC 15** and **Civil Appeal 105 of 2000 Rattansingh v The Attorney General of Trinidad and Tobago & another**).

45. The Appellant in its defence advanced what he considers to be lawful reasons for the refusal to return the dump truck within a reasonable time from the date of the demand for its delivery. The question that arises is whether those reasons, or any of them, amount to lawful grounds for the refusal to deliver up the dump truck to the Respondent and so for defending this claim.

46. In relation to the first period (July 16, 2019, being the date when the dump truck was seized to September 30, 2019 when the charges were laid under the State Lands Act), as we mentioned above, the Judge rested her decision on the fact that there was no power under the Minerals Act to detain a vehicle that had been used in relation to the offence for which the men were charged. The Judge did not consider the common law powers of the police to seize and detain goods nor did the Judge consider the provisions of the State Lands Act.

The Judge seemed to think that no reliance was placed by the Appellant on the common law powers of the police but that is not so as it is clear from the Appellant's submissions in the Court below that the Appellant did rely on them. In any event, he can seek to do so before this Court.

47. With respect to the common law powers of the police to seize and detain goods, we refer to the case of **Ghani v Jones [1970] 1 QB 693**. In that case, Lord Denning M.R. set out the powers of the police to seize and detain goods where no person has been arrested or charged. That does not appear to be apposite here. Lord Denning M.R, however, also referred to the power of the police to seize and retain goods where a person has been arrested or charged. In relation to that scenario, Lord Denning M.R. said this:

"I would start by considering the law where police officers enter a man's house by virtue of a warrant, or arrest a man lawfully, with or without a warrant, for a serious offence. I take it to be settled law, without citing cases, that the officers are entitled to take any goods which they find in his possession or in his house which they reasonably believe to be material evidence in relation to the crime for which he is arrested or for which they enter. If in the course of their search they come upon any **other** goods which show him to be implicated in some **other** crime, they may take them provided they act reasonably **and** detain them no longer than is necessary." (Emphasis added)

There are two things to note in that statement that are relevant to this appeal. First, the police may take goods found in the possession of the person arrested which they reasonably believe to be material evidence in relation to the crime for which he is arrested. Second, the police may also take goods which they come upon which show the man arrested to be implicated in some crime other than the one for which he is arrested. In the second scenario, they may take and detain the goods provided they act reasonably and detain them for no longer than is necessary.

48. In this appeal, the pleaded facts in summary are that:

- (a) On July 16, 2019 PC Gordon received information that persons were illegally quarrying in block 3 of the Wallerfield area; an area where it is known illegal quarrying takes place;
- (b) On arrival there, PC Gordon observed an excavator digging material and loading in onto the dump truck;
- (c) There were two men in the dump truck and one in the excavator and they admitted they were not in possession of any licence, permit or documentation authorising them to carry out quarrying;
- (d) The lands where the men were found were confirmed to be State lands and that no person had permission to conduct quarrying at that area; and PC Gordon had reason believe they were engaged in illegal quarrying;
- (e) The men were arrested, and the dump truck and excavator were seized and detained;
- (f) The dump truck was found to be carrying aggregate;
- (g) On July 19, 2019 after the area in which the men were found quarrying was properly identified to be State lands, they were charged under section 45(1) of the Minerals Act for the offence of mining in an area that is not a mining zone;
- (h) During the period July 19, 2019 to September 30, 2019 further investigations were carried out;
- (i) PC Gordon liaised with and received assistance in investigating the case from the Illegal Quarrying Unit of the Criminal Investigations Department, which investigates any disturbances and illegal and unlawful activity in State lands, and also received instructions from the Director of Public Prosecutions; and

(j) On September 30, 2019 the men were charged under section 25 of the State Lands Act.

49. If these facts are established, a reasonable inference may be drawn, namely that PC Gordon, when the men were arrested on July 19, 2019, had a reasonable suspicion that they were acting in violation of the Minerals Act. After further investigations, the men were charged under that Act. A reasonable inference may also be drawn that PC Gordon at the date of the arrest suspected the men to be implicated in some other crime relating to quarrying in the area in respect of which the dump truck was material evidence, it having been found in the possession of two of the men and to be carrying aggregate suspected to have been dug from the area in which they were found. If the pleaded facts are established, reasonable inferences may therefore be drawn that can support the common law powers of the police to seize and detain goods which may show the arrested persons to be implicated in some crime other than the one for which they were arrested. As was set out in **Ghani v Jones** (supra), the goods so seized may be detained for no longer than is necessary. That, too, is a matter that is dependent on the evidence and on what facts are established at trial.

50. In view of the above, there are issues of fact relevant to whether the police had the power at common law to seize and detain the dump truck which can only be determined by oral evidence properly led and tested at the trial. We therefore do not agree with the Judge that with respect to this first period the defence discloses no reasonable ground for defending the claim.

51. We have come to that conclusion on the basis of the common law power of the police. Mr. Lalla also relied on the provisions contained in section 26(1)(b) of the State Lands Act as providing the lawful justification in the circumstances of this case for the seizure and detention of the dump truck for this first period. It was accepted by the Respondent that the power to seize and detain a vehicle

under the State Lands Act is additional to the power to seize and detain goods under the common law. The State Lands Act provides a discrete power to seize and detain a vehicle with the ultimate aim of the forfeiture and sale of the vehicle as a form of punishment. However, in view of our conclusion on the common law principles, we do not see the need to address Mr. Lalla's submissions on section 26(1)(b) of the State Lands Act and therefore we express no view on it.

52. Before leaving this first period, we should point out that the Judge appears to be of the view that the lawful detention began from July 16, 2019, the date when the dump truck was seized. On the basis of the authorities referred to earlier, that is not correct. The Respondent's causes of action in this case did not crystallise before the expiration of a reasonable time after the date of demand for the return of the dump truck. The demand was made on July 26, 2019, and what is a reasonable time is fact-dependent and would also be a matter of evidence at the trial.

53. With respect to the second period, namely from the date the charges were laid under the State Lands Act to the date they were dismissed, the arguments of Mr. Lalla, as summarised above, are two-pronged. First, the Magistrates' Court and not the police was in possession of the dump truck so the cause of action in detinue and/or conversion does not lie against the Appellant. Second, section 27 of the State Lands Act provides an exclusive remedy for the recovery of the dump truck so that a claim in conversion and detinue does not lie while the charges under the Act are pending. The effect of the latter submission, if correct, would mean that this claim was premature and cannot be maintained before the charges were dismissed.

54. We will deal with the first submission.

55. We have already set out section 26 of the State Lands Act and noted that the section gives the power to, inter alios, a constable to seize and detain a vehicle

having, drawing or carrying any material reasonably suspected to have been dug, won, or removed from State lands without a prescribed licence. We have also noted the power is expressed in discretionary terms so the constable may seize and detain the vehicle.

56. The important thing to note in addressing Mr. Lalla's argument in this appeal is that the power is given to the constable. The power to seize and detain the vehicle is not vested in the Magistrates' Court. It is a power which the constable may exercise in the circumstances described above. As the power is expressed in discretionary terms, it is not compulsory that the constable seize and detain the vehicle. He may for good reason decide not to seize and detain the vehicle and if having seized the vehicle, may decide on further investigations and information that comes to him that the continued detention of the vehicle is not merited and that delivery of the vehicle to its owner is warranted. Such a case may arise where there is evidence that the owner of the vehicle was not engaged or concerned in the digging or removing of the material from State lands. Alternatively, the constable may decide on the basis of evidence in his possession that the owner was so involved and detain the vehicle until the magistrate decides on the fate of the vehicle. But in neither scenario is possession of the vehicle vested in the Court. That may change if the vehicle is tendered in evidence, but, until then, the vehicle is in the possession and at the disposal of the constable. There is nothing in the State Lands Act which provides that merely on the laying of charges under section 25 that possession of a vehicle, which may have been seized and detained by the police, passes to the Magistrates' Court.

57. Mr. Lalla in support of the proposition that the Magistrates' Court came into possession of the dump truck on the laying of charges under the State Lands Act referred to **Civil Appeal S192 of 2020 Rivulet Investments Group Limited v The Attorney General of Trinidad and Tobago**. That was an appeal from the striking out of the claim in detinue and conversion in relation to the seizure

and detention of the excavator (which was seized and detained by the police at the same time as the dump truck in this appeal) on the grounds that the statement of case showed no grounds for bringing the claim and the claim was an abuse of process.

58. The appeal in the **Rivulet** case was determined by a consent order. Essentially, the parties agreed to accept an order of the Court of Appeal that the claim be reinstated but stayed pending the decision of the Magistrate on the charges before the court or the outcome of an application before the Magistrates' Court for the release of the excavator. The Court of Appeal was not required to decide whether the Judge was wrong to strike out the claim. However, what Mr. Lalla relied on in support of his submission is a passage in the recorded exchanges between the court and counsel during the hearing of the appeal.

59. We however do not consider it appropriate to refer and rely on exchanges in the course of the argument as authority for that proposition. The fact is that the court may say things in the course of hearing submissions on a point in issue which may not be expressed with the clarity and precision of a reasoned written or oral decision. The court may also on further reflection resile entirely from what was said in the course of argument when it comes to decide the point in issue. In those circumstances, we think better dividends would be paid by focussing on the order made by the court in the **Rivulet** matter.

60. As we said above, in **Rivulet** the Court of Appeal reinstated the claim for detinue and conversion but stayed the claim pending the decision of the Magistrate on the charges before the court or the determination of the application for the release of the excavator before the Magistrates' Court. At that time, the charges against the men were still pending before the Magistrates' Court. Clearly, the order made by the Court of Appeal does not support the proposition that the vehicle seized is in the possession of the Magistrates' Court. By reinstating the claim in detinue and conversion, it was



implicit and recognised by the Court of Appeal that the police and not the Court were in possession of the excavator.

61. We therefore do not accept Mr. Lalla's submission that the **Rivulet** case supports the proposition that the dump truck was in the possession of the Magistrates' Court once the charges were laid. The order made by the Court of Appeal in fact acknowledges that that is not so.

62. We see no reason to disagree with the Judge's conclusion on this point that the police remained in possession of the dump truck notwithstanding charges were laid pursuant to section 25 of the State Lands Act. As the Judge noted (at para 14):

"If more needs to be said on this, then a reminder that the Magistrate made no order for the return of the vehicle confirms that she had at no time assumed control over it. When the vehicle was eventually returned to the Claimant from Camp Cumuto where it had been kept, there was no involvement of the Magistrate. This Court did not have to direct the release order to the Magistrate..."

63. In relation to the second argument that section 27 provides an exclusive remedy for the recovery of the dump truck, Mr. Lalla provided no authority to support this point. In fact, the **Rivulet** case to which he referred without qualification provides no support for this proposition and in fact is against it.

64. As noted earlier, the claim in the **Rivulet** case in detinue and conversion was reinstated pending the decision of the Magistrate on the charges before the court or the outcome of an application for the return of the excavator. If there is any proposition that the **Rivulet** case supports it is that a stay of a claim in detinue and conversion may be obtained pending the determination of the proceedings or an application before the Magistrates' Court for the return of the vehicle that may be seized and detained. That is not a course of action that need be considered here as the charges against the men have since been dismissed. But what it shows is that a claim in detinue and conversion may co-

exist with pending charges under the State Lands Act and an approach to the Magistrates' Court to recover the vehicle which has been seized and detained.

65. The Judge was of the view that the provisions of the State Lands Act do not give to the owner of a vehicle that has been seized and detained the *locus* to go before the Magistrate to secure the release of his vehicle unless he has been charged under the State Lands Act or is a witness. This was supported by counsel for the Respondent. On that basis, the provisions of the State Lands Act can provide no bar to a claim in detinue and conversion by an owner of a vehicle that was seized and detained under that Act.

66. We, however, do not agree that an owner who has not been charged under the State Lands Act and whose vehicle has been seized under section 26 of that Act cannot go before the Magistrate to secure the release of the vehicle. Statements made by the Court of Appeal in **Archie v Headley** (supra), **Magisterial Appeal 149 of 2006 Rajcoomar v Mahase** and **Bola v Mc Kenzie** (supra) acknowledge that the owner may do just that.

67. In **Archie**, the Court of Appeal after observing that the Magistrate is not empowered to make an order for forfeiture of the vehicle if it is proven that the owner of the vehicle was not engaged or concerned in the digging or removing of material from State lands stated:

“This seems to us to be the plain and, indeed, the only reasonable interpretation of the relevant provisions of the Ordinance. Otherwise, it may be added, an owner, whose vehicle is stolen for the purpose of being used, or without whose consent or authority is used in the commission of an offence under section 26, may conceivably lose it to a Magistrate's order of forfeiture without, perhaps, even his discovering that the vehicle was stolen or used without his authority or consent, let alone being heard by the Magistrate before the order is made forfeiting the vehicle.”

This points irresistibly to the fair and reasonable conclusion that the owner may go before the Magistrate and be heard on an application to secure the return to him of his vehicle.

68. Similarly, in **Rajcoomar v Mahase** (supra) the Court of Appeal stated with particular reference to section 27 of the State Lands Act:

“(20) On the notice point it is clear that the Act makes no express provision for the giving of notice to anyone that vehicles have been seized and detained and so liable to forfeiture.

(21) Notice would serve to notify the person to whom it is given that the vehicles have been seized and detained and so liable to forfeiture so that he may be heard as to why the vehicles ought not to be forfeited. It would seem to be unnecessary that where the vehicles are seized from the person charged under the Act to give him notice that the vehicles are liable to forfeiture. He is aware of their seizure and detention and is presumed to know the law. He would have every opportunity to answer the charge under section 25(b) and what he would need to establish to avoid a conviction, if a prima facie case is made out against him, and what he would need to establish to avoid a forfeiture of the vehicles. Section 27 seems to provide however for persons other than those charged to have an opportunity to establish one of the grounds in section 27(d), (e) and (f) which would avoid the forfeiture of the vehicles. One such person may be the owner of the vehicle. He may not be in any way involved in the digging, winning or removal of the material from the lands but vehicles belonging to him having, drawing or carrying such material may be seized. It seems that he may prove to the satisfaction of the Magistrate the grounds referred to at (d), (e) or (f) and so avoid the forfeiture of the vehicles. If the owner is not aware of the seizure and detention of his vehicles, although section 27 provides that the onus to establish the matters at (d), (e) or (f) is on the person charged, fairness would dictate that the owner be made aware of the seizure and detention of his vehicles and hence their liability to be forfeited.”

The above quoted passages in **Mahase** are entirely consistent with what was said in **Archie** despite submissions made by Mr. Ramdeen that there is some inconsistency in the decisions of the Court of Appeal in those cases, with which we do not agree and see no need to elaborate on in the context of this appeal.

69. Also and to the same effect, in **Bola v Mc Kenzie** (supra) the Court of Appeal stated:

“It would be prudent, in our view, where the accused person is convicted of a charge under s.26 and there is no evidence or

explanation as to the use of the vehicle that the Magistrate, before making an order under s.s.[27](g), make some effort to ascertain from the accused person whether he is the owner of the vehicle or not. If he is not, then it should be determined whether the accused was using the vehicle with the consent or authority of that owner. This may entail calling the owner but once the Magistrate is fully satisfied that it was being so used, there could be no further restraint in making the order under s.s.[27](g)."

70. However, although the owner of a vehicle may be heard before the Magistrate to try to recover his vehicle, it does not mean that he cannot pursue a claim in detinue and conversion while charges under the State Lands Act are pending. In our judgment, clear words would be necessary to take away or deprive an owner of such a right and liberty and they do not appear in the State Lands Act. As we have pointed out, Mr. Lalla was unable to provide any authority to support his proposition that the provisions of the State Lands Act have the effect contended for by him. The authority on which he sought to rely in fact supports the contrary position.

71. In view of the above, we do not agree with Mr. Lalla's submission in relation to the second period. But where does that leave this matter in the face of the provisions of the State Lands Act that give to a constable the power to seize and detain any vehicle having, drawing or carrying any material reasonably suspected to have been dug, won or removed from State Lands without the prescribed licence?

72. As we have mentioned before, the power to seize and detain the vehicle is a discretionary power given to a constable among other named officials. There is an averment in the amended defence that the dump truck was lawfully detained by PC Gordon further to an investigation into illegal quarrying and continued to be detained pursuant to the State Lands Act. Properly understood, the detention of the dump truck by PC Gordon relates to the period before the charges under the State Lands Act were laid. There is no

avermment that the police exercised the power given to them by the State Lands Act to continue the detention of the truck after the charges were laid. There is also an averment that the dump truck is part of the prosecution's case and is considered evidence. There is however no averment that the dump truck was detained by the police because it was considered evidence. What appears in the amended defence however is the erroneously pleaded defence, which we have discussed above, that the dump truck came into the possession of the Magistrates' Court after the charges under the State Lands Act were laid.

73. In our view, the defence, properly understood, is that after the charges were laid under the State Lands Act the police did not seek to exercise the power of detention of the dump truck as the Magistrates' Court then came into possession of the dump truck . The effect of that is to altogether take this period outside of section 26. This provides a further response to Mr. Lalla's argument that section 27 of the State Lands Act provides an exclusive remedy for the recovery of a vehicle that has been seized and detained. If section 26 is not in play, then neither is section 27. But the important point here in relation to the second period is that, on the pleaded defence, the police had not exercised the power to further detain the dump truck after the charges under the State Lands Act were laid.

74. This is not a surprising result as there was no pleading of any information or evidence that was available to the police to show that the owner of the dump truck was engaged or had anything to do with the digging or removing of material from State lands. On the pleaded case, the statement of Pitt was clearly to the effect that the owner of the dump truck had nothing to do with the digging or removing of materials from the State lands. As Pitt said, his instructions were not to obtain material from any source other than National Quarries. It follows that on the information available to the police, they would have had no justification to further detain the dump truck. Similarly, the owner and/or Pitt would have been able to satisfy the grounds necessary to show

why the dump truck should not be forfeited and sold. It is therefore not surprising that the police would not have chosen to exercise the power to further detain the dump truck.

75. Before leaving this second period, we wish to refer to the view expressed by the Judge that the charges laid against the men under the State Lands Act are invalid as the wording of the charges took them outside of the provisions of the State Lands Act. In those circumstances, the Judge came to the decision that the Appellant could not rely on the State Lands Act to justify the detention of the dump truck. This was not a plea that appeared in the statement of case nor did Mr. Ramdeen seek to defend the Judge's position. In view of our conclusion above, it is not necessary to consider the Judge's decision on this point. However, if it were necessary to do so, we would adopt the submissions of Mr. Lalla on this point and hold that the Judge fell into error in coming to that conclusion.

76. In relation to the third period (May 7, 2021, being the date of the dismissal of the charges to September 15, 2021, being the date when the dump truck was returned), there is nothing in the amended defence that speaks to this. According to Mr. Lalla, there is nothing pleaded in the statement of case of the Respondent that addresses this period, and he was not given an opportunity to further amend his defence. The fact of the matter however is that the claim in detinue and conversion crystallised on a demand for the return of the dump truck and the failure of the Appellant to deliver it after the expiration of a reasonable time.

77. As Diplock LJ explained in the **General and Finance Facilities Limited** case, the cause of action in conversion is a single wrongful act and accrues at the date of conversion and the cause of action in detinue is a continuing cause of action which accrues at the date of the wrongful refusal to deliver up the goods and continues until delivery up of the goods or judgment in the action for detinue.

The obligation is therefore on the person seeking to justify the refusal to deliver up the goods to plead his case fully. This entails providing a lawful basis for the continued detention of the goods. In this case, the obligation was on the Appellant to seek to further amend its case, if that is what was thought necessary, to justify the refusal to deliver up the dump truck immediately after the dismissal of the charges. That may still be possible if there were something to justify the refusal to return the dump truck to the Respondent immediately after the charges were dismissed. But nothing which Mr. Lalla has said justifies the refusal to do so.

78. The fact is that any continued detention of the dump truck after the dismissal of the charges, or, for that matter, since the charges were laid, has not been justified by anything contained in the amended defence or advanced by Mr. Lalla orally or in writing. The continued detention of the dump truck after the dismissal of the charges was tortious.

79. Mr. Lalla referred to the possibility that the charges before the Magistrates' Court might be reinstated on appeal. If that were to occur, we do not see how that is relevant to this claim. If the suggestion is that the police may again seize and detain the dump truck, that will give rise to a new cause of action and is not part of this claim.

80. In view of the above, we allow the appeal to the extent only that the amended defence shows reasonable grounds for defending the claim in respect of the first period. To give effect to that we make the following order:

- (1) The order of the Judge is set aside.
- (2) Those parts of the amended defence that only relate to the period of detention of the dump truck after September 30, 2019 are struck out.
- (3) The Appellant shall within 14 days hereof file and serve a re-amended defence that is reflective of the order at (2) above.

- (4) Should the Respondent object to any parts of the re-amended defence as being non-compliant with paragraph (2), those objections shall be for the Judge's determination.
- (5) Permission is granted to the Respondent to enter judgment against the Appellant with damages to be assessed for the wrongful detention of the dump truck from September 30, 2019 to September 15, 2021.
- (6) The damages are to be assessed by a Master on a date to be fixed by the Registrar.

81. We will hear the parties on costs.

**Mendonça J.A.**

**Aboud J.A.**