REPUBLIC OF TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

CIVIL APPEAL NO. P- 40 of 2021

CLAIM NO CV 2021-00363

IN THE MATTER OF NELYSBETH ADRIANA CONTRERA IN AN APPLICATION FOR A WRIT OF HABEAS CORPUS AD SUBJICIENDUM

BETWEEN

THE CHIEF IMMIGRATION OFFICER

Appellant

AND

NELYSBETH ADRIANA CONTRERA

Respondent

CIVIL APPEAL NO. P- 24 of 2021

CLAIM NO CV 2021-00364

IN THE MATTER OF CORALZA DEL VALLE MARIN TORRES IN AN APPLICATION FOR A WRIT OF HABEAS CORPUS AD SUBJICIENDUM

BETWEEN

THE CHIEF IMMIGRATION OFFICER

Appellant

AND

CORALZA DEL VALLE MARIN TORRES Respondent

RESPONDENT

Panel:

Justice of Appeal P. Moosai

Justice of Appeal G. Lucky

Justice of Appeal M. Dean-Armorer

Date of Delivery: December 16, 2021

Appearances:

Mr. F. Hosein SC leading Mr. R. Dass and Mr. R. Ajodhia instructed by Ms. H. Muddeen on behalf of The Chief Immigration Officer

Mr. G. Ramdeen and Mr. U. Maharaj instructed by MS. D. Harripaul on behalf of Keren Keysi Gobin Navarro and Keysha Ediceryls Gobin and Coralza Del Valle Marin Torres and Jesus Alexander Rodriguez Martinez and Luisa Del Valle Martinez Hernandez

I have read the judgment of Dean-Armorer JA and I agree with it.

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Moosai

Justice of Appeal

I have read the judgment of Dean-Armorer JA and I too agree with it.

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Gillian Lucky
Justice of Appeal

JUDGMENT

Delivered by Justice of Appeal M. Dean-Armorer

Introduction

1. The applications of Nelysbeth Contrera and Coralza Torres, (the Respondents), were among a tetrad of cases instituted by Venezuelans, who entered Trinidad and Tobago illegally in November, 2020. They all instituted constitutional proceedings. They also sought interim relief, pending the hearing and determination of the constitutional proceedings, to forestall efforts by the immigration authorities to have them deported. In each case, deportation orders were served on them, while they were in detention. In response, the immigrants each filed writs of habeas corpus.

2. The four matters were heard and determined by different Judges of the High Court and at length the orders of the High Court were each appealed. In March, 2021, the Court of Appeal directed that the four matters, by then on appeal, be heard together.[1] Those appeals all concerned, in essence, the ambit of the power of detention pending deportation, where there was extant an interim order preventing deportation.

3. In July 2021, this Court delivered judgment in ***Martinez v. CIO***[2], having given it priority because the appellants, in that case , were in detention.

[1] Civ App. 026-2021 Martinez v. CIO

Civil Appeal No. P040 of 2021 The Chief Immigration Officer v Nelysbeth Adriana Contrera.

Civil Appeal No.P024 of 2021 The Chief Immigration Officer v Coralza Del Vale Marin Torres

Civ. App. No. 031 of 2021 The Chief Immigration Officer v Keren Keysi Gobin Navarro and Keysha Ediceryls Gobin

[2] Martinez v. CIO Civ App p-026 of 2021

4. In this judgment, we have considered the appeals by the CIO in respect on the Respondents, Contrera and Torres. The applications of the Respondents were heard by Justice Quinlan-Williams in January, 2021. On February 5, 2021, the Judge ordered the release of the Respondents from detention. The Judge identified three broad issues and determined each in favour of the Respondents.

5. The Appellant, the Chief Immigration Officer (the CIO) filed an appeal in respect of all three issues. They were:

- whether habeas corpus proceedings constituted an abuse of the Court's process in so far as there were pending constitutional proceedings;
- whether the interim order /undertakings rendered the detention of each Respondent unlawful;
- whether the deportation orders were in breach of natural justice in so far as they omitted to identify the section pursuant to which deportation was contemplated.

6. We considered each issue in turn and hold at the outset that there was no abuse of process and that the Judge was correct in her decision on this issue.

7. In respect of the validity of the deportation orders, we considered and applied the reasoning in the recent Court of Appeal decision in ***Geelal v. A.G***.[3] and held that, as a

[3] Primnath Geelal and Dharajie Geelal v Attorney General Civ Appeal No. S 274 of 2017

matter of principle an order which deprives an individual of a fundamental right should specify the grounds upon which it was made .

8. It is our view, however that the deportation orders adequately stated the grounds on which each deportation order was made and that they were not in breach of natural justice. We therefore find that the Judge was plainly wrong to hold as she did on this issue.

9. In respect of the effect of the interim orders, we have arrived at different conclusions in respect of each Respondent. In respect of Torres, we find that the Judge was correct, in so far as she held that the deportation order against the Respondent Torres was in breach of the expansive interim injunction, which prevented the contemplated deportation. Accordingly, the release of Ms. Torres was justified and is unaffected by our finding that the deportation orders were valid.

10. In respect of the Respondent Contrera, however, it is our view that the Judge was plainly wrong to hold that an undertaking by the Attorney-General impliedly included Ms. Contrera. The appeal in respect of Ms. Contrera is accordingly allowed and the order for her release is set aside.

Factual History

11. The Respondents entered Trinidad and Tobago illegally in November 2020. Nelysbeth entered Trinidad together with her child Zaid Jesus Marcano on November 24, 2020. She was arrested with her children and taken first to the Siparia Health facility and then

to the Erin Police Station. She was detained under a quarantine order at the Chaguaramas heliport.

12. The quarantine order expired on December 15, 2020, and was extended for a further 14 days.

13. Meanwhile, on November 25, 2020 proceedings were initiated by her husband, Felix Marcano on behalf of their child, Zaid. The Constitutional proceedings have not been disclosed to this Court.

14. The claim which was filed on behalf of Zaid was accompanied by an application for interim relief, seeking his immediate release from police custody.

15. Zaid was not released, as the Attorney General indicated that he was subject to a quarantine order. The child was however ordered to be removed from the Erin Police Station and taken to the quarantine facility at the Chaguaramas heliport. The claim was adjourned to November 26, 2020, the next day.

16. In the interim, the Ministry of the Attorney General issued a letter undertaking that any deportation order issued for the deportation of the child Zaid, as Claimant, will be stayed and not executed pending the hearing and determination of the claim.

17. The contents of the letter were confirmed by Senior Counsel for the Attorney General at the hearing on November 26, 2020.

18. On November 30, 2020 an amended fixed date claim was filed, adding the Respondent, Nelysbeth Contrera, as a Claimant to the Constitutional claim. The amended fixed date

claim was served on the Attorney-General on that very day. When the matter came up for hearing, the Attorney General agreed and that the undertaking would continue.

19. On January 12, 2021, however, a deportation order was issued under the hand of the Minister of National Security in respect of Ms. Contrera.

20. On January 26, when an application for a Writ of Habeas Corpus was made on behalf of Nelysbeth, she was still being detained at the Chaguaramas heliport although the children of Nelysbeth and Felix Marcano were released into his custody.

21. A question therefore arose as to whether the undertaking of the Attorney-General extended to the Respondent, Nelysbeth Contrera.

Coralza -Torres

22. Coralza Del Valle Marin Torres is the wife of Alexander Jose Meta Milano, who swore the affidavit in support of her application for a writ of habeas corpus.

23. Coralza entered Trinidad on November 24, 2020. She was arrested and sent to the Siparia Health Facility and then to the Erin Police Station.

24. On November 30, 2020, Coralza filed a Constitutional Motion. She obtained an injunction restraining the Attorney-General from deporting her pending the determination of her constitutional motion[4]. On January 12, 2021, a deportation order was issued in respect of Coralza.

[4] Injunctive Order granted by Charles J

25. On January 26, 2021, while Coralza was still in detention, an application for a writ of habeas corpus was filed on her behalf.

26. The Chief Immigration officer filed a return relying solely on the fact of the deportation order for the purpose of justifying the continued detention of Coralza.

The Judgment

27. The Judge delivered her Judgment on February 4, 2021 and granted the orders sought in both Applications. She directed that the Applicants be released from detention no later than 4 p.m. on Friday 5, January, 2021. The date cited in her order was clearly a typographical error, since the Judgment itself had been delivered on February 4, 2021.

28. The Judge ordered further that the applicants be placed under orders of supervision with reporting and other conditions that the CIO deemed satisfactory in the circumstances.

29. It is not clear why the Judge made an order that the Respondents be placed under supervision. This seems incongruent with the finding that the deportation orders were unlawful. This order was not however challenged by way of cross-appeal and we will not consider it.

30. In arriving at her conclusion, the Judge identified three issues, that is to say: whether the application for a writ of habeas corpus was an abuse of the Court's process; whether

the deportation orders provided a complete answer to the detention of the Respondents and whether the deportation orders were properly made.

31. On all three points, the Judge ruled in favour of the Respondents. In respect of the issue of abuse of process, the Judge carefully reviewed the authorities which indicated the circumstances in which judicial review proceedings would be more appropriate than applications for habeas corpus. Ultimately, the Judge expressed her satisfaction that whether or not the applicants have other options available to them, habeas corpus was a suitable remedy.

32. The Judge held that the deportation orders could not provide a complete answer to the detention of the Applicants, in the context of interim injunctive orders against the Attorney-General.

33. Finally, upon examination of the deportation orders, the Judge found that they failed to provide sufficient information as to the section under which they were made. They were thereby in breach of natural justice and had the effect of rendering the deportation orders unlawful.

Submissions for the Appellant

34. Senior Counsel, Mr. Hosein argued that the Judge was plainly wrong and that her orders should be set aside. At the outset, Senior Counsel argued the two Applications for writs of habeas corpus were abusive of the Court's process. He alluded to the constitutional

proceedings which had been filed on behalf of both Respondents and contended that the relief of habeas corpus should have been brought within the constitutional proceedings. The rationale for his submission was that by section 5 (2) of ***the Constitution***, the right to approach the Court by way of habeas corpus is a fundamental right. It was therefore properly sought in the Constitutional proceedings where, importantly, the Appellants would have had facility of filing affidavits.

35. In respect of the Respondent, Nelysbeth Contrera, Mr. Hosein maintained that the undertaking was only in respect of the child and not the adult Contrera. Mr. Hosein contended that, in so far as the Judge found that undertaking protected both the adult and the minor Contrera, the Judge was plainly wrong. Senior Counsel submitted that the Judge wrongly struck down the deportation order although there was no challenge to it.

36. Intermittently, Mr. Hosein continued his theme that it was wrong to institute habeas corpus proceedings, where there were extant constitutional proceedings. It was Senior Counsel's submission that the Respondents could have secured their release in the context of the constitutional proceedings in the same way that they obtained interim injunctive relief.

37. In the submission of Senior Counsel, the institution of habeas corpus proceedings was superfluous, leading to increased costs and in breach of the overriding objective.

38. Mr. Hosein submitted that the application for the writ of habeas corpus is a summary proceeding used for detention by the police. In any event, Mr. Hosein repeated that the CIO should have been permitted to put in affidavits and reinforced his submissions by saying that the modern practice in habeas corpus applications is to permit the detainer to put in affidavits.

39. Senior Counsel distinguished the Privy Council decision in ***Lennox Phillip v AG***[5]. He argued that release upon an application for a writ of habeas corpus was not confined to the issue of legality, but included the issue of irrationality. For the latter issue, the Court would require affidavit evidence. Moreover, according to Senior Counsel, there was a need to join the Minister of National Security, where the issue of irrationality is being considered.

40. Mr. Hosein addressed the finding of the Judge, that the deportation orders, having failed to specify the section under which they were issued, were in breach of natural justice. Mr. Hosein noted that the deportation orders conformed strictly with Form 19B of the ***Immigration Act***[6] and that they specified the sections of the Immigration Act which the Respondents had breached.

41. Relying on ***Herbert Charles v AG***,[7] Mr. Hosein submitted that if a mistake is a made in a statutory form , the form is not rendered invalid. Senior Counsel contended that the

[5] Lennox Phillip v AG[1992] 1 A.C.545
[6] Immigration Act Ch. 18:01
[7] Herbert Charles V. JLSC [2002] UKPC 34

Judge had misconstrued the term "pending deportation", which meant no more than "until deportation". It was his argument that the Minister still held the intention to deport. Citing ***Khadir***[8] Mr. Hosein argued that removal of the detainee will be pending deportation , so long as the Secretary of State remains intent on removing the detained immigrant. This remains so, notwithstanding prolonged litigation.

42. Mr. Hosein relied heavily on the authority of the ***Jaswinder Singh***[9] and argued that the injunction does not preclude the effectiveness of a deportation order.

43. Mr. Hosein addressed the issue of costs arguing that costs should be prescribed and not assessed.

Submissions for the Respondents

44. Mr. Ramdeen for the Respondents argued that Justice Quinlan-Williams was correct in all of her findings. Relying on the Privy Council decision in ***Lennox Phillips v AG***[10], Mr. Ramdeen underscored the paramountcy of the liberty of the subject. Mr. Ramdeen submitted that as long as a prima face case is established, the Court has no discretion to refuse an application for the remedy of habeas corpus. Quoting Lennox Phillips, Mr. Ramdeen argued that an applicant ought not to be deprived of the fundamental right

[8] Khadir v. The Home Secretary [2006]1 A. C. 207
[9] Jaswinder Singh (1996) Lexis Citation 637
[10] Lennox Phillips v AG [1992] 1 AC 545

to liberty and the right to approach the Court by way an application for habeas corpus because of the existence of some alternative wholly unsatisfactory remedy.

45. Counsel turned to the effect of the deportation order and was adamant in his argument, that a deportation order does not authorise detention. It would therefore follow that omissions in the deportation order will have no effect on the detention, which is ordered pursuant to section 16 of the ***Act***.

46. He examined the Returns which were filed in respect of the Respondents and contrasted them with that filed in respect of ***Hernandez and Martinez v. CIO***[11] and noted that the former made no reference to any section of the ***Immigration Act***[12], which would justify the detention of Contrera and Torres.

47. In Mr. Ramdeen's submission, the CIO was bound by the Return. If this failed to justify the detention, the applicant for the writ of habeas corpus would be entitled to be released as of right.

48. Continuing his submissions that the Appellant was bound by the Return, Mr. Ramdeen relied on the Supreme Court decision in ***R (Lumba) v Secretary of State for the Home Department***[13], and argued that the fact that the Appellants could have been lawfully detained says nothing to the question of whether he was in fact lawfully detained.[14]

[11] Martinez v. CIO Civ. App. P026 of 2021
[12] Immigration Act Chap 18:01
[13] R (Lumba) v Secretary of State for the Home Department (2012) 1 A.C. 245
[14] See Lord Kerr in Lumba

49. Mr. Ramdeen, after referring to section 16 of the ***Immigration Act***[15] and to the authorities of ***Hardial Singh***[16] and ***Tan te Lam,***[17] submitted that the precedent fact to the exercise of the power to detain was the exercise of the power to deport. He submitted further that in the cases of Contrera and Torres, at the date of the deportation order, there was no power to deport by reason of the interim injunction.

50. Finally, Mr. Ramdeen contended that the Judge was correct that the deportation orders were bad in that they failed to disclose the section under which they had been made.

Issues

51. Four major issues arise in this appeal. The first pertains to the Judge's refusal to uphold the CIO's objection that the Applications for Writs of Habeas Corpus constituted an abuse of the Court's process.

52. Related to the first issue was whether the Judge should have permitted the CIO to file affidavits.

53. The third issue was whether the detention of the Respondents was illegal, having regard to the injunctive orders which had been made in extant constitutional proceedings.

[15] Immigration Act Chap 18:01
[16] R v. Governor of Durham Prisons Ex Parte Hardial Singh [1984] 1 WLR 704
[17] Tan te Lam and others v. the Superintendent of Tai A. Chau Detention Centre [1997] A.C. 97

54. The fourth issue concerned the Judge's decision that the deportation orders, having failed to specify the section pursuant to which the Respondents were detained, were in breach of the rules of natural justice.

Discussion

Abuse of process

55. At paragraph 23 of her judgment, the Judge held that she was satisfied that there was no abuse of process, which prevented her from hearing the applications for the writs of habeas corpus. This finding was challenged by the CIO , in the Notice of Appeal, at grounds (iii) to (vii).[18]

56. The contention of Senior Counsel for the CIO may be divided into two parts. Firstly, Senior Counsel argued that the Respondents had mounted a claim which ought properly to have been brought by way of judicial review and not by habeas corpus.

57. Secondly, he contended, that the remedy of habeas corpus should have been sought as interim relief in the collateral constitutional proceedings.

58. At the outset, we considered whether Mr. Hosein was correct in his submission that the Respondents ought properly to have approached the Court by way of judicial review and not by habeas corpus. In support of his submission , Mr. Hosein relied principally on the English cases of ***Cheblak***[19] and ***Muboyayi***[20] which were both heard and

[18] See the Notice of Appeal filed February 12,2021
[19] R v. Secretary of State for the Home Department, Ex parte Cheblak [1991] 2 All ER 319
[20] R v. Secretary of State for the Home Department, Ex parte Muboyayi [1991] 4 All ER 72

determined by the civil division of the Court of Appeal. Lord Donaldson of Lymington, Master of the Rolls delivered the leading judgments in both matters.

59. Cheblak was a Lebanese academic who had been given indefinite leave to remain in the United Kingdom in 1987. With the onset of the Gulf War in 1991, he was arrested and served with a deportation order on the ground that his deportation would be conducive to the public good.

60. Cheblak applied for both a Writ of Habeas Corpus and leave to apply for judicial review. He was unsuccessful with both applications at first instance. He appealed the refusal of the Writ of Habeas and renewed his application for leave to apply for judicial review.

61. Both aspects of the appeal were unsuccessful. The Master of Rolls, however, in the course of his judgment restated the importance of the writ of habeas corpus in these words:

> *"Habeas corpus is probably the oldest of the prerogative writs. Authorising its issue in appropriate cases is regarded by all judges as the first duty, because we have all been brought up to believe, and do believe, that the liberty of the citizen under the law is the most fundamental of all freedoms. Consistently with this, an application for a writ of habeas corpus has virtually absolute priority over all other court business".*[21]

[21] See R v. Secretary of State for the Home Department, Ex parte Cheblak [1991] 2 All ER 319, 322(g)

62. Lord Donaldson then proceeded to provide an incisive and illuminating analysis of the difference between the Writ of Habeas Corpus and applications for certiorari by way of judicial review. He had this to say:

> *"Although, as I have said, the two forms of relief which Mr. Cheblak seeks are interrelated on the facts of his case, they are essentially different. A writ of habeas corpus will issue where someone is detained without any authority or the purported authority is beyond the powers of the person authorising the detention and so is unlawful. 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. In the case of detention, if the warrant, or the underlying decision to deport, were set aside but the detention continued, a writ of habeas corpus would issue".*

63. The distinction between judicial review and the writ of habeas corpus was considered more directly in ***R v Secretary of State for the Home Department ex parte Muboyayi***.[22]

[22] R v Secretary of State for the Home Department Ex parte Muboyayi

This was a decision of the Court of Appeal, where once again, Lord Donaldson of Lymington was President of the Panel. It concerned the application of a citizen of Zaire for leave to enter the UK seeking political asylum. When Muboyayi's application was refused by the Secretary of State, he filed an application for a writ of habeas corpus. The Judge at first instance issued the Writ, following which the Secretary of State appealed. Muboyayi made an application for leave to apply for judicial review directly to the Court of Appeal.

64. He was unsuccessful in both appeals. The decision of the Court of Appeal was based on a finding that in an application for writ of habeas corpus, the Court would not investigate the propriety of a prior administrative decision.[23]

65. Lord Donaldson cited his earlier decision in ***Cheblak***, and quoting his analysis in ***Cheblak*** once again explored the difference between the remedies of judicial review and of habeas corpus. The choice between judicial review, as habeas corpus proceedings was considered in locally in ***Machado v CIO*** and AG of Trinidad and Tobago[24]. After considering the authorities of ***Cheblack***, ***Muboyayi*** and ***Sheik***,[25] Mr. Justice R. Mohammed held that Machado was challenging the acts of the Chief Immigration officer on the ground of procedural impropriety and that this was a ground

[23] See [1992] 1 QB 245
[24] CV 2020-11118
[25] R. v Secretary of State for the Home Department Ex parte. Sheik [2000] 12 WLUK 149

for judicial review.[26] Justice Mohammed then dismissed the application for a writ of habeas corpus on the finding that there was lawful authority to detain the Applicant.

66. Many years following the decisions of ***Cheblak***[27] and ***Muboyayi***[28], the Privy Council considered the ambit of the judicial enquiry in habeas corpus proceedings. In ***Cartwright and Another v. The Superintendent of Her Majesty's Prisons and Another***[29], Lord Steyn has this to say:

> "*The subject matter of the present case requires some consideration of the link between habeas corpus and judicial review. In R (on the application of Khawaja) v Secretary of State for the Home Department, Lord Scarman observed (111B-C): "There are, of course, procedural differences between habeas corpus and the modern statutory judicial review . . . in the instant cases the effective relief sought is certiorari to quash the immigration officer's decision. But the nature of the remedy sought cannot affect the principle of the law. In both cases liberty is in issue. 'Judicial review' under RSC Ord 53 and the Supreme Court Act 1981 is available only by leave of the court. The writ of habeas corpus issues as of right. But the difference arises not in the law's substance but from the nature of the remedy appropriate to the case."*[30]

67. Two years later the Board endorsed its earlier position in ***Knowles v Government of United States***[31]. Their Lordships had this to say:

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[26] See Machado (supra) at paragraph [101]
[27] R v. Secretary of State for the Home Department, ex p Cheblak [1991] 1 WLR 890
[28] Regina v. Secretary of State for The Home Department, Ex Parte Muboyayi [1992] Q.B. 244
[29] Cartwright and Another v. The Superintendent of Her Majesty's Prisons and Another [2004] UKPC 10
[30] Cartwright and another v The Superintendent of Her Majesty's Prison and Another [2004] UKPC 10 para 16
[31] [2006] UKPC 38

"The Government suggested, in reliance on obiter observations of Hall JA in McDonald v R (Court of Appeal, Bahamas, 2 May 2001, unreported), citing Jean v Minister of Labour and Home Affairs (1981) 31 WIR 1, that the role of the Supreme Court on an application for habeas corpus in criminal proceedings (such as extradition) is to review the formal validity of an order for detention and not enquire into its substantial merits. This proposition cannot be accepted, for three compelling reasons. First, it is contrary to sound Bahamian authority: see R v Superintendent at Her Majesty's Prison Fox Hill, ex parte Darville (No 1) [1989-90] 1 LRB 128; R v Superintendent at Her Majesty's Prison Fox Hill, ex parte Bain [1989-90] 1 LRB 156. Secondly, it is contrary to English authority of high standing: Armah v Government of Ghana [1968] AC 192, [1966] 3 All ER 177, 131 JP 43. Thirdly, it is irreconcilable with ss 7 and 11 of the 1994 Act which expressly authorise the Supreme Court to enquire into specified aspects of the merits of the detention order which is challenged."

68. In 2007, in the case of ***Gibson v Government of USA***, their Lordships again revisited the issue of the breadth of habeas corpus proceedings.[32] Lord Brown held:

"It is impossible nowadays to argue that on an application for habeas corpus in extradition proceedings the court is confined to a review of the formal validity of the detention order and cannot, except by certiorari, enquire into its substantial merits."

69. Their Lordships have spoken with one voice. A Court, which is seized of habeas corpus proceedings, is not restricted to the narrow consideration of legality, but is empowered

[32] [2007] UKPC 52

to consider wider issues, which would normally arise on applications for judicial review. In the face of the recent Privy Council decisions one wonders why Senior Counsel for the CIO invited this Court to choose. There is no choice. In spite of the impeccable logic of Lord Donaldson in ***Cheblak*** and ***Muboyayi***, this Court is bound by the decisions of the Privy Council. It follows that even if wider issues had been raised by the Respondents in these applications, the Court's hands are not tied and the Court may unlock issues beyond the strictures of the legality of the detention.

70. That being said, it is noteworthy that the debate really does not arise in this appeal, where one finds no issue of a challenge to the underlying decision to deport. That was made, as we understand it in the related constitutional proceedings. What is challenged here is the legality of the very deportation order on which the CIO relies: whether on its face it is valid and therefore legal.

71. For this reason, we endorse the view of the Judge that there is nothing to prevent the Court from hearing this challenge by way of habeas corpus.

72. We proceed to consider the second aspect of the objection on the ground of abuse of process. On behalf of the CIO, Senior Counsel has argued that an application for a writ of habeas, in circumstances where there are extant constitutional proceedings, constitutes an abuse of the court's process.

73. According to Senior Counsel, at section 5(2) (c) (iv) of ***the Constitution***, there is a fundamental right to proceed by way of habeas corpus and that for this reason, the

application for habeas corpus should have been made in the context of the constitutional proceedings in the same way in which the Respondents obtained interim injunctive relief.

74. In our view this argument needs only to be stated to be rejected. Indeed, section 5 (2) (c) (iv) of ***the Constitution*** prohibits Parliament from depriving an arrested person of :

> "the remedy by way of habeas corpus for determination of the validity of his detention and for his release if the detention is not lawful."

75. The Privy Council in ***Thornhill v AG***[33] held that section 5 (2) of ***the Constitution*** constituted further and better particulars of the right to due process and the protection of the law at section 4 (a) and 4 (b) respectively. Indeed, therefore, an attempt on the part of state authorities to deprive the Respondents of their right to seek the remedy of habeas corpus would amount to contravention of their fundamental rights.

76. However, the effect of section 5(2) (c) (iv), far from suggesting that the remedy should only be sought in extant constitutional proceedings, confirms that the Respondents cannot be deprived of the remedy, where the validity of their detention is called into question.

77. The argument of the Respondent in our view compromises the right enshrined at section 5 (2) (c) (iv) and is therefore flawed.

[33] Thornhill v. AG [1979]UKPC 43

78. What the court is left with is essentially an 'alternative remedies' argument, that is to say that if the Respondent could have proceeded by way of the extant constitutional motion, they should opt to do so rather than institute fresh habeas corpus proceedings.

79. In this regard, the words of their Lordships in ***Lennox Phillips v AG***[34] are apt. The well-known facts of Lennox Phillips begin with an insurrection by members of Jamaat al Musilmeen, following which the insurgents were granted a pardon. A number of them instituted constitutional proceedings to challenge their prosecution, in light of the fact that they had received a pardon. A number of them also implemented the remedy of habeas corpus.

80. Hearing an argument that the validity of the pardon would be tested in the course of criminal proceedings their Lordships noted that;

> *"the incalculable value of habeas corpus is that it enables the immediate determination of the right to the Applicants freedom"*[35]*.*

Ultimately, their Lordships held that the applicants were not to be deprived of their fundamental right by the existence of an alternative remedy. Lord Ackner had this to say:

> *"It is unfortunate that the application for habeas corpus did not receive the painstaking consideration given to the constitutional appeal. If this application had been taken first it might have been more readily appreciated that the*

[34] See Lennox Phillips [1992] 1 AC page 558
[35] See Lennox Phillips [1992] 1 AC page 558 C.

applicants had made out a clear prima facie case that they were unlawfully imprisoned and therefore entitled to the writ as of right. 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 the detention. The applicants are not to be deprived of this fundamental right by the existence of some alternative, but in the circumstances, some wholly unsatisfactory remedy."

81. It is therefore clear that the application for habeas corpus cannot be refused because of the existence of an alternative remedy. We note further that it is doubtful that the constitutional proceedings in fact offer an alternative remedy. It is questionable whether a writ of habeas corpus could be issued in the midst of constitutional proceedings and if it could the applicant would obtain an interim order, pending the final determination of the proceedings. This would be unsatisfactory because a finding that the detention is illegal ought only to be followed by the absolute and not the interim release of the detainee.

82. The second ground of abuse of process is also dismissed. We proceed to consider the second ground of appeal.

Affidavits

83. Should the view expressed supra be correct, that is to say that a Court hearing an application for habeas corpus can properly investigate the underlying decision, it seems inevitable that the detainer should be permitted to file affidavits. Indeed, it is within living memory, where courts, hearing applications for habeas corpus would issue directions for the filing of affidavits. Accordingly, we agree in principle with Senior Counsel for the CIO.

84. What troubles us however, is that there is nothing in the record before us to suggest that an application for the filing of affidavits was either made or refused. In these circumstances, there is no order of the Judge that could either be challenged or set aside.

The Effect of the Interim Orders

85. Justice Quinlan-Williams considered the effect of interim orders in respect of both Contrera and Torres. The circumstances of the orders were however different and will therefore be considered separately.

86. In the case of Torres, an interim order had been made in the context of the related Constitutional proceedings by Charles J. The terms of the order were:

"The Respondent (the Attorney-General) is to refrain from taking any steps to remove the Claimant from the jurisdiction pending the determination of this Application…."

87. The Judge quickly disposed of this issue by saying at paragraph 50:

"There is no issue where there is a subsisting injunction preventing any steps from being taken to remove the applicant from the country."[36]

88. This finding was challenged at Grounds 10 and 12 of the Notice of Appeal. In support of these grounds , Mr. Hosein, for the Appellants relied heavily on ***Jaswinder Singh***[37]. We will considered this case in depth.

89. Jaswinder Singh was a decision of the Court of Session, Outer House of Scotland. Singh entered the UK illegally and applied for political asylum in 1994. His application was refused and a removal order issued against him. Singh exhausted the available avenues of challenge and eventually applied for leave to apply for judicial review of the decision to refuse his application for bail. Singh obtained an interim liberation order.

90. There was a second application for leave to apply for judicial review. This was against the decision to deny him political asylum.

91. Several months later (December 1994), Singh was detained with directions for his removal. The removal direction was quickly cancelled, Singh remained in detention, but

[36] See the reasons of the Judge of paragraph 50

[37] ***Re Jaswinder Singh*** Scottish Transcripts Archive [1996] Lexis Citation 528

was released by reason of a mistaken identity. At the date on which the matter was heard and determined Singh was not in detention.

92. The matter which engaged the attention of the Court was whether the Secretary of State for the Home Department had acted in contempt of Court by issuing a removal order in breach of his undertaking.

93. It was asserted on behalf of Singh, that the Secretary of State had made general undertakings in numerous unreported cases to the effect that no steps will be taken towards the removal from the UK of someone such as Singh, once the Secretary of State is aware of a petition for judicial review.

94. Lord Gill, who decided the Motion, set out the undertaking to the effect that the Secretary of State will refrain from removing or deporting a person who has raised proceedings for judicial review unless and until those proceedings have been finally determined in the respondent's favour.

95. It was accepted that this undertaking had not been formally recorded by the Court. Lord Gill expressed the view that the undertaking was more akin to a general statement of policy than to the kind commonly given to the Court.

96. Lord Gill held that where an undertaking is made by a Minister of the Crown, but not formally recorded and parties differed as to the terms of the undertaking, the Court will proceed on the basis that the terms of the undertaking are those given by Counsel for the Minister.

97. In arriving at this conclusion, Lord Gill took into account the consequences which will flow from opposing interpretation. He noted that the interpretation offered on behalf of Singh could lead to unreasonable results Lord Gill has this to say:

> *"On that interpretation, an applicant for judicial review with a proven record of hiding would be immune from detention the moment his petition is lodged."*

98. We do not hold the view that ***Re Jaswinder Singh*** is applicable to the Respondent Torres, in respect of whom, the injunction of Charles J were clear and expansive.

99. Surprisingly, no objection was taken on behalf of the Attorney General as to the correctness or availability of an order enjoining the Attorney General. By s. 22(2) of the ***State Liability and Proceedings Act***[38] an injunctive order may not be made against the AG . Nevertheless, the order of Charles J was an order of a court of competent jurisdiction that has been perfected and has not been set aside on appeal. It does not therefore fall to us to question the correctness of the order.

100. The terms of the Order of Charles J are clear. The Attorney-General, as the representative of the multi-headed hydra of the State, is prevented from taking any steps to remove the Claimant from Trinidad. The first step that may be taken towards removing the Claimant is the issuing of a deportation order which was made against Torres was in breach of the Order of Charles J and therefore ought to be set aside.

[38] The State Liability and Proceedings Act Ch. 8:02

101. We therefore agree with the Judge's summary disposition of this issue. The detention is unlawful simpliciter and there is no need to proceed to consider the second limb of the Hardial Singh principles.

102. In our view, the case of ***Jaswinder Singh*** is distinguishable from Torres. Lord Gill was careful to make it clear that the undertaking in Jaswinder Singh was an informal undertaking that had not been formally recorded by the Court. It was an undertaking which was made consensually.

103. In the case of Torres, however we encounter not an undertaking, but the Order of a Court of competent jurisdiction. The order was formally recorded by Justice Charles and perfected with the imprimatur of the Registrar of the Supreme Court.

104. It is therefore our view and we hold that the issue of a deportation order, being a step towards the removal of the Respondent Torres, was enjoined by the Order of Charles J . It is accordingly illegal and in incapable of providing justification for the detention of Torres. The Judge was correct in this regard.

Contrera

105. We turn to consider the deportation order against Nelysbeth Adriana Contrera, whose case differs from that of Torres.

106. The adult Contrera was not protected by an injunctive Court order. In her case, she was joined in constitutional proceedings which instituted on behalf of her son Zaid Jesus

Marcano Contrera in respect of whom, an undertaking had been made on November 25, 2020 from the Ministry of the Attorney General.

107. The claim on behalf of the minor Contrera was filed on November 25, 2020. In response to applications for an interim order releasing the minor, a letter was issued on behalf of the Attorney-General providing an undertaking of the terms which were set out at paragraph 29 of the Judgment of Quinlan-Williams J. They were:

> *"The Respondent (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".*

The terms of the letter were confirmed by an undertaking Senior Counsel for the Attorney-General on the following day, November 26, 2020.

108. On November 30, 2020, an amended fixed date claim form was filed. One of the amendments sought was the joinder of Contrera in the Constitutional Motion. The amendment was served on the Attorney-General. The Attorney-General acknowledged service.

109. When the amended fixed date claim came up for hearing before Quinlan-Williams J, the Court heard and refused applications for the use of cell phones by the claimants. The Judge also refused an application that meals could be brought to the claimants from 3rd parties. The Attorney-General agreed, however that the undertaking given by letter of November 25, 2020 and relayed to the Court on November 26, 2020, do continue.

110. On January 12, 2021, in the face of the letter of undertaking, a deportation order was made against the adult Contrera.

111. The question which engaged the attention of the Judge and which now engages our attention is whether the undertaking of the Attorney-General impliedly protects Ms. Contrera and if so, whether such protection prevents detention and deportation or deportation only.

112. An undertaking made to the Court has the force of a Court order. Being an order of the Court it must be clear and specific. If it is ambiguous and if it affords more than one meaning, the order becomes difficult to fulfil and impossible to enforce.

113. The interpretation suggested on behalf of the Respondents and indeed accepted by the Judge, requires the Court to imply into the undertaking protection for the adult Contrera. In my view it would be wrong to imply terms into an undertaking.

114. The Attorney- at- law for Ms. Contrera could have quite easily made an enquiry at the Court proceedings. This was not done. The Court was asked only to order that the undertaking continue. The undertaking was only given in respect of the first Claimant, the child.

115. Even if at the time, there was an omission to ensure that Ms. Contrera was included in the undertaking, an enquiry could have been made subsequently through the Registrar of the Supreme Court. This was not done and it was the responsibility of Counsel for Ms. Contrera to ensure that the undertaking in favour if his client was clear.

116. According to the authority of ***Jaswinder Singh***, where an undertaking is given by Counsel for a State authority, ambiguities are resolved by adopting the interpretation placed on it by Counsel for the State.

117. We are acutely mindful of the remoteness of the authority of ***Jaswinder Singh*** from our own jurisdiction and that it is but persuasive authority. This case has not however been shown to be wrong and it seems to accord with logic and reason that the undertaking, being the emanation of the AG, should properly be interpreted by the AG or his representative. We therefore hold the view that the Judge fell into error in her interpretation of the undertaking. We hold that the undertaking continued only in respect of the minor Contrera unless and until it was explicitly varied by the Attorney General in whose name it was made.

118. In the event that we are wrong in this finding, we proceeded to assume that the undertaking was made in respect of the adult Contrera and considered whether it rendered the deportation order ineffective.

119. A clear reading of the undertaking suggests that there was no agreement to refrain from issuing the deportation order. The assurance was that it would not be effected until the hearing and determination of the Constitutional proceedings. The result of this finding is there was no illegality in the issue of the deportation order. Should a deportation order be issued however, it was agreed on by the Attorney-General that it would be ineffective pending the hearing and the determination of the Constitutional

proceedings. The deportation order would be incapable of execution but not in breach of the undertaking and therefore lawful. We hold therefore that the Judge fell into error in her view that the deportation order, in respect of Ms. Contrera was unlawful.

120. In so far as the deportation order was not invalid, it was capable of providing a ground under section 16 if the ***Immigration Act*** for Ms. Contrera to be the detained pending deportation.

121. We therefore hold the view that the Judge ought to have found that the initial detention was lawful and should have proceeded to consider the second limb of ***Hardial Singh***.

Hardial Singh

122. The principles enunciated by Lord Woolf in ***Hardial Singh***[39] have resonated through the decades and formed the centre piece of most cases of detention pending deportation.

123. In summary, Justice Woolf as he then was, recognised that there was no express limitation on the power of the Secretary of State for Home Affairs to detain pending deportation.

124. Justice Woolf held however that there were implied limitations. Firstly, detention pending deportation must be for the purpose of deportation and for no other reason. Secondly, detention, even for the purpose of deportation ought not to be unreasonably

[39] Hardial Singh [1984] 1 WLR 704

long. Whether or not detention is unreasonably long falls to be determined by the Judge having regard to all the circumstances of the case.

125. In our view, it is clear that the detention of Ms. Contrera was for the single purpose of her deportation pursuant to the deportation order issued on January 12, 2021. In this regard, the case of Ms. Contrera is distinguishable from Hardial Singh itself where detention was for the purpose of conducting criminal investigations. Contrera's case is also distinguishable from the local case of ***Troy Thomas v CIO***[40], where again the purpose of Thomas detention the conduct of investigations by the DPP[41].

126. The second category of cases in which detention, pending deportation has been held to have been unlawful are those where deportation has become impossible. In the case of ***Tan te Lam v Superintendent of Tai A. Chau Detention Centre***[42], their Lordships held that the deportation of the Appellants to Viet Nam had become impossible, since the policy of the Government of Vietnam was to refuse entry to persons, such as the appellants, who had not originated in that country. Since deportation had become impossible, there could be no genuine detention pending deportation.

127. Ms. Contrera's case is however distinguishable from ***Tan te Lam***. There is no comparable policy preventing Ms. Contrera's return to Venezuela. Ms Contrera does not even have the benefit of an injunction pending her deportation. She is free to go. It

[40] Troy Thomas v CIO CV 2019-00888
[41] Tan te Lam v. the Superintendent of Tai A. Chau Detention Centre [1997] A.C. 97
[42] [1992] AC 97

is to the credit of the immigration authorities that they have delayed her deportation pending the outcome of the constitutional proceedings of which she is a party. One presumes that, immigration authorities have held their hands in deference to the administration of justice, since the deportation of Ms. Contrera will render the constitutional proceedings academic.

128. The third category of cases in which detention has been held to be unlawful are those where the detention has been regarded as unreasonably long. An example of this may be found in ***Christopher Odikabue v. CIO***[43] , in which Kokaram J (as he then was) held that the Applicant's detention was unreasonably long.

129. In determining whether detention pending deportation has become unreasonably long, the Court does not employ ***Wednesbury***[44] principles but considers whether in all circumstances, detention is unreasonable long.

130. The circumstances of Ms. Contrera are similar to those in the related matter of ***Martinez v. CIO***.[45] Ms. Contrera entered Trinidad illegally in November, 2020 at a time when the borders of Trinidad and Tobago were closed. She is a claimant in constitutional proceedings which are yet to be determined. The content of the constitutional proceedings has not been disclosed to this court. In our view, it is not unreasonable for the immigration authorities to observe a virtual stay of deportation

[43] Odikabue v. CIO CV 2016-2258
[44] Associated Provincial Picture Houses Ltd. v Wednesbury Corp [1948] 1 KB 223
[45] Martinez v CIO Civ App No. 026 of 2021

pending the outcome of the related proceedings. In order to defer to the administration of justice however, the CIO must be mindful of his responsibility to implement the provisions of ***the Immigration Act***, should the constitutional proceedings be determined against Ms. Contrera. The CIO will then be duty bound to give effect to the deportation order. This may become impossible to perform if Ms. Contrera absconds. In all the circumstances, the prospect of Ms. Contrera absconding is very real, having regard to her determination to enter Trinidad illegally at a time when its borders were closed because of a global pandemic.

131. We therefore hold the view that, having regard to all the circumstances, the detention of Ms. Contrera is not unreasonably long and has not become unlawful according to the Hardial Singh principles.

The Legality of the Deportation Orders

132. The third and final issue considered by the Judge was whether the failure of the deportation orders to identify the section, under which they were made, render them in breach of natural justice and therefore invalid. The Judge examined the Returns and observed that they clearly demonstrated that the Respondent relied on the deportation orders as a complete answer to the Writs of Habeas Corpus.[46] On the basis of this observation the Judge formulated these two questions:

[46] See paragraph 56 of the Judgment of Justice Quinlan-Williams

"a. In light of the undertaking and injunctions, can the detention be said to be for the purpose of deportation.

b. Are the deportations orders properly made under the authority of the Immigration Act."

The Judge's decision on the first question was considered above . We proceed to consider the second question .

133. In respect of the deportation orders, the Judge noted that they were patterned on the prescribed form, that is to say Form 19B. She observed that they omitted to identify the section under which the Deportation Order had been made.

134. The Judge summarised sections 9(5), 10, 11 and 22, as the various sections of the ***Immigration Act*** under which a deportation order could be made.[47] She noted that the Deportation Orders cited Section 8 (1) (p) and (q), but observed that these were not sections under which a deportation order could be made .

135. Section 8(1) (p) and (q) provide :

"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 –

[47] See para 67 of the Judgment

(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 i n the opinion of the Minister is reliable information or advice is likely to be an undesirable inhabitant of, or visitor to Trinidad and Tobago.

136. The Judge held that natural justice dictated that the Deportation Orders should provide sufficient information to identify the section under which the orders are made.

137. Ultimately, the Judge held that, even without reference to the injunction and the undertaking, the detention under the deportation orders was unlawful. Significantly, the Judge, though finding that the deportation orders were unlawful, fell short of striking them down.

138. The CIO challenged the decision at grounds (xiii) to (xvii) of the Notice of Appeal. They contended that the Judge herself had acted in breach of natural justice, since the validity of the deportation order did not form part of the Respondents case and was introduced by the Court. The Appellants contended further that the Court failed to give them a full opportunity to make representations.

139. Mr. Ramdeen, in his written and oral submissions , contended that the Judge was correct. Relying on ***Anufrijeva***[48], Mr. Ramdeen restated the long established principle that where Parliament confers decision-making power, there is an implied a duty to act according to the rules of natural justice. This included a duty to notify the person against whom the decision was made of the particulars of the decision. Counsel argued that the identification of the relevant section was necessary, since the Respondents would then have been placed to know whether they had a right of appeal. He asserted that it was no answer to say there was compliance with Form 19 B, since the layout of the form could have accommodated a statement as to the section, pursuant to which the deportation orders had been made[49].

140. We accepted as a matter of principle that there is an implication that a decision which is made pursuant to a statutory power must be made in accordance with the rules of natural justice. The Judge found that, according to those rules, the deportation orders were required to provide sufficient information to enable the Respondents to identify the section under which the orders are made.

141. In our view however, in so far as the deportation orders specified sections 8 (1) (p) and (q) of the Act, there was a clear allusion to section 11, which is the only one of the four sections which pertained to the prohibited classes of entrants.

[48] R v. the Secretary of State for the Home Dept Ex p Anufrijeva [2003] 3All E.R. 827
[49] See pages 44 and 45 of the Written Submissions for the Respondent.

142. This is borne out by a reading of the sections under which deportation orders may be made. Section 9 (5) is relevant to permitted entrants, while section 10 pertains to immigrants who have received a permit from the Minister . Sections 9(5) and 10 clearly have no relevance to these Respondents.

143. Section 22, being very different from the earlier sections, contemplates the issue of a deportation order, following the conduct of a Special Enquiry. Section 22 is likewise inapplicable.

144. In so far as we accept the Judge's view that natural justice would dictate that the deportation orders provide sufficient information to identify the sections under which they were made, we hold that reference to section 8(1) (p) and (q) was sufficient to enable the Respondents to identify the sections.

145. In any event, it is clear from the terms of section 8(1) (p) and (q) that they would have had no right of appeal. They therefore suffered no prejudice in being unable to discern, from an indication of the sections, whether or not they had a right of appeal.

146. We also accept Mr. Ramdeen's argument, that Form 19 B was capable of accommodating reference to the section, under which the deportation orders were made. The question which we must consider is the effect of these apparent omissions.

147. Mr. Hosein relied on ***R v Soneji and Another*** , where the House of Lords considered the effect of non-compliance with Criminal Justice Act of 1988, Their Lordships held:

"…the correct approach to an alleged failure to comply with a provision prescribing the doing of some act before a power was exercised was to ask whether it was a purpose of the legislature that an act done in breach of that provision should be invalid"[50]

148. Lord Steyn , delivering a decision ,with which the other law Lords agreed, traced the history of thinking on the failure to comply with a statute . He alluded to the core problem which is the failure of Parliament to spell out the consequences of non-compliance with statutory mandates.[51] Lord Steyn observed that this led to the evolution of the mandatory and directory requirements.[52]

149. His Lordship then alluded to the "new perspective" and set out the leading authorities including our own ***Herbert Charles v. JLSC***. [2003]2 LRC 422.

150. He then endorsed the ruling of the House of Lords in Attorney General's Reference (no. 3 of 1999) [2001] 2 A.C. 91, and held that the rigid "mandatory" and "directory" distinction had outlived its usefulness and instead *"the emphasis ought to be on the consequences of non-compliance and posing the question whether Parliament can be taken to have intended total invalidity …".*[53]

151. We proceeded to consider the facts of the appeals before us in the light of the very persuasive learning in ***Sonjei***, which establishes the principle that the relevant

[50] Sonjei [2006] 1A.C. 340
[51] Ibid at page 349A
[52] Ibid
[53] Ibid 353 E -F

consideration is the intention of Parliament and in particular whether Parliament intended that failure to provide the information in question would result in the invalidity of the deportation order.

152. We therefore considered the intention of Parliament as reflected in the Act. It seems that the answer to the question may be found in examining the plain meaning of the words of the statute, which do not require the deportation order to identify the section under which it was made.

153. In this way, the appeals which engage our attention are distinguishable from the ***Sonjei*** line of cases, where there was non-compliance with a provision of an Act of Parliament. In these appeals there was no question of non-compliance with ***the Act*** and the deportation orders could only be faulted if they failed to satisfy the implied requirements of natural justice. We have already held supra they had not failed to comply with natural justice.

Geelal

154. Following the hearing of the appeal, Mr. Ramdeen, for the Respondents requested that the Court consider the decision of the Court of Appeal in ***Primnath and Dhanrajie Geelal v AG of Trinidad and Tobago***[54]. Consequently, we gave directions for further submissions on the authority of Geelal.

[54] Primnath Geelal and Dhanrajie Geelal v Attorney General Civ Appeal No. S 274 of 2017

155. The facts of ***Geelal*** were, in brief, that the premises of appellant were searched on the morning of July 31, 2015 and a quantity of local and foreign currency was seized. A few days later Acting Sergeant Francis applied successfully for an order under the ***Proceeds of Crime Act*** (POCA) to detain the cash.

156. In a constitutional motion decided by the Court of Appeal, the appellants contended that the Magisterial Order was invalid since it had failed to specify the grounds for the continued detention of the cash.

157. The Court of Appeal considered whether there was a requirement implicit in the POCA, that grounds should be specified in the detention order. As a second issue, they considered whether any requirement to provide grounds was modified or satisfied by alternatives available to the Appellants. They considered further whether the grounds should have been supplied and finally the consequences of the failure to provide grounds.

158. The Court ruled that the POCA required that grounds be specified in the magisterial order. The reason for this view was that an applicant had the facility under the POCA of making an application for the return of the cash. According to the Court of Appeal, inherent in such an application is the need to know the grounds on which the ex parte order was made.

159. The Court of Appeal held that no alternative would suffice for the failure to provide grounds and that such failure would result in the invalidation of the order.

160. Mr. Ramdeen for the Respondents argued that the Deportation Order in this appeal was indistinguishable from the order in ***Geelal***. They were both made ex parte, and so were made without affording the respective applicants an opportunity to be heard. Secondly the prescribed form in ***Geelal***, though published after the impugned order did not require that grounds be specified.

161. Mr. Ramdeen submitted that the deportation orders here were even more unsatisfactory than that in ***Geelal***, since they pertained to the liberty of the subject while, Geelal concerned property. Mr. Ramdeen submitted that it was axiomatic that if the source of power is not known, the exercise of power cannot be challenged.

162. Mr. Ramdeen submitted that at common law an individual had a right to know the section under which an order was made.

163. Mr. Hosein, while accepting the correctness of ***Geelal*** distinguished it from the present appeal. Senior Counsel contended further that the failure of the deportation orders to specify the section pursuant to which they were made formed no part of the case for the Respondents.

164. The principle to be distilled from ***Geelal*** is one embedded in the rules of natural justice. In our view, the principle could be stated in this way: where administrative or judicial orders have the effect of depriving an individual of one of their fundamental rights, the Order should specify the ground upon which it is being made. The underlying reason is that an individual who has been deprived of a fundamental right, is entitled to know the

ground for such deprivation, so as to enable him to mount an effective challenge to the order. The result is that the order would be rendered invalid.

165. According to the Court of Appeal in ***Geelal***, an alternative will not suffice. It is no good answer to say to the object of the Order that they ought to have known the grounds or that they could have figured it out.

166. We accepted the correctness of ***Geelal*** without reserve and assessed its impact on this appeal. However, we found distinctions between ***Geelal*** and the present appeal. The Court of Appeal in ***Geelal*** held that the order of the Chief Magistrate ought to have specified grounds. When the person from whom cash has been seized seeks to recover the cash, they must show that the grounds on which the cash was seized have ceased to exist. See section 38 (7) of POCA.

167. It is also clear that ***Geelal*** arose out of the exercise of powers conferred by the POCA, which established an elaborate structure for seizure and recovery of cash. An examination of those sections discloses that there is intricate provision for the approach of the seizing officer for a Magisterial Order and there is an equally intricate procedure, whereby the person, from whom the cash is seized, may seek its recovery.

168. It is clear that the underlying reason for this complex structure is the recognition that there is an incursion into the right of the holder of the cash.

169. There is no comparable intricacy under the ***Immigration Act***, particularly in respect of the deportation of prohibited entrants, a class into which the Respondents fell. The

Minister issues the deportation order. He does not have to seek an order of a Magistrate or the other judicial officer and there is no appeal from the Minister's decision. It is probable that the rationale for the apparent simplicity of the procedure is that the members of the prohibited class have no right to remain in Trinidad and therefore, no right to resist deportation. See section 3 of the ***Immigration Act***. In this way they are eminently distinguishable from the person from whom cash is seized under POCA.

170. This Court recognises that the status of the prohibited entrant is subject to change if the Respondents are eventually successful in their Constitutional Motion. They will then be treated not as prohibited entrants but as refugees. However, until that event occurs, they are bound by the terse and non-negotiable terms of ***the Immigration Act*** that they have no right to be in Trinidad and Tobago.

171. We therefore considered the impact which ***Geelal*** had on the present appeal. It seemed to us that the essence of the principle applied in ***Geelal*** was that the deportee was entitled to be informed of the ground of the deportation order, so as to equip them to challenge the deportation.

172. We examined the deportation order, as well as the written judgement of Quinlan-Williams J and find that what was omitted were the sections of ***the Act***, on which the Minister exercised his power of deportation. The grounds, however have been stated. The grounds are as stated in the deportation order that the Respondents fell into the class of immigrants prohibited by section 8 (1) (p) and (q) of the Act.

173. The relevant section is a matter of law. Not only are persons, including immigrants, presumed to know the law, but they were represented by eminent and learned Counsel. Having been supplied with the grounds, it was possible to locate the section upon which the power was exercised.

174. It is therefore our view that the Judge fell into error in her assessment of the deportation orders. Her findings in this regard must therefore be set aside.

Disposition

175. In respect of Torres, the Judge was correct in her view that the deportation order was in breach of the interim injunction of Charles J. Our finding as to the effect of ***Geelal*** has no effect on Torres and the appeal in respect of Torres is dismissed.

176. In respect of Contrera, the appeal is allowed in so far as we hold that Ms. Contrera is not protected by the interim undertaking. Moreover, the grounds were adequately stated in the deportation order to enable her to mount a challenge. We disagree with the Judge that the deportation order is in breach of natural justice and therefore invalid. The appeal is therefore allowed in respect of Ms. Contrera.

177. We will hear the parties on costs.

Dated the 16th day of December ,2021

Mira Dean Armorer JA