

BARBADOS
[Unreported]

IN THE SUPREME COURT OF JUDICATURE
HIGH COURT
CIVIL DIVISION

No. 1666 of 2012

BETWEEN:

RAUL GARCIA

CLAIMANT

AND

**MINISTER RESPONSIBLE
FOR IMMIGRATION**

FIRST RESPONDENT

CHIEF IMMIGRATION OFFICER

SECOND RESPONDENT

BEFORE: The Hon. Madam Justice Margaret Reifer, Judge of the High Court

2012: December 12, 17.

**Mr. David Commissiong in association with Mr. Leslie Haynes Q.C.,
Mr. Ajamu Boardi and Ms. Paula Jemmott, Attorneys-at-Law for Claimant**

**Ms. Donna Brathwaite and Mrs. Margreta Jordan-Watson, Attorneys-at-Law for
Respondents**

Ruling on “In Limine” Submission by Counsel for the Respondents

- [1] The substantive application before this court is a Writ of Habeas Corpus ad subjiciendum issued on the 10th day of October 2012 calling on the Minister Responsible for Immigration and the Chief Immigration Officer to produce the body of Raul Gracia, and to state the day and cause of his being detained so that this court may determine whether such cause is legal.
- [2] The Writ of Habeas Corpus is an ancient prerogative writ of common law origin designed to protect individual liberty. It allows the Court to inquire into the legality of a Claimant’s detention and ultimately determine whether the cause for that detention is sufficient in law. It permits the Court in cases where there is no criminal charge to examine the truth of the cause(s) of detention stated in the Respondent’s return of the Writ.

[3] The Writ of Habeas Corpus has been preserved in our constitutional framework by Section 18(1) of the Supreme Court of Judicature Act Cap. 117A of the Laws of Barbados which states:

“The High Court has the same jurisdiction as heretofore to hear and determine an application for a Writ of Habeas Corpus”.

The In Limine Submission

[4] Counsel for the Respondents made an in limine submission founded on an application and interpretation of Section 23 of the Immigration Act Chap. 190 which states as follows:

“23(1) No court has jurisdiction to review, quash, reverse, restrain or otherwise interfere with any proceeding, decision or order of the Minister or an immigration officer had made or given under the authority of this Act relating to

(b) the detention or deportation of any person, upon any ground whatsoever unless that person is a citizen or a permanent resident”.

[5] Counsel argues, that since the Claimant is neither a citizen or permanent resident of Barbados, and since it has been established on the face of the record that both the detention and deportation orders were lawful, section 23 of the Immigration Act ousts the Court’s jurisdiction to review the detention and/or deportation order. In short, she submits that this Court has no further jurisdiction on a Writ of Habeas Corpus.

[6] In support of this argument counsel cited the case of **Alfred Sparman v Gilbert Greaves and the Attorney General**, an unreported case of the Barbados High Court, No. 529 of 2003.

[7] A look at that case however shows it to be of only general relevance. In that case, the Applicant sought judicial review of the decision of the Chief Immigration Officer to revoke the permission granted to the Applicant to reside and work in Barbados.

[8] In answering the question whether the Respondents could rely on the provisions of Section 23 to oust the jurisdiction of the Court, Kentish J. found “..that the decision in question (did) not fall within the category of decisions protected from review by the Court”. Ultimately, the ruling in that case was based on a determination that the principles of Natural Justice had not been exercised by the Chief Immigration Officer.

[9] Therein lies the distinction between that case and this one. This case does fall squarely within the category of decisions referred to by section 23, namely, detention and/or deportation. But, as clearly recognized and acknowledged by Kentish J., there are exceptions, in other words, circumstances in which outster clauses are not inviolate.

[10] Counsel also referred the Court to the authority of **R v Secretary of State for the Home Department, ex parte Muboyayi (1992) I QB 244**, a decision of the Court of Appeal of the United Kingdom.

[11] Counsel for the Claimant submitted that section 23 of the Immigration Act does not oust the jurisdiction of the Court if the acts of the Immigration Department are ultra vires the section, that is, it is beyond the power granted by the Minister by the Immigration Act and thus unlawful and reviewable by the Court. It is his submission that the authority of the Chief Immigration Officer to detain, arises pursuant to a deportation and such deportation must be possible and must be effected within a reasonable time.

[12] It will be his substantive argument that not only is this matter reviewable because it is outside the four corners of section 22, he will also be alleging that the continued

detention of the Claimant is in breach of the Constitution as it relates to the loss of the personal liberty of the Claimant.

- [13] In support of his submission he cited the legal text **Immigration Law and Practice in the UK**, 7th ed. by Ian MacDonald. He further submits that the Sparman case is based on a different factual matrix and can give no proper guidance in this matter.

Discussion

- [14] Ouster clauses, both constitutional and statutory (as is Section 23) which purport to exclude the courts from reviewing the decisions of a public body have been the feature of extensive discussion and argument regionally and throughout the Commonwealth. There has been some degree of discord over this area of the law but certainly one area of agreement is that ouster clauses are subject to challenge.
- [15] The seminal case on this point has been **Anisminic v Foreign Compensation Commission [1969] 2WLR 163**, and this case together with others such as **R v Ministry of Defence ex parte Smith [1996] Q B 577**, **Public Service Commission v Davis [1984] 33 WIR** (to name but a few of many), have shown how jealously the courts guard their inherent supervisory jurisdiction of inferior bodies, how they guard the subject's right of access to the court and how they guard the principles enshrined in our Constitutions: see **Hinds V R [1977] A C 195**; **Albert Fiadjoe' Commonwealth Caribbean Public Law 3rd ed.**
- [16] In **Anisminic Lord Reid** addressed just one of the grounds excluding the applicability of ouster clauses when he concluded that the ouster clause did not hinder the supervisory jurisdiction of the Court where the decision of the tribunal was a nullity.
- [17] Despite the apparent discord on the proper approach to this issue, Albert Fiadjoe at P 77 of his text, following an analysis of cases from across the Commonwealth, including cases from this region, lists ten (10) exceptions which by their very nature preserve the jurisdiction of Supreme Courts where ouster clauses exist when he states as follows:
- “Two points need to be made. One is that control by the courts seems to be unimpaired by an ouster clause no matter how “sweeping or encyclopedic”. Among the grounds on which ouster clauses have been dishonoured by the courts are:
- (a) the improper composition of a tribunal;
 - (b) exceeding legitimate scope of functions;
 - (c) absence of locus standi;
 - (d) non-fulfillment of a condition precedent;
 - (e) deviation from prescribed procedure;
 - (f) contravention of the rules of natural justice;
 - (g) fraud;
 - (h) wrong questions;
 - (i) improper purposes and irrelevant considerations?
 - (j) insufficiency of evidence”.

Disposal

- [18] The primary question in this case is whether the Minister and/or Chief Immigration Officer exceeded his jurisdiction by the continued detention of the Claimant. Under this Writ of Habeas Corpus this court has jurisdiction to determine whether his continued detention is lawful or not. The supervisory jurisdiction of the Supreme Court cannot be

limited in circumstances where a public authority has exceeded its jurisdiction and it will be the central issue of this proceeding to determine whether the Minister and/or the Chief Immigration Officer have exceeded their statutory authority.

[19] The submission of counsel for the Respondents made in limine is rejected.

This court shall tomorrow at 11:00 a.m. proceed to hear the substantive application in this matter.

Margaret A. Reifer
Judge of the High Court