REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2023-02854

In the Matter of an Application for Leave to Apply for Judicial Review Pursuant to Part 56.3 Of the Civil Proceedings Rules, 1998 And Pursuant to Section 6(1) of the Judicial Review Act, Chapter 7:08.

BETWEEN

ABRAHAM JOSE RAUSSEO LOPEZ

1st Named Applicant/Intended Claimant

ANTONIO JOSE LEON SIFONTES

2nd Named Applicant/Intended Claimant

ANYELA PAOLA VELASQUEZ FUENTES

3rd Named Applicant/Intended Claimant

GREIBAN GABRIEL MARTINEZ PAUL

4th Named Applicant/Intended Claimant

KIRVER EDUARDO SERRANO NUNEZ

5th Named Applicant/Intended Claimant

LUIS ADRIAN JAIME VELASQUEZ

6th Named Applicant/Intended Claimant

CARLOS JHOANERSON ARVELAEZ

7th Named Applicant/Intended Claimant

ANGEL EZEQUIEL RAMOS TENIAS

8th Named Applicant/Intended Claimant

LUIS JOSE RAMOS

9th Named Applicant/Intended Claimant

MILAGRO DEL VALLE FARIAS MERCHAN

10th Named Applicant/Intended Claimant

CARLOS ENRIQUE GUEVARA GIRON

11th Named Applicant/Intended Claimant

GHILMER ANDRES SALAZAR TRILLO

12th Named Applicant/Intended Claimant

DIOMARLIN JOSE MARTINEZ

13th Named Applicant/Intended Claimant

ANGEL DAVID CARABALLO REYES

14th Named Applicant/Intended Claimant

ROSA ANGELA GUERRA GOITIA

15th Named Applicant/Intended Claimant

LUZ SAMANTHA GONZALES PINERUA

16th Named Applicant/Intended Claimant

KELLY YOJANNA MARTINEZ

17th Named Applicant/Intended Claimant

ZOINA DEL CARMEN NORIEGA ARCIA

18th Named Applicant/Intended Claimant

FREDIANNIS MARIA SANCHEZ ESPINOZA

19th Named Applicant/Intended Claimant

ANJEL EDUARDO MARQUEZ SIFONTES

20th Named Applicant/Intended Claimant

FREDDY LEONARDO ZORILLA CENTENO

21st Named Applicant/Intended Claimant

REINA CAROLINA MONTANO GONZALEZ

22nd Named Applicant/Intended Claimant

KEIBER JOSE MORALES MACHADO

23rd Named Applicant/Intended Claimant

YEISON JOSE CONTRERAS FUENTES

24th Named Applicant/Intended Claimant

LOURDES YANEX LEIVA AGUIRRE

25th Named Applicant/Intended Claimant

INDIRA COROMOTO GARCIA

26th Named Applicant/Intended Claimant

GENESIS VANESSA HERNANDEZ RODRIGUEZ

27th Named Applicant/Intended Claimant

FRANCIS DEL VALLE RAUSSEO PACHECO

28th Named Applicant/Intended Claimant

ELIANNY ADRIANA RAUSEO CEDENO

29th Named Applicant/Intended Claimant

CELSO TOMAS LOPEZ CENTENO

30th Named Applicant/Intended Claimant

ROSELIS DEL VALLE LEZAMA

31st Named Applicant/Intended Claimant

JEISON DANIEL ROJAS URBANEJA

32nd Named Applicant/Intended Claimant

LIZ MARIELA DEL C FERNANDEZ FUENTES

33rd Named Applicant/Intended Claimant

NIBSEN JOSE RAUSEO CEDENO

34th Named Applicant/Intended Claimant

PEDRO MIGUEL SALAZAR NORIEGA

35th Named Applicant/Intended Claimant

YARIVI DEL VALLE NORIEGA LETIDEL

36th Named Applicant/Intended Claimant

WILDRE FRANCISCO CALDEA LEZAMA

37th Named Applicant/Intended Claimant

EDUARDO MANUEL GARCIA DIQUE

38th Named Applicant/Intended Claimant

ANTONY GREGORIO CHAUNDARY LEON

39th Named Applicant/Intended Claimant

EULISMAR NADIUSKA ARZOLAY BERNARD

40th Named Applicant/Intended Claimant

KARINA DEL VALLE FRONTEN

41st Named Applicant/Intended Claimant

ELMA YSABEL BLANCO

42nd Named Applicant/Intended Claimant

JOSE FRANCISCO MARTINEZ LOPEZ

43rd Named Applicant/Intended Claimant

MABEL ROSMERY CENTENO DE LOPEZ

44th Named Applicant/Intended Claimant

MARITZI ROSMERY CENTENO MARCANO

45th Named Applicant/Intended Claimant

SINAI ALEXAIDY CORTEZ ZAVALA

46th Named Applicant/Intended Claimant

PASTORA DEL CARMEN TOVAR HARREAZA

47th Named Applicant/Intended Claimant

MIGUEL ANGEL JOSE YANCE FUENTES

48th Named Applicant/Intended Claimant

DIANNORY DEL VALLE BRICENO SALAZAR

49th Named Applicant/Intended Claimant

EVA KATHERINE CAMPANA PACHECO

50th Named Applicant/Intended Claimant

LUISA MARIA SALAVAERRIA HERRERA

51st Named Applicant/Intended Claimant

EUKARIS KATTERIN GUERRA HERNANDEZ

52nd Named Applicant/Intended Claimant

JUAN MANUEL ACOSTA

53rd Named Applicant/Intended Claimant

FELIX JOSE BOMPART MARTINEZ

54th Named Applicant/Intended Claimant

LUIS FERNANDO HERNANDEZ RODRIGUES

55th Named Applicant/Intended Claimant

ROGELIS DEL LOS ANGELES MARQUEZ VALDERRAMA

56th Named Applicant/Intended Claimant

JOSE JULIAN GARCIA MADRID

57th Named Applicant/Intended Claimant

SAUL ALEJANDRO PEREZ ACOSTA

58th Named Applicant/Intended Claimant

ELINOIDES DEL VALLE URBAEZ FIGUEROA

59th Named Applicant/Intended Claimant

CRISTIAN CEDENO

60th Named Applicant/Intended Claimant

SAVI ALEJANDRO PEREZ

61st Named Applicant/Intended Claimant

LEIDA MARIA ARAMBULET GONZALES

62nd Named Applicant/Intended Claimant

CEASAR JOSE BOMPART

63rd Named Applicant/Intended Claimant

MARIA ALEJANDRA MARTINEZ SUBERO

64th Named Applicant/Intended Claimant

AND

THE MINISTER OF NATIONAL SECURITY

Respondent/Intended Defendant

Before the Honourable Mr. Justice R. Rahim

Date of Delivery: August 8, 2023.

Appearances:

Applicants: E. Prescott SC, C. Williams and S. Mohan instructed by B. Sobrian.

Respondent: G. Delzin, V. Gopaul, S. Singh, A. Romain instructed by V. Jardine and A. Mohan.

1. The sixty four applicants have made an application for leave to institute Judicial Review proceedings and an application for interim relief filed August 2, 2023. The applicants are all nationals of Venezuela who were detained on July 9, 2023 and kept at a facility loosely referred to as "The Heliport" at Chaguaramas where they remain to date. The information set out in the affidavit in support of the applications show that from July 13, 2023 to July 24, 2023, the respondent issued deportation orders against all of the applicants (save and except for Miguel Angel Jose Yance Fuentes the 48th named applicant) under sections 8(1)(p) and (q) of the **Immigration Act** Chapter 18:01. In respect of the 48th applicant his deportation order was made on April 30, 2022. All of the deportation orders were subsequently served on the applicants. It is therefore accepted by them that they are the subject of orders of deportation.

2. In the grounds set out in the application, the applicants have accepted that there is no legislation in this jurisdiction that provides the detention and treatment of persons who either seek Refugee or Asylum status or are considered to be such by the United Nations High Commissioner for Refugees (UNCHR). In that regard they accept that this is the case notwithstanding that Trinidad and Tobago acceded to the 1951 Geneva Convention on the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees.

3. The notice of application describes all of the applicants as citizens of Venezuela and protected refugee/asylum seekers protected by the UNCHR. However the affidavit in support of the applications sets out that only two of the applicants are in fact registered with the UNHCR as registered refugees while two others have engaged the process to be so registered. The respondent has submitted that the application is vague in respect of the other applicants. The court is willing however to treat all applicants as persons who have embarked on the process of having themselves registered by the UNCHR as it is clear that this appears on the face of it to have been the intention of all of the applicants and further, whether they are or are not matters not to the issue before this court.

4. Finally by way of introduction, the Heliport facility was designated an Immigration Station on July 25, 2023.

5. In determining both the application for leave and the application for interim relief the court has made no findings of fact whatsoever as its remit at this stage is narrowly defined in law.

THE CHALLENGE

6. The application clearly sets out that the applicants wish to mount challenges to two decisions namely, the failure of the respondent to release the applicants pending determination of their applications to the United Nations High Commissioner for Refugees and the decision to continue their detention at the Heliport immigration station pending determination of their applications to the United Nations High Commissioner for Refugees.

THE GROUNDS OF THE CHALLENGE

7. That the respondent has failed to perform what the applicants have referred to as his public duty to release them on orders of supervision pursuant to section 17 of the Act pending the outcome of their applications to the United Nations High Commissioner for Refugees. The application refers to this as the principal ground of the challenge.

8. That the respondent issued orders of deportation and continued to detain the applicants at the Heliport notwithstanding that the applicants wish to have their status determined by the UNHCR.

9. At the onset the court notes that contrary to the submissions made by the applicants, there is no challenge in the pleaded case to the issue of the lawfulness of detention prior to July 25, 2023 at which time the Heliport was not designated an immigration station on the basis that their detention was unlawful by virtue of that fact. This simply does not arise for consideration either directly or by reasonable inference to be drawn from the pleaded case. In that regard the evidence in support of the application demonstrates that attorneys for the applicants have complained to the respondent on several occasions by way of letters of the deplorable conditions in which the applicants are kept.

Quite alarmingly those conditions appear to include allegations of sexual abuse by those entrusted with the duty to protect the detainees. This I shall return to later. Suffice to say that it is in this context in which the court understands a possible challenge to have been to the decision to continue detention at the Heliport facility. However this is not what was argued in submissions by the applicants. Their oral submission was one based on lawfulness of detention as a consequence of the non-designation of the facility as an immigration station.

LEAVE

The Test for the Grant of Leave

10. The test is well known and settled. The applicants must demonstrate an arguable case with a realistic prospect of success, subject of course to the bars of delay and alternative remedy. The purpose of the test is that of weeding out wholly unmeritorious claims, to prevent the time of the court being wasted by busy-bodies with misguided or trivial complaints of administrative error and to remove the uncertainty in which public officers and authorities might be left wondering whether they could safely proceed with administrative action while proceedings for judicial review of it were actually pending even though misconceived. The does not propose to traverse the relevant authorities that are well known but directs itself in terms of the dicta of those authorities. They include but are not limited to Steve Ferguson, ***Ishwar Galbaransingh v AG***[1], ***Satnarine Sharma v Carla Brown-Antoine***[2], the very helpful and articulate dicta of the His Lordship the Chief Justice in ***Wayne Munore and Others v Maxie Cuffie and others***[3] commonly referred to as the election petition cases, and ***Devant Maharaj v Petrotrin***[4].

Preliminary Point on Ouster

11. The respondent has relied on the ouster provision in **section 30 of the Act** which reads as follows;

[1] Civ. App. No. 207 of 2010
[2] [2007] 1 WLR 780
[3] CA S 229 to 234 and 235 to 240 of 2015
[4] [2019] UKPC 21

"No court has jurisdiction to review, quash, reverse or restrain or otherwise interfere with any proceedings decision or order of the Minister, the Chief Immigration Officer…."

12. In ***Beverley Burrowes and others v The Attorney General and Chief Immigration Officer***[5], Justice Dean-Armorer as she then was dealt with the issue of the ouster clause in definitive manner at paragraphs 35 to 38 as follows;

> 36. *The authorities on the effect of an ouster provision establish that a Court may inquire into the validity of the exercise of any power, but must limit its inquiry to ascertaining the existence and scope of the power and not consider the sufficiency of the ground on which it has been exercised. See* ***Francisco Jose Martinez Centeno v. Chief Immigration Officer HCA*** *No. 969 of 1981.*
>
> *37. The Court also has the power to review decisions on the grounds of a breach of natural justice and of taking into account irrelevant factors. See Rajendra Ramlogan,* ***Judicial Review in the Commonwealth Caribbean****.*
>
> *38. The Court therefore retains its jurisdiction, where the ground for review is directed at bias, procedural unfairness or lack of jurisdiction. Accordingly, there was no barrier to my considering these grounds, as canvassed by the Claimants.*

13. There has been no challenge to that dicta in this case and the ratio has in fact been accepted by all parties. The court also accepts her Ladyship's dicta and approach to be entirely consistent with the law on ouster clauses and in particular in relation to the ouster provision contained in section 30.

14. In this case however, the challenge as articulated is whether the respondent has failed to exercise his public duty to release the applicants on orders of supervision pursuant to section 17 of the Act

[5] CV2016-01749

pending the outcome of their applications to the United Nations High Commissioner for Refugees. In respect of the present challenge the court would be limited on the substantive claim to examining whether the duty and power so to do under section 17 exists and the scope of the power if it does exist. The court would however be prohibited from considering the sufficiency of the grounds upon which such power was exercised. It is in this context that Learned Senior Counsel for the applicants have accepted that a court would not be required to determine whether the reasons for continued detention if any were provided, were sufficient. This court must therefore determine whether there is an arguable case with a realistic prospect of success that the power does in fact exist by way of section 17 and whether the respondent was duty bound to consider the exercise of that power. The ouster clause therefore does not adversely affect the application for leave in so far as this challenge is concerned.

15. In relation to the second challenge, namely the decision to continue detention at the Heliport, the argument of the applicants has been (although not pleaded) that the applicants were unlawfully detained at a place that was not an immigration station and so their detention is open to challenge on that basis.

16. According to their argument, the detention was unlawful ab initio and so the unlawfulness of the detention means that the ouster provision cannot apply. The court does not accept this argument in the face of the uncontested facts of this case. It is clear that the detention of the applicants even if it was at the highest unlawful before July 25, 2023 became lawful from that date by virtue of the designation of the Heliport as an immigration station. So that at the highest the applicants may be entitled to damages in tort for unlawful detention for the period should they be able to prove their case. This is separate and apart from the issue as to whether their <u>continued</u> detention at the Heliport is lawful. On the face of it the argument that their continued detention is unlawful because they had been unlawfully detained prior to the designation is a wholly unmeritorious one in that is not sound in law and therefore holds no realistic prospect of success and the court so finds. In that regard the court is of the view that the ouster clause would not have applied in so far as the challenge was one to the jurisdiction to continue to detain at a place that was not designated an immigration station when first detained. However the challenge so set out is with the greatest of respect of no legal logic

and is bound to fail in any event, the issue of detention of the applicants at an immigration station having been resolved. In so saying it must be emphasized that the challenge was that to the ***continued*** detention at the Heliport only on the basis articulated in the grounds.

ISSUE OF LEAVE ON THE REMAINING CHALLENGE

The existence and scope of the power

17. Section 17 of the Immigration Act reads;

> *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.*

18. Contrary to the submission of the respondent, on a plain and ordinary reading of the subsection it is clear that the Chief Immigration Officer (CIO) is vested with the power (subject to an order or direction to the contrary by the Minister) to place an individual who is awaiting deportation on an order of supervision. Firstly the section is not a stand-alone section but is a corollary to the section that precedes it namely section 16 which reads;

> *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.*

19. The general rule is that pursuant to section 16, where a deportation order has been made against the person, that person may be detained pending deportation. Section 17 further provides that such a

person may however be released on an order of supervision (called a conditional release) on the condition that he reports for his deportation at the time and place given to him. In such a case a security deposit as is satisfactory to the Chief Immigration Officer is made, to be forfeited in the event of non-compliance.[6] In the view of the court the section is pellucid in its application to persons in respect of whom deportation orders have been made.

20. Secondly, the power is restricted by order or direction of the Minister to the contrary. It follows therefore that the Chief Immigration Officer is empowered to act in his own deliberate judgment in determining whether a person who is the subject of a deportation order ought to be placed on an order of supervision. In so doing there may be many considerations which may include but are not limited to the following;

    i. Any ties to the community.

    ii. Any special circumstances of the deportee, for example any medical need that cannot be treated with while in custody.

    iii. Any criminal record of the deportee so that the CIO may form the view that the deportee should not be released in the interest of public safety.

    iv. The likelihood that the deportee will appear to face deportation bearing in mind that deportation is the final stage of the process provided for in the Act and the consequences thereof.

    v. Whether the respondent has the resources to detain a deportee or a large number of deportees in circumstances that allow for treatment with the dignity and protection of human rights expected by all persons detained by the state.

    vi. The length of time it may reasonably take to make arrangements of deportation.

[6] See section 17(2) of the Act.

21. The list is not an exhaustive one and such considerations are often times also dictated by the individual circumstances of the deportee. In the end it remains within the good sense of the CIO to make such a decision. That decision is of course subject to an override as it were by the Minister. The court also notes that the challenge in the present case has not been to the unreasonableness or unfairness of the exercise of the discretion by the CIO in relation to the failure to place the applicants on orders of supervision.

Have the applicants demonstrated an arguable case that there exists a duty on the part of the Minister to consider an order of supervision when making the order of deportation

22. In the present case, the applicants say that there was a positive duty on the Minister or the CIO to consider whether an Order of Supervision should be made once a deportation order is made. The respondents have argued that section 17 does not apply to persons in respect of whom deportation orders are made so that no such duty exists. This court has formed the view as set out above that there is an arguable case with a realistic prospect of success that section 17 does in fact apply to a person in respect of whom a deportation order has been made. The issue therefore is whether there is equally an arguable case with a realistic prospect of success that section 17 imposes a duty on the Minister to consider a release on an order of supervision.

23. The starting point is of course the section itself. Section 17(1) vests the decision in the CIO to determine whether the person ought to be placed on a supervision order after a deportation order is made. The scheme of the legislation is that a report is forwarded to the Minister who then either acts on the recommendations set out in the report or not. In either case he exercises his own deliberate judgment. It follows that unless the Minister has decided to and does issue an order of deportation, section 17(1) is not applicable. In other words, the act that triggers consideration of whether an order of supervision is to be made is the act of the imposition of the order of deportation. In the present case, the Minister is the public authority who would have made the order on July 25, 2023 on the information before the court, but there is no information as to whether the CIO subsequently considered the issue of an order of supervision. Supervision is not a matter for the Minister under the section unless he is directing otherwise. This means that unless the CIO is of the view that an order of

supervision ought to be made, there can be no order of direction to the contrary by the Minister having regard to the wording of the section.

24. It seems to the court on the face of it that that is quite a different matter from imposing a duty on the Minister to consider an order of supervision at the time he makes the deportation order. The legislation makes no expressed provision and neither does it appear to be implied from the words. In any event, in the view of the court, should the legislature have intended to impose such a duty it would have expressly done so. The section appears to recognise that the imposition of an order of supervision is an administrative one to be determined in all of the circumstances by the CIO but subject to contrary direction by the Minister.

25. The court therefore does not accept the argument that the duty lies at first with the Minister to consider whether an order of supervision must be made when making the deportation order. It is only if such an order is proposed to be made by the CIO is the Minister entitled to essentially consider and veto same. It appears to the court therefore that the Minister's duty emanates from the power of veto or override and does not arise ab initio when the order of deportation is being made. It is also to be noted that the applicants have provided no authority to support their argument that such a duty exists. The applicants have therefore failed to satisfy the court that there is an arguable case with a realistic prospect of success that such a duty was imposed on the Minister when making the order of deportation.

OTHER CHALLENGE RAISED BY THE APPLICANTS

26. The applicants raised the failure of the respondents to deport them within a reasonable time in their grounds set out at paragraph D 11 of the Notice of Application. In the view of the respondent this was the gravamen of the complaint of the applicants in the first place when all is distilled. The deportation orders were made between the 13th to 16th July 2023 and some three weeks have elapsed up to the date of filing the application. It is well established that the power to detain in such circumstances shall be only for such reasonable period as is necessary to effect deportation. (see the discussion of relevant authorities by Justice D. Rampersad in ***Luisa Fidela Velasquez Hernandez v Chief Immigration Officer*** CV2021-02230). In ***Luisa Fidela Velasquez Hernandez v Chief Immigration***

Officer[7] my brother Rampersad J considered the relevant authorities regarding detention. At paragraph 17 the Honourable Judge quoted the privy Council decision of ***Naidike v The Attorney General of Trinidad and Tobago***[8];

> *17. Their Lordships were of the respectful view:*
>
> > *"48. The regrettable fact is that section 15 (and, indeed, certain other sections in this part of the Act) contain a number of puzzling features. 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 the liberty of the subject without making it clear that this was its intention."*

He further stated;

> *19. In* ***Odikagbue vs. Chief Immigration Officer & Or*** *CV2016-02258, Kokaram J also said:*
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> > *"17:40 The Courts will jealously guard the liberty of the person and will require clear words in a statute to take away liberty and to interfere with fundamental rights. Broad statutory discretions to detain will be construed narrowly and strictly ensuring that they are only exercised for the proper statutory purpose. There is no statutory timeline placed on administrative detention but the power is impliedly limited to a duration and circumstances consistent with that statutory purpose and which are reasonable."*

In the seminal case of ***R v Governor of Durham Prison ex p Hardial Singh*** *[1984] 1 All ER 983,* Rampersad J went on to say;

> *20. Of course, this is in keeping with the Hardial Singh principles emanating from the case of* ***R vs. Governor of Durham Prison ex parte Singh****:*

[7] CV2021-02230
[8] [2004] UKPC 49

"Although the power which is given to the Secretary of State in para 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 authorized 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. Second, 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 on the circumstances of the particular case. What is more, if there is a situation which it is apparent to the Secretary of State that he is not going to be able to operate the machinery provided in the Immigration 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 its 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."

The Honourable Judge then analyzed section 16 of the Act and said;

23. Clearly, the intention is to detain a person in respect of whom a deportation order has been made pending deportation. That cannot mean pending deportation at large as has been established by the authorities establishing the application of a reasonable time test for the execution of the deportation. Also, can a person effectively be pending deportation if the processes for relief are still ongoing?

24. With respect to refugees, there is no doubt that there is an "absence of national legislation for the protection of refugees or the granting of asylum under the international refugee instruments, asylum-seekers". Therefore, since the Immigration Act does not address the situation, the court has to look at other avenues and sources for the policy which drives how the defendant is to act.

There has been no affidavits in opposition to the applications and so the court is left to determine from all of the information before it whether the applicants have demonstrated an arguable case with a realistic prospect of success that the period of detention thus far has been unreasonable. The information before the court in that regard is limited.

27. Attorney for the applicants has submitted that the period ought to be considered from the date of first detention namely July 9, 2023 and not from the date of the deportation order. In that case the applicants would have been detained for almost one month. In the court's view there is some merit in this argument. This is of course dependent on the purpose of detention on July 9, 2023. In that regard there is no information before the court but there is information as to the reason for deportation. This is set out in the several orders of deportation annexed to the affidavit in support. Those orders set out that the applicants are persons who:

    a. cannot or do not fulfil or comply with any of the conditions or requirements of the Act or the Regulations or any orders lawfully made or given under the Act or Regulations; and

    b. from information or advice which in the opinion of the Minister is reliable information or advice are likely to be undesirable inhabitants of or visitor to Trinidad and Tobago.

28. It can reasonably be argued therefore that this was the basis for detention of the applicants from as early as July 9, 2023, namely that the applicants were being held to ascertain whether they were prohibited entrants under section 8(1)(p) and (q) of the Act. The basis of detention would have changed however on July 25, 2023 when the deportation order was made in that they were now being detained for the purpose of deportation and the making of arrangements for same. So that it appears to the court that the submission of the applicants that time must run from the date they were first detained does not appear to be an arguable one in the court's view.

29. Whether a period is a reasonable one is a matter of fact in given circumstances. In this case a period of over three weeks have elapsed with no indication from the respondent as to what if any efforts have been made to deport the applicants. The absence of such information must be viewed on the

face of it from a perspective that is favourable to the liberty of the individual. The court takes the point made by the respondent that it is usual in this jurisdiction for arrangements for deportation to take longer than one month but is of the respectful view that that which is usual may not be that which is reasonable. The duty lies with the respondent to ensure that the period of detention for the purpose of deportation is limited to that which is reasonable. Should the period be one that is not reasonable for the purpose of detention the CIO and by extension the Minister are duty bound to consider whether the applicants should be placed on supervision orders. That of course is not for the court to decide.

30. The court is therefore of the view that the applicants have demonstrated an arguable case with a realistic prospect of success that the period of detention has not been that which is reasonable for the purpose of detention and shall grant leave of this limb only. In that regard the application as filed appears to the court with great respect to be poorly drafted thereby missing the true essence of the complaint. While the court also accepts the argument of the respondent that procedural rigour in judicial review demands that the applicants identify the real substance of their complaint (See ***R v Secretary of State for Trade and Industry, ex p Greenpeace Ltd*** **[1999] All ER (D) 1232** and ***Keep Bourne End Green v Buckinghamshire Council*** **[2020] EWHC 1984 (Admin)**) the court is equally of the view that there must be a modicum of flexibility where it becomes abundantly clear that the real issue is deeply hidden within the pleaded case. To this it must be added in any event the ability of the applicant to amend its application if needs be and the duty of the court to make an order that is just.

INTERIM RELIEF

31. The well-established and well-known principles for consideration of the court when treating with interim relief are set out in the cases of ***American Cyanamid v Ethicon*** (1975) AC 396, ***Jetpak Services Ltd v BWIA International Airways Ltd*** (1998) 55 WIR 362, ***East Coast Drilling and Workover Services Ltd v Petroleum Company of Trinidad and Tobago Ltd*** (2000) 85 WIR 351, ***National Commercial Bank Jamaica Ltd v Olint Corp Ltd (Jamaica)*** [2009] UKPC 16 and ***Chief Fire Officer and Others v Felix Phillip and Others*** (7th December 2013)(Unreported). These principles are widely accepted and not in issue so that the court does not propose to traverse them in these reasons but directs itself in terms of the cases.

32. In that regard while the court directs itself in terms of the dicta of those cases, the court thinks it necessary to set out the dicta of the relevant passages of the ***Chief Fire Officer*** case (supra) as the facts of that case encompassed the exercise the discretion in the context of a claim in public law. The erudite exposition in relation to the additional factor to be considered in the context of public law was set out by Mr. Justice of Appeal N. Bereaux at paragraph 61;

Public interest

[61] I turn then to the public interest considerations. As Lord Goff held in Factortame No. 2 (supra), the balance of justice must be looked at more widely in public law applications for interim relief. The Court must take into account the interest of the public in general to whom the public authority owes its duties. The second appellant is performing its duties in the public interest. Lord Goff, in the context of the case before him stated that:

a. *"particular stress should be placed upon the importance of upholding the law of the land in the public interest, bearing in mind the need for stability in our society and the duty placed upon certain authorities to enforce the law in the public interest".*

[62] In this case, the second appellant is constitutionally mandated to appoint and promote persons to public office. It is in the public interest to ensure that its functions are not unnecessarily inhibited. It is also in the public interest that the best candidates be promoted and without delay, for reasons of efficiency and good administration. As I have set out at paragraph 51 there are also wider implications of good governance which affect civil society. Third parties rights are also affected. Deserving candidates may be delayed in obtaining promotion.

[63] Looking at the case in the round and bearing in mind the public interest, the balance of justice lies with the appellants. The prejudice to the public interest will be

greater than that suffered by the applicant should the appellants' functions be enjoined and the appellants ultimately succeed in the substantive action.

The interim relief sought

33. Attorney for the applicants has set out in his oral submissions that he is essentially asking for the court to grant interim relief numbers 1, 2, 5 and 6 of the application. They are;

- An Order of prohibition, restraining the Respondent/Intended Defendant from deporting the Applicants/Intended Claimants to the Bolivarian Republic of Venezuela.
- An order of mandamus compelling the Respondent/Intended Defendant to stay the order of Deportation in favour of the Applicants/Intended Claimants dated 24th July 2023.

- An Order of Mandamus compelling the Respondent/Intended Defendant to forthwith and without unreasonable delay release the Applicants/Intended Claimants on Orders of Supervision pursuant to **Section 17 of the Immigration Act, Chapter 18:01, as amended**.

- An Order of *mandamus* compelling the Respondent/Intended Defendant to forthwith and without unreasonable delay release the Applicants/Intended Claimants on an Order of Supervision according to **Section 17 of the Immigration Act Chapter 18:01, as amended**, pending the determination of their claim for Refugee/Asylum Seeker status with the United Nations High Commissioner for Refugees (UNHCR) in the Republic of Trinidad and Tobago.

Serious issue to be tried

34. In relation to this consideration the court formed the view that for the reasons set out above there is a serious issue to be tried in relation to whether the period of time that has elapsed is a reasonable one in the context of the purpose of detention of the applicants. This much is obvious from the dicta

of the court set out above. In that regard the court has considered that the applicants may have a good case that their continued detention particularly in the circumstances under which they are being made to live at the Heliport should the evidence prove to be true, is unreasonable in light of both the time already spent awaiting deportation and the conditions of detention.

Damages an adequate remedy

35. It is clear to the court that the effects of such detention can be varied and that it is more likely than not that deprivation of freedom in the circumstances may carry a higher cost for some in terms of not only quantifiable loss but also psychological and physical harm so that damages are unlikely to be an adequate remedy. In so saying the court is of the view that this is one of those cases in which the consideration of whether damages are adequate is of much less weight having regards to the circumstances and the relief sought.

The balance of Justice

36. The court has weighed the likely damage to the applicants should a suitable interim order not be granted and the applicants be ultimately successful on their claim as against the likely consequences should the relief be granted but the respondent be ultimately successful. In so doing the court has also considered the interest of the public in general to whom the public authority (Minister) owes his duties. In that regard he is duty bound to give preference to domestic law in the case where the domestic law does not conform to the Treaty obligation of the nation. He is also duty bound to give effect to government policy.

37. In relation to the applicants, the affidavit in support (which has not yet been challenged) sets out events which (should they be proven to be true) tell of horrible sexual advances and in some cases abuse both by members of the Trinidad and Tobago Coast Guard, by other guards and other detainees. The incidents are clearly set out at paragraph 19 of the affidavit in support and will not be repeated in this written decision. They tell a tale of depravity and mental anguish as a result.

38. The conditions under which the applicants are detained include but are not limited to overflowing toilets, sleeping on the floor with smelly stagnant water, deprivation of food sent in by relatives, lack of female toiletries and the inability to care for children left with others.

39. In relation to the respondent, his duty lies with obeying the law. He must of course be satisfied that the deportees would appear for their deportation. However the duty of the office holder extends to protecting not only the vulnerable ones who are detained by the State for the purpose of deportation but every such deportee. In that regard a person who is so detained does not lose his human rights and treatment must be accorded to the those detained in keeping with recognized principles of human rights. The evidence in this case should it be true, demonstrates nothing short of inhumane treatment towards some members of the group and their circumstances of detention fall far short of what is to be expected to say the least. The damage likely to be suffered by these individuals may as a matter of common sense and logic be exacerbated the longer they are kept in custody under those circumstances awaiting deportation.

40. Not only is it likely to be harmful to the applicants but such actions may reflect adversely on the reputation of the nation on the international front. The way we treat foreign nationals often times reflect the way we view our own people. The respondent is duty bound to secure the applicants while they are in the custody of the State. Anything less is unacceptable. If he cannot do so then he must consider their release pending deportation.

41. Additionally it is the duty of the Minister to ensure that deportation occurs within a reasonable period. If this is not done then he is duty bound to consider supervision orders. In that regard the longer it takes to deport, the stronger the case for the period being one that is not reasonable for the purpose of deportation.

42. When the balance is weighed therefore it tilts in favour of the grant of interim relief pending the determination of the claim. The relief sought however is that of orders pending the outcome of the application of the applicants before the UNHCR. Of course, the applications before that body do not form part of domestic law and so to make such an order would be in effect to indirectly leapfrog over

Parliament to impose a duty for the Minister and by extension to courts to take into account the obligations of an unincorporated treaty.

43. The order of the court is therefore as follows;

i. The application filed on August 2, 2023 is deemed fit for vacation hearing.

ii. Permission is granted to the applicants to file a claim for judicial review for an order of mandamus that the Respondent/Intended Defendant be compelled to consider whether the applicants should be placed on orders of supervision pending deportation and paragraphs 14, 15, 16 and 17 of the substantive relief set out in the application filed August 2, 2023 on the condition that the applicants file a claim for Judicial Review with fourteen days of the date hereof.

iii. The Respondent/Intended Defendant is restrained from enforcing the orders of deportation against the applicants until determination of the claim.

iv. The Respondent/Intended Defendant shall forthwith issue orders of supervision for each Applicant/Intended Claimant pending determination of the claim.

v. For the avoidance of doubt it is declared as an interim declaration that the deportation order of each applicant remains valid and in effect until and unless set aside by the court upon determination of the claim or revocation by the Minister.

vi. There shall be a Case Management Conference on a date and time to be set by the docketed Judge the Honourable Madame Justice A. Quinlan Williams.

vii. Costs of the interim relief proceedings reserved.

Ricky Rahim

Judge