ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCV 2005/0164

BETWEEN

OTWELL JAMES

Claimant

And

EDSON BROWN
THE COMMISSIONER OF POLICE
THE ATTORNEY GENERAL

Defendants

Appearances:

Mr. Ralph Francis for the Applicant

Ms. Rhodette Browne for the first Defendant

Ms. Carla Brooks-Harris for the second and third Defendants

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2008: April 5
October 31
…….

RULING

[1] **Blenman J:** This is a ruling on an application to have the Court reopen the hearing of a matter.

[2] **Background**

Mr. Otwell James brought an action against the defendants for wrongful arrest and Mr. Edson Brown counterclaimed against him for the wrongful detention of his vehicle and

sought damages in the sum of $52,000. The matter having been heard, the Court dismissed Mr. James' claim for wrongful arrest.

[3] In relation to the counterclaim for wrongful detention, the Court found that Mr. Brown had failed to prove that the vehicle was wrongfully detained. The Court also found as a fact that Mr. Brown did not seek to retrieve his vehicle from Mr. James, but sought instead to be compensated for the full value of the vehicle.

[4] More importantly, the Court was not of the view that Mr. Brown had proven on a balance of probability that Mr. James is retaining his vehicle against his wishes. The Court expressed the view that it was for Mr. Brown to retrieve his vehicle; his counterclaim was dismissed.

[5] The Court delivered a written judgment.

[6] Thereafter, Mr. Brown filed an Application together with a supporting affidavit and sought to have the Court reopen the case. Mr. Brown stated in his affidavit in support, that judgment having been delivered, he went to Mr. James' business place where he saw that his Toyota Rav4 was in a deplorable condition and it had not been repaired since he had last seen it. In fact, it had deteriorated badly.

[7] Mr. James filed an affidavit in opposition to Mr. Brown's application.

[8] The issues that arise for the Court's consideration are as follows:

(a) Whether the Court has jurisdiction reopen the case after judgment has been rendered, in order to admit fresh evidence.

(b) Whether it is proper for the Court to order the case at bar to be reopened.

[9] **Mr. Ralph Francis' submissions**

Learned Counsel Mr. Ralph Francis stated that it is settled law that the High Court, like the Court of Appeal, has jurisdiction to reopen proceedings after they have been concluded to hear more evidence or further argument; **Seray-Wurie v Hackney London Borough**

Council (2002) 3AER 448. The power should only be executed where there has been a significant injustice and where there is no alternative remedy.

[10] Learned Counsel Mr. Francis, in support of the application to reopen the case, stated that in a counterclaim in which the first defendant sought compensation from the claimant for having deprived him of a Rav4 motor vehicle, it was the judgment of the Court that "Mr. Brown is therefore advised to retrieve his vehicle". The Court's decision, stated learned Counsel Mr. Francis, was influenced by the evidence of Mr. Jarvis that "he has repaired the vehicle and has replaced the missing parts". The evidence of Mr. Jarvis that the vehicle had been repaired since the issue of the claim was never advanced before the trial, neither in his reply to defence and defence to counterclaim nor in his witness statement. Mr. Brown in his evidence was not aware that the vehicle had been repaired. At the date of the issue of proceedings by Mr. Jarvis, the vehicle had not been repaired. Mr. Brown in his evidence was not aware that the vehicle had been repaired. At the date of the issue of proceedings by Mr. Jarvis the vehicle had not been repaired.

[11] Learned Counsel Mr. Francis said that judgment having been delivered; Mr. Brown proceeded to the business premises of Mr. Jarvis only to find that the Rav4 was not in the condition suggested. Furthermore, the condition of the vehicle, if returned to Mr. Brown would effectively make meaningless the judgment of the Court.

[12] It is on this basis that Mr. Brown's application has been made. Mr. Francis submitted that Mr. Brown ought to be allowed by the Court to have the case reopened so that he could lead more evidence.

[13] Learned Counsel Mr. Francis said that the hearing of fresh evidence would allow for the objectives of the Rules of the Supreme Court to be met in that it is far less expensive and in keeping with the rules of natural justice for the proceedings to be reopened in the High Court. The judgment of the Court was delivered on the 6th June 2006 and Mr. Brown's application was filed on the 14th June 2006. Clearly, there can be no issue of delay.

[14] **Ms. Rhodette Browne's submissions**

Learned Counsel Ms. Rhodette Browne stated that it is well established that the High Court has an inherent jurisdiction to control its procedures so as to ensure its proceedings are not abused and to achieve injustice: **Bremer Vulkan Schiffbau and Maschinenfabrik v South India Shipping Corporation Ltd. [1981] AC at 977,** per Lord Diplock. In the interest of certainty, however, it is noted that the High Court extends the ambit of its inherent jurisdiction with some caution.

[15] Like the Court of Appeal, the High Court has an inherent jurisdiction to reopen proceedings after they have been concluded to hear more evidence or further argument. However, this power should only be exercised where there has been a significant injustice and where there is no alternative remedy. In **Seray-Wurie v Hackney London Borough Council** ibid, it was held that the Court should exercise strong control over any application to reopen proceedings, so as to protect those who were entitled reasonably to believe that the litigation was already at an end. In this case, such an application was refused since the claimant was relying on grounds that had been argued before the first judge and did not show cause for reopening the proceedings. The requirements therefore to be satisfied have been stringently applied in the Court.

[16] It is of further note that even if the Court decides to reopen proceedings, strong grounds still need to be shown before fresh evidence will be admitted. Certainly since the introduction of the Civil Procedure Rules 2000, the Court must have regard to Part 1, the Overriding Objective in exercising its discretion in this regard. However, for further assistance, resort can be had to the principles in **Ladd v Marshall [1954] WLR 1489**. Under these principles, which related to admitting fresh evidence on appeal, the evidence should be one that:

(i) could not have been obtained with reasonable diligence for use at the hearing in the lower Court;

(ii) would probably have an important influence on the result; and

(iii) was apparently credible.

[17] Learned Counsel Ms. Browne referred to paragraph 45, page 8 of the judgment, where the trial judge noted as follows:

> "I am of the opinion that Mr. Brown has not pursued his counterclaim with any vigor and I put this down to the fact that he admitted that he did not seek to ascertain whether his vehicle was repaired. I find this strange to say the least. Surely he ought to have taken steps to ascertain the present state of the vehicle".

[18] Ms. Browne also stated that in paragraph 46, the trial judge goes on to say that:

> "Mr. James stated that he repaired the vehicle and has replaced the missing parts. His evidence on this aspect of the matter was not successfully controverted. I have no choice but to accept his evidence." "It is rather unfortunate that Mr. Browne has not seen fit to retrieve the vehicle from Mr. James but rather seeks to be compensated to the extent of the full value of the vehicle". (Paragraph 47).

[19] Learned Counsel Ms. Browne stated that by Mr. Brown's application, he is now seeking at this point to prove his counterclaim, the very counterclaim for the value of the subject vehicle which was not pursued with any vigor at the trial. From a perusal of the law laid out above, it is clear that the inherent jurisdiction of the Court ought not to be exercised to allow a litigant to have a 'second – bite' at the cherry. The evidence sought to be admitted could certainly have been reasonably admitted at trial had the applicant sought to ascertain whether at the relevant time the vehicle was in fact repaired. The applicant lost that opportunity and ought not now, to be allowed to lead evidence, at this stage. In any event, Mr. James maintains that at the time of the trial, his evidence was a true representation of the facts.

[20] Ms. Browne learned Counsel stated that Mr. Brown has not shown exceptional circumstances sufficient for the exercise of the Court's inherent jurisdiction to reopen proceedings. No significant injustice has been proved and there was an alternative remedy available to him i.e. to appeal the judgment.

[21] Of further significance is the fact that the only time, and after the judgment, that the applicant sought to retrieve his vehicle, was on the 6th day of July 2006, when he proceeded to Mr. James' business place, the respondent himself being off-island. No other attempts have been made to retrieve the vehicle from the respondent himself. Mr. Brown, rather than pursuing enforcement proceedings, has instead chosen to request the reopening of the proceedings.

[22] **Ms. Carla Brooks-Harris' submissions**

Learned Crown Counsel Ms. Carla Brooks-Harris referred the Court to **Taylor and Another v Lawrence and Another (2002) All ER 353** where it was held that the Court of Appeal has a residual jurisdiction to reopen an appeal which it had already determined in order to avoid real injustice, in exceptional circumstances.

[23] Further, in **Seray-Wurie v Hackney London Borough Council** ibid, it was held that "the High Court has jurisdiction to reopen an appeal that it had already determined so as to avoid real injustice in exceptional circumstances". It was further held that the power should be exercised where it was clearly established that a significant injustice had probably occurred and that there was no alternative remedy.

[24] Learned Crown Counsel Mrs. Brooks-Harris said that notwithstanding the above mentioned principles, it should be noted that it is a fundamental principle at common law that the outcome of litigation should be final. See **Ladd v Marshall** ibid.

[25] In **Ampthill Peerage Case [1976] 2 All ER 411,** Lord Wilberforce stated that:

> 'English law, and it is safe to say, all comparable legal systems, place high in the category of essential principles that which requires that limits be placed on the right of citizens to open or to reopen disputes. The principle which we find in the (Legitimacy Declaration Act 1858) is the same principle as that which requires judgments in the courts to be binding, and that which prohibits litigation after the expiry of limitation periods. Any determination of disputable fact may, the law recognises, be imperfect: the law aims at providing the best and safest solution

compatible with human fallibility and having reached that solution it closes the book. The law knows, and we all know, that sometimes fresh material may be found, which perhaps might lead to a different result, but in the interest of peace, certainty and security it prevents further enquiry. It is said that in doing this, the law is preferring justice to truth. That may be so; these values cannot always coincide. The law does its best to reduce the gap. But there are cases where the certainty of justice prevails over the possibility of truth (I do not say that this is such a case), and these are cases where the law must be attended with safeguard: so the law allows appeals; so the law, exceptionally, allows appeals out of time; so the law still more exceptionally allows judgments to be attacked on the ground of fraud; so limitation period may, exceptionally be extended. But these are exceptions to a general rule of high public importance, and as all the cases show, they are reserved for rare and limited cases, where the facts justifying them can be strictly proved".

[26] Ms. Carla Brooks-Harris learned Crown Counsel stated that the Court, in the present case which sits as a Court of first instance, does not have the power to reopen a case after judgment has been delivered. Ms. Brooks-Harris further stated that what Mr. Brown should have done was to use fresh evidence to challenge the decision by way of an appeal to the Court of Appeal. The **Seray-Wurie** and the **Taylor's** cases mentioned above, can be distinguished from the case at bar, because the principles laid down in those cases apply to the Court of Appeal and the High Court in its appellate jurisdiction and not at its first instance.

[27] Alternatively, Ms. Brooks-Harris submitted that if the Court accepts that it has the power to reopen the matter, then the next issue for determination is whether the fresh evidence which Mr. Brown is seeking to admit in support of its application comes within the ambit of exceptional circumstances. In the judgment dated 6th day of July 2006, Madam Justice Blenman dismissed the applicant's counterclaim against the respondent and order that the applicant retrieve his vehicle from Mr. James. Mr. Brown is now seeking to adduce fresh

evidence to show that the vehicle was not repaired as stated by Mr. James and that the vehicle is in fact in a deplorable condition.

[28] Learned Crown Counsel Ms. Brooks-Harris said that in **Ladd v Marshall** ibid, Lord Denning stated that "it is very rare that application is made to this Court for a new trial on the ground that a witness has told a lie". It was further held that certain conditions have to be satisfied in order for fresh evidence to be adduced. These conditions are as follows: The evidence must be:

(1) evidence which could not have been obtained with reasonable diligence for use at trial;
(2) such that, if given it would probably have an important influence on the result of the case though it need not be decisive;
(3) such as is presumably to be delivered.

[29] Learned Crown Counsel said that the fresh evidence which Mr. Brown is now seeking to show that the vehicle was not repaired does not satisfy the first condition. Mr. Brown could and should have challenged at the time of the hearing that the vehicle was not repaired and since he could reasonably have become aware as to the state or condition of the vehicle, Mrs. Brooks-Harris therefore submitted that he is precluded from relying on this fresh evidence. His application should be dismissed.

[30] **Court's analysis and findings**

I have given deliberate consideration to the submissions of all learned Counsel's.

[31] By way of introduction, it is prudent to state that the substantive matter was heard and determined by the same Court, as the one that is constituted to hear this application. This is said for the sole reason of conveying that the Court is in a particularly advantageous position to determine this application, having been seized of the entire matter throughout; and having heard the evidence and assessed the credibility and reliability of the witnesses. The Court digresses to state that it was easy for the Court to make the findings of fact it did since the substantive matter that engaged the Court was a simple one. The relevant law

also is not complex. The Court concluded that, by way of emphasis, Mr. James was not wrongfully detaining Mr. Brown's vehicle rather it was Mr. Brown who did not seek to retrieve the vehicle.

[32] Returning to the application at hand, it was against that background that Mr. Brown sought to have the Court reopen the case. He wanted to be able to lead fresh evidence to show that after the Court had delivered its judgment, he went to Mr. James' business place and to indicate to the Court the condition in which he says the vehicle is in.

[33] In his affidavit, Mr. Brown stated that "when he went to Mr. James' business place on the 6th day of July 2006 and that the condition of the vehicle had deteriorated greatly since he had last seen it. He has been advised and greatly believed that the condition of the vehicle is such that it cannot now be repaired'.

[34] In his affidavit in opposition, Mr. James denies that the vehicle is in a deplorable condition. He says that he was out of the country on the 6th day of July 2006 and on his return he was told that Mr. Brown went to his business place and was seen interfering with the vehicle. More importantly, Mr. James says that "it is his view that Mr. Brown has never desired the return of the vehicle but rather prefers and has always preferred to have the value of the vehicle paid over to him and that he would do all in his power to serve that outcome".

[35] **Court's jurisdiction to reopen case**

The Court proposes to address the first issue. I have read the very helpful submissions of all Counsel in relation to the High Court's inherent jurisdiction to reopen a case after final judgment has been given. The Court has also paid cognisance to the very instructive cases of **Seray-Wurie v Hackney London Borough Council** ibid and **Taylor v Lawrence** ibid which seem to hold that the Court when sitting as an appellate Court has jurisdiction to reopen a case, in exceptional circumstances and in order to avoid real injustice. The Court accepts that the cases also are authorities for the proposition that this is a jurisdiction that should be exercised very sparingly. In the case at bar, there is an important matter on

which the Court has not been assisted, that is when can the High Court be said to be sitting as an appellate Court. Mrs. Brooks-Harris says the Court is not in this application, sitting as an appellate Court. However, the Court has not been presented with any legal authorities on which it could properly conclude that in hearing the Notice of application, the Court is sitting as an appellate Court. The Court is therefore not so persuaded. The Court is inclined to accept the position advocated by Mrs. Brooks-Harris. It is the Court's view that the onus to prove that the Court is sitting, in the present application, on appeal. Mr. Brown has failed to establish this.

[36] Even if the Court were to form the view that this is so sitting, an ancillary question arises for the Court's consideration that is whether this is a proper case on which the Court should grant the application and reopen the case.

[37] In determining whether the Court should exercise its jurisdiction in this matter, the Court agrees with Crown Counsel Mrs. Brooks-Harris that the principles stated in **Ladd v Marshall** ibid and **Ampthill Peerage Case** are applicable. Therefore, even if the Court is sitting as an appellate Court, it has to be satisfied that the evidence which Mr. Brown is seeking to have the Court hear in the opening of the case, could not have been obtained with reasonable diligence for use at trial. It must also be shown that that evidence, had it been given, would probably have an important influence on the result of the case though it need not be decisive. Also, Mr. Brown is required to satisfy the Court that he does not have an alternative remedy.

[38] The Court is of the view that Mr. Brown in his affidavit, filed in support of his application, fails to address the two important aspects of an application in order to buttress his application to reopen the case, namely that he has no alternative remedy and that the evidence which he is now seeking to lead could not have been obtained with reasonable diligence. This failure is fatal to his application. The Court shares the view with Mrs. Brooks-Harris that the evidence which Mr. Brown now seeks to adduce, namely that the vehicle was not repaired, could have been obtained had he been reasonably diligent in the prosecution of his counterclaim.

[39] In any event, the Court is far from satisfied that had Mr. Brown adduced fresh evidence, it would have had an important influence on the result of the case. On those grounds the Court would decline to exercise its jurisdiction, if any, to reopen the case in order to enable Mr. Brown to lead evidence as to the state of the vehicle.

[40] Further, it seems to me that everything turns on whether the Court should reopen the case to allow evidence to be adduced that can in no way impact on the original judgment. The Court accepts the submissions of both learned Counsel Ms. Browne and learned Crown Counsel Mrs. Brooks-Harris that this is not an appropriate case for the Court to order that fresh evidence be led as to the condition of the vehicle.

[41] It is clear that the Court adjudged that Mr. Brown had failed to prove his counterclaim for wrongful detention. Learned Counsel Ms. Browne is correct in saying that Mr. Brown is now seeking to prove his counterclaim and by doing so get "a second bite at the cherry". There is no doubt at all that if Mr. Brown was dissatisfied with the judgment of the Court he ought to have appealed. It is not open to him to seek to have the Court reopen the case in an effort for him to prove his case where the Court has clearly stated that he has not.

[42] It is the law that in order to prove the wrongful detention of a chattel, the claimant is required to prove that a person was in possession of another's goods and refused to give them up. There was no doubt that Mr. James was wrongfully in possession of Mr. Brown's vehicle. However, Mr. Brown had not led any credible or reliable evidence from which the Court could conclude that Mr. James was refusing to deliver the vehicle to Mr. Brown, or was in any way impeding Mr. Brown's retrieval of the vehicle. To the contrary, the Court found as a fact that Mr. Brown did not seek to retrieve his vehicle.

[43] In order to have succeeded in his counterclaim, Mr. Brown needed to prove that Mr. James was wrongfully detaining his car. At common law, wrongful detention is evidenced by the claimant proving that he demanded the return of his good and that the defendant refused to deliver up the goods. Usually the redress claimed is the return of the chattel or payment of its value, together with damages for its detention. See **Rosenthal v Aldertion & Sons**

[1946] KB 374. For all of the above reasons the Court dismissed Mr. Brown's counterclaim. In passing, the Court opined that Mr. Brown should seek to retrieve his vehicle. This latter statement was clearly obiter.

[44] In any event, the matters of which Mr. Brown seeks to lead fresh evidence do not go towards the root of the matter, namely the Court's conclusion that he had failed to prove that Mr. James was detaining his car. He does not seek to challenge the judgment of the Court which dismissed the counterclaim, but rather to have the Court grant relief to him even though his counterclaim was dismissed.

[45] By way of emphasis, the Court is in agreement with both learned Crown Counsel Mrs. Brooks-Harris that had Mr. Brown required to challenge the judgment of the Court he ought to have proceeded by way of an appeal to the Court of Appeal. The situation could have been different had he succeeded on his counterclaim and the Court had ordered the return of the vehicle. In those circumstances, it is arguable that the Court may have been inclined to hear fresh evidence which shows, if that is contention, that the vehicle was no longer in a good state and that damages should have been ordered instead of the return of the vehicle. That however, was not the judgment of the Court.

[46] Mr. Brown having not succeeded on the counterclaim is now seeking to lead new evidence about the condition in which he found the car. With respect, that bit of evidence can in no way impact on the Court's rulings that there was no wrongful detention of the car. Once his counterclaim is dismissed, it is the law that the Court has no jurisdiction to stipulate reliefs, be they in the form of the return of the car or damages in lieu of the return.

[47] The Court is driven to the conclusion that Mr. Brown has utilised the incorrect procedure. As stated earlier, he ought to have filed an appeal to the higher Court, if he was dissatisfied with the Court's dismissal of his counterclaim.

[48] **Conclusion**

In view of the foregoing reasons, Mr. Edson Brown's application to have the Court reopen the case is dismissed.

[49] The Court orders that Mr. Edson Brown pays Mr. Otwell James and the Attorney General, each, costs assessed in the sum of $2,000. No order as to costs is made in favour of the Attorney General, as agreed.

[50] The Court gratefully acknowledges the assistance of all learned Counsel.

Louise Esther Blenman
High Court Judge