

THE EASTERN CARIBBEAN SUPREME COURT

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

SAINT LUCIA

Case Number: SLUHCV2023/0115

BETWEEN:

DERRECK DANIEL

Claimant

-and-

THE ATTORNEY GENERAL OF SAINT LUCIA

Defendant

Before the Honourable Mr. Justice Alvin Pariagsingh

Appearances: Ms. Jadia Jn Pierre for the Claimant
Mr. Seryozha Cenac for the Defendant

2024: July 29 – Trial
September 20 – Written Submissions
November 25 – Decision

JUDGMENT

Claim for Constitutional Relief

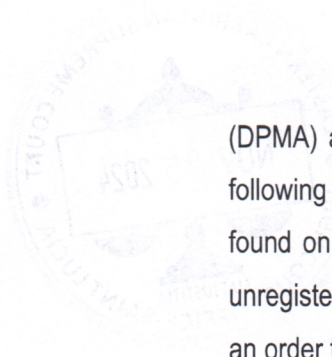
Vessel forfeiture, Constitutional rights, Ownership, State responsibility, Forfeiture orders, Criminal conviction, Constitutional breach, Possession, Proof of ownership

[1] **PARIAGSINGH, J** : - This is a claim for constitutional relief brought by the Claimant in connection with the confiscation of a vessel used in the commission of a drug offence. By an interlocutory decision of Innocent J given on 13 November 2023, it was determined that this is the appropriate method for the Claimant to seek relief from the Court. There has been no appeal from this decision.

DISPOSITION:

[2] Having considered the evidence the Court is of the view that there was no forfeiture of the vessel. There was no criminal forfeiture of the vessel ordered at the time of passing sentence pursuant to Section 38 of the Drug (Prevention of Misuse) Act Cap. 3.02





(DPMA) and as such no constitutional rights of the Claimant were breached for not following the procedure for criminal asset forfeiture set out in the DPMA. I have also found on a balance of probabilities that the Claimant is the owner of the unmarked unregistered vessel seized on 21 July 2017 and is entitled to its return unless there is an order for civil asset recovery made.

[3] On the issue of costs, the Claimant has been successful in one limb of his claim. In this regard, the Claimant will have one third of his costs, to be assessed in default of agreement.

THE CLAIM:

[4] The Claimant, by his Fixed Date Claim Form, sought the following relief:

- 1) A declaration that the order for the confiscation of the vessel, on which drugs totalling 449.07 kilograms were found, with referral to the Financial Intelligence Authority for civil recovery, made by Her Ladyship the Honourable Justice V. Georgis Taylor Alexander on 19 July 2019, was wrongful and unlawful on the following grounds:
 - i. That the Claimant was not summoned to show cause why the vessel should not be confiscated, contrary to section 38(6) of the Drugs (Prevention of Misuse) Act, Cap. 3.02.
 - ii. That the order breached the Claimant's fundamental right to equality before the law and protection of the law under section 1(a) of the Constitution of Saint Lucia, Cap. 1.01.
 - iii. That the order breached the Claimant's right to protection from deprivation of property without compensation under sections 1(c) and 6 of the Constitution of Saint Lucia, Cap. 1.01.
- 2) A declaration that the order for the confiscation of the vessel, on which drugs totalling 449.07 kilograms were found, with referral to the Financial Intelligence Authority for civil recovery, made by Her Ladyship the Honourable Justice Lorraine B. Williams on 18 February 2020, was wrongful and unlawful on the following grounds:
 - i. That the Claimant was not summoned to show cause why the vessel should not be confiscated, contrary to section 38(6) of the Drugs (Prevention of Misuse) Act, Cap. 3.02.

- ii. That the order breached the Claimant's fundamental right to equality before the law and protection of the law under section 1(a) of the Constitution of Saint Lucia, Cap. 1.01.
 - iii. That the order breached the Claimant's right to protection from deprivation of property without compensation under sections 1(c) and 6 of the Constitution of Saint Lucia, Cap. 1.01.
- 3) A declaration that the Claimant is the owner of the vessel on which drugs totalling 449.07 kilograms were found and is therefore entitled, under section 38(6) of the Drugs (Prevention of Misuse) Act, Chapter 3.02, to show cause why the vessel should not be forfeited.
- 4) A declaration that the Claimant, as the owner of the vessel, is entitled to possession on the following grounds:
 - i. That the Claimant did not authorise the use of his vessel for the commission of the offence of possession of controlled drugs with intent to supply.
 - ii. That the Claimant did not have prior knowledge that his vessel was used in the commission of the offence of possession of controlled drugs with intent to supply.
 - iii. That the Claimant has had no connections with any of the persons convicted for the offence of possession of controlled drugs with intent to supply in Case Nos. SLUCRD2018/0033A, 0033B
- 5) An order that the vessel is released into the care and custody of the Claimant.
- 6) A declaration that the Claimant is entitled to be paid the difference between the fair market value of the vessel at the date of wrongful and unlawful confiscation and the date of payment or judgment.
- 7) Compensatory damages in respect of the breach of the Claimant's constitutional rights.
- 8) Interest at the commercial rate from the date of wrongful and unlawful confiscation of the vessel to the date of payment or judgment.
- 9) Such further order as the Court deems just in the circumstances.
- 10) Costs.

THE EVIDENCE:

Affidavit in Support:

- [5] The Claimant seeks to establish ownership of the vessel by relying on the Certificate of Sale of the recreational vessel dated 14 March 2013 and by his oral evidence and evidence given in cross examination.
- [6] By this certificate of sale, the Claimant purchased the vessel identified as *Ti Fre* from Michel Chastanet on 14 March 2013 for the sum of €15,000. In this document, the vessel is described as having a CIN or HIN number of FRCTGSEH33L797 and registered in the Department of Marine Affairs of Pointe-à-Pitre, Guadeloupe, as 919030N. The sale also relates to a "Recreational Vessel". Save that the vessel was constructed of polyester, there is no other description of the vessel given (e.g., size, colour, interior make or colour). The certificate does indicate that the vessel was sold with two engines as accessories. These engines are described as "2x 225 CV motors."
- [7] On 16 July 2017, the Claimant reported the vessel stolen. In his report to the Public Prosecutor, the Claimant stated that *Ti Fre* was moored in the Carenage section in Pointe-à-Pitre on 16 July 2017, when he was alerted by a friend that the vessel had been stolen. In this report, a description of the vessel is given. This description was not part of the Certificate of Sale. The Claimant described the vessel as being '10.5 meters' in length and being '*light grey inside and purple and black outside*' in colour.
- [8] In his affidavit in support, the Claimant states the following about how he became aware that his vessel had been intercepted in Saint Lucia at paragraphs 10 and 11:
- "10. Sometime after the disappearance of *Ti Fre*, while scanning through Facebook, I came across a news article in Dominica which stated that a Dominican national and a Saint Vincent national were charged in Saint Lucia after they were found on an unmarked vessel with cannabis.
11. Based on my recollection, the vessel was not identified by name in the news article. In the article, the vessel was described as a purple and black vessel with two (2) 225 horsepower Mercury engines. Due to the passage of time,

I do not recall how long after the disappearance of *Ti Fre* I saw this news article.”

[9] The Claimant’s evidence is that he travelled to Saint Lucia in early 2018 and went to the Marine Unit in Vieux-Fort, where he identified the vessel detained as his. He thereafter retained Mr. Marius Wilson, Attorney at Law, to make an application to have the vessel returned to him.

[10] By an application made on 25 July 2018, the Claimant applied under section 3 of the Administration of Justice (Miscellaneous Provisions) Act of 1999 (AJA) for an order releasing the vessel detained in Saint Lucia. In that application, the vessel was alleged to have been detained from 17 May 2017.

[11] The grounds of this application were that the occupants of the vessel had been formally charged and their criminal matter was ongoing. He, the Applicant, was not charged and had no knowledge of the activities of the persons charged.

[12] In his affidavit in support, the Claimant (the Applicant in the application) deposed that on 17 May 2017, he received information from an attorney in Saint Lucia that his vessel had been intercepted by the police with a quantity of cannabis found on board. His evidence was that his vessel had just been repaired and outfitted and was placed in the custody of one ‘Ted-I,’ who reported that the vessel had been missing since about 14 May 2017.

[13] On 10 September 2018, Magistrate Willie Trotman, sitting in the Second District Court (Civil), granted an order in the following terms on the application:

“It is hereby ordered that the vessel named *Ti Fre*, registration number RCTGSEM331787, be forthwith released to the applicant upon due compliance with the requirements of the Administration of Justice (Miscellaneous Provisions) Act, 1999, such compliance to be made no later than 7 days from the date of this order.”

[14] The Claimant’s evidence is that he was informed that the vessel could not leave the jurisdiction until the criminal case concerning the drugs found was determined. He left

the vessel in the care and custody of Mr. Ronal John, whom he says he does not know personally.

[15] His evidence is that he received an email from WPC No. 565 Jules of the Financial Intelligence Authority, who informed him that the Director of Public Prosecutions (DPP) had applied for forfeiture of the vessel. His attorney filed a response to the application, and the matter came on for hearing before a judge of the Criminal Division on 28 September 2022. At that hearing, the application for forfeiture by the DPP was withdrawn. I will refer to this application below as the evidence in support of that application regarding ownership is relevant to this claim.

[16] The Claimant's case is that he was denied the procedural protection provided by section 38(6) of the DPMA. He contends that he was not afforded the right to be heard before the vessel was confiscated as the owner of the vessel and this irregularity caused the breach of his constitutional rights.

[17] His case is that, as a result, he has been denied the use of his vessel, which has caused him loss of income. He also complains about the deterioration of the vessel while in custody. He further contends that the incident has caused him reputational damage.

The Application for Forfeiture filed on 20 July 2022:

[18] On 20 July 2022, the Director of Public Prosecutions filed an application for the vessel to be forfeited in accordance with sections 38 and 47 of the DPMA.

[19] The application was supported by the evidence of WPC 565 Jules of the Financial Intelligence Authority. Her evidence was that Alick Couriol, a Dominican national, and Brian Vincent, a Saint Vincent national, were charged with drug-related offences on 21 July 2017, and the vessel used for the conveyance of the drugs was detained. She contends that this vessel had no identifying marks.

[20] She highlights that the application for the release of the vessel, which she read on 10 September 2018, contained inconsistencies in that the vessel detained had no name or

registration number. The date of seizure stated in the information was 17 May 2017, whereas the vessel was actually seized in Saint Lucia on 21 July 2017.

[21] Her evidence is that the person whom the Claimant appointed as his agent for the care of the vessel until the completion of the case, Ronal Kendal John, is well known to the Financial Intelligence Authority as an individual involved in the drug trade. She exhibits a copy of a conviction of Ronal Kendal John, which shows three convictions between 2014 and 2017. Of these three convictions, only one is for a drug-related offence in 2016.

[22] In her evidence, she also refers to her examination of the interview under caution of Alick Couriol, when he was asked the question, "Who is the owner of the vessel in which you were travelling on?" His response was, "**I don't know his full name, I call him Mr. Wonty.**" During the said interview, Alick Couriol claimed that he had only known the owner of the vessel about two days before its interception.

[23] She also gives evidence of examining the interview under caution of Brian Myers, who, when asked who the owner of the vessel was, stated, "**I don't know.**"

[24] Her evidence is that Brian Myers entered a plea of guilty to the charges against him. On 19 July 2019, he was sentenced by Taylor–Alexander J to a term of imprisonment of 1 year, 10 months, and 28 days for possession of a controlled drug and 5 years and 4 months for possession of cannabis with intent to supply, both sentences to run concurrently. The judge also ordered that the vessel on which the drugs were found be confiscated, with referral for civil recovery.

[25] On 31 October 2018, she sought the assistance of the Attorney General's Chambers to obtain mutual legal assistance. On 24 October 2019, correspondence was received from Dominican authorities which did not assist in determining the owner of the vessel. She refers to information received from investigations conducted in the community of Cottage, where the Claimant resides. Her evidence is that his alias is "Red Ants," not "Wonty."

[26] Further, her inquiries also revealed that on 18 February 2020, the second accused, Alick Couriol, was sentenced by Williams J to 1 year, 7 months' imprisonment for possession of drugs, and 5 years and 4 months for possession of drugs with intent to supply. The judge also ordered that the vessel on which the drugs were found be confiscated, with a referral for civil recovery.

[27] In support of the application, a valuation report is also provided, which values the vessel at \$60,000.00. This value was approximately 2 years after the last order made in connection to the vessel on 18 February 2020.

[28] In response to this application, the Claimant filed an affidavit on 8 September 2022. In this affidavit, he deposed that although he was born in Dominica, he has been living in Guadeloupe for the past 42 years.

[29] He contends that the date in his application to the Magistrate to release the vessel, '17 May 2017,' regarding the seizure, was an error. He asserts that the vessel was stolen in July 2017. Regarding Mr. John's criminal record, whom he had put in charge of the vessel in Saint Lucia, he contends that he did not know or have any contact with him. He asserts that it was the attorney he retained to file the application before the Magistrate who informed him that he had a client he would communicate with about securing the vessel. He also asserts that he does not know either of the accused persons, nor is he known by the alias "Wonty."

The Vessel – Hand Over:

[30] On 14 September 2018, Sgt. Reece Auguste, on behalf of the Police Marine Unit, handed over the detained vessel to Mr. Ronald John. The vessel was described as registered under 'FRCTGSEM3317897'. This is relevant when considering the fresh evidence that the Defendant was permitted to reopen its case to lead.

[31] In the document, the vessel is described as "wood, fiberglass, purple outside, black bottom, and white inside." It is also noted as having "02 225 hp Mercury outboard motors." Although the document states that it was handed over to Mr. Ronald John, the Claimant signed as receiving it.

[32] The Claimant's evidence is that the form was a pre-prepared form with Mr. John's name. He contends that Mr. John is a friend from Saint Lucia, whom he left in charge of the vessel in Saint Lucia as he had to leave.

Affidavit in Response of WPC No. 565 Jules:

[33] The affidavit of WPC Jules mirrors the facts deposed to in her affidavit in support of the forfeiture application. In addition, she contends that the vessel is registered as a "recreational vessel," and the Claimant's claim for loss of earnings is misconceived. She further contends that this action is abusive, as the Claimant had the opportunity to apply to vary or discharge the orders of Taylor–Alexander J and Williams J. Alternatively, it is contended that the Claimant could have appealed the decisions.

[34] In any event, she contends that the vessel, being an instrument of conveyance of drugs in a drug trafficking case, was liable to forfeiture.

[35] The preliminary issue of alternative remedy was already determined by Innocent J in his judgment delivered on 13 November 2023, from which there has been no appeal.

Affidavit in Reply of Derreck Daniel, filed on 12 March 2024:

[36] In this affidavit in reply to the application for forfeiture the Claimant contends that he first became aware of the orders of Taylor–Alexander J and Williams J years after they were made. He also contends that the email from WPC Jules on 22 March 2023 was an attempt to comply with Section 38 (6) of the DPMA. His evidence is that, as far as he is aware, no one else has made a claim of ownership of the vessel since its detention in 2017.

Fresh Evidence:

[37] After the parties had closed their cases and directions had been given for submissions, with judgment reserved, the Defendant applied to lead fresh evidence. This application was considered by the Court and granted on 8 July 2024. There has been no appeal from that decision.

[38] The Defendant filed the additional affidavit of No. 569 PC Clauzelma on 11 July 2024.

In this affidavit, it is deposed that three individuals—Mr. Eric Samuel, Mr. Zachary Perpie, and Ms. Marvin Tal—were charged with certain drug-related offences between 22 and 24 May 2023. These offences arose from the interception of a vessel named "Journey" on 21 May 2023.

[39] He further states that he came to understand, through police-to-police intelligence from Martinique, that the vessel "Ti Fre" had run aground on a reef in Martinique and had sunk as a result.

[40] The fresh evidence admitted consists of two documents. The first is an agreement for the sale made on 24 July 2018 between the Claimant and Ronal Kendal John. The subject of this sale is described as "one polyester vessel with VIN number FRCTGSEM33L797 for the consideration of Fifty Thousand Dollars E.C." The agreement was executed before the same Notary Royal who had acted for the Claimant in the application for the release of the vessel filed at the Magistrates' Court. In the agreement, the Claimant's address is given as "Portsmouth in the island of Dominica...".

[41] The second document is a Certificate of Registration of a Saint Lucia Fishing Boat. This document identifies the vessel as "Journey" and shows Ronal J. John as the owner. The exterior is described as purple and black, and the interior is described as red. The length is stated to be 36 feet, with a width of 8 feet. The engines are described as two Mercury 350 hp engines.

[42] In response to the fresh evidence, the Claimant contends that, sometime in 2018, while he was in Saint Lucia, he met Ronal John through his attorney. He had discussions with Mr. John and agreed to sell one of his vessels to him. He contends that the vessel he sold to Mr. John was, at that time, in his possession and not subject to any legal proceedings. The Claimant asserts that this vessel was named "Twister One," and the document exhibited as proof of this purchase is written in French, with no translation provided.

[43] The Claimant further contends that "Journey" is in the possession of Mr. John, who has instituted separate proceedings against the Attorney General regarding its seizure and subsequent release to him.

THE LAW:

Forfeiture v Confiscation.

[44] According to **Butterworths Money Laundering Law**, Lexis Nexis Online Version Chapter 3, page 262, there are fundamental differences between forfeiture and confiscation. These can be summarised as follows:

Forfeiture refers to the automatic loss of property or assets as a penalty following a criminal conviction. It usually occurs when the property is considered to be the proceeds of crime or has been used in the commission of an offence. **Confiscation, on the other hand, refers specifically to the legal process of seizing assets** that are deemed to have been obtained through criminal conduct, particularly in cases where an individual has been convicted of a serious offence like fraud or drug trafficking. Confiscation orders are typically based on a proceeds of crime (POCA) framework.

They are not the same processes. Forfeiture is more about removing property directly linked to a crime, while confiscation focuses on recovering the financial benefits of crime after a conviction.

Forfeiture aims to seize property related to criminal activity, while confiscation focuses on depriving offenders of the proceeds from crime. Forfeiture can occur as a direct consequence of criminal conduct, often immediately after a crime is committed. Confiscation usually follows a conviction and involves a more formal process to assess the defendant's financial benefit from crime. Forfeiture can apply to any property involved in a crime, while confiscation is typically concerned with the value or proceeds gained from illegal activities. Forfeiture may not always require a conviction (in some cases, civil forfeiture), while confiscation always follows a conviction.

ANALYSIS:

The Orders Challenged:

[45] Both of the judges' orders are worded in a similar fashion. The relevant part reads:

“... and the confiscation of the vessel on which the drugs were found with referral to the Financial Intelligence Authority for civil recovery.” (Emphasis mine.)

[46] Section 38(2) of the DPMA provides for mandatory forfeiture where a person is convicted of a drug trafficking offence in passing sentence. It reads:

“(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.”

[47] Sub-section (6) of the DPMA provides that:

“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.”

The Effect of The Orders:

[48] The effect of the orders, in my view, is that the vessel was not forfeited under s. 38(2) of the DPMA. There was no criminal forfeiture which is what is contemplated by s38 of the DPMA. What the judges did was order confiscation which is a process towards the forfeiture of property. The rationale for ordering the vessel confiscated in my view is obvious. Had the judge not made that order, there would be no hold on the release of the vessel pending the application for civil asset recovery.

[49] Additionally, there was no evidence of the ownership of the vessel before the learned judges when they made their orders. The sum total of the evidence comes from

utterances in two cautionary statements which only identifies someone as 'Wonty' as the owner of the vessel.

[50] In my view the rationale for not ordering criminal forfeiture as part of sentencing pursuant to s. 38 DPMA is clear. There was no one identified as 'owner' for whom a summons could be issued under subsection (6).

[51] The learned judges did not exercise the option of making a criminal forfeiture order which was open to them to make when sentencing the both accused. Instead, they ordered confiscation of the vessel with a referral to the Financial Intelligence Authority to consider civil recovery.

[52] To be in compliance with the provisions of the Act regarding mandatory forfeiture upon conviction, the word "confiscated" in the orders cannot be interpreted to mean forfeited. One is automatic, that is forfeiture, and one is a process, that is confiscation. In my respectful view the orders of the learned judges cannot be interpreted to mean that the vessel was forfeited. There was no such order made.

[53] In my view the judges when imposing sentence on the accused before them had two options. The first was to order criminal forfeiture under DPMA or the second to order civil asset recovery. The judges clearly opted for the second.

[54] In the circumstances, the onus was on the DPP to commence civil asset recovery. This could have been done with or without an order.

[55] It follows then that the Claimant's constitutional right could not be breached for not following a process that was not ordered by the judge. Accordingly, the Claimant's claim for constitutional relief fails.

[56] The other relief the Court must now consider is the release of the vessel to the Claimant. If the Claimant succeeds in proving ownership of the vessel, he would be entitled to its return on the basis that it has not been forfeited. This is a factual issue.

[57] In resolving the issue of ownership, the Court must consider what the Claimant must prove. Does the Claimant have to prove ownership (title) of the vessel, or does the Claimant have to prove possession of the vessel?

[58] A good starting point is to establish that possession must relate to lawful possession. A person dispossessed unlawfully, by theft, in my view, remains in possession. To hold otherwise would give rights to a person who has stolen property.

[59] The relevance of documentary evidence of ownership to be established before a claim can be brought under the Constitution was considered by the Board in **Jaroo v Attorney General [2002] UKPC 5**. Though the discussion in **Jaroo** concerned s. 4(2) of the Constitution of Trinidad and Tobago, which is different from the provisions of Sections 1 and 6 of the Constitution of Saint Lucia, it is my view that the reasoning is still apt. In **Jaroo** at paragraphs 18 and 19 the Board held that:

“18. It is clear from these observations that, if the constitutional right to the enjoyment of property extends only to property of which the person is the owner or to which he can show a good title, the motion which the applicant filed in this case was bound to fail. Dr Ramsahoye accepted that there was evidence that the numbers had been tampered with and that there were reasonable grounds for believing that the vehicle was stolen property. But he maintained that it was sufficient for the purposes of the applicant's constitutional right that the vehicle was in his possession when he was deprived of it. He also maintained that the return of the vehicle would not have been contrary to the provisions of the Motor Vehicles and Road Traffic Act, as the applicant was entitled to use it according to its existing registration as a hire vehicle. In any event, he was entitled to have it back so that he could dispose of it for such value as it might have to a purchaser.

19. It is to be noted that the words used in section 4(a) are the "enjoyment of property" and "the right not to be deprived thereof" without due process. Two constitutional rights are recognised and declared by these words. One is the right to the enjoyment of property. The other is the right not to be deprived of property without due process. **In neither case, however, is the constitutional right confined to the rights which flow from the ownership of property. It is not necessary for a person who wishes to assert his constitutional right to the enjoyment of property against the state to show that he is the owner of the property which he wishes to enjoy or to demonstrate that he has some other good title to it. It is sufficient for him to show that at the relevant time he was in possession of the property.** The rights which are

protected by section 4(a) include the right of possession, which vests a possessory title in the possessor, as well as the right of ownership.”

OWNERSHIP OF TI FRE

[60] I start the resolution of this issue by emphasising that the Claimant was never cross-examined, nor was it disputed or put to him that, prior to the alleged theft, he was not in possession of Ti Fre. This, in my view, is significant. There was no evidence led by the Defendant disproving or showing that the Claimant was not in possession of Ti Fre. The Claimant must be taken to have been in possession of Ti Fre before it was allegedly stolen.

[61] In proving his ownership of the vessel, the Claimant relies on a Certificate of Sale. This Certificate identifies the vessel by its VIN, but the lack of further supporting documentation or detailed descriptions of the vessel makes it difficult to confirm ownership definitively. There was no evidence to establish the description of the vessel by photographs or from witnesses. The only description of the vessel was the evidence of the Claimant and the generic descriptions on the document produced by the Claimant.

[62] The court finds that the documentary proof provided does not meet the standard of conclusive evidence required to establish ownership but that the Claimant's evidence of him being in possession of the vessel prior to its theft or his identification of the vessel in Saint Lucia has not been discredited.

[63] Furthermore, the court found Mr. Daniel to be a credible witness. Throughout his testimony and under cross-examination, he provided consistent statements, save for the issue of how he learned about the vessel's seizure. At one point, he claimed to have learned about it through a Facebook post, and at another, he stated that his lawyer had informed him and at one time he said he never knew Mr. John but when the fresh evidence was adduced, he indicated he had met Mr. John in 2018. These contradictions do not, in my view, undermine his reliability as a witness, more so as they do not go to the issue of possession of the vessel before the theft or its ownership. As such, the court accepts his testimony as truthful.

[64] On Mr. Daniel's oral evidence of identification of the vessel, although cross-examined, he remained resolute in his evidence that he identified the vessel as his stolen vessel, Ti Fre. No alternative version or claim to ownership was advanced by the Defendant. On a balance of probabilities, I find that the Claimant is the owner of Ti Fre and that Ti Fre is the same vessel seized, detained, and confiscated by the Crown.

[65] As for the issue of whether Ti Fre and Journey are the same vessel, the court finds that they are not. The court is satisfied that Ti Fre and Journey are two separate vessels, primarily as the evidence adduced is that Journey remains in the possession of Mr. John and available for inspection, while the unmarked and unidentified vessel confiscated by the Crown remains in the possession of the Crown. The two vessels are different.

[66] The court accepts the explanation of the Claimant that the appearance of the VIN number of Ti Fre on the agreement for sale of Journey was a clerical error, in any event, not attributed to the Claimant but the attorney preparing the agreement. The fact that it was the Claimant who supplied the information to the attorney in my view is inconsequential to the fact that the VIN number on the documents for the sale of Journey is the VIN number of Ti Fre. This error in my view has been ably explained by Mr. Daniel. In any event, I have already found that Ti Fre and Journey are two separate vessels.

[67] The court also notes that the two individuals charged in connection with the vessel's seizure did not identify Mr. Daniel as the owner of the vessel seized. During their interviews, both individuals failed to provide any clear indication that Mr. Daniel was the owner of the vessel. This is consistent with Mr. Daniel's evidence that the vessel was stolen on 17 July, and the accused's cautionary statement that they met the owner two days prior to the interception of the vessel, that is, 19 July, by which time Mr. Daniel would not have been in possession of the vessel. The reference to 'Wonty,' as contended by Mr. Daniel, could not have related to him.

[68] Finally, PC Clauzelma's evidence that, through police-to-police information, he became aware that the vessel Ti Fre had sunk in Martinique must carry no weight. This evidence is hearsay and, though admissible pursuant to sections 44 and 45 of the Evidence Act,

remains evidence uncorroborated and unsubstantiated from an unknown source. If correct, there would be no logical explanation for the Crown being in possession of one vessel and Mr. John being in possession of another, Journey.

[69] Accordingly, on a balance of probabilities, I find that the Claimant is the owner of the unmarked and unregistered vessel sized by the Police in Saint Lucia on 21 July 2017 and is entitled to its return.

[70] The Claimant's claim for losses arising from the seizure and forfeiture is refused. The evidence is that the vessel was registered as a recreational vessel. The Claimant has not led any evidence of any losses suffered by reason of him not being able to use the vessel as a pleasure vessel.

[71] Further the Claimant's claim of deterioration of the vessel is not supported by any evidence and as such no award can be made in this regard.

[72] Similarly, the Claimant's claim for damage to his reputation is not supported by any evidence and is accordingly refused.

[73] It is to be noted that the limitation period for the DPP to bring an action for civil recovery has not expired. In this regard, any order for the release of the vessel to the Claimant is subject to an application being made for civil asset recovery.

COSTS:

[74] The Claimant, having been partially successful in his claim, is entitled to some of his costs. Given that the Claimant is only receiving the return of the vessel with no damages or declarations for any constitutional breaches a fair amount reflecting his success in this claim is one third.

[75] These costs are to be assessed by this Court, pursuant to the detailed costs assessment procedure. In the event of a failure to agree on the costs, such proceedings are to be commenced within 21 days of the delivery of judgment.

ORDERS:

[76] For the reasons stated above, I make the following orders:

- 1) It is declared that the Claimant is the owner of the unmarked, unregistered vessel seized and detained on 21 July 2017 and currently detained by the Police Marine Unit pursuant to orders of confiscation of the High Court made on 19 July 2019 and 18 February 2020.
- 2) The Defendant is ordered to immediately release the vessel detained to the Claimant.
- 3) The Defendant shall pay the Claimant one third of his costs of this claim to be assessed by this Court, pursuant to the detailed costs assessment procedure in default of agreement to be commenced within 21 days of the delivery of judgment.

**Alvin Pariagsingh
Judge**



By the Court,

Registrar