

At the material time, more particularly on the 29th day of June 1995, the Claimants were registered as joint owners of a Toyota Starlet Motor Car registration number 7787 BA.

It is averred that prior to their purchasing it, this motor vehicle had been left with the First claimant of agents by a man named 'Poison', to be repaired. This was sometime around the early part of 1994. The said vehicle was duly repaired by the First Claimant but was not collected by 'Poison', who however made with First the Claimant later and a "transaction was entered into for the purchase of the motor car by the First claimant from 'Poison' for the sum of \$95,000.

This agreed purchase price was paid and comprised \$50,000 provided by the Second Claimant (then on an academic scholarship to Canada), \$10000. cash supplied by First Claimant and a set off of \$35,000 being the value of previous work done by the First claimant for 'Poison.'

No receipt was ever issued by Poison for the sums paid but 'Poison' duly signed the Motor Vehicle Transfer form in the name of the Second Claimant, the registered owner. This transaction was completed in about July 1994 and the vehicle licenced and insured and put into use.

On the 29th day of June, 1995, while the vehicle was in the possession of the First Claimant, a police party led by Detective John Davis seized the car, its documents of fitness, registration and insurance and detained the First Claimant.

Also seized at this time were documents pertaining to a motor bike and an Isuzu Aska motor car belonging to First Claimant. Four days later, the last named documents were returned to the First Claimant and he was released from custody without charge.

Despite several requests by the First Claimant and his attorney at Law for the documents for the Toyota Starlet to be returned, these documents were never returned.

On the 9th day of July, 1995, the First claimant was again detained by the Second defendant who advised him that he would be charged with Larceny of the Motor vehicle once it was identified as the motor vehicle stolen from the fleet of Grace Kennedy Ltd.

First claimant was later charged with the Offence of Larceny of the said motor vehicle along with other men. The case was brought up in the Resident Magistrate's Court for the parish of Trelawny. The first Claimant was remanded in custody at the Crown's request. He was later released on bail on July 26, 1995. The charge against the First Claimant was dropped by the Crown who offered no further evidence.

The motor car was not returned to the First Claimant until the 23rd day of September, 1995 and it was returned in such a deplorable condition that it required substantial body and mechanical work, repair and replacing of parts either damaged or stolen while the car was in the custody of the police.

Substantial loss of time and great expense were incurred in finding and using alternative transportation. Further, the vehicle could not be used as the documents pertaining to it were “maliciously and irresponsibly” retained by the Police, despite Claimants and their Attorney at Law’s and even the Clerk of Court’s repeated requests for their return.

The First Claimant has suffered considerable humiliation and distress in his small, rural community. He has also lost income during his detention when he was unable to operate his business.

Having admitted that he was unable to locate the documents for the Toyota Starlet Motor car, the Second Defendant, on the 24th November, 1995, provided Claimants with a letter to the relevant authorities and so Claimants were then enabled to secure the issue of substitute documents for the car.

The Second Defendant denied that he acted maliciously and/or without reasonable or probable cause. He contended that it was reasonably suspected that the First Claimant had committed the offences of Larceny of a motor vehicle or receiving stolen property.

A yellow Toyota Starlet motorcar was reported stolen, property of one Eric Burrell. The vehicle was found in possession of the First Claimant on June 29, 1995. After investigation the First Claimant was arrested and charged and the motor vehicle detained pending the outcome of the matter.

The Second Defendant denies that the car was returned to the First Claimant in the deteriorated and deplorable condition alleged.

The allegation that documents for the First Claimant's motorbike and Isuzu motorcar were seized by Second Defendant is denied.

The case against First Claimant was not proceeded with as the complainant Eric Burrell had died from natural causes.

The Defendants aver that the Toyota Starlet motorcar was returned to the First Complainant on the 23rd of September, 1995 in good condition. During the handing over process the First Claimant had examined the vehicle and signed the Register as being received in the same condition as it was when it had been confiscated.

The Second Defendant admits that a letter was prepared and handed to the First Claimant enabling him to obtain substitute documents for the Toyota Starlet motorcar.

The Claimants sought damages against the Defendants as follows:-

1. False imprisonment of the First claimant for a total of twenty two (22) days between June 29, 1996 and July 2, 1995 and July 9, 1995 variously
2. Detinue of the Claimant's Toyota Starlet Motor vehicle registration number 7787 BA for a period between June 29, 1995 and September 23, 1996.

3. Detinue of the statutorily required papers for use of the vehicle for the period June 29, 1995 to November 24, 1997, being 125 weeks and 4 days (879 days).
4. Refund of the cost of Damages and lost parts of the Claimant's said vehicle \$23,710.00.
5. Refund of labour costs for body work \$23,710.00.
6. Refund of other labour costs for repairs \$15,000.00.
7. Damages and Aggravated damages.
8. Interest
9. Costs
10. Further and/or other relief.

The issues of be decided in this matter are:-

- (a) Whether the detention of First Claimant Carlos Stupart by the Second Defendant Detective John Davis was lawful and justifiable either on the 29th day of June 1995 or on the 26th July, 1995.
- (b) Are the Defendants liable in Detinue for the seizure and detention of the 1985 Starlet Motorcar
 - (i) Licenced 7787 BA between June 29, 1995 and September 23, 1996 and for the seizure and failure to return to the Claimants the statutorily required papers for use of the said

motor vehicle for the period 29th June, 1995 to November 24, 1997.

- (c) If the Claimant's case succeeds, the quantum of damages to be awarded.

The Law

An action for false imprisonment will arise where a person is detained, by another either maliciously or without reasonable or probable cause, against the will of the person detained. Where the person is detained by a member of the Jamaica Constabulary Force, to succeed in an action for false imprisonment, that person must prove, on a balance of probabilities that the constable acted maliciously or without reasonable and/or probable cause.

Section 33 of the Constabulary Force Act states:-

Every action to be brought against any Constable for any act by him in the execution of his office, shall be an action on the case as for a tort; and in the declaration it shall be expressly alleged that such act was done either maliciously or without reasonable or probable cause; and if at the trial of any such action the plaintiff shall fail to prove such allegation, he shall be non-suited or a verdict shall be given for the defendant."

Where the arrest is by a warrant of arrest lawfully obtained, or where the Police is given a power of arrest in circumstances where he honestly believes a crime to have been committed, the arrest may be considered to be with lawful justification.

Section 13 of the Constabulary Force act states:-

“The duties of the Police and this Act should be to detect crime, apprehend persons found committing any offence or whom they may reasonably suspect of having committed any offence or who may be charged with committing any offence.”

“Reasonable and probable cause “has been defined and described in several authorities.”

In *Glinkski v. McIver* (1962) 1AER 696 the House of Lords held, inter alia, that “a prosecutor need only be satisfied that there is a proper case to go before the Court. He must have reasonable and probable cause in fact....”

Lord Denning, in *Gluski v. McIver* (supra), referring to Justice Hawkins definition of “reasonable and probable cause” opined that the rule of law is that “in order to succeed in an action for malicious prosecution, the plaintiff must prove to the satisfaction of the Judge, that, at the time when the charge was made, there was an absence of reasonable and probable cause for the prosecution.” He has only to be satisfied that there is a probable cause to bring the accused to a fair and impartial trial.” (See *Johnstone v. Sutton* (1786) 1 Term Rep. at p., 547).

In *Dallison v. Caffery* (1964) 2 All E.R. 610, Lord Justice Diplock puts it thus:

“Where a felony has been committed, a person, whether or not he is a police officer, acts reasonably in making an arrest without a warrant if the facts, which he himself knows of which he has been credibly informed at the time or of the arrest, make it probable that the person arrested committed a felony. That is

what constitutes in law reasonable and probable cause.

Lord Denning at page 617 paragraph B of *Dallison v. Caffery* (supra) expressed himself in this manner, (comparing the situation where a private person “arrests” as opposed to where the “arrest” is by a Police Officer).

“A constable however, has a greater power. When a Constable has taken into custody a person reasonably suspected of felony, he can do what is reasonable to investigate the matter and to see whether the suspicions are supported by further evidence.”

“A claim in Detinue lies at the suit of a person who has an immediate right to the possession of the goods against a person who is in possession of the goods, and who, upon proper demand, fails or refuses to deliver them up without lawful excuse.”

This is the classic definition of Detinue by Donaldson in the case of *Alicia Hosiery v. Brown Shipley* 1 Q.B. 195 at p. 207.

“Where no one has been arrested or charged by the Police, the Police, is justified in taking an article only where the following prerequisites are satisfied:-

- (a) the police must have reasonable grounds for believing that a serious offence has been committed,***
- (b) the police must have reasonable grounds for believing that the article is either the fruit of the crime or is material evidence to prove commission of the crime;***

- (c) ***the police must have reasonable grounds to believe that the person in possession of the article committed the crime or is implicated in it, or is accessory to it.....***
- (d) ***the police must not keep the article nor prevent its removal for any longer than is reasonably necessary to complete their investigations or preserve it for evidence;***
- (e) ***the lawfulness of the conduct of the Police at the time and not be what happens afterwards.”***

See ***Ghani and others v. Jones (1969) 3 All E.R. 1700.***

The First Claimant submitted that the Second Defendant did not have reasonable and probable cause to imprison him or to detain his motor vehicles and motor vehicle documents, nor did Defendant have any reason to retain his motorcar documents thereby preventing its use, initially or after the case had been thrown out.

He argued that even if he was the eventual holder of a stolen motor vehicle as was being alleged by the Defendants, there was any link between the Vendor and the First Claimant such as to justify imprisoning him, the known perpetrators having migrated.

The civilized and reasonable recourse in the circumstances was in the Civil law in an action by the alleged complainant Eric Bell.

The prosecution of the First Claimant was reckless as there was no evidence of wrong doing on his part, he being in possession of a motor vehicle with papers which on the face of them were and are valid.

The malicious interest of the Defendant was clearly established by the refusal to return Claimants property for several months after the Court had thrown the case out. The Defendants must compensate the Claimants for the deterioration of their property whilst in their possession in addition to satisfying First Claimant for false imprisonment.

The Claimants contended that the Second Defendant had reasonable and probable cause to suspect that the First Claimant had committed the offence of Larceny of Motor Vehicle and or receiving stolen property. Consequently the detention of the First Claimant and the detention of the said motor vehicle were lawful and justifiable. Defendant's denied that the said vehicle was returned to the First Claimant as alleged.

The Claimants were therefore not entitled to judgment as sought. There was legal justification to detain the First Claimant, he having been found in possession of the said vehicle. He was charged with the Offence of Simple Larceny. Thereafter he was detained pursuant to a judicial remand and remained in custody until July 26, 1995 when he was granted bail.

Findings of Facts

I find, on a balance of probabilities, that the Second Defendant, Detective John Davis that as Inspector of Police in charge of the CIB Trelawny in 1994 was in receipt of complaints of motor vehicles stolen in Trelawny and in Kingston. This remained uncontroverted.

I accept that on the 29th day of June, 1995, acting on information received, he went to the house of the First Claimant at Salt Marsh, Trelawny and identifying himself to First Claimant as a policeman, he indicated that he was investigating a car stealing ring. He examined a yellow Toyota, Starlet motorcar which appeared to have had the engine and chassis number tampered with. This vehicle was in First Defendant's possession. This was shown to the First Claimant who was asked to accompany Detective John Davis to the Falmouth Police Station where he was detained and the Toyota Starlet motor car also taken, pending further investigations.

When Second Defendant made further investigations, he found that he did not have enough evidence to "formally charge" the First Claimant so he was released on the Second day of July 1995.

While the First Claimant was detained, Det. John Davis, on the 30th June, 1995, continued his investigations which took him to the Collector of Taxes, Montego Bay where he received information relative to the alleged transfer of the Toyota Starlet found in the First Claimant's possession with the engine and chassis

numbers tampered with. Reports of Stolen Motor vehicles are made via Police radio wherever in the island there are reports of stolen vehicles.

The First Claimant was charged formally by Second Defendant on the day the Stolen Vehicle Unit came to the station. By now investigations had revealed that the said Toyota Starlet had been stolen in Kingston on the 5th day of May, 1994, from one Eric Bell, the said motor car was transferred to First Claimant on First June 1994, less than a month after it was stolen. For case of consideration, the detention of First Claimant may be considered in two parts, that between the 29th day of June, 1995 and the Second day of July, 1995 and the Second period 9th to the 26th of July, 1995.

The Second Defendant has given a reason for releasing the First Claimant on the Second day of July 1995. He said he did so as he did not have 'sufficient evidence to formally charge' him.

It is the state of affairs at the time the First Claimant was apprehended that is to be considered and it is my view that Det. John Davis, the Second Defendant had reasonable and probable cause to have apprehended the First Claimant when he did on the 25th June, 1995. A police officer will be deemed to have acted reasonably when he makes an arrest without a warrant, based on facts which he himself knows or of which he has been credibly informed at the time of the arrest and which makes it probable that the person arrested has committed a felony.

See *Diplock L.J. in Dallison v, Caffery (1964) 2 All E.R. 610* (emphasis supplied).

When the First Claimant Carlos Stupart was remanded in custody after his appearance in the Resident Magistrate's Court, his remand in custody was as a result of the order of the Resident Magistrate. I reject the First Claimant testimony that the Second Defendant had asked the Magistrate to remand him in custody for another two weeks to enable him to complete his investigations.

No liability can be laid at the feet of the Second Defendant where the First Claimant is remanded by the Magistrate. As Mr. Justice Cassels expressed it in *Diamond v. Minter (1941) 1 K.B. 656-*

“With regard to his being remanded in custody, was the result of a judicial Act by the learned Chief Magistrate and no liability can attach to the Police Officers for that.”

Because of the death of the initial complainant Eric Bell, the matter was ended with a “no order” being made in it. The Toyota Starlet was still up to that time being kept by the Police, as an exhibit in the case.

It is Claimants contention that the said motor car was returned to them in a deplorable condition on the 23rd of September, 1996. The Second Defendant strenuously denied this and testified that First Claimant, having secured bail, made several visits to the station to look at the car and not once was any

complaint made about the condition of the car especially with regards to any damage.

I accept the evidence of the Second Defendant and find on a balance of probabilities that the car was returned in the same condition as when it was taken from First Claimant.

The Claimants have claimed damages for Detinue that their motor car was detained along with the statutorily required documents and that this detention was unlawful and that they suffered loss.

The undisputed fact is that the Claimants' motorcar was detained for the 29th of June, 1995 until the 23rd day of September, 1996. Its initial detention on June 29, 1995 was justifiable as the Police had taken it into custody as being material evidence as it was the item allegedly stolen and on which it appeared that efforts were made to tamper with the engine and chassis numbers. Forensic tests needed to have been made and were made. When the matter came before the Resident Magistrates Court, it was necessary that the said motor car would be kept as material evidence.

First Claimant did not go to collect the motorcar immediately it would have become available. When he did, it is his evidence that several visits were made to the Police Station but the Second Defendant Det. John Davis was not there – Claimants had the motor car returned to them on September 23, 1996. The Court proceedings were ended on September 11, 1996.

I am not satisfied, on a balance of probabilities that Det. John Davis was ever asked by the Claimants to hand over the motor car and refused or failed to do so.

The First Claimant on examination in chief (the witness statement) stated that he asked the lawyer who told him he would talk with Det. John Davis concerning the return of the car. Later, on advice of his lawyer, the First Claimant went to the Station "several times but each time Mr. Davis wasn't there and they wouldn't release it without him."

The principles in relation to detention of goods by the Police are outlined in ***Ghani and Others v. Jones (1969) 3 All E.R. 1700.***

"In order to justify the taking of the Police of an article when no one has been arrested or charged the following must be satisfied."

- (a) the Police must have reasonable grounds for believing that a serious offence has been committed.***
- (b) the Police must have reasonable grounds for believing the article in question is either the fruit of the crime or the instrument by which the crime has been committed or is material evidence to prove the commission of the crime;***
- (c) the Police must have reasonable grounds to believe that the person in possession of the article committed the crime, or is implicated in it, or is accessory to it, or at any rate his refusal must be quite unreasonable;***
- (d) the Police must not keep the article nor prevent its removal for any longer that is reasonably necessary***

to complete their investigations or preserve it for evidence and

- (e) the lawfulness of the conduct of the police, must be judged at the time, and not by what happens afterwards.”***

In *Alicia Harvey v. Brown Shipley (1970) 1 QB195* at page 207, the following statement appears re Detinue-

“A claim to Detinue lies at the suit of a person who has an immediate right to the possession of the goods against a person who is in possession of the goods and who, upon proper demand fails or refuses to deliver them up without lawful excuse.....”

Where the goods or their equivalent have been redelivered by the Defendant and accepted by the Claimant at anytime before judgment, this goes to bar further maintenance of the action for the goods or for their value.

The learned authors of McGregor on Damages 13th Edition, explains the reason for this in this way

“since the action of Detinue, unlike conversion is primarily for the return of the goods and not for damages the plaintiff may however, still recover, damages for detention if he can prove that he has suffered loss.”

I am of the view that the police has taken the Toyota Starlet into custody on reasonable grounds that it is “the fruit of the crime”, that the First Claimant

committed the crime or is implicated in its commission. The car was redelivered to the Claimant, albeit without the statutorily required documents.

What then is the loss which Claimants have suffered?

The particulars of Special Damages – particulars of damaged and stolen parts total \$73,710.00. If one accepts that the car was ‘purchased’ by Claimants for \$65,000.00, the total of the damages is difficult to accept as true. There is also a claim for aggravated damages.

Claimants have not pleaded any facts supporting a claim for aggravated damages. This has not been pleaded and so, having failed to satisfy the requirement, and no such evidence having been presented, no award is made under this head. See Bullen & Leake & Jacobs (13th Edition) Precedents and Pleadings.

Special Damages:

Claimants claim for special damages amounts to a total of \$484,084.00 they have failed to prove any of the Special Damages pleaded. ***Lawford Murphy v. Luther Mills (1976) 14 JLR 119*** is authority for holding that Claimants have a duty to prove their loss in special damages strictly.

The headnote of the above case states as follows:-

“In any action in which a plaintiff seeks to recover special damages the onus is on him to prove his loss strictly. It is not for a plaintiff to write down particulars, and so to speak, throw them at the head

of the Court, saying this is what I have lost. I ask you to give me.”

There is no denial that the Second Defendant was instrumental in providing the First Claimant with a letter to the relevant authorities to cause the car's documents to be replaced. This is not, in my opinion, an indication that Det. John Davis had the documents in his possession as opposed to their being in the Court's office file and being misplaced or lost.

Det. John Davis was not in possession of these documents, no demand was made on him and there is no evidence that he refused to deliver them up.

The Claimants also claim damages for other losses and have itemized the losses under the caption “Particulars of Other losses:-

These losses are itemized thus:

1. Cost of transportation from 29th June, 1995 to 24th November, 1997 – 125 weeks and 4 days @ \$300 per day - \$263,700.00.
2. Loss of income – 22 days @ \$6,667.00 per day, (while First claimant in custody) - \$146,674.00.

Besides their claim – False Imprisonment (First Claimant), Detinue of motor car and of the statutorily required documents, there are claims for Refund of damaged and lost parts of the Claimants' vehicle; refund of labour cost of body work and refund of labour costs for repairs.

There was lawful justification and reasonable cause for the First Claimant to be taken into Police custody on both the 29th June, 1995 and on the 9th of July 1995.

The Toyota Starlet motorcar and the statutory documents thereto were lawfully confiscated as they formed evidence to prove that the First Claimant in either committed or was involved in the commission of a serious offence. The said Toyota Starlet was returned to the First Claimant in the same condition as when it had been taken by the Police.

The motorcar having been returned to Claimants, before judgment, the Claimant could only be able to be awarded damages if he could prove loss. They have not.

This Court is not satisfied on a balance of probabilities that the documents for the car were in the possession of the Second Defendant and if they were, what if any loss did Claimant suffer? Claimant has not provided proof of his loss.

Judgment is therefore given in favour of the Defendants, with costs to be agreed or if not agreed to be taxed.