THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No.: CV2020-00937

IN THE MATTER OF AN APPLICATION BY

JOHN EMANUEL DE MENDONCA

FOR AN ADMINISTRATIVE ORDER UNDER PART 56 OF

THE CIVIL PROCEEDINGS RULES, 1998 (AS AMENDED)

AND

IN THE MATTER OF SECTION 23(2) OF THE IMMIGRATION ACT CHAPTER 18:01

BETWEEN

JOHN EMANUEL DE MENDONCA

Claimant

AND

THE CHIEF IMMIGRATION OFFICER

Defendant

Before the Honourable Madame Justice Margaret Y Mohammed

Date of Delivery August 27, 2021

Appearances

Ms Ashley Badal instructed by Ms Kavita Sarran Attorneys at law for the Claimant.

Mr Duncan Byam and Ms Karlene Seenath instructed by Ms Sangeeta Latchan and Mr Brent James Attorneys at law for the Defendant.

JUDGMENT

INTRODUCTION

1. The Claimant is a Guyanese national who entered Trinidad and Tobago legally in 2006 and has since then been residing and working here. On 21 December 2011, he applied for a Right of Establishment under the Caricom Single Market and Economy ("the Right of Establishment Application") for himself and his family. The Claimant also applied to the Minister of National Security ("the Minister") for permanent residency[1] ("the Residency Application") on 28 November 2015. He was detained by the Defendant in August 2018 and released on an Order of Supervision. On 10 January 2020, he was notified that deportation proceedings were instituted against him. He has instituted the instant action seeking the following orders:

    (i) An Order of Certiorari quashing the decision of the Chief Immigration Officer ("the CIO"), his agents and/or servants, initiating and/or prosecuting and/or continuing the process of Special Inquiry under section 23 of the Immigration Act[2] ("the Immigration Act"), pending the determination of the Residency Application under section 5(3) of the Immigration Act before the Minister.

    (ii) An Order of Certiorari quashing the decision of the CIO to initiate and prosecute the Claimants by way of Special Inquiry under Section 22 of the Immigration Act.

    (iii) An Order of prohibition staying all or any proceedings namely the Special Inquiry under the Immigration Act by the CIO allowing for the detention or deportation of the Claimant until the determination of the Residency Application under section 5(3) of the Immigration Act by the Minister.

[1] Exhibit JEDM 4
[2] Chapter 18:01

(iv) An Order prohibiting the CIO his servants and/or agents from harassing, interfering with, or detaining the Claimant in any manner whatsoever until the determination of the Residency Application by the Minister.

(v) An Order prohibiting the CIO his servants and/or agents from committing any acts that adversely affects or interferes with or renders nugatory the exercise of the discretion of the Minister in relation to the Residency Application namely:

(a) Deporting the Claimant while the Residency Application is pending;

(b) Detaining the Claimant in any manner whatsoever while the Residency Application is pending; and

(c) Arresting and/or threatening the Claimant with arrest and/or detention while the Residency Application is pending.

(vi) An Order of Certiorari revoking the Orders of Supervision of the CIO or alternatively an Order staying the expiration of the said Orders of Supervision pending the determination of the Residency Application by the Minister.

(vii) Costs.

(viii) Such further other orders, directions or writs pursuant to Section 8(1)(d) of the Judicial Review Act[3] ("the JRA").

FACTUAL BACKGROUND

2. The Claimant's position was set out in his two affidavits filed on 9 March 2020 ("the Claimant's Affidavit") and 8 July 2020 ("the Claimant's Affidavit in Reply").

3. According to the Claimant, he lawfully entered Trinidad and Tobago in 2006 and since that time he has continued to reside in this country. On 15 November 2011, he

[3] Chapter 7:08

incorporated and opened a construction company under the name De Mendonca General Contractors Limited[4].

4. Shortly thereafter on 21 December 2011, the Claimant made the Right of Establishment Application for himself and his family. The Minister at that time acknowledged receipt of the Right of Establishment Application by a letter dated 26 January 2012[5]. The Claimant also made the Residency Application to the Minister on 28 November 2015, but to date his application has not been acknowledged.

5. In the numerous correspondence exchanged between the Claimant and the Minister during the period 25 January 2013 and 27 April 2017[6], the Claimant requested permission for his wife and children to be able to re-enter Trinidad and Tobago, having been forced to leave in order for their respective applications to be processed. However, the re-entry of his family was delayed by spellings errors that were made in relation to the names of two of his children which needed to be rectified.[7] In one of the Claimant's letter to the Minister dated 25 April 2017, he again inquired into the status of the re-entry of his wife and children. The Permanent Secretary of the Ministry of National Security ("the Ministry") acknowledged his letter and informed him that his application had been forwarded to the Immigration Division for processing.

6. The Claimant then wrote to the CIO by letter dated 3 October 2017[8], inquiring into the status of the Right of Establishment Application and pointing out the incorrect spelling of the names of two of his children, who had been denied entry into the country on that basis. The CIO responded by letter dated 14 November 2017[9] and informed the Claimant that entry into the country was determined at the port of entry. On 30 August 2018 when the Claimant attempted to receive his daughter at the Piarco International Airport he was detained by Immigration Officials, his passport was seized and he was transported to the Port of Spain Immigration Division, where an Order of

[4] Exhibit JEDM 5
[5] Exhibit JEDM 1
[6] Exhibit JEDM 2; Exhibit JEDM 3; and Exhibit JEDM 6
[7] Exhibit JEDM 3
[8] Exhibit JEDM 7
[9] Exhibit JEDM 7

Supervision was placed on him pending the outcome of the Special Inquiry. He was also ordered to pay a bond of $1,700.00 to secure his release.

7. On 10 January 2020 the Claimant was served with an Order to show Cause and the Notice of Hearing in Deportation Proceedings. Therein, it was alleged that the Claimant had: (i) remained in the country illegally after the expiration of the certificate granted to him on arrival; and (ii) worked in Trinidad and Tobago without a valid work permit, therefore breaking the terms and conditions of the certificate granted to him on his initial arrival and he was subject to deportation pursuant to Section 22(2) of the Immigration Act.

8. The Defendant's position was set out in the affidavit of Ms Charmaine Gandhi-Andrews ("the Defendant's Affidavit")[10].

9. The material facts set out in the Defendant's Affidavit were that in August 2018, the Immigration Division became aware that the Claimant had exceeded his stay in Trinidad and Tobago, having entered the country as a visitor on 18 June 2015 and being given until 17 December 2015 to leave. An Order of Supervision was then placed on the Claimant. In September 2018 the Claimant produced a letter applying for permanent residence, which was addressed to the Minister, which he claimed had been sent to the Ministry. However, there was no record of any such application being received by the Immigration Division or the Ministry.

10. The Defendant explained that the procedure to be followed in the making of and/or granting of a Permanent Residence Application is as follows. The applicant should write to the Minster through the Ministry applying for permanent residence, then the Ministry will acknowledge receipt of the applicant's letter and invite the applicant to visit the Citizenship and Immigration Section of the Ministry with certain documents. After the relevant documents have been received, a copy of the application is then forwarded to the Immigration Division with a request for a report. The Immigration

[10] Filed on 1 July 2020

Division then opens a file to treat with the applicant's letter and an investigation is commenced. Once the investigation is completed, a report is prepared by the assigned Immigration Officer and sent to the Permanent Secretary of the Ministry within six months. The Minister's decision can take upwards of a year depending on the circumstances of the case.

11. The Defendant also stated that applicants for permanent residence are required to adhere to all the laws and regulations applicable to foreign nationals, inclusive of maintaining lawful status within the country. The applicants must ensure that they apply for an extension of stay before the expiration of their landing certificates. In the instant case, the Claimant had permission to stay in the country for six months, but had remained in the country for approximately three years and the Immigration Division had no record of him applying for an extension of stay.

12. According to the Defendant it was only after being examined by Immigration Officers in 2018, that the Claimant alleged that he had made the Residency Application. It is not the policy of the Immigration Division to delay or stay deportations or the initiation of deportation proceedings pending an application for permanent residence. Due to the Claimant overstaying his permitted entry in Trinidad and Tobago, an order was made that the Claimant ceased to be a permitted entrant under section 9(4) of the Immigration Act and instructions were given for deportation proceedings to be initiated.

13. The Defendant also stated that she was advised by her Attorney at law that the decision which the Claimant has sought to review is not reviewable under section 30 of the Immigration Act and that she was giving notice of her intention to have the order granting the permission to file the claim set aside, on the basis that this was not disclosed in the leave application.

THE ISSUES

14. I will address two issues in this judgment namely:

(a) Whether the claim should be dismissed on the basis that the Claimant had failed to disclose that the decision is not subject to judicial review or that he has an alternative remedy?

(b) Did the Defendant act illegally, irrationally and/or unreasonably by initiating deportation proceedings against the Claimant?

WHETHER THE CLAIM SHOULD BE DISMISSED ON THE BASIS THAT THE CLAIMANT HAD FAILED TO DISCLOSE THAT THE DECISION IS NOT SUBJECT TO JUDICIAL REVIEW OR THAT HE HAS AN ALTERNATIVE REMEDY?

15. It was submitted on behalf of Counsel for the Defendants that the substantive relief which the Claimant is seeking in the instant action is to stop the deportation proceedings pending the determination of the Residency Application. Counsel argued that the leave should be set aside and the action dismissed, as the Claimant failed to disclose to the Court that sections 27 and 30 of the Immigration Act ousts the jurisdiction of the Court where the officers of the Immigration Division have acted properly. Further, under section 27 of the Immigration Act there is an alternative remedy available to the Claimant if he is aggrieved with the outcome of the deportation proceedings. In support of this submission, Counsel for the Defendant relied on the dicta of this Court in the judgment of **Francisco Javier Polanco Valerio and Johan Rudolfo Custodio Santana v The Chief Immigration Officer and the Attorney General** [11] where I addressed the same issues. The Claimant did not respond to these submissions.

16. Although the Defendant did not file any formal application to set aside the leave which was granted to file the instant action, the Court can still at this juncture address this issue as the Defendant raised it in the Defendant's Affidavit.

[11] CV 2017-01623.

17. In **Francisco Javier Polanco Valerio**, I set out the reasons for a Claimant making full disclosure at the leave stage and the consequences for failing to do so. It is worth repeating the dicta from paragraphs 35 to 38, which are as follows:

> "35.In Michael Fordham's **Judicial Review Handbook**[12] at paragraph 10.3 the author stated that in judicial review Claimants always have an important duty to make full and frank disclosure to the Court of material facts, and any procedural hurdles eg ouster, alternative remedy, delay). The matters requiring disclosure include facts and documents, legal principles and authorities, statutory ouster and alternative remedy[13].
>
> 36.The reasons for the Claimant having such a duty is because an order obtained ex parte is in its nature provisional and the consequences for failing to bring to the Court's attention materials facts and documents, legal principles, statutory ouster and alternative remedy entitles a Court on an inter partes hearing to examine the matters which were not disclosed to ensure that the Claimant who obtained the order did not obtain an advantage improperly obtained by his non-disclosure and to serve as a deterrent from doing so.
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> 37.Balcombe LJ in **Brink's MAT Ltd v Elcombe**[14] explained the reasons for discharging an injunction obtained ex parte where there was material non-disclosure as:
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> > "It will deprive the wrongdoer of an advantage improperly obtained… But it will also serve as a deterrent to ensure that persons who make ex parte application realise that they have this duty of disclosure and of the consequences (which may include liability in costs) if they fail in that duty."

[12] 4th ed
[13] At para10.3.3
[14] [1988] 3 All ER 189 at page 193

38.In order to determine if an order obtained ex parte should be set aside on the basis on material non-disclosure, the learning in **R v Jockey Club Licensing Committee ex p Wright**[15] referring to **Brink's MAT Ltd v Elcombe**[16] is instructive:

> "In *Brink's Mat Ltd v Elcombe* [1988] 1W.L.R. 1350, the Court of Appeal had been concerned with nondisclosure on the making of a Mareva injunction but the principles there laid down were relevant in the present case. These included:
>
> (a) The duty to make a full and frank disclosure of all the material facts, see *R. v Kensing on Income Tax Commissioners, ex p. Princess Edmond de Polignac* [1917] 1K.B. 486.
>
> (b) The material facts were those which it was material for the judge to know and materiality was to be decided by the court and not by the assessment of the applicant or his legal advisers, see, in particular, *Thermas Ltd v Schott Industrial Glass Ltd* [1981] F.S.R. 289.
>
> (c) The applicant must make proper inquiries before making the application, see *Bank Mellat v Nikpour* [1985] F.S.R. 87. The duty of disclosure therefore applied not only to material facts known to the applicant but also to any additional facts which he would have known had he made such inquiries.
>
> (d) The extent of the inquiries which would be held to be proper, and therefore necessary, must depend on all the circumstances of the case including the nature of the case, the order for which the applicant contended, the degree of legitimate urgency and the time available for the making of inquiries.

[15] 1991 C.O.D. 306
[16] [1988] 1 WLR 1350

(e) Where material non-disclosure was established the court would be "astute to ensure that a plaintiff who obtains [*ex parte* relief] without full disclosure is deprived of any advantage he may have derived by that breach of duty" *per* Donaldson L.J. in *Bank Mellat v Nikpour*

(f) Whether the fact not disclosed was of sufficient materiality to justify or require immediate discharge of the order without examination of the merits depended on the importance of the fact to the issues which were to be decided by the judge on the application. Finally, the court had a discretion and it was not for every omission that an *ex parte* order would be automatically discharged."

Non-disclosure of the ouster provisions

18. In **Francisco Javier Polanco Valerio**, I stated that there is a duty on a Claimant to point out the existence of an ouster clause in any application for leave to file for judicial review. At paragraphs 54 to 58, I stated the following:

"54. There are two sections in the **Immigration Act** which oust the jurisdiction of the Court namely sections 27 and 30. Neither of these sections was brought to the Court's attention before the order was made. Section 27 provides for appeals of a deportation order as follows:

"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 from upon an immigration officer or upon the person who served the deportation order.

(3) All appeal 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 person 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."

55. Section 27 does not give the Court the jurisdiction to deal with appeals of orders for deportation.

56. Section 30 is a specific ouster provision since it states that:

"Subject to section 31(3) no Court has jurisdiction to review, quash, reverse, restrain or otherwise interfere with any proceeding, decision or Order of the Minister, the Chief Immigration Officer, a Special Inquiry Officer or an immigration officer had, made or given under the authority of and in accordance with this Act relating to the detention or deportation of any person, upon any ground whatsoever, unless such person is a citizen of Trinidad and Tobago or is a resident."

57. Section 31 only gives the right of appeal to citizens of Trinidad and Tobago. It states:

> "31(1) Subject to the provisions of subsection (2), an appeal shall lie to a Judge of the High Court and then to the Court of Appeal against any rejection Order or deportation Order of the Minister, a special inquiry Officer, or an immigration officer with respect to any person who claims to be a citizen or resident of Trinidad and Tobago or any declaration as to loss of resident status under section 7 (4).
>
> (2) Notwithstanding the provisions of subsection (1), there shall be no appeal by a person referred to in section 8(1) (l), (m), (o), or (q).
>
> (3) A person to whom section 50(5) applies may appeal to a Judge of the High Court, whose decision thereon may be final, on the ground that there is a reasonable excuse for his failure to apply for permission to become a resident in accordance with section 50(1) or , where his application is refused because the Minister considers that such person was not ordinarily resident in Trinidad and Tobago for a period of five years from the commencement of this Act, he may appeal on the ground that he was so ordinarily resident.
>
> (4) Rules of Court may be made by the Rules Committee under section 77 of the Supreme Court of Judicature Act for regulating and prescribing the procedure on appeal from the decision of the person making the rejection order or deportation order or any other matter in respect of which an appeal may lie under this section to a Judge of the High Court and therefrom to the Court of Appeal.

58. It was clear from section 31 that Parliament intended to only exclude the jurisdiction of the Court in matters concerning persons who are not citizens or residents and in the interest of certainty on this category of persons were excluded from the ouster provisions."

19. Where there is an ouster provision in the statute, the onus was on the Claimant to identify the error of law made by the Defendants. However, the Claimant has not provided any evidence to demonstrate that the Defendant erred in law when she made the decision to institute deportation proceedings. For this reason, the Claimant's action can be dismissed.

Non-disclosure of alternative remedy

20. The Claimant stated in the leave application, in response to the question, "*Whether an alternative form of redress exists and if so why judicial review is more appropriate or why the alternative has not been pursued"*, that *"There is no alternative remedy that is available to Claimant to challenge the decision of the Chief Immigration Officer except by way of judicial review".*

21. At paragraphs 43 to 47 in **Francisco Javier Polanco Valerio**, I stated the following on this issue:

> "43. Section 9 of the **Judicial Review Act** expressly provides that the Court shall not grant leave to an application 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. In **Judicial Review Principles and Procedure**, the authors at paragraphs 26.89 to 28.91 discussed the reasons for judicial review as a last resort as:
>
> > "Because judicial review is a remedy of last resort, where an adequate alternative remedy is available the court will usually refuse permission to apply for judicial review, unless there are exceptional circumstances justifying the claim proceeding. The availability of an adequate alternative remedy is a matter that is relevant to the exercise of the court's discretion to grant permission to apply for judicial review; it does not go to the court's jurisdiction to entertain a claim for judicial review.

> There is a twofold rationale for the requirement that a claimant should usually exhaust any adequate alternative remedy before, or instead of, making a claim for judicial review. First, it is not for the courts to usurp another body that is charged with resolving challenges to or complaints about decisions of public bodies, particularly where that other body has specialist expertise in the relevant field. Secondly, judicial review is intended to be a speedy procedure and, given the limited judicial resources available, this necessarily requires limiting the number of claims considered by the courts. This second element of the rationale should, however, be treated with caution: claimants should not be denied access to the courts simply because the court's resources are inadequate, particularly if Convention rights are in issue."

44. Therefore the basis for abandoning a remedy created by statute, in the instant case the **Immigration Act**, can only be justified by exceptional circumstances.

45. Section 9(4) (c) and (f) of the **Immigration Act** provides that:

> "Where a permitted entrant is in the opinion of the Minister a person described in section 8(1), (k), (l), (m) or (n) or a person who-
>
> (a)….
>
> (c) has become an inmate of any prison or reformatory;….
>
> (f) was admitted or deemed to have been admitted to Trinidad and Tobago under subsection (1) and remains therein after the expiration of the certificate issued to him under subsection (2) or under section 50(2);"

46. Section 22 of the **Immigration Act** provides that any person who being a permitted entrant has been declared by the Minister to have ceased to be a

permitted entrant under section 9(4) can have Immigration Proceedings in the form of a Special Inquiry be issued against them. Section 23 empowers the First Defendant to cause a Special Inquiry to be held with respect to whom a report has been made under section 22. Section 24 sets out the nature of the Special Inquiry. Section 24 (5) makes provisions for the voluntary departure from Trinidad and Tobago where there are deportation proceedings in certain circumstances. Section 24 states:

"24. (1) An inquiry by a Special Inquiry Officer shall be separate and apart from the public and in the presence of the person concerned wherever practicable, but the person concerned shall, on request, be entitled to a public hearing.

(2) 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).

(3) The Special Inquiry Officer may, at the hearing, receive and base his decision upon evidence considered credible or trustworthy by him in the circumstances of each case.

(4) Where an inquiry relates to a person seeking admission to Trinidad and Tobago, the burden of proving that he is not prohibited from admission to Trinidad and Tobago rests upon him.

(5) If the respondent in a deportation matter admits the factual allegations in the order to show cause and notice of hearing and is willing to leave Trinidad and Tobago voluntarily and at no expense to the Government of Trinidad and Tobago, he may make verbal application for voluntary departure before the Special Inquiry Officer and if the Special Inquiry Officer is satisfied that the case is genuine he may, instead of making a deportation order against such person issue the prescribed from for his voluntary departure."

47. Section 25 sets out the various decisions the Special Inquiry Officer can make namely he can admit or let the person come into or remain in Trinidad and Tobago as the case may be or may make an order for deportation."

22. Under the Immigration Act the Minister has the power to cancel or stay a deportation order. Section 27(3) provides:

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

23. Section 27(4) and (6) provides the Minister with various option, one of which is to quash the decision of the Special inquiry officer. It states:

"(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…

….

(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"

24. Further section 29 (3) of the Immigration Act clearly states that any appeal against a deportation order shall stay the execution of the order, pending the decision of the Minister on the appeal.

25. In my opinion, although the Special Inquiry has not been completed, once it has, there is an alternative relief available to the Claimant under section 27 of the Immigration Act if the Claimant is not satisfied with the outcome of that process. Therefore, the

Claimant's failure to disclose the availability of this alternative relief means that his action can also be dismissed on this basis.

DID THE DEFENDANT ACT ILLEGALLY IRRATIONALLY AND/OR UNREASONABLY BY INITIATING DEPORTATION PROCEEDINGS AGAINST THE CLAIMANT?

26. The Claimant's case was that the Defendant's decision to institute deportation proceedings against him by way of the Special Inquiry, was wrong in law as the Residency Application was pending at the material time and it also gave him a right to remain in the jurisdiction. The Claimant relied on the learning in **Beverley Burrowes v Chief Immigration Officer [17].**

27. It was submitted on behalf of the Defendant that even if judicial review was available, she has not acted illegally because: (a) section 3 and 4 of the Immigration Act only gives citizens and residents the right to enter and remain in Trinidad and Tobago and allows for the granting of licences to remain to other persons. Anyone who is not a resident or a licencee, or who was a licencee but whose license has expired, has no prima facie right to remain and is therefore subject to proceedings for deportation, that is, a Special Inquiry; (b) the Immigration Act does not give any right to anyone to stay in Trinidad and Tobago pending the Residency Application; and (c) she has given good reasons for her decision to initiate the Special Inquiry. It was also argued on behalf of the Defendant that the decision in **Beverley Burrowes** which the Claimant relied on is not binding on this court and can be distinguished as there was no application for residency pending in that case.

28. Section 3 of the Immigration Act states:

> "3. Except as permitted under this Act, no person may be admitted into Trinidad and Tobago as an immigrant or being within Trinidad and Tobago remain therein as an immigrant."

[17] CV 2016-01749

29. Section 4 of the Immigration Act states:

> "4(1) A citizen of Trinidad and Tobago has the right to be admitted into Trinidad and Tobago.
>
> (2) A resident who is not a citizen of Trinidad and Tobago, so long as he continues to be a resident, has the right to be admitted into Trinidad and Tobago."

30. In **Beverley** Burrowes, the Court made an order quashing the decision of the CIO to initiate, prosecute or continue the Special Inquiry process against the Claimants, while they were awaiting the outcome of their application for permanent residency which was before the Minister. In that case the Claimants, Mr and Mrs Burrowes were Guyanese nationals who came to Trinidad and Tobago with their minor child in August 2003. In 2006, Mrs Burrowes obtained employment as a Legal Secretary at a local law firm and had also commenced an education at the University of the West Indies without a valid work or student permit. Similarly, Mr Burrowes owned a construction business which was registered in 2008. The Claimants applied for permanent residency on 16 June 2008 but were unsuccessful. Thereafter, they re-applied for permanent residency on 27 April 2015 and their application was acknowledged on 29 April 2015. Prior to this, the Claimants last entry into Trinidad and Tobago was 22 August 2013.

31. On 27 July 2015, the Claimants were detained by the servants and/or agents of the Defendant, their passports were seized and they were later released on an Order of Supervision. Following a report dated 13 April 2016 that was submitted by the Immigration Division to the CIO, she declared that the Claimants 'ceased to be permitted entrants' for the purpose of section 9(4) of the Immigration Act and deportation proceedings were commenced by way of a Special Inquiry.

32. In the judicial review proceedings instituted by the Claimants against the CIO's decision, the Court considered whether its jurisdiction had been extinguished by the

ouster provision contained in section 30 of the Immigration Act. It stated that the Court retained its jurisdiction in the instances where the ground for review was directed at bias, procedural unfairness or lack of jurisdiction. It stated further that the CIO upon the receipt of a report from a public officer in respect of the factors cited in section 22(1)(d) to (i) of the Immigration Act, may exercise her discretion and commence a Special Inquiry against the Claimant and there was nothing in the present circumstances that deprived her of that discretion. Although, the exercise of the CIO's discretion may be set aside for bias or irrationality, the Court may not inquire as to the sufficiency of the grounds for her discretion. Further, the seizure of the Claimants' passports fell within the conditions contemplated at section 17(1) of the Immigration Act. The conditions are imposed under the authority of the CIO and are protected by the ouster provision, unless there is an allegation of bias, procedural unfairness or a lack of jurisdiction and there was no evidence to support such an allegation in this case.

33. The Court also stated that the CIO had an obligation to delay the exercise of her discretion in anticipation of a decision by the Minister, in respect of the Claimant's permanent residency application which was pending. It reasoned that:

> "the scheme of section 23(2), by conferring discretionary power on the Chief Immigration Officer, subject to any order or direction of the Minister, implicitly required her to foresee, that a pending application could be viewed favourably by the Minister and that such future Ministerial Order or direction would be frustrated, if the Special Inquiry had ended with the deportation of the Claimants."

34. In my opinion, **Beverly Burrowes** did not assist the Claimant's case as he failed to provide documentary proof that the Residency Application was pending when the deportation proceedings were initiated.

35. The Claimant has not disputed the facts set out in the Defendant's Affidavit. The Claimant only called upon the Defendant to provide proof of the request by the

Immigration Division to the Ministry to find out the status of the Residency Application and the policy of the Immigration Division not to stay deportation proceedings pending the determination of any application for permanent residency. However, the Claimant did not make any specific request for those documents. In my opinion, in the absence of any cross-examination and any specific request, I am entitled to treat the facts set out in the Defendant's Affidavit as not being disputed by the Claimant.

36. Even if the Claimant had recourse through judicial review proceedings, I am of the opinion that he still failed to satisfy the Court that the Defendant acted illegally, unfairly or unreasonably by initiating deportation proceedings. Consequently, the Claimant failed to indicate to the Court the provision in the Immigration Act which allows him to stay in Trinidad and Tobago beyond his period of permitted entry in the absence of obtaining any extension from the Immigration Division, pending the determination of the Residency Application.

37. Further, the Defendant has provided good reasons for her decision to initiate the Special Inquiry. Based on the evidence it was not in dispute that the Claimant is a Guyanese national who entered this jurisdiction as a visitor on 18 June 2015, he was given until 17 December 2015 to leave and that at the time he was detained by the Immigration Authorities in August 2018 he had exceeded his stay in Trinidad and Tobago. Further, the Claimant had not obtained any extension from the Immigration Authorities to stay in this jurisdiction beyond 17 December 2015 and he has provided no legal basis to support his position that the Defendant acted illegally by declaring him no longer a permitted entrant under section 9(4) of the Immigration Act.

38. Section 9(4)(f) of the Immigration Act permits the Minister to declare any person who was admitted to Trinidad and Tobago legally but has exceeded his stay to cease to be a permitted entrant. This power was delegated to the Defendant by Gazette No 287 of 1986 and as such, it was well within the Defendant's power upon receiving the report that the Claimant had overstayed the period he was permitted upon entry, to declare that the Claimant was no longer a permitted entrant. Therefore, at the time

when deportation proceedings were initiated by the Defendant against the Claimant he was in breach of the provisions of the Immigration Act.

ORDER

39. The Claimant's claim is dismissed.

40. The Claimant to pay the Defendant's costs to be assessed by the Registrar in default of agreement.

/s/ Margaret Y Mohammed

Judge