[2026] JMSC Civ.09

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2016 HCV 02133

BETWEEN	**BARBARA JOILES**	**1ST CLAIMANT**
A N D	**VALLIN JOILES**	**2ND CLAIMANT**
A N D	**THE ATTORNEY GENERAL OF JAMAICA**	**DEFENDANT**

IN OPEN COURT

Mr. Andre Moulton with Ms. Stacy Knight instructed by Knight Junor & Samuels for the Claimants

Mr. Stephen McCreath instructed by the Director of State Proceedings for the Defendant

HEARD: December 8, 2025 and January 23, 2026.

Emergency Powers Act and Emergency Powers Regulations May and June 2010 – Civil Practice and Procedure – Nullity – Whether Suit as originally filed is a nullity for failure to allege that the Security forces did not act in good faith.

Emergency Powers Act and Emergency Powers Regulations May and June 2010 – Whether or not the Supreme Court has jurisdiction in Claims in Tort where the injuries are covered by the compensation scheme in the Emergency Powers Regulations.

Emergency Powers Act and Emergency Powers Regulations May and June 2010 – Whether or not the Claim for Breach of Statutory Duty was statute-barred – Whether or not there is a claim for breach of Statutory Duty to "Act in Good Faith" as Pleaded.

Tort – Conversion – Whether or not the Claimant's claim for Conversion was proven

Tort – Trespass to Property – Whether or not the Claimant's claim for Trespass to property was proven.

Emergency Powers Act – Section 3(1), (2), (4), (5) and (6)

Emergency Powers Regulations May 23, 2010 – Regulations 44, 45, and Articles 6 and 10 of the Schedule to the Regulations.

Damages – Assessment of Damages – Quantum of Damages – Whether or not the Claimant has established their claim to the sums claimed.

STAPLE J

BACKGROUND

[1] It was the beginning of the summer of 2010. Following a series of events that need not be gotten into here, the security forces in Jamaica, comprising members of the Jamaica Constabulary Force and the Jamaica Defence Force, decided to use force to enter the community of Tivoli Gardens in West Kingston to attempt to apprehend Christopher Coke, who was wanted on an extradition warrant.

[2] A limited State of Public Emergency was declared by the Governor General pursuant to his powers under the Constitution, and the Emergency Powers Act and Regulations were made under that Act to govern proceedings under the State of Emergency.

[3] One of the areas covered by the state of emergency was the community of Tivoli Gardens and surrounding communities, including Denham Town.

[4] The Claimants are a mother and son. They are joint owners of several business enterprises on a plaza in Tivoli Gardens. They say they own a store that sells phones and accessories, a restaurant, a bar, and a meat shop. The premises were located at 33-35 Spanish Town Road.

[5] According to the Claimant, the security forces, on or about the 23rd May 2010, forcibly occupied the premises belonging to them. They said they occupied the premises from May 23, 2010, to June 13, 2010.

[6] The Claimants contend that during the occupation by the security forces, they lost a quantity of cash, phones and accessories from the phone store which were unlawfully appropriated, meat spoiled due to the security forces shutting off a backup generator and there was other loss and damage suffered to the property.

[7] Following the occupation, the Claimants wrote to the Jamaica Defence Force seeking compensation for their losses. There followed a lengthy back and forth between the Claimants and the JDF that ultimately did not lead to any compensation being paid out. Eventually, on the 24th May 2016, the Claimants filed a claim in the Supreme Court to recover damages for what they termed as wrongful entry, wrongful occupation, and trespass.

[8] It is important to note that there was no allegation raised by the Claimants that the security forces did not act in good faith in this original pleading.

[9] The Defendant defended the Claim on the basis that the entry was lawful pursuant to the Emergency Powers Act and Regulations and that no business could have been conducted by the Claimants due to sustained gunfire during the period, among other things.

[10] More than two years later, pursuant to an Order of the Court, the Claimants amended their Claim to claim damages for breach of statutory duty under the Emergency Powers Regulations, Trespass to Goods and/or in the alternative, Conversion.

[11] In defending the amended Particulars of Claim, the Defendant denied that the Claimant is entitled to any relief under the Emergency Powers Regulations, as they ought to have pursued compensation under the scheme established under the said regulations and that, in any event, the time to seek such compensation under the regulations had expired.

[12] The Defendant justified the actions of the security forces and argued that there was no statutory duty pleaded which was established by the Emergency Powers Act and Regulations and that the statute did not give rise to a private law claim for breach of that duty.

[13] The matter now comes before the Court to determine whether or not the Claimants are entitled to the relief they sought.

[14] As part of the preparation of the case, the Court invited the parties to make submissions on whether the aspect of the Claim dealing with the breach of statutory duty was statute-barred. The Court heard and read the submissions of counsel on the point and reserved its ruling until after the taking of the evidence in the matter, as the trial was just around the corner.

[15] At the close of evidence, the Court invited the parties to make submissions, in addition to the general submissions, on whether or not the Claim **as originally filed** (emphasis mine) was a nullity due to the failure of the Claimants to allege therein that the security forces failed to act in good faith thus rendering them immune from suit pursuant to Regulation 45 of the May 2010 Regulations.

[16] The Court has also read the submissions of both parties subsequent to the trial and has taken them into account as part of this judgment. The Court is grateful to counsel for their submissions.

THE LEGAL FRAMEWORK

The Emergency Powers Act and Regulations May and June 2010

[17] The Governor General is authorised to make a proclamation that a state of public emergency is existing pursuant to s. 26(4) of the **Constitution of Jamaica.**

[18] Upon making such proclamation, the period is known as a period of public emergency.[1]

[19] Upon making such a proclamation, the Governor General is then authorised to make Regulations under the **Emergency Powers Act[2]** (hereinafter the EPA). The regulations are for the purposes of securing the essentials of life to the community. The regulations are very broad in their scope. I will set out what they may cover pursuant to s. 3 of the Act here for completeness:

> *"S(1) During a period of public emergency, it shall be lawful for the Governor-General, by order, to make Regulations for securing the essentials of life to the community, and those Regulations may confer or impose on any Government Department or any persons in Her Majesty's Service or acting on Her Majesty's behalf such powers and duties as the Governor-General may deem necessary or expedient for the preservation of the peace, for securing and regulating the supply and distribution of food, water, fuel, light and other necessities, for maintaining the means of transit or locomotion, and for any other purposes essential to the public safety and the life of the community, and may make such provisions incidental to the powers aforesaid as may appear to the Governor-General to be required for making the exercise of those powers effective.*
>
> *(2) Without prejudice to the generality of the powers conferred by subsection (l), such Regulations may so far as appears to the Governor-General to be necessary or expedient for any of the purposes mentioned in that subsection-*
>
> *make provision for the detention of persons and the deportation and exclusion of persons from Jamaica;*
>
> *(b) authorize on behalf of Her Majesty-*
>
> *(i) the taking of possession or control or the managing or carrying on, as the case may be, of any property or undertaking;*
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> *(ii) the acquisition of any property other than land;*

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[1] See section 26(4) of the Constitution of Jamaica.
[2] See section 3(1) of the Emergency Powers Act 1938

(c) authorize the entering and search of any premises;

(d) provide for amending any enactment, for suspending the operation of any enactment, and for applying any enactment with or without modification;

(e) provide for charging, in respect of the grant or issue of any licence, permit, certificate or other document for the purposes of the Regulations, such fee as may be prescribed by or under the Regulations

(f) provide for payment of compensation and remuneration to persons affected by the Regulations…"

[20] The period of emergency lasts for one month upon 1st proclamation[3]. The duration of the Regulations is governed by s.3 (4) of the **Emergency Powers Act.** It says as follows:

"(4) Any Regulations so made shall be laid before the Senate and the House of Representatives as soon as may be after they are made, and shall not continue in force after the expiration of seven days from the time when they are so laid before the Senate and the House of Representatives, whichever shall be the later unless a resolution is passed by the Senate and the House of Representatives, providing for the continuance thereof."

[21] In the case at bar, there was such a proclamation made by the Governor General declaring a State of Public Emergency and Regulations were made under s. 3 of the **Emergency Powers Act** by the Governor General on the 23rd May 2010.

[22] However, the Regulations were not laid before the House of Representatives until the 1st June 2010 and then the Senate on the 11th June 2010.

[23] Therefore, the regulations would continue in force up to the 18th June 2010. The 1st Regulations cover the period of the subject of this claim and so we need not consider the subsequent regulations passed.

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[3] See section 26(6)(a) of the Constitution of Jamaica

[24] It is important to note that by virtue of s.3(6) of the **Emergency Powers Act**, the Regulations passed pursuant to s. 3, have the effect of being part of the statute and so become incorporated into the statute itself. The Regulations have the force of the substantive legislation and not merely as subsidiary legislation. The relevant subsection is set out below:

> *"(6) The Regulations so made **shall have effect as if enacted in this Act (emphasis mine)**, but may be added to or altered by resolution of the Senate and House of Representatives or by Regulations made in like manner which shall be laid before the Senate and House of Representatives and shall be subject to the like provisions as the original Regulations."* ***Emphasis mine***

[25] Therefore, the relationship between the Act and the Regulations is that whenever Regulations are made and passed, the Act is (in a sense and in effect), amended. When the Regulations expire, the Act is, once again (in a sense and in effect), amended as the new provisions inserted by the Regulations are removed and the Act reverts to its original state.

Immunity from Suit

[26] An important feature of the May 2010 Regulations is the fact that it conferred immunity from suit on members of the security forces for Acts done pursuant to the regulations in good faith. Regulation 45 is what deals with this immunity from suit. I will set out the relevant provision here.

> *"45.- (1) Subject to paragraph (2), no action, **suit**, prosecution or other proceeding shall be brought or instituted against any member of the security forces in respect of any act done in good faith during the emergency period in the exercise or purported exercise of his functions or for the public safety or restoration of order or the preservation of the peace in any place or places within the Island or otherwise in the public interest.*
>
> *(2) Paragraph (1) shall not prevent institution or prosecution of proceedings*
>
> *(a) for compensation pursuant to regulation 44; or*

(b) in respect of any rights for alleged breaches of contract if the proceedings are instituted within one year from the date when the cause of action arose."

[27] The constitutionality of such a provision was extensively and finally dealt with by our Court of Appeal in the decision of ***Tinglin et al v Claudette Clarke et al***[4]. In this case, there were consolidated appeals arising out of a ruling by the Full Court that determined that good faith certificates issued by the Minister of National Security in favour of the soldiers were of no effect and their criminal trial had to continue.

[28] F. Williams and Straw JA, delivering the judgment of the Court of Appeal, said at paragraph 35 as follows:

"Having regard to the entirety of the Act and its clear language and scope, it is apparent that the Act gives to the Governor-General very wide powers to make regulations geared towards the preservation of the peace, among other things, during a period of emergency. Incidental to that is the power to give to the members of the security forces a measure of protection in the form of a shield of immunity as they perform their duties during a state of emergency. It is to be remembered that a period of emergency and the conditions that obtained during the period in question, may fairly be likened to war-time conditions. The security forces were under attack and had to engage in several gun battles with armed gun men, in defence of themselves and civilians. The breadth of the powers accorded by the Act to the Governor-General is meant to empower him to deal with extraordinary circumstances effectively."

[29] The Court of Appeal also decided, in the same case, that the immunity exists whether or not a certificate of good faith was issued for the particular actions of the members of the security forces. What they determined was that if the certificate

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[4] [2023] JMCA Civ 1

was issued before prosecution, then there is an automatic bar to prosecution, unless the presumption of good faith was rebutted.

[30] The Court of Appeal stated that in the event there was no certificate of immunity issued to the security forces prior to prosecution being initiated, then, it would be for the security forces to raise the immunity and then, once raised, there would have to be a preliminary issue dealt with before a Court to resolve the question as to whether the case can proceed or not. That is, whether the actions were done in good faith and so the prosecution would be a nullity[5] and aborted.

[31] However, there was an authority from the UK House of Lords (now UK Supreme Court) on this issue that was not considered by our Court of Appeal, which sheds a different light on the effect of the immunity.

[32] In the case of ***Seal v Chief Constable of South Wales Police***[6] the facts were that in December 1997, an incident was reported to the police at the home of the claimant's mother and the claimant was arrested for causing a breach of the peace and taken into the street where a further incident took place and as a consequence the claimant was removed to a place of safety under s 136(1) of the Mental Health Act 1983 ('the Act') and then detained for just over a week under s 136(2) of the Act and later s 2 of the Act and then released. On the eve of the expiry of the six-year limitation period under s 2 of the Limitation Act 1980 the claimant issued proceedings against the Chief Constable of South Wales ('the defendant').

[33] The defendant applied for the action to be struck out as the claimant had not obtained the leave of the High Court under s 139(2) of the Act. This application was granted and upheld by the Court of Appeal. The claimant argued that: (1) the lack of leave when required, was an irregularity which could be rectified and not a fatal flaw which invalidated the proceedings; and (2) the effect of s 139(2) of the

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[5] Ibid at para 126
[6] 97 BMLR 172; [2007] UKHL 31

Act was to infringe his right of access to the court contrary to art 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950.

[34] The House held (with Baroness Hale and Lord Woolf dissenting) that (1) any civil proceedings brought in respect of an act purporting to be done in pursuance of the Act without the leave of the High Court as required by s 139(2) rendered the subsequent proceedings a nullity and (2) the restriction on access to the court without the leave of the High Court was a proportionate restriction under art 6 and the mandatory requirement for leave which invalidated subsequent proceedings did not infringe art 6.

[35] Section 139 of the Mental Health Act 1983 is set out here as it is appropriate for comparison with the immunity section of the May 2010 Regulations set out above.

> *(1) No person shall be liable, whether on the ground of want of jurisdiction or on any other ground, to any civil or criminal proceedings to which he would have been liable apart from this section in respect of any act purporting to be done in pursuance of this Act or any regulations or rules made under this Act, or in, or in pursuance of anything done in, the discharge of functions conferred by any other enactment on the authority having jurisdiction under Part VII of this Act, unless the act was done in bad faith or without reasonable care.*
>
> *(2) No civil proceedings shall be brought against any person in any court in respect of any such act without the leave of the High Court; and no criminal proceedings shall be brought against any person in any court in respect of any such act except by or with the consent of the Director of Public Prosecutions.'*

[36] Lord Brown of Eaton-Under-Heywood, made a very poignant observation regarding the immunity conferred by s. 139(1). He said as follows at paragraph 71:

> *Since 1930, therefore, it has been impermissible to bring Mental Health Act proceedings ('proceedings' as I shall call them) without leave (although since 1982 such leave has been easier to obtain), and throughout this whole period it has been accepted by all that without such leave any proceedings brought would be a nullity. This was conceded at the highest level in the criminal context in Pountney v Griffiths [1975] 2 All ER 881, [1976] AC 314 (consistently with other*

> *authoritative decisions both before and after Griffiths' case itself—see para [14] of Lord Bingham's opinion). Furthermore as again Lord Bingham points out at [15], above) there has been no suggestion amongst academic commentators that this concession might have been wrongly made or might not apply in a civil context. Take, for example, Dr Larry Gostin's work, Mental Health Services—Law and Practice (1986 and supplements) para 21.26.2 under the heading 'Proceedings instituted without leave are a nullity':* ***'Proceedings instituted without the required leave or consent are a nullity. Further, a person who acts in pursuance of the statute cannot waive (either expressly or by implication) the protection afforded by section 139. The provision does not create a personal immunity which is capable of being waived, but imposes a fetter on the court's jurisdiction which is not so capable.' (Emphasis mine).***

[37] In approving this commentary, Lord Brown was saying, in my view, that once a person asserts that they were acting under the statute, they have immunity by virtue of the provision and they cannot waive it (expressly or by implication). In other words, a Defendant does not have to raise the immunity to be afforded its protection.

[38] Again, it is important to remember that the provision of immunity by the regulations has the effect of statute by virtue of section 3(6) of the **Emergency Powers Act**.

[39] What is also clear, is that the House of Lords treats the immunity as going to the jurisdiction of the Court to hear the matter. So that the Court must satisfy itself that it has jurisdiction to try the case before proceeding. I do recognise that s. 139(2) does have the requirement for leave to prosecute to be obtained from either the DPP in criminal cases or the Court in civil cases. We have no such provision in the Regulations. But in the *Tinglin* case, our Court of Appeal has essentially accepted something similar in practice if not by statute[7].

The Compensation Regime

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[7] See paragraph 126 of *Tinglin* (supra)

[40] Another feature of the May 2010 Regulations was the compensation regime established by Regulation 44.

[41] Regulation 44 is set out here:

> *"44.-(1) Where pursuant to these Regulations-*
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> > *(a) possession of any land has been taken on behalf of the Government;*
> > *(b) any property other than land has been requisitioned or acquired on behalf of the Government; or*
> > *(c) any work has been done on any land on behalf of the Government otherwise than by way of measures taken to avoid the spreading of the consequences of damage not caused by Government during the emergency.*
>
> *then, subject to the provisions of the Schedule, compensation assessed in accordance with those provisions shall be paid out of monies provided by Parliament, in respect of the taking of the land, the requisition or acquisition of the property, or the doing of the work, as the case may be.*
>
> *(2) For the purposes of this regulation, a requirement that any space or accommodation in a ship or aircraft be placed at the disposal of any authority shall be deemed to be a requisition of property.*
>
> *(3) Any dispute as to whether any compensation is payable under these Regulations or as to the amount of any compensation so payable shall, in default of agreement, be referred to and determined by, the Supreme Court."*

[42] The Schedule to the Regulations then sets out in detail how compensation is to be calculated for each act done in Regulations 44(1)(a), (b) and (c)[8].

[43] To obtain compensation, there must be compliance with Article 6 of the Schedule. I will set it out here.

> *No claim for any compensation under these Regulations shall be entertained unless notice of the claim has been given to the Attorney-General within the period of six months, or such longer period as the Minister may, either generally or in relation to any particular claim or class of claim, allow, beginning in either case with the date on which*

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[8] See Arts 1-5 of the Schedule.

the compensation accrues due or the date of commencement of these Regulations, whichever is the later.

[44] Therefore, in order to get compensation under Regulation 44, the aggrieved person would have to first notify the Attorney General of their demand for compensation. They must notify the Attorney General within 6 months of either the date on which the compensation became due or the date of commencement of the regulations. The Minister may extend the period of time from 6 months either in a general way or confined to a particular class of claim.

[45] A few other things to note in relation to compensation are.

1 Article 10 limits how compensation is to be assessed, even in a regular civil claim. It says that compensation is to be assessed in accordance with these regulations and not otherwise. Therefore, even in a matter brought to court, the Court is not at large to assess damages in the usual way. However, in my view, if no method is provided for assessing compensation for a particular type of injury or class of claim, then the Court retains its usual method for assessing damages.

2 Even if an act is done in good faith, an aggrieved person is still entitled to compensation for any of the things done under regulation 44(1)

Civil Litigation vs Compensation

[46] It is my considered view that an aggrieved person does not have the right to sue for damages for torts that are covered by the compensation regime established under Regulation 44 **once the acts of the security forces are done in good faith** (emphasis mine). In my view, the torts can only be pursued, if the actions of the security forces are found not to have been done in good faith.

[47] I say this as Regulation 44 makes it clear that compensation under that regulation is only payable for acts done **pursuant to the Regulations** (emphasis mine). An act not done in good faith, in my view, is not done in pursuance of the Regulations. I gain support for this view from the decision in *Tinglin* above.

[48] In tackling the question of "good faith" in the criminal context of a charge of murder, F. Williams and Straw JJA said as follows[9]:

> *The term "good faith" is defined in the Concise Oxford Dictionary, 10th edition, as: "honesty or sincerity of intention". The expression appears to be a nebulous concept in criminal proceedings. It cannot be substituted for intention, which has a completely different meaning and function from the concept of good faith. Also, it does not fit well within the criminal law, which is based essentially on the notion of mens rea. However, it seems certain that if the prosecution has cogent evidence to establish that the elements of murder are satisfied, there would have to be some finding of the existence of extraordinary circumstances in order for the certificate of good faith to be accepted.*

[49] For my part, the term "good faith" attaches itself to the actions that you carry out. Meaning, you are exercising your powers under the Regulations with sincerity of intention to carry out those statutory purposes[10]. So, as in the case of *Tinglin* above, you cannot commit murder and at the same time say that it was done in the good faith exercise of your powers to preserve life under the Regulations. It would be incongruous.

[50] Similarly, in the civil realm, a member of the security forces cannot take and convert someone's property to their own use and purposes that had nothing to do with the exercise of their powers under the Regulations, but simply because they wanted to appropriate the property for themselves.

[51] On the other hand, if the member of the security forces took someone's car in order to pursue a person who was trying to escape from detention under the regulations and crashed the car, then it is arguable that would have been a good faith exercise of their powers under the Regulations.

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[9] *Tinglin et al v Clarke et al* [2023] JMCA Civ 1 at para 49

[10] The scope of the protection offered by the immunity depends on the wording of the statute. See the discussion on this point in the article from Dietrich & Field, Statute and Theories of Vicarious Liability, Melb U Law Rev. Vol 43(2) 515 at 545-546

[52] In the scenario at paragraph 51, you would be entitled to sue for conversion, but in the latter scenario, you would only be entitled to compensation under regulation 44 as the member of the security forces would have immunity from suit.

[53] Sections 3(1) and (2) of the **Emergency Powers Act** set out the statutory purposes for the Regulations and the powers conferred on the security forces by the regulations made pursuant to the Act. So an act done for a purpose outside of the regulations is not one that can be argued was done in good faith.

[54] So Trespass to Property, Conversion and such similar torts are not actionable as such for matters done by the security forces in the good faith exercise of their powers under the Regulations.

[55] It is therefore critical, in my view, for a Court to address the issue of the good faith exercise of the powers by the member(s) of the security forces at the earliest possible stage to determine whether or not the immunity is triggered, as, in my view, immunity from suit goes to the Court's jurisdiction to address the claim.

[56] The compensation regime, is meant to exclude the involvement of the Court and its usual litigation processes as it is meant to dispose of these matters quickly. The role of the Supreme Court, where the Regulation 44 regime is involved, is limited to resolving a dispute as to whether compensation is due at all and if so, how much, where the aggrieved and the Attorney-General cannot resolve the dispute[11].

[57] It is not unusual for statute to limit the involvement of the Supreme Court in the resolution of disputes between parties. We see this under the labour relations dispute resolution regime created by the **Labour Relations and Industrial Disputes Act** with the IDT[12]. In my view, then, Regulation 44 creates a specific regime to address compensation claims arising from the good faith actions of

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[11] See Regulation 44(3)

[12] *Village Resorts Limited v Industrial Disputes Tribunal et al* (Unreported) Court of Appeal Jamaica SCCA 66/97 delivered June 30, 1998

persons done pursuant to powers conferred on them by the Regulations. The Supreme Court only becomes involved if a dispute arises between the aggrieved and the Attorney General that they cannot resolve by agreement.

[58] As a final observation, torts not covered by the compensation regime would seem to be always actionable once not done in good faith. So actions for false imprisonment, assault, battery, etc. would not fall within the compensation regime under Regulation 44.

THE CLAIM ITSELF

[59] Having set out extensively what I consider to be the key aspects of the statutory framework, I turn now to the question of the substantive claim itself.

[60] By their Amended Claim Form and Particulars of Claim, the Claimants claim the following relief:

a) Compensation for the Security Force's forcible occupation of the Claimant's premises for 22 days between May 23, 2010 and June 13, 2010 and losses suffered as a consequence.
b) Breach of Statutory Duty under the Emergency Powers Regulations 2010 by failing to do only what was necessary and expedient for the statutory purpose and/or in the purported exercise of their functions and/or for public safety and/or restoration of order in the public interest and by failing to act in good faith.
c) Damages for Trespass to Goods in that the Defendants took or caused a quantity of cash to go missing, unnecessarily turned off a breaker to the cold room resulting in meat spoilage; broke glass doors and kicked down metal doors on the premises; destroyed inventory for business and assets as detailed in an attached report (which report was not put into evidence);
d) Damages for Conversion in that the security forces took the missing cash amounting to $1,657,000.00, which was unaccounted for when the Claimants were allowed access to the premises following the occupation; took the items of inventory as outlined in the report (not in evidence) when they were given access, which items were missing and not account given therefor.

[61] As part of their amended pleadings, the Claimants asserted that they wrote to the JDF seeking compensation for their losses, but they did not get any favourable reply. The importance of this will become apparent in due course.

[62] It is important to note that in their original pleadings, the Claimants did not assert as a matter of fact that the security forces failed to act in good faith for any of the matters pleaded. I will address what I think are the consequences of this shortly.

[63] The Defendant admitted to occupying the premises, but say that they lawfully entered the premises pursuant to the powers under the EPA and Regulations. Concerning the claim for breach of statutory duty, the Defendant denied that any such duty exists under the Act or Regulations.

[64] In particular, at paragraphs 14-15 of the Amended Defence, the Defendant sought to explain how it was that their actions were done in furtherance of their statutory powers and why the conduct was necessary. They asserted that the taking of the Claimants' property was necessary to preserve the peace, secure and regulate the supply and distribution of food, water, fuel, light and other necessities essential to public safety and the life of the community. It was done to gain a tactical advantage in observing the criminal elements who were firing in and around the Tivoli Gardens community, as the premises (which the Defendant identified as Foxes Plaza) was the highest building in the area.

[65] They said they searched the property as it became apparent that some suspicious activity was taking place there. They admitted to some damage being done, but said it was done to gain access to the property and to reduce security risks created by the light bulbs. They specifically denied that cash or items of merchandise were removed or stolen. They also said that the generator had to be turned off as it was noisy and created an audio interference.

[66] I find that the Defendant's defence does raise the issue of the security forces acting in good faith in the exercise of their statutory powers. It is clear from paragraphs 14-15 that the Defendant was indicating that what the security forces did, was done in the genuine interest of furthering their statutory duties.

THE ISSUES AT TRIAL

[67] I do respect the submission of the issues as outlined by the Claimants in their final written submissions filed on the 8th January 2026, at page 5 of the submissions. I, would, without any disrespect to the industry of the Claimants, propose my own outline of the issues that arise and I will treat with them in order:

(i) Was the failure to plead that the security forces did not act in good faith in the original claim render the entire proceedings a nullity or was it simply an irregularity that could be cured by amendment?
(ii) Concerning the claim for Breach of Statutory Duty:
   a. Is there such a duty;
   b. If so, are the Claimants statute barred from bringing the claim for compensation for breach of that duty;
   c. If the Claimants were not statute-barred, did the security forces breach such a duty;
(iii) Can the Claimants sue for Trespass to Property, Goods and Conversion?
(iv) If so, have the Claimants claims succeeded?
(v) What is the Quantum of Damages to be awarded the Claimants, if successful.

Was the Failure to Plead that the Security Forces Did Not Act in Good Faith in the Original Claim Render the Entire Proceedings a Nullity or was it Simply an Irregularity that Could be Cured by Amendment.

[68] It is my view that the failure to plead that the security forces acted in bad faith or that they did not act in good faith in the exercise of their powers under the **Emergency Powers Act and Regulations** did not render the proceedings an incurable nullity as, based on the decision of the Court of Appeal in *AG of Jamaica v Claudette Clarke et al*[13], the executive (meaning the Crown) does not enjoy the same immunity from suit afforded to members of the security forces under regulation 45. So, whilst the Claimants failed to assert that the security forces acted in bad faith, as the Court of Appeal has determined that the immunity from suit does not extend to the executive, the failure so to plead is not fatal.

[13] [2019] JMCA Civ 35

[69] At paragraphs 40-41 of the *AG of Jamaica v Claudette Clarke et al* decision, Morrison P said as follows:

> *"[40] It seems to me that, in the context of this case, the important point to note about the immunity granted by regulation 45(1) is that it is an immunity from action, suit, prosecution or other proceedings granted to individual members of the security forces acting in their capacity as such. In other words, in keeping with the clear legislative intention as it appears from section 3(1) of the Act, regulation 45 taken as a whole must be seen as a manifestation of what the Governor-General considered to be required in order to make the exercise of emergency powers conferred on members of the security forces, as persons acting "in Her Majesty's Service or acting on Her Majesty's behalf", effective. [41] But it is not, of course, an immunity from suit granted to the Executive itself. It therefore does not purport to bar action against the Executive in respect of the allegedly wrongful acts of its servants or agents, such as members of the security forces: under the established principles of vicarious liability, and naturally subject to proof, the Executive remains liable for any such wrongful acts."*

[70] No authority was cited by the learned President (as he then was) for this position. However, in my own research, I came across several authorities that expressed a different view. This view is that the immunity granted to the crown servants (whether as individuals or as a group) extends to the Crown.

[71] One such authority is *Bell v Western Australia*[14] from the Court of Appeal of Western Australia. In this case, the plaintiff suffered the loss of his houseboat when it sank after a naval architect surveyor, employed by the WA Department of Transport to survey and certify the boat, negligently failed to require the manufacturer to take steps to ensure that one of the doors to the houseboat would not be opened while it was afloat. The trial judge found that the surveyor would have been liable but for the immunity provided by s 124 of the *Western Australian Marine Act 1982* (WA). That section applies to conduct done 'in good faith in the exercise or purported exercise of a power or in the discharge or purported discharge of a duty under [the] Act'. The Act made no reference to the liability of the Crown.

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[14] (2004) 28 WAR 555

[72] The Western Australian Court of Appeal rejected the view that the immunity was merely a procedural one from suit. It considered that the weight of authority favoured the view that 'immunity from liability of the servant cannot co-exist with vicarious liability of the employer, whatever the jurisprudential basis of vicarious liability.[15]

[73] The House of Lords (as it then was) adopted a similar view in the case of *Majrowski v Guy's and St. Thomas' NHS Trust*[16]. Lord Nicholls of Birkenhead set out the general principle as follows:

> *"[16] One further general question should be noted on the interpretation of statutory provisions in this context. The question can be framed this way. Does employers_ vicarious liability arise* ***unless the statutory provision expressly or impliedly excludes such liability*** *(emphasis mine)? Or does employers liability arise only if the statutory provision expressly or impliedly envisages such liability may arise? As already indicated, I prefer the first alternative. It is more consistent with the general rule that employers are liable for wrongs committed by employees in the course of their employment. The general rule should apply in respect of wrongs having a statutory source unless the statute displaces the ordinary rule. This accords with the approach adopted by Lord Oaksey in the passage cited above from National Coal Board v England [1954] AC403, 422. [17] Accordingly on this point I agree with the Court of Appeal. Unless the statute expressly or impliedly indicates otherwise, the principle of vicarious liability is applicable where an employee commits a breach of a statutory obligation sounding in damages while acting in the course of his employment."*

[74] There is also the proviso under s. 3 of the **Crown Proceedings Act**. I will set it out below:

> *"Provided that no proceedings shall lie against the Crown by virtue of paragraph (a) in respect of any act or omission of a servant or agent of the Crown unless the*

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[15] See also *Commonwealth v Griffiths* (2007) 70 NSWLR 268. The case concerned the immunity of witnesses giving evidence in court proceedings. The New South Wales Court of Appeal held that the immunity extended to the employer, the Australian Government Analytical Laboratories ('AGAL'), which was conducted by the Commonwealth. AGAL was not vicariously liable for any tort committed by the witness. The Court concluded that 'there is a long line of authority … that a person who is vicariously liable for the tortious conduct of another is protected by any immunity that is available to the actual wrongdoer'. The Court emphasised that the policy reasons for the immunity supported the conclusion that the employer should not be held liable (vicariously or directly). The immunity was treated as a substantive one.

[16] [2007] AC 224 at p 231 paras 16 and 17; [2006] UKHL 34

act or omission would, apart from the provisions of this Act, have given rise to a cause of action in tort against that servant or agent or his estate."

[75] Paragraph 3(1)(a) provides as follows:

> *"Subject to the provisions of this Act, the Crown shall be subject to all those liabilities in tort to which, if it were a private person of full age and capacity, it would be subject-*
>
> *(a) in respect of torts committed by its servants or agents…"*

[76] The case of *X v Lord Advocate*[17] has interpreted the like provision of the Crown Proceedings Act of Scotland to mean that, "the words effect the purpose of imposing on the Crown the law on vicarious liability in delict or tort. The purpose is not, as the pursuer submits, to impose on the Crown only a limited part of that law and nor is it to deem aspects of that law (ie the first stage of vicarious liability) as being automatically satisfied where the wrongdoer is a Crown servant…It follows from this correct interpretation that **all the law on vicarious liability** (emphasis mine) that would apply if the Crown were a private person, applies to the Crown…"

[77] In so far as the proviso to section 2(1)(a) (the equivalent of our 3(1)(a)) was concerned, the UKSC said as follows[18]:

> *"Two final, if minor, points on section 2 of the 1947 Act should be mentioned for completeness. The first is that the purpose of the proviso to section 2(1)(a) is not immediately obvious. Both R M Bell, Crown Proceedings , pp 30-31, and Glanville Williams, Crown Proceedings, p 44, suggest that the proviso was inserted out of an abundance of caution in order to make it plain that the Crown was to benefit where the defence of act of state was available to its servant, although it was strictly unnecessary, since where the defence of act of state was available, it would follow that no tort had been committed."*

[78] To this observation, I would humbly add that the proviso also intends to preserve the immunity to the Crown where a statute confers such immunity on its servants.

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[17] [2025] UKSC 44 at paras 53 & 54
[18] Ibid at para 55

[79] In my view, the Claimants were required by the Regulations to establish that the security forces did not act in good faith in order to get around the immunity conferred on them by Regulation 45. Those specific words were not used in the pleadings. However, they did say that the actions by the security forces were done maliciously and without reasonable and/or probable cause.

[80] It is exceedingly important for the Claimant to set out all the material facts upon which they rely to ground their claim.

[81] Rule 8.9 sets out the requirement for the Claimant to plead their case fully:

> *(1) "The claimant must include in the claim form or in the particulars of claim a statement of all the facts on which the claimant relies.*
>
> *(2) Such statement must be as short as practicable.*
>
> *(3) The claim form or the particulars of claim must identify or annex a copy of any document which the claimant considers is necessary to his or her case.*
>
> …."

[82] This is given further power by rule 8.9A, which says that a Claimant cannot rely on any allegation or factual argument not set out in the particulars unless the Court gives permission.

[83] The case of ***Charmaine Bernard (Legal Representative of the Estate of Reagan Nicky Bernard) v Ramesh Seebalack***[19] is instructive. This was an appeal to the Privy Council from the Court of Appeal of Trinidad and Tobago, regarding the interpretation to be placed on provisions in the Civil Proceedings Rules of Trinidad and Tobago. That case held, speaking generally, that the claimant's duty in setting out his or her case to include a short statement of all facts relied on, meant that each head of loss the claimant was seeking to recover should

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[19] [2010] UKPC 15

be identified in the statement of case. Where that was not done, an amendment is required.

[84] The Privy Council had regard to the case of ***McPhilemy v Times Newspapers Ltd***[20] and Lord Woolf's observation that even in the new CPR era, the Witness Statement was no substitute for a properly pleaded case and that parties were required to set out a short statement of **all the facts** being relied on by the pleader.

[85] A pivotal case on this point is ***Rasheed Wilks v Donovan Williams***[21]. In that case, the Respondent (Defendant in the court below) failed to properly set out the facts in his defence that would show why the driver of his car, at the time of a fatal collision, was not acting as his servant and/or agent as asserted by the Claimant in her pleadings.

[86] However, the Defendant/Respondent, inserted in his witness statement, more detailed evidence to support his defence. Counsel for the Appellant/Claimant objected, at the trial, to the evidence on the basis that those facts were not present in the Defence. The trial judge overruled the objection and allowed the evidence to be presented and relied upon. The Claimant/Appellant appealed this decision.

[87] The Court of Appeal allowed the appeal and ordered that those aspects of the Claimant's evidence that purported to give evidence of facts not pleaded in the defence could not be relied upon and should be struck out.

[88] Edwards JA, delivering the judgment of the Court of Appeal, said as follows from paragraphs 38-40:

> *"[38] The case of McPhilemy v Times Newspapers Limited was also cited by the appellant. This case held that pleadings were not made superfluous because of the requirement for witness statements, but that pleadings were still necessary* ***"to mark out the parameters of***

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[20] [1999] 3 All ER 775
[21] [2023] JMCA Civ 15

> ***the case being advanced by each party and to identify the issues and extent of the dispute between the parties"*** *(emphasis mine). In that regard, it said, no more than a concise statement is required. At page 793 of that case, it was said that:*
>
> > *"What is important is that the pleadings should make clear the general nature of the case of the pleader."*
>
> *[39] It is clear, therefore, that although only a short statement of facts is required, a witness statement cannot be issued as a substitute for it. Although the authorities mostly deal with the inadequacies in a claimant's statement of case, the principles would, obviously hold true for a defendant's statement of case.*
>
> *[40] I, therefore, agree with the appellant that the respondent having failed to plead facts or information in his defence to dispute that Mrs Williams was driving his car as his servant and/or agent at the relevant time, he cannot now seek to do so in a witness statement..."*

[89] Although the ***Wilks*** case had to do with the Defence, the same principles apply to the Particulars of Claim.

[90] As discussed above, Regulation 45 of the May 2010 Regulations under the EPA, conferred an unwaivable immunity from suit on members of the state exercising their powers in good faith under the EPA and Regulations. This immunity goes to the Court's jurisdiction to even entertain the claim.

[91] I am fortified in this view by the very wording of the regulation. It says, "Subject to paragraph (2), no…suit…or other proceeding shall be brought or instituted…in respect of any act done in good faith…" The wording is clear and unambiguous. You cannot even file the proceedings for acts done in good faith. Ergo, to file a suit, you must allege that the act(s) complained of were not done in good faith to entitle you to even commence the proceedings.

[92] In the context of a civil claim, a Claimant must therefore, in my view, if they are going to seek remedies outside of the Regulation 44 compensation regime, ground the Court's jurisdiction to make even a provisional assessment (as required by *Tinglin*) as to whether the actions of the security forces were done in good faith.

This grounding comes in them making the specific assertion that the acts of the security forces were not done in good faith.

[93] The Claimants argued that the enquiry into whether the failure to plead rendered proceedings a nullity was a matter of form over substance. They argued that they expressly pleaded that the Defendants did not act in good faith at paragraph 11(x)(b) of their Amended Pleadings. But counsel seemed not to recall that I asked them to address this issue in the context of the Claim **as originally filed** (emphasis mine).

[94] Unlike the case of *Tinglin* which concerned a criminal case involving the laying of charges by the DPP in the exercise of her constitutional powers, the case at bar concerns a civil claim where a Claimant must set out their case and ground the Court's jurisdiction to hear same. The DPP has absolute constitutional authority to commence a criminal prosecution. A civil litigant must, however, conform to the EPA and Regulations.

[95] The effect of Regulation 45 is that you cannot commence the civil suit if the action by the state actor was done in good faith. If the state actor has the Certificate of Good Faith as **evidence** of their good faith conduct, it makes the case that much more difficult to ultimately prove. But in the context of the commencement of the civil claim, the Claimant must, whether there was a certificate or not, still assert that the state actor was not acting in good faith. If you fail to assert that they did not act in good faith, then the Court would not have jurisdiction to entertain the claim and it cannot be cured by amendment.

[96] For support for my position, I look to a similar statutory context of the failure to plead that a police officer acted maliciously and/or without reasonable and/or probable cause as required by s. 33 of the **Constabulary Force Act.** Our Court of

Appeal has held that the failure to plead those words rendered a claim in tort against a member of the Force liable to be struck out[22].

[97] Unlike s. 33 of the **Constabulary Force Act**, s. 45 of the Regulations bars the suit from even being commenced if the actions of the state actor were done in good faith. It is therefore incumbent on the Claimant to assert that the actions were not done in good faith in order to be able to initiate the suit. The words themselves do matter, in my view.

[98] The assertion in the original pleadings that the security forces acted "maliciously" is insufficient in my view. In ***Peter Flemming v Det Cpl Myers and the Attorney General***[23], Forte JA, as he then was, adopted the statement of Lord Devlin in ***Glinski v McIver***[24] that, "'malice' covers not only spite or ill will but also any motive other than a desire to bring a criminal to justice".

[99] According to Kellock J in the famous case of ***Chaput v Romain et al***[25]

> *"S. 7 of the Quebec statute makes it clear that it is subject to the same construction. It provides that the protection which the statute provides is limited to cases where the officer has "exceeded his powers or jurisdiction and has acted clearly contrary to law", but acted "in good faith in the execution of his duty". What is required in order to bring a defendant within the terms of such statute as this is* ***a bona fide belief in the existence of state of facts which had they existed would have justified him in acting as he did****. This rule was laid down in Herctnann Seneschal. The contrast is with an act of such nature that it is wholly wide of any statutory or public duty i.e. wholly unauthorized and where there exists no colour for supposing that it could have been an authorized one. In such case there can be no question of good faith or honest motive." (Emphasis mine)*

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[22] See the decision of in *Bowers et al v Gordon* Unreported, Court of Appeal of Jamaica, SCCA 46/90, July 8, 1991 at page 2
[23] (1989) 26 JLR 525 at p 535
[24] [1962] 2 WLR 832
[25] [1955] SCR 834 at 856-857

[100] So the concepts are related and similar, but different. Good faith goes to the honest belief of the actor in the validity and, therefore, appropriateness of their actions. Malice goes to the motive of the actor for their actions.

[101] In my view, then, it is necessary to make the correct allegation despite the fact that malice can be viewed as lacking in good faith. To allow otherwise would deprive the security forces of the full intended protection from suit afforded by the Regulation. Moreso, where, unlike s. 139(2) of the UK Mental Health Act, the Regulation does not require that leave be obtained from the Court before proceeding with the suit.

[102] However, since I am bound by the decision of the Court of Appeal, I must come to the conclusion that there was no need for this assertion in the original pleadings and so the Claim as originally filed was not a nullity.

Was there a Duty Imposed on the Security Forces to Act in Good Faith and to Do Only What was Necessary and Expedient for the Statutory Purposes and/or in the Purported Exercise of their Functions etc.

[103] There was no duty imposed by the EPA or the Regulations for the security forces or state actors to act in good faith. The issue of good faith only arises in the context of Regulation 45, giving the state actors immunity from suit in the circumstances already described.

[104] Likewise, there was no duty imposed on them to do only what was necessary and expedient for the statutory purposes and/or in the purported exercise of their functions. There was no such expressed or implied duty imposed on state actors. The EPA empowers the Governor General to grant certain powers to certain state actors to achieve the objectives as outlined in s. 3(1) of the EPA. The use of the word “duties”, as stated in s. 3(1), is not to be understood as imposing a manner in which the powers and responsibilities are to be carried out. Rather, in my view, it is to be read as “responsibility” as in “function they are to carry out”.

If Such a Duty was Imposed, did they Breach their Duty?

[105] This question arises in the context of the security forces' occupation of the Claimant's premises. There was no pleading from the Claimants that the security force's occupation of the premises was done in bad faith or not for the statutory purposes. Nor was there any claim for Trespass to Property.

[106] The contention is that whilst in occupation, they took cash, removed and/or caused items of inventory to go missing, unnecessarily turned off the breaker to the cold room on the premises causing meat spoilage, caused miscellaneous damage to property, took items from the bar, took phones and stationary as well.

[107] The Claimants must therefore satisfy me, on the balance of probabilities, that the security forces did these things and that they did them in bad faith and that these acts exceeded their statutory remit. It is important to note, that if the actions were done in good faith, then they would be immune from suit even if the actions exceeded their statutory responsibilities.

Evidence, Findings and Analysis

[108] The evidence from the Claimants comes primarily from the 2nd Claimant as the 1st Claimant was absent at the time of the incident. It was the 2nd Claimant that was actually present at the premises at the time the security forces took possession.

[109] Mr. Joiles said he and his mother jointly own and operated a building at 33-35 Spanish Town Road in Kingston that they call Attic Plaza. He said he was on the building on the 23rd May 2010 as he needed to start a standby generator to keep the cold storage unit running to prevent meat on the premises from spoiling. There had been a power outage.

[110] According to him, the security forces entered the premises without lawful justification. I reject this evidence and find, based on the evidence from the security forces through their witnesses, that the entry was justified and in furtherance of their statutory mandate to secure life and property. I accepted the evidence of Lt. Col. Kevron Henry when he said that their task was to seize certain structures,

including what he identified as the Claimants' premises (which he called Foxy's Plaza), to establish vantage points so they could have clear line of sight into the community and activities on the ground. I also find that this entry was done in good faith on the part of the security forces.

[111] I also reject his evidence that the search was unjustified and unnecessary. Again, the search was done in the good faith exercise of the statutory mandate of the security forces to secure life and property. According to the evidence of Sgt. Williams, which I accept as being true, they had to breach metal doors in order to access the roof to establish firing positions. I accept his evidence as being true and I find it was done in the good faith exercise of their duty. It is my finding that Sgt. Williams was under the direct command of one Lt. Richards. So whilst he was a member of the same command group of Lt. Col. Henry, he was part of a different platoon carrying out a different aspect of the overall objective.

[112] According to Sgt. Williams, whilst they were attempting to gain entry, they were being fired upon. This firing continued and lasted for some time before they were able to gain entry. Based on the evidence of Lt. Col. Henry and Sgt. Williams, I find as proven that the effort to get into the building and secure the roof was done over a protracted period whilst they were under gunfire and duress.

[113] It was not disputed by the Defendant that the security forces turned off the generator and broke down some doors. I find that the evidence given by both Lt. Col Henry and Sgt. Williams as to the reason for this was credible and reasonable and they were not shaken in cross-examination on this issue. There was no evidence of malice on the part of the security forces in damaging the doors. They both testified that the generator was making too much noise and presented an unreasonable interference with their operational objectives. They could not hear well and in such an environment, hearing would be critical to locating enemy fire and enemy combatants. Their action in disabling the generator was more than reasonable and done in good faith.

[114] Keeping the generator off was also done for reasonable and/or probable cause and there is no evidence of malice. I reasonably infer that it was done to maintain their ability to monitor what was happening around them effectively whilst securing their location. I find that the generator was turned off before they encountered the 2nd Claimant and not after.

[115] I rejected the evidence of the 2nd Claimant that the breaches of the doors were arbitrary or capricious. He hasn't said exactly which doors were breached. But it must be noted that they gained access to the premises and the roof the day before locating the 2nd Claimant. This is based on the evidence of both Sgt. Williams and Lt. Col Henry. Neither gentleman was challenged in cross-examination on this aspect of their evidence. I find this evidence to be true.

[116] It is my finding that the Claimant was well aware that the soldiers were trying to get access to the building, as he was monitoring activities from a location on the building with CCTV footage showing the exterior of the building. He did not alert them to his presence in the building at all and it was they who actually had to come and find him. He did not deny this evidence.

[117] So when he testified that he offered them keys to the building, I reject that as being completely false.

[118] There was no dispute that the Claimants were kept out of operating their business for some time after the occupation, as the security forces were still there. I find that this was done for reasonable and/or probable cause and was not malicious, as the state of emergency was ongoing and they needed to maintain a presence there.

[119] Concerning the missing money, the 2nd Claimant only testified to losing the sum of $1,067,000.00 in cash. He claimed that this money was in the wholesale shop. He does not say where in the shop it was located. He did not say it was in a secure area and that when he returned to that area, it was breached. I do not believe his evidence. I do not accept that any reasonable business person in Jamaica would

have cash of that amount simply lying around in an unsecured location, easily accessible to anyone to come and take.

[120] I accept the evidence of the 2nd Claimant that the meat and other items in the cold room were lost. But I do not accept that these losses were caused by any malicious act or were done maliciously or without reasonable and/or probable cause. I also do not accept the valuation. There was no evidence put in to support that valuation. Surely, the Claimants, as business people, could have gotten invoices from their suppliers as to what these things had cost at the time. Even if the original invoices had been lost due to the incident, their suppliers or other suppliers could have provided invoices. So, I do not accept them simply throwing figures at the Court when it was easy for them to get actual evidence.

[121] I do accept that they had suffered losses to their businesses, but again, I do not accept the value of loss. The Claimants said they would have earned $4.4m in roughly 20 days. I am not disputing the capacity so to do. I am saying that they have provided no proof of this. With such earnings, the Claimants ought to have been paying GCT and filing quarterly income tax returns to prove that they have made their GCT returns and are paying their fair share. Remember, their evidence is that they are proper business people.

[122] So they would have had proper records of their earnings, etc., and had filings at the tax office upon which they could rely to substantiate their income. Not one document was put into evidence to support their claims for this level of income.

[123] Similarly, no documentary evidence was put in to support the losses from the bar, the over 40 assets listed, or the income from the restaurants. I do, however, accept that there was damage to the bar. But there was no evidence that this damage was caused by the security forces or was caused deliberately. When one considers that there was a major exchange of gunfire, one can see how the bar was damaged. There is no evidence that there was any deliberate act on the part of the

security forces to destroy the bar or that they acted without reasonable or probable cause or maliciously.

[124] There was no evidence, as to how or why water tanks, televisions, battery supplies, computer equipment, surveillance equipment (which the 2nd Claimant was using at the time of being found) and other electronic devices were lost. I therefore reject that these items were lost.

[125] Incidentally, there was no evidence from him in his witness statement or from his mother that phones were taken or missing from the phone shop. He said that he lost income from the phone business. But there was no evidence from him that phones were actually taken or missing.

[126] I found that the members of the security forces who testified were generally credible and believable. Mark you, there were moments where they had Nelsonian memory of certain events, but I also bear in mind that over 15 years had passed since those events till now when they are testifying. So I can reasonably excuse some memory lapses if they "could not recall". But I did not find that it entirely destroyed their credibility.

[127] All told, therefore, I am not satisfied, on the balance of probabilities, that the security forces breached their duty. I found their actions to have been done in good faith and they did not exceed their statutory remit.

Is The Claimants' Claim For Compensation Under Regulation 44 Statute Barred?

[128] In my view, the Claimants are not entitled to any compensation under Regulation 44 as they have failed to notify the Attorney General of their claim for compensation within the time specified by Article 6 of the Schedule to the May 2010 Regulations and so are statute-barred from making such a claim.

[129] As part of my Pre-Trial Orders, I had invited the parties to make submissions as to whether or not the claim for compensation under Regulation 44 was statute-barred.

The parties duly made their submissions and I reserved my ruling till after the trial. This is the fulfilment of this promise.

[130] Article 6 of the Schedule to the Regulations requires that where persons are seeking compensation under Regulation 44 for losses suffered for the security forces taking possession of and/or occupying premises and consequential damage or the taking of articles, they must notify the Attorney General of Jamaica within 6 months of the date on which the right to compensation accrues or the commencement of the Regulations whichever is later. The Minister may extend this period.

[131] The Claimants sought to argue and presented affidavit evidence that they notified the Jamaica Defence Force of their claim for compensation and that the JDF was acting as the servant and/or agent of the Attorney General. I rejected this position. The JDF is a separate entity from the Attorney General and there was no evidence that the JDF was acting as the servant and/or agent of the Attorney General for these purposes. Accordingly, any notice that went to the JDF was misconceived and ineffectual for the purposes of Article 6 of the Schedule.

[132] The Claimants then sought to argue that the Minister, in effect, extended the period of time when he extended the deadline for persons to make submissions to the Compensation Committee.

[133] They submitted that the Compensation Committee was set up on the 21st November 2006 (perhaps 2016) to receive all claims arising from the Tivoli Incident in May of 2010.

[134] In my view, however, this administrative decision by the Executive was ineffectual for the purposes of Article 6 of the Schedule. Firstly, the Regulations, and therefore the schedule, had long expired and so could not be amended. It was the Schedule that provided that notice of claims had to be made to the Attorney General. If there was to be a change to this mechanism, it would have had to have been effected

by an amendment to the regulations or subsequent regulations. This, by virtue of s. 3(6) of the EPA, was a function for Parliament and not the Cabinet.

[135] Therefore, the fact that the Cabinet set up their own administrative mechanism to deal with the claims did not affect the timeline under Article 6 as there was no amendment to the Schedule to change the entity to whom notice of claims should have been made. Therefore, whatever extension of time was given to the Compensation Committee to receive claims by the Minister cannot be treated as a lawful extension of the timeline given under Article 6 of the Schedule to the Regulations, which had, in any event, expired and could no longer be amended.

[136] As a consequence, the Defendant's defence to this claim for compensation that it was statute-barred is successful.

The Claims in Tort – Were they Successful?

[137] The Claims for Trespass to Goods and for Conversion do not succeed for the reasons I have set out above. I find that the Claimants did not satisfy me, on the balance of probabilities, that the security forces committed these acts without reasonable and/or probable cause or maliciously.

[138] I found that the security forces did not take any money from the Claimants' wholesale and there was no evidence from the Claimants that the security forces took any phones from the premises or that phones were missing. Therefore, the claims in conversion would have failed.

[139] Concerning the claim for trespass to goods, there was no evidence put in of the items in the inventory as pleaded under that head at paragraph (iv) so this claim would fail.

[140] Similarly, for the claim for conversion, there was no evidence of stationary being taken or what bar items were taken or missing or that phones were taken or even missing.

CONCLUSION

[141] In my view, the Claimants' claim as originally filed was not a nullity as despite the fact that they failed to specifically allege that the actions of the security forces was not done in good faith, the Court of Appeal has held that the Executive does not benefit from whatever immunity is granted to its servants and/or agents for actions they do in good faith under Regulation 45. I am bound by the decision of the Court of Appeal. Accordingly, the Claimants did not need to plead absence of good faith to have authority to institute proceedings.

[142] In my view, the Claimants' claim for compensation was statute barred as a consequence of their failure to notify the Attorney General of their claim for compensation within 6 months of the claim arising or of the date of the Regulations coming into force.

[143] In any event, the Claimants have failed to show that the actions of the security forces were done maliciously or without reasonable and/or probable cause or were a breach of any statutory duty imposed on them. I also find that there was no statutory duty imposed on the security forces to act in good faith.

[144] The Claimants have also failed to satisfy me, on the balance of probabilities, that their claims for trespass to goods and conversion have been established on the evidence.

DISPOSITION

1 Judgment for the Defendant
2 Costs to the Defendant to be taxed if not agreed.