THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Port of Spain [Virtual Hearing]

Claim No. CV 2021-00001

In The Matter of an Application of

Roselis Del Calle Lezama

And

Jennifer Carolina Lezama Bompart

For Leave to Apply for Judicial Review

Under Part 56 of the Civil Proceedings Rules 1998 (As Amended)

And Section 5 (2) of the Judicial Review Act Chapter 7:08

And In The Matter Of the Decision of the Commissioner of Police To

Detain Refugees on The Basis of Illegal Entry

Between

Roselis Del Valle Lezama

First Named Applicant/Intended Claimant

Jennifer Carolina Lezama Bompart

Second Named Applicant/Intended Claimant

And

The Commissioner of Police

First Named Respondent/Intended Defendant

The Chief Immigration Officer

Second Named Respondent/Intended Defendant

Before: Honourable Madam Justice Eleanor J. Donaldson-Honeywell

Delivered: 26 May 2021

Appearances:

Mr. Criston Williams and Mr. Jerome Riley, Attorneys at Law for the Applicants

Mr. Yohann Niles and Mr. Kumar Ramsaran, Attorneys at Law for the First Respondent

RULING

A. Introduction

1. The Applicants are Venezuelan nationals who were detained when the police were addressing a traffic infraction by the driver of a vehicle in which they were passengers. This Ruling determines an application for leave to apply for Judicial Review to challenge their detention.

2. The Court's determination is that an alternate remedy was available to the Applicants. Additionally, they have not established an arguable case that can be ventilated in Judicial Review proceedings. Accordingly, for the reasons explained in this Ruling leave to apply for Judicial Review will not be granted.

B. Issues

3. The issues determined are:
    a. Whether there are any discretionary bars to the grant of leave to apply for Judicial Review and
    b. Whether there is an arguable case for Judicial Review with a realistic prospect of success.

C. Factual Background

4. On or around 1:50 a.m. on Friday 1 January 2021, Police Constable Ramcharitar arrested the Applicants after stopping motor vehicle reg. no. TCU 6373. The First Respondent avers that the vehicle was stopped due to transport of persons in a dangerous manner. Upon inquiry, it was revealed that five Venezuelan nationals, the Applicants among them, were being conveyed.

5. On suspicion that these Venezuelan nationals had committed immigration offences, they were arrested and taken to St James Police Station. On inquiries at the Station, it was ascertained that the Applicants had been issued with United Nations High Commissioner for Refugees ("UNHCR") cards.

6. Thereafter, the Applicants were taken with the other detained persons to the St James Medical Centre for medical examinations mainly with a view to checking for injuries. The Applicants claim that they were tested for COVID-19 on 1 January and their test results were negative. This alleged testing is denied by the First Respondent.

7. The detained persons, including the Applicants, were conveyed to the Four Roads Police Station pending investigation by the Immigration Division. Some were released upon proof of permission to remain in Trinidad and Tobago. A child was released in keeping with the need to protect her best interests. The Second Applicant was separated from the child, her two-year-old daughter, in the process. The child was left in the care of her father, a Venezuelan national. He was one of those who were able to prove permission to remain in Trinidad and Tobago as he produced his Migrant Registration Framework Card. He also established that he has a place of residence in Trinidad. He was not detained and was allowed to take the child home.

8. On the day after their arrest, Saturday 2 January 2021, the Applicants filed an application for leave to apply for Judicial Review. In the application, the Applicants

indicated at B. a) to n) that their proposed Judicial Review Claim will seek a number of reliefs. The reliefs can be categorised as follows:

a. Reliefs at B. a) to i) and k) - Redress for alleged unlawful detention including declarations and orders of mandamus to achieve the release of the Applicants
b. Relief at B. j) – A Declaration that a decision to charge the Applicants who are within "a category undefined in the Immigration Act Chap 18:01" shall "infringe their rights" guaranteed under the Constitution.
c. Relief at B. l) and m) – Damages and costs.

9. Hearing of the application commenced on Monday 4 January 2021. There was discussion about the welfare of the child referred to in the Applicants filed documents as separated from her mother at the time of the arrest. Additionally, certain discrepancies were noted in the information put forward by the Applicants. The discrepancies were later corrected in an amended notice of application filed on 8 January 2021.

10. Additionally, the Covid-19 status of the Applicants was being investigated. According to the First Respondent, on 6 January, it was noted by the police that the Applicants had not yet been tested for COVID-19. They had to be tested before the Immigration Division would take custody of the Applicants.

11. At the hearing on 4 January 2021, the Court gave Directions for the filing of affidavits by both parties to address the concerns raised as well as matters relevant to the leave application. The matter was adjourned to Friday 8 January 2021.

12. On 5 January 2021, the Second Respondent issued the Applicants with Detention Orders pursuant to Section 15 of the Immigration Act, Chap. 18:01. There was from thenceforth lawful basis for the detention of the Applicants by the Second Respondent.

13. The Applicants were transferred to the custody of the Second Respondent on 7 January 2021. At the hearing on 8 January 2021, permission was given to add the Second Respondent as a party based on information, provided that the Second Respondent had taken custody of the Applicants. Counsel for the Second Respondent undertook not to deport the Applicants/Intended Claimants on or before the next scheduled hearing on 13 January 2021.

14. On 13 January 2021, the Second Respondent asked to be relieved of further involvement in the proceedings as they had agreed to release the Applicants from detention and place them on a supervision order. However, as the said release was subject to payment of a bond, and that bond may have been in issue later in the proceedings, they were asked by the Court to remain.

15. The Applicants, however, indicated an intention to pursue the leave application against the First Respondent. Accordingly, the parties were directed to file submissions. The parties agreed between them and the Court directed that the determination would be on a "rolled-up" basis. As such, parties were to file submissions not only on matters pertaining to leave but also on the full merits of the Claim.

16. These submissions were not filed in the order directed by the Court as the Applicant failed to file on time. As a result, the First Respondent filed submissions before the Applicant. The First Respondent filed opposing submissions to the application for leave to apply for Judicial Review in accordance with the timelines set in the Court's directions.

17. The First Respondent applied, by notice of application filed on 29 March 2021, for an order of the Court striking out the Applicants' application for leave. This application by the First Respondent was based inter alia on the Applicants' failure to meet the filing deadlines for submissions in support of their application for leave. However, in the interest of a full ventilation of the issues, the Applicants

were granted extended time to file submissions. The Applicants filed submissions on 14 May 2021, after receiving the extension of time.

18. As the determination herein is that the application for leave to apply for Judicial Review is without merit, there is no need for the Court to consider and determine the striking out application. That application was not necessary. It will be dismissed with no order as to costs.

D. <u>Law and Analysis</u>

19. **Section 9** of the **Judicial Review Act, Chap. 7:08** provides:

    "The Court shall not grant leave to an applicant for judicial review of a decision where any other written law provides an alternative procedure to question, review or appeal that decision, save in exceptional circumstances."

20. **Section 3(4) Criminal Law Act, Chap. 10:04** provides:

    "Where a police officer, with reasonable cause, suspects that an arrestable offence has been committed, he may arrest without warrant anyone whom he, with reasonable cause, suspects to be guilty of the offence."

21. **Sections 15**, **17** and **22(1)(i)** of the **Immigration Act, Chap. 18:01** provide**:**

    "15. Every police officer and every immigration officer may, without the issue of a warrant, order or direction for arrest or detention, arrest and detain for an inquiry or for deportation, any person who upon reasonable grounds is suspected of being a person referred to in section 9(4) or section 22(1)(i), and the Chief Immigration Officer may order the release of any such person."

    17. (1) Subject to any order or direction to the contrary by the Minister, a person taken into custody or detained may be granted conditional release or an order of supervision in the prescribed form under such conditions, respecting the time and place at which he will report for examination, inquiry, deportation or

rejection on payment of a security deposit or other conditions, as may be satisfactory, to the Chief Immigration Officer.

22. (1) Where he has knowledge thereof, any public officer shall send a written report to the Minister in respect of paragraphs (a) to (c) and to the Chief Immigration Officer in respect of paragraphs (d) to (i), with full particulars concerning—

> *any person other than a citizen of Trinidad and Tobago who either before or after the commencement of this Act came into Trinidad and Tobago at any place other than a port of entry or has eluded examination or inquiry under this Act."*

Alternate Remedy to Leave for Judicial Review

22. Both parties outlined in submissions the test for Judicial Review as supported by statute and case law – **Section 9 Judicial Review Act**; **Sharma v Browne-Antoine [2006] UKPC 57**. The First Respondent argues that there is an adequate alternative remedy available to the Applicants, which renders it unnecessary for the Applicants to seek Judicial Review. The alternate remedy suggested is an application for a Writ of Habeas Corpus.

23. The First Respondent submits that this alternative remedy would have resolved the issues raised fully, directly and more quickly. The quick redress afforded by Habeas Corpus proceedings is emphasised by dicta in **Ferguson & Galbaransingh v McNicholls, Chief Magistrate CV2008-03639**:

"In Ex parte Waldron [1985] WLR 1090, 1108, exceptional circumstances were defined by Glidewell CJ, in the following terms:

> *"whether the alternative statutory remedy will resolve the question at issue fully and directly; whether the statutory procedure would be quicker or slower, than procedure by way of Judicial Review; whether*

the matter depends on some particular or technical knowledge which is more readily available to the alternative appellate body; these are amongst the matters which a Court should take into account when deciding whether to grant relief by Judicial Review when an alternative remedy is available.

…

I also find that the Claimants suffer no prejudice by the pursuit of the habeas corpus application. Indeed the nature of habeas corpus proceedings provide a quicker avenue for the resolution of the issues raised in the Judicial Review application. The habeas corpus application having been filed first in time and since the 23rd July, 2008, is set down for hearing on 10th October, 2008. A grant of leave in Judicial Review sets the time table for a final decision on the issues in reverse and will result in unnecessary and unproductive delay."

24. As aforementioned, the relief proposed at B. a) to i) and k) of the application seek redress for the Applicants' detention. Counsel for the Applicants grounds much of their case on submissions relating to the length of time the Applicants were detained without charge. Counsel submits that the Applicants ought to have been brought promptly before an appropriate judicial authority – citing **S.5(2) Constitution of Trinidad and Tobago** and **Article 5(3) of the European Convention of Human Rights**.

25. It is clear, however, that the most expeditious procedure to bring a detained person before the courts is by way of habeas corpus application. Such an application could have been heard within hours of the detention of the Applicants. The follow up actions by the Respondents that arose during the instant proceedings, namely that the Applicants were issued with orders of detention and subsequently orders of supervision, could have more appropriately been achieved in Habeas Corpus proceedings.

26. The alternative remedy would have sufficiently addressed the issue raised concerning the detention of the Applicants. In relation to the length of detention, it is also noted that a false imprisonment action may have afforded the Applicants appropriate relief.

27. There are no exceptional circumstances, which make it appropriate to grant leave for Judicial Review as it relates to the reliefs sought regarding the detention. The Court's determination is that there was an alternate remedy that ought to have been accessed by the Applicants instead of seeking leave to apply for Judicial Review.

28. The application for leave is therefore dismissed firstly on that basis. As the alternate remedy bar to Judicial Review is discretionary, the merits of the claim have also been assessed to determine whether there is sufficient arguability in the proposed claim to justify the grant of leave.

Arguability & Substantive Merits of the Claim

29. The test for leave as set out in **Sharma v Browne Antoine** (above) is whether there is an arguable ground for Judicial Review.

30. As to one aspect of the relief claimed, namely the claim at B.j) regarding "a decision to charge" which may infringe on the Applicants rights, it is clear that there is no arguable case. This aspect of the claim is speculative, as the Applicants were not charged. At the time of the filing of the application for leave, the First Respondent was in the process of investigating whether any charges would be appropriate. At the same time, they were addressing the need for Covid-19 testing before releasing the Applicants to the custody of the immigration services.

31. As to the challenges to the detention of the Applicants, the First Respondent argue that there is nothing in the application and affidavits initially relied upon by them to suggest that the decisions to arrest and detain the Applicants were illegal or

contrary to lawful procedure. Counsel for the First Respondent submit that the Police Service has the legal authority and responsibility to arrest and detain persons where there are reasonable grounds to do so – **S.3 Criminal Law Act, Chap. 10:04**; **Anil Roopnarine v AG CV2013-04469**.

32. The commission of immigration offences, it is submitted by the First Respondent, is a matter of national security. The undetected commission of such offences raise safety and other risks for the general public of Trinidad and Tobago.

33. The affidavit of Anselm John includes averments that the detention of the Applicants was done by lawful process and steps were taken to verify the immigration status of the Applicants before deciding on the course of action that would be appropriate. Three other persons detained were released when their lawful residence in Trinidad and Tobago was determined.

34. The sworn evidence of the First Respondent's witnesses is that efforts were made, whilst the Applicants were detained, to determine the legal implications of UNHCR Cards, which they had obtained. It was based on the information gleaned from the relevant authorities that Counsel for the First Respondent submits that the First Respondent, in detaining the Applicants, was of the view that the award of a UNHCR Card does not grant immunity from immigration offences. It is further submitted that the duty to investigate the status of the Applicants was carried out and all necessary actions were taken.

35. The Applicants were transferred to the custody of the Second Respondent from 7 January 2021 and were no longer the responsibility of the First Respondent. The First Respondent, therefore, submits that the evidence does not support the grounds and reliefs sought by the Applicants. The case shows no realistic prospect of success and the application for leave ought to be dismissed.

36. In the Applicants filings before this Court, the Applicants are labelled as refugees in the sense defined under the 1951 Convention Relating to the Status of Refugees

and the 1967 Protocol relating to the Status of Refugees. In submissions, they contend that the issuance of UNHCR cards to them represents that they are individuals who are in need of international protection. However, their status as refugees has not been demonstrated in the evidence.

37. On the contrary, the status of the Applicants indicated in the correspondence from the UNHCR attached to the affidavit of Ms. Faith Walke and un-contradicted by the Applicants, is of asylum-seekers. The protections afforded to refugees in the 1951 Convention are not explicitly stated to extend to asylum-seekers.

38. The Applicants' main argument is that their detention is in breach of their legitimate expectation to be treated in conformity with the 1951 Refugee Convention. It is accepted that Trinidad and Tobago is a party to the Refugee Convention and the 1967 Protocol but never incorporated the Convention into domestic law. In 2014, a policy entitled "A Phased Approach Towards the Establishment of a National Policy to Address Refugee and Asylum Matters in the Republic of Trinidad and Tobago" ["the 2014 Policy"] was adopted. The policy states that recognized refugees should be entitled to a series of rights including travel documents, identity papers, authorization to work, and right to education.

39. The House of Lords in **R (Bancoult) v Secretary of State for Foreign & Commonwealth Affairs (No. 2) [2008] UKHL 61** held that a "legitimate expectation can be based only upon a promise which is clear, unambiguous and devoid of relevant qualification."

40. The ways in which Commonwealth Caribbean courts use unincorporated treaties was analyzed in the CCJ decision of **AG v. Joseph and Boyce [2006] CCJ 3**. The court considered the presumption that the local Parliament intended to legislate in conformity with such a treaty where there is ambiguity or uncertainty in a subsequent Act of Parliament. In such cases, the court would go only so far as to look at the treaty in order to try to resolve the ambiguity - See **R v Home Secretary,**

ex parte Brind [1991] 1 AC 696, **R v Chief Immigration Officer, ex parte Salamat Bibi [1976] 1 WLR 979 at 984** and **Boyce v. R [2004] UKPC 32**.

41. The CCJ then determined (considering **Minister of State for Immigration and Ethnic Affairs v Teoh [1995] 3 LRC 1**, **Baker v Canada (Minister of Citizenship and Immigration) [1999] 2 SCR 817**, and **R v Secretary for the Home Department ex parte Mohammed Hussain Ahmed [1999] Imm AR 22**) that in some circumstances, ratification of a treaty could give rise to the legitimate expectation that the treaty would partially apply in the domestic plane, even if legislation had not brought the treaty into force locally:

    "What are the facts and circumstances that could have given rise to the legitimate expectation claimed by the respondents? Quite apart from the fact that Barbados had ***ratified the ACHR, positive statements were made by representatives of the Executive authority evincing an intention or desire on the part of the Executive to abide by that treaty****. Such statements were, for example, made in Parliament during the debate on the Constitution Amendment Act. Further, it appears that it was the* ***practice of the Barbados Government to give an opportunity to condemned men to have their petitions to the international human rights body processed before proceeding to execution****. In all these circumstances we would hold that the respondents had a legitimate expectation that the State would not execute them without first allowing them a reasonable time within which to complete the proceedings they had initiated under the ACHR by petition to the Commission."* [Emphasis added]

42. The 2014 policy, relied upon by the Applicants as demonstrating a promise or practice by the Executive to abide by the 1951 Convention, cites, under general principles, the "Principle of Non-detention". It states:

    "Article 21 of the 1951 Convention stipulates, that Contracting States shall not impose penalties on account of the illegal entry or presence of refugees. As a

general rule, an asylum seeker should not be detained as detention should be considered as a measure of last resort. There are four general exceptions under international law to the non-detention rule. These are:

- *To verify identity;*
- *To determine elements on which the claim for refugee status or asylum is based;*
- *In cases where asylum-seekers have destroyed their travel and/or identity documents or have used fraudulent documents in order to mislead the authorities of the State in which they intend to claim asylum; and*
- *To protect national security and public order."*

43. The policy also recites a Cabinet decision recorded at **Minute No. 4809** dated November 16, 1979 as follows:

"Requests for the granting of refugee status on political or economic grounds continue to be dealt with under the appropriate sections of the Immigration Laws of Trinidad and Tobago governing the grant of resident status."

44. The policy specifically sets out provisions of the Immigration Act and the scope of responsibilities and procedures of Immigration Officers under it to adjudicate refugee claims, including the provision for conditional release or orders of supervision to persons detained.

45. The policy then sets out a phased strategy in relation to the transfer of knowledge and expertise on refugee status determination to the Trinidad and Tobago Government. Notably, from the first phase, findings made by UNHCR in relation to an asylum-seeker are to be presented to the Immigration Division. Within one day of the initial screening of an asylum-seeker, the Living Waters Community (the Honorary Liaison for the policy) is required to present the asylum seeker to the Immigration Division. In this phase, once the Immigration Division registers the

asylum seeker, an Order of Supervision will be issued. In relation to Phase 3, it is expected that Trinidad and Tobago would enact legislation and administrative regulations on asylum and refugee matters.

46. There is no evidence from either party that the matters outlined in Phase 1 of the policy have been adhered to in this case. In that context, it is clear from the outset that the Applicants cannot rely on a legitimate expectation set out in this policy.

47. Moreover, there is no evidence before the Court at this time that the policy itself represents a clear promise or practice that persons in the situation of the Applicants would not be detained. Despite the general principles outlined, the Cabinet Note specifically refers to the current Immigration laws and declares that grants of refugee status continue to be dealt with under the sections governing grant of resident status. This indicates that, without refugee/resident status designated by the Immigration division, the Applicants could not have expected to have been treated as such.

48. Furthermore, it is clear that the principle of non-detention can be complied with by issuing supervision orders. This accords with the statement made in the policy at p. 8 under "Immigration Act" that Section 17 allows the Minister the authority to grant conditional release or orders of supervision to persons detained.

49. Further, the alleged entitlement of the Applicants, based on the policy to not be detained on suspicion of immigration offences such as unlawful entry, directly contradicts the powers of detention under the Immigration Act. In particular, **Sections 9(4)**, **15**, and **22(1)(i)** concern the powers of police officers to arrest persons without warrant.

50. For a legitimate expectation to arise from a policy or promise, it must be clear and unambiguous. In the present circumstances, in light of the wording of the policy itself, as well as the immigration legislation that provides for arrest and detention, the Applicants have not established an arguable case that there is a clear and

unambiguous representation from the State capable of giving rise to a legitimate expectation.

51. In order for a promise/policy to give rise to a legitimate expectation, it must be lawful and within the powers of the person/authority issuing it – **R v North and East Devon Health Authority ex. p. Coughlan (Secretary of State for Health and another intervening) [2001] QB 213; R (on the application of Bibi) v London Borough of Newham [2001] EWCA Civ 607**; **Pantrinbago Inc. v National Carnival Commission of Trinidad and Tobago CV2017-00468**.

52. The functions of the Immigration Division in regulating entry of persons through the borders, particularly in the present circumstances of a global pandemic, are fundamental to national security. The Immigration Act empowers police and immigration officers to carry out these functions by detaining and making inquiries of persons suspected of breaching the provisions of the Act.

53. The Chief Immigration Officer and the Minister of National Security are empowered with a discretion to admit persons, release detained persons, provide conditions for release and supervision and cancel deportation orders. In exercising this discretion, they may consider the 2014 policy, international obligations and humanitarian considerations– See **Sections 16, 27, 29 of the Immigration Act**. There is an indication of the exercise of this discretion in this case as the Second Applicant's husband is in fact the holder of a permit granted by the Minister allowing his residence in Trinidad and Tobago. It is referred to in the affidavit of Keron Ramkhalwhan dated 4 January 2021.

54. Finally, the decision of the Court of Appeal to dismiss the appeal in **Jose Machado v Chief Immigration Officer Civ. App. No. 108/2020 (unreported)** is binding and authoritative on this issue. According to the Applicants, many of the same arguments raised herein were canvassed in that case by both sides before the Court of Appeal. The Court in **Machado** is cited by the Applicants as stating the following:

"There is no basis on the evidence in this case, therefore, for the Applicant, who had a Deportation Order made against him, who was deported, who left the country, and who returned to the country, and then sought to apply for refugee status -- there is no basis for him to contend that Section 29(1) or 29(2) do not apply to him, (1) because it involves a breach of statutory duty on the part 30 of the Chief Immigration Officer, and (2) because ***there is nothing in the policy that he has relied upon, that either creates a legitimate expectation in relation to him, or a legitimate expectation that the Deportation Order would be suspended, or not applied or enforced in relation to him****.*

For those reasons, there is no basis for the Deportation Order that is in effect to be suspended, set aside, cancelled, or otherwise ignored" [Emphasis added]

55. In the aforementioned extract, the Court has clearly stated that there is nothing in the policy that creates a legitimate expectation in relation to that Appellant. The Applicants attempt to distinguish this from the present case as that Appellant had returned to the country after an Order of Deportation. However, the statement cited as dicta from the Court of Appeal on the effect of the Policy remains applicable in any event.

56. The Applicants' submissions on conspicuous unfairness, error of law and unreasonableness all hinge on the applicability of the 1951 Convention to domestic law. There is nothing outside of these international obligations which demonstrates unfairness, unreasonableness or inequality in the arrest and detention of the Applicants on suspicion of commission of immigration offences.

57. Counsel for the Applicants makes several arguments regarding alleged breaches of constitutional and international law rights – the right to equality before the law and protection of the law, the right to liberty and security, and the right to respect for private and family life. These arguments are unsupported by case law or legal analysis of what constitutes a breach of these rights.

58. What is put in issue in relation to equality before the law, liberty and security is essentially the length of detention. This, as aforementioned, ought to have been the subject of a habeas corpus application. It may, in the event that there is sufficient evidence, even merit a claim in false imprisonment as noted above.

59. The Applicants' submission on a purported breach of the Second Applicant's right to respect to family life was not included in the pleaded notice of application for leave. It is also not borne out by the evidence before the Court as it is clear that the child was left in the care of her father. Furthermore, throughout the proceedings it was clear that the Respondents paid due care and attention to the interest of the child in being re-united with and cared for by her mother as well. This was a factor taken into account in undertaking not to deport and providing for the early release of the Applicants.

60. An alternative to the initial detention of the Applicants for inquiries and determination of Covid 19 status pending transfer of their custody to the immigration authorities has not been put forward.

61. Counsel for the Applicants submit on a number of other issues not set out in their application for leave to apply for Judicial Review. These include the First Respondent's alleged failure to caution the Applicants, the alleged failure to provide translation for them, alleged non-disclosure by the Respondents and the alleged lack of independence of the Commissioner of Police. These issues were not properly put before the court. The First Respondent had no fair opportunity to answer them, particularly as the Applicants failed to comply with directions to file submissions before the First Respondent.

62. In any event, there is no positive evidence from the Applicants that they were not cautioned when detained. The absence of information on the caution in the affidavit of the First Respondent's witness, Mr. Anselm John, cannot be viewed as evidence that there was no caution. This was not put in issue by the Applicants.

63. The enquiries by PC Ramcharitar took place when the motor vehicle transporting the Applicants was stopped. His reasonable suspicion of commission of immigration offences only arose after these enquiries. According to Rule II of the Judges' Rules cited by Counsel for the Applicants, the caution would only have been required when the officer had "evidence which could afford reasonable grounds for suspecting that a person has committed an offence".

64. The Applicants also raised a new issue in submissions as to the non-disclosure of the detention orders by the First Respondent in their affidavits. However, it is clear that this information falls within the purview of the Second Respondent. Another new point raised in submissions by the Applicants was that the First Respondent did not attach station diary or pocket diary extracts to their Affidavits. This however, could have been addressed through a request for specific disclosure.

E. Conclusion

65. The Applicants' application for leave to apply for Judicial Review fails firstly based on availability of an adequate alternative remedy in the form of a habeas corpus application.

66. Further, the Applicants have not presented arguable grounds for Judicial Review. There is no evidence before the Court indicating any procedural failing or unlawful action on the part of the Police Officers in detaining them for inquiries about their immigration status. The Applicants' reliance on a legitimate expectation arising from the ratification of the 1951 Convention and adoption of the 2014 Policy is misplaced, in the circumstances of this case. There is no lawful, unambiguous promise therein not to detain for inquiries persons in the circumstances of the present Applicants.

67. The Applicants also introduced, in closing submissions, un-pleaded claims as to other breaches of their rights under the Constitution, such as the protection of the

family. They did not raise an arguable case as to these alleged breaches in their application or the supporting evidence.

F. Order

68. **IT IS HEREBY ORDERED:**

i. The Amended Application for leave to apply for Judicial Review filed on 8 January 2021 is dismissed with costs of the application to be paid by the Applicants to the First Respondent.

ii. The First Respondent's application filed on 29 March 2021 is dismissed with no order as to costs.

...EJD Honeywell...

Eleanor Joye Donaldson-Honeywell

Judge