

THE EASTERN CARIBBEAN SUPREME COURT

SAINT LUCIA

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

Case Number: SLUHCV2020/0361

BETWEEN:

ALVIN PHILIP

Claimant

and

THE ATTORNEY GENERAL

Defendant

Before:

The Hon. Mde. Justice Kimberly Cenac-Phulgence

High Court Judge

Appearances:

Mr. David Francis for the Claimant

Mr. Seryozha Cenac for the Defendant

2022: November 17,18;	(Written Submissions)
November 23;	(Trial)
November 24;	(Oral Submissions)
2023: January 7;	(Further Written Submissions)
2026: January 15.	(Decision)

JUDGMENT

[1] **CENAC-PHULGENCE J:** In this claim, the claimant, Mr. Alvin Philip (“Mr. Philip”) seeks certain relief as a result of the alleged unlawful detention of the vessel “Our Toy” (“the vessel”) from 18th January 2018 to 13th August 2020. He seeks a declaration to that effect¹, as well as damages for the unlawful detention, for loss of

¹ In the Claim Form, Mr. Philip seeks a declaration for unlawful detention of the vessel for the period 18th January 2018 to 11th August 2018.

use and loss of earnings, special damages, aggravated damages, interest and costs.

A. Pleadings

Seizure of the vessel

- [2] Mr. Philip alleges that he is the owner and manager of the vessel, which was stopped off the coast of Trouya Beach, Castries on 10th March 2017, with two occupants on board: Mr. Dellinger² Alexander (“Mr. Alexander”) and Mr. Jamal Gills (Mr. Gills”). The two occupants of the vessel, and the vessel, were detained by members of the Royal Saint Lucia Police Force (RSLPF). The two occupants were subsequently arrested and charged with possession of cannabis contrary to the **Drugs (Prevention of Misuse) Act**³ (“the Drugs Act”).
- [3] Mr. Philip states that on 10th October 2017,⁴ the matters against the two occupants were withdrawn and they were discharged. He says that the vessel was not returned to him but remained at the Police Marine Unit (referred to by the defendant as the Ports Police Unit but correctly referred to as the “Marine Police Unit” (MPU) hereinafter) of the RSLPF. Mr. Philip says he was never served with a notice of seizure nor was an application for forfeiture made or served on him.
- [4] It is the defendant’s case that on 10th March 2017, two polythene bags which contained what appeared to be green plant material consistent with the controlled substance cannabis were handed over to Corporal Lester Byron (“Corporal Byron”), along with the two occupants. The defendant states that the vessel (which it classified as a pirogue/fishing boat) was also handed over to the police as part of the evidence in the suspected offences of possession of a controlled drug and possession with intent to supply a controlled drug. Subsequently, according to the defendant, the vessel was detained on behalf of the investigating officer at the MPU in order to serve as an exhibit in the criminal matters.

² The defendant states this name as “Deline Jah Alexander” at paragraph 4 of its Defence.

³ Cap 3.02 of the Revised Laws of Saint Lucia 2023.

⁴ The charges were actually dismissed on 27th September 2017 as per the Extract exhibited.

[5] The defendant admits that the criminal matters were withdrawn by the Crown since the green plant material had not been tested within six (6) months of the seizure as the forensic lab was closed at the time. The defendant states that it was its intention to make an application for forfeiture of the vessel upon the conviction of the two occupants in the criminal matter.

[6] The defendant denies that the claimant is entitled to the relief sought and prays that the claim be dismissed.

Ownership of the vessel

[7] It is Mr. Philip's case that he is the owner of the vessel. The defendant alleges that at the material time, it was not aware that Mr. Philip was the owner of the vessel and only became aware of this on 12th August 2020 and could not admit nor deny that Mr. Philip was at all material times the manager of the vessel.

[8] In reply, Mr. Philip states that the defendant had every opportunity to discover that he was the legal owner of the vessel. He relies on the Certificate of Registration issued by the Division of Maritime Affairs, Saint Lucia Air and Sea Ports Authority (SLASPA), as evidence of his ownership.

Demand(s) and refusal(s) for return of the vessel

[9] Mr. Philip states that there was no justification for keeping the vessel as an exhibit, as it could have been photographed and released to him. Moreover, he says there was no justification for keeping the vessel long after the matter had been withdrawn. He states that the continued detention of the vessel long after the withdrawal of the claim was unjust.

[10] According to Mr. Philip, on or about 18th January 2018, he visited the MPU in the company of Mr. Alexander to retrieve the vessel. He was asked to return with the registration documents for the vessel, his identification card and a copy of the Extract of Order from the High Court evidencing that the criminal charges were

dismissed. Mr. Philip alleges with no particularity, that on successive occasions he returned to the MPU with the requested documents and was told that the vessel could not be released.

- [11] Mr. Philip again visited the MPU on 8th June 2020 with the registration documents for the vessel, his identification card and a copy of the Extract of Order from the High Court in the criminal matters SLUCRD2017/0226 and 0226A. He was attended to by a female officer who took his documents and informed him that he would not receive the vessel unless he produced a court order granting its release. He indicated to the officer that no application had been made relative to the vessel, and no proceedings were ongoing with respect to it but was unsuccessful in his plea.
- [12] On 23rd June 2020, a pre-action protocol letter was sent to the defendant demanding the reasons for the continued detention of the vessel, and in the absence of such that damages be paid. Mr. Philip alleges that this letter was never responded to by the defendant. The defendant admits that it received the pre-action protocol letter and avers that its lack of response was solely due to the fact that they had to obtain details and all relevant information of the matter before a response could be submitted.
- [13] On 11th August 2020, Mr. Philip was contacted by his attorney-at-law, who informed him that Officer Mathurin of the MPU had asked him to come collect the vessel. He was also informed that the RSLPF was now in possession of a court order granting the release of the vessel, which Mr. Philip alleges he has not seen nor was a copy provided to him. Mr. Philip asserts that there was no such court order and this was only said in light of the absence of reasonable cause or proper motive for the continued detention of the vessel.
- [14] The defendant vehemently denies that Mr. Philip came forward and presented himself as the owner of the vessel at any time since October 2017. The defendant says he did not make any unconditional demand for the vessel's release, nor did

the defendant ever refuse such a demand. The defendant had no intention of keeping the vessel in defiance of Mr. Philip's rights or any connected party.

[15] The defendant denies that Mr. Philip and Mr. Alexander ever attended the MPU requesting the release of the vessel. The defendant states that it only became aware that the criminal charges were withdrawn on or about 8th June 2020 when Mr. Philip, along with his attorney, attended the MPU, in connection with the release of the vessel and after the MPU made further enquiries with the police. It was on this occasion that the defendant informed Mr. Philip, in the presence of his attorney, of the requirements for the vessel to be released: his identification card, his document of ownership and an Extract of the Order of the Court in relation to the withdrawal of the matter which they undertook to produce. On 11th August 2020, the defendant, through the MPU, also contacted Mr. Philip's attorney for the release of the vessel on the production of the relevant documents.

[16] Mr. Philip alleges that on 12th August 2020, he met with Officer Mathurin at the MPU and handed over his registration documents and a copy of the Extract of Order in the matter SLUCRD2017/0226 and 0226A as he had done on prior occasions. The vessel was then released to him and he had to hire a wrecker to remove the vessel from the Impound Lot at MPU.

[17] Mr. Philip alleges that the defendant's refusal to return the vessel prior to 11th August 2020 in the absence of any reasonable justification is unlawful.

[18] The defendant avers that the 12th August 2020, was the first time Mr. Philip attended the MPU with the documents required for the vessel's release. On production of same, the vessel was released to him in the same condition it was detained and he signed to that effect.

Article 2124 of the Civil Code of Saint Lucia and Allegations of Bad Faith

- [19] Mr. Philip alleges that the defendant has acted in bad faith, maliciously or absent proper motive due to the lack of reasonable cause for the continued detention of the vessel, the absence of criminal proceedings or an ongoing investigation or application for the continued detention or seizure of the vessel. He also alleges that the defendant used the continued unlawful detention of the vessel as a means of punishing and embarrassing him in light of their inability to secure a criminal conviction against Mr. Alexander and Mr. Gills.
- [20] The defendant denies that it acted in bad faith, maliciously or without proper motive. The defendant states that at all material times it was justified in retaining the vessel as it was an instrument of crime and liable to forfeiture and potentially could be used in the commission of further drug activities. In the circumstances, there being no bad faith, the defendant avers that the claim is prescribed by article 2124 of the **Civil Code of Saint Lucia** (“the Code”).
- [21] In response, Mr. Philip asserts that the limitation period under article 2124 of the Code is unconstitutional insofar as it is an unnecessary, inconvenient, arbitrary, unreasonable and unjustifiable restriction of Mr. Philip’s right of access to the court’s process provided for by section 6(2)(d) of the Constitution of Saint Lucia (“the Constitution”). He also asserts that the 6-month period is inadequate and unfair to the extent that it nullifies that claimant’s right of access to the courts and is without justification.

Evidence

Mr. Philip, the claimant

- [22] Mr. Philip’s evidence remained consistent with his pleadings in the main, except for a major point of deviation where he states that when he visited the MPU in or around January 2018, he did so with the relevant documents already in hand. However, in his pleadings, he states that it was on this occasion that he was asked to return with the documents and it was on successive occasions he brought the said documents

to the MPU which suggests that he did not have them on the initial visit in January 2018.

[23] During cross-examination, Mr. Philip was asked about the document he produced to the MPU to prove ownership of the vessel. He referred to the Certificate of Registry⁵ which he admitted states under "Important Information" that a Certificate of Registry is not proof of ownership. However, we will see below that the MPU would have accepted the certificate as proof of ownership.

[24] Mr. Philip was also asked about being unable to retain an attorney for financial reasons despite his evidence that he was earning \$1000.00 a day and an attorney's letter cost about \$250.00. He agreed that if he was really doing tours, he would have been in a position to pay for a lawyer's letter at that time.

[25] I found that Mr. Philip answered the questions as asked but I did not believe some aspects of his evidence, especially where he stated that he made visits to the MPU between 18th January 2018 and 8th June 2020. Mr. Philip could remember the January 2018 visit vividly, but could provide no other dates when he would have attended the MPU after that and before 8th June 2020. From his own evidence, I find that when Mr. Philip went to the MPU on 18th January 2018, he went to get information and did not have the relevant documents with him.

The defendant

[26] For the defendant, evidence was given by Corporal Anne Marie Bailey ("Corporal Bailey"), the officer present at the MPU on 8th June 2020 and Sergeant Lester Byron ("Sgt. Byron"), the officer investigating the drug offences. The evidence of these officers remained consistent with the defendant's pleadings.

⁵ Annexed as "A" to his Statement of Claim at p 13 of Trial Bundle 1 (TB1).

[27] A witness statement was also filed on behalf of Acting Inspector Jn Baptiste Mathurin, an officer at the MPU at the material time. However, he did not present himself at the trial and his witness statement is accordingly struck out.

Corporal Anne Marie Bailey (“Corporal Bailey”)

[28] The evidence of Corporal Bailey remained consistent with the pleadings of the defendant. She maintains that on 8th June 2020, Mr. Philip visited the MPU and she requested that he produce proof of ownership of the vessel which he did not have in his possession. She went on to inform him that he would need to provide a form of identification (national identification card), a copy of extract from the court to verify that the matters had been dismissed and his boat document.

[29] On making further enquiries, she came to understand the events which led to the seizure of the vessel. On 8th June 2020, she also obtained an email copy of the High Court Order. After speaking with Sgt. Byron, a decision was made to release the vessel to Mr. Philip when he returned with the necessary documents.

[30] On 11th August 2020, Acting Inspector Mathurin, in her presence, called Mr. Philip’s attorney and informed them of the decision to release the vessel upon the documents being provided. She understands that the vessel was released to Mr. Philip on 12th August 2020 by Constable Charles. She was given a copy of the “Asset Handing-Over Certificate” which Mr. Philip signed.

[31] Corporal Bailey says she is not aware that Mr. Philip attended the MPU prior to 8th June 2020. Further, she says it is not customary that an entry is made when persons make general enquiries about a vessel except when the vessel has been officially handed over. According to her, 12th August 2020 was the first time Mr. Philip presented the proper documents to facilitate the release of the vessel.

[32] During cross-examination, Corporal Bailey admitted that she has access to SLASPA and the records kept in relation to vessels and would have been able to get the

ownership information on the vessel. Further, Corporal Bailey was asked whether the certificate of registration from SLASPA would be accepted as proof of ownership and she indicated that once the document produced indicates that the person is the owner of the vessel, it would be accepted. She admitted that it is not customary for the police to make a record about persons making enquiries about vessels.

Sergeant Byron (“Sgt. Byron”)

- [33] It is Sgt. Byron’s (previously Corporal at the relevant time) evidence that on 10th March 2017, he was part of an intelligence led operation which caused the interception of the vessel which he describes as a fishing pirogue. His investigations revealed that the vessel attempted to evade interception, and packages were thrown from the vessel during the chase. The occupants were apprehended, and two polythene bags were recovered from the sea near to where they had been thrown.
- [34] The occupants, the two polythene bags and the vessel were detained; the vessel having been the instrument by which the drug offences had been committed. The occupants were charged with two offences namely: possession of a controlled substance to wit and possession with intent to supply. On 27th September 2017, the prosecutor withdrew the matter because the substance had not been tested within the 180-day period as required by law.
- [35] According to Sgt. Byron, a restitution order was made by the Court and in order to comply with the said order, he attempted to contact the captain of the vessel, Mr. Alexander, who had been released on 27th September 2017. He was unable to contact him directly or indirectly as he appeared to not be on island. He later came to learn that Mr. Alexander was intercepted in Martinique waters and was imprisoned there for similar offences as charged in Saint Lucia. Sgt. Byron states that he received no information with respect to a request for the vessel by Mr. Philip or anyone. As at the date of his witness statement, Sgt. Byron states that he

continues to seek updates on Mr. Alexander's status as the Saint Lucia police are considering re-instating the charges.

- [36] It is Sgt. Byron's evidence that the vessel was detained for use as evidence in the criminal matters. At all material time, the vessel was liable to forfeiture, and an application would have been made at the appropriate time, that is, after conviction of the occupants.
- [37] According to Sgt. Byron, more importantly, Mr. Alexander was known by the police to be engaged in drug related activity, and it was imprudent to release the vessel back into his custody whilst he was on bail. He says the police held the view that Mr. Alexander had the propensity to commit further drug related offences whilst on bail and the release of the vessel would facilitate same. Further, he says that the captain of the vessel, Mr. Alexander, had for some time been unable to meet his bail conditions and consequently would not have been in a position to receive the vessel.
- [38] Nevertheless, he states that all attempts were made to release the vessel in accordance with the court order. He says that the police never had any other information which could have resulted in an earlier release and that he only became aware of Mr. Philip's letter of 23rd June 2020 subsequent to that date. He states that neither him, nor any other police officer, received a demand from Mr. Philip nor did they deny any unconditional demand made by Mr. Philip.
- [39] Sgt. Byron says he is not aware that Mr. Philip ever made a demand or request for the vessel prior to 8th June 2020. Neither did Mr. Philip make such a demand to the Drug Unit or the Commissioner of Police. According to Sgt. Byron, at all material times, he did not have any proof of ownership in his possession nor did Mr. Philip supply him with such proof and prior to 8th June 2020, no one came forward to claim the vessel.

[40] Sgt. Byron further states that any loss in the value of the vessel is attributable to ordinary depreciation of a vessel of that kind and is not attributable to any act, neglect or omission by the State.

[41] During cross-examination, Sgt. Byron admitted that the absence of a photographer and the fact that the vessel was an exhibit which the State had interest in for the purposes of forfeiture, prevented the State from returning the vessel to Mr. Philip. In cross-examination, Sgt. Byron said that Mr. Alexander said the vessel belonged to him but admitted that he did not say that in his evidence in chief. He denied having purposely ignored the order for restitution. Importantly, Sgt. Byron admitted that after the matter was withdrawn, he had no opportunity to convict the persons or forfeit the vessel. Sgt Byron disagreed that had he carried out investigations he would have known who the owner of the vessel was.

B. Issues

[42] The issues for determination are as follows:

- (i) Whether the vessel was unlawfully detained by agents of the defendant after the charges were dismissed?
- (ii) Did the claimant bring an action in detinue and/or conversion?
- (iii) Whether the claimant can maintain a claim for detinue?
- (iv) Whether the claimant has proven the claim for detinue?
- (v) Whether the matter is prescribed by article 2124 of the Code?
- (vi) Whether the claimant is entitled to damages?

C. Law & Analysis

Issue (i)-Whether the vessel was unlawfully detained by agents of the defendant after the charges were dismissed?

[43] Mr. Phillip has not brought these proceedings to question the defendant's seizure of the vessel and its detention whilst the criminal matters were ongoing. This is clear from the relief sought. His issue is with its continued detention after the matters in the criminal court were dismissed. Counsel for Mr. Philip relies on the authorities of

Ramsingh v the Attorney General of Trinidad & Tobago⁶ and **Jaroo v the Attorney General of Trinidad and Tobago**⁷ to support his submission that it is for the detainer to justify the detention by the State. He says that this justification for detention is required on a minute-by-minute basis. He also relies on the authority of **Ghani and Others v Jones**,⁸ to support his argument that after 27th September 2017, when the matter was withdrawn, there was no basis for keeping the vessel.

[44] On the other hand, the defendant submits that at all material times the police detained the vessel lawfully and relies on the authority of **Derrick Daniel v Attorney General of Saint Vincent and the Grenadines**⁹ where the Court considered the principles discussed in **Ghani**. Further, the defendant states that at no time did Mr. Philip make any formal and/or proper demand for the release of the vessel. They submit that the letter of 23rd June 2020 could not be treated as a demand as it was not made to the right and proper party (the detaining department) and relies on paragraph 23 of **Derrick Daniel** in support of this argument. Notwithstanding the absence of a formal demand, the defendant submits that the vessel was released to the claimant within a reasonable time on submission of the relevant documents.

[45] Moreover, Counsel for the defendant further submits that the defendant presumed that Mr. Alexander was the owner of the vessel and it was only on 23rd June 2020, that Mr. Philip presented himself as the owner of the vessel.

Law & Analysis

[46] According to section 22 of the **Police Act**:¹⁰

“(1) Every police officer has throughout Saint Lucia and in several bays, creeks, and inlets thereof, and also on board any vessel in which any indictable offence, or any offence punishable on summary conviction is or may be suspected to be committed, all the authorities, privileges, protection and advantages, and is liable to all the duties and responsibilities as that

⁶ [2012] UKPC 16.

⁷ [2002] UKPC 5.

⁸ [1969] 3 All ER 1700.

⁹ SVGHCV2011/0029 at paras [16]-[20].

¹⁰ Cap 14:01, Revised Laws of Saint Lucia 2023.

police officer duly appointed now has or is subject or liable to or may hereafter have or be subject or liable to either by the common law of England or by virtue of any law which now is or which may hereafter be in force in Saint Lucia.”

[47] Whilst section 22 does not speak directly to police powers of seizure and detention, it identifies that police powers are exercisable subject to the common law of England or legislation of Saint Lucia. Consequently, I will first deal directly with the submissions of the parties which rely on common law principles.

[48] Counsel for the claimant refers to **Jaroo**, which concerned the unlawful detention of a vehicle and whether it was appropriate for the appellant to assert his constitutional rights in a matter of that kind. Whilst this is not the issue which this Court has to resolve, the Board in **Jaroo** did approve of **Ghani**, an authority on which Counsel for the parties rely.

[49] The authority of **Ghani** establishes that in circumstances where no one had been arrested or charged but goods had been seized (my emphasis), there are certain requisites which must be satisfied to justify the seizure of the goods. Lord Denning MR sets them out as follows:¹¹

“What is the principle underlying these instances? 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 (my emphasis), 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.

Secondly. 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

¹¹ Ghani at p 1705.

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).

Thirdly. 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.

Fourthly. 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.”

[50] Having read **Ghani**, the Court questions its applicability to this case. A notable distinguishing factor is that in **Ghani**, no persons were arrested or charged with the offence of murder whereas in this case, the occupants were charged for drug related offences, and the vessel was seized in connection to those offences. The Court has been asked by the claimant to make a finding of unlawful detention through the application of the requisites set out in **Ghani**. The defendant on the other hand has asked the Court to consider the factors in **Ghani** with a view to establishing that it was lawful for them to continue the detention of the vessel. I will therefore go on to consider whether it is appropriate to apply the requisites in **Ghani** given the circumstances of this case.

[51] The application of the **Ghani** principles where an arrest or charge was made is not unfamiliar to the courts. This concern was raised by the trial judge in **Malone v Metropolitan Police Commissioner**.¹² In **Malone**, the Court of Appeal had to decide the question of whether it was necessary for the defendant to detain bank notes which did not form part of the offence against the plaintiff, but which were found during the search of his premises, until the trial of the plaintiff was

¹² [1980] QB 49.

concluded¹³. Stephenson LJ recounts the trial judge's findings as follows at pages 56-57 of the judgment:

"The defendant rested his case before the judge [trial judge] that retention of these notes was necessary on two grounds: (1) that the notes were material evidence in connection with the offences for which the plaintiff had been committed for trial; (2) that they might be the subject of a forfeiture order under section 43 of the Powers of Criminal Courts Act 1973.

On the first point the judge held that the production of the money proved nothing that the witness who discovered it in the cupboard could not prove without producing it. ...

On the second point he thought that it would be difficult to prove the conditions necessary to satisfy this section. He said:

"The applicant contends that the police should not retain the money for an event that may never occur and which is highly improbable. **In *Ghani v. Jones* [1970] 1 Q.B. 693, 708, Lord Denning M.R. sets out certain requisites where a person has not been arrested or charged, which is not the case here. These requirements are not intended to be all-embracing - but it seems to me beyond any doubt that police must not keep money, not alleged to be stolen, longer than necessary for the purpose of evidence. I see no justification at all for the police to retain the money for no other purpose than to invite the court which may or may not make an order under section 43. On the evidence before me it is not the duty of the police to retain property purely for that speculative purpose."**

[52] Stephenson LJ concluded on both points stated thus:

"While the police were initially entitled to seize the money counsel for the applicant is, in my opinion, correct in submitting that they are no longer entitled to retain it. What is the best evidence is the fact that it was seized and there is no justification for the police keeping it for the speculative purpose of an application under section 43. I do not see how or on what grounds the Crown Court could ever be satisfied that the money was intended to be used to pay thieves or receivers."

[53] In **Malone**, the bank notes in question did not form part of the evidence for the offences of conspiracy to handle stolen goods. According to the plaintiff, the bank notes were detained because if the plaintiff were to be found guilty at his trial, in the

¹³ At p 56.

event of a compensation order or an order for costs made against the plaintiff, the money would be available to satisfy those orders¹⁴. According to the defendant, there was reason to believe that the bank notes seized were used by the plaintiff to pay burglars, thieves and other dishonest handlers for stolen property he was purchasing and accordingly the banks notes were valuable and the best evidence in the plaintiff's upcoming trial.¹⁵

[54] In addressing the first point raised by the trial judge, Stephenson LJ considered the dicta of Lord Denning MR in **Ghani** and said:¹⁶

“... In other words, it is not disputed that the officer's evidence is material, and reasonably believed to be so, as tending to prove the charges on which the plaintiff is being prosecuted, within the law as declared by Lord Denning M.R. in *Ghani v. Jones* [1970] 1 Q.B. 693, 706. There Lord Denning said:

"I take it to be settled law, without citing cases, that the officers are entitled to take any goods which they find in his possession or in his house which they reasonably believe to be material evidence in relation to the crime for which he is arrested or for which they enter. **If in the course of their search they come upon any other goods which show him to be implicated in some other crime, they may take them provided they act reasonably and detain them no longer than is necessary.**

... I accept the second part of the statement of the law as to seizure of property in Halsbury's Laws of England, 4th ed., vol. 11 (1976), paras. 126-135. These paragraphs are very much cut down from what they must have originally contained. They simply read in this way:

"A constable effecting a search should not take property which is in no way connected with the offence alleged to have been committed by the person arrested; but if, in the course of the search, he comes upon other property which shows a person to be implicated in some other offence, **he may take that property also, provided he acts reasonably and retains it no longer than is necessary. The police are entitled to retain property relevant to the offence charged for the purpose of its production in court but may not retain it for longer than the period required for the trial or any appeal.**"

¹⁴ Malone at pp 54-55.

¹⁵ Malone at p 55.

¹⁶ Malone at p 58.

- [55] On the first point, the Court concluded that the balance tipped on the “side of the public” and differed, with hesitation, from the trial judge's opinion that the notes were not the best evidence and, therefore, of benefit to no one judge, jury or prosecution, intending to prove the offences charged. The appeal was accordingly allowed on this ground¹⁷.
- [56] In deciding the second point, Stephenson LJ was asked to consider sections 35 and 43 of the **Powers of Criminal Courts Act 1973**; powers to make compensation and forfeiture orders upon conviction. He stated that he accepted it as clear law generally speaking that the right or power to deprive a defendant of his property even for a time, whether in criminal or in civil proceedings, for the purpose of punishing him by forfeiture or compensating the victim of his wrongdoing by any form of restitution can only be conferred by express and unambiguous statutory provisions. No such provision existed in the three enactments on which the plaintiff relied.¹⁸ The Court found that none of the sections conferred on the police the power to retain anything. The Court concluded that the defendant had no right to detain the notes for the purpose of enabling the Court of trial to consider making an order under section 43 or any other statutory provision which they have been asked to consider. Stephenson LJ upheld the plaintiff's objection on this point but did not allow the appeal on this ground.
- [57] From **Malone**, one can make the following observations: it is apparent that the Court relied on wider common law principles of seizure and detention, that is, the item may be detained if the officer acts reasonably and it is held for no longer than is necessary, rather than the **Ghani** requisites in deciding the first point. Secondly, the detention of the articles for the purposes of making compensation or forfeiture orders can only be expressly provided for in legislation and the common law could not be expanded to allow detention of goods for those purposes.

¹⁷ Malone at p 60.

¹⁸ Malone at pp 61-62.

[58] I now turn to **Derrick Daniel**, the case relied on by the defendant. Whilst **Derrick Daniel** bears some factual similarities with the case at bar as it concerned the seizure of a boat which had been used as “an instrument of crime and as such the police investigating the matter were entitled to retain the same pending the laying of charges that may have emanated from the circumstances”, there is critical factual difference. Like in the case of **Jaroo**, no arrest or charge was laid against the claimant as the police could not locate the suspects who stole the boat in the first instance.

[59] At paragraph 14 of **Derrick Daniel**, Byer J endorses Lord Denning MR in **Ghani** when he stated that the question which must be asked is, ‘is this a significant justification in law?’ Byer J utilised the five-pronged approach in looking at the circumstances surrounding seizure of personal items by the police to determine whether they were entitled to seize the property.

[60] In my opinion, **Derrick Daniel** solidifies this Court’s view that the **Ghani** requisites cannot be applied in the context of this case, where there was no dispute as to the lawfulness of the seizure of the vessel initially and the occupants were arrested and charged in March 2017.

[61] Another case which sheds some light on the issue is **The Attorney General of Trinidad and Tobago v Edasco Limited**¹⁹ wherein Mendonca JA stated as follows:

“47. With respect to the common law powers of the police to seize and detain goods, we refer to the case of **Ghani v Jones [1970] 1 QB 693**. In that case, Lord Denning M.R. set out the powers of the police to seize and detain goods where no person has been arrested or charged. That does not appear to be apposite here. Lord Denning M.R, however, also referred to the power of the police to seize and retain goods where a person has been arrested or charged. In relation to that scenario, Lord Denning M.R. said this:

“I would start by considering the law where police officers enter a man's house by virtue of a warrant, or arrest a man lawfully, with or without a warrant, for a serious offence. **I take it to be settled law, without citing cases, that the officers are entitled to take any**

¹⁹ Civil Appeal No. P178 of 2022.

goods which they find in his possession or in his house which they reasonably believe to be material evidence in relation to the crime for which he is arrested or for which they enter. If in the course of their search they come upon any other goods which show him to be implicated in some other crime, they may take them provided they act reasonably and detain them no longer than is necessary.” (Emphasis added)

There are two things to note in that statement that are relevant to this appeal. First, the police may take goods found in the possession of the person arrested which they reasonably believe to be material evidence in relation to the crime for which he is arrested. Second, the police may also take goods which they come upon which show the man arrested to be implicated in some crime other than the one for which he is arrested. In the second scenario, they may take and detain the goods provided they act reasonably and detain them for no longer than is necessary.”

[62] The reference made in **Edasco** to **Ghani**, was also made by Stephenson LJ in **Malone** and points to a wider common law principle regarding the right of the police to seize and detain goods where a person has been arrested or charged. Although the case of **Edasco** was appealed to the Privy Council, the Board did not have to address the principles in **Ghani** given the nature of the appeal before it. I am of the opinion that the common law would be utilized where the statute does not speak to continued detention. This is supported by **Costello v Chief Constable of Derbyshire Constabulary**²⁰ where at paragraph 11 Lightman J did agree with **Malone** that the statutory provisions supplement the common law powers of the police.

[63] From the authorities above, I have formed the opinion that it would be inappropriate to apply the requisites set out in **Ghani** which the parties have relied upon.

Provisions of the Drugs Act

[64] Whilst the Court does take issue with the basis upon which the claimant has asked the Court to find the detention of the vessel unlawful, I have had regard to the

²⁰ [2001] 3 All ER 150.

provisions of the Drugs Act. Notably, neither party relied on these provisions in their submissions nor grounded their arguments in relation to unlawful detention on these provisions. Section 33 of the Drugs Act provides for the powers of the police or other person authorized in that behalf by a general or special order of the Minister, to search and obtain evidence. According to section 33(2) of the Drugs Act:

“(2) If a police officer has reasonable grounds to suspect that a person is in possession of a controlled drug in contravention of this Act or of regulations made under it the police officer may subject to subsections (3), (6) and (7)—

(a) ...

(b) ... 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.

(3) Subsection (2) shall not derogate from any power of search or any power to seize or detain property which is otherwise exercisable by a police officer.”

[65] In **Costello v Chief Constable of Derbyshire Constabulary**²¹ Lightman J did agree that the statutory “provisions vest in the police no title to the property seized but only a temporary right to retain property for the specified statutory purposes”.

[66] The statutory provisions in the Drugs Act empower the police to **seize and detain evidence of an offence for a specified statutory purpose, that is, for the purposes of proceedings under the Act**. It is the defendant’s evidence that the vessel was seized and detained as an exhibit in the drug related criminal matters. This is not disputed by the claimant. The criminal matters from all accounts were dismissed on 27th September 2017 and this is not disputed. Naturally, the criminal matters having been dismissed, the purpose for which the vessel was detained no longer existed.²²

²¹ [2001] 3 All ER 150 at para 11.

²² See *Costello v Chief Constable of Derbyshire Constabulary*.

[67] The defendant's arguments that they continued to detain the vessel because the police intended to reinstate charges against Mr. Alexander, prevent the commission of further drug related activities through the use of the vessel, or could not find Mr. Alexander whom they believed to be the owner of the vessel, do not justify the continued detention of the vessel since the basis upon which it was seized was exhausted. As Corporal Bailey admitted in her evidence, she had access to the SLASPA's records and could have easily ascertained or attempted to ascertain the owner of the vessel. This would have allowed the defendant to facilitate the release of the vessel to the claimant. Sgt. Byron also made no attempts to ascertain who the owner of the vessel was. He assumed it was Mr. Alexander but took no steps to verify this.

[68] I would therefore say that the police powers under the Drugs Act to seize and detain items are narrower than the common law, since it is confined to the purposes of the proceedings under the Act.

[69] The Court also cannot accept the defendant's argument that they intended to forfeit the vessel. Section 38 of the Drugs Act addresses forfeiture. It states as follows:

(1) ...

(2) Without prejudice to subsection (1), where a person is convicted of a drug trafficking offence the court shall in passing sentence order forfeiture to the Government of Saint Lucia of—

- (a) any article relating to the offence;
- (b) any money relating to the offence; or
- (c) any valuable consideration relating to the offence.

(3) Forfeiture shall extend—

- (a) to any property which there is reason to believe has been obtained from the proceeds of anything relating to the offence for which a person is convicted under this Act or to a conspiracy to commit any such offence; or
- (b) to anything into which any such property has been converted.

...

(6) Before making an order for forfeiture under this section the Court shall summon any person who is the owner or agent of any article, vehicle or other means of conveyance to show cause why the article, ship, vessel

boat, aircraft, vehicle, or other means of conveyance should not be forfeited.

[70] I again rely on the dicta of Stephenson LJ in **Malone** that:

“The common law can develop in many ways, but I would accept it as clear law that, **generally speaking, the right or power to deprive a defendant of his property even for a time, whether in criminal or in civil proceedings, for the purpose of punishing him by forfeiture or compensating the victim of his wrongdoing by any form of restitution can only be conferred by express and unambiguous statutory provisions.**”²³

[71] Evidently, no conviction was secured in the criminal matters in this case. As a result, the ability to forfeit the vessel could not have arisen pursuant to section 38 of the Drugs Act.

[72] In these circumstances, I am of the opinion that the defendant did not have the authority to detain the vessel after the criminal charges were dismissed on 27th September 2017 as the statutory power to do so pursuant to section 33(2) of the Drugs Act was spent. I therefore find that the claimant would be entitled to a declaration that the vessel was unlawfully detained from 28th September 2017 to 11th August 2020.

[73] Even if I am wrong in my analysis above, application of the requisites set out in **Ghani** would lead to a similar result. **Firstly**, on the evidence the police did have reasonable grounds to believe that a serious offence had been committed, that is, drug related offences, which resulted in them arresting and charging the two occupants of the vessel, as well as, instituting criminal proceedings. **Secondly**, from the evidence of Sergeant Byron, there was reasonable grounds for believing that the vessel was material evidence to prove the commission of the crime as the two occupants found on the vessel were trying to evade the police and a chase ensued resulting in the occupants throwing certain substances overboard. **Thirdly**, at the material time, the person in possession of the vessel was its captain, Mr. Alexander,

²³ At pp 61-62.

and not the claimant. The police had reasonable grounds to believe that Mr. Alexander (and the other occupant of the vessel) committed the crimes of possession of a controlled drug and intent to supply a controlled drug.

[74] **Fourthly**, it is undisputed that on 27th September 2017, the matters against the two occupants were withdrawn and the judge ordered restitution (according to the defendant). The defendant's evidence is that they intended to forfeit the vessel after convictions were secured. However, this is not evidence which the Court accepts since the matters were withdrawn and there were no other offences complained of which required the vessel as an exhibit for evidence. The defendant also states that they wished to reinstate charges against Mr. Alexander but have failed to show the Court its basis for this course of action in relation to the specific offences dismissed on 27th September 2017. As stated in **Ghani**, as soon as the case is over, or it is decided not to go on with it, the article should be returned. In these circumstances, the Court is hard-pressed to see how the defendant can submit that it did not keep the vessel longer than was reasonably necessary, especially in the face of the lack of evidence of any further investigations of any offences in which the vessel was involved. I also accept Mr. Philip's submission that photographs could have been taken of the vessel after the matter was dismissed, enabling its return to the claimant. **Fifthly**, although the police were entitled to detain and retain the vessel in 2017, they have failed to show to this Court why it was reasonably necessary to continue doing so after 27th September 2017. The fourth and fifth requisite in **Ghani** are therefore not satisfied.

Issue ii- Did the claimant bring an action in detinue and/or conversion?

[75] Counsel for Mr. Philip submits that he brought an action in detinue and conversion. In coming to a finding, it is important for me to set out the distinction between the two. Lord Justice Diplock in **General and Finance Facilities Ltd v Cooks Cars (Romford) Ltd**²⁴ states that:

²⁴ [1963] 2 All ER 314 at 317.

“There are important distinctions between a cause of action in conversion and a cause of action in detinue. The former is a single wrongful act and the cause of action accrues at the date of the conversion; the latter is a continuing cause of action which accrues at the date of the wrongful refusal to deliver up the goods and continues until delivery up of the goods or judgment in the action for detinue. ...

The action in conversion is a purely personal action and results in a judgment for pecuniary damages only. The judgment is for a single sum of which the measure is generally the value of the chattel at the date of the conversion together with any consequential damage flowing from the conversion and not too remote to be recoverable in law.

On the other hand the action in detinue partakes of the nature of an action in rem in which the plaintiff seeks specific restitution of his chattel. At common law it resulted in a judgment for delivery up of the chattel or payment of its value as assessed, and for payment of damages for its detention. This, in effect, gave the defendant an option whether to return the chattel or to pay its value, and if the plaintiff wished to insist on specific restitution of the chattel he had to have recourse to Chancery. ...

... In addition to an order for specific restitution of the chattel or for payment of its value as assessed, the plaintiff was always entitled to damages for wrongful detention of the chattel.

In the result an action in detinue today may result in a judgment in one of three different forms: (1) for the value of the chattel as assessed and damages for its detention; or (2) for return of the chattel or recovery of its value as assessed and damages for its detention; or (3) for return of the chattel and damages for its detention.”

[76] Counsel for Mr. Philip also relies on **Eric Conliffe v Sergeant Jeffrey Laborde and others**²⁵ at paragraphs 53 to 54 to support his argument that the claim is also in conversion. These paragraphs refer to authorities which state that to prove conversion by detention a claimant must show that he made a demand for the property, the defendant refused to return it, or there was some positive act of withholding of the property by the defendant.

[77] Having considered the learning in the cases of **General and Finance** and **Eric Conliffe**, it is clear to the Court that Mr. Philip has brought this action solely in

²⁵ SVGHC2009/0331 (delivered 24th August 2011, unreported).

detinue and not conversion, especially when one has regard to his pleadings. His pleadings simply do not contain an alternative claim for conversion, and this is further evidenced by the relief he has sought.

[78] I therefore agree with the defendant's oral submission that there was no pleading in the alternative for conversion. I would therefore only consider detinue. The claimant therefore needs to prove that a formal demand for the return of the vessel was made and there was a refusal after a reasonable time, to comply with such demand. The authorities establish that such demand must be unconditional and specific²⁶.

[79] I wish to emphasise the importance of the claimant clearly identifying the cause of action in the claim form. A court should not have to guess or be confronted with a question as to what really is the cause of action being pursued.

Issue iii - Whether the claimant can maintain a claim for detinue?

[80] Counsel for the claimant submits that an action in detinue can be maintained even after the item has been returned and relies on **General and Finance Facilities Ltd**. Notably, in **General and Finance Facilities Ltd**, the crane which was the subject of the dispute had not been returned to the owner when the action for detinue was brought. However, in his discussion of the law in **General and Finance**, Lord Justice Diplock refers to the case of **Jones v Dowle (1841) 9 Neeson & Welsby** in which the Court found that an action of detinue will lie against an auctioneer (the defendant), who having sold a picture to the plaintiff, and received a deposit on the sale by the hands of his clerk, afterwards sells it bona fide to a third party, who refuses to deliver it to the plaintiff. Detinue does not lie against him who never had possession of the chattel, but it does against him who once had but has improperly parted with the possession of it (Parke B). Lord Justice Diplock also refers to **Reeve v Palmer 5 Common Bench (New Series) page 84** which lays the principle that it was no answer for an attorney, when sued in detinue for a deed which has been entrusted to him by a client, to say simply that he has lost it.

²⁶ See para 23 of Derrick Daniel.

[81] In my opinion, the cases described do not support the claimant's argument that detinue can be maintained even after the item has been returned. Rather, it speaks to situations where the defendants had been in possession but were no longer in possession of an article not because they had returned it to the rightful owner but because they had lost it or had in the other case sold it to a third party after receiving a deposit.

[82] In **Jaroo**, the Board did find that it was inappropriate for the appellant to bring a constitutional motion when, "as the Court of Appeal observed, the appropriate remedy for him to pursue at common law was an action for delivery in detinue".²⁷ Notably, in **Jaroo**, the vehicle had not been returned to the appellant at the time of the filing of the action.

[83] A High Court decision from Trinidad and Tobago also sheds light on this issue. In **Anda Ball v the Attorney General of Trinidad and Tobago**,²⁸ Donaldson-Honeywell J had the following to say of the claimant's case in detinue:

"The Claimant's case in detinue is not well-founded having been filed after the detained vessel was returned to him and over two years after the October 2017 date when the Magistrate's Court case, in which it may have been an exhibit, ended."

The matter then proceeded on the remaining aspect of the claimant's case in negligence.

[84] The facts in **Anda Ball** bear striking similarity with the instant matter. It is therefore my opinion that a claim in detinue, in the circumstances of this case, cannot be maintained since the vessel was returned to Mr. Philip prior to the claim being filed. However, if I am wrong, I will go on to consider the claim for detinue.

²⁷ Jaroo at [32].

²⁸ CV2020-01039 at [2].

Whether the claimant has proven the claim for detinue?

- [85] Mr. Philip must prove that he made a proper demand for the vessel to be returned to him and that the defendant refused to return the vessel after the demand. The refusal can be an explicit 'no' or a failure to return the vessel without lawful excuse.
- [86] In his pleadings, Mr. Philip states that he visited the MPU on 18th January 2018 with Mr. Alexander with a view to retrieving his vessel. He says that he was asked to return with the registration documents for the vessel, his identification card and a copy of the Extract of Order from the High Court. He also states that on successive occasions he returned to the MPU with the documents and was told the vessel could not be released. This aspect of his pleadings was inconsistent with his evidence in chief, which seems to suggest that when he visited on 18th January 2018, he already had these documents in hand and was only told about a Court Order being needed for the vessel's release. The defendant's evidence alleges that Mr. Philip and Mr. Alexander never attended the MPU requesting the release of the vessel.
- [87] From the evidence, it appears to me that Mr. Philip did not make an unconditional demand for his vessel on 18th January 2018. The evidence seems to suggest that he visited the MPU with a view to finding out what was necessary for the release of his vessel, as opposed to providing those documents in the first instance. Mr. Philip appeared to me to be seeking information. I also do not find that the MPU made an unconditional refusal as they, as Mr. Philip states, asked him to provide documents for the vessel to be released. I therefore do not accept the defendant's evidence that the first interaction with Mr. Philip was on 8th June 2020, especially where the evidence of Corporal Bailey shows that the MPU did not record when people came to make general enquiries about vessels. That being said, it is evident that the first interaction on 18th January 2018 was not one where Mr. Philip made his first unconditional demand.
- [88] I am also not of the view that Mr. Philip made successive attempts after 18th January 2018 and before 8th June 2020 to obtain the return of the vessel. I make this finding

based on his lack of particulars with respect to these successive attempts and the fact that the office copy of the order exhibited to his pleadings bears the date, 8th June 2020. The lack of particulars around these successive attempts I find to be odd in light of his ability to vividly recall the events of 18th January 2018. In my opinion, if he did visit subsequently, he should have been in a position to proffer more details surrounding those visits. Mr. Philip has simply provided no evidence to show that he returned to the MPU prior to 8th June 2020, with the requested documents. Furthermore, Mr. Philip's evidence during cross-examination that he was making \$1000.00 per day yet did not have the \$250.00 to hire a lawyer in 2018, cements my opinion that he just did not care to do anything during that time to recover the vessel. He just left the vessel there until he was ready to deal with it.

[89] I accept Corporal's Bailey's recount of the interaction with Mr. Philip on 8th June 2020. I accept her evidence that he attended the MPU with his attorney to recover the vessel but did not have in his possession his proof of ownership. In my opinion, the first unconditional demand made by the claimant was on 8th June 2020, when he visited MPU and had a conversation with Corporal Bailey with a view to the release of the vessel. Corporal Bailey also says she informed Mr. Philip that he would also need a form of identification and a copy of the extract from the Court to verify the dismissal of the charges prior to the vessel being released.

[90] Even if I accept that Mr. Philip did make a demand for the release of his vessel on 8th June 2020, it cannot be said that there was an unconditional refusal to release the vessel by the defendant. Rather, the release was conditional upon his provision of certain documents.

[91] The pre-action protocol letter was sent on 23rd June 2020, with a stipulated response time by 31st July 2020. It is important to highlight that the pre-action protocol letter called upon the defendant to provide reasons for the continued detention of the vessel, and not for the defendant to release the vessel to Mr. Philip. It is Corporal Bailey's evidence that on 11th August 2020, Acting Inspector Mathurin called Mr.

Philip's attorney in her presence to let him know that the vessel would be released once the documents were brought in. These documents were brought in by Mr. Philip on 12th August 2020, and the vessel was subsequently released to him.

[92] From the first demand made on 8th June 2020, to its collection by the claimant on 12th August 2020, I do not find this to be an unreasonable time to facilitate its release and in any event, there was no unconditional refusal.

[93] In these circumstances, I do not find that the elements of detainee have been made out.

Whether the matter is prescribed by Article 2124 of the Civil Code of Saint Lucia?

[94] In light of the Court's finding that the demand for the release of the vessel was made on 8th June 2020 and the matter was filed on 25th August 2020, the issue of prescription would not be a live one. The cause of action would only have arisen on 8th June 2020. The claim was therefore filed within the six-month prescription period as provided for in article 2124 of the Civil Code. As such, this issue will not be considered as it is now purely academic to do so.

[95] In these circumstances, I am also not of the view that the question of the constitutionality of article 2124 of the Code as raised by Mr. Philip arises and I decline to address this issue. It may very well be relevant in another set of circumstances.

Whether the claimant is entitled to damages?

[96] Mr. Philip alleges that as a result of the defendant's unlawful detention of the vessel, he has suffered loss of earnings as a tour boat operator, loss of use, damages for the advanced depreciation of the vessel during its detention, as well as costs associated with restoring the vessel. He also claims aggravated damages. and interest on these damages.

[97] The defendant puts Mr. Philip to strict proof of his loss of earnings as a consequence of the detention of the vessel. They also deny that the vessel required the repairs as claimed as the vessel was returned to Mr. Philip in the condition “as received”. Mr. Philip is put to strict proof of the damages claimed.

[98] It is the case that Mr. Philip has failed to prove his claim in detinue. As indicated above, Counsel for the claimant sought to suggest that the claim was grounded in both detinue and conversion. However, I have determined that the pleadings do not support any other cause of action but detinue which was the basis of his claim for damages.

[99] In **George W. Bennett Bryson’s and Co Ltd trading as Bryson Shipping v. George Purcell trading as Hortico Landscaping and Nursery**²⁹ the Court stated the fundamental rule that fairness dictates that a party is bound by their pleadings or by their pleaded case, and the Court, in the proper discharge of its duty to decide cases, is bound to do so based on the pleaded case, that is to say, the pleaded causes of action.³⁰ Having failed to meet the elements required to prove detinue and there being no other cause of action pleaded, there is no basis for the claim for or award of damages.

D. Conclusion and Order

[100] In light of the foregoing discussion, the Court makes the following orders:

1. The Court declares that the defendant unlawfully detained the vessel “Our Toy” from 28th September 2017 to 11th August 2020.
2. The claimant having failed to prove his claim in detinue is not entitled to damages as claimed.

²⁹ ANUHCVP2011/0033 (delivered 28th February 2018, unreported).

³⁰ See discussion at paras 30-39 of Bryson Shipping.

3. In light of the fact that a declaration in relation to the unlawful detention was made in favour of Mr. Philip but he failed to secure any of the other relief which he sought, the Court thinks that the appropriate costs orders is that each party bears their own costs.

[101] The Court sincerely apologises for the delay in the delivery of this judgment and for any inconvenience caused as a result.

**Kimberly Cenac-Phulgence
High Court Judge**

By The Court



Registrar