



[2] The general rule is that the period for filing an Acknowledgement of Service is 14 days after the date of service and the Defence is 42 days after the date of service (see: rules 9.3(1) and 10.3(1) respectively).

[3] The Defendant was tardy in both regards. The Acknowledgement of Service was filed on the 26<sup>th</sup> of May 2011, i.e. 21 days after service and the Defence was filed on the 23<sup>rd</sup> of September 2011, some 142 days after service.

[4] Not surprisingly, the Claimant sought and obtained an Interlocutory Judgment in Default ('Default Judgment') on the 27<sup>th</sup> of July 2011. This Default Judgment was however set aside by consent of the Parties, which is duly reflected in paragraph 1 of the Order(s) granted by Beckford J on the 26<sup>th</sup> of February 2013.

[5] It is necessary to recount the procedural history of this matter in order to explicitly make the point that the only Defence before the Court is the one filed on the 23<sup>rd</sup> of September 2011 in response to the original initiating documents notwithstanding the fact that an Amended Claim Form together with an Amended Particulars of Claim were filed by the Claimant on the 23<sup>rd</sup> of October 2013 and a Further Amended Claim Form and Further Amended Particulars of Claim was filed on the 29<sup>th</sup> of February 2016 which was allowed to stand pursuant to an order made by this Court on the 18<sup>th</sup> of April 2016, the first trial date. It should be noted that there was no objection by Counsel for the Defendant, Mr. Campbell.

Accordingly, the Court must have regard to rule 10.7 which states the consequences of not setting out one's defence –

*The defendant may not rely on any allegation or factual argument which is not set out in the defence, but which could have been set out there, unless the court gives permission.*

[6] It should be noted that the Further Amended Claim Form adds trespass to property as a cause of action and the Further Amended Particulars of Claim contains an updated figure for loss of earnings under the Particulars of Special Damages; to which to Defendant has provided no response.

## THE CLAIMANT'S CASE

[7] The Claimant, Mrs. Carol Campbell, is seeking to recover damages for trespass to property, detinue or alternatively for conversion.

[8] Mrs. Campbell is a Bus Operator and the owner of a 1997 Toyota Coaster motor vehicle (the 'motor vehicle'), which she claims was duly licensed and used as a public passenger vehicle<sup>1</sup>. She contends that on the 15<sup>th</sup> of September 2010, the said motor vehicle was seized by the Defendant unlawfully, maliciously and/or without reasonable/probable cause. She further contends that for the last five (5) years, the Defendant has unlawfully detained her motor vehicle and continues to do so.

[9] The Claimant alleges that she has made numerous requests to the Defendant to return her motor vehicle, however the Defendant has failed to accede to these requests. As a consequence of the Defendant's alleged refusal, the Claimant claims that she has suffered loss and damage and is now seeking –

(i) *Damages*

(ii) *Aggravated Damages*

(iii) *Exemplary Damages*

(iv) *Vindictory Damages*

(v) *Interest pursuant to the **Law Reform (Miscellaneous Provisions) Act***

(vi) *Costs*

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<sup>1</sup> Pursuant to the statutory definition contained in the Road Traffic Act at section 60(1).

## THE DEFENDANT'S CASE

[10] The Defendant, the Transport Authority, is a body corporate established by virtue of the **Transport Authority Act** and is liable to be sued in its corporate name pursuant to section 28(1)(b) of the **Interpretation Act**.

[11] The Defendant admits that it seized the Claimant's motor vehicle, however it denies that this was done on the 15<sup>th</sup> of September 2010 and further denies that the seizure was done maliciously and/or without reasonable/probable cause.

[12] The Defendant contends, in its Defence, that the seizure took place on the 7<sup>th</sup> of March 2011 (but in its witness statements and cross-examination seems to adopt September 2010) and was carried out because the motor vehicle was being operated without a valid licence in breach of the **Transport Authority Act** and the **Road Traffic Act**.

[13] The Defendant denies that the Claimant is entitled to the relief sought or any relief at all.

## THE APPLICABLE LAW

[14] A brief recital of the law in relation to interference with chattels/goods is necessary. The learned author, John G. Fleming in **The Law of Torts** 8<sup>th</sup> edition, at page 55, concisely states –

*There are three (3) ways in which one might deprive another of his property: by wrongfully taking it, detaining it, or disposing of it. In the first, the defendant gains possession by wrongful appropriation, in the second he might acquire possession rightfully but retains it wrongfully, and in the third he neither takes nor retains it wrongfully but so disposes of the chattel that it is lost to the owner, as for example by destruction or sale. Corresponding to these modes of dispossession, the common law has provided three actions: trespass for the first, detinue for the second and trover for the third.*

[15] The Claimant by virtue of her Further Amended Claim Form has taken a wide approach and is claiming trespass to property, detinue and in the alternative conversion (also known as trover). In more common terms the Claimant is alleging that the Defendant has interfered with her motor vehicle by wrongfully taking it, detaining it, and/or disposing of it

[16] As an aside, it should be noted that in the UK the law has changed, specifically the tort of detinue has been abolished by statute. This had been succinctly summarised by the learned authors of **Halsbury's Laws of England** (Volume 97 (2015)) at paragraph 602 –

*Until 1978, two main causes of action lay for the protection of proprietary interests in goods. These were trover (now more commonly called 'conversion') and detinue. The Torts (Interference with Goods) Act 1977 abolished the former tort of detinue but expanded the scope of conversion, which now lies in every case in which detinue formerly lay before it was abolished.*

*Today the law on wrongful interference encompasses the specific torts of conversion, trespass to goods, and negligence so far as it results in damage to goods or to an interest in goods, and any other tort so far as it results in damage to goods or to an interest in goods.*

[17] There does not appear to be any statute in Jamaica akin to the **Torts (Interference with Goods) Act, 1977** and as such the common law actions of trespass to goods, detinue and trover/conversion remain available to aggrieved persons to claim. Since the Claimant in the case at bar has claimed all three, each will be addressed in turn.

### **Trespass to Goods**

[18] Trespass to goods is a wrongful physical interference with them. I would adopt the formulation of the learned authors of **Clerk & Lindsell on Torts** (17<sup>th</sup> ed.) at paragraph 13-02 –

*The action of trespass has always been a remedy affording compensation for injury to a chattel in the plaintiff's possession. The sole question is whether the defendant has directly interfered with the plaintiff's possession. Trespass remedies any damage thus caused; it is also actionable per se, that is, without proof of actual damage to the chattel.*

**[19]** It should be noted however that merely being in possession of another's goods without his authority is not a tort. In some instances even direct/intentional interference will not amount to trespass. This is so as there may be instances in which the goods are lawfully acquired. Such an instance may be created by statute which may provide for the lawful acquisition or seizure of another's goods/chattel in certain circumstances. The **Transport Authority Act** (the '**TAA**') is one such Act.

The relevant sections of the **TAA** (with emphasis supplied) are –

**13(1)** *An Inspector or a Constable may at any time –*

- (a) stop and inspect any public passenger vehicle to ensure compliance with the terms of the road licence and any relevant road traffic enactments;*
- (b) stop and inspect and vehicle which he reasonably suspects is operating as a public passenger vehicle contrary to relevant road traffic enactments;*
- (c) monitor the frequency of public passenger vehicles on any route;*
- (d) carry out an inspection of conductors and drivers of public passenger vehicles and the licences held by these conductors and drivers;*
- (e) carry out such powers or duties in relation to relevant road traffic enactments as may be prescribed.*

**(2)** *An Inspector or a Constable shall have power –*

- (a)** *To seize any vehicle which –*

- (i) is licensed as a stage carriage, express carriage or route taxi and is not being operated on the route for which it is licensed to operate;*
  - (ii) is licensed as a hackney carriage and is being operated as a stage carriage, route taxi or express carriage;*
  - (iii) is licensed as a contract carriage and is being operated as a stage carriage, route taxi or express carriage;*
  - (iv) is licensed as a express carriage and is being operated as a stage carriage or route taxi; or*
  - (v) is being operated or used as a public passenger vehicle without a licence issued for such operation or use;***
- (b) To take or cause to be taken to the nearest police station or to the nearest convenient place authorized by the police pursuant to subsection (3)(a) any vehicle which is seized under paragraph (a);*
  - (c) To prosecute any person for any contravention of a relevant road traffic enactment and to serve on any person any process, summons or document relating to such prosecution or contravention;*
  - (d) To give the owner, driver or operator of a public passenger vehicle directions consistent with the road licence and as may be necessary, in the opinion of the Inspector or a Constable, to ensure orderly, safe and efficient operation of public passenger transport in any area;*
  - (e) To enter during office hours the business premises of a holder of a licence issued under the Public Passenger Transport (Kingston Metropolitan Transport Region) Act or an exclusive licence issued under the Public Passenger Transport (Rural Area) Act, as the case may be, for the purpose of –*
    - (i) Examining the books, records or other documents relating to the transport business carried on by the holder of that licence or exclusive licence; or*

(ii) *Making copies of such books, records or documents.*

**(3) Where under this section a vehicle is seized –**

**(a) *The vehicle may be stored by the police or the Authority in such a place and in such circumstances as the police or the Authority in such place and in such circumstances as the police or the Authority consider appropriate;***

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

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

*(3A) The proceeds of sale of a vehicle seized under subsection (3) shall be paid to the Accountant-General.*

*(3B) If, on the application of a person not later than one year after the sale of a vehicle seized under subsection (3), the Authority is satisfied that the applicant was at the time of the seizure the owner, or was entitled to the vehicle as the personal representative of the owner, the Authority shall authorize payment to that person of the amount paid to the Accountant-General in respect of that vehicle, less costs incurred in keeping and selling or otherwise disposing of the vehicle.*

(4) ...

**[20]** The **TAA** also provides for the release of seized vehicles as follows –

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

*(a) paid to the Authority fees for the removal and storage of the vehicle; and*

*(b) submitted to the Court, a bond, with such sureties as the Court may determine, in an amount not less than the minimum fine prescribed in respect of an offence under section 61(5) of the Road Traffic Act.*

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

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

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

[21] It should be further noted that in addition to powers of seizure and storage/detention, the **TAA** also provides that the Defendant may sell seized vehicles by public auction, private treaty or cause them to be destroyed or otherwise disposed of as it thinks fit (see: section 13A).

## **Detinue**

[22] In **Trevor Wright v Det. Sgt. Yates et. al.** [2012] JMSC Civ. 52, my brother, Campbell J at paragraph [18] helpfully referred to a judicial definition of detinue from the Court of Appeal decision in **George and Brandy Ltd. v Lee** (1964) 7 WIR 275,

*[18] Waddington JA, in **George and Brandy Ltd.**, defines detinue, at page 278, letter e, as follows;*

*“The gist of the cause of action in detinue is the wrongful detention, and in order to establish that it is necessary to prove a demand for the return of the property detained and a refusal after a reasonable time, to comply with such demand. The authorities establish that a demand must be unconditional and specific.”*

[23] The learned author, John G. Flemming in **The Law of Torts** 8<sup>th</sup> edition, at page 58, opines as follows –

*Merely being in possession of another's goods without his authority is not a tort. If lawfully acquired, detention alone does not become a wrong in the absence of some manifestation of intent to keep them adversely or in defiance of his rights. (see: Spackman v Foster (1883) 11 QBD 99)...*

*To establish that the detention has become adverse and in defiance of his rights, the claimant must prove that he demanded return of the chattel and that the defendant refused to comply...but such refusal must be categorical; if qualified for a reasonable and legitimate purpose, without expressing or implying an assertion of dominion inconsistent with the plaintiff's rights, it amounts to neither detinue nor conversion. One does not always act unreasonably in refusing to deliver up property immediately on demand but may inquire first into the rights of the claimant. Moreover, a mere omission to reply to a letter of demand cannot itself be construed as a refusal (see: Nelson v Nelson [1923] QSR 37)...*

**[24]** In other words, if the Claimant's motor vehicle was lawfully acquired, detention alone does not become a wrong in the absence of some manifestation of intent to keep it adversely or in defiance of the Claimant's rights.

**[25]** It seems to me that to establish that the detention has become adverse and in defiance of her rights, the Claimant must prove that –

(i) she “unconditionally and specifically” demanded return of the motor vehicle (per **George and Brandy Ltd**); and

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

**[26]** With regards to (ii) the Defendant's refusal to comply with the Claimant's request, there is authority to suggest that such a refusal must be categorical or unequivocal; if qualified for a reasonable and legitimate purpose, without expressing or implying an assertion of dominion inconsistent with the Claimant's rights, it amounts to neither detinue nor conversion.

[27] In the case at bar, statute has expressly provided for the detention of motor vehicles by the Defendant. Namely, the **Road Traffic Act** provides -

*61 (1) Subject to the provisions of subsection (6) no person shall use or cause or permit a motor vehicle to be used on any road as a public passenger vehicle unless he is the holder of a licence (in this Act referred to as a "road licence" or "an emergency road licence") to use it as a vehicle of that class in accordance with the provisions of this Part...*

*(2) ...*

*(3) ...*

*(4)...*

***(4A) Where a constable or an Inspector designated under section 12(1) of the Transport Authority Act has reasonable cause to believe that a person has used or caused or permitted a vehicle to be used in contravention of this section, the constable or Inspector may seize the vehicle.***

***(4B) Subject to subsection (7)(b), a vehicle shall be kept in the possession of the Police or Transport Authority, as the case may be, until the licence required under this Part is obtained and produced to the Police or the Transport Authority.***

*(5) A person who uses or causes or permits a vehicle to be used in contravention of this section, shall be guilty of an offence and shall be liable on conviction thereof...*

*(6)...*

*(7) Where a vehicle is seized pursuant to this section –*

*(a) storage fees shall become payable to such persons at such rates and in accordance with such conditions as may be prescribed; and*

*(b) if the vehicle remains in the possession of the Police or the Transport Authority for more than six months the vehicle may, subject to such conditions as may be prescribed, be sold by the*

*Police or the Transport Authority, as the case may be, to recover the cost of storage.*

## **Conversion**

**[28]** The law relating to the tort of conversion is set out comprehensively by McIntosh JA at paragraphs [35] – [41] of **The Commissioner of Police and the Attorney General v Vassell Lowe** [2012] JMCA Civ 55. The relevant portions are reproduced as follows –

*[35] ...The learned trial judge had placed reliance on the definition of conversion in the 21<sup>st</sup> edition of Salmon & Heuston's Law of Torts...*

*“A conversion is an act or complex series of acts of which willful [sic] interference, without lawful justification, with any chattel in a manner inconsistent with the right of another, whereby that other is deprived of the use and possession of it.”*

*[36] In addressing the elements required to constitute conversion the learned authors provide a brief and useful history of the tort, stating, inter alia, that there are three distinct ways by which one man may deprive another of his property and so be guilty of a conversion, namely: “(1) by wrongly taking it; (2) by wrongly detaining it and (3) by wrongly disposing of it”. Historically, the authors state the term conversion was originally limited to the third mode as merely to take another's goods, however wrongful, was not to convert them. However, in its modern sense, the tort includes instances of all three modes and not of one mode only. The authors point out that two elements combine to constitute willful interference: (1) dealing with the chattel in a manner inconsistent with the right of the person entitled to it and (2) an intention in so doing to deny that person's right or to assert a right which is in fact inconsistent with such right (see **Caxton Publishing Co v Sutherland Publishing Co** [1939] AC 178, 189 and **Penfolds Wines Pty Ltd v Elliott** (1946) 74 CLR 204, 229)...*

[37] *The courts have determined that in the absence of willful and wrongful interference there is no conversion even if by the negligence of the defendant the chattel is lost or destroyed (see **Ashby v Tolhurst** [1937] 2 KB 242). Further the authorities show that every person is guilty of a conversion who without lawful justification takes a chattel out of the possession of anyone else with the intention of exercising a permanent or temporary dominion over it because the owner is entitled to use it at all time (see **Fouldes v Willoughby**)...But, a mere taking unaccompanied by an intention to exercise dominion is no [sic] conversion. Further, the detention of a chattel amounts to conversion only when it is adverse to the owner or other person entitled to possession – that is, the defendant must have shown an intention to keep the thing in defiance of the owner or person entitled to possession. The usual way of proving that a detention is adverse within the meaning of this rule is to show that the party entitled demanded the delivery of the chattel and the defendant refused or neglected to comply with the demand...*

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

[40] *...The appellants' submission that when goods are seized by the police under a warrant the possessor's right or title to the goods is not abridged and that possession is thereby merely suspended, are soundly based on authority such as **Webb and Costello v Chief Constable of Derbyshire Constabulary**...*

[29] In **Trevor Wright** there was some dispute as to whether the cause of action was in detinue or conversion, Campbell J enunciated at paragraph [20] –

*It is open to the claimant, in a case of this nature where the essence of the complaints is the wrongful seizure of a good, to institute action either in conversion or detinue, or both. In **Attorney General and Transport Authority v Aston Burey**, 2011 JMCA CIV 6, the court held at paragraph 6, inter alia;*

*“Both torts relate to the wrongful detention and dealing with a chattel inconsistent with possession or a right of possession of another. As these torts amount to the wrongful interference with a chattel, a person who is deprived of his chattel is entitled to bring an action in either or both.”*

[30] As previously mentioned at paragraph [21] herein, the Defendant has wide powers in respect of seized vehicles. They can be sold, destroyed or otherwise disposed of pursuant to the **TAA**.

### **ANALYSIS**

[31] The Defendant’s authority to acquire/seize motor vehicles is clearly provided for by statute. In fact, counsel for the Claimant, Mr. Kinghorn, acknowledged that the powers of the Defendant to seize a citizen’s motor vehicle are contained in the **Transport Authority Act** and the **Road Traffic Act**.

[32] It should be noted at this juncture that neither the **Transport Authority (Amendment) Act**, 2015 nor the **Road Traffic Act**, 2015 (which will repeal and replace the existing **Road Traffic Act**) have come into effect at the time of this judgment. As such the inclusion of the latter in Mr. Kinghorn’s written submissions was irregular and was not considered by the Court.

Further, Mr. Kinghorn’s reliance on the dicta of Anderson R. J, from **Vincent Garrick v The Transport Authority** Suit No: G – 032 of 2001 with regards to the judicial interpretation of section 13(2) of the **TAA** was in my view misplaced as section 13(2) was substantially amended subsequent to the **Vincent Garrick** decision.

[33] Section 61(4A) of the **Road Traffic Act** and section 13(2) of the **TAA** make it clear that the Defendant can lawfully seize a motor vehicle which is being operated without the requisite licence. The **Road Traffic Act** does however specify that the Defendant (through its Inspector) should have reasonable cause to believe that the Claimant used or caused or permitted the motor vehicle to be used without a valid licence.

[34] Mr. Kinghorn in his written submissions has framed the issues as follows:

*i. Has the Defendant established that its seizure of the Claimant's vehicle was pursuant to the **Transport Authority Act** and **Road Traffic Act** as pleaded and that this seizure was therefore lawful;*

*ii. Has the Defendant proven on a balance of probabilities that the licence issued to the Claimant was invalid;*

*iii. If the licence issued to the Claimant was in fact invalid, has the Defendant established that the Claimant is in any way culpable or implicated in its issuing and use; and*

*iv. If the licence is in fact invalid, and the Claimant is not culpable or implicated in its issuing and use, does the Defendant have the right to seize and continue to detain the Claimant's vehicle in those circumstances. (emphasis added)*

[35] Having regard to the framing of the issues by counsel for the Claimant (underlined for emphasis), it is critical for this Court to determine and state where the burden of proof lies. To borrow the words of McIntosh JA from **The Commissioner of Police and the Attorney General v Vassell Lowe**, at paragraph [19], it is a "time-honoured and fundamental principle relating to the conduct of civil proceedings that "he who alleges must prove"..."

[36] The learned authors of Murphy on Evidence (12<sup>th</sup> ed.) state at 4.5 –

*The legal burden of proof as to any fact in issue in a civil case lies upon the party who affirmatively asserts that fact in issue, and to whose claim or defence proof of the fact in issue is essential... If the claimant fails to prove any essential element of his claim, the defendant will be entitled to judgment. The position of the defendant is somewhat different. Since the claimant affirmatively asserts his claim, he bears the burden of proving the claim, and the defendant assumes no legal burden of proof by merely denying the claim. However if the defendant asserts a defence which goes beyond a mere denial (sometimes referred to as an 'affirmative defence') the defendant must assume the legal burden of proving*

*such defence. An affirmative defence is most easily recognized by the fact that it raises facts in issue which do not form a part of the claimant's case...It is a sound rule, therefore, that every party must prove each necessary element of his claim or defence.*

**[37]** While neither of the parties specifically addressed the issue of the burden of proof, it is implied in Mr. Kinghorn's submissions that it is the Defendant who has the burden of proving that, *inter alia* the Claimant was operating her motor vehicle without a valid road licence in breach of the relevant law. It is useful to have regard to paragraph 3 of the Defence –

*Save that it is admitted that the Defendant seized motor vehicle bearing registration number PE 2984 on March 7, 2011 the Defendant denies that it did so maliciously or without reasonable probable cause and the Defendant says that at the time of seizure the Claimant was operating without a valid road licence contrary to the Transport Authority and Road Traffic Acts.*

**[38]** The latter part of paragraph 3 (supra) clearly goes beyond a mere denial and as such I am inclined to agree with Mr. Kinghorn that the Defendant bears the burden of proof in relation to issue ii. i.e. *Has the Defendant proven on a balance of probabilities that the licence issued to the Claimant was invalid.* It should however be noted that with the exception of issue ii., I do not agree with the framing of the issues by Mr. Kinghorn. It seems to me that the issues to be resolved are as follows –

- 1) Whether the Defendant has proven that the Claimant's licence was invalid;
- 2) Whether the Claimant has proven trespass to property;
- 3) Whether the Claimant has proven detinue;
- 4) Alternatively, whether the Claimant has proven conversion; and
- 5) If the Defendant is found liable and the Claimant is entitled to judgment, what is the appropriate measure of damages.

**Whether the Defendant has proven that the Claimant's licence was invalid**

[39] In relation to the validity of the road licence it is accepted on a balance of probabilities that the licence was invalid. The former Managing Director of the Transport Authority, Daniel Dawes gave evidence indicating that the Claimant's road licence which bore the name "Daniel Dawes" and the words "Transport Authority" was unrecognizable to him. He testified that he did not recognize either the name or the marking that appeared above the name as he does not write his name in that manner nor does he make his signature in the manner which appeared on the document. Mr. Dawes stated that he neither signed nor wrote his name on the document which was shown to him by Dereefe Stephens. This accords with the unchallenged evidence of Mr. Stephens that the licence produced to him revealed a signature which was unlike the signature usually placed on such licences by Mr. Dawes and that he took the licence and presented it to Mr. Dawes.

[40] I will also place some, albeit limited, reliance on the witness statement of Shaun Fogarty which was tendered into evidence as hearsay. Mr. Fogarty was not called by the Defendant, however an application was made by Mr. Kinghorn to have the witness statement tendered as hearsay evidence (pursuant to rule 29.8(3)). Mr. Fogarty, the Chief Internal Auditor of the Transport Authority stated as follows –

*4. On doing my assessment of the validity of the license I made the following findings:*

*a) The vehicle chassis number did not correspond with the motor vehicle registration certificate. The chassis number appearing on the motor vehicle registration certificate is HZB500100925.*

*b) a comparison of the signature on the license did not appear to match the specimen signature of the then Managing Director Daniel Dawes.*

*c) The words "NOT VALID" appeared in the background on top of the page when the license for carol [sic] Campbell was photocopied.*

*d) Checks on the JUTC license Management Information System revealed that license 200208630 was issued to Terrance Davis of 11 Aldene Drive Kingston 20 for a 1997 Toyota Coaster bearing registration number PE 6161, chassis number HZB 500101 265 and engine number 1 HZ0212885.*

**[41]** I have attached some weight to the findings at a),c) and d) as they are empirical observations that could have been made by anyone. However, with regards to the finding at b), the point was made by Mr. Kinghorn that Mr. Fogarty did not possess any expertise with regards to handwriting. I have placed no reliance on Mr. Fogarty's finding with regards to the signature. In any event, Mr. Dawes himself gave evidence that he did not recognise the signature to be his own.

**[42]** The evidence of the Defendant's witnesses is for the most part confirmed by the Claimant's witness Detective Sergeant Kirk Roach. In cross-examination by Mr. Campbell, Detective Sergeant Kirk Roach admitted that the road licence was determined to be fraudulent. The exchange is set out below –

*Question: In September 2007, you determined the document said to be a road licence was fraudulent?*

*Answer: Yes it was. The handwriting experts checked it and deemed it fraudulent on that licence and sticker.*

*Question: You also detected that the number which appeared was inconsistent and did not belong to that particular licence?*

*Answer: Yes*

*Question: Resulting from this you charged one Carl Campbell?*

*Answer: Yes*

**[43]** The Defendant having satisfied its burden in relation to the validity of the licence, it is for the Claimant to satisfy this Court of its claim that *“members of the Transport Authority (Defendant) acting or purporting to act in the execution of their duties as servants and/or agents of the said Transport Authority unlawfully, maliciously and/or without reasonable and/or probable cause seized the Claimant's motor vehicle*

*registration number PE 2984 and to date the Defendant has unlawfully detained and continue [sic] to unlawfully detain the said motor vehicle upon the premises of the Defendant.”*

### **Whether the Claimant has proven Trespass to Property**

[44] While I am of the view that the Defendant directly interfered with the Claimant's motor vehicle I am constrained to find that this direct or intentional interference does not amount to trespass. The seizure of the Claimant's motor vehicle, which is not disputed, was lawfully done pursuant to section 13(2) of the **TAA** and section 61(4A) of the **Road Traffic Act**. I accept the evidence of Mr. Dereefe Stephens who seized the motor vehicle (which was unchallenged by the Claimant who did not seek to cross-examine him) that on September 15, 2010 there was a special joint operation between Police Officers and officers of the Transport Authority (the Defendant) and that the Claimant's motor vehicle was stopped. I further accept that upon the production of the requested documents, Mr. Stephens observed a suspicious/unusual signature purporting to belong to the then Managing Director, Mr. Daniel Dawes. I am of the view that this suspicious/unusual signature, prima facie, amounts to reasonable cause which is required by section 61(4A) of the **Road Traffic Act**.

[45] The Defendant submitted in its written submissions that in order to support a claim for detainee or trespass to property, the Claimant must establish malice or the absence of reasonable or probable cause. The case of **Kirk Lofters v The Attorney General and the Deputy Superintendent Cleon March** [2012] JMSC Civ 189 was relied on in support of the point that malice must be particularized if it is being relied on. While I agree with the reasoning of my brother Anderson K. J, from **Kirk Lofters** at paragraph [11] that if malice is being alleged and seriously pursued by the Claimant then Particulars of Malice ought to be set out, having regard to rules 8.9 and 8.9A of the CPR; and I also agree with Mr. Campbell's submission that malice was not particularised by the Claimant in her statement of case nor was it suggested to the Defendant's witnesses in cross-examination that they had acted maliciously and as such the Claimant has fallen short of proving malice. As an aside I would venture to add

that I am not of the view that it was necessary for malice to have been pleaded by the Claimant in the first place. The case at bar is clearly distinguishable from a case such as **Kirk Lofters** in which section 33 of the **Constabulary Force Act** applies; this section expressly provides that actions against persons of the Force are to be in tort and it must be expressly alleged that the act was done either maliciously or without reasonable or probable cause. There is no such requirement in the instant case and as such in respect of trespass, the Claimant's burden is confined to proving on a balance of probabilities that the Defendant unlawfully seized her motor vehicle without reasonable cause. As I have already indicated earlier, I am of the view that the Claimant has failed to prove same and as such the Defendant is entitled to judgment in this regard.

#### **Whether the Claimant has proven Detinue**

[46] The fact that I have found that the Defendant lawfully seized the Claimant's motor vehicle and that trespass to property has not been proved by the Claimant does not automatically mean that the claim for damages for detinue must fail. As I indicated earlier, at paragraph [24] supra, if the motor vehicle was lawfully acquired, detention alone does not become a wrong in the absence of some manifestation of intent to keep it adversely or in defiance of the Claimant's rights.

[47] I am guided by Waddington JA's formulation, "The gist of the cause of action in detinue is the wrongful detention, and in order to establish that it is necessary to prove –

- (i) a demand for the return of the property detained; and
- (ii) a refusal after a reasonable time, to comply with such demand.

The authorities establish that a demand must be unconditional and specific."

[48] As stated previously, where the seizure/acquisition is lawful the Claimant must establish that the detention has become adverse and in defiance of her rights. In so doing the Claimant must prove that she demanded return of the motor vehicle and that the Defendant refused to comply. Such refusal must be categorical or unequivocal; if

qualified for a reasonable and legitimate purpose, without expressing or implying an assertion of dominion inconsistent with the Claimant's rights, it amounts to neither detinue nor conversion.

A. *Was there a specific and unconditional demand by the Claimant for the return of her motor vehicle?*

[49] The Claimant in her witness statement indicates that she has been represented by counsel from as early as November 2010. She claims that she has made a number of demands but has furnished proof of only two (2) such demands; the first demand was dated the 7<sup>th</sup> of February 2011 and the second demand on the 21<sup>st</sup> of May 2011. Both were written demands which bear the Defendant's stamp indicating receipt on the 7<sup>th</sup> of February 2011 and the 25<sup>th</sup> of May 2011, respectively. Based on the foregoing and the wording of the said demands, I accept that the Claimant has proved that she specifically and unconditionally demanded the return of her motor vehicle, which is a required ingredient for a successful claim for detinue.

B. *Was there a categorical/unequivocal refusal by the Defendant to comply with the demand(s)?*

[50] Based on the wording of the Claimant's second demand it appears that the Defendant did not respond to the first demand and in fact conditionally agreed to release the Claimant's motor vehicle. It reads –

*We refer to ours of the 7<sup>th</sup> February 2011, a copy of which is enclosed for ease of reference. **We are yet to have the courtesy of our [sic] response.***

*Our client has now instructed us that **you have agreed to release her motor vehicle** registration number PE 2984 to her on the condition that she signs a document referred to you as being a "Release and Discharge"... (emphasis added)*

[51] As previously stated, a mere omission to reply to a letter of demand cannot itself be construed as a refusal nor can a conditional agreement, which Mr. Kinghorn himself

has expressly acknowledged in the second demand (quoted and emphasised above). On a balance of probabilities, the Claimant has not satisfied me that there was a categorical/unequivocal refusal by the Defendant to comply with her demand(s) and as such the Defendant is entitled to judgment in this regard also.

[52] I wish to add that neither of the Parties addressed the Court in relation to effect of the Release and Discharge which was tendered into evidence pursuant to the request of the Claimant. In fact, this very point was raised by me during the trial to which Mr. Kinghorn responded without more by saying that he had put the document in. I have however considered the Release and Discharge and I am of the view that it amounted to conditional agreement to release the Claimant's motor vehicle to her. I have no reason to find that this conditional agreement was unreasonable or disingenuous, I am fortified in this view by the evidence of the Claimant's witness, Detective Sergeant Kirk Roach who stated that to his knowledge, the Defendant returned the motor vehicles of two (2) other bus operators in similar circumstances. Paragraph 18 of his Witness Statement states –

*“Ms. Carol Campbell and the other 2 bus owners were directed by Mr. Dawes to a gentleman by the name of Mr. Stephens. When we all arrived at this Transport Authority office and the bus owners indicated to the personnel in the reception area the purpose for which they had come, the personnel presented all three persons with a document entitled “Release and Discharge”. I saw Ms. Campbell looking at the document. She indicated that she would not be signing the document and did not sign the document. The other 2 bus owners signed the document. They indicated that they wanted their buses and that they were frustrated with the delay. **It is to my personal knowledge that the Transport Authority returned to these 2 persons their respective buses. Ms. Carol Campbell's bus was not returned to her.**” (emphasis added)*

[53] Notwithstanding that I have found for the Defendant, it should be noted that Mr. Campbell in his written submissions did not advance the argument that there was no categorical/unequivocal refusal by the Defendant. Instead, he submitted that the Defendant did not have the authority to comply with the Claimant's request(s) to release

the motor vehicle. Mr. Campbell placed reliance on section 61(4B) of the **Road Traffic Act** -

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

which he submitted the use of the word “shall” placed a mandatory obligation on the Defendant to retain possession of the motor vehicle until the Claimant produced the requisite licence.

**[54]** It is curious to note that this mandatory obligation was not contemplated by the document titled “Release and Discharge” which was tendered into evidence. To reconcile this seeming anomaly, the Court has considered the evidence of the Defendant’s witness Mr. Dawes who testified that in May 2011 after the Police conducted its investigation it was decided by the Government officials, the Police and the Transport Authority officers that the motor vehicles could be released if the operators decided to “regularise their business”. In re-examination, Mr. Campbell asked Mr. Dawes to explain what he meant by “regularise their business”, Mr. Dawes explained that this involved the bus operators obtaining the proper licence from the Transport Authority. It is curious that this was not made a condition of the Release and Discharge.

#### **Alternatively, whether the Claimant has proven Conversion**

**[55]** The Claimant at paragraph 37 of her Witness Statement claims –

*I have made periodic checks on my bus at the Lakes Pen Pound where the Transport Authority continues to detain it. It is now in a state of complete disrepair from what I can see. It has deteriorated terribly and is now decrepit. A huge tree is growing through the bus. This tree [sic] starts from outside and has continued its growth inside the bus. As far as I can see this bus is useless.*

[56] The whereabouts of the motor vehicle was confirmed by Mr. Dawes who gave evidence in cross-examination that the Claimant's bus is still in the Defendant's possession at the Lakes Pen Pound. Mr. Dawes was however unable to state what the current state of the motor vehicle is as he gave evidence that he had not seen it recently.

[57] Besides the Claimant's evidence there is nothing before the Court which indicates the current state of the motor vehicle. It is however reasonable to infer that the condition of a motor vehicle would deteriorate if it was parked for more than five (5) years.

[58] I am guided by the dicta of McIntosh JA from **Vassell Lowe** in which her Ladyship held that, "The courts have determined that in the absence of willful and wrongful interference there is no conversion even if by the negligence of the defendant the chattel is lost or destroyed (see **Ashby v Tolhurst** [1937] 2 KB 242)." As such the Claimant's contention that her motor vehicle has been rendered useless, without more does not in my view amount to conversion. The Claimant must prove willful/wrongful interference in order to be successful in her alternative claim for conversion.

[59] The law in relation to the tort of conversion has already been set out fulsomely, it seems to me therefore that I must consider whether the Claimant has proved the requisite two elements which constitute willful/wrongful interference, namely:

(1) that the Defendant dealt with the motor vehicle in a manner inconsistent with the right of the Claimant; and

(2) that the Defendant had an intention in so doing to deny that Claimant's right or asserted a right which is in fact inconsistent with the Claimant's right.

[60] Further, it is evident that the key to the establishment of the tort is wrongful interference or unjustifiable interference with the chattel so as to question or deny the owner's title to it. To this end, the Claimant has failed to prove that the Defendant dealt with her motor vehicle in a manner inconsistent with her right and that the Defendant

had an intention to question/deny her title to it. I am bolstered in the view I have taken by the fact that the detention at no time became adverse, the Defendant did not categorically/unequivocally refuse the Claimant's demand(s) to return her motor vehicle. The dicta of McIntosh JA bears repeating –

*[37] ... the detention of a chattel amounts to conversion only when it is adverse to the owner or other person entitled to possession – that is, the defendant must have shown an intention to keep the thing in defiance of the owner or person entitled to possession. The usual way of proving that a detention is adverse within the meaning of this rule is to show that the party entitled demanded the delivery of the chattel and the defendant refused or neglected to comply with the demand...*

**[61]** I would also add that the lawful seizure by the Defendant is somewhat akin to when goods are seized by the police under a warrant. With regards the latter, the Court of Appeal has acknowledged that the principle that the possessor's right or title to the goods is not abridged and that possession is thereby merely suspended, are soundly based on authority (see: **Vassell Lowe** at paragraph 40).

**[62]** In light of the foregoing I find that the Claimant has failed to prove the requisite two (2) elements which constitute willful/wrongful interference and as such the Defendant is entitled to judgment in this regard.

## **CONCLUSION**

**[63]** It is acknowledged that the position in which the Claimant finds herself is unfortunate, particularly as the statutory mechanism provided for by section 16A(1) of the **TAA** which permits an owner of motor vehicle to apply, prior to the determination of the matter, for the release of his/her motor vehicle would not have availed the Claimant. As Mr. Campbell correctly submitted, the Court does not have the power to order a release where the motor vehicle was seized for operating without a licence, i.e. pursuant to section 13(2)(v) of the **TAA**.

**[64]** It seems that had the Defendant exercised its power to sell the motor vehicle after it was in storage for more than six (6) months, pursuant to section 61(7)(b) of the **Road Traffic Act** and section 13(3) of the **TAA**; the Claimant might have been in a slightly better position as she would have been entitled to apply, in her capacity as owner, (within one year after the sale) for the proceeds of sale less the costs incurred in keeping and selling or otherwise disposing of the vehicle (see: section 13(3B) of the **TAA**).

**[65]** Perhaps Parliament was taking a pragmatic approach by providing for this eventuality, it seems to me that the power to sell seized motor vehicles that have been detained/stored for extended periods and allowing the owner to apply for the remaining balance, is an attempt at balancing the interest of the parties in less than ideal circumstances.

## **DISPOSAL**

**[66]** It is hereby ordered as follows-

1. Judgment entered in favour of the Defendant.
2. Each party to bear their own costs with respect to this Claim.