[2018] JMSC Civ. 09

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2011HCV06602

BETWEEN	**HUBERT WHITE**	**CLAIMANT**
AND	**CONSTABLE O. O'CONNOR**	**1ST DEFENDANT**
AND	**THE ATTORNEY-GENERAL OF JAMAICA**	**2ND DEFENDANT**

Miss Danielle Archer instructed by Kinghorn and Kinghorn for the claimant

Miss Deidre' Pinnock instructed by the Director of State Proceedings for the defendants

Malicious prosecution – Operating a motor vehicle without a road licence - Whether reasonable and probable cause – Detinue - Motor vehicle impounded up to trial of claim - Vehicle ordered released by Resident Magistrate - Written demand for release of motor vehicle after dismissal of case.

Heard: 4th December 2017 and 19th January 2018.

EVAN BROWN J.

Introduction

[1] Mr. Hubert White, an electrician by trade, claims damages against the 1st and 2nd defendants for malicious prosecution and detinue. The 1st defendant was acting in the lawful execution of his duties at the material time, controlling the flow of traffic in the Bog Walk gorge. Since the 1st defendant was lawfully executing his duties as a servant or agent of the Crown, the 2nd defendant was made a party to the claim by virtue of the provisions of the ***Crown Proceedings Act***.

[2] Mr. White, the claimant, averred that on the 24th November 2010 he was lawfully driving his Toyota Wish motor car registered 6227 FK, with five passengers onboard, along the Angels main road, St. Catherine, when it was seized by the 1st defendant. The seizure of his motor car came in the wake of his prosecution by the claimant for breaches of the ***Road Traffic Act***. After a number of appearances before the Resident Magistrate's Court for St. Catherine, sitting in Spanish Town, the charges were dismissed for want of prosecution. From the time of his prosecution up until the trial of the claim, Mr. White's motor car remained in the possession of the crown.

[3] On the date of the dismissal of the charges, the 10th October 2011, Mr. White's Attorneys-at-Law wrote to the Commissioner of Police and the Attorney-General demanding the return of the motor vehicle. That demand went unanswered. Mr. White, therefore, claims loss of use (rental of alternate motor vehicle) in the sum of $1,667,500.00 and loss of earnings of $4,100,000.00 for detinue.

Case for the claimant

[4] In his witness statement, Mr. White said he was on his way to work on a house in Old Harbour, St. Catherine. Travelling with him were four workmen and the girlfriend of one of them, who, he was told, was going to Spanish Town. As previously arranged, he had picked them up in Ocho Rios, St. Ann. Somewhere along the Angels main road he passed two policemen directing traffic. A few chains away he heard a police siren behind him and pulled off the road to allow the vehicle passage. The police vehicle stopped alongside his vehicle. A policemen (said to be Spl. Cpl. Leachman under cross-examination) told Mr. White he had reason to suspect that he was operating his vehicle as a robot (illegal taxi). He was instructed to turn around and follow the police vehicle to the point where he had earlier passed the two policemen.

[5] Reaching there, one (the 1st defendant) asked if he did not realise he was being signalled to stop. He said no. The suspicion of operating an illegal taxi was then

repeated. One workman opened his bag, displaying his tools and told the policeman that all were heading to work, except the lady. That workman was shouted down by the policeman.

[6] Mr. White advised his workmen to make their way to work. About three hours later a wrecker arrived and transported his motor vehicle to the pound. Before the vehicle was removed Mr. White was told to take his tools from the trunk of the vehicle. He said he was unable to do so, however, on account of the quantity of tools he had, without alternate transportation. He was then ticketed for operating a motor vehicle without a road licence contrary to section 61 of the ***Road Traffic Act*** and no public passenger vehicle insurance***,*** to attend court on the 10th January 2011.

[7] In response to the traffic tickets Mr. White attended court on five occasions. The policeman attended only on Mr. White's third outing. On his fifth appearance the charges were dismissed.

[8] There was a financial impact on Mr. White as a result of the seizing of his motor vehicle and the concomitant loss of the use of his tools. Four "pending contracts" went by the board. That is, two houses in St. Ann owned by Maganadeedle and Charles Benjamin and two houses in St. Catherine, one belonging to Mrs. Hall and the other to Mrs. Burton, were all to be wired. These were oral contracts. He approximated his gross loss to be $4,100,000.00. He also attributed not being able to work for some time to the same two reasons. Additionally, he fell into arrears with the loan which was used to purchase the motor vehicle, being unable to work.

[9] Eventually he was able to purchase some tools. To transport these tools to work he rented a vehicle. He said he had receipts evidencing rental payments totalling $1,667,500.00. Reference was made to seven receipts in his witness statement, dated between 17th December 2010 and 15th January 2013. However, none of those receipts were tendered into evidence.

[10] With reference to the defence filed, Mr. White expressed puzzlement at what could have aroused the suspicion of the policeman, or what reasonable cause he could have had to believe that the passengers were being transported for hire. In that vein, he denied saying to the policeman "mi a electrician and mi just take up a people because mi short on lunch money and mi a run two trip".

[11] Under cross-examination, Mr. White's attention was drawn to an order made by the Resident Magistrate Court on the 20th April 2011 releasing the motor vehicle to the title holder on a bond of $40,000.00 with a surety, on condition that the relevant fees are paid (see exhibit 1). He admitted being at court on that date but said he was unaware of the order. Furthermore, he never at any time sought to have the vehicle released to him. He went on to say that after the case was dismissed he made enquiries through his lawyer about how he might regain possession of the vehicle. He learnt that the vehicle was being kept at the Lakes Pen Pound.

[12] Mr. White's account of what took place was supported by his witness, Mr. Lambert Miller. When the charge of operating an illegal taxi was levelled at Mr. White, Mr. Miller told the police that they were all workmen heading to a house in Old Harbour. He was told, however, to shut his mouth because it was police business. Mr. Miller confirmed that he and the other workmen left Mr. White at the scene and proceeded to work. He stated that none of the passengers were asked to pay a fare to Mr. White.

[13] When Mr. Miller was cross-examined, he said this was the second time he was meeting the other workmen. Although he did not know their names, he claimed to be able to identify them. He knew the lone female in the vehicle was one of the workmen's girlfriend as that was said when they entered.

Case for the defence

[14] The 2nd defendant traversed the averment that the 1st defendant acted unlawfully, maliciously and without reasonable and probable cause in seizing the claimant's motor vehicle and prosecuting him for the breach of the ***Road Traffic Act***. The defence countered that the 1st defendant had reasonable and probable cause for detaining the motor vehicle as an exhibit to further the prosecution of the claimant under the ***Road Traffic Act***. Once the claimant was ticketed, only the court was competent to release the vehicle to the claimant.

[15] The defendant averred that once the court made the order for the release of the motor vehicle, or at the conclusion of the case, the claimant could have collected the vehicle on payment of the fees. The claimant, therefore, by his own choice, failed to retrieve his motor vehicle from the Lakes Pen Pound. Consequently, the claimant is not entitled either to damages for loss of the vehicle or loss of use. In the former case it was always open to him to have the vehicle released once the he paid the fees and, in the latter, he bore the responsibility to mitigate his loss.

[16] The defence called Cons. O'Connor in support of those averments. On the day in question he was dressed in uniform and on mobile traffic duty in the company of Spl. Cpl. Leachman along the Angels main road. Spl. Cpl. Leachman was the driver of the service vehicle. Together, they were enforcing a one-way flow of traffic through the Bog Walk gorge. Cons. O'Connor was positioned at the exit of the Spanish Town end of the gorge while Spl. Cpl. Leachman traversed the Flat Bridge in the service vehicle.

[17] Whilst he was so engaged, Cons. O'Connor received a call from Spl. Cpl. Leachman to stop the vehicle the claimant was driving. On the approach of the claimant's vehicle from the direction of the Flat Bridge Cons. O'Connor signalled the claimant to stop. Cons. O'Connor went into the road, pointed at the claimant, raised his left hand and pointed to the right hand side of the road. The claimant, Cons. O'Connor said, pulled to the left of the road in the vicinity of a nearby service station and stopped. However, as he approached the claimant sped off.

[18] Not long after, Spl. Cpl. Leachman drove to where Cons. O'Connor was standing. They spoke. Spl. Cpl. Leachman then drove in the direction of the claimant's vehicle. In a matter of minutes Spl. Cpl. Leachman escorted the claimant back to where Cons. O'Connor stood.

[19] Cons. O'Connor asked the claimant to switch off the ignition, step out of the vehicle and produce the documents for the vehicle. The claimant complied. Cons. O'Connor then asked him why he did not stop. The claimant replied that he did not see him. That invited the following retort from Cons. O'Connor, "really, I am dressed in my number one and I saw you pull to the left of the road and when I approached the vehicle you drove off and further more you a run a taxi". The claimant allegedly responded, "mi a electrician and mi just take up a people because mi short lunch money and mi a run two trip". A passenger in the claimant's car supposedly made this gratuitous remark, "officer mi a correctional officer at the prison, just give him a bly [chance], just warn him".

[20] Having examined the documents, Cons. O'Connor observed that the claimant did not have a licence to transport public passengers. As a result, Cons. O'Connor ticketed the claim for the offences of operating a public passenger vehicle without a road licence and no public passenger vehicle insurance. The vehicle was thereafter taken to the pound.

[21] Although he preferred that charge, when he was cross-examined he said he did not see anything which caused him to conclude that the claimant was operating an illegal taxi. He went on to say that he discovered the claimant was an electrician because of what the claimant said in response to being told of the offence. The claimant's utterance came before the "correctional officer" spoke. He disagreed with the suggestion that there was no "correctional officer" in the claimant's vehicle. He admitted, however, that no verification of the occupation of the "correctional officer" was either tendered or requested.

Findings and reasoning

Malicious Prosecution

[22] The ingredients of the tort of malicious prosecution have been distilled and settled by numerous judicious pronouncements. They are encapsulated in the judgment of Wooding CJ in ***Wills v Voisin*** (1963) 6 WIR 50, at page 57. First, the claimant must prove that the law was set in motion against him on a charge of a criminal offence. Second, he must prove that he was acquitted of the charge or that it was otherwise determined in his favour. Third, he must establish that in setting the law in motion, the prosecutor (1st defendant) did so without reasonable and probable cause or, fourth, that he was actuated by malice (see ***Flemming v Myers and the Attorney General*** (1989) 26 JLR 525 at page 535).

[23] The evidence establishing the first and second ingredients was uncontroverted. The contest in the case centred on the third ingredient, while no evidence was led in respect of the fourth, which, in any event, is an alternative ingredient that the claimant need not prove once he has established the third (see ***Flemming v Myers***, *supra*.). What then is reasonable and probable cause?

[24] The definition that has stood the test of time was pronounced by Hawkins J in his oft quoted judgment in ***Hicks v Faulkner*** (1878) 8 QBD 167, at page 171 and approved by the House of Lords in ***Herniman v Smith*** [1938] AC 305. Reasonable and probable cause was defined to be:

> *"an honest belief in the guilt of the accused based upon a full conviction, founded upon reasonable grounds, of the existence of a state of circumstances, which, assuming them to be true, would reasonably lead any ordinarily prudent and cautious man, placed in the position of the accuser, to the conclusion that the person charged was probably guilty of the crime imputed".*

[25] For there to be reasonable and probable cause, the accuser must first be aware of the existence a state of circumstances, which causes him to honestly believe that the accused is probably guilty of the crime he imputes. His awareness of the circumstances may be the result of either his own perception or information received: ***Hicks v Faulkner***, *supra*, at page 173. The litmus test of the

reasonableness of the accuser's purported honestly held belief is the coincidence of that belief with that of the supplanted ordinarily prudent and cautious man.

[26] In the instant case, the claimant complained that he was lawfully transporting his workers and a female companion of one of those workers, gratis, when he was prosecuted for carrying passengers for hire. In answer to the claim the 2nd defendant asserted in his witness statement that he told the claimant he was running a taxi and the claimant made what may be characterised as an admission.

[27] Before examining the alleged admission, I will consider the circumstances leading up to the confrontation of the claimant. Spl. Cpl. Leachman was the first of the two policemen to interface with the claimant. Regrettably, Spl. Cpl. Leachman did not testify. His witness statement, however, had been served upon the claimant's Attorneys-at-Law. The fact of its service gave the defence the option of tendering the statement, if they wished to rely upon it (see ***Civil Procedure Rules, 2002***, r. 29.8 (1) (b)). That option was not exercised. Hence, all that is known is that Spl. Cpl. Leachman precipitated the intervention of Cons O'Connor. That intervention was limited to the attempted interception of the vehicle and assumption of custody upon the handing over of the claimant by Spl. Cpl. Leachman to Cons O'Connor.

[28] Cons O'Connor having frankly admitted to defence counsel that he did not see anything which caused him to conclude that the claimant was operating an illegal taxi, it begs the question, what was the basis for his allegation that the claimant was operating a taxi? Clearly, he was not relying on his own observation of any activity which could have led him to believe in the existence of a state of circumstances to go on to allege the operation of an illegal taxi. It was entirely competent for him to rely on information received from Spl. Cpl. Leachman for that purpose (see ***Hicks v Faulkner,*** *supra*). There was, however, no evidence that Spl. Cpl. Leachman communicated to Cons O'Connor anything he may have observed.

[29] It is an offence for any person to use a motor vehicle on any road as a public passenger vehicle unless there is in place a road licence or emergency road licence (see section 61 (1) and (5) of the ***Road Traffic Act***). To substantiate the charge of operating a motor vehicle without a road licence (illegal taxi), evidence must be led to show that consideration passed between the claimant and one or more of his passengers: ***R v Edwards*** (1966), 9 JLR 396. In that case there was evidence that the driver of the motor car collected fares from two of the passengers.

[30] In the instant case there is no evidence that either Spl. Cpl. Leachman or Cons O'Connor made any observation from which a contractual relationship could be found, either directly or inferentially. The 2nd defendant, therefore, has not demonstrated that he had any factual basis upon which to allege that the claimant was using his motor vehicle contrary to the ***Road Traffic Act***.

[31] So then, since Cons O'Connor neither personally observed anything to warrant his conclusion that the claimant was operating an illegal taxi nor testified to receiving any information in that regard from Spl. Cpl. Leachman, the only material which exercised his mind was the alleged admission. The admission, if it was made, may very well be regarded as sufficient for the ordinarily prudent and cautious man, placed in the position of Cons O'Connor to conclude that the claimant was probably guilty of using his motor vehicle as alleged. The admission therefore assumes a pivotal role and its acceptance turns on the credibility of the actors.

[32] On that score, Cons O'Connor did not inspire confidence in the truth of his assertion on the point. He first said the claimant uttered the admission after he issued the ticket. That then changed to "in the process of giving him the ticket I wrote what he said on the ticket". Even if that were to be attributed to imprecise use of language, his demeanour did not advance his cause. On the other hand, I found both the claimant and his witness, Lambert Miller, to be credible. Although Mr. Miller was the claimant's employee, I formed the view that his mission was to

tell the unvarnished truth with all the simplicity of someone lacking the trappings of much formal education.

[33] I therefore accept that the passengers in the claimant's vehicle were not being transported for hire. I reject that the claimant made the admission attributed to him by Cons O'Connor. Even if Cons O'Connor suspected that the claimant was using his motor vehicle as alleged, he had the means to test that suspicion. For example he could have enquired from the passengers where they had been picked up and what was the arrangement to take them to their destination. In any event, it has long been established that it is not justifiable to institute a prosecution on mere suspicion (***Meering v Graham - White Aviation Co*** (1919) 122 LT 44, at page 56, as considered in ***Tims v John Lewis & Co Ltd*** [1951] 2 KB 459, at page 474.

[34] As Lord Goddard explained in the latter case, it is strong evidence of a lack of reasonable and probably cause to embark upon a prosecution either with no evidence or full knowledge that the evidence is so slight as to leave a jury unconvinced that the offence had been committed. That is, to proceed upon mere suspicion. To borrow Lord Goddard's analogy, I may suspect that my household helper has been stealing from me but without evidence to ground that suspicion I have no reasonable and probable cause to prosecute her for larceny from my dwelling. Ergo, even if Cons O'Connor had reason to suspect that the claimant was using his motor vehicle as alleged, to have prosecuted him without even a scintilla of evidence, resting his case only on a supposed admission, was to prosecute without reasonable and probable cause. In further submissions filed on the 18th January 2018, counsel for the defence conceded that there was no reasonable and probable cause to institute the prosecution.

Detinue

[35] The essence of the claim of detinue is wrongful detention. The most obvious manifestation of that wrongful detention is the unlawful failure to deliver up the goods when demanded: ***Halsbury's Law of England*** Third edition volume 38

para 1283, citing ***Jones v Dowle*** (1841), 9 M. & W. 19; ***Clements v Flight*** (1846), 16 M & W 42; ***Mason v Farnell*** (1844), 12 M & W 674. To successfully maintain the claim the claimant must establish that a demand was made for the chattel with a corresponding refusal to deliver after a reasonable time to comply: ***George and Brandy Ltd v Lee*** (1964) 7 WIR 275, at page 278. The claim of detinue does not lie in the declining to give up the chattel immediately. The law allows for time within which to investigate the claimant's title. In other words, there must be a deliberate act in withholding the property (see ***Clayton v Le Roy*** [1911-13] AER Rep. 284, at page 286). There must be some evidence that the defendant intended to interfere with the claimant's right to the chattel namely, to detain it wrongfully.

[36] Therefore, the claim arises, or accrues, at the date of the wrongful refusal to deliver up the chattel. Having so accrued, the claim continues until either the chattel is delivered up or judgment is delivered. Detinue, consequently, has been described as a continuing cause of action (see ***General Finance and Facilities Ltd v Cooks Cars (Romford), Ltd*** [1963] 2 All E.R. 314, at page 317). The predicate ingredient of the claim is the demand for delivery up of the chattel. The claim crystallizes upon the refusal to comply with that demand.

[37] The demand for the chattel's return need not be in writing. An oral demand has been held to be sufficient (see ***Smith v Young*** (1880), 1 Camp. 439). The demand must specify the chattel or goods of which delivery up is required (***Nixon v Sedger*** (1890), 7 T.L.R. 112). So that, a demand for delivery of "the goods of the deceased" was held to be inadequate: ***Nixon v Sedger***. On the other hand, a blanket demand for more goods than the claimant is entitled was adjudged sufficient when it was met by a refusal to deliver any of the goods (see ***Greenslade v Evans*** (1848), 12 LT Jo. 124). For the demand to be effective, it must be made either by the owner of the chattel or someone exercising his authority, in his name (***Gunton v Nurse*** (1812), 2 Brod. & Bing. 447; ***Tollit v Shenstone*** (1839), 5 M & W 283).

[38] There was no dispute that the claimant's motor vehicle was seized by the 1st defendant. The 1st defendant had the authority to seize the claimant's vehicle once he had reasonable cause to believe the vehicle was being used in contravention of the ***Road Traffic Act*** (see section 61 (4A) of the ***Road Traffic Act***; ***Transport Authority Act*** section 13 (2) (a) (v)). As I have found, however, there was no reasonable cause to entertain that suspicion. Once the vehicle is so seized it is to be kept in the possession of the Crown until the requisite road licence is obtained and produced (see section 61 (4B) of the ***Road Traffic Act***).

[39] There does not appear to be any power to release a motor vehicle which has been seized in the circumstances alleged pending the outcome of the case. That is in stark contrast to the situation where the seized motor vehicle was already issued with a road licence but offended by operating off its designated route or contrary to its licence for example, a hackney carriage being operated as a stage carriage. In any such case the court may order the release of the motor vehicle before the determination of the case upon the payment of the fees for the removal and storage of the vehicle and entering into a bond with surety (see ***Transport Authority Act*** section 16A (1)).

[40] Notwithstanding the apparent absence of legislative authority, the evidence is that the court below ordered the release of the claimant's vehicle on terms similar to those provided under section 16 A (1) of the ***Transport Authority Act***. The claimant, therefore, in furtherance of that order could have satisfied the two conditions and obtain the release of his motor vehicle. I reject entirely the claimant's assertion that he was unaware of the order for the conditional release of his vehicle. Against the background of the order, there was therefore no necessity for a demand for the release of his motor vehicle.

[41] It is true that the claimant relies on the written demand made by his Attorney-at-Law after the dismissal of the charges (exhibit 3): ***Smith v Young***, *supra*. The demand, quite rightly, specifically recited the registration letters and number of the claimant's vehicle: ***Nixon v Sedger***, *supra*. Further, the demand was appropriately

made by someone exercising the claimant's authority: ***Gunton v Nurse***, *supra*. A demand by itself, however, is insufficient to ground the claim for detinue. That demand came some time after the making of the magistrate's order which rendered it nugatory.

[42] To succeed on this aspect of the claim, the claimant must show not only that a demand was made but also that there was a refusal to comply with the demand. The claimant led no evidence that there was a refusal to deliver his vehicle to him. The claimant was duty bound to lead some evidence that the crown intended to interfere with his right to his motor vehicle, that is, to detain it wrongfully. As Fletcher Moulton LJ said in ***Clayton v Le Roy***, *supra*, at page 286, "there should be some deliberate act of withholding the chattel in order to afford a good cause of action". Without a refusal, the claim for detinue has not accrued. As Diplock LJ said in ***General and Finance Facilities, Ltd v Cooks Cars (Romford), Ltd***, *supra*, "[detinue] accrues at the date of the wrongful refusal to deliver up the goods".

[43] Against the background of the absence of evidence of any refusal to deliver up the claimant's vehicle is the Resident Magistrate's order for its conditional release. The claimant, therefore, had the legal authority to obtain the release of his motor vehicle. Beyond that legal authority was the requirement of the payment of storage fees. No evidence was elicited concerning the total storage fees payable from the date of seizure to the date of the magistrate's order. That notwithstanding, it strains the imagination to think that in the approximately five months in the pound, the storage fees could have amounted to a sum equal to, or greater than, the $1,667,500.00 the claimant expended on alternate transportation. I am therefore prepared to conclude that since the claimant had the financial capability to afford the rental, he was not without the means to pay the storage fees. The last condition of the bond of $40,000.00 was a mere formality which required no financial outlay.

[44] So then, far from evincing any intention to interfere with the claimant's right to his motor car, the Crown was, from the date of the magistrate's order, prepared to

release the motor car to him upon the fulfilment of conditions which, in the circumstances, cannot be fairly described as onerous or oppressive. It is absolutely amazing that the claimant abandoned his tools and motor vehicle when it was within his grasp to take possession of both. The court must look askance at his subtle attempt to profit from that abandonment by this ill-conceived claim for detinue.

Assessment of Damages

[45] The claimant claimed aggravated, vindicatory and exemplary damages. Reliance was placed on ***Greg Martin v Det. Sgt. Halliman and The Attorney-General of Jamaica*** 2007 HCV 01096 (unreported) dated September 19, 2011 (***Greg Martin v The Attorney-General***) and ***Keith Nelson v Sergeant Gayle and The Attorney-General of Jamaica*** C.L. 1998/N-120 (unreported) dated April 20, 2007(***Keith Nelson v The Attorney-General***). No figure was suggested as adequate compensatory damages.

[46] In ***Greg Martin v The Attorney-General*** the claimant was a thirty-three year old barber. He was arrested and charged for possession of, dealing in, attempting to export and conspiracy to export cocaine from Jamaica on the 3rd November 2002. He was acquitted of the first three charges on the 15th April 2004 and no order was made in the last on the 3rd June 2004. The court took into consideration the fact that he was not a tertiary level educated man but one who was subjected to a hopeless prosecution for at least nineteen months. The award there was $1,500,000.00.

[47] In ***Keith Nelson v The Attorney-General*** the claimant was an architectural draftsman and structural engineering technician. He was shot and injured by the licensed firearm holder who he was charged with assaulting. The case against him ended in his favour after three months and four court appearances. The court considered that he was a qualified graduate of a tertiary institution, the fact that for three months he had to contend with the prosecution while suffering from his injury

and the absence of any deleterious effect upon him as a result of the prosecution. He was awarded the sum of $400,000.00.

[48] The defence filed three authorities for the consideration of the court. They are, ***Allan Currie v The Attorney-General for Jamaica*** CL 1989/C315 dated August 10 2006***, Robert Salmon v Senior Superintendent Elan Powell and The Attorney-General of Jamaica*** [2012] JMSC Civ 15 (***Salmon v The Attorney-General***) and ***Maxwell Russell v The Attorney-General for Jamaica and Corporal McDonald*** 2006 HCV 4024 dated 18 January 2008 (***Maxwell Russell***).

[49] The claimant in ***Allan Currie v The Attorney-General*** was charged with murder, illegal possession of firearm and illegal possession of ammunition. He spent 510 days in custody. Among the factors the learned judge took into consideration were the lifespan of the malicious prosecution, the number of court appearances and the nature of the offences. The learned judge opined that "the more serious the charge, the greater the amount likely to be awarded" (see paragraph 45 of the judgment). Also considered were the effect on his family life and the psychological, as well as the economic, impact on the claimant. Mr. Currie was awarded $2,000,000.00 in compensatory and aggravated damages.

[50] ***Salmon v The Attorney-General*** is virtually indistinguishable from the instant case. The claimant, a policeman, was prosecuted for operating contrary to the terms of his road licence (described as "relatively minor" by the learned judge) and his motor vehicle impounded. The prosecution lasted for seven months. ***Maxwell Russell*** was relied on for the length of time the prosecution lasted (approximately ten months). Mr. Salmon was awarded $500,000.00 which updates to $598,724.35.

[51] In the instant case the claimant is a fifty-two year old electrician. No evidence was led concerning his certification and the level of his education. He made five appearances in answer to the charges over a period of approximately five months. As in ***Salmon v The Attorney-General***, the offence here is a minor one without

the peril of a criminal conviction. Save for the status of the claimants, ***Greg Martin v The Attorney-General*** is distinguishable for the disparity in the seriousness of the offences involved. Similarly, ***Keith Nelson v The Attorney-General*** may be distinguished on the basis of the difference in the status of the claimants, as well as the seriousness of the offence.

[52] The claimant asserted that he lost approximately $4,100,000.00 as a result of the incident on account of not having any tools and being without a motor vehicle. I find that to be a very hollow claim. The tools of his trade were not seized along with the motor car. His own evidence is that the policeman told him to remove his tools from the vehicle. His excuse for not removing them at the time (lack of a motor vehicle) was reasonable but once he was able to rent a vehicle nothing prevented him from taking possession of them. The result of this finding is that no account will be taken of the alleged economic impact on the claimant in the assessment of damages.

[53] On the question of the appropriateness of making an award for aggravated, vindicatory and exemplary damages, I have come to the view that the circumstances of the prosecution do not warrant an award under any of these heads. To take first vindicatory damages, I am firmly of the view that the compensatory damages awarded provide an adequate remedy for what the claimant alleged took place (see ***Greg Martin v The Attorney-General***, *supra*, at paragraphs 34 - 35). Equally, there was nothing in the conduct of the police which can fairly be described either as "oppressive, arbitrary or unconstitutional" or "insolence or arrogance" (see ***Rookes v Barnard*** [1964] A.C. 1129; **Broome v Cassell & Co** [1972] A.C. 1027).

Conclusion

[54] In light of the above, I make an award of $600,000.00 for general damages for malicious prosecution. The award will attract interest at the rate of 3% from the 8th

November 2011 until the 19th January 2018. Costs to the claimant, to be agreed or taxed.