

BARBADOS

IN THE SUPREME COURT OF JUDICATURE

HIGH COURT

FAMILY DIVISION

NO: 508 of 2009

BETWEEN:

**RHAJAN ALLEYNE-KING
APPLICANT**

(Acting by his next friend and

mother Alexis Edwards)

THE ATTORNEY GENERAL

1st RESPONDENT

DIRECTOR OF THE CHILD CARE BOARD

2nd RESPONDENT

Before the Hon. Madam Justice Margaret A. Reifer, Judge of the High Court

2009: September 25

October 14

Mr. Kendrid Sargeant, Attorney-at-Law for the Applicant

DECISION

- [1] Alexis Edwards has applied 'ex parte' to this Court for a Writ of Habeas Corpus Ad Subjiciendum pursuant to the provisions of Order 54 of the Rules of the Supreme Court 1982.
- [2] The Writ is to secure the delivery up of the body of her son Rhajan Alleyne-King (a four year old child) to this Court from his "detention" at the Nightengale Children's Home.
- [3] On the 22nd September 2009, on the continuation of a maintenance hearing, Magistrate Marshall Harris on the reading of a report from the Child Care Board ordered that the said minor be taken out of the care and control of his mother Alexis Edwards, and placed in the care and control of the Director of the Child Care Board until the matter is concluded.
- [4] It is clear that this is an Interim Care Order pending the conduct by the learned Magistrate of an inquiry. It is not a final Order.

[5] It is also clear that the circumstances of this matter, as outlined in the report of the Child Care Board, have raised urgent issues necessitating the conduct of an inquiry into the welfare of this minor child. (See Report dated September 18th 2009).

[6] A Writ of Habeas Corpus Ad Subjiciendum is used to secure the release of a person from unlawful detention or confinement.

[7] In these circumstances the Court notes the following significant factors:-

- (1) That a Magistrate under section 20(2) of the Maintenance Act Chap 216 has the power and authority to place a child in the custody of someone other than the mother, where he/she from the circumstances considers it to be in the best interests of the child;
- (2) It is clear from the Child Care Board Report that the child's father is unable or unwilling to have the care and control of the child;
- (3) It is unclear from the Affidavit filed and from the submission of counsel if representations were made to the Magistrate that there was some person other than the mother or father who was a fit and proper person to have temporary custody of the child;
- (4) This was clearly an Interim Order to secure the best interests of the child pending the Magistrate's inquiry;
- (5) Most significantly, sec. 20(4) of the Maintenance Act provides that such an Order may be revoked at any time upon a like application and some other person may be appointed;
- (6) Finally, the proceeding in the Magistrate's Court is presently adjourned with an early hearing date. In other

words, these proceedings are still pending. Habeas corpus issued to the care authority (as in this case) can only bring the child to the Court. The jurisdiction to deal with the care proceedings remains with the Magistrate until completed or otherwise ended.

[8] This Court is of the view that there has been no unlawful detention in the circumstances outlined and that these are not proper circumstances for the issue of a Writ of Habeas Corpus.

[9] While there is authority for this having been done, (**see Ex parte B (an infant) (1985) 36 WIR 198**) I am more persuaded by the authorities that establish that it is not appropriate to apply 'habeas corpus' in relation to children placed into the care of a local authority: **see De Smith's Judicial Review 6th ed. at p868 and S v Haringey LBC (Habeas Corpus) (2003) EWHC 2734, [2004] FLR 590.**

[10] In **S v Haringey LBC Mundy J.** addressed two analogous situations, the first being where an application was made for judicial review challenging the local authority's decision-making in relation to a child; and secondly, applications under the Human Rights Act 1998 alleging the local authority's infringement of the human rights of a child. In each such circumstance, he opined that the proper place for such matters to be considered is within the care proceedings. He emphasized that judicial review (and by analogy habeas corpus proceedings) are to be deprecated in this kind of case. This case was also one where an attempt was made to litigate much the same issues by means of an application for 'habeas corpus'.

[11] Mundy J. made his ruling in this matter in the strongest terms as follows:-

“Even if there was otherwise some arguable merit in Ms. S's application, this is a matter which ought plainly to be dealt with in the Family Division as part of the care proceedings and not in the Administrative Court ... The proper forum for this dispute is within the care proceedings ... If Ms. S is dissatisfied with the orders made in the care proceedings her remedy (if she has one) is an appeal to the Court of Appeal ... Her application for 'habeas corpus' is as misconceived as was her earlier application for judicial review. Both must suffer the same fate”.

[12] I concur in this approach. This application for 'habeas corpus' is similarly misconceived. In **Kenneth v Coles [1987] QB 555** where the Court of Appeal addressed the issue of whether a contemnor was entitled to his release by way of 'habeas corpus', **Lawton LJ** stated that the Writ of habeas corpus “is probably the most cherished cow in the British constitution ... but the law has never allowed it to graze in all legal pastures”.

[13] In **Re C (Adoption. Religious Observance) [2002] 1FLR 1119** cited and adopted by **Mundy J. in S v The London Borough of Haringey Wilson J.** had this to say:

“...the guardian’s issue of proceedings for judicial review of the local authority’s decision to match C with Mr. & Mrs A was, in retrospect, misguided. Even had the proceedings been well-founded in law, the proper forum was to challenge the care plan in the care proceedings. There the full merits as apposed to the bare lawfulness of the decision fell for debate ... It seems to me that the issue about the suitability of particular adopters ... or of a particular type of adopters ... identified in a care plan is just as well suited to ventilation in a family proceedings court as to ventilation in the Family Division and I hope that no court is again required so painstakingly to consider the lawfulness of a decision when the real issue is to be whether it best serves the child’s interests”.

[14] This application is accordingly dismissed.

Margaret A. Reifer

Judge of the High Court.