**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

Claim No**. CV2019-00888**

BETWEEN

**TROY THOMAS**

Applicant

AND

**THE CHIEF IMMIGRATION OFFICER**

Respondent

**Before the Honourable Mr. Justice V. Kokaram**

**Date of Delivery: Wednesday 13 March, 2019.**

**Appearances:**
**Mr. Gerald Ramdeen and Mr. Umesh D. Maharaj instructed by Ms. Dayadai Harripaul, Attorneys at Law for the Claimant.**
**Mr. Ebo Jones and Ms. Nicol Yee Fung instructed by Ms. Radha Sookdeo, Attorneys at Law for the Respondent.**

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**JUDGMENT**

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1. The Claimant is an illegal immigrant who has been in detention for the past five months[1] at the Immigration Detention Centre, Aripo. A deportation order was made against him on 2nd March 2007 pursuant to the Immigration Act Chapter 18:01. The deportation order remains in effect and has not been executed. The Defendant has indicated that his continued detention was necessary based upon his previous history of breaching supervisory orders and the fact that he has pending against him several criminal charges in this jurisdiction. By Writ of Habeas Corpus the Claimant challenges his continued detention.

2. What falls for determination is whether the reasons advanced by the Defendant justify the continued detention of the Claimant or whether he should be immediately released.

[1] Since 12th October 2018

3. The Claimant is not contesting the right of the Chief Immigration Officer to deport him. He complains, however, that there is no authority to continue to detain him on the basis advanced by the Defendant that he has pending criminal matters.

4. Detention under the Immigration Act cannot be indefinite. Such administrative powers of detention are to be exercised strictly within its statutory remit and for a reasonable period of time. In this case, the power to detain is linked to the execution of a deportation order. The immigration authorities must demonstrate that its powers of detention were exercised lawfully and the period of detention limited to that reasonably necessary to effect that deportation under the Immigration Act. It is in proceedings such as these that the immigration authorities are called upon to account for the lawful use of power prescribed by the Immigration Act and specifically to demonstrate that the power to detain existed and that it was lawfully exercised for a detention which is for a period reasonably necessary to effect that statutory purpose.

5. In my view, it was not unreasonable to have first detained the Claimant on 12th October 2018 on the basis that he had breached an existing supervision order. However, the Defendant can only justify the continuation of his detention for the statutory purpose of "making arrangements for his removal" to execute the deportation order[2]. I am satisfied on the evidence that the Defendant continued to detain the Claimant based upon his poor record of complying with supervision orders and to await the advice of the Director of Public Prosecutions (DPP) on the status of his criminal matters. While it was reasonable in my view to confer with the prosecuting authorities on his criminal charges, in the absence of any response from them on a critical matter such as this, there is no warrant to "stay the deportation process" nor to await indefinitely on advice from them. A failure to make arrangements for his deportation will render his continued detention unreasonable and devoid of a statutory purpose. Taking into account all the circumstances, his continued detention was unjustified. For the reasons set out in this judgment, I shall order the Claimant to be immediately released. Whether the Defendant wishes to exercise its power of detention again, to execute the deportation order, is open to them and I have set out in the judgment guidelines for the exercise of that power.

[2] Section 29(10) of the Immigration Act Chap 18:01

**Brief Background**

6. The facts can be briefly stated. The Claimant, a citizen of Antigua and Barbuda entered into this jurisdiction on 22nd May 2004. He overstayed his entry certificate and ceased to be a permitted entrant pursuant to section 9(4) (f) of the Immigration Act. A special inquiry was convened leading to a deportation order on 2nd March 2007. His appeal against that order was dismissed by the Minister of National Security on April 2007.

7. He was placed on several orders of supervision. He breached one of the orders of supervision in failing to report to the Immigration Division on 30th May 2007. The Defendant was then unable to locate him for a period of nine (9) years when in 2016 he came to the attention of the Defendant after being released from Maximum Security prison. During that time, in 2011, he was arrested and charged with larceny. Those proceedings are pending before the Magistrates Court. He was granted bail which was revoked in 2015 for non-appearance at the Magistrates Court. He was then remanded at the Maximum Security Prison until bail was reinstated by order of the High Court.

8. On 22nd April 2016 he was detained at the Immigration Detention Centre for breach of the Order of Supervision. Pursuant to a letter dated 26th July 2016, the then Minister of National Security, the Honourable Edmund Dillon ordered his release. He remained incarcerated for forty three (43) days after the Minister had directed his immediate release. He thereafter commenced proceedings in the High Court for the issue of a Writ of Habeus Corpus ad Subjiciendum. Permission was granted by order of Boodoosingh J dated 6th September 2016 to issue a Writ of Habeus Corpus as Subjiciendum directed to the Chief Immigration Officer. He was thereafter released from the Immigration Detention Centre on 7th September 2016.

9. He was eventually placed on an Order of Supervision to report to the Defendant on 9th February 2017. He again breached this order and only again came to the attention of the Defendant eighteen (18) months later in September 2018 when he was arrested by the police for pending criminal charges. On 5th September 2018, a warrant was issued for his arrest due to his non-appearance at the Port of Spain Magistrates Court for his pending proceedings. He appeared before the Port of Spain Magistrates Court to explain his non-appearance on 11th September 2018. The Magistrate, satisfied with his explanation that he was ill and unable to attend Court that day, granted his bail with surety. He was

remanded at the Maximum Security Prison until he was able to secure surety on 10th October 2018.

10. Thereafter, on 12th October 2018, he was arrested by officers of the Trinidad and Tobago Police Service and detained at the San Fernando Police Station until he was transferred to the Immigration Detention Centre in Aripo. He contends that he remained on bail for his criminal charges and he has not been given any notice of any charges made against him in contravention of the Immigration Act nor notice of any special inquiry proceedings to be held.

11. With respect to his criminal record the Defendant's intelligence suggest that he has fourteen (14) charges pending before various Magistrates' Court inclusive of the following:

    (i) Use of Vehicle Without Owner's Consent;

    (ii) Obtaining Credit by Fraud;

    (iii) Larceny;

    (iv) Obtaining Money by False Pretences;

    (v) Fraudulent Conversion.

**Issues**

12. The submissions of both Counsel were brief but the main issue that falls for determination can be crystallized in the following terms: Whether the said detention and/or failure to release the Claimant is an unlawful exercise of power.

**The Defendant's grounds for detention**

13. The Defendant's letters to the Claimant's attorneys set out the reasons for the continued detention of the Claimant as follows:

    (i) He was ordered to be deported on 2nd March 2007 and even though he appealed the order of deportation, his appeal was dismissed by the Minister of National Security. He was placed on successive Orders of Supervision until 12th April 2007 requiring him to report to the Immigration Division at Henry Street, Port of Spain where he failed to do so and breached the Order of Supervision.

(ii) The Claimant continued to evade the Immigration Division until 22nd April 2016 where he came to the attention of the Immigration Division and was detained. He was released on 7th September 2016 and placed on successive Orders of Supervision until 2nd February 2017 requiring him to report on 9th February 2017. Again, he failed to report and breached the terms of the Order of Supervision.

(iii) He has several pending criminal matters before the Magistrate Court.

14. Further in his affidavit, Mr. Gewan Harricoo, Immigration Officer IV of Immigration Division, indicated that on 29th January 2019, the Immigration Division was advised of a meeting between the Deputy Director of Public Prosecutions and representatives of the Immigration Division Enforcement Unit.

> "The Immigration Division was advised by the Deputy DPP that the meeting was scheduled for 5th February 2019. Mr. Terrence Ramrattan, Immigration Officer III attached to the Enforcement Unit, and Mr. Abdul Mohammed, Associate Professional attached to the Immigration Division, attended that meeting with the Deputy DPP. The Deputy DPP indicated that she would look into this matter and give further advice on whether the Immigration Division can execute the Order of Deportation against the Applicant or whether the DPP is still pursuing the convictions (sic) against the Applicant. It is on this basis that the Applicant is still under detention"[3].

15. However, I wish to highlight the Defendant's letter to the DPP[4] seeking his comment on the deportation of the Claimant while there are several criminal charges still pending against him. That letter establishes the following:

a) That when the Claimant came to the attention of the Defendant in September 2018, he was detained and an Order of Supervision was not granted as a result of "his history of absconding."

b) That owing to the pending criminal matters the Immigration Division "stayed his deportation."

c) The Defendant was mindful of the DPP's interest in the Claimant and viewed

[3] Affidavit of Gewan Harricoo, filed 6th March 2019, paragraph 20
[4] Exhibited "G.H.8" to the affidavit of Gewan Harricoo filed 6th March 2019

deporting as hindering the DPP's efforts.

d) The Defendant was very aware of the potential illegality of continued detention:

> "The result of the Division's stay of effecting said Deportation Order however has been challenged on several occasions. Following several judgments on the issue (**Naidiki v The Attorney General of Trinidad and Tobago [2004] UKPC 49; R v Governor of Durham Prison ex p. Hardial Singh [1984] 1 WLR 704; R (I) v Secretary of State for the Home Department [2002] EWCA Civ 888; and Souop v The Chief Immigration Officer and the Attorney General of Trinidad and Tobago CV2016-01611)** the Division has been challenged consistently on issues of indefinite detention of immigrants."

e) The Defendant pointed out that there are similar detainees presently in the same position as the Claimant hence the need for clarity.

f) The Defendant recognised that the deportation order is still effective and its underlying obligation to execute the deportation. The letter ends with a request:

> "The Division is eager to find whether your office would be opposed to the execution of our Deportation Orders despite any pending criminal matters taken up against subjects of said orders or if you are minded to offer any alternatives to the Division".

16. It is apparent to me therefore that the Defendant found itself in a difficult position. They have detained an illegal immigrant with an unexecuted deportation order and pending criminal charges. He was considered by them to be one who had disobeyed orders of supervision. But rather than deport, they chose to await advice from the DPP on his pending prosecution. This judgment should also assist the Defendant in determining the fate of the other similarly circumstanced detainees. With this in mind, I seek in this judgment to succinctly capture the principles enunciated by our Courts to guide the Defendant on the question of the detention of illegal immigrants who are the subject of unexecuted orders of deportation but who are also awaiting the conclusion of the prosecution of pending criminal proceedings.

17. The starting point is, as the Defendant themselves recognised in its letter, the Hardial

Singh principles[5]. Our local authorities have well-rehearsed the applicable principles from **R v Governor of Durham Prison ex parte Singh** [1984] 1 All ER 983 affirmed in **Tan Te Lam v Superintendent of Tai A Chau Detention Centre** [1997] AC 97. See **Odikagbue, Christopher v Chief Immigration Officer and The Attorney General of Trinidad and Tobago** CV2016-02258, **Souop v The Chief Immigration Officer and the Attorney General of Trinidad and Tobago** CV2016-01611 and **Isioma Loveth Eze v The Chief Immigration Officer and The Attorney General of Trinidad and Tobago** CV2016-04426. These authorities enunciate the main limitations to the Defendant's power to detain relative to its statutory purpose of the detention and the period of detention. The power to detain is therefore for a specific purpose. This enunciation of these principles on the permissible period of detention is fixed on the purpose of the detention. The need to effect a deportation is the precedent fact to trigger the right to detain in this case. Any considerations of pending criminal trials cannot form the basis for a detention to effect a deportation. Admittedly, there is indeed a lacuna between the Immigration Act and the criminal legislation and while one can sympathise with the Defendant for making the courtesy call of the DPP, the question still remains whether the statutory purpose of detention was effected by the Defendant.

**The purpose of the detention**

18. With respect to the detention to execute deportations, unless the immigrant's detention is required for his removal to be effected pursuant to a deportation order already in force, there is no sound reason for their power of detention to be exercised at all. There is no question that the Claimant can be arrested either with or without a warrant on the basis that a deportation order has been made against him. See sections 14 (1), 15 and 16 of the Immigration Act. However, the statutory purpose of such a detention is to effect the deportation. Section 16 states that the power of detention is "pending deportation". Importantly, section 29(10) of the Immigration Act gives the Defendant the power to detain the Claimant in custody for such period "as may be necessary for the purpose of making arrangements for his removal".

19. In **Naidike v Attorney General of Trinidad and Tobago** [2004] UKPC 49 Lord Brown examining this power of detention concluded that the interpretation which was in

[5] **R v Governor of Durham Prison ex parte Singh** [1984] 1 All ER 983

favour of preserving the liberty of the subject is to prevail: "unless the immigrant's detention is required for an inquiry to be held forthwith or for his removal to be effected pursuant to a deportation order already in force, there seems no sound reason for the power to be exercised."[6]

20. It is upon such detention to effect a statutory purpose that the Minister may grant a supervision order to effect his conditional release pursuant to section 17 (1) of the Immigration Act. In doing so the power to detain arises if those conditions are breached[7].

21. In **Odikagbue, Christopher v Chief Immigration Officer and The Attorney General of Trinidad and Tobago** CV2016-02258 I concluded that the power to grant a conditional release arises where it is apparent that a deportation cannot be effected within a reasonable period of time. The immigrant ought then to be released pursuant to section 17(2) of the Immigration Act on conditions unless there is good reason to do otherwise, such as cogent evidence of a risk of flight or of re-offending. In **Reg v Governor of Richmond Remand Centre, ex pater Asghar** [1971] 1 W.L.R. 129, the Court in considering the implied limitation of the executive power to detain individuals under immigration legislation commented:

> "....The matter in my judgment does not end there, because, even if I were wrong in that, and valid directions were given, the question remains whether, pursuant to paragraph 4(1), the applicants continued thereafter, that is after the directions, to be held pending removal in pursuance of such directions. It quite clearly contemplates, of course, that there will be some interval of time between the giving of the directions and their implementation, and for that period of time there is authority to detain. But when one turns to the facts of this case, the reality of the position is that the applicants were being detained pending the trial at the Central Criminal Court at which they were required to give evidence. Accordingly on that second ground I think that detention was not justified.
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> Mr. Slynn has argued very forcibly that of course the period contemplated that may elapse between the giving of the directions and the actual removal must be a

[6] **Naidike v Attorney General of Trinidad and Tobago** [2004] UKPC 49, paragraph 50
[7] Section 17(2) of the Immigration Act Chapter 18:01

reasonable period. He says here that in all the circumstances it was reasonable for the Secretary of State to require the detention of these two men pending the completion of the trial at the Central Criminal Court.

Much as I wish I could accede to that argument, it does seem to me that while a reasonable time is contemplated between the giving of the directions and the final removal, that is a reasonable time necessary to effect the physical removal, the truth of the matter is that the Home Office naturally desires to do nothing which will interfere with the trial. One sympathises with this object, but of course it can be achieved, by giving these applicants conditional permits. There are obvious practical reasons why this course is not adopted, because as experience has shown, nothing may ever be seen of the applicants again. But that, as it seems to me, is a gap in the powers of the Home Secretary, and that here it is impossible to say that detention today, five months after the refusal to admit and three months after the alleged directions, is a valid detention."[8]

**The reasonable period of detention**

22. The Claimant has been detained for the last five months. What has the Defendant been doing in that period? The Defendant was enquiring from the DPP on whether it is continuing its criminal charges. Save for this enquiry there is no evidence that any arrangements were made for his deportation. However, in the supplemental affidavit of Mr. Harricoo[9] he does indicate:

"3. In reference to the Application for Writ of Habeas Corpus ad Subjiciendum court hearing held on 7th March 2019 before the Honourable Justice Kokaram. Based on the said Court hearing the Respondent has taken the necessary steps pursuant to the Immigration Act to have the Applicant deported out of the jurisdiction of Trinidad and Tobago and to his original home of domicile Antigua and Barbuda.

4. On 8th December 2018 (sic)[10], I wrote to[11] requesting funds be made available to the Immigration Division via the Permanent Secretary for the purchasing of airplane

[8] **R v Governor of Richmond Remand Centre ex parte Asghar** at 132-133
[9] Supplemental affidavit of Mr. Gewan Harricoo filed 12th March 2019
[10] Counsel for the Defendant indicated that this date should be 8th March 2019
[11] It was not specified in the supplemental affidavit of Mr. Gewan Harricoo filed 12th March 2019 to whom the request was made.

tickets in relation to the deportation of the Applicant as it relates to his Order of Deportation. I am unable to provide a true copy of correspondence at this time and said correspondence will be provided at a later date."

23. I was shown a detailed memorandum to the Permanent Secretary, Minister of National Security dated 8th March 2019, where the request has now been made for the sum of $18,532.00 to facilitate the deportation of the Claimant. The cost includes the cost of the ticket and two (2) escorting officials. It suggests that an itinerary is booked for 17th March 2019:

    "However, the said vote currently has no funds to facilitate this exercise. Hence the request is forwarded for your **URGENT** attention and consideration."

24. However, I have no evidence that the ticket is in hand or approval was obtained. In any event, it does not answer why this was not done before and nothing in this judgment precludes the Defendant from continuing to take steps to secure the funds for the Claimant's deportation.

25. In **Tan Te Lam v Superintendent of Tai A Chau Detention Centre** [1997] AC 97, Lord Browne Wilkinson in applying the "Hardial Singh Principles" observed:

    "Section 13D(1) confers a power to detain a Vietnamese migrant "pending his removal from Hong Kong". Their Lordships have no doubt that in conferring such a power to interfere with individual liberty, the legislature intended that such power could only be exercised reasonably and that accordingly it was implicitly so limited. The principles enunciated by Woolf J. in Hardial Singh case [1984] 1 W.L.R. 704 are statements of the limitations on a statutory power of detention pending removal. ….The courts should construe strictly any statutory provision purporting to allow the deprivation of individual liberty by administrative detention and should be slow to hold that statutory provisions authorize administrative detention for unreasonable periods or in unreasonable circumstances."[12]

26. Whether the Defendant wishes as a matter of operational courtesy to make enquires of the DPP, the statutory powers to detain under the Immigration Act is limited to taking steps to execute the deportations. The statute clearly states that steps should be taken

[12] **Tan Te Lam v Superintendent of Tai A Chau Detention Centre** [1997] AC 97 page 111

timeously.

27. Permanand J noted in **Saheedar Ali v Mr. Basdeo Panday, Mr. Joe Bodkyn and Mr. John Blake** H.C.A. No. 82 of 1987 that section 9 stated that a deportation order shall take effect "as soon as possible". Regulation 28(1) of the Immigration Regulations states that the deportation should be executed "as soon as practicable."

**Guidance to the Defendant**

28. It is useful in my view to set out a list of principles emanating from the well-rehearsed authorities over the years which should guide the Defendant on this question of detention of persons under the Immigration Act awaiting deportation with pending criminal charges:

    (i) The power being exercised is an administrative detention. Such powers conferred by statute are strictly and narrowly construed and its operation and effect supervised by the Court according to high standards.

    (ii) Any deprivation of liberty must be balanced by the need to protect the individual from the arbitrary use of power.

    (iii) Detention should be used as a last resort to pursue the statutory objects of the power of deportation.

    (iv) With respect to a deportation, the detention can only be authorized if the individual is being detained pending his removal. It cannot be used for any other purpose.

    (v) The power of detention that is conferred by the Immigration Act to enable the machinery of deportation to be carried out, is impliedly limited to a period which is reasonably necessary for that purpose.

    (vi) The Defendant must 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 and as soon as practicable.

    (vii) What is a reasonable period of detention necessary to effect the purpose of deportation will depend on the circumstances of the particular case.

    (viii) Some circumstances that are relevant to determining what is a reasonable

period of time to detain a person pending his deportation include:

- the length of the detention;
- the nature of the obstacles which stand in the path of the Immigration Department preventing a deportation;
- the diligence, speed and effectiveness of the steps taken to surmount those obstacles;
- the condition in which the detained person is 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 or act in ways not conducive to the public good.

The list is not an exhaustive one. The Court is entitled to conduct a site visit of the place of detention and make such other enquiries to take into account all relevant circumstances of the detention. All the relevant circumstances must be considered holistically in determining whether the period of detention is reasonable.

(ix) There must be cogent evidence of a risk of re-offending and not merely a risk of absconding to justify any lengthy period of detention. Detention simply to prevent the commission of crime on its own may be insufficient to justify a detention of a person awaiting the execution of a deportation order and becomes incompatible with the purpose for which that detention serves.

(x) Where a reasonable period has expired or the detention has gone on for longer than is reasonably necessary for the purpose for which it is authorized, it will be unreasonable to continue the detention and the detained person must be released.

(xi) If it is apparent that the Defendant is not going to be able to operate the machinery provided in the Immigration Act for removing persons who are intended to be deported within a reasonable period, it would be wrong to seek to exercise the power of detention.

(xii)The power of detention must be exercised in accordance with established administrative law principles of rationality, fairness and reasonableness.

(xiii) Sound administrative law practice would require the Defendant to provide reason(s) to the detainee for his detention and continued detention such as "you are likely to abscond if released on a Supervision Order"; "your removal is imminent" or the like.

(xiv) Special considerations must apply in the cases of minors, families or vulnerable groups and detention to effect their deportation will be scrupulously scrutinised by the Court. Save for special factors, the power to detain should be exercised as close to removal as possible.

(xv)Although a high level of co-operation is expected between the immigration authorities and the law enforcement authorities, there is in fact no power to detain under sections 14, 15 or 29 of the Immigration Act pending the determination of criminal proceedings.

(xvi) The only statutory restrictions to pre-empt the execution of a deportation are:

-whether the person against whom the deportation order is made is an inmate serving a term of imprisonment. In such a case the deportation order is to be executed upon the determination of the sentence. See section 29(5) of the Immigration Act.

-where the deportation order is stayed pursuant to Regulation 28 of the Immigration Regulations.

(xvii) While operational co-operation between the Immigration Division and the DPP is desirable, there is no statutory power to detain simply as an aid to the criminal process.

(xviii) The respective departments, including those responsible for funding, should establish a clear policy to deal with these cases establishing firm deadlines for action. Requests by the Defendant for information or assistance should be

expeditiously addressed.[13]

29. In my view, the Claimant's detention originally served its statutory purpose but the Defendant must exercise care that prolonged detention would run the risk of an unlawful deprivation of liberty.

30. His original detention in October 2018 was on the basis that there was a breach of his supervisory order and the existence of a deportation order which has not yet been executed. This is a valid exercise of power to detain permitted under sections 16 and 17(2) of the Immigration Act. However, the purpose of the continued detention must be to effect the deportation. The evidence demonstrated that the deportation order was "stayed" for the purpose of enquiring into pending criminal matters. This is an illegitimate exercise of power. The only power to stay a deportation is conferred by Regulation 28 which provides:

> "28. (1) Where the Minister dismisses an appeal against a deportation order pursuant to any provision of the Act, he shall direct that the order be executed as soon as practicable, except that—
>
> (a) in the case of a person who has lost the status of a resident before the making of the deportation order, having regard to all the circumstances of the case; or
>
> (b) in the case of any other person who was not a resident at the time of the making of the order of deportation, having regard to—
>
> (i) the existence of reasonable grounds for believing that if execution of the order is carried out the person concerned will be punished for activities of a political character or will suffer unusual hardship; or

[13] **See R v Governor of Durham Prison ex parte Singh** [1984] 1 All ER 983**, R v Secretary of State for the Home Department, ex parte Saadi (FC) and Others (FC)** [2002] UKHL 41**, R (on the application of I) v Secretary of State for the Home Department** [2002] EWCA Civ 888 **Tan Te Lam v Superintendent of Tai A Chau Detention Centre** [1997] AC 97, **Nadarajah v Secretary of State for the Home Department and Conjoined Cases [**2003] EWCA Civ 1768**, R v Secretary of State for the Home Department, ex parte Ghaly** CO/4303/97**, Regina v Governor of Richmond Remand Centre Ex Parte Asghar and Another** [1971] 1 WLR 129**, Laurent Pret Souop v Chief Immigration Officer and the Attorney General of Trinidad and Tobago Claim No.** CV2016–01612, **Odikagbue, Christopher v Chief Immigration Officer and The Attorney General of Trinidad and Tobago** CV2016-0225, **Isioma Loveth Eze v The Chief Immigration Officer and The Attorney General of Trinidad and Tobago** CV2016-04426, **Henry Obumneme Ekwedike v The Chief Immigration Officer and The Attorney General** CV2017-02148. See also **Macdonald's Immigration Law and Practice, 6th Edition, paragraphs 17.39 – 17.46**.

(ii) the existence of compassionate or humanitarian considerations that in the opinion of the Minister warrant the granting of special relief,

the Minister may direct that the execution of the deportation order be stayed, or may quash the order and direct the entry of the person against whom the order was made.

(2) Where, pursuant to subregulation (1)(a) or (b) the Minister directs that execution of a deportation order be stayed, he shall allow the person concerned to come into or remain in Trinidad and Tobago under such terms and conditions as he may prescribe and shall review the case from time to time as he considers necessary or advisable.

(3) The Minister may at any time—

(a) amend the terms and conditions prescribed under subregulation (2) or impose new terms and conditions; or

(b) cancel his direction staying the execution of a deportation order and direct that the order be executed as soon as practicable.

(4) Where the execution of a deportation order has been stayed pursuant to sub regulation (1) the Minister may at any time thereafter quash the order and direct the entry of the person against whom the order was made."

31. If, indeed, it was evident to the authorities that his deportation could not be effected within a reasonable period of time as a result of his pending criminal charges then he ought to have been released.

32. It was, however, not illegitimate nor unreasonable for the Defendant to consider the effect of a further Supervision Order based on the Claimant's poor record of compliance and criminal record. However, even here the evidence demonstrates that the criminal courts have granted the detainee bail and therefore the idea of the detainee being a flight risk or at risk of offending does not on this evidence bear the hallmarks of credibility. There is absolutely no warrant therefore for the Defendant to remain transfixed as it were without setting about the business for which his detention was based.

33. The Defendant was clearly aware of its difficulty reflected in the letter to the DPP dated 6th December 2018 which revealed the Defendant's understanding of the law and the rights of the Claimant. The Defendant was aware of the power of detention for the statutory purpose and the problem created by the DPP's silence on the progress of the criminal charges.

34. However, five months is quite enough time to have this matter resolved. In my opinion, the detention strayed beyond its statutory purpose.

**Conclusion**

35. For these reasons, the Claimant is to be released forthwith. The Defendant is to pay the Claimant's costs assessed in default of agreement.

**Vasheist Kokaram**

**Judge**