THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE
Port of Spain

Claim No. CV2019-02421

BETWEEN

ANDREW NERENEI

Applicant

AND

CHARMAINE GHANDI-ANDREWS
CHIEF IMMIGRATION OFFICER

Respondents

Before the Honourable Mme. Justice Jacqueline Wilson

Date of Delivery: July 8, 2019

APPEARANCES:
Mr. Gerald Ramdeen, Mr. Umesh D. Maharaj and Ms. Dayadai Harripaul Attorneys at law for the Applicant
Mr. Neil Byam and Ms. Sangeeta Lalchan Attorneys at law for the Respondents

DECISION

1. On 13 June 2019, the Applicant applied to the court for the issue of a writ of habeas corpus ad subjiciendum to the Chief Immigration Officer. The grounds of the application are that the Applicant is deprived of his liberty without lawful justification by the Respondent, that he was first detained at the Immigration Detention Centre, Eastern Main Road, Aripo, on 28 October 2017, that a deportation order was made against him on 3 January 2018 ordering his deportation to Nigeria, and that he has not been deported to date.

2. In his affidavit in support of the application the Applicant alleged that he has been held pending deportation for a period of at least one year, five months and eight days. He alleged that the conditions at the Immigration Detention Centre were insanitary and overcrowded.

3. Also filed in support of his application was an affidavit by the Applicant's Attorney-at-law. She deposed that she is aware of statements by the Prime Minister of Trinidad and Tobago, given at a Post Cabinet Media Briefing on 6 June 2019, of the Government's proposals to bring relief to persons detained at the Immigration Detention Centre "particularly Africans" who have not been deported because of the prohibitive costs of transporting them from Trinidad to Ghana or Nigeria.

4. On 25 June 2019, I made an order for the issue of the writ returnable on 1 July 2019. A hearing was ultimately convened on 3 July 2019. On 1 July 2019, the Respondent filed a return to the writ endorsed with the following statements:

> *"This return is made by Mark Sharma Immigration Officer III in the Immigration Department under the authority of the Chief Immigration Officer*
>
> 1. *The Applicant, Andrew Mereni also known as Andrew Nerenei, is detained at the Immigration Detention Centre under section 16 of the Immigration Act, Chapter 18:01.*
>
> 2. *A Deportation Order was made against him on January 3rd 2018 and the Department bought a ticket for him to be returned to Nigeria. He was supposed to depart using that ticket on November 4th 2018.*

3. *The Applicant refused to leave the country on November 4th 2018 and was charged with failing to leave the country in accordance with the terms of the order. He was fined $500.00 for the offence in default of which he was supposed to serve 30 days imprisonment.*

4. *The reason the Applicant gave for his refusal is that he had not had enough time to prepare to leave.*

5. *The Department is making arrangements for him to leave again. The first step towards this, the application for funds from the Ministry of National Security to buy another ticket, was taken on the 18th of June 2019.*

6. *It will take one month to get those funds and six weeks to have him repatriated."*

5. At the hearings on 25 June and 3 July 2019 I made an observation that the deportation order under which the Applicant was detained was not in evidence before the Court. On the latter date, Counsel for the Respondent stated that there was no dispute between the parties as to its terms. As a consequence, the hearing proceeded without this piece of material evidence.

THE APPLICANT'S SUBMISSIONS

6. Counsel for the Applicant submitted that the Applicant was detained pursuant to a deportation order, issued under section 16 of the Immigration Act, pending his deportation. Such detention was not for an indefinite period but was for the sole purpose of effecting the Applicant's deportation. Counsel submitted that the Applicant had been detained pending deportation since 3 January

2018 and that an attempt was made to deport him in November 2018. Counsel submitted that, having regard to the failed deportation in November 2018, as of the date of hearing the relevant period of detention was approximately seven months.

7. Counsel submitted further that no steps were taken by the Respondent until 18 June 2019 to secure funds for the purchase of a ticket to deport the Applicant, some four days after the institution of the habeas corpus proceedings on 14 June 2019.

8. Counsel submitted that the prolonged and unexplained failure by the immigration authorities to take steps to procure the Application's deportation was an unlawful exercise of the power of detention. He submitted that there was no guarantee that the funds for deportation would be provided or that they would be provided within the stated time-frame.

9. Counsel argued further that the Respondent's assertion that deportation would be effected in six weeks called into question why the deportation had not taken place before. He asserted that the lawfulness of the Applicant's detention must be established as of the date of the return of the writ and not on the basis of the future events indicated by the Respondent.

THE RESPONDENT'S SUBMISSIONS

10. Counsel for the Respondent submitted that habeas corpus proceedings are summary proceedings in which the legality of a person's detention must be determined. He stated that the question for decision was whether, as of the date of hearing the return to the writ, the Applicant was lawfully detained.

11. Counsel stated that, notwithstanding that steps for the Applicant's removal from the jurisdiction were taken after the filing of the habeas corpus proceedings, the process had been initiated and the six-week time frame that was given for deportation was not unreasonable or impracticable.

12. Counsel submitted that, in so far as travel arrangements were concerned, there were no direct flights to Africa, that limited resources were available for this purpose and that an application was needed to obtain the required funds. Counsel argued that sums had previously been provided for the Applicant's removal but he had resisted his deportation with the effect that criminal charges were brought against him and funds were now required for a second time.

13. Counsel argued that, having regard to the Applicant's refusal to co-operate in the past, it was not unreasonable to continue to detain him pending deportation to ensure that he was available when the renewed arrangements were to take effect.

DISCUSSION

14. It is common ground that the "*Hardial Singh*" principles apply to the Applicant's detention. Those principles were articulated by Lord Woolf in the seminal case of *R v Governor of Durham Prison, ex p. Hardial Singh*[1] as follows:

> "Although the power which is given to the Secretary of State …to detain individuals is not subject to any express limitation of time, I am quite satisfied that it is subject to limitations.

[1] [1984] 1 WLR 704, at 706 C-F

> 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 operate the machinery provided in the Act for removing persons who are intended to be deported 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.
>
> In addition, I would regard it as implicit that the Secretary of State should exercise all reasonable expedition to ensure that the steps are taken which will be necessary to ensure the removal of the individual within a reasonable time."

15. The *Hardial Singh* principles were approved by the Privy Council in *Tan Te Lam and Ors v Superintendent of Tai A. Chau Detention Centre*[2] where Lord Browne-Wilkinson posited that:

> "…the courts should construe strictly any statutory provision purporting to allow the deprivation of individual liberty by administrative detention and should be slow to hold that statutory provisions authorise administrative detention for unreasonable periods or in unreasonable circumstances."

[2] [1997] AC 97 at 111D-E

16. In *R(I) v Secretary of State for the Home Department*[3] Lord Justice Dyson, as he then was, said:

> "It is not possible or desirable to produce an exhaustive list of all the circumstances that are or may be relevant to the question of how long it is reasonable for the Secretary of State to detain a person pending deportation… But in my view they include at least: the length of the period of detention; the nature of the obstacles which stand in the path of the Secretary of State preventing a deportation; the diligence, speed and effectiveness of the steps taken by the Secretary of State to surmount such obstacles; the conditions in which the detained person is being kept; the effect of detention on him and his family; the risk that if he is released from detention he will abscond; and the danger that, if released, he will commit criminal offences."

17. In *R(A) v Secretary of State for the Home Department*[4] Lord Justice Toulson stated that:

> "[45] ….where there is a risk of absconding and a refusal to accept voluntary repatriation, those are bound to be very important factors and likely often to be decisive factors, in determining the reasonableness of a person's detention that deportation is the genuine purpose of the detention. The risk of absconding is important because it threatens to defeat the purpose for which the deportation order was made…

[3] [2002] EWCA 888 at [48]
[4] [2007] EWCA Civ 804 at [45] to [46]

> [46] A risk of offending if the person is not detained is an additional relevant factor, the strength of which would depend on the magnitude of the risk, by which I include both the likelihood of it occurring and potential gravity of the consequences."

18. The question for determination is whether the period for which the Applicant has been detained is reasonably necessary for the purpose of his deportation. The relevant period of detention is approximately seven months. While this period must, by any standard, be considered as substantial, it must be viewed in the context of other relevant factors.

19. The Applicant's failure to end his detention on 4 November 2018 by refusing to co-operate in the deportation process is relevant in this regard. Also relevant are the financial obstacles standing in the way of deporting detained persons to Ghana or Nigeria. This matter is addressed in the affidavit of the Applicant's Attorney where she deposes that on 6 June 2019 the Government publicly stated its commitment to bring relief to persons in similar circumstances as the Applicant in circumstances where the prohibitive costs of deportation had previously served as an obstacle.

20. The Respondent's evidence, as stated in the return to the writ, is that on 18 June 2019 the Respondent made an application to the Ministry of National Security to secure funds for the purchase of an airline ticket for the Applicant. It is relevant that the application for funding was made less than two weeks after the Government's public pronouncements discussed above. It may also be inferred from the timing of the application for funding that the habeas corpus application was <u>not</u> the only event that precipitated

renewed action by the Respondent to procure the Applicant's deportation, as suggested by Counsel for the Claimant, but that the recent indications given by the Government may also have played a part.

21. There is no evidence that other bars to removal currently exist and the Respondent asserts that the Applicant's deportation will take place in six weeks.

22. When all of the above matters are considered in the round, I am of the view that the Applicant's continued detention is lawful at this time.

23. I do not consider it appropriate, as suggested by Counsel for the Respondent, to adjourn the application for six-weeks to consider the outcome of the arrangements that are currently underway. It is open to the Applicant to make a fresh application in the future in the event that the proposed arrangements do not materialise.

24. The application is therefore dismissed. There shall be no order as to costs.

Jacqueline Wilson
Judge