

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2019-02943

OLIVER CHRISTOPHER HEADLEY

Claimant

AND

**THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO
THE CHIEF IMMIGRATION OFFICER**

Defendants

BEFORE THE HONOURABLE MADAME JUSTICE JOAN CHARLES

Appearances:

Claimant: Mr. Farai Hove Masaisai instructed by Mr. Issa Jones and
Ms. Antonya Pierre

Defendant: Ms. Sasha Sukhram instructs Mr. Vincent Jardine

Date of Delivery: 5th February, 2020

JUDGMENT

THE CLAIM

[1] By Fixed Date Claim filed on the 19th June 2019, the Claimant sought the following reliefs:

- i. A declaration that the 2nd Defendant's detention and arrest of the Claimant for the period of 21st November 2018 to January 2019 was illegal, unlawful, harsh, oppressive and unconstitutional and infringed the right of the Claimant to personal liberty and security of person as entrenched in Section 4(a) of the Constitution of the Republic of Trinidad and Tobago as he was lawfully allowed into the country on the 21st June 2018 by an Immigration Officer at the Piarco International Airport
- ii. A declaration that the 2nd Defendant breached the Claimant's constitutional rights under Section 4(a)¹ of the Constitution of the Republic of Trinidad and Tobago when he was wrongfully and unlawfully detained having lawfully been allowed into the country on the 21st June 2018 by an Immigration Officer at the Piarco International Airport
- iii. A declaration that the 2nd Defendant breached the Claimant's constitutional rights under Section 4(b)² by failing to properly and forthwith carry out a special inquiry

¹ 4. It is hereby recognised and declared that in Trinidad and Tobago there have existed and shall continue to exist, without discrimination by reason of race, origin, colour, religion or sex, the following fundamental human rights and freedoms, namely: (a) the right of the individual to life, liberty, security of the person and enjoyment of property and the right not to be deprived thereof except by due process of law;

² 4(b) the right of the individual to equality before the law and the protection of the law; Recognition and declaration of rights and freedoms.

- iv. A declaration that the 2nd Defendant breached the Claimant's constitutional rights under Section 4(c)³ by depriving him of his family life when he was detained for fifty days
- v. A declaration that the 2nd Defendant breached the Claimant's constitutional rights under Section 5(2)(e)⁴ when he was denied the right to a fair hearing and legal advisor
- vi. An order that the Defendants do pay the Claimant such monetary compensation including aggravated, exemplary and punitive damages for infringement of the Claimant's fundamental rights guaranteed to him by the Constitution
- vii. An order that the Defendants do pay the Claimant such monetary compensation including aggravated, exemplary and punitive damages for malicious prosecution
- viii. An order granting compensatory damages for breach of fundamental rights and freedoms of the Claimant as enshrined in the Constitution of Trinidad and Tobago
- ix. An order granting vindicatory damages to demonstrate the court's distaste and to reflect the sense of public outrage and to deter future breaches by the Defendants of the fundamental rights and freedoms as enshrined in the Constitution
- x. An injunction preventing the deportation of the Claimant back to Guyana
- xi. That damages be assessed by a Judge in Chambers
- xii. Further and other reliefs
- xiii. Costs

³4 (c) the right of the individual to respect for his private and family life;

⁴ 5(2)(e) Without prejudice to subsection (1), but subject to this Chapter and to section 54, Parliament may not—
deprive a person of the right to a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations;

[2] On 2nd October 2019, the Defendants filed a Notice of Application to strike out the Claimant's claim. By said Notice of Application the Defendant sought the following reliefs:

- i. That the Claimant's Fixed Date Claim Form filed on 19th July 2019 be struck out pursuant to Part 26.2(1)(b) of the Civil Proceedings Rules 1998, as amended, as it constitutes an abuse of process of the Honourable Court
- ii. That the Claimant's Fixed Date Claim Form filed on 19th July 2019 be struck out pursuant to Part 26.2(1)(c) of the Civil Proceedings Rules 1998, as amended as it discloses no grounds for bringing a claim; and
- iii. That the Claimant do pay to the Defendants the costs of this application, to be assessed in default of agreement.

BACKGROUND

[3] The facts in this matter are as follows:

- i. In 2008 the Claimant arrived in Trinidad and Tobago from Guyana and was granted entry until 18th May 2008 for the purpose of vacation.
- ii. The Claimant did not return to Guyana on/before 18th May 2008 and continued to stay in Trinidad illegally.
- iii. More than four (4) years thereafter the Claimant was detained by officers.
- iv. A Special Inquiry was held in early 2013. At the Special Inquiry the Claimant pleaded guilty to remaining in the country after the

expiration of the certificate granted. A Deportation Order was issued against the Claimant and he signed same.

- v. The Claimant was also placed on an Order of Supervision to return to Immigration with a ticket to return to Guyana. The Claimant failed to appear on the date that he was mandated to return with the ticket.
- vi. In November 2018 the Claimant was arrested and detained in relation to the Deportation Order.
- vii. The Claimant was released in January 2019 after being able to secure bail.

SUMMARY OF THE DEFENDANTS' SUBMISSIONS

[4] The Defendants relied upon the following grounds in support of its Notice of Application supra:

- (a.) All of the reliefs sought by the Claimant touch and concern the Claimant's detention for the period 21st November 2018 to January 2019; he claims a declaration for the breach of his constitutional right to liberty and damages as compensation for same;
- (b.) A constitutional claim must be of last resort and should not be entertained where the applicant has recourse to other avenues of redress;
- (c.) The Claimant had recourse to alternative forms of redress, namely by false imprisonment and/or malicious prosecution claims; all of the reliefs

sought by the Claimant could have been pursued in these said claims in tort. The Claimant has accordingly abused the process of the court;

(d.) The Claimant has disclosed no grounds for bringing a claim as he has not established the basis upon which he alleges that his detention is unlawful;

(e.) The Claimant should not be allowed to claim for Constitutional relief and the Fixed Date Claim Form filed on 19th July 2019 should be struck out.

[5] It was argued by the Defendants that it was an abuse of process of the Court for the Claimant to institute a Constitutional Claim since there existed alternative forms of redress in respect of the matters complained of in his Fixed Date Claim. The alternative remedies available to the Claimant included a claim in false imprisonment and/or a claim in malicious prosecution since he is challenging his detention for a specific period of time, alleging that he was unlawfully detained, deprived of his liberty and is seeking compensation for the period of detention.

[6] The Defendants argued further that the Claimant's claim for damages for unlawful detention is basically a claim for false imprisonment and should have been pursued in Tort rather than a Constitutional claim. It was contended that the Claimant's pursuit of aggravated and exemplary damages could have been dealt with under a claim in Tort for malicious prosecution or false imprisonment aforesaid. The Defendants also pointed out that the Claimant failed to appeal the Deportation Order even though he had been informed of this course of action by the officer conducting the special inquiry.

[7] Lastly, the Defendants submitted that the Claimant could not claim to have been arrested unlawfully since the Deportation Order issued

against him during a Special Inquiry when he had pleaded guilty to staying in Trinidad and Tobago unlawfully had not been lifted. His arrest and detention having occurred after said Deportation Order had been made, it was further submitted that the Claimant had no basis for claiming that he had been unlawfully arrested and/or detained and for seeking constitutional redress for same.

SUMMARY OF THE CLAIMANT'S SUBMISSIONS

- [8] The Claimant submitted that he was denied a Special Inquiry hearing by the Chief Immigration Officer in accordance with Immigration Regulations 1974; that the issuance of a Deportation Order in 2013 was illegal and had deprived the Claimant of the right to such procedural provisions that are necessary for giving effect to the protection of his Constitutional Rights in accordance with Section 5 (b) of the Constitution.
- [9] The Claimant also submitted that he was denied the Right to a fair hearing at said Special Inquiry, by the failure of the Defendants to promptly inform him of the charge/offence, of his right to an attorney at the Special Inquiry and of his Right to Appeal the decision of said Inquiry to the Minister of National Security.
- [10] The Applicant denied that he was intercepted at Piarco Airport in 2018 as alleged by the Defendants; he instead asserted that he had been advised by an Immigration Officer at the airport that the Deportation Order had been lifted and he was given leave to stay in Trinidad and Tobago for six months; this was endorsed on his passport which was in the possession of the Immigration Department.
- [11] The Claimant submitted that a Constitutional Review is the most effective remedy where there is a Deportation Order in issue before the

Court. He submitted further, that Constitutional Relief can be sought where a claim includes some features which make it applicable to take that course. The arbitrary use of state power was one such feature.

[12] The Claimant argued further, that where a case, such as the one at bar, alleged the breach of Rights, some common law and others Constitutional, it would not be fair, convenient or conducive to the proper administration of justice to require an applicant to abandon his Constitutional Remedy or to file separate actions for the vindication of his Rights.⁵

ANALYSIS AND CONCLUSION

[13] Having considered the Claim before me, and in particular:

- a. The Claimant's challenge to the Deportation Order made against him in 2013 on the grounds that he had not been advised of his Right to an attorney and his Right to appeal the decision of the Special Inquiry made against him.
- b. The Claimant's assertion (as yet unanswered by the Defendants) that in 2018 he was allowed to enter Trinidad and Tobago and to stay for six months pending his application for resident status; further, that the Claimant was advised by an Immigration Officer at the airport, that the said deportation order had been lifted.
- c. That his passport had been stamped at the airport and would show that the Claimant had been allowed to enter Trinidad and Tobago and stay for six months.
- d. The Claimant's passport was in the possession of the Defendants,

⁵ Paragraph 17 Claimant's Submissions

I concluded that there are important issues to be determined, some of which impinge upon the Constitutional Rights of the Claimant – the fairness of the Inquiry at which the Deportation Order had been made; and whether the Claimant had been informed of his Right to an Attorney and his Right to appeal the decision made against him. The mere fact that a notice advising the Claimant that he could appeal the Deportation Order made against him was given to the Claimant, without more, does not establish that Mr. Headley was informed at the time that the decision was made of this procedure. The fact that the Claimant disputes this is a matter to be determined after both sides have been heard.

[14] Further, the issue as to whether or why the Claimant had been permitted to reenter the country in 2018 without the Deportation Order being executed is also an important one which may impinge upon the lawfulness of the Claimant's arrest and detention. I do not consider that common law remedies in Tort alone are applicable in this case, nor that those remedies alone should be pursued by the Claimant. This case is also about the exercising of executive power by the Immigration Department and whether this power has been exercised fairly, reasonably, legally and in accordance with the Constitutional Rights of the Claimant. To my mind this aspect of the case makes it appropriate for the Claimant to pursue Constitutional Relief.

[15] I therefore Ordered that the Defendants' Notice of Application dated 2nd October 2019 be dismissed.

Joan Charles
Judge