

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL**

SAINT LUCIA

SLUHCVP2023/0019

BETWEEN:

THE ATTORNEY GENERAL

Appellant

and

FAUSTINUS VENOID GEORGE

Respondent

Before:

The Hon. Mr. Eddy D. Ventose	Justice of Appeal
The Hon. Mr. Gerard St. C. Farara	Justice of Appeal [Ag.]
The Hon. Mde. V. Georgis Taylor-Alexander	Justice of Appeal [Ag.]

Appearances:

Mr. Seryozha Cenac and Mr. George Charlemagne for the Appellant
Mr. Alvin St. Clair for the Respondent

2024: March 14;
2025: March 14.

Civil appeal – Section 130(1) of the Customs (Control and Management) Act – Power to detain goods – whether Customs has the authority to detain goods for investigative purposes under section 130 of the St. Lucia Act or otherwise - Damages - Whether the learned judge correctly assessed the damages awarded to the respondent

The respondent imported into St. Lucia a used motor vehicle (“the vehicle”). A deposit entry was prepared by the Customs and Excise Department (“Customs”) in relation to the vehicle pursuant to which the respondent paid the sum of EC\$28,490.22, representing the duties and charges assessed in accordance with the declared transaction value. The vehicle was thereafter released by Customs to the respondent on 30th January 2019.

On 13th March 2019 after the vehicle had been released following its assessment on the declared value, the respondent was invited to a meeting with Customs with the vehicle eventually being detained pending further investigations. On 22nd March 2019, the respondent was served with a letter by Customs asking him to provide information on price negotiations, documents on goods *inter alia*. On 10th April 2019, Customs caused

a warrant to be issued on the respondent's bank seeking disclosure of the respondent's bank statements which revealed the total sum of EC\$39,836.52 had been sent to Jimex Co Ltd, the seller of the vehicle, from an account jointly held by the respondent and another.

At a meeting with the respondent and his then attorney on 22nd May 2019, Customs held a further meeting with the respondent where the respondent's attorney informed Customs that writings contained in surrendered messages translated to mean that the vehicle had a faulty transmission. Customs identified discrepancies with the information presented by the respondent as regards the delivery documents and the gate pass from the Saint Lucia Air and Sea Ports Authority which showed that the respondent had driven the vehicle from the bond and that on the date of delivery out of the bond, there appeared to have been no indication of a transmission issue. Information was also recovered from the freight carriers that showed that freight was charged at US\$2,000.00 for the vehicle freight invoice presented to Customs while the freight invoice presented by the respondent reflected a sum of \$1,800.00 paid. Following the receipt of a wire transfer receipt representing a refund related to the vehicle's transmission in the sum of EC\$17,473.12 which Customs acknowledged, Customs wrote to the respondent advising that the vehicle was to be released.

On 2nd December 2019, the respondent initiated a claim against the Attorney General, as legal representative for Customs, seeking a declaration that the seizure and detention of his vehicle violated his constitutional rights to possess the vehicle. The respondent argued that the seizure and detention were unlawful and wrongful. The claim included a request for damages, encompassing aggravated and exemplary damages, as well as special damages amounting to EC\$50,898.36.

The learned judge found that Customs' detention of the vehicle was unlawful and amounted to tortious conduct. The learned judge found that the Customs (Control and Management) Act (the "St. Lucia Act" or "Act") does not expressly authorize the detention of goods liable to forfeiture otherwise than in accordance with the provisions of section 130(1). The learned judge ordered that: 1.) the detention of the respondent's vehicle by the Customs from 14th March 2019 to 11th June 2019 was unlawful and amounted to tortious interference by Customs with the respondent's use and enjoyment of his vehicle; 2.) general damages in the sum of EC\$5,000.00, special damages in the sum of EC\$39,398.36 representing loss of earnings, special damages in the sum of EC\$10,000.00 representing legal expenses; and 3.) prescribed costs in the sum of EC\$8,159.75.

Dissatisfied with the decision of the learned judge, the appellant appealed. In his notice of appeal filed on 17th August 2023, the appellant advanced six grounds of appeal. The issues before the Court for determination are: 1.) whether Customs has the authority to detain the vehicle for investigative purposes under section 130 of the St. Lucia Act or otherwise; 2.) if answered in the affirmative, on what grounds would such detention be justified; and 3.) whether the learned judge correctly assessed the damages awarded to the respondent and properly considered the evidence presented by the appellant.

Held: dismissing the appeal, awarding costs in the court below to be assessed if not agreed and costs on appeal assessed at 2/3 of the costs in the court below, that:

1. A reading of section 130(1) of the St. Lucia Act implies that the right to seize or detain goods can only occur, where the goods in question are liable to forfeiture. The officers cannot detain goods under mere suspicion or having reasonable grounds; there must be an objective conclusion that the goods are liable to forfeiture in accordance with provisions in the Act.

Section 130 (1) of **the Customs (Control and Management) Act** Cap 15.05 of the Revised Laws of Saint Lucia applied; **R (on the application of Eastenders Cash and Carry) and R (on the application of First Stop Wholesale) v HMRC** [2014] UKSC 34 distinguished.

2. The detention of a vehicle by Customs without more constitutes an interference with the right to property under sections 1 and 6 of the Saint Lucia Constitution Order and such a detention is only valid if it serves a legitimate public purpose and is carried out under the authority of law in a manner that is reasonably justified under the law. An incidental power to detain under the St. Lucia Act arises when Customs exercises its power to examine goods under section 91. Further, the power of examination in section 91 of the St. Lucia Act in which the power to detain is implied, by its wording seems to apply to uncleared goods only. In essence, while section 91 itself doesn't explicitly provide a power to detain, it does imply that, during an examination, goods may be detained temporarily for the purposes of that examination. The Eastenders case is therefore distinguishable from the current circumstances under the St. Lucia Act because the UK Act as it then was, provided a broader statutory foundation for detention during the examination process whereas the St. Lucia Act requires a more direct connection to the goods being liable to forfeiture under specific provisions. Customs cannot rely on the express power under section 130, and section 91 could not be invoked since the vehicle had already been cleared and the duties had been paid as required under section 65. There was therefore no lawful basis for the detention.

Section 91 of **the Customs (Control and Management) Act** Cap 15.05 of the Revised Laws of Saint Lucia applied; **R (on the application of Eastenders Cash and Carry) and R (on the application of First Stop Wholesale) v HMRC** [2014] UKSC 34 distinguished; **Jacobsohn v Blake and Compton** (1844) 6 Man & G 919; 13 LJ CP 89 considered.

3. An appellate court will only overturn a trial judge's findings if it identifies a material error in the judge's reasoning or evaluation of the evidence. The appellate court also generally refrains from interfering with the judge's findings of fact, particularly when those findings are based on the judge's direct assessment of witnesses and will only intervene if there is a clear error in the way the trial judge evaluated the evidence. Based on the evidence presented before the learned judge and his assessment of the witnesses on the issue of damages, there is no error in his reasoning.

Margaret Blackburn v James Bristol GDAHCVAP2012/0019 (delivered 12th October 2015, unreported) applied.

JUDGMENT

- [1] **TAYLOR-ALEXANDER JA [AG.]:** This is an appeal against the judgment of a judge of the High Court (“the learned judge”) dated 7th July 2023, wherein the court ordered (1) that the detention of the respondent’s vehicle by the Customs and Excise Department (“Customs”) from 13th March 2019 to 11th June 2019 was unlawful and amounted to tortious interference by Customs with the respondent’s use and enjoyment of his vehicle; (2) general damages in the sum of EC\$5,000.00; special damages in the sum of EC\$39,398.36, representing loss of earnings; special damages of EC\$10,000, representing legal expenses incurred to secure the return of the vehicle; (3) prescribed costs of EC\$8,159.75.

The Sequence of Events

- [2] The respondent imported into St. Lucia a used hybrid black Toyota Crown motor vehicle chassis Number AWS210-6060047 (“the vehicle”). A deposit entry was prepared by Customs in relation to the vehicle pursuant to which the respondent paid the sum of EC\$28,490.22, representing the duties and charges assessed in accordance with the declared transaction value. The vehicle was thereafter released by Customs to the respondent on 30th January 2019. It is not disputed that the respondent may have stood to benefit from a refund on the assessed duties and charges, if the Cabinet of Ministers by Cabinet Conclusion 186 of 2017 determined a grant of concessions for hybrid vehicles, but this is an ancillary issue, unrelated to the substantive issue in this claim.
- [3] On 13th March 2019, after the vehicle had been released following its assessment on the declared value, the respondent was invited to a meeting with Customs which ended with a detention slip being issued to the respondent for the vehicle and the vehicle being detained by Customs pending further investigations. On 22nd March 2019, the respondent was served with a letter by Customs asking him to provide information which may include, but was not limited to price negotiations; documents on goods; confirmation of payment and method of payment. On 10th April 2019, Customs caused a warrant to be issued on the respondent’s bank

seeking disclosure of the respondent's bank statements. The statements revealed two separate payments of EC\$17,900.96 and EC\$21,935.56, a total of EC\$39,836.52 had been sent to Jimex Co Ltd, the seller of the vehicle, from an account jointly held by the respondent and another. On 6th May 2019, Customs held a further meeting with the respondent informing him that further analysis was required by Customs of the information it had collected.

- [4] On 22nd May 2019, Customs held a further meeting with the respondent and his then attorney, at which meeting emails and messages were collected from the respondent's attorney. The respondent's attorney informed Customs that the writing in the surrendered messages, translated to English, meant that the vehicle had a faulty transmission. At that meeting Customs identified discrepancies with the information presented by the respondent as regards the delivery documents and the gate pass from the Saint Lucia Air and Sea Ports Authority, where the vehicle was kept on its arrival into St. Lucia and while under Customs bond, which showed that the respondent had driven the vehicle from the bond and that on the date of delivery out of the bond, there appeared to have been no indication of a transmission issue. Customs also recovered information from the freight carriers that showed that freight was charged at US\$2,000.00 for the vehicle while the freight invoice presented to Customs by the respondent reflected a sum of US\$1,800.00 paid.
- [5] On 29th May 2019, the respondent's attorney submitted a wire transfer receipt from Jimex Co Ltd representing a refund related to the vehicle's transmission in the sum of EC\$17,473.12, which Customs acknowledged. On 11th June 2019, Customs wrote to the respondent advising that the vehicle was to be released to cause no further inconvenience to the respondent and considering the wire transfer receipt which confirmed a refund to the respondent for the transmission. The vehicle was thereafter released.
- [6] On 2nd December 2019, the respondent initiated a claim against the Attorney General, as legal representative for Customs, seeking a declaration that the seizure and detention of his vehicle violated his constitutional rights to possess the vehicle. The respondent argued that the seizure and detention were unlawful

and wrongful. The claim included a request for damages, encompassing aggravated and exemplary damages, as well as special damages amounting to EC\$50,898.36.

Summary of the High Court Judgment

[7] The judge learned ruled in favour of the respondent and determined that Customs' detention of the vehicle was unlawful and amounted to tortious conduct. The key findings and orders are summarized below: The learned judge found that:-

- (i) The **Customs (Control and Management) Act** (the "**St. Lucia Act**" or "**Act**")⁵ does not expressly authorize the detention of goods liable to forfeiture otherwise than in accordance with the provisions of section 130(1).
- (ii) In order for the detention of the vehicle to be lawful it must be shown by the evidence that the vehicle was detained by Customs in the execution of its duty under the **St. Lucia Act**. The only action available to Customs, under the **St. Lucia Act**, where there is reasonable suspicion that an offence had been committed in these circumstances is to seize the goods. Customs acknowledged that it exercised no power of seizure under section 130(1) of the **St. Lucia Act**. The vehicle having been returned to the respondent meant that the vehicle could not have been detained under any power exercised pursuant to section 130(1) of the **St. Lucia Act**.
- (iii) A power of detention by Customs, though not explicitly stated in the **Act**, can be implied as part of Customs' authority to examine goods to determine the applicable duties or assess whether the goods are subject to forfeiture. It was not conditional on the goods being liable to forfeiture. It was sufficient for the power of detention to be lawfully exercised outside of section 130(1) of the **St. Lucia Act**, that Customs should have a "real and honest doubt" that the goods are liable to forfeiture, rather than merely having a well-founded suspicion. However, Customs held the view that the vehicle was

⁵ Cap 15:05 of the Revised Laws of Saint Lucia.

liable to forfeiture based on a reasonably held suspicion that the respondent had committed offences contrary to sections 113 and 116 of the **St. Lucia Act**.

- (iv) Outside the provisions of section 130(1) of the **St. Lucia Act**, Customs is required to show demonstrably that the detention of goods was necessary for the fulfillment of the duties of its officers under the **St. Lucia Act**. On the evidence presented, it cannot be said that Customs satisfied this requirement.
- (v) Customs' detention of the respondent's vehicle after payment of duties in conformity with section 65 of the **St. Lucia Act** and after its subsequent release were unlawful to the extent that the act of detention was contrary to the provisions of section 65. Section 65 provides that no imported goods shall be delivered or removed on importation until the importer has paid to the proper officer any duty chargeable thereon, and that duty shall, in the case of goods of which entry is made, be paid on making the entry. It follows that duties are determined on entry. At the time that the deposit entry was made the duties payable on the importation of the vehicle were not capable of being ascertained.⁶ The respondent's vehicle was released to him upon payment of the duties upon a deposit entry. The duties could have been ascertained in a manner that did not require detention of the vehicle. As such, the detention of the respondent's vehicle was unreasonable and unnecessary for the ascertainment of the amount of duties payable.
- (vi) It was improper for Customs to proceed on the basis that the vehicle was detained for the purpose of conducting an inquiry as to whether an offence had been committed under the **Act**. The real question for the court, where Customs detained the goods on the basis of a reasonable suspicion or reasonable cause to suspect that the

⁶ As earlier stated, there was before the Cabinet of Ministers a memorandum for consideration to grant concessions on hybrid vehicles that would allow for the payment of duties on such vehicles at a value lower than what was ordinarily paid.

respondent had committed an offence under the Act, was whether there was in fact such reasonable or probable cause for suspicion. In this instance, the court found that Customs had no reasonable grounds for suspecting that the claimant had committed any offence under the Act. The officers held a mere suspicion based on speculation.

(vii) The appellant was not entitled to the immunity provided for by section 133 of the **Act**. The protection is available only if it appears to the court that there was probable cause for such seizure or act. As it stood, the detention of the respondent's vehicle was not done pursuant to the statutory power of seizure where goods are liable to forfeiture under sections 113 and 116 of the **St. Lucia Act**.

(viii) The learned judge also found that as the claim was filed as an ordinary claim in detinue, confined strictly to a private law remedy, a declaration of the breach of the respondent's constitutional right was not an appropriate remedy. That although a declaration of the infringement of the respondent's constitutional right was a sufficient and adequate vindication for the infringement of that right, it was not a declaration that the court is inclined to make in the present proceedings.

Grounds of Appeal

[8] Dissatisfied with the decision of the learned judge, the appellant appealed. In his notice of appeal filed on 17th August 2023, the appellant outlined six grounds of appeal, with certain grounds including sub-grounds, as detailed below:

(i) The learned judge misdirected himself in law when he interpreted section 130 of the **Act** which led him to conclude that the only power the Customs had was to issue a notice of seizure in the circumstances, thereby rendering the detention of the vehicle unlawful and a trespass to property.

(a) The learned judge erred when he failed to appreciate the appellant's case that detention and seizure under

section 130 of the **Act** are two different concepts and have different procedures under the **Act**.

- (b) The learned judge erred when he found that section 130 of the **Act** mandates the issuing of a notice of seizure and failed to assess the appellant's evidence which showed that Customs continued to investigate the offences and consequently, a notice of seizure would not have been appropriate in the circumstances.
 - (c) The learned judge erred when he failed to assess sections 32 and 130 of the **Act** which permitted Customs to detain goods even after the goods had been released to the importer. Further, implicitly section 102 of the **Act** provides for detention/seizure after the goods have been released.
 - (d) The learned judge erred when, contrary to the jurisprudence cited by the appellant, he concluded (applying the case of **Bike World Ltd v Comptroller of Customs and others ("Bike World Ltd")**)⁷, that section 130 of the **Act** did not confer the power of detention on Customs.
 - (e) The learned judge erred when he formed his own opinion regarding the respondent's intent as it relates to the word "seizure" which was not contained in the respondent's pleadings or evidence at trial.
- (ii) The learned judge failed to materially assess the evidence of the appellant which led him to conclude that the detention of the respondent's vehicle was unlawful and a trespass to property.
 - (a) The learned judge failed to materially assess the detention slip presented at "RL8" exhibited to Officer Raymond Leopold's Witness Statement which

⁷ [2003] UKPC 28.

provided reasons for the detention of the respondent's vehicle.

- (b) The learned judge erred when he found that the appellant did not rely on section 130 of the **St. Lucia Act** and the appellant's reliance thereon was in the context of their closing submissions. Further, the appellant's reliance on section 130 (1) was without merit and disingenuous.
 - (c) The learned judge's conclusion on the purpose of the detention of the respondent's vehicle is plainly wrong as he failed to materially assess the evidence of the investigating officer, Raymond Leopold, who indicated that the respondent's vehicle was detained for the purposes of investigations into suspected offences committed by the respondent in contravention of sections 113 and 116 of the **St. Lucia Act**. Based on investigations conducted, it appeared to Customs that the respondent's vehicle was liable to forfeiture.
 - (d) The learned judge erred when he did not properly assess the evidence of the appellant in relation to the request for further information pursuant to section 102 of the **St. Lucia Act**.
- (iii) The learned judge erred in the assessment of damages to the respondent notwithstanding his view that it was unacceptable, and he erred when he did not materially assess the evidence of the appellant in relation to the damages claimed by the respondent and proceeded to the award of damages.
- (iv) The learned judge erred when he applied section 65 of the **St Lucia Act** and concluded that the detention of the respondent's vehicle was unlawful as duties had been paid. The learned judge failed to consider that the offence being investigated by

the officers would have affected the duties paid and payable by the respondent.

- (v) The learned judge erred in his interpretation of section 78 and schedule 2 of the **St. Lucia Act** *vis a vis* the appellant's case. The learned judge failed to assess the evidence presented by the appellant that inquiries were ongoing which may have affected the transaction value as presented by the respondent and the vehicle.
- (vi) The learned judge erred when he applied the case of **Bike World Ltd** and indicated that section 133 of the **Act** did not apply to the officers in this case as the appellant's evidence showed that there was no reasonable cause for the detention of the respondent's vehicle.

Summary of the issues

[9] The issues raised on appeal can be succinctly summarized as follows:

- (i) Whether Customs has the authority to detain the vehicle for investigative purposes under section 130 or the broader provisions of the **St Lucia Act** or otherwise? (**Ground 1**)
- (ii) If the answer to 9(i) is affirmative, on what grounds would such detention be justified? (**Ground 2**)
- (iii) Whether the learned judge correctly assessed the damages awarded to the respondent and properly considered the evidence presented by the appellant. (**Ground 3**)

The appellant's submissions

[10] The appellant asserts that the vehicle was detained, not seized, under Section 130(1) of the **St. Lucia Act**, which permits the detention of goods pending further inquiry to ensure revenue security and proper valuation. Detention is a necessary preliminary step to assess potential breaches before determining forfeiture liability. Detention does not require immediate evidence of forfeiture but reasonable cause to inquire.

- [11] The appellant referenced the definition of “detention” from **Econo Parts v Comptroller of Customs & Excise**⁸, where Smith J. described it as “a temporary assertion of control over goods.” They assert that detention aimed to facilitate investigation into the vehicle's valuation and potential duty liabilities, is distinct from seizure under section 130(1).
- [12] The appellant cites sections 32(1)(e) (Goods Improperly Imported), 113 (Untrue Declarations), and 116 (Fraudulent Evasion) of the **St. Lucia Act**, suggesting that breaches of these provisions render goods liable to forfeiture and that detention during investigation of potential breaches is justified. They argue that sections 6(6)(a)(i) and (vii) of the Saint Lucia Constitution permit property possession for tax satisfaction or during necessary investigations, aligning the **Act's** detention provisions with the exceptions to the constitutional protections against arbitrary deprivation of property.
- [13] They submit that detention of the respondent's vehicle was based on concrete facts, such as the discrepancy in the vehicle's declared value and bank records showing higher payments for the purchase. The bank records revealed that sums of EC\$17,900.96 (approximately USD 6,588.74) and EC\$21,735.20 (approximately USD8,000.00) were wired on the same day, with the descriptions indicating the purchase of a vehicle identified by the same chassis number. This raised concerns that the true value of the vehicle may not have been declared. This gave rise to reasonable suspicion of breaches under sections 32(1)(e), 113, and 116 of the **Act**, justifying detention pending investigation.

Respondent's Submissions

- [14] The respondent contends that the **St. Lucia Act** does not authorize detention for examination purposes without reasonable grounds to believe the goods are liable to forfeiture. He argues that if Customs suspected breaches making the vehicle

⁸ SLUHCv2014/0309 (delivered 10th May 2017, unreported).

liable to forfeiture, the appropriate action was seizure, not detention, and that detention without prior investigation exceeds statutory authority. The respondent claims the detention of his vehicle was based on mere suspicion without objectively ascertainable facts.

- [15] The respondent draws a parallel with section 139 of the **UK Customs Act**, (hereinafter referred to as the “**UK Act**” or the “**1979 Act**”) prior to its amendment of 1979, which similarly granted customs authorities the power to seize or detain goods. Relying on the dicta of Lord Sumption in the case of **R (on the application of Eastenders Cash and Carry) and R (on the application of First Stop Wholesale) v HMRC (“Eastenders”)**⁹, the respondent emphasizes that the right to seize or detain property for inquiry purposes alone is not embedded in section 139. He submits that a narrow construction of Customs powers is preferred. The respondent submits that under section 130 of the **Act**, the power to detain goods must end when the relevant customs duty has been paid, and the goods have been released. Allowing Customs to retain goods beyond this point would amount to arbitrary deprivation of property, contravening constitutional protections.

Discussion

- [16] An appreciation of the statutory provisions underpinning the disputed issues is necessary in disposing of this appeal.

The Customs (Control and Management) Act (The St. Lucia Act)

- [17] The **St. Lucia Act** is a consolidation of various acts relating to customs. Its provisions regulate the movement of vessels, aircraft, goods, and passengers entering or leaving Saint Lucia, along with the collection of taxes and duties on imported goods. The Comptroller of Customs is a public office charged with the duty of collecting and accounting for and otherwise managing the revenue of customs¹⁰. Section 5 grants the Comptroller the authority to delegate powers to other officers.

⁹ [2014] UKSC 34.

¹⁰ Section 4 of the Act.

- [18] The following provisions are relevant to the submissions of the parties and the judgment of the lower court and provide an understanding of the powers available to Customs:

Section 65(1) of the **Act** under the rubric “**Time at which duty chargeable and payable**” provides that no imported goods shall be delivered or removed on importation until the importer has paid to the proper officer any duty chargeable thereon, and that duty shall, in the case of goods of which entry is made, be paid on making the entry.

Section 91(1) and (2), under the rubric “**Power to examine and take account of goods**” provides that without prejudice to any other power conferred by any customs enactment, an officer may examine and take account of any goods—

- (a) which have been imported;
- (b) which are in a warehouse or a Customs warehouse;
- (c) which have been loaded into or unloaded from any vessel or aircraft at any place in Saint Lucia;
- (d) which have been entered for exportation or for use as stores;
- (e) which have been brought to any place in Saint Lucia for exportation or for use as stores, or for shipment for exportation or for use as stores;
- or
- (f) in respect of which any claim for drawback, allowance, rebate, remission or repayment of duty has been made,

and may for that purpose require any container to be opened or unpacked.

- (2) Any examination of goods by an officer under subsection (1) shall be made at such time and place as the officer may direct.

Sections 32(1)(e), 113, and 116 of the **Act** detail offences related to improper importation, untrue declarations, and fraudulent evasion, rendering goods liable to forfeiture.

Section 32(1)(e) under the rubric “**Goods improperly imported**” provides that without prejudice to any other provision of any customs enactment, where any imported goods are found, whether before or after delivery, not to correspond with any entry made in respect of them; these goods, subject to subsection (2), are liable to forfeiture.

Section 113 under the rubric “**Untrue Declaration**” provides for the payment of fines and the goods being liable to forfeiture where a person (a) makes or signs, or causes to be made or signed, or delivers or causes to be delivered to the Comptroller or an officer, any declaration, notice, certificate or other document; or (b) makes any statement in answer to any question put to him or her by an officer which he or she is required by or under any enactment to answer, being a document or statement produced or made for any purpose of any assigned matter, which is untrue in a material particular, he or she commits an offence and is liable to a fine of \$5,000, and any goods in relation to which the document or statement was made are liable to forfeiture. Under subsection (2) the fine increases where the act was done knowingly or recklessly.

Section 116 under the rubric “**Fraudulent Evasion**” provides that if any person (a) knowingly acquires possession of any of the following goods, that is to say (ii) goods which are chargeable with a duty which has not been paid, and does so with fraudulent intent, he or she commits an offence and is liable to a fine of \$10,000, or 3 times the value of the goods, whichever is the greater, or to imprisonment for 5 years, or to both, and may be arrested, and the goods in respect of which the offence was committed are liable to forfeiture, and at subsection (2) states that if any person is, in relation to any goods, in any way concerned in a fraudulent evasion or attempt at evasion (a) of any duty chargeable on those goods and is so concerned with fraudulent intent, he or she commits an offence and is liable to a fine of \$10,000, or to 3 times the value of the goods, whichever is the greater, or to imprisonment for 5 years, or to both, and may be arrested, and the

goods in respect of which the offence was committed are liable to forfeiture.

Section 130 of the **Act**, under the rubric “**Forfeiture; detention, seizure and condemnation of goods**” provides

:

- (1) Anything which is liable to forfeiture is seized or detained by any officer or police officer.
- (2) Where anything which is liable to forfeiture is seized or detained by a police officer, that thing shall be delivered to the Comptroller within 7 days unless— (a) such delivery is not practicable; or (b) that thing is or may be required for use in connection with any proceedings to be brought otherwise than under a customs enactment.
- (3) Where, by virtue of subsection (2), anything seized or detained by a police officer is not delivered up to the Comptroller within 7 days, notice in writing of the seizure or detention, containing full details of the thing seized or detained, shall be given to the Comptroller, and any officer shall be permitted to examine and take account of that thing at any time while it remains in the custody of the police.
- (4) Schedule 4 has effect in relation to appeals against the seizure of anything seized as liable to forfeiture under any customs enactment, and for proceedings for the condemnation as forfeited of that thing.
- (5) Although something seized as liable to forfeiture has not been condemned as forfeited, or considered to have been condemned as forfeited, the Comptroller may at any time if he or she sees fit—
 - (a) deliver it up to any claimant upon the claimant paying to the Comptroller such sum as the Comptroller thinks proper, being a sum not exceeding that which in the Comptroller’s opinion represents the value of the thing, including any duty chargeable thereon which has not been paid; or
 - (b) if the thing seized is a living

creature or is in the Comptroller's opinion of a perishable nature, sell or destroy it.

- (6) The restoration, sale or destruction under subsection (5) of anything seized as liable to forfeiture is without prejudice to any right of appeal against its seizure.

Section 133(2) and (3) under the rubric "**Protection of Officers Seizing or Detaining Goods**" provides:

- (2) Where any proceedings are brought against the Government or the Comptroller on account of the seizure or detention of anything as liable to forfeiture, and judgment is given for the plaintiff or prosecutor, then if either— (a) a certificate relating to the seizure has been granted under subsection (1); or (b) the court is satisfied that there were reasonable grounds for seizing or detaining that thing, the plaintiff or prosecutor shall not be entitled to recover any damages or costs.
- (3) Subsection (2) shall not affect any right of any person for the return of the thing seized or detained or to compensation in respect of any damage to the thing or in respect of the destruction of it.

Schedule 4 of the **Act** details the procedure to effect seizure leading ultimately to the discharge of the goods or to its condemnation.

The Authority to Detain

- [19] Both parties rely on the analysis of the UK Supreme Court in **Eastenders**. In **Eastenders**, the UK Supreme Court examined the application of section 139(1) of the **UK Act**. The central issue in the case was the lawfulness of the power exercised by Her Majesty's Commissioners of Customs & Excise (HMRC) to temporarily detain goods for investigative purposes. The court analyzed this power in the context of other provisions of the **UK Act** and the specific facts of the case.

[20] To accurately determine the scope of detention powers granted to the Commissioners under the **UK Act**, the Supreme Court conducted a historical analysis of customs detention and seizure powers in the UK, examining their development from the Customs and Excise Act of 1825 through 1979. The Court concluded that understanding the evolution of customs and excise legislation, and the changing powers to detain goods outlined within it, was crucial to interpreting the legal framework at the time of its decision. The Court found that the 1825 legislation framed the detention of goods under section 22 in a different context. Specifically, customs officers were authorized to detain goods if, upon inspection, they appeared to be undervalued. In such cases, the goods could be seized for the Crown's use, with the importer receiving compensation based on their own valuation. Section 133, meanwhile, made a clear distinction between goods that were "seized as forfeited" and those "detained as under-valued."

[21] The Court next examined the case of **Jacobsohn v Blake and Compton**¹¹, which followed the 1833 amendment to the Customs and Excise Act. This case, one of the few reported decisions in the UK in this area of law, provided the only detailed consideration of the relevant principles of detention. In the judgment, Tindal CJ is reported, at pages 925-926 of Manning and Granger's report, as stating:

"The defendants merely took possession of the goods, in the execution of their duty as custom-house officers, for the purpose of examination. When the goods were examined certain marks were found which led the defendants to suspect they were prohibited; and they decided to detain them; and then, on a subsequent application on the part of the plaintiff for the delivery of the goods, the answer was that they were detained and would be prosecuted as seizures. It appears, therefore, that the defendants initially detained the goods due to a genuine and honest doubt about whether they were subject to forfeiture. Whether that doubt was well-founded is not the question...There has been no abuse of authority on their part. The goods remained, [throughout the examination], in the same custody in which they were, [originally] legally detained..."

[22] The Court concluded that the judgment implied the examination process was not complete until all necessary inquiries were made. Other judgments from that period, also examined by the Supreme Court, reinforced the idea that when customs officers detained goods for examination, they were acting within the

¹¹ (1844) 6 Man & G 919; 13 LJ CP 89.

authority granted by law to determine whether the goods were subject to duty. The Court concluded that while the facts of the **Jacobsohn** case involved an investigation of duty on goods in a customs warehouse, the ratio of the case should not be limited solely to the non-payment of duty in such settings. Instead, it reflects a broader principle: customs authorities have the right to detain goods based on reasonable suspicion and examination related to potential forfeiture or duty concerns, not merely the payment of duty.

- [23] The power of detention which was held to exist in **Jacobsohn** was not expressly conferred by the customs and excise legislation but arose by necessary implication from the officers' statutory power to examine goods for the purpose of determining the duty payable or whether they were liable to forfeiture. It was not conditional upon the goods being liable to forfeiture.
- [24] The Customs Consolidation Acts of 1833 and 1845 included provisions that were generally similar in nature. The next major consolidation occurred with the Customs Consolidation Act of 1853, which unified the previously separate provisions regarding the seizure of goods liable to forfeiture and the detention of suspected offenders into a single statute. As a result, the concept of detention was introduced for the first time within a section addressing the seizure of goods. A similar approach was adopted in the subsequent consolidation, the Customs Consolidation Act of 1876, which contained comparable provisions.
- [25] The final consolidation before the **1979 Act** was made by the Customs and Excise Act of 1952. Like its predecessors, the 1952 Act granted customs officers broad investigative powers. However, it reverted to treating the detention of persons separately, under section 274, and the seizure of goods under section 275. Notably, section 275(1) preserved the reference to detention that had appeared in both section 223 of the 1853 Act and section 202 of the 1876 Act. It provided that "anything liable to forfeiture under the Customs and Excise Acts may be seized or detained by any officer, constable, or member of Her Majesty's armed forces or coastguard." Section 275(1) thus established an explicit statutory power to detain goods subject to forfeiture. This power, the court found was distinct from the

authority to detain goods during the examination process, as it serves a different purpose and carries different legal implications.

- [26] The **1979 Act** mirrored earlier provisions, maintaining the flexibility to investigate potential violations before moving to forfeiture. The Court concluded that the explicit detention power introduced in Section 139(1) of the **1979 Act** did not replace previous detention powers but rather supplemented them. The authority to temporarily detain goods for investigative purposes remained necessary and distinct from the formal seizure process.

Section 139(1) of the UK Act

- [27] The Supreme Court found that the right to seize or detain property under section 139(1) was dependent on that property actually being liable to forfeiture under one of the various forfeiture provisions. Such liability turned on the objectively ascertained facts rather than the beliefs or suspicions of customs officers.
- [28] Section 139(1) conferred two distinct powers: a power of seizure and a power of detention neither of which are exercisable on the basis of reasonable grounds for suspicion or belief. The Court found that seizure and detention under Section 139(1) serve different purposes even though the **UK Act** does not state this. Seizure is the first stage of the statutory process leading to forfeiture. According to the **UK Act**, the commissioners must give notice of “the seizure of anything as liable to forfeiture” and the grounds for it. Thereafter, the owner of the goods has one month from the date of said notice to serve a notice claiming that the thing seized is not liable to forfeiture. If the owner does not serve that notice then the seized goods are deemed to have been duly condemned as forfeited. If the owner does serve the notice, then the commissioners must take proceedings for condemnation at the court.
- [29] Detention on the other hand is a temporary assertion of control over goods. In the context of section 139(1), detention following a conclusion that goods are liable to forfeiture can occur in circumstances where, for example, commissioners might not wish to embark at once upon the procedure leading to the condemnation of the goods, for example where the breach of the law was capable of correction.

- [30] The Supreme Court found that the power to detain goods liable to forfeiture under section 139(1) did not abrogate any existing common law power to detain as part of the examination process. The Court concluded that implicit in the now-repealed section 118(c) of the **UK Act** was a distinct power of detention under specific circumstances, allowing commissioners to examine goods or secure them pending investigations that might lead to their later seizure.
- [31] Section 118(c) of the **UK Act** stated that where an officer has reasonable cause to believe that any premises are used in connection with the supply, importation, or exportation of goods of a class or description chargeable with a duty of excise and that any such goods are on those premises, he may at any reasonable time enter and inspect those premises and inspect any goods found on them.
- [32] The Court also considered the dicta in **Jacobsohn and Gora v Customs and Excise Comrs.**¹² which established that for officers to exercise this power of detention, it is sufficient for them to have a real and honest doubt that the goods are liable to forfeiture
- [33] The Supreme Court emphasized that while earlier legislation implied the power to detain goods for investigation, the **1979 Act** provides a clear statutory basis for detention related to forfeiture. However, it did not eliminate detention powers for investigative purposes. The rationale for maintaining this distinction was articulated by Sales J in the High Court judgment in **Eastenders**, cited with approval by the UK Supreme Court. He explained:
- “It does not require much imagination to see that there may be many cases in which HMRC officers, when inspecting goods, are uncertain whether duty has been paid. In such cases, the effective and fair enforcement of the relevant tax regime requires that goods be temporarily held while investigations clarify the situation. Parliament could not have intended that the owner of goods avoid full enforcement, including the forfeiture of goods on which duty has not been paid, by obfuscating or creating uncertainty about the supply chain during inspection.”

¹² [2004] QB 93.

- [34] The UK Supreme Court itself concluded that it was difficult to conceive why Parliament should have conferred upon the Commissioners and their officers a wider range of intrusive investigatory powers than any other public body, but should at the same time have chosen to deprive them of a means of preventing goods from being disposed of until they have completed their examination and decided whether the goods should be seized.

Detention Under Section 130(1) of the St. Lucia Act

- [35] Similar to section 139(1) of the **UK Act**, a reading of section 130 of the **St. Lucia Act** implies that the right to seize or detain goods can only occur, where the goods in question are liable to forfeiture. The officers cannot exercise this power under mere suspicion or by virtue of having reasonable grounds; there must be an objective conclusion that the goods are liable to forfeiture in accordance with provisions in the act.

The Power to Detain or Seize pending investigation under the St. Lucia Act

- [36] The detention of a vehicle by Customs without more constitutes an interference with the right to property under Sections 1 and 6 of the Saint Lucia Constitution Order. Such a detention is only valid if it serves a legitimate public purpose and is carried out under the authority of law in a manner that is reasonably justified under the law.¹³
- [37] An incidental power to detain under the **St. Lucia Act** arises when Customs exercises its power to examine goods under section 91, as referenced above. Section 91 is part of Part 9 of the Act, which deals with Customs powers. A closer examination of the provisions under this Part reveals that the power to detain is specifically outlined in Sections 95 and 96 of the **St. Lucia Act**, unlike in section 91.
- [38] For instance, sections 95 and 96 extend Customs' power of search to include premises, vehicles, and persons. However, this power cannot be exercised

¹³ Section 6(1) and (6)(a) (vii) of the St. Lucia Constitution Order.

based solely on mere suspicion. In the case of premises, an officer must have reasonable grounds to believe that goods liable to forfeiture are being concealed or kept there, or that an offence under a Customs enactment has been committed. With authorization from the Comptroller, the officer may enter the premises to search, seize, detain, or remove anything that appears liable to forfeiture. Similarly, in the case of vehicles and persons, the officer must have reasonable grounds to believe that the vehicle or individual is carrying items liable to forfeiture, and the Comptroller is empowered to search, seize, detain, or remove such items.

[39] There is no qualification in sections 94-96 that the goods be uncleared goods. Seemingly it applies to cleared and uncleared goods. However, the power of examination in Section 91 of the **St. Lucia Act** in which the power to detain is implied, by its wording seems to apply to uncleared goods only.

[40] While section 91 itself doesn't explicitly provide a power to detain, it does imply that, during an examination, goods may be detained temporarily for the purposes of that examination. For example, if an officer finds discrepancies or suspects non-compliance during an examination of uncleared goods, detention could follow as part of the investigation. However, this detention is tied specifically to the examination process and is not as broadly framed as the detention powers under Sections 95 and 96. Section 91 is narrower in scope and geared towards compliance checks for uncleared goods, while Sections 95 and 96 are broader, applying to both cleared and uncleared goods suspected of being involved in customs violations.

[41] The **UK Act** as it was then, at Section 118 provided a clear statutory power for the detention of goods for examination and investigation, even in the absence of immediate suspicion of forfeiture. This is distinct from the **St. Lucia Act**, where section 91 only applies to the examination of uncleared goods, and the incidental detention power is more limited. The **Eastenders** case is therefore distinguishable from the current circumstances under the **St. Lucia Act** because the UK Act provided a broader statutory foundation for detention during the examination

process, whereas the **St. Lucia Act** requires a more direct connection to the goods being liable to forfeiture under specific provisions.

[42] A summary of the learned judge's findings at paragraphs [120], [184]-[188] of his judgment are that the detention of the vehicle was unlawful because the officers did not follow the statutory procedures outlined in section 130(1) and Schedule 4 of the Act, which govern the seizure of goods. Moreover, there was no lawful authority or justification for detaining the vehicle outside of the statutory framework of section 130(1). He also found that the respondent paid the duties as required under section 65 of the **Act**, and there was no legal basis to prevent the claimant from taking possession of the vehicle once the duties were paid, which he had done. As such the detention of the respondent's vehicle was unauthorized and unlawful, as it was not supported by any clear legal provisions, nor was it justified by the statutory requirements of the **St. Lucia Act**. He therefore found that the respondent was deprived of his right to the enjoyment of his property otherwise than by due process of law.

[43] The learned judge's decision aligns with my earlier finding that the St. Lucia Act limits detention powers, outside of section 130(1), to the examination of uncleared goods. Unlike the **UK Act**, the **St. Lucia Act** does not provide a similar statutory foundation for broad detention powers during an investigation. Ground 1 of the appeal thus fails. Customs cannot rely on the express power under section 130, and section 91 could not be invoked since the vehicle had already been cleared and the duties had been paid as required under section 65. Therefore, there was no lawful basis for the detention.

[44] This conclusion renders the investigation of Ground 2 unnecessary, and I will now proceed to consider Ground 3.

Ground 3 Damages

[45] The appellant contends that the learned judge erred in his assessment of the respondent's damages by rejecting the documentary evidence, specifically the banking records submitted by the respondent as proof of special damages. The appellant further argues that the judge failed to adequately consider the evidence

presented by the appellant regarding the damages claimed by the respondent before proceeding to award damages.

[46] This ground too must fail for the reasons outlined below. The learned judge awarded two separate sums for special damages: EC\$39,398.36 for loss of earnings and EC\$10,000 for legal expenses incurred in securing the return of the vehicle.

[47] The learned trial judge's findings on damages are set out in paragraphs 235-242 of his judgment. He determined that the vehicle was an income-generating asset used in the respondent's trade. While he acknowledged that the documentary evidence supporting the special damages, particularly the banking records, was not entirely satisfactory, he accepted the oral testimony provided by Mr. Carswell Francis, which included the employer's calculation of the loss of earnings based on the employer's records.

[48] A review of the Record of Appeal reveals that the evidence of damages presented during the trial included the following:

- (i) **Witness Statement of Carswell Francis:** Carswell Francis, the owner of Island Taxi and Tours, provided a statement confirming that the respondent had worked for him for the past five years, performing tours on both a daily and weekly basis, for which he was paid a monthly salary. Between 13th March and 12th June, the respondent did not fulfill his duties, and Francis assigned other drivers to cover the service. Francis submitted a list of luxury tours that the respondent would have been responsible for during this period, but which were instead handled by other drivers.
- (ii) **Exhibits from Carswell Francis' PayPal Account:** Among the documents presented were records from Francis' PayPal account, detailing the payments received from various sources during the period from March to May 2019, as well as corresponding amounts. Payment records from Viator for a similar timeframe were included.

(iii) **Tour List and Payment Totals:** Carswell Francis provided a list of tours that were scheduled for the respondent between March and May 2019, which amounted to \$34,955.64 in potential earnings. For June 2019, the corresponding total for the tours was \$4,560.36.

(iv) **Witness Statement of the Respondent:** He stated that he is a taxi driver, testified that he provided taxi tours and transfers for multiple companies, including Island Taxi and Tours. He explained that, for the majority of transfers, he was paid in cash. He stated that he provided high-end taxi services that were paid for by customers via credit card, with transactions processed through the PayPal account of the company that contracted him. The company would then retrieve the funds from PayPal and compensate him in cash. The respondent referred to documents FCIB1-4 to show that, prior to the seizure, he earned \$3,200 weekly for this work. He also cited FCIB J to demonstrate that he earned \$15,000 during February 2019.

[49] The findings of the learned judge were therefore based on the oral and documentary evidence presented at the trial, which he accepted as proof of loss of earnings amounting to EC\$39,398.36. As a result, he awarded compensation for this loss. As regards the further order of \$10,000 for legal fees, the learned judge justified this award at paragraph 238 of his judgment that in the circumstances of the present case the respondent was forced to retain a lawyer to secure the release of his vehicle at a cost of \$10,000, which he concluded was a reasonable expense to secure the return of the respondent's vehicle.

[50] An appellate court will only overturn a trial judge's findings if it identifies a material error in the judge's reasoning or evaluation of the evidence. The appellate court generally refrains from interfering with the judge's findings of fact, particularly when those findings are based on the judge's direct assessment of witnesses. In **Margaret Blackburn v James Bristol**¹⁴, Baptiste JA (as he then was) cautioned that an appellate court should not interfere with

¹⁴ GDAHCVAP2012/0019 (delivered 12th October 2015, unreported).

a trial judge's findings unless the judge was plainly wrong. The appellate court should only intervene if there is a clear error in the way the trial judge evaluated the evidence. Based on the evidence presented before the learned judge and his assessment of the witnesses on the issue of damages, I find no such error in his reasoning. Accordingly, ground 3 of the appellant's notice of appeal is dismissed

Disposition

- [51] The appeal is dismissed. The respondent is entitled to his costs in the court below to be assessed if not agreed and to his costs on appeal assessed at 2/3 of the costs in the court below.

I concur.
Eddy D. Ventose
Justice of Appeal

I concur.
Gerard St. C Farara
Justice of Appeal [Ag.]

By the Court

Chief Registrar