

THE EASTERN CARIBBEAN SUPREME COURT

**IN THE HIGH COURT OF JUSTICE
CIVIL DIVISION**

SAINT LUCIA

Case Number: SLUHCV2023/0312

IN THE MATTER of the Constitution Order of St.
Lucia Cap 1.01 of the Revised Laws of Saint Lucia

-and-

IN THE MATTER of a claim that the Claimant's
rights under sections 6 and 8 have been
contravened, by virtue of which the Claimant is
entitled to relief under section 16 of the said
Constitution.

BETWEEN:

MC KIN ST HILAIRE

Claimant

-and-

[1] **THE COMPTROLLER OF CUSTOMS**

[2] **THE ATTORNEY GENERAL OF SAINT LUCIA**

Defendants

Before the Honourable Mr. Justice Alvin S. Pariagsingh

Appearances: Mr. Anand Ramlogan SC, leading Mrs. Lydia B. Faisal instructed by
Mr. Jared Jagroo for the Claimant
Mr. Seryozha Cenac for the Defendant

2025: January 21 – trial
March 14, 17 – written submissions
April 15 – decision

JUDGMENT

Claim for judicial review and constitutional relief.

THE CLAIM:

[1] **PARIAGSINGH, J:** This is a claim for judicial review of the decision of the Comptroller of Customs, and for constitutional relief under the Constitution of Saint Lucia. By Fixed Date Claim Form filed on 31 July 2023, the Claimant seeks the following relief:

- 1) An order of certiorari to quash the decision of the Comptroller of Customs dated 10 July 2023, to proceed with the forfeiture of the Claimant's vehicle;
- 2) An order of certiorari to quash the Notice of Seizure dated 12 May 2023 issued by the Comptroller of Customs in respect of the Claimant's motor vehicle;
- 3) A declaration that the Claimant has been treated unfairly and in breach of the principles of natural justice;
- 4) An order pursuant to CPR 56.6(2)(c) directing the Comptroller of Customs to return the Toyota RAV4 Hybrid SUV, VIN: JTMY53FV60D016771;
- 5) A declaration that the Claimant's right to the protection of the law under section 8 of the Constitution has been breached;
- 6) A declaration that the Claimant's right to property under section 6 of the Constitution has been breached;
- 7) Damages, including vindicatory damages, for the breach of the Claimant's constitutional rights; and
- 8) Costs.

THE EVIDENCE:

Affidavit of Mr. McKin St. Hilaire:

[2] In June 2022, the Claimant began searching for a vehicle, having previously attempted to purchase one through a Japanese auction house without success. One afternoon, after returning home from visiting a local dealership with his family, he was visited by his long-time friend, Robby Mitchel. During their conversation, Robby mentioned that he could source a vehicle from the UK that would be categorised as a "non-runner", meaning it would not require extensive bodywork. Mr. St. Hilaire, who had both a personal interest and a side business in vehicle repairs, saw this as a viable opportunity.

He intended to repair the vehicle, license it, and lease it to a taxi operator to generate additional income.

- [3] Robby later identified a 2020 Toyota RAV4 Hybrid in generally good condition. Although the front end had been removed for parts, Mr. St. Hilaire confirmed the availability of suitable replacement parts from US suppliers and concluded that, even accounting for a worst-case repair scenario, the investment remained financially sound. He agreed to purchase the vehicle. Robby, who was returning to the UK shortly thereafter, undertook to arrange the shipping and container logistics. Prior to Robby's departure, Mr. St. Hilaire transferred the necessary funds, deducting an amount that Robby already owed him from a previous transaction. An invoice dated 20 June 2022 was prepared, and a cash receipt for EC\$23,700.00 was issued by Robby on 28 June 2022.
- [4] On 10 July 2022, Mr. St. Hilaire received a bill of lading from BritLink Cargo Limited confirming that shipping charges had been paid. The vehicle arrived at Port Castries on 21 July 2022, as verified by an out-of-charge note from Superior Shipping Services Ltd. The container was unloaded on 4 August 2022. Following its arrival, Mr. St. Hilaire travelled to Vieux Fort to collect the shipping documents. After settling the fees with the agent, he was informed that the container was being offloaded in Castries. He then contacted his broker and handed over the documentation to begin the customs clearance process.
- [5] A few days later, he was advised to collect the documents following the approval of hybrid vehicle concessions. At the Customs Valuation Department, officers, including Mr. Leopold, examined the declaration and requested additional documentation. The initial package submitted by his broker included Robby's invoice for £13,400.00, the EC\$23,700.00 cash receipt, and proof of a bank transfer from the Bank of Saint Lucia for EC\$25,382.78, together with EC\$105.00 in fees. Attempts to contact Robby for the additional documents, such as the V5C registration certificate, were unsuccessful.

- [6] Mr. St. Hilaire queried the necessity of the V5C, pointing out that it was not unusual for vehicles imported from the UK to arrive without one. He referenced listings on auction sites where the absence of a V5C was often indicated. Nevertheless, he submitted further documents and explanations relating to the purchase. Customs, however, maintained their position that the V5C was required. This prompted Mr. St. Hilaire to conduct an online VIN check, which revealed no irregularities. The check indicated a manufacturer recall but no legal encumbrances or red flags.
- [7] Robby eventually responded and relayed that the vehicle had been sold "as-is", for parts and for breaking, and that all sales were final. Mr. St. Hilaire continued to press for the release of the vehicle and remained willing to pay all applicable duties. On 9 August 2022, he signed a formal declaration valuing the vehicle at £13,400.00.
- [8] On 12 September 2022, he was issued with a detention slip. Several months later, on or around 3 March 2023, Customs Officer Hinkson Regis requested that Mr. St. Hilaire provide a written statement concerning the purchase. A draft was supplied, and after discussion, a final version was agreed upon on 12 April 2023.
- [9] On or around 12 May 2023, Officer Regis personally served Mr. St. Hilaire with a notice of seizure. The notice outlined three options: (i) take no action, in which case the vehicle would be condemned automatically; (ii) opt for administrative review by the Comptroller or a designated officer; or (iii) file a formal claim and contest the seizure in court. Mr. St. Hilaire chose the second option, preferring an administrative hearing to expensive litigation. He signed to acknowledge receipt of the notice and indicated his intention to proceed with the administrative option. Officer Regis recorded this in the file and assured him that a hearing would be scheduled.
- [10] In the ensuing weeks, Mr. St. Hilaire made several calls and visits to Customs to enquire about the status of his matter. Although Officer Regis remained responsive and even provided his personal contact details, no hearing was ever arranged. On 6 June 2023, Mr. St. Hilaire met with Officer Regis, who expressed surprise at the delay and advised

him to email the Comptroller directly. On 10 June 2023, Mr. St. Hilaire sent an email confirming his election of the administrative route and attaching a copy of the seizure notice. No reply was received.

[11] He followed up with Officer Regis via WhatsApp on 16 June 2023 and later by telephone. At Officer Regis' request, he re-sent the original email internally. On 29 June 2023, Regis advised him that the matter had been referred to the Attorney General's Chambers. The following day, he was informed that a response had been received and that a formal letter would be issued.

[12] On 10 July 2023, Officer Regis visited Mr. St. Hilaire at his home and handed him a letter from the Comptroller dated that same day. The letter advised that the vehicle had been identified as stolen in the UK and that forfeiture proceedings had been initiated. It also indicated that the matter had been referred to the Attorney General. This development came as a complete shock to Mr. St. Hilaire, who had been diligently pursuing the administrative process on the understanding that he would be afforded the opportunity to be heard before any final decision was made.

[13] Throughout this period, Mr. St. Hilaire maintained that he had acted in good faith. On the basis of repeated representations made by Customs officers, he had expected to be granted an opportunity to explain himself. The events caused him considerable financial and emotional strain. He had planned to lease the vehicle to Mr. Kimbert Duplesis of PHV Tours for EC\$4,000.00 per month over a three-year period. At the time, he had also commenced employment at Arbiter Bank in Rodney Bay and had intended to use the vehicle himself until the lease commenced in September 2022. To facilitate this, he obtained a loan from First Caribbean International Bank in the amount of EC\$96,500.00, with monthly repayments of EC\$1,514.16. The anticipated lease income would have allowed him to service the loan and contribute to the completion of his home.

[14] Instead, the vehicle remained impounded, delaying the completion of his home and forcing him to continue renting a small apartment in Grand Riviere, Dennery. This

situation placed substantial pressure on his personal and family life. Promises made to his daughter about moving into their new home could not be honoured. The experience left him demoralised and deeply frustrated. Despite being a law-abiding citizen with no history of misconduct, he felt treated with indifference and suspicion. His repeated visits to the Customs office left him with a growing sense of despair. He had elected the administrative process in good faith, believing that fairness would prevail. Yet, he was never afforded the opportunity to speak. The process failed him, and he was left disillusioned.

Affidavit in Opposition by Mr. Hinkson Regis:

[15] Mr. Hinkson Regis, a senior customs officer with over two decades of experience, currently holds the position of Customs Inspector II within the Investigations Unit. His affidavit addresses the circumstances surrounding the importation of the 2020 Toyota RAV4 Hybrid, which arrived in Saint Lucia in July 2022. He states that he became involved in the matter on 20 July 2022, following concerns regarding two vehicles imported under the classification of “shells”.

[16] During the course of his investigation, it came to light that the subject vehicle had been reported stolen in the United Kingdom on 31 May 2022. Crime reference and insurance policy numbers were obtained, and it was confirmed that the matter had been closed following an insurance payout by Aviva Insurance. However, efforts to communicate with the insurer to clarify the status of legal ownership did not yield a definitive response.

[17] Mr. Regis refers to the Claimant’s declared value of £13,400.00, as documented in the supporting paperwork. However, following a departmental assessment, the Customs Department valued the vehicle at £25,728.00 as of May 2023, resulting in revised duties of XCD\$37,574.48. The discrepancy between the declared and assessed values, coupled with other irregularities, led to the detention and eventual seizure of the vehicle.

[18] He recounts that he interviewed Mr. St. Hilaire on 10 August 2022, and obtained a written statement. According to Mr. Regis, the Claimant explained that the vehicle had

been sourced by a contact named Robby Mitchel. Attempts to contact Mr. Mitchel were unsuccessful, as calls were neither answered nor returned. Mr. Regis outlines several concerns which arose during the investigation, including the timing of the vehicle's procurement in relation to its reported theft, the labelling of the bank wire transfer as "family support" rather than as a payment for a vehicle, and the appearance of falsity in the sales invoice. He also notes that Mr. Mitchel was not the registered owner of the vehicle.

[19] On 12 May 2023, a seizure notice was formally issued to Mr. St. Hilaire, citing breaches of sections 113(1)(a) and 114(b) of the Customs Act namely, the making of untrue statements and the use of false documentation. The Claimant was presented with three options for recourse. Mr. Regis clarifies that the administrative option selected by the Claimant (Option 2) does not entail a right to an oral hearing but instead provides for internal review and written notification of the Comptroller's decision. Such notification was duly given by letter dated 10 July 2023.

[20] In Mr. Regis's view, the Comptroller's decision was lawful, procedurally sound, and within the scope of the statutory powers conferred by the Customs Act. He maintains that the seizure was a proper exercise of authority and constituted a lawful, temporary interference with private property pending judicial determination. He further contends that the condemnation process under the Customs Act provides an adequate and effective remedy, and that the constitutional challenge brought by the Claimant is not the appropriate mechanism for redress.

Affidavit in Reply to Mr. Hinkson Regis by Mr. McKin St. Hilaire:

[21] In response, Mr. St. Hilaire disputes several key assertions made by Mr. Regis. He explains that the 2020 Toyota RAV4 Hybrid was purchased as a non-runner, and sold in a partially dismantled state for parts. In that context, he notes that the absence of a V5C registration certificate was neither unusual nor suspicious. He supports this explanation with a sample V5C document, marked "M.S.H.13", which expressly states that it is not proof of ownership.

[22] He adds that, on at least one prior occasion involving a 2015 Mercedes C200, the Customs Department did not insist on the production of a V5C, and the vehicle was processed without difficulty. The informal nature of his arrangement with Mr. Robby Mitchel, whom he trusted, accounted for the lack of a detailed invoice listing the vehicle's VIN. However, he points out that the VIN was included on the bill of lading and other declaration documents submitted to Customs.

[23] He firmly denies ever representing the vehicle as a "shell" and insists that no such description appeared in the documents submitted. On the contrary, he had applied for hybrid vehicle concessions, which would not have been available for a mere vehicle shell. With respect to valuation, Mr. St. Hilaire stands by the declared price of £13,400.00. When concerns were raised about the operability of the vehicle, he offered to make it available for mechanical inspection, but this offer was not taken up by Customs.

[24] Addressing the wire transfer labelled "family support", Mr. St. Hilaire explains that this was a result of procedural requirements imposed by his bank. The original transfer description was "used vehicle", but due to the bank's insistence on seeing an invoice which was not readily available due to the informal nature of the transaction, he was advised to amend the payment description to avoid delay. He provided this explanation to the Valuation Department at Customs.

[25] He also raises concerns regarding the procedure following the issuance of the seizure notice. A full witness statement had been submitted in August 2022, yet the seizure notice was not issued until nine months later, in May 2023. Upon receipt of the notice, he opted for administrative processing based on what had been communicated to him namely, that he would be afforded an opportunity to be heard. He now asserts that this understanding was mistaken, and that the process failed to provide him with any real opportunity to respond. He claims this omission constitutes procedural unfairness.

Affidavit in Reply by Mr. Robby Mitchel:

[26] Mr. Robby Mitchel, a resident of the United Kingdom and a long-standing friend of the Claimant, confirms that he assisted Mr. St. Hilaire in sourcing the 2020 Toyota RAV4 Hybrid in question. He recalls that, during a visit to Saint Lucia in June 2022, Mr. St. Hilaire expressed interest in acquiring a vehicle that could be repaired and later used for commercial purposes. Given his location and familiarity with UK garages, Mr. Mitchel agreed to assist.

[27] Shortly thereafter, he located a suitable vehicle a 2020 Toyota RAV4 Hybrid, which had been classified as a non-runner and sold by a UK garage for parts. The front end of the vehicle had already been removed, consistent with its status. Mr. Mitchel states that this classification is not unusual in the UK, particularly where vehicles are dismantled for sale. Because the vehicle was intended for parts and not for road use, no V5C registration certificate was issued.

[28] Mr. Mitchel explains that Mr. St. Hilaire had already transferred funds to him in anticipation of such a purchase. Following the acquisition of the vehicle, Mr. Mitchel issued both a sales invoice and a cash receipt to confirm the transaction. He reiterates that the absence of a V5C in this context was standard practice and not indicative of any irregularity. In his experience, it is not uncommon for vehicles sold for dismantling to be accompanied only by proof of purchase, particularly where the vehicle is being “parted out”.

[29] He further affirms that the V5C certificate is not, in any event, conclusive evidence of ownership. Rather, it records the name of the registered keeper for the purposes of the Driver and Vehicle Licensing Agency in the UK and is primarily relevant for vehicles that are intended for use on public roads. Mr. Mitchel states that he has himself imported vehicles into Saint Lucia without a V5C and encountered no difficulty from Customs in those cases.

[30] In sum, Mr. Mitchel maintains that the transaction with Mr. St. Hilaire was conducted in good faith, that the vehicle was properly acquired and shipped, and that there was never any intention to mislead Customs or to provide false information. He confirms that all relevant documentation in his possession was provided to support the Claimant's importation process.

Further Affidavit of Mr. Hinkson Regis:

[31] In this further affidavit, Mr. Hinkson Regis, a senior customs officer and Inspector II within the Investigations Unit, responds to the issues raised in the reply affidavits of Mr. McKin St. Hilaire and Mr. Robby Mitchel concerning the seizure of the 2020 Toyota RAV4 Hybrid.

[32] Mr. Regis begins by reaffirming that the vehicle was declared as a "shell" and valued at £13,400.00. He maintains that this declared value was not accepted by the Customs Department, which, following assessment, determined the fair value to be £25,728.00. This reassessment gave rise to a significantly higher duty liability and formed part of the basis for the vehicle's detention and subsequent seizure.

[33] He states that the seizure was not arbitrary, but rather grounded in discrepancies in the documentation provided, the undervaluation of the vehicle, and intelligence received concerning the vehicle's background. Mr. Regis again refers to the report that the vehicle had been stolen in the United Kingdom and had been the subject of an insurance payout. Notwithstanding Mr. Mitchel's assertion that the vehicle was acquired for parts and lacked a V5C certificate, Mr. Regis contends that such documentation remains an important part of verifying a vehicle's legitimacy and provenance.

[34] While acknowledging that a V5C is not conclusive proof of ownership, Mr. Regis asserts that it plays a key evidentiary role in the Customs' verification process, particularly in circumstances where the vehicle's status or origin may be in doubt. He maintains that the absence of a V5C in this case compounded the concerns already raised by other inconsistencies in the import documentation.

[35] In relation to the administrative processing chosen by Mr. St. Hilaire, Mr. Regis reaffirms that this procedure does not include the right to an oral hearing. Rather, it involves an internal review and the issuance of a written decision by the Comptroller. He denies that the process was misleading or procedurally deficient, stating that the available options and their implications were clearly explained to the Claimant.

[36] Mr. Regis also addresses the explanation given for the wire transfer marked as “family support.” He expresses concern that the reclassification of the transfer raises questions about transparency and the true nature of the transaction. In his view, informal arrangements between friends do not exempt the parties from compliance with the evidentiary requirements of the Customs Act.

[37] Finally, Mr. Regis addresses the delay between the taking of the Claimant’s statement and the issuance of the seizure notice. He attributes this delay to the need for a thorough investigation, including efforts to contact the UK insurer, Aviva. These steps, he says, were essential given the allegations of prior theft and the insurance payout linked to the vehicle.

[38] In conclusion, Mr. Regis stands by his earlier assertion that the seizure was lawfully effected, procedurally fair, and consistent with the statutory powers of the Customs Department. He maintains that the route taken by the Comptroller in referring the matter for condemnation proceedings was appropriate in light of the findings of the investigation.

FINDINGS OF FACT:

Credibility and Demeanour of Witnesses:

[39] The Claimant presented as a credible witness. His evidence was measured and coherent, and he made appropriate concessions where necessary. He was forthright about the informality of his arrangement with Mr. Mitchel and the limitations of his knowledge but remained consistent throughout. His account was corroborated in key respects by Mr. Mitchel, whose evidence the Court also accepts.

[40] By contrast, Mr. Regis gave his evidence in a careful but ultimately incomplete manner. Several of the documents to which he referred were not disclosed or exhibited. His position relied heavily on unverified assertions, unsupported by underlying material. His failure to provide basic evidence arising from his investigation significantly weakened the probative value of his testimony.

[41] Having considered the affidavit evidence, listened to the cross-examination of the witnesses, and observed the manner in which they gave their evidence, the Court makes the following findings of fact on a balance of probabilities.

Whether the Vehicle Was Declared as a “Shell”?

[42] The Court accepts the Claimant’s evidence that the vehicle was imported as a “non-runner” and not as a “shell”. In his affidavit, the Claimant stated that he had purchased the vehicle for the purpose of repair, with the intention of licensing it and eventually leasing it as a source of income. This account was consistent with the surrounding circumstances, including his application for hybrid vehicle concessions, an application that would not logically accompany the importation of a vehicle classified as a “shell”. Mr. St. Hilaire did not waver on this point during cross-examination.

[43] Mr. Regis alleged that the vehicle was declared as a “shell” but did not produce any documentary evidence to support this claim. When pressed, he conceded that importing a shell is not, in itself, unlawful, and no persuasive evidence was offered to show that the Claimant had misclassified the vehicle. No entry form, declaration document, or correspondence was tendered which described the vehicle as a “shell”, nor was any explanation given as to where that designation originated. While the vehicle’s condition may have reflected that of a non-runner, there is no cogent evidence before the Court that the vehicle was described as a “shell” by the Claimant or his broker.

[44] On the whole, the Court is satisfied that the Claimant treated the vehicle as a non-runner for the purpose of importation and made no attempt to misrepresent its classification.

The reference to a “shell” appears to have been an internal characterisation adopted by Customs that was neither communicated to nor endorsed by the Claimant.

The Value Declared for the Vehicle:

[45] The Claimant declared the value of the vehicle as £13,400.00. He accepted during cross-examination that this was the amount agreed with Mr. Mitchel and that he had not made any independent inquiries into how much Mr. Mitchel had actually paid. He also candidly admitted that Mr. Mitchel had generated the sales invoice and that he had accepted the stated value without further scrutiny. Whilst this may reflect a degree of informality or even carelessness, it does not, in the Court’s view, establish deceit. The Claimant struck the Court as someone who relied heavily on his longstanding relationship with Mr. Mitchel, and who genuinely trusted that the transaction was being handled appropriately.

[46] The Defendant’s case was that Customs reassessed the vehicle’s value at £25,728.00. However, no valuation report was disclosed, nor was any explanation provided as to how this revised figure was reached. Mr. Regis confirmed during cross-examination that the reassessment of value does not in itself require seizure and that there is discretion to permit the importer to pay revised duties. It is also accepted that the Claimant had no control over the value ultimately ascribed to the vehicle by Customs and that his broker completed and submitted the relevant declaration.

[47] The Court finds that the Claimant relied on the invoice value provided by Mr. Mitchel in good faith. While it is possible that the vehicle’s market value was higher, there is no evidence that the Claimant knowingly undervalued the vehicle or intended to avoid the proper payment of duties.

Whether the Vehicle Was Stolen?

[48] Mr. Regis stated in both his affidavit and oral evidence that the vehicle had been reported stolen in the United Kingdom on 31 May 2022, and that the insurer, Aviva, had issued a payout in respect of the loss. However, under cross-examination, it became

apparent that this claim was based almost entirely on hearsay. No police report was exhibited. No correspondence from Aviva or any UK authority was produced. No document was tendered which directly linked the specific vehicle imported by the Claimant by VIN or other identifier to the reported theft.

[49] The Claimant, by contrast, testified that he had no knowledge of any allegation that the vehicle had been stolen until informed by Customs some weeks after its arrival. He stated that, in light of the ongoing insistence by Customs on the production of a V5C, he became concerned and undertook a VIN check online. This check raised no red flags and revealed only a manufacturer recall. He gave this evidence in a clear and forthright manner, and it was not shaken in cross-examination. The Court has no reason to doubt the sincerity of his account.

[50] In the absence of any documentary support for the assertion that the vehicle was stolen, and in view of the Claimant's consistent and good faith conduct throughout, the Court finds that there is insufficient evidence to conclude that the vehicle was stolen, or that the Claimant had any knowledge or reason to suspect that it was.

The Receipt for EC\$23,700.00:

[51] The receipt dated 28 June 2022, purporting to confirm a cash payment of EC\$23,700.00, was put squarely to the Claimant in cross-examination. He readily admitted that the receipt did not reflect a cash payment made on that date but was instead intended to account for a set-off against building materials and services previously provided to Mr. Mitchel. He acknowledged that he did not have documentary proof of the precise value of those materials, but he explained that the figure was mutually agreed between them, arising out of informal arrangements made during the COVID-19 pandemic.

[52] The Court accepts this explanation. The informal nature of the receipt is consistent with the broader character of the transaction between the Claimant and Mr. Mitchel, which was rooted in longstanding friendship and mutual trust. While the description of the

payment may have been imprecise, there is no evidence that the receipt was fabricated or intended to deceive Customs. In context, the receipt was not fraudulent.

The Bank Transfer Labelled “Family Support”:

[53] The Claimant was also questioned at length regarding the designation of the bank transfer as “family support”. He explained that he had initially attempted to process the transfer using the label “used vehicle”, but the bank refused to proceed without an invoice. As the invoice was not yet available, he requested that the teller permit him to classify the transfer as “family support”, and this was accepted. Although the phrasing in his affidavit may have suggested that this was the bank’s suggestion, the Court is satisfied that this was, at most, a minor inaccuracy in expression rather than any attempt to mislead.

[54] The Claimant was forthright in his explanation and did not seek to minimise his role in making the change. His evidence on this point was consistent and not shaken under cross-examination. Considering the informal nature of the arrangement with Mr. Mitchel, the Court accepts that the use of the phrase “family support” was a practical response to the banking constraints he encountered and was not motivated by a desire to conceal the transaction.

Fairness of the Administrative Process:

[55] The Claimant elected to proceed via administrative processing under Option 2 of the seizure notice. His unchallenged evidence was that he expected and indeed believed, based on the wording of the notice and his discussions with Officer Regis, that he would be given the opportunity to be heard before any final decision was taken. Mr. Regis accepted in cross-examination that he never informed the Claimant that no hearing would occur and acknowledged that he had no personal experience with the process. His description of the procedure lacked clarity and did not inspire confidence that it had been accurately explained to the Claimant.

[56] The seizure notice itself uses the word “appear” and sets out a process which, on its face, suggests that the importer would be permitted to make representations. The Court finds that the Claimant was misled, if not deliberately, then certainly through a lack of proper explanation, into believing that he would be afforded the opportunity to be heard. No such hearing occurred. The Court finds that this omission rendered the administrative process procedurally unfair.

ANALYSIS:

[57] This matter arises out of the seizure of a 2020 Toyota RAV4 Hybrid by the Comptroller of Customs pursuant to sections 113(1)(a) and 114(b) of the **Customs (Control and Management) Act**¹. The Claimant challenges both the lawfulness of the seizure and the subsequent decision by the Comptroller to initiate condemnation proceedings. The claim has been brought as a claim for both judicial review and constitutional relief, alleging breaches of sections 6 and 8 of the Constitution namely, the right to property and the right to the protection of the law.

[58] The Court has already made findings on the key factual issues in the case. Those findings now form the basis upon which the Court must apply the relevant legal principles to determine whether the impugned actions of the Comptroller were lawful and constitutionally valid.

Whether the Comptroller Lawfully Exercised His Powers Under the Customs Act?

[59] The Defendants submitted that both the seizure of the vehicle and the decision to initiate condemnation proceedings were authorised under the Customs Act, in particular sections 113(1)(a) and 114(b), which address the making of untrue declarations and the use of forged or falsified documents.

[60] According to the Respondents, the Claimant’s declaration of value (£13,400.00) was materially inaccurate since the documentation provided in support of the importation was

¹ Cap. 15.05 of the Revised Laws of Saint Lucia.

either unreliable or false and the Claimant falsely represented himself as the lawful owner of the vehicle. They further relied on intelligence allegedly received from UK authorities that the vehicle had been reported stolen and had become the property of Aviva Insurance following an insurance payout.

[61] The Claimant, on the other hand, submitted that the seizure lacked any evidential foundation. He maintained that he had purchased the vehicle in good faith from a long-time friend, Mr. Robby Mitchel, and declared the value based on the information provided to him. He submitted that all available documentation, including an invoice and receipt, had been handed over to Customs and that he had paid duties on the declared value. He stated that he had no knowledge of any allegation of theft and that Customs never produced any documentation to substantiate that the vehicle had been stolen or was otherwise liable to forfeiture.

[62] The Court accepts the Claimant's submission that, in a public law context, the lawfulness of an administrative act such as seizure, must be assessed not by reference to the subjective belief of the decision-maker, but by reference to objective legal standards. In this regard, the Court is guided by the Court of Appeal's recent decision in **Attorney General v Faustinus Venoid George**², which affirmed that the power to seize goods under section 130 of the Customs Act arises only where those goods are **objectively liable** to forfeiture. Mere suspicion or even reasonable belief is not sufficient.

[63] The burden of proof, therefore, rests squarely on the Defendants to establish that the Claimant's vehicle was, in fact, liable to forfeiture. In this case, the evidence led by the Comptroller falls significantly short of that standard. The Court notes that the central allegation that the vehicle was stolen is wholly unsupported by any primary evidence. No crime report was produced; no confirmation from UK police or Aviva Insurance was disclosed; and no documents were exhibited to link the Claimant's vehicle by VIN or other identifying feature to any specific theft.

² SLUHCVP2023/0019 (delivered on 14 March 2025)

[64] The explanation offered for this lack of disclosure was unsatisfactory. In a matter as serious as the seizure and prospective forfeiture of private property particularly where the justification rests on an alleged criminal offence, the law requires more than assertion. As was stated by Lord Lowry in **R v Inland Revenue Commissioners and Another, ex parte T.C. Coombs & Co.**³:

“In our legal system generally, the silence of one party in face of the other party's evidence may convert that evidence into proof in relation to matters which are, or are likely to be, within the knowledge of the silent party and about which that party could be expected to give evidence. Thus, depending on the circumstances, a prima facie case may become a strong or even an overwhelming case. But, if the silent party's failure to give evidence (or to give the necessary evidence) can be credibly explained, even if not entirely justified, the effect of his silence in favour of the other party, may be either reduced or nullified.”

[65] As such, the Defendants' silence or the failure to produce available evidence may convert the Claimant's case into proof. That principle applies with particular force in the context of judicial review.

[66] The duty of disclosure upon public authorities in judicial review proceedings is well established. As Sir John Donaldson MR observed in **R v Lancashire County Council, ex parte Huddleston**⁴, judicial review is not adversarial litigation in the conventional sense, but a collaborative process intended to secure lawful public administration. At page 945 of the judgment, Sir John Donaldson MR stated that judicial review “is a process which falls to be conducted with all the cards face upwards on the table and the vast majority of the cards will start in the authority's hands”.

[67] In that spirit, the Court finds the Respondents' failure to disclose core documents including the crime report, any response from Aviva Insurance, and the internal customs valuation report, to be more than a technical irregularity. It constitutes a material breach of the duty of candour. As was reaffirmed in **Marshall and others v Deputy Governor**

³ [1991] 2 AC 283 at 300

⁴ [1986] 2 All ER 941

of Bermuda and others⁵, the government's failure to fully and transparently disclose the evidential basis for its decision entitles the Court to draw adverse inferences.

[68] Accordingly, the Court finds that the Defendants have failed to discharge their burden of establishing that the Claimant's vehicle was liable to forfeiture. There is no credible evidence before the Court that the vehicle was stolen, that it was unlawfully acquired, or that it fell within the statutory grounds for seizure. The seizure must therefore be set aside.

Whether the Claimant Made a False Declaration or Used Counterfeit Documents?

[69] The Defendants further contended that the Claimant had made an untrue declaration of value and had submitted falsified documentation. They questioned the authenticity of the invoice and receipt, noting that Mr. Mitchel was not a licensed motor dealer and suggesting that the documents were generated to mimic a commercial transaction. They also relied on the Claimant's admission that the wire transfer was labelled "family support", arguing that this reflected a willingness to misrepresent the nature of the transaction.

[70] The Claimant's evidence on these points was frank and consistent. He testified that the valuation of £13,400.00 was based on the figure provided by Mr. Mitchel and that the documentation was prepared informally between friends, not as part of any business enterprise. He acknowledged the personal and informal nature of the transaction but offered a credible explanation for the "family support" designation: namely, that the bank required an invoice for a vehicle purchase and would not otherwise process the transaction. This explanation was supported by the written statement given to Officer Regis and was not contradicted by any evidence.

[71] The Court finds that while the documentation may have lacked formal commercial characteristics, it was not fraudulent. The Claimant made no attempt to conceal the origin or nature of the transaction and provided all relevant documentation to Customs

⁵ (2010) 77 WIR 182

at the earliest opportunity. His account remained steady both in his affidavits and under cross-examination, and was corroborated by Mr. Mitchel. The Respondents, by contrast, produced no evidence to demonstrate that the documents were fabricated or that the declared valuation was knowingly false. As Lord Justice Robert Goff explained in **The Ocean Frost**⁶, the credibility of witnesses is to be assessed by reference to the objective facts, the documentary evidence, and the inherent probabilities. Applying that approach, the Court prefers the evidence of the Claimant.

[72] Accordingly, the Court finds that the evidence does not support the conclusion that the Claimant knowingly made a false declaration or used counterfeit documents. Based on the evidence before the Court, the Defendants have failed to establish that the requirements of sections 113(1)(a) and 114(b) of the Customs Act have been satisfied.

Procedural Fairness and Right to Be Heard:

[73] Even if the Comptroller had reasonable grounds to suspect an offence under the Customs Act, it would still have been incumbent upon him to act fairly. The seizure notice issued to the Claimant offered three courses of action, one of which was administrative processing. The notice indicated that the importer could “appear” before the Comptroller or a designated officer. The Claimant gave unchallenged evidence that he interpreted this as an entitlement to be heard.

[74] Despite his repeated efforts to pursue this route (including emails, telephone calls, and personal follow-ups), no hearing was arranged. The decision to proceed with forfeiture was communicated by letter dated 10 July 2023, without any prior opportunity for the Claimant to respond. Mr. Regis conceded that he had never attended an administrative hearing and could not describe the process with any precision. The Court finds that the procedure was inadequately explained to the Claimant, and that he was misled albeit perhaps unintentionally, into believing that he would be afforded the opportunity to present his case.

⁶ [1985] 1 Lloyd's Rep. 1 at 57

[75] As the Privy Council observed in **Horace Reid v Dowling Charles and Percival Bain**⁷, the right to be heard prior to the deprivation of property is a central tenet of procedural fairness. Where an administrative decision will have the effect of depriving an individual of property, natural justice requires that the affected party be given an opportunity to know and respond to the case against him. That safeguard was not afforded in this case.

CONSTITUTIONAL RELIEF:

[76] In light of the foregoing findings, the Court is satisfied that the seizure and intended condemnation of the Claimant's vehicle constituted a breach of his right to the protection of the law under section 8 of the Constitution, and his right not to be deprived of property save by due process of law under section 6.

[77] The seizure was effected in circumstances where the legal basis was unsubstantiated, the evidence relied upon was not disclosed, the procedure adopted was procedurally unfair, and the Claimant was given no real opportunity to respond. In those circumstances, the Court concludes that the State failed in its constitutional duty to treat the Claimant fairly and lawfully.

DISPOSITION:

[78] Having considered the evidence, the law, and the submissions of the parties, the Court finds that the actions of the Comptroller of Customs first in detaining and subsequently seizing the Claimant's vehicle were not supported by law, and the process by which those decisions were taken failed to meet the standards required under both the Customs Act and the Constitution.

[79] As set out above, the seizure was premised on an allegation that the vehicle had been stolen in the United Kingdom, and that the Claimant had submitted false or misleading documents. However, a careful review of the evidence reveals that neither claim was established. No official record was produced to confirm the vehicle's status as stolen.

⁷ [1989] UKPC 24

No documents were tendered to show that the insurer had acquired lawful title. Likewise, there was no evidence that the Claimant knowingly misrepresented the vehicle's value or submitted false documentation. The transaction, while informal, was consistent with the Claimant's explanation from the outset.

[80] Of particular concern to the Court is the process which followed the issuance of the seizure notice. The Claimant, acting in good faith, elected to resolve the matter administratively. He did so in reliance on the language of the notice and on communications with the investigating officer, both of which reasonably led him to believe he would be heard. He pursued this process diligently, following up repeatedly, only to be informed without warning that a decision had already been taken. That, in the Court's view, constituted a breach of the foundational principle that no person should be deprived of property without an opportunity to be heard.

[81] Section 6 of the Constitution protects the right to the enjoyment of property, subject only to lawful deprivation. Section 8 guarantees the right to the protection of the law, which, in this jurisdiction and across the Commonwealth Caribbean, has been interpreted to include a right to procedural fairness. It is no answer, as the Defendants contended, to assert that the Comptroller had discretion. That discretion, particularly where it engages fundamental rights, must be exercised in a manner that is lawful, transparent, and fair.

[82] The Court therefore concludes that the Claimant's constitutional rights under sections 6 and 8 of the Constitution were violated. The seizure and the purported administrative process which followed were marred by legal and procedural irregularities that rendered both the original decision and the continued retention of the vehicle unlawful.

[83] The Claimant's conduct throughout was consistent with someone seeking resolution through lawful means. His good faith efforts to co-operate stand in sharp contrast to the opacity and procedural lapses that characterised the State's response. Judicial review exists to prevent precisely such miscarriages. Where, as here, public power has been exercised in a manner that unjustifiably infringes a person's rights, the Court is bound

to intervene, not to substitute its own discretion, but to vindicate the constitutional limits on State authority.

[84] In light of these conclusions, the Court makes the following declarations and orders:

- 1) It is declared that the decision of the Comptroller of Customs, dated 10 July 2023, to proceed with condemnation of the Claimant's 2020 Toyota RAV4 Hybrid, was unlawful, procedurally unfair, and in breach of the Claimant's rights under sections 6 and 8 of the Constitution of Saint Lucia.
- 2) It is further declared that the seizure of the said vehicle on 12 May 2023, was effected without lawful justification and in breach of the Claimant's constitutional rights.
- 3) It is also declared that the Claimant was treated unfairly and in breach of the principles of natural justice.
- 4) An order of certiorari is hereby granted, quashing the seizure notice issued by the Comptroller of Customs on 12 May 2023 and the decision to initiate condemnation proceedings.
- 5) An order of mandamus is granted, directing the immediate release and return of the Claimant's vehicle to him.

DAMAGES:

[85] The Court has also been invited to make an award of damages, including vindicatory damages. In all the circumstances of this case, the Court is satisfied that an award of damages is appropriate, taking into account the distress, inconvenience, and financial loss suffered by the Claimant as a result of the unlawful seizure, as well as such sum as may be appropriate to vindicate the breach of constitutional norms and to affirm the importance of the rights engaged.

[86] It is well established that where a claimant succeeds in demonstrating a violation of fundamental rights, he is entitled to an effective remedy, which may include compensation of both a compensatory and a vindicatory nature.

[87] This principle is reflected in the jurisprudence of both the Caribbean Court of Justice and the Privy Council. In **Merson v Cartwright**⁸, the Board affirmed that constitutional damages are intended not only to compensate for loss but also to vindicate the constitutional right infringed. Similarly, in **Ramanoop v The Attorney General of Trinidad and Tobago**⁹, the Board emphasised that vindicatory damages should reflect the seriousness of the breach and the public interest in upholding constitutional rights.

[88] In the present case, the Claimant's rights under sections 6 and 8 of the Constitution were plainly breached. He was deprived of his property namely, the 2020 Toyota RAV4 Hybrid, through a process that was legally and procedurally deficient. He was not afforded a fair hearing, and the seizure was carried out with inadequate evidential justification. These were not technical breaches; they had direct and measurable consequences.

Compensatory Damages:

[89] The evidence before the Court establishes that the Claimant had intended to lease the vehicle to Mr. Kimbert Duplesis of PHV Tours at a monthly rate of EC\$4,000.00 over a proposed three-year period. This lease was scheduled to begin in September 2022, shortly after the anticipated licensing of the vehicle. The Claimant also provided unchallenged evidence that he had obtained a loan from First Caribbean International Bank in the sum of EC\$96,500.00, on which he was liable to make monthly payments of EC\$1,514.16.

⁸ [2005] UKPC 38

⁹ [2005] UKPC 15

[90] The Court accepts that the Claimant reasonably expected to use the income from the lease to service the loan and complete his family home. That expectation was thwarted by the prolonged seizure and detention of the vehicle, which, as of the date of this judgment, has endured for over 20 months.

[91] Considering the financial loss occasioned by the denial of use and income-generating potential, the Court assesses compensatory damages for economic loss in the sum of EC\$65,000.00. This figure reflects a conservative estimate of the income lost between September 2022 and April 2025. While the lease arrangement was not reduced to writing, the Court is satisfied, on a balance of probabilities, that it was genuine and intended to be implemented.

[92] In addition, the Court awards a further EC\$15,000.00 in damages for emotional distress and inconvenience. This includes the psychological impact of the delay in completing the family home, the disappointment of unmet expectations for his daughter, and the general disruption to the Claimant's personal and professional life. These were natural and foreseeable consequences of the State's actions and cannot be regarded as trivial.

Vindictory Damages:

[93] The breach of the Claimant's constitutional rights in this case was neither marginal nor technical. The State seized and retained his property without lawful justification and in a manner that denied him the basic opportunity to be heard. His communications were met with silence or delay, and the administrative process offered to him failed to meet constitutional standards of fairness and transparency.

[94] In determining the appropriate quantum for vindictory damages, the Court has considered the guidance in **Merson** and **Ramanoop**, as well as the instructive regional precedent of **Inniss v Attorney General of Saint Christopher and Nevis**¹⁰. Vindictory damages serve to reinforce the seriousness of the constitutional violation and to express

¹⁰ [2008] UKPC 42

the Court's disapproval of the State's conduct, even where no malice or bad faith is proven.

[95] In this case, the Claimant was deprived of his property for an extended period based on a flawed and opaque process. He reasonably expected that he would be heard, having been invited to select an administrative option that implied the opportunity to appear. Despite his diligence in pursuing that process, no hearing occurred. The State has not demonstrated that the vehicle was stolen, nor that it was falsely declared, nor that the Claimant had acted dishonestly. The failure to disclose material information, coupled with the procedural unfairness, calls for a clear judicial response.

[96] The Court considers that an award of EC\$25,000.00 is appropriate in the circumstances. This figure is not excessive, nor is it merely symbolic. It reflects the gravity of the breach while remaining proportionate to the facts. In regional cases involving procedural unfairness, vindictory damages in the range of EC\$20,000.00 to EC\$30,000.00 have been upheld. In this case, the sum awarded strikes a fair balance: it affirms the seriousness of the constitutional breach, acknowledges the Claimant's legitimate expectation of due process, and reinforces the accountability of public authorities.

[97] In summary, the Court awards the following damages:

- 1) Loss of use/income: EC\$65,000.00
- 2) Emotional distress and inconvenience: EC\$15,000.00
- 3) Vindictory damages: EC\$25,000.00

Total: EC\$105,000.00

COSTS:

[98] The Claimant, having succeeded in this claim, is entitled to his costs. These costs are to be assessed by the Court in default of agreement between the parties within 28 days of the date of this judgment, pursuant to the detailed assessment procedure set out in **CPR 65.15**.

INTEREST:

[99] Interest shall accrue on the total award at the statutory rate of 6% per annum from the date of this judgment until full satisfaction.

ORDERS:

[100] For the reasons outlined above, I make the following orders:

- 1) It is declared that the decision of the Comptroller of Customs dated 10 July 2023 to proceed with condemnation of the Claimant's 2020 Toyota RAV4 Hybrid was unlawful, procedurally unfair, and in breach of the Claimant's rights under sections 6 and 8 of the Constitution of Saint Lucia;
- 2) It is further declared that the seizure of the said vehicle on 12 May 2023, was effected without lawful justification and in breach of the Claimant's constitutional rights;
- 3) It is also declared that the Claimant was treated unfairly and in breach of the principles of natural justice.
- 4) An order of certiorari is granted, quashing the seizure notice issued by the Comptroller of Customs on 12 May 2023 and the decision to initiate condemnation proceedings;
- 5) An order of mandamus is granted, directing the immediate release and return of the Claimant's vehicle, the Toyota RAV4 Hybrid SUV, VIN: JTMY53FV60D016771 to him;
- 6) The Defendants shall pay the Claimant compensatory damages in the sum of EC\$80,000.00;

- 7) The Defendants shall pay the Claimant vindictory damages in the sum of EC\$25,000.00;
- 8) Interest shall accrue on the total award at the statutory rate of 6% from the date of this judgment until full satisfaction;
- 9) The Defendants shall also pay the Claimant's costs of this claim, to be assessed in default of agreement, in accordance with CPR 65.15.



**Alvin S. Pariagsingh
Judge**

By the Court,

Registrar