

**EASTERN CARIBBEAN SUPREME COURT  
GRENADA**

**IN THE HIGH COURT OF JUSTICE  
(CIVIL)**

**CLAIM NO. GDAHCV2024/0311**

**IN THE MATTER OF THE GRENADA CONSTITUTION**

**AND**

**IN THE MATTER OF SECTION 12 OF THE CONSTITUTION**

**AND**

**IN THE MATTER OF AN APPLICATION FOR CONSTITUTIONAL REDRESS  
PURSUANT TO SECTION 16 OF THE CONSTITUTION**

**BETWEEN:**

**KEYLON LATOUCHE**

Claimant

and

**ATTORNEY GENERAL OF GRENADA**

Defendant

**Before:**

The Hon. Mde. Justice Agnes Actie

High Court Judge

**Appearances:**

Mr. Ruggles Ferguson KC and Ms. McKaeda Augustine for the Claimant  
Ms. Camille Gooding-DeSouza for the Defendant

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2026: March 10<sup>th</sup>; 20<sup>th</sup>;  
May 27<sup>th</sup>.  
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## **JUDGMENT**

- [1] **ACTIE, J.:** The issue arising under this claim is whether the policy requiring prison officers to obtain permission from the Commissioner or Superintendent of Prisons before leaving Grenada is ultra vires, unconstitutional under section 12 of the Constitution, and unlawful.

- [2] This constitutional redress brought pursuant to Section 16 of the Grenada Constitution arises from the actions of the Immigration Department and the Commissioner of Prisons on 14<sup>th</sup> January 2024, which resulted in the claimant being prevented from boarding an international flight.

### **Brief Facts**

- [3] The claimant (hereafter referred to as “Mr. LaTouche”) is a prison officer and public servant since the year 2010, and was on approved vacation leave from 2<sup>nd</sup> January 2024 to be followed by approved study leave.
- [4] On 14<sup>th</sup> January 2024, Mr. LaTouche was prevented from boarding his flight to the United States by officers of the Immigration Department at the Maurice Bishop International Airport who informed him that he could not leave the State without written authorisation from the Commissioner of Prisons.
- [5] In a fixed date claim filed on 2<sup>nd</sup> August 2024, Mr. LaTouche contends that the defendant’s actions violated his right to freedom of movement under section 12 of the Constitution of Grenada. He further argues that those actions were unlawful and ultra vires, as no law authorises such a restriction on his liberty. He therefore seeks a declaration that the policy requiring him to obtain permission to leave Grenada while on vacation leave is unconstitutional and infringes his constitutional right.
- [6] The defendant in response contends that the alleged restriction is justified under section 12(3)(f) of the Constitution and that the acts complained of were carried out by public officers in the execution of their public duties pursuant to established policy.

### **The Evidence**

#### *Mr. LaTouche*

- [7] Mr. LaTouche states that he was intercepted, escorted from the departure lounge and prevented from boarding his flight. Subsequently, by notice dated 23<sup>rd</sup>

January 2024, the Commissioner of Prisons reminded prison officers and staff that a letter of authorisation granting permission to leave the State was required.

- [8] In his witness statement, Mr. LaTouche stated that despite over 13 years of service, he was unaware of any requirement to obtain permission to travel. However, under cross-examination, Mr. LaTouche accepted that on prior occasions he had received permission to travel. He recalled a letter dated 6<sup>th</sup> August 2021 granting him permission to travel. He also confirmed that he had provided the details of his intended overseas address in that instance.

*Anthony Rogers – Commissioner of Prisons (Ag.)*

- [9] Mr. Anthony Rogers was not the Commissioner of Prisons at the material time, but indicated that he had previously served at the prisons as Chief Officer in 2019, and as acting Commissioner from August 2024.
- [10] In cross-examination, Mr. Rogers stated that the established procedure requires prison officers to seek permission to travel outside of Grenada. He indicated that Mr. LaTouche in the past applied verbally for travel outside of Grenada, which application resulted in a written permission to travel. Mr. Rogers exhibited two letters dated 19<sup>th</sup> July 2017 and 6<sup>th</sup> August 2021 respectively reflecting that Mr. LaTouche had previously applied for permission to travel out of State, consistent with the requirement to disclose an intention to travel.
- [11] Mr. Rogers further explained that applications for leave are made on completion of a prescribed form which requires the officer to indicate whether there is an intention to travel overseas. The form is usually submitted to the Commissioner of Prisons and thereafter forwarded to the Public Service Commission for approval.

*Carlyn McQuilkin – Permanent Secretary*

- [12] Ms. McQuilkin, Permanent Secretary in the Ministry of National Security, Home Affairs, Information and Disaster Management, in her witness statement, indicated that the Regulations governing the public service operate in the interest

of national security. She explained that the procedure for leave involves an application being submitted through the relevant department, then forwarded to the Permanent Secretary, and ultimately sent to the Public Service Commission for approval. She noted that prison officers typically liaise with their Head of Department rather than directly with the Permanent Secretary with respect to leave, and that responses regarding permission are communicated through the Commissioner of Prisons.

[13] Ms. McQuilkin's evidence was not challenged at trial.

### Legal Analysis

*Whether the claimant's constitutional right to freedom of movement was violated*

[14] **Section 12** of the **Constitution** states:

"12. Protection of freedom of movement

(1) No person shall be deprived of his or her freedom of movement, that is to say, the right to move freely throughout Grenada, the right to reside in any part of Grenada, the right to enter Grenada, the right to leave Grenada and immunity from expulsion from Grenada.

(2) Any restriction on a person's freedom of movement that is involved in his or her lawful detention shall not be held to be inconsistent with or in contravention of this section.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision-

....

(f) for the imposition of restrictions upon the movement or residence within Grenada or on the right to leave Grenada of any public officer;..."

[15] In addition, **Regulation 54** of the **Public Service Commission Regulations, SRO 27 of 1969** states:

"54. Absence without leave

(1) An officer shall not be absent from duty without leave or reasonable excuse.

(2) An officer shall not leave Grenada without the permission in writing of the Chief Personnel Officer after consultation with the Permanent Secretary or Head of Department.”

### Mr. LaTouche's arguments

[16] Mr. Ruggles Fergusson KC for the claimant argues that the right to leave one's country is a core component of the constitutional guarantee of freedom of movement. He cites the decision of the Caribbean Court of Justice in **AG v Joseph & Boyce**<sup>1</sup>, which emphasised that constitutional guarantees must be construed broadly, avoiding the austerity of tabulated legalism, and that courts should interpret domestic fundamental rights consistently with evolving international human rights norms to which the State has subscribed.

[17] King's Counsel further submits that **Section 12** ought to be interpreted consistently with international human rights norms, including **Article 12** of the **International Covenant on Civil and Political Rights** and **Article 13** of the **United Nations Universal Declaration of Human Rights 1948**, both of which expressly recognise the right of every person to leave any country, including his or her own.

[18] King's Counsel further submits that any restriction on this right must be prescribed by law, reasonably justifiable in a democratic society, and directed to a legitimate public purpose. He accepts that **Section 12(3)(f)** permits restrictions on the movement of public officers but contends that any such restriction must be lawfully imposed. He further submits that constitutional rights and freedoms must be interpreted generously and purposively so as to give full effect to their spirit and purpose.

[19] King's Counsel also relies on the decision in **Collymore v Attorney General of Trinidad and Tobago**<sup>2</sup>, where the court emphasised that executive convenience

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<sup>1</sup> (2006) 69 WIR 104

<sup>2</sup> (1969) 12 WIR 5

or administrative policy cannot curtail a fundamental right unless the restriction is expressly grounded in law.

[20] With respect to **Regulation 54**, King's Counsel submits that:

- i. The regulation is administrative in nature and cannot operate to abrogate constitutional rights;
- ii. The authority to grant permission to leave Grenada is expressly vested in the Chief Personnel Officer, after consultation with the Permanent Secretary or Head of Department. In the extant case, the Commissioner of Prisons acted unilaterally;
- iii. Administrative regulations cannot override, amend, or diminish rights protected by the supreme law.

[21] King's Counsel further relies on the decision of the Privy Council in **Endell Thomas v Attorney General of Trinidad and Tobago**<sup>3</sup> to emphasise that public officers do not forfeit their constitutional rights by virtue of public employment, and that the Constitution remains the supreme law. There, the Privy Council held that public officers can only be removed from office for cause in accordance with disciplinary processes. Reference is also made to **Barnwell v Attorney General of Guyana**<sup>4</sup> where the Guyanese Court of Appeal reiterated that constitutional provisions protecting fundamental rights are to be interpreted generously and purposively.

[22] King's Counsel therefore submits that the actions taken against Mr. LaTouche were in violation of his constitutional right to freedom of movement.

[23] King's Counsel also challenges the reliability of the evidence of the Acting Commissioner, Mr. Rogers, pointing to the inconsistencies in his interpretation of Regulation 54(2). In his affidavit, Mr. Rogers suggested that permission to leave Grenada could be granted by the Head of Department, whereas under cross-examination, he accepted that the Regulation vests that authority in the Chief Personnel Officer. It is submitted that this inconsistency demonstrates a

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<sup>3</sup> [1982] AC 113

<sup>4</sup> (1993) 49 WIR 88

fundamental misunderstanding of the legal framework governing permission to travel, and further supports Mr. LaTouche's case that the restriction imposed was not authorised by law.

### **The defendant's submissions**

[24] Ms. Camille Gooding-DeSouza, counsel for the defendant, submits that the claimant's constitutional rights were not infringed, as the restriction imposed was authorised by **Regulation 54** of the **Public Service Commission Regulations**. Counsel argues that **Regulation 54** constitutes a law within the meaning of **Section 12(3)(f)** of the **Constitution** and therefore represents a constitutionally permissible restriction on the movement of public officers.

[25] Counsel further submits that such restrictions serve the public purpose of the effective management of the public service and considerations of national security.

[26] Counsel relies on the decision of **Council of Civil Service Unions and others v Minister for the Civil Service**<sup>5</sup>, where Lord Fraser stated at page 402:

“...The decision on whether the requirements of national security outweigh the duty of fairness in any particular case is for the government and not for the courts; the government alone has access to the necessary information, and in any event the judicial process is unsuitable for reaching decisions on national security.”

[27] Counsel also relies on **R (XH) v Secretary of State of the Home Department**<sup>6</sup>, relied on by our Court of Appeal in **Minister of National Security of Saint Christopher and Nevis et al v Khaled Awad et al**<sup>7</sup>, stating that the court will generally accept the opinion of the State as to what national security requires. The Court of Appeal in paragraph 39 of its judgment stated that:

“...the court will generally accept the opinion of the State as to what national security requires. In **R (XH) v Secretary of State** Lord Hoffman opined: “The

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<sup>5</sup> [1985] AC 374

<sup>6</sup> (2018) QB 355

<sup>7</sup> Claim No. SKBHCVP2022/0015

question of whether something is in the interest of national security is not a question of law. It is a matter of judgment and policy. Whether something is or is not in the interest of national security are not a matter for judicial decision. They are entrusted to the executive.”

- [28] Counsel submits that the Constitutional framers couched **Section 12(3)(f)** to ensure that actions emanating from the exercise of **Regulation 54** will be constitutionally protected as ensuring the optimal use of resources in the interest of national security.
- [29] Counsel further submits that the evidence shows Mr. LaTouche was aware that permission was required before leaving the state, and that the Commissioner of Prisons, as Head of Department, was properly involved in the travel approval process as a matter of administrative practice.

### **The court’s findings**

- [30] The court accepts that **Section 12(1)** of the **Constitution** guarantees the right to freedom of movement, including the right to leave Grenada<sup>8</sup>. This right however is expressly subject to the limitations set out in **Section 12(3)**.
- [31] **Section 12(3)(f)** provides that nothing done under the authority of any law shall be held to contravene section 12 to the extent that the law makes provision for the imposition of restrictions on the movement of public officers. The constitution therefore expressly contemplates that the right of public officers to leave the State may be subject to lawful restriction.
- [32] In interpreting constitutional provisions, the court must adopt a purposive approach. The Court of Appeal in **Minister of National Security of Saint Christopher and Nevis et al v Khaled Awad et al**<sup>9</sup> citing **Uber BV and Others v Aslam et al**<sup>10</sup> stated the following:

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<sup>8</sup> Minister of Immigration et al v Sharon Nettlefield et al Civil Appeal No. 6 of 2002

<sup>9</sup> Claim No. SKBHCVP2022/0015

<sup>10</sup> [2021] 4 All ER 209

“The modern approach to statutory interpretation is to have regard to the purpose of a particular provision and to interpret its language, so far as possible, in the way which best gives effect to that purpose. In *UBS AG v Revenue and Customs Comrs. Deutsche Bank Group Services (UK) Ltd v Revenue and Customs Comrs* (2016) UKSC 13, ...Lord Reed (with whom the other Justices of the Supreme Court agreed) explained how this approach requires the facts to be analyzed in the light of the statutory provision being applied so that if for example, a fact is of no relevance to the application of the statute construed in the light of its purpose, it can be disregarded, Lord Reed cited the pithy statement of Ribeiro PJ in *Collector of Stamps Revenue v Arrowtown Assets Ltd* [2003] HKCFA 46,...: The ultimate question is whether the relevant statutory provisions, construed purposively were intended to apply to the transaction viewed realistically”

- [33] **Regulation 54** of the **Public Service Commission Regulations** provides that an officer may not leave Grenada without the written permission of the Chief Personnel Officer, granted after consultation with the Permanent Secretary or Head of Department. The court is satisfied that this regulation constitutes a “law” within the meaning of **Section 12(3)(f)**. In the court’s view, the requirement that a prison officers obtain permission before leaving Grenada is a constitutionally permissible restriction on freedom of movement. Public officers, by reason of their role in the public service and the essential functions they perform, may properly be subject to administrative controls that do not apply to the general public. The **Constitution** itself recognises this distinction by expressly permitting restrictions on the movement of public officers.
- [34] The court further accepts that such a requirement serves a legitimate public purpose, including the proper administration of the public service, the management of human resources, and in appropriate cases, considerations of national security.
- [35] Mr. LaTouche’s complaint is not directed at the existence of **Regulation 54**, but at the manner in which it was applied. In particular, he contends that the Commissioner of Prisons lacked authority to prevent him from travelling, since the Regulation vests the power to grant permission in the Chief Personnel Officer.
- [36] The court accepts that **Regulation 54(2)** identifies the Chief Personnel Officer as the authority responsible for granting permission to leave Grenada, after consultation with the Permanent Secretary or Head of Department. However, the

evidence establishes that the requirement for permission to travel forms part of the established administrative framework governing public officers. It is axiomatic that Heads of Department, including the Commissioner of Prisons, play an integral role in ensuring compliance with that framework by prison officers.

- [37] Mr. LaTouche under cross examination accepted that he had previously sought and obtained permission to travel abroad. The court also notes the documentary evidence provided demonstrates a well-known and established procedure for prison officers in obtaining permission to travel. A requirement known and previously complied by Mr. LaTouche.
- [38] While there was no direct evidence that the Chief Personnel Officer had granted permission in respect of Mr. LaTouche's travel, the absence of such permission meant that Mr. LaTouche had not satisfied the requirement imposed by Regulation 54.
- [39] Given the express provision in **Section 12(3)(f)** permitting restrictions on the movement of public officers, and the existence of a valid law imposing such a requirement, the court is satisfied that the restriction complained of falls within the scope of constitutionally authorised limitations. Even if there were procedural imperfections in the manner in which the requirement was enforced such matters do not, without more, amount to a breach of a fundamental constitutional right.
- [40] In those circumstances, the court finds that Mr. LaTouche was subject to a lawful regulatory requirement that he had not met when he attempted to travel. The actions taken were therefore consistent with the enforcement of that requirement. This court does not accept that those actions fell outside the ambit of Regulation 54.
- [41] The court therefore finds that Mr. LaTouche has failed to establish an infringement of his fundamental constitutional right to freedom of movement under Section 12 of the Constitution.

## **Conclusion**

[42] In summary, and for the reasons given above, the court is satisfied that Mr. LaTouche has not established any infringement of his constitutional right. The court finds that the requirement for him to obtain permission before travelling abroad falls within the lawful regulatory framework governing public officers, particularly prison officers, given the essential services they provide to the State and the possibility that they may be recalled from leave in the event of a prison crisis or other exigency. The court is therefore satisfied that the restriction is reasonably justifiable and falls within the constitutionally permitted limitations under section 12(3)(f) of the Constitution. Accordingly, the claim for constitutional redress fails.

## **ORDER**

[43] It is therefore ordered and directed as follows:

- (i) The claimant's claim stands dismissed with no order as to costs.

**Agnes Actie**  
High Court Judge

**By the Court**

**Registrar**