

THE EASTERN CARIBBEAN SUPREME COURT

SAINT LUCIA

**IN THE HIGH COURT OF JUSTICE
(CIVIL)**

CLAIM NO: SLUHCV2023/0249

BETWEEN:

MARTINUS ALEXANDER

Claimant

and

THE ATTORNEY GENERAL

Defendant

Before:

The Hon. Mde. Justice Kimberly Cenac-Phulgence

High Court Judge

Appearances

Mr. Horace Fraser of Counsel for the Claimant

Mr. Seryozha Cenac of Counsel for the Defendant

2024: July 10; (Trial)

2026: March 6 (Decision)

JUDGMENT

[1] **CENAC-PHULGENCE J:** By this claim the claimant, Mr. Martinus Alexander ("Mr. Alexander") seeks against the defendant, the Attorney General of Saint Lucia ("the AG") the following relief: (1) an order for the release of the vessel, "JUSTIFY" ("the vessel") and its engines (2) alternatively, an order for payment of the value of the vessel and its two engines (3) special damages in the sum of \$151,140.00 (4) general damages for trespass (5) exemplary damages or alternatively, punitive damages (6) costs and (7) interest.

[2] This claim arises out of the seizure and subsequent detention by the police of the vessel together with nineteen (19) bags of conch, and five (5) barrels of fuel found thereon belonging to Mr. Alexander. It must be noted that by the trial of this matter the vessel and its engines had been returned to Mr. Alexander thus reliefs (1) and (2) are no longer in issue.

Background

The Claimant's case

- [3] Mr. Alexander is the owner of a fishing boat more particularly described as a "Pirogue" painted red, blue and green, measuring 25 feet by 6 feet and outfitted with two Yamaha 85 horsepower engines. He was the holder of a local fishing vessel license number 001602 issued by the Ministry of Agriculture, Fisheries, Physical Planning, Natural Resources and Co-operatives, Department of Fisheries and his license was valid at the time of seizure.
- [4] Mr. Alexander avers that on 25th March 2023, the vessel was moored at the Fisheries Complex in Praslin Bay, the official operating site of the vessel with a load of 4,500 pounds of *Strambus Gigas* (conch) on board when a team of four (4) police officers led by Sergeant 711 Lester Byron ("Sgt. Byron") entered the vessel, unlawfully seized and took away the conch without any explanation or legal process being engaged.
- [5] On 27th March 2023, the police officers returned to Praslin Bay seized, carried away and detained Mr. Alexander's vessel and five barrels of fuel which were stored on the boat again without any explanation to him or legal process being engaged.
- [6] Mr. Alexander was not arrested neither was he charged with committing any offence nor had he received any communication from the police officers who committed the acts which he claims were unlawful.
- [7] On 18th April 2023, Mr. Alexander through his Attorney at Law caused a letter to be written to the Commissioner of Police demanding the release of the vessel and for payment of compensation for his losses. He says that the Commissioner of Police omitted or refused to reply to the letter and his boat remained in the custody of the Police. On 18th April 2023, Mr. Alexander also caused notices of intended suit to be served on Sgt. Byron and the Commissioner of Police.

[8] On 24th July 2023, Mr. Alexander caused a notice of application to be filed in the High Court seeking the release the vessel to him and on 9th October 2023 it was ordered by consent that the Commissioner of Police immediately release the vessel to him.

[9] Mr. Alexander contends that the actions of the police officers seizing and detaining his vessel and confiscating his goods constitute oppressive official actions and are blatant abuses of power as a result of which he has suffered loss.

The Defendant's case

[10] The AG has admitted that Mr. Alexander is the owner of the vessel and was the holder of a local fishing vessel license which was in force though at the time of the alleged seizure, Mr. Alexander did not assert his ownership of the vessel.

[11] According to the defendant, on 25th March 2023, at about 8 p.m., intelligence was received which indicated that a large amount of cash was to come into Saint Lucia from Martinique destined for Praslin. Sgt. Byron of the Royal Saint Lucia Police Force (RSLPF), along with three (3) other members of the RSLPF, proceeded to Praslin Bay to intercept. At 11:50 p.m. the team of police officers left their position at Praslin Bay and proceeded to the Fisheries Complex.

[12] At the Fisheries Complex they came upon a known drug trafficker, Gideon Charlery, an unlawful immigrant from Saint Vincent and the Grenadines named Onaldo Gourd, Mr. Alexander, who is known to law enforcement, two men who sought to escape by jumping into the water (but were caught and detained) and two other men on vessels next to the jetty. The team of officers discovered that the jetty and surrounding area contained a wheelbarrow containing a backpack which contained cannabis, a box containing 6000 Camel branded cigarettes and a travel bag, a white bucket and a black backpack which also contained cannabis. The total cannabis recovered was twenty point four six kilograms (20.46 kilos).

- [13] Mr. Alexander's vessel was the only vessel with warm engines and it had five (5) barrels of fuel on board. Nineteen (19) polythene bags containing conch were found on the vessel. The conch and the keys to the vessel were seized.
- [14] Mr. Alexander, along with the other men, were informed that the police had reason to believe that they were on the jetty for an unlawful purpose. Mr. Alexander asserted that he had gone to Praslin to pick up the conch and had the necessary documents in his vehicle. Sgt. Byron, upon searching Mr. Alexander's vehicle obtained documents dated 8th and 9th March 2023 which Mr. Alexander asserted were obtained for the importation of the conch.
- [15] Sgt. Byron was of the view that documents for the importation of conch must be dated the day on or before the day they are landed and declared at Customs and that the dates on Mr. Alexander's documents of 8th and 9th March 2023 were for a previous shipment. Accordingly, the conch discovered on the vessel was an unlawful importation. Mr. Alexander, whilst at the Fisheries Complex, was informed that the conch would be seized due to its unlawful importation. On 27th March 2023, the police officers returned to the fishing complex at Praslin Bay and the vessel was towed from Praslin Bay and secured at the Police Marine Unit. Sgt. Byron believed that the vessel was used in unlawful activity and was likely to be used to commit further offences.
- [16] The defendant avers that there was reasonable cause to seize and destroy the conch and to seize and detain the vessel as there was reason to believe that the conch was unlawfully imported, and the vessel was the instrument of conveyance for that unlawful importation and the potential commission of a drug trafficking offence. The matter of the unlawful importation of the conch and the seizure of the vessel were referred to the Customs Department for their determination and action.
- [17] According to the AG, Mr. Alexander has not suffered any loss as alleged and is not entitled to any of the relief which he seeks.

The Issues

- [18] The issues for determination in this matter are:
- (i) Whether the police had reasonable and probable cause to seize and detain Mr. Alexander's property?
 - (ii) Whether the seizure and detention of Mr. Alexander's property was unlawful?
 - (iii) Whether Mr. Alexander is entitled to damages for the unlawful seizure and detention of his properties and consequential loss?
 - (iv) Whether Mr. Alexander is entitled to the awards of exemplary and/or punitive damages?

The Evidence

- [19] Mr. Alexander was the only witness called in support of his claim. By his evidence he is a resident of Union, Balata in the Quarter of Castries and is the owner of the vessel and the holder of a valid local fishing vessel license.
- [20] Mr. Alexander's evidence is that on 25th March 2023, his boat was moored at its official operating site at Praslin with a load of 4,500 pounds of conch on board when a team of four (4) police officers led by Sgt. Byron entered the vessel and took away the conch without any explanation being given to him.
- [21] When cross examined, Mr. Alexander could not recall how many bags of conch were seized, he said that Sgt. Byron did not count the bags in his presence, but he confirmed that the conch belonged to him. Mr. Alexander gave Sgt. Byron his documents for the conch when asked about the frozen conch. According to Mr. Alexander these were the documents concerning the conch and having paid the requisite customs duty the conch on the vessel was legally and lawfully imported.
- [22] According to Mr. Alexander, he is a small businessman engaging in fishing, purchasing and selling conch and other sea foods. On 25th March 2023, he had a quantity of conch on the vessel which he had purchased with the intention of selling.

- [23] In cross-examination, Mr. Alexander said that the conch did not come from Saint Vincent and the Grenadines on 25th March 2023 but it had come around 9th March 2023. It was on his vessel on 25th March 2023 because they were taking it to Gros Islet. It came through Vieux Fort around 9th March 2023 and was transported from Vieux Fort and stored at Praslin. He was the one who imported the conch, he required an import license to import conch but could not recall whether he had exhibited the import license.
- [24] According to Mr. Alexander the value of the conch should also have been part of the documents he exhibited. When further cross-examined, Mr. Alexander agreed that the importer of the conch on the documents was Seafood Masters, and the exporter was Union Seafood of Saint Vincent and the Grenadines. He then said that Seafood Masters is his business name but he produced no certificate of registration of the business name or any further evidence of his ownership of the business.
- [25] Mr. Alexander also agreed in cross-examination that the conch in the exhibits weighed 4,500 lbs or approximately 2 tonnes and that a 25-foot boat cannot carry 2 tonnes of conch and still be seaworthy. Mr. Alexander agreed that the documents he gave to Sgt. Byron indicated that 300 bags of conch were imported from Saint Vincent and the Grenadines. He also agreed that 300 bags were not 19 bags but responded that there are different sizes of bags.
- [26] Mr. Alexander further stated under cross examination that he did not bring these bags of conch into Saint Lucia via Praslin and he did not give the documents to Sgt. Byron to try to trick him into believing that the documents related to the 19 polythene bags found on his vessel. Mr. Alexander also accepted that Sgt. Byron had told him that he had suspected that the conch was illegally imported.
- [27] On 27th March 2023, the police officers returned to Praslin and seized, carried away and detained his vessel and the five barrels of fuel stored on it without any explanation given to him.

- [28] When cross examined, Mr. Alexander said that the officers came to intercept on 25th March, but they seized the boat on 27th March. He was not sure when they took the keys, and he could not remember whether he told Sgt. Byron that he was the owner of the vessel. He did not even know that Sgt. Byron took the keys as he is not the captain of his vessel.
- [29] Mr. Alexander stated that on 18th April 2023, he caused a lawyer's letter to be written to the Commissioner of Police demanding the release of the vessel and for payment of compensation for his losses, but had received no response. On 24th July 2023 he caused a notice of application to be filed in the High Court for an injunction to compel the Commissioner of Police to release the boat and on 9th October 2023 the Court granted the Order directing the Commissioner of Police to immediately release the vessel to him. However, in cross-examination, Mr. Alexander agreed that the parties had consented to the release of the vessel by way of a Consent Order.
- [30] Mr. Alexander was not arrested or charged with committing any offence and has received no communication from the police officers who seized his property. According to him, the police have not offered any evidence of wrongdoing by him or involving the vessel. In Mr. Alexander's words, this is a case of an unlawful abuse of authority.
- [31] Upon receipt of the Order of the Court, Mr. Alexander would have immediately attended at the Police Marine Unit Base to secure the release of the vessel. He says he faced some resistance and reluctance on the part of the police to release the vessel in compliance with the Court order and it was only after his lawyer intervened that the vessel was released to him in November of 2023. However, he only recovered one of the five full barrels of fuel which the police had taken from the vessel.
- [32] Mr. Alexander claims that as a result of the actions of the Police he suffered the following losses:
- (i) Loss of the use of the vessel from 25th March, 2023 to 29th November 2023-8 months and 4 days at \$24.60 per day \$6,150.00;
 - (ii) The value of the conch on board the vessel-\$22,500.00

- (iii) Loss of profit from the sale of the conch-\$22,500.00.
- (iv) Wasted customs duties and VAT paid in relation to the conch \$4,620.00

[33] Similarly, one witness gave evidence on behalf of the defendant, Sgt. Byron. According to Sgt. Byron, he has been a police officer for the past eighteen (18) years. He is currently attached to the Drug Squad Unit and that as a police officer he is also an authorised officer under the Fisheries Act.¹

[34] On 25th March 2023, at about 8:00 p.m., whilst on duty at the Drug Squad Unit, he received police intelligence that one Michael Joseph alias Boyo had left for Martinique to pick up cash and was expected to land at Praslin to make the transfer of that cash. He and three police officers proceeded to Praslin and at about 11:50 p.m. there being no sign of any vessel or Michael Joseph, he, along with his team of officers left the area where they were waiting and proceeded to the Fisheries Complex in Praslin.

[35] On arrival at the Fisheries Complex, he noticed Gideon Charlery, a man known to him through his official duties as a police officer, walking near a white truck towards the jetty. Two (2) officers on his team walked towards Mr. Charlery and stopped him. Whilst doing so, Sgt. Byron saw a man walking from the jetty towards him. Sgt. Byron stopped the man, and he was identified as Onaldo Gourd of St. Vincent and the Grenadines.

[36] Corporal 77 Bernard and Police Constable 40 Reggie who were with Sgt. Byron went to the water's edge whilst Sgt. Byron spoke with Onaldo. The officers later returned to where Sgt. Byron was with three (3) men one of whom was Martinus Alexander of Gros Islet. On being informed by the officers of what had transpired at the water's edge, Sgt. Byron informed the men that they were detained on suspicion of committing the offence of drug trafficking.

[37] Under further cross-examination, Sgt. Byron testified that he had received intelligence that the vessel was used for drug trafficking, but he found no drugs

¹ Cap. 7.15 of the Revised Laws of Saint Lucia, 2020.

on it. He said he did not see Mr. Alexander taking part in any illegal activity and he did not prefer any charges against Mr. Alexander when he seized his property. Sgt. Byron also did not provide any documents showing that any of the other men were charged criminally.

[38] Sgt. Byron then searched the jetty and noticed a black wheelbarrow near a coconut tree. The wheelbarrow had items in it. He examined the contents and noticed there was a backpack, a box and a travel bag. A white bucket and a black backpack were also found on the jetty. He took the wheelbarrow to the area where the men were detained and secured them.

[39] He then moved to the water's edge and noticed the vessel. According to Sgt. Byron there were two other vessels, but it was the only one with barrels of fuel onboard. He searched the vessel and observed that the engines were warm. There were two keys in the console. It contained five barrels of fuel and nineteen polythene bags. He examined the bags and noticed they contained frozen conch. The conch and the keys were seized and escorted to the area where the men were detained. In cross-examination, Sgt. Byron stated that he did not weigh or measure the bags of conch. He also did not see the vessel sail into Praslin but had found the vessel moored.

[40] Sgt. Byron testified that he then introduced himself to the men and asked them who owned the vessel and the items found on the jetty. None of them claimed any of the recovered items as theirs. The contents of the wheelbarrow and bucket were examined in their presence, and a quantity of dried plant material was found. Sgt. Byron informed the men that he had reason to believe that they were on the jetty for an unlawful purpose and that the vessel, conch, bags, box and bucket recovered would be seized.

[41] Sgt. Byron said Mr. Alexander then stated that he ordered conch from St. Vincent and was informed that the vessel transporting it had some issues and he was asked to pick up the conch in Praslin. Sgt. Byron asked him whether he had documents for the conch and he said he did. Mr. Alexander took Sgt. Byron to the white truck he had seen earlier and gave him permission to

search it. Sgt. Byron searched the truck and recovered customs documents dated 8th and 9th March 2023. According to Sgt. Byron, Mr. Alexander said that these were the documents for the conch. Sgt. Byron said he viewed the documents and made some inquiries.

[42] Based on inquiries made with the Ministry of Agriculture and the Customs Department, Sgt. Byron said he came to understand that documents for conch must be dated the day the conch was declared at Customs. He also came to learn that the date on the documents was for a previous shipment. Sgt. Byron also learnt from Mr. Onaldo Gourd that he was assisting Mr. Alexander with carrying the conch. When cross-examined, Sgt. Byron stated that he made his investigations, and his actions were based on responses from competent authorities, however he did not provide any documentation to show that he made any such enquiries or of the responses he received.

[43] Based on his investigations, Sgt. Byron held the view that the conch should be seized and destroyed. He informed Mr. Alexander of his suspicion that the conch was ordered by him and that he did not have any documents authorising the importation of the conch, and as such, it was an unlawful importation.

[44] He then informed the men including Mr. Alexander that he was seizing the conch contained in the nineteen (19) polythene bags, and the vessel, and that Customs and the Fisheries Department would be informed. He also kept the documents he received from Mr. Alexander as evidence in the matter. According to Sgt. Byron, Mr. Alexander did not admit at the time to being the owner of the vessel.

[45] The conch, box, travel bag, bucket and backpacks were taken to the Police Marine Unit where they were further examined and photographed. The bags contained dried plant material whilst the box contained Camel cigarettes. The conch and the keys for the vessel were handed over to Police Sergeant 113 Henry who kept them to confirm the ownership of the vessel. Sgt. Byron later made enquiries on the status and owner of the vessel at the Fisheries

Department and subsequently received documents which disclosed Mr. Alexander as the owner of the vessel.

[46] According to Sgt. Byron, on 27th March 2023, the vessel was towed to and secured at the Police Marine unit because the vessel was considered to have been used in unlawful activity and was likely to be used to commit further offences, whether under the **Criminal Code**,² the Fisheries Act or under the **Customs (Control and Management) Act**³ ("the Customs Act"). When re-examined, Sgt. Byron said that the barrels of fuel also remained on the vessel until he handed them over to the Marine Officer.

[47] According to Sgt. Byron, the matter of the unlawful importation of the conch and the seizure of the vessel were referred to the Customs Department for their determination and action since the vessel was liable to forfeiture under the Customs Act. However, under cross-examination, Sgt. Byron said that at the time of seizure he acted under the Fisheries Act and that he seized the vessel without a warrant. However, he could not recall the specific section of the Fisheries Act which permitted him to seize the vessel. He further stated that he did not seek a detention order from the Court because he had handed the vessel to Customs and normally Customs issues a detention order to the owner of the vessel. Sgt. Byron also gave no written notice of seizure of the vessel, conch or fuel, nor did he provide any written evidence of having reported the seizure to the police, or the Chief Fisheries Officer or of a referral to the Customs Department.

The Law and Analysis

Issue (i)-Whether the police had reasonable and probable cause to seize and detain Mr. Alexander's property?

Issue (ii)-Whether the seizure and detention of Mr. Alexander's property was unlawful?

[48] The first two issues will be dealt with together as the factual considerations in support of whether there was reasonable cause to seize and detain and the

² Cap. 3.01 of the Revised Laws of Saint Lucia, 2020.

³ Cap. 15.05 of the Revised Laws of Saint Lucia , 2020.

ultimate legality of the seizure and detention of Mr. Alexander's property are intrinsically linked.

[49] Mr. Seryozha Cenac ("Mr. Cenac") for the AG submits that the police, in the person of Sgt. Byron had reasonable and probable cause to seize and detain Mr. Alexander's goods as and when they did. He argues that Sgt. Byron had the necessary reasonable suspicion of criminal conduct and that the circumstances of the seizure provide both direct and circumstantial evidence to induce a reasonable person to believe that a criminal offence was or was being committed.

[50] The defendant relies on paragraphs 42 and 43 of **Bernard Wiltshire v Attorney General**⁴ where the Court quoted Mr. Justice Hawkins in **Hicks v Faulkner**⁵ in relation to the interpretation of reasonable and probable cause. This is what was said:

"I should define reasonable and probable cause to be, an honest belief in the guilt of the accused based on a full conviction, founded upon reasonable grounds, of the existence of a state of circumstances, which, assuming them to be true would reasonably lead an ordinary prudent and cautious man placed in the position of the accused to the conclusion that the person charged was probably guilty of the crime imputed."

[51] Mr. Cenac also referred to the case of reference made to **Dallison v Caffrey**⁶ quoted in **Bernard Wiltshire** in which Lord Diplock said:

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

[52] A consideration of the evidence in this case shows that Sgt. Byron formed the suspicion that the vessel was being used for an illegal purpose, ultimately the unlawful importation of conch. However, this suspicion could not have been reasonably deduced merely by the presence of conch on Mr. Alexander's

⁴ DOMHCV2011/364, (delivered 10th December 2013), unreported.

⁵ [1881] 8 QBD 167,

⁶ [1964] 2 ALL ER 610, 619.

vessel. A search of the vessel resulted in Sgt. Byron discovering nineteen (19) bags of conch and five (5) barrels of fuel, neither of which are on the face of it unlawful to possess or unreasonable in the context of being found upon a fishing vessel moored at a fishing complex.

[53] The AG also submits that the officers conformed with section 33(2) of the **Drugs (Prevention of Misuse) Act**⁷ (“the Drugs Act”) and section 27(1) of the Fisheries Act. According to Mr. Cenac the evidence shows that the officers had reasonable cause to seize Mr. Alexander’s property and had informed him that they were so doing. I will address each of these sections in turn as they appear to have guided Sgt. Byron’s actions in seizing and detaining Mr. Alexander’s property.

[54] Section 33 of the Drugs Act allows a police officer for the purposes of execution of the Act to enter the premises of a person carrying on business as a producer or supplier of any controlled drug and to demand the production of, and to inspect, any books or documents relating to dealings in any such drugs and to inspect any stocks of any such drugs. If a police officer has reasonable grounds to suspect that a person is in possession of a controlled drug in contravention of the Act or of regulations made under it the police officer may

—

“(a) search that person, and detain him or her for the purpose of searching him or her;

(b) search any ship, vessel, boat, aircraft, vehicle or other means of conveyance of any description in which the police officer suspects that the drug may be found, and for that purpose require the person in control of the ship, vessel, boat, aircraft, vehicle or other means of conveyance of any description to stop it; or

(c) seize and detain for the purposes of proceedings under this Act, anything found in the course of the search which appears to the police officer to be evidence of an offence under this Act.”⁸

[55] According to Sgt. Byron, the vessel was moored at the Fisheries Complex when he arrived, the intelligence he received was that the vessel was being

⁷ Cap. 3.02 of the Revised Laws of Saint Lucia, 2020.

⁸ s 33(2).

used for drug trafficking, but no drugs were found on the vessel nor was Mr. Alexander engaged in any criminal conduct at the time of seizure or detention of his property. Sgt. Byron's further evidence is that he searched the jetty and noticed a black wheelbarrow near a coconut tree. The wheelbarrow had items in it. He examined the contents and noticed there was a backpack, a box and a travel bag. A white bucket and a black backpack were also found on the jetty. None of the men claimed any of the recovered items as theirs.

[56] The vessel in the circumstances cannot be said to have been used in the conveyance of the plant material found nor had Mr. Alexander been found to be in possession of a controlled drug, nor had he claimed that he was the owner of the contents of the wheelbarrow, backpack or bucket none of which were found in his possession or aboard his vessel. The seizure and detention of the vessel therefore could not be considered evidence of an offence under the Drugs Act and thus could not have been legitimated by section 33 of the Drugs Act

[57] Section 27 of the Fisheries Act empowers an authorised officer to seize any vessel (together with its gear, stores and cargo), vehicle, fishing gear, net or other fishing appliance which he or she has reason to believe has been used in the commission of the offence or in respect of which the offence has been committed where he or she has reasonable grounds to believe that an offence has been committed under the Act. A consideration of the Fisheries Act discloses no offence for the importation of seafood, in this case for the importation of conch without declaring the imported conch to the Customs Authorities. Thus, the seizure and detention of the vessel could not be said to have been in the furtherance of section 27 of the Fisheries Act as there was no evidence provided by the defendant of reasonable suspicion of Mr. Alexander's commission of an offence under the Fisheries Act.

[58] Counsel for the AG further submits that section 35 of the Fisheries Act places the onus on Mr. Alexander to prove that the importation of conch was lawful. Section 35 provides that:

“In any legal proceedings under this Act where the defendant is charged with having committed an offence under which a licence, authority or the permission of any person is required for the doing of any act, the onus shall be on the defendant to prove that at the time to which the charge related, the requisite licence, authority or permission was duly held.

[59] In light of the foregoing, I find that section 35 of the Fisheries Act is not of universal application and is not applicable in this matter. These are not proceedings commenced under the Fisheries Act nor is Mr. Alexander charged with having committed an offence under which a licence, authority or permission of any person is required.

[60] The AG also submitted that Mr. Alexander was in breach of section 21 of the Customs Act on the basis that the conch was unlawfully imported into Saint Lucia. Based on his evidence, I believe this section to be gravamen of Sgt. Byron’s suspicion and action in seizing and detaining the vessel. The section which establishes the procedure for vessels on arrival into Saint Lucia provides as follows—

“(1) Subject to the provisions of this section and save as the Comptroller may otherwise permit—

(a) the master of any vessel arriving in the territorial sea of Saint Lucia from a place outside of Saint Lucia shall not cause or permit that vessel to arrive at any time at any place other than a customs port; and

(b) a person importing or concerned in importing any goods in any vessel shall not bring those goods into Saint Lucia at any place other than a customs port.

(2) A master or other person who contravenes or fails to comply with any requirement of subsection (1) commits an offence and is liable to a fine of \$5,000, or 3 times the value of the goods whichever is the greater, and any goods imported in contravention of that subsection are liable to forfeiture.”

[61] Sgt. Byron’s evidence in support of his suspicion that the conch was illegally imported came from the discovery of the conch aboard the vessel. However, the vessel was moored at the time of his arrival at the Fisheries Complex and subsequent discovery of the conch aboard. Sgt. Byron did not observe the

vessel arriving at the Fisheries Complex nor did he provide any other evidence of the vessel departing from Saint Vincent or arriving into Saint Lucia with the conch. There was also no further information or evidence from the customs authorities that the conch had been imported contrary to section 21 of the Customs Act and no action was commenced against Mr. Alexander for a breach of the section.

[62] In his evidence, Sgt. Byron stated that he retrieved customs documents for the conch which he viewed and he made some inquiries. He does not say when these inquiries were made. He says he came to learn that the date on the documents was for a previous shipment but again he does not say how and when he learnt this.

[63] Having reviewed the evidence and in the circumstances of this case, I do not find that Sgt. Byron at the time of seizure had reasonable grounds to suspect that the conch was illegally imported into Saint Lucia or that the vessel had been used to unlawfully import the conch. The police officers did not have reasonable cause to seize the vessel, the conch and fuel nor was the subsequent detention of Mr. Alexander's property lawful or rendered lawful by section 33 of the Drugs Act, section 27 of the Fisheries Act or section 21 of the Customs Act.

Issues (iii) and (iv)

(iii) Whether Mr. Alexander is entitled to damages for the unlawful seizure and detention of his properties and consequential loss?

(iv) Whether Mr. Alexander is entitled to the awards of exemplary and/or punitive damages?

[64] Having found the seizure and detention of Mr. Alexander's property to have been unlawful, I now turn to consider the issue of damages and the evidence of the losses suffered by Mr. Alexander.

Loss of conch

[65] Mr. Alexander in his pleadings has sought damages for the loss of 4,500 pounds of conch. However, he accepted in cross-examination that the vessel

could not carry 4,500 pounds of conch and still be seaworthy. It is a reasonable conclusion that the vessel did not have 4,500 pounds of conch aboard at the time of seizure.

- [66] Mr. Alexander also accepted that nineteen (19) bags of conch was not three hundred (300) bags of conch as disclosed in the importation documents exhibited by him. The police in seizing the conch also did not measure or weigh the conch seized and have provided no evidence of the value of the seizure. As a result, the Court is unable to determine the amount of conch seized and thus unable to quantify the value of Mr. Alexander's purported loss. Further and in any event, the documents provided by Mr. Alexander show the importer of the conch as Seafood Masters and not Mr. Alexander himself and though he stated in cross examination that Seafood Masters is his business, he has provided no documentary evidence to support this assertion. It is also noteworthy that the receipts for sale of seafood provided by Mr. Alexander are in his name and not in the name of Seafood Masters. In the circumstances, Mr. Alexander has not established that he is in fact the owner of the conch or alternatively that he is the owner of Seafood Masters who is in turn the owner of the conch and thus entitled to compensation for its loss.

Loss of Profit and Customs duties

- [67] Mr. Alexander further claims loss of profit of \$22,500.00 as a result of the seizure and detention of the conch along with \$4,620.00 for loss of customs duties and value added tax (VAT) paid for the importation of the seized and detained conch. However, these figures are based on the importation of the same 4,500 pounds of conch by Seafood Masters and as stated previously Mr. Alexander has failed to provide any evidence of having lost 4,500 pounds of conch or that he was in fact the owner of the conch. Further he has failed on the evidence to establish that the conch would have attracted a profit of \$22,500.00. None of the receipts for the sale of seafood by Mr. Alexander are of the sale of conch and he has provided no agreement or otherwise to sell the conch at a particular price or any accounting of his profits after sale. In the circumstances, an award of damages for the unlawful seizure and detention of

the conch, loss of profits in the sum of \$22,500.00 and loss of the sum of \$4,620.00 cannot made.

Loss of barrels of fuel

- [68] Mr. Alexander in his amended statement of claim seeks compensation in the sum of \$1,520.00 for the loss of the four barrels of fuel for the vessel. However, he has not shown how this figure was quantified and has failed on his evidence to make the case for an award of damages for this sum. The Court is not in a position to make any award in this regard.

Damages for unlawful seizure and detention

- [69] Mr. Alexander also seeks damages for the unlawful seizure and detention of his vessel. Through the course of these proceedings and on the evidence of Sgt. Byron it is not in dispute that Mr. Alexander is the owner of the vessel nor that the vessel was seized.

- [70] Having already found that the seizure and detention of the vessel were unlawful, an assessment of compensation for the period of detention remains. The difficulty however comes in the form of Mr. Alexander's evidence of his loss of use of the vessel or rather his lack thereof. Mr. Alexander seeks the sum of \$6,150.00 at a daily rate of \$24.60 for loss of use of his vessel from the time of its seizure on the 27th of March 2023 to the date of its return on the 29th of November 2023, a period of 8 months and 4 days. However, he has provided no evidential basis upon which this Court can make such an award. No evidence of the returns generated by the boat, of the frequency of its use or of the losses he has accumulated because of its seizure and detention. In the circumstances, the Court would likely be constrained to make an award of nominal damages for the unlawful seizure and detention of the vessel and the four barrels of fuel.

- [71] However, before such a determination is made, I must address Mr. Cenac's submission that the Crown is immune from suit by virtue of section 29 of the Fisheries Act which provides that:

“an action shall not be brought against any authorised officer in respect of anything done or omitted to be done by him or her in good faith in the execution or purported execution of his or her powers and duties under this Act”.

[72] However, these proceedings have not been brought against the authorised officer. Moreover, having determined that the unlawful importation relied on by Sgt. Byron is not an offence under the Fisheries Act and that the provisions of the Fisheries Act relied on by the defendant are inapplicable, I find that the Fisheries Act does not offer immunity from suit to the Crown in this instance.

[73] In relation to damages for unlawful seizure and detention, I have already determined that Mr. Alexander is entitled to nominal damages. I note that Counsel for Mr. Alexander, Mr. Horace Fraser (“Mr. Fraser”) in submissions has referred to the case of **Hamilton Edward v The Attorney General**⁹ and suggests that nominal damages in the sum of \$10,000.00 would be an appropriate award. However, in **Hamilton Edward**, Mr. Edward had given evidence of his daily earnings, his work week and the Court would have used this evidence as a guide in its award of nominal damages. In this case, Mr. Alexander has not provided any such evidence. In the circumstances, I am of the view that the sum of \$5,000.00 would be an adequate award as general damages.

Exemplary Damages

[74] Regarding an award of exemplary damages, I rely on the dicta of Lord Devlin in **Rookes v Barnard**¹⁰ where His Lordship categorized the circumstances in which an award of exemplary damages can be made. His Lordship cited the first category as “oppressive, arbitrary or unconstitutional action by the servants of the government”, thus opening the door for an award of this nature against the Crown.

[75] On the issue of exemplary damages, Lord Nichols of Birkenhead in **A v Bottrill**¹¹ said:

⁹ SLUHCv2015/0669, (delivered 1st March 2017), unreported.

¹⁰ [1964] UKHL 1.

¹¹ Privy Council Appeal No 10 of 2002 at para 26.

“If experience in the law teaches anything, it is that sooner or later the unexpected and exceptional event is bound to occur. It would be imprudent to assume that, in the absence of intentional wrongdoing or conscious recklessness, a defendant’s negligent conduct will never give rise to a justifiable feeling of outrage calling for an award of exemplary damages. Never say never is a sound judicial admonition. **There may be the rare case where the defendant departed so far and flagrantly from the dictates of ordinary or professional precepts of prudence, or standards of care, that his conduct satisfies this test even though he was not consciously reckless.**” (my emphasis)

[76] I further consider the decision of the court in **Dale Naylor v Attorney General of Antigua and Barbuda**¹² where Kelsick J cites the practitioner’s text of **McGregor on Damages** stating:

“...while it was said in *Holden v Chief Constable of Lancashire*, that unconstitutional action would suffice without the need for additional oppressive or arbitrary behaviour, so that in effect the three epithets fall to be read disjunctively, unconstitutional action will not suffice without the presence of aggravating features; **the central requirement for exemplary damages has always been, as already said, the presence of outrageous conduct, disclosing malice, fraud, insolence, cruelty and the like.**” (my emphasis)

[77] I agree with Counsel for the defendant’s submission that there is no basis for the award of exemplary damages, and it ought not to be awarded. I do not find that the officers have “departed so far and so flagrantly from the dictates of ordinary or professional precepts of prudent or standard of care” to satisfy the test of outrageousness. I find that the alleged “abuse of power” by the officers, is not of a kind amounting to malice, fraud, insolence, cruelty and the like which would justify an award of exemplary damages.

[78] I note that the claimant has sought exemplary damages and in the alternative punitive damages. As far as I see, in English law, exemplary and punitive damages are really the same and are very often used interchangeably. In any event, I see no basis for an award of exemplary or punitive damages.

Conclusion

¹² ANUHCv1999/0308, (delivered 23rd March 2020) unreported at para 46.

[79] The police had no reasonable and probable cause to seize Mr. Alexander's property. The seizure and detention of Mr. Alexander's property, to wit, the vessel "JUSTIFY", the conch and the fuel was unlawful and not subsequently rendered lawful by the provisions of the Drugs Act, Fisheries Act or Customs Act. The defendant is therefore liable in trespass for the unlawful detention of the vessel and the fuel for the period 27th March 2023 to 29th November 2023, a period of 8 months and 4 days. No damages are awarded in relation to the value of the conch, customs duties and loss of profit claimed for the reasons outlined above.

Order

[80] Having considered the evidence and the applicable legal principles, I make the following Order:

1. Judgment is entered for the claimant for damages in trespass to his property for the period 27th March 2023 to 29th November 2023. The claimant is awarded nominal damages for the unlawful detention of his property namely the vessel "JUSTIFY" and the four barrels of fuel seized in the sum of \$5,000.00 with interest thereon at the statutory rate of 6% per annum from the date of judgment to the date of payment.
3. The claimant is not entitled to an award of exemplary or punitive damages.
4. Prescribed costs are awarded to the claimant in accordance with CPR 65.5.

[81] I thank Counsel and the parties for their patience in awaiting the decision in this matter.

**Kimberly Cenac-Phulgence
High Court Judge**

By The Court

Registrar