



Easter Term  
[2025] UKPC 23  
Privy Council Appeal No 0033 of 2024

## **JUDGMENT**

**Attorney General of Trinidad and Tobago  
(Appellant) v EDASCO Ltd (Respondent) (Trinidad  
and Tobago)**

**From the Court of Appeal of the Republic of  
Trinidad and Tobago**

before

**Lord Reed  
Lord Lloyd-Jones  
Lord Sales  
Lord Stephens  
Lady Rose**

**JUDGMENT GIVEN ON  
15 May 2025**

**Heard on 6 February 2025**

*Appellant*

Robert Strang

(Instructed by Charles Russell Speechlys LLP (London))

*Respondent*

Tom Richards KC

Gerald Ramdeen

(Instructed by Dayadai Harripaul)

## **LORD LLOYD-JONES AND LORD STEPHENS:**

### **Introduction**

1. This appeal concerns an application to strike out the Attorney General's amended defence ("the Defence") to a claim in detinue brought by Edasco Ltd in the High Court to recover from the police its property, a dumper truck ("the Truck"), and to obtain damages for its unlawful detention. On 16 July 2019, a police constable seized the Truck under section 26 of the State Lands Act Chap 57:01 ("the SLA") and it was detained by the police until 15 September 2021. On the hearing of the application, Gobin J struck out the Attorney General's Defence and gave Edasco Ltd permission to enter judgment against the Attorney General for the relief claimed in Edasco Ltd's Statement of Case. The Attorney General appealed, and the Court of Appeal held that there were grounds for defending the claim in respect of the period from 16 July 2019 to 30 September 2019 but struck out the Defence in relation to the rest of the period of detention, entering judgment for damages to be assessed. Edasco Ltd does not appeal against the Court of Appeal's order allowing the Attorney General to defend the claim in respect of the period 16 July 2019 to 30 September 2019. For his part the Attorney General does not appeal against the order of the Court of Appeal striking out the Defence in respect of the period 7 May 2021 to 15 September 2021. However, in respect of the period 30 September 2019 to 7 May 2021, the Attorney General does now appeal to the Board contending that there are grounds for defending the claim in respect of that period.

2. The appeal raises important questions in relation to the interplay between, on the one hand, detinue proceedings to recover property in circumstances where the property has been seized and detained by a police constable under section 26 of the SLA and, on the other hand, proceedings which can be brought by, amongst others, the owner of the property under section 27 of the SLA before a Magistrate to resist an order for the forfeiture and sale of the property. The resolution of these questions primarily depends on the true construction of sections 25-27 of the SLA.

### **Factual background**

3. There have been no findings of fact in these proceedings so in setting out the factual background it must be borne in mind that this consideration is based upon several sources including the parties' Statement of Facts and Issues for the hearing of this appeal, the allegations contained in the Defence, and the helpful summary of the facts contained in the judgments below.

4. On 16 July 2019, a group of police officers, acting on information, came upon three men quarrying for material on State Land in Arima, Trinidad. One of the police officers, Constable Shawn Gordon, observed that the men were using an excavator ("the

Excavator”) to dig material from the ground and were loading the material onto the Truck. The Truck appeared to be almost completely full of aggregate. The officers approached the Excavator and the Truck. There were two men in the Truck, namely Mr Brondell Pitt and Mr Roberto Hernandez, and one in the Excavator, namely Mr David Sanchez.

5. The officers identified themselves and informed the men of the report which they were investigating. The men were questioned as to whether they were in possession of a licence in the prescribed form to carry out quarrying. In response, the men stated that they were quarrying on behalf of someone but ultimately admitted that they were not in possession of the required licence. The officers carried out enquiries of the State Lands Commission. As a result of those enquiries, the officers established that the lands in question were State Lands and that no person had permission to conduct quarrying there.

6. As there was reasonable cause to suspect that the men were digging, or winning, or removing material on or from State Lands without a licence in the prescribed form, they were arrested. In addition, Constable Gordon, exercising his power as a constable under section 26(1)(b) of the SLA, seized and detained the Excavator and the Truck.

7. On 17 July 2019, Constable Soyer conducted interviews with Mr Sanchez, Mr Hernandez and Mr Pitt in the presence of Constable Gordon. Mr Pitt informed Constable Soyer that he was a truck driver working for a company known as Edasco Ltd which was located in Longdenville, Chaguanas. Mr Pitt further stated that Edasco Ltd was the owner of the Truck but according to the Defence he was unable to properly identify the owner and was unable to provide a contact number. Mr Pitt admitted that he went to the land to get material and he “took a chance.”

8. On 26 July 2019, ten days after the Truck had been seized and detained, Edasco Ltd wrote to the Commissioner of Police demanding the return of the Truck, stating that Mr Pitt was acting outside the scope of his employment at the time of his arrest. The Director of Legal Service at the Police Service replied stating that as the Truck had been seized pursuant to section 26(1) of the SLA it was being detained lawfully.

9. By virtue of section 45(1)(b) of the Minerals Act Chap 61:03 (“the Minerals Act”) a person who mines in an area that is not a mining zone commits an offence. On 19 July 2019, the three men were charged by the police in the Magistrates’ Court with the offence of illegal mining in contravention of section 45(1)(b) of the Minerals Act.

10. By virtue of section 25 of the SLA, it is an offence if any person “digs or wins or removes, or is in any way concerned in the digging, winning, or removing of, material on or from any State Lands in Trinidad and Tobago without a licence in the prescribed form.” On 30 September 2019, the three men were charged by the police in the Magistrates’ Court with an offence under section 25 of the SLA. It is not clear as to whether the charges

under section 45(1)(b) of the Minerals Act were withdrawn once the new charges were brought under the SLA. However, for all practical purposes the relevant charges for the purposes of this appeal are those brought under section 25 of the SLA. A point of concern to Gobin J was that the terminology used in the charge under section 25 of the SLA was that the three men were “mining” as opposed to digging, or winning, or removing material on or from State Lands.

11. On 7 May 2021, the charges against the three men under section 25 of the SLA came on for hearing before Her Worship Ms Bassaw. As the complainant Constable Gordon did not attend court, Ms Bassaw dismissed all the charges. She did so without hearing any evidence.

12. On 15 September 2021, some four months after the criminal charges against the three men had been dismissed, the police delivered the Truck to Edasco Ltd. The Truck had been detained by the police for a total period of approximately two years and two months between 16 July 2019 and 15 September 2021.

13. It is appropriate at this stage to add that after the seizure of the Excavator on 16 July 2019, it transpired that it was owned by Rivulet Investments Group Ltd (“Rivulet”). Rivulet brought proceedings in detinue against the Attorney General seeking to recover the Excavator. The Board will refer to those proceedings in para 80 below.

### **Edasco Ltd’s claim in detinue**

14. On 18 May 2020, some one year and four months prior to the Truck being delivered to Edasco Ltd by the police, and whilst the charges against the three men were pending, Edasco Ltd commenced these civil proceedings in detinue against the Attorney General who is sued by virtue of section 19(2) of the State Liability and Proceedings Act Chap 8:02. In the proceedings, Edasco Ltd asserts that without lawful justification the Truck had been removed and carried away by the police on 16 July 2019 and that the Truck was unlawfully detained by the police.

### **The Attorney General’s Defence to Edasco Ltd’s claim in detinue and the application to strike out the Defence**

15. The basis on which the Attorney General resisted the claim was set out in the Defence filed on 20 November 2020. On the hearing of the appeal to the Board, counsel on behalf of the Attorney General frankly accepted that there was a lack of clarity in the Defence. Whilst it is necessary for the Board to return to consider the Defence in greater detail, it is sufficient for present purposes to summarise the central matters which it raises.

16. First, the Attorney General asserts that the seizure and detention of the Truck by the police was lawful as it had been seized and “continues to be detained pursuant to the [SLA]”: see paras 4 and 9 of the Defence. In short, the Attorney General asserts that whilst Edasco Ltd could bring a claim in detinue, there is a complete defence to that claim as the legislature has authorised the seizure and detention of a vehicle under section 26(1)(b) of the SLA and on the facts of this case the Truck had been lawfully seized and detained by Constable Gordon.

17. Second, the Defence asserts that “[s]ections 25-27 of the [SLA] outlines a specific procedure that [Edasco Ltd] *must* adopt in order to recover possession of the [Truck] when charges are laid pursuant to the said Act.” (Emphasis added). The specific procedure was for Edasco Ltd, as the owner of the Truck, to apply to the Magistrate under section 27(b) of the SLA to resist an order for the forfeiture and sale of the property. As the specific procedure is one that “must” be adopted, the Attorney General submitted in the courts below that exclusive jurisdiction resided in the Magistrate so that the High Court had no jurisdiction to entertain civil proceedings in detinue after the Truck had been seized and detained.

18. Third, the Defence makes another assertion which featured prominently in the submissions on behalf of the Attorney General before the lower courts and which was correctly abandoned before the Board. This is that by virtue of the provisions of section 27 of the SLA, the Truck was no longer in the *possession* of the police but rather was in the possession of the Magistrates’ Court. A variation in the Defence in respect of this assertion is that the Truck is “now in the *custody* of the [Magistrates’] Court” and that “the [Magistrates’] Court is entitled to retain *possession* of the truck until the Magistrate discharges the truck from the [forfeiture] proceedings as it is within their sole discretion.” (Emphasis added).

19. Some of the acknowledged confusion in the Defence arises through eliding the concept of the Truck being in the *possession* or *custody* of the Magistrate, which it clearly was not, with the *jurisdiction* of the Magistrate to declare that the Truck is forfeit to the State and to order its sale by the Commissioner of State Lands, which jurisdiction clearly existed. The existence of the Magistrate’s *jurisdiction* to declare the Truck forfeit and to order its sale then led to the incorrect assertion on the part of the Attorney General in the courts below that the Truck was under the *control* of the Magistrate. The only element of the Magistrate’s *control* over the Truck was under the jurisdiction to determine whether to declare the Truck forfeit and to order its sale. For all other purposes, the Truck remained under the *control* of the police.

20. Edasco Ltd brought an application: (a) to strike out the Attorney General’s Defence pursuant to Part 26.2(c) of the Civil Proceedings Rules 1998 on the basis that the Defence disclosed “no grounds for ... defending” Edasco Ltd’s claim; and (b) to enter judgment against the Attorney General for the reliefs sought in the Statement of Case.

## **The judgments in the lower courts**

### *The judgment in the High Court*

21. The applications came on for hearing before Gobin J who considered whether the Defence disclosed no grounds for defending Edasco Ltd's claim by reference to three distinct periods making up the overall period during which the Truck had been detained by the police. The first period was from the date the Truck was seized and detained on 16 July 2019 to 30 September 2019 being the date on which the charges were laid against the three men under section 25 of the SLA. The second period was from 30 September 2019 to 7 May 2021 being the date on which the charges against the three men were dismissed by the Magistrate. The third period was from 7 May 2021 to 15 September 2021 being the date on which the Truck was delivered by the police to Edasco Ltd.

22. In respect of the first period, Gobin J held, at para 12 of her judgment, that the defence was "doomed" to fail as the power to detain the Truck under the SLA only arose upon the laying of charges under that Act which did not occur until 30 September 2019. Therefore, she held that the police had no power to seize or detain the Truck prior to 30 September 2019.

23. In respect of the second period, Gobin J addressed the question of the jurisdiction of the Magistrate by reference to the question whether the Magistrate had custody or control of the Truck. She held, at paras 13 and 14 of her judgment, that the Attorney General was wrong to say that custody and control of the Truck moved from the police to the Magistrate and therefore the Magistrate did not have jurisdiction over the Truck.

24. Gobin J held further that the Attorney General was wrong to say that Edasco Ltd was bound to proceed by way of an application to the Magistrate under section 27 of the SLA to resist an order for the forfeiture and sale of the Truck. She gave two reasons for this.

25. First, the power of detention under the SLA had not arisen because the charge under the SLA in the complaint was defective: there was no offence of "mining" under the SLA. Therefore, since the charges were unrecognisable under section 25 of the SLA, Gobin J held, at paras 18 and 19 of her judgment, that the police did not have and therefore could not exercise the ancillary powers under section 26 of the SLA of seizure and detention of the Truck.

26. Second, if, contrary to the above, Constable Gordon had been entitled to seize and detain the Truck upon filing a complaint, however defective, the Attorney General was wrong to say that Edasco Ltd should proceed by way of an application to the Magistrate

under section 27 of the SLA. Gobin J held, at paras 20 to 30, that on a proper reading of section 27 of the SLA, the only person who could satisfy the Magistrate of matters which would prevent the forfeiture and sale of the Truck is “the person charged”. Edasco Ltd had no standing and no right of redress under section 27 of the SLA as it was not charged with any offence. Therefore, it retained the right to bring a civil claim in detinue.

27. In respect of the third period, Gobin J stated, at para 11 of her judgment, that she understood the Attorney General to concede that there was no power to detain the Truck after the dismissal of the charges against the three men by the Magistrate. Therefore, she held that there was no defence to the claim of unlawful detention for the period from 7 May 2021 to 15 September 2021.

28. In conclusion, Gobin J held that the Defence disclosed “no grounds for ... defending” Edasco Ltd’s claim in relation to any part of the overall period from 16 July 2019 to 15 September 2021. She granted Edasco Ltd’s application to strike out the Attorney General’s Defence and she gave permission to enter judgment against the Attorney General for the relief claimed in Edasco Ltd’s Statement of Case.

### *The judgment in the Court of Appeal*

29. The Attorney General appealed against Gobin J’s order to the Court of Appeal.

30. By a judgment delivered on 23 May 2020, the Court of Appeal (Mendonça and Aboud JJA) allowed the appeal in part, ruling that the Attorney General was entitled to defend the claim in respect of the first period, between the date of seizure and the laying of charges under the SLA, but otherwise dismissed the appeal.

31. In relation to the first period, the Court of Appeal, relying on *General and Finance Facilities Ltd v Cooks Cars (Romford) Limited* [1963] 1 WLR 644, 648-650, held that demand for delivery up of the chattel was an essential requirement of an action in detinue so that Edasco Ltd’s cause of action in detinue could not arise before its demand, dated 26 July 2019, for the return of the Truck. In relation to the remaining part of the first period, the Court of Appeal reasoned that the Attorney General had pleaded factual grounds for reasonable suspicion on the part of police officers of an offence under the SLA which gave rise to a common law power to detain the Truck, in respect of which there were issues of fact to be determined at trial. The Court of Appeal accepted that discrete powers of seizure and detention were also provided by the SLA, but in light of its conclusion as to the common law power to detain the Truck it did not address the Attorney General’s arguments on section 26(1)(b) of the SLA.



32. In relation to the second period, the Court of Appeal dismissed the Attorney General's appeal for the following reasons.

33. First, it rejected the Attorney General's contention that upon seizure under the SLA the Truck was in the custody of the Magistrates' Court.

34. Second, the Court of Appeal rejected the Attorney General's contention that the owner of the vehicle was bound to apply to the Magistrate under section 27 of the SLA for its release. It disagreed with Gobin J's view that the owner, unless charged, could not apply to the Magistrates' Court under section 27 but rejected the proposition that an application under section 27 was the exclusive method, holding that clear words were needed to deprive an owner of the right to bring a claim in detinue, and such words did not appear in the Act. Accordingly, an owner could bring a civil claim in detinue while charges were pending under the Act.

35. Turning to the question of whether the Defence had set out the basis of a lawful right to detain the Truck during the second period, the Court of Appeal found that, properly understood, the Defence averred that the police had detained the Truck, further to an investigation, up to the date that charges were laid under the SLA. There was no averment that, after charges were laid, the police had exercised the power under the SLA to continue to detain the Truck. Rather, what appeared was the erroneous averment that the Truck came into the possession of the Magistrates' Court after the charges were laid. The effect of this defence, reasoned the Court of Appeal, was that after the charges were laid under the SLA the police had not sought to exercise the power of detention under section 26 of the SLA, as the Magistrates' Court had then come into possession of the Truck. That took the case outside the operation of sections 26 and 27 of the SLA.

36. The Court of Appeal stated (at para 75) that, had it been necessary to address Gobin J's ruling on the point, it would have held that she had fallen into error in finding that the charges laid under the SLA were invalid just because the terminology in the charge was of "mining" as opposed to the statutory terminology of digging, winning or removing material.

37. Accordingly, the Court of Appeal set aside Gobin J's orders, struck out those parts of the Defence that related to the period of detention after 30 September 2019, ordered the Attorney General to file and serve a re-amended defence, and granted permission to Edasco Ltd to enter judgment for damages to be assessed for the wrongful detention of the Truck from 30 September 2019 to 15 September 2021.

## Relevant legislative provisions

38. Section 2 of the SLA, accompanied by the side note of “Interpretation”, provides that:

“In this Act—

‘material’ includes asphalt, earth, sand, gravel, stone, shingle, soil, or shells;

‘vehicle’ includes any cart, carriage, whether hung on springs or not, or any wheelbarrow, truck, hand cart, or other vehicle on wheels, whether drawn or propelled by any animal or not.”

39. Section 25 of the SLA, accompanied by the side note of “Digging or removing material without a licence”, provides that:

“Any person who digs or wins or removes, or is in any way concerned in the digging, winning, or removing of, material on or from any State Lands in Trinidad and Tobago without a licence in the prescribed form is liable—

(a) where the material dug, won, or removed is asphalt, on first conviction to a fine of three hundred thousand dollars and imprisonment for a term of three years, and on subsequent conviction to a fine of five hundred thousand dollars and imprisonment for a term of five years;

(b) where material other than asphalt is dug, won, or removed, on first conviction to a fine of one hundred and twenty thousand dollars and imprisonment for a term of one year, and on subsequent conviction to a fine of three hundred thousand dollars and imprisonment for a term of three years.”

40. The Board considers it appropriate at this point to make several observations in relation to section 25 of the SLA.

41. First, the offence is not confined to persons who dig, win or remove material on or from any State Lands in Trinidad and Tobago without a licence in the prescribed form. The offence is also committed by a person who “is in any way concerned in the digging, winning, or removing of, material on or from any State Lands in Trinidad and Tobago without a licence in the prescribed form.”

42. Second, there are diverse ways in which a person may be “concerned in the digging, winning, or removing of, material on or from any State Lands in Trinidad and Tobago.” For instance, the owner of a vehicle may be so concerned if he or she gives permission or authorises the use of the vehicle for the purpose of digging, winning, or removing of, material on or from any State Lands in Trinidad and Tobago.

43. Third, the person who does the actual digging, winning, or removing must undertake that activity on State Lands. However, the activity of the person who “is in any way concerned in the digging, winning, or removing of, material on or from any State Lands in Trinidad and Tobago” need not take place on or within the limits of those Lands.

44. Section 26 of the SLA, accompanied by the side note of “Arrest without warrant” provides:

“(1) The Commissioner, a Deputy Commissioner or any constable may without warrant—

(a) seize and detain any material which there shall be reasonable cause to suspect to have been dug, won, or removed from any State Lands without the prescribed licence;

(b) seize and detain any vehicle, animal, or boat having, drawing, or carrying any such material;

(c) arrest and detain any person who may be reasonably suspected of having been employed or engaged in digging, winning, or removing such material.

(2) It shall be lawful to make the seizures, detentions, and arrests mentioned in this section whether the material, vehicle, animal, or boat, or the person suspected of being employed or engaged in the digging, winning or removing, is found within or without the limits of any State Land.”

45. It is also appropriate at this stage to make several observations in relation to section 26 of the SLA.

46. First, the Commissioner is the Commissioner of State Lands, and a Deputy Commissioner is a Deputy Commissioner of State Lands: see section 2 of the SLA. The Board will refer to the Commissioner, a Deputy Commissioner and a constable collectively as “the relevant persons” and individually as “a relevant person.”

47. Second, for a relevant person to seize and detain any material there must be reasonable cause to suspect that the material has been dug, won, or removed from any State Lands without the prescribed licence: see section 26(1)(a).

48. Third, for a relevant person to seize and detain “any vehicle, animal, or boat”, two conditions have to be met as follows:

(a) there must be reasonable cause to suspect that material has been dug, won, or removed from any State Lands without the prescribed licence; and

(b) the vehicle, animal, or boat must have, draw, or carry any such material.

Accordingly, for a vehicle, animal, or boat to be seized and detained there is no requirement for a relevant person to suspect that the owner of the vehicle, animal, or boat was in any way concerned in the digging, winning, or removing of the material. Rather, the reasonable cause to suspect in condition (a) is as to whether the material has been dug, won, or removed from any State Lands without the prescribed licence. Furthermore, the condition in (b) is met if in fact the vehicle, animal or boat, has, draws, or carries the material.

49. Fourth, for a relevant person to arrest and detain there must be reasonable suspicion that the person to be arrested was “employed or engaged in digging, winning, or removing” material from any State Lands without a licence in the prescribed form.

50. Fifth, the power to seize and detain and the power to arrest is in the discretion of a relevant person.

51. Sixth, there is no requirement for charges to have been brought before a relevant person has the power without warrant to: (i) seize and detain the material under section 26(1)(a); (ii) seize and detain any vehicle, animal or boat under section 26(1)(b); or (iii)

arrest or detain any person under section 26(1)(c). Gobin J was incorrect to hold that the power to seize and detain the Truck under the SLA only arose upon the laying of the charges under that Act. Indeed, the power without warrant to: (i) seize and detain the material under section 26(1)(a); or (ii) seize and detain any vehicle, animal or boat under section 26(1)(b) can be exercised in circumstances where no one will be charged with any offence under the SLA. For instance, if a person who digs with an excavator on State Lands runs away before he or she can be identified, leaving behind the excavator, then it may well be that no charges can ever be brought against anyone. However, a relevant person may still seize and detain the excavator as both of the conditions set out in para 48 above will have been met.

52. Seventh, just as the power to seize and detain any vehicle, animal, or boat is not dependent on any charges being brought, the power to detain does not necessarily come to an end if any charges which have been brought are dismissed. After any charges have been dismissed, the continued power to detain under section 26(1)(b) of the SLA still depends on whether there is reasonable cause to suspect that the material found in or on the vehicle, animal or boat was dug, won or removed from State Lands without a licence. For instance, if, as here, the charges are dismissed simply because the complainant did not attend the hearing, the reasonable cause for suspicion may well continue. Another instance would be where the criminal charges are dismissed because the accused was wrongfully identified as the person who had in fact dug the material from State Lands without a licence in the prescribed form. In such circumstances, the material had still been dug from State Lands without a licence in the prescribed form but not by the accused. The dismissal of the charges in such circumstances does not speak to the conditions giving rise to the power to continue to detain the material as set out in section 26(1)(a) of the SLA.

53. Eighth, once the material, vehicle, animal or boat is seized and detained by a relevant person it is in the possession and under the control of that person. Gobin J and the Court of Appeal correctly rejected the Attorney General's assertion that by virtue of the provisions of sections 26 and 27 of the SLA the Truck was in the custody of the Magistrate and was no longer in the possession of the police.

54. Ninth, the purpose of the power to seize and detain material or any vehicle, animal, or boat is with a view to forfeiture and sale under section 27 of the SLA. Therefore, if the relevant person positively decides that the purpose of forfeiture is no longer being pursued there would no longer be a power for that person to detain under section 26 of the SLA. The Board considers that a relevant person, who has seized and detained any material, vehicle, animal or boat, has an obligation to keep under review whether he or she continues to pursue the purpose of forfeiture. If the relevant person becomes aware, from whatever source, of facts which cause him or her to decide that forfeiture should no longer be pursued, the power to detain ceases. Where the power to detain comes to an end, the relevant person is under an obligation to inform the owner and return the property. However, the obligation to review is qualified by the onus of proof which rests on a person

making an application to the Magistrate to resist an order for forfeiture and sale: see paras 71-72 below. Given the onus of proof, the obligation to keep under review does not include an obligation on the relevant person to investigate from time to time the factual background to arrive at a decision as to whether to continue to pursue forfeiture. Rather, the onus rests on the person resisting an order for forfeiture and sale to bring matters to the attention of the relevant person and, if the relevant person does not positively decide not to pursue forfeiture, to prove those matters before the Magistrate.

55. Tenth, the power to seize and detain any material or any vehicle, animal, or boat depends on the relevant person having reasonable cause to suspect that the material was dug, won or removed from State Lands in Trinidad and Tobago without a licence in the prescribed form. Therefore, the power to continue to detain under section 26(1)(a) or (b) would come to an end if the relevant person no longer had reasonable cause to suspect that the material was dug, won or removed from State Lands without such a licence. The Board considers that a relevant person, who has seized and detained any material, vehicle, animal or boat, has an obligation to keep under review whether he or she continues to have reasonable cause to suspect that the material was dug, won or removed from State Lands in Trinidad and Tobago without a licence in the prescribed form. Again, the obligation to review is qualified by the onus of proof which rests on a person making an application to the Magistrate to resist an order for forfeiture and sale: see para 71-72 below. Given the onus of proof, the obligation to keep under review does not include an obligation on the relevant person to investigate from time to time the factual background to arrive at a decision as to whether he or she continues to have reasonable cause to suspect that the material was dug, won or removed from State Lands in Trinidad and Tobago without a licence in the prescribed form. Rather, the onus rests on the person resisting an order for forfeiture and sale to bring matters to the attention of the relevant person and, if the relevant person does not positively decide that there is no longer reasonable cause to suspect, to prove those matters before the Magistrate. If the relevant person does so decide, he or she comes under an obligation to inform the owner and return the property.

56. Section 27 of the SLA, accompanied by the side note of “Punishment for unlawful removal” provides that:

“Unless the person—

(a) from whom any material has been seized and detained; or

(b) whose vehicle, animal, or boat having, drawing, carrying, or removing any material has been seized and detained, or the owner thereof; or

(c) who has been arrested as a person suspected of having been engaged or concerned in the digging, winning, or removing of material from State Lands without the prescribed licence,

proves to the satisfaction of a Magistrate—

(d) that the material so seized and detained was not dug, won, or removed from State Lands without a licence in the prescribed form; or

(e) that any material for the having, carrying, or removing of which such vehicle, animal or boat has been seized and detained was not dug, won, or removed from State Lands without a licence in the prescribed form; or

(f) that he was not in truth and in fact engaged or concerned in the digging or removing of material from State Lands, or that he had a licence in the prescribed form,

the proof of all which shall be on the person charged, such Magistrate shall declare—

(g) all such material, vehicles, animals, or boats forfeited to the State, and shall order the same to be sold by the Commissioner; and the proceeds arising from such sale shall be paid into public funds for the use of the State; and

(h) that the person so arrested on suspicion as having been concerned in the digging, winning, or removing of material is guilty of an offence against this Act,

and the person shall be punished accordingly as provided by section 25.”

57. It is appropriate at this stage to make several points in relation to section 27 of the SLA.

*(a) Whether an application can be made to the Magistrate under section 27 by a person who has not been charged with an offence*

58. The Board recognises that on one reading of section 27 of the SLA the only person who can make an application to a Magistrate to resist an order for the forfeiture and sale of any property seized under section 26 is a person who has been charged with an offence under section 25. The essential words in section 27 in support of that construction can be reduced to the following:

“Unless the person ... proves to the satisfaction of a Magistrate [any of the matters in (d), (e) or (f)] the proof of all [of] which shall be on the person charged, such Magistrate shall declare ... the person so arrested ... guilty of an offence against this Act, and the person shall be punished accordingly as provided by section 25.”

If the words “the person” in section 27 consistently refers to the person charged and who can be punished as provided by section 25, then the conclusion is that the only person who can seek to prove matters to the satisfaction of the Magistrate is the person charged.

59. However, in agreement with the Court of Appeal at para 66 of its judgment, and for several reasons, the Board considers that the true construction is that a person who has not been charged with an offence may apply to the Magistrate under section 27. For instance, an owner of a vehicle who has not been charged with any offence under the SLA may nevertheless bring an application to the Magistrate seeking to prove to the satisfaction of the Magistrate any of the matters specified in section 27(d)-(f) to resist an order for the forfeiture and sale of the vehicle.

60. First, section 27 provides that unless the person “proves to the satisfaction of a Magistrate” and then, between (f) and (g), repeats the onus of proof by providing that “the proof of all [sic] which shall be on the person charged.” The explanation for this apparent unnecessary duplication is that on the first occasion that there is reference to the onus of proof, a “person” includes not only a person who has been charged but also includes a person who has not been charged but nevertheless is making an application to a Magistrate, as, for instance, an owner in relation to a vehicle which has been seized. On the second occasion there is reference to the onus of proof, a “person” is confined to a person charged. The purpose of referring to the onus of proof on the second occasion is to make it clear that the onus remains on a person charged, displacing the ordinary requirement in criminal proceedings for the prosecution to bear the onus.

61. Second, to avoid an absurdity, the words “the person” in section 27 cannot always refer to a person charged. It would be absurd if an owner could not bring an application



to a Magistrate to prevent an order being made to forfeit and to sell his property just because the owner has not been charged. An owner must have a right to be heard before being deprived of his or her property rights.

62. Third, only some or indeed none of the persons identified in section 27(a)–(c) might be charged with an offence under section 25 of the SLA and yet the material, vehicle, animal or boat might still be subject to forfeiture and sale.

63. Fourth, the proper construction of section 27 is conclusively determined by sections 29 and 31 of the SLA.

64. Section 29 of the SLA makes provision for there to be no digging of material by certain persons after the date of an order or conviction and before the Court of Appeal, in the case of an appeal against the order or conviction, has pronounced final judgment in favour of the appellant. The section makes it unlawful for a person: (a) against whom an order has been made by any Magistrate under the provisions of the SLA relating to material; or (b) who has been convicted by any such Magistrate under section 25 of the SLA, at any time after the order or conviction and before the Court of Appeal has pronounced final judgment in favour of the appellant, to dig or win or be in any way concerned in the digging or winning or removing of material on or from any State Lands. It is clear from the category of person in (a) above that the section envisages an order being made against a person who has not been convicted and envisages that person appealing against the order to the Court of Appeal. The order against the person in (a) above must have been made by any Magistrate under the provisions of the SLA relating to material. Clearly an order for forfeiture and sale of any material, vehicle, animal or boat belonging to any person would be an order under the SLA relating to material. It is also clear that a person in section 29 is not confined to a person who having been charged is convicted of an offence. Reading section 27 in the statutory context of section 29 requires that a person in section 27 is also not confined to a person who has been charged and includes a person who seeks to prove any of the matters in (d), (e) or (f) to oppose the making of an order for forfeiture and sale.

65. Section 31 of the SLA makes provision, subject to the provisions of the Bail Act, for a person arrested under section 26 of the SLA to be granted bail subject to a condition that “neither he, his agents or servants, nor any person claiming through, by or under him, shall dig or win material or be in anywise concerned in the digging or winning or removing of material on or from” State Lands. The condition governs not only the period before the actual hearing and determination of the case by a Magistrate but also “in case of *an order or conviction* against him and appeal by him to the Court of Appeal against such order or conviction, ... until the Court of Appeal shall have pronounced a final judgment thereon in his favour.” Section 31 envisages that the power to make an order does not depend on the person being convicted.

66. In conclusion, on the proper construction of section 27 of the SLA, a person who can make an application to a Magistrate is not confined to a person charged. Rather, an owner of any material, vehicle, animal or boat which has been seized who has not been charged with any offence, can nevertheless make an application to the Magistrate seeking to prove any of the matters in section 27 (d), (e) or (f). Similarly, a relevant person who has seized and detained any material, vehicle, animal or boat may apply to a Magistrate for a forfeiture and sale order. The ability of a relevant person to apply to a Magistrate can be illustrated by, but is not restricted to, circumstances in which no person can be charged with an offence because for instance he or she has run away and cannot be identified. In such circumstances, a vehicle, animal or boat which the person was using could be seized and detained under the SLA. To bring matters to a conclusion, a relevant person in such circumstances must be able to apply to a Magistrate for an order for forfeiture and sale.

*(b) Whether the available procedure under section 27 of the SLA for an owner to apply to a Magistrate removes an owner's right to bring civil proceedings*

67. Under section 27 of the SLA, the Magistrate has sole jurisdiction to determine the matters in (d)-(f) and to declare that any material, vehicle, animal, or boat which has been seized and detained is forfeit to the State and shall be sold by the Commissioner of State Lands. However, contrary to the Attorney General's assertion and in agreement with the Court of Appeal at para 64 of its judgment, the Board considers that the existence of the Magistrate's jurisdiction does not mean that the High Court has no jurisdiction in respect of civil proceedings in detinue if there are proceedings before the Magistrate. The right to sue in detinue can only be removed by clear words and section 27 does not contain any such words. Therefore, detinue proceedings can co-exist with pending charges under the SLA and can co-exist with an application to the Magistrate by an owner opposing an order to forfeit and to sell any material, vehicle, animal or boat which has been seized.

*(c) The effect of the lawful seizure and detention under the SLA on civil proceedings*

68. The co-existence of civil proceedings and proceedings before the Magistrate does not mean that the seizure of any material, vehicle, animal or boat has no impact on the civil proceedings. The lawful seizure and detention and the lawful continued detention of the material, vehicle, animal or boat provides a complete defence to the claim in detinue. However, if the initial seizure and detention was lawful but if at some subsequent date either:

- (a) the purpose of forfeiture was no longer being pursued by the relevant person; or

- (b) the relevant person no longer had reasonable cause to suspect that the material was dug, won or removed from State Lands without a licence in the prescribed form,

then as from that subsequent date there would no longer be a power to continue to detain the material or to continue to detain any vehicle, animal, or boat having, drawing or carrying the material. Furthermore, as from that subsequent date there would no longer be a defence to the proceedings in detinue in respect of that property.

*(d) The time at which and the procedure by which an application can be made to the Magistrate under section 27*

69. Section 27 of the SLA is silent as to the time at which an application can be made to a Magistrate seeking to prove to his or her satisfaction any of the matters in section 27 (d), (e) or (f). In the absence of any fixed time, the application can be made at any time after the material, vehicle, animal or boat has been seized and detained. Thereafter, it will be for the Magistrate to determine when the application will be heard and determined.

70. The power to make an application is contained in section 27 of the SLA and that power is not dependent on there being some procedural rule governing the manner in which the application can be made.

*(e) The onus and standard of proof under section 27*

71. The onus of proving any of the matters in section 27(d), (e) or (f) is on the person making an application to a Magistrate to resist an order for forfeiture and sale and is also on the person charged with an offence under the SLA. In respect of a person charged, this reverses the ordinary onus of proof in criminal proceedings, but as is normal in situations where the onus of proof is reversed in criminal proceedings, the standard of proof on the person charged is on the balance of probabilities. The same balance of probabilities standard applies to a person making an application to a Magistrate to resist an order for forfeiture and sale.

72. The impact of the onus of proof being on the person making an application to the Magistrate to resist an order for forfeiture and sale is that in cases of doubt a relevant person may leave it to a Magistrate to determine whether the person making an application to resist an order for forfeiture and sale has proved any of the matters in section 27 (d), (e) or (f). It is only in circumstances where the relevant person positively decides that there is no reasonable cause to suspect that the material was dug, won, or removed from State Lands without a licence in the prescribed form or positively decides that the purpose of forfeiture is no longer being pursued, that the power to continue to detain comes to an

end with a corresponding obligation to so inform the owner and to return the property which has been seized.

*(f) The consequence if one of the matters in section 27 (d), (e) or (f) is not proved to the satisfaction of a Magistrate*

73. Section 27 is expressed in mandatory terms so that if none of the matters in (d), (e) or (f) is proved then the Magistrate has no discretion. Rather, in respect of materials, vehicles, animals or boats which have been seized, the Magistrate “shall” declare them to be forfeited to the State, “shall” order the same to be sold by the Commissioner of State Lands and “shall” order the proceeds arising from such sale be paid into public funds for the use of the State. In respect of a person charged who was arrested on suspicion as having been concerned in the digging, winning, or removing of material, the Magistrate “shall” declare the person guilty of an offence against the SLA and “shall” punish the person accordingly as provided by section 25.

*(g) Whether a Magistrate can order a relevant person to return the seized and detained property to the owner*

74. A Magistrate has jurisdiction to declare that material, vehicles, animals or boats are forfeited to the State. However, we consider that it is implicit in section 27 of the SLA that if a person within (a) to (c) of section 27 proves points (d), (e) or (f) then, as well as finding that it is not subject to an obligation to order the forfeiture of the item, the Magistrates’ Court can order the material, vehicles, animals or boats to be returned by a relevant person to the owner. We consider that this is implicit in section 27 of the SLA for several reasons. First, the legislation puts the onus on the persons in section 27(a)-(c) to come to the Magistrates’ Court to test whether the material, vehicles, animals or boats should be forfeit or not, so one would expect that they should be able to claim from that court the practical benefit of making out their case that the items are not to be forfeit. That benefit is return of the items to the owner, not just their non-forfeiture, leaving them in the hands of a relevant person. Second, on an application under section 27 of the SLA the Magistrates’ Court tries a single issue: should the true owner retain ownership of their material, vehicles, animals or boats (including the right to possession which is associated with that ownership) or should the items be forfeit to the state? Having reached a conclusion in favour of the owner on this issue, the natural inference is that the court should be able to act to give effect to its judgment, which is in favour of recognising the ownership rights (including the right to immediate possession) of the owner. Thirdly, it gives effect to the principle of the rule of law and avoids unnecessary duplication of proceedings, with attendant delay, cost and expense. If the Magistrates’ Court did not have the power to order the return of the items to the owner, then the owner would either have to institute or continue civil proceedings in detinue. To require the owner to do so would result in the unnecessary duplication of proceedings. Rather, the result in the Magistrates’ Court will have fully determined the outcome and the owner should not be

required to turn to another court to get the relief they desire and which it has been proved they are entitled to, namely the return of their material, vehicles, animals or boats.

### **The issues on the appeal**

*Issue 1 – Did the Magistrates’ Court rather than the police have possession of and jurisdiction over the vehicle once the complaint was made?*

75. The origin of this issue is to be found in the Attorney General’s Defence which avers at several points that the Truck was in the possession and custody of the Magistrates’ Court.

76. This plea reveals a confusion between possession and control of an item of movable property and its being subject to the forfeiture jurisdiction conferred on a Magistrate by the SLA. At the hearing of the appeal before the Board, no attempt was made by the Attorney General to support the plea that the Truck was in the possession of the Magistrates’ Court. On the contrary, it is clear that the Truck remained in the possession of the police throughout the entire period from 16 July 2019 to 15 September 2021, during which time it was stored by the police at the military base at Camp Camuto for safe keeping.

77. However, this defective and ineffective plea should not be permitted to obscure an alternative plea which is considered below. The essential question is whether the Truck, when in the possession of the police, was lawfully detained.

*Issue 2 – Does section 27 exclude a civil claim?*

78. Section 27 makes provision for a special procedure for forfeiture before the Magistrates’ Court. The SLA requires that questions of forfeiture be decided in the Magistrates’ Court. It will often be convenient for forfeiture proceedings to be heard in conjunction with the related criminal charges in accordance with section 27.

79. Reference has been made above to certain special features of the procedure under section 27. In particular, the burden of proof is reversed so that it is for the owner of a vehicle to prove to the satisfaction of a Magistrate, on the balance of probabilities, that the case falls within one of sub-paragraphs (d), (e) or (f). Furthermore, unless one of those provisions applies, there is a duty on a Magistrate to make an order for forfeiture. In practice, the procedure followed before the Magistrates’ Court has been supplemented by the provisions of the Summary Courts Act Chap 4:20 (“the Summary Courts Act”), and has been elaborated in caselaw. For example, in *Rajcoomar v Mahase*, Magisterial Appeal

No. 149 of 2006, the Court of Appeal noted that if the owner of a vehicle is not aware of its seizure and detention under the SLA, fairness dictates that he be made aware of the facts and of the potential for a forfeiture and sale order being made. (See Mendonca JA at para 21.) In this way, a system has developed for giving notice of the forfeiture proceedings to the owner of property seized under section 26 of the SLA.

80. Under section 27 of the SLA, the owner of a seized vehicle who has not been charged is entitled to intervene in the proceedings before the Magistrates' Court in order to oppose the making of a forfeiture order. It would normally be expected that that course should be followed. It is convenient to refer at this point to what occurred in relation to the Excavator owned by Rivulet which had been seized by the police on the same occasion as the Truck with which these proceedings are concerned. The Excavator had been let by Rivulet to persons who permitted it to be used in the allegedly illegal quarrying. Rivulet brought a claim in detinue against the Attorney General and the lessees. Mohammed J struck out Rivulet's claim holding that the Excavator was in the custody of the Magistrates' Court, that that Court and not the civil court had jurisdiction over the Excavator and that the proper remedy for Rivulet was to apply to the Magistrates' Court under section 27 of the SLA to show why the Excavator should not be forfeited. Rivulet appealed. At the hearing of the appeal, after a discussion between the Court and the parties in the course of which Rivulet indicated that it was willing to go before the Magistrate to apply for the release of the Excavator, the Court of Appeal (Archie CJ, Pemberton JA) by consent reinstated Rivulet's claim and stayed it pending determination of the complaints by the Magistrates' Court. Rivulet's representatives attended the hearing of the complaints on 7 May 2021 and, upon the dismissal of the charges against the defendants, the Magistrate ordered the immediate release of the Excavator to Rivulet.

81. In addition to the special features of the procedure before the Magistrates' Court, there is an obvious advantage in linking forfeiture proceedings to the hearing of the criminal charges. It will often be possible for all factual issues relating to the nature of and participation in the allegedly criminal enterprise to be resolved by a single tribunal on one occasion before the Magistrate. However, in appropriate circumstances, for example where there is a delay in proceeding with the criminal charges, it would be open to the owner of a seized vehicle to apply to the Magistrates' Court for an order for interim release of the vehicle on the giving of recognisances: see section 6(3) of the Summary Courts Act. Alternatively, the owner might seek a hearing of the forfeiture proceedings in advance of the criminal charges. It would be a matter for the Magistrate whether to accede to such an application.

82. However, section 27 of the SLA does not exclude a civil claim, for example a claim in detinue. There may be exceptional circumstances where it is appropriate for the owner of a seized vehicle to bring a civil claim rather than to take part in forfeiture proceedings before the Magistrate. As we have seen, the police, having seized a vehicle and remaining in possession of it pending forfeiture proceedings, remain under a continuing duty to keep the case under review and to form a view as to whether there

remains a case for forfeiture. The police would be under a duty to release the vehicle if, for example, they no longer had reasonable grounds to suspect that the material found in the vehicle was dug, won or removed from State Lands without a licence in the prescribed form. If for any reason the purpose of forfeiture under section 27 of the SLA was no longer pursued, the police would no longer have a power to detain it. In such circumstances, the police would be under a duty to notify the owner so that he could make an application to the Magistrate seeking an order declining to forfeit and to sell the vehicle. Alternatively, in those circumstances the owner could bring a claim in detinue against the police. At the hearing of this appeal, Mr Strang accepted on behalf of the Attorney General that this analysis is correct.

83. Save in such exceptional circumstances, however, the appropriate forum for the resolution of the dispute will be the forfeiture proceedings before the Magistrates' Court. In general, the owner has no right to the return of the vehicle unless and until he proves to the satisfaction of the Magistrate one of the matters specified in section 27 (d), (e) or (f). Where a relevant person has not positively decided that there is no longer reasonable cause to suspect that the material carried in the vehicle was dug, won or removed from State Lands without a licence, and has not positively decided not to pursue forfeiture, the owner of the vehicle has no right to the return of the vehicle until the conclusion of the forfeiture proceedings. That the vehicle was subject to forfeiture proceedings which were lawfully brought would be a defence to a claim in detinue.

84. We consider, therefore, that section 27 of the SLA does not exclude a civil claim. However, where a vehicle is lawfully in the possession of the police pending forfeiture proceedings brought before the Magistrates' Court pursuant to sections 25-27 SLA, this will provide a valid defence to a claim in detinue.

*Issue 3 – Was the Court of Appeal correct that the Defence disclosed no lawful basis for the continued detention of the vehicle after charges were laid?*

85. The Attorney General's Defence discloses a number of infelicities of drafting. However, we are concerned only with the question of whether the pleading discloses an arguable defence to a claim in detinue in respect of the second period, i.e. between 30 September 2019 and 7 May 2021. In that regard, the plea that the Truck was in the possession and custody of the Magistrates' Court is clearly wrong and is no longer maintained.

86. The Defence nevertheless sufficiently raises an alternative arguable defence on the basis of sections 25-27 SLA. The Defence pleads the following facts necessary to establish the defence: (1) that the Truck was detained under the SLA; (2) the facts which made the detention lawful under section 26 of the SLA; and (3) that it was for the

Magistrate to take a decision as to whether the Truck should be forfeited. As explained above (at paras 16 and 17), the Defence makes the following averments:

(1) that the seizure and detention of the Truck by the police was lawful as it had been seized and “continues to be detained pursuant to the [SLA]”. (Defence paras 4 and 9)

(2) that the claimant does not have an immediate right to possession of the [Truck] as sections 25-27 of the SLA constitute a specific procedure that the claimant must adopt in order to recover possession (Defence para 4 (xv)).

87. The conjunction of these pleas with the defective plea relating to possession by the Magistrates’ Court does not invalidate them. We consider that the Court of Appeal erred in its approach to the pleading. First, it correctly identified (at para 71) that the SLA gives to a constable the power to seize and detain any vehicle having, drawing or carrying any material reasonably suspected to have been dug, won or removed from State Lands without a licence in the prescribed form. Moreover, it correctly identified (at para 72) an averment in the Defence that the Truck was lawfully detained by Constable Gordon further to an investigation into illegal quarrying and continued to be detained pursuant to the SLA. However, it then went on to state:

“Properly understood, the detention of the dump truck by PC Gordon relates to the period before the charges under the State Lands Act were laid. There is no averment that the police exercised the power given to them by the State Lands Act to continue the detention of the truck after the charges were laid.”

This is, with respect, a misunderstanding of the pleading. While it advanced a primary case that the Truck was in the possession of the Magistrates’ Court, it also advanced a case that its detention was justified under the SLA pending a decision by the Magistrate on forfeiture. There was, moreover, no warrant for limiting the plea to the period before the charges under the SLA were laid on 30 September 2019. On the contrary, para 4 of the Defence which was dated 20 November 2020 expressly avers that the Truck was lawfully detained by Constable Gordon further to an investigation into illegal quarrying “and continues to be detained pursuant to the State Lands Act”.

88. The Court of Appeal went on to make a further error. It stated (at para 73):

“In our view, the defence, properly understood, is that after the charges were laid under the State Lands Act the police did not seek to exercise the power of detention of the dump truck as the



Magistrates' Court then came into possession of the dump truck. The effect of that is to altogether take this period outside of section 26."

This is a further misunderstanding of the Attorney General's Defence. At no point did it disavow its case that the SLA justified the detention of the Truck pending the determination of the forfeiture proceedings before the Magistrate. Whatever view was formed as to who was in possession of the Truck pending that determination, the Attorney General raised a plea which is capable of affording a complete defence to the claim and which therefore should not have been struck out.

89. It is necessary to address two further points concerning the adequacy of the pleading which arose in the course of argument before us. First, contrary to the submission on behalf of the respondent, there was no need for the Attorney General to plead or to prove particulars of his case that the owner was liable to forfeiture of the Truck. It was simply necessary to plead that there was reasonable cause to suspect that the material it carried had been won from State Lands without the necessary licence and that as a result the Truck had been seized by the police and was subject to forfeiture proceedings before the Magistrates' Court pursuant to sections 26 and 27 of the SLA. This is because the burden under section 27 is on the owner of the vehicle. The burden of proof is reversed. It was not necessary for the Attorney General to plead particulars of the owner's involvement in the criminal enterprise. Secondly, there was no need for the Attorney General to plead the purpose of the retention beyond saying that it was subject to proceedings before the Magistrates' Court under sections 25-27 of the SLA. That was sufficient. It was clearly implicit in the pleading that the purpose was forfeiture and that there is a basis for it. There was no need for the Attorney General to plead that the police were still seeking forfeiture.

*Issue 4 – Should the Attorney General be permitted to raise the argument of re-amending its Defence in circumstances, where, Edasco Ltd contends, it did not do so before the Court of Appeal?*

*Issue 5 – Did the Court of Appeal err in striking out the Defence in relation to the period 30 September 2019 to 7 May 2021 rather than allowing the Attorney General an opportunity to re-amend?*

90. It is convenient to deal with Issues 4 and 5 together. In the light of the Board's conclusion on Issue 3, that the Defence raises an arguable justification for the continued detention of the Truck which is capable of constituting a defence to a claim in detinue in respect of the period 30 September 2019 to 7 May 2021, there is no need for the Defence to be re-amended. As there is no need for the Defence to be re-amended, no issue arises

as to whether the Attorney General should be permitted to raise the argument as to re-amending the Defence even if that argument was not raised before the Court of Appeal.

## **Conclusion**

91. The Court of Appeal erred in striking out the Defence in relation to the second period. The dispute should now return to a judge at first instance where the relevant issues can be considered and resolved.