

BARBADOS

IN THE SUPREME COURT OF JUDICATURE

HIGH COURT

Civil Division

[Unreported]

Consolidated Suits CV 14 of 2009

And CV 717 of 2009

BETWEEN

OSLAY RAFAEL SOTERO CORBO - APPLICANT

AND

THE SUPERINTENDENT OF PRISONS - FIRST RESPONDENT

**THE MINISTER WITH RESPONSIBILITY
FOR IMMIGRATION - SECOND RESPONDENT**

THE ATTORNEY GENERAL - THIRD RESPONDENT

Before:

The Hon. Madam Justice Maureen Crane-Scott, Judge of the High Court

2015: March 25.

Appearances:

Mr. Douglas Trotman in association with Ms. Veronica M. McFarlane, Attorneys-at Law for the Applicant

Mr. Wayne Clarke in association with Ms. Irene Stephney, Attorneys-at-Law for the Respondents

DECISION

- [1] **Crane-Scott J.:** This is an application for judicial review under the *Administrative Justice Act Cap 109B* in which the Applicant seeks relief from the decision of the Second Respondent (“the Minister”) pursuant to section 22 of the *Immigration Act, Cap. 190* to detain him at Her Majesty’s Prison at Dodds (“HMP Dodds”) in the parish of St. Phillip pending his deportation from Barbados.

BACKGROUND:

- [2] The Applicant is a Cuban national. He arrived in Barbados on 24th August 2006 and was granted permission to enter Barbados as a visitor for 30 days. He applied for an extension of his stay and the Immigration Department granted a 15 day extension. Upon the expiration of the 15 day extension, the Applicant remained in Barbados where he illegally lived and worked until his arrest at his workplace on January 22nd, 2008.
- [3] Following his arrest by officers of the Royal Barbados Police Force, he was escorted to his residence to retrieve his passport. He was subsequently taken to the Immigration Department and then transported to the Grantley Adams International Airport where he was detained in custody for approximately 2 months.

- [4] On 19th March 2008, whilst still detained in the holding area at the Grantley Adams International Airport, the Applicant was served with a “Deportation Order” dated 18th March, 2008 ostensibly issued pursuant to section 13(6) of the *Immigration Act* and signed by The Hon. Maxine Mc Clean, the then Minister responsible for Immigration.
- [5] The Applicant was also served with a copy of an “Order for Detention Pending Removal from Barbados” pursuant to section 22 of the *Immigration Act*, signed by the Minister responsible for Immigration and also dated 18th March 2008.
- [6] This second Order, which was addressed to the Superintendent of HMP Dodds, stated that the Minister acting pursuant to s. 22 (1) and (2) of the *Immigration Act* had approved Her Majesty’s Prison at Dodds, as a place where, *inter alia*, persons against whom a Deportation Order is made may be detained.... for such period as may be necessary for the purpose of making arrangements for their removal from Barbados.
- [7] Pursuant to the powers vested in her by s. 22 (1) and (2) of the said Act the Minister further ordered the Superintendent of Prisons to receive the Applicant into his custody.
- [8] Following service of the said Orders, the Applicant was subsequently transferred from the holding area at the Grantley Adams International

Airport to Her Majesty's Prison at Dodds on 19th March 2008 pursuant to the Minister's Order.

- [9] The Applicant then languished at Her Majesty's Prison at Dodds for a period of almost 10 months until 6th January 2009, when he approached the High Court in Suit No. CV14 of 2009 by way of Writ of *Habeus Corpus ad Subjiciendum* under a Certificate of Urgency seeking a review of the legality of his detention.
- [10] In addition to filing the Writ, the Applicant also filed a Notice of Originating Motion and a Statement in Suit No. CV717 of 2009 on April 21st, 2009 pursuant to Rule 2(a) of the *Judicial Review (Application) Rules, 1983* seeking 10 items of relief including numerous Declarations, an order for Certiorari, an Injunction and Damages.
- [11] Both proceedings, that is: Suit No. CV14 of 2009 and CV717 of 2009 were subsequently consolidated by order of **Richards J.** on August 28th, 2009.
- [12] The Applicant's *Habeus Corpus* application eventually came on for hearing before me on August 31st, 2009. After reading the respective affidavits and hearing argument, this Court ruled that the Applicant's continued detention at HMP Dodds pending deportation under the *Immigration Act* was no longer reasonable or lawful.

[13] The Court then made a consent order for the Applicant's immediate release from HMP Dodds into the care of a Mr. Harry Collymore, subject to the stipulation, *inter alia*, that the Applicant report to the immigration authorities on Mondays and Wednesdays before 10:30 am until further order. [See "*ORSC*" v *The Superintendent of Prisons et al [Unreported] Suit Nos. CV14 of 2009 and CV717 of 2009, decision of 31st August 2009.*]

[14] Regrettably, by the time of his release from custody on August 31st, 2009, the Applicant had already spent some 17 months in detention at HMP Dodds pending his deportation.

THE APPLICATION:

[15] The Applicant's substantive judicial review proceedings filed in Suit No. CV717 of 2009 eventually came on for hearing before me in November 2009.

[16] At the start of the hearing, Counsel for the Applicant, Mr. Douglas Trotman, informed the Court that as the Applicant had been released from HMP Dodds on August 31st, 2009, he would no longer be pursuing his claims under items (b) and (i) of the Originating Motion for an order of Certiorari and an Injunction respectively.

[17] Mr. Trotman also informed the Court that the relief claimed at items (e), (f) and (g) of the Originating Motion would also be withdrawn and that the Applicant's case would proceed in relation to the relief sought at items (a), (c), (d), (h) and (j) of the Notice of Originating Motion only. He indicated that his arguments in relation to relief in the form of Damages claimed at item (j) would be reserved pending the Court's determination of the remaining areas of relief claimed.

[18] Against the foregoing background, the remaining items of relief claimed in the Applicant's Notice of Originating Motion of April 21st, 2009 in Suit No: CV717 of 2009, may, for convenience, be identified as follows:

(a) "A **Declaration** that the Respondent's decision to detain Oslay Rafael Sotero Corbo at Her Majesty's Prison at Dodds in the parish of St. Philip is an excess of jurisdiction;

(b).....;

(c) A **Declaration** that the Respondent was not authorized under the *Immigration Act, Cap. 190* of the Laws of Barbados or any other Act part of the laws of Barbados to imprison the Applicant;

(d) A **Declaration** that the Respondent and the Respondent's servants and/or agents acted *ultra vires* in purporting to detain the Applicant at Her Majesty's Prison at Dodds, St. Philip;

- (e)
- (f)
- (g).....;
- (h) A **Declaration** that there was a breach of the Applicant's fundamental rights under the Constitution of Barbados;
- (i)
- (j) An order for special and general **Damages** to the Applicant on the basis that the Applicant be compensated for the loss and damage suffered as a result of the decision of the Minister of Immigration."

THE ISSUES:

[19] The following issues arose for the Court's determination on the application:

- i) Whether the Minister of Immigration exceeded her jurisdiction in ordering the Applicant detained at HMP Dodds?
- ii) Whether the *Immigration Act, Cap. 190* authorized the Minister of Immigration to imprison the Applicant?
- iii) Whether the Minister of Immigration acted *ultra vires* in purporting to detain the Applicant at HMP Dodds?
- iv) Whether the Applicant's fundamental rights under the *Constitution of Barbados* were breached?

- v) Whether the Applicant should be compensated in damages for any loss and damage he may have suffered consequent on his detention at HMP Dodds?

DISCUSSION:

[20] The issues will now be discussed *seriatim* under the italicized sub-headings which follow.

[21] **Issue 1- Did the Minister of Immigration exceed her jurisdiction in ordering the Applicant detained at HMP Dodds?** At paragraph (a) of his Origination Motion, the Applicant claimed a declaration that the Respondent's decision to detain the Applicant at HMP Dodds was an excess of jurisdiction.

[22] At the outset of his submissions on this ground, Counsel for the Applicant, Mr. Trotman, stated that it could not be denied that the Second Respondent had the statutory authority under s. 22(2) of the *Immigration Act, Cap. 190* to order the Applicant detained in such place and for such period as may be necessary pending the making of arrangements for his deportation from Barbados.

[23] Mr. Trotman submitted that notwithstanding the Minister's power to order the detention in custody of a person against whom a deportation order is made, the period of detention must be reasonable and must not be for an

indefinite period. He cited in support the case of *R v Durham Prison, Ex parte Singh* [1984] 1 WLR 704 and the Hong Kong Privy Council decision of *Tan Te Lam and others v. Superintendent of Tai A Chau Detention Centre and another* [1996] 2 W.L.R. 863.

[24] Mr. Trotman reminded the Court that on August 31st, 2009 when the Court in ordered the Applicant's release from detention at HMP Dodds under the Writ of *Habeas Corpus*, the Court had found that the Applicant's continued detention at HMP Dodds under section 22(2) of the *Immigration Act* was no longer reasonable or lawful.

[25] He submitted that while it was clear that the Minister of Immigration could order the Applicant to be detained at a place to be appointed by the Minister and the Minister had purported to direct that the Applicant be detained at HMP Dodds, the Applicant was challenging the legality of the Minister's decision to *select* Her Majesty's Prison at Dodds as a place where he was to be detained in custody pending deportation.

[26] In response, Counsel for the Respondents, Mr. Wayne Clarke submitted that section 22(2) of the *Immigration Act*, gave the Minister of Immigration wide power to choose any place in Barbados for the detention of a person who was the subject of a deportation order. He contended that the words "*in*

such place” in section 22(2) of the Act should be given their ordinary meaning and read broadly to mean just that, namely, “*in such place.*”

[27] Mr. Clarke also submitted that given the Applicant’s peculiar circumstances as a stateless person, the Minister’s choice of Her Majesty’s Prison at Dodds as the place where he was to be held pending deportation was perfectly reasonable since the Applicant was a person who could not return to Cuba.

[28] Mr. Clarke submitted that the Applicant had been sent to Dodds prison for detention in custody as a person pending deportation from Barbados and had never been sent to Dodds as a prisoner serving a sentence. According to Mr. Clarke, once housed at Dodds, the Applicant was in a secure environment and the relevant authorities knew where he was at all times.

[29] During the course of his submissions on this issue, Mr. Trotman conceded the existence of a broad statutory power under the *Immigration Act* for the Minister to direct, *inter alia*, the place where the Applicant was to be detained in custody pending deportation from Barbados.

[30] While not expressly stating that he had abandoned the claim under paragraph (a) of the Origination Motion for a declaration that the Second Respondent’s decision to detain the Applicant at HMP Dodds was an excess of jurisdiction, Mr. Trotman then turned his attention to Issue 2. He informed the Court that the thrust of the Applicant’s case was that by selecting HMP

Dodds as the place where the Applicant was to be detained pending his deportation from Barbados, the Minister of Immigration had effectively “imprisoned” the Applicant.

[31] Undoubtedly, section 22(2) of the *Immigration Act*, expressly vests wide power on the Minister of Immigration to direct the place where a person against whom a deportation order has been made is to be detained pending deportation. Mr. Clarke for the Respondents says that the words “*in such place*” in section 22(2) of the Act should be given their ordinary meaning and read broadly to give the Minister a wide and unrestricted discretion to direct the place where the Applicant should be detained in custody pending deportation.

[32] At the hearing, Mr. Trotman offered very little assistance to the Court in relation to Issue 1 and preferred instead to focus his legal submissions on the declarations sought at paragraphs (c), (d) and (h) of the Originating Motion.

[33] In the circumstances, the Court has accordingly declined to make the declaration sought at paragraph (a) of the Originating Motion and turns to consider the Applicant’s other challenges to the legality of the Minister’s Order under the second, third and fourth issues as follows.

[34] **Issues 2 and 3 - Whether the *Immigration Act, Cap. 190* authorized the Minister of Immigration to “imprison” the Applicant? and Whether the**

Minister of Immigration and her servants and/or agents acted *ultra vires* in detaining the Applicant at HMP Dodds? Mr. Trotman’s submissions in

relation to the second and third issues were essentially the same and in the circumstances the Court considers that both issues can conveniently be discussed together.

[35] At paragraph (c) of his Origination Motion, the Applicant claimed a declaration that the Respondent was not authorized under **the *Immigration Act, Cap. 190*** of the Laws of Barbados or any other Act part of the laws of Barbados to ‘imprison’ the Applicant.

[36] Additionally, at paragraph (d) of the Motion, the Applicant also sought a declaration that the Respondent and the Respondent’s servants and/or agents acted *ultra vires* in purporting to detain the Applicant at Her Majesty’s Prison at Dodds, St. Philip.

[37] Counsel for the Respondents, Mr. Clarke, raised a preliminary objection to the wording of the declaration sought at paragraph (c). He vehemently objected to Mr. Trotman’s use of the term “imprison” and submitted that in exercising her power under section 22(2) of the *Immigration Act* to order the Applicant “detained in custody” at HMP Dodds pending his deportation from Barbados, the Minister had not purported to ‘imprison’ the Applicant.

- [38] In response to the objection, Counsel for the Applicant explained that the Applicant's challenge on this ground would require the Court to consider whether, by selecting HMP Dodds as the place where the Applicant was to be held pending his deportation, the Minister of Immigration had effectively changed what was by law a 'prison' to an 'immigration detention centre'? and whether it was lawful for her to do so?
- [39] Developing his argument, Mr. Trotman referred the Court to the legislative scheme of the *Prisons Act, Cap. 168* and the *Prisons Rules, 1974* made thereunder. He referred to the long title of the Act and submitted that the *Prisons Act* had clearly been intended, *inter alia*, to make provision for the treatment of "prisoners" therein and for matters connected therewith or incidental thereto.
- [40] He also referred to Rule 123 of the *Prison Rules, 1974*, which describe the arrangements to be put in place for the detention of various types of persons categorized in the Rules as "*civil prisoners*," including: "*(d) aliens committed for deportation or otherwise;*"
- [41] Mr. Trotman asked the Court to consider whether anything either in the *Prisons Act* or in the *Immigration Act* had expressly authorized the Minister of Immigration to order an alien to be committed to prison? He submitted that close examination of both Acts would reveal that there was nothing in

either Act which conferred on the Minister of Immigration the power to order an alien to be committed to prison pending deportation.

[42] Mr. Trotman further submitted that, if Her Majesty's Prison at Dodds had been intended to be a place where persons subject to a deportation order were to be kept pending deportation, rules ought to have been made by the Minister of Home Affairs, as the Minister having executive responsibility for the administration of the prisons, pursuant to section 66 of the Act specifically prescribing the separation of such persons from the rest of the prison population and for the treatment of such persons while under detention at the prison. According to him, no such rules had been made.

[43] He also referred, in particular to section 66(1)(q)(ii) of the *Prisons Act* which expressly, authorized rules to be made in relation to the treatment of persons detained in prison who are not serving a sentence. He submitted that nothing in the Act had expressly provided for the detention at Dodds of persons subject to a deportation order.

[44] Mr. Trotman drew the Court's attention to the definition of the word "prisoner" in the *Prisons Act*. He submitted that the definition of "prisoner" in section 2 of the *Prisons Act*, ought not to be read so as to recognize the Minister of Immigration as a lawful authority (similar to a court, Judge, magistrate or Justice) having power and jurisdiction to order imprisonment.

Were such an interpretation to be given to the definition of “*prisoner*” in the *Prison Act*, he argued, it would have implications for the doctrine of the separation of powers and would effectively place the Minister of Immigration (a member of the Executive) in the same category as a court, Judge, magistrate, Justice who exercise judicial power to order imprisonment.

[45] Mr. Trotman submitted in addition that the Applicant had been denied due process of law prior to his detention as a ‘prisoner’ at Her Majesty’s Prison at Dodds. He referred to paragraphs 7 and 8 of the affidavit of the Deputy Chief Immigration Officer, Rodney Farrell filed in the proceedings on November 10th, 2009 which suggested that the Applicant had been found illegally working at “Licking Chicken” at Oistins, Christ Church and had been questioned and detained by police officers of the Royal Barbados Police Force on January 22nd, 2008. According to Mr. Trotman, the Applicant could have been charged with a criminal offence contrary to section 17(1) of the *Immigration Act* and taken before a magistrate who could have committed him to prison.

[46] Mr. Trotman referred the Court to section 17 of the *Immigration Act* and submitted that the Applicant has never disputed the allegation in the affidavit of Rodney Farrell that he had been illegally working in Barbados. According

to Mr. Trotman, had the authorities charged him under section 17(4)(a) of the Act for working without a work permit, the Applicant would have been accorded due process of law because he would have been taken before a magistrate and would have been liable to have been committed to prison as an alien.

[47] Mr. Trotman contended that the Applicant had never been charged with or convicted of a criminal offence by any court, Judge, magistrate or Justice. Instead, he argued, the Applicant had been unlawfully ‘imprisoned’ at HMP Dodds pursuant to an order of the Minister of Immigration (a member of the Executive) who, he argued, had no express statutory authority to do so.

[48] Counsel for the Applicant drew the Court’s attention to the fact that section 13 of the *Immigration Act* expressly prescribes the circumstances in which a “permitted entrant” who has remained in Barbados after the expiration or revocation of his entry permit, may be detained by the Chief Immigration Officer pending the making of a deportation order against him.

[49] Mr. Trotman also observed that provision is also expressly made in Part IV of the *Immigration Act* for the circumstances in which persons who are not permitted to enter Barbados may be deported and detained pending their deportation and removal from Barbados.

[50] Mr. Trotman contended that a person could only lawfully be detained in prison pending deportation after being accorded due process. Nothing in the Act, he said, expressly empowered the Minister to use Her Majesty's Prison at Dodds as an 'immigration detention centre'. In conclusion he submitted that to the extent that the Minister of Immigration had ordered the Applicant detained at HMP Dodds, she had acted unlawfully and *ultra vires* the *Immigration Act*.

[51] In response, Counsel for the Respondents, Mr. Clarke submitted that Mr. Trotman's submissions in relation to the requirement for due process and section 17 of the Act were based on a fallacy. Section 17, he submitted, merely sought to regulate the circumstances in which certain categories of persons may apply for and obtain a work permit to engage in an occupation or accept employment in Barbados.

[52] He submitted that section 17(4) had simply set out the circumstances in which persons found working without a work permit could be taken before a magistrate and found guilty of a criminal offence. The *Immigration Act*, he submitted, did not mandate that all persons found working without a work permit should automatically be charged with a criminal offence.

[53] According to Mr. Clarke, the immigration authorities had two avenues open to them under the *Immigration Act* for dealing with the Applicant. He

identified these as: (i) either to institute a criminal charge under section 17(4) against him for working in Barbados without a work permit; or (ii) to issue a deportation order against him under section 13(6) as a “*permitted entrant*” whose entry permit had expired, coupled with an order under section 22(2) for his detention at such place as the Minister directed pending his removal from Barbados.

[54] Counsel for the Respondents submitted that had the Applicant been charged with a criminal offence under section 17(4), he would obviously have been entitled to due process before a court in accordance with section 13(3)(b) of *the Constitution* of Barbados.

[55] However, he submitted the Applicant was not charged under section 17(4) with a criminal offence, but had, instead, been lawfully detained pursuant to section 13(8) of the Act at the Grantley Adams International Airport for an initial 2 month period pending the making of a deportation order. The legal basis for his initial detention at the airport was that he was a “*permitted entrant*” whose entry permit had expired.

[56] Mr. Clarke submitted that following his initial 2 month detention, the Applicant had once again been lawfully detained at HMP Dodds pursuant to section 22(2) of the Act, after the Minister of Immigration had first made a deportation order against him pursuant to section 13(6) of the Act.

- [57] According to Mr. Clarke, the Applicant was an administrative detainee and not a 'prisoner' serving a sentence within the context of the *Prisons Act* or the *Prisons Rules*.
- [58] Counsel for the Respondents, Mr. Clarke contended that the wording of s. 22(2) of the *Immigration Act* was clear and unambiguous. According to him, the Second Respondent acted lawfully and within her powers when she ordered the Applicant to be detained in custody *in such place* as she directed. He reiterated that the Applicant was not sent to HMP Dodds as a prisoner but as an administrative detainee and he had been detained there pending his deportation from Barbados.
- [59] Counsel for the Respondent also submitted that this was the first occasion that a Cuban national had come to this jurisdiction and been detained pending deportation "with no place to go" in light of the Cuban government's policy not to allow him re-entry. He urged the Court to have regard to the peculiar aspect of this case.
- [60] He submitted that the Minister had not purported to 'imprison' the Applicant under the *Immigration Act* and that the Minister had merely designated HMP Dodds as a place where the Applicant was to be detained pending his deportation in accordance with the statutory power given under s. 22(2) of the Act.

[61] In conclusion, Mr. Clarke stressed that in designating HMP Dodds as a place for the Applicant's detention pending deportation, the Minister had not acted *ultra vires* her powers under section 22(2) because: (i) the Applicant was never sent to HMP Dodds as a "prisoner" serving a sentence; and (ii) he had simply been sent there for detention as a person against whom a deportation order had been made pending his removal from Barbados. In short, he contended, the exercise of the Minister's power under section 22(2) of the Act was both lawful and reasonable in all the circumstances.

[62] The thrust of the Applicant's case appears to be that the Minister of Immigration had no authority to cause the Applicant to be detained or imprisoned at Her Majesty's Prison at Dodds and that by selecting HMP Dodds as the place where he was to be detained pending his deportation from Barbados, the Minister acted unlawfully and without legal authority and *ultra vires* the *Immigration Act*.

[63] The Court has found it prudent to commence its examination of the Applicant's claims by adverting briefly to the constitutional framework contained in section 13 of *the Constitution of Barbados* against which a person may, under the authority of law, be deprived of his personal liberty.

[64] Insofar as it is relevant to the current proceedings sub-section 13(1) of the Constitution of Barbados provides:

“13. (1) No person shall be deprived of his personal liberty save as may be **authorized by law** in any of the following cases, that is to say-

- (a) *In consequence of.....or in execution of the sentence or order of a court, whether established for Barbados or some other country, in respect of a criminal offence of which he has been convicted;*
- (b) ...
- (c) ...
- (d) ...
- (e) *upon reasonable suspicion of his having committed, ... a criminal offence under the laws of Barbados;*
- (f) ..
- (g) ..
- (h) ..
- (i) *...for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Barbadosetc*
- (j) *...etc*”[emphasis mine]

[65] As is self-evident, the Constitutional guarantee contained in sub-section 13(1) is very broadly worded. It gives persons broad protection against the deprivation of their personal liberty and expressly recognizes the specific situations in which a person may be deprived of his liberty **under the authority of law**.

[66] Among the several situations provided for in section 13(1) of the *Constitution of Barbados* in which a person may be deprived of his liberty, are:

- i) where a person has been *convicted of a criminal offence* and his liberty is taken away *in execution of a sentence* imposed by a court;

- ii) deprivation of a person's liberty *upon reasonable suspicion of his having committed a criminal offence*;
- iii) deprivation of liberty *for the purpose of effecting [his] expulsion, extradition or other lawful removal from Barbados*.

[67] It is evident that sub-section 13(1) draws no distinction between the concepts of “*detention in custody*” and “*imprisonment*” found in the ***Immigration Act*** and the ***Prisons Act*** respectively both of which are subsumed under the broad terminology of “*deprivation of liberty*”.

[68] With specific reference to section 13(1) (i) of the ***Constitution of Barbados***, a brief review of the Laws of Barbados will reveal that there are a number of enactments which expressly authorize the several circumstances in which persons may be deprived of their personal liberty for the purpose of effecting their expulsion, extradition or other lawful removal from Barbados.

[69] The ***Expulsion of Undesirables Act, Cap. 188*** for example, governs the procedure for effecting the lawful expulsion from Barbados of persons (not being citizens of Barbados) who are considered by the Governor-General to be “undesirables” pursuant to an ‘expulsion order’ issued by the Governor General of Barbados. Section 5 of the Act also makes provision for the “*detention in custody*” of a person who is arrested under an expulsion order.

[70] Additionally, the Governor General is expressly authorized to direct the manner and place of the person's detention. It is evident that the Act purports to give the Governor-General an absolute discretion to select the place where such a person is to be detained pending his expulsion from Barbados. It is noteworthy that nothing in the Act circumscribes the Governor-General's discretion and in particular, the Governor-General is not forbidden from ordering such a person detained in custody in prison pending expulsion from Barbados.

[71] Next, the *Extradition Act, Cap. 189* specifically defines "extradition crimes" and prescribes, *inter alia*, the circumstances in which, and the procedures to be followed where fugitives from justice from a Commonwealth country or a foreign state, may be "arrested", "committed to prison", "detained in custody", "surrendered" and "conveyed out of Barbados".

[72] The *Extradition Act* also expressly governs those situations in which a fugitive from a Commonwealth country or a foreign state has either been charged with an offence committed in Barbados or is serving a sentence following a conviction for an offence committed in Barbados not being the offence for which his surrender is sought. In such situations, the Act stipulates that the fugitive may not be surrendered, or his surrender shall not

take effect until after he has been discharged, whether by acquittal or by expiration of his sentence or otherwise.

[73] It is therefore evident from the foregoing enactments that under the broad legislative framework of the Laws of Barbados, not every person who is “*committed to prison*” or “*detained in custody*” in prison or elsewhere is necessarily a person who has been charged with a criminal offence or who is serving a sentence.

[74] The *Immigration Act* also governs, *inter alia*, the circumstances in which a person may lawfully be “*detained in custody*” for the purpose of effecting his expulsion and lawful removal from Barbados under a deportation order.

[75] Significantly, and in terms not dissimilar to section 5 of the *Expulsion of Undesirables Act*, section 22(2) of the *Immigration Act* provides:

“Where a deportation order is made against a person, the Minister may order that person to be detained in custody in such place as the Minister directs and for such period as may be necessary for the purpose of making arrangements for his removal from Barbados.”

[emphasis mine]

[76] Turning to the application under review, the Applicant complains that by selecting Her Majesty’s Prison at Dodds as the place where he was to be detained pending his deportation and removal from Barbados, the Second

Respondent effectively ordered his “*imprisonment*” at Dodds and made him a “*prisoner*” and under the ***Prisons Act*** and accordingly, acted *ultra vires* both the ***Immigration Act*** as well as the ***Prisons Act***.

[77] Counsel for the Applicant referred the Court to section 2 of the ***Prisons Act*** which defines the word “*prisoner*” to mean:

“*any prisoner charged with or convicted of any criminal offence or any person ordered to be detained by any court, Judge, magistrate, Justice or other lawful authority having power and jurisdiction to order imprisonment.*” [emphasis mine]

[78] Counsel for the Applicant, Mr. Trotman contends that the Minister of Immigration is not a “*lawful authority having power and jurisdiction to order imprisonment.*” According to Mr. Trotman the definition of “*prisoner*” in section 2 of the ***Prisons Act***, ought not to be interpreted so as to recognize the Minister of Immigration as a lawful authority (in the same category of a court, Judge, magistrate or Justice) having power and jurisdiction to order ‘*imprisonment*’.

[79] He contends that only a court, Judge, magistrate or Justice and other lawful authorities like a court, Judge, magistrate or Justice have power to lawfully order someone ‘*imprisoned*’ at Dodds prison and that to the extent that the Minister of Immigration directed the Applicant to be detained in custody at

Dodds prison, he imprisoned him and made him a prisoner and accordingly acted *ultra vires* and contrary to law.

[80] In his submissions, Counsel for the Respondents, Mr. Clarke steered clear of offering the Court an opinion as to what, in his view, was the intended scope of the powers of detention conferred on the Minister of Immigration under section 22(2) of the *Immigration Act*.

[81] Nor did Mr. Clarke provide the Court with any views as to on the question whether the Minister of Immigration could be regarded for purposes of section 2 of the *Prisons Act* as a lawful authority having power to “imprison” the Applicant. Ultimately, Counsel for the Respondents, Mr. Clarke merely submitted that the Applicant was an “administrative detainee” and was not a ‘prisoner’ serving a sentence within the context of the *Prisons Act*. The Court was also provided with no definition of what Mr. Clarke meant by the expression “administrative detainee”.

[82] The answer to the conundrum raised by Counsel for the Applicant on this application appears to lie in the Court determining whether in ordering the Applicant’s “detention in custody” at HMP Dodds pursuant to section 22(2) of the *Immigration Act*, the Minister of Immigration was an authority having the power and jurisdiction to order his “imprisonment” within the meaning of the *Prisons Act*?

[83] As the Court embarked on its task of ascertaining Parliament’s intention as disclosed in the *Immigration* and *Prisons Acts*, respectively, the Court was satisfied that it was impossible to determine firstly, the full scope of the Second Defendant’s power to order the Applicant’s “*detention in custody*” conferred by section 22(2) of the *Immigration Act*; or secondly, whether the Minister’s power of detention under section 22(2) was synonymous with the power to order “*imprisonment*” referred to in section 2 of the *Prisons Act*, unless both Acts were read as a whole and against the background of section 13(1)(i) of the *Constitution of Barbados* and other enactments providing for the deprivation of liberty

[84] The approach of reading the text of an Act or other instrument as a whole commended itself because as Lord Scarman stated in *South West Water Authority v. Rumbles’s* [1985] AC 609 @ 617, “*it is not possible to determine their true meaning save in the context of the legislation read as a whole.*” [Bennion on Statutory Interpretation, 5th Edition at p. 1156.]

[85] Construction as a whole requires that unless the contrary appears, three principles should be applied. These are that (i) every word in the Act should be given a meaning; (ii) the same word in the Act should be given a meaning; and (iii) different words should be given different meanings. [Bennion, 5th Edition at p. 1157.]

[86] On the assumption that Parliament does nothing in vain, the Court must endeavor to give significance to every word of an enactment. It is presumed that if a word or phrase (or section or sub-section) appears, it was put there for a purpose and must not be disregarded. [*Bennion, at p. 1157.*]

[87] The canon that every word in an enactment is to be given meaning also applies where the meaning in question is that of a different enactment. [*Bennion, at p. 1159.*]

[88] Against the background of the foregoing linguistic canons of construction, the question which arises for the Court's consideration at this time is, given the existing scheme of the *Prisons Act*, whether Parliament intended that the power to order the Applicant's "detention in custody" and to select the place of his detention conferred on the Minister of Immigration by section 22(2) of the *Immigration Act* to be interpreted so that the Minister of Immigration ought properly to be regarded, for purposes of the definition of "prisoner" in section 2 of the *Prisons Act* as "*a lawful authority having power and jurisdiction to order imprisonment*"?

[89] The Court sought to determine the meaning of the word "*imprisonment*" in section 2 of the *Prisons Act* by applying the well-known linguistic canon of construction that as the word had not been given any special meaning, Parliament intended that it was to be given its "proper and most known

signification.” A Court may also take judicial notice of the meaning of words from well-known and authoritative dictionaries and other works of reference. [*Bennion at p. 1182 & 1222.*]

[90] Volume I of the Sixth Edition of *The Shorter Oxford Dictionary* provides the following broad definition of the verb “*imprison*” and states that it means to: “*put or keep in a prison or other place of confinement: confine or shut up*”

[91] Additionally, the words “*imprison*” and “*imprisonment*” are defined at page 825 of the Ninth edition of *Black’s Law Dictionary* respectively, to mean: “*to confine (a person) in prison*” and “*the state of being confined.*”

[92] Next, the Court turned to section 22(2) of the *Immigration Act* and sought to determine whether (if at all) there is any qualitative difference in meaning between the power conferred on the Minister of Immigration to order a person “*detained in custody*” and the power to “*order imprisonment*” referred to in section 2 of the *Prisons Act*?

[93] The Court took note of the fact that the verb “*detain*” is defined in the Sixth Edition of *The Shorter Oxford Dictionary* to mean: “*to place or keep in confinement; keep as a prisoner, especially without charge.*”

[94] While not specifically defining the verb “*detain*”, *Black’s Law Dictionary* defines a “*detainee*” to mean “*a person held in custody, confined, or*

delayed by an authority, such as law enforcement or a government.” The Court was satisfied that the power conferred on the Minister of Immigration under section 22(2) (like that conferred on the Governor-General by section 5 of the *Expulsion of Undesirables Act*) was intended to confer wide executive power and discretion to select and direct the place where a person subject to a deportation order is to be detained in custody, pending his removal from Barbados.

[95] The discretion was wide enough to permit the Minister to direct that the Applicant (against whom a deportation order was made) to be “*put or kept in a prison or other place of confinement*” and therefore, to be effectively “*imprisoned*”.

[96] Ultimately, the Court was satisfied that there is no qualitative difference between the power conferred on the Minister of Immigration under section 22(2) to order a person “*detained in custody*” and the power to “*order imprisonment*” referred to in section 2 of the *Prisons Act*.

[97] The Court observed in particular, that the exercise by the Minister of Immigration pursuant to section 22(2) of the *Immigration Act*, of the power to detain the Applicant in custody pending deportation, coupled with the wide discretion also conferred on the Minister, to select the place of his detention, would inevitably result in the deprivation of the Applicant’s

liberty, and his confinement or “imprisonment”, either in a prison or in such other place of confinement determined by the Minister.

[98] The Court was satisfied that such an interpretation would not conflict with the scheme of the *Prisons Act* since, read as a whole, the Act recognizes a clear distinction between different categories of “*prisoners*”, including those persons detained in prison by a lawful authority having power and jurisdiction to order imprisonment.

[99] In section 34 of the Act for example, a distinction is clearly drawn between a prisoner who is sentenced to imprisonment on the one hand, and one who has been committed to prison on remand or pending trial “*or otherwise*” on the other. Section 34(1) provides:

“34(1) A prisoner, whether sentenced to imprisonment or committed to prison on remand or pending trial **or otherwise**, may be lawfully confined in any prison.” [emphasis mine]

[100] The words “*or otherwise*” which appear immediately following the words “*pending trial*” in section 34, suggest the existence of a third category of prisoner, namely, those who have been committed to prison and are being detained in custody at the prison, otherwise than for sentence, on remand or pending trial. According to section 34, it is these 3 categories of prisoners who “*may lawfully be confined in any prison.*”

[101] While not providing further definitions, section 49 of the *Prisons Act* specifically identifies 3 broad classes of ‘*prisoners.*’ The section also specifies the types of employment to be undertaken in prison by “*civil prisoners*” and “*convicted prisoners*” on the one hand and “*appellant prisoners*” on the other.

[102] Some further insight into the Parliamentary intent may also be found in section 66 of the *Prisons Act* conferring general rule-making power on the Minister responsible for prisons to make rules for any of the purposes of the Act and conferring express power to make rules for the specific purpose *inter alia*, of:

“(a) *The classification of prisons and prisoners into categories and their separation accordingly;*

(m) *The execution of “condemned prisoners”;*

(q) *the treatment of the undermentioned persons while required to be detained in prison*

(i) *any appellant pending the determination of his appeal;*

(ii) *any other person detained in prison who is not a person serving a sentence or a person imprisoned in default of payment of a sum adjudged to be paid by him on his conviction.”*

[103] The Court is therefore satisfied that by reason of the conjoint operation of section 2, section 34 and section 66(q)(ii) of the Prisons Act, Parliament intended that persons may lawfully be confined in prison who (like the Applicant) are not serving a sentence and who are committed to prison otherwise than on remand or pending trial.

[104] It is therefore not unlawful nor *ultra vires* nor contrary to the scheme of the *Prisons Act* for a person (like the Applicant) who has been ordered detained in custody at HMP Dodds pending his deportation and who is not on remand, nor awaiting trial and who is not serving a sentence, to be confined, detained or imprisoned at HMP Dodds.

[105] The *Prison Rules, 1974* were made on the 8th November, 1974 pursuant to the subsidiary law making powers delegated on the Minister having portfolio responsibility for prisons by section 66 of the *Prisons Act*. Broadly, the Rules purport to set out the general rules governing the treatment of prisoners and the classification of prisoners between prisoners under 21 years (Young Prisoners' Class); those 21 years and over who have not previously been convicted (Star Class) and "*convicted prisoners*" who in view of their record or are likely to have a bad influence on others (Ordinary Class).

[106] Rules 98 to 113 contain special rules for another category of prisoner, namely: “*untried prisoners*” who have been “*committed*” to prison in any of the following circumstances-

(a) *On commitment for trial for any indictable offence;*

(b) *Pending or in the course of a hearing before a court of summary jurisdiction of a charge for an indictable offence, or pending or in the course of the hearing of an information or complaint;*

(c) *On commitment under section 24 or 26 of the Bankruptcy Act, Cap. 303;*

(d) *On commitment to await extradition.*” [emphasis mine]

[107] Additionally, Rules 114 to 120 apply to persons, referred to as “*appellant prisoners*”, “*committed*” to prison by virtue of any enactment pending the hearing of an appeal or to any person who, after admission as a “*convicted prisoner*”, appeals against such conviction or sentence.

[108] In keeping with section 66(m) empowering the Minister responsible for Prisons to make rules for the execution of “*condemned prisoners*”, Rules 128 to 132 identify and make provision for the treatment of: “*Prisoners under Sentence of Death*”.

[109] Finally, Rules 123 to 127 identify yet another category of prisoner, referred to as “*Civil Prisoners*” being:

- (a) “Persons **detained** in prison for default in payment of a civil debt;
- (b) Persons **committed** for non-payment under an order of the court;
- (c) Persons **committed** for contempt of court; and
- (d) Aliens **committed** for deportation **or otherwise**.” [emphasis mine]

[110] As is evident from the foregoing, Rules 88 and 123 dealing respectively with “*untried prisoners*” and “*civil prisoners*”, both expressly stipulate that such persons are persons who have been “*detained*” in prison for a civil debt in the case of a “*civil prisoner*” or who have been “*committed*” to prison in the circumstances expressly outlined in Rules 88 and 123.

[111] It is obvious that nothing in the *Prisons Act*, as presently formulated, makes any express reference to a person subject to a deportation order who has been ordered “detained in custody” in prison by the Minister of Immigration pending his removal from Barbados pursuant to powers conferred by section 22(2) of the *Immigration Act*.

[112] The Court considered whether the absence of an express reference in the *Prisons Act* and *Rules* to persons ordered by the Minister of Immigration to be “detained in custody” in prison pending deportation from Barbados, necessarily resulted in the Applicant’s detention being unlawful.

[113] I was satisfied that notwithstanding the absence of an express reference in the *Prisons Act* and *Rules* to persons ordered detained in custody by the

Minister of Immigration, by reason of the conjoint operation of section 2, section 34 and section 66(q)(ii) of the *Prisons Act*, Parliament clearly intended that persons may lawfully be confined in prison who (like the Applicant) are not serving a sentence and who are committed to prison otherwise than on remand or pending trial.

[114] Such an interpretation appears completely consistent with Rule 123 of the *Prison Rules*, which provides for the manner of treatment whilst in prison as “civil prisoners,” of “*aliens committed for deportation or otherwise*”.

[115] The use of the word “*committed*” in Rule 123 immediately begs the question whether an order of the Minister of Immigration made pursuant to section 22(2) of the *Immigration Act* purporting to direct a person against whom a deportation order has been made to be detained in custody in prison pending his removal from Barbados can properly be equated with the conferral by Parliament on the Minister of Immigration of a power to “*commit*” a person who is subject to a deportation order to prison pending his deportation from Barbados?

[116] This naturally lead the Court to consider the meaning of the expression “*committed*” as used in Rules 98 and 123 of the *Prison Rules*. In Black’s Law Dictionary, the word “*commit*” is defined, *inter alia*, to mean: “*to send a person to prison or to a mental health facility; especially, by court order.*”

[117] The Court is accordingly satisfied and holds for purposes of the *Prisons Act*, that the order made by the Minister of Immigration pursuant to section 22(2) of the *Immigration Act* purporting to direct the Applicant to be detained in custody at HMP Dodds pending his removal from Barbados, was an order issued by a lawful authority having power and jurisdiction to order his “*imprisonment*” and which effectively “*committed*” or sent him to prison, and made him a lawful “*prisoner*” within the meaning of the *Prisons Act*.

[118] In the circumstances and for the several foregoing reasons, the declarations sought at paragraphs (c) and (d) of the Originating Motion are refused.

[119] **Issue 4- Whether the Applicant’s fundamental rights under the Constitution of Barbados were breached?** At paragraph (h) of his Originating Motion, the Applicant claimed a declaration that his fundamental rights under the Constitution had been breached.

[120] The specific sections of the Constitution alleged to have been contravened were not initially identified in the Originating Motion. However at the hearing Counsel for the Applicant Mr. Trotman handed the Court his Written Submissions in which he submitted very generally that the following rights of the Applicant under the *Constitution of Barbados* had been contravened:

- (i) His right to liberty and security of the person – *section 11(a)*;

- (ii) His right not to be deprived of his personal liberty without due process- *section 11(c)* and *section 13(3)(b)*; and
- (iii) His right not to be subjected to inhuman or degrading punishment or treatment – *section 15*.

[121] In the course of his oral submissions, Mr. Trotman evidently abandoned his intended challenge under section 15 of *the Constitution* as he made very few oral submissions in respect of section 15. He conceded that the section 15 challenge “was a difficult one to make” and ultimately, he informed the Court that his submission on the Applicant’s treatment while at Dodds prison was more appropriately directed towards the issue of damages.

[122] The Court found that Mr. Trotman’s concession was not at all surprising since the evidence adduced in the Applicant’s affidavit of November 10, 2009 in support of his having been subjected to inhuman or degrading punishment or treatment appeared tenuous at best.

[123] Mr. Trotman focused the thrust of his oral submissions instead on sections 11(a), 11(c) and sections 13(1)(i) and 13(3)(b) of *the Constitution*. He submitted that the affidavit evidence of the Deputy Chief Immigration Officer, Mr. Rodney Farrell disclosed that the Applicant had been taken by police from his workplace at “Licking Chicken” in Oistins Plaza on January 22, 2008 and had been detained and questioned by police on suspicion of his

having accepted employment without a work permit contrary to section 17(1) of the *Immigration Act*.

[124] According to Mr. Trotman, the evidence disclosed that police did not charge the Applicant for an offence under section 17(4) of the *Immigration Act*, but had instead subsequently handed him over to the immigration authorities.

[125] Mr. Trotman contended that the Applicant had not been afforded due process under section 13(3)(b) of the Constitution since after detaining him at the station, the police should either have charged the Applicant with an offence under section 17(4) of the Act and taken him before a court or released him. As the Applicant had not been charged with a criminal offence, he contended, he ought to have been released and accordingly, his subsequent detention by the immigration authorities was unlawful and in breach of his due process rights under section 13(3)(b) of *the Constitution*.

[126] Mr. Trotman submitted further that the Applicant's right to due process under section 13(3)(b) of *the Constitution* had similarly been breached by the immigration authorities during the period January 22, 2008 and March 18, 2008 when he was detained at the Grantley Adams International Airport. He contended that as the Applicant had not been charged and taken before a court, the immigration authorities would similarly have breached the due process requirements of section 13(3)(b) of *the Constitution* since the

Applicant would have committed an offence under section 17(4) of the *Immigration Act* by reason of his having been found in employment in Barbados without a work permit.

[127] Mr. Trotman based this contention on the provisions of section 13 (3) (b) of the *Constitution of Barbados* which states:

“13 (3) Any person who is arrested or detained-
(a) ...
(b) upon reasonable suspicion of his having committed or being about to commit a criminal offence,
and who is not released, shall be brought before a court as soon as is reasonably practicable; and if any person arrested or detained upon reasonable suspicion of his having committed or being about to commit a criminal offence is not tried within a reasonable time, then, without prejudice to any further proceedings which may be brought against him, he shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial.”

[128] In response, Counsel for the Respondents, Mr. Wayne Clarke rejected Mr. Trotman’s submission that the Applicant’s constitutional rights had been breached. He referred to Part III of the *Immigration Act* which deals with work permits. He argued that there is no mandatory requirement under section 17 of the *Immigration Act* that a person who is working without a permit must necessarily be charged. According to him, that section simply

states that a person who has breached the provisions is guilty of an offence but does not mandate that such a person must automatically be charged.

[129] Section 17 of the ***Immigration Act*** provides as follows:

“17 (1) A person other than a citizen, permanent resident, immigrant or national of a Member State to whom

(a) the right of establishment referred to in Articles 32, 33, paragraph (c) of Article 34, 36 and 37 of the Treaty applies; and

(b) the provision of services referred to in Articles 37 and 38 of the Treaty applies

may not in Barbados engage in any occupation or accept employment without having first obtained a written permit for the purpose granted by the Minister.

(2) A person may not engage or employ another person who is not a citizen, permanent resident or immigrant or national of a Member State to whom

(a) the right of establishment referred to in Articles 32, 33, paragraph (c) of Article 34, 36 and 37 of the Treaty applies; and

(b) the provision of services referred to in Articles 37 and 38 of the Treaty applies

unless there is a work permit in force in relation to that other person and for the purpose of that engagement or employment.

(3) A work permit shall be in such form and may be granted subject to such conditions as the Minister thinks fit.

(4) Any person who

(a) contravenes subsection (1) or (2); or

(b) being the holder of a work permit, contravenes or fails to comply with any condition subject to which that permit was granted is guilty of an offence under this Act.” [emphasis mine]

[130] Mr. Clarke argued with some force that the Applicant would only be entitled to constitutional protection under s 13 (3) (b) of *the Constitution* **if** he had been charged under s. 17 of the *Immigration Act*. Accordingly, as no charges had been laid against the Applicant for breaches under s. 17 of the Act, he submitted that no violations of the Applicant’s constitutional rights arose under s. 13(3) (b) of *the Constitution*.

[131] In his response, Counsel for the Applicant submitted that section 17 (1) and (4) of the *Immigration Act* created a strict liability offence and therefore the State (meaning the police and the immigration authorities) did not have the right to elect which route they proceeded on. He suggested that if the State elected not to charge the Applicant in accordance with s. 13 (3) (b) then the Applicant should have been released.

[132] Interestingly, s. 21 (5) of the *Immigration Act* provides that, “*a person who commits an offence under this Act or the regulations may, notwithstanding the fact that a deportation order has been made against him, be prosecuted and required to undergo any punishment imposed upon him in respect of that offence before he is deported.*” [emphasis mine]

[133] This section seemingly lends support to Mr. Clarke's contention that the law enforcement and immigration authorities had a complete discretion whether to charge the Applicant with an offence under section 17(4) or not. Clearly after questioning the Applicant on January 22, 2008, the police chose not to charge the Applicant and handed him over to the immigration authorities who detained him until March 18, 2008 pending the making of a deportation order.

[134] The Applicant's detention pending the making and execution of a deportation order is expressly authorized by section 13 of the *Immigration Act* dealing with "*permitted entrants*." The relevant sub-sections provide as follows:

"13(6) Where a person to whom a permit to enter Barbados was issued under subsection (2) remains in Barbados after the expiration or revocation thereof, the Minister may make a deportation order against him.

"13(8) The Chief Immigration Officer may detain a person mentioned in subsection (6) pending the making and execution of a deportation order."

[135] The evidence discloses and the Court is satisfied that the Applicant arrived in Barbados on 24th August 2006 and was granted permission to enter

Barbados as a visitor for 30 days. He applied for and was granted an extension of his stay for a further 15 days and upon the expiration of the 15 day extension, the Applicant remained in Barbados where he illegally lived and worked until his arrest at his workplace on January 22nd, 2008.

[136] It is evident from the affidavits (and the Court so holds) that after police released the Applicant into the custody of the immigration authorities on January 22, 2008 following their investigations, he was thereafter lawfully held by the immigration authorities at the Grantley Adams International Airport until March 19th 2008 pursuant to section 13(8) of the *Immigration Act* pending the making and execution of a deportation order against him.

[137] More specifically, the Court is satisfied that the Applicant's detention by the Chief Immigration Officer in the holding facility at the Grantley Adams International Airport was lawful and authorized by law since (as the evidence clearly discloses) he was both in fact and in law a "permitted entrant" who had remained in Barbados after the expiration of his entry permit in and around October of 2006.

[138] The Court has already held that the Applicant's subsequent detention in custody at HMP Dodds in the period between March 19th, 2008 and his eventual release from custody by this Court on August 31st, 2009 was authorized by section 22(2) of the *Immigration Act* and lawful.

[139] In the circumstances, the Court is satisfied that the deprivation of the Applicant's liberty between January 22, 2008 and August 31st, 2009 was not only authorized by law but was entirely consistent with the spirit and intent of section 13(1)(i) of *the Constitution of Barbados*.

[140] Regrettably, no legal authorities were cited by either Counsel in support of their respective arguments on this issue. Nonetheless, the Court is satisfied that *the Constitution* affords to every person in Barbados the fundamental rights and freedoms of the individual described in Chapter III. These rights and freedoms are subject to limitations designed to ensure that their enjoyment does not prejudice the rights and freedoms of others or the public interest: [See s. 11 of *the Constitution*.]

[141] Section 13 (1) (i) of *the Constitution* provides that:

“No person shall be deprived of his personal liberty save as may be authorised by law in any of the following cases, that is to say- for the purpose of preventing the unlawful entry of that person into Barbados, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Barbados or for the purpose of restricting that person while he is being conveyed through Barbados in the course of his extradition or removal as a convicted prisoner from one country to another.” [emphasis mine]

[142] The Applicant's detention at HMP Dodds by the First and Second Respondents pursuant to the order made under section 22(2) of the *Immigration Act* was expressly stated to have been for the purpose of

facilitating his deportation from Barbados. The Court has already pointed out that the deprivation of a person's personal liberty to effect his deportation from Barbados is lawful and expressly permitted under s. 13 (1) (i) of *the Constitution*.

[143] Turning to the alleged breaches of section 13 (3) (b) of *the Constitution*, it is very obvious that this section is intended to provide for the release from custody of a person who has either been arrested or detained upon reasonable suspicion of his having committed or about to commit a criminal offence where that person is not tried within a reasonable time. The due process guarantees set out in s. 13 (3) (b) of the Constitution are inapplicable in the current circumstances for the reasons that now follow.

[144] Firstly, the power conferred on the immigration authorities to lawfully deprive a person of his personal liberty under the *Immigration Act* pending his deportation from Barbados is expressly recognized and authorized by the provisions of s. 13 (1) (i) of *the Constitution*.

[145] Secondly, there is no provision either in the *Immigration Act* or in the *Constitution* which mandates a person who is reasonably suspected of having committed an offence contrary to the laws of Barbados to first be charged with the offence before a deportation order is issued against him. As is clear from section 13 of the *Immigration Act*, where deportation of a

“permitted entrant” who has overstayed his permit to enter is contemplated, no criminal proceedings need be instituted and such a person may be legally detained pending the making and execution of a deportation order. In short, detention pending the making of a deportation order and detention subsequent to the execution of a deportation order are purely administrative acts to which the “due process” provisions of section 13(3)(b) of *the Constitution* do not apply.

[146] Section 13 (3) (b) of *the Constitution* which mandates the release of a person initially detained on suspicion of having committed a criminal offence, cannot apply in circumstances where the facts establish that the Applicant was in effect being detained as authorized under the *Immigration Act* for the purpose of making arrangements to facilitate his deportation from Barbados.

[147] To order otherwise would be to completely nullify the express statutory powers conferred on (a) the Chief Immigration Officer to detain the Applicant pending the making and execution of a deportation order and (b) the Minister of Immigration to issue a deportation order and to order that person’s detention under s. 22(2) of the *Immigration Act*. Both provisions are clearly authorized under s. 13 (1) (i) of *the Constitution*.

[148] A careful reading of s. 13 (3) (b) will also show that that provision is concerned with ensuring that persons who are arrested or detained on suspicion of having committed a criminal offence and who are not released, are brought before the courts as soon as reasonably practicable for trial or the determination of the matter.

[149] The section mandates such a person to be tried “within a reasonable time” and mandates that if not, “he shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial”. In short, the section cannot operate to prevent the deprivation of liberty of a person who is subject to a deportation order and to detention pending his removal from Barbados pursuant to the *Immigration Act* and to *the Constitution*.

[150] Having regard to the foregoing, I find that there were no breaches of the Applicant’s constitutional rights and freedoms as alleged.

[151] Further, based on the evidence before the Court, I do not find that the Applicant was subjected to inhumane or degrading punishment or other treatment as Mr. Trotman also suggested.

[152] It is therefore the Court's determination that there has been no breach of the Applicant's fundamental rights under *the Constitution*. The declaration sought at paragraph (h) of the Originating Motion is accordingly refused.

[153] **Issue 5- Whether the Applicant should be compensated in damages for any loss and damage he may have suffered consequent on his detention at HMP Dodds?** At paragraph (j) of his Origination Motion, the Applicant also claimed relief in the form of an order for special and general damages on the basis that he be compensated for the loss and damage suffered by him as a result of the decision of the Minister of Immigration to detain him at Her Majesty's Prison at Dodds pending his deportation.

[154] As the Court has refused to make the declarations sought at paragraphs (a), (c), (d) and (h) of the Originating Motion, it follows that the Applicant is not entitled to an award of damages to compensate him either: (i) for his detention at the Grantley Adams International Airport between January 22nd, 2008 and March 19th, 2008 pending the execution of the deportation order; or (ii) for his detention at HMP Dodds between March 19th, 2008 and his eventual release on August 31st, 2009 pursuant to his successful *Habeas Corpus* application.

[155] This Court has previously held that as the Minister of Immigration was unable to say when the Applicant was likely to be deported from Barbados,

the Applicant's continued detention at HMP Dodds, where he had been detained for some seventeen (17) months, was no longer reasonable or lawful. *[See "ORSC" v The Superintendent of Prisons et al Suit Nos. 14 of 2009 and 717 of 2009 [unreported decision] of 31 August 2009.]*

[156] The fact that the Applicant was successful in securing his release following his *Habeas Corpus* application, does not, and cannot, entitle him to an award of damages in these proceedings since (as this Court has now found) he was lawfully detained under the Minister's Order pursuant to section 22(2) of the *Immigration Act* until his release from prison on August 31st, 2009.

[157] The claim for damages is accordingly also refused.

DISPOSAL:

[158] For the reasons earlier outlined, the Plaintiff's Originating Motion is dismissed. There is no order as to costs.

MAUREEN CRANE-SCOTT
Judge of the High Court