[2023] JMCA Civ 40

JAMAICA

IN THE COURT OF APPEAL

BEFORE: THE HON MRS JUSTICE MCDONALD-BISHOP JA
THE HON MISS JUSTICE STRAW JA
THE HON MR JUSTICE E BROWN JA

SUPREME COURT CIVIL APPEAL NO COA2020CV00045

BETWEEN	**ROWENA JOHNSON-DENNIE**	**APPELLANT**
AND	**T/A INSPECTOR W EMMANUEL**	**1ST RESPONDENT**
AND	**DIANA PATTERSON**	**2ND RESPONDENT**
AND	**TRANSPORT AUTHORITY**	**3RD RESPONDENT**

Garth Lyttle instructed by Garth Lyttle & Co for the appellant

Harrington McDermott instructed by McDermott Reynolds McDermott for the respondents

19 April and 28 July 2023

Tort - Detinue – reasonable and probable cause to effect seizure of motor vehicle upon production of photocopy road licence – whether unequivocal and categorical refusal to release vehicle after production of original road licence – effect of failure to sign release and discharge as a condition for the release of the motor vehicle – conversion – deterioration of motor vehicle – requirements to prove conversion – Road Traffic Act sections 61, 61(4A) and 61(4B) – Transport Authority Act section 13

MCDONALD-BISHOP JA

[1] I have read, in draft, the judgment of Straw JA and I agree with her reasoning, conclusion and proposed orders. There is nothing I could usefully add.

STRAW JA

Background

[2] This is an appeal from a decision of Nembhard J ('the learned trial judge'), given on 10 June 2020, by which she gave judgment and costs to the 1st, 2nd and 3rd respondents, in respect of the appellant's claim for damages for detinue and conversion.

[3] The matter had its genesis in events that took place on or about 12 August 2009. It was the evidence of the appellant, Mrs Rowena Johnson-Dennie, that she was the owner of a Toyota Hiace motor vehicle ('the motor vehicle') registered PA 6513, which operated as a public passenger vehicle. On the aforementioned date, she was advised by Norman Cunningham, the driver of the motor vehicle, that it was seized by the 1st respondent, Inspector Emmanuel, an employee of the 3rd respondent, the Transport Authority. Mr Cunningham reported that Inspector Emmanuel was unwilling to accept a photocopy of the road licence. Those assertions were not in dispute before the learned trial judge.

[4] Also undisputed was the evidence of Mrs Johnson-Dennie that, on the same date, she attended the offices of the Transport Authority. She interfaced with the 2nd respondent, Ms Diana Patterson, who was, at all material times, the Operations Manager at the Transport Authority. Mrs Johnson-Dennie produced the original road licence and also paid the required wrecker and storage fees. However, she refused to sign a release and discharge that Ms Patterson required her to sign. Ultimately, the motor vehicle was not released to her.

[5] Mrs Johnson-Dennie's evidence is that she returned to the offices of the Transport Authority about six times to demand the return of her vehicle, but Ms Patterson refused to do so. These refusals were disputed by Ms Patterson. Formal demands were made for the return of the motor vehicle by Mrs Johnson-Dennie's attorneys-at-law, by way of letters dated 18 and 26 August 2009. According to Mrs Johnson-Dennie, these demands bore no fruit. Eventually, the claim (on which this appeal is based) was instituted on 1

December 2009. It was not until in or around November 2013, that Mrs Johnson-Dennie was advised, through her attorneys, that the motor vehicle was available for collection from the Transport Authority's Lakes Pen pound.

[6] In or around February 2014, when she inspected the motor vehicle, it was damaged and was no longer roadworthy. As a result, she rejected the return of the motor vehicle and demanded to be paid for its value.

Findings in the court below

[7] In rejecting Mrs Johnson-Dennie's claim for detinue and conversion, the learned trial judge found, firstly, that Inspector Emmanuel had reasonable and probable cause to seize the motor vehicle, arising from Mr Cunningham's failure to produce a valid road licence. The learned trial judge found that the photocopy of the road licence did not amount to a valid road licence.

[8] Secondly, that although there was a specific and unconditional demand by Mrs Johnson-Dennie for the return of her motor vehicle, there was no unequivocal or categorical refusal to return the motor vehicle, as the signing of the release and discharge did not adversely affect Mrs Johnson-Dennie. As such, there could be no successful claim for detinue.

[9] Lastly, the learned trial judge found that Mrs Johnson-Dennie had failed to prove the elements of conversion in that she failed to prove that the Transport Authority, through its servants or agents, dealt with the motor vehicle "in a manner that was inconsistent with her right and that they had an intention to question or deny her title to it".

Grounds of appeal

[10] The challenge before this court concerns all three of the major findings of the learned trial judge. However, the grounds of appeal primarily concern the learned trial

judge's findings that neither detinue nor conversion was established. The grounds of appeal may be summarized thus:

a) The learned trial judge erred in failing to apply section 61(4) of the Road Traffic Act ('RTA') which required an unconditional release of the motor vehicle upon production of the original road licence (grounds two and eight);

b) The learned trial judge erred in failing to find that the seizure in law was justified under section 13 of the Transport Authority Act but limited to the time of the production of the original road licence and the payment of the wrecker and storage fees (ground three);

c) The learned trial judge failed to consider the Transport Authority's continued detention of Mrs Johnson-Dennie's motor vehicle after several demands were made for its release (ground four);

d) The learned trial judge failed to consider that the state and condition of the motor vehicle, as at 2014, was sufficient to establish the tort of conversion (ground five);

e) The learned trial judge erred in law in accepting and admitting into evidence a document tendered by the respondents purporting to be the photocopy of the road licence that was produced on the date of the seizure (grounds six and seven); and

f) The learned trial judge failed to rule on the "conditional demand" contained in the Transport Authority's release and discharge, which deprived Mrs Johnson-Dennie of her constitutional rights to bring a claim for damages arising from any loss suffered (ground nine).

[11] Ground of appeal one was not, in fact, a proper ground of appeal; it contained arguments that were relevant to grounds two, three, eight and nine and can be addressed in a consideration of those grounds. Grounds of appeal six and seven were not pursued.

[12] Based on the grounds of appeal, the issues for this court's consideration are:

a) Whether the learned trial judge erred in finding that there was reasonable and probable cause to seize Mrs Johnson-Dennie's motor vehicle and whether she erred in her consideration of section 61(4B) of the RTA;

b) Whether the learned trial judge erred in finding that detinue was not established; and

c) Whether the learned trial judge erred in finding that conversion was not established.

Submissions

[13] Mr Lyttle, on behalf of Mrs Johnson-Dennie, submitted that although the learned trial judge relied on section 13(2) of the Transport Authority Act ('TAA'), she failed to apply section 61(4B) of the RTA, in circumstances where Mrs Johnson-Dennie produced the original road licence to Ms Patterson within two hours of the seizure. It was Mr Lyttle's submission that by virtue of section 61(4B), the Transport Authority would have been obliged to release the motor vehicle upon that production.

[14] Further, counsel submitted that the Transport Authority had no right, whether under statute or otherwise, to impose a requirement on Mrs Johnson-Dennie, for the signing of a release and discharge, before the motor vehicle could be released to her. There was no legal basis to do so, as she had committed no offence. In the result, the learned trial judge erred in concluding that the tort of detinue was not made out. Reliance was placed on the case of **B & D Trawling Limited v Lewis and another** (unreported), Supreme Court, Jamaica, Claim No CL B015 of 2001, judgment delivered 6 January 2006.

[15] Counsel also highlighted section 4(2) of the TAA, which empowers the Transport Authority to charge and collect fees as may be prescribed. He noted that the wrecker and storage fees were paid in the absence of a court order requiring such payments. Additionally, that no charges were laid, thereby preventing the court from exercising jurisdiction over the motor vehicle. Therefore, Mrs Johnson-Dennie would not have been in a position to request the release of the motor vehicle from the court, in an attempt to mitigate her losses.

[16] As it related to conversion, Mr Lyttle submitted that the learned trial judge misapplied the law and failed to take account of the various demands made for the return of the motor vehicle, coupled with the fact that many parts were missing from the vehicle, when it was finally being returned several years later. He cited the case of **The Commissioner of Police and another v Vassell Lowe** [2012] JMCA Civ 55.

[17] Ultimately, Mr Lyttle asked this court to set aside the judgment of the court below in order that the matter may proceed to an assessment of damages.

[18] In opposing the appeal on behalf of the respondents, Mr McDermott submitted that the learned trial judge was correct in her analysis that the tort of detinue was not proven. He pointed to the evidence of Mrs Johnson-Dennie under cross-examination that she was told by Ms Patterson that since the original road licence had been produced, the motor vehicle would have been released. He submitted further that Mrs Johnson-Dennie's evidence that she received vouchers for the payment of the wrecker and storage fees was indicative that the Transport Authority's intention was to release the motor vehicle. Mr McDermott also pointed to various letters between the parties that were tendered as exhibits, and which letters, he stated, clearly demonstrated that the motor vehicle was available to Mrs Johnson-Dennie for collection. In the circumstances, Mr McDermott contended that there was no unequivocal refusal to return the motor vehicle.

[19] On the tort of conversion, Mr McDermott posited that the learned trial judge was correct in her analysis and her conclusion was supported on the evidence. He submitted

that the evidence before the court demonstrated that the Transport Authority was willing to return the motor vehicle for several years prior to the trial. Further, that Mrs Johnson-Dennie rejected the return of the vehicle on the basis that it was a shell. Mr McDermott also contended that Mrs Johnson-Dennie's claim for conversion was unclear and imprecise. The pleadings failed to particularize (i) the condition that her motor vehicle was in when seized, (ii) the parts of the motor vehicle that were removed, and (iii) who it was being alleged had removed those parts. There was, therefore, no allegation that the motor vehicle parts were removed by the Transport Authority or its servants or agents. Mr McDermott asserted that in the absence of pleadings and evidence that the motor vehicle parts were removed by the Transport Authority or its servants or agents, there could be no finding of conversion. Reliance was placed on the cases of **The Commissioner of Police and another v Vassell Lowe** and **Raquel Fray v Sergeant Jeffery Amos and others** [2018] JMSC Civ 74.

[20] With respect to section 61(4B) of the RTA, Mr McDermott submitted that the complaint that the learned trial judge failed to consider the section is without merit. This is especially so having regard to the learned trial judge's analysis of the claims for detinue and conversion. He submitted further that the learned trial judge's conclusion that there was reasonable and probable cause to seize the motor vehicle, in light of the production of a photocopy of the road licence, which was open to being tampered with, was unassailable.

[21] On the issue of the requirement by the Transport Authority that Mrs Johnson-Dennie should sign a release and discharge, Mr McDermott focused on the finding of the learned trial judge that the initial seizure was lawful. In the result, Mrs Johnson-Dennie would have had no opportunity to bring a claim arising from the seizure. In addition, the learned trial judge had found that Mrs Johnson-Dennie had committed no act of wrongdoing. As such, the release and discharge did not apply to her as it addressed circumstances where someone had committed an offence.

[22] Still further, Mr McDermott stated that if the learned trial judge were to consider whether the release and discharge infringed Mrs Johnson-Dennie's constitutional rights, she would have been embarking upon an academic exercise.

[23] In oral submissions before us, Mr McDermott acknowledged that there was no evidence that the Transport Authority had called Mrs Johnson-Dennie to advise her that she could retrieve her vehicle, or any evidence that she was advised how to retrieve her vehicle in circumstances where she refused to sign the release and discharge. While he conceded that there was no statutory basis to ground the release and discharge, it could be classified under the common law right to effect a compromise. He acknowledged that the Transport Authority would have had no basis to continue to detain the motor vehicle after demands were made for its release. He, nonetheless, contended that there was no categorical refusal in order to establish a claim in detinue. Mrs Johnson-Dennie was under no obligation to sign the release and discharge which amounted to a conditional release; that, this was further evident in light of the fact that she had been given the invoice for wrecker and storage fees to be paid. In elucidation of his point that there was no categorical refusal, counsel also referred the court to a letter of Mrs Lisamae Gordon dated 18 September 2009, on behalf of the Transport Authority, to Mrs Johnson-Dennie's attorneys-at-law. He contended that there was no continued detention of the motor vehicle as the inference could be drawn (from the letter) that Mrs Johnson-Dennie was free to collect the vehicle and the issue of whether she signed the release and discharge was moot.

[24] It was Mr McDermott's respectful submission that the decision of the learned trial judge should be affirmed and the appeal dismissed, with costs to the respondents.

Analysis and determination

[25] Evidently, Mrs Johnson-Dennie challenges not only the learned trial judge's findings of law, but also her application of the law to the facts that were presented. This court will not interfere with the findings of fact of the learned trial judge unless it can be

demonstrated she was "plainly wrong". This principle was explored in the case of **Beacon Insurance Company Limited v Maharaj Bookstore Limited** [2014] UKPC 21, in which the Board gave guidance on the relevant considerations to be used in determining whether a judge at first instance was "plainly wrong". At para. 12 Lord Hodge stated:

> "... It has often been said that the appeal court must be satisfied that the judge at first instance has gone 'plainly wrong'. ... This phrase does not address the degree of certainty of the appellate judges that they would have reached a different conclusion on the facts: *Piggott Brothers & Co Ltd* [1992] ICR 85, Lord Donaldson at p 92. Rather it directs the appellate court to consider whether it was permissible for the judge at first instance to make the finding of fact which he did in the face of the evidence as a whole. That is a judgment that the appellate court has to make in the knowledge that it has only the printed record of the evidence. The court is required to identify a mistake in the judge's evaluation of the evidence that is sufficiently material to undermine his conclusions. Occasions meriting appellate intervention would include when a trial judge failed to analyse properly the entirety of the evidence: *Choo Kok Beng v Choo Kok Hoe* [1984] 2 MLJ 165, PC, Lord Roskill at pp 168-169."

In order to succeed, therefore, Mrs Johnson-Dennie must demonstrate that the learned trial judge erred in her assessment of the facts and/or her application of the law on the basis of those facts.

Whether the learned trial judge erred in finding that there was reasonable and probable cause to seize Mrs Johnson-Dennie's motor vehicle and whether she erred in her consideration of section 61(4B) of the RTA

[26] In arriving at the finding that there was reasonable and probable cause to seize Mrs Johnson-Dennie's motor vehicle, the learned trial judge considered sections 61(4A) of the RTA and section 13(2)(a)(v) of the TAA. Based on these sections, the learned trial judge found that a Transport Authority Inspector ('an Inspector') or Constable may lawfully seize a motor vehicle, being operated as a public passenger vehicle without the requisite licence. Section 61(4A) of the RTA provides:

> "Where a constable or an Inspector designated under section 12(1) of the Transport Authority Act has reasonable cause to believe that a person has used or caused or permitted a vehicle to be used in contravention of this section, the constable or Inspector may **seize the vehicle**." (Emphasis supplied)

[27] Of further relevance is section 61(1) of the RTA, which stipulates:

> "Subject to the provisions of subsection (6), no person shall use or cause or permit a motor vehicle to be used on any road as a public passenger vehicle unless he is the holder of a licence (in this Act referred to as a 'road licence' or 'an emergency road licence') to use it as a vehicle of that class in accordance with the provisions of this Part."

Subsection (6) refers to an exception which may be provided by the Minister on special occasions, where existing transport services outside the Corporate Area would be inadequate. This exception would, therefore, not be relevant to the instant case.

[28] Section 13(2)(a) of the TAA also sets out the circumstances under which an Inspector or constable may seize a vehicle. Section 13(2)(a)(v) specifically states:

> "(2) An Inspector or a Constable shall have power-
>
> (a) to seize any vehicle which -
>
> (i) …
>
> (ii) …
>
> (iii) …
>
> (iv) …
>
> (v) is being operated or used as a public passenger vehicle without a licence issued for such operation or use;"

[29] Although, in this case, there was no explanation given on the vehicle seizure form as to the reason for the seizure, the evidence of Inspector Emmanuel under cross-examination, was that Mr Cunningham failed to produce a valid road licence. Particularly,

that it was a photocopy that was produced and not the original. This photocopy was on regular paper and was not laminated. This document was not accepted as valid as it could have been easily altered. The fact that only a photocopy of the road licence was produced was also confirmed by Mr Cunningham and agreed to by Mrs Johnson-Dennie, who was in possession of the original. These facts were sufficient to show that Inspector Emmanuel had reasonable cause to believe that Mrs Johnson-Dennie's motor vehicle was being operated without a road licence, in contravention of section 61(1) of the RTA. It was undisputed that at the time of the seizure, the motor vehicle was laden with passengers and was in fact being operated as a public passenger vehicle. Inspector Emmanuel was, therefore, empowered under section 61(4A) of the RTA and section 13(2)(a)(v) of the TAA, to effect the seizure.

[30] In light of this evidence, it was open to the learned trial judge to accept Inspector Emmanuel's reason for seizing the motor vehicle, as demonstrating that there was reasonable and probable cause to effect the seizure. The production of an invalid document amounted to failure to produce a road licence.

[31] As it relates to the learned trial judge's treatment of section 61(4B) of the RTA, she alluded to the section when she set out the statutory framework relevant to the facts of the case (see para. [36] of the judgment). Further, the learned trial judge appeared to have relied on the section in arriving at the conclusion that Mrs Johnson-Dennie was not adversely affected by the release and discharge (see paras. [60] and [62] of the judgment). It cannot be said, therefore, that the learned trial judge failed to consider and apply the section. The section states:

> "Subject to subsection (7)(b), a vehicle shall be kept in the possession of the Police or the Transport Authority, as the case may be, until the licence required under this Part is obtained and produced to the Police or the Transport Authority."

[32] Based on this section, subject to subsection (7)(b), once the owner of a vehicle produces the requisite road licence, the vehicle should be released. However, this section cannot be read in isolation. Sections 61(7)(a) and (b) go on to prescribe:

> "(7) Where a vehicle is seized pursuant to this section –
>
> (a) storage fees shall become payable to such persons at such rates and in accordance with such conditions as may be prescribed; and
>
> (b) if the vehicle remains in the possession of the Police or the Transport Authority for more than six months the vehicle may, subject to such conditions as may be prescribed, be sold by the Police or the Transport Authority, as the case may be, to recover the cost of storage."

[33] I am unable to agree with Mr Lyttle's submissions that Mrs Johnson-Dennie was entitled to an unconditional release of her motor vehicle, merely upon production of the original road licence. On the contrary, Mrs Johnson-Dennie would still have been required to pay the prescribed fees, as the seizure had been effected with reasonable and probable cause. Similar provisions are also found in section 13(3) of the TAA as follows:

> "(3) Where under this section a vehicle is seized-
>
> (a) the vehicle may be stored by the police or the Authority in such place and in such circumstances as the police or the Authority consider appropriate;
>
> (b) storage fees shall become payable to such persons at such rates and in accordance with such conditions as may be prescribed under the Road Traffic Act; and
>
> (c) if the vehicle remains in the possession of the police or the Authority for more than six months the vehicle may, subject to such conditions as may be prescribed under the Road Traffic Act, be sold by the police or the Authority to recover the cost of storage."

[34] The statutory framework discussed above indicates that Mr Lyttle's submissions in relation to grounds two and eight are devoid of merit. Mrs Johnson-Dennie's motor vehicle

having been lawfully seized based on both the provisions of section 61(4A) of the RTA and section 13(2)(a) of the TAA, she was mandated to pay the wrecker and storage fees in order to procure the release of the motor vehicle. These requirements were not obviated by section 61(4B) of the RTA. However, Mrs Johnson-Dennie did pay these requisite fees and was still unable to secure the return of her vehicle. She was entitled to its return upon her production of the road licence and the payment of those fees. Mr Lyttle's submissions in relation to ground three would, therefore, succeed. The issue is whether this continuing detention by the Transport Authority amounted to a wrongful detention so as to establish the tort of detinue.

Whether the learned trial judge erred in finding that the tort of detinue was not established

[35] The learned trial judge, in my view, properly stated the law as it relates to establishing detinue. The authorities on which she relied are the seminal authorities for our jurisdiction and bear repeating. Waddington JA, in the case of **George and Branday Ltd v Lee** (1964) 7 WIR 275 at page 278E, stated:

> "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 ..."

[36] Likewise, the Halsbury's Laws of England, 3rd edition, Volume 38, at paragraph 1294 provides:

> "Where, however, a person has possession of the goods of another and a valid demand is made for them by the owner, an unqualified and unjustifiable refusal to deliver them up entitles the owner to sue in detinue …"

[37] The learned author, John G Flemming in The Law of Torts 8th edition, at page 58, opines as follows:

> "10 - 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). ..." (Emphasis supplied)

[38] It must, therefore, be determined whether the continuing detention of Mrs Johnson-Dennie's vehicle was a result of an unjustifiable and categorical refusal on the part of the Transport Authority to return the said vehicle. As already stated, the learned trial judge found that although there was a specific and unconditional demand for the return of the motor vehicle, detinue was not established as there was no categorical or unequivocal refusal by the respondents to release the motor vehicle.

[39] Much of this issue turns on the wording of the release and discharge that Mrs Johnson-Dennie was asked to sign and the stated policy of the Transport Authority surrounding this release and discharge, at the material time. The release and discharge tendered into evidence, as exhibit eight stated:

> "I the undersigned, of
> DO HEREBY ACKNOWLEDGE the Transport Authority's decision to forego all Criminal action relating to infractions committed on the and subsequent seizure of motor vehicle registered and I agree to accept this pardon as full and final settlement of all claims, demands, suits, rights of action, cost and expenses in respect of all liability of whatsoever nature whether now or hereinafter to

> become manifest arising directly or indirectly as a result of the seizure of the said motor car by the Transport Authority.
>
> This pardon received by way of compromise of my claim and without admission of liability on the part of the said Transport Authority and in consideration thereof I HEREBY RELEASE AND DISCHARGE the said Transport Authority from all claims and demands whatsoever arising directly or indirectly from the seizure of the said vehicle **AND I HEREBY AGREE that I will not at any time hereafter take or bring any action or proceedings or make any claims whatsoever in respect of the seizure of the said vehicle**." (Emphasis supplied)

[40] A plain reading of this document shows that the signatory thereto is, agreeing to a "compromise" with the Transport Authority. In exchange for "pardon" from criminal prosecution, the signatory agrees to forego "all claims … in respect of all liability **whatsoever**" (emphasis added), which may arise from the seizure, whenever such liability may arise, and whether arising directly or indirectly. In effect, by signing this document, the signatory is agreeing not to sue the Transport Authority for any loss, damage or expense that may be suffered, arising from the Transport Authority's seizure of their vehicle, even if the Transport Authority had conducted itself negligently or otherwise.

[41] The evidence of Ms Patterson at paras. 7 and 8 of her witness statement filed 17 April 2015, which stood as her evidence-in-chief, was that:

> "7. … The fact that a valid road licence was produced, I informed [Mrs Johnson-Dennie] that her vehicle would be released. However, I indicated that the driver would need to visit the office to collect the summons to attend court or she could sign the release and discharge. She agreed to the latter. As such, she left my office with a member of staff who prepared a Release and Discharge for her to sign.
>
> 8. [Mrs Johnson-Dennie] at no time returned to my office. Neither did she indicate that she was not prepared to sign the Release and Discharge. **Additionally, if she had indicated an unwillingness to sign the Release and Discharge, I**

> **would have asked her to make the driver available for the summons to be served on him to attend court and the vehicle would have been released to her having produced the valid road licence.**" (Emphasis supplied)

[42] Under cross examination, it was also Ms Patterson's evidence that:

> "No summons was served at the point of seizure. A request was made of the driver to visit the office of the Transport Authority to come collect his Summons.
>
> **When Mrs Dennie attended the office I outlined two things; for the driver to attend, for a Release and Discharge to be signed which was the policy of the Transport Authority at the time. If she refused to sign then Transport Authority's agent would seek to visit the address of the driver for the Summons to be served. We would have the address of Mrs Dennie but not necessarily the driver's address.**" (Emphasis supplied)

[43] Based on the foregoing, it is apparent that the motor vehicle would only have been released to Mrs Johnson-Dennie, if she had either signed the release and discharge or procured the attendance of her driver to the Transport Authority to facilitate service of a summons. Failing the fulfilment of either of these conditions, there is no evidence to conclude that the motor vehicle would have been released to Mrs Johnson-Dennie, notwithstanding she had paid the wrecker and storage fees. This position was also confirmed in a letter dated 18 September 2009 from the Transport Authority to Mrs Johnson-Dennie's attorneys, under the hand of the then General Manager for Legal and Corporate Affairs, Ms Lisamae Gordon. This letter was in direct response to the letter dated 18 August 2009 from Mrs Johnson-Dennie's attorneys, to the Transport Authority, formally demanding the return of the motor vehicle. By the last paragraph of her letter Ms Gordon indicated:

> "There are instances when upon the presentation of the original road licence, we exercise our **executive discretion** to release the vehicle, but ask that persons sign a Release and Discharge. **In the alternative however**, we may prosecute

> persons for the breach. As your client, clearly prefers the latter, she need not execute the Release and Discharge. Indeed you have advised her not to, as you find the exercise of an executive discretion unlawful. Please be advised that we have prepared the summons for your client. We respectfully request you either provide us with an address where she can be served, or ask her to visit the offices of the Transport Authority so that we can properly serve her with the summons." (Emphasis supplied)

[44] Ultimately, there was no evidence of any prosecution having been instituted, either against Mrs Johnson-Dennie or Mr Cunningham, despite the further evidence of Ms Patterson under cross examination that the Transport Authority had both their addresses. The result of this is that Mrs Johnson-Dennie was unable to apply to the court for an order that the motor vehicle be released to her pending the determination of any prosecution as provided for by section 16A(1) of the TAA. She was, therefore, entirely at the mercy of the Transport Authority.

[45] Further, there is no indication in the letter from Ms Gordon or any other correspondence from the Transport Authority prior to 14 January 2014, that Mrs Johnson-Dennie could collect her motor vehicle, regardless of whether she fulfilled either the condition of signing the release and discharge or collecting a summons. In all the circumstances, therefore, it cannot be said that the Transport Authority did not refuse to return Mrs Johnson-Dennie's motor vehicle after a demand was made for its return. The real question is whether the requirement for the fulfilment of either of these conditions, prior to the return of the motor vehicle was lawfully justified.

[46] There has been no submission that the requirement for Mrs Johnson-Dennie to enter into a forced compromise, was legally permissible. Instead, it was stated to be a policy of the Transport Authority. I have great difficulty accepting that this policy could have been appropriately used to deprive Mrs Johnson-Dennie of the immediate release of her motor vehicle, given that she had complied with the requirements of the RTA and TAA, by producing her valid road licence and paying the wrecker and storage fees. In the

light of her compliance with the applicable law, the Transport Authority has not shown what offence she or Mr Cunningham could have been properly prosecuted for.

[47] The release and discharge, although touted as being some kind of pardon, is clearly intended primarily, if not solely, to shield the Transport Authority from any liability that may accrue to it, arising from any unlawful seizure or negligence of its servants or agents in effecting a seizure, lawful or otherwise. Such a policy is inimical to the rights of citizens to seek redress for wrongs which may have been suffered and no real justification has been provided for this policy in the circumstances of the case at bar. Still further, as in the instant case, where there remains no basis upon which to continue the detention of a person's vehicle, such a policy cannot be lawfully upheld as reasonable justification for continuing a detention. The learned trial judge would have been plainly wrong to state that the release and discharge did not adversely affect Mrs Johnson-Dennie, especially as the undisputed evidence is that she did not have any opportunity to even inspect the motor vehicle before being required to sign the release and discharge.

[48] The approach of the Transport Authority in this case may well be described as high-handed and contumelious and this court is hard-pressed to find that the refusal to return Mrs Johnson-Dennie's motor vehicle in these circumstances, was justified.

[49] The learned trial judge found at para. [58] of her judgment that Mrs Johnson-Dennie was asked to sign the release and discharge in order that the motor vehicle might be returned to her. She nevertheless found, at para. [59], that this did not amount to a categorical and unequivocal refusal for the purposes of establishing a claim in detinue. Her reasoning on this point is incorrect on the law and factual circumstances. The request for Mrs Johnson-Dennie to sign the release and discharge in the circumstances, and the continuing refusal to return the vehicle, cannot be considered to be a refusal qualified by a reasonable and legitimate purpose (see John G Flemming, The Law of Torts, 8th edition at page 58, cited at para. [37] above).

[50] The result was that Mrs Johnson-Dennie was unable to recover her motor vehicle on the date that she produced the original road licence and paid the wrecker and storage fees and on continuing dates thereafter.

[51] It is not apparent if any further demands were made after 26 August 2009 (the letter written by Mr Lyttle) but the claim was issued on 1 December 2009. In their defence filed on 30 November 2012, the respondents placed reliance on the said letter of Ms Gordon dated 18 September 2009 and a denial is averred at para. 7, that the respondents at any time refused to return the vehicle. However, the letter of Ms Lisamae Gordon speaks to an executive discretion that may be exercised to release the vehicle. It did not state that she had been at liberty to recover the vehicle.

[52] The factual circumstances certainly demonstrate an intent to keep Mrs Johnson-Dennie's motor vehicle in defiance of her rights to an unconditional release, as the motor vehicle ought to have been released to her once the original road licence had been produced and the appropriate fees had been paid.

[53] There was sufficient evidence established by Mrs Johnson-Dennie that, (1) she made an unconditional and a specific demand for the return of her motor vehicle; and (2) there was a categorical and unequivocal refusal after a reasonable time, to comply with such a demand. The learned trial judge erred in finding that the cause of action for detinue was not established. Ground four succeeds.

[54] With respect to ground of appeal nine, it is not factually correct that the learned trial judge failed to "rule on the conditional demand" contained in the release and discharge. The learned trial judge examined the release and discharge and ruled that it did not adversely affect Mrs Johnson-Dennie. Ground of appeal nine, as worded, would therefore fail, although the learned trial judge arrived at an incorrect conclusion as to the effect of the release and discharge.

[55] As contended by Mr McDermott, however, Mrs Johnson-Dennie is not at large to seek an award for damages for detinue from the date of the seizure up to trial or

assessment. Rather, as the evidence before the learned trial indicated that the motor vehicle was prepared for release from 21 January 2014 (see letter from the Attorney General's Chambers dated 21 January 2014 requesting notification from Mr Lyttle of a date for examination, if an inspection was required before release) and that on 11 February 2014, Mrs Johnson-Dennie attended the Transport Authority to inspect the motor vehicle, but refused to accept it based on its deteriorated condition. Therefore, in any assessment of damages for detinue, all the relevant principles must be applied in determining the extent of the liability and the quantum of damages, including the duty to mitigate.

Whether the learned trial judge erred in finding that conversion was not established

[56] The learned trial judge was correct in her conclusion that Mrs Johnson-Dennie had failed to prove the tort of conversion. She considered several authorities on the point, including **The Commissioner of Police and another v Vassell Lowe**, **Kuwait Airways Corpn v Iraqi Airways Co (Nos 4 and 5)** [2002] 2 AC 883 ('**Kuwait Airways**') and **Caxton Publishing Co Ltd v Sutherland Publishing Co** [1939] AC 178.

[57] In **The Commissioner of Police and another v Vassell Lowe**, McIntosh JA considered the law relating to conversion and, at para. [35] of the judgment, referred to the definition of that tort in Salmon and Heuston's Law of Torts, 21st edition at page 97 as follows:

> "A conversion is an act or complex series of acts of willful interference, without lawful justification, with any chattel in a manner inconsistent with the right of another, whereby that other is deprived of the use and possession of it."

McIntosh JA then stated at paras. [36] and [37]:

> "[36] In addressing the elements required to constitute conversion the learned authors provide a brief and useful history of the tort, stating, *inter alia*, that there are three distinct ways by which one man may deprive another of his

property and so be guilty of a conversion, namely: '(1) by wrongly taking it; (2) by wrongly detaining it and (3) by wrongly disposing of it'. Historically, the authors state, the term conversion was originally limited to the third mode as merely to take another's goods, however wrongful, was not to convert them and merely to detain them in defiance of the owner's title was not to convert them. However, in its modern sense, the tort includes instances of all three modes and not of one mode only. The authors point out that two elements combine to constitute willful interference: (1) a dealing with the chattel in a manner inconsistent with the right of the person entitled to it and (2) an intention in so doing to deny that person's right or to assert a right which is in fact inconsistent with such right (see **Caxton Publishing Co v Sutherland Publishing Co** [1939] AC 178, 189 and **Penfolds Wines Pty Ltd v Elliott** (1946) 74 CLR 204, 229). It seems to me that Mrs Dixon Frith was correct in her submission that the learned trial judge failed to take account of these two elements which she was obliged to do before she could make a finding that the action of the police amounted to conversion.

[37] The courts have determined that in the absence of willful and wrongful interference there is no conversion even if by the negligence of the defendant the chattel is lost or destroyed (see **Ashby v Tolhurst** [1937] 2 KB 242). Further, the authorities show that every person is guilty of a conversion who without lawful justification takes a chattel out of the possession of anyone else with the intention of exercising a permanent or temporary dominion over it because the owner is entitled to the use of it at all times (see **Fouldes v Willoughby**). This, at first glance, would seem to provide some authority for the learned trial judge's finding that in taking the truck and its contents into their custody without the consent of the respondent, the police had deprived him of the use and possession of his 'missing' items and had therefore converted them. But, a mere taking unaccompanied by an intention to exercise dominion is no conversion. Further, the detention of a chattel amounts to conversion only when it is adverse to the owner or other person entitled to possession – that is, the defendant must have shown an intention to keep the thing in defiance of the owner or person entitled to possession. The usual way of proving that a detention is adverse within the meaning of this

> rule is to show that the party entitled demanded the delivery of the chattel and that the defendant refused or neglected to comply with the demand. In the instant case, the learned trial judge did not make a finding that there was a demand, so that her finding that there was conversion was clearly not based upon this method of establishing the tort (see **Barclays Mercantile Business Finance Ltd v Sibec Developments Ltd** [1992] 1 WLR 1253)."

[58] The factual circumstances of the instant case do support the wrongful detention of the motor vehicle but do not demonstrate both elements necessary to constitute wilful interference, namely "(1) a dealing with the chattel in a manner inconsistent with the right of the person entitled to it and (2) an intention in so doing to deny that person's right or to assert a right which is in fact inconsistent with such right".

[59] In **The Transport Authority v Amy Hyacinth Bogle** [2020] JMCA Civ 6, this court also reviewed the authority of **Kuwait Airways** and stated the following at para. [59]:

> "[59] In **Kuwait Airways v Iraqui Airways**, the court undertook a review of the tort of conversion and commented that the tort existed to provide a remedy in a large variety of situations in which a third party exercises dominion over a claimant's goods and treats them as his own. The court also commented that a lot of difficulties have occurred because the acts of conversion may take so many different forms. The essence of the tort, however, was reiterated, that there must be an intention on the part of a defendant to deny the owner's right or to assert a right which is inconsistent with the owner's right. The court also referred to **Caxton Publishing Co Ltd v Sutherland Publishing Co** and, in particular, to Lord Porter's adoption of Atkin J's definition of conversion which had been approved by Scrutton LJ in **Oakley v Lyster**:
>
> > 'Atkin J goes on to point out that, where the act done is necessarily a denial of the owner's right or an assertion of a right inconsistent therewith, intention does not matter. **Another way of reaching the same conclusion would be to say that conversion consists in an act intentionally done inconsistent with the owner's right,**

> **though the doer may not know of or intended** [sic] **to challenge the property or possession of the true owner.**' (Emphasis supplied)"

[60] Mrs Johnson-Dennie has not demonstrated from the evidence that the Transport Authority had any intention to deny her right of ownership or to assert a right inconsistent with her right as owner. They were merely insisting that she should adopt a particular process for the recovery of the motor vehicle (which they were not legally entitled to do). Further, the fact that the motor vehicle was in a state of disrepair and, that, there were missing parts would be insufficient to prove the tort of conversion (see **The Commissioner of Police and another v Vassell Lowe** at para. [37] where reference is made to **Ashby v Tolhurst** on this point). Ground of appeal five, therefore, fails.

Conclusion

[61] Mrs Johnson-Dennie has succeeded in the appeal in relation to the tort of detinue as the learned trial judge erred in her assessment of the evidence on this point. However, the learned trial judge correctly determined that the tort of conversion was not established. I would recommend, therefore, that the appeal be allowed in part and the matter be remitted to the Supreme Court for an assessment of damages in relation to the tort of detinue.

[62] In light of the result of the appeal, the costs awarded below must be set aside. Mrs Johnson-Dennie is entitled to a proportionate costs order as two major planks in the appeal centered on the continuing detention of her vehicle and whether the tort of detinue was established, succeeded.

BROWN JA

[63] I, too, have read, in draft, the judgment of Straw JA and agree. I have nothing else to add.

MCDONALD-BISHOP JA

ORDER

1. The appeal is allowed, in part.

2. The judgment entered in the Supreme Court on 10 June 2020 for the respondents on the claim for conversion, is affirmed.

3. The judgment entered for the respondents in respect of the claim for detinue is set aside and substituted therefor is an order entering judgment for the appellant on the claim for detinue.

4. The order of the learned trial judge awarding costs to the respondents in the court below is set aside.

5. The matter is remitted to the Supreme Court for an assessment of damages in respect of the appellant's claim for detinue before a different judge of the Supreme Court.

6. The case is to be fixed for case management conference as soon as practicable by the Registrar of the Supreme Court for the necessary case management orders to be made.

7. 75% of the costs here and in the court below to the appellant, to be taxed, if not agreed.