IN THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2021-00363

IN THE MATTER OF NELYSBETH ADRIANA CONTRERA

IN AN APPLICATION FOR A WRIT OF HABEAS CORPUS AD SUBJICIENDUM

BETWEEN

NELYSBETH ADRIANA CONTRERA

Applicant

AND

THE CHIEF IMMIGRATION OFFICER

Respondent

Claim No. CV2021-00364

IN THE MATTER OF CORALZA DEL VALLE MARIN TORRES

IN AN APPLICATION FOR A WRIT OF HABEAS CORPUS AD SUBJICIENDUM

BETWEEN

CORALZA DEL VALLE MARIN TORRES

Applicant

AND

THE CHIEF IMMIGRATION OFFICER

Respondent

Before the Honourable Madame Justice Quinlan-Williams

Appearances: Mr. Gerald Ramdeen and Mr. Umesh D. Maharaj instructed by Ms. Dayadai Harripaul for the Claimants

Mr. Fyard Hosein S.C. leads Mr. Raphael Ajodhia and Mr. Sanjiv Sookoo instructed by Ms. Nisa Simmons for the Defendant

Date of Delivery: 4th February 2021

JUDGMENT ON THE RETURNS OF HABEAS CORPUS

History to proceedings

1. In 2020 stories were running rampant in the media and social media about sightings of illegal immigrants entering Trinidad and Tobago. Those sightings were reported in and near to the capital city as well as in remote parts of the country. The stories also spurned all manner of vitriol and commentary. Naturally, the court eventually became engaged with issues concerning the immigrants.

2. This court is here dealing with returns made to two writs of habeas corpus involving immigrants who challenge their detention as being unlawful. The court will be moved by the law and what justice demands and by no other consideration.

3. The issues raised in these return are as follows:

    a. Abuse of Process
    b. Whether the Deportation Orders provide a complete answer
        i. In light of the undertaking and injunction
        ii. Are the deportation orders properly made under the authority of the Immigration Act

Summary of the court's findings

4. The court is not satisfied that the respondent has provided a complete answer to the detention of the applicants. The applications relate to the lawfulness of the applicants detention, the fact that there are claims for constitutional reliefs pending where similar redress can be sought, does not make these applications an abuse of the courts process. They are not an abuse of process because the core issue is a question about the unlawfulness of the applicants' detention.

5. The court is not satisfied that the Deportation Orders provide a complete answer to either application. To provide a complete answer the respondent would need to be in a position to deport the applicants, tomorrow or at some other reasonably delayed date. The respondent is unable to do so. The respondent cannot take any steps towards deportation, in one case because the Attorney General promised and undertook that no such step shall be taken and in the other case, there is a subsisting order of the high court preventing any such step from being taken.

6. Further, the court is not satisfied that the Deportation Orders comply with the Immigration Act. They do not provide sufficient particulars from which the persons subject to the orders can determine the section or part of the Immigration Act, the Minister of National Security exercised his administrative powers to make Deportation Orders. Deportation Orders made under the Immigration Act are not identical in the manner in which they are made and in the circumstances under which they are effected. As such based on the provision of the Immigration Act and natural justice, Deportation Orders must provide sufficient particulars.

7. The applicants are to be release on terms provided in this judgment.

The first issue – Abuse of Process

8. The respondents allege that these applications amount to an abuse of process. They argue that the nature of the applications and the arguments are more akin to judicial review proceedings. They also argue that the applicants should raise their concerns and seek relief in the pending substantive constitutional claims.

9. The applicants say that these applications challenging the lawfulness of their detention, at the time the returns were made, are properly before the court.

10. The question the court has to answer is, whether the issue raised, is the lawfulness of the applicants' detention. Once I am satisfied that the core issue is the lawfulness of the applicants' detention, then I have the jurisdiction to hear the applicants on the return to the writs of habeas corpus.

11. The parties referred, both in oral and written submissions to *Lennox Phillip and ors* [1992] 1 AC 545. Phillip and the others, as is well known, were involved in an insurrection in 1990. They were granted a pardon on the 28th day of July 1990 and the captives were released. After the release of the captives, the insurrectionist were arrested and charged with criminal offences, including treason and murder. Phillip and the others sought redress pursuant to section 14(1) of the Constitution arguing that their arrests were unlawful since they were the beneficiaries of a pardon.

12. On the 8th of October 1990, Phillip and some of the others, applied for the issue of a writ of habeas corpus. They also argued that their arrests were unlawful and that they should be released immediately. Both actions raised the same argument; that by virtue of being granted pardons, their arrests and detention were unlawful.

13. One of the arguments raised was that an applicant should not have two bites of the same cherry, to argue that the pardon was valid – at the arraignment for the criminal offences and in the habeas corpus proceedings. In answer to this submission the court decided,

> "it is in the overall interest of justice that there should be the earliest possible decision as to the validity of the pardon…The injustice of the applicants remaining in prison, if they are the beneficiaries of a valid pardon, heavily outweighs the inconvenience of their raising again the pardon as a plea in bar at the trial"[1].

14. Regarding the issue of a writ of habeas corpus, Lord Ackner reiterated:

> "The court has no discretion to refuse it. A prima facie case having been established that the Applicants were unlawfully detained, it was clearly for the Respondents to make a return justifying their detention. The applicants are not to be deprived of this fundamental right by the existence of some alternative, but in the circumstances wholly unsatisfactory remedy."

15. In considering the possibility of alternative remedies, in particular judicial review as an alternative for applications for writs of habeas corpus, the court considered the text, Farbey and Sharpe, with Atrill[2] which stated at page 63:

> "The liberty of every individual, and the principle that governments must be able to justify each and every detention of an individual, are core elements of constitutional democracies. It is to be hoped and expected that judges in democracies will protect liberty irrespective of the procedural route by which a case comes to court. But habeas corpus is a bulwark against arbitrary decision-making and to this extent, it is a right too precious to remove from the constitutional framework in which it is embedded."

16. The respondent referred the court to the judgment, CV2020-01082 *Mendez v Chief Immigration Officer*. In the ruling, Boodoosingh J. (as

[1] Page 560 paragraph C

[2] The Law of Habeas Corpus. Third Edition. Judith Farbey and R.J. Sharpe with Simon Atrill.

he then was) said that if the applicants wish to challenge the state's refusal to allow the immigrants an opportunity to seek refugee status:

> "this must be a separate claim where the court can examine the evidence being presented by the applicants and carefully consider the response of the State authorities. The court can also grant interim orders in such a matter to prevent the deportation pending the hearing of a case."

17. In the applications before the court, the applicants are saying that they do have such a separate claim and that interim reliefs have been made or undertaken. They say therefore that based on the interim reliefs made or undertaken, their detention is unlawful. The question whether at the time of the returns, the detention is unlawful does not require this court to consider the evidence in the constitutional claims, only the circumstances of the detention.

18. The court agrees with the judgment of R. Mohammed J in CV2020-01118 *Machado v Chief Immigration Officer*, that there is a difference between applications for judicial review and writs of habeas corpus. In *Machado* [supra], the applicant wished to seek protection as an asylum-seeker. R. Mohammed J noted that there is no provision in the Immigration Act to determine the treatment of persons who are refugees, nor is there any national legislation pertaining to the treatment of asylum-seekers and refugees in Trinidad and Tobago. A court can take judicial notice of those facts now, they are well known by all. The line of authorities considered by R. Mohammed J in *Machado* [supra] from paragraphs 90 to 98, regarding the development in the jurisprudence in applications for writs of habeas corpus when detention around immigration issues are raised are clear.

19. In *R v Secretary of State for the Home Department, ex parte Cheblak* [1992] Q.B. 244 Donaldson MR said:

> "The remedy of judicial review is available where the decision or action sought to be impugned is within the powers of the

> person taking it but, due to procedural error, a misappreciation of the law, a failure to take account of relevant matters, a taking account of irrelevant matters or the fundamental unreasonableness of the decision or action, it should never have been taken. In such a case the decision or action is lawful, unless and until it is set aside by a court of competent jurisdiction."

20. Overtime and by 2000, the position regarding applications for writs of habeas corpus was clearly expressed by Lord Justice Schiemann in *R. v Secretary of State for the Home Department Ex parte. Sheik* [2000] 12 WLUK149 as follows:

> "When a person is detained as a result of an administrative action he can challenge the legality of that detention. It is for the detainer to produce legal justification for the detention… As our law presently stands the challenge to the legality of the detention can be made by way of judicial review or by way of Habeas Corpus… Whatever procedure is employed, the detainer has to show the legality of the detention… the principle underlying Habeas Corpus is that each day's detention has to be justified and if someone is wrongfully detained the fact that he does not challenge the legality of his detention for 3 years does not prevent him from challenging it thereafter, at any rate whilst he is still detained."

21. It is impossible to think that in 2021, anyone would argue that if any of the matters mentioned by Donaldson MR occurred, and they led to a detention that such detainee would not have the right to seek the court's assistance by an application for a writ of habeas corpus to issue.

22. In *Machado* [supra], the judge found that the applicant had not challenged the precedent fact; the validity or the existence of the deportation order, therefore the detention was lawful. The applicants here have challenged the validity of the Deportation Orders; they claim that in light of the stay and undertaking, the Minister of National Security exceeded his administrative jurisdiction because there can be no deportation. They say that the Minister of National Security knew or must have known about the stay and undertaking before the

deportation order was made by him. Therefore since there can be no deportation, there can be no detention as a precursor to deportation.

23. The respondent also referred to *Jane v Westminister Magistrates' Court* [2019] EWHC 394 (Admin). In that case, the court found that the application was not fit for habeas corpus but rather for judicial review. Two of the reasons that supported the court's decision were firstly, the applicant was not detained at the time the return was heard. He was on bail and not in custody, and even if that was not fatal to the application, there was another factor. Secondly, there was a complete answer to the writ as the detention had been authorized by an order of the court. This case does not support the respondent's submission and it has not provided any assistance to the court.

24. In *Cosar v Governor of HMP Wandsworth; Chmurzynski v Governor of HMP Wandsworth* [2020] 1 WLR 3846, the court decided that the remand of a person arrested in the UK under the Extradition Act 2003 to await extradition on a European arrest warrant issued in Romania was a complete answer to the writ. The complaint of a district judge's subsequent exercise of a power under the Extradition Act 2003, to extend the time for the person's detention while awaiting extradition was not suitable to a habeas corpus application but rather an application for judicial review. This court agrees that if the Deportation Orders provide a complete answer to the detention, then that would end the matter and the applications would be dismissed by this court. However, the question here whether the Deportation Orders are complete answers can be determined in these applications for habeas corpus and in consideration of the returns made. The case is distinguishable.

25. I am satisfied that whether or not the applicants have another or other options available to seek similar or like redress, an application for a

habeas corpus is a suitable and available remedy. It would set a dangerous precedent for this court to say to an applicant, where the liberty of the subject and the lawfulness of an arrest and detention are concerned, that habeas corpus is not available to you because you have a different option.

26. The issues around the constitutionality of the applicants' right to remain in Trinidad and Tobago are the matters raised in the constitutional motion. This court does not need to determine those matters here.

27. The court is satisfied that there is no abuse of process for this court to hear and determine these applications.

Second issue – Whether the deportation orders provide a complete answer

28. To address this issue, the court has to consider the prevailing circumstances of the applicants' detention before the deportation orders were made and what followed thereafter.

The First Applicant – Nelysbeth Adriana Contrera

29. On the 25th day of November 2020 a claim CV2020-03987 was filed by Zaid Jesus Marcano Contrera (by his kin and next friend Felix Marcano) (hereinafter referred to as the child) for redress under section 14 of the Constitution of the Republic of Trinidad and Tobago. The next friend and the child are father and son.

30. The claim was amended on the 30th day of November 2020 by, inter alia adding as a claimant Nelysbeth Adriana Contrera (hereinafter referred to as Nelysbeth). Nelysbeth is the child's mother. As a general overview, the Constitutional claim was whether the child and Nelysbeth entered Trinidad and Tobago on the 17th day of November

2020, with the intention of seeking protection as refugees. Without an opportunity for their claims to be heard and determined as refugees, the child and Nelysbeth were deported on the 22nd day of November 2020. The claim allege that the deportation on or about the 22nd day of November 2020, was unconstitutional having regard to the Government's 2014 National Policy to address refugees and asylum matters.

31. When the claim was filed on the 25th day of November 2020, a notice of application, together with a certificate of urgency were also filed. The application sought interim reliefs. The application for interim reliefs came up for hearing on the very 25th day of November 2020. The application had been served on the respondent (the Attorney General) and the hearing was therefore with notice to the Attorney General. At that first hearing, the applicant was the child. The application prayed for the court to release the applicant who was in police custody several days after he entered the country.

32. The Attorney General responded that a quarantine order had been made by the Minister of Health for the applicant to be quarantined at a named facility in Chaguaramas. However, the child had not been taken to the quarantine facility but was kept detained at the Erin Police Station. The court ordered the child to be taken to the quarantine facility by 6:00am the following morning, failing which he was to be released.

33. The notice of application was adjourned to the 26th day of November 2020. By letter dated the 25th day of November 2020, from the Ministry of the Attorney General and Legal Affairs, the Attorney General responded to the application filed for interim reliefs. In that letter, the Attorney General agreed, inter alia that "The Respondent [the Attorney General] undertakes that any Deportation Order which may be issued

to the claimant will be stayed and not executed pending the hearing and determination of the Constitutional Motion." That letter was addressed to the attorneys in the claim CV2020-03987 *Zaid Jesus Marcano Contrera v The Attorney General of Trinidad and Tobago*.

34. At the hearing on the 26th day of November 2020, the Senior Council appearing for the Attorney General confirmed the undertaking in the letter of the 25th day of November 2020. With respect to the claim itself, the parties consented, at the suggestion of the court, to arrive at an agreed timetable to advance the claim. Subject to the agreed timetable, the claim would therefore take its usual course and the first case management conference was to be fixed.

35. An amended fixed date claim form, amending the constitutional motion, was filed on the 30th day of November 2020. The amendments included adding Nelysbeth as a claimant. On that day an amended notice of application was also filed. When this notice of application was filed Nelysbeth was named as one of the claimants as per the amended fixed date claim form.

36. The amended proceedings were served on the Attorney General at 1:15pm, by electronic means and the Attorney General acknowledged service at 1:32pm.

37. The parties had not, yet, agreed to a timetable and the first case management conference had not been scheduled.

38. The reliefs sought in the notice of application of the 30th day November 2020, included having access to cell phones and meals provided by third parties. When the second notice of application came up for hearing, the attorney were the same; the same Senior Counsel appeared for the Attorney General and the same attorney appeared for all three applicants.

39. The court heard the arguments on the reliefs sought in the application of the 30th day of November and refused the applicants' application with costs to be cost in the cause. The Attorney General agreed and the court ordered that the undertaking given in the letter of the 25th day of November 2020 and relayed to the court on the 26th day of November was to continue.

40. The next question for the court to answer is: does the Attorney General's undertaking reduced in writing in the letter of the 25th day of November 2020, given in court on the 26th day of November 2020 and repeated in court on the 30th day of November 2020 relate to the child only and not to Nelysbeth? Alternatively, does the undertaking also apply to Nelsybeth?

41. The Attorney for the respondent, in this return to the writ, the Chief Immigration Officer, submits that the undertaking applies to the child only.[3] The applicant's attorney says no, the undertaking while initially made when the child was the only claimant in the claim, now applies to all the claimants added when the claim was amended on the 30th day of November 2020. The applicant's attorney adds that permission was not required at the time the claim was amended as the first case management conference had not, as yet been scheduled. The attorney for the applicant in this matter also appeared for the claimants in CV2020-03987, the claim for constructional relief. I would add that I presided as the judge in the claim for constitutional relief.

42. In answering this question, the court would examine the undertaking itself and the circumstances that pertained when that undertaking was made. The letter of the 25th November 2020, referred to one claimant,

[3] The court notes that the Senior Counsel appearing in these proceedings is not the same Senior Counsel who appeared for the Attorney General in the claim for constitutional relief.

quite naturally because there was one claimant before the court at the time. If there were two or more claimants, and the undertaking of the 25th day of November 2020 referred to one claimant only, then that would provide clear and unequivocal proof that the undertaking related to that named claimant.

43. The court notes that on the 25th day of November 2020, when the letter was written, the child was at the quarantine facility, held pursuant to a quarantine order made by the Minister of Health. When the application came up for hearing on the 26th day of November and the 30th day of November 2020, the child was still at the quarantine facility. When the claim was amended, adding Nelysbeth as a claimant, she was also held at the quarantine facility pursuant to a quarantine order made by the Minister of Health.

44. The letter of the 25th day of November 2020, said that the Attorney General undertook that, "any Deportation Order which may be issued to the claimant will be stayed and not executed pending the hearing and determination of the Constitutional Motion." What is important is that the Attorney General was speaking prospectively. No deportation had been "issued for the child". Further, the Attorney General has no legal authority over the issuance of Deportation Orders under the Immigration Act.

45. Therefore, what did the Attorney General mean by a "stay" or "not execute" any Deportation Order issued under the Immigration Act? It means exactly what it says, that the Attorney General as the legal advisor to the Government of Trinidad and Tobago, will see to it that no steps are taken if any deportation order is made. This undertaking to the court and the claimant, has the same effect as if an injunction ordered by the court, they are both equally binding on parties.

46. When the undertaking was ordered to continue on the 30th day of November 2020, with the consent of the Attorney General, Nelsybeth was a party to the claim. This fact was known to the Attorney General. The Attorney General had been served with the amended fixed date claim form and was represented when the matter was called.

47. Based on the representation made by the Senior Counsel who appeared for the Attorney General, it was clear to the court that the undertaking was and continued to be prospective on the 30th day of November 2020. No Deportation Orders had been made for any of the claimants in the constitutional claim. However, if any Deportation Order had been made; same would be stayed pending the determination of the claim. This is what the Attorney General promised.

48. After the 30th of November when the fixed date claim form was amended, the court finds that it is irrelevant and immaterial if a Deportation Order is made against any of the claimants. The Attorney General undertook to stay any Deportation Order made in the claim until the matter is determined. Such an undertaking was to preserve the integrity of the court proceedings

49. To come to any other conclusion would be unjust and have a perverse outcome on the progress of the claim.

50. The Attorney General's undertaking became retrospective when the Chief Immigration Officer issued a Deportation Order to the claimant Nelsybeth dated the 12th day of January and served on the 14th day of January 2021.

51. The court therefore finds that the undertaking applies to the claimant.

The Second Applicant - Coralza Del Valle Marin Torres

52. Coralza Del Valle Marin Torres also entered the country illegally and alleged that her detention is unlawful. Torres was quarantined pursuant to a quarantine order made on the 24th day of November 2020. On the 30th day of November 2020, Torres sought relief by filing a constitutional claim CV2020-04080. By order dated the 30th day of November 2020 Charles J ordered that the Attorney General "is refrain from taking any steps to remove the Claimant from the jurisdiction pending the determination of this Application." The court has not determined the notice of application filed on the 30th day of November 2021. Meanwhile, a Deportation Order was issued on the 12th day of January 2021 and this application for the issue of a writ of habeas corpus was filed on the 26th day of January 2021.

53. By notice dated the 3rd day of February 2021, CV2020-04080 was docket to me.

54. There can be no issue here, that there is a subsisting injunction preventing any steps from being taken to remove the applicant from the country.

The returns

55. Having decided that there is an undertaking and an injunction in favour of the applicants, what effect, if any do they have on the Deportation Orders?

56. The returns made to the writs are more or less identical.

57. The respondent's return to the writs were made by Legal Officer 1, Immigration Division, Mr Abdul Mohammed. The returns state that the applicants are detained at the Heliport Chaguaramas pursuant to Deportation Orders made by the Minister of National Security on the 12th day January 2021.

58. The Deportation Orders addressed to the applicants inform them that because the applicants are not citizens of Trinidad and Tobago and are persons described in Section 8(1)(p) and (q) of the Immigration Act the Minister of National Security has decided that they be ordered detained and deported to the Bolivarian Republic of Venezuela.

59. The returns annexed letters written by attorney-at-law for the respondent dated 27th day of January 2021 to the applicants' attorney-at-law informing them of the Deportation Orders. In that letter the attorney identified a number of issues the respondent considered relevant:
    a. That there has been material non-disclosure by the applicant of the attempt to serve her with a deportation order on the 14th January 2021;
    b. That the application for the writ was an abuse of process as the applicant has a constitutional matter which predated this application; and
    c. That the applicant entered the country illegally on the 24th day of November, 2020 at a time when the borders were closed and that the state has and will utilize all legal means to defend from the influx of illegal immigration.

60. The returns made are pellucid that the respondent relies on the deportation orders as complete answers to the writs.

61. Two questions arise for the court to answer:
    a. In light of the undertaking and injunction, can the detention be said to be for the purpose of deportations?
    b. Are the deportation orders properly made under the authority of the Immigration Act?

    I will answer those questions in consecutive order following.

a. In light of the undertaking and injunction, can the detention be said to be for the purpose of deportations?

62. The Hardial Singh Principles emerging from the case *R v Governor of Durham Prison ex parte Singh [1984] 1 All ER 983* are found in the following extract from the judgment*:*

> "Although the power which is given to the Secretary of State in paragraph 2 to detain individuals is not subject to any express limitation of time, I am quite satisfied that it is subject to limitations. First of all, it can only authorise detention if the individual is being detained in one case pending the making of a deportation order and, in the other case, pending his removal. It cannot be used for any other purpose. Secondly, as the power is given in order to enable the machinery of deportation to be carried out, I regard the power of detention as being impliedly limited to a period which is reasonably necessary for that purpose. The period which is reasonable will depend upon the circumstances of the particular case. What is more, if there is a situation where it is apparent to the Secretary of State that he is not going to be able to deport within a reasonable period, it seems to me that it would be wrong for the secretary of state to seek to exercise his power of detention."[4]

63. Those principles are settled and widely applied in habeas corpus applications. In *Naidike v The Attorney General of Trinidad and Tobago* [2004] UKPC 49 the Privy Council judgment is quite clear that detention under a Deportation Order made under the Immigration Act of Trinidad and Tobago can only be for the purpose of deportation:

> "The Board in the end is driven to the view that the intended scope of section 15 is uncertain and that this uncertainty must be resolved in favour of the liberty of the individual. The governing principle is that a person's physical liberty should not be curtailed or interfered with except under clear authority of law. As McCullough J succinctly put it in R v Hallstrom, ex parte W (No. 2) [1986] QB 1090, 1104:
>
> > 'There is ... a canon of construction that Parliament is presumed not to enact legislation which interferes with

[4] R. v Governor of Durham Prison, ex p. Hardial Singh [1984] 1W.L.R. 704 at 706C-F

> the liberty of the subject without making it clear that this was its intention.'
>
> True it is, as the majority decision of the House of Lords in Wills v Bowley 1983 1 AC 57 illustrates, that there are limits to this presumption. The legislation there was construed by the majority in such a way as not unduly to narrow the police's powers of arrest. Proper consideration should be had to the maintenance of public order and other aspects of the public interest and powers conferred by Parliament should not lightly be rendered ineffective. The tension was well explained by Lord Wilberforce in R v IRC ex parte Rossminster Ltd [1980] AC 952, 997-998:
>
> > 'The courts have the duty to supervise, I would say critically, even jealously, the legality of any purported exercise of these powers [powers of entry conferred on the Revenue]. They are the guardians of the citizen's right to privacy. But they must do this in the context of the times, i.e. of increasing Parliamentary intervention, and of the modern power of judicial review. ... While the courts may look critically at legislation which impairs the rights of citizens and should resolve any doubt in interpretation in their favour, it is no part of their duty, or power, to restrict or impede the working of legislation, even of unpopular legislation; to do so would be to weaken rather than to advance the democratic process.'
>
> Nothing in the present case suggests that the public interest would be served or the democratic process advanced by giving a wide rather than narrow interpretation to section15. Quite the contrary: unless the immigrant's detention is required for an inquiry to be held forthwith or for his removal to be effected pursuant to a deportation order already in force, there seems no sound reason for the power to be exercised."[5]

64. *Naidike* [supra] is binding and has been repeatedly applied in these courts, including in CV2019-00888 *Troy Tomas v The Chief Immigration Officer.* In *Troy Thomas* [supra] a deportation order was made and remained in effect. The claimant had been detained for five months and had a previous history of breaching supervisory orders and he also had several criminal charges pending in Trinidad and Tobago. However, rather than deport the applicant, the defendant detained him while

[5] Naidike v Attorney General of Trinidad and Tobago [2004] UKPC 49, paragraph 48, 49 and 50

awaiting advice from the DPP. Applying the recognized legal principles that unless the detention is required for his removal pursuant to a deportation order, there is no reason or no sound reason for the detention.

65. Kokaram J (as he then was) decided that while the purpose of the detention was initially legitimate, in keeping with the administrative powers of detention pursuant to a detention order, that purpose became illegitimate. The court decided that the defendant had "stayed" the deportation order to make enquiries of the DPP about the applicant's pending criminal matters. The Chief Immigration Officer was therefore utilizing an illegitimate exercise of power and therefore in those circumstances five months detention was beyond the statutory purpose.

66. The court is of the opinion that the second Hardial Singh principle, the period of detention, is not relevant in the circumstances here because there is no authorized detention.

67. In the circumstances before this court, the detention orders are stayed by the undertaking given by the Attorney General and by injunction ordered by the court. There is therefore no legitimate exercise of power to detain the applicants, they cannot be deported. The applicants cannot be deported unless there are further or other orders made by the court.

68. The respondent argued that the injunction (and the court would add the undertaking) does not prohibit the Minister of National Security from signing Deportation Orders. Section 29(2) of the Immigration Act gives Deportation Orders life even if they are stale dated, unless and until cancelled by the Minister. It seems to the court that if the Minister of National Security chooses to issue Deportation Orders (as he has

done in the circumstances of this case), then the only option available to him would be for an order to be made under section 17 of the Immigration Act for conditional release or supervision[6].

69. In the circumstances, and based on the respondent's return, they have not satisfied the court that the applicants' detention is lawful.

b. Are the deportation orders properly made under the authority of the Immigration Act?

70. The Deportation Orders are patterned from the Prescribed Form 19B, made under Regulation 39(1) of the Immigration Act. There are two Prescribed Forms 19A and 19B. The Regulations do not prescribe which Form is to be used for a Deportation Order made under any particular section of the Immigration Act.

71. Deportation Orders can be made under different sections of the Immigration Act.

a. Section 9 of the Immigration Act creates a category of persons called Permitted Entrants. Those are persons permitted entry into Trinidad and Tobago under certain detailed conditions. After a person is permitted entry into Trinidad and Tobago by an immigration officer, the Minster of National Security may form the opinion that such person falls into any one of the listed categories of persons described in section 9(4). If the Minister is so satisfied, he may make a deportation order under section 9(5). There is no right of appeal of this Deportation Order.

[6] 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.

b. Section 10 allows the Minister of National Security to issue a written permit authorizing any person to enter Trinidad and Tobago or, being in Trinidad and Tobago, to remain therein. In granting that Minister's Permit, the Minister may dictate such terms and conditions as he may think fit. The Minister may also cancel the Minister's Permit. Under section 10(6), upon the cancellation (or expiration) of the Minister's Permit, the Minister may make a Deportation Order. There is no right of appeal of this Deportation Order.

c. Part 1 of the Act deals with admission of persons into Trinidad and Tobago. Those persons fall into three classes: entitled citizens and residents; persons in the prohibited class and persons in the permitted class. Section 11 says that nothing in Part 1 shall be construed as conferring a right on any person to be or remain in Trinidad and Tobago on any person either before or after the commencement of the Act has come into Trinidad and Tobago otherwise than in accordance with the Act, or who at the commencement of the Act is a prohibited immigrant within the meaning of the former Ordinance. Section 11 allows the Minister to make a Deportation Order against such person. There is no right of appeal of this Deportation Order.

d. Under Section 22(1)(i), a report may be made to the Chief Immigration Officer that any person other than a citizen of Trinidad and Tobago who came into Trinidad and Tobago other than at a port of entry or has eluded examination or inquiry. Such a person, if found upon an inquiry duly held by a Special Inquiry Officer to be a person described in subsection (1), shall be subject to deportation. Those Deportation Orders are made after the special inquiry procedures outlined in the Act are followed. Under section 24(4) if the Special Inquiry Officer makes an adverse decision, the Special Inquiry Officer makes a

Deportation Order. A Special Inquiry may be re-opened for the hearing and receiving of additional evidence or testimony in stated circumstances. Section 27 (1) says that there shall be no appeal of Deportation Orders made of a person described in section 8(1) (a), (b), (c), (j) and (k). It appears therefore, that there is a right of appeal if the circumstances relied on fall under section 8(p) and (q).

72. Section 16 of the Immigration Act[7], is limited to detention for inquiry, examination or deportation. There is no power to make deportation orders under section 16.

73. It appears to this court that natural justice dictates that when a Deportation Order is made, it should provide sufficient information to identify the section under which the Deportation Order is made. In this case the Deportation Order states it relies on the class of prohibited persons, particularly under section 8(1)(p) and(q):

> "8. (1) Except as provided in subsection (2), entry into Trinidad and Tobago of the persons described in this subsection, other than citizens and, subject to section 7(2), residents, is prohibited, namely—
> (p) persons who cannot or do not fulfil or comply with any of the conditions or requirements of this Act or the Regulations or any orders lawfully made or given under this Act or the Regulations;
> (q) any person who from information or advice which in the opinion of the Minister is reliable information or advice is likely to be an undesirable inhabitant of, or visitor to Trinidad and Tobago."

74. Section 8 of the Immigration does not make provision for the making of Deportation Orders.

[7] 16. 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.

75. Further, the letter of the 27th day of January 2021 to the applicant's attorney-at-law say, "That the applicant entered the country illegally on the 24th day of November, 2020 at a time when the borders were closed and the that the State has and will utilize all legal means to defend from the influx of illegal immigration."

76. It appears to the court the respondent is relying on information provided to the Chief Immigration Officer under section 22 of the Immigration Act. If that is the case, then the procedure antecedent to the issuance of a Deportation Order would be a special inquiry and made by a Special Inquiry Officer; from which there may be a right of appeal. If the respondent is relying on some other section, such as section 11, then the applicant should also know this from the Deportation Order.

77. The court therefore finds, without any consideration of the injunction and undertaking, that the detention under the Deportation Orders made by Minster of National Security on the 12th January 2021 to be unlawful.

DISPOSITION

78. It is hereby ordered:

    a. The court orders that the applicants are to be placed under Orders of Supervision with reporting and other conditions that the Chief Immigration Officer deem satisfactory in the circumstances.

    b. The applicants are to be released from detention no later than 4:00pm on Friday the 5th day of January 2021.

c. Written submissions on costs are to be filed and served by 4:00pm 8th February 2021.

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Justice Avason Quinlan-Williams

JRC: Romela Ramberran