IN THE CARIBBEAN COURT OF JUSTICE
APPELLATE JURISDICTION

ON APPEAL FROM THE COURT OF APPEAL OF THE EASTERN CARIBBEAN SUPREME COURT (SAINT LUCIA)

CCJ Appeal No LCCV2024/002
LC Civil Appeal No SLUHCVAP2022/019

BETWEEN

PETER HIPPOLYTE
MICHAEL AUGUSTIN
MARTINUS ALEXANDER **APPELLANTS**

AND

MAGISTRATE BERTLYN REYNOLDS
FINANCIAL INTELLIGENCE AUTHORITY **RESPONDENTS**

Before: **Mr Justice Saunders, President**
Mr Justice Anderson
Mme Justice Rajnauth-Lee
Mr Justice Barrow
Mr Justice Jamadar

Date of Judgment: **13 May 2025**

Appearances

Mr Horace Renison Fraser for the Appellants

Mr Seryozha Cenac and Mr George K Charlemagne for the Respondents

Criminal law – Proceeds of crime – Seizure of cash – Whether the retention of seized cash by the police was lawful – Whether the re-seizure of cash was lawful – Whether the magistrate's Continued Detention Order was ultra vires – Criminal Code, Cap 3.01 – Proceeds of Crime Act, Cap 3.04.

SUMMARY

This appeal in judicial review proceedings arises out of an original seizure of USD252,755 and EUR99,440 in cash ('the cash') on 26 May 2010. Criminal proceedings were originally commenced against Mr Hippolyte and others ('the appellants') under s 441 of the Criminal Code of St Lucia, but these proceedings were discontinued on 5 March 2019 after the said section was found to be unconstitutional on the ground that it offended the presumption of innocence. The cash remained in police custody until it was re-seized by a financial investigator on 24 April 2019. A Continued Detention Order ('CDO') was issued by a magistrate [the First Respondent] in keeping with s 29A of the Proceeds of Crime Act on 26 April 2019. The appellants opposed the granting of the CDO and sought judicial review. The High Court quashed the CDO. On appeal, however, the Court of Appeal reversed the High Court's decision and restored the CDO. The appellants then appealed to the Caribbean Court of Justice ('CCJ').

The appeal to the CCJ along with a challenge on costs, consisted of two grounds that disputed respectively (i) the existence of evidence to prove that a re-seizure had occurred (irrationality) and (ii) the lawfulness of the magistrate's decision to accept that there had been a re-seizure within the statutorily prescribed time (illegality). The relief the appellants sought was that the money be released to them.

On 20 February 2025, the CCJ dismissed the appeal with reasons to follow.

Barrow J in delivering the reasons of the Court, rejected the appellants' submission that there was no evidence that established that a re-seizure of the money had occurred. The Court found that the cash was always in police custody and that it was sensible to regard re-seizure as capable of being effected by a simple surrender or handing over from the police officer who held the monies as the charging officer in the discontinued criminal proceedings, to another police officer who was acting as a financial investigator of the Financial Intelligence Authority. The Court referenced *R (Kingdom Corporate Ltd) v Revenue and Customs Commissioners* in finding that where there had been a lawful seizure of property

re-seizure was permissible without the ceremony of first handing the property over to the original owner and then re-seizing it. The Court therefore confirmed the decision of the Court of Appeal to reject the argument that there was no evidence of re-seizure.

The appellants contended that the police had unlawfully retained the cash after the discontinuance of the criminal proceedings and that this alleged unlawfulness rendered the subsequent re-seizure also unlawful and an abuse of process. The Court however, upheld the Court of Appeal's reasoning, stating that there was no automatic duty to return the cash upon discontinuance of the criminal proceedings and that the police had acted reasonably in retaining it for a period while assessing the next steps. The judge noted that what is a reasonable period of detention will depend on the circumstances of the case. The Court also noted that the appellants never demanded the return of the cash during the period of alleged unlawful retention and there was therefore nothing to indicate that, following the dismissal of the criminal proceedings, the cash was being withheld from them. Indeed, it may well have served the appellants' purposes to have the police keep the cash at least for some time.

On the issue of whether the magistrate's order was *ultra vires*, the Court rejected the appellants' argument that the magistrate had exceeded her jurisdiction by issuing the CDO. The Court noted that the financial investigator of the Financial Intelligence Authority ('FIA') lawfully seized the funds under the Proceeds of Crimes Act ('POCA'), and that s 29A of that Act expressly empowered the magistrate to authorise continued detention. The Court dismissed the contention that the Commissioner of Police was the true applicant for the CDO, noting that while the application was initially mis-headed under the Commissioner's name, it was in fact WPC Jules who had made the application, a point confirmed by the reasons for decision of the Magistrate to whom had been made an oral request to amend same. No reason was offered why the standard practice, as it seemed, of using the title of the COP to head court documents should be fatal in this case, when the magistrate was satisfied that the true applicant was a lawfully authorised person.

The Court also dismissed the appellants' challenge to the costs order. The Court reaffirmed that the principle that costs do not automatically follow the event in constitutional law

matters applies to claims of a private citizen seeking to enforce their fundamental rights and not to public law claims generally. The Court rejected the appellants' attempt to rely on *Spencer v Attorney General of Antigua and Barbuda* by claiming that their case was a constitutional claim asserting a right to property. The Court identified the proceedings as an appeal by way of judicial review challenging a court order and not a constitutional law claim. The Court noted that the appellants and the Court of Appeal did not reference r 56.11(6) of the Civil Procedure Rules (Rev Ed) 2023, which speaks to costs in applications for an administrative order.

The Court dismissed the appeal, affirming the Court of Appeal's ruling that the re-seizure and the CDO were lawful. Costs were awarded to the respondents.

Cases referred to:

A-G v Hippolyte LC 2016 CA 4 (CARILAW), (4 April 2016); *Chief Constable of Merseyside Police v Hickman* [2006] EWHC 451 (Admin); *Commissioners for Her Majesty's Revenue and Customs v Mann* [2021] EWHC 1182 (Admin); *Daniel v A-G of Saint Vincent and the Grenadines* VC 2019 HC 46 (CARILAW), (8 October 2019); *Ghani v Jones* [1970] 1 QB 693; *Henderson v Henderson* (1843) 3 Hare 100, 67 ER 313; *His Majesty's Procurator General in Egypt v Deutsches Kohlen Depot Gesellschaft* [1919] AC 291; *Marcel v Commissioner of Police of the Metropolis* [1992] 1 All ER 72; *R v Uxbridge Magistrates' Court ex p Henry* [1994] Crim LR 581; *R (Cook) v Serious Organised Crime Agency* [2011] 1 WLR 144; *R (HM) v Secretary of State for the Home Department* [2022] 1 WLR 5030; *R (Iqbal) v South Bedfordshire Magistrates' Court* [2011] EWHC 705 (Admin); *R (Kingdom Corporate Ltd) v Revenue and Customs Commissioners* [2024] 1 WLR 2157; *R (Merida Oil Traders Ltd) v Central Criminal Court* [2017] 1 WLR 3680; *R (Walsh) v HM Customs and Excise* [2001] EWHC 426 (Admin); *Reynolds v Hippolyte* LC 2024 CA 5 (CARILAW), (16 April 2024); *Spencer v A-G of Antigua and Barbuda* (AG CA, 8 April 1998); *Sunrise Resources Inc v Bluestar Resources Inc* [2025] CCJ 3 (AJ) (GY).

Legislation referred to:

Saint Lucia – Criminal Code, Cap 3.01, Eastern Caribbean Supreme Court Civil Procedure Rules (Rev Ed) 2023, Proceeds of Crime Act, Cap 3.04; **United Kingdom** – Police and Criminal Evidence Act 1984.

REASONS FOR DECISION

Reasons:

BARROW J:

Introduction

[1] This appeal in judicial review proceedings arises out of an original seizure of USD252,755 and EUR99,440 in cash from the motor vehicle in which the appellants were travelling in the early morning of 26 May 2010 in Vieux Fort District, Saint Lucia. On 31 December 2018, the Director of Public Prosecutions ('DPP') discontinued criminal proceedings on a charge for possession of the stated sums reasonably suspected to have been unlawfully obtained contrary to s 441 of the Criminal Code,[1] in connection with which the cash was being held as evidence. The discontinuance came after the Court of Appeal upheld a High Court decision that the section was unconstitutional because it offended the presumption of innocence[2] by requiring the defendant to prove the legality of their possession or be convicted.

[2] The monies remained in police custody. On 24 April 2019, a financial investigator seized[3] the cash from the police officer who had been detaining it. On 26 April 2019, a Continued Detention Order ('CDO') issued by Magistrate Bertlyn Reynolds, the first named respondent ('the magistrate'), ordered that the funds be detained by the Financial Intelligence Authority ('FIA'), the second named respondent. The CDO

[1] Cap 3.01.
[2] *A-G v Hippolyte* LC 2016 CA 4 (CARILAW), (4 April 2016).
[3] This seizure is sometimes referred to as a reseizure to distinguish it from the original seizure in May 2010.

was made pursuant to s 29A of the Proceeds of Crime Act ('POCA')[4] and was for the maximum three-month period authorised by the law.[5]

[3] The appellants had appeared by counsel to oppose the granting of the CDO. Dissatisfied with its granting, they sought judicial review, and a High Court judge quashed the order. On appeal, the Court of Appeal reversed the High Court judge and restored the magistrate's detention order. Now, almost 15 years after the original seizure and more than 5 years after the grant of the three-month duration detention order, there is no indication on record that there has been any movement in the forfeiture proceedings stated to have been adjourned on 31 October 2019.

[4] Following the hearing of this appeal on 19 February 2025, on 20 February 2025 this Court made the following orders:

1. The appeal is dismissed, with reasons to follow.
2. Costs are reserved.

[5] In keeping with those orders, this Court now provides the reasons for its decision.

The Limit of Judicial Review

[6] It was recognised by the appellants that the current proceedings are not an appeal on the merits against a forfeiture order but, as emphasised by Pereira CJ, is an appeal in a claim for judicial review in which a challenge is limited to grounds of illegality, irrationality, unreasonableness and procedural impropriety. Appropriately, the appellants, along with challenging the award of costs, confined their substantive appeal to two grounds, disputing (i) the existence of evidence to prove that a re-seizure had occurred (irrationality) and (ii) the lawfulness of the magistrate's

[4] Cap 3.04.
[5] ibid at s 29A(3)(b). Continued detention orders may be made for a total period not exceeding two years from the date of the order first made by a magistrate.

decision to accept that there had been a re-seizure within the statutorily prescribed time (illegality). The relief the appellants seek is that the money be released to them.

The Seizure

[7] The appeal grew in the submissions to address more than the contention in the grounds of appeal that there was no evidence that a re-seizure occurred. The appellants extended their case to contending that a re-seizure was unlawful and an abuse of process, and that it was *ultra vires* the power of the magistrate under s 29A of the POCA to issue a Continued Detention Order in support of a seizure and detention that was unlawful.

[8] The context of the re-seizure is that after the DPP discontinued the criminal case on 31 December 2018, the money simply remained in the possession of the police. The record does not indicate that the law enforcement authorities took any steps to hand over the monies. Similarly, it does not indicate that the appellants made any request for its release, for which s 29A (5)(a)(i) of the POCA provides. On 5 March 2019, a formal Order of discontinuance of the High Court criminal proceedings against the appellants was entered following a hearing in open court. There was no appearance by the appellants. And still no request for the money – neither to the High Court judge nor the police. As mentioned, on 24 April 2019, WPC Jules acting pursuant to s 29A of the POCA in the capacity of an investigator of the FIA formally seized the monies from Corporal James, who had held them in connection with the criminal proceedings. On 25 April, WPC Jules applied for a CDO and, following a contested hearing, on 26 April the magistrate granted the order.

[9] The heart of the case for the appellants is that upon the filing by the DPP of the notice of discontinuance of the criminal proceedings, in December 2018, the continued detention or retention of the funds by the police was unlawful. The re-seizure of the funds following that unlawful retention, they say, was necessarily

unlawful and a magistrate's order pursuant to s 29A of the POCA for its detention was *ultra vires*. Section 29A provides as follows:

> 29A. Seizure and Detention of Cash
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> (1) A police officer, of the rank of corporal or above, or a financial investigator of the Financial Intelligence Authority, may seize and detain, in accordance with this Part, any cash in Saint Lucia if the officer or investigator has reasonable grounds for suspecting that it directly or indirectly represents any person's proceeds of criminal conduct or is intended by any person for use in any criminal conduct. *(Substituted by Act 14 of 2013)*
>
> (2) Cash seized by virtue of this section must not be detained for more than seventy two hours unless its continued detention is authorized by an order made by a Magistrate; and no such order must be made unless the Magistrate is satisfied –
>
> (a) that there are reasonable grounds for the suspicion mentioned in subsection (1); and
>
> (b) that continued detention of the cash is justified while its origin or derivation is further investigated or consideration is given to the institution, whether in Saint Lucia or elsewhere, of criminal proceedings against any person for an offence with which the cash is connected.
>
> *(Substituted by Act 14 of 2013)*
>
> (3) Any order under subsection (2) must authorize the continued detention of the cash to which it relates for such period, not exceeding three months beginning with the date of the order, as may be specified in the order; and a Court of summary jurisdiction, if satisfied as to the matters mentioned in that subsection, may thereafter from time to time by order authorize the further detention of the cash except that –
>
> (a) no period of detention specified in such an order must exceed three months beginning with the date of the order; and
>
> (b) the total period of detention must not exceed two years from the date of the order under subsection (2).

(4) Any application for an order under subsection (2) or (3) shall be made by a police officer of the rank of corporal or above or a financial investigator of the Financial Intelligence Authority.
(Substituted by Act 14 of 2013)

(5) At any time while cash is detained by virtue of this section –

(a) a Court of summary jurisdiction may direct its release if satisfied –

(i) on an application made by the person from whom it was seized or a person by or on whose behalf it was being imported or exported, that there are no, or are no longer, any such grounds for its detention as are mentioned in subsection (2); or

(ii) on an application made by any other person, that detention of the cash is not for that or any other reason justified; and

(b) the Commissioner of Police or any police officer authorized by him or her may release the cash if satisfied that its detention is no longer justified but shall first notify the magistrate or court of summary jurisdiction under whose order it is being detained. *(Substituted by Act 18 of 2023)*

(6) Cash detained by virtue of this section must not be released until any proceedings pursuant to the application or, as the case may be, the proceedings for that offence have been concluded.
(Inserted by Act 15 of 2011)

The Evidence of Re-seizure

[10] It is straightforward to dispose of the factual foundation of this ground that there was no evidence of the re-seizure of the funds by WPC Jules. This ground could properly only have been advanced in judicial review proceedings as an assertion that it was irrational for the magistrate to decide that there was evidence of a re-seizure (as opposed to an assertion challenging the merits of the decision), and in argument irrationality was advanced. The Court of Appeal found[6] there was sufficient evidence for the magistrate to reach the decision, as a matter of fact, that there had

[6] *Reynolds v Hippolyte* LC 2024 CA 5 (CARILAW), (16 April 2024) at [57].

been a re-seizure based on the affidavit of the police officer and the exhibits attached thereto, including statements by various officials.

[11] It is borne in mind that the funds were always in police custody and, therefore, it would be eminently sensible to regard re-seizure as capable of being effected by a simple surrender or handing over from the police officer, Corporal Jones, who held the monies as the charging officer in the discontinued criminal proceedings, to the other police officer, WPC Jules, who was acting as an investigator of the FIA. There was no need for moving the physical cash and nothing more would have been needed than respective statements by the two officers of surrender and of assumption of responsibility, with other formalities or practicalities being internally satisfied. This makes inconsequential the appellants' submission that WPC Jules gave no evidence of what her act of seizure entailed, and this is confirmed by the decision next considered.

[12] The English Divisional Court in *R (Kingdom Corporate Ltd) v Revenue and Customs Commissioners*[7] discusses unlawfulness and re-seizure and examines their treatment in several decisions. In *Kingdom Corporate Ltd*, the legislation required that an application to the magistrate for a detention order had to be made within a stated time. The authorities lodged the application within the stated time, in the presence of the claimant but, because the magistrates' courts were occupied, by the time they got a hearing and obtained the order for detention, it was 12 minutes beyond the time limit. Subsequently, it was conceded that the belated detention order, therefore, was invalid and this made unlawful the original detention for which the order had been sought. The claimants demanded the return of their money, and this was resisted and instead there was a re-seizure in a 'ceremony' at the police station of which the claimants were informed and upon which they did not attend.

[7] [2024] 1 WLR 2157.

[13] After considering relevant authorities, including those cited by the appellants in the instant proceedings[8], the court confirmed the principle[9] that if there had been an unlawful seizure or a wrongful retention, then there had to be a surrender of the object to the claimants, even if this was followed by the immediate re-seizure of the money from the claimant.[10] The point of this requirement was that an unlawful detention was an abuse of process, and such abuse was to be discouraged by denying to the detaining authority any benefit from the improper exercise of the power given by law of seizing property, even if it was a case of a minimal breach of the stated time requirements authorising detention of property. The case is clear, however, that where there had been a lawful seizure of property, the re-seizure was permissible without the ceremony of first handing the property over and then re-seizing it.[11] Therefore, this case confirms the decision in the instant case of the Court of Appeal[12] rejecting the argument that there was no evidence of reseizure.

Lawfulness of the Re-seizure

[14] Argument on the ground disputing the fact of re-seizure also asserts that it was unlawful for the police to retain the funds after the filing of the notice of discontinuance of the criminal proceedings. As discussed above, if unlawful retention was established, it would support the appellants' contention that it was an abuse of process for the funds to be re-seized because to uphold such a re-seizure would require overlooking or excusing the earlier, underlying unlawful retention. That unlawful retention, the appellants submit, should be sanctioned by an order for the funds to be released rather than be supported and condoned by an order for its continued detention.

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[8] *R v Uxbridge Magistrates' Court ex p Henry* [1994] Crim LR 581; *R (Walsh) v HM Customs and Excise* [2001] EWHC 426 (Admin); *Chief Constable of Merseyside Police v Hickman* [2006] EWHC 451 (Admin); *R (Cook) v Serious Organised Crime Agency* [2011] 1 WLR 144; *R (Iqbal) v South Bedfordshire Magistrates Court* [2011] EWHC 705 (Admin); *R (Merida Oil Traders Ltd) v Central Criminal Court* [2017] 1 WLR 3680; *Commissioners for Her Majesty's Revenue and Customs v Mann* [2021] EWHC 1182 (Admin); *R (HM) v Secretary of State for the Home Department* [2022] 1 WLR 5030.
[9] *Kingdom Corporate Ltd* (n 7) at [29], [38].
[10] ibid.
[11] ibid at [38].
[12] *Reynolds* (n 6).

[15] The Court of Appeal gave full consideration in [47] to [55] to whether the detention of the funds allegedly for 115 days between 31 December 2018 and 24 April 2019 was unlawful, as the trial judge had found and reversed that decision for the reasons it summarised. Pereira CJ stated:

> [55] Law enforcement authorities ought to have an opportunity to assess various factors including their ability to defend civil proceedings for the return of the cash, whether the cash can or ought to be seized for the purposes of civil proceedings or any other alternative proceedings, and to facilitate the return of the cash if appropriate, which, contrary to the arguments by counsel for the respondents, cannot practically or reasonably occur immediately after the discontinuance or acquittal. What is a reasonable period of detention will depend on the circumstances of each case and what investigations or arrangements have to be made in that particular case.

[16] Before so concluding, the court had considered relevant principles for determining the lawfulness of the police's retention of the cash. These were stated in *Ghani v Jones*[13] in which the court laid down a five-pronged approach that included that police officers should be allowed the necessary time to complete their investigations or preserve the object for evidence. In the instant case, the trial judge had found that there was "no evidence that any investigation was carried out by the police authority in the interval between discontinuance and the re-seizure of the property by WPC Jules. Therefore, the continued detention of the property by the police was clearly without any lawful authority…"[14]

[17] Against that finding by the trial judge, the Court of Appeal considered the discussion by the magistrate who relied on the authority of *Marcel v Commissioner of Police of the Metropolis*,[15] to decide that following a discontinuance there is no automatic duty to release property to the one from whom it was seized but that the test of police power to retain seized goods is one of necessity. The magistrate also had considered in this regard the English case of *R (Iqbal) v South Bedfordshire Magistrates' Court*[16]

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[13] [1970] 1 QB 693.
[14] *Reynolds* (n 6) at [48].
[15] [1992] 1 All ER 72.
[16] [2011] EWHC 705 (Admin).

in which cash seized was detained under the relevant statutory provision, the Police and Criminal Evidence Act ('PACE'),[17] which conferred power to detain 'so long as is necessary in all the circumstances.'[18] It was decided not to proceed with criminal charges and the claimant was informed of this. Seven days later, a different law enforcement unit re-seized the cash under a different statute, their POCA, and the issue arose as to the lawfulness of the re-seizure. The court decided that the POCA permitted property to be retained for a short period while the position regarding seizure was considered. If within a reasonable time, which should be short, the decision was taken to apply to the court to retain the cash under a different statute, then the statute permitted this to be done without returning the property.

[18] In the instant case, the Court of Appeal observed, the four months taken exceeded the seven days taken in *Iqbal* but the court referred to the fact that the magistrate considered the affidavit of the investigating officers of the police and determined that they acted responsibly in the absence of any court order for restitution or any application for release from the respondents. The magistrate was satisfied with the evidence before her that the police had to liaise with the prosecution to understand the basis of the discontinuance of the criminal proceedings and seek advice on whether the matter was amenable to alternative charges. The magistrate found that they exercised due diligence and acted reasonably in all of the circumstances. The Court of Appeal decided that having regard to the findings of the magistrate, it was not open to the trial judge on an application for judicial review to disregard the magistrate's findings of fact based on the evidence which was before her and to substitute his own.

[19] As the lawfulness of the detention of the property is judged against the standard of abuse of process, there may be added to this reasoning the consideration that the appellants did not make any demand for the funds. The cash had been held by the police as evidence, for almost nine years before it became open to demand its return

[17] Police and Criminal Evidence Act 1984.
[18] ibid s 22.

and it may have been that the appellants did not know what to do with this large amount of cash, which presumably, no bank would take. Rather than the detention amounting to denying possession, it may have benefitted the appellants for the cash to remain where it was until they chose to demand it. Of course, this is pure surmise, not a finding, and comes to mind only in considering whether the magistrate should have presumed the retention of the cash was an abuse of process because it was being detained against their demand.

[20] The respondents relied on *Daniel v Attorney General of Saint Vincent and the Grenadines*[19] to argue that the detention of property does not become wrongful until a demand for its return has been made and refused. That was a claim in civil proceedings, for the tort of detinue, and the re-seizure in this case is also in civil proceedings so its discussion of what makes a detention wrongful could be helpful in considering what makes a detention an abuse of process. The appellants relied on *His Majesty's Procurator General in Egypt v Deutsches Kohlen Depot Gesellschaft*,[20] to argue that once criminal proceedings were discontinued, the police had no power to retain possession of the cash against the superior claim by its owner. The submission overlooks the salient fact that there was not any demand for the cash, so there was no resistance '*against* the superior claim' of the owner (emphasis added).

[21] The attention to formality in this case makes it fitting to observe that it was on 5 March 2019 that the criminal proceedings were formally terminated by an order of a judge in open court and, therefore, the re-seizure on 24 April 2019 was not, as contended, 115 days after the criminal proceedings had ended. Until the order was made by the court, the detention of the funds by the police had the aegis of extant legal proceedings as justification. In which regard also, s 29A(6) states that any cash detained pursuant to criminal proceedings must not be released until any proceedings pursuant to the application or proceedings have been concluded.

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[19] VC 2019 HC 46 (CARILAW), (8 October 2019).
[20] [1919] AC 291.

[22] A further observation is that the exercise by the Court of Appeal of considering pertinent factors in determining whether the continued detention following discontinuance was an abuse of process may be seen as the court allowing a margin of appreciation to law enforcement authorities in our jurisdictions where the requisites of the POCA are not as familiar as in larger jurisdictions. In larger jurisdictions, prosecutions occur more often than, perhaps, once a year and legal departments operate with more trained personnel, the benefit of experience and precedents, and at a quicker pace, enabling decisions to be made more quickly whether to continue detaining cash or return it. This margin of appreciation must not be taken for license, and it does not diminish the force of the requirement of reasonableness as the measure of any delay.

Was the Continued Detention Order Ultra Vires?

[23] As argued, the second ground of appeal directed itself to the proposition that it was the Commissioner of Police who first seized the cash, that he retained it unlawfully for 115 days after the DPP filed his notice of discontinuance of criminal proceedings, and that the purported re-seizure through the instrumentality of WPC Jules was a continuation by the Commissioner of his unlawful retention of the funds. The argument, therefore, was that it was not competent for the magistrate, and it was *ultra vires* her power, to have ordered the continued detention of the funds when that detention would have been a continuance or furtherance of the unlawful detention. *Kingdom Corporate Ltd*[21] is cited as confirming the principle that seizure arising out of an unlawful detention, without a surrender to the owner and re-seizure, was not permissible. That decision, of course, also holds that where the detention or retention was lawful, there may be re-seizure without first surrendering the cash.

[24] Counsel pressed the argument that it was the Commissioner and not the FIA who re-seized the funds and drew attention to the fact that relevant documents in this matter bore the name of the Commissioner, as for instance the order for the CDO which

[21] *Kingdom Corporate Ltd* (n 7).

was headed Commissioner of Police. However, it is clear from the affidavit and exhibits of WPC Jules and the body of the CDO that this officer had identified herself as the person making the application, acting for the FIA, and in the Reasons for Decision of the Magistrate, she is so identified and treated. Thus, in her affidavit in response to the application for judicial review, WPC Jules stated that she acted on behalf of the Director of the FIA in formally seizing the cash and applying for the CDO. She also stated that the police prosecutor, prior to making the application for the continued detention order made an oral application to amend the application by substituting the Commissioner of Police with WPC 565 Dalia Jules of the FIA, as it was that entity which was seizing the cash under s 29A of the POCA. She said the court granted the amendment without opposition of counsel for the respondents. Similarly, in her reasons for decision the magistrate makes clear that Dalia Jules was 'the de facto applicant' who had seized the cash (and there is no need to engage, for present purposes, with the statement which followed that the de jure applicant for the detention order was the Commissioner of Police). The detention order, while still headed by the Commissioner of Police, identified WPC Jules in the body as the applicant for the order.

[25] Manifestly, the CDO was granted on the application of WPC Jules, who identified herself as an investigator for the FIA, and s 29A authorised her as such to apply for and be granted the order. No reason has been offered why the standard practice, as it seems, of using the title of the COP to head court documents – perhaps in familiar 'cut and paste' error -- should be fatal, in this case, to the proceedings when the magistrate was satisfied the true applicant was a lawfully authorised person.

[26] In any case, *Kingdom Corporate Ltd*[22] directly decided that the Revenue Commissioner, the applicant, having failed to get a detention order in time (which rendered unlawful the continued detention but not the earlier seizure) could lawfully re-seize the cash which he held – therefore, from himself.[23] This shows it does not

[22] ibid.
[23] ibid at [33], [38].

matter even if the true applicant for the CDO was the Commissioner (and he was not), because the argument must be rejected that it was unlawful for the Commissioner of Police to re-seize the money from himself. For the future, it must be wondered why, on the hearing before the magistrate for the CDO, in particular when the application was made to substitute WPC Jules as the applicant, and the appellants had the perfect opportunity to object to the application having been filed bearing the name of the Commissioner, they did not object. It does not appear that the applicants raised this objection to the magistrate granting the CDO in their application to the High Court to quash the order. Without deciding the point because it was not argued, it smacks of abuse of process when a party seeks to argue before this Court, for the first time, a ground of objection and appeal that was open to them to argue before a court below and that was part of the reasons for this Court recently refusing leave to appeal in *Sunrise Resources Inc v Bluestar Resources Inc*,[24] the Court stated:

> It is a well-known principle of litigation long ago expounded in *Henderson v Henderson*[25] that a litigant must bring forward in litigation every matter that pertains to their cause of action and will not be permitted to litigate subsequently an issue that with reasonable diligence, they could have advanced in the earlier proceeding.

Costs

[27] The appeal against the order for costs made against the appellants claimed that the Court of Appeal acted contrary to its established rule that costs in public law matters does not follow the event, save in situations where the case lacked merit. The appellants claimed the Court of Appeal fell into error by departing from the rule and failing to state the reasons for the said departure. It is at once observed that the rule relied on is stated to operate in '*public law* matters' (emphasis added). The written submissions of the appellants stated a somewhat different rule, which was that: 'It is accepted that the general principle which we have been applying is not to order costs against a private citizen seeking to enforce his Constitutional rights' : *Baldwin*

[24] [2025] CCJ 3 (AJ) (GY) at [4].
[25] (1843) 3 Hare 100; 67 ER 313 at 319.

Spencer v The Attorney General of Antigua and Barbuda.'[26] But having so stated it, the appellants went on to argue that the court will depart from the general rule (implicitly, only) where there is no cause of action in relation to any breach of a *constitutional or public law* right. The submissions then peaked with the assertion that the appellants were '…seeking to recover property over which they have a possessory right…' and their case was '…therefore distinguishable from the Baldwin Spencer case….'

[28] It requires scant analysis to decide that the appellants' case is not distinguishable from the case in *Spencer* and is fully caught by the statement of principle regarding costs made by Byron CJ in *Spencer*. In that case, the Chief Justice stated:

> It is accepted that the general principle which we have been applying is not to order costs against a private citizen seeking to enforce his Constitutional rights.
>
> However, this is not such a case. The appellant has not alleged that any fundamental rights of his were being invaded. The learned trial Judge and our court are ad idem in concluding that there is no scintilla of a cause of action in relation to any breach of any provision of the constitution.[27]

[29] It was in vain that counsel argued that their case was a claim for recovery of property, because it was not. It was an appeal, in the form of a claim for judicial review, against a court order authorising the detention of property, in connection with court proceedings for its forfeiture. There was no claim or issue of constitutional law in this case and, therefore, no application of the rule as to not awarding costs in proceedings of that nature against an unsuccessful party.

[30] In opposing the appeal as to costs, the respondents submitted r 56.11(6) of the Civil Procedure Rules (Rev Ed) 2023 contains provisions appropriate to be considered in judicial review proceedings. The provision states the general rule is that no order for costs may be made against an applicant for an administrative order unless the court

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[26] (AG CA, 8 April 1998) at 26.
[27] ibid.

considers that the applicant has acted unreasonably in making the application or in the conduct of the application. The respondents submitted that because the court awarded costs to the respondents, it stood to reason they considered it just to depart from the general rule, as the rule permitted.

[31] There are compelling reasons why this Court should not consider the question whether this rule may have been applicable. Foremost, it is inconceivable that the Court of Appeal was unaware of the rule. It is not for this Court to speculate as to the reason why the court did not even mention the rule, and the appropriateness of our not examining the applicability of the rule to these proceedings is supported by the conduct of very experienced counsel for the appellants. Counsel chose not to rely on or even mention r 56.11(6) but chose, instead, to rely on the rule referred to in *Spencer* on costs in constitutional claims. It would be an indulgence to consider that both the Court of Appeal and counsel overlooked the rule, and any faint thought that could be the case disappears having regard to the written submissions. The respondents, in their written submissions identified the rule as applicable which gave the appellants a clear opportunity in their reply submissions to argue that indeed the rule applied and that the appeal court erred in failing to give reasons for departing from the rule. Instead, the appellants completely ignored the rule.

[32] Of course, it must be doubted how far the appellants could have gone with raising a new ground of appeal in reply submissions, but since the respondents were the ones to raise the rule, and properly so in our view, it may have been open to the appellants to seek to place some reliance on it. This thought makes all the more significant that the appellants did not appeal to this Court, on the ground that the Court of Appeal failed to consider and to properly apply r 56.11(6). That this was not a complaint of the appellants must mean that there was no call upon the court to consider the rule. Inescapably, the appellants and the Court of Appeal, in common, did not consider r 56.11(6) had any application.

[33] This Court's conclusion, therefore, is that neither by reference to the practice developed in the judicial decisions of the Eastern Caribbean Supreme Court nor to the practice stated in the Civil Procedure Rules is there ground for interfering with the decision by the Court of Appeal to award costs to the successful party. It follows that there is no reason for this Court to depart from the standard practice of awarding costs to the successful parties, as we now do.

Disposition

[34] The following were the orders of the Court made on 20 February 2025:

1. The appeal is dismissed with reasons to follow.

2. Costs are reserved.

[35] The following are the orders of the Court:

1. Costs are awarded to the Respondents in this Court in the agreed sum of EC60,000.

/s/ A Saunders

Mr Justice Saunders (President)

/s/ W Anderson

Mr Justice Anderson

/s/ M Rajnauth-Lee

Mme Justice Rajnauth-Lee

/s/ D Barrow

Mr Justice Barrow

/s/ P Jamadar

Mr Justice Jamadar