

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

**SAINT LUCIA**

**SLUHCVP2022/0019**

**BETWEEN:**

**[1] MAGISTRATE BERTLYN REYNOLDS  
[2] FINANCIAL INTELLIGENCE AUTHORITY**

Appellants

**and**

**[1] PETER HIPPOLYTE  
[2] MICHAEL AUGUSTIN  
[3] MARTINUS ALEXANDER**

Respondents

**Before:**

The Hon. Dame Janice M. Pereira, DBE, LL.D

Chief Justice

The Hon. Mr. Trevor Ward

Justice of Appeal

The Hon. Mde. Esco Henry

Justice of Appeal [Ag.]

**Appearances:**

Mr. Seryozha Cenac and Mr. George K. Charlemagne for the Appellants

Mr. Horace Fraser for the Respondents

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2023: November 7;  
2024: April 16.

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*Civil appeal – Judicial review – Section 29A of the Proceeds of Crime Act of Saint Lucia – Seizure – Detention order – Authority to seize and detain cash under the Proceeds of Crime Act of Saint Lucia - Whether the learned magistrate acted ultra vires in granting a continued detention order – Retention of seized property following discontinuance of criminal proceedings - Whether police were in lawful possession of seized cash following discontinuance of criminal proceedings and whether this was a relevant consideration of the learned magistrate*

On 26<sup>th</sup> May 2010, at around 2:15 a.m., the respondents were arrested following a search of vehicle bearing Registration Number 1261. The search revealed foreign currency amounting to approximately EC\$982,301.76 (“the cash”). The cash was seized and retained

by the police with then acting Corporal of Police Alain James charging the respondents with unlawful possession of the cash under section 441 of the Criminal Code. The police retained the cash pursuant to the said criminal proceedings.

The respondents then challenged the constitutionality of section 441 of the Criminal Code with both the High Court and this Court subsequently confirming the unconstitutionality of section 441. The criminal charges were accordingly dismissed on 31<sup>st</sup> December 2018 with a notice of discontinuance being served on the Commissioner of Police on 4<sup>th</sup> January 2019. On 24<sup>th</sup> April 2019, WPC Dalia Jules ("WPC Jules"), acting in her capacity as a financial investigator of the Financial Intelligence Authority ("FIA") and on behalf of the Director of the FIA, formally seized the cash from Corporal Alain James pursuant to section 29A of the Proceeds of Crime Act ("POCA"). She then applied for a continued detention order on 25<sup>th</sup> April 2019, which was granted on 26<sup>th</sup> April 2019 by the learned magistrate. Up until this date, the cash had been in possession of the police for almost 9 years.

On 30<sup>th</sup> April 2019, counsel for the respondents filed an application challenging the jurisdiction of the learned magistrate to make the continued detention order which was heard on 26<sup>th</sup> July 2019. A further order continuing the detention order was made to run from 26<sup>th</sup> July 2019 to 23<sup>rd</sup> August 2019 to allow the court to deliver its ruling. On 19<sup>th</sup> August 2019, the learned magistrate dismissed the application finding inter alia that the Royal Saint Lucia Police Force ("RSLPF") acted reasonably in the period between the notice of discontinuance of the criminal proceedings and the seizure by the FIA and that the possession was lawful in the circumstances. The learned magistrate also found that a magistrate still had jurisdiction to hear and grant a continued detention order notwithstanding that criminal proceedings under the Criminal Code had been discontinued. Finally, the learned magistrate concluded that the suspicion that the cash was tainted was reasonable within the meaning of section 29A of the POCA and was therefore not persuaded to grant the respondents' application for the release of the cash.

Counsel for the respondents applied to the High Court for leave to seek judicial review of the magistrate's decision and leave was granted on 9<sup>th</sup> February 2022. Among the reliefs sought, was a declaration that the decision of the learned magistrate of 26<sup>th</sup> April 2019 was *ultra vires* section 29A of the POCA. The learned judge in the High Court, considering the application for judicial review, concluded that the learned magistrate erred in granting the continued detention order on 26<sup>th</sup> April 2019. The learned judge found following the discontinuance of the criminal proceedings, the cash was unlawfully detained by the police for a period in excess of the 72 hours stipulated by section 29A of the POCA. Further, that the Money Laundering (Prevention) Act ("MLPA") did not confer any power on the FIA to seize or detain proceeds of criminal conduct or to prosecute anyone in relation to those proceeds and as it appears that WPC Jules' seizure was actuated by the directions of another person, she did not have reasonable grounds for suspicion within the meaning of section 29A. The learned judge set aside the detention order made by the magistrate.

Dissatisfied with the decision of the learned judge, the appellants appealed. The two issues for determination on appeal are: i) whether the learned magistrate acted *ultra vires* the POCA when she granted the continued detention order on 26<sup>th</sup> April 2019 following a purported seizure on 24<sup>th</sup> April 2019; and (ii) whether the police were in lawful possession of the cash

between the period 1<sup>st</sup> January 2019 and 23<sup>rd</sup> April 2019 following the prosecution's discontinuance of the criminal trial and whether this was a relevant consideration of the learned magistrate in arriving at her decision to grant the continued detention order.

**Held:** allowing the appeal; setting aside the judgment of the learned judge; and ordering costs to the appellants in this Court and in the court below, such costs to be assessed unless agreed within 21 days, that:

1. In conducting a judicial review of the decision of a statutory or public body, a judge's jurisdiction is very narrow and is limited to evaluating the decision solely within the framework of administrative law principles. This entails considering the grounds of illegality, irrationality or Wednesbury unreasonableness, and procedural impropriety. In this case, the learned judge treated judicial review as an original hearing of the matter and went about his own fact-finding mission while impugning the facts accepted by the learned magistrate. It was simply not open to him to arrive at his own set of facts or to act as an appellate body. In so doing he fell into error.

**Hugh Wildman v The Judicial and Legal Services Commission** Grenada Civil Appeal No. 9 of 2006 (delivered 1<sup>st</sup> March 2007, unreported) applied; **Attorney General v Kenny D Anthony** SLUHCVP2009/031 (delivered 14<sup>th</sup> June 2010, unreported) applied; **Dufour and Others v Helenair Corporation Ltd and Others** (1996) 52 WIR 188 applied.

2. Seizure in the traditional sense refers to the act of physically taking possession of property and removing it from the owner's control and that property is usually held by the authorities pending legal proceedings. However, authorities may also effect seizure by asserting control over property without physically removing it from the owner's possession. The affidavit evidence of WPC Jules was that she made a formal seizure of the cash. The learned magistrate was clearly satisfied upon hearing WPC Jules and reading her affidavit, that she had satisfied the necessary conditions of seizure to warrant the grant of a continued detention order. The cash was in the possession of the RSLPF and they were well aware of the seizure. The respondents were also made aware of the seizure in due course. It was therefore open to the learned magistrate to find that WPC Jules did in fact seize the cash on 24<sup>th</sup> April 2019.

**Cory & Sons v Burr** [1881-85] All ER Rep 414 considered; **United States v Jacobsen** 466 U.S. 109 (1984) considered; **Levar Devere Browne v Chief of Police** SKBMCRAP2021/0003 (delivered 5<sup>th</sup> July 2023, unreported) applied.

3. Section 29A of the POCA permits financial investigators of the FIA to seize and detain cash. The powers which WPC Jules sought to exercise fell entirely within the scope of the POCA. It was not open to the learned judge to ignore the explicit power given to the financial investigators of the FIA by section 29A in the absence of any challenge to the validity or legality of the section. The learned judge accordingly committed an error of law by disregarding the explicit provisions of the POCA and relying on the provisions of the MLPA to ascertain the extent of the powers of the

FIA. Additionally, section 29A gives authority to seize and detain cash to both police officers of the rank of corporal or above, or a financial investigator of the FIA thus bestowing the power on two distinct categories of persons. Although WPC Jules is a police officer, at the time of the seizure she was serving in her capacity as an investigator of the FIA and acting on behalf of its Director as evidenced in her affidavit.

Section 29A of the **Proceeds of Crime Act** Cap. 3.04 of the Revised Laws of Saint Lucia applied.

4. Section 29A of the POCA requires that the investigating officer or police officer seizing cash have a reasonable ground for suspecting that it directly or indirectly represents any person's proceeds of criminal conduct or is intended by any person for use in criminal conduct. The POCA does not include any requirement that the reasonable grounds or reasonable suspicions be that of the seizing officer only. Based on the circumstances in which the cash was found, and the additional evidence of the original officers, there was enough evidence for WPC Jules to form her own reasonable suspicion that the cash formed the proceeds of criminal conduct and the learned judge erred in substituting his assessment for that of the magistrate and in finding otherwise. Having concluded that WPC Jules did in fact seize the cash on 24<sup>th</sup> April 2019 and that she had the authority to so seize, the learned magistrate, in granting the continued detention order on 26<sup>th</sup> April 2023, being the first occasion of seizure under the POCA, was not acting *ultra vires* the POCA in that she granted the detention order within 72 hours of the seizure of the cash, as is required by section 29A. She made no error of law and her decision was not so unreasonable or irrational that it ought to have been quashed on a judicial review.

Section 29A of the **Proceeds of Crime Act** Cap. 3.04 of the Revised Laws of Saint Lucia applied; **Labour Tribunal et al v St. Lucia Electricity Services Limited** SLUHCVP2019/0002 (delivered 8th April 2020, unreported) applied.

5. Although the Police and Criminal Evidence Act 1984 ("PACE") is no longer applicable in the state of Saint Lucia, the provisions of PACE are, in large, part, codifications of the common law of England which has and continues to form part of the laws of Saint Lucia. The learned magistrate's reliance on cases applying PACE does not imply a direct application of PACE to the present case but instead indicates a consideration of principles such as 'necessity' and 'reasonableness' which are grounded in common law as well as in good police practices which balance the rights of the individual against the welfare of the public. In all the circumstances, it was open to the learned magistrate to arrive at a finding that the police were in lawful possession of the cash during the period 1<sup>st</sup> January 2019 to 23<sup>rd</sup> April 2019. The learned magistrate relied on relevant and appropriate cases and her conclusion was justified in light of those authorities and the investigations of the police which she accepted to have been necessary and proportionate. Once the learned magistrate determined that a seizure under section 29A of the POCA did in fact take place on 24<sup>th</sup> April 2019, it was open to her to consider whether the period of retention prior to the seizure tainted that seizure with unlawfulness. If she found (which she did

not) the seizure to be unlawful, this would have influenced the considerations to which she would have had regard in determining whether to grant the continued detention order. This was a reasonable consideration in all the circumstances and did not constitute an excess of jurisdiction such that the learned judge should have interfered.

**Ghani v Jones** [1970] 1 QB 693 considered; **R (on the application of Iqbal) v South Bedfordshire Magistrates Court** [2011] EWHC 705 (Admin) considered; **Earl Hunte v The Queen** SLUHCRA2006/012 (delivered 19th January 2011, unreported) applied.

## JUDGMENT

- [1] **PEREIRA CJ:** This is an appeal against the decision of the learned judge in the court below on an application for judicial review of the decision of Magistrate Bertlyn Reynolds, the first appellant herein, to grant a continued detention order on 26<sup>th</sup> April 2019 under section 29A<sup>1</sup> of the **Proceeds of Crime Act**<sup>2</sup> (“**POCA**”) with respect to a cash seizure by WPC Dalia Jules of the Financial Intelligence Authority (“the FIA”) on 24<sup>th</sup> April 2019. The instant appeal has a legal and procedural history that spans several years and the pertinent facts are set out below.

### Background

- [2] On 26<sup>th</sup> May 2010, at approximately 2:15 a.m., Police Constable Rene Jn Baptiste of the Special Services Unit arrested the respondents following a search of a vehicle bearing Registration Number 1261, which was travelling along New Dock Road in Vieux Fort. The search revealed USD\$252,755.00 and EURO\$99,440.00, amounting to approximately EC\$982,301.76 (“the cash”). Some of the cash was found in a black backpack on the person of the first respondent who was seated on the backseat of the vehicle, some was found wrapped in duct tape in a pink plastic bag on the left front side of the vehicle, and the rest was found in a clear sealed

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<sup>1</sup> As amended by the Proceeds of Crime (Amendment) Act, Act No. 14 of 2013.

<sup>2</sup> Cap. 3.04 of the Revised Laws of Saint Lucia.

saver bag on the left front floor mat of the vehicle. The cash was seized and retained by the police.<sup>3</sup>

- [3] Then acting Corporal of Police Mr. Alain James laid criminal charges against the respondents for unlawful possession of the cash under section 441 of the **Criminal Code**<sup>4</sup> and they were presented for trial before then Magistrate Andy Daniel. The police retained the cash pursuant to the said criminal proceedings. The respondents challenged the constitutionality of section 441 to the extent that it offended the presumption of innocence afforded to them under the **Constitution of Saint Lucia**.<sup>5</sup> The High Court as well as this Court<sup>6</sup> confirmed the unconstitutionality of the section and on 31<sup>st</sup> December 2018, the criminal charges were accordingly discontinued with the notice of discontinuance being served on the Commissioner of Police on 4<sup>th</sup> January 2019.
- [4] Following the discontinuance of the criminal proceedings, during the period 4<sup>th</sup> January 2019 to 23<sup>rd</sup> April 2019, the police made enquiries about the discontinuance and sought advice from the Attorney General as to how to proceed. On 24<sup>th</sup> April 2019, WPC Dalia Jules, acting in her capacity as a financial investigator of the FIA and on behalf of the Director of the FIA, formally seized the cash from Corporal Alain James pursuant to Section 29A of the **POCA**. She then applied for a continued detention order on 25<sup>th</sup> April 2019, which was granted by Magistrate Bertlyn Reynolds (“the learned magistrate”) on 26<sup>th</sup> April 2019.<sup>7</sup> As at this date, the cash had been in the possession of the police for almost 9 years.
- [5] On 30<sup>th</sup> April 2019, counsel for the respondents, Mr. Horace Fraser, filed an application challenging the jurisdiction of the learned magistrate to make the continued detention order. This application was heard by the learned magistrate on

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<sup>3</sup> See Record of Appeal, pp. 201-202.

<sup>4</sup> Cap. 3.01 of the Revised Laws of Saint Lucia.

<sup>5</sup> Cap. 1.01 of the Revised Laws of Saint Lucia.

<sup>6</sup> The Attorney General v Peter Hippolyte et al SLUHCVAP2015/0019 (delivered 4th April, 2016, unreported).

<sup>7</sup> See para. 8 of the Affidavit of Dalia Jules, Record of Appeal, p. 202.

26<sup>th</sup> July 2019 and a further order continuing the detention order was made to run from 26<sup>th</sup> July 2019 to 23<sup>rd</sup> August 2019 to allow the court to deliver its ruling. On 19<sup>th</sup> August 2019, the learned magistrate dismissed the application.

[6] In determining Mr. Fraser's application, the learned magistrate considered three main issues: (i) whether the retention of the cash by the police between 31<sup>st</sup> December 2018 and 26<sup>th</sup> April 2019 was unlawful in the absence of an order for Restitution issuing at the time of the discontinuance of the case of unlawful possession; (ii) whether the Magistrate's Court still had jurisdiction to entertain the matter in 2019 or whether the Crown, by opting to proceed in 2010 with a case of Unlawful Possession instead of Forfeiture, waived its right to proceed under **POCA**, such that those proceedings amounted to an abuse of process; and (3) whether the cash ought to be released to the respondents or subjected to continued detention by the FIA pending investigations pursuant to section 29A of the **POCA**.

[7] In relation to the first issue, the learned magistrate favoured the prosecution's argument made in reliance on the principle emanating from **Marcel v Commissioner of Police**,<sup>8</sup> that the law does not impose an automatic duty on the police to release the property in its custody upon discontinuance of criminal proceedings but that the test of police power to retain seized goods is one of necessity which included the primary purposes of investigating and prosecuting crime. She also found that the Crown is not an indivisible unit, such that the Royal Saint Lucia Police Force ("RSLPF") is bound by a discontinuance of criminal proceedings by the Director of Public Prosecutions ("DPP") such that it may not resort to civil proceedings through the FIA. She accordingly concluded that the RSLPF acted reasonably in the period between the discontinuance of the criminal proceedings and the seizure by the FIA and that the possession was lawful in all the circumstances.<sup>9</sup>

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<sup>8</sup> [1992] 1 AER 72.

<sup>9</sup> See Record of Appeal, pp. 85-86.

- [8] In resolving the second issue the learned magistrate concluded that a magistrate still has jurisdiction to hear and grant a continued detention order notwithstanding that criminal proceedings under the **Criminal Code** have been discontinued. She also found that while the cash was seized in contemplation of proceedings under the **Criminal Code**, such proceedings being discontinued by the DPP in 2018, the police were not obliged to automatically release the cash to the respondents without the issuing of an order for restitution under that very Code or an order for release under the **POCA**. The learned magistrate cited, *inter alia*, the cases of **Chief Constable of Merseyside Police v Lee Hickman**<sup>10</sup> and **Lynne Marie Preston and Olden v Serious Organized Crime Agency**<sup>11</sup> in support of her findings.<sup>12</sup>
- [9] Finally, after a careful consideration of the affidavits in support of the respondents' application, and the affidavits of the members of the RSLPF, the learned magistrate found that the suspicion that the cash was tainted was reasonable within the meaning of section 29A of the **POCA**. Therefore, she was not persuaded to grant the respondents' application for the release of the cash. Following the learned magistrate's ruling, WPC Jules applied for and obtained another continued detention order on 23<sup>rd</sup> August 2019.
- [10] Being dissatisfied with this ruling, counsel for the respondents applied to the High Court for leave to seek judicial review on 27<sup>th</sup> January 2020 of the learned magistrate's decision and in a written decision delivered on 9<sup>th</sup> February 2022, received such leave. By Fixed Date Claim Form filed on 16<sup>th</sup> February 2022, the respondents sought, *inter alia*, declarations that the decision of the learned magistrate entered on 26<sup>th</sup> April 2019 to detain the cash was ultra vires section 29A of the **POCA**, that she took irrelevant matters into consideration in arriving at her decision, that she had no jurisdiction to make a detention order, that the order is

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<sup>10</sup> [2006] EWHC 451.

<sup>11</sup> [2010] EWCA Civ. 143.

<sup>12</sup> See Record of Appeal, p. 88.

without legal effect, as well as an order of certiorari quashing the decision and an order directing the release of the cash to the respondents.<sup>13</sup>

#### **Decision in the court below**

- [11] Upon considering the application for judicial review, the learned judge concluded that the learned magistrate erred in granting the continued detention order on 26<sup>th</sup> April 2019. He found that following the discontinuance of the criminal proceedings, the cash was unlawfully detained by the police for a period in excess of the 72 hours stipulated by section 29A of the **POCA**. The learned magistrate ought to have considered that the only lawful authority the police possessed to detain the cash was for the purposes of evidence in criminal prosecution and that lawful justification for the detention of the cash was no more following the discontinuance.
- [12] He found that the purported re-seizure of the cash by WPC Jules did not cure the unlawfulness of the initial detention by the police and that the application for a detention order by the police financial investigator was but a procedural step employed by the police to retain the cash. He considered the provisions of the **Money Laundering (Prevention) Act**<sup>14</sup> ("**MLPA**") and found that none of the functions of the FIA specified therein appeared to be directly or indirectly related to law enforcement in its strictest sense and that the **MLPA** did not confer any power on the FIA to seize or detain proceeds of criminal conduct or to prosecute anyone in relation to those proceeds. He found that the fact that a police officer provides services to the FIA in the fulfilment of its mandate under the **MLPA** does not make that police officer an employee of the FIA and that police officer still acts under the superintendence of the Commissioner of Police.<sup>15</sup> Therefore, he concluded that

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<sup>13</sup> See Core Bundle, p. 64.

<sup>14</sup> Cap. 12.20 of the Revised Laws of Saint Lucia.

<sup>15</sup> See para. 66 of the judgment in the court below.

WPC Dalia Jules was acting in her capacity as a police officer at the time of the seizure and such a seizure would be unlawful.

[13] He went further to say that the reasonable ground for suspicion contemplated by section 29A of the **POCA** must be that of the police officer or financial investigator of the FIA who makes the application and who in fact seized the property. In addition, any reasonable grounds for suspicion must be seen to be the police officer's or financial investigator's independent thought process unpersuaded by any other person or authority.<sup>16</sup> As it appears that WPC Jules' seizure was actuated by the directions of another person, she did not have reasonable grounds for suspicion within the meaning of section 29A.

[14] The learned judge was also of the view that the learned magistrate erred in law when she found that the property was lawfully detained by the police. He found that her consideration of the concepts of 'reasonableness' and 'necessity' in line with the provisions of the Police and Criminal Evidence Act 1984 ("PACE") as espoused in the case law she applied rendered her decision unlawful on the basis that she took into account irrelevant factors and thereby fell outside the ambit of the jurisdiction conferred on her by section 29A. He found that by applying the provisions of **PACE**, she committed an error of law and ultimately acted ultra vires the **POCA**, and he accordingly ordered that the detention orders be set aside.

### **The appeal**

[15] In their amended notice of appeal filed on 7<sup>th</sup> June 2023, the appellants challenged the decision of the learned judge on 13 grounds. However, only two main issues fall to be determined by this Court to sufficiently dispose of the appeal: (i) whether the learned magistrate acted ultra vires the **POCA** when she granted the continued detention order on 26<sup>th</sup> April 2019 following a purported seizure on 24<sup>th</sup> April 2019; and (ii) whether the police were in lawful possession of the cash between the period

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<sup>16</sup> See para. 105 of the judgment in the court below.

1<sup>st</sup> January 2019 and 23<sup>rd</sup> April 2019 following the prosecution's discontinuance of the criminal trial and whether this was a relevant consideration of the learned magistrate in arriving at her decision to grant the continued detention order.

### Discussion

- [16] It is prudent at this stage to set out the relevant principles to be borne in mind when treating with the issues to be determined on this appeal. First, I restate the principles governing appellate interference which have been stated and restated in countless decisions of this Court:

“...an appeal will not be allowed unless the appellate court is satisfied (1) that in exercising his or her judicial discretion, the judge erred in principle either by failing to take into account or giving too little or too much weight to relevant factors and considerations, or by taking into account or being influenced by irrelevant factors and considerations; and (2) that, as a result of the error or the degree of the error, in principle the trial judge's decision exceeded the generous ambit within which reasonable disagreement is possible and may therefore be said to be clearly or blatantly wrong.”<sup>17</sup>

- [17] Next, bearing in mind that the decision being appealed is one made on an application for judicial review, I shall set out the nature of judicial review and the role of the trial judge determining an application for judicial review. For guidance on this point, I turn to **Halsbury's Laws of England** which said:

“Judicial review is concerned with reviewing not the merits of the decision in respect of which the application for judicial review is made, but with ensuring that the bodies exercising public functions observe the substantive principles of public law and that the decision-making process itself is lawful. It is thus different from an ordinary appeal. The purpose of the remedy of judicial review is to ensure that the individual is given fair treatment by the authority to which he has been subjected: it is no part of that purpose to substitute the opinion of the judiciary or of individual judges for that of the authority constituted by law to decide the matters in question. This remains so even where the court can say that it is in as good a position as the original decision-maker to determine whether the relevant test is met. Unless that restriction on the power of the court is observed, the court will, under the guise of preventing the abuse of power, be itself guilty of usurping power. The duty of the court is to confine itself to the question of legality. Its concern is with whether a decision-making authority exceeded its powers, committed an error of law, committed a breach of the rules of natural justice,

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<sup>17</sup> Dufour and Others v Helenair Corporation Ltd and Others (1996) 52 WIR 188.

reached a decision which no reasonable tribunal could have reached or abused its powers. The grounds upon which administrative action is subject to control by judicial review have been conveniently classified as threefold. The first ground is 'illegality': the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it. The second is 'irrationality', namely *Wednesbury* unreasonableness. The third is 'procedural impropriety'. What procedure will satisfy the public law requirement of procedural propriety depends upon the subject matter of the decision, the executive functions of the decision-maker (if the decision is not that of an administrative tribunal) and the particular circumstances in which the decision came to be made."<sup>18</sup>

[18] Finally, as much of this appeal surrounds the interpretation of Section 29A of the POCA,<sup>19</sup> I shall set it out in its entirety:

**"29A. Seizure and Detention of Cash**

(1) A police officer, of the rank of corporal or above, or a financial investigator of the Financial Intelligence Authority, may seize and detain, in accordance with this Part, any cash in Saint Lucia if the officer or investigator has reasonable grounds for suspecting that it directly or indirectly represents any person's proceeds of criminal conduct or is intended by any person for use in any criminal conduct.

(2) Cash seized by virtue of this section must not be detained for more than seventy two hours unless its continued detention is authorized by an order made by a Magistrate; and no such order must be made unless the Magistrate is satisfied -

(a) that there are reasonable grounds for the suspicion mentioned in subsection (1); and

(b) that continued detention of the cash is justified while its origin or derivation is further investigated or consideration is given to the institution, whether in Saint Lucia or elsewhere, of criminal proceedings against any person for an offence with which the cash is connected.

(3) Any order under subsection (2) must authorize the continued detention of the cash to which it relates for such period, not exceeding three months beginning with the date of the order, as may be specified in the order; and a Court of summary jurisdiction, if satisfied as to the matters mentioned in that subsection, may thereafter from time to time by order authorize the further detention of the cash except that—

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<sup>18</sup> Vol. 61A (2023), para 2.

<sup>19</sup> As amended by Act No. 14 of 2013.

(a) no period of detention specified in such an order must exceed three months beginning with the date of the order; and

(b) the total period of detention must not exceed two years from the date of the order under subsection (2).

(4) Any application for an order under subsection (2) or (3) shall be made by a police officer of the rank of corporal or above or a financial investigator of the Financial Intelligence Authority.”.

(5) At any time while cash is detained by virtue of this section—

(a) a Court of summary jurisdiction may direct its release if satisfied—  
(i) on an application made by the person from whom it was seized or a person by or on whose behalf it was being imported or exported, that there are no, or are no longer, any such grounds for its detention as are mentioned in subsection (2); or  
(ii) on an application made by any other person, that detention of the cash is not for that or any other reason justified; and

(b) the Commissioner of Police or any police officer authorized by him or her may release the cash if satisfied that its detention is no longer justified but shall first notify the Magistrate or Court of summary jurisdiction under whose order it is being detained.

(6) Cash detained by virtue of this section must not be released until any proceedings pursuant to the application or, as the case may be, the proceedings for that offence have been concluded.”

Now, I turn to a consideration of the substantive issues.

**Issue 1: Whether the learned magistrate acted *ultra vires* the POCA when she granted the continued detention order on 26<sup>th</sup> April 2019 following a ‘purported seizure’ on 24<sup>th</sup> April 2019**

### **Appellants’ submissions**

[19] The thrust of the appellants’ submissions is that the learned magistrate was at all times acting within her jurisdiction under section 29A of the **POCA**. They contended that she was correct in finding that a re-seizure of the cash took place on 24<sup>th</sup> April 2019 and therefore the detention order granted on 26<sup>th</sup> April 2019 was within the 72 hour timeframe prescribed by the **POCA**. In that regard, the appellants contended that the learned trial judge was plainly wrong in finding that the seizure took place

on or about 1<sup>st</sup> January 2019. The appellants further submitted that the learned magistrate was correct in finding that WPC Jules seized the cash in her capacity as a financial investigator of the FIA. There was no re-seizure by the police.

- [20] Mr. Cenac further averred that even if WPC Jules was acting as a police officer, the power of re-seizure under section 29A of the **POCA** as a civil process, is separate and apart from the police's ordinary powers of seizure for investigating crimes under the **Criminal Code**. Counsel for the appellants relied on **Hickman**<sup>20</sup> as authority for the submission that it is not unlawful for law enforcement to use all tools available to them against a person including the power to re-seize under a separate enactment. In any event, in light of the evidence before the learned magistrate, it was not irrational for her to conclude that the seizure of the cash took place on 24<sup>th</sup> April 2019 and in that regard, the learned judge wrongly substituted his own view of the facts which he was not permitted to do in judicial review proceedings.

### **Respondents' submissions**

- [21] The essence of the respondents' submissions was that the learned magistrate had no jurisdiction to make the continued detention order on 26<sup>th</sup> April 2019 as the application was out of time. From the date of the seizure of the cash to the date of the application for the detention order, 8 years, 7 months and 5 days had elapsed, or alternatively, 116 days had elapsed from the date when the criminal proceedings were discontinued. Counsel for the respondents, in citing **Daniel Forde et al v The Attorney General of St. Lucia**,<sup>21</sup> argued that the **POCA** does not give a magistrate the discretion to extend the time within which a continued detention order may be made and she therefore acted *ultra vires* the **POCA**.

### **Seizure**

- [22] A good starting point in resolving this issue is to determine whether a 'seizure' in fact occurred on 24<sup>th</sup> April 2019. At the hearing of the appeal, some debate arose

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<sup>20</sup> See n. 10.

<sup>21</sup> SLUHCVP2017/0024 (delivered 20<sup>th</sup> June 2019, unreported).

between the parties as to the true definition of 'seizure'. Although this point was not canvassed before the learned judge, I shall touch briefly on it as it will aid in the resolution of the issue as a whole. Counsel for the appellants relied on the definition in **Cory & Sons v Burr**<sup>22</sup> which said that "[s]eizure" seems to be a larger term than "capture," and goes beyond it, and may reasonably be interpreted to embrace every act of taking forcible possession, either by a lawful authority, or by overpowering force'; as well as the definition in **United States v Jacobsen**<sup>23</sup> which said that '[a] "seizure" of property occurs when there is some meaningful interference with an individual's possessory interests in that property'.

- [23] Counsel for the respondents relied on the definitions of 'seizure' and 'constructive seizure' set out in **Black's Law Dictionary**<sup>24</sup> as follows:

"seizure; n. The act or an instance of taking possession of a person or property by legal right or process; esp., in constitutional law, a confiscation or arrest that may interfere with a person's reasonable expectation of privacy.

constructive seizure. A manifest intent to seize and take possession of another person's property, usu. either by lawfully acquiring actual custody and control of the property or by posting notice of the property's pending foreclosure."

- [24] Having considered the definitions presented to the Court in light of the circumstances of this case, the only one with which I take issue is the definition given in **Cory & Sons**. That case was decided in 1883 and seems to proffer a limited and antiquated definition of what a seizure entails. Any modern definition of seizure must contemplate that seizure does not at all times require a physical or forcible taking of the item being seized and that it may in some instances be constructive. This Court has already made pronouncements on principles governing constructive possession<sup>25</sup> and in modern times, given the objective and mischief which

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<sup>22</sup> [1881-85] All ER Rep 414.

<sup>23</sup> 466 U.S. 109 (1984).

<sup>24</sup> 8<sup>th</sup> ed., 2004.

<sup>25</sup> See *Levar Devere Browne v Chief of Police SKBMCRAP2021/0003* (delivered 5<sup>th</sup> July 2023, unreported).

legislation such as the POCA seeks to address, it makes good sense and reason that some of these principles extend to the concept of seizure.

[25] Seizure in the traditional sense refers to the act of physically taking possession of property and removing it from the owner's control, often through means such as confiscation, impoundment or attachment, and that property is held by the authorities, usually pending legal proceedings. However, authorities may also effect a seizure by asserting control over property without physically removing it from the owner's possession. Instead, they may impose legal restrictions or limitations that effectively deprive the owner of their rights to use or dispose of the property. This could involve freezing assets, imposing liens, or obtaining court orders that prevent the owner from accessing or benefitting from the property. While the mechanisms differ, the underlying objective remains consistent—to prevent the owner from exercising control over the property in question.<sup>26</sup>

[26] Mr. Fraser contended that WPC Jules never physically seized the cash, and while he acknowledged that it was possible for the seizure to have been constructive, he argued that she took no positive step to assert a seizure and that her purported seizure was null and void. He posited that none of her actions evinced an intention to seize and she should, for example, have given a notice as suggested in the definition of constructive seizure in **Black's Law Dictionary**.

[27] At paragraph 8 of the Affidavit of WPC Jules in response, she said this of the circumstances of her seizure:

“Following my investigations, on 24<sup>th</sup> April 2019, on behalf of the Director of the Financial Intelligence Authority, I formally seized the cash under section 29A of POCA. I applied for a continued detention order on April 25<sup>th</sup> 2019, which was granted by Magistrate Reynolds on April 26<sup>th</sup> 2019.”<sup>27</sup>

Additionally, the order of the learned magistrate dated 26<sup>th</sup> April 2019 reads as follows:

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<sup>26</sup> The concept of 'constructive seizure' was also alluded to in *PetroSaudi Oil Services (Venezuela) Ltd v Clyde & Company LLP* [2021] EWHC 444 (Ch).

<sup>27</sup> See Record of Appeal, p.202.

“UPON HEARING the Application of Detective #565 Dalia Jules of the Royal St. Lucia Police Force attached to the Financial Intelligence Authority.

AND UPON READING the Affidavit of Detective #565 Dalia Jules attached to the Financial Intelligence Authority

AND UPON being satisfied that the condition specified in Section 29A of the Proceeds of Crime CAP 3.04 of the Revised Laws of Saint Lucia are fulfilled hereto.

IT IS HEREBY ORDERED THAT:

- (1) The sum of USD\$252,040.00 and €97,970.00 which was seized from Alain James on the 24<sup>th</sup> day of April 2019 at 2:00 pm at the Major Crime Unit continue to be detained for a period not exceeding three (3) months commencing from the date of this Order.”<sup>28</sup>

[28] WPC Jules stated in her affidavit that she made a formal seizure of the cash. While she did not go into detail as to what that seizure entailed or how she went about it, the learned magistrate was clearly satisfied, upon hearing WPC Jules and reading her affidavit, that she had satisfied the necessary conditions of seizure to warrant the grant of a continued detention order. Perhaps some immediate notice to the respondents would have been required had the cash been in their possession and under their control however this was not the case. The cash was in the possession of the RSLPF and they were well aware of the seizure. Furthermore, the respondents, being party to the impending civil proceedings, were made aware of the seizure in due course. Accordingly, I am satisfied that it was open to the learned magistrate to find that WPC Jules did in fact seize the cash on 24<sup>th</sup> April 2019.

#### **Authority to seize**

[29] The next point of contention between the parties was whether WPC Dalia Jules had the requisite authority to seize the cash. In this regard, the learned trial judge had this to say:

“[62] ...Section 5(2) of the MLPA sets out specifically the functions of the FIA none of which appears to be directly or indirectly related to law enforcement in its strictest sense. Clearly, neither sections 5(1) or 5(2) of

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<sup>28</sup> See Core Bundle, pp. 95-96.

the MLPA confer any power on the FIA to seize or detain proceeds of criminal conduct or to prosecute anyone for an offence in relation to the proceeds of criminal conduct or a money laundering offence. The functions of the FIA are purely investigative and regulatory.

[63] The FIA is a statutory body which has only the powers conferred upon it directly and indirectly by the MLPA and any other statutory enactment...

[64] In the circumstances, the investigative and regulatory functions of the FIA are distinct from the prosecutorial functions of the police and the DPP. Clearly, it was the intention of the legislature to confer on the FIA only an investigative function, which was entirely consistent with the FIA's procedural obligation to conduct an independent investigation. It was never intended that the FIA would have both an investigative role and a prosecutorial function.

[65] In the court's view, the power conferred by section 29A(2) of the POCA on a police officer who is a financial investigator of the FIA to seize cash and apply for its continued detention is necessary and incidental to or consequential upon the performance of the FIA's functions under the MLPA.

[66] However, the fact that a police officer described in section 4(4) of the MLPA provides service to the FIA in the fulfillment of its mandate under the provisions of the MLPA does not translate into the police officer being an employee or agent of the FIA. The police officer's designation remains the same. The police officer still acts under the superintendence of the Commissioner of Police in the exercise of their law enforcement powers on behalf of the State.

[67] This is only logical since the FIA does not possess the power to seize, apply for the detention of seized property, and apply for the forfeiture of detained property in its own name and in its own right. Such powers are not conferred directly on the FIA as established under the MLPA. The purport and effect of section 4(4) of the MLPA quite rightly operates to confer the exercise of such powers on law enforcement, notably the police authorities.

[68] In the premises, the court is inclined to adopt the view that at the time WPC Jules purported to re-seize the property and apply for a detention order pursuant to section 29A (2) of the POCA, she was for all intents and purposes exercising her powers as a police officer and not as an agent of the FIA or acting under the direction and control of the FIA."

[30] Later in the judgment, he went further to say:

"[123]...the FIA is not empowered to perform any law enforcement functions or to act as a law enforcement agency. Therefore, the FIA cannot in its own

right initiate any procedure under the POCA. These law enforcement functions are entirely within the province of the Police and the DPP. The FIA simply was not established for that purpose.

[124] The FIA is a statutory body and it exercises only those powers that are conferred upon it directly or indirectly by the MLPA. On a proper interpretation of the MLPA it cannot be said that the legislature intended that the FIA would have a prosecutorial function in addition to the investigative function similar or consistent with the law enforcement and prosecutorial powers of the police or the DPP.

[125] In the court's view, neither the POCA nor the MLPA authorises the FIA to initiate any proceedings under the POCA which has been the subject of the FIA's investigation or information received or obtained under the provisions of the MLPA or the POCA. In the premises, the FIA could not have seized the property or applied for a detention order pursuant to section 29A of the POCA in its own right.

[126] The combined effect of section 4 of the MLPA and section 29A of the POCA is to give a police officer who is a financial investigator like powers given to any police officer authorised by section 29A of the POCA. However, the powers conferred on a police officer who is also a financial investigator with the FIA by the POCA are conferred on that police officer in light of the preexisting powers held and exercised by him in his capacity as a police officer and not purely in his capacity as a financial investigator under the MLPA.

[127] For the sake of completeness, the legislature has allocated the power to seize and apply for a detention order pursuant to section 29A of the POCA to the police and not to the FIA. All that section 29A and the other relevant provisions of the POCA does is enhance the FIA's investigative function by permitting it to be carried out in certain respects through the medium of a police officer authorised under the Act.

[31] These findings of the learned judge represent an evident conflation of the provisions of the **MLPA** and the provisions of **POCA**, which in my view led him into error. The FIA is a statutory body established in October 2003 pursuant to the provisions of the **Financial Intelligence Authority Act**<sup>29</sup> and continued under the **MLPA**. While the **MLPA** does outline the functions of the FIA, it does not do so in a vacuum. The FIA is the agency responsible for recovering, analysing, obtaining and disseminating information which relates to money laundering and other proceeds of crime. It is

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<sup>29</sup> No. 17 of 2002.

guided by a suite of legislation inclusive of the **MLPA**, **POCA**, and the **Anti-Terrorism Act**,<sup>30</sup> all of which bestow it with certain powers and obligations.

[32] The issues that have arisen in this case all surround the **POCA** which, although related, is separate and distinct from the **MLPA**, and which clothes the FIA with different powers and responsibilities. The powers which WPC Jules sought to exercise fell entirely within the scope of the **POCA** and the learned judge ought not to have resorted to a consideration of the provisions of the **MLPA**. Section 29A was not only a later insertion into the **POCA** but that insertion was subsequently amended to allow financial investigators of the FIA to seize and detain cash. This, to me, indicates a clear legislative intent to broaden the powers of the FIA beyond the scope originally envisioned by the **MLPA**. It was therefore not open to the learned judge to ignore the explicit power given to financial investigators of the FIA by section 29A in the absence of any challenge to the validity or legality of the section.

[33] The learned judge himself, at paragraph 63, noted that because the FIA is a statutory body it only has 'the powers conferred upon it directly and indirectly by the **MLPA and any other statutory enactment**' (emphasis mine). This Court need not even have recourse to the rules of statutory interpretation to determine that the FIA is empowered to seize and detain the proceeds of criminal conduct as it was so clearly granted that power by section 29A of **POCA** as amended. The learned judge accordingly committed an error of law by disregarding the explicit provisions of the **POCA** and relying on the provisions of the **MLPA** to ascertain the extent of the powers of the FIA.

[34] The extracts above also show that the learned judge took issue with WPC Jules' designation as a financial investigator with the FIA. He found that although she identified herself as a 'woman police constable attached to the Financial Intelligence

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<sup>30</sup> Cap. 3.16 of the Revised Laws of Saint Lucia.

Authority as a Financial Investigator’,<sup>31</sup> she was at all times acting under the superintendence of the Commissioner of Police and in her capacity as a police officer. In this regard, it is my view that the learned judge incorrectly interpreted section 29A.

[35] Section 29A of the **POCA** gives authority to seize and detain cash to ‘[a] police officer, of the rank of corporal or above, or a financial investigator of the Financial Intelligence Authority’. The section makes a clear distinction between a police officer and a financial investigator, which to my mind suggests that the two roles are not meant to be synonymous, i.e. it is bestowing a power on two distinct categories of persons. Although WPC Jules is a police officer, at the time of the seizure she was serving in her capacity as an investigator of the FIA and acting on behalf of its Director as evidenced in her affidavit. In attributing her actions to falling under the purview of her regular duties as a police officer, the learned judge ignored the criteria for a person to even be appointed as a financial investigator. Under the **MLPA**, financial investigators must be ‘police officers, customs officers, inland revenue officers or persons from the private sector having suitable qualifications and experience to serve as financial investigators’.<sup>32</sup> In fact, in some jurisdictions financial investigators are exclusively police officers.

[36] If it is expected, albeit mandated, that financial investigators of the FIA are, *inter alia*, police officers, it follows that upon such a police officer taking on that designation, they would be authorised to carry out the statutory functions of a financial investigator and that they would be acting in that capacity when furthering the business of the FIA. Therefore, a police officer above the rank of corporal, irrespective of his affiliation to the FIA or lack thereof would be entitled to seize cash under section 29A of the **POCA**, as would any financial investigator of the FIA, irrespective of their rank or profession. Accordingly, WPC Jules being a financial investigator attached to the FIA was authorised to seize the cash pursuant to section

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<sup>31</sup> See Record of Appeal, p. 125.

<sup>32</sup> Section 4(3)(b).

29A. Furthermore, as she was not at or above the rank of corporal, she could not have purported to seize under the section and could only have effected the seizure in her capacity as a financial investigator.

[37] Finally, the learned judge also attacked WPC Jules' authority to seize on the basis that she did not satisfy the requirements of section 29A to properly effect a seizure. He said:

"[105] In the court's considered view, the reasonable grounds for suspicion contemplated by section 29A of the POCA must be that of the police officer or financial investigator of the FIA who makes the application and who in fact seized the property. In addition, any reasonable grounds for suspicion must be seen to be the police officer's or financial investigator's independent thought process unpersuaded by any directive from any other person or authority.

[106] In other words, it would have been improper for the magistrate to act on WPC Jules' evidence of reasonable grounds for suspicion if it was made to appear that WPC Jules' seizure of the property and the subsequent application for a detention order were actuated by the direction of any other person, entity, or authority, and was not triggered by her own personal and independent reasonable grounds for suspicion.

...

[114] Undoubtedly, section 29A(2) required that the reasonable grounds for suspicion be subjective to the extent that the police officer personally has reasonable grounds for suspicion. Therefore, if the police officer knows nothing of the case and acts on orders from another person or police officer who perhaps does have such grounds, the police officer in (sic) not protected by section 29A(2). This interpretation of section 29A(2) is in keeping with the principle of the independence and accountability of the individual police officer.

[115] Therefore, in the present case, the only relevant matters were those present in the mind of WPC Jules. The information which caused WPC Jules to be suspicious that the property directly represented any person's proceeds of criminal conduct or was intended by any person for use in any criminal conduct and that the continued detention of the property was justified while its origin or derivation was further investigated or consideration was given to the institution, whether in Saint Lucia or elsewhere, of criminal proceedings against any person for an offence with which the property was connected would have had to be in existence to the knowledge of WPC Jules and must have been vested in WPC Jules who engaged in the decision to apply for the detention order and not in her superior officers or any other authority.

[116] It is the court's considered view, that given the independent responsibility and accountability of a police officer whether a financial investigator or not, implied by the provisions of section 29A of the POCA, it follows that the mere fact that a police officer has been instructed by a superior officer to apply for a detention order is not capable of amounting to reasonable grounds for suspicion within the meaning of section 29A of the POCA.

[117] Therefore, in respect of a statute like the POCA vesting an independent discretion in a police officer, and requiring them to personally have reasonable grounds for suspicion it would be surprising if commands from a superior officer would make any difference. It would be contrary to the principle underlying section 29A which makes a police officer individually responsible for the application and accountable in law.

[118] To simplify the matter, section 29A relates to what is in the mind of the police officer exercising the power to apply for a detention order. It is in part a subjective test because the police officer must have formed a genuine suspicion in her own mind that the matters required by section 29A existed. In part it is also objective, because there must also be reasonable grounds for the suspicion which she had formed. All that is required is that the grounds be examined objectively and they be judged at the time when the power is being exercised. It does not matter that at the time the police officer thought that the grounds were reasonable. The question is whether a reasonable man would be of that opinion, having regard to the information which was in the mind of the police officer. It is the police officer's own account of the information which he had which matters, not what was observed or known to anyone else. The information acted upon by the police officer need not be based on his own observation, as he is entitled to form a suspicion based on what he has been told. The question whether the information provided reasonable grounds for the suspicion depends on the source of the information and its context seen in light of the whole surrounding circumstances."

[38] Although this was not an issue which formed the subject of the judicial review proceedings, the learned judge gave it significant consideration in his judgment and I will briefly address it. All that is required under section 29A of the **POCA** is for the financial investigator or police officer seizing cash to have 'reasonable grounds for suspecting that it directly or indirectly represents any person's proceeds of criminal conduct or is intended by any person for use in any criminal conduct'. As Blenman JA (as she then was) found in **The Labour Tribunal et al v St. Lucia Electricity**

**Services Limited**,<sup>33</sup> the fundamental principle of statutory interpretation is that where the words, in their natural and conventional sense, are clear then they must prevail. It is not for the judiciary to ignore the language of the legislature, attach and accept a meaning that the words simply do not have.

- [39] To put it simply, the learned judge erred in his interpretation of section 29A of the **POCA** in finding that anything more than reasonable grounds for suspecting that cash seized under the section were the proceeds of criminal conduct was required. The **POCA** does not include any requirement that the reasonable grounds or reasonable suspicion be that of the seizing officer only. In fact, it was likely contemplated that financial investigators, who are not all police officers, would be operating on the evidence presented to them by police officers who may have previously seized the cash or who, through their own investigations, have reason to believe that the cash represents proceeds of criminal conduct. If the financial investigator is satisfied, on the basis of that evidence, that there are reasonable grounds for such a suspicion, that is sufficient for the purposes of the **POCA**. Section 29A requires nothing further and certainly not to the degree that the learned judge has suggested. The facts of this case in short were that the respondents were found in a vehicle in the early hours of the morning carrying almost 1 million EC dollars in foreign currencies. Based on these circumstances, and the additional evidence of the original seizing officers, there was enough evidence for WPC Jules to form her own reasonable suspicion that the cash formed the proceeds of criminal conduct and the learned judge erred in substituting his assessment for that of the magistrate and in finding otherwise – a course not open to him on review.

#### **Timeframe for granting continued detention order**

- [40] Having concluded that WPC Jules did in fact seize the cash on 24<sup>th</sup> April 2019 and that she had the authority to so seize, the only conclusion at which I can arrive is that the learned magistrate, in granting the continued detention order on 26<sup>th</sup> April 2023, being the first occasion of seizure under the **POCA**, was not acting ultra vires

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<sup>33</sup> SLUHCVP2019/0002 (delivered 8th April 2020, unreported).

the **POCA** in that she granted the detention order within 72 hours of the seizure of the cash, as is required by section 29A.

[41] Counsel for the respondents argued that the learned magistrate was out of time by at least 116 days. Following the discontinuance of the criminal proceedings on 31<sup>st</sup> December 2018, he contends that a continued detention order ought to have been made within 72 hours of that date. This argument, to my mind, equates to counsel for the respondents contending that some sort of implied seizure, presumably under the **POCA**, took place immediately following the discontinuance. This is surprising as it runs contrary to his argument that seizure requires some demonstrable act and there is no evidence of any other seizure under the **POCA** prior to 24<sup>th</sup> April 2019. Furthermore, in the absence of a purported seizure under the **POCA**, the 72 hour time frame does not even arise. That timeframe emanates from section 29A and is only of any relevance following a seizure of cash pursuant to **POCA**.

[42] The learned judge appears to have fallen into this same error in concluding that 'the grant of a detention order to WPC Jules was contrary to the provisions of section 29A of the **POCA**, particularly in light of the court's finding that the property had been unlawfully detained by the police authorities for a period in excess of 72 hours stipulated by the provisions of section 29A of **POCA**'.<sup>34</sup> This error may also have been brought about by the learned judge's position that WPC Jules was at all times acting as a police officer and could not, as a police officer herself, seize from the police. Even if this were so, and I have already found it not to be, then no seizure under the **POCA** would have taken place at all, particularly as WPC Jules was below the rank of corporal, and there would have been no reason for the 72-hour timeframe to become relevant. Accordingly, the learned judge erred in finding that the learned magistrate acted ultra vires the **POCA** by granting the continued detention order on 26<sup>th</sup> April 2019. She granted the detention order within the 72 hours stipulated by the statute, namely the **POCA** and there was no attempt to enlarge time, as

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<sup>34</sup> See para. 169 of the judgment in the court below.

Mr. Fraser suggested. She made no error of law and her decision was not so unreasonable or irrational that it ought to have been quashed on a judicial review.

**Issue 2: Whether the police were in lawful possession of the cash between the period 1<sup>st</sup> January 2019 and 23<sup>rd</sup> April 2019 following the prosecution's discontinuance of the criminal trial and whether this was a relevant consideration of the learned magistrate in arriving at her decision to grant the continued detention order**

**Appellants' submissions**

- [43] On this issue, the appellants contended that the police were in lawful possession of the cash during the period from 1<sup>st</sup> January 2019 to 23<sup>rd</sup> April 2019. Counsel for the appellants relied on the case **Ghani v Jones**<sup>35</sup> as authority for the proposition that the police may retain property for so long as is necessary in furtherance of their investigations. They submit that this common law principle was later crystallised into the **PACE** legislation and was subsequently applied in cases such as **Marcel**. The appellants suggested that Saint Lucia, which follows the English common law from which the provisions emanated, inherited that common law principle and to find otherwise would be anti-policing and anti-law enforcement.
- [44] Accordingly, it is the appellants' submission that the second appellant had placed before the first appellant sufficient evidence to support the continued retention of the cash. This included the enquiries made by the police about the discontinuance of the criminal proceedings as well as the seeking of advice from the Attorney General about possible alternative law enforcement actions, ultimately leading to the seizure of the cash by WPC Jules under section 29A of the **POCA**.
- [45] On the question of whether the lawfulness of the retention of the cash was a relevant consideration, the appellants submitted that once the first appellant found that a seizure under section 29A of the **POCA** had taken place, she had to consider whether the period of retention prior to seizure tainted that lawful seizure with unlawfulness. They further stated that even if this was an irrelevant consideration, it

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<sup>35</sup> [1970] 1 QB 693.

would affect the reasonableness of the decision and not the question of jurisdiction. Therefore, once she was satisfied that she had jurisdiction, she could consider whether, if the retention was unlawful, she still ought to grant a continued detention order in the circumstances. This being a question of fact, the learned judge was not entitled to disturb her finding.

### **Respondents' submissions**

- [46] Counsel for the respondents on the other hand stated that on the discontinuation of the criminal proceedings, the continued detention of the cash by the police became unlawful as the police no longer had a legal reason for said detention as the evidentiary purpose for which the cash was detained no longer existed. The respondents also indicated that the evidence emanating from the affidavits of the police officers suggested a desire to not release the cash to the respondents, thus making it an abuse of power. The respondents further contended that once the criminal charge was discontinued against the respondents, at law the right to possession of the cash was automatically vested in the respondents and there was no need for an order of restitution.

### **Discussion**

- [47] Perhaps the starting point in determining the lawfulness of the police's retention of the cash from 1<sup>st</sup> January 2019 to 23<sup>rd</sup> April 2019 is an examination of the principles enunciated in **Ghani v Jones**. Lord Denning MR devised a 5-pronged approach to determine whether the police are entitled to seize and retain property. He said:

"We have to consider, on the one hand, the freedom of the individual his privacy and his possessions are not to be invaded except for the most compelling reasons. On the other hand, we have to consider the interest of society at large in finding out wrongdoers and repressing crime. Honest citizens should help the police and not hinder them in their efforts to track down criminals. Balancing these interests, I should have thought that, in order to justify the taking of an article, when no man has been arrested or charged, these requisites must be satisfied:

First: The police officers must have reasonable grounds for believing that a serious offence has been committed - so serious that it is of the first importance that the offenders should be caught and brought to justice.

Second: The police officers must have reasonable grounds for believing that the article in question is either the fruit of the crime (as in the case of stolen goods) or is the instrument by which the crime was committed (as in the case of the axe used by the murderer) or is material evidence to prove the commission of the crime (as in the case of the car used by a bank raider or the saucer used by a train robber).

Third: The police officers must have reasonable grounds to believe that the person in possession of it has himself committed the crime, or is implicated in it, or is accessory to it, or at any rate his refusal must be quite unreasonable.

Fourth: 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. If a copy will suffice, it should be made and the original returned. As soon as the case is over, or it is decided not to go on with it, the article should be returned.

Finally: The lawfulness of the conduct of the police must be judged at the time, and not by what happens afterwards.”

[48] The respondents have never challenged the legality of the initial seizure of the cash by the police on 26<sup>th</sup> May 2010, nor the reasonableness of their suspicion that the cash was the fruit of a crime or that the respondents were the persons who committed or were implicated in that crime. What is being challenged is the police’s retention of the cash following the discontinuance of the criminal proceedings on 31<sup>st</sup> December 2018 up until it was eventually seized by the FIA under the **POCA** regime on 24<sup>th</sup> April 2019. As it pertains to the fourth limb of the test, the learned judge found that there was ‘no evidence that any investigation was carried out by the police authority in the interval between discontinuance and the re-seizure of the property by WPC Jules. Therefore, the continued detention of the property by the police was clearly without any lawful authority...’.<sup>36</sup>

[49] The learned magistrate on the other hand, in reliance on **Marcel**<sup>37</sup> found that following a discontinuance there is no automatic duty to release property to the one

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<sup>36</sup> See para. 152 of the judgment in the court below.

<sup>37</sup> See note 8.

from whom it was seized but that the test of police power to retain seized goods is one of necessity. She also considered the case of **R (on the application of Iqbal) v South Bedfordshire Magistrates Court**<sup>38</sup> which she found to be similar to the case at bar. In **Iqbal**, the police suspected the claimant of money laundering and seized cash from him under PACE in May of 2009. The cash was detained under section 22 of PACE which confers power to detain 'so long as is necessary in all the circumstances'. On 1<sup>st</sup> October 2009, a decision was taken not to proceed with criminal charges and the claimant was informed of this on 3<sup>rd</sup> October 2009. The Economic Crime Unit (similar to the FIA) re-seized the cash on 9<sup>th</sup> October 2009 under the Proceeds of Crime Act 2002. On the question of whether cash seized by the police under PACE may lawfully be re-seized under the Proceeds of Crime Act 2002 by a different law enforcement agency, the court found that:

"Cash seized under s19 of PACE could subsequently be re-seized under s294 of POCA. Section 22 of PACE permitted property to be retained for a short period while the position regarding seizure was considered. If the decision was taken to apply to the court to retain the cash under section 294 of POCA within a reasonable time, which should be short, then section 294 could be exercised without returning the property."<sup>39</sup>

[50] The learned magistrate found the case to be entirely on point and indistinguishable from the instant matter save for the point of time. The time taken for a re-seizure in the instant case (4 months) exceeded the period of time taken in **Iqbal** (7 days). However, she considered the affidavits of the investigating officers of the RSLPF and determined that they acted responsibly in the absence of any court order for restitution or any application for release from the respondents. She was satisfied on the evidence before her that the police had to liaise with the prosecution to understand the basis of the discontinuance of the criminal proceedings and seek advice on whether the matter was amenable to alternative charges. She found that they exercised due diligence and acted reasonably in all the circumstances.<sup>40</sup> Having regard to the findings of the learned magistrate, it was not open to the

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<sup>38</sup> [2011] EWHC 705 (Admin).

<sup>39</sup> Ibid.

<sup>40</sup> See Record of Appeal, pp.175-176.

learned judge, on an application for judicial review, to disregard her findings of fact on the basis of the evidence which was before her, and to substitute his own. This will be discussed in greater detail below.

[51] The learned judge also criticised the learned magistrate's reliance on the cases of **Marcel** and **Iqbal**. He said:

"[95]... According to Mr. Fraser, the magistrate applied the wrong principles when she arrived at the conclusion based on principles of necessity and the reasonableness of the police's conduct.

[96] It appears from the magistrate's ruling that she placed great weight and reliance on the case law previously cited herein that dealt with the provisions of section s 19 and 22 of PACE. It seems that the magistrate mistakenly or erroneously imported the reasoning in the case law as it pertained to PACE in arriving at her decision as to the lawfulness of the continued detention of the property by the police subsequent to 31st December 2018. It is on this basis that the court accepts Mr. Fraser's argument.

[97] It is clear that the decision in **Iqbal** is entirely distinguishable from the present case because in the former there was a distinct statutory framework which made detention of the property by the police justifiable in the circumstances provided for in section 22 of PACE; whereas in the latter case, there was no statutory provision similar to section 22 of PACE which the magistrate could have applied in arriving at her decision that the property was lawfully detained by the police after the DPP's discontinuance of the criminal proceedings against the claimants.

[98] In the circumstances, it follows that the police were obliged to return the property to the claimants in whose possession it had been prior to its seizure. By extension, WPC Jules' could not have re-seized what was in the unlawful possession of the police. In order for WPC Jules' seizure pursuant to section 29A of POCA to have been lawful the property should have first been in the possession of the claimants..."

[52] It was made clear by this Court in **Earl Hunte v The Queen**<sup>41</sup> that PACE was being applied in Saint Lucia up to 1<sup>st</sup> November 2005 when the **Evidence Act**<sup>42</sup> came into force. While PACE is no longer applicable to Saint Lucia, the Court found an obvious

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<sup>41</sup> SLUHCRA2006/012 (delivered 19th January 2011, unreported).

<sup>42</sup> Cap. 4.15 of the Revised Laws of Saint Lucia.

implication that the legislature gave its blessing to the PACE Codes of Practice – Code D to continue so far as practicable, subject to or until displaced by any existing codes of practice made pursuant to section 168(b) of the **Evidence Act**.

[53] Although PACE can no longer be applied in this jurisdiction, it must be highlighted that the provisions of PACE are, in large part, codifications of the common law of England which has and continues to form part of the laws of Saint Lucia. The learned magistrate's reliance on cases applying PACE does not imply a direct application of PACE to the present case. Instead, her reliance on those cases indicates a consideration of principles such as 'necessity' and 'reasonableness' which are grounded in the common law as can be seen in cases such as **Ghani v Jones**, as well as in good police practices which balance the rights of the individual against the welfare of the public.

[54] I find that in all the circumstances, it was open to the learned magistrate to arrive at a finding that the police were in lawful possession of the cash during the period 1<sup>st</sup> January 2019 to 23<sup>rd</sup> April 2019. She relied on relevant and appropriate cases and her conclusion was justified in light of those authorities and the investigations of the police which she accepted to have been necessary and proportionate. To my mind, having considered cases such as **Iqbal** and **Hickman**, as well as the case of **Gough and another v The Chief Constable of the West Midlands Police**,<sup>43</sup> the police do have somewhat of a 'grace period' to return cash following a discontinuance or an acquittal of a defendant.

[55] Law enforcement authorities ought to have an opportunity to assess various factors including their ability to defend civil proceedings for the return of the cash, whether the cash can or ought to be seized for the purposes of civil proceedings or any other alternative proceedings, and to facilitate the return of the cash if appropriate, which, contrary to the arguments by counsel for the respondents, cannot practically or reasonably occur immediately after the discontinuance or acquittal. What is a

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<sup>43</sup> [2004] EWCA Civ 206.

reasonable period of detention will depend on the circumstances of each case and what investigations or arrangements have to be made in that particular case.

[56] I now turn to the question of whether the lawfulness of the possession of the cash was a relevant consideration of the learned magistrate in arriving at her decision to grant the continued detention order. At paragraph 168 of the judgment in the court below, the learned judge stated:

“However, in the court’s view, the learned magistrate erred in law when she found that the property was lawfully detained by the police authorities. The infusion of concepts of reasonableness and necessity in line with the provisions of PACE as espoused in the decided case law adverted to by the learned magistrate rendered the magistrate’s decision unlawful on the basis that she took into account irrelevant considerations and thereby fell outside the ambit of the jurisdiction conferred on her by the provisions of section 29A of POCA. The magistrate was constrained by the provisions of section 29A of POCA and it was therefore forbidden for her to look outside of the statutory enactment. In the circumstances, the learned magistrate having applied the provisions of PACE amounted to an error of law and ultimately ultra vires the provisions of section 29A of POCA”

The learned judge also stated at paragraph 147 that:

“Second, section 29A of the POCA does not require the magistrate to consider the reasonableness of the conduct of the police. What the statute required was that the police do not retain property beyond 72 hours of its seizure before obtaining a detention order pursuant to section 29A. In the premises, the magistrate was wrong to factor the reasonableness of the conduct of the police in determining the lawfulness of their detention of the property beyond the period prescribed by section 29A. The question of the reasonableness of the conduct on the part of the police did not fall to be considered at the time.”

[57] To my mind, once the learned magistrate determined that a seizure under section 29A of the **POCA** did in fact take place on 24<sup>th</sup> April 2019, it was open to her to consider whether the period of retention prior to the seizure tainted that seizure with unlawfulness. If she did find the seizure to be unlawful, that would have influenced the considerations to which she had regard in determining whether to grant the continued detention order. The learned judge himself addressed his mind similarly in finding that ‘[t]he purported re-seizure of the property by WPC Jules did not cure

the unlawfulness of the initial detention by the police authorities'.<sup>44</sup> I find that this was a reasonable consideration in all the circumstances and did not constitute an excess of jurisdiction such that the learned judge should have interfered. It seems to me that the learned judge's reasoning was flawed and continued throughout to be so flawed by his treatment of WPC Jules as a police officer simpliciter and his decided approach not to treat with her actions and evidence pursuant to her role under the **POCA** despite the uncontroverted evidence before the learned magistrate of the capacity in which she acted. This was an approach not open to him in these proceedings. His remit was not to act as an appellate body.

### **Judicial review**

[58] The extract from **Halsbury's Laws of England** set out at paragraph 17 above collates the leading authorities' position on the nature of judicial review as well as the exercise a judge on an application for judicial review must conduct. The judge must consider the three grounds underscoring a judicial review: illegality, irrationality and procedural impropriety. First, he must assess whether the decision-maker acted within their legal authority; second, the judge must determine whether the decision was irrational or unreasonable in the Wednesbury sense such that no reasonable authority could have ever come to it; and finally, the judge must investigate whether there were any procedural irregularities in the decision-making process.

[59] In **Hugh Wildman v The Judicial and Legal Services Commission**,<sup>45</sup> Gordon JA on an appeal from a judicial review of a decision of the Judicial and Legal Services Commission said:

"I am, therefore, of the clear view that the decision of the Commission was in no sense aberrant; it was clearly a decision that a commission faced with the information with which the Commission was faced could come to. I remind myself that the function of the court in judicial review is not to act as an appellate forum from the body whose decision is being challenged. If the process was fair and the decision not deviant, then the order sought under the judicial review must be refused."<sup>46</sup>

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<sup>44</sup> See para. 169 of the judgment in the court below.

<sup>45</sup> Grenada Civil Appeal No. 9 of 2006 (delivered 1<sup>st</sup> March 2007, unreported).

<sup>46</sup> Ibid, para. 31.

[60] Rawlins JA (as he then was), in concurring with Gordon JA, also pointed out that the purview of a court on an application for judicial review is quite narrow. The court was not involved in a review of the merits of the decision of the Commission. It could not therefore determine the suitability or otherwise of the appellant for the Office of Attorney General, particularly in the absence of a trial process in which allegations and evidence were not tested. That determination fell within the purview of the Commission. The jurisdiction of the court was to review the decision making process of the Commission in the light of the applicable legal principles for such a review and the court found that the decision making process of the Commission fell within the compass of those principles.<sup>47</sup>

[61] Furthermore, Webster JA in **Attorney General v Kenny D Anthony**<sup>48</sup> stated that:

“It is now settled that the Courts have jurisdiction to question a decision made by a public authority. The jurisdiction is purely supervisory in the sense that the Court’s role is limited to ensuring that the decision was lawfully made. The Court cannot act as an appellate body to question the decision on the merits, even if it thinks that the wrong decision was made.”

[62] It is well settled and the authorities are clear that in conducting a judicial review of the decision of a statutory or public body, a judge’s jurisdiction is very narrow and is limited to evaluating the decision solely within the framework of administrative law principles. This entails considering the grounds of illegality, irrationality or Wednesbury unreasonableness, and procedural impropriety. It appears to me that the learned judge in the instant case failed to adhere to the rules of this well established exercise. In his judgment, he made little to no reference to the principles or cases which ought to guide a judge on a judicial review. Instead, he treated it as an original hearing of the matter and went about his own fact finding mission while impugning the facts accepted by the learned magistrate. It was simply not open to him to arrive at his own set of facts, particularly as he did not have the benefit of hearing the evidence of the parties. In purporting to assess the lawfulness of the

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<sup>47</sup> Ibid, para. 41.

<sup>48</sup> SLUHCVP2009/031 (delivered 14th June 2010, unreported).

decision of the learned magistrate and determine whether she exceeded her jurisdiction, the learned judge went beyond his supervisory role and exceeded his own jurisdiction.

[63] After conducting a thorough examination of the findings of fact and conclusions reached by the learned judge, it is apparent to this Court that the learned judge erred in principle by failing to take into account relevant factors and considerations and by taking into account irrelevant factors and considerations. As a result of this error, his judgment exceeded the generous ambit within which reasonable disagreement is possible and was blatantly wrong such that this Court must interfere. As has been discussed above, the learned magistrate acted entirely within the confines of her jurisdiction pursuant to section 29A of **POCA** in granting the continued detention order on 26<sup>th</sup> April 2019.

[64] Additionally, she did not err in law in finding that the police lawfully detained the cash during the period 1<sup>st</sup> January 2019 to 23<sup>rd</sup> April 2019 such that her finding ought to have been quashed on a judicial review. Her decision was not illegal as she understood and gave effect to the law that regulated her decision making power; her decision was not irrational or unreasonable in the *Wednesbury* sense such that no reasonable person could have made it; and her decision making process was not procedurally improper. Consequently, the learned judge erred in setting aside her decision such that this Court must restore it.

### **Disposition**

[65] I would accordingly make the following orders:

- (1) The appeal is allowed and the judgment of the learned judge is set aside in its entirety.

- (2) The appellants shall have their costs in this Court and in the court below, such costs to be assessed by a Judge or Master of the High Court unless agreed within 21 days.

I concur.

**Trevor Ward**

Justice of Appeal

I concur.

**Esco Henry**

Justice of Appeal [Ag.]

**By the Court**

**Chief Registrar**