

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. **CV2018-01522**

**IN THE MATTER OF AN APPLICATION BY ONEKACHI EKE AKA
EMMANUEL FOR LEAVE TO APPLY FOR JUDICIAL REVIEW
UNDER PART 56 OF THE CIVIL PROCEEDINGS RULES 1998 (AS AMENDED)
AND THE JUDICIAL REVIEW ACT CHAPTER 7:08**

BETWEEN

ONEKACHI EKE AKA EMMANUEL

Claimant

AND

CHIEF IMMIGRATION OFFICER

Defendant

Before the Hon. Madam Justice C. Gobin

Date of Delivery: May 22, 2019

Appearances: -

Mr. C. Williams instructed by Ms. S. Ramkissoon for the Claimant

Ms. C. Finley and Mr. R. Ramcharitar instructed by Ms. S. Latchan for the Defendant

REASONS

Background

1. By his amended Claim Form filed on 18th May 2018 the Claimant sought inter-alia the following declarations, which from Counsel's statements from the bar table at Case Management, I believe to have been the main reliefs. These were :-

“(1): a declaration that there is no power under the Immigration Act to detain the Claimant at the IDC or at any other detention facility for a period longer than 6 months from the date upon which a detention order was issued.”

(2) That the delay in deporting or repatriating the Claimant after 6 months from the date of his deportation order is unreasonable.

2. For some reason (which remained unexplained) the period of 6 months for either of these two events (detention or issuance of deportation order) was identified as objectionable, as opposed to “a reasonable period”, not so specifically marked or pinpointed. By the time it got to submissions, the Claimant’s case appeared to have shifted to a case of a period of 5 years (detention awaiting deportation) being unreasonable. The Claimant it seems from the submissions abandoned the case on what I consider to be the arbitrarily identified 6 month period.
3. The parties agreed at an early stage that the matter would proceed on the legal issues. There was no response or cross-examination on any aspects of the evidence which specifically alleged it was the Claimant’s own conduct that had caused and/or contributed to delay in the efforts of the Chief Immigration Officer to repatriate him. That evidence therefore remained uncontroverted.

Chronology of facts

4. The Claimant’s case as I said before was not as pleaded that the Chief Immigration Officer may detain for a reasonable period and that 6 months in the circumstances of this case was a reasonable period. It eventually emerged that it was that in the peculiar circumstances the period of 5 years detention, awaiting deportation was unreasonable and therefore unlawful. This significant shift on its own could have resulted in the dismissal of the claim. I proceeded however to consider the evidence and the submissions on the merits and found that the Claimant’s case should be dismissed.
5. The Chronology of events was helpfully set out in the Respondent’s submissions. It conveniently indicated at paragraph 5 to 7 the Claimant’s pre-deportation (17/10/13) – history and the post issuance events in paragraph 8 to 12.

Chronology of facts: Pre issuing of deportation order

(5). In summary, the Claimant is a Nigerian national who entered this country legally on 3rd September 2012, and was granted a stay of 3 weeks until 18th September 2012. He sought an extension of time of his initial permitted entry but failed to

keep his rescheduled appointment and to produce a return ticket to his homeland as requested on the 5th December, 2012. On visiting the Extensions Unit on 7th January, 2013, he was detained for the purpose of holding a Special Inquiry. He was placed on Orders of Supervision and given notice of Hearing in Deportation Proceedings (Special Inquiry) scheduled for 22nd May, 2013. The Special Inquiry was adjourned to 22nd August, 2013 to accommodate the Claimant's request for an attorney, and he was placed on a further Order of Supervision during this time.

- (6). The Special Inquiry reconvened on 22nd August, 2013 where the Claimant indicated, amongst other things, that he had funds to purchase a ticket to Nigeria. The Claimant was granted Voluntary Departure to return to Nigeria within 3 weeks for charges contained in the Order to Show Cause. (N.B. charges). Having produced what appeared to be a valid ticket and flight itinerary for his travel through to Nigeria, the Claimant departed from Trinidad to Grenada on 13th October, 2013. He however returned to Trinidad on the same day and was refused entry pursuant to section 21 of the Immigration Act. Chap. 18:01. He was served with a Rejection Order and placed in the care of the airline between the 13th and 17th October, 2013.
- (7). On 17th October, 2013, the Chief Immigration Officer, the Respondent, ordered a Special Inquiry be reopened as the Claimant breached the terms of the voluntary departure order. The Special Inquiry was reopened on **18th October, 2013** and an Order of Deportation made against the Claimant on the said 18th October, 2013 (which the Claimant refused to sign) whereupon the Claimant was detained.

Chronology of facts: Post issuing of deportation order

- (8). On 9th January, 2014, the Chief Immigration Officer requested approval from the Permanent Secretary, Ministry of National Security for funds to deport the Claimant. The Claimant however refused to complete the requisite visa applications forms to transit through the approved repatriation route at the time or to provide any information complete same.

- (9). In the latter half of 2014 a flight was chartered for the deportation of the Claimant and other persons scheduled to depart on 20th November, 2014. By letter dated 13th November, 2014 the UNHCR informed the Chief Immigration Officer that the Claimant and three other Nigerians who were scheduled to depart on the said flight had applied for refugee status, and those applications were pending at the time of the charter. As a result these four persons, including the Claimant, were not deported.
- (10). On 17th May, 2015 the UNHCR informed that the Claimant that he did not meet the criteria for recognition as a refugee. The Immigration Division received a copy of this letter on 16th July, 2015. The Division received further correspondence dated 31st January, 2016 from the UNHCR.
- (11). Subsequent to the receipt of these letters efforts were ongoing by the Immigration Division for the repatriation of deportees including the Claimant. On 24th October, 2016 a report was generated for the consideration of the Chief Immigration Officer which addressed the challenges faced in regard to repatriation. Continuous efforts were made by the Immigration Division to charter a flight for the repatriation to reduce costs and other challenges that the Division faced in repatriation persons individually.
- (12). On 8th March, 2018 the Immigration Division once again wrote to the Permanent Secretary, Ministry of National Security requesting approval and release of funds to cover the costs of repatriation for the Claimant. Approval was granted on 9th March, 2018. Tickets were purchased for the Claimant and the necessary escorts and the Claimant was carded to depart Trinidad on 29th April, 2018. The total cost of his repatriation was \$225,836.42. On 28th April, 2018 the Claimant sought and was granted an injunction preventing his deportation.

6. From the chronology I have come to the conclusion that in large measure the extended period of loss of liberty and the delay in effecting his repatriation were the products of the Claimant's own making. The specific conduct and actions the Claimant were identified at paragraph 38 of the Respondent's submissions.

Actions of the Claimant

38. On the facts of this case, it is clear that the Claimant does not wish to return to Nigeria and has frustrated the process of his removal. The following circumstances illustrate his own efforts to prevent the execution of the valid deportation order against him: -
- i. Notwithstanding a grant of voluntary departure issued to him in on 22 August 2013, he purportedly got married a mere 17 days after, and departed and returned to Trinidad on the 13th October, 2013 in breach of the conditions of the voluntary departure order.
 - ii. On the issuance of the Deportation Order against him on 18th October, 2013 he refused to sign same.
 - iii. He refused to complete the requisite visa application forms to transit through the then approved route when arrangements were first being made in January 2014 to deport him.
 - iv. On approval of funding and a flight being chartered in November 2014 to deport him, the Chief Immigration Officer was informed of a pending application for refugee status made by the Claimant to the UNHCR. It is to be noted that this application was made long after his initial entry in the country and only after the deportation order was made against him.
 - v. Moreover, this claim was initiated by the Claimant seeking emergency injunctive relief to prevent his deportation on the eve of another scheduled chartered flight paid for by the State to have him repatriated.
 - vi. Further, as Mr. Anderson Jerome notes in his principal affidavit at paragraph 24, notwithstanding the issuance of a deportation order against an individual, nothing prevents him or her from securing their own funding for their departure, which has been the case many times in the past in respect of several deportees. The case of **Isioma Loveth Eze** was an instance of this. There is no evidence of any such attempt by the Claimant.

7. These facts not disputed. Indeed the Claimant failed to mention most of them in his affidavit. In the circumstances of his own actions to prevent his deportation and the effect on the process, it cannot be open Mr. Emmanuel to complain about the unlawfulness of his detention or the delay.
8. This is not a case in which the Claimant was offering to procure a ticket for his return to his homeland. It seems clear from his actions and there is enough from which the Court could infer, that he was not someone who wanted to return. If there was any doubt about this, his refusal since January 2014, to complete and sign his visa application forms which were necessary for his transit visas – established his unwillingness to co-operate so as to achieve his goal of defeating the efforts of the CIO to comply with the law. His application for refugee status to the UNCHR (which he was entitled to make), contributed to further delay.
9. The principal and supplement affidavits of Mr. Anderson Jerome (Immigration Officer III Enforcement Unit) established the huge and complex logistical challenges involved in repatriating the Claimant and other nationals from Nigeria and other parts of Africa. This is because there are no direct flights from Trinidad and because established transit hubs such as England refuse entry even for accompanied deportees without visas. Deportation exercises require cooperation with immigration authorities in several countries and compliance with visa and additional security requirements at multiple destinations via indirect and circuitous routes. They require the co-operation of the deportee as well.
10. Mr. Jerome also indicated the huge drain on limited budgetary allocations as well as the cost in terms of manpower – the number of officers required to accompany deportees. It is not unreasonable in the light of the evidence that mass deportations by way of airline charter are considered to be the best way, economically, to achieve the repatriation. It is the least costly way for the State but it necessarily involves delay and Ministerial approvals for funding still have to be obtained.
11. Significantly, this Claimant was carded to leave Trinidad on 29th April 2018 at a total allocated cost of \$225,836.42. He defeated the process once more by his own actions. On 28th April 2018, the Claimant applied for and was granted an injunction preventing his removal.

12. I have considered the **Hardial Principles** and the principles set out in the Judgment of the Privy Council in **Tan Te Lam and others v. Superintendent of Tai A Chau Detention Centre and Another [1997] A.C. 97** In applying them I have factored in the conduct of the Claimant in contributing to the delay, the actions of the CIO given the budgetary constraints and the logistical problems of repatriation to Nigeria, and the efforts of the Respondent to achieve to repatriation. In the circumstances of this case, while the period has been long and no doubt difficult for the Claimant I do not consider the period of detention to be unlawful. For a significant period it was self-induced.
13. On the issue of his conditional release, there was no evidence that the CIO considered conditional release pending his deportation as she ought to have done, but having regard to his history it is not unreasonable to assume that the Claimant may not have been favourably considered. At most he may have established that there was a breach in that regard but I decline to make a declaration in the peculiar circumstances of this case. The Claimant is now in lawful custody as a result of criminal charges having been preferred against him and he will now have to await the outcome of the criminal matter.

Disposition

14. The Claimant's case is dismissed with costs to be assessed by the Registrar.

Carol Gobin

Judge