

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No.: CV2020-03090

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO MAKE A
CLAIM FOR JUDICIAL REVIEW PURSUANT TO PART 56.3 OF THE
CIVIL PROCEEDINGS RULES, 1998 AS AMENDED AND PURSUANT
TO SECTION 6 OF THE JUDICIAL REVIEW ACT, 2000**

AND

**IN THE MATTER OF THE DECISION OF SPECIAL INQUIRY OFFICER
SOOKRAM TO PROCEED WITH THE SPECIAL INQUIRY AGAINST
LEILA DEONARINE ON JUNE 29, 2020**

AND

**IN THE MATTER OF THE FAILURE OF SPECIAL INQUIRY OFFICER
SOOKRAM TO CONSIDER AN APPLICATION BY LEILA DEONARINE
ON JUNE 29, 2020 FOR VOLUNTARY DEPARTURE**

BETWEEN

LEILA DEONARINE

Claimant

AND

THE CHIEF IMMIGRATION OFFICER

First Defendant

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Second Defendant

Before the Honourable Madame Justice Margaret Y Mohammed

Date of Delivery 14 October 2021

Appearances

Mr Peter Carter instructed by Ms Shanice Ramdhan Attorneys at law for the Claimant.

Mr Sanjeev Lalla instructed by Mr Brent James Attorneys at law for the Defendants

JUDGMENT

INTRODUCTION

1. The Claimant is a Guyanese national who entered Trinidad and Tobago legally on 21 September 2014 and was granted permission to stay until 20 March 2015. The Claimant married Curtis Elborne, a citizen of Trinidad and Tobago on 2 November 2014. Shortly thereafter, the Claimant applied to the Minister of National Security (“the Minister”) for permanent residency (“the Residency Application”). The Claimant was granted various extensions to her landing certificate, the last of which was issued on 28 December 2015 and permitted her to remain in this country until April 2016. On 8 January 2018, she was detained by the First Defendant and released on an Order of Supervision. The Claimant was later declared as a person who ceased to be a permitted entrant by the First Defendant on 18 December 2019 and she was notified on 10 March 2020 that deportation proceedings were being instituted against her. At the conclusion of the Special Inquiry the Claimant was order to be deported on 29 June 2020. She has appealed the decision of the Special Inquiry Officer to the Minister and the said appeal remains pending.
2. In this action, the Claimant has sought the following declarations and orders of certiorari against the First Defendant, namely:

- (i) A declaration that the decision of the First Defendant to commence a Special Inquiry on 29 June 2020, before the determination of the Residency Application was unlawful, ultra vires and in excess of jurisdiction;
- (ii) A declaration that the failure of the First Defendant to await the determination of the Residency Application but instead to commence and continue the Special Inquiry on 29 June 2020 was in breach of the published policy of the Ministry of National Security (“the Ministry”) as reflected by the correspondence issued to the Chief Immigration Officer by letters dated 23 February 2012 and 3 April 2012 by the then Minister of State to the Ministry was an abuse of power and the consequent Special Inquiry was null and void and of no effect;
- (iii) A declaration that the failure of the Special Inquiry Officer to disclose the particulars of the charge, namely that the Claimant had broken the terms and conditions of her landing certificate by working without a work permit, was in breach of the principles of natural justice, unlawful and ultra vires;
- (iv) An order of Certiorari to remove into the Honourable Court and quash the decision of the Special Inquiry Officer to commence and continue a Special Inquiry on 29 June 2020;
- (v) A declaration that the finding of the Special Inquiry Officer that the Claimant worked without a permit was unlawful and without jurisdiction because the Special Inquiry Officer failed to make a decision under the Immigration Act;
- (vi) Alternatively; a declaration that the findings were unlawful/ without jurisdiction/ unreasonable in that:

- a. The findings were made based on a report prepared pursuant to section 22(1) of the Immigration Act which was relied upon by the Special Inquiry Officer in breach of the principles of natural justice. The officer failed to disclose the contents of the report to the Claimant and to afford her an opportunity to respond or make representations to it; and
 - b. The finding that the Claimant breached the terms of her certificate by working without a permit was made in the absence of any evidence and was unreasonable.
- (vii) An order of Certiorari to remove into the Honourable Court and quash the decision of the Special Inquiry Officer that the Claimant falls within the prohibited class under section 9(4) of the Immigration Act;
- (viii) A declaration that the failure of the Special Inquiry Officer to consider the Claimant's application for voluntary departure pursuant to section 24(5) of the Immigration Act is unlawful, ultra vires, unreasonable;
- (ix) A declaration that the failure of the Special Inquiry Officer to give reasons for the decision not to grant voluntary departure upon the Claimant's application is unlawful, ultra vires, unreasonable, in breach of the Claimant's right to due process and her right to the protection of the law;
- (x) A declaration that the failure of the Special inquiry Officer to give written reasons for his decision contrary to section 25(1) of the Immigration Act rendered his decision a nullity;
- (xi) An order of certiorari to quash decision of the Special Inquiry Officer not to grant voluntary departure to the Claimant;

(xii) An order of certiorari to remove into the Honourable Court and quash the Deportation Order issued against the Claimant on 29 June 2020; and

(xiii) Such further or other relief as this Court may deem fit in the circumstances of the case.

3. The Claimant has also sought the following orders against the Defendants:

(i) A declaration that the arrest and detention of the Claimant on 8 January 2018 by the First Defendant, her servant and or agent was in breach of the Claimant's right to liberty as protected by section 4(a) of the Constitution and not to be deprived thereof except by due process of the law;

(ii) Damages for unlawful detention;

(iii) A declaration that the failure to promptly inform the Claimant on 8 January 2018 of the reason for her arrest and detention with sufficient particularity was in breach of her right to the protection of the law as protected by section 4(b) of the Constitution;

(iv) A declaration that the seizure and continued detention of the Claimant's passport from 8 January 2018, by the First Defendant, her servant and or agent was in breach of the Claimant's right to the enjoyment of her property and the right not to be deprived thereof except by due process of law as secured by section 4(a) of the Constitution;

(v) A declaration that the Special Inquiry Officer's failure to consider the Claimant's pending Residency Application before proceeding with the Special Inquiry on 29 June 2020 or to balance the reason for expulsion against the impact on the Claimant's husband was in breach of her right of private and family life as protected by section 4(c) of the Constitution;

(vi) The Special Inquiry Officer's conduct of the Special Inquiry was in breach of the principles of natural justice and due process of the law and thus infringed the Claimant's right to the protection of the law as secured by section 4(b) of the Constitution;

(vii) Damages for breach of the Claimant's rights including vindicatory damages; and

(viii) Such further and/or other relief as the Court may consider appropriate.

FACTUAL BACKGROUND

4. The Claimant's position was set out in her two affidavits filed on 16 October 2020 ("the Claimant's Affidavit") and 23 February 2021 ("the Claimant's Affidavit in Reply").
5. According to the Claimant, she lawfully entered Trinidad and Tobago on 21 September 2014 and has continued to reside in this country since that time. On 2 November 2014, she married Curtis Elborne, a citizen of Trinidad and Tobago¹ and has been married for approximately 6 years.
6. On 18 September 2015, she submitted her Residency Application to the Minister, who confirmed receipt of the said application on 1 October 2015.² The Claimant was given several extensions to her landing certificate pending the outcome of her Residency Application, the last of which was given on 28 December 2015 which permitted her to remain in Trinidad and Tobago until April 2016 and which coincided with the expiration of her then Guyanese passport. Thereafter, the Claimant stopped visiting the Immigration Division to seek extensions to her landing certificate, because Immigration Officials had informed her on 28 December 2015, that her

¹ Exhibit LD 1

² Exhibit LD 2

husband needed to accompany her on her next visit and at that time they were having marital problems.

7. The Claimant received a letter from the Immigration Division dated 11 July 2017, inviting her to visit the Port of Spain Immigration Division on 8 January 2018 to be interviewed in relation to her Residency Application. On 8 January 2018, the Claimant and her husband visited the Immigration Division with the requested documents, which were inspected by Immigration Officials who then detained her and served her with 'Reasons for Arrest and Detention'³, which informed her that: (i) she had remained in the country illegally after the expiration of her extension certificate; and (ii) she had broken the terms of her landing certificate by working in the country without a valid work permit. The Claimant's passports were seized and she was placed on an Order of Supervision pending the outcome of the Special Inquiry.
8. On 18 December 2019, the Claimant was declared a person who ceased to be a permitted entrant by the First Defendant. The Claimant became aware of the First Defendant's decision in June 2020, when her Attorney at law challenged the First Defendant's continued retention of her passports.⁴
9. On 10 March 2020, the Claimant was served with an Order to show Cause and the Notice of Hearing in Deportation Proceedings⁵, which alleged that the Claimant had (i) remained in the country illegally after the expiration of the certificate granted to her on her arrival; and (ii) worked in Trinidad and Tobago without a valid work permit, therefore breaking the terms and conditions of the certificate granted to her on her arrival and as such she was subject to deportation pursuant to section 22(2) of the Immigration Act.

³ Exhibit LD 9

⁴ Exhibit LD 12

⁵ Exhibit LD 14

10. The Special Inquiry was held on 29 June 2020 and the Claimant was present and represented by her Attorney at law. The Claimant pleaded not guilty to the charges and at the end of the hearing, her Attorney at law requested that she be permitted voluntary departure but the request was not granted. According to the Claimant, the Special Inquiry Officer did not provide any oral or written reasons for his refusal of the request for voluntary departure. A Deportation Order was then made against the Claimant⁶ and again the Special Inquiry Officer did not provide the Claimant with any written reasons for his decision.
11. The Claimant appealed the decision of the Special Inquiry Officer by way of a Notice of Appeal on 29 June 2020⁷. By letters⁸ dated 23 July 2020 and 16 September 2020, the Claimant's Attorney at law wrote to the Minister requesting that he exercise his powers pursuant to section 27(6) Immigration Act to cancel the Claimant's Deportation Order, but to date no response has been received.
12. The Defendants' position was set out in the affidavit of Mr Alan Sookram the Immigration Officer who conducted the Special Inquiry ("the Sookram Affidavit")⁹.
13. The material facts as set out in the Sookram Affidavit were that the Claimant legally entered Trinidad on 21 September 2014 and her passport was endorsed with a certificate of entry, which was valid until 20 March 2015. Immigration Officials granted the Claimant four extensions on her certificate of entry, the last of which was granted on 28 December 2015 and extended her stay in this country to 19 April 2016.¹⁰ The Claimant sought no further extensions, but continued to remain in Trinidad beyond 19 April 2016.

⁶ Exhibit LD 17

⁷ Exhibit LD 18

⁸ Exhibit LD 19; and Exhibit LD 20

⁹ Filed 12 February 2021

¹⁰ Exhibit AS 1

14. On 11 July 2017, the Claimant was invited to visit the Immigration Division on 8 January 2018 with her supporting documents, to be interviewed in relation to the Residency Application. On that occasion, Immigration Officials examined the Claimant's supporting documents and became aware that she did not have a valid extension certificate endorsed in her passport. The Claimant then admitted to the Immigration Officials that she earned wages as a domestic cleaner and that she had stopped coming to the Immigration Division after she received the last extension certificate, because she was having difficulties with her husband. The said information was recorded on an Information Sheet¹¹ ("the Information Sheet"). The Claimant was detained and served with a Notice of Reasons for Arrest and Detention, which outlined the reasons that she was being detained.¹² An Order of Supervision was then placed on the Claimant pending a Special Inquiry and she was released.

15. The First Defendant acting on the information received from the Immigration Officials, made an Order on 18 December 2019, that the Claimant ceased to be a permitted entrant under section 9(4) of the Immigration Act and instructions were given for a Special Inquiry to be held.¹³ The Claimant was then served with an Order to Show Cause and Notice of Hearing in Deportation Proceedings on 10 March 2020, which informed her that she: (i) had remained in the Trinidad and Tobago illegally after the expiration of her extension certificate granted to her on arrival; and (ii) worked in Trinidad and Tobago without a valid work permit, thereby breaking the terms and conditions of the certificate granted on her arrival.

16. The Special Inquiry hearing was held on 29 June 2020. The Claimant attended the said hearing and was represented by her Attorney at law. At the commencement of the hearing Mr Sookram, the Special Inquiry Officer,

¹¹ Exhibit AS 2

¹² Exhibit AS 3

¹³ Exhibit AS 4

informed the Claimant that she had overstayed the period she had been permitted upon entry into Trinidad and an order had been made that she ceased to be a permitted entrant with effect from 20 April 2016, as she was a person described in sections 9(4)(f) and (k) of the Immigration Act. Mr Sookram also informed the Claimant in the presence of her Attorney at law, of the particulars alleged against her. He then showed the Claimant and her Attorney at law, the Cease to be Order, the Order for Holding the Special Inquiry and the Notice to Show Cause and gave them the opportunity to review these documents.

17. Mr Sookram denied that the Claimant was unaware of the particulars alleged against her. He stated that during the Claimant's interview at the Immigration Division on 8 January 2018, she had admitted to Immigration Officials that she did domestic work for which she received an income of \$600.00 per week. The Claimant had also admitted that she had not visited the Immigration Division after 28 December 2015 to obtain the required extension on her certificate of entry, because she was having domestic issues with her husband. These admissions were recorded on the Information Sheet¹⁴, which was then dated and signed by the Claimant. The Claimant was then detained by Immigration Officials and served with Reasons for Arrest and Detention, which was also signed by her and which informed her that she had remained illegally in the country after the expiration of the extension certificate granted to her on 28 December 2015 and that she had broken its terms and conditions by working without a valid work permit.

18. According to Mr Sookram, despite the Claimant's refusal to participate in the Special Inquiry hearing, he proceeded with the hearing. During the hearing, the Claimant failed to answer any of the questions posed to her. At the end of the hearing, he concluded that the Claimant was a person described in section 9(4)(f), 9(4)(k) and 22(1)(f) of the Immigration Act and

¹⁴ Exhibit AS 2

ordered that she be deported to Guyana. The Claimant was informed of her right of appeal to the Minister and provided with a Notice of Appeal form, which she completed and submitted. The Claimant was also informed that she could make written representations within seven working days.

19. Further, Mr Sookram asserted that he did not have any obligation to grant the Claimant voluntary departure, as she had refused to participate in the Special Inquiry hearing and was therefore not eligible. He explained that under section 14(5) of the Immigration Act, the option of voluntary departure was conditional on the Claimant admitting to the factual allegations in the Order to Show Cause and Notice of Hearing and she had failed to do so.

20. In the Claimant's Affidavit in Reply, she denied that she had stated in an interview at the Immigration Division on 8 January 2018 that she worked as a domestic cleaner. The Claimant stated that she informed the Immigration Officials who were conducting the interview that she lived with her husband and brother-in-law and did domestic work for them. She had also informed the Immigration Officials that she did not earn an income from the domestic work she did for her husband and her brother-in-law and any monies that she received from them was to assist with her personal needs or to purchase groceries or cleaning supplies. She also stated that Mr Sookram never produced the Information Sheet, which he relied on during the Special Inquiry hearing; never advised her that she needed to make representations in writing to the Minister within seven working days; and nothing in the Notice of Appeal indicated that this was a condition.

THE ISSUES

21. The parties address the following issues in their respective closing submissions :

- (i) Whether the Claimant's initial arrest and detention was unlawful and in breach of her constitutional rights;
- (ii) Whether the seizure of the Claimant's passport and the imposition of an Order of Supervision was unlawful and in breach of her constitutional rights;
- (iii) Whether the decision to commence and continue the Special Inquiry was unlawful, ultra vires and in excess of jurisdiction;
- (iv) Whether the failure of the Special Inquiry Officer to consider the Claimant's pending Residency Application before proceeding with the Special Inquiry and/or to balance the reasons for expulsion against the impact on her familiar relations in Trinidad was in breach of her constitutional right to respect for private and family life;
- (v) Whether the Special Inquiry was conducted unlawfully and/or in breach of the Claimant's constitutional rights; and
- (vi) Whether the Special Inquiry Officer had a duty to provide reasons for his decision and, if so, whether the failure to give reasons rendered the Special Inquiry a nullity?

WHETHER THE CLAIMANT'S INITIAL ARREST AND DETENTION WAS UNLAWFUL AND IN BREACH OF HER CONSTITUTIONAL RIGHTS

22. The Claimant contended that her arrest and detention on 8 January 2018 from approximately noon to 6 pm was unlawful and in breach of her constitutional right not to be deprived of her liberty except by due process, as it was prior to the Ministerial order dated 18 December 2019 which declared that she had ceased to be a permitted entrant. To support this position the Claimant relied on the learning from the Privy Council decision of **Robert Naidike and ors v The Attorney General of Trinidad and**

Tobago¹⁵. The Claimant argued that she was not informed upon her arrest of the reason for her arrest and detention and that she was deprived of her right to retain and instruct without delay a legal advisor and to hold communication with him during her period of detention.

23. The Defendants submitted that there was no breach of the Claimant's fundamental rights, as she was lawfully detained and released pursuant to section 16 and 17 of the Immigration Act pending the Special Inquiry hearing. Counsel also argued that the Claimant was notified of the reasons for her detention and that she was not denied her right to retain and instruct a legal advisor as on the facts of the instant case, there is no such constitutional right.

24. In my opinion, there was no breach of any of the Claimant's fundamental rights as she was lawfully detained on 8 January 2018 by the First Defendant; she was notified of the reasons she was being detained; and in the circumstances of this case she was not deprived of her right to retain and instruct a legal advisor. I arrived at this position for the following reasons.

Detention of the Claimant

25. The onus was on the Defendants to demonstrate that the First Defendant acted lawfully when it detained the Claimant on 8 January 2018.

26. It was common ground between the parties that **Robert Naidike** established that the power to arrest without a warrant under section 15 of the Immigration Act, is premised on the arrestor having reasonable suspicion that the Minister has declared that the person concerned has ceased to be a permitted entrant.

¹⁵ [2004]UKPC 49

27. Section 15 of the Immigration Act provides:

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

28. It was not in dispute that the Claimant ceased to be a permitted entrant after she was detained. However, section 15 of the Immigration Act is not the only provision which empowers the First Defendant to detain persons. Section 16 of the Immigration Act also bestows such powers on the First Defendant in certain circumstances.

29. Section 16 of the Immigration Act states:

“Any person in respect of whom an inquiry is to be held, or an examination under section 18 has been deferred under section 20, or a deportation or rejection order has been made may be detained pending inquiry, examination, appeal or deportation at an immigration station or other place satisfactory to the Minister.”

30. In the instant case, the undisputed facts were that on 8 January 2018 the Claimant was interviewed on two occasions. She was first interviewed by an Immigration Officer attached to the Permanent Residence and Citizenship Section in response to a letter of invitation dated 11 July 2017. The Claimant was then interviewed by another Immigration Officer in the Deportation and Investigation Section. This interview was recorded on the

Information Sheet¹⁶, which was then signed by the Claimant. According to the Information Sheet, the Claimant admitted that she did not obtain any further extensions on her certificate of entry due to difficulties she was experiencing with her husband at the time. In my opinion, the Immigration Officer had adequate information to form the view that a Special Inquiry was to be held concerning deportation proceedings for the Claimant, as she had breached her certificate of entry and this was a proper basis to exercise the discretion to detain the Claimant pending the Special Inquiry.

Notification of the reasons for detention

31. The undisputed fact is that the Claimant was served with the Notice of Reasons for Arrest and Detention¹⁷ during her visit to the Immigration Office on 8 January 2018. The said Notice stated that the reasons for the Claimant's arrest and detention, were that she had (i) entered Trinidad and Tobago on or about 21 September 2014 and remained illegally therein after the expiration of the extension certificate granted to her on 28 December 2015; and (ii) broke the terms and conditions of the said certificate by working without a valid work permit.¹⁸

32. In my opinion, there was no ambiguity in the said Notice regarding the reasons for the Claimant's arrest and detention. Therefore, the First Defendant had acted lawfully.

The right to retain and instruct a legal advisor

33. Section 5 (2) (c) (ii) of the Constitution provides that without prejudice to subsection (1), but subject to this chapter and to section 54, Parliament may not deprive a person who has been arrested or detained of the right

¹⁶ Exhibit "A.S.2" to the Sookram Affidavit

¹⁷ Exhibit "L.D.6" of the Claimant's Affidavit

¹⁸ Exhibit "L.D.9" of the Claimant's Affidavit

to retain and instruct without delay a legal adviser of his own choice and to hold communication with him. The Privy Council in **Ramsaran v the Attorney General of Trinidad and Tobago**¹⁹ held that the right to be informed of the right to counsel was not limited to a person arrested and detained upon suspicion of having committed a criminal offence, but the right also covered persons arrested or detained “in any other circumstances”.

34. In my opinion, the “any other circumstances” as described in **Ramsaran** includes a person who has been arrested and detained under section 16 of the Immigration Act. I agree with the submissions by Counsel for the Claimant that the purpose of this right is to protect a detained person from making self-incriminating statements. However, in the circumstances of this case the Claimant was not questioned after she was arrested. So there was no danger of her making any self-incriminating statements. She was interviewed first with respect to the pending Residency Application and then her immigration status and then she was released on an Order of Supervision. Therefore, in the circumstances of this case the Claimant was not denied the right to retain and instruct without delay a legal advisor.

WHETHER THE SEIZURE OF THE CLAIMANT’S PASSPORT AND THE IMPOSITION OF AN ORDER OF SUPERVISION WAS UNLAWFUL AND IN BREACH OF HER CONSTITUTIONAL RIGHTS

35. I will address the imposition of the Order of Supervision first. The power of the First Defendant to place a detained person, under section 16 of the Immigration Act, on an Order of Supervision is set out in section 17 of the Immigration Act as follows:

¹⁹ [2005]UKPC 8, para 9.

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

(2) Where a person fails to comply with any of the conditions under which he is released from custody or detention he may without warrant be retaken into custody forthwith and any security deposit made as a condition of his release shall be forfeited and shall form part of the general revenue.”

36. I adopt the position articulated by Gobin J in **Henry Obumneme Ekwedike v The Chief Immigration Officer and anor**²⁰, that sections 16 and 17 must be read together and that the Order of Supervision can only be issued after someone has been arrested or detained. In my opinion, having lawfully detained the Claimant pursuant to section 16 of the Immigration Act, the Immigration Officer exercised his discretion under section 17 of the Immigration Act to release the Claimant by placing her on an Order of Supervision with conditions pending the Special Inquiry. I am therefore of the view that the imposition of the Order of Supervision was lawful.

Power to detain the Claimant's passport

37. There are two periods of detention of the Claimant's passport for consideration, namely prior to and subsequent to the Special Inquiry and Order for Deportation.

²⁰ CV2017-02148

38. It was submitted on behalf of the Claimant that the detention of the Claimant's passport prior to the Special Inquiry and Order for Deportation was unlawful for two reasons, namely: (i) the First Defendant did not have any power to detain the Claimant and as a consequence there was no power to impose the surrender of the passport as a condition of her release; and (ii) it was not a condition of her release under the Order of Supervision. The Claimant therefore argued that the seizure and detention of her passport breached her right to due process.

39. There is no merit in the first limb of the Claimant's contention, as section 16 of the Immigration Act granted the First Defendant the power to detain the Claimant and section 17 of the Immigration Act bestows the power on the First Defendant to impose conditions on a detained person under the Order of Supervision. In **Austine Okeke v the Chief Immigration Officer and anor**²¹, Rahim J took the position that section 17 bestows the power on the First Defendant to detain the passport of a person but this must be clearly set out in the Order of Supervision. Rahim J also stated that the power to detain a passport without setting it out specifically in the Order of Supervision as a condition deprives a person of the protection afforded by law and amounts to an arbitrary and unfair exercise of power. On the facts of the instant case I adopt the dicta of Rahim J.

40. With respect to the second limb of the Claimant's contention, the initial Order of Supervision was issued on 8 January 2018. The Claimant explained that she did not have the Order of Supervision for 8 January 2018, as it was retained by the Immigration Division when she reported to Immigration Officials and thereafter she was issued with a new Order. The material Orders of Supervision which she exhibited were for 10 March 2020, 18 June 2020, 29 June 2020, 7 July 2020 and 13 October 2020²².

²¹ CV 2019-01098

²² Exhibit "LD 11" of the Claimant's Affidavit

41. In light of the allegations made by the Claimant concerning the legality of the detention of her passport, the onus was on the First Defendant to demonstrate that there was a proper basis to do so. However, the Sookram Affidavit only disclosed the Orders of Supervision prior to the Special Inquiry dated 10 March 2020 and 18 June 2020²³, which the Claimant had also exhibited. The other previous Orders of Supervision were not disclosed by the First Defendant.

42. In light of this failure to disclose the Order of Supervision dated 8 January 2018, I am entitled to make the adverse inference against the Defendants that the surrender or detention of the Claimant's passport was not a condition set out in the Order of Supervision dated 8 January 2018 and therefore the initial detention of the Claimant's passport was illegal. Further, in the two Orders of Supervision prior to the Special Inquiry, which were produced to the Court and dated 10 March 2020 and 18 June 2020, the detention of the Claimant's passport was not stated as a specific condition. In the circumstances, the Defendants failed to demonstrate that the detention of the Claimant's passport from the initial detention on 8 January 2018 until the Special Inquiry was held was lawful.

43. I now turn to the detention of the Claimant's passport subsequent to the Special Inquiry and the Deportation Order. It was submitted on behalf of the Claimant that the decision to impose the surrender of the Claimant's passport as part of the Order of Supervision after the conclusion of the Special Inquiry was in breach of the principles of natural justice and an arbitrary exercise of power.

²³ Exhibit "AS 6" and "AS 7" of the Sookram Affidavit

44. Regulation 29(1) of the Immigration Act gives the First Defendant the power to release a person who is detained, pending the hearing and disposition of an appeal under the Immigration Act. It states:

“29. (1) A person who is being detained pending the hearing and disposition of an appeal under the Act may apply to the Chief Immigration Officer for his release and the Chief Immigration Officer may, notwithstanding anything in the Act, order his release.

(2) A person may be released under subregulation (1)—

(a) upon entering into a recognizance before the Chief Immigration Officer in the form set out as Form 33 and with sufficient sureties in such amount as the Chief Immigration Officer directs;

(b) upon depositing with the Comptroller of Accounts such sum of money as the Chief Immigration Officer directs; or

(c) upon entering into his own recognizance before the Chief Immigration Officer in such amount as the Chief Immigration Officer directs in the form set out as Form 28,

and the recognizance shall prescribe such conditions of release as the Chief Immigration Officer considers advisable, including the time and place at which the person released shall report to the Chief Immigration Officer.”

~~45.~~ The Claimant gave notice of her appeal of the decision to deport her on 29 June 2020. She also exhibited the Orders of Supervision subsequent to the Special Inquiry, which were dated 29 June 2020, 7 July 2020 and 13 October

2020²⁴. The First Defendant did not produce any Order of Supervision subsequent to the Order for Deportation. From the Order of Supervisions dated 29 June 2020 and 7 July 2020 the detention of the Claimant's passport was not a condition which was expressly stated therein. However, in the Order of Supervision dated 13 October 2020, the release of the Claimant's passport to the Immigration Division is one of the conditions stated in therein. Therefore, there was no lawful basis for the continued detention of the Claimant's passport by the First Defendant after the Special Inquiry and Deportation Order until the 13 October 2020. The legality of the detention of the Claimant's passport only became effective on the 13 October 2020.

WHETHER THE DECISION TO COMMENCE AND CONTINUE THE SPECIAL INQUIRY WAS UNLAWFUL, ULTRA VIRES AND IN EXCESS OF JURISDICTION; AND WHETHER THE FAILURE OF THE SPECIAL INQUIRY OFFICER TO CONSIDER THE CLAIMANT'S PENDING APPLICATION FOR PERMANENT RESIDENCE BEFORE PROCEEDING WITH THE SPECIAL INQUIRY AND/OR TO BALANCE THE REASONS FOR EXPULSION AGAINST THE IMPACT ON HER FAMILIAR RELATIONS IN TRINIDAD WAS IN BREACH OF HER CONSTITUTIONAL RIGHT TO RESPECT FOR PRIVATE AND FAMILY LIFE

46. In my view, issues (iii) and (iv) are closely related and the evidence for each issue overlaps to a great degree, as such I propose to deal with them together for the sake of convenience and clarity.

47. The Claimant contended that the First Defendant was obliged to consider the pending

²⁴ Exhibit "LD 11" of the Claimant's Affidavit.

48. Residency Application before making the decision to commence the Special Inquiry under section 23(2) of the Immigration Act. In support she relied on the judgment of **Beverley Burrows and ors v The Attorney General of Trinidad and Tobago and anor**²⁵. It was also submitted on behalf of the Claimant that there is a Policy (“the Policy”) issued by the Ministry to the First Defendant which gives such directions and that the Sookram Affidavit which disputes the existence of the Policy is inadmissible hearsay and should be struck out. Counsel further submitted that the constitutional right to respect for private and family life enjoyed by the Claimant and her husband, a Trinidad and Tobago citizen required the Special Inquiry Officer to balance the reason for expulsion against the impact it would have on her husband and their marriage. In support, the Claimant relied on the learning in **Ibrahim and ors. v The Chief Immigration Officer and ors**²⁶ and **AB (Jamaica) v Secretary of State for the Home Department**²⁷.

49. The Defendants’ response was that the Claimant failed to demonstrate that the Policy was implemented or continued by the Ministry, as such Mr Sookram’s evidence disputing the Policy is to be accepted. Counsel for the Defendants also submitted that the Claimant has not challenged the First Defendant’s decision to order the Special Inquiry under section 23(2) which is lawful. The Claimant’s pending Residency Application does not act as a stay of the Special Inquiry; the decision in **Beverley Burrowes** is not binding in the instant matter; and the Claimant had alternative remedies if she wanted to stay the Special Inquiry which she did not exhaust. Counsel for the Defendant also submitted that the decision by the Special Inquiry Officer cannot nullify the pending Residency Application and that the order

²⁵ CV 2016-01749

²⁶ CV 2017-03368 and CV 2017-03369

²⁷ [2007] EWCA Civ 1302

for deportation does not usurp the Minister's power to determine residency applications under section 6 of the Immigration Act. The Defendants' position was that the case of **AB (Jamaica)** is also not applicable to the facts of the instant matter.

50. I will first deal with the legality of the Policy. I have decided against striking out the portions of the Sookram Affidavit which deal with the Policy as in my opinion, Mr Sookram as an Immigration Officer with over 22 years' experience is well placed to state that the Policy did not exist or was not implemented. Indeed, the evidence which the Claimant provided supported the Defendants' position that there was no Policy as the Claimant did not provide any evidence that the Policy was published to the public or that there were other persons who benefited from the application of the Policy.

51. Having concluded that the Policy did not exist or was not implemented, it follows that it did not and could not act as a stay on the commencement and continuation of the Special Inquiry. Indeed, there was nothing which prevented the First Defendant from ordering the Special Inquiry and from its commencement and continuation.

52. Under sections 22 and 23(2) of the Immigration Act only an Order or direction from the Minister can stop the First Defendant from ordering a Special Inquiry. Sections 22 and 23 (2) of the Immigration Act provide:

“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—

- (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;
- (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.

23. (2) Subject to any Order or direction by the Minister, the Chief Immigration Officer shall, upon receiving a written report under section 22 and where he considers that an inquiry is warranted, cause an inquiry to be held concerning the person respecting whom the report was made.”

53. The Defendants’ evidence was that upon receipt of advice from the Enforcement Unit concerning the Claimant, the First Defendant took two steps on 18 December 2018, she issued the order where the Claimant ceased to be a permitted entrant under section 9(4) of the Immigration Act and she also issued the Order pursuant to section 23 (2) of the Immigration Act for the Special Inquiry. There was no evidence that there was any Order or direction from the Minister which prevented the First Defendant from ordering the Special Inquiry. Indeed, it was common ground that the Claimant did not challenge the decision of the First Defendant to order the Special Inquiry.

54. In my opinion, having made the order for the Special Inquiry, the Special Inquiry Officer had a duty to comply with the order of the First Defendant to commence and continue the Special Inquiry, as he had no discretion to unilaterally stay the First Defendant’s order pending the Residency Application. The power to stay the Special Inquiry pending the

determination of a Residency Application is set out in section 27 of the Immigration Act which states:

“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.

(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.”

55. However, there was no evidence from the Claimant that she obtained an order from the Minister to stay the Special Inquiry.

56. In **Beverley Burrowes**, the Court made an order quashing the decision of the Chief Immigration Officer 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 had been 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.

57. 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 Chief Immigration Officer, 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.

58. In the judicial review proceedings instituted by the Claimants against the Chief Immigration Officer's decision, the Court stated that 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, the Chief Immigration Officer, 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 Chief Immigration Officer'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 Chief Immigration Officer 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 **Beverley Burrowes**.

59. The Court also stated that the Chief Immigration Officer 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.”

60. Although **Beverley Burrowes** has been appealed, it still remains the legal position until it is overturned by a higher court. However, I am of the view that the learning in **Beverley Burrowes** did not assist the Claimant as in that case the Court stated that the obligation was on the Chief Immigration Officer to delay the exercise of her discretion to order the Special Inquiry. The Court did not prohibit the Special Inquiry Officer from conducting the Special Inquiry after the Chief Immigration Officer had already exercised her discretion to order the Special Inquiry.

61. In **Ibrahim**, one of the issues the Court had to determine was whether the deportation order issued against the Claimants contravened their right to family life as guaranteed by section 4 (c) of the Constitution. In my opinion, this case did not assist the Claimant's case as the facts can be distinguished. In **Ibrahim**, the challenge to the deportation order was made after the Claimants' appeals were dismissed by the Minister, however, in the instant case the appeal of the deportation order is still pending before the Minister.

62. Similarly, the case of **AB (Jamaica)** also does not assist the Claimant's case on this issue. In **AB (Jamaica)** the Court was concerned with an application which was made by the Claimant to the Home Office, after she identified herself as an over-stayer in the country and sought leave to remain on the basis of marriage. **AB (Jamaica)** addressed the Claimant's right to family life under article 8 of the Convention for Protection of Human Rights and Fundamental Freedoms as a schedule to the Human Rights Act 1998 in the UK. There is no similar provision in the Immigration Act and therefore the issue under consideration in that case is different from the issue in this case, which is whether the continuation of the Special Inquiry hearing was unlawful.

63. In my opinion, the Immigration Act draws a distinction between the role of the Special Inquiry Officer at the Special Inquiry hearing, the Chief Immigration Officer in ordering the Special Inquiry and the Minister, who is the only public body under section 6 of the Immigration Act to determine Residency Applications. There is nothing in section 6 of the Immigration Act which stays the commencement and continuation of the Special Inquiry after it has been ordered by the First Defendant. On the other hand, only the Minister, not the Special Inquiry Officer, is empowered, when he is considering all the factors of the case with respect to the pending Residency Application to consider the Claimant's right to private and family life, as under section 6(1) (b) and (c) of the Immigration Act, a person may apply for residence status on the grounds of marriage.

64. The Special Inquiry was triggered by section 23 of the Immigration Act and the Order to Show Cause and Notice of Hearing clearly stated that the purpose of the hearing was to determine if the Claimant was subject to deportation.

65. For these reasons, I have concluded that the Special Inquiry Officer had no duty to consider the Claimant's pending Residency Application before proceeding with the Special Inquiry or to balance the reasons for expulsion against the impact on her right to family, as for him to do so meant that he would have acted outside the scope of his powers.

**WHETHER THE SPECIAL INQUIRY WAS CONDUCTED UNLAWFULLY
AND/OR IN BREACH OF THE CLAIMANT'S CONSTITUTIONAL RIGHTS**

66. The Claimant contended that the Special Inquiry was conducted in an unlawful manner in two aspects, namely: (a) the Claimant requested disclosure of the particulars of the allegation in relation to working without

a permit as the information set out in the Order to Show Cause was insufficient in law. Therefore, this was a breach of the Claimant's right pursuant to section 5(2)(e) of the Constitution; and (b) the Special Inquiry Officer received evidence in a manner that was not in keeping with the procedural safeguards and provisions as are necessary for protecting the Claimant's rights.

67. The Claimant also contended that the failure of the Special Inquiry Officer to consider the Claimant's application for voluntary departure pursuant to section 24 (5) of the Immigration Act was unlawful, ultra vires and unreasonable.

68. The Defendant argued that there was no breach of the Claimant's constitutional rights, as the information contained in the Order to Show Cause was sufficient for the Claimant to be in a position to defend the allegations being made against her. Counsel for the Defendant also argued that even if there was no evidence that the Claimant worked in the jurisdiction without a work permit, it still did not nullify the entire Special Inquiry Hearing as it did not negate the Special Inquiry Officer's finding on the first charge. Counsel for the Defendant submitted that the issue of voluntary departure is prescribed by section 24(5) of the Immigration Act and based on the facts of the instant case the Special Inquiry Officer had no basis to make such an order.

69. The main principles of procedural fairness were summarised by Lord Mustill in the House of Lord judgment **R v Secretary of State for the Home Department, ex p. Doody**²⁸ as :

²⁸ [1993] UKHL 8

“From them, I derive that (1) where an Act of Parliament confers an administrative power there is a presumption that it will be exercised in a manner which is fair in all the circumstances. (2) The standards of fairness are not immutable. They may change with the passage of time, both in the general and in their application to decisions of a particular type. (3) The principles of fairness are not to be applied by rote identically in every situation. What fairness demands is dependent on the context of the decision, and this is to be taken into account in all its aspects. (4) An essential feature of the context is the statute which creates the discretion, as regards both its language and the shape of the legal and administrative system within which the decision is taken. (5) Fairness will very often require that a person who may be adversely affected by the decision will have an opportunity to make representations on his own behalf either before the decision is taken with a view to producing a favourable result; or after it is taken, with a view to procuring its modification; or both. (6) Since the person affected usually cannot make worthwhile representations without knowing what factors may weigh against his interests fairness will very often require that he is informed of the gist of the case which he has to answer.”

70. According to the Minutes of the Special Inquiry, at the beginning of the hearing of the Special Inquiry, the Special Inquiry Officer read out and explained to the Claimant the Order to Show Cause and the Notice of Hearing²⁹. According to the Order to Show Cause and Notice of Hearing which the Claimant received on 10 March 2020, well before the Hearing, she was informed of the two specific allegations against her which were

²⁹ Exhibit “ AS 5” of the Defendant’s Affidavit

the subject of the deportation proceedings. The allegations against the Claimant were that she entered Trinidad and Tobago on 21 September 2014 and she remained illegally after the expiration of the certificate granted to her upon arrival and that she worked in Trinidad and Tobago without a valid work permit and therefore broke the terms and conditions of the certificate granted upon her arrival.

71. In my opinion, the information in the Order to Show Cause and the Notice of Hearing contained sufficient particulars which notified the Claimant of the gist of the case she had to answer and therefore there was no breach of any of the Claimant's constitutional rights.

72. I now turn to the evidence, which the Special Inquiry Officer received at the Special Inquiry. At the conclusion of the hearing, the Special Inquiry Officer was satisfied that the two allegations against the Claimant were made out. With respect to the allegation that the Claimant remained illegally beyond the permitted period, the Minutes of the Inquiry indicate that the Claimant's Guyanese passport was tendered into evidence and that her last extension certificate, which permitted her to stay in Trinidad and Tobago expired on 19 April 2016. To this extent, the Special Inquiry Officer acted lawfully with respect to this first allegations.

73. However, there was nothing in the Minutes of the Inquiry which indicated that the information concerning the Claimant working without a valid work permit during her stay was tendered into evidence. The Information Sheet dated 8 January 2018, which was signed by the Claimant and recorded the Claimant's admission that she worked doing domestic chores was not put to the Claimant nor tendered into evidence. I accept that the Claimant remained silent when questions concerning this allegation were put to her, but there was no evidential basis for the Special Inquiry Officer making an adverse finding against the Claimant with respect to this charge.

74. Nonetheless, I agree with the position articulated by Counsel for the Defendants that the shortcoming by the Special Inquiry Officer with respect to the second allegation, does not nullify the entire Special Inquiry and the Special Inquiry Officer's findings with respect to the first charge.

75. I now turn to the Claimant's case concerning her request for voluntary departure which was made at the Special Inquiry. Section 24(5) of the Immigration Act sets out the basis on which an order for voluntary departure can be made. It states:

“ (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 a 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 form for his voluntary departure.”

76. In my opinion, the Special Inquiry Officer cannot be faulted for not acceding to the Claimant's request to grant voluntary departure as he had no evidential basis to do so. According to the Minutes of the Inquiry, the Claimant remained silent when the two allegations were put to her. She did not admit to any of the said allegations and as such the Special Inquiry Officer's decision not to order voluntary departure was lawful.

77. Should the deportation order against the Claimant be quashed? In my opinion there is no basis to do so as the Claimant was aware of the nature of the allegations against her. Even though there was no evidential basis

for the Special Inquiry Officer to make a finding that the Claimant worked in Trinidad and Tobago during her stay without a valid permit, this did not negate the order that the Claimant remained in the country beyond the period of entry. Indeed, the Claimant has appealed the deportation order which is pending before the Minister. Under section 27 of the Immigration Act, the Minister has the power to consider all matters pertaining to the Claimant's appeal, dismiss the appeal, quash the decision of the Special inquiry Officer or cancel the deportation order whether or not it was made by him.

WHETHER THE SPECIAL INQUIRY OFFICER HAD A DUTY TO PROVIDE REASONS FOR HIS DECISION AND, IF SO, WHETHER THE FAILURE TO GIVE REASONS RENDERED THE SPECIAL INQUIRY A NULLITY

78. The Special Inquiry Officer as a public official conducting the Special Inquiry had a duty to provide reasons for his decision. In my opinion, the Special Inquiry Officer complied with his duty to provide the Claimant with the reasons for his decisions. According to the Minutes of the Inquiry, at the conclusion of the Special Inquiry, the Claimant was informed by the Special Inquiry Officer that based on the evidence before him and by her own admission, he had concluded that she was neither a citizen nor resident of Trinidad and Tobago and that she was a person described in section 9(4)(f) and 9(4)(k) and 22 (1) (f) of the Immigration Act. The Special Inquiry Officer also informed the Claimant that she came into Trinidad and Tobago at Piarco International Airport and remained in the country after the expiration of the certificate issued to her by the Immigration Division and broke the terms and conditions of the said certificate by working without a work permit. In my opinion, the reasons for the Special Inquiry Officer's decision were clear to the Claimant as she lodged an appeal against his decision. I have therefore concluded that this was not a valid basis for finding that the Special Inquiry was a nullity.

ORDER

79. It is declared that the finding of the Special Inquiry Officer that the Claimant worked without a permit was unlawful and without jurisdiction, as the Special Inquiry Officer failed to make the decision on credible and trustworthy evidence contrary to section 24(3) of the Immigration Act.
80. It is declared that the seizure and continued detention of the Claimant's passport from 8 January 2018 to the 12 October 2020 by the First Defendant, her servant and or agent was in breach of the Claimant's right to the enjoyment of her property and the right not to be deprived thereof except by due process of law as secured by section 4(a) of the Constitution.
81. I will hear the parties on the issue of costs and damages on 11 January 2022 at 11:30am by a virtual hearing.

/S/ Margaret Y Mohammed
Judge