

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO 26/2014

APPLICATION NO 55/2014

**BEFORE: THE HON MR JUSTICE PANTON P
THE HON MISS JUSTICE PHILLIPS JA
THE HON MISS JUSTICE MANGATAL JA (AG)**

BETWEEN	TRANSPORT AUTHORITY	APPLICANT
AND	ALROMEO BROWN	RESPONDENT

Mrs Georgia Gibson Henlin and Miss Taniesha Rowe instructed by Campbell & Campbell for the applicant

Mrs Kayann Balli instructed by Balli & Associates for the respondent

30 May and 20 June 2014

PANTON P

[1] On 30 May 2014, we heard this application for the extension of time for the filing of notice of appeal. The application was supported by an affidavit filed by Mr Leslie Campbell, attorney-at-law.

[2] The application arises as a result of a judgment handed down by Campbell J in the Supreme Court on 15 November 2013, with a further order on 10 January 2014. The respondent had sought damages for detinue or conversion in respect of the seizure

of his motor car on or about 7 July 2008 by the applicant. The respondent was charged for operating a motor vehicle without a road licence and his car was deposited at the Lakes Pen pound in St Catherine. The particulars of claim alleged that the respondent was injured as a result of being assaulted by members of the constabulary force. The charge against the respondent was dismissed, but his car has not been returned to him as it was sold by the applicant, in contravention of the relevant statutory provisions.

[3] In the written judgment delivered on 15 November 2013, Campbell J noted that summary judgment for detinue had been ordered by King J and a date fixed for the assessment of damages. Campbell J was therefore assessing damages. It seems that the assessment was limited to the items listed in paragraph [2] of his judgment, namely:

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|---|------------------|
| “(a) Loss of his motor vehicle | \$2,200,000.00 |
| (b) Loss of trade goods | \$100,000.00 |
| (c) Loss of use of the said motor vehicle | \$1,339,000.00”. |

The learned judge awarded the respondent as follows:

- (i) the market value of a 1997 Toyota Camry as assessed at the date of the trial;
- (ii) the sum of \$100,000.00 for loss of trade goods; and
- (iii) the sum of \$1,000.00 per day for alternative transportation.

The award for alternative transportation covered the period July 2008 to the date of the award. Interest was also awarded at the rate of 3% per annum from 7 July 2008

to the date of the award, and execution of the judgment was stayed on condition that payment be made for items (i) and (ii) above.

[4] Subsequent to this order, there were consultations between the parties in respect of the valuation that was ordered. This resulted in the value of the car being ascertained as \$450,000.00. On 10 January 2014, Campbell J accepted this valuation and ordered payment accordingly. The formal order is as follows:

- “1. Damages for detinue are awarded to the Claimant being the market value of a 1997 Toyota Camry as assessed at the date of trial.
2. The value of the 1997 Toyota Camry motor vehicle is to be determined by a reputable valuer agreed between the parties and which value is to be submitted to the Court within 30 days of this ruling and has been assessed as per valuation report provided over signature of Bruce Zaidie for AVC which valuation dated December December [sic] 13, 2013 in the sum of \$450,000.00.
3. Special Damages as follows:
 - a. \$100,000.00 for the loss of trade tools
 - b. Loss of use in the sum of \$1,000.00 per day from July 8, 2008 to November 15, 2013 in the sum of \$2,296,000.00.
4. Interest is awarded on the damages for loss of trade tools at the rate of 3% per annum from July 7, 2008 to November 15, 2013
5. Interest is awarded on general damages for detinue at the rate of 3% per annum from December 17, 2009 to November 15, 2013.

6. Leave to appeal is granted to the 1st Defendant
7. Execution of this Judgment is stayed on condition that payment be made to the Claimant of the amount awarded for the loss of trade goods and amount for the loss of the 1997 Toyota Camry motor vehicle.
8. Costs to the Claimant to be agreed or taxed."

[5] In his affidavit, Mr Campbell stated that "by inadvertence in [his] office", the notice of appeal was not filed by 21 February 2014, as required by the rules. This "error", he said, was on the part of the attorneys-at-law, and not the applicant. He said that the appeal has real prospects of success as the sum awarded to the respondent for loss of use of his motor car was based on an incorrect principle of law. Further, he said, the learned judge erred in awarding interest on damages for detinue for the market value of the car. The delay, he said, was not excessive and the respondent will not be prejudiced in any way seeing that "the judgment [was] "entered for too much".

[6] At the time of the commencement of the hearing of this application, the applicant had not made its written submissions available to us. However, there was a draft notice and grounds of appeal filed by it, and we were provided with written submissions filed by the respondent.

[7] The draft grounds of appeal, which were referred to in the affidavit of Mr Campbell, contained complaints as regards what the applicant perceives as errors made by the judge in relation to the method adopted to ascertain the value of the car,

the measure of damages, the awarding of general as well as special damages for detinue, and the awards of interest. In her oral submissions, as well as written submissions handed up during the hearing (clearly there was no intention for us to read them), Mrs Gibson-Henlin said that the appeal had a good prospect of success in that the damages were awarded from the date of seizure when the relevant date ought to have been the date of demand. In addition, she said that the judge ought not to have made an award to the date of trial, without reference to the respondent's duty to mitigate his loss. She submitted further that the learned judge had erred in applying principles applicable to the assessment of damages in personal injury cases.

[8] Miss Kayann Balli's response may be summarized as follows:

- There was no good reason for the delay;
- The respondent has been prejudiced by the conduct of the applicant in how it proceeded with the case in the court below and which continues in the form of this application;
- In relation to the measure of damages, there has been no misapplication of the applicable principle which is 'restituto in integrum';
- An appellate court will not interfere with an award of damages unless it is either inordinately low or inordinately high; and
- The award of interest is in the discretion of the court, and there should not be any interference with the exercise of that discretion.

[9] The method by which Campbell J determined the value to be placed on the car has been criticized. The learned judge, having heard the evidence, realized that the value of the car had not been proved and so adjourned the proceedings for that evidence to be provided. He indicated that it was his wish for the parties to agree on a valuer and then present the valuation. To this end, the respondent took the necessary steps and submitted to the applicant the names of three valuers for a selection to be made. The applicant did not cooperate with the process, and though advised of the result of the valuation and the date for its presentation to the court, it chose not to participate in the proceedings. In the circumstances, it is hollow-hearted of the applicant to be now seeking to use this as a ground of appeal. Taking the overriding objective into consideration, such a ground of appeal would be destined to fail miserably.

[10] The learned judge awarded damages on the basis of the market value of the car as at the date of trial. That is what he was required to do. In detinue, as regards the valuation, the respondent is entitled to the value of the car at the date of the judgment. In **Rosenthal v Alderton** [1946] 1 KB 374, a decision of the English Court of Appeal, Evershed J (as he then was) in delivering the judgment of the court, said at pages 377 – 378:

“In an action of detinue the value of the goods claimed but not returned ought, in our judgment, to be assessed as at the date of the judgment or verdict. ... It was, and still is, of the essence of the action of detinue that the plaintiff maintains and asserts his property in the goods claimed up to the date of the verdict”.

In this case, the valuation accepted by the court was a sum of \$450,000.00. There can be no useful challenge to that award on appeal.

[11] The motor vehicle contained tools that the respondent used in his trade. The respondent was entitled to have them returned, or be compensated for their value. The fact that the judge's order has listed these items as special damages cannot give rise to a legitimate ground of appeal as the respondent is entitled to have his tools of trade returned, or to be compensated with their value. It does not matter what terminology is used to describe the situation.

[12] There is a proposed ground of appeal challenging the award for loss of use, saying that the sum is excessive in all the circumstances. Mrs Gibson-Henlin complained that the respondent should have mitigated his loss. However, she did not indicate the manner in which this mitigation should have been done. In a situation such as this, the respondent would have been entitled to hire a motor car of the same type in order to continue to operate in the manner in which he was accustomed. The fact that he decided to use public transport instead shows that he has mitigated as there can be no doubt that travelling by public transportation in Jamaica is far cheaper than hiring a car from a rental agency. This ground would also flounder on appeal.

[13] The final complaint is in relation to the various awards of interest. Looking on the overall picture, the respondent is therefore entitled to:

- I. the return of his car, or its value at the date of trial;
- II. the return of his tools of trade, or their value; and

- III. an award for the loss of use of the car and for having to make alternative travel arrangements during the period of deprivation.

Having been so compensated, it is questionable whether the respondent would be entitled to interest over the entire periods specified by the learned judge. In the circumstances, the applicant has a prospect of success on appeal on this ground only.

[14] Given this reasoning and the fact that in the circumstances of this case the delay cannot be described as inordinate, I think that it is appropriate to extend the time for filing the notice of appeal and to allow the applicant to challenge the awards of interest. Hence, I would grant the application in this limited manner, and the applicant may only file and argue grounds in respect of the awards of interest. I would extend time to facilitate the filing and service of notice and grounds within seven days from today, and award the costs of this application to the respondent, such costs to be agreed or taxed.

[15] It seems to me that the parties in the instant case should act in a manner that will see to the speedy conclusion of these proceedings which have gone on for far too long.

PHILLIPS JA

[16] I have had the opportunity of reading in draft the reasons of the learned President and agree with the same and have nothing to add.

MANGATAL JA (Ag)

[17] I have read the draft judgment of Panton P and agree with his reasoning and conclusion. I have nothing to add.

PANTON P

ORDER

1. Time extended to seven days from today for the applicant to file and serve notice and grounds of appeal.
2. Appeal to be limited to the awards of interest.
3. Costs of this application to the respondent to be agreed or taxed.