IN THE SUPREME COURT OF JAMAICA

IN CIVIL DIVISION

CLAIM NO. 2008HCV 01237

BETWEEN	**EVON GORDON**	**CLAIMANT**
AND	**DET. CPL. BROWN**	**1ST DEFENDANT**
AND	**W/CPL. GREEN DIXON**	**2ND DEFENDANT**
AND	**CHIEF OF POLICE MICHAEL GARRICK**	**3RD DEFENDANT**
AND	**ATTORNEY GENERAL**	**4TH DEFENDANT**

Tort – False Imprisonment – Constitutional Breach – Defamation – Arrest – Search and Seizure – whether reasonable and probable Cause – Injury to business - Whether S. 33 applicable to defamation – Whether warrant under Unlawful Possession of Property Act valid.

Catherine Minto, Stephanie Forte instructed by Nunes Scholefield DeLeon & Co. for Claimant.

Marlene Chisholm instructed by the Director of State Proceedings for the Defendants.

Heard: 3rd, 4th, 5th, 27th June, 2013; 2nd July 2013 and 17th January 2014

Coram: Batts, J.

[1] This Judgment was orally delivered on the 17th January 2014. I now reproduce it with minor alterations in a permanent form. The Claimant describes himself as a businessman of Orange River District, Richmond P.O. St. Mary. He is an auto

parts dealer and a minibus operator. His witness statement dated 10th April 2013 was allowed to stand as his evidence in chief with some corrections and amplifications. **Exhibit 1** was an Agreed Bundle of Documents labelled bundle #3.

[2] The Claimant gives an account, which if true, records either a startling abuse of power or a shocking degree of incompetence. He states that at 9:30 a.m. on the 1st June 2007 the police arrived at his business place in Highgate St. Mary. He says the police "swarmed everywhere" and searched everything. His telephone was taken from him. They were at his premises for 2 hours. A large crowd gathered and watched. The police demanded documentation relative to vehicles on the premises and these the witness said he obtained and gave to them. They compared the numbers on the documents to that on the chassis of the vehicles. At one point, he said they scratched the area where the chassis was printed and accused him of stealing cars. The police also directed him to send for other vehicles he owned which were not at the premises. These included 2 Hiace buses used as public passenger vehicles. They seized the buses as well as his 2001 Corolla motor car and a 1995 Corolla.

[3] The Claimant and a member of his staff were arrested, handcuffed, and taken away in a marked police vehicle. On Tuesday 5th June 2007, he was advised that he would be released without charge. However while awaiting his release he was informed by Cpl. Green Dixon that Mike Garrick had called and indicated that he was not to be released. He says Cpl. Green Dixon said, **"Boss we done what we came to do. We no find nutten to charge you for, and we supe at town say we fi let you go but Mike Garrick call and say nuh fi let you go. So, mi wash mi hand clean of this matter now; mi nuh have nutten fi do wid you again."**

[4] He was subsequently taken before the court on the 7th June 2007, by virtue of Habeas Corpus proceedings instituted by his attorney at law. The police then advised the court investigations were continuing. On the 11th June 2007 the court ordered his release. He was released on the afternoon of the 11th June 2007. (See pages 84 and 85 of Exhibit 1 in corroboration).

[5] An application was also made for the release of his motor vehicles. After approximately 6 court appearances the vehicles were ordered released on a bond. Eventually the court released the bond. This witness statement also contained evidence supportive of losses he incurred.

[6] When cross-examined the Claimant admitted knowing Det. Cpl. Delroy Brown (the 1st Defendant) prior to the 1st June 2007. They were born and grew up in the same community. He knew W/Cpl. Green (2nd Defendant) prior to that date as he used to take her to school and work when he operated a public passenger vehicle. Det. Inspector Michael Garrick (3rd Defendant) he knew as someone from the same general area known as Marlboro.

[7] The Claimant was asked about a Toyota Hiace 2485EV and said he had purchased it from Mack D's Auto and admitted that he had agreed to pay the price in instalments but had not yet finished paying for it. He used it as a "robot" until the police got 'hard' and he applied for a PPV licence. He admitted, having seen page 26 of Exhibit 1, that the chassis number of the vehicle was RZH112-0043207. It was the same vehicle the police seized on 1st June 2007. He said when he went to collect the vehicle he noticed scraping on the firewall. He denied tampering with the chassis number on the vehicle. It was suggested to the witness that a forensic test was done on the vehicle but he said he was unaware of that. He was asked how the vehicle became PE2445 from 2485 EV and he responded that the former was the public passenger licence number issued after he got approval for the licence. The cross examiner tendered through the witness his answers to the Question and Answer dated 1st December

2007 as Exhibit 2. When asked Crown Counsel admitted that there were no inconsistencies being relied upon.

[8] The Claimant admitted buying a Toyota Corolla 2532 EC from a Mr. Lee. Mr. Lee had agreed to buy the vehicle from Mack D's Auto but was unable to complete the purchase. It was agreed that the Claimant would complete the purchase. That vehicle is described at page 12 of Exhibit 1. He said the vehicle was extensively damaged and had rotten spots. He therefore had to do repairs involving the cutting of the front and welding another front unto the vehicle. He also purchased a new engine from Better Wheels Auto in St. Mary and put it in the vehicle. He said he explained all this to the police. The relevant receipts were also given to the police. The following exchange occurred:

> **"Q: What did you do with the chassis number that you received from the shell?**
>
> **A: I did not get it with a chassis number when they selling it they bore holes in the chassis number and write on the receipt that they not selling you a car, they selling you as parts."**

[9] He was asked about the motor vehicle licenced 4058EX, he said he purchased it from his attorney Christopher Hibbert. It had been involved in an accident. It was suggested that he had used body filler where the chassis number was printed. The Claimant explained,

> **"My answer is where chassis number is no body filler was there. Repaired in Richmond nothing done to this chassis number**."
>
> **Q: Suggest when body filler removed a piece of metal 18cm x 13 cm was seen welded in place.**
>
> **A: That vehicle 4058 EX met in an accident. The chassis number line about 4" in length. That vehicle was poorly worked on. I sold this vehicle to Mavado. No metal was welded in place and the reason is and person I was sold, I was called to Constant Spring Police Station. The same person who they**

say Supt. Parsons checked the vehicle in my presence but did not know I was the same person.

He pass it and say nothing was wrong with it."

[10] In re-examination the Claimant elaborated on the area of damage to 4058DX,

[11] The Claimant's next witness was Derval Jackson. The Defence objected that his evidence was mostly irrelevant. However, I ruled it admissible and his witness statement was allowed to stand, as his evidence is corroborative of the Claimant's testimony. It concerns events on the same day and related to the alleged co-conspirator.

[12] Mr. Jackson stated that he was an employee of Evon Gordon (the Claimant) in June 2007. It was a Friday morning when the police arrived. He said they started asking him questions without identifying themselves as police officers. They questioned him about a Prado and he told them it belonged to his boss. He said at no point did the police say why they were there. He heard a female officer call the Claimant a car thief. He says there were customers around when this occurred. The police he says searched everything. He saw them use a knife to scrape the chassis of the vehicle in the yard. They then took him to Barracks River, his grandmother's residence. They never beat him. They questioned him about the Corolla at his home and he said the Claimant had purchased it from a man named Mr. Lee. They said it was a stolen car which he was keeping for the Claimant. They searched his grandmother's premises. They then took him to Zion Hill where he lived and where the Corolla was parked. He was called a thief. He was afraid they would kill him there as no one was at home. The car was not licensed or insured. He was taken to Richmond Police Station. Two weeks later he was charged and offered bail. He was in jail for over a month. Eventually the judge told him he was free to go.

[13] When cross examined the witness identified two of the police officers who were present. He also indicated that he had known the one named Brown before that day. The following exchange occurred:

> **"Q: Were they the only persons in the car**
> **A: No 2 others were in the car male**
> **Q: Put to you only one other officer in the car.**
> **A: I saw 2 come out. They never identified themselves so I would not know."**

[14] He said at the time of the incident he had been working for the Claimant for about three (3) months. He was a mechanic. He knew the Claimant before as they had gone to school together. He was asked about the questioning re the Prado and gave a detailed account. He said the police told him the white Corolla was at Zion Hill where he resides. As they already knew that he denied telling them it was at Barracks where his grandmother lives. The following exchange occurred,

> **"Q. I suggest it was you who directed them to Barracks**
> **A: Yes because me alone lives at Zion Hill as I was afraid."**

[15] There was no re-examination. In answer to the court, the witness stated that he was charged in relation to the bus and the case went to court several times, "after quite awhile," they said they had no offence against him. The following exchange occurred,

> **"J. How you get them go to Barrack River**
> **A: because I tell them I live in Barracks River because I did not want to go to Zion Hill by myself with them. I actually lie to them."**
>
> **Neither side had any questions arising.**

[16] At this stage the Claimants Counsel applied to amend Paragraph 2(d) of the Further Amended Particulars of Claim to change 1096 PA to insert PB2939. The

amendment was granted. Three documents were admitted as Exhibit 3 (Income Tax Returns for 2005, 2009 and 2010) and Ex. 4(a) and (b) respectively. The latter being the road licence to operate PD2445, (2485 EV) as a Public Passenger Vehicle. The Claimants case was then closed.

[17] At the commencement of the case for the Defendant Deputy Superintendent Leonard Parsons was called. The Claimant's counsel objected to the Defendants being present while his evidence was given and felt the Defendants ought to be called first. I ruled that I had no authority to exclude the Defendants from any part of the trial nor to dictate in what order witnesses were called. I reminded Defence counsel however that it could go to the weight of the evidence. The Defendants then voluntarily waited outside while this witness gave evidence.

[18] Mr. Leonard Parsons stated that he is now a Deputy Superintendent of Police; in 2007 he was a Detective Inspector. He described himself as an expert in the restoration of obliterated serial numbers. He has been doing that for 17 years and 4 months up to the date of giving evidence in court. He received training by Miami Customs Department and by Scotland Yard in England. He is now at the Organised Crime Investigation Division. In 2007 he was attached to the Forensic Laboratory. He said in 2007 he received a call from Detective inspector Garrick indicating he had some vehicles to be examined. He attended the Richmond Police Station. He says his reports are indentified by case number and his signature. The case number is at the top left hand corner. The following were admitted:

"Exhibit:
5(a) Certificate 44847 re: Toyota Corolla 2532 EC
5(b) Certificate #44934
5(c) Certificate #44935
5(d) Certificate #44848

[19] In relation to 5(a) he said he used a hammer and chisel to remove filler. That, the removal and replacement of the chassis number was not done by him. In relation to 5(b) he said "etching" is a process whereby charcoal is used to restore obliterated numbers. It reveals original digits that were there.

[20] When cross examined he admitted he did not note the date he received instructions from Mr. Garrick. He said he examined some vehicle on the 7th and some on the 21st June 2007. He did not note the time it took to examine nor the tools used nor the time of day examination was done. He said he was not alerted to the fact that 2532EC had been involved in motor vehicle accidents and that the front section had been damaged. Nor was he told that as a part of repairs a shell was purchased. He was not told that a replacement engine had been bought. Nor was he told that the Claimant had provided receipts in proof of these transactions. He was not told that in doing repairs a section of the firewall was removed and replaced. He said none of those facts (among others also suggested) would have affected his findings. The witness agreed that his report on its own could not be the basis of charging anyone with larceny; other evidence to determine who did tampering would be required. It was his understanding that for tampering to be a crime, it must have been done with intent to conceal a theft or other dishonest dealing.

[21] He admitted that body filler is normally used when repairs are done to a vehicle. He admitted it was possible for the firewall to sustain damage in an accident. The witness said he observed no evidence of dents or accidents in or around the area on 2532EC. The examination was with his naked eye. Det. Sgt. Stephen Brown of the Forensic Laboratory was present when he did the examination.

[22] In relation to Exhibit 5(b) he could not explain why this was done on 21st June 2007 or 2 weeks after the other examination. Prior to examination he was not told the vehicle had been in an accident or that it had sustained extensive damage to the front. He gave a detailed explanation of the etching process. He

was asked having done etching what he discovered (re 2001 Toyota Corolla) and responded,

> **"we did not get original number**
>
> **Q: You observe tampering**
>
> **A: No we observed tampering first before etching**."

[23] He stated that the numbers observed were not consistent with manufacturer's style of stamping and spacing. He took no photographs and was unable to demonstrate. The following exchange occurred.

> **"Q: At the end of this examination could you identify vehicle allegedly stolen**
>
> **A: No**
>
> **Q: so your report could not establish larceny?**
>
> **A: No**

[24] The witness admitted there was a data base at Organised Crime Division for stolen motor vehicles. The following exchange occurred,

> **"Q: Prior to coming here did you check the data base To ascertain whether you examined any vehicle more than once.**
>
> **A: if you enter an engine or chassis number twice it raises an alarm and you would know**
>
> **Q: you do it.**
>
> **A: me too but others record**
>
> **Q: Did you record information in relation to these 3 vehicles in data base**
>
> **A: I am not sure."**

[25] In relation to Exhibit 5(c) (44935) he said he observed tampering because style of digits not consistent with Toyota Manufacturers. He was unable to provide details as he made no detailed notes nor had he taken any photographs.

[26] The witness disclosed that his training in Scotland Yard was a 2-week course in 2005. In Miami it was one week. He had not done any formal refresher courses. Amazingly, he said he now trains others. With regard to the Toyota Hiace the witness stated he was not advised that it had been purchased from Mack D's Auto or that import documents had been provided. It was suggested to him that RZH114004581 was never the original number for the Hiace bus and he responded it was the original number for the bus he examined. It was suggested that there was no metal measuring 87 cm welded in placed and he said there was.

[27] When re-examined the witness said his report exhibit 5(c) could establish dishonesty because,

> "**based on original number the investigator could check database and reveal original owner and other things."**

I was not impressed either by his methodology or his expertise.

[28] Each of the Defendants then gave evidence commencing with the 1st Defendant Detective Cpl. Delroy Brown. One would have expected having regard to the evidence of Deputy Supt. Parsons that the Defendants were coming to speak to information received or evidence obtained which pointed to the Claimant being responsible for a crime. This is not what emerged. I will not therefore take you through the details of the evidence from each Defendant save to say, that:

a. They deny making the alleged defamatory remarks about the Claimant.
b. They asserted that the search and seizure was the result of information received and observations made.
c. Their observations included "signs of tampering" with the chassis or engine number of the vehicles.
d. They denied taking a bag of receipts from the Claimant.

[29] The Defendants' evidence confirmed that at the time of the seizure and his arrest the Claimant provided explanations generally consistent with his evidence to this court. The Defendants also gave the following evidence:

- Det. Sgt. Brown at Para 16 of his witness statement,

  "16.
  We indicated to her that Detective Insp. Parsons would not be available to conduct the forensic examination until later in the week. We were minded to release Mr. Gordon based on what the auto body repairman had informed us and that the forensic analyst would not be available. The investigation was handed over to Inspector Garrick on the instructions of our immediate supervisor Deputy Superintended of Police Norman Hamilton."
- **During the cross examination of Det. Sgt. Brown the following exchange occurred:**

  "Q. Up to when you handed over investigation
  A: Either Wednesday or Thursday
  Q: June 4 or 5
  A: Yes
  Q: Had you satisfied yourself as to how Toyota Corollas was acquired by Mr. Gordon.
  A: To a point
  Q: you were satisfied the vehicle had been purchased from an attorney
  A: I was satisfied he had purchased a crashed vehicle from the attorney
  Q: As part of your investigation did you ascertain the engine and chassis number of the crashed vehicle he bought from his attorney
  A; Yes
  Q: That engine and chassis number that was on the crashed vehicle was it same engine and chassis number you saw on the Grey Corolla
  A: it appears to have been the same number
  Q: up to when you handed over your investigation had you satisfied yourself that Mr. Gordon had purchased the white Hiace from Mack D's.
  A: yes based on story he told me
  Q: up to when you handed over your investigation were you satisfied he had bought Toyota station wagon for Mack D

A: Yes."

- Detective Sgt. Green Dixon the 2nd Defendant admitted in cross-examination to making very few notes of the phones seized or observations made in her notebook save for the Claimants name, address and date of birth. Her notebook was never produced. She also stated that as a weekend had intervened and as she got certain instructions, no further investigations were carried out by her after 1st June 2007. She had spoken to an Autobody repairman whose name she cannot recall but who corroborated Claimant's account. In re-examination she stated rain had damaged the notebook.

- Det. Sgt. Trudy Brimm stated,

> **"Following the investigation conducted by Det. Cpl. Ewan I was satisfied that the vehicle sold to Mr. Mals was not stolen. As a result I went back to court on Monday June 11 2007 and informed her Hon. C. Brown of the results of the investigation and he was released that day."**

[30] It was the evidence of the 3rd Defendant Mr. Michael Garrick (who at the time of giving evidence was no longer a member of the police force) which this court found to be most revealing. He retired on the 24th January 2013 as a Deputy Superintendent of Police. On the 1st June 2007 he was a Det. Inspector of Police stationed at Port Maria in St. Mary. He stated that having received information that the Claimant was involved in a car racket where stolen motor vehicles were scrapped or tampered with, he obtained a search warrant and contacted the Organised Crime Investigation Division. He gave instructions for a search of the Claimants business place and to conduct investigations. He gave an account of the investigations and forensic analysis that was done. Interestingly, it was not until the 1st December 2007 that he conducted an interview of the Claimant which was recorded and signed in the presence of the Claimant's attorney Mr. Christopher Hibbert. He asked about 54 questions and the Claimant answered them all.

[31] Mr. Garrick also states that the information he received came from one Vincent Minott. Mr. Garrick says that he contacted Mr. Winston Lee who confirmed purchasing an old Toyota Corolla from Mack D's which had been involved in accidents to the point it was unserviceable. He sold it to the Claimant. When shown a vehicle at Richmond Police Station he said it was not the vehicle. Mr. Garrick is of the view that the Claimant purchased the vehicle from Mr. Lee and, **"obtained a similar vehicle unlawfully and cut out the firewall from the old vehicle and replace it with the chassis number."** He stated that he was still conducting investigations when on 4th December 2007 he was summoned to the Resident Magistrate's Court Annotto Bay before Her Hon. Miss A. Collins. He was instructed to hand over the vehicles. Mr. Garrick stated,

> **"27. The vehicles were handed over to the Claimant on December 7th 2007. I was informed to take up transfer in the St. James Division in January 2008 since then I had not been able to follow up the Investigation of the said motor vehicle.**
>
> **28. In all the circumstances I honestly believed that the vehicles in the possession of the Claimant were stolen motor vehicles as they were all tampered with."**

[32] When cross-examined Mr. Garrick stated that he had not taken a written statement from the informant. The information included no details about the vehicles allegedly stolen. Nor did it include information about the victims of the alleged theft. Mr. Garrick then told the cross-examiner that prior to search and seizure he did "surveillance" which confirmed the information received. He was not however able to note the licence numbers of vehicles observed during that surveillance. Nor was he able to refer to anywhere a note was made of it. Indeed surveillance had not been mentioned in either of the 2 witness statements which stood as his evidence in chief.

[33] When pressed by Claimant's Counsel whether no other steps were taken to verify the information received Mr. Garrick admitted he had not obtained licence numbers for the vehicles. He then stated for the first time that Mr. Minott told him that he had got information from "Donovan." The witness then admitted that in breach of the Order of Sykes J he had failed to disclose that information. He said he was unable to locate Donovan.

[34] It also emerged in Mr. Garrick's witness statement that the first time the Claimant saw the search warrant was on 6th May 2013. The Court had then ordered disclosure of information allegedly received. He had not said in his statements that he informed any of the police officers of the existence of the search warrant. He denied the suggestion that the warrant was a recent fabrication. He admitted that he "executed" the search warrant after the search, after the seizure and after the Claimant was taken into custody.

[35] When asked questions by the court, he admitted receiving receipts and information from Betta Wheels that Claimant had purchased an engine from them. He was aware that Det. Sgt. Brown wished to release the Claimant but disagreed. The following exchange followed:

> **"Q: Did you have any view why he should not be released.**
>
> **A: Yes, because I wanted to ask him questions and make arrangements to ask him questions.**
>
> **J: He has to be in custody for you to ask him questions.**
>
> **A: no, but based on all information from Sgt. Brown with regard to another matter. As also to conduct further investigations**."

[36] Generally the evidence of the investigation by the Defendants strikes me as being unprofessional and lacking in thoroughness. Details were not recorded. Information given by the accused was not properly checked and when checked

were not recorded or the record unaccounted for. So that for example the statement taken from the lawyer from whom the Claimant said he had purchased one of the suspect vehicles has never been produced; also there was no note made it seems of the licence plate of one of the Hiace buses which was examined and which the Claimant says was licensed PD2939; furthermore no statement was taken from the autobody repairman who confirmed to the police he had done repairs on the vehicle seized as the Claimant alleged. The conduct of the officers displayed a marked insensitivity to the Claimant and the fact that he was operating in a service industry and that the information on which they were acting was unverified. Even if there was a basis for reasonable suspicion and hence to search and seize for examination, the process could have been dealt with in a more discrete civilised and professional manner.

[37] At the close of the case for the Defence the parties were allowed time to file and exchange written submissions. They attended before me on the 2nd July 2013 to speak to the written submission of each other. I am indebted to counsel for the assistance provided but in the interest of not unduly extending an already lengthy judgment, I do not propose to repeat the submissions. Having reviewed the evidence I find that the Claimant and his witnesses were witnesses of truth. I make the following findings:

a. On the 1st June 2007 the police attended the Claimant's premises

b. They first entered the premises without uniforms and without first identifying themselves. However as the Claimant recognized the 1st and 2nd Defendants as Police Officers ,being persons he knew before, this was of no great moment.

c. Other police officers in uniform arrived (about 15 in number). They all proceeded to search the Claimant's premises and ask him questions. The police did not ask permission before proceeding to search.

d. The Claimant made no objection and cooperated fully with the police providing documentation and information.

e. The Claimant objected only when parts of the motor vehicles were scraped.

f. The Claimant did not consent to the search but rather resigned himself to it given the sudden and overwhelming police presence.

g. The police and in particular the 3rd Defendant had an honest belief based upon reasonable grounds (which were conveyed to the other police officers) that a crime had been committed and evidence of it might be found at the Claimant's premises.

h. Upon attending to search observations were made which strengthened that belief.

i. As at the 5th June 2007 however there were no longer any reasonable grounds to support an honest belief that the Claimant was involved in a criminal activity. The police by then had received confirmation that repairs had been done, and the vehicles obtained, in the manner and from the reputable sources the Claimant had alleged.

j. The 1st and 2nd Defendants therefore advocated for the Claimant's release on the 4th June 2007.

k. The Defendants did however have reasonable cause to continue to seize the motor vehicles for the purpose of forensic examination.

l. Thereafter and upon their failure to identify any stolen vehicle the vehicles ought to have been released. It was unreasonable to keep the motor vehicles after the 30th July 2007.

m. Disparaging remarks were made to the Claimant on the 1st June 2007, however given the information in the possession of the police as well as their observations at the time of the search, I find that the remarks were nor malicious or without reasonable and probable cause. The claim for defamation will not succeed when regard is had to Section 33 of the Constabulary Force Act.

[38] The Defence led evidence of the existence of a search warrant issued pursuant to the Unlawful Possession of Property Act. (See exhibit 1 page 73). That document purported to authorise a search of the Claimant's premises and was directed to each and all of the Constables of St. Mary. The Claimant's counsel attacked this document in many respects and even suggested it was fabricated. She also submitted that the warrant only

authorised search of premises and that vehicles on a road where not on the premises.

[39] I do not find it necessary to go into those issues because neither the warrant nor its existence was relied upon or referred to or brought to the attention of the Claimant at the time of the search on the 1st June 2007. The police seemed unaware of its existence. Therefore any legal authority for the search of the Claimant's premises must be found elsewhere than in the search warrant. See generally ***Attorney General of Jamaica v. Williams*** [1998] AC 351 @ 364E.

[40] The legal question for my determination is whether the Defendants with the information in their possession, had a lawful basis to attend and search the Claimant's premises. Section 63 of the Larceny Act authorises a Resident Magistrate to grant a search warrant where there is reasonable cause to believe that any person has in his custody or possession any property with respect to any offence under the Larceny Act. It bears repeating that no search warrant was issued under that Act. There is, so far as I am aware no statute that authorises a search or entry without permission onto a citizen's private property where there is no existing breach of the peace or no reasonable grounds to believe that a breach of the peace is occurring. The Constitution provides –

> **"S. 19(1) Except with his own consent, no person shall be Subject to the search of his person or his property or the entry by others on his premises."**

[41] The Claimant was not asked to give permission before the search commenced. As did Lord Denning MR in **Ghani v. Jones [1970] 1 QB 693 @705** F, I find it a little farfetched to say that the Claimant consented to the search or to the entry. The entry and search of the Claimant's premises was therefore unlawful. It matters not whether the police had an honest belief supported by reasonable grounds. The law requires that they present a search warrant before entry to and search of the citizen's premises. Let me be clear: in my view the court ought not

to be too eager to substitute its opinion for that of the police officer whose judgment is in question. So that a magistrate before whom the police may have attended with information from a source he considered credible, that stolen cars were located at a particular premises, would be entitled to issue a warrant. In this case, the 3rd Defendant identified his source and stated that he had known him for 40 years. In my view, therefore the honest belief was reasonably held. The police did not rely on a search warrant when entering the Claimant's premises. Their entry and search was therefore unlawful and in breach of the Claimant's Constitutional rights.

[42] The second legal issue, is whether the arrest of the Claimant and the seizure of his vehicles were unlawful. In the course of an unlawful search the police discovered what appeared to be tampering with engine and/or chassis numbers on the motor vehicles. When regard is also had to the information already in their possession the decision to arrest the Claimant and to seize the motor vehicles could not be considered unreasonable. The power to arrest is found in section 13 of the Constabulary Force Act. The Jamaican Court of Appeal is **Attorney General v Glenville Murphy [2010] JMCA 50** has given guidance on approach to the question whether the requirements of S. 13 have been met:

> ***"If it is found that the police had honestly believed that the respondent had molested his daughter, then no liability could be ascribed to them. However if it established that they could not have had any genuine suspicion that he had done so, then the objective test comes into play. Consideration would then have to begin as to whether there were reasonable grounds for the police to have reasonably suspected that they had committed the offence." (per Harris JA).***

[43] In this case the requirements of S13 have been met as the police did "reasonably suspect" the Claimant of having stolen vehicles. An informant had said so, and they had found vehicles with tampered engine and chassis numbers. The Claimant was therefore not falsely imprisoned on the 1st June 2007.

[44] That situation changed by the 5th June 2007. The police by then had confirmation from the motor vehicle repairer that he had done the repairs alleged. Furthermore Mack's D Auto, Mr. Lee and Mr. Christopher Hibbert (the attorney) all admitted selling vehicles to the Claimant. Any reasonably held suspicion no longer continued to exist. The Claimant ought therefore to have been released on the 5th June 2007. His false imprisonment commenced on that date.

[45] The position is similar with respect to the motor vehicles seized. In accordance with Lord Dennings 4th principle, stated in **Ghani v Jones (1970) 1 QB 693 @709** the police ought not to have kept the motor vehicles longer than was necessary to do the forensic tests and verify that they or parts thereof, were stolen. In my view the 30th July 2007 was the last date on which the motor vehicles ought reasonably to have been held. Thereafter the tort of Detinue commenced.

[46] Judgment is therefore entered against the 1st, 2nd, 3rd and 4th Defendants for trespass and breach of Constitutional right to freedom from search of his property. Although not present the 3rd Defendant orchestrated the search and my view is responsible for its unlawful nature. Judgment is entered against the 3rd and 4th Defendants for false Imprisonment and Detinue. The claim for defamation is dismissed.

[47] Damages I assess as follows:

a) **Trespass and breach of Constitutional right to freedom from unlawful search:** The Claimant has quite properly conceded that an award of exemplary damages would suffice for this area of liability. In this regard I agree that the entry to search the Claimant's premises was oppressive and arbitrary. In my view $500,000 will suffice to express the court's disapproval and to punish for the unlawful entry to and search of the Claimant's premises.

b) Aggravated Damages:

The aggravating circumstances are the humiliation and embarrassment caused by the very public nature of the search in the presence of customers and family and neighbours; the derogatory remarks made in the course of the unlawful search; the embarrassment caused by the numerous court appearances. In my view, and having regard to the **Hemans v A.G. (2009) HCV 02800 Unreported Judgment** delivered 11th June 2007 and the cases cited therein, I award $500,000.

c) **False imprisonment**

The Claimant, as I have decided, was unlawfully held in custody for a 7-day period (5th to 11th June 2007). I apply the principle stated in *Mayne & McGregor on Damages 12th edition* @ para 850 (quoted in the Claimants submission, as well as the authorities of ***Greenwood v AG CLS*** 1999 Unreported Judgment 26th October 2005, ***Hobbins v. AG CL NO. 1998/H196*** *and* ***Ellis v AG*** Court of Appeal No. 37/01 and **Attorney General v. Murphy** (above). I hold that $200,000 per day is an appropriate award and therefore award $1,800,000 for False Imprisonment.

d) **Detinue/wrongful and unlawful seizure of motor vehicles.**

The Defendants unlawfully continued to retain the Claimant's motor vehicles until the court ordered them released on the 7th December 20007. The Claimant seeks compensation only in relation to one of the two Hiace buses. I agree that the Defendants cannot rely on the fact that the Resident Magistrate did not order the vehicle's release until then. This is because (as with the Habeas Corpus application) it is the Defendant's unlawful conduct, which caused the Claimant to have to apply for its release. Whether the magistrate erred in not immediately ordering release or whether the Magistrate acted on misleading information from the Defendant, does not affect the fact that it is the Defendants unlawful act, which caused the Claimant's loss. I agree with the Defendant's submission that this court ought not to countenance illegality by awarding loss of income for a chattel being used illegally for profit earning. However the Claimant has put in evidence proof that one Hiace bus had been approved for a PPV licence on the 31st July 2007 (See Exhibit 4). I accept that the

Claimant earned from it approximately $48,000 per week. For the period 1st September 2007 to 7th December 2007 I award damages for Detinue of $816,000.00.

e) **Damages for Pecuniary Loss i.e. Loss of business**

This item was pleaded in the Particulars of Claim, as damages for Defamation. The Claim was not otherwise particularised. It was however outlined in detail in the Claimant's witness statement. The Claimant wishes an award made as part of General Damages for the injury to the Claimant due to loss of profits from his business. It will be difficult to accurately assess as on the 1st June 2007 the Claimant's auto business was a new one. No business records showing sales or business profits prior to the 1st June 2007 have been produced. The Claimant in his witness statement says he earned net $160,000 to $180,000 per month. He says (and I accept) his documents were seized by the police and not returned. After he reopened he says he earned $45,000 to $55,000 per month. A loss of $115,000 to $125,000 per month. Given the speculative nature of this assessment I will award $100,000 per month as lost income for a period of 6 months i.e. $600,000. This award will be added to and form part of the award of damages for Detinue of the other 3 motor vehicles and False Imprisonment.

f) The Claimant claims $70,000 for attorneys fees incurred in his Defence before the criminal courts. This is reasonable and there was no serious challenge. I so award.

[48] There will therefore be judgment in this cause as follows:

a) Against the 1st, 2nd, 3rd and 4th Defendants for Trespass and breach of Constitutional Right to Freedom from search and Aggravated Damages.

$1,000,000

b) Against the 3rd and 4th Defendants for False Imprisonment and Detinue including Loss Of Business and Legal costs incurred

$3,286,000

Total $4,286.000

c) Interest will run at 3% on these general damages from the 18th March 2008 to the date of judgment.

d) Costs of the Claim to the Claimant against the Defendants to be agreed or taxed.

[49] In closing let me indicate that if and when a hard copy of this decision becomes available I intend to ask the Registrar of the Supreme Court to forward a copy to the Commissioner of Police and to the Commissioner of Indecom so each can take such steps as he may consider appropriate. I would add that it seems to me that the creation of a comprehensive statutory regime treating with the issue and presentation of Search and Arrest Warrants is desirable.

David Batts
Puisne Judge
17th January 2014