[2026] JMCA Civ 12

JAMAICA

IN THE COURT OF APPEAL

BEFORE: THE HON MRS JUSTICE MCDONALD-BISHOP JA
THE HON MISS JUSTICE P WILLIAMS JA
THE HON MRS JUSTICE G FRASER JA (AG)

SUPREME COURT CIVIL APPEAL NO COA2022CV00115

BETWEEN	**THE TRANSPORT AUTHORITY**	**APPELLANT**
AND	**MARLON PARKER**	**RESPONDENT**

Harrington McDermott and Mrs Kimberly Reynolds McDermott instructed by McDermott Reynolds McDermott for the appellant

Dr Garth Lyttle instructed by Garth E Lyttle & Co for the respondent

19 March 2024 and 15 May 2026

Civil practice and procedure – Tort of detinue – Reasonable and probable cause for seizure of vehicle – Unequivocal demand for the release of vehicle – Unjustified refusal or failure to release vehicle – Loss of vehicle by fire while in the Authority's custody – Whether evidence supports finding of detinue – Conversion – Requirements to prove conversion – Whether evidence supports finding of wilful interference – Whether award of damages for loss of earning capacity inordinately high

MCDONALD-BISHOP JA

[1] I have read, in draft, the judgment of G Fraser JA (Ag). I agree with her reasoning and conclusion and have nothing to add.

P WILLIAMS JA

[2] I, too, have read the draft judgment of G Fraser JA (Ag) and agree with her reasoning and conclusion.

G FRASER JA (AG)

Introduction

[3] Mr Marlon Parker ('the respondent'), on 16 March 2013, filed a claim in the Supreme Court, averring causes of action in detinue and conversion against Inspector R M Hepburn (1st defendant in the court below) and the Transport Authority ('the appellant'). The claim was heard by Wint-Blair J ('the learned judge') and judgment given in favour of the respondent on 30 September 2022, with neutral citation **Marlon Parker v Inspector R M Hepburn and The Transport Authority** [2022] JMSC Civ 160. The appellant, being dissatisfied with the decision, filed a notice of appeal and grounds on 10 November 2022. This appeal challenges the learned judge's findings regarding the respondent's claim for damages for detinue and conversion, as well as the dismissal of the appellant's counterclaim for outstanding storage fees. The orders of the learned judge being appealed are as follows:

> "1. Judgment for the claimant on the claim.
>
> 2. Judgment for the claimant on the counterclaim.
>
> General damages
>
> 3. The claimant is awarded the sum of $1,200,000.00 with interest at 3% from December 16, 2009 to the date of judgment.
>
> 4. The claimant is awarded the sum of $4,679,480.00.
>
> Special Damages
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> 5. The claimant is awarded the sum of $18,000.00 with interest at 3% from December 16, 2009 to the date of judgment.
>
> 6. Costs to the claimant to be agreed or taxed.
>
> 7. The claim against the first [Inspector R M Hepburn] is dismissed."

Background

[4] The respondent's vehicle was seized by Inspector R M Hepburn (the agent of the appellant) on 30 November 2009, while being driven by the respondent's employee along Hope Road in Saint Andrew. The appellant asserted that the seizure was due to the vehicle being operated without a road licence and valid insurance. The respondent's employee and driver pleaded guilty in court and paid the required fines on 14 December 2009.

[5] On 16 December 2009, the respondent averred that he visited the appellant's office at Maxfield Avenue and informed the appellant that the fines had been paid. He was directed to the Lyndhurst Road pound to collect the vehicle, but despite a thorough search of the compound, the vehicle could not be located. He returned to the appellant's office and was then directed to various other locations operated by the appellant, none of which had the vehicle in storage.

[6] In April 2012, the respondent further averred that he received a call from the appellant instructing him to pay wrecker fees and collect the vehicle from the appellant's pound located at Lyndhurst Road. The respondent attended the Maxfield Avenue office and demanded that his vehicle be shown to him before he made payments. Suffice it to say, the vehicle was not located. On 17 April 2012, the respondent paid the requisite fees following a telephone call advising that his vehicle was available for collection; however, upon his arrival, the vehicle could not be located. The respondent subsequently engaged the services of attorney at law, Dr Garth Lyttle ('Dr Lyttle'), who, on 30 January 2013, wrote to the appellant demanding the return of the vehicle, referencing nine separate visits made by the respondent seeking its recovery. By letter dated 7 February 2013, the appellant responded, advising that the respondent had failed to provide sufficient particulars to correctly identify the vehicle, which prevented the appellant from investigating the allegations. No satisfactory resolution was reached; as a result, the respondent filed the claim form and particulars of claim with causes of action in detinue

and conversion against the appellant to recover damages for his vehicle that the appellant had failed to return.

[7] The respondent later discovered, through the appellant's defence filed on 15 October 2014, that his vehicle had been destroyed in a fire on 23 July 2012, at the Lakes Pen pound, in Saint Catherine. The appellants admitted liability for the value of the vehicle, as at 23 July 2012. The respondent claimed the value of the vehicle to be $1,200,000.00. The respondent had also claimed loss of earnings and special damages totalling $9,310,500.00, which the appellant denied.

[8] In the appellant's defence and counterclaim, the appellant admitted to the seizure of the vehicle, alleging that the vehicle was lawfully seized as a result of breaches of the Road Traffic Act ('the RTA') and the Transport Authority Act ('TAA'). Further, the respondent's driver pleaded guilty and paid the requisite court fines. The appellant further acknowledged several key facts, including the respondent's payment of the wrecker fees and the subsequent transfer of the vehicle to Lakes Pen pound, where it was later destroyed.

[9] The appellant, however, denied that the letter dated 30 January 2013, from the respondent's attorney, constituted a valid demand. It was also asserted that the vehicle was not returned due to the respondent's failure to pay the required storage fees. Furthermore, the appellant maintained that the respondent's vehicle was kept at 107 Maxfield Avenue until it was moved to the Lakes Pen pound in 2012. They asserted that the vehicle was effectively abandoned and that its loss in the fire did not entitle the respondent to damages for loss of earnings. Additionally, they disputed the alleged nine visits made by the appellant and demanded proof thereof.

[10] The appellant denied liability for special damages and contended that the respondent failed to mitigate his loss. They had also counterclaimed for $969,000.00 in unpaid storage fees from the date of seizure until the date of the fire. In response, the respondent insisted that his driver appeared in court, paid the fines, and attempted to

retrieve the vehicle on 16 December 2009. He claimed that the vehicle was already missing from the appellant's custody at that time and argued that this fact was either known or ought to have been known by the respondents, thereby denying their counterclaim for storage fees.

The findings in the court below

[11] The learned judge made several findings of fact and law; however, this court will address only those relevant to the appeal. The learned judge found that the respondent had presented a receipt from MKM Haulage Contractors, dated 17 April 2012, indicating payment for wrecker fees. This payment, made three years after the vehicle's seizure, was taken to suggest that the appellant had not located the vehicle even at that time. The respondent's payment of the wrecker fees in April 2012, according to the learned judge, indicated an intention to retrieve the vehicle and contradicted the appellant's claim of abandonment.

[12] The evidence of Ms Banneta Walker ('Ms Walker'), an employee of the appellant, did not support the appellant's allegation of abandonment. In her witness statement dated 7 March 2022, Ms Walker stated that, based on the appellant's records she had reviewed, the respondent's vehicle was transported to 107 Maxfield Avenue on 30 November 2009 and remained there until 19 July 2012, when it was moved to the Lakes Pen pound. She further stated that the vehicle stayed at Lakes Pen until it was destroyed by fire on 23 July 2012. Under cross-examination, however, Ms Walker conceded that she could not confirm whether the respondent had visited any of the appellant's various locations or made demands for the return of his vehicle. This admission undermined her assertion in her witness statement that the vehicle had been "abandoned for the entire period" and that the respondent had failed to take steps to recover it.

[13] The learned judge accepted the evidence that the respondent had refused to pay storage fees until the vehicle was located and, in the interim, had consistently visited the appellant's facilities to demand its return. The learned judge found that the first significant demand occurred on 16 December 2009 at the appellant's main office, where

the respondent expressly, unconditionally, and unequivocally demanded the return of his vehicle. Additionally, the respondent's attorney-at-law had issued a formal written demand.

[14] The learned judge also determined that the failure of the appellant to respond to the attorney-at-law's formal demand or to provide information concerning the vehicle's whereabouts contributed directly to its wrongful detention. Moreover, the appellant adduced no evidence documenting the vehicle's storage or handling during the relevant period. In particular, no records, if they existed, were produced to show the vehicle's transfer to the Lakes Pen pound or its subsequent destruction by fire. This glaring omission raised serious concerns about the appellant's record-keeping and its failure to communicate with the respondent. The learned judge found that the respondent did not become aware of the vehicle's destruction until 2014.

[15] Ultimately, the learned judge concluded that while the respondent lost possession of his vehicle due to the fire, this did not amount to an abandonment of his proprietary rights. The destruction of the vehicle did not preclude him from pursuing a claim in detinue or from seeking compensation based on its value at the time of judgment. Notably, the learned judge observed that the vehicle's salvage remained in the appellant's possession up to the date of trial.

[16] The learned judge determined that there was no evidence to support a conclusion that the appellant had issued a written refusal in response to the formal written demand for the vehicle's return. Nor was there any challenge to the respondent's evidence of his numerous in-person demands, which she accepted.

[17] In her evaluation of whether the appellant refused to return the respondent's vehicle, she made the following statement at para. [69]:

> "This means that the claimant was denied the return of the vehicle upon demand. The denial did not take the form of a statement or a document, it took the form of the conduct on the part of the agents of the second defendant in not checking

> or causing to be checked, records, which clearly exist, and which were in their possession, in order to locate the vehicle and so inform the claimant where to go to collect it."

[18] Further, at para. [70], the learned judge stated:

> "…I find that this casual handling of the claimant's demand, sending him hither, thither and yon without regard for his time or the expense of doing so is tantamount to a denial of the return of the vehicle upon demand."

[19] While the learned judge found no evidence of a wrongful taking, she did find that the respondent's vehicle was wrongfully detained by the appellant from 16 December 2009 until its destruction by fire. She concluded that the acts and omissions of the appellant's agents amounted to wilful interference. The learned judge found that the respondent had successfully proven the adverse detention of the vehicle, by presenting evidence that he had made repeated demands for the return, which the appellant "**while not refusing to comply neglected to comply with the demand**" (emphasis as in the original). As a result, the appellant was found to have denied the respondent's title to it as owner. Based on the evidence, the learned judge concluded that the torts of detinue and conversion had been established.

[20] Consequently, the learned judge held that the respondent was entitled to damages for the loss of use of the vehicle from 16 December 2009 until the date of judgment. The learned judge further found that the wrongful detention continued due to the appellant's failure to return the vehicle. This wrongful detention, she said, persisted until the vehicle was returned or judgment was given. The learned judge further found that the appellant's negligence in failing to locate and return the vehicle, despite having records indicating its location, further compounded the wrongful detention.

[21] Although the respondent provided evidence of potential earnings from the vehicle, estimating a daily income of $7,000.00, the learned judge determined that the lack of detailed evidence regarding the vehicle's operation, maintenance, and expenses

warranted a reduction in the claimed damages. She concluded that a fair and reasonable award for the loss of use should reflect a discount due to the imprecision of the evidence.

[22] The learned judge proceeded to award damages for loss of use from 16 December 2012 to the judgment date; however, no interest was awarded on the award for loss of use. She accepted the respondent's evidence regarding expenses and awarded $18,000.00 for nine return trips related to those expenses. No damages were awarded for the cost of seizure, including wrecker fees, as the learned judge found that the vehicle was lawfully seized and prosecuted for an offence under the TAA. Interest was also not awarded on damages for loss of use, as it was considered equivalent to interest. However, an award of interest at a rate of 3% per annum was granted on the replacement value of the vehicle from 16 December 2009 to the date of judgment. Interest at the same rate was also awarded on special damages for transportation costs, from 16 December 2009 to the date of judgment.

The appeal

[23] The challenge before this court concerns findings of fact and law made by the learned judge, as well as her assessment of the damages for loss of use deemed appropriate in the circumstances of the case. The appellant's complaints are encapsulated in the 12 grounds of appeal, and enumerated as follows:

> "1. The Learned Trial Judge erred when she found that the Appellant was liable to the Respondent in detinue. In particular, the Learned Trial Judge erred in fact and law when she found that the Appellant refused to return the Respondent's vehicle.
>
> 2. Having found, as a fact, that at the time of the Respondent's verbal demands the Appellant was unable to locate the vehicle, the Learned Judge had no basis in fact or law to find that the Appellant had 'refused' to return the Respondent's vehicle.
>
> 3. The Trial judge erred in her findings, as there was no evidence before the Court which suggested that the failure of the Appellant to locate the Respondent's vehicle, was

demonstrative of an intention to deny the Respondent's right to ownership in his vehicle. Neither was there any evidence to suggest a refusal to comply with the demands for the vehicle's return.

4. The Learned Judge erred in law when she failed to appreciate that the Appellant's short comings, as identified by her in paragraphs 69 to 71 of her reasons for judgment, did not amount, in law, to a detention which had become adverse and in defiance of the Respondent's rights to his vehicle so as to justify her finding that the Appellant was liable detinue.

5. The Learned Trial Judge erred in law when she held that December 16, 2009, the date she determined as the date of the Respondent's first verbal demand, was the date of refusal. The Trial Learned Judge further erred when she went on to assess damages using the said date as the date the Respondent's cause of action in detinue accrued.

6. The Trial Judge erred in law when she found that the Appellant was liable to the Respondent in conversion. In particular, the Learned Trial Judge misapplied the law as to what constitutes a willful interference.

7. In finding that there had been willful interference with the Respondent's vehicle on the part of the Appellant, the Learned Trial Judge erred in law when at paragraphs 81 and 82 of her reasons for judgment she implicitly equated the concept of willful interference with negligence.

8. The Learned Trial Judge erred in law when she failed to appreciate that the Appellant's short comings, as identified by her in paragraphs 82 to 85 of her reasons for judgment, did not amount to an intention to deny the Respondent's right to his vehicle or to assert a right which is inconsistent with that of the Respondent so as to justify a finding of conversion.

9. The Learned Trial Judge failed to no evidence before her of willful interference with the Respondent's vehicle as to justify her finding that the Appellant was liable in conversion.

10. The Learned Trial erred in law when, in addition to awarding damages for loss of use, she also to award interest on the damages awarded for the replacement value of the Respondent's vehicle.[sic]

> 11. The Learned Judge erred when she failed to appreciate that the Respondent had failed to adduce sufficient evidence which would provide a basis for her to use her *'judicial experience'* to assess the loss of use which the Respondent had suffered.
>
> 12. Having regard to the deficiencies in the Respondent's case identified by the Learned Trial Judge at paragraph 89 of her reasons for judgement, the Learned Trial Judge erred in her assessment of the quantum of loss of use which the Respondent had suffered." (Italics as in the original)

[24] Following the filing of the initial notice and grounds of appeal, the appellant filed supplemental grounds of appeal on 8 December 2022. However, at the commencement of the hearing of the appeal on 19 March 2024, counsel for the appellant, in response to the court's enquiry, candidly acknowledged that the deadline for filing supplemental grounds had elapsed and that no application had been made for an extension of time or for leave to rely on the additional grounds. In light of this concession, the court directed that the appeal proceed solely based on the original grounds previously set out in para. [23] above.

[25] During that same appearance, counsel further indicated the appellant's intention to withdraw ground 11 of the original grounds of appeal. Consequently, that ground is treated as formally abandoned and does not form any part of the arguments advanced in support of the appeal. The matter then proceeded on the extant grounds. The court also notes that, in the notice and grounds of appeal, the appellant purports to challenge all orders made by the learned judge, including those relating to the counterclaim concerning outstanding storage fees allegedly owed to the appellant, and the dismissal of the claim against Inspector RM Hepburn. However, no specific ground of appeal addressed those issues, nor were any arguments or submissions advanced in relation to them. Moreover, it would be incongruous for the appellant to seek to revive a claim against its agent that the learned judge had already dismissed. In the absence of any challenge to those orders, the court infers that the appellant has effectively abandoned those aspects of the appeal and, accordingly, makes no pronouncement on them.

The issues

[26] While the appellant raises 12 grounds of appeal, the court considers it more effective and appropriate to address the issues arising from the arguments of both counsel and the judgment thematically, rather than by undertaking a ground-by-ground analysis. Many of the grounds overlap in substance and centre around common legal and evidential concerns. In this regard, the court has distilled the appeal into three principal issues for determination. These issues collectively encapsulate the substance of the appellant's challenge and will guide the structure of the court's analysis and findings.

> Issue one: Whether the learned judge erred in finding that the tort of detinue was established (Grounds 1 to 5).
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> Issue two: Whether the learned judge erred in finding that conversion was established (Grounds 6 to 9).
>
> Issue three: Whether the learned judge erred in her assessment of the quantum of loss of use and the award of damages (Grounds 10 and 12).

Appellant submissions

[27] The appellant contended that the learned judge erred in finding the respondent had established a claim in detinue. Relying on **Carol Campbell v The Transport Authority of Jamaica** [2016] JMSC Civ 148, counsel submitted that to prove detinue, the claimant must show that the defendant wrongfully detained the claimant's goods. This required two things: (1) that the claimant made a clear and unconditional demand for the goods' return, and (2) that the defendant deliberately refused to fulfil the demand within a reasonable time, showing intent to withhold the property. While it was accepted that the respondent made repeated demands for the return of his vehicle, the critical element of a clear refusal to return it was neither pleaded nor proven. Instead, the evidence showed that the vehicle was reportedly lost or damaged by fire, which suggested negligence rather than a deliberate withholding. The law requires a specific,

unequivocal refusal, and the mere absence of a response to a demand letter did not meet this threshold.

[28] Furthermore, the appellant argued that the respondent's pleadings were fundamentally flawed. Although demands were mentioned, there was no express allegation of refusal, which is essential to a claim in detinue. Without this, the respondent's case was incomplete, and the trial judge should not have proceeded to make a finding in his favour. Additionally, there was no evidence presented at trial to establish any intentional act by the appellant that interfered with the respondent's rights to the vehicle.

[29] Based on the authority of **The Commissioner of Police and the Attorney General v Vassell Lowe** [2012] JMCA Civ 55 ('**Vassell Lowe**'), where counsel argued that the court held that to prove conversion, there must be wilful interference with the claimant's property that challenges or denies their ownership. It was submitted that this requirement was not met at trial.

[30] The appellant also challenged the learned judge's determination that the tort of conversion was established on the respondent's case. The learned judge was said to have wrongly construed "what could only be described as the negligent actions of the appellant's servants to be acts of wilful interference". However, conversion requires a deliberate act that denies or challenges the owner's rights, which was not established in this case.

[31] On the issue of damages, the appellant criticised the learned judge's decision to award compensation for a period of nine years, even though the respondent's claim only referenced a loss of use for a little over three years. The appellant further complained that the respondent gave conflicting figures in his evidence without formally amending his claim, and the court should not have awarded damages beyond what was pleaded. Doing so denied the appellant the opportunity to address the expanded claim properly. Mr McDermott also argued that the learned judge erred in awarding damages for loss of

use to the respondent, as the respondent had already been awarded interest on the replacement value. He submitted that, based on the authorities of Halsbury's Laws of England, 3rd edition, Volume 38 at para. 1325 and McGregor on Damages at paras. 15-037-15-038, it was doubtful whether the learned judge was entitled to take such a course.

[32] Lastly, the appellant submitted that the respondent failed to provide adequate proof of his financial loss. No documentary evidence was produced to show daily earnings or operating expenses. Despite this, the learned judge applied a daily rate of $2,000.00 based on her own judicial experience from unrelated cases. The appellant argued that this approach was inappropriate and deprived them of a fair opportunity to challenge the basis of the award.

[33] In summary, the appellant asserted that the learned judge made several significant legal and procedural errors, ranging from the misapplication of legal principles to awarding unsupported damages. As such, the decision should be set aside.

Respondent submissions

[34] Dr Lyttle, on behalf of the respondent, submitted that the learned judge had correctly determined the claim in favour of the respondent and that this court ought not to interfere with the orders made. He argued that the respondent made persistent efforts, at least nine visits, to various locations of the appellant's facilities, demanding the return of his vehicle. Despite these repeated demands and formal notification made through his attorney, the vehicle was never returned to him. This pattern of conduct, Dr Lyttle contended, satisfied the first legal requirement of the tort of detinue, as supported by the authority of **George and Branday Ltd v Lee** (1964) 7 WIR 275.

[35] Counsel argued that in its defence, the appellant admitted that the respondent's vehicle was destroyed in a fire at the Lakes Pen pound and acknowledged that he was entitled to compensation for its value. Furthermore, the learned judge, in dealing with the losses suffered by the respondent, observed that this admission came only after the respondent had filed his claim. The learned judge, counsel submits, referencing the

principle of *restitutio in integrum*, ruled that detinue is a continuing tort and held that the appellant could not challenge a claim for loss of use after denying admission of liability. Additionally, she further emphasised in her reasons that the wrongful refusal to return the vehicle triggered a continuing cause of action.

[36] To strengthen his argument that detinue was established correctly, Dr Lyttle also relied on **Workers Savings Bank & Loan Bank and others v Horace Shields** (unreported), Court of Appeal, Jamaica, Supreme Court Civil Appeal No 113/1998, judgment delivered 20 December 1999. Specifically, where Harrison JA, at page 6 of the judgment, referred to the dicta of Romer LJ in **Strand Electric and Engineering Co Ltd v Brisford Entertainments Ltd** [1952] 1 ALL ER 796. Counsel contended that the appellant's admission that the vehicle was in its possession and later destroyed confirmed the appellant's responsibility. As such, the learned judge's findings should not be disturbed.

[37] Dr Lyttle further submitted that the learned judge noted that the letter dated 30 January 2013, written by the respondent's attorney-at-law to the appellant, demanded the return of the vehicle and provided its particulars. Counsel referred to para. [36] of the written judgment, where the learned judge stated that although the letter referenced a record showing the vehicle had been transferred to Lakes Pen pound, neither party submitted that record into evidence. This omission did not affect the conclusion that the appellant had custody of the vehicle and failed to return it, despite repeated demands.

[38] In closing Dr Lyttle disputed the appellant's allegation that the learned judge had awarded interests on the damages for loss of use. In reference to para. [113] of the judgment he indicated that the learned judge had only awarded interest on the replacement value of $1,200,000.00 at 3% per annum. No interest was awarded on the $4,679,480.00 for loss of earnings, as the learned judge said, doing so would amount to double compensation. Counsel submitted further that at para. [110] of the judgment, the learned judge reasoned that awarding interest on both the replacement value, and the loss of use would result in an unfair "windfall" to the respondent.

Discussion and analysis

The relevant law

[39] This court has consistently upheld the well-established principle that it will not lightly disturb the findings of fact made by the first instance tribunal, which is vested with the duty to do so. In considering this appeal, this court is bound by the guidance of **Watt v Thomas** [1947] AC 484, **Industrial Chemical Co (Ja) Ltd v Ellis** (1986) 23 JLR 35 and **Rayon Sinclair v Edwin Bromfield** [2016] JMCA Civ 7. The authoritative principle derived from those decisions is that this court will only disturb the decision of the court below if it is unsupported by the evidence and/or plainly wrong, or if the tribunal did not make use of the benefit of having seen and heard the witnesses. The mere fact that this court might have decided the case at the trial stage differently does not justify overturning the findings of the judge at first instance. The Privy Council, in **Beacon Insurance Company Limited v Maharaj Bookstore Limited** [2014] UKPC 21, reaffirmed and reiterated the established principle, stating at para. 12:

> "...Rather it directs the appellate court to consider whether it was permissible for the judge at first instance to make the findings 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…"

[40] Each issue will be examined in turn, in keeping with the principle established by the above authorities.

Issue one: Whether the learned judge erred in finding that the tort of detinue was established (Grounds 1 to 5)

[41] The appellant admits that the vehicle was lawfully seized by it, subsequently remained in its custody, and that there was a demand for its return that was not met. The appellant's argument, in essence, is that there could be no "refusal" sufficient to

ground detinue where the inability to return the chattel arose from loss or misplacement rather than any deliberate or conscious decision to withhold it.

[42] This appeal, therefore, raises, in a particularly acute form, the proper application of the tort of detinue within a modern statutory and administrative context. While the factual matrix is not especially unusual, being a case of seizure, retention, and eventual loss of a motor vehicle, the legal issues it engages in the circumstances of this case require careful attention to the conceptual foundations of detinue, its relationship with bailment, and how it differs from negligence and conversion.

[43] Detinue, one of the oldest common law actions, traces its origins to medieval writs such as *detinue sur bailment* and *detinue sur trover*. It developed as a proprietary remedy within the law of bailment at a time when contractual enforcement was still nascent, enabling a bailor to recover specific chattels wrongfully withheld or, where return was no longer possible, their value. Central to its doctrinal significance is the principle that a bailee cannot discharge his obligation merely by asserting loss or inability to redeliver; rather, he is under a stringent duty to account for the goods and to justify any failure to return them upon demand. The older authorities, forged in that context, continue to illuminate the allocation of risk, the evidential burdens borne by bailees, and the primacy of possessory rights within bailment relationships.

[44] That historical foundation continues to inform the modern law. Although the procedural forms of action have long since been abolished in the United Kingdom, the underlying principles remain of enduring relevance where the common law is still applied, like in Jamaica. In particular, the insistence that a defendant in possession must either redeliver the chattel or provide a satisfactory account for its absence underscores the continuing nature of the wrong and shapes both liability and remedy. It also explains why, in contemporary analysis, the evidential burden rests heavily on the defendant in a case of detinue once possession and a demand for return of the chattel are established. These features distinguish detinue from cognate torts such as conversion and reinforce

its particular utility in cases where the claimant's primary interest lies in the recovery of the specific property, or its value, where recovery is no longer possible.

[45] The action is historically distinct from trespass (which protected possession against direct interference) and later from trover (which evolved to address conversion). Detinue, by contrast, remained focused on the continued detention of goods in circumstances where the defendant's initial possession was lawful, most commonly under a bailment.

[46] A bailment arises where goods are voluntarily delivered by one person (the bailor) to another (the bailee) upon terms that they will be returned or otherwise dealt with in accordance with the bailor's directions. The bailee's core obligations are: (i) to take reasonable care of the goods; and (ii) to redeliver them upon demand, or at the termination of the bailment, in accordance with its terms. It is this second obligation that most directly engages the action in detinue.

[47] The juridical contours of the tort of detinue have been authoritatively articulated in the leading texts. In Stroud's Judicial Dictionary of Words and Phrases, 4th edition, John S James, at page 515, describes detinue thus:

> "A common-law action to recover personal property wrongfully taken **or withheld by another**…
>
> '**A claim in detinue lies at the suit of a person who has an immediate right to the possession of the goods against a person who is in actual possession of them, and who, upon proper demand, fails or refuses to deliver them up without lawful excuse.** Detinue at the present day has two main uses. In the first place, the plaintiff may desire the specific restitution of his chattels and not damages for their conversion. He will then sue in detinue, not in trover. In the second place, the plaintiff will have to sue in detinue if the defendant sets up no claim of ownership and has not been guilty of trespass; for the original acquisition in *detinue sur bailment* was lawful.' R.F.V Heuston, *Salmond on the Law of Torts* 111 (17th ed. 1977)." (Emphasis added)

[48] Drawing on Heuston's treatment in Salmond on the Law of Torts, 17th edition, at page 111, the definition emphasises that the essence of detinue lies in the wrongful detention of goods, and the action finds its most natural application where the defendant's possession was originally lawful, most commonly in the capacity of a bailee. The text makes clear that, upon a proper demand, a bailee's failure to redeliver the goods entrusted to him gives rise, *prima facie*, to liability in detinue, unless he is able to advance a lawful excuse for non-delivery. In this way, the action operates as a primary legal mechanism for enforcing the bailee's obligation to restore possession to the person entitled.

[49] The analysis further situates the tort within its historical development, particularly through the lens of *detinue sur bailment*. In such cases, the legitimacy of the initial possession is not in issue; rather, the focus of the inquiry is directed to the subsequent conduct of the defendant. The wrongful element arises, not from the acquisition of the chattel, but from the failure to return it in accordance with the bailor's rights. This historical perspective reinforces the centrality of detention, as opposed to taking, in defining the nature and scope of the action.

[50] The older authorities have consistently affirmed this close connection. In **Reeve v Palmer** (1855) 5 CB (NS) 84, it was recognised that a bailee who cannot redeliver goods upon demand bears the burden of providing an explanation consistent with the proper discharge of his duty. Similarly, in **Bullen v Swan Electric Engraving Co** (1906) 22 TLR 275, the court held that the bailee's inability to produce the goods raises a presumption of liability, reflecting the stringent nature of the obligation assumed.

[51] The same theme is echoed in Halsbury's Laws of England, 3rd edition, Volume 38, which, in its discussion of detinue, observes that the action is particularly suited to cases of bailment because the bailee's duty is one of strict accountability for the goods while in his custody, and an inability to return them calls for explanation. The legal encyclopaedia, at para. 1283, notes that detinue was originally an action chiefly used against bailees. Such a form of action lies "…against a bailee who has lost goods unless he shows that

the loss was without default on his part …it is the appropriate form of action when the return of title deeds or other specific chattels is desired…". Detinue is, therefore, available where a person has negligently lost goods of which he had lawful possession. This principle is further reinforced by academic commentary. The authors of Winfield & Jolowicz on Tort, 13th edition, at page 466 opined that in relation to interference with goods:

> "The most obvious forms of interference, such as removing or damaging the goods, were covered in early law by trespass de bonis asportatis, the forerunner of the modern 'trespass to goods' … Trespass was obviously unsuitable to deal with the case where the owner had voluntarily put his goods into another's possession and the other refused to re-deliver them, but this situation was covered by the remedy of detinue.
>
> Detinue was thus based upon the right to possession, and its connection with bailment gave it a strong contractual flavour. However, 'the medieval writ lay across the categories of modern analyst, and to force it into one or other of them is to be guilty of anachronism': Fifoot, History and Sources of the Common Law, p. 25."

[52] A comparable exposition is found in The Law of Torts, John G Flemming, 17th edition, at page 53, where the author explains that liability in detinue arises where the defendant has detained the claimant's chattel adversely and in defiance of the claimant's possessory rights. Central to that inquiry is the interplay between demand and refusal. Flemming underscores that the refusal must be unequivocal in character; a response which is qualified for a legitimate or reasonable purpose, and which does not evince an assertion of dominion inconsistent with the claimant's rights, will not suffice to ground liability in either detinue or conversion. He proceeded to clarify the specific nature of the refusal required and detailed this at page 53:

> "…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."

[53] When these formulations are read together, they reveal a coherent doctrinal position. The doctrinal position may, therefore, be stated as follows: where goods are delivered under a bailment, and a demand for their return is made by the person entitled to immediate possession, the bailee's failure to redeliver the goods, whether through loss, misplacement, or destruction, constitutes *prima facie* wrongful detention. The law does not require proof of a deliberate refusal in the narrow sense; rather, the failure to comply with the demand, absent lawful excuse, is sufficient. The concept of refusal, as treated by the foregoing authors, remains central; however, it is not confined to express words, but must be assessed in light of whether the defendant's conduct, viewed objectively, amounts to an unjustified denial of the claimant's possessory entitlement.

[54] It is through this historical lens of the development and contours of the tort of detinue that the appeal against the learned judge's findings regarding detinue is considered.

The circumstances leading to the detention of the motor vehicle

[55] The starting point is to consider the circumstances giving rise to the detention required to ground the claim in detinue.

[56] The learned judge considered the appellant's authority to seize motor vehicles pursuant to the TAA and the RTA. She determined, pursuant to section 13(2)(a)(iii), that the seizure of the respondent's vehicle was lawfully effected, and that the respondent's driver was properly prosecuted for an offence under the TAA.

[57] Although the respondent filed no counter-notice of appeal, Dr Lyttle, in his written submissions, sought to convince this court, contrary to the learned judge's findings, that the appellant unlawfully seized the respondent's vehicle. He argued that the vehicle was properly licensed; however, the driver had been charged on a prior occasion with operating without a road license in relation to another vehicle, not the one in question. I note that the appellant's vehicle seizure form, issued by Inspector Hepburn, did not support counsel's contention, nor did para. 5 of the respondent's witness statement. This

court also brought to counsel's attention para. 4 of the respondent's particulars of claim, which stated that:

> "…[Inspector RM Hepburn] seized the [respondent's] vehicle and charged the [respondent's] driver with operating **the said** vehicle without a road licence… **[respondent's] driver went to court and pleaded guilty to the charge of operating the vehicle without a road licence**…." (Emphasis added)

[58] Quite apart from the fact that it was not open to the respondent to impugn the learned judge's findings without a counter-notice of appeal, there would have been no discernible basis upon which her finding that the seizure was lawful could have been disturbed. The statutory framework amply supports the legality of the seizure, and the learned judge's finding in that regard is unimpeachable.

[59] The lawful seizure of the respondent's vehicle under statutory authority created a relationship that can reasonably be described as one of bailment, and even if not in the strict sense, it, at least, closely resembles it. This is because, by lawfully taking custody and control of the vehicle, the appellant assumed the role of a bailee, whether termed a bailee for reward or a statutory bailee, while the respondent retained the role of bailor, with a right to possession once the relevant statutory conditions (such as payment of fees and fines) were met. Since this relationship exhibits all the essential characteristics of a bailment, it would involve the well-known obligations of a bailee on the part of the appellant: (a) to keep the vehicle safe; (b) to account for its condition and location; and (c) most importantly, to redeliver it when the respondent is entitled to return of possession.

[60] In all the circumstances, therefore, the appellant's seizure and detention of the vehicle laid the foundation for a claim in detinue *sur bailment,* or an analogous claim. This leads to the next stage of the enquiry: was there evidence before the learned judge of an unqualified demand for the return of the vehicle?

The demand for the return of the vehicle

[61] The classification of detinue in keeping with that enunciated in the case of **George and Branday Ltd v Lee** at page 278E, states that:

> "…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** ..." (Emphasis added)

[62] The respondent's evidence disclosed that he had made numerous trips to the appellant's offices to demand the return of his vehicle, a fact the appellant was unable to refute. Additionally, and equally indisputable was that after the respondent engaged the services of an attorney at law, a formal letter of demand for the delivery of the vehicle to the respondent was sent to the appellant on 30 January 2013.

[63] On this evidence, the learned judge found that there was an unqualified demand for the return of the vehicle, thereby satisfying the requirements of the tort of detinue. Mr McDermott accepted the correctness of the learned judge's finding in this regard, a concession rightly made. Accordingly, there was, on the evidence, a demand in law sufficient to establish detinue, as the learned judge concluded.

Was there a refusal to return the vehicle?

[64] The hotly debated issue concerns the learned judge's conclusion that there was a refusal to return the vehicle sufficient to satisfy the requirements of detinue. The appellant, while neither denying the detention of the respondent's vehicle nor the failure to return it, argued that the failure to return the vehicle due to its destruction by fire did not constitute an unjustified and absolute refusal to return the vehicle. Although the respondent was unable to recover his vehicle during the many trips he made, or even after the appellant informed him by letter that he should pay the storage fees and collect his vehicle, the appellant maintained that this did not amount to a refusal to return the vehicle. In response to the respondent's counsel's letter of demand, the appellant argued

that its reply was not a refusal to return the vehicle but a request for better particulars to identify the vehicle in question. The appellant contended that after the respondent paid the storage fees, his vehicle was not withheld due to any refusal to release it but because it had been destroyed by fire and was no longer in existence.

[65] Considering this contention of the appellant, it is noted that the claim was filed on 16 March 2013. At the time of filing, the respondent had no knowledge of what had happened to his vehicle beyond that it was in the appellant's possession. It was after the claim was initiated that the appellant, in its defence and counterclaim filed on 15 October 2014, averred that the vehicle was destroyed by fire. There was no denial of a refusal to return it. In response to this court's inquiry of Mr McDermott regarding why the appellant did not raise the issue of refusal in the court below, he responded that since there was no allegation of a deliberate refusal in the claim, there was no opportunity to raise it.

[66] I have examined the particulars of claim, specifically, para. 5, where the respondent detailed his attendance at the various locations but could not find his vehicle because "…it was nowhere to be found". Further, that following the demands made for return of the vehicle "…the [appellant] had failed to do [sic], produce or to account for its whereabouts". I, therefore, agree that there is no allegation of a deliberate refusal arising from the respondent's averments. What the pleadings state was a failure on the part of the appellant to return the vehicle and to account for its whereabouts upon demand.

[67] According to the evidence of Ms Walker, the appellant maintained records detailing the movement and location of the respondent's vehicle throughout the relevant period. However, despite this, the appellant failed to inform the respondent of the vehicle's whereabouts. It was not until the appellant filed its defence in 2014, some five years after the respondent's initial demand for the vehicle's return, that the respondent learned the vehicle had been destroyed.

[68] Detinue, particularly in bailment (or analogous) cases, does not depend on proof of an express, categorical refusal. Its focus is wrongful detention without lawful excuse: once there is a clear, unconditional demand by the person entitled to immediate possession, liability arises if the chattel is not redelivered within a reasonable time and no lawful excuse for the non-delivery is shown.

[69] Here, there was ample proof of repeated, unqualified demands. Although there was no explicit refusal, a reasonable time for return elapsed without any account of the vehicle's whereabouts. The appellant only later asserted that the vehicle had been destroyed by fire, without disclosing the circumstances or advancing any lawful basis to excuse non-delivery. In those circumstances, the continued non-return constituted wrongful detention sufficient to found detinue.

[70] Consistent with *detinue sur bailment*, the decisive question is whether, after demand, the bailee failed to redeliver within a reasonable time without lawful excuse; any "refusal" may be express or implied from conduct, inaction, or unexplained inability to produce the goods.

[71] The courts have long recognised that a bailee's mere assertion that goods have been lost is insufficient. In **Coldman v Hill** [1919] 1 KB 443, the Court of Appeal of England and Wales dealt with a situation in which goods deposited with the defendant could not be returned. It was held that where a bailee is unable to redeliver goods upon demand, there arises a *prima facie* case of liability, and the bailee must demonstrate that the loss occurred without fault on his part.

[72] That principle is similarly illustrated in **Reeve v Palmer**, where the court emphasised that a bailee who cannot return goods entrusted to him may be called upon to explain their absence. The case reflects the evidential burden that arises in bailment: once the bailor proves delivery and the bailee's failure to return the goods, the onus shifts to the bailee to account for the loss. A failure to provide a credible explanation, just like

an outright refusal to return it, may justify an inference of wrongful detention sufficient to ground liability in detinue.

[73] This reflects a broader doctrinal principle: bailment gives rise to a rebuttable presumption of negligence where goods are not returned. While this is often discussed in the context of negligence, it has direct implications for detinue. If the bailee cannot rebut the presumption, the continued failure to return the goods may be treated as wrongful detention, even if there is no positive act of conversion (see Halsbury's Laws of England, 3rd edition, Volume 38 at para. 1283).

[74] Having determined that there was an unqualified demand made by the respondent for the return of his vehicle, the learned judge correctly proceeded to consider whether there was a refusal by the appellant to return the vehicle to the respondent. At para. [66] of the judgment, she found that there was no evidence to support a finding "that there was a written refusal by the [appellant] to return the vehicle to this formal written demand". She went on to consider what constituted a refusal and referred to Black's Law Dictionary, 9th edition, and stated that it refers to "[t]he denial or rejection of something offered or demanded". Her determination was that the respondent was denied the return of the vehicle upon demand. At para. [69], the learned judge concluded that the conduct of the appellant's agents amounted to a denial which, in effect, supported a refusal necessary to establish a claim in detinue. In her words:

> "…The denial did not take the form of a statement or a document, it took the form of the conduct on the part of the agents of the second defendant in not checking or causing to be checked, records, which clearly exist, and which were in their possession, in order to locate the vehicle and so inform the claimant where to go to collect it." (Emphasis added)

[75] That account highlighted the learned judge's reliance on the appellant's agents' failure to consult available records as a denial of the respondent's right to possession. However, admittedly, the conduct described by the learned judge more accurately reflects administrative negligence or oversight rather than a refusal, as established by some

relevant authorities. For instance, Lord Justice Moulton, in **Clayton v Le Roy** [1911-13] ALL ER Rep 284, when discussing this element of refusal, stated:

> "If a demand has been made by the owner from the person in possession of the property and it has met with a refusal by the latter to give it up, then in six years the remedy of the owner is barred. It is therefore very important that the owners of chattels should know what is sufficient in law to constitute a cause of action in detinue. **I think it would be mulcting the real owner of his rights if the law did not insist that there should be some deliberate act of withholding the chattel** in order to afford a good cause of action. If something short of that were held to be sufficient, the Statute of Limitations might run against the true owner without his knowledge." (Emphasis added)

[76] Thus, in his treatment of the defendant's actions, Moulton LJ indicated that a refusal should constitute a definite act of deliberate withholding. On that basis, the learned judge would not have been correct to find the failure to maintain records to track the vehicle and to advise the respondent where to collect it a refusal to return it.

[77] However, Moulton LJ's emphasis on a "deliberate act of withholding", while authoritative, must be read and understood in its proper context: it reflects a legitimate concern about fixing liability for ambiguous conduct so that liability in detinue is too readily imposed. It does not displace the equally settled bailment principle that, once demand is made, a bailee's failure to redeliver within a reasonable time coupled with an inability to account for the goods may itself be legally significant. Here, the appellant did not produce the vehicle on demand, gave no satisfactory account of its whereabouts before litigation, and later asserted that it had been destroyed by fire without explanation, especially that it was not at fault. The continued non-delivery in such circumstances amounted to failure to deliver the vehicle without lawful excuse.

[78] In that regard, the analysis of Mr Stephen Morris QC, sitting as a Deputy High Court Judge ('Deputy Judge Morris') in **R (on the application of Atapattu) v Secretary of State for the Home Department** [2011] EWHC 1388 (Admin), is

instructive. He reviewed cases on what constitutes a bailee's refusal or failure to deliver goods. On review of **Mitchell v Ealing London Borough Council** [1979] 1 QB 1, Deputy Judge Morris referred to the principle enunciated by O'Connor J, that a bailee is not liable for goods lost without any default on his part before a demand for the return of said goods is made, but he is liable even without fault for goods lost after the expiry of a reasonable time between demand and the time allowed to deliver up. Reference was also made to **Marclays Merchantile Business Finance Ltd v Sibec Developments Ltd** [1992] 1 WLR 1253, where Millet J cited passages from Clerk & Lindsell on Torts, and that of Moulton LJ in **Clayton v Le Roy**, making the observation that the passages show that an overt act of withholding goods is a condition precedent and cannot be established without such evidence.

[79] Having reviewed the authorities, Deputy Judge Morris recognised that the law draws a distinction between cases where goods are retained and those where they have been lost or destroyed. In doing so, he acknowledged both the traditional emphasis on an overt act of withholding and the alternative basis upon which liability may arise, namely the failure of a bailee to deliver up goods within a reasonable time after demand.

[80] Deputy Judge Morris, on consideration of these cases, among others, in making the distinction between goods kept and goods lost or destroyed, reasoned that for the goods lost or destroyed case, there is no need for a refusal, whether the loss or destruction of goods occurred before or after demand. He went on to itemise numerous factors concerning refusal, including:

(a) The refusal must be clear and unequivocal.

(b) The refusal need not be in express words.

(c) The refusal may be inferred from other action or inaction.

(d) Whether action or inaction amounts to an unequivocal refusal is a question of fact in the circumstances of the case.

(e) The refusal is commonly inferred from circumstances where delay in responding to a demand goes beyond a reasonable time.

(f) Mere failure to redeliver or inaction may be considered sufficient and unequivocal.

[81] I agree with the Deputy Judge's analysis that "refusal" is not confined to express words and that, depending on context, it may be inferred from conduct, inaction, or delay beyond a reasonable time. In bailment-type cases, especially where goods are lost or destroyed while in the defendant's custody, an insistence on proof of an overt refusal risks elevating form over substance: the failure to redeliver on a lawful demand, absent lawful excuse and without a satisfactory account, is sufficient to engage liability in detinue. Whether that conclusion is framed as an implied refusal or simply as a failure to redeliver, the inquiry remains objective: has the claimant's right to immediate possession been unjustifiably denied?

[82] It follows, therefore, that the absence of evidence of an express refusal is not necessarily determinative. The court must instead examine whether, viewed objectively, the defendant's conduct, including any failure to locate, account for, or return the goods, amounts to an unequivocal denial of the claimant's right to immediate possession. Such an approach accords with the practical realities of bailment or analogous relationships and avoids an unduly formalistic distinction between cases in which goods are deliberately withheld and those in which they are lost or destroyed while in the defendant's custody. Accordingly, while the insistence on a "deliberate act of withholding" remains a powerful indicator of refusal, it ought not to be treated as the exclusive means by which refusal may be established. The court must also consider whether the defendant's inability to produce the goods, coupled with any failure to take reasonable steps to locate or return them within a reasonable time, is sufficient, viewed objectively, to amount to a refusal in the sense of being a denial of the claimant's right to immediate possession.

[83] Therefore, given the continued operation of the common law in this jurisdiction, the preferred approach is not to insist in every case on proof of an express or overt refusal. The analysis must instead reflect detinue's foundation in bailment: liability may arise from either a refusal or a failure to restore possession to the person entitled to it when return is legally required. Accordingly, refusal need not be proved by direct evidence of explicit denial; in appropriate circumstances, a bailee's failure to redeliver after a lawful and unequivocal demand, coupled with an inability to account for the chattel or to provide any lawful justification for non-delivery, may itself suffice. Such failure may also support an inference that the detention has become adverse and therefore amounts to an implied refusal, an inference to be drawn from the facts in light of the bailee's continuing obligation to restore possession.

[84] Against that background, the learned judge cannot, on the facts of this case, be faulted for treating the appellant's conduct, particularly its failure to maintain and check records capable of revealing the vehicle's whereabouts and leading to its redelivery, as supporting an implied refusal. Her analysis, however, might have addressed more directly the appellant's later case that the vehicle was destroyed by fire, in circumstances where no adequate explanation was offered. That was the only omission in her analysis of the question of refusal, but that is not fatal to her decision. Even if "refusal" is construed narrowly, the evidence nevertheless established, at least, a failure to comply with the respondent's lawful demand without lawful excuse. On that basis, detinue was made out.

[85] On these facts, there is no question that the seizure and initial detention were lawful, or that the respondent made a lawful demand for its return. Detinue became engaged once the respondent paid the fines on 14 December 2009, thereby removing any continuing legal basis for retention, and demanded the return of his vehicle on 16 December 2009. From then, 16 December 2009, the appellant was obliged to redeliver the vehicle promptly, subject only to any lawful conditions properly due and communicated, or to give a satisfactory account for any inability to do so.

[86] The difficulty was immediate: when the respondent first attempted to retrieve the vehicle, it could not be located at any of the appellant's facilities. That inability engaged the established bailment principle: a bailee's failure to deliver up goods on a lawful demand is prima facie wrongful, and the evidential burden shifts to the bailee to account for the chattel and to show lawful excuse, including (where relevant) that any loss occurred without fault. The appellant's contention that there was no "refusal" because there was no express denial or conscious decision to withhold the vehicle cannot prevail where, from December 2009 onward, it could not say where the vehicle was or why it could not be produced.

[87] The position was reinforced by the appellant's own evidence that the vehicle remained within its custodial regime and was ultimately destroyed in one of its pounds. This was therefore a loss occurring within, not outside, the appellant's sphere of responsibility, and its failure to provide any or any satisfactory account of its destruction, being without fault, bore directly on whether the respondent's right to immediate possession had been denied.

[88] As **Coldman v Hill** illustrates, wrongful detention may be made out by failure to deliver on demand even without overt defiance; the question is whether, objectively, the claimant's right to immediate possession has been denied. On that objective view, the learned judge was entitled to treat the appellant's conduct, sending the respondent from place to place, failing to consult or act on its own records, and ultimately being unable to produce the vehicle without a lawful excuse, as an effective denial of his right to possession. In any event, even if the evidence fell short of "refusal" in the stricter sense, it plainly established a failure to redeliver on a lawful demand without lawful excuse, which was sufficient to found a detinue action.

The accrual of the cause of action

[89] The appellant further challenged the learned judge's finding that the cause of action accrued on 16 December 2009. This challenge is likewise unpersuasive. It is well established that, in detinue, the cause of action accrues upon a demand for delivery and

a refusal or failure to comply. Once the respondent made his demand and the appellant, without lawful authority, failed to produce the vehicle when it was required to do so, the tort was complete. The fact that the vehicle may already have been misplaced or untraceable at that time does not defer the accrual of the cause of action. On the contrary, it confirms that the appellant was already in breach of its obligation to redeliver.

[90] The destruction of the vehicle by fire in July 2012 did not extinguish the respondent's cause of action. By that time, liability in detinue had already crystallised and continued. The subsequent loss merely rendered specific delivery impossible and converted the remedy into one for the value of the chattel.

[91] The learned judge was, therefore, correct to hold that the respondent's proprietary rights survived the destruction of the vehicle and that he remained entitled to compensation.

Whether, in the alternative, the facts more appropriately give rise to liability in negligence

[92] The learned judge, in the course of her reasoning, referred to the appellant's failure to properly manage, safeguard, and account for the respondent's vehicle, and described aspects of that conduct as negligent. The appellant submitted that this reflected an impermissible conflation of negligence and detinue.

[93] While the two causes of action are doctrinally distinct, the mere reference to negligent conduct did not undermine the learned judge's finding in detinue. The factual circumstances giving rise to the respondent's claim were capable of engaging considerations of negligence, particularly given the appellant's admitted inability to account for the vehicle whilst it remained within its custody and control. Those matters do not displace liability in detinue but rather provide the evidential context in which the wrongful detention is established. The same conduct which evidences a breach of the duty of care simultaneously underscores the absence of any lawful justification for non-delivery. Those observations, however, did not alter the juridical basis upon which liability was ultimately imposed.

[94] Properly analysed, therefore, this is not a case in which negligence stands as an alternative to detinue, but one in which the appellant's negligent custodial failures culminated in, and substantiate, a finding of detinue. In those circumstances, the learned judge's conclusion that the tort of detinue was made out discloses no error of principle, and the challenge advanced in grounds 1–5 cannot be sustained.

[95] In any event, although it was the court that raised the issue, it is unnecessary to embark on any conclusive determination of negligence. The appeal was argued and resolved on the basis of the learned judge's finding in detinue, which, for the reasons already given, was properly open to her on the evidence. No ground of appeal required this court to displace that finding, nor was there any respondent's counter-notice seeking to affirm the judgment on an alternative basis.

[96] It is sufficient to observe that the factual matrix disclosed a clear failure by the appellant to safeguard and account for the respondent's vehicle whilst it remained under its control. Whether those facts might also have sustained liability in negligence is, therefore, ultimately academic to the disposition of this appeal. The learned judge's references to negligence may properly be understood as reinforcing the absence of any lawful justification for the appellant's failure to redeliver the vehicle, rather than as constituting a separate and independent basis of liability.

Conclusion

[97] I conclude that the cause of action in detinue was, on the facts, properly established and had accrued from 16 December 2009, as the appellant:

i. had taken lawful possession of the respondent's vehicle;

ii. came under a duty to preserve and return the vehicle when required by law to do so;

iii. was met with clear, unqualified and repeated demands for the vehicle's return after 16 December 2009, following the payments of the requisite fines on 14 December 2009;

iv. failed to produce the vehicle or provide any satisfactory explanation for its absence; and

v. ultimately admitted, without any explanation, that it was destroyed while under its control.

[98] Therefore, when the evidence is considered in its totality, although the learned judge did not arrive at her conclusion regarding the refusal required for detinue on an identical factual basis as mine, a finding of liability for detinue was nonetheless available to her, in fact and law, based on the evidence. There is thus no legal basis to disturb her conclusion that the appellant was liable to the respondent in detinue for the deprivation of his vehicle and that he should be compensated in damages. Consequently, the grounds of appeal challenging the learned judge's finding of detinue are without merit and, therefore, fail.

Issue two: Whether the learned judge erred in finding that conversion was established (Grounds 6 to 9).

[99] The tort of conversion is concerned with an unjustifiable interference with goods which is inconsistent with the rights of the person entitled to immediate possession. It is established when a defendant, without lawful justification, deals with the chattel in a manner amounting to an assertion of dominion over it, or a denial of the claimant's possessory rights. The classic formulation is that of Parke B in **Fouldes v Willoughby** (1841) 8 M & W 540 at 546, who described conversion as a wrongful exercise of dominion over the goods of another. A similar formulation appears in Salmond on the Law of Torts, 17th edition, where conversion is defined as a wilful interference with a chattel, without lawful justification, in a manner inconsistent with the rights of another.

[100] Modern authority has refined, but not displaced, that formulation. In **Kuwait Airways Corp v Iraqi Airways Co (Nos 4 and 5)** [2002] 2 AC 883 at paras. 419 to 421, Lord Nicholls explained that conversion consists of dealing with goods in a manner inconsistent with the owner's rights, coupled with an intention to assert a right inconsistent with those rights.

[101] It is also well established that conversion is a strict liability tort. As explained in **OBG Ltd and another v Allan and others; Douglas and others v Hello! Ltd (No 3) and others; Mainstream Properties Ltd v Young and others** [2008] 1 AC 1 at paras. 95 to 101, liability depends upon the nature of the defendant's act rather than fault, provided that the interference is sufficiently serious to justify requiring the defendant to pay the full value of the goods. In that respect, conversion is to be distinguished from detinue in both structure and temporal focus. Detinue concerns the continued wrongful detention of goods following a lawful demand for their return and is, in a sense, a continuing wrong dependent upon subsisting possession and refusal. Conversion, by contrast, is complete upon the doing of any act which is sufficiently inconsistent with the owner's rights to amount to an assertion of dominion over the goods. It is not dependent upon a prior demand, nor upon continued possession thereafter; the tort is constituted at the moment the defendant deals with the chattel in a manner repugnant to the owner's immediate right.

[102] Closer to home, the case of **Vassell Lowe** emphasises the principles that guide the court in determining whether the tort of conversion has been established. McIntosh JA, at paras. [36] and [37] enunciated that:

> "[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)." (Emphasis added)

[103] After quoting para. 14-03 from Clerk and Lindsell on Torts, 18th edition, McIntosh JA, highlighted that the essence of establishing the tort lies in demonstrating a wrongful or unjustified interference with another's personal property, carried out in a way that challenges, denies or is inconsistent with the owner's legal right or title to the property.

[104] In **The Transport Authority v Amy Hyacinth Bogle** [2020] JMCA Civ 6, at para. [59], Straw JA, drawing on **Kuwait Airways Corp v Iraqi Airways Co**, emphasised that the tort of conversion is designed to afford a remedy in the wide range of circumstances in which a defendant exercises dominion over another's goods in a manner inconsistent with the owner's rights. Notwithstanding the variety of forms which such conduct may assume, the essential feature of the tort is the defendant's dealing with the goods in a way that denies or is inconsistent with the claimant's entitlement. In that context, it was recognised that where the act itself is inherently inconsistent with the owner's rights, liability may arise irrespective of any subjective intention to challenge those rights. Furthermore, the case of **Ashby v Tolhurst** [1937] 2 KB 242 makes clear that for liability in conversion to arise, there must be wilful and wrongful interference with the property, even where the property is lost or destroyed as a result of negligence.

[105] In addressing the tort of conversion, the learned judge, in the instant case, found that there was no evidence of wrongful taking, as the seizure was "…correct in law. On the second element, the mere possession of the goods of another without his authority, is not a tort". Upon examining the first element of wilful interference, the learned judge opined that the respondent, being entitled to his vehicle, would not have expected to lose possession of it upon handing it over to the appellant. With respect to the second element, she concluded that the appellant's failure to account for the vehicle's whereabouts after the fines had been paid constituted a denial of the respondent's right to the vehicle. The learned judge inferred intention from the appellant's conduct, particularly the fact, as established by the appellant's own evidence, that the vehicle had remained in the same location for a period of three years, a fact capable of verification by records that were never consulted. However, it appears that in assessing whether there was wilful

interference, the learned judge erred by treating what more properly amounted to negligent conduct on the part of the appellant's agents as conduct indicative of wilful interference.

[106] Moreover, at para. [85], the learned judge stated the following:

> "It is trite that an agent has the authority to act for his principal. Therefore, the acts and omissions of the agents of the second defendant can be described as **inexcusable carelessness**, there need be no evil or malicious act for their conduct to be described as wilful and I so find." (Emphasis added)

[107] Regrettably, this statement highlights a fundamental misapprehension of the legal standard for wilful interference. While it is correct that malice is not a necessary component, the learned judge appears to equate "inexcusable carelessness" with wilfulness. Such a conflation blurs the distinction between negligence and intentional wrongdoing. The requirement of wilfulness implies a deliberate or conscious disregard for another's right, not merely a failure to exercise reasonable care. By treating negligent omissions as wilful conduct, the learned judge arguably applied an incorrect legal standard, thereby undermining the integrity of the finding of wilful interference. The learned judge, therefore, failed to have regard to the elements which constitute wilful interference, which she cited in paras. [81] and [82]. She also failed to take into account the definition of the words as set out in para. [84] of her judgment, which stated:

> "Lastly, the word 'wilful' as defined by the Oxford Dictionary of Law,[20] means:
>
> 'Deliberate; intended: usually used of wrongful actions in which the conduct is intended and executed by a free agent.'"

[108] For all the foregoing reasons, the learned judge was ultimately incorrect in concluding that the respondent had successfully established the tort of conversion. While her summary of the applicable legal principles, including those from **Vassell Lowe** and **Caxton Publishing Co v Sutherland Publishing Co** [1939] AC 178, was accurate,

she erred in her application of those principles to the facts as she determined them to be. As a result, grounds 6 to 9 succeed.

Issue three: Whether the learned judge erred in her assessment of the quantum of loss of use and the award of damages (Grounds 10 and 12).

[109] It is well established that an appellate court will not lightly interfere with an award of damages made by a trial judge. The assessment of damages is quintessentially an exercise of judicial discretion, informed by the trial judge's evaluation of the evidence, including the nature and extent of the loss proved. Accordingly, appellate intervention is confined to limited and carefully restricted circumstances.

[110] The governing principles were classically articulated by Greer LJ in **Flint v Lovell** [1935] 1 KB 354, at pages 360–361 ([1934] All ER Rep 200, at pages 202–203), where he stated that in order:

> "To justify reversing the trial judge on the question of the amount of damages it will generally be necessary that this court should be convinced either that the judge acted upon some wrong principle of law, or that the amount awarded was so extremely high or so very small as to make it, in the judgment of this court, an entirely erroneous estimate of the of damages to which the plaintiff is entitled."

[111] That formulation has been consistently applied in this jurisdiction. In **The Attorney General v Derrick Pinnock** (unreported), Court of Appeal, Jamaica, Supreme Court Civil Appeal No 93/2004, judgment delivered 10 November 2006, Panton JA (as he then was), at para. 6, reaffirmed that an appellate court ought not to interfere merely because it might itself have arrived at a different figure. Intervention is warranted only where the award is shown to be founded upon a demonstrable error of principle, a misapprehension of the evidence, or where the sum awarded is so inordinately high or low as to fall outside the ambit of a reasonable assessment.

[112] In **Jay-Ann O'Connor v Delsha Hyman** [2025] JMCA Civ 14, this court reiterated that restraint remains the controlling principle in appellate review of damages.

McDonald-Bishop JA (as she then was) emphasised that the inquiry is not whether the appellate court would have awarded a different sum, but whether the award made by the trial judge represents an erroneous estimate of the loss suffered, having regard to the evidence and the applicable legal principles.

[113] Accordingly, the threshold for appellate interference is a high one. It is not sufficient that another figure might also have been reasonable, or even preferable. The appellant must demonstrate that the award discloses a material error in principle or is so disproportionate as to be plainly wrong. Only in such circumstances may an appellate court properly substitute its own assessment for that of the trial judge.

[114] In the case at bar, the respondent asserted that he suffered a significant loss as a direct consequence of the appellant's failure to locate and preserve his vehicle. The prolonged delay in locating the vehicle, followed by its eventual destruction, effectively deprived him of its use and the opportunity to continue generating income. The respondent also met the requirement of particularising the nature and extent of the damages he had suffered, citing the financial loss flowing from the deprivation of the vehicle. These assertions were supported by his witness statement, filed in support of the claim.

[115] Mr McDermott, on behalf of the appellant, conceded liability for the value of the vehicle and, up to the date of hearing, expressed a willingness to compensate the respondent for that loss. The appellant, however, continued to challenge liability for special damages, particularly for loss of use, and counsel advanced arguments opposing the respondent's claim for compensation under this head. This court finds it inherently inconsistent for the appellant to accept liability for the replacement of the vehicle while simultaneously denying liability for loss of use, especially in the circumstances where it is undisputed that the vehicle was an income-earning chattel.

[116] The appellant averred in its defence and counterclaim that the respondent was not entitled to possession of the vehicle for the period claimed because he failed to pay

storage fees, and by failing to pay such fees, he was therefore not entitled to loss of use. However, neither in the evidence nor in the submissions was there any allegation that the respondent had been asked to pay storage fees, and he refused. Furthermore, the appellant had not demonstrated how the payment of storage fees was tied to the issue of loss of use of the vehicle. Nor did it proffer any reasonable offer, even nominal compensation, for the respondent's loss of income during the relevant period. It follows that, where the vehicle was used to generate income, the respondent was entitled to recover the income he would reasonably have earned during the period of deprivation.

The applicable principles

[117] The assessment of damages in this case required careful attention to the distinct juridical bases upon which compensation may be awarded in detinue, as well as the limits imposed by principle on recovery for consequential loss.

[118] In an action for detinue, the primary remedy is the return of the chattel. Where delivery is no longer possible, as in the present case due to the destruction of the vehicle, the court is required to award its monetary value, ordinarily assessed as at the date of judgment. This approach reflects the continuing character of the wrong: the detention is treated as persisting until delivery or, where that cannot occur, until judgment is entered. It follows that the respondent is entitled to recover the value of the vehicle at that date. This principle is well established, having been articulated in **Rosenthal v Alderton** [1946] 1 KB 374 and consistently applied by this court, including in **The Attorney General and The Transport Authority v Aston Burey** [2011] JMCA Civ 6.

[119] In addition to the value of the chattel, a claimant may recover damages for its detention. These are commonly measured by the loss of use of the goods during the period of wrongful detention. In **Workers Savings & Loan Bank and others v Horace Shields**, Harrison JA, citing McGregor at para. 715, noted that the standard measure of damages comprised two components. First, where the goods are not ordered to be returned, the claimant is entitled to their market value. Second, regardless of whether the goods are returned, the claimant is entitled to recover an amount representing the

ordinary loss occasioned by their detention, typically calculated at the market rate for which the goods could have been hired during the relevant period.

[120] Also, on the authority of **Reverend Dr Ralph Griffiths v Attorney General for Jamaica and Transport Authority** [2019] JMCA Civ 44, the respondent is entitled to compensation for the loss of income occasioned by the appellant's failure to redeliver the vehicle at the material time.

[121] Such damages are not automatic; they must be proved, albeit the court is entitled to adopt a broad, common-sense approach where precision is not possible. However, the law draws a clear distinction between compensating for loss of use and awarding speculative or unsubstantiated claims for lost profits. The claimant must provide a sufficient evidential foundation to enable the court to make a fair and reasonable assessment.

The value of the vehicle

[122] There is no controversy regarding the award of the vehicle's value. The appellant admitted liability for the sum of $1,200,000.00, representing the assessed value of the vehicle at the date of judgment. In circumstances where the chattel has been destroyed while in the appellant's custody, such an award is both orthodox and unassailable.

Loss of use

[123] The more substantial challenge concerns the award for loss of use. The respondent's evidence was:

> "I was earning $7,000.00 net per day. This is the sum I obtained from my driver Mr. Taffe each day. He worked the vehicle and paid himself and bought oil and gas for the vehicle."

[124] It appeared that the respondent had a share arrangement with his driver, and his share was based solely on net profit. He maintained that this arrangement reflected the income he earned during the vehicle's period of operation.

[125] In this jurisdiction, a claimant is required to strictly plead and prove special damages, as in this case, where the respondent avers loss of income from the commercial use of his vehicle as a public passenger vehicle (see **Bonham-Carter v Hyde Park Hotel Ltd** (1948) 64 TLR 177). There is no issue that the respondent specifically pleaded the loss of income during the time the vehicle was in the appellant's possession. Initially, in his amended particulars of claim filed on 27 August 2014, he indicated loss of use for a period of "1155 days while in Transport Authority pound at $7,000.00 per day (and continuing)". This translates to approximately three years and six weeks, which would not have been inconsistent with the time frame between the vehicle's seizure on 30 November 2009 and the filing of the amended particulars of claim. Subsequently, during the course of the trial, the respondent, in his witness statement signed in 2021, averred a loss of use for 12 years, which is still not inconsistent with the period between 16 December 2009, when the vehicle was detained after demand for its return, and 2022, when the matter came on for hearing. The task of the learned judge was to determine whether there was sufficient evidence on which to assess loss of income.

[126] The respondent's consistent evidence was that he earned $7,000.00 in net profit daily, after deductions for gas, oil, and the driver's wages. The learned judge expected the respondent to tender documentary evidence to support the quantum of his loss. While there was a paucity of such evidence, the learned judge relied on a handwritten note supplied by the driver, corroborating the respondent's claim of $7,000.00 daily net profit. That evidence, however, specified that the daily payment was for five days per week, Monday to Friday. The driver also agreed that he was responsible for the daily operational costs. The learned judge accepted this evidence. Having accepted that aspect of his evidence, the learned judge is therefore taken to have found that aspect of the respondent's evidence to be credible. The respondent was also tasked with establishing the period of loss of income, which he stated was 12 years.

[127] The learned judge, however, identified significant deficiencies in the respondent's evidence, including the absence of supporting documentation and the failure to account

for operating expenses such as fuel, maintenance, and downtime (see paras. [88] – [91 of judgment). In those circumstances, she rejected the claimed figure as a reliable measure of net loss. Nevertheless, she did not treat the evidential deficiencies as fatal to the claim. Instead, she adopted a discounted, moderated approach, awarding a sum that, in her view, fairly reflected the loss of use over the relevant period (see paras. [92] – [94] of judgment).

[128] That approach accords with authority, as a court is not bound to reject a claim for loss of use merely because the evidence is imprecise. As has often been stated, the wrongdoer cannot complain that damages are assessed broadly where the uncertainty arises from the very wrong committed. The court is entitled to draw reasonable inferences and to make a pragmatic assessment based on the material available. At the same time, the learned judge was careful to avoid overcompensation. By accounting for imponderables and discounting the claimed daily earnings.

[129] By adopting the figure of $2,000.00 per day as "the best estimate", the learned judge plainly approached the assessment on a broad evaluative basis, recognising the evidential limitations inherent in the respondent's proof. The award was therefore intended to reflect a reasonable approximation of the respondent's loss of use, rather than a mathematically exact or strictly quantified calculation. In that context, even if the learned judge erred in referring to her prior "judicial experience" in arriving at the figure selected, no material prejudice can be said to have been occasioned to the appellant. Indeed, the quantum of damages ultimately awarded was conservative in nature and well within the range reasonably open to the court on the evidence available.

The relevant period

[130] A more troubling aspect of the award lies in the period for which loss of use was granted. The learned judge appears to have awarded damages from 16 December 2012, rather than 16 December 2009, which she had earlier identified as the date of the first demand and the accrual of the cause of action (see para. [73] of judgment). This approach introduced a degree of inconsistency into the reasoning. In principle, damages

for detention should run from the date of demand and refusal, up to the date of judgment, subject to any supervening event rendering continued detention legally irrelevant.

[131] That aspect of the award, therefore, warrants closer scrutiny. However, in the absence of a specific ground squarely directed to this temporal inconsistency, and given the general nature of the challenge to quantum, the court must approach the matter with appropriate restraint.

[132] It is equally well established, following **British Westinghouse Electric and Manufacturing Co Ltd v Underground Electric Railways Co of London Ltd** [1912] AC 673, that the respondent was under a duty to take reasonable steps to mitigate that loss. The learned judge, at para. [99] of her judgment, adverted to this principle and posed the question whether the respondent had "unreasonably failed to do so", concluding that "[t]here was no evidence from the defendants to prove such a failure on the part of the claimant".

[133] However, notwithstanding that finding, the learned judge stated that a period of one year was sufficient for the purposes of mitigation. No rationale was provided for how that temporal benchmark was derived. In circumstances where the learned judge expressly found that there was no evidential basis to establish a failure to mitigate, it is difficult to discern the foundation upon which the one-year period was fixed. In the absence of any disclosed rationale, that assessment appears unsupported, and it is not possible to agree with the imposition of that timeframe as a principled measure of the respondent's duty to mitigate.

[134] While I agree that the respondent was under a general duty to take reasonable steps to mitigate his loss, the existence of that duty does not, without more, establish a failure to mitigate. The burden of proving such failure rested on the appellant, and, as the learned judge herself recognised, there was no evidence adduced to demonstrate that the respondent acted unreasonably in the circumstances. In particular, there was no evidence that the respondent possessed the financial means to acquire a replacement

vehicle, secure the requisite licences and permits, or otherwise restore his income-generating capacity within any specified period. Nor can it be overlooked that the respondent was not informed by the appellant, at the material time, that the vehicle had been destroyed. Indeed, the evidence indicates that he continued to make inquiries and search for the vehicle over an extended period. In those circumstances, it would be speculative to conclude that the respondent unreasonably failed to replace the vehicle or otherwise mitigate his losses.

[135] The learned judge appreciated the imperfect system under which the respondent and other PPV operators conduct business, and she approached the task of assessing damages for loss of income cautiously, primarily because it was based on oral evidence. She also had regard to the respondent's seemingly contradictory evidence of earnings, which his driver stated were for five days per week, and not "daily" as his evidence initially conveyed, implying seven days per week.

[136] In the context of informal public transportation operations in Jamaica, strict accounting records are not always maintained. While the documentation is limited and there are no formal accounting records, this court concurs with the learned judge that some evidence had been presented to substantiate the claim for loss of income. I also appreciate that taxi and minibus operators often do not keep records or logbooks, and there is no legal requirement for them to use a ticketing system. Accordingly, I am of the view that the respondent had pleaded and provided some evidence to substantiate the claim for loss of income. The respondent's evidence was, therefore, broadly credible and reasonably specific.

[137] Although not ultimately pursued with any real vigour, the appellant initially contended that the learned judge erred in awarding damages for loss of use on the basis that the respondent had failed to adduce sufficiently precise evidence to support such an assessment. In particular, it was suggested that the evidential foundation was too uncertain to permit the learned judge to draw upon her judicial experience in arriving at an appropriate figure.

[138] In any event, that contention would not have justified appellate interference. As the learned judge recognised at paras. [93]–[95] of her judgment, damages for loss of use do not invariably admit of exact mathematical calculation. Although such damages must be specifically pleaded and supported by evidence, the authorities accept that, once a sufficient evidential foundation is laid, the court is entitled to undertake a practical and evaluative assessment of the loss sustained. In the present case, the respondent adduced evidence that the vehicle was operated as an income-generating public passenger vehicle, identified the approximate daily income derived from its use, and described the loss occasioned by its detention and ultimate destruction. While the evidence lacked precision in certain respects, particularly regarding operating expenses and contingencies, it nevertheless furnished an adequate evidential basis upon which the learned judge could arrive at a reasonable assessment, even if reliance upon what she described as her prior "judicial experience" may have been inaptly expressed.

[139] The real issue, therefore, was whether the award made by the learned judge for loss of use disclosed any error of principle or was so inordinately high as to warrant appellate intervention. In assessing damages for loss of use, the learned judge was required to undertake an evaluative exercise in circumstances where the evidence as to earnings and operational expenses was necessarily imprecise. Although the respondent asserted daily earnings of approximately $7,000.00, the evidence did not comprehensively address deductions, operational costs, contingencies, or other vicissitudes ordinarily relevant to the assessment of net loss. The learned judge was, therefore, entitled to adopt a cautious approach in arriving at an appropriate figure.

[140] Indeed, the learned judge approached the issue with evident caution, conscious of the imprecision of the evidence and the need to avoid speculation. Her ultimate assessment reflected an attempt to balance those evidential deficiencies against the undeniable reality that the respondent had been deprived of the use of an income-producing chattel over a prolonged period. In that regard, the complaint is not so much

that there was no evidence capable of supporting an award, but rather that the evidence may have justified a different evaluative outcome.

[141] Significantly, upon this court's own review of the evidence and the applicable principles, it could not be said that the learned judge's award was inordinately high. In considering the award of damages, I conclude that a greater award might properly have been justified, particularly having regard to the duration of the deprivation, the learned judge's treatment of the respondent's duty to mitigate and the evidence relating to the vehicle's earning capacity.

[142] The respondent filed no counter-notice of appeal contending that the award was manifestly low or seeking an upward adjustment. Accordingly, there exists no proper procedural basis upon which this court could increase the quantum awarded by the learned judge. The only issue arising is whether the award was so excessive or erroneous in principle as to warrant reduction. For the reasons already given, that threshold has not been met.

[143] Having regard to the applicable principles governing appellate restraint in relation to awards of damages, I am unable to conclude that the learned judge's assessment of $4,679,480.00 for loss of use was so excessive, or otherwise so erroneous in principle, as to justify interference by this court. Even if another tribunal might have arrived at a different figure, that is not the test. The award falls within the ambit of a reasonable assessment open to the learned judge on the evidence before her and should therefore be allowed to stand.

Interest on loss of use

[144] The learned judge declined to award interest on the sum assessed for loss of use, having regard to the fact that the award itself compensated the respondent for the continuing deprivation of the vehicle and the income capable of being derived from it up to the date of judgment.

[145] That approach cannot be faulted. Where damages for loss of use are assessed over the entire period extending to judgment, the award itself performs, in substance, a compensatory function analogous to interest, reflecting the respondent's inability to utilise the chattel or derive income from it during that time. In such circumstances, the addition of interest may risk compensating the claimant twice for the same period of deprivation. The learned judge was, therefore, entitled to treat the award for loss of use as sufficiently compensatory without making a further award of interest on that aspect of the damages.

[146] In **Dion Moss v Superintendent Reginald Grant and the Attorney General of Jamaica** [2017] JMCA Civ 13 ('**Dion Moss**'), McDonald-Bishop JA (as she then was), delivering the decision of the court, addressed the issue of damages and interest at paras. [131] and [132]. She references McGregor on Damages at para. [131] noting that:

> "[131] In McGregor on Damages, at paragraphs 15-037-15-038, it is intimated that where damages is awarded in cases at common law, where profit earning or non-profit earning chattels are destroyed (which, to my mind, seems analogous to the situation in this case where the chattel is not returned and accounted for), two courses are open: 'Either the value of loss of use may be awarded as damages, as of right, on general principles, **and this would be equivalent to interest**, or the discretion of the court should be exercised in favour of the award of [statutory interest] following principles applied in the admiralty cases'." (Emphasis as in the original)

[147] At para. [132], McDonald-Bishop JA, concluded that, based on these authorities, a claimant who has already received interest on damages for the replacement value of a chattel should not also receive interest on damages awarded for loss of use. This is because damages for loss of use are regarded as the equivalent of interest, and awarding further interest on that amount would contravene the rule against interest upon interest. She concurred with Morrison P, in the same case, that such an award would result in a windfall to the appellant at the respondents' expense, which would be unjust.

[148] As it concerns the award of interest for loss of use, Morrison P in **Dion Moss** stated that:

> "[9] Both of my sisters refer to the statement in Halsbury's Laws of England, Third Edition, Volume 38, paragraph 1325, that **'[i]t is doubtful…whether interest could be awarded in addition to damages…for loss of use in an action of detinue without infringing the rule against giving interest upon interest'**. The learned editors refer specifically to proviso (a) to section 3(1) of the English Law Reform (Miscellaneous Provisions) Act, which is in identical terms to proviso (a) to section 3 of our Act of the same name. **I would in the circumstances of this case take this to be sufficient authority militating against the making of an award of interest on the damages for loss of use**.
>
> [10] It seems to me that in these circumstances, even without a ground of appeal, the court ought not to sanction a result that is not only contrary to principle, but also produces a substantial windfall for the appellant. If authority is needed for disturbing the learned judge's award of interest without it having been appealed against, I would pray in aid rule 2.15(b) of the Court of Appeal Rules 2002, which empowers the court to 'give any judgment or make any order which, in its opinion, ought to have been made by the court below'. On this basis, I would therefore, in agreement with McDonald-Bishop JA, make no order as to interest on the damages for loss of use of the airplane." (Emphasis added)

[149] I agree that interest ought not be awarded on both the replacement value and the damages for loss of use. In this case, the learned judge, contrary to the appellant's contention, did not grant an award of interest on both. There was no "double recovery by the respondent". The learned judge awarded interest on the replacement value, and made no such award of interest in respect of damages for loss of use. She correctly recognised that "there can be interest on damages for the replacement value but no interest on the damages for loss of use, since damages for loss of use are said to be equivalent to interest".

[150] In **Dion Moss**, the court granted interest on the replacement value awarded and also made a separate award for loss of income. However, notably, no interest was awarded on the sum granted for loss of income. This authority, therefore, establishes that while a court may concurrently award interest on the replacement value and on damages for loss of income, it cannot award interest on the damages for loss of income.

[151] Whether in this case interest should be awarded in addition to such damages is ultimately a matter of discretion, informed by the need to achieve full but not excessive compensation. In addition to compensation for the value of the vehicle, the respondent also sought interest at a rate of 3% from 16 December 2009 to the date of judgment. In light of the appellant's admission of liability for the replacement value, for a corresponding figure, the respondent is accordingly awarded the sum of $1,200,000.00, with interest at that rate for the specified period.

[152] The appellant has not demonstrated that the learned judge's exercise of that discretion was wrong in principle.

Conclusion on damages

[153] Viewed in its entirety, the learned judge approached the assessment of damages with appropriate care and restraint, bearing in mind the evidential limitations inherent in the case. Her methodology reflects a proper appreciation of the governing principles applicable to claims in detinue and of the need to fashion an award that was fair, reasonable, and proportionate in the circumstances disclosed by the evidence.

[154] Although certain aspects of the reasoning may admit of debate, particularly concerning the treatment of the period relevant to loss of use, the dispositive question for this court is whether the award ultimately made discloses any material error of principle or is so inordinately high as to warrant appellate intervention. Having regard to the applicable standard of review, I am unable to so conclude. The award falls within the range of assessments reasonably open to the learned judge on the evidence before her.

[155] In those circumstances, the appellant's challenge to the quantum of damages [grounds 10 and 12] cannot succeed. The appeal against the award of damages must, therefore, fail.

Costs

[156] The general principle is that costs follow the event, subject to the court's discretion to make such order as is just in all the circumstances. The learned judge's primary finding of liability in detinue, together with the award of damages, has been upheld by this court. The appellant has achieved material success on one discrete but relatively significant aspect of the appeal, namely the setting aside of liability in conversion. Much of the court's time, though, was expended in treating with the learned judge's finding of liability for the tort of detinue.

[157] In the exercise of this court's discretion, and bearing in mind the mixed outcome of the appeal, the respondent is entitled to a substantial, but not full, recovery of his costs. I, therefore, propose that the justice of the case would be met by awarding the respondent 85 % of his costs of the appeal, such costs to be taxed if not agreed.

MCDONALD-BISHOP JA

ORDER

1. The appeal is allowed, in part.

2. The order of Wint-Blair J made on 30 September 2022, on the claim for conversion, is set aside.

3. The order of Wint-Blair J made on 30 September 2022, on the claim for detinue, is affirmed.

4. The award of damages is affirmed.

5. The respondent is awarded 85% of his costs incurred in the court below and in the Court of Appeal, such costs to be taxed if not agreed.