

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
SAINT VINCENT AND THE GRENADINES
HIGH COURT CLAIM NO. 142 OF 2005
BETWEEN:



GREGORY FERRARI

Claimant

V

THE HONOURABLE ATTORNEY GENERAL

First Defendant

THE COMPTROLLER OF CUSTOMS AND EXCISE DEPARTMENT

Second Defendant

Appearances:

Mr. J. Martin for the Claimant.

Ms. Ruth-Ann Richards for the Defendants.

2012: June 5
July 20

DECISION

BACKGROUND

- [1] **JOSEPH, MONICA, J (Ag.):** The Claimant filed this claim against the Defendants on 21st March 2005. He seeks these reliefs: damages for false imprisonment, wrongful detention of property, wrongful interference with goods and damages for breach of the Constitution. The Defendants filed a defence on 22nd April 2005 mainly denying the Claimant's claim.

WRITTEN SUBMISSIONS; 28TH and 29th June 2012

THE CLAIMANT'S CASE:

- [2] The Claimant is an employee of St. Vincent and the Grenadines Electricity Services Ltd., and a business man who operated both a bar and a trucking business in Union Island. He bought beers originating in Venezuela from Bronson Hutchinson who, he said, had a licence to import beer.
- [3] On 29th March 2004, (accepted to be early hours of 31st March), the Claimant, having obtained assistance from Percival Davis, loaded beer unto the back of his truck registration No. T7922 (truck). He was transporting the beer to a boat 'Gem Star' at Clifton. His intention was to send the beer to the mainland as sales were slow in Union Island.
- [4] He was arrested by a customs officer who accused him of being in possession of uncustomed goods. The cases of beer were detained by the customs officer. He accompanied the customs officer to the Union Island Customs Office, where he maintained that he was not involved in any illegal activity. He was released and asked to return the next day. On his return he was asked to sign a statement admitting his guilt, but refused to do so.
- [5] The Claimant was released but his goods were kept. He was not charged for having committed any offence or given an opportunity to put up a defence of any kind. He received a letter dated 18th May 2004 (letter) from the Second Defendant, the Comptroller of Customs (the Comptroller) in which reference was made to the seizure of his truck, but no mention was made of seizure of the beers. He was fined \$2,000.00. He was also informed that failure to pay the fine would result in the institution of forfeiture proceedings.

THE DEFENDANTS CASE

- [6] On 31st March 2004, at approximately midnight, Elvis Frederick, a senior customs officer (customs officer), who was assigned to the Union Island Customs and Excise Department, was on patrol when he saw the Claimant driving a black two ton Isuzu truck. The customs officer was driving a vehicle registered G253 (customs vehicle).
- [7] The truck was fully laden with Cerveza Regional Tipo Pilsen Beer (beer). The customs officer was able to see the name of the beer by means of a street light and the fact that the truck was going over a speed bump in the road. He sought to stop the truck, but the Claimant increased speed, thus causing cases of beer to fall from the truck to the road. A chase ensued and the customs officer eventually forced the Claimant to stop.
- [8] The Claimant was carrying two hundred and ninety eight cases of twenty four by two hundred and fifty milliliters (24 x 250 ml) beer. The Claimant was informed by the customs officer that he had contraband uncustomed goods in his possession. The customs officer arrested the claimant. The customs officer seized and detained the cases of beer and the truck. The Comptroller addressed a letter to the claimant imposing a fine of \$2,000.00..
- [9] The claimant filed a notice of intended prosecution on 9th November 2004 and a claim was filed 21st March 2005, approximately one year after the incident. At no time did the claimant send a notice of claim challenging the seizure of the goods or a notice of claim challenging the seizure of the truck.
- [10] The issues identified by the parties are:
1. Whether the claimant was lawfully arrested;
 2. whether the claimant's beer and truck were lawfully detained and forfeited;
 3. whether the letter of 18th May 2004 from the comptroller of Customs was unlawful offending against the principle of separation of powers;

4. whether the claimant is entitled to claim constitutional relief in an ordinary claim as this;
5. whether the claimant's constitutional rights under section 1 and 6 of the Constitution have been breached;
6. whether the claimant has been denied his right of access to the court.

ADMISSIONS BY THE DEFENDANTS;

[11] The defendants admit:

1. the claimant's beer and the truck on which the beer was being transported were seized and detained;.
2. the claimant has exhibited a receipt purporting to show that he purchased the beers from one Bronson Hutchinson;
3. a letter dated 18th May 2004 was sent by the second defendant to the claimant.

FACTS

[12] About midnight on 31st March 2004, the customs officer saw the claimant driving a truck in the opposite direction with cases of beer that he suspected were uncustomed. He saw that the beer was a restricted cargo called Cerveza Regional tip Pilsen Beer which is a beer produced in Venezuela locally known as "Sling Shot". He turned his vehicle around and signaled the claimant to stop.

[13] The claimant ignored the signaling customs officer and increased speed. The customs officer, honking his horn, tried overtaking on either side of the truck, eventually pulling along side the truck, forcing the claimant to stop. During the chase some of cases of beer fell from the truck.

- [14] The customs officer got out of his vehicle and told the claimant he had in his possession uncustomed goods which is an offence. By uncustomed goods the officer stated that he meant goods that were not licensed as there is a local brewery. The claimant replied that the goods belonged to him, then he said that he had a job to transport the beers. The customs officer arrested the claimant under section 92 (1) of the Customs (Control and Management) Act Chapter 422 (the Act) then 14 of 1999.
- [15] The customs officer called for assistance and was joined by junior customs officer, Monique Craigg. She remained on the spot and he went to retrieve the cargo that had fallen from the truck. He returned with five cases of beers in the back of his vehicle. He informed the claimant that the truck and the beers are detained pending the second defendant, Comptroller's decision. He instructed the claimant to drive slowly in front of the Customs vehicle to the Customs House.
- [16] On arrival at the Customs House he sought instructions from his superior officers. He requested a statement from the claimant who declined to give it at that time and asked if it were possible to give a statement later. The matter was taken over by a senior customs officer. The claimant was allowed to depart the Customs Office.
- [17] The defence admitted that the claimant had bought the beer from Bronam Hutchinson and his daughter, M. Hutchinson confirmed that in her evidence. A receipt obtained from Hutchinson showed that the Claimant had bought beer some months before. It is unclear whether the beer seized is from the batch bought. To provide clarity, the evidential burden shifts to the defendants to establish that the receipt does not in fact relate to the restricted beer.

WHETHER THE CLAIMANT WAS LAWFULLY ARRESTED:

- [18] Mr. Maundy's submissions: that the claimant was arrested by a customs officer, the basis for the arrest being cited as section 92(1) of the Act. An arrest, however short, is not the same thing as a detention. A person detained may be released at any time by the detaining officer, but special circumstances apply to an arrest.
- [19] It is the law that once an arrest is made it is the duty of an arresting officer to ensure that the arrested person is taken before a Magistrate as soon as practicable. The power is not his to simply release the person as in the case of a detention. The point is made with crystal clarity at para 12-58 of **Clerk and Lyndell on Torts 17th ed.** Counsel also cited **Christie v Leachinsky** (1946) A.C. 573; **Commonwealth Caribbean Tort Law 2nd ed. by Gilbert Kodilinye p. 46:**
- [20] Ms. Richards' submission: The customs officer had reasonable cause for suspecting that the claimant had committed an offence, which is a question for the court to determine. The exercise by the customs officer of the discretion to arrest was exercised in good faith and the claim of false imprisonment should fail. Counsel cited **Holgate-Mohammed v Duke** (1984) 1 AER 1054.
- [21] These are the circumstances in which the customs officer arrested the claimant: The customs officer was driving on the road around midnight on 31st March 2004, when he saw the claimant driving a truck which was laden with a restricted beer.
- [22] The claimant admitted that he recognized the customs truck, that the officer signaled him to stop but he drove on slowly, stopping some three minutes after the officer's indication to him to stop. I find that the Claimant increased speed when the customs officer signaled to him. He came to a halt only when he was forced to come to do so by the customs officer.

[23] When asked about the beers, the claimant gave two different replies. What would a reasonable customs officer think in those circumstances? A reasonable customs officer would consider that the actions of the claimant were exceedingly strange: that those actions seem to point to the commission of an offence, that is, the evasion of customs duty. The claimant's behavior provided the customs officer with reasonable grounds to suspect that the claimant was doing something illegal, that is, conveying goods that had not been cleared by customs.

[24] The customs officer informed the claimant that he was under arrest for being in possession of uncustomed goods. I find that the customs officer had reasonable grounds to suspect that the claimant had committed an offence in breach of customs legislation. I find that, at that point in time, the customs officer exercised his power of arrest properly and in good faith. Section 92(1) of the Act enacts:

"Subject to subsection (2) an officer or a police officer may arrest any person who has committed, or whom there are reasonable grounds to suspect of having committed any offence for which he is liable to be arrested under any customs enactment."

[25] After an arrest there must be a charging for the offence for which a person is arrested. According to the customs officer, having arrived at the customs office with the claimant, and with the claimant's truck containing the beer, he handed over the matter to his superior officers. The claimant was allowed to leave the customs office. He was not charged with any offence.

[26] As the arrest was not followed by charging the claimant or a taking of the claimant before a magistrate, I find that the arrest of the claimant is unlawful. It follows that any detention following the arrest constitutes false imprisonment. The claimant was falsely imprisoned. In Christie v Leachinsky (1946) A.C. 573.... At p. 600: Lord DuParcq had this to say:

"Arrest (as is said in Dalton's Country Justice, 1727 ed. at p.580) "may be called the "beginning of imprisonment" and these appellants were called on to justify the whole imprisonment and not its beginning alone.....".

[27] Commonwealth Caribbean Tort Law 2nd ed. by Gilbert Kodilinye p. 46:

"An arrest which would otherwise be lawful will be unlawful if the arresting officer neglects to follow the proper procedure during and after the arrest. An arresting officer who fails to observe the required procedure may be liable for false imprisonment. In particular: the arrestee must be informed that he is under arrest, and he must be informed of the true ground for the arrest either at the time of arrest or as soon as practicable afterwards: After an arrest, the arresting officer must bring the arrestee before a magistrate as soon as reasonably practicable."

[28] Clerk and Lyndell on Torts 17th ed. 12-58

"Whenever a person exercises a power of arrest it is his duty to ensure that the arrested person is taken before a Magistrate or to a police station as speedily as reasonably possible. Every power of summary arrest on a criminal charge is granted for the purpose of its further investigation by a Magistrate and no power of arrest can be justified which is not for this purpose."

[29] I pause here to comment. I am satisfied that the customs officers in Union island are attempting to deal with the incidents of smuggling. However, in doing so, legal principles must be adhered to. If legal principles are not followed, the actions by customs officers during performance of their duties will be regarded as unlawful.

WHETHER THE CLAIMANT IS ENTITLED TO CLAIM CONSTITUTIONAL RELIEF IN AN ORDINARY CLAIM:

[30] Mr. Maundy submits that the claimant can claim relief for breach of his constitutional rights in an ordinary claim. Counsel cited a number of cases: **Tamara Merson v Drexel**

Cartwright and the Attorney General (2005) UKPC 38. Attorney General of Trinidad and Tobago v Ramanoop (2005) UKPC 15

[31] Ms. Richards disagreed with Mr. Maundy's submission and referred to the existence of alternative remedies.

[32] I think that a claim for relief for breach of constitutional rights can be made in the claim. If the court finds for the claimant, the court may make an additional award, enough to acknowledge that a right has been violated, without there being an award of an exorbitant figure. In the **Ramanoop** case the Board quoted the following at paragraphs 18 and 19:

18. "When exercising this constitutional jurisdiction the court is concerned to uphold or vindicate the constitutional right which has been contravened. A declaration by the court would articulate the fact of violation, but in most cases more will be required than words. If the person wronged has suffered damage the court may award him compensation....,

19. An award of compensation will go some distance towards vindicating the infringed constitutional right. How far it goes will depend on the circumstances, but in principle it may well not suffice. The fact that the right violated was a constitutional right adds an extra dimension to the wrong. An additional award, not necessarily of substantial size, may be needed to reflect the sense of public outrage, emphasize the importance of the constitutional right and the gravity of the breach, and deter further breaches. All these elements have a place in this additional award.....Although such an award, where called for, is likely in most cases to cover much the same ground in financial terms as would an award by way of punishment in the strict sense of retribution, punishment in the latter sense is not its object. Accordingly, the expressions "punitive damages" or exemplary damages" are better avoided as descriptions of this type of additional award."

[33] The Constitution protects the fundamental rights and freedoms of the individual..

Chapter 1:

"WHEREAS every person in Saint Vincent and the Grenadines is entitled to the fundamental rights whatever his race, place of origin, political opinions, color, creed or sex but subject to respect for the rights and freedoms of others and for the public interest to each and all of the following namely –

- (c) Protection for the privacy of his home and other property and from deprivation of his property.

Section 6 (1) enacts:

"No property of any description shall be compulsorily taken possession of and no interest in or right over property of any description shall be compulsorily acquired except for a public purpose and except where provision is made by a law applicable to that taking of possession or acquisition for the payment within a reasonable time of adequate compensation."

Section 6(6):

"Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1) of this section –

- (a) To the extent that the law in question makes provision for the taking of possession or acquisition of any property, interest or right...
- (ii) By way of penalty For breach of any law or forfeiture in consequence of breach of any law

Section 6 (8)

"Property" means any land or other thing capable of being owned or held in possession and includes any right relating thereto, whether under a contract, trust or law or otherwise and whether present or future, absolute or conditional."

[34] I hold that the constitutional provisions protect the claimant from being deprived from the use of his goods except where there is a breach of legislative provisions. The claimant has been so denied in that his goods have been detained for considerably longer than they ought to have been. I have also held that his arrest was unlawful and that he was falsely imprisoned

FORFEITURE

- [35] It is convenient at this stage to deal with the question of forfeiture of goods. Section 125 (1) gives the power of seizure and detention to a customs officer. That section enacts:

“An officer...may seize and detain anything which is liable for forfeiture under a customs enactment”.

- [36] “Liable for forfeiture” means that the possibility exists of illegal goods being forfeited. The customs officer’s evidence of the circumstances of the night of 31st March 2004, which I have accepted, led to the seizure of what the officer suspected to be goods that were uncustomed. The customs officer, using the power given under section 125, seized the goods. Those seized goods are liable for forfeiture. In **Squib United Kingdom Staff Association v Certification Officers** (1979) 2 AER 452 at p 459 Lord Justice Shaw said:

“The phrase “liable to” when used otherwise than in relation to legal obligations has an ordinary and well understood meaning namely “subject to the possibility of.”

- [37] The Fourth Schedule of the Act outlines the procedure for forfeiture of seized goods. Where goods are seized in the absence of an owner, the Act imposes the duty on the Comptroller under paragraph (1) to serve notice on the owner which, by paragraph 3, must be in writing. That procedure provides a process that ensures that, the owner of goods liable to forfeiture, is given an opportunity to be heard, before the goods are condemned, which is a principle of natural justice.
- [38] By paragraph 2, notice is not required to be given by the Comptroller to the owner if the goods were seized in the owner’s presence. I accept the Customs Officer’s evidence that

he told the claimant that the beer and truck (the goods) were detained pending a decision by the Comptroller. I hold that the goods were seized in the claimant's presence.

[39] Where goods have been seized in the owner's presence, the principle of natural justice that the owner must be given an opportunity to be heard, which underscores the procedure outlined where goods are seized in the owner's absence, is present in another paragraph. An owner may forward a written claim to the Comptroller, whether or not the Comptroller has served notice of seizure on him.

[40] Paragraph 4 provides for a situation where an owner who claims that his seized goods are not liable for forfeiture, and who has received the Comptroller's notice of seizure, to forward a written claim to the Comptroller within one month of the date of the service on him of the seizure notice. That paragraph also provides that, where no Comptroller's notice of seizure is served on the owner, the owner may send a written notice of claim to the Comptroller, within one month of the date the goods were seized. That paragraph reads:

"Where the owner who was at the time of the seizure claims that anything seized was not liable to forfeiture, he shall, within one month of the date of service of the notice of seizure or where no such notice was served, within one month of the date of seizure give notice of his claim in writing to the Comptroller at any customs office."

[41] It seems to me the rationale for so drafting the legislation, is that the legislature intended to ensure that natural justice principles are set out in the Act, to be activated by the Comptroller, where the owner of the goods is not present when goods are seized, by the owner, where goods are seized in his presence.

[42] I think that paragraph shifts the burden to commence natural justice proceedings from the Comptroller, who would normally be expected to be the activator of natural justice principles, by inviting representations from a person who alleges an injustice by Customs

staff, to the owner of goods. Under the paragraph, the owner is to activate the principle of natural justice, by taking some action where his goods are seized by customs. This procedure provides a natural justice route for the claimant to make representations to the Comptroller, providing the latter with information in support of a claim that the goods are customed, and are not liable to forfeiture.

- [43] My thinking is strengthened by paragraph 12 where, after seizure of goods, the burden of proving that the process outlined in the legislation has been followed, lies on the person who alleges that the process has not been followed, not on the Comptroller. That burden is the civil standard burden of proof - on a balance of probabilities. Paragraph 12 reads:

"In any proceeding arising out of the seizure of anything, the fact, form and manner of the seizure shall be taken to have been as set out in the process, unless the contrary is proved."

- [44] Paragraphs 6 and 7 read:

6. "If, on the expiration of the relevant period under paragraph 4 for giving of a notice of claim, no such notice has been given to the Comptroller, or where such notice is given, that notice does not comply with the requirement of paragraph 5, the thing seized shall be deemed to have been duly condemned as forfeited."
7. Where notice of claim in respect of anything seized is duly given in accordance with paragraphs 3 and 4, the Comptroller shall take proceedings for the condemnation of such goods by the court, and if the court finds that at the time of its seizure it was liable to forfeiture the court shall order that it be forfeited."

- [45] Paragraph 6 relates to two situations where goods seized "shall be deemed to have been duly condemned as forfeited". One situation is where a claimant owner has not presented

a written notice of claim to the Comptroller, and the time of so doing has passed i.e., one month of the date of seizure of goods.

[46] The second situation is where a claimant owner has given notice but that notice does not comply with the requirements of paragraph 5, which requirements are: name and address of the claimant or the name and address of the legal representative of a claimant, who is outside of St. Vincent and the Grenadines, and who is authorized to accept service on the claimant's behalf.

[47] If the owner fails to act, then under paragraph 6, after the passage of the relevant period of time, the goods seized "shall be deemed duly condemned as forfeited." The phrasing of that paragraph may read as though there is automatic forfeiture but, in fact, there is not an automatic forfeiture.

[48] In accordance with the process outlined, whether or not seized goods are to be condemned and forfeited, is for a court, upon proceedings instituted by the Comptroller. The Comptroller is not authorized to forfeit goods seized by customs officers outside of that process.

[49] I think the use of the expression "shall be deemed to have been duly condemned as forfeited" is misleading, as paragraph 7 authorizes the Comptroller to institute proceedings for the condemnation and forfeiture of seized goods. By paragraph 9 those proceedings are to be civil proceedings in the High Court or Magistrate's court.

[50] To "deem something" could mean that one is making something that which that thing is not, or that something should be judged or considered in a particular light. In this case, the goods seized cannot be deemed duly condemned as forfeited by the Comptroller, as paragraph 7 provides a procedure for the Comptroller to institute civil proceedings to

determine whether the goods should be forfeited. It may be that the phrasing here should be that the goods are "liable to forfeiture". The position would be that the seized goods remain liable to forfeiture until a court decides.

[51] Paragraph 10 outlines the proceedings in a court as follows:

- (1) In any proceedings for condemnation, the claimant or his solicitor or lawyer shall swear on oath that he is to the best of his knowledge and belief, the owner of the property at the time of the seizure.
- (2) In any proceedings for condemnation before the High Court, the claimant shall give such security for the costs of the proceedings as may be determined by the Court.
- (3) If any requirement of this paragraph is not complied with, the court shall give judgment for the Comptroller.

WHETHER THE CLAIMANT HAS BEEN DENIED RIGHT OF ACCESS TO THE COURT

[52] Mr. Maundy submits that the only manner of determination of any issue by the Comptroller in relation to the claimant was by way of the letter dated 18th May 2004. Counsel argues that it seems that, by way of that letter, the Comptroller clothed himself with a judicial function. The letter states that the claimant is fined in accordance with section 125 (5) (a) for breach of section 111 (1) (b) of the Act. The claimant, counsel submits, was afforded no opportunity to be heard or to even appear at a hearing of any sort.

[53] Counsel submits that, under section 111 (1) (b), a number of elements must be established before adjudication can come to a finding of guilt. These include, fraudulent intent and knowledge. The Comptroller came to a finding that the claimant is in breach of that section without any adjudication process.

- [54] There is no evidence that proceedings have been instituted by the Comptroller. There is a threat of proceedings mentioned in the Comptroller's letter, upon failure by the claimant to pay the fine imposed by the Comptroller, which fine is not authorized by the Legislation. The letter reads:

"Please be advised that in accordance with section 125 (1) of the Customs Control and Management Act No. 14/99 a vehicle T7922 has been detained by the Customs Department for breach of section 111 (1) (b) of the said Act.

Subject to section 125(5) (a) of the above mentioned act, you are required to pay the sum of EC\$2000.00 as a fine under the said section by May 31st, 2004.

Failure to make the payment will result in the institution of proceedings under paragraph (7) of the fourth schedule of the act for forfeiture of the truck."

- [55] The Comptroller has no authority under Section 125 to impose a fine on the claimant. The purported imposition of a fine by the Comptroller is ultra vires, null and void. Failure to pay an unauthorized fine does not attract the forfeiture procedure.
- [56] What is clear from the legislation is that goods that are liable to forfeiture may be seized by a customs officer. Before forfeiture of these goods, the owner of the goods must be given the opportunity to be heard. The opportunity provided for in the legislation is that the Comptroller is required to follow the procedure set out in the Fourth Schedule with the court being the final arbiter in proceedings for forfeiture. The Comptroller has not instituted those proceedings. The Court holds that the seizure of the beer and truck is unlawful.

WHETHER THE APPROACH TAKEN BY THE SECOND DEFENDANT OFFENDS AGAINST THE CONSTITUTIONAL PRINCIPLE OF SEPARATION OF POWERS;

- [57] Further, counsel suggests that section 125 (5) strikes at the principle of separation of powers and that the issuance of this letter constitutes the Comptroller as a court which infringes the principle of separation of powers of the judiciary and the executive exercised through the Comptroller.

[58] I do not think that that section infringes the principle of separation of powers of the judiciary from the executive. I do think that the Comptroller has misunderstood what his powers are under that section. I consider section 125(5) and (6).

[59] Section 125 subsections (5) and (6) provide:

"(5) Notwithstanding that anything seized as liable to forfeiture has not been condemned as forfeited, the Comptroller may at any time if he sees fit -

(a) deliver it up to a claimant upon the claimant paying to the Comptroller such sum as the Comptroller thinks proper, being a sum not exceeding that which in the Comptroller's opinion represents the value of the thing, including the duty chargeable thereon which has not been paid; or

(b) if the thing seizedis in the Comptroller's opinion, of a perishable nature, sell or destroy it.

(6) The restoration, sale or destruction under subsection (5) of anything seized as liable to forfeiture shall be without prejudice to any right of appeal against its seizure."

[60] My understanding of subsection (5), is where the goods seized as liable to forfeiture have not been condemned as forfeited, that sub section provides an amicable, administrative procedure for settlement between the Comptroller and a claimant. The Comptroller is authorized by that section to determine the sum to be paid by a claimant for the goods, including a sum representing unpaid duty. That decided sum must not exceed the value of the goods, which value is determined by the Comptroller.

[61] Where there is a settlement and payment made by a claimant, a claimant may still pursue a claim relating to seizure of his goods, as subsection (6) preserves his right of appeal against seizure of his goods.

CONCLUSION

[62] The constitutional rights of the claimant have been infringed. The claimant was unlawfully arrested and unlawfully imprisoned. The claimant's truck and beer were unlawfully seized. Counsel for the claimant invited the court to grant an award for aggravated and exemplary damages as the servants of the Crown have acted in an arbitrary and high handed manner with flagrant disregard for the claimant's constitutional rights.

[63] The court will make an award recognizing that public officers have not followed the legal principles, and the process outlined in the Act was not observed. I recognize that the claimant suffered damage financially and otherwise. I think that public officers will recognize that it is critical for them to be guided by legal principles in the performance of their duties. It might be advisable for them, before they act, to seek legal advice on interpretation of any legislative provisions empowering them.

[64] Exemplary damages are in their nature punitive, awarded where there has been outrageous conduct, where a court is sending a message that tortuous acts do not pay. I do not think that exemplary damages are warranted. In this case, the customs officer acted in good faith, carrying out his duties diligently, around midnight. In the A v Bottrill case (2002) UKPC 41, Lord Nicholls of Birkenhead, at paragraph 23 of his judgment had this to say:

"23. The next point to note is that, in the nature of things, cases satisfying the test of outrageousness will usually involve intentional wrongdoing with, additionally, an element of flagrancy or cynicism or oppression or the like: something additional, rendering the wrongdoing or the manner or circumstances in which it was committed particularly appalling. It is these features that make the defendants' conduct outrageous".

[65] What transpired subsequent to the initial arrest could be attributed to a misunderstanding of the legal process which, of course, is not an excuse. Senior public officers must ensure that they are made aware of the principles that they are required to follow.

[66] I award aggravated damages, including general damages, to compensate the claimant for the wrong that he has suffered. I keep the claimant's conduct in mind. If the claimant had stopped his truck when the customs officer attempted to stop him, and not increased speed, would the action of the customs officer been different? Had the claimant not given two different responses when the customs officer asked him about the beer, would the customs officer have arrested him? I have found that the claimant's conduct caused the customs officer to have reasonable suspicion of illegal conduct by the claimant's conduct.

[67] There is no evidence that from the date of seizure of the goods that, without prejudice, the Comptroller had any discussions regarding the truck been in his custody from 2004. There was no forfeiture proceeding commenced and no discussions held. I take that factor into consideration in arriving at a daily rate and average working days given on behalf of the claimant with respect to the truck.

[68] The value of the cases of beer is to be paid by the defendants. The truck is to be returned to the claimant.

AWARD

[69] Mr. Maundy seeks an award as follows:

Loss of income from the trucking business of \$450.00 for four days a week bearing in future uncertainties from 31st March 2004 to date and continuing until the return of the truck or its value. Counsel calculates loss of use as follows:

Average month of 16 working days March to December 2004	
144 Days x \$450.00	= \$64,800.00
2005 to 2011 – 1344 days x \$450.00	= \$604,800.00
January to June 2012 – 96 days x \$450.00	= \$43,200.00
Total loss income	= \$712,800.00

[70] The claimant claims that the trucking business brought in \$450.00 a day. He did give evidence that he operated the truck, at the end of the day, after he left his place of employment. I do not accept the figure of \$450.00. per day. Neither do I accept that he did trucking business in Union Island for sixteen working days in a month.

[71] He did not, for example, produce any evidence or any document to support the claim of what the earnings were from the trucking business in 2003. There is no evidence of the number or scope of the jobs that he had during that year. Were there developmental projects in Union Island on which he was employed for average sixteen days from 2004 to 2012? If so, what were the projects? No details were given. I allow ten working days in each month at \$200.00 a day, calculating as follows:

10 working days in months - March to December 2004 - $10 \times 10 \times 200 = \$20,000.00$
2005 to 2011 - $7 \times 12 \times 10 \times \$150.00 = \$126,000.00$
January to June 2012 - $10 \times 6 \times \$150.00 = \$9,000.00$

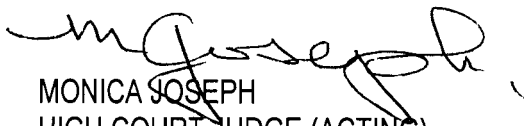
Total: = \$155,000.00

[72] I award \$20,000.00 damages – aggravated and general damages. The truck is to be returned to the claimant. The value of the beer is to be paid to him.

ORDER

1. The claimant is to be paid the sum of \$175,000.00
2. The truck is to be returned to the claimant
3. The value of the beer is to be paid to the claimant
4. Costs to be paid by the defendants

5. Liberty to apply in Chambers on 20th July 2012 at 11:00 a.m., relative to the value of the beer and costs.



MONICA JOSEPH
HIGH COURT JUDGE (ACTING)
18th July 2012