

IN THE SENIOR COURTS OF BELIZE

IN THE HIGH COURT OF BELIZE

CLAIM No. CV 748/2023

BETWEEN:

[1] CARLOS ANTHONY SETONI HIGGINS

Applicant

and

[1] ATTORNEY GENERAL OF BELIZE

[2] DIRECTOR OF IMMIGRATION

[3] GEORGE REYNOLDS, PORT COMMANDER, PGIA

[4] LUIS ROMERO, SUPERVISOR, IMMIGRATION DEPARTMENT, PGIA

Respondents

Appearances:

Hubert Elrigton SC with him Norman Rodrigues for the Applicants
Samantha Matute, Assistant Solicitor General with her
Alia Gomez Crown Counsel for the Respondents

2023: December 6; 7;
December 7

JUDGMENT

**IN RESPECT OF A HABEAS CORPUS APPLICATION AND CONSTITUTIONAL RELIEF FOR
DETENTION BY IMMIGRATION AUTHORITIES CONSEQUENT TO REFUSAL OF LEAVE TO LAND IN
BELIZE**

- [1] **GOONETILLEKE , J.:** This is a judgement of Court delivered in open court on December 7, 2023, reduced to writing. The Applicant, Mr. Carlos Anthony Setoni Higgins, a Jamaican national was refused entry to Belize at the Philip Goldson International Airport (PGIA) by Immigration authorities on November 24, 2023. At the time of the decision of the Immigration authorities to refuse him leave of entry to Belize, the COPA airlines aircraft Mr. Higgins arrived on, had closed its doors for departure from Belize. Mr. Higgins was therefore detained by the Immigration authorities till he could be placed onboard the next available flight of that airline from Belize to the port from which he had originated. The next available flight was one week thereafter, on December 1, 2023. Mr. Higgins spent the night of November 24, 2023 in the police station at Ladyville and from December 25, 2023 was placed in a hotel for the nights at the expense of the airline and brought to the immigration offices at the PGIA during the day. Consequent to filing this Application on November 29, 2023, Mr. Higgins was not returned on the COPA airlines flight scheduled for December 1, 2023, but was released to the custody of his Attorney on December 3, 2023.
- [2] Mr. Higgins in his Application to this Court dated November 29, 2023, seeks the following reliefs; a writ of Habeas Corpus to be issued against the Respondents; an order that the immigration authorities give permission for him to remain in Belize until the conclusion of this Application; compensation for trespass and detaining him unlawfully and without reason; and for costs.
- [3] This Application was heard on December 6, 2023 in open court at which hearing, counsel for the Applicant and the Respondents were given time till 10 a.m., December 7, 2023 to file any further material they required in support of their respective positions. This matter was thereafter resumed for hearing at 3.30 p.m. on December 7, 2023 and judgment delivered, thereafter.
- [4] For the reasons set out in this judgment, the Application is dismissed as Mr. Higgins has failed to demonstrate that he was unlawfully detained. Therefore, Mr. Higgins is not awarded compensation. This court notes however, that the practice of detaining immigrants who have not committed an immigration offence, in a police station, is neither appropriate nor desirable and that the Immigration Department should take suitable measures to place such immigrants denied entry, in places of detention suitable and appropriate for them.

Relevant facts

- [5] Mr. Higgins, arrived at the Philip Goldson International Airport (PGIA), Belize on November 24, 2023 on COPA airlines flight CM 280 from Panama City, at about 4.15 p.m.
- [6] He presented himself at the immigration counter at the PGIA where he was interviewed by Ms. Lenira Urbina, Immigration Clerk. Mr. Higgins presented his Jamaican Passport bearing No. A6953032, and a return air ticket to Santa Domingo, Dominican Republic. He informed that he had a reservation for 7 days at the 'Drift Inn' in San Ignacio, and that he had US Dollars 500/- with him. Ms. Urbina had checked with the hotel and got confirmation that he had such a reservation but was not satisfied that he had sufficient funds to stay in Belize and therefore escalated the matter to her supervisor.
- [7] The supervisor Ms. Sheree Flores and the Port Commander Mr. George Reynolds decided that Mr. Higgins lacked sufficient funds for his intended stay and was likely to become a charge on public funds and therefore deemed him a "Prohibited Immigrant". A further reason for such decision as evident from the affidavits of Mr. Reynolds and Ms. Flores is that it is the policy of the Immigration authorities that a visitor to Belize should have a return ticket to the port of origin, but that Mr. Higgins who had travelled from Jamaica had a return ticket not to Jamaica but to the Dominican Republic.
- [8] Consequently, Mr. Higgins was ordered to leave Belize and proceed immediately on the vessel he arrived on. According to paragraph 11 of the affidavit of Ms. Flores she had informed him that he was a 'Prohibited Immigrant'. This fact is corroborated at paragraph 14 of the first affidavit of Mr. Higgins. A Form 11 – Notice, in terms of the Immigration Act was served on the airline on November 24, 2023 to remove Mr. Higgins as he had been forbidden to land in Belize. A copy of the said form was exhibited marked "GR -1". According to the affidavit of Ms. Flores, when the COPA airline's agent was informed to place Mr. Higgins on the return flight CM 281 to Panama City, the agent had informed her that the door of the aircraft had been closed and that it would not be possible to do so.
- [9] Mr. Higgins was thereafter informed that he would be taken to the Ladyville police station till further arrangements could be made for his return to Panama. He spend the night at the Ladyville police station and was thereafter transferred to the 'Global Village" hotel on November 25, 2023, where he remained every night till December 3, 2023. During that period, he would be taken to the Immigration offices at the PGIA during the day and returned to the hotel for the nights.

- [10] According to paragraph 14 of the affidavit of the Port Commander, Mr. George Reynolds, there is only one direct flight of COPA airlines between Belize and Panama that operates once a week on a Friday. He states therefore that Mr. Higgins would have to wait till the following Friday, December 1, 2023 to be returned. He also states that there are no direct flights from Belize to Jamaica and passage on any other routes including through Guatemala and the United States of America would require a visa for Jamaican nationals (the nationality of Mr. Higgins); therefore, there was no alternative but for Mr. Higgins to return on the COPA airlines flight scheduled on December 1, 2023.
- [11] On December 1, 2023, at about 2 p.m., Mr. Higgins was served a Form titled; “Refusal of Entry Order of the Caribbean Community” which stated that he had failed to present sufficient funds to sustain his stay in Belize and also to present a return ticket to his home country of Jamaica and that under these circumstances he has been declared an undesirable person who may become a charge on the Public Funds, and therefore refused leave to land in Belize. This Form has been exhibited marked “CASH -2” by Mr. Higgins and marked “LR-1” by the Respondents. Both Mr. Higgins and the Respondents state that Mr. Higgins refused to sign the said Form, but it is undisputed that this Form was given to him on that date. Mr. Luis Romero in his affidavit states that he left a copy of the Form with Mr. Higgins as he refused to sign it and took away another copy for their records (LR -1).
- [12] Consequent to this Application being filed, Mr. Higgins was not removed on the scheduled COPA airlines flight on December 1, 2023, but was released to the custody of his Attorney Mr. Norman Rodriguez on December 3, 2023. The Form of release has been exhibited marked “CASH -1” by Mr. Higgins.

Submissions of Parties

- [13] It was submitted on behalf of Mr. Higgins that; there were no valid grounds to have refused leave to enter Belize as he had a hotel reservation, a return ticket though to a different destination than his home country, 500 US Dollars of spending money and friends in Belize who would have supported him. It is to be noted that though both the Applicant and the Respondents were given a further opportunity to file any additional material in support of their positions, Mr. Higgins did not file any affidavit of any person in Belize who would have supported him in Belize, nor was material of such support produced to the Immigration authorities.

- [14] It was also submitted by counsel for Mr. Higgins that his detention was unlawful as he had not been informed in time of the reason for his detention in the prescribed form mandated by Section 28 of the Immigration Act and that he had been detained beyond 48 hours without being brought before a court as required by Section 5(3) of the Belize Constitution. It was further submitted on behalf of Mr. Higgins that he had wanted to visit Belize to see its beauty and had instead to suffer the indignity of spending the night in a police station, in a holding cell, and thereafter brought daily to the immigration office at the airport and spend the night in a hotel. Counsel also brought to attention that Mr. Higgins had been kept in this manner in excess of seven days prior to his release to the custody of his Attorney and that in such circumstances he was entitled to relief for violation of the Constitutional rights guaranteed in Sections 5(1), 5(2) (a), 5(2) (b) and 5(3) of the Belize Constitution and also entitled for compensation for the indignity he had to undergo.
- [15] For the Respondents it was submitted that; the reasonableness of the decision of the Immigration authorities to refuse to grant leave to enter Belize could not be gone into in a Habeas Corpus Application and that it could be the subject of an Application for Judicial Review. It was further submitted that the detention was legal in terms of Section 27 of the Immigration Act, and that Mr. Higgins had been informed the very day of his arrival, the reasons for refusal of leave for him to enter Belize. Therefore, it was submitted that the requirements under Section 5(2) (a) of the Constitution to be informed promptly and in any case not later than twenty four hours of his arrest or detention, the reasons for such arrest or detention in a language he understands, had been complied with. It was also submitted that the Prescribed Form with reasons for refusal of leave to enter Belize, as required by Section 28 of the Immigration Act, had been served on Mr. Higgins in compliance with the law.
- [16] Counsel for the Respondents pointed out that when it was not possible to return Mr. Higgins on the COPA airlines flight on November 24, 2023, there was no option but to detain him till the next flight which was one week thereafter on December 1, 2023. It was submitted that there were no alternate direct flights to his destination of origin and that any other route would have required Mr. Higgins to obtain a visa to travel through those counties; and that in these circumstances, the period of detention was not unreasonable or excessive. It was submitted for the Respondents therefore that the detention was not unlawful, that the Applicant was not entitled to the relief claimed nor for compensation and that the Application be dismissed.

Analysis

[17] This is an Application for Habeas Corpus to vindicate the Constitutional rights of the Applicant guaranteed by Sections 5(1), 5(2) (a), 5(2) (b) 5 (2) (d) and 5(3) of the Belize Constitution. As such this court cannot refuse the remedy on a discretionary basis as the writ of habeas Corpus is a writ that is '*ex debito justitiae*'; which simply means that the court may only properly refuse relief on the grounds that there is no legal basis for the Application.¹

[18] The following issues arise for determination in the Application;

- a) Was the detention of Mr. Higgins unlawful and in violation of Section 5(1) of the Belize Constitution?
- b) Was Mr. Higgins informed of the reasons for his detention in compliance with Section 5(2) (a) of the Belize Constitution?
- c) Was Mr. Higgins served in time with the Prescribed Form giving notice of the grounds of detention as required by Section 28 of the Immigration Act?
- d) Was it reasonable to detain Mr. Higgins for the period he was detained?
- e) As Mr. Higgins was detained for more than forty eight hours, was it necessary for him to have been brought before a court as required by Section 5(3) of the Belize Constitution?

[19] The court will presently consider the first Issue of the lawfulness of the detention. In a Habeas Corpus Application the Court calls upon the custodian of the Applicant to inform the basis upon which the Applicant is arrested and/or detained and for court to examine and determine if such basis is lawful.

[20] It is not for the court to examine in a Habeas Corpus Application the reasonableness of the underlying decision for detention which is a matter for judicial review, but to examine if the detention has been made in terms of the provisions of the law. This position has been established in a long line of cases².

¹ Mary v. Ferndale Institution [2005] 2 S.C.R. 809

² R. v. Secretary of State for the Home Department, Ex. p. Cheblak [1991] 1 W.L.R. 890, R. v. Secretary of State for the Home Department, Ex. p. Muboyayi [1992] 1 Q.B. 244 followed in R. v. Oldham Justices and Another, Ex. p. Crawley [1997] Q.B. 1 and applied in R.(Saadi) v. Secretary of State for the Home Department [2002] U.K.H.L.41;[2002] 1 W.L.R. 3131.

As held in *R. v. Board of Control, ex. p. Ruddy*³ Habeas Corpus is not an appeal from a decision of arrest or detention.

[21] The Immigration authorities have in terms of Section 27 of the Immigration Act, made order that the Applicant is a 'Prohibited Immigrant'. That decision cannot be challenged in these proceedings, though it could be the subject of challenge in an Application for Judicial Review as has been held in the cases of *Cheblak*⁴ and *Muboyay*⁵, which were also cases concerning Habeas Corpus Applications in regard to immigration. Section 27 (1) of the Immigration Act reads as follows;

An immigration officer who decides that a person is a prohibited immigrant may -

- (a) order him to leave Belize and proceed immediately in the same vessel in which he arrived; or*
- (b) order him to leave Belize within sixty days of entering Belize, and, if the immigration officer thinks fit, by a special vessel; or*
- (c) cause him to be arrested and brought before a magistrate with a view to an order being made for his removal, ...*

As evident from the document exhibited marked "GR-1" the airline was informed on November 24, 2023 itself that Mr. Higgins had been forbidden to land and to remove him. There was therefore a decision recorded in the Form 11 Notice issued to the airline indicating an order in terms of Section 27(1) (a) of the Immigration Act. As Mr. Higgins' removal was not practically possible that day, due to the aircraft having closed its doors for departure, his removal had to be made on the next available flight, the following week. The decision to detain Mr. Higgins was therefore made in terms of the provisions of the law as set out in Section 27(1) of the Immigration Act.

[22] I, next have to consider whether there has been a violation of Section 5(2) (a) of the Constitution which requires reasons for the arrest or detention to be given promptly and in no case later than twenty four hours after such arrest or detention. The evidence establishes that Mr. Higgins was verbally informed

³ [1956] 2 Q.B. 109 at 119

⁴ [1991] 1 W.L.R. 890.

⁵ [1992] 1 Q.B. 244.

on November 24, 2023 that he was deemed to be a “Prohibited Immigrant”, this fact is admitted by Mr. Higgins at paragraph 14 of his first affidavit. The argument of counsel for Mr. Higgins was that the reasons were not given in writing and that the reasons as set out in the Prescribed Form referred to in section 28 of the Immigration Act was only served on Mr. Higgins on December 1, 2023.

[23] Section 5 (2) (a) of the Constitution reads as follows;

Any person who is arrested or detained shall be entitled,

(a) to be informed promptly, and in any case no later than twenty-four hours after such arrest or detention, in a language he understands, of the reasons for his arrest or detention;

On a plain reading of this section, there is no requirement for reasons to be given in writing though it may be desirable to do so if there is dispute as to whether reasons were given or not given. In this instance however, there is no dispute of fact, Mr. Higgins at paragraph 14 of his first affidavit states;

“That after interviewing me, the Immigration Officer was not satisfied that I had met the minimum requirement to be admitted to Belize and she declared me a prohibited immigrant”.

It is clear therefore, that Mr. Higgins was told of the reason for his detention promptly and within twenty four hours of his detention. Whether there has been compliance with Section 28 of the Immigration Act in regard to the serving of the Prescribed Form is a matter that is separately considered. As regards the Constitutional rights in Section 5(2) (a), I hold that there has been no violation of that right as Mr. Higgins was told the reason for his detention promptly.

[24] The next issue to be considered is whether the prescribed form as required in Section 28 of the Immigration Act has been duly issued. Section 28 (1) of the Immigration Act reads as follows;

Whenever any person is detained, restricted or arrested as a prohibited immigrant, notice of that fact and the grounds of detention, restriction or arrest shall be given by the officer to such person in the prescribed form.

This Section does not set out a time period when this form should be given to the detainee. The requirement for the form to be given is to enable an appeal to the summary jurisdiction court in terms

of Section 27(3) of the Immigration Act. The language of Section 28(2) also indicates that there is no fixed period when such form should be given though it is desirable for the form to be given as soon as possible. Section 28(2) of the Immigration Act, reads as follows:

If such notice is given within seven days of the arrival of the immigrant, the immigration officer giving such notice shall also inform, if known, the master or local agent or owner of the vessel by which the immigrant arrived that such notice has been given.

In this instance, the prescribed form was issued on December 1, 2023. So the question would be; was that too late to be in compliance with Section 28 (1) of the Immigration Act?

[25] As there is no time stipulated in Section 28(1) of the Immigration Act for the serving of such form on the detainee, and as Section 28(2) indicates that such notice could be given beyond seven days, the serving of the prescribed form on December 1, 2023 to Mr. Higgins is not in violation of the provisions of Section 28 of the Immigration Act.

[26] I will now turn to consider whether the period of detention was unreasonable. Mr. Higgins was held in detention in order that he could be returned on the next available COPA airlines flight to Panama which was scheduled for December 1, 2023. As explained by the immigration Authorities, this was necessary as there was no other direct flight that the Applicant could be placed on without him having to obtain a visa for an intermediate destination such as Guatemala or the United States of America through which he could have been routed to Jamaica, his destination of origin.

[27] Legal authority for reasonableness of the period of detention is the case of **Haridal Singh**⁶; which set down the following principles in regard to detention for immigrants; (a) detention must be for the purposes laid down in the Statute and; (b) detention must be only for as long as reasonably necessary. This criteria has been approved by the Privy Council in **Tan Te Lam and ors v. Superintendent of Tai A Chau Detention Centre**⁷ and endorsed in **R. v. Secretary of State for the Home Department**⁸. I find that the Immigration authorities have been in compliance with the *Haridal Singh* principles; the detention has been for the purposes of the Statute – Mr. Higgins was declared a ‘prohibited immigrant’, and the detention was only for as long as reasonably necessary – in this instance, the airline that

⁶ R. v. Governor of Durham Prison ex. p. Haridal Singh [1984] 1 W.L.R. 704

⁷ [1997] A.C. 97

⁸ [2002] EWCA Civil 888

brought the applicant had only one flight a week from Belize. Mr. Higgins was scheduled to return on the next available flight on December 1, 2023; the reason for his further detention in Belize and release to the custody of his Attorney is due to Mr. Higgins filing this Application on November 29, 2023.

[28] I now turn to consider whether there has been a violation of Section 5(3) of the Constitution as alleged by counsel for Mr. Higgins who argued that if he was detained for more than forty eight hours he should have been brought before a court.

[29] Section 5(3) of the Constitution reads as follows;

Any person who is arrested or detained,

(a) for the purpose of bringing him before a court in execution of the order of a court; or

(b) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under any law,

and who is not released, shall be brought before a court without undue delay and in any case not later than forty-eight hours after such arrest or detention.

Mr. Higgins' detention clearly does not come within the first limb of Section 5(3). Mr. Higgins has not committed an immigration offence, he was merely not granted leave to enter Belize having presented himself at the immigration counter of the Philip Goldson International Airport. As he could not be placed on the flight on which he had arrived he had to be detained till the next available flight. He has therefore not been detained in terms of the second limb of Section 5(3) of the Constitution. I therefore find that there has been no violation of the rights under Section 5 (3) of the Belize Constitution. This is not to imply that the detainee could be held indefinitely; the period of detention would have to be reasonable in terms of the principles set out in the case of *Haridal Singh*. In this instance, however, I find that the period of detention has not been unreasonable.

[30] The next matter I need to consider is the nature, place and conditions of detention. The case of **Saadi v. U.K.**⁹ has held that for detention to be made in good faith it should be;

- (a) Connected to the purpose of preventing unauthorized entry;
- (b) The place and condition of detentions should be appropriate; and
- (c) The length of detention should not exceed that reasonably required for the purpose pursued.

It is reiterated that Mr. Higgins has not committed an offence; when presenting himself at the immigration counter at the PGIA he was not granted leave to enter Belize. In these circumstances, it was not appropriate for him to have had the indignity of spending a night in a cell in a police station till he was placed in a hotel the following night. It is in this context that the Immigration authorities should take note to have appropriate places of detention for persons placed in the circumstances of Mr. Higgins.

[31] In deciding whether Mr. Higgins should be compensated for having to spend a night in the police station at Ladyville, I have considered Section 24(7) of the Immigration Act, which reads as follows;

Any person to whom leave to land has been refused shall be removed from Belize by the master of the vessel in which he arrived, or with the consent of the immigration officer, in another vessel within a specified time by the owner or agent of the vessel in which he arrived,

Provided that where permission is granted to the owner or agent to remove such person by another vessel, such owner or agent shall be held responsible for the accommodation of such person until he leaves Belize.

I find that the situation Mr. Higgins was placed in falls squarely within the proviso to Section 24(7) of the Immigration Act, and it is the airline that should have been responsible for his accommodation even on the night of November 24, 2023 as the Immigration authorities had issued the airline the Form 11 Notice (Exhibited as GR-1) on November 24, 2023. Due to this fact and my finding that the detention

⁹ (2008) E.H.R.R.17 at paragraph 64

was made in terms of the Statue and not unlawful, the Respondents would not be liable to compensate Mr. Higgins.

[32] There is one final matter I wish to address in this judgment and that is the issue of publication of the policy of the Immigration authorities in regard to entry to Belize. Both the affidavits of Ms. Flores, the Immigration Supervisor at PGIA and Mr. Reynolds, the Port Commander at PGIA, stated that it was the policy of the Immigration authorities to require an entrant to Belize to have a return ticket to the port of origin and this was one of the reasons why Mr. Higgins who had a return ticket to a different destination was not granted leave to stay in in Belize. The Counsel for the Respondents were questioned by court as to whether such a policy was published and the answer was in the negative. None of the affidavits filed on behalf of the Respondents also disclose that such a policy was published. In these circumstances, it has to be assumed that the policy has not been published.

[33] In the case of *Nataraja v Secretary of State for the Home Department*¹⁰ it was held that immigration policies must be published if they are to be relied upon. As this is an Application for Habeas Corpus and not an Application for Judicial Review, it would not be necessary for this court to consider the validity of the decision of the Immigration authorities to refuse leave to Mr. Higgins to enter Belize. Nevertheless, it is appropriate that the Immigration authorities take note of this fact and publish its policies for purposes of transparency and to avoid inconvenience to visitors such as Mr. Higgins.

Disposition

[34] For the reasons set out above I hold that Mr. Higgins in not entitled to a writ of Habeas Corpus as the detention has been made in terms of the Immigration Act, and

[35] In the circumstances of this Application, Mr. Higgins is not entitled to compensation.

[36] The finding of this court in this Application however, is not a bar to Mr. Higgins seeking any other judicial or administrative remedy including an Application for Judicial Review, challenging the reasonableness of the decision of the Immigration authorities in refusing to grant him leave to land in Belize.

¹⁰ [2003] E.W.C.A Civ. 1768

IT IS HEREBY ORDERED THAT

- (1) The Application is dismissed.
- (2) In the circumstances of this case, there will be no order of Costs.

Rajiv Goonetilleke
High Court Judge