

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN CIVIL DIVISION

SUIT NO. 2004 HCV 2144

BETWEEN	EWART MCLEOD	CLAIMANT
AND	NATIONAL MEATS DISTRIBUTION LTD.	1 ST DEFENDANT
AND	DONALD MCDONALD	2 ND DEFENDANT
AND	INSPECTOR JACKSON	3 RD DEFENDANT
AND	CONS. ROBERT BARNETT	4 TH DEFENDANT
AND	CORPORAL DELROY CLARKE	5 TH DEFENDANT
AND	THE ATTORNEY GENERAL OF JAMAICA	6 TH DEFENDANT

Ms. Sandra Johnson for Claimant instructed by Sandra Johnson and Company.

Mr. Andre Earl with Ms Gracie instructed by Rattray, Patterson, Rattray for 2nd and 3rd Defendants.

Ms Thalia Francis instructed by the Director of State Proceedings for 3rd 4th 5th and 6th Defendants.

Coram: D. McIntosh, J

HEARD: 21ST - 22ND October, 2008

The claimant Ewart McLeod sued the defendants jointly and severally for Malicious Prosecution and False Imprisonment arising from an incident on the 7th November, 2000.

On that day the defendant was employed to National Meats Distribution Ltd., a company which imported and distributed meats, throughout Jamaica with offices and distribution centre at Lydford in the parish of St. Ann.

At the relevant time the second defendant [McDonald] was the Operations Manager of the 1st defendant. He met with Inspector Jackson on the 6th day of November and as a consequence of their meeting a "sting" operation was put in place for the 7th November, 2000.

On that day [7/11/2000] the claimant drove a loaded refrigerated truck, Number 10 [registered Number CA 40843] containing meats from Lydford enroute to Montego Bay and back. He was in charge of this truck and its contents. He had the key to the refrigerated section of the truck. With him were two sidemen who were to assist in making deliveries. These men were under his supervision. The truck and its contents were his responsibility.

There is no doubt that the contents of the truck belonged to National Meats and were entrusted to the claimant to be delivered.

It is the claimant's evidence that in Montego Bay after all deliveries had been made, 250 cases of mutton were loaded on the truck at Westgate. These were to be taken to Lydford. There were no more deliveries to be made. He supervised the loading of the mutton onto the truck. At that time no other meats were on the truck which was as it should have been [empty of meats].

On the way to Lydford however, he stopped the truck at Lilliput, [near the border of St. James and Trelawny] outside the Turtle Inn Bar and Restaurant

although he had no reason to stop there. He remained in the truck for less than five (5) minutes after the two sidemen had left the truck and entered restaurant.

Claimant says, he left the truck with the engine running and went across the road to where there was a boat yard several chains away.

The police officers [3rd, 4th and 5th defendants] had been trailing the truck. It is their evidence that they said one of the two sidemen open the refrigerated door of the truck and remove two (2) white plastic bags which appeared full and both took them into the restaurant while claimant remained inside of the vehicle around the steering.

The claimant admits that Inspector Jackson spoke to him, asked him to accompany into the restaurant where the two (2) sidemen were as well as two (2) large plastic rice bags containing some 23 Best Dressed Chicken. These were the same type of chicken which claimant had been employed to deliver.

Claimant, with sidemen on board thereafter continued towards Lydford. On the way one of the sidemen jumped truck [Rhoden]. The other [Woolery] returned to the offices.

There the truck was unloaded. Apart from the 250 cases of mutton, there were loose king fish, a black scandal bag with sliced fish and three (3) loose Best Dressed Chicken.

The defendants say that all the meats found in the truck and those taken from Turtle Inn were weighed in the claimant's presence and valued at \$18,139.10.

These goods were 21.8kg Bangamary fillet, 6.25kg Silver Snapper, 53.8kg Best Dressed Chicken 28.4 kg King Fish and 14.7 kg Gourmet Trout.

That day the claimant and one of the sidemen were arrested and charged with criminal offences arising from the 'find'. They were never tried but a "No Order" was made in the cases.

There are very few points in issue. This court found the Defendants to be more credible witnesses than the claimant.

For the defendant to succeed in this action he must prove on a "Balance of Probabilities" that the goods on truck did not belong to the first defendant and came into the vehicle by some other means or from another source.

There is absolutely no issue that these goods came from the defendant's vehicle and the only inference that can be drawn is that these goods were the property of the first defendant.

Of interest too is the fact that the claimant informed this court that he would have acted exactly in the same way as the second defendant had acted, had he been the manager.

In these circumstances on the clearest of evidence, the claimant must fail.

Accordingly this court will dismiss the case against all five (5) defendants with costs to them to be agreed or taxed.

J. M. West
16/4/09