

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

H.C.A. No. 2107 of 2000

BETWEEN

LIONEL WILLIAMS

Plaintiff

AND

**THE ATTORNEY GENERAL
OF TRINIDAD AND TOBAGO**

Defendant

Before the Honourable Mr. Justice Ventour

Appearances:

Mr. K. Thompson for the Applicant
Ms. A. Rambarran for the Respondent

JUDGMENT

By Notice of Motion filed on September 8, 2000 the Applicant seeks, inter alia, a Declaration that the seizure and detention by Police of his motor vehicle registration PAP 7754 was and is unlawful and contravenes his fundamental right to the enjoyment of property and to the protection of the law as guaranteed by sections 4(a) and (b) of the Constitution of Trinidad and Tobago. The Applicant also claims monetary compensation for the unlawful seizure and retention of the said motor vehicle.

In support of the application the Applicant has filed the following affidavits:

- (1) Affidavit sworn and filed on 8th September, 2000; and
- (2) Affidavit sworn and filed on 30th April, 2001;

Four affidavits were filed on behalf of the Respondent. They are:

- (1) Affidavit of Police Constable Adesh Ramdeo sworn and filed on 13th March, 2001;
- (2) Affidavit of Corporal Craighton Hudson sworn and filed on 13th March, 2001;
- (3) Affidavit of Clive Thomas sworn and filed on 13th March, 2001; and
- (4) Supplemental affidavit of Clive Thomas sworn and filed on 24th April, 2001.

According to the evidence of the Applicant on 7th October, 1996 he purchased from one Troy Henry motor vehicle PAP 7754 for the sum of \$25,000.00 which sum he borrowed from the San Juan Branch of the Republic Bank. He said that on 26th June, 1997 three men came to his home at Trou Macaque Road, Laventille and identified themselves as Police Officers. One of the men Corporal Hudson told him that he had reason to believe that the said vehicle was stolen and that he would like to examine it. He explained to the officer the circumstances by which he had become the owner of the vehicle.

However, Corporal Hudson examined the said motor vehicle and then left with the other two officers. On 3^d July, 1997 the three officers returned to his home and Corporal Hudson informed him that he still had reason to believe that the vehicle was stolen. He said he showed the officer the receipt which he had received from Troy Henry evidencing the purchase together with the relevant certified copy of ownership with respect to the said vehicle. Notwithstanding, he was instructed to drive the motor vehicle to the Old Police Headquarters situate on St. Vincent Street, Port of Spain the said day.

The Applicant further testified that he complied with the instructions of the Police Officers and drove the car to the Police Headquarters. He was followed by the officers in

an unmarked vehicle. On arrival at the Police Headquarters the vehicle was examined by another Police Officer and immediately thereafter Corporal Hudson informed him that the chassis number of the vehicle was tampered with and as a consequence the vehicle had to remain in the custody of the police. Despite repeated requests he said that the Police has not returned the vehicle to him.

The evidence of the Police Officers Corporal Hudson and Constable Ramdeo are not materially different from the testimony of the Applicant except to say that both Officers insisted that they visited the Applicants home on 30th June, 1997 and not 26th June, 1997 as the Applicant has testified. Further the Officers said that on 30th June, 1997 the Applicant was asked to bring the vehicle to the Police Headquarters on 3rd July, 1997 and that he did so voluntarily. They denied that they had returned to the Applicants home on 3rd July, 1997 and instructed him to drive the vehicle to the Police Headquarters while following him in an unmarked car. Both Corporal Hudson and Constable Ramdeo testified that they had examined the vehicle and concluded that the chassis number was tampered with. They said that they informed the Applicant of their findings and of their intention to keep the vehicle in custody in order to facilitate other investigations.

Corporal Hudson said that since seizing he had interviewed several people who had reported stolen cars but by the end of July 1999 no one was able to successfully identify the vehicle. Thereafter, he had been transferred to another section of the Criminal Investigation Department and the investigation was passed to another officer to continue the investigation.

Prior to being transferred, Corporal Hudson testified that the vehicle was sent to the Forensic Science Centre on 3rd September, 1997 and a Report dated 1st October, 1997

which was prepared by one Clive Thomas, the Deputy Director of the Trinidad and Tobago Forensic Science Centre, was received by the Police Department on 6th October, 1997. A copy of the Report (Exhibited as “AR 1”) is attached to the affidavit of Police Constable Adesh Ramdeo.

Mr. Clive Thomas who holds a M.Sc.Degree in Forensic Science from the University of Strathclyde Glasgow has testified that he has had some 30 years experience in performing forensic examination of motor vehicles which are suspected of being stolen and which have been submitted by the Police for examination. Mr. Thomas also testified that on 3^d July, 1997 Corporal Collins submitted to the Forensic Science Centre for examination a white Gallant Motor Vehicle which purported to bear registration No. PAP 7754 with chassis number A 163 K 003752 and engine number J.63B63AN7037. Upon examination he said that he had found that the chassis number had been tampered with and that treatment of the metal surface bearing the number revealed only 2 digits “9” and “6”. There was no evidence of tampering with the engine number of the said vehicle. Mr. Thomas said that he also conducted an examination of the paint on the said vehicle which revealed that the white gallant motor vehicle was painted red, grey and white.

On that evidence the Applicant has sought a declaration from the Court that the seizure and retention of the said motor vehicle by the servants and/or agents of the State on 3^d July, 1997 contravene his constitutional rights to the enjoyment of property and protection of the law as guaranteed by sections 4(a) and 4(b) of the Constitution of the Republic of Trinidad and Tobago.

Counsel for the Applicant has submitted that the Police had no authority to enter the private property of the Applicant to seize the Applicant’s motor vehicle without a

search warrant. Counsel also argued that there was no reasonable grounds for suspecting that the motor vehicle was stolen. In the circumstances the seizure and the detention were unlawful. Counsel further submitted that even if the Court finds that the seizure was lawful, the continued detention of the vehicle in the circumstances, where no arrest has been made, is unlawful. Mr. Thompson referred the Court to several authorities to support his submission including the decision of this Court in the case of **Ardash Ramsubag –vs- The Attorney General of Trinidad and Tobago H.C.A. No. 1352 of 1996.**

Counsel for the Respondent has argued that after Corporal Hudson and Constable Ramdeo carried out an examination of the vehicle on 26th June, 1997 and on 3rd July, 1997 there was reasonable grounds for them to suspect that the motor vehicle was a stolen vehicle and according to law they were entitled to seize and detain the vehicle to facilitate further enquiries in order to bring the wrong doers to justice.

The issue that arises on the evidence in this case is whether seizure and detention of the motor vehicle from the Applicant on 3rd July, 1997 was lawful. The issue as identified has two distinct elements. First was the seizure lawful? In answering that question I don't think it is material for the Court to find as a fact whether the seizure took place at the Police Headquarters in Port of Spain or at the Applicant's home in Laventille. Counsel for the Applicant did submit that the unlawful seizure was effected at the Applicant's home when the Police entered the Applicant's premises on 3rd July, 1997 and instructed the Applicant to drive the car to the Police Headquarters which he did. The Police Officers however denied that they were at the Applicant's home on 3rd July, 1997. They both testified that on 26th June, 1997 when they visited the Applicant at his home

and carried out the preliminary examination of the vehicle Corporal Hudson asked the Applicant whether he could bring the vehicle to the Police Headquarters in Port of Spain (at a time when both Corporal Hudson and Constable Ramdeo were on duty) so that a further examination may be carried out. They testified that the Applicant complied with the request and did in fact bring the vehicle as promised.

The procedure which the Police say they adopted prior to seizing the vehicle is, in my respectful view, rather unusual. Corporal Hudson's evidence is that he was reliably informed by an informant that the vehicle carrying registration number PAP 7754 was a stolen vehicle. Having located the vehicle at the Applicant's home and having examined the vehicle in the presence of the Applicant and Constable Ramdeo and having concluded that there was evidence that the chassis number was tampered with it is unlikely that in those circumstances he would have asked the Applicant to bring the vehicle to the Police Headquarters some 7 days later.

The Applicant's testimony on this issue seems quite credible. He said that when the Officers met him on 26th June, 1997 it was Corporal Hudson who told him that he had reason to believe that the vehicle was stolen and thereafter the officers left. They gave the Applicant no indication that they would return nor did they indicate what their findings were following the preliminary examination of the vehicle. I accept the Applicant's version of the facts on this issue. I believe that the police were not prepared to give the Applicant any indication as to what their next move would have been. They, however, returned on July 3, 1997 and instructed the Applicant to drive the motor vehicle to Police Headquarters in Port of Spain. The Applicant could have refused to carry out the instruction in which case the Police would have had to arrange to have the vehicle

towed to Police Headquarters. I don't accept that the Applicant was under any obligation to respond positively to the Officers' request and was therefore not under arrest as Counsel for the Applicant has contended. The evidence is that the Applicant simply complied with the Police Officers' request.

At the Police Headquarters the vehicle was examined and the Officers were satisfied that the chassis number was tampered with. They informed the Applicant of their findings and indicated that the vehicle must remain in the custody of the Police to facilitate further enquiries. The vehicle was subsequently sent to the Forensic Science Centre on 3rd September, 1997 for a scientific examination and the Report was received by the Police on 6th October, 1997. The examination was undertaken by Clive Thomas the Deputy Director of the Forensic Science Centre whose qualifications and experience have not been challenged. The Certificate of Analysis (attached to the affidavit of Clive Thomas and marked "CT1") showed not only that the chassis number had been tampered with but that the paint examination revealed that the vehicle purporting to be PAP 7754 was painted red, gray and white.

As I have indicated earlier the issue for determination is whether the seizure and detention of the vehicle by the Police for the period alleged contravenes the constitutional rights of the Applicant under section 4(a) and 4(b) of the Constitution of the Republic of Trinidad and Tobago.

The Seizure:

Counsel for the Applicant argued that the Police Officers had no authority to enter the private property of the Applicant and seize his vehicle without a warrant. Counsel further argued that there was no reasonable grounds for suspecting that the vehicle was a

stolen vehicle and therefore subject to seizure. Mr. Thompson further contends that even if the Court finds that the initial seizure was lawful the continued detention of the vehicle in the circumstances where no one has been charged with an offence relative to the said vehicle violates the constitutional rights of the Applicant. In support of his submissions Counsel referred the Court to the case of **Ramsubag –vs- The Attorney General of Trinidad and Tobago (supra)**.

On the other hand Counsel for the Respondent however placed heavy reliance on the Court of Appeal's decision of **Thakur Persad Jaroo –vs- The Attorney General of Trinidad and Tobago C/A. No.78 of 1990** in support of her submission that both the seizure and detention of the said vehicle were lawful. Counsel referred the Court to several other authorities to support her arguments that not only had the Police had reasonable grounds for suspecting that the vehicle was a stolen vehicle but that the detention was justified to facilitate further inquiries in an attempt to bring the wrong doers to justice. The authorities include the following:

- (1) **Chic Fashions (West Wales Ltd.) –vs- Jones (1978) QB;**
- (2) **Ghani –vs- Jones (1970) QB 693;**
- (3) **Constable of Kent –vs- V & another (1982) 3 AER 462.**

Counsel must forgive me if I have failed to mention in this judgment all the authorities to which reference has been made in support of their submissions. I have however, read them all. They highlighted the rights of the Police under the common law to seize property in circumstances where there are reasonable grounds for believing that the property seized (in this case motor vehicle PAP 7754) is the fruit of a crime. This principle was highlighted prominently in the case of **Ghani –vs- Jones (supra)**.

Are the grounds for the seizure reasonable:

The evidence of Corporal Hudson was that he was reliable informed by an informant that motor vehicle purporting to be motor vehicle PAP 7754 was a stolen vehicle and details of the vehicle's whereabouts were given to him by the informant. Having located the vehicle both Corporal Hudson and Constable Ramdeo examined the said vehicle. Corporal Hudson testified that he did inform the Applicant that he had reason to believe that the vehicle was a stolen vehicle.

I did indicate earlier that I accept the evidence of the Applicant that the Police Officers left after their first visit and returned to the Applicant's home on 3rd July, 1997 when they instructed him to drive the vehicle to Police Headquarters in Port of Spain.

The Applicant

corporated and at the Police Headquarters the vehicle was again examined by Constable Ramdeo and Corporal Hudson and their findings were revealed to the Applicant who was then told that the vehicle had to remain in the custody of the Police pending further enquiries.

I do not accept the argument of Counsel for the Applicant that the vehicle was seized by the Police at the home of the Applicant on 3rd July, 1997. The evidence revealed that the Applicant corporated with the Police in having the vehicle examined after the Applicant was told that the Police had reason to believe that the said vehicle was a stolen vehicle. According to the unchallenged testimony of Constable Ramdeo he has had extensive training in the examination of motor vehicles which were suspected of being stolen. Constable Ramdeo was at the time attached to the Stolen Vehicle Squad at the Criminal Investigation Department. Prior to joining the Stolen Vehicle Squad he

attended a training course at the Forensic Science Centre which course was co-ordinated and supervised by the Deputy Director of the Centre, Mr. Clive Thomas. The course was intended to assist Police Officers of the Stolen Vehicle Squad in determining whether the chassis or engine numbers of motor vehicles had been tampered with and in restoring the original numbers.

Given his training, Constable Ramdeo was able to determine that the chassis number of the vehicle was in fact tampered with. Paragraph 17 of his affidavit evidence states:

“When I examined the Applicant’s vehicle I noticed that the original chassis number was obliterated and a new number was stamped in its place. Using a magnifying instrument, I examined the area surrounding the chassis number and noticed that it was devoid of paint. There were also signs of grinding and there were polishing marks in the said area surrounding the chassis number. When the area of a chassis is bare of paint and there is grinding and polishing marks this raises suspicion that the chassis number may have been tampered with.”

I do not believe that in those circumstances it could be argued that there were no reasonable grounds for the Police to believe that the vehicle was a stolen vehicle. As the authorities have shown there was no need for the Police Officers to have equipped themselves with a warrant for the purpose of entering the Applicant’s property as they did. There was no forced entry. The Applicant did not object to the conduct of the Police Officers. In fact the evidence established that he willingly permitted the examination of the vehicle at his home and thereafter offered no objection when asked to drive the

vehicle to the Police Headquarters on 3rd July, 1997 where the vehicle was in fact seized by the Police after the Applicant was informed of the findings of Constable Ramdeo's examination.

On the evidence I hold therefore that the seizure was lawful.

Is the continued detention unlawful:

Counsel argues that if the Court finds that there were reasonable grounds for the seizure to facilitate further investigation the continuing detention of the said vehicle from the time it was seized, that is, on 3rd July, 1997 to the date of the filing of the motion, that is, September 8, 2000 – a little more than 3 years, must be unconstitutional. The evidence of Corporal Hudson reveals that despite his investigation no one has been charged by the Police for stealing the said motor vehicle or for any other offence relative thereto.

On the other hand Ms. Rambarran has submitted that the detention is lawful. She has argued that the evidence shows clearly that following the seizure Corporal Hudson proceeded to interview previous registered owners of the said vehicle. In particular, Troy Henry who is alleged to have sold the said vehicle to the Applicant was interviewed and a statement taken. Several other persons were interviewed for the purpose of identifying the said vehicle. Unfortunately, there was no success in that regard. By the end of July 1999 Corporal Hudson was transferred to another section of the Criminal Investigation Department and the file was then passed to Constable Chadband for continuation of the investigation. In the circumstances Ms. Rambarran submits that the police investigation is ongoing in an effort to apprehend the wrong doers and to have them brought to justice. No one can doubt that car stealing is a serious offence in this country and statistics would

show that those responsible are committing the offence with alarming frequency. The Stolen Vehicle Squad has been established by the Criminal Investigation Department to deal specifically with this offence. The evidence of Constable Ramdeo which has not been challenged shows quite clearly the techniques used by criminal elements in their attempt to conceal evidence of their unlawful act.

The Certificate of Analysis obtained by the Police from the Forensic Science Centre supports the initial suspicion of the police officers that the car may have been a stolen car. That Report shows that the chassis number was tampered with and it also reveals that a paint examination of the vehicle was red, gray and white. Equipped with that kind of scientific evidence it is the responsibility of the Police to find the perpetrators of the unlawful act. But the Police must not keep the vehicle for any longer than is reasonably necessary to complete their investigations or to preserve the vehicle as crucial evidence in the event that a charge is laid against someone.

In the case of **Ardesh Ramsabag (supra)** referred to by Counsel for the Applicant did not stipulate any fix period beyond which detention will be considered unconstitutional or unlawful. At page 23 of that judgment this is what the Court had to say:

“Investigating the larceny or theft of a motor vehicle may provide different considerations when the system of registration and the need for scientific examination of the vehicle may be a necessary part of the investigation. It may be that scientific examination may not be necessary at all in order to prove a particular charge. For those reasons this Court would hesitate to stipulate as a rule any particular time period beyond which the detention of

the article or property seized become unlawful. That ought to depend on the nature and the demands of the investigative requirements. Each case ought to be examined on its own set of circumstances.”

Those words were echoed by Justice of Appeal Hosein in the Court of Appeal decision of **Thakur Jaroo –vs- The Attorney General (supra)** which was delivered on 30th November, 1988. At page 8 of the judgment the learned Judge of Appeal said:

“While the detention of the vehicle in the circumstances of this case and for the period in question were necessary for the purpose of enquiries and for preserving valuable evidence in the event that a criminal charge was preferred against someone, yet in the absence of appropriate criminal proceedings, there would of necessity arise a time beyond which it would be unreasonable to detain the vehicle any longer. It is not possible to stipulate what such a period would be in any given case since much would depend on the circumstances of the particular detention, the diligence to which investigations are pursued, the progress made and any other relevant consideration.”

Counsel for the Applicant submitted that the Jaroo’s case was distinguishable on the facts. I do not agree. While it is true that certain details of the case are different I believe that in substance the Court in Jaroo’s case was dealing with the issue of the lawfulness of the seizure and detention of a motor vehicle by the Police in circumstances where it was established that both the chassis and the engine numbers were tampered with.

Counsel for the Applicant has argued that the seizing of the Applicant's motor vehicle PAP 7754 by the Police Officers on 3rd July, 1997 contravened the Applicant's rights to the enjoyment of property and to the protection of the law as guaranteed by Sections 4(a) and 4(b) of the Constitution. Section 4(b) of the Constitution protects the right of the individual to equality before the law and protection of the law. I do not believe there is any merit in the argument that the Applicant has been denied the protection of the law as a result of the action taken by the Police in seizing and detaining the said motor vehicle. Lord Diplock had made it quite clear in the case of **Attorney General of Trinidad & Tobago –vs- McLeod (1984) 1 WLR 522 at page 531** that the Applicant's access to the Courts of Justice seeking a declaration that an Act of Parliament was invalid was sufficient to preserve the constitutional right of the Applicant to the protection of the law to which every individual is entitled under Section 4(b) of the Constitution. In the circumstances the Applicant's claim for relief under Section 4(b) of the Constitution is refused.

Section 4(a) of the Constitution protects the individual's rights to the enjoyment of property and the right not to be deprived thereof except by due process of law. Counsel for the Respondent has argued that the Applicant's right for ownership of the said motor vehicle PAP 7754 has not been established on the evidence. There is no doubt, on the evidence, that the Applicant had a right to possession of the said vehicle and since Section 4(a) protects not only the right to ownership but also the right to possession, the Applicant's right to enjoyment of the property under Section 4(a) is constitutionally protected. See the Privy Council decision delivered on 4th February,

2002 in the case of **Thakur Persad Jaroo –vs- The Attorney General of Trinidad & Tobago** (Privy Council Appeal No.54/2000).

Has the Applicant’s right to the enjoyment of property been denied without due process? In the context of the instant case the expression “due process” has two aspects, that is, the right to the protection against the abuse of power and the requirement that when the powers of the State are exercised against the individual they must be exercised lawfully and not arbitrarily.

The Respondent has argued that the continued detention of the motor vehicle by the Police was reasonably necessary in order to complete their investigation and/or to preserve the vehicle for evidence in the event that the wrong doers are brought to justice. See Lord Denning M.R. at page 708 in the case of **Ghani–vs- Jones (1970) 1QB 693**. However, the issue as to whether the continued detention of the vehicle (at the date of the filing of the motion) was lawful and not arbitrary is an issue which comes with the “due process” provision of Section 4(a) of the Constitution.

In order to challenge the State’s right to detain the motor vehicle the Applicant could have used a procedure under the common law, as for example, an action in detinue. Instead he choose to invoke to provisions of the Constitution, which in the context of the particular case seems unsuitable and inappropriate. As Hosein J.A. advised in delivering the decision of the Court of Appeal in the **Jaroo’s case**, the Applicant must consider the true nature of the right allegedly contravened before he resorts to the procedure under Section 14(1) of the Constitution. The Privy Council agreeing with the Court of Appeal decision, said further at paragraph 39 of their judgment:

“He must also consider whether having regard to all the circumstances of the case, some procedure either under the common law or pursuant to statute might not more conveniently be invoked. If another such procedure is available, resort to the procedure by way of originating motion will be inappropriate and it will be an abuse of the process to resort to it.”

Moreover, in his affidavit filed on 13th March, 2001 in opposition to the motion filed by the Applicant, Police Constable Adesh Ramdeo stated in paragraph 34 as follows:

“Further, I hereby wish to state that in my opinion it was necessary to keep the vehicle for such a period of time because it was necessary to keep it in its original state because it was believed to be the “fruit of a crime”, namely larceny of a motor car, and for persons who have lost similar vehicles to view this vehicle with the aim of identifying same. No one has been charged with this offence to date and enquiries are still ongoing.”

That evidence of Constable Ramdeo has not been contradicted. In particular, his testimony that investigations by the Police were continuing remain unchallenged. The facts were therefore in issue and for the Applicant to proceed by way of motion would have been “unsuitable and inappropriate.” This is what the Privy Council had to say in the Jaroo’s case at paragraph 36 of the judgment:

“Their Lordships wish to emphasise that the originating motion procedure under Section 14(1) is inappropriate for use in cases where the facts are not in dispute and questions of law only are in issue. It is wholly unsuitable in cases which depend for their decision on the resolution of disputes as to

facts. Disputes of that kind must be resolved by using the procedures which are available in the ordinary courts under the common law.”

In conclusion I therefore hold that the filing of the constitutional motion by the Applicant on 8th September, 2000 was an abuse of process. The declarations sought are therefore denied. In the circumstances of the case and in the exercise of my discretion I find it appropriate to make no order as to cost.

Dated this 6th day of March, 2002

**Sebastian Ventour
Judge**