IN THE REPUBLIC OF TRINIAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2018-02702

In the matter of the Habeas Corpus Act, Chapter 8:01
In the matter of an Application of
Chukwudum kingsley Ezenwa for the issue of a
Writ of Habeas Corpus ad Subjiciendum against
The Chief Immigration Officer

Between

Chukwudum Kingsley Ezenwa

Applicant

And

The Chief Immigration Officer

Respondent

Before The Honourable Madam Justice Eleanor Joye Donaldson-Honeywell

Appearances:

Ms. Sophia Chote SC, Mr. Peter Carter, Samantha Ramsaran and Stacey McSween for the Applicant.

Ms. Antoinette Alleyne and Kristy Mohan for the Respondent

Oral Ruling delivered on August 29, 2018

Reasons delivered September 17, 2018

Oral Ruling - Reasons

A. Introduction

1. The present habeas corpus application was brought by the Applicant, Mr. Chukwudum Kingsley Ezenwa, a Nigerian national detained at the Immigration Detention Centre ("IDC"), Aripo for more than 950 days.

2. The following facts are undisputed:
    a. The Applicant arrived in Trinidad and Tobago at the Piarco International Airport on 15 May, 2014 and was granted a two-week stay by immigration officials. The Applicant stayed beyond that two-week permitted stay and was arrested by Police Officers on or about 13 December, 2015.
    b. The Applicant was detained at the Chaguanas Police Station before being taken to the IDC and he has remained there since. He was informed of the reason for his arrest and in January 2016 the Special Inquiry was held. At the end of the Inquiry, he was issued a deportation order and was given 24 hours to appeal. He did not appeal as he knew he had overstayed and worked without a permit and these were stated as the reasons for the deportation order.
    c. The Applicant's passport was kept by the Respondent and its agents. It expired on 16 April 2018 and no attempt was made to have it renewed.

3. The Applicant now challenges the lawfulness of the period of his detention of over 950 days on the basis that the Respondent should have secured his removal within a reasonable time

4. The Respondent's main contention is that plans were in the works for repatriation, that the Applicant could not be released on a supervision order without a landing/security deposit, and that there is concern by the Permanent Secretary of the Ministry of National Security that money is wasted when tickets are purchased and Nigerian nationals refuse to comply and depart.

B. Procedural History

5. The Applicant filed his Notice of Application and accompanying affidavit on 24 July 2018. The Respondent filed its return on 2 August, 2018 and an affidavit of Dennison Aley on 30 July, 2018.

6. The return indicated that a booking had been made for the Applicant to leave on 2 September, 2018 but that this could be brought forward if there is no resistance by the Applicant.

7. Supplemental affidavits of Dennison Aley and Anderson Jerome were filed on 7 August, 2018.

8. The first hearing of the application was held on 26 July, 2018. A Site Visit was then scheduled to be held on 31 July, 2018 at the IDC and at the visit observations were made about the conditions therein.

9. An affidavit in reply of Stacey McSween was filed on 21 August, 2018 by the Applicant.

10. A supplemental return to the writ was filed on 29 August, 2018, on the date of the hearing, containing the Minutes of the Special Inquiry held on 6 January, 2018 and a ticket booking for 9 September, 2018. Attorneys for the Respondent indicated that the previous booking had lapsed and that the Permanent Secretary was reluctant to incur the cost of the ticket without resolution of the legal issues being determined. The return highlighted that the reason for this concern is due to recent litigation by other Nigerian nationals which resulted in monies expended for repatriation being wasted.

C. Affidavit Evidence and Site Visit

11. At [15] to [21] of the Applicant's affidavit, the Applicant details his experience at the IDC. He states that in December 2017 an immigration officer spoke to all African detainees about the possibility of allowing them six-month work permits to get money to buy their own tickets. However in January of this year they were informed that this proposal would not be carried out due to doubts over the genuine citizenship of some of the detainees.

12. Dennison Aley states in his affidavit that this was an option that was being explored and it was never indicated that it would be adopted. He denies that the Immigration Division changed its mind over doubts about citizenship

13. The Applicant avers that he is unable to afford a ticket to Nigeria and neither his friends in Trinidad nor his family in Nigeria are able or willing to assist him with the cost. He also says he is unable to afford legal representation and is now being represented pro bono.

14. During his period of detention he claims to have suffered considerable emotional distress, anguish and despair. He claims that the conditions at the IDC are harsh and outlines them as follows:
    a. Sharing a dorm with forty-five detainees which is supposed to accommodate thirty-five detainees;
    b. Sharing bed accommodation where detainees are sometimes forced to sleep on the floor;
    c. No fresh air as there were no windows and only a few ventilation blocks;
    d. Fans being kept on all day causing stifling heat as a result of the poor ventilation;
    e. Being given food that is often inedible;
    f. Being taken back and forth from Aripo to Santa Rosa without explanation or reason;
    g. Being treated worse than the prisoners at Santa Rosa, e.g. being denied "airing";
    h. Being without basic toiletries (e.g. toothpaste, soap, toilet paper) and having to wait weeks before these are provided;
    i. No system whereby detainees can place official calls to legal representatives or to respective embassies;
    j. No provision of reading material – the only reading material given are those donated by church groups or detention officers' personal newspapers which they give to the detainees when they are finished with them;
    k. Provision of only one orange jumpsuit which is allowed to be washed once or twice a week along with any other personal clothing;

15. The Applicant also states that usually the detainees are confined to dormitories for 14 hours daily and 10 hours of "airing". However, after a protest by some of the detainees against the harsh conditions faced, the detainees are only given airing for 2 hours per day and are on lockdown for 22 hours.

16. The affidavit filed by the Respondent of Dennison Aley, Acting Immigration Officer IV sets out the response to the conditions alleged to have been experienced by the Applicant. He firstly states that he began working at the IDC in May 2017 which is nearly two years after the Applicant was first placed there. He states that on his arrival efforts were made to deal with the overcrowding and the number of male detainees was decreased from 130 to 98. He avers therefore that there is now an equal number of beds to the number of detainees and that new beds and mattresses were put in in February 2018. He denies that any detainees were made to sleep on the floor.

17. Mr. Aley avers that between the hours of 6:00 a.m. to 3:00 p.m. and 5:00 p.m. to 10:00 p.m. the detainees are allowed free movement between the dormitories and the recreation hall with airing time scheduled between 3:00 p.m. to 5:00 p.m. if the weather permits. The recreation hall was observed to be large enough to hold all the detainees during the site visit as this is where they were all kept during the tour and there were industrial fans therein. Mr. Aley states that from 10:00 p.m. to 6:00 a.m. the detainees are locked within their dormitories.

18. Regarding ventilation, he states that there is a ventilation system consisting of 48inch industrial fans on one end of the IDC which pull air from the outside, several 32inch fans fitted throughout the IDC for continuous movement of air and 48inch extractor fans on the other end to take stale air out. He avers that in September to October 2017 all fans were returned to proper working condition.

19. The detainees' meals, he states, are provided by J De Freitas and Company Limited which ensures that a balanced diet is provided. Special diets, he states, are also catered

for. The meal observed at the site visit consisted of rice and peas, vegetables and a piece of chicken and appeared to be edible.

20. He avers that in September 2017, the detainees were temporarily relocated to the Eastern Correctional Rehabilitation Centre in Santa Rosa due to renovation works being conducted at IDC. The detainees have since returned to the IDC. Prior to that he said he is aware that in 2015 the detainees had set a part of the building on fire and had to be moved while the IDC was being refurbished

21. He maintains that the detainees are provided, every Friday, with toothpaste, toilet paper and soap to be used on a daily basis and that stock levels are monitored to ensure that they are always sufficient. At the site visit the Applicant did show his pack of toiletries to the Court. However, it is undetermined whether this provision is always made.

22. Mr. Aley appears to admit that there is no system for making official calls, stating that the detainees who entered with a personal cell phone can request to use it under supervision and then re-lodge it after use. For those without cell phones, the officers are said to "make every effort to accommodate their requests for phone calls using IDC telephones, limited to local calls". At the site visit it was observed that the cell phones were kept in bags of belongings of the detainees and each use of the phones was logged in a diary.

23. He states further that the recreation hall is fitted with two televisions and board games and that books are kept stored for security purposes due to the large number of detainees. At the site visit it was seen that the books were indeed kept in storage and that there were two televisions in the recreation hall, however both appeared to have bad signal.

24. Mr. Aley states that detainees are provided with two orange jumpsuits on arrival and that there can be laundry days twice a weeks for each dormitory unit.

25. He further states that the detainees cause damage to the building and mattresses when they engage in destructive behaviour, particularly when they engage in protest action.

He admits that there was a riot in January 2018 but denies that there were threats to use rubber bullets or tear gas or that men were dragged away. He also denies that the schedule for airing has changed as a result of the riot.

26. The affidavit of Stacey McSween responds to the averments of Mr. Aley stating, on instruction of the Applicant, firstly that the recreation area is an enclosed area within the Detention Centre. This was seen to be true at the site visit.

27. She also states that there are few books offered to inmates but that the Applicant does not have access to these books nor does he know where they are stored. At the site visit it was in fact observed that the books are kept in a room away from the detainees and comprise a very small collection of seemingly dated religious pamphlets and texts.

28. She further states that he has been given two jumpsuits for his period of detention and when they are being washed together, he is forced to wait in boxer shorts and a vest until the laundry is returned. This in fact was the attire of the Applicant on the day of the site visit.

29. She states that while the usual airing is from 3: p.m. to 5: p.m., there are times when the airing is cut short and when it rains they are not allowed airing at all. Finally she states that the building is poorly lit and badly ventilated and after lights are turned off they are locked in the dormitories.

30. Anderson Jerome states in the return that he spoke with Mr. Peter Carter, attorney on record for the Applicant, on the telephone and that Mr. Carter indicated that the Applicant wished to be compensated prior to repatriation. The affidavit of Stacey McSween denies that Mr. Carter suggested that deportation is contingent on any factual matter and indicates that Mr. Carter is aware that where there is a deportation order, the deportee has no choice in the matter.

31. The supplemental affidavit of Dennison Aley filed on 7 August, 2018 indicated the cost per day of the detention as $350.33 per day.

32. The supplemental affidavit of Anderson Jerome confirms that the deportation procedure is not voluntary and where there are signs of resistance an escort is arranged. It also outlines, without a breakdown or documentation, that the expenses incurred by the State in deportation of African nationals of $225,000 represents the cost of one-way airfare for the deportee, return airfare for three escorts, meal allowances for the detainee and escorts, hotel accommodation for the escorts and subsistence allowance for the escorts.

D. Submissions

33. Counsel for the Applicant firstly submitted that no evidential weight should be given to the new information contained in the supplemental return due to it being unsworn. It was further submitted that even if the court were to assign weight to it, it is wholly insufficient to show a real intention to deport the Applicant on the date proposed for the reasons summarised as follows:

    a. Firstly, there is an indication that the Permanent Secretary still has concerns about the release of the funds and therefore all that is before the court is an intention to decide whether to purchase the ticket.
    b. There is no indication of whether the Applicant's travel documents will be in order prior to the date of departure and no documentation to indicate that all necessary approvals have been given or will be given in time for the proposed flight date.
    c. That any possible proceedings for compensation for the Applicant has no bearing on the monies assigned to the immigration division for deportation and the concern of the permanent secretary about expenditure by the state of such monies is irrelevant to the present matter.
    d. That in light of the Respondent's previous indication that the Applicant would be repatriated on 2 September, a bare assertion is insufficient to support the change in circumstance and also no documentation regarding the flight has been produced.

34. Counsel for the Applicant then submitted on the facts of the Applicant's detention. Firstly Counsel argued that, although there was no appeal made by the Applicant of the Special Inquiry, his detention was in fact unlawful as the declaration that he ceased to be a permitted entrant was made on 22 December, 2015 after his arrest when it should have been made prior to his arrest. Counsel noted however that her Client had not challenged his deportation order.

35. Counsel for the Applicant explained that the Applicant, now 28 years of age, a Nigerian citizen, previously a teacher overstayed and was detained in excess of 950 days with no attempt to have him deported. Counsel for the Applicant made the point that much of the response by the Respondent is based upon circumstances surrounding the detention and deportation of other detained persons and is not specific to the Applicant.

36. Regarding attempts to avoid deportation and refusal to comply with deportation orders, the Respondent has produced nothing to show that the present Applicant has been unwilling to leave but lumps the Applicant into the category of Nigerian nationals so unwilling. According to the Applicant, the Respondents made reference to the doubts about citizenship of other detainees when considering whether to allow them to work for their ticket back home. Again this conflates the treatment of the present Applicant with that of other detainees from African countries.

37. Further the Respondent cites difficulties with getting persons who are placed on orders of supervision to report to the airport on the date of the scheduled deportation. There is nothing in the Respondent's response to indicate that the Applicant's case was considered individually. Counsel for the Applicant argued that this showed discrimination and prejudice on the part of the Respondent.

38. Counsel for the Applicant submitted that the Respondent has failed to show that they took any steps to deal with the Applicant's deportation prior to the initiation of these legal proceedings, even allowing the Applicant's passport to expire in April of this year. Counsel further submitted that there was no explanation for the delay or the

refusal or omission to act and even now the Respondent does not appear to have taken reasonable steps to secure his repatriation in light of these proceedings.

39. Counsel for the Applicant pointed out that the Respondent has not produced or referred to any rules, written procedures or regulations of the Immigration Division governing the treatment of detainees at all. This includes a lack of formal regulation on recreation, telephone calls, health, visiting hours and many other procedural issues detainees may face. Counsel submitted that the lack of such regulation results in the exercise of a broad and arbitrary discretion by immigration officials and falls below the standard of treatment towards persons charged with criminal offences, as there are rules that apply to protect their human rights.

40. Counsel for the Applicant pointed out that Mr. Dennison Aley was only appointed at the IDC from May 2017 and therefore cannot speak to conditions experienced by the Applicant prior to that.

41. Counsel for the Respondent made two preliminary points on the affidavit in reply of Ms. Stacey McSween. Firstly, that the affidavit should have been made by the Applicant himself as in habeas corpus proceedings, attorneys are not allowed to present the evidence of the Applicant. Counsel for the Applicant responded to this stating firstly that it was impossible to get a Justice of the Peace to the IDC for the Applicant to make his own affidavit.

42. Secondly, Counsel for the Respondent submitted that the information contained therein about statements made by Mr. Peter Carter should have been averred to in an affidavit by Mr. Carter himself and pointed out that there was no explanation given regarding his failure to do so. Further they submit, citing **Francisco Javier Polanco Valerio & Johan Rodolfo Custodio Santana v Chief Immigration Officer & AG CV2017-01623** and **Rule 35 of the Code of Ethics of the Legal Profession Act Chap. 90:03**, that an attorney should not be a witness in his or her own matter except in merely formal matters.

43. Counsel for the Respondent also submitted that all that the Court must consider on a habeas application concerning an illegal immigrant in detention is the prospects of his early deportation looking forward, i.e. not looking back at how he was treated in the past.

E. Legal Analysis

44. The crux of the matter at hand, however, lay in whether the test for release on a habeas corpus application had been satisfied. Both Counsel relied on the case of **R v Governor of Durham Prison, ex p. Hardial Singh [1984] 1 WLR 704** which outlines the test to be satisfied. The court in that case considered that the State *"should exercise all reasonable expedition to ensure that the steps are taken which will be necessary to ensure the removal of the individual within a reasonable time."*

45. Counsel for the Applicant also relied on **R (I) v Secretary of State for the Home Department [2002] EWCA Civ 888** and **Souop v Chief Immigration Officer & The Attorney General CV2016 – 01612.** In the latter case the guidance of Dyson LJ (as he then was) in R (I) v Secretary of State for the Home Department was cited at paragraph 33 as to relevant considerations in determining the lawfulness of the detention period. Dyson LJ said:

> *"[46] There is no dispute as to the principles that fall to be applied in the present case. They were stated by Woolf J in Re Hardial Singh [1984] 1 All ER 983, [1984] 1 WLR 704, at p 706D of the latter report in the passage quoted by Simon Brown LJ at para 9 above. This statement was approved by Lord Browne-Wilkinson in Tan Te Lam v Tai A Chau Detention Centre [1997] AC 97, [1996] 4 All ER 256, at p 111A-D of the former report, in the passage quoted by Simon Brown LJ at para 12 above. In my judgment, Mr Robb correctly submitted that the following four principles emerge:*
>
> *a. The Secretary of State must intend to deport the person and can only use the power to detain for that purpose;*
>
> *b.* ***The deportee may only be detained for a period that is reasonable in all the circumstances****;*

c. *If, before the expiry of the reasonable period, it becomes apparent that the Secretary of State will not be able to effect deportation within that reasonable period, he should not seek to exercise the power of detention;*
d. *The Secretary of State should act with the reasonable diligence and expedition to effect removal.*

[47] Principles (ii) and (iii) are conceptually distinct. Principle (ii) is that the Secretary of State may not lawfully detain a person "pending removal" for longer than a reasonable period. ***Once a reasonable period has expired, the detained person must be released.*** *But there may be circumstances where, although a reasonable period has not yet expired, it becomes clear that the Secretary of State will not be able to deport the detained person within a reasonable period. In that event, principle (iii) applies. Thus, once it becomes apparent that the Secretary of State will not be able to effect the deportation within a reasonable period, the detention becomes unlawful even if the reasonable period has not yet expired.*

[48] It is not possible or desirable to produce an exhaustive list of all the circumstances that are or may be relevant to the question of ***how long it is reasonable*** *for the Secretary of State to detain a person pending deportation pursuant to para 2(3) of Sch 3 to the Immigration Act 1971. But in my view they include at least:* ***the length of the period of detention; the nature of the obstacles which stand in the path of the Secretary of State preventing a deportation; the diligence, speed and effectiveness of the steps taken by the Secretary of State to surmount such obstacles; the conditions in which the detained person is being kept****; the effect of detention on him and his family;* ***the risk that if he is released from detention he will abscond; and the danger that, if released, he will commit criminal offences****."[Emphasis Added]*

46. Applying these authorities, the main contention of Counsel for the Applicant is that reasonable steps have not been taken by the Respondent to ensure the removal of the Applicant. Counsel contends that over 900 days could not be considered a reasonable time for detention and that the Respondent has failed to show that it has taken any reasonable steps. Furthermore, the conduct of the Respondent on that day in changing the proposed date of detention, thereby postponing yet again the repatriation of the Applicant cannot be viewed as taking reasonable steps in light of the period of detention.

47. Counsel for the Respondent began by pointing out that what must be looked at is the position at the date of the hearing and consideration must be given to the steps taken to date to secure the removal of the Applicant. In the submission of Counsel for the Respondent, the steps taken by the Respondent in making the booking for 9 September and the undertaking from Counsel that the funds would be released for purchase upon determination of the hearing are sufficient to warrant the continued detention of the Applicant.

48. Counsel for the Respondent pointed out that in the **Hardial Singh** case relied on by both sides, the court granted an adjournment of three days for the state to produce additional evidence, considering *"that if it is shown to this court that the applicant is due to be removed within a very short time indeed, then it would be proper for him to remain in detention for that short time."*

49. It is to be noted, however, that the period of detention in that case was from June to December of the same year and that what was considered reasonable in those circumstances would not necessarily be reasonable in the present case.

F. Findings

50. The determination as to the lawfulness of continued detention of the Applicant commenced at the first hearing of this Application on 26 July, 2018, continued on the 31 July 2018 when the Applicant was visited at the Detention Centre and concluded with the findings herein delivered orally on 29 August, 2018.

51. The Respondent's return, the first version of which was filed on 30 July which was the day before the Site visit, indicated at paragraph 13 that a booking had been made for the Applicant to leave on 2 September, 2018. There was therefore in clear view a possible end to the lengthy detention. Arrangements had not been made definite however, and in the interim a decision was made to visit the detention centre so as to take into account the conditions there as one of several factors relevant to deciding whether the continued detention was reasonable.

52. On the final date of hearing of the Application the Respondent filed a Supplemental Return informing the Court that arrangements had not been made for the anticipated deportation of the Applicant on 2 September. Instead, a new booking for 9 September was made but there had been no payment to allow for travel on that day. Additionally, no arrangements had been made for travel documents to be in place for such travel. The reason stated was that the Permanent Secretary was reluctant to incur the costs of the ticket until the legal issues were resolved.

53. In those circumstances, it was my view that the extended period of detention of Mr. Ezenwa to 1000 days which would be occasioned by this further delay was unjustified. The parties were informed at the outset of the hearing of my position in this regard. Senior Counsel for the Applicant also objected to this delay as there had been no communication at all with her Client or his Attorneys about this postponed proposed travel date. Accordingly, there being no fixed date and travel arrangements in place the matter proceeded on that understanding.

54. At the end of the proceedings, after approximately two hours of legal submissions for the Applicant, while counsel for the Respondent was closing off her submissions she asked that a witness be sworn in to prove that the Respondent had, at that moment, purchased the Applicant's return ticket. I did not allow such evidence to be taken based upon the lateness of the application, the uncertainty of the circumstances surrounding how this new evidence came to the knowledge of the intended witness during the proceedings as well as the potential weight of this proposed evidence without more.

55. There was merit to the submission of Counsel for the Respondent, that regardless of any unreasonableness of the prior 989 days of the Applicant's detention, the Court's main consideration on a Habeas Corpus Application was as to whether going forward his release would be justified. If his detention would come to an end within a short time the argument against his release would be stronger and less weight should be given by the court to all other considerations.

56. It is my finding however that there was insufficient evidence before me as to timely deportation of the Applicant. Instead, there was evidence of delay beyond the time envisaged when the hearing started one month ago. Accordingly, several factors were considered in determining the lawfulness of the detention period guided by the authorities cited above.

57. Firstly, I took into account that there was no intention on the part of the Respondent to effect the deportation of the Applicant. This is evident firstly, from the fact that he was in custody for 950 days without being deported. In addition the Returns and Affidavit evidence filed by the Respondents provide no information specifying any plans or steps towards deporting the Applicant from 2015 to 2018 when his Attorneys inquired on his behalf.

58. Secondly, the period of detention of almost 1000 days has not been shown by any Return or Evidence to be reasonable in the circumstances. On the contrary the evidence filed on both sides points to the unreasonableness of this treatment of the Applicant.

59. One of the main reasons given for delays in general, though not specific to this Applicant, was the cost of deportation. According to the respondent the Applicant's ticket would cost $34,000.00. However, for another person in a similar situation for whom three escorts were required deportation had cost $225,000.00.

60. In compliance with a request made by the Court the Respondent provided information on the daily cost of the Applicant's detention which was said to be $350.00. For a period of 1000 days in detention which the Applicant would have served had he been detained until September 9, 2018, the cost would be in the vicinity of $350,000.00 and continuing. Then after that he would still be deported at some point at a cost that could reach $225,000.00. Additionally, the prospect of the Applicant seeking and possibly being granted compensation for unlawful detention was recognised by the Respondent. In total the cost of detaining instead of sending the Applicant home could surpass half a million dollars. I took this into account in determining that the detention for 989 days was not reasonable.

61. On the other hand the Respondent admitted, in an Affidavit of Dennison Aley filed on July 30, 2018 that, as alleged by the Applicant, some thought was given to allowing him and other detainees to be released on supervision orders to work and pay for return tickets home. This idea was discussed in 2017 however the reason for not pursuing it was not provided by the Respondent. The Applicant's contention is that he was told the Immigration Division changed its mind due to doubts over the citizenship of the detainees.

62. There was no evidence as to any doubts regarding the Applicant's citizenship, specifically. In fact it was not in dispute that he had entered the country with a valid Nigerian Passport and Visa. The Respondent had confiscated his Passport since 2015 and allowed it to expire early in 2018. If in fact the reason for the change in decision was due to doubts over citizenship, in my view it would have been reasonable for the Respondent to have given proper consideration to releasing the Applicant as contemplated in 2017 or earlier to work and have his salary paid directly to the Respondent to pay for his ticket. There is no evidence that this was fully considered and if so why, in relation to the Applicant, it was not pursued. I took this into account in deciding that the continuing detention of the Applicant was unreasonable.

63. Another unreasonable aspect of the detention was the position expressed by the Respondent specific to "detainees from the African Continent" but not referring individually to the Applicant. This position is stated at paragraph 11 to 14 of the Return dated July 30, 2018. The Respondent states that persons referred to as Nigerian Nationals, but giving examples of persons from other African nations such as Ghana, often "refuse to comply and depart". This, it is said, causes "wastage of tax-payers monies".

64. This statement required clarification as to whether the deportation process included a voluntary element such that refusal to comply could prevent it. In compliance with the court's direction the Respondent filed an Affidavit admitting that deportation was not voluntary. In all the circumstances it is my finding that any difficulty the Respondent had with other detainees could not reasonably have been applied to the Applicant as a reason for keeping him in custody for 1000 days.

65. There is, in fact, no evidence at all that the Respondent took into account the individual circumstances of the Applicant, namely (i) that he was a lawful entrant into the country, (ii) that he had no criminal record, (iii) that there was no indication that he was a burden to the state as he was working, albeit without a work permit, or (iv) that his travel documents would have expired this year.

66. Another disturbing aspect of this rationale expressed by the Respondent is that it appears to betray a discriminatory bias for treatment of persons of the African Continent being kept in detention. This is clear from many of the statements made in the Respondent's documents filed herein. I have also taken into account this discriminatory manner of determining that persons should be kept longer in custody in further determining the unreasonableness of the length of the detention.

67. Another factor I have considered regarding the lawfulness of the detention is that the Respondent's Return reveals that for several years before 2018 it was apparent that the Respondent is not able to effect deportation within a reasonable period. At paragraph 16 of the July 30, 2017 return the Respondent admits that prior to 2018 they had

insufficient funds for deportation. The Respondent, as soon as the lack of funds was evident, should not thereafter have continued to seek to exercise powers of detention against the Applicant.

68. In deciding whether the detention was unlawful and therefore ought to have been discontinued I also took into account that the Respondent had not acted with reasonable diligence and expedition to effect removal of the Applicant. No evidence of any steps at all taken prior to the Applicant's Attorney's inquiry in mid-2018 was put forward by the Respondent. Efforts proffered as being in train after that were not specific and gave the impression that there was no urgency. This was so up to the last day of the Habeas Hearing when the Court was informed of postponement of the 2 September, 2018 travel date.

69. Other factors I considered were –

- The nature of the obstacles standing in the path of the Respondent preventing deportation - None being shown by the Respondent specific to the Applicant.
- The diligence and effectiveness of steps taken to surmount such obstacles - No evidence in this regard was presented by the Respondent.
- The conditions in which the detained person was being kept - That there was no dispute regarding poor ventilation, structural defects and leaking roof over periods of time, That there were no proper reading materials, no effective communication afforded to detainees and no legislated Rules governing how the detainees are treated, their entitlements etc.
- The assumed concern about risk that the Applicant would abscond if released, be a danger to the public or a burden on the public purse - On all these factors there was undisputed evidence in favour of the Applicant. He had shown no inclination to evade deportation having even forgone an appeal of his initial detention because he knew he had overstayed. He had no criminal track record and had come into the country legally, so there was no basis for considering him likely to endanger the public. His offence was to over stay and work as a security guard. He was not a burden to the public

purse. If he had been allowed to work with a garnishee order for his salary to go to the Respondent to pay for his ticket home he may have been less of a burden on the public purse than the cost of being detained for 1000 days.

G. Conclusion

70. It is therefore my determination that, in light of the conduct of the Respondent, particularly most recently allowing the booking of the ticket of the 2 September to lapse and in further postponing the repatriation to 9 September without evidence of any steps taken to release funds for the purchase of the ticket or to secure the travel documents of the Applicant, the reasonable steps were not taken to secure the removal of the Applicant.

71. The actions of the Respondent throughout the detention and on the date of the hearing do not meet the standard required in the limitation of a person's right to freedom. For the reasons fully explained in my findings, the Applicant was, therefore, ordered to be released under certain conditions.

H. The Order

IT IS ORDERED as follows:

1. The Applicant shall be released from the Immigration Detention Centre situate at Eastern Main Road, Aripo upon the following conditions:
   a. Upon his release, the Applicant shall reside in the care and at the address of Bishop Ibeleme being No. 9 St. Annes Gardens, St. Annes and whose contact number is 627-4503.
   b. Upon his release, the Applicant shall be placed on an Order of Supervision where he shall be made to report to a Senior Immigration Officer at the Enforcement Unit at the Immigration Division situate at 135 Henry Street, Port of Spain on Monday September 3rd 2018 at 9:00 a.m.
   c. On September 3rd 2018 the Applicant shall be placed on a further Order of Supervision where he shall be made to report to a Senior Immigration Officer at the Enforcement

Unit at the Immigration Division situate at 135 Henry Street, Port of Spain on Thursday September 6th 2018 at 9:00 a.m.

d. On September 6th 2018, the Applicant shall be placed on a further Order of Supervision where he shall be made to report to a Senior Immigration Officer at the Piarco International Airport on Sunday September 9th 2018 at 3:00 a.m. to be checked in for his flight for deportation to Nigeria.

Delivered on September 17, 2018

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Eleanor Joye Donaldson-Honeywell
Judge

Assisted by: Christie Borely

JRC 1