

IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ON MONTSERRAT
CASE MNIHCV2021/0008

In the matter of a claim for damages and
loss of use/income in bailment and/or
negligence

BETWEEN

WILLIAM WHITE	Claimant
-and-	
THE COMMISSIONER OF POLICE	1 st Defendant
THE ATTORNEY GENERAL	2 nd Defendant

APPEARANCES

Mr Jean Kelsick for the Claimant
Ms Cedricia Shiell for the 1st and 2nd Defendants

2022: JULY 21

RULING

**On whether a claim outside six months for almost \$1mec
arising from police failing to keep an old minivan in working condition
after being confiscated for drug dealing but returned by the Court of Appeal
is time barred**

- 1 **Morley J:** William White wants compensation from the Government of Montserrat for his 1992 Toyota Liteace van H1373 which he drove as a minibus, seized by police in 2013 and he suggests thereafter so neglected it became irreparable and valueless. His claim as at today is for \$883000ec.
 - a. On 19.01.13 he was arrested getting out of the van with 142g cannabis, and 1840g were then found in his home, leading to the van being held at Brades police station.
 - b. On 16.04.14, before Redhead J, he was convicted of possession with intent to supply, sentenced to 3 years and the van was confiscated, along with cash found (US\$1168,

350euro, £160gbp and \$6345ec), leading to the van being moved to Salem police station that day.

- c. On 16.02.16, White¹ was released.
- d. On 25.10.17, the Court of Appeal quashed confiscation of the van, and cash, opining these not shown related to drug dealing.
- e. On 21.02.18, White got back the van keys.
- f. On 20.03.18, he wrote the van had so deteriorated in police custody he should be compensated for its value, with countering letter from Registrar Meade on 09.04.18 he should collect the van.
- g. On 06.07.20, Counsel Kelsick wrote to police demanding \$20000ec as the van's value, and compensation for its loss of use at \$500ec daily fares income for 19.01.13-14.04.14 (441 days) and from 14.04.16 to date, being 21.07.22 (2654 days), plus \$200ec daily for its loss of rental income for 14.04.14-14.04.16 (731 days), amounting to \$1693700ec.
- h. In the claim filed on 19.04.21, Counsel Kelsick adjusted the compensation to \$500ec daily from 28.10.17 to date, being 21.07.22 (1727 days), amounting to \$863000ec, while still demanding \$20000ec as the van's value.

2 The case was listed for trial on 15.07.22, but a preliminary point arose, which is the cause of this ruling. In terms of the evidence poised for the trial:

- a. There is no documentation to support any of the sums claimed;
- b. As at the date of arrest on 19.01.13 the van was registered to a 'Keith Greenaway', and remains so, though there is a letter from him to Counsel Kelsick dated 07.12.21 saying he sold the van to White on 05.06.12, not saying for how much, and not an affidavit;
- c. There was a court visit to the van at Salem police station to see its condition on 18.07.22 at 16.30, where it has not moved since 16.04.14, the engine is dead, front lights are broken, there is a small plant growing out from the chassis at the rear offside wheel, there are rat droppings inside, and the engine with battery have not been examined by a mechanic to assess their present condition, nor since return of keys on 21.02.18, nor seizure on 19.01.13;
- d. There are no photos available as to the van's condition when seized;
- e. White nowadays has another van;
- f. Since getting the keys on 21.02.18, White has not tried to fix the van or remove it.

¹ The claimant White will be referred to by his surname for ease of reading, and no disrespect is intended by not referring to his title with full name and the legalese of which party he is.

- 3 The preliminary point is whether the claim is barred under **s2 Protection of Public Authorities Act**, cap 18.10, (PAPA) first promulgated in 1910, which says:

Where any action, prosecution or other proceeding is commenced against any person for any act done in pursuance or execution or intended execution of an Act or Ordinance of any public duty or authority or of any alleged neglect or default in the execution of any such act, duty or authority, the following provisions shall have effect:

- (a) the action, prosecution, or proceeding shall not lie or be instituted unless it commenced within six months next after the act, neglect or default complained of, or, in case of a continuance of injury or damage within six months next after the ceasing thereof;...

- 4 This legislation contemplates White ought to have begun his suit in negligence filed on 19.04.21 within six months of the Court of Appeal decision of 25.10.17, or more aptly on getting back the keys on 21.02.18, or possibly at a stretch of legalistic creativity after Counsel Kelsick's letter of 06.07.20, though the filing is plainly more than six months later than all three dates.

- 5 As overview, on the one hand, White was a drug dealer, leading to his van being seized and his being jailed; on the other, he suggests the van was his livelihood, ordered returned to him, yet has been destroyed through neglect. He complains the police have failed in their duty of care to look after it, and so he is suing them for its value and all the money he claims he should have been able earn with it. Further, on the one hand, it is suggested the van on seizure was worth a modest \$20000ec; on the other hand, there has been a claim for unmitigated unearned income by letter on 06.07.20 for \$1693700ec and by filing on 19.04.21 for \$863000ec. Viewed so starkly, to an observer there may seem something cheeky about this claim for so large an undocumented sum, with there being perhaps a whiff of sticking it to the police and settling scores.

- 6 During argument on 15.07.22, supported by written submission filed by Counsel Kelsick on 14.07.22, a number of points were explored.

- a. The court wondered if it was open to Counsel Kelsick to sidestep **PAPA** by arguing the letter of 20.03.18 might be construable as perhaps a letter before action, and therefore some 'other proceeding', offered within six months of the Court of Appeal decision of 25.10.17 or return of the keys on 21.02.18, but Counsel Kelsick did not think so.
- b. Instead he argued **PAPA** does not apply because:

- i. The damage is continuing at the daily rate of \$500ec and so has not 'ceased' for the six month period to begin;
- ii. No lawful duty under any 'Act or Ordinance' arose as the Court of Appeal in quashing the confiscation had rendered police action on 19.01.13 in seizing the van and the later confiscation order of 16.04.14 all unlawful;
- iii. **PAPA** can only apply to a public duty arising under an 'Act or Ordinance', whereas here the police owed a private duty of care at common law and so does not apply; and
- iv. **PAPA** should be construed restrictively, as per Lord Nicholls in **Felix Duritty v T&T AG 2002 UKPC20**, referred to at para 17 of **AG BVI v Daphne Alves 2013 BVIIHCVAP 2011/0065**, and therefore applied sparingly, so that the **PAPA** should not become 'an engine of oppression', as would happen here, as it is old law and most unfair because there is a limit of broadly six years for private suit in negligence but only six months if suing a public authority.

- 7 To settle this preliminary point requires uncomplicated statutory construction as to the meaning and purpose of **PAPA**.
- 8 Turning to the first point, the tort is neglecting the van so it cannot be used, which non-use will have been apparent, if true, on getting back the keys on 21.02.18, and such was said by letter on 20.03.18. The loss of income is simply the consequence of the tort; it is not a continuing tort. To use an analogy, if Counsel Kelsick was correct, no personal injury action could ever be time barred under any statute of limitations, being on Montserrat **s4 Limitation Act** cap 2.12, as loss of income as a cause of action arising from the injury would be forever until settled by the claim, meaning there would be no date for the limitation to start, which plainly cannot be right as defeating the purpose of limitation legislation.
- 9 Turning to the second point, it is plain the van was lawfully seized on 19.01.13 as being suspected as part of drug dealing, and then lawfully confiscated on 16.04.14 by court order, later quashed; but the effect of quashing the confiscation on 25.10.17 does not render unlawful the confiscation on 16.04.14, nor the seizure on 19.01.13, such that the police must be deemed retrospectively to have had no lawful reason to seize the van, or confiscate it under court order, so that the effect of the Court of Appeal decision on 25.10.17 means the police had no public duty they can rely on to engage **PAPA**. The effect of Counsel Kelsick's

logic is any acquittal would mean there should never have been an arrest; and any conviction or sentence varied later by the Court of Appeal is actionable as having been unlawful and ultra vires police and court powers. Instead, the position is the police and court have acted within the law, which same law allows for appeal, which if successful does not mean earlier action did not take place under the law applying to the earlier stage of the proceedings. The alternative proposition, that successful appeal means prior illegality, would make litigation over criminal proceedings like gambling, encouraging any activity by a public authority to be akin to a 'one-armed bandit cash machine' if successfully appealed, inhibiting activity for fear of later suit, and contrary to the public interest encouraging suit as a punt on making money, like pulling the arm of the slot machine to see if you get lucky.

- 10 Turning to the third point, at trial the van had been an exhibit held as part of the investigation, and its forfeiture on conviction on 16.04.14 was ordered by Redhead J under **s28 Drugs (Prevention of Misuse) Act** cap 4.07 (DPMA), giving rise to a public duty on the police to take possession of it, which they did, moving the van to Salem that day. Their private duty to care for it at common law arose from their public duty under statute to retain it, meaning the private relationship between White and the police over caring for the van arose because of their public duty. As such, under **s2(a) PAPA** supra, the 'alleged neglect' was 'in the execution of' a 'public duty' arising from 'the execution of the Act', namely the **DPMA**, so that **PAPA** applies.
- 11 Turning to the fourth point, it is right in theory White could have an action in police negligence, leading to discussion over whether he could ever prove the van unusable on 21.02.18, given he did not try to use it, or fix it, instead abandoning it, or even had locus to launch the action where the van is registered to another. However, in this case the complaint he should have more time to act than six months fails to resonate strongly where he wrote a complaint on 20.03.18, demanding the van's value, meaning he was aware he may have a cause of action within a month of getting the keys. Given Counsel Kelsick has posited the letter cannot be some form of 'other proceeding' so **PAPA** does not apply, the suit begun on 19.04.21 is plainly long outside the six months. The purpose behind the act is to reduce the spectre and quantity of 'have-a-go' legal actions against public authority as otherwise its activity would be inhibited, instead requiring legal action galvanised quickly, rather than at leisurely pace, and here, in light of the extraordinary sum sought as lost income, unsupported, once Counsel

was later retained, and even then not launching the action within six months of counsel's letter of 06.07.20, this seems the very sort of legal action **PAPA** is designed to curb.

- 12 Finally, concerning the *Alves* case supra, it concerned a nurse injured at work, whose claim after three years was found time barred as outside the six months applicable on BVI; though the Act is to be used sparingly, it was applied in her case, where it might be said there was more merit in her action than this.
- 13 In short, I find White's action against the police for \$883000ec in respect of his old 1992 van, worth possibly a modest \$20000ec in 2013, brought more than 3 years after he knew and wrote he might sue for its value, is precisely the sort of have-a-go action **PAPA** was designed to prevent, and as such I find the Act applies and the suit is time barred.
- 14 In all the circumstances, there shall be no order as to costs.
- 15 *Obiter*, in concluding, the van belongs to White, it was formally returned to him more than four years ago on 21.02.18, he may want to move it, it cannot be left forever at Salem police station, noting correspondence from the Police Commissioner on 19.08.20 contemplates he may be charged for its storage.

The Hon. Mr. Justice Iain Morley QC
High Court Judge
21 July 2022