

**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: 5<sup>th</sup> February, 2020

**JUDGMENT**

- [1] On the 23rd October 2019, the Claimant filed a Notice of Application seeking Orders that the Claimant's Fixed Date Claim filed on the 19th July 2019 do proceed as undefended due to the failure of the Defendants to file any affidavits in response within the requisite time frame and no application for an extension of time having been filed.
- [2] The Claimant also relied upon the ground that he has a reasonable prospect of success in the claim.<sup>1</sup>

### **DEFENDANTS' SUBMISSIONS**

- [3] In opposition to this application, the Defendants, relying on Civil Procedure Rule (CPR) 15.3(a), submitted that summary judgment cannot be awarded against the State in Constitutional cases.
- [4] The Defendants also submitted that while an affidavit in answer to an application for an administrative order must be filed within forty two days<sup>2</sup>, there is no sanction for failing to file such affidavit within the forty two day deadline unless an application for default judgment is made. Since default judgment cannot be granted where the claim is a fixed date claim such as the case at bar, the Claimant's application must be dismissed.
- [5] The Defendants argued that it would be contrary to the overriding objective to grant the Order since an application to strike out the Claimant's Fixed Date Claim had been made by the said Defendants before the Claimant's Notice of Application had been filed. Further, should the Defendants' Notice of Application be successful, considerable time and costs will be saved since there would be no need to file affidavits and submissions in reply.

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<sup>1</sup> Paragraph 9 of the Claimant's Notice of Application filed on the 23rd October 2019

<sup>2</sup> CPR 10

[6] Significantly, the Defendants also pointed out that granting the Claimant's application of the 23rd October 2019 will not bring the claim to an end since submissions will still have to be filed on the substantive issues by both sides. In such a case the Court would have all the evidence before it in order to dispose of the matter fairly in accordance with its powers pursuant to CPR 1.1 and 1.2 to deal with the Claim fairly and expeditiously.

### **THE CLAIMANT'S SUBMISSIONS**

[7] The Claimant argued, contra, that the Defendants having failed to comply with the provisions of the Civil Procedure Rules relative to the filing of its affidavit in reply, the Court ought to proceed with the claim as undefended in order to deal with said claim expeditiously and in accordance with the overriding objective.

### **ANALYSIS AND CONCLUSION**

[8] I considered the submissions advanced by both sides and concluded that the issues raised in the Fixed Date Claim filed by the Claimant are of Constitutional importance since they deal with the due process rights of an immigrant during a Special Inquiry conducted by the Defendants; the exercise of the power of detention by the Defendants and whether the exercise of this power was lawful in this case, or whether it operated to unlawfully deprive the Claimant of his right to liberty of the person guaranteed him under the Constitution of the Republic of Trinidad and Tobago. This case is of high public importance since it also deals with the exercise of quasi-judicial power by the Executive; it is important that the Court diligently scrutinize its exercise in order to ensure that the power

to arrest and detain persons under the Immigration Act is exercised lawfully.

[9] In the circumstances, I did not grant the Claimant's application and ordered that the Defendants file their affidavits in response.

[10] At this hearing, I also made an Order that the Deportation Order made on the 25th September 2019 be stayed until the hearing and determination of the Fixed Date Claim herein. The Defendants on a previous hearing had given an undertaking to stay the Deportation Order until the hearing of the 5th February 2020, but was unwilling to extend that stay.

[11] In the circumstances, I decided that the risk of injustice would be greater if I did not grant a stay, since the Claimant could be deported without having his claim ventilated - in particular without a determination of the issue of whether his Constitutional Rights had been breached. The Defendants, on the other hand, would not be prejudiced since the Claimant is currently under an Order of Supervision and can easily be deported if needed. Since being placed on such Order of Supervision, he has kept his appointments with the Immigration Division. I also took into consideration the fact that he has submitted to the jurisdiction of this Court to have the issues which he has raised and which I have already determined to be of Constitutional importance, determined.

[12] In the circumstances, I granted a stay of the Deportation Order until the determination of the Fixed Date Claim herein.

**Joan Charles**

**Judge**