

**THE EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA**

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

SLUHCV2012/0635

BETWEEN:

PC138 DESMOND ALFRED

Claimant

and

**ASSISTANT SUPERINTENDENT OF POLICE EMMANUEL JOSEPH
SERGEANT (AG) ANTHANAITIUS MITCHEL
THE ATTORNEY GENERAL**

Defendants

Before:

The Hon. Mde. Justice Kimberly Cenac-Phulgence

High Court Judge

Appearances:

Mr. Colin Foster of Counsel for the Claimant

Mrs. Karen Bernard of Counsel for the Defendants

2018: February 21;
2019: January 24.

JUDGMENT

[1] **CENAC-PHULGENCE J:** This is a claim of false imprisonment, trespass to goods, and detainee. In respect thereof, the claimant claims special damages, general damages, aggravated damages, exemplary damages for indignity, mental suffering, disgrace and humiliation suffered, costs, and interest.

[2] The claimant, Mr. Desmond Alfred ("Mr. Alfred") was, at the time of the incident giving rise to the claim, a Police Constable in the Royal Saint Lucia Police Force,

stationed at the Vieux Fort Police Station (“the Station”). The first defendant, Mr. Emmanuel Joseph was Assistant Superintendent of Police, (“ASP Joseph”) and the second defendant, Mr. Anthanaitius Mitchel was Acting Sergeant of Police, (“SOP Mitchel”) both of whom were also posted at the Station. The third defendant, the Attorney General (“the AG”) is joined to the suit pursuant to the **Crown Proceedings Act**¹, as liable for any tort committed by servants of the State.

- [3] Mr. Alfred claims that he was deprived of his liberty for sixty-one hours having been wrongfully arrested, illegally detained and confined in a police cell; that his Blackberry Bold cellular phone (“the cell phone”), was illegally detained and has not been returned to him to date; and that his motor vehicle registration number HG1004 (“the vehicle”) was seized and illegally detained for five days without consent, search warrant or other lawful authority.

Background

- [4] Mr. Alfred alleges that on or about 19th February 2012, at about 4:30 am, he was on duty at the Station when ASP Joseph and SOP Mitchel (together “the defendants”) invited him into ASP Joseph’s office. There, ASP Joseph informed him that he was under arrest for the commission of the offence of burglary. He says that at the time of the arrest, they did not inform him of any sufficient reason or reasonable grounds for his arrest, which was carried out without a warrant, without cautioning him and without inviting him to respond.
- [5] Mr. Alfred says that the defendants then produced a search warrant to search his residence for tyres. Mr. Alfred says he was escorted to his home and the search warrant executed, but no tyres were found. Thereafter he was returned to the station where he was escorted to the police cell. Mr. Alfred further alleges that he was served a ‘Royal Saint Lucia Police Force Rights in Custody Form’ (“the Form”), which was not witnessed by a Justice of the Peace or superior officer

¹ Chapter 2.05 of the Revised Laws of Saint Lucia, 2008.

independent of the investigation and he was not allowed to make any telephone call or communicate with anyone until the following day at 10:00 a.m. when his wife made a complaint.

- [6] Mr. Alfred alleges that he was not interviewed until 1:45 p.m. on 20th February 2012, the day following his arrest. It was only at this time that he was allowed to see his Attorney. He says it was also at this time that he was made aware that he had been arrested on suspicion of having stolen tyres from a store room at the rear of the Station. Mr. Alfred alleges that thereafter he was further detained without being charged, and not released from confinement until 21st February 2012 at about 6:00 p.m.
- [7] Mr. Alfred alleges the following particulars of false imprisonment against the defendants: arrest without a warrant; without any or any sufficient reasonable grounds; without informing him of the reason/ground for his arrest until thirty-two hours later; preventing him from making a telephone call to and impeding him from consulting or instructing his attorney for thirty-two hours after arrest; failing to allow him to communicate with friends or family until 10:00 a.m. the following day; failing to release him promptly or prefer charges against him within a reasonable time and bring him before a court of law as soon as possible; and arresting him and then beginning to look for grounds to justify unfounded suspicion that he was responsible for the burglary.
- [8] Mr. Alfred alleges the following particulars of trespass to goods against the defendants: causing search warrants to be executed in vain at the residence of his mother, his mother-in-law and driver, and arresting and detaining his driver for seventy-two hours without charge; wrongfully detaining the cell phone; wrongfully seizing, detaining and searching the vehicle without a search warrant, consent or other lawful authority; wrongfully refusing to allow him to remove the vehicle from the Station from 19th February to 24th February 2012.

- [9] Mr. Alfred says that as a result he was subjected to inconvenience, disgrace, indignity, humiliation, mental suffering; suffered loss of use of the vehicle and cell phone; and further that the broadcast of his arrest on the Juke Bois radio programme has caused him to suffer injury to his reputation and credibility.
- [10] To the contrary, the defendants say that on 19th February 2012, when they invited Mr. Alfred into ASP Joseph's office, ASP Joseph informed Mr. Alfred that they had reasonable grounds to suspect that he had been involved in the commission of the offence of burglary of the store room. ASP. Joseph further informed Mr. Alfred that the stolen items involved a quantity of tyres housed there.
- [11] With respect to the search of Mr. Alfred's home, the defendants say that on informing Mr. Alfred of the search warrant, he denied the allegations and invited them to search his premises. This search was done in his presence, with his knowledge and consent and under the lawful authority of a search warrant. On returning to the Station, the defendants say that Mr. Alfred was not placed in the custody suites or any cell but was allowed the courtesy of being seated in the general area of the Station.
- [12] The defendants say that there is no requirement for the Form to be witnessed as suggested by Mr. Alfred and contend that it was properly witnessed and there was no violation of Mr. Alfred's rights in custody. The defendants say that Mr. Alfred's rights were explained to him but that he opted not to call his Attorney immediately. ASP Joseph says that notwithstanding, he requested Mr. Alfred to contact his Attorney in order that an interview could have been conducted in his Attorney's presence that day. The defendants say that Mr. Alfred was allowed to use the telephones at the Station to contact his Attorney or any person he desired.
- [13] The defendants acknowledge that Mr. Alfred was interviewed at 1:45 p.m. on 20th February 2012 in the presence of his Attorney and subsequently released on 21st

February 2012. The defendants deny the particulars of false imprisonment asserted by Mr. Alfred.

[14] The defendants contend that there has been no wrongful detention of the cell phone. They state that they had reasonable grounds to request the cell phone, which Mr. Alfred surrendered willingly and which is undergoing forensic analysis. The defendants contend that the search of Mr. Alfred's vehicle was done with lawful authority for the purpose of forensic analysis and that upon completion of same, the vehicle was released to him on 22nd February 2012 and not 24th February 2012 as Mr. Alfred alleges.

[15] The defendants deny the loss, injury and damage claimed to have been suffered by Mr. Alfred and state that the broadcast of his arrest was not done by the defendants or any servant or agent of the Crown.

The Evidence

[16] Mr. Alfred, ASP Joseph and SOP Mitchell each provided a signed witness summary in the matter which was admitted as their respective evidence in chief at the trial. All three were cross-examined. Several aspects of the evidence were worthy of note and are set out below.

Examination in Chief

Mr. Alfred

[17] Mr. Alfred's pleadings and evidence revealed a substantial number of inconsistencies. One such material inconsistency is that contrary to his claim on the pleadings, Mr. Alfred's evidence in chief was that ASP. Joseph did inform him of the reason for his arrest, being burglary of the Station's storeroom and theft of a quantity of tyres housed there. Contrary to the pleadings, his evidence in chief is also that he was informed that investigations pointed to him. Mr. Alfred's complaint in his evidence in chief is that at the time of his arrest, the defendants did not communicate to him what led them to suspect that he was implicated in the

commission of the offence, nor that they had sufficient evidence to arrest and charge him.

[18] In paragraph 5 of Mr. Alfred's witness summary, he says:

"ASP Joseph informed the Witness [Mr. Alfred] that some tyres, that had been stored at the back of the Vieux Fort Police Station in a small store room, had been stolen. ASP Joseph further informed the Witness that all investigations into the theft of the tyres pointed to the Witness as being the person responsible for the burglary of the tyres at the Vieux Fort Police Station. However, at no time did ASP Joseph or any other police officer communicate to the Witness what led ASP Joseph or PC Mitchel or any other police officer to suspect that he was implicated or involved in the theft of the said tyres. At no time did any of the arresting officers inform the Witness that they were in possession of any or any sufficient evidence to arrest and charge the Witness for the offence of burglary of the said tyres. Nothing was said to the Witness about what led the police to suspect the Witness. No reason was given to the Witness for his arrest and detention except that the Witness was informed that the police had reasonable grounds to suspect that he was implicated in the theft of the said tyres."

[19] Also worth mentioning is that in Mr. Alfred's evidence in chief is the notable absence of evidence pertaining to the Form and his rights not having been explained to him as alleged in his pleadings.

ASP Joseph

[20] In his evidence in chief, ASP Joseph says that in February 2012 he received information which indicated that Mr. Alfred was involved in the theft of the tyres. The information was that Mr. Alfred was seen in a minibus registration number HG1004 parked outside the back fence of the Station on the night of the burglary. Mr. Alfred was seen exiting the vehicle and approaching the fence in the area where the fence had been cut to gain access to the compound and the engine/store room. ASP Joseph said that he believed the information to be credible as it was obtained from a police officer who knew Mr. Alfred and the vehicle he drove.

- [21] ASP Joseph said that information was also received that Mr. Alfred who was supposed to have been on duty on the night of the burglary had called in sick.
- [22] Further information was received from a source who confirmed that Mr. Alfred was seen immediately after the burglary in possession of the tyres and that he had been involved in the burglary.
- [23] ASP Joseph said that he believed that Mr. Alfred may have been under financial constraint. He also said that he was aware that a lamp illuminating the back of the compound had been turned off and that this combined with the information received about Mr. Alfred aroused his suspicion that he was involved in or responsible for the burglary.
- [24] ASP Joseph said that on 19th January 2012 he told Mr. Alfred that he had reasonable grounds to suspect that he had committed the burglary involving the twenty-three stolen tyres at the Station on 29th January 2012. He says Mr. Alfred denied being involved.
- [25] ASP Joseph said that he served Mr. Alfred with the Form, Mr. Alfred read the Form, and when asked whether he understood those rights he said yes. His answer was recorded on the Form and Mr. Alfred signed the Form in the presence of Sergeant Chitolie. Mr. Alfred was then asked whether he wished to exercise any of his rights at the time and he indicated he would call his Attorney later which was also recorded on the Form and signed by Mr. Alfred. ASP Joseph said that he witnessed Mr. Alfred's signature.
- [26] ASP Joseph said that he asked Mr. Alfred for the vehicle and Mr. Alfred informed him that it was at the mechanic. ASP Joseph said they proceeded to the mechanic who gave them the keys to open and inspect the vehicle. The inspection revealed that the seats were moist and what appeared to be black rubber markings on them. ASP Joseph said he requested that Mr. Alfred submit

the vehicle for analysis to which he agreed. Mr. Alfred drove the vehicle back to the Station where it remained for three days and was thereafter returned to Mr. Alfred.

[27] ASP Joseph also said that on the day of the arrest, he requested that Mr. Alfred submit the cell phone for analysis. ASP Joseph said that Mr. Alfred handed over the cell phone but refused to give his password.

[28] He says that at no time was Mr. Alfred ever placed in a cell. He was a police officer and although arrested for a crime, he was extended the courtesy of remaining in the general area. He said Mr. Alfred was never handcuffed; he was allowed to make several phone calls; and his wife came to the Station to visit him on several occasions and was never denied access to him.

[29] ASP Joseph said that on 19th February 2012, the date of Mr. Alfred's arrest, he informed Mr. Alfred that he wanted to conduct an interview in relation to the burglary but would not do so without the presence of Mr. Alfred's Attorney. ASP Joseph said he asked Mr. Alfred several times when his lawyer would be present to conduct the interview. On 20th February 2012, he informed Mr. Alfred that he wanted to conduct the interview at 1:00 p.m. that day. Mr. Alfred's Attorney came to the Station at about 1:45 p.m. and shortly thereafter he cautioned Mr. Alfred in the presence of his Attorney, a Mr. Harrow, and commenced the interview. During the interview on two separate occasions Mr. Alfred requested permission to consult privately with his Attorney which ASP. Joseph said he permitted. At the end of the interview, Mr. Alfred signed the statement, followed by his Attorney.

SOP Mitchel

[30] SOP Mitchel's evidence in chief was that on 31st January 2012, he was assigned to investigate a report of burglary at the Station's engine room from which twenty-three tyres had been stolen. He says he proceeded to the site and commenced investigation into the matter.

- [31] SOP Mitchel said that through his investigations, he was made aware that on the night of 28th January leading into the morning of 29th January 2012, Mr. Alfred was seen in his white high roof minibus registration number HG1004 parked outside the Station in the area where the fence had been cut to gain access to the compound.
- [32] SOP Mitchel said that he also had cause to check the Station diary and observed that Mr. Alfred, who was supposed to have been on duty on the night of the burglary, had called in sick and accordingly was not on duty.
- [33] SOP Mitchel further said that a confidential source gave information about the burglary and confirmed that Mr. Alfred had been involved in the burglary and had, for some time thereafter, been in possession of the tyres. He said that based on the information received, he believed that there was reasonable cause to suspect that Mr. Alfred committed the offence of burglary.
- [34] SOP Mitchel also said that on the day of Mr. Alfred's arrest, the vehicle had been detained at the Station. He said he looked inside the vehicle and observed black marks on the seat, which also felt damp.
- [35] SOP Mitchel says he continued investigations and contacted his confidential source in an attempt to gather information, but was told that tyres had already been disposed of by the time the search warrant had been obtained. The source was unable to determine the new location of the tyres, and although investigations continued, no tyres were found.

Cross Examination

Mr. Alfred

- [36] Several aspects of Mr. Alfred's evidence on cross examination corroborate the evidence of the defendants.

- [37] Mr. Alfred, in cross examination, admitted that when ASP Joseph invited him into his office, ASP Joseph informed him that the Station had been burglarized, that twenty-three tyres were missing, that he, ASP Joseph, had reason to believe that he, Mr. Alfred, had something to do with it, and that as a result he was arresting him.
- [38] Mr. Alfred was asked whether, at the time ASP Joseph spoke to him on 19th February 2012, he informed him of his rights. He responded no. It was then suggested to Mr. Alfred that ASP. Joseph informed him that: he could consult with a legal practitioner of his choice; he could communicate with family or a friend; he was entitled to make a telephone call; he was entitled to writing material; he had the right to remain silent; he could be questioned in the presence of his lawyer; and if he waived his right to a lawyer, he could have someone present. He also responded no to each of these suggestions.
- [39] However, Mr. Alfred responded yes when he was asked whether he was given the Form, whether he read it, whether he was asked at the time if he understood it, whether he replied that he did understand it; whether this reply was noted on the Form, whether he signed the Form where his reply was noted; and whether by so signing he was confirming that he understood his rights. He was further asked who witnessed his signature on the Form. He stated that it was witnessed by a Sergeant Chitolie.
- [40] Mr Alfred was also asked in cross examination, whether ASP Joseph had asked him at the time if he wished to exercise any of his rights. He replied yes. When asked what his response to that question was, he said he could not recall. It was suggested to him that his response was that he would try to call his lawyer later. He said again that he could not recall. It was suggested to him that his answer was recorded on the Form and that he signed the Form immediately below his answer. He replied yes to both. He was then shown the Form containing what it

was suggested was his response and his signature. Mr. Alfred responded by saying that the Form was given to him one hour after he was arrested. It was suggested to him that the Form was given to him right after ASP Joseph spoke with him. He replied no, he was in ASP Joseph's office and then he was given the Form in the custody area.

[41] In relation to the interview Mr. Alfred admitted that the interview was conducted in the presence of the Attorney of his choice at 1:45 p.m. and concluded at 2:30 p.m. It was suggested to him that the paragraph of his witness summary where he says he was not interviewed until 4:00 p.m. was incorrect. He admitted that he may have gotten the time wrong.

[42] In relation to the vehicle and the cell phone, in cross examination Mr. Alfred admitted that ASP Joseph requested his cell phone; that he consented and handed over the cell phone to him; that on the day of his arrest he went to the mechanic with the officers; that he consented to the officers inspecting his vehicle; and that he drove the vehicle back to the Station. He however denied that he consented to the police examining the vehicle at the Station or that he was present when the vehicle was examined. He was then asked if he was present when it was examined at the mechanic, to which he responded that it was not examined just collected. It was put to him that while at the mechanic, he agreed to his vehicle being submitted for analysis; he said he was not informed of that. It was suggested to him that he got back his vehicle on 21st February 2012, to which he said no. When it was suggested he got his vehicle back three days after his arrest, he said no, then said that he could not really recall when.

[43] It was also suggested to Mr. Alfred that after his arrest he stayed in the general area of the police station to which he replied no. When asked where he was, he replied that he was in the prisoner's section, to the far end of the Station where there are three cells and a waiting area. He was asked if he was in the waiting area to which he replied yes.

[44] He was asked whether he was allowed to make phone calls while he was there to which he said yes. It was suggested to him that his wife came to the Station to visit him on several occasions to which he also agreed.

[45] On re-examination, Mr. Alfred said that he was allowed to make calls the following day and when he asked to make calls prior to that, he was told by the front desk that ASP Joseph had instructed that he was not allowed any calls. He said he could not recall the exact date the vehicle was returned to him but that it was about a week after.

ASP Joseph

[46] Much of the cross examination of Mr. Joseph focused on the PACE **Code of Practice** ("PACE") and whether PACE was complied with in the course of investigation and arrest of Mr. Alfred.

[47] ASP Joseph was asked what code guides the practice of arrest of suspects to which he responded PACE. He was asked whether there are different log books which police officers on duty are obligated to utilize to log information about the detention and questioning of suspects to which he said yes. He was then asked a series of questions which included whether: every station has a custody record book; every station has a crime register; every station has a movement diary; there are officers assigned to fill in the movement diary and crime register; whether he is aware that these diaries have to be initialed or signed by the officer making the entry; and whether if a report of a crime is made it is entered into the log book. He responded yes to all of these questions. He was asked if gaps in the logs are tolerated to which he responded no, it is not supposed to be.

[48] ASP Joseph was also asked if the information he received leading him to suspect Mr. Alfred was ever recorded. He responded that information like that is not put in the diary. It is intelligence information which is not logged. It was put to him that

he was duty bound under Code B of PACE and to report and log all entries relevant to an offence and the detention of a suspect.

[49] He was also asked whether it was not his duty to obtain from the source of the information, a description of the suspect. He replied that he did not get a description as the source was a police officer and friend of Mr. Alfred who knew him well. It was suggested to him that in not getting the description of the suspect, he broke the PACE Code and interfered with the rights of a suspect.

[50] It was also suggested to him that there is no documentary evidence of the logging or documenting of the arrest and detention of Mr. Alfred. He responded that he was sure that Mr. Alfred was logged in at the Station. It was pointed out that there is nothing in the custody record to which he replied that he is not the custody officer. When asked whether any contemporaneous record was made relevant to the arrest and detention, he said that he interviewed Mr. Alfred and gave him the Form. It was put to him that he operated outside the code of conduct in PACE Codes B and D to which he said he operated pursuant to section 570 of the **Criminal Code**.

[51] He was asked whether he was aware that it is illegal to protect the identity of an informant unless he has applied to the Court, to which he responded no.

[52] It was suggested to him that the information he refers to from third parties in his witness summary was an invention and that is why he has no report from the party giving the information. ASP. Joseph responded that he has nothing to gain; when he received the report from the informant he tried to obtain a statement from the officer but it was never done. He said he has been honest in his statement.

SOP Mitchel

[53] On cross examination, SOP Mitchel was asked the following: whether he wrote in the crime register or movement diary that he was investigating a report of burglary;

whether he had a pocket book with him at the time he was assigned to investigate; whether he made any entries in his pocket book relevant to the investigation; whether he had any written evidence documenting the reports made by the other officers; whether he wrote in the movement diary or crime register that he received information. He replied no to all of these questions.

[54] He was asked whether he investigated the individual who committed the previous offence in relation to the tyres. He replied that he investigated other persons, not only Mr. Alfred.

[55] SOP Mitchel was asked whether he knew which officer provided the information received. He replied that he did not ask his supervisor. He was asked whether he did not think that was important. He replied not at the time. It was suggested to him that he has no authority to make the information confidential. He replied that if an informant wants his name not to be mentioned, you keep it that way.

[56] He was also asked whether he obtained a written statement concerning Mr. Alfred's involvement. He said efforts were made with a view to obtaining a written statement; that is how he knew that the informant did not want his name mentioned.

[57] SOP Mitchel was asked if he knew why the cell phone has not been returned to Mr. Alfred. He said that the last time he checked it was still at the lab and that the lab was still unable to access the phone. He was asked whether he was aware of any report being made after processing of the vehicle. He said the crime scene officer would have taken photos and made a record of observations which would be kept by that department.

Preliminary Matters

[58] At the close of the hearing of this matter on 21st February 2018, the Court made the following order: "Counsel is to file closing submissions with authorities on or

before 28th March 2018. The decision is reserved on receipt of the submissions.” At the date of writing of this judgment, in disregard for the order of the Court, counsel for the claimant has not filed submissions. Counsel for the defendant filed submissions on 21st December 2018, nine months after the due date and after the drafting of the judgment was well on its way. The Court finds this position unacceptable. It is the duty of counsel and in the interest of their client's case to file submissions. The purpose of submissions is to assist the Court in coming to a fair and just decision. In view of the length of time that has elapsed since the date ordered for filing of submissions and in the interest of justice, the Court has proceeded to give its decision, in spite of this omission of counsel for the claimant.

[59] Several issues which were not pleaded in Mr. Alfred's claim form and statement of claim were raised in his pre-trial memorandum filed 29th June 2017, being breach of the claimant's constitutional rights and a claim for loss of reputation. Mr. Alfred also raised in his pre-trial memorandum the issue of duress, coercion and intimidation suffered by the restraint of his liberty, carrying him to the residences of his mother, mother in law and driver, and the execution of search warrants at these residences. The issues, having not been pleaded, cannot be considered by the Court. The Court is concerned to ensure that the defendant knows the case that he has to meet. The pleadings serve to establish the parameters of the claim and the issues which arise.

[60] In this regard, in the case of **Shankiell Myland v Commissioner of Police et al**² Ellis J said the following:

“Litigation proceeds on the basis that the court is a court of pleadings. They are critical in that they give fair notice of the case that has to be met, so that the opposing party may direct its evidence to the issues disclosed and they assist the court in adjudicating on the allegations made by the litigants. Not only should they define the issue(s) between litigants with clarity and precision, but they also serve as a record of the issues involved in the action which can (if necessary) be referred to at a later date.”³

² GDAHCV2012/0045, delivered 9th May 2014, (unreported).

³ At paragraph 37.

“The Court cannot accept that in these circumstances it is appropriate for a claimant to ignore the requirements set out under the CPR and to seek to litigate an issue which has not been raised in his pleadings, thus taking the opposite party completely by surprise.”⁴

Law and Analysis

False Imprisonment

Law

[61] False imprisonment has been defined thus:

“the unlawful imposition of constraint on another’s freedom of movement from a particular place. The tort is established on proof of: (1) the fact of imprisonment; and (2) the absence of lawful authority to justify that imprisonment. For these purposes, imprisonment is complete deprivation of liberty for any time, however short, without lawful cause.”⁵

[62] As to lawful authority for an arrest, section 3(1)(e) of the **Constitution of Saint Lucia**⁶ (“the Constitution”) provides:

(1) “A person shall not be deprived of his or her personal liberty, save as may be authorised by law in any of the following cases, that is to say—

...

(e) upon a reasonable suspicion of his or her having committed, or being about to commit, a criminal offence under any law.”

[63] Section 570(3) of the **Criminal Code**⁷ (“the Code”) provides that “where a police officer with reasonable cause, suspects that an offence has been committed, he or she may arrest without warrant anyone whom he or she, with reasonable cause, suspects committed the offence.”

[64] In a claim of false imprisonment, the onus is on the defendant to satisfy the Court that the arrest is lawful. It is therefore for the defendant to satisfy the Court that he

⁴ At paragraph 41.

⁵ *Albert Augustin v WPC 152 Bertie Ferdinand and The Honourable Attorney General of Saint Lucia* SLUHCv2008/0647 at paragraph [31], quoting from Clerk & Lindsell paragraphs 15-23 Imprisonment; *Alexander Jules and Lisa Callender v The Attorney General* SLUHCv2016/0595 at paragraph [10].

⁶ Cap 1.01, Revised Laws of Saint Lucia, 2013.

⁷ Cap 3.01, Revised Laws of Saint Lucia, 2013.

or she acted with reasonable cause or upon reasonable suspicion. The question is then what constitutes 'reasonable cause' or 'reasonable suspicion'.

[65] In the case of **Alexander Jules and Lisa Callender v The Attorney General**, the following was said in relation to 'reasonable grounds for suspicion':

"[12] ... Reasonable grounds for suspicion are not to be equated with prima facie proof of guilt. The test is whether in all the circumstances the objective information available to the constable supports reasonable grounds for suspicion of guilt. There is no general or absolute rule that a constable must make all practicable inquiries to confirm or dispel his suspicions before making an arrest. In **Buckley v Chief Constable of Thames Valley Police**, it was pointed out that "suspicion is a state of mind well short of belief and even further short of belief in guilt or that guilt can be proved." The threshold for showing reasonable suspicion is therefore a low one and in **O'Hara v Chief Constable of the Royal Ulster Constabulary** it was held that information from other officers may suffice to create reasonable grounds to arrest."

[13] In the case of **Jarett v Chief Constable of West Midlands Police**, Potter LJ said that reasonable grounds for suspicion 'can arise from information received from another, even if it subsequently proves to be false, provided that a reasonable man, having regard to all the circumstances, would regard them as reasonable grounds for suspicion.'⁸

[66] In the case of **Cecil Toussaint v Attorney General of Saint Lucia, Commissioner of Police, and No. 122 Detective Sergeant Troy Lamontagne**, Smith J quoted Ramdhani J in **Everette Davis v Attorney General of St. Christopher and Nevis** on the power to detain, arrest and charge on reasonable suspicion:

"[12] ... The test as to whether there is reasonable and probable cause is both subjective and objective. The perceived facts must be such as to allow the reasonable third person and actually cause the officer in question to suspect that the person has committed or is about to commit a crime. It does not matter if the information available to the police leads equally or more to a view that the person may be innocent of the offence, once it leads reasonably to a conclusion that he may have committed, or is about to commit the offence, that is sufficient to ground the arrest. The reasonable police officer is assumed to know the law and possessed of the information in the possession of the arresting officer, and would have

⁸ SLUHCv2016/0595 at paragraphs [12]-[13].

believed that the claimant was guilty of the offence for which he was arrested. The term 'reasonable suspicion' relates to the existence of facts at the time. It does not relate to a perception on the state of the law.

[13] It is significant to note that there is no need for the officer to have admissible evidence amounting to a prima facie case to ground reasonable suspicion when it comes to mere detention without charge. A lower standard is permissible and can be founded on inadmissible evidence. Of course reasonable suspicion can also be founded on admissible evidence. Such reliance on either admissible or inadmissible evidence must be shown to have actually existed and was reasonable in the circumstances.

[14] Reasonable suspicion may arise from the overt acts of the person who becomes the suspect. It may also arise from statements made by that person. Statements from known third persons may also provide such grounds. Thus information from an informer or a tip off from a member of the public may provide such reasonable grounds... A statement by one officer to a second officer that X is a suspect is not sufficient to ground suspicion in that second officer. However, a police briefing outlining the reasons for the suspicion, might provide reasonable grounds for suspicion, and so too might a police bulletin providing sufficient information.”⁹

[67] In the case **Dwight Cozier v Shawna Pemberton and The Attorney General of St. Kitts and Nevis**, Williams J said:

“[39] In the case of **Dallison vs Caffery**, the Court held that:
'When a constable has taken into custody a person reasonably suspected of felony, the constable may **without becoming liable for false imprisonment** do what is reasonable to investigate the matter; he may take a suspect to his house to see whether any of the stolen property is there and is not bound to take the suspect immediately and directly to the police station or before a Magistrate.
The constable will not be protected from liability if the measures that he takes were not reasonable.'

[40] The same approach has been taken in the context of other statutory powers where the question has been raised whether the constable who exercised the power had reasonable grounds to suspect that an offence had been committed.
In the case of **Castorina vs Chief Constable of Surrey**, the Court stated that:

⁹ SLUHCv2013/0531 at paragraph [26].

'Suspicion by itself however will not justify an arrest. There must be factual basis for it of a kind which a Court would adjudge to be reasonable. The facts may be within the arresting constable's own knowledge or have been reported to him.

Where there is an issue in a trial as to whether a Constable had reasonable cause, his claim to have had knowledge or to have received reports on which he relied may be challenged. It is within this context that there may be an evidential issue as to what he believed to be the facts but it will be for **the Court** to adjudge what were the facts which made him suspect that the person he arrested was guilty of the offence which he was investigating.”¹⁰

[68] Section 3(2) of the **Constitution** provides:

“(2) Any person who is arrested or detained shall with reasonable promptitude and in any case no later than 24 hours after such arrest or detention be informed in a language that he or she understands of the reasons for his or her arrest or detention and be afforded reasonable facilities for private communication and consultation with a legal practitioner of his or her own choice...”

[69] Section 3(3)(b) of the **Constitution** provides that:

“(3) Any person who is arrested or detained—

...

(b) upon reasonable suspicion of his or her having committed, or being about to commit, a criminal offence under any law, and who is not released, shall be brought before a court without undue delay and in any case not later than 72 hours after such arrest or detention.”

[70] Similarly, section 584(1) of the Code provides that:

“(1) A person arrested for any cause, whether with or without warrant, shall be brought before the Court or the judge, or a magistrate, as the case may be, as soon as is practicable but not later than 72 hours of his or her arrest.”

[71] Section 584(2) requires a suspect who is to be interviewed to be informed of his rights:

“(2) If a person arrested is to be questioned, he or she shall be informed—

a) that the person has the right to remain silent, without such silence being a consideration in the determination of guilt or innocence; and

¹⁰ NEVHCV2014/0006 at paragraphs [39]-[40].

- b) of their rights under section 589; and
- c) that the person has a right to be questioned in the presence of a lawyer unless the person voluntarily waives the right to counsel;
- d) of their right to have legal assistance of their choosing or to have legal assistance assigned to them if the arrest is for an offence under section 86 or 87.”

Analysis

- [72] Mr. Alfred has not made out his case of false imprisonment. While it is clear on the evidence that Mr. Alfred was in fact imprisoned from 19th February 2012 to 21st February 2012, in that his freedom of movement was restrained as he was not allowed to leave the Station, he has not established that he was imprisoned without lawful authority.
- [73] On the contrary, the defendants have satisfied the Court that Mr. Alfred was arrested on reasonable suspicion of having committed the criminal offence of burglary of the Station storeroom and theft of the tyres. Therefore his arrest was lawful pursuant to section 3(1)(e) of the Constitution and section 570(3) of the Code.
- [74] The defendants’ evidence, which has not been challenged, is that they received information from another officer that Mr. Alfred’s vehicle was seen parked outside the fence of the Station in the area it was cut to gain access to the compound on the night of the burglary; and Mr. Alfred was seen exiting his vehicle and approaching the fence in this area. This information was obtained from a police officer who knew Mr. Alfred, the vehicle he drove and whom the defendants believed to be credible.
- [75] This report was corroborated by another officer who, though his identity was confidential, reported that Mr. Alfred had been seen in possession of the tyres immediately after the burglary and that he had been involved in the burglary.

- [76] It had also come to the defendants' attention that the light illuminating the back of the Station compound where the storeroom was located had been turned off; and that Mr. Alfred who was supposed to have been on duty at the Station on the night of the burglary had called in sick, and therefore was absent from duty.
- [77] The Court is of the view that the sum of this information constitutes reasonable grounds to suspect that Mr. Alfred committed the offence of burglary to the requisite standard and that the defendants so suspected. The defendants have stated in their evidence that they suspected that Mr. Alfred committed the burglary and this has not been challenged.
- [78] As the cases cited above demonstrate, the standard or degree of reasonable suspicion is a low one. The grounds for suspicion are not required to amount to prima facie proof of guilt, nor does suspicion mean belief in Mr. Alfred's guilt. The defendants were not obligated to make inquiries to confirm or dispel their suspicion. It does not even matter if the information available leads equally or more to a view that Mr. Alfred may have been innocent of the offence. Further it does not matter if the grounds for suspicion are subsequently proved to be false. All that is required is that the objective information received would, to the reasonable person, support reasonable grounds to suspect that Mr. Alfred committed the offence and that the defendants did in fact suspect that he committed the offence.
- [79] From the line of questioning, it appears that counsel for Mr. Alfred sought to challenge the reasonableness of the grounds for suspicion on the basis that the information leading to the suspicion was based on reports from other officers, one of whom was confidential. The cases however, are clear that information received from others is sufficient to establish reasonable grounds to arrest, particularly where the arresting officer has been briefed on the grounds for reasonable suspicion. This was the case here.

- [80] The cases also establish that the defendants did not have to have admissible evidence amounting to a prima facie case; but that suspicion can be found on inadmissible evidence. Therefore the suggestion on behalf of Mr. Alfred that there is no contemporaneous or other documentation in writing of the investigation or of the grounds the defendants had to suspect that Mr. Alfred committed the offence is of no consequence. It is also of no consequence that the identity of one of the informants was confidential or that the informants did not provide written statements.
- [81] In relation to the manner of arrest, Mr. Alfred's complaint is that he was not made aware of the grounds of suspicion held by the defendants at the time of his arrest. However, this is not a requirement for lawful arrest either under section 3(3)(e) of the Constitution or section 570(3) of the Code. What is required by these sections is that the defendants have reasonable grounds for the suspicion; not that Mr. Alfred be informed of those reasonable grounds.
- [82] Section 3(2) of the Constitution requires that the defendants inform Mr. Alfred with reasonable promptitude and no later than 24 hours after arrest of the reason for his arrest. The Court is satisfied that this was complied with on the evidence of both parties. Mr. Alfred admits that while in ASP Joseph's office at the time he was arrested, ASP Joseph told him that the Station storeroom had been broken into and tyres stored there had been stolen and that investigations pointed to him as the person responsible. Therefore, the Court accepts that Mr. Alfred had been immediately informed of the reason for his arrest.
- [83] The Court is also satisfied on the evidence that Mr. Alfred's rights in custody were not breached, as alleged. Even if the Court were to accept Mr. Alfred's evidence that he was not informed of his rights, which it does not, Mr. Alfred admitted that he was given the Form which he read and understood, so confirmed to the defendants by signing the Form and his signature was witnessed. Mr. Alfred's rights in custody are clearly set out on the Form. Therefore, having admitted to

having read and understood the Form, the Court finds that he was made aware of his rights in custody.

[84] The Court prefers the evidence of the defendants over that of Mr. Alfred, as the defendants appeared on examination to be more credible. The Court therefore accepts the evidence of the defendants that Mr. Alfred was permitted to make telephone calls to his Attorney and anyone else, and that his wife was permitted to and did visit him. The Court also accepts ASP Joseph's evidence that he requested Mr. Alfred contact his Attorney on the day of his arrest to facilitate the interview. However that it was Mr. Alfred who delayed in calling his Attorney until the following day, when ASP Joseph insisted that he was conducting the interview that afternoon. Mr. Alfred's decision 'to call his attorney later' was recorded on the Form and signed by Mr. Alfred, the authenticity of which note and signature has not been challenged.

[85] Further the Court has placed little weight on the suggestion on behalf of Mr. Alfred that PACE was not complied with in the recording in the station diaries of the investigation, arrest and detention of Mr. Alfred, rendering the arrest unlawful. The Court is of the view that PACE is not applicable in the State of Saint Lucia in circumstances such as this where there is law governing arrest without warrant by a police officer of a person reasonably suspected of having committed an offence. This is the procedure contained in section 570 of the Code.

[86] Counsel for Mr. Alfred indicated at trial that he was relying on the case of **Earle Hunte v The Queen** as authority that PACE is applicable to the State of Saint Lucia. However, the Court in **Earle Hunte**, in looking at the application of PACE first noted that section 948 of the now repealed Criminal Code 1992 provided that subject to any other Statute, the law of evidence to be administered in the Court shall be the law of evidence in criminal causes and matters in England. The Court also noted that pursuant to that section, prior to 2002, PACE was considered and referred to by police officers in Saint Lucia in carrying out various procedures. The

Court however, went on to expressly state that section 948 of the Criminal Code was repealed by the **Evidence Act** No. 5 of 2002 of Saint Lucia. The Court in **Earle Hunte** noted that in relation to identification procedure, the **Evidence Act** enacted similar provisions to PACE Code D. The Court said there was therefore “an obvious and proper implication that the legislature gave its blessing to PACE Codes of Practice Code D continuing so far as practicable, subject to or until displaced by any existing codes of practice made pursuant to section 168(b) of the Saint Lucia Evidence Act.”¹¹

[87] It is therefore clear that the Court in **Earl Hunte**, in applying PACE considered the extent to which there existed legislation of the State of Saint Lucia in relation to the issue, the subject of the case, being identification procedure. The Court applied PACE subject to and only insofar as it was similar and conformed to the Evidence Act. In relation to arrest without warrant, the Criminal Code sets out the relevant procedure to be followed by the arresting officer. In these circumstances, there is no need to rely on PACE as submitted by counsel for Mr. Alfred, so as to render unlawful an otherwise lawful arrest carried out in accordance with the provisions of the **Criminal Code**.

[88] The Court finds that Mr. Alfred’s arrest was lawful pursuant to section 570(3) of the Code, the defendants having reasonable grounds to suspect Mr. Alfred committed the burglary and theft; that on his arrest, he was immediately and adequately informed of the reason for his arrest in accordance with section 3(2) of the Constitution; that his rights in custody were duly observed by the defendants in accordance with section 584(2) of the Code; and that Mr. Alfred had been released within the 72 hour period stipulated by section 3(3)(b) of the Constitution and section 584(1) of the Code. The Court therefore finds that, on a balance of probabilities, Mr. Alfred has not made out a case of false imprisonment.

¹¹ HCRAP2006/012 at paragraphs [15]-[16].

Trespass to Goods

Law

[89] In **Halsbury's Laws of England**, it is stated: "A trespass to chattels is actionable without proof of actual damage, and a plaintiff is at least entitled to nominal damages for any unauthorized direct physical interference with chattels in his possession".¹²

[90] In **Clerk & Lindsell on Torts** on the tort of trespass to goods, the authors say –

"The action of trespass has always been a remedy affording compensation for injury to a chattel in the plaintiff's possession. The sole question is whether the defendant has directly interfered with the plaintiff's possession. Trespass remedies any damage thus caused; it is also actionable per se, that is, without proof of actual damage to the chattel."¹³

[91] Trespass to goods is simply the wrongful/unauthorized direct physical interference with goods of another. In relation to whether interference is wrongful, in the case of **Carol Campbell v The Transport Authority of Jamaica**, McDonald J had this to say:

"It should be noted however that merely being in possession of another's goods without his authority is not a tort. In some instances even direct/intentional interference will not amount to trespass. This is so as there may be instances in which the goods are lawfully acquired. Such an instance may be created by statute which may provide for the lawful acquisition or seizure of another's goods/chattel in certain circumstances."¹⁴

[92] Section 623(2) of the **Code** provides:

"(2) A police officer who is lawfully present in a place pursuant to a warrant or otherwise in the execution of duties may, without a warrant, seize any thing that the officer believes on reasonable grounds—

- (a) has been obtained by the commission of an offence against the Code or any other enactment;
- (b) has been used in the commission of an offence against the Code or any other enactment; or
- (c) will afford evidence in respect of an offence against this or any other enactment."

¹² Volume II (3rd ed.) at paragraph 434.

¹³ (17th ed.) at paragraph 13-02.

¹⁴ [2016] JMSC Civ 148 at paragraph [19].

[93] In the case of **Derrick Daniel v The Attorney General, The Commissioner of Police and The Commander of the Coast Guard**, Byer J cited the case of **Ghani v Jones**¹⁵, where Lord Denning produced a five-pronged approach in looking at the circumstances surrounding seizure of personal items by the police to determine whether they were entitled to do so:

“First: The police officers must have reasonable grounds for believing that a serious offence has been committed – so serious that it is of the first importance that the offenders should be caught and brought to justice.

Second: The police officers must have reasonable grounds for believing that the article in question is either the fruit of the crime (as in the case of stolen goods) or is the instrument by which the crime was committed (as in the case of the axe used by the murderer) or is material evidence to prove the commission of the crime (as in the case of the car used by a bank raider or the saucer used by a train robber).

Third: The police officers must have reasonable grounds to believe that the person in possession of it has himself committed the crime, or is implicated in it, or is accessory to it, or at any rate his refusal must be quite unreasonable.

Fourth: The police must not keep the article, nor prevent its removal, for any longer than is reasonably necessary to complete their investigations or preserve it for evidence. If a copy will suffice, it should be made and the original returned. As soon as the case is over, or it is decided not to go on with it, the article should be returned.

Finally: The lawfulness of the conduct of the police must be judged at the time, and not by what happens afterwards.”¹⁶

Analysis

[94] The question then is whether the defendants’ seizure of Mr. Alfred’s vehicle and cell phone was wrongful interference with them to amount to trespass to goods? This Court finds that the defendants had the authority to and did seize Mr. Alfred’s vehicle and cell phone pursuant to section 623(2) of the Code.

[95] The information received by the defendants was that the vehicle was parked outside the Station where the fence had been cut and Mr. Alfred was seen exiting

¹⁵ 1970 1QB 693 at page 704; See also *Thakur Persad Jaroo v The Attorney General of Trinidad and Tobago* at [2002] UKPC 5 at paragraph 26.

¹⁶ SVGHCV2011/0029 at paragraph [16].

the vehicle and approaching the fence on the night of the burglary. Mr. Alfred was later seen with the tyres in his possession. The defendants would therefore have reasonable grounds to believe that the vehicle had been used in the commission of the burglary and theft, pursuant to section 623(2)(b).

[96] The defendants seized the cell phone as part of its investigation of the burglary. According to ASP. Joseph's evidence in chief, the cell phone was sealed and marked as an exhibit and handed over to a Constable for processing. It would therefore appear that the defendants seized the cell phone believing that it may afford evidence in respect of the burglary pursuant to section 623(2)(c).

[97] Applying Lord Denning's test from **Ghani v Jones**, this Court finds that: (i) the offence of burglary of the Station storeroom and theft of the tyres was committed, and it is important for the offender to be caught and brought to justice; (ii) for the reasons already stated, the defendants had reasonable grounds to believe that the vehicle had been used by Mr. Alfred in the commission of the burglary and the cell phone may have provided evidence of the commission of the offence; (iii) for the reasons also already stated, the defendants had reasonable grounds to suspect that Mr. Alfred committed the burglary and theft, and any refusal by him to allow the defendants to retain the vehicle and cell phone for the purpose of their investigation would have been unreasonable; (iv) however, that the cell phone, which has not been returned to Mr. Alfred to date, has been detained longer than is reasonably necessary to complete investigations or preserve it for evidence – while the defendants stated that after seizure their investigations continued, they have not indicated the current status of those investigations, except that SOP Mitchel said under cross examination that the cell phone was still at the lab, unable to be accessed, and to date, some seven years later, no charge has been preferred against Mr. Alfred; (v) as stated previously, the defendants, in 2012, were lawfully entitled to seize the vehicle and cell phone in the circumstances, pursuant to section 623(2) of the Code.

[98] Though the Court has approached the question of trespass to Mr. Alfred's vehicle and cell phone in this way, the Court is of the view that it is important to note that the evidence in chief of ASP Joseph and evidence of Mr. Alfred himself (both in chief and under cross examination) is that the defendants requested Mr. Alfred's cell phone to which Mr. Alfred consented and handed it over to the defendants. The evidence reveals that Mr. Alfred also consented to inspection of the vehicle, at least at the mechanic, though it may be in dispute whether Mr. Alfred consented to submit the vehicle for forensic analysis.

[99] Nonetheless, having found that any seizure of the vehicle and cell phone by the defendants was lawful, Mr. Alfred has failed to prove on a balance of probabilities trespass to goods. Mr. Alfred claimed the sum of \$2,000.00 as special damages in relation to the cell phone. However, as submitted by counsel for the defendants, Mrs. Karen Barnard ("Mrs. Barnard") special damages must be pleaded and particularized.¹⁷ Mrs. Barnard submitted that Mr. Alfred provided no proof of the value of the cell phone and therefore no damages should be awarded to him.

[100] Lord Goddard CJ in **Bonham Carter v Hyde Park Hotel** said that parties
"must understand that if they bring actions for damages, it is for them to prove their damage; It is not enough to write down the particulars, so to speak, throw them at the head of the court saying 'this is what I have lost; I ask you to give me these damages'. They have to prove it."¹⁸

[101] Despite the fact that the Court finds that the seizure of the cell phone was lawful at the time it was taken, it has been retained for some seven years, which is longer than reasonably necessary to complete their investigations or preserve it for evidence. Mr. Alfred is therefore entitled to have the cell phone returned to him forthwith. As explained having not proved the special damages claimed, I am not able to make an order for compensation in the alternative.

¹⁷ Kangaloo JA in *Mario's Pizzeria Ltd v Hardeo Ramjit*, CA 146 of 2003, Trinidad and Tobago.

¹⁸ *Bonham Carter v Hyde Park Hotel* [1948] 64 TLR at page 178.

Detinue

Law

[102] This Court adopts the exposition of the law in relation to detinue as set out in the **Carol Campbell** case by McDonald J:

“[22] In **Trevor Wright v Det. Sgt. Yates et al.** [2012] JMSC Civ. 52, my brother, Campbell J at paragraph [18] helpfully referred to a judicial definition of detinue from the Court of Appeal decision in **George and Brandy Ltd. v Lee** (1964) 7 WIR 275,

[18] Waddington JA, in **George and Brandy Ltd.**, defines detinue, at page 278, letter e, as follows;

“The gist of the cause of action in detinue is the wrongful detention, and in order to establish that it is necessary to prove a demand for the return of the property detained and a refusal after a reasonable time, to comply with such demand. The authorities establish that a demand must be unconditional and specific.”

[23] The learned author, John G. Flemming in **The Law of Torts**¹⁹, opines as follows –

“Merely being in possession of another’s goods without his authority is not a tort. If lawfully acquired, detention alone does not become a wrong in the absence of some manifestation of intent to keep them adversely or in defiance of his rights. (see: *Spackman v Foster* (1883) 11 QBD 99)... To establish that the detention has become adverse and in defiance of his rights, the claimant must prove that he demanded return of the chattel and that the defendant refused to comply...but such refusal must be categorical; if qualified for a reasonable and legitimate purpose, without expressing or implying an assertion of dominion inconsistent with the plaintiff’s rights, it amounts to neither detinue nor conversion. One does not always act unreasonably in refusing to deliver up property immediately on demand but may inquire first into the rights of the claimant. Moreover, a mere omission to reply to a letter of demand cannot itself be construed as a refusal (see: *Nelson v Nelson* [1923] QSR 37)...”²⁰

[103] Following McDonald J in the **Carol Campbell** case, if goods are lawfully acquired, then detention alone does not become a wrong in the absence of some manifestation of intent to keep it adversely or in defiance of the claimant’s rights.

¹⁹ 8th edition, at page 58.

²⁰ [2016] JMSC Civ 148 at paragraphs [22]-[23].

To establish that the detention has become adverse and in defiance of a claimant's rights, the claimant must prove that –

- i. he/she 'unconditionally and specifically' demanded return of the goods; and
- ii. the defendant 'categorically or unequivocally' refused to comply with the demand after a reasonable time.

The defendant's refusal, if qualified for a reasonable and legitimate purpose, without expressing or implying an assertion of dominion inconsistent with the claimant's rights, does not amount to detinue.

[104] Further, it must be established that at the moment of issuing the writ, the claimant is in a position to bring an action in detinue. Detinue is a continuing cause of action which accrues at the date of the wrongful refusal to deliver up the goods and continues until delivery up of the goods or judgment in the action for detinue.²¹

Analysis

[105] At the outset, the Court finds that Mr. Alfred, at the date this claim was filed, was not in a position to do so for detinue in respect of the vehicle. Following the case of **Allan Smith v The Attorney General**²², the vehicle having been returned to him a number of days after seizure, the cause of action in detinue did not arise because at the date of the claim there was no detention.

[106] For the reasons stated above, the acquisition of Mr. Alfred's cell phone was lawful pursuant to section 623(2)(c) of the Code. The question therefore is whether that acquisition has become wrongful by some manifest intention on the part of defendants to continue detention adversely and in defiance of Mr. Alfred's rights. Mr. Alfred has failed to establish that this is the case.

[107] Mr. Alfred has failed to show the requisite 'unconditional and specific demand' for the return of his cell phone. The Court in so concluding notes that "if the demand

²¹ Allan Smith v The Attorney General SLUHCv2010/0665 at paragraph [19].

²² At paragraphs [19] and [24].

is unclear or equivocal because it is merely a request ... it may not be enough".²³ There is a complete absence of evidence, documentary or otherwise of any demand by Mr. Alfred for its return. There having been no demand, there is no need to determine whether there was a categorical refusal by the defendants to return the cell phone. However, for completeness, the defendants have stated that the cell phone was retained for the purpose of forensic analysis and ongoing investigation. The Court therefore does not find there was categorical refusal to return the cell phone, which in any event was retained for a reasonable and legitimate purpose. This ends the matter. The claim in detinue has not been made out and therefore fails.

Conclusion

[108] Having found that Mr. Alfred has failed to establish his case of false imprisonment, trespass to goods or detinue, it is unnecessary to consider an award of damages, whether special, general, aggravated or exemplary as prayed.

[109] By reason of all the foregoing, the Court makes the following orders:

1. The defendants are not liable for false imprisonment of the claimant.
2. The defendants are not liable for trespass in respect of the claimant's vehicle and cell phone.
3. The defendants are not liable to the claimant in detinue with respect to claimant's vehicle and cell phone.
4. The claimant's claim is therefore dismissed.
5. The claimant is entitled to the return of his cell phone, which the defendants shall return within 30 days of the date hereof, alternatively the defendants shall compensate the claimant for the value of the cell phone as at the date of seizure, such value to be assessed.
6. Prescribed costs in the sum of \$7,500.00 to the defendants.

²³ Allan Smith v The Attorney General SLUHCv2010/0665 at paragraph [20].

Postscript

[110] On notification being given of the delivery of the judgment by the clerk of court on the morning of 22nd January 2019, counsel for the claimant, Mr. Colin Foster decided to file his closing submissions on the said 22nd January 2019 at 1:48 p.m.. This is not only disrespectful to the Court but in clear violation of the Court's order which cannot be countenanced in any way. For what it is worth, I have read the submissions and do not find that they in any way affect my judgment.

**Kimberly Cenac-Phulgence
High Court Judge**

By the Court

Registrar