THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2018-00010

IN THE MATTER OF THE JUDICIAL REVIEW ACT CHAPTER 7:08

AND

IN THE MATTER OF THE IMMIGRATION ACT CHAPTER 18:01

AND

IN THE MATTER OF AN APPLICATION BY
DEAUGHN DILLON BENNETT
FOR JUDICIAL REVIEW OF

(1) THE DECISION OF A SPECIAL INQUIRY OFFICER MADE ON 20th DECEMBER, 2017, ORDERING HIM TO BE DEPORTED FROM TRINIDAD AND TOBAGO AND TO REMAIN OUT OF TRINIDAD AND TOBAGO WHILE THE SAID DEPORTATION ORDER IS IN FORCE; and

(2) THE DECISION OF AN IMMIGRATION OFFICER MADE ON 20th DECEMBER, 2017, REQUIRING HIM TO REPORT IN PERSON ON 2nd JANUARY, 2018, AT 8:00 a.m. TO THE SENIOR IMMIGRATION OFFICER, ENFORCEMENT UNIT (NORTH) AT #135 HENRY STREET, PORT OF SPAIN TO PRODUCE A TICKET FOR HIS DEPARTURE FROM TRINIDAD AND TOBAGO TO GUYANA

BETWEEN

DEAUGHN DILLON BENNETT **Applicant**

AND

THE CHIEF IMMIGRATION OFFICER
OF TRINIDAD AND TOBAGO **Respondent**

Before the Honourable Madame Justice Margaret Y. Mohammed

Dated the 13th April, 2018

APPEARANCES:
Mrs. Jehan Mohammed –Ali instructed by Mr. Russell Warner Attorneys at law for the Applicant.
Mrs. Josephina Baptiste-Mohammed, Ms. Candice Alexander and Ms. Nicole Yee Fung instructed by Ms. Anala Mohan and Ms. Radha Sookdeo Attorneys at law for the Respondent.

JUDGMENT

Introduction

1. The Applicant is a Guyanese National who entered Trinidad and Tobago legally on the 19th February 2009 and he was permitted to stay until the 18th July 2009. Without obtaining further permission from the Immigration Division he has remained in this country. He was first detained by Trinidad and Tobago Police Officers on the 16th November 2017. Upon discovering that he was not a national of this country, he was handed over to Immigration Division to determine his status. At the Immigration Division, it was determined that the Applicant had remained illegally in this country and was also in breach of various provisions of the Immigration Act[1] ("the Immigration Act"). On the 17th November, 2017 the Applicant was placed on an Order of Supervision to return on the 14th December, 2017 pending the Special Inquiry ("the Special Inquiry"). The Applicant on the 28th November, 2017 married a local person by the name of Cilita Warner.

2. The Applicant returned on the 14th December, 2017 and was placed on a further Order of Supervision for the 20th December, 2017. On that day the Special Inquiry commenced when the Applicant was interviewed together with his wife. It was determined that having ceased to be a permitted entrant, the Applicant being in breach of various provisions of the Immigration Act, was ordered to be deported.

3. On 2nd January, 2018, the Applicant applied for leave to apply for judicial review seeking the following reliefs**:**

    i. A declaration that the Defendant granting the Deportation Order was unlawful, illegal, procedurally improper, null, void and of no effect;

    ii. A declaration that the Defendant in requiring the Applicant to report to the Immigration Department with a ticket for his departure to Guyana was unlawful, illegal, procedurally improper, null, void and of no effect;

    iii. An order of certiorari to bring up into this Honourable Court and to quash the decision of the Defendant to deport the Applicant;

[1] Chapter 18:01

iv. An order of certiorari to bring up into this Honourable Court and to quash the decision of the Defendant requiring the Applicant to report to the Immigration Department with a ticket for his departure to Guyana;

v. A declaration that the Applicant is entitled to remain in Trinidad and Tobago until the determination of this matter;

vi. Costs; and

vii. Such further and/or other relief as the Court may deem just**.**

viii. The Applicant alleged that there were several procedural flaws in the Special Inquiry which would render the decision made to deport him unlawful. The Applicant also contended that he was never made aware of his right of Appeal and therefore he could not lodge any appeal against the said order.

The Background

4. In support of the leave application the Applicant relied on 4 affidavits namely his affidavits filed on the 2nd January 2018 ("the Applicant's First Affidavit"); the affidavit filed on 15th January 2018 (The Applicant's Second Affidavit") and the affidavit filed on the 2nd February 2018 ("the Applicant's Third Affidavit"). An affidavit of Ms. Cilita Warner was also filed on the 15th January 2018 ("the Warner Affidavit").

5. According to the evidence in support of the Applicant, he lawfully entered Trinidad and Tobago on or around 19th February, 2009 and since that time has continued to reside in this country. He married Cilita Ayanna Therese Warner, a citizen of Trinidad and Tobago, on 28th November, 2017 and he annexed copies of his wife's National Identification Card and their Marriage Certificate as **"D.D.B.2"** to the Applicant's First Affidavit.

6. The Applicant was stopped and searched by police officers on 16th November, 2017. Thereafter he was detained by officers of the Respondent and he was released on 17th November, 2017 after a Landing Deposit in the sum of Seventeen Hundred Dollars ($1700.00) was paid on his behalf, a copy of the receipt evidencing payment which he attached as **"D.D.B.3"** to the Applicant's First Affidavit.

7. On 15th December, 2017 the Applicant was served with an "Order to Show Cause and Notice of Hearing in Deportation Proceedings under section 22 of the Immigration Act, 1969", which he attached as **"D.D.B.4"** to the Applicant's First Affidavit. The said Notice required the Applicant to appear before a Special Inquiry Officer on 20th December, 2017 to show cause why he should not be deported from Trinidad and Tobago.

8. According to the Applicant he was not informed that he had a right to retain, instruct and be represented at the Special Inquiry by an Attorney-at-law or relative. He stated that he was informed that he was required to attend the hearing and to "bring a relative". The Applicant's wife accompanied him to the hearing on 20th December, 2017 to provide him with emotional support and not in the capacity of his representative.

9. According to the Applicant neither he nor his wife were informed at the Special Inquiry that the Applicant could be represented by "Counsel", nor was the meaning of "Counsel" explained to them. The Applicant stated that he was also not informed that the Chief Immigration Officer declared that he ceased to be a permitted entrant with effect from 19th July, 2009. The Applicant deposed that since he did not complete secondary school education and he did not have anyone present to represent him, he did not understand most of what was happening at the hearing and he did not have anyone to assist or advise him. The Applicant's wife deposed in the Warner Affidavit that the Applicant was never asked about his educational background.

10. At the conclusion of the Special Inquiry, the Special Inquiry Officer presented the Applicant with a document headed "Deportation Order Against Deaughn Dillon Bennett". The said document was neither read nor explained to the Applicant and he was merely informed that it was his deportation order and that he was required to sign same. According to the Applicant, he was not informed by the Special Inquiry Officer of his right to appeal the decision. The Special Inquiry Officer only informed the Applicant that he could write a letter to the Ministry but that in doing so, he would be taken into police custody. The Applicant said that he did not write any letter to the Ministry since he was never previously arrested.

11. On 2nd January, 2018 the Applicant attended the Immigration Enforcement Unit (North) at 8:00am and produced his return ticket to Guyana bearing E-ticket number 1062412288466

in compliance with his Supervision Order dated 20th December, 2017. The Guyanese High Commission provided the Applicant with a copy of his passport with a stamp from Immigration and his signature and the Applicant also obtained an emergency certificate since his Guyanese Passport was expired. The Applicant attached copies of these documents as **"D.D.B.7"** to the Applicant's Second Affidavit.

12. The Respondent's position was set out in the affidavits of Mrs. Joanne Nelson-Joel Assistant Chief Immigration Officer which was filed on the 5th January, 2018; Ms. Simone Telesford the Clerk Stenographer who took the notes at the Special Inquiry which was also filed on the 5th January, 2018 and the Special Inquiry Officer Mr. Lyndon Francis whose Affidavit was filed on the 23rd January, 2018.

13. The material facts which were set out in the Respondent's evidence were as follows: On 16th November, 2017, the Chief Immigration Officer issued an Order of Detention under section 15 of the Immigration Act for the Commissioner of Police to detain the Applicant in order for an examination or inquiry to be conducted on the Applicant. The Applicant was detained on 16th November, 2017 and Immigration Officer Kendall Boodoo interviewed the Applicant at the Immigration Enforcement Unit (North) at 3:40pm. An Information Sheet was completed with the responses of the Applicant which the Applicant signed. A copy of the said Information Sheet was annexed as **"J.N.J.1"** to the Affidavit of Joanne Nelson-Joel. This Information Sheet was sent to the Chief Immigration Officer requesting that the Chief Immigration Officer declare that the Applicant has ceased to be a permitted entrant with effect from the 19th July, 2009 and to direct that a Special Inquiry be held.

14. The Chief Immigration Officer issued an Order dated 29th November, 2017 declaring that the Applicant has ceased to be a permitted entrant with effect from 19th July, 2009, a copy of which was annexed in a bundle marked as **"J.N.J.1"** to the Affidavit of Joanne Nelson-Joel. The Chief Immigration Officer also issued an Order to Hold an Inquiry directing a Special Inquiry Officer to hold an Inquiry to determine whether the Applicant is a person other than a citizen of Trinidad and Tobago or a resident and is a person described in Section 22(1)(f) of the Immigration Act. A copy of this Order was also annexed in a bundle marked as **"J.N.J.1"** to the Affidavit of Joanne Nelson-Joel.

15. The Applicant was served with the Order to Show Cause and Notice of Hearing in Deportation Proceedings on 15th December, 2017 and he was informed of his due process rights including the right to representation by Counsel, by a relative or a friend. A copy of this Order is annexed as **"L.F.4"** to the Affidavit of Lyndon Francis.

16. On 20th December, 2017, Special Inquiry Officer Lyndon Francis conducted a Special Inquiry of the Applicant in the presence of Simone Telesford, Clerk Stenographer. The Applicant and his wife were present for the Special Inquiry. The Applicant was shown the Order of the Chief Immigration Officer directing that a Special Inquiry be held and the reason for it was explained to the Applicant. The Applicant was shown the Order of the Chief Immigration Officer that he ceased to be a permitted entrant and it was explained to him. The Applicant was further shown the Order to Show Cause and he was asked to confirm details of it, after which the charges against him were read out. Mr. Francis explained to the Applicant his right to have Counsel represent him at his expense. He explained to him the meaning of "Counsel" and he was asked if he wished to be represented by Counsel, to which the Applicant replied "no". Mr. Francis also informed the Applicant that he was entitled to have a friend or family member present at the Special Inquiry to represent him and the Applicant responded that he wished for his wife to represent him. The Applicant was sworn on the Holy Bible and after reading the charges to the Applicant and asking him whether he was innocent or guilty of the charges, the Applicant responded that he was guilty.

17. Mr. Francis asked the Applicant questions surrounding his marriage to Cilita Warner, his initial entry into Trinidad and Tobago and on his educational background. The Applicant in response to the latter questions responded that he had finished Secondary School but received no passes. The Applicant did not appear to Mr. Francis to have any difficulty understanding the questions being asked, nor did the Applicant indicate that he was having any such difficulty.

18. The Applicant was further questioned about the manner in which he came to the attention of the Immigration Division. He was also questioned as to whether he had a ticket to return to Guyana. At one point during the Special Inquiry, the Applicant was asked to leave the

room so that Mr. Francis could speak with his wife/ representative in the presence of Ms. Telesford to determine whether the marriage was genuine in nature.

19. On a consideration of all the evidence, Mr. Francis concluded that:

i. the Applicant was not a citizen or resident of Trinidad and Tobago, nor did he have any claims to such status;

ii. the Applicant did not obtain an extension of his entry certificate and worked without a permit;

iii. the Applicant made no voluntary act to regularise his status in the country;

iv. while the Applicant claimed to be married, the Applicant could not recall the date of his marriage even though it had occurred a mere three weeks prior;

v. the marriage between the Applicant and his wife took place under Muslim Rites even though they were both Christians; and

vi. the Applicant nor his wife could produce their Marriage Certificate, Registration Certificate or any receipt which would indicate that any such marriage took place.

20. Mr. Francis informed the Applicant that he would be ordered deported to Guyana and that he could not return to Trinidad and Tobago until the Deportation Order was lifted since to do so would constitute an offence. The Applicant was informed that Mr. Francis' decision could be appealed within 24 hours to the Ministry of National Security. The Applicant was asked whether he wished to appeal, to which the Applicant responded "no". The process of making the appeal was explained to both the Applicant and his wife. The Deportation Order was read by the Applicant and his wife in Mr. Francis' presence and the Applicant signed the said document together with Ms. Simone Telesford as a witness. The Applicant was then turned over to other Immigration Officers in the Enforcement Unit who placed the Applicant under an Order of Supervision.

21. Mr. Lyndon Francis proceeded on Vacation Leave outside of the jurisdiction and returned on 16th January, 2018, after which he was able to confirm the contents of the minutes of the Inquiry and sign same.

Legal principles- Application for leave for Judicial Review

22. Section 9 of the Judicial Review Act[2] (JRA) 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."*

23. The **Civil Proceedings Rules Part 56.3(1)** states:

> "(1) *No application for judicial review may be made unless the court gives leave."*

24. The test for granting leave for judicial review was stated in the judgment of **Sharma v Browne-Antoine[3]** at paragraph 14 (4) as follows:

> "(4) The ordinary rule now is that the court will refuse leave to claim judicial review **unless** satisfied that there is an arguable **ground** for judicial review **having** a realistic prospect of success **and not subject to a discretionary bar such as delay or an alternative remedy:** R v Legal Aid Board, Ex p Hughes (1992) 5 Admin LR 623, 628; Fordham, Judicial Review Handbook, 4th ed (2004), p 426.But arguability cannot be judged without reference to the nature and gravity of the issue to be argued. It is a test which is flexible in its application. As the English Court of Appeal recently said with reference to the civil standard of proof in R(N) v Mental Health Review Tribunal (Northern Region) [2005] EWCA Civ 1605, [2006) QB 468, Para 62, in a passage applicable mutatis mutandis to arguability :
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> ". . . the more serious the allegation or the more serious the **consequences** if the allegation is proved, the stronger must be the evidence before a court will find the allegation proved on the balance of probabilities. Thus the flexibility of the standard lies **not in** any adjustment to the degree of **probability** required for an allegation to be proved (such that a more serious allegation has to be **proved** to a higher degree of **probability), but in the strength or quality of the evidence that will in practice be required for an allegation to be proved on the balance of probabilities." (**Emphasis Added)

[2] Chapter 7:08
[3] (2006) 1 UKPC 57

25. In **Ferguson & Another v The Attorney General of Trinidad and Tobago**[4] Kangaloo JA advocated that the Court ought not to use a stringent application of the aforesaid test. He stated that:

> "4. It would be a travesty if the words of their Lordships were taken to mean that he test of arguability lends itself to stringent application. To adopt such an approach would be to erode the very protection that is offered by the remedy of judicial review. The purpose of judicial review is to keep the executive in check and to prevent the citizen from arbitrary, unwarranted and unlawful executive action. Such protections are part of the wider concept of the rule of law which lies at the foundation of any democratic society. In this regard the observations of Lord Phillips of Worth Matravers are worthy of note:
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> > "The rule of law is the bedrock of a democratic society. It is the only basis upon which individuals, private corporation, public bodies and the executive can order their lives and activities … . The rule of law will not fully prevail unless the domestic law of a country permits judges to review the legitimacy of executive action. This is increasingly becoming the single most important function of the judge in the field of civil law, at least in jurisdiction.
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> 5. The main purpose of the permission stage in judicial review proceedings is still to eliminate unmeritorious application brought by an applicant who is "no more than a meddlesome busybody"; an aim which is particularly beneficial in current times given the explosion of civil litigation which our justice system has witnessed. However in fulfilling its mandate as the guardians of democracy and the rule of law; concepts which can easily be seen as two sides of the same coin, the court must not lightly refuse a litigant permission to apply for judicial review. It must only be in wholly unmeritorious cases which are patently unarguable (barring issues of delay and alternative remedies) that the courts should exercise its discretion in refusing to grant leave."

26. In the instant matter, there were disputes of fact and there was no cross-examination. Even where there is a dispute of fact the onus is still on the Applicant to provide strong evidence

[4] Civ. App No 207 of 2010

to demonstrate that the grounds upon which he has mounted his challenge has a reasonable prospect of success. In determining the instant application, the Court is guided by the learning in **R v Secretary of State for the Home Department ex p Swati**[5] at page 487 A-B of the judgment. In Ex p Swati it was stated that "*The onus is on the applicant to show that he has an arguable ground to challenge the decision complained of. It is not sufficient merely to express disagreement, however strongly".* At 487 F it was stated that "*the grounds were an assertion of factual disagreement with the immigration officer's decision. No want of authority or procedural irregularity is there alleged. Unless the reason given by the immigration officer for refusal was deficient, there can be no basis for granting leave to apply for judicial review."*

27. At paragraphs 46 to 51 of the Applicant's submissions, the Applicant submitted that the transcript of the Special Inquiry proceedings provided by the Respondent were not signed by the Applicant nor his wife and given the disparity between the facts of each party's case, the Respondent's notes should not be relied on as an accurate reflection of the Special Inquiry proceedings.

28. Sections 24, 25 and Regulation 25 of the Immigration Act establish the procedure for the Special Inquiry. There is no provision which requires the Applicant to sign the transcript of the Special Inquiry. Therefore, there is no merit in the Applicant's submissions that it is not an accurate reflection since it was not signed by him since the law makes no such requirement.

Reasons

29. I have decided to refuse the Applicant's application for judicial review since the Applicant has failed to satisfy me that he has exhausted all alternative remedies which are available to him. Further, the Applicant has failed to persuade me that he has an arguable ground for judicial review with a realistic prospect of success with respect to any of the grounds on which the application is based.

[5] (1986) 1 WLR 477

Alternative Remedies

30. The Applicant contends that he has no alternative remedy for two reasons as stated in the Application namely; he was deprived of the opportunity to lodge an appeal against the Deportation Order since he was advised by the Special Inquiry Officer "*that the only way to uplift the inquiry is to write a letter to the Ministry within twenty-four hours and I would be taken into custody"*. He also submitted that although the Deportation Order was served on him which referred to the right of appeal, it was not read or explained to him and he did not understand what was meant by "uplifting the inquiry". Prior to the 28th December 2017 he did not understand he could appeal the Deportation Order and by the 28th December 2017 the time limited for lodging the appeal had already passed.

31. He also contended that by letter dated the 29th December 2017[6] his attorneys at law requested the Respondent to reopen the Special Inquiry but there was no response to the request.

32. The Respondent argued that the Applicant still has three alternative remedies available to him namely: to cancel the deportation order under section 27(6) of the Immigration Act; under section 26 of the Immigration Act he can write the Minister and request for the Special Inquiry to be re-opened and under section 10 he can apply for a permit from the Minister which would have the effect of staying the Deportation Order.

33. Section 27 of the Immigration Act provides:

27. (1) No appeal may be taken from a deportation order in respect of any person who is ordered deported as a member of a prohibited class described in section 8(1)(a), (b) or (c) where the decision is based upon a certificate of the examining medical officer, or as a person described in section 8(1)(j) and (k).

(2) Except in the case of a deportation order against persons referred to in section 50(5), an appeal may be taken by the person concerned from a deportation order if the appellant within twenty-four hours serves a notice of appeal in the prescribed form upon an immigration officer or upon the person who served the deportation order.

[6] See " DDB 6" to the Applicant's First Affidavit

(3) All appeals from deportation orders may be reviewed and decided upon by the Minister, and subject to sections 30 and 31, the decision of the Minister shall be final and conclusive and shall not be questioned in any Court of law.

(4) The Minister may—

(a) consider all matters pertaining to a case under appeal;

(b) allow or dismiss any appeal; or

(c) quash a decision of a Special Inquiry Officer that has the effect of bringing a person into a prohibited class and substitute the opinion of the Minister for such decision.

(5) The Minister may in any case where he thinks fit appoint an Advisory Committee consisting of such persons as he considers fit for the purpose of advising him as to the performance of his functions and the exercise of his powers under this section.

(6) The Minister may in any case where he considers it fit to do so, cancel any deportation order whether made by him or not."

34. Under section 27 the Applicant has a right to appeal the Deportation Order within twenty four hours after it is made. In my opinion the twenty four hour period is not mandatory since the language used in the subsection is "may" and not "shall" which is an indicator that the twenty four hour period is a guideline but it does not act as a bar to a person who is subject to a Deportation Order from filing his appeal after the twenty four hour period. In this regard, I agree with the submission by the Respondent that although the twenty four hour period had passed, he could and he still can lodge his appeal against the Deportation Order.

35. According to the Applicant's evidence, the reasons he has not lodged an appeal was because by the time he understood that he had this right, the time had expired. In my opinion, the Applicant having labored under this erroneous assumption, still has the alternative relief of lodging an appeal against the Deportation Order. He does not need an order in the instant proceedings to do so.

36. Section 26 of the Immigration Act makes provision for the re-opening of a Special Inquiry. It provides:

"26. An inquiry may be re-opened for the hearing and receiving of additional evidence or testimony by Order of the Minister or at the instance of the Special Inquiry Officer who presided at such inquiry, or by any other Special Inquiry Officer acting upon the directive of the Chief Immigration Officer; and the Special Inquiry Officer concerned may confirm, amend or reverse the decision previously given."

37. In my opinion under section 26, the Special Inquiry can be re-opened by one of three acts; (a) either by an Order of the Minister; or (b) at the instance of the Special Inquiry Officer who presided, in this case it would be Mr. Francis; or (c) by any other Special Inquiry Officer upon the direction of the Chief Immigration Officer.

38. According to the Applicant's evidence, after the Special Inquiry he immediately returned home and collected the receipt which evidenced the registration of his marriage and he returned to the Immigration Division with it. He said he presented it to another Immigration Officer who informed him that as the Special Inquiry has ended the receipt could not be considered. There was no description of the Immigration Officer to whom he spoke with, when and where he was informed of this position.

39. The Applicant also deposed that his attorneys at law by letter dated the 29th December 2017 requested the Chief Immigration Officer to re-open the Special Inquiry but they received no response. There was no evidence from the Applicant that having failed to obtain a response from the Chief Immigration Officer that he wrote or approached the Minister to have the Special Inquiry re-opened. There is no time frame in section 26 to do so and therefore I am of the opinion that the Applicant can still approach the Minister and request that the Special Inquiry be re-opened. Therefore, the Applicant has an alternative remedy under section 26.

40. Section 10 (1) of the Immigration Act makes provision for the Minister issuing a permit for a person to enter and remain in Trinidad and Tobago. It provides that:

"10. (1) The Minister may issue a written permit authorising any person to enter Trinidad and Tobago or, being in Trinidad and Tobago, to remain therein.

(2) A permit shall be expressed to be in force for a specified period not exceeding twelve months, and during the time that it is in force such permit stays the execution of any deportation order that may have been made against the person concerned."

41. The Applicant's evidence was silent on whether subsequent to the Deportation Order he has applied for a permit under section 10. Notably a permit issued by the Minister under section 10 has the effect of staying the execution of a Deportation Order. In my opinion this is still an alternative remedy which is available to the Applicant.

42. Therefore, I agree with the Respondent that the Applicant has failed to demonstrate that he has exhausted his alternative remedies under section 10, 26 and 27 of the Immigration Act.

Failure to comply with legislative rules and procedures

43. It was submitted on behalf of the Applicant that the Respondent did not comply with the legislative rules and procedures with respect to the process of the Special Inquiry. In particular the Applicant asserted that the Respondent breached sections 9 (4), 22, 24(2) and Regulation 25 of the Immigration Act. In my opinion, the Applicant failed to demonstrate that the Respondent breached those provisions and as such he failed to demonstrate that he has a reasonable prospect of success.

44. The Applicant argued that the Minister did not declare that he had ceased to be a permitted entrant under section 9(4) and that the Ministerial declaration was a pre-condition to the Deportation Order. The Applicant relied on the local case of **Henry Obumneme Ekwedike v the Chief Immigration Officer and anor**[7] to support its submission that the Minister is the person who declares that a person had ceased to be a permitted entrant under section 9(4) of the Immigration Act.

45. According to the Order dated the 29th November 2017, the Chief Immigration Officer had declared that the Applicant had ceased to be a permitted entrant with effect from the 19th July 2009. In **Legal Notice 287/1986** ("the 1986 Legal Notice") published on the 7th February, 1986 in the Trinidad and Tobago Gazette, the Minister of National Security,

[7] CV 2017-02148

under the powers conferred on him by the Immigration Act, authorized the Chief Immigration Officer to declare when a person described in section 9(4) of the Immigration Act has ceased to be a permitted entrant. This Order took effect from 7th February, 1986. The Applicant has not challenged the information nor the validity of the said Legal Notice.

46. In **Henry Obumneme Ekwedike** the Applicant was given a Minister's permit which was issued under section 10 of the Immigration Act. Therefore there was ministerial authority allowing Mr Ekwedike to stay in Trinidad and Tobago and he could have only lost his status as a permitted entrant under section 9(4) if the Minister had made such a declaration within the prescribed section. In my opinion, the facts in the instant case can be distinguished from **Henry Obumneme Ekwedike** since there was no permit or direct act by the Minister. As such, the Chief Immigration Officer is able to exercise the power delegated by the Minister under the 1986 Legal Notice.

47. Therefore the Applicant has failed to prove that he has a reasonable prospect of success on this challenge.

48. The Applicant submitted that there was no written report relative to the Minister's declaration which was prepared by a Public Officer in accordance with section 22 of the Immigration Act.

49. Section 22 of the Immigration Act provides that:

> "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—
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> (a) any person, other than a citizen of Trinidad and Tobago, who engages in, advocates or is a member of, or associated with any organisation, group or body of any kind that engages in or advocates subversion by force or other means of democratic Government, institutions or processes;
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> (b) any person, other than a citizen of Trinidad and Tobago, who, if in Trinidad and Tobago has, by a Court of competent jurisdiction, been convicted of any offence involving disaffection or disloyalty to the State;

(c) any person, other than a citizen of Trinidad and Tobago, who, if out of Trinidad and Tobago, engages in espionage, sabotage or any activity detrimental to the security of Trinidad and Tobago;

(d) any person, other than a citizen of Trinidad and Tobago, who is convicted of an offence for the violation of section 5 of the Dangerous Drugs Act;

(e) any person who being a resident is alleged to have lost that status by reason of section 7(2)(b) or (4);

(f) any person, who, being a permitted entrant, has been declared by the Minister to have ceased to be such a permitted entrant under section 9(4);

(g) any person other than a citizen or resident of Trinidad and Tobago who has become a charge on public funds;

(h) any person, other than a citizen of Trinidad and Tobago, who counsels, aids, or abets others to remain in the country illegally;

(i) 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.

(2) Every person who is found upon an inquiry duly held by a Special Inquiry Officer to be a person described in subsection (1) is subject to deportation."

50. According to section 22(1) of the Immigration Act, the written report is to be submitted to the Minister in respect of paragraphs (a) to (c), and to the Chief Immigration Officer in respect of paragraphs (d) to (i). The section is silent on whether the written report has to be sent to the Applicant.

51. The Affidavit of Joanne Nelson-Joel exhibited as **"J.N.J.1"** the written report dated the 16th November 2017 which was prepared by Kendall Boodoo and signed by the Applicant. It was this report which was submitted to the Chief Immigration Officer. This evidence was unchallenged. In my opinion there was statutory compliance with section 22(1)(f) of the Immigration Act since the report dated the 16th November 2017 was properly directed to the Chief Immigration Officer.

52. It was also contended by the Applicant that the Respondent breached the statutory procedure with respect to the Special Inquiry. In particular the Applicant argued that the Respondent failed to give him notice that a Special Inquiry was convened to determine whether he was a person described in section 22(1)(f) of the Immigration Act.

53. At paragraph 9 of the Applicant's First Affidavit he deposed that:

"9. On the 15th December 2017, I was served with a document headed **"ORDER TO SHOW CAUSE AND NOTICE OF HEARING IN DEPORTATION PROCEEDINGS UNDER SECTION 22 OF THE IMMIGRATION ACT 1969',** which required me to appear before a Special inquiry Officer on the 20th December 2017, to show cause why I should not be deported from Trinidad and Tobago. A true copy of the notice dated the 15th December 2017, is now shown to me, hereto annexed and marked "D.D.B 5".

54. Regulation 25 (7) of the Immigration Act provides the steps which the Chief Immigration Officer is to follow upon receipt of the report of a person pursuant to section 22 of the Immigration Act. Regulation 25(7) provides that:

> "(7) Where upon receipt of a report in respect of a person pursuant to section 22 of the Act, the Chief Immigration Officer causes an inquiry to be held concerning that person by a Special inquiry Officer under section 22 (2) of the Act, the direction causing the Inquiry shall be in writing and shall set out the provisions of the Act or these Regulations that have occasioned the Chief Immigration Officer to cause an inquiry to be held."

55. According to the evidence of Mrs. Joanne Nelson-Joel by Order dated the 29th November 2017[8] the Chief Immigration Officer directed that a Special Inquiry be held to determine whether the Applicant was a person described in section 22(1)(f) of the Immigration Act. In the bundle of documents annexed as **"J.N.J. 1"** to the Affidavit of Mrs. Nelson-Joel, a copy of the Order dated the 29th November 2017 was annexed. The Order to Show Cause and Notice of the Hearing in Deportation Proceedings which the Applicant said he was served on the 15th December 2017 was annexed as exhibit **"L.F. 4"** of the Affidavit of Mr.

[8] See exhibit JNJ1 to the affidavit of Joanne Nelson-Noel

Francis. In the Notice, the Applicant was informed of the Special Inquiry hearing on the 20th December 2017.

56. But that was not all. Notably in the Order of Supervision which was signed by the Applicant on the 17th November 2017 he stated that he understood that he was being placed on the Order of Supervision since it was pending the Special Inquiry and he was required to report on the 14th December 2017 at 8:00 am to the Immigration Department. Although the Applicant has denied seeing the Order of Supervision dated the 17th November 2017 prior to it being annexed to Mrs. Joanne Nelson-Joel's Affidavit, he has not disputed that he signed the Order of Supervision neither has he alleged that the signature was not his. He also has not alleged that he did not know that he had to attend the Special Inquiry on the 14th December 2017. In my opinion, the signature by the Applicant of the Order of Supervision dated the 17th November 2017 is prima facie evidence that the Applicant signed the Order of Supervision and he did so because he knew and understood the terms of the document he was agreeing to sign. Therefore there was statutory compliance by the Respondent since the Applicant was notified of the date of hearing of the Special Inquiry.

57. It was also contended by the Applicant that the Respondent failed to comply with Regulation 25 (9) of the Immigration Act. Regulation 25 (9) states that:

> "At the commencement of an inquiry where applicable—
>
> (a) the written report referred to in subregulation (5) made in respect of the person; or
>
> (b) the direction referred to in subregulation (7) causing the inquiry to be held,
>
> shall be filed as an exhibit."

58. According to the evidence of Mr. Francis[9], he informed the Applicant at the beginning of the Special Inquiry of the direction of the Chief Immigration Officer causing the Special Inquiry to be held in accordance with Regulation 25(7) and this was filed as Exhibit I to the Special Inquiry Proceedings conducted by him. In the Notes of Evidence of the Special Inquiry, which is exhibit **"L.F. 1**" the Applicant was also informed of the Order of the Chief Immigration Officer declaring him to have ceased to be a permitted entrant (Exhibit

[9] See exhibit LF 2 in the affidavit of Lyndon Francis

II) and the Order to Show Case and Notice of Hearing was read and explained to the Applicant. This was filed as Exhibit III to the Special Inquiry proceedings.

59. The Applicant's evidence was silent on whether he was shown these documents. All he asserted was that he was confused and he did not understand. In my opinion, this does not necessarily mean that Mr. Francis did not read and/or explain the said documents to the Applicant. In my opinion, the Respondent has provided evidence to demonstrate that there was compliance with regulation 25(9). Again, the Applicant has failed to demonstrate that he has a reasonable prospect of succeeding with this ground.

60. It was also submitted on behalf of the Applicant that the Respondent breached the statutory procedure set out in Regulation 25(10) of the Immigration Act. Regulation 25(10) provides:

> "At the commencement of an inquiry the presiding officer shall—
>
> (a) read the report and the directions referred to in subregulation (9) where applicable; and
>
> (b) inform the person concerned that the purpose of the inquiry is to determine whether he is a person who may be permitted to enter or remain in Trinidad and Tobago and that in the event a decision is made at the inquiry that he is not such a person, an order shall be made for his deportation from Trinidad and Tobago."

61. According to paragraph 12 of the Applicant's First Affidavit:

> "….for much of the Special Inquiry I was confused. I did not understand exactly what I was supposed to do or say. I did not understand much of what was happening and I did not have anyone present to assist or advise me."

62. Paragraphs 4 to 7 of the Affidavit of Mr. Francis set out the information with respect to compliance with Regulation 25 (10). He stated**:**

> "4. I have read the contents of the Minutes of the Special Inquiry and they accurately reflect the interview which I conducted with the Claimant in which his wife Cilita Warner was also present. I used a blank template in the conduct of the interview. After the introductions were made I asked Mr. Bennett if he understood why the inquiry was being held and he replied in the affirmative. I then showed him the Order of the Chief Immigration Officer directing that a Special Inquiry be

held-referred to as Exhibit I in the Minutes. I then explained Section 22(1)(f) of the Immigration Act and the reason for the Inquiry. A copy of the said Order for the Special Inquiry is hereto annexed produced and shown to me and marked **"L.F.2."**

5. I then showed him the Order where the Chief Immigration Officer declared that he ceased to be a permitted entrant as at the 19th July, 2009 and that she was making a charge as a person in breach of Section 9 (4) (f) and (k) referred to as exhibit II in the Minutes. I explained to him what those sections referred to, that is, that he remained in the country illegally at the expiration of his Landing, Certificate and that he was employed without a work permit, work permit exemption or CSME Certificate. A true copy of the said Order of the Chief Immigration Officer declaring the Claimant to cease to be a permitted immigrant is hereto annexed produced and shown to me and marked "L.F.3".

6. I then showed to him the Order to Show Cause were I explicitly asked him to confirm the details of same, that is his name, address in his home country, whether he was born in Guyana, whether he was a citizen of Guyana, and again I read out the charges which were made against him referred to as Exhibit III in the Minutes. Having explained same, I indicated to him that after the Inquiry if I make any findings that he was guilty of the charge he may be deported. I also asked him if he understood why the Inquiry was being held and he replied in the affirmative. A true copy of the Order to show cause is hereto annexed produced and shown to me and marked **"L.F.4".**

7. I told Mr. Bennett of his right to have an Attorney at Law or Counsel present with him at his own expense. I explained to him what Counsel meant, that is, an Attorney at Law, anyone who is licensed to practice Law in Trinidad and Tobago. I then asked him that he could have a friend or family member to be present at the Inquiry to witness same. I asked him whether he wanted anyone else to represent him and he said yes, his wife. The relevant details were then taken from Cilita Warner, such as, her identification information, name and, employment and telephone contact."

63. Therefore there was no breach of Regulation 25(10) as the written report prepared in accordance with section 22 was read to the Applicant by the Special Inquiry Officer, Mr. Lyndon Francis, at the commencement of the Special Inquiry proceedings. Again there is no reasonable prospect of the Applicant succeeding on this ground.

Denial of legal advice and representation at the at the Special Inquiry

64. It was contended by the Applicant that "*he was never informed of his right to be represented by an Attorney at law and as such he was denied his right to legal representation*" and that "*the notice of hearing, which informed the Applicant of the SI did not contain any advice to the Applicant that he is entitled to legal representation at the hearing.*"

65. Section 24(2) of the Immigration Act provides:

> "The person concerned shall be entitled to conduct his case in person or by an Attorney-at-law, or may be assisted in conducting his case at the hearing by any other person with leave of the Special Inquiry Officer (which leave shall not be unreasonably withheld)."

66. Regulation 25(2) of the Immigration Regulations provides as follows:

> "At the commencement of an inquiry where the person concerned is present and is not represented by an Attorney-at-law, or by a relative or friend, the presiding officer shall —
>
> (a) inform the person concerned of his right to retain, instruct and be represented by an Attorney-at-law or by a relative or friend at the inquiry at no expense to the Government of Trinidad and Tobago; and
>
> (b) upon request of the person concerned adjourn the inquiry for such period as in the opinion of the presiding officer is required to permit the said person to retain and instruct an Attorney-at-law or to obtain the services of a relative or friend"

67. Based on the relevant statutory provisions, the Applicant was entitled to either conduct the case by himself or by an attorney at law or with the permission of the Special Inquiry Officer by any other person. If the person is not represented by an attorney at law or by a relative or friend, the Special Inquiry Officer has a duty to inform that person of his right to retain, instruct and be represented by an attorney at law or by a friend or a relative and on the request of the person, the Special Inquiry Officer has the authority to adjourn the Special Inquiry to accommodate the person obtaining the said representation.

68. The Respondent has submitted that the Applicant was never denied the right to representation by an Attorney at Law since he stated that he did not wish to be represented by an Attorney at Law.

69. According to paragraph 21 of the Applicant's First Affidavit, at no time he was informed of his entitlement to retain, instruct and/or be represented by an Attorney at law. At paragraph 11 of the Applicant's First Affidavit he deposed that when he was served with the Order to Show Cause he was not informed that he had a right to retain, instruct and be represented at the Special Inquiry by an Attorney at law. The Applicant's evidence that he was not advised by the Special Inquiry Officer that he had a right to retain, instruct and be represented by an attorney at law at the Special Inquiry was supported by his wife's evidence in the Warner affidavit.

70. According to the Respondent's evidence, a Notice of Hearing was served on the Applicant on 15th December 2017. In my opinion it is not sufficient for the Applicant to assert that the person who served him the said Notice did not inform him of his right to retain an attorney at law. This is a serious allegation which the Applicant has mounted against the Respondent with respect to the process. For the Court to accept the Applicant's assertion more details such as the name or description of the person, when and how the Notice was served were required to convince the Court that the person failed to notify the Applicant of this right. In the absence of such evidence, the Court cannot presume that the person who served the Notice failed to inform the Applicant of his right to have an attorney at law to represent him at the Special Inquiry hearing. To do otherwise would be to prejudice the Respondent without any proper basis.

71. At paragraph 7 of the Affidavit of Lyndon Francis he indicated that as the Special Inquiry Officer he informed the Applicant of his right to have an Attorney at Law present with him. He explained the meaning of Counsel and then asked whether the Applicant wished to be represented by Counsel, to which the Applicant responded "*no*". This was substantiated by the transcript of the Special Inquiry which was annexed to the Affidavit of Lyndon Francis as **"L.F.1".**

72. Mr. Francis evidence was supported by paragraph 4 of the Affidavit of Simone Telesford who was present at the Special Inquiry and who made the contemporaneous notes of the same which was annexed to her Affidavit as **"S.T.1"** as well as the transcript of those said notes annexed to the same Affidavit as **"S.T.3".** Ms. Telesford indicated that she recorded where the Applicant was asked whether he wished to be represented by Counsel, "Counsel" was explained to him and the Applicant responded "*no*".

73. In my view, the evidence of Mr. Francis and Ms. Simone Telesford which was supported by the contemporaneous documents is compelling. It demonstrates that the Respondent's servants and/or agents acted in accordance with the procedures set out in Regulation 25 by properly informing the Applicant of his right to retain, instruct and be represented by an Attorney-at-law at the Special Inquiry. The Respondent in no way denied the Applicant his right to legal representation, nor was the consequent proceedings rendered unfair, null or void. Therefore, the Applicant has failed to demonstrate that he has a reasonable prospect of success with this ground.

Denial of Representation by an Appropriate Adult

74. It was contended on behalf of the Applicant that he was denied the right to representation by an appropriate adult at the hearing by the Respondent since when he was served with the Notice of Hearing, "*he was simply informed by the Respondent's servants, agents and/or employees that he should "bring a relative". It was never explained to the Applicant that he could be represented by a relative of his choice or another adult."*

75. The Applicant also argued that it was never explained to him that the relative or adult of his choice could represent him at the hearing, and that he brought along his 23 year old

wife who was never "*exposed to similar proceedings before and therefore could not have been competent to represent the Applicant"*. The Applicant's wife deposed in the Warner affidavit that the Applicant did not ask her to be present at the Special Inquiry as his representative and at no time during the Special Inquiry did the Special Inquiry Officer informed her that she was there in her capacity as the Applicant's representative.

76. It was common ground that Regulation 25 allows a person who is the subject of a Special Inquiry to have a friend or a relative represent him at the hearing. It was not in dispute that the Applicant's wife who is a 23 year old adult attended the Special Inquiry with him. According to paragraph 7 of the Affidavit of Lyndon Francis, the Special Inquiry Officer, he also informed the Applicant of his right to be represented by a friend or family member, and upon asking whether the Applicant wanted anyone else to represent him, the Applicant indicated that he wished for his wife, Cilita Warner, to represent him. Mr. Francis evidence was supported by page 2 of the transcript of the Special Inquiry which was exhibited as **"L.F.1"** to his affidavit.

77. Mr. Francis' evidence was also supported by the evidence of Ms. Simone Telesford who stated at paragraph 4 of her affidavit that Mr. Francis informed the Applicant that the law permitted him to have a friend or family member present at the Special Inquiry and the Applicant responded that he wished for his wife, Cilita Ayanna Therese Warner, to represent him. Ms. Telesford contemporaneous handwritten notes which were exhibited as **"S.T.1"** to her affidavit and the transcript of those notes exhibited as **"S.T.3"** supported the evidence of Mr. Francis and Ms. Telesford.

78. The Applicant also contended that the Respondent did not permit the Applicant's wife to remain at the Special Inquiry as his representative for two reasons namely i) that the Applicant's wife was questioned by the Special Inquiry Officer Mr. Francis and her answers were "*considered*" and "*used against the Applicant*"; and ii) the Applicant was excluded from the room while his wife was being interrogated.

79. I will deal with the second contention first. Regulation 25(1) of the Immigration Act provides as follows:

"An inquiry shall be conducted in the presence of the person concerned whenever practicable."

80. In my opinion the Regulation gives the Special Inquiry Officer the discretion based on the circumstances of the case to conduct the Special Inquiry in the presence of the person concerned or not. Indeed if the Special Inquiry Officer exercises his discretion to conduct the Special Inquiry without the presence of the person concerned he has a duty to explain the reasons he took such action.

81. Mr. Lyndon Francis explained the reasons he questioned the Applicant's wife without the Applicant being present at paragraph 8 and 9 of his affidavit. He deposed that at the Special Inquiry both the Applicant and his wife were sworn on the Holy Bible after he ascertained that they were Christian. He asked the Applicant about the date of his marriage and the Applicant could not remember the date despite the marriage having taken place three weeks before the Special Inquiry. He said he considered the Applicant's marriage since it did not appear to be a genuine one having regard to the period of time between the date of the Applicant's arrest on the 16th November 2016 and the date of marriage on the 28th November 2017; the failure by the Applicant to know his date of marriage; the Applicant and his wife were in a long relationship without having married before his arrest and that both the Applicant and his wife claimed to be Christian but they got married under Muslim Rites without putting forward a reasonable explanation for them getting married under a totally different faith.

82. According to Mr. Francis, he questioned the Applicant's wife in the absence of the Applicant but in the presence of Ms. Telesford, the stenographer to determine whether the marriage was genuine.

83. As the Special Inquiry Officer, Mr. Francis was empowered by the Schedule to the Immigration Act to examine any such witnesses or documents necessary for conducting a full investigation of the matters for which he was instructed.

" **SCHEDULE**

POWERS OF SPECIAL INQUIRY OFFICERS

1. Special Inquiry Officers have the power of summoning before them any witnesses, examining such witnesses and requiring them to give evidence on oath, or on solemn affirmation if they are persons entitled to affirm in any Court of law orally or in writing, and requiring them to produce such documents and things as such officers consider requisite to the full investigation of the matters into which they are appointed to examine, and to punish persons guilty of contempt."

84. In my opinion given the responses from the Applicant to Mr. Francis, he had the authority to separate the Applicant from his wife to question her about the legitimacy of the marriage between them. This did not deprive the Applicant of his wife's assistance when he was questioned since she was present.

85. With respect to the first contention, the Special Inquiry Officer, Mr. Francis was empowered by the Schedule of the Immigration Act to examine witnesses who he considered requisite for the full investigation. Based on the responses Mr. Francis had received from the Applicant he was entitled to question the Applicant's wife in his absence and use any evidence he obtained from her in exercising his discretion as the Special Inquiry Officer.

86. Therefore, I concluded that the Applicant has no reasonable prospect of success with this ground.

Futility of the reliefs sought

87. In the Respondent's closing submissions, it was pointed out that even if the Applicant obtains the substantive reliefs in the instant proceedings, he would still be without legal status because he is deemed to cease to be a permitted entrant by the Chief Immigration Officer. There is merit in this submission since all the Applicant seeks in his substantive reliefs are to quash the Deportation Order and the Special Inquiry.

Conclusion

88. The Applicant has failed to satisfy this Court that he has an arguable ground for judicial review having a realistic prospect of success of any of the grounds upon which he was relying. The bald assertions and evidence of the Applicant that he was denied certain rights as provided for under the Immigration Act, without more, falls short of what was required. The Applicant has not sufficiently shown that he was denied representation at the Special Inquiry, legal advice or that there was a failure on the part of the Respondent to comply with legislative rules and procedures. Simply put, he has not shown that there were procedural flaws in the Special Inquiry which would operate to render the decision to have him deported unlawful.

89. Moreover, this Court has assessed that the Applicant had available to him alternative remedies to seek redress for the reliefs sought. Having found that there were alternative remedies available to the Applicant under the Immigration Act, the Applicant has failed to demonstrate to this Court any exceptional circumstances as to why he did not or could not pursue those alternative remedies available to him, leaving him with no choice but to make an application for judicial review. In the circumstances, this Court finds that the Applicant has not succeeded in his application for leave to apply for judicial review.

Order

90. The Applicant's application filed on the 2nd January 2018 for leave to apply for judicial review is dismissed.

91. The Applicant to pay the Respondent's costs to be assessed by the Registrar in default of agreement.

Margaret Y Mohammed
Judge