

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE**

MONTSERRAT

CLAIM NO. MNIHCR 2024/0002

BETWEEN:

[1] The King

Crown

and

[1] Crawford Sabaroche

Defendant

Appearances:

Mr. Oris Sullivan for the Crown
Mr. Crawford Sabaroche litigant in person

2024: JULY 29

RULING

FITZPATRICK [AG.]:

THE COURT CONSIDERED THE FOLLOWING:

- [1] Should the Montserrat High Court dismiss the multiple human smuggling criminal charges pending against Mr. Sabaroche on the basis that he has been remanded in custody without a warrant or that his right pursuant to section 24 of the *Criminal Procedure Code* (“CPC”) to be brought before the Magistrate’s Court within seventy two hours of being charged was violated?
- [2] The path to decide both issues should be well travelled and clear. Such is not the reality here in Montserrat for the reasons that follow.

Background

- [3] On January 30, 2024, Crawford Sabaroche (the “Accused”) was aboard a disabled boat with eighteen other men, women and children drifting in the waters off of Montserrat. The boat was intercepted and towed into port by officers from the Royal Montserrat Police Service (“RMPS”), Marine Unit.
- [4] Initially, the investigation pertaining to the boat occupants was directed by the Immigration Department with the assistance of RMPS members given the number of passengers and limited immigration resources.
- [5] All passengers were detained by the Immigration Department to facilitate the investigation into their arrival in Montserrat.
- [6] The Accused was suspected of being the captain of the boat early into the investigation.
- [7] The Accused was arrested by the RMPS and “booked” into their custody on January 31st. The Accused was initially jailed at the RMPS headquarters but subsequently in His Majesty’s Royal Prison (“HMRP”).
- [8] The RMPS obtained formal statements from various boat occupants at the beginning of February identifying the Accused as the boat captain (see: Statements of Jean Menos Joseph dated February 1st, Guy-Stanley Joseph dated February 1st and Loranso Joseph dated February 2nd among others).
- [9] Further to his arrest, the Accused was interviewed in the presence of his counsel by the RMPS on February 3rd offering a “no comment” response.
- [10] The RMPS attended with a charge sheet in hand at the Accused’s cell and read the charges to him on Friday, February 9th at approximately 3:55 p.m.
- [11] The RMPS again attended at the Accused’s cell on February 9th at about 4:00 p.m. to serve a document to bail the accused into the Immigration Department’s custody.
- [12] The RMPS next attended at the Accused’s cell on Sunday, February 11th. Upon arrival, the Accused was observed laying on the floor complaining of stomach pain. A plastic

bottle containing dish washing liquid was observed on the floor nearby the Accused. It appeared to the officers present that the Accused had consumed the liquid causing his stomach pain.

- [13] The Accused denies consuming the liquid. In his materials filed June 5, 2024, the Accused states “on the day in question, February 11, 2024, the accused Crawford Sabaroche fell ill and was taken to the hospital by an ambulance. The accused have no memory of nothing that happened before been blackout.” In submissions during the argument of his Application, the Accused amended this account saying that he was then suffering from a seizure.
- [14] Regardless of cause, the Accused was transported to the hospital for care on February 11th. The Accused remained hospitalized until Friday, February 16th when he was released and returned to his cell at HMRP.
- [15] The Accused was brought before the Magistrate’s Court on February 19th for a hearing where bail was addressed for the Accused in the presence of and with participation by his counsel. Bail was denied by Chief Magistrate Chatoor and the Accused was returned to HMRP where he has remained pending the determination of his criminal charges before this Court and his immigration proceedings.
- [16] The Accused was next before the Magistrate’s Court on February 26th. The hearing that day was held for the Accused in the presence of and with participation by his counsel. The matter was noted as not being ready for transfer to the High Court given ongoing investigations and disclosure. The Accused was remanded in custody to the next scheduled date on March 5th.
- [17] The Accused returned before the Magistrate’s Court on March 5th. The hearing was held for the Accused but on this date his counsel was marked as being absent. Regardless, the charges were read to the Accused who acknowledged his understanding of the allegations. The case was marked as transferred to the High Court for a Sufficiency Hearing scheduled by the Magistrate for April 29th. The Complaint Without Oath was endorsed “Initial Hearing Complete 5 March 2024”. The Accused was remanded in custody to the next scheduled date on April 29th.

- [18] The draft Indictment filed by the Crown charges the Accused with eighteen counts of smuggling migrants contrary to *Penal Code* section 226(1) with other related offences. This is an indictable class of offence that carries a potential sentence of twenty years imprisonment and/or a \$500,000.00 fine per count.
- [19] The Accused filed an application on May 13, 2024 seeking dismissal of all charges on the basis he was held in custody without a warrant and/or the violation of his right to be brought before a magistrate within seventy two hours after being charged pursuant to *CPC* section 24 (the “Accused Application”).
- [20] Counsel for the Crown denies any infringement related to the Accused being held in custody or the timing of his attendance before the Magistrate.
- [21] The Accused Application was argued before this Court on July 19, 2024 with the decision reserved until July 29th. This Court dismissed the Accused Application orally that day.
- [22] The Crown on July 29th, to his credit, agreed with this Court’s characterization of the applicable legislation as “clumsy” and asked that written reasons be provided towards highlighting the need for amendment. The Court wholeheartedly commends this approach by the Crown and acknowledges the related importance here for the Accused to have written reasons. These are the Court’s reasons.

The Applicable Legislation

- [23] *CPC* section 23 directs how a criminal proceeding is commenced where it states:

Criminal proceedings are instituted by making a charge against a person either –

- a) Under section 24; or,*
- b) Under section 26.*

- [24] *CPC* section 24 details the right of an accused to be brought before a magistrate within seventy two hours following charge where it states:

A police officer who arrests an accused without a warrant may institute criminal proceedings against him by preparing and signing a formal charge in accordance with the provisions relating to form and content of charge in Part 24 and shall –

- c) Bring the accused before a magistrate within seventy two hours; or,*
- d) Subject to the Police Act, release the accused on bail to attend the magistrate's court on a specified date.*

[25] CPC section 67 details the requirements for an Initial hearing providing that:

Section 67(2) – If the defendant has not been granted bail, the Initial Hearing shall take place within seventy hours of arrest.

Section 67(3) – At the Initial Hearing the magistrate shall –

- e) consider bail in accordance with Part 7;*
- g) make a scheduling order filing dates –*
- i) for a Sufficiency Hearing in the High Court.*

[26] The applicable sections of *Immigration Act* are as follows:

Section 3(1) – The Deputy Governor shall appoint a Chief Immigration Officer and the Chief Immigration Officer has all the powers conferred by this Act upon immigration officers, in addition to any power specifically conferred upon him by this Act.

Section 3(3) – For the purpose of performing his duties under this Act an immigration officer shall have the powers of a police officer and may board and search any vessel arriving in Montserrat.

Section 9 – The following persons, not belonging to Montserrat, are prohibited immigrants –

- d) *Any person who, not receiving a free pardon, has been in any country convicted of an offence for which sentence of imprisonment has been passed and who for this reason appears to be an undesirable immigrant.*

Section 13(1) – The Chief Immigration Officer may for the purpose of making further inquiry and for such period as may be necessary therefor postpone deciding whether a person is or is not a prohibited immigrant.

Section 26 – In the event of the Chief Immigration Officer deciding that a person is a prohibited immigrant, the Chief Immigration Officer may in his discretion –

- a) *Within fifteen days after the arrival of such person in Montserrat, order him to leave Montserrat within a specified period, and, if the Chief Immigration Officer sees fit, by a specified vessel; or*
- b) *Cause him to be arrested and brought before a Magistrate's Court with a view to an order being made for his removal.*

Section 38 - A person detained in custody under this Act but not serving a sentence of imprisonment may be so detained either in the gaol or any place appointed for the purpose by the Governor on the advice of Cabinet, but if detained in the gaol shall be treated as a person awaiting trial.

Section 39 – It shall be the duty of all police officers whenever necessary or at the request of an immigration officer to assist the immigration officer in the exercise of his powers and duties under this Act.

[27] In addition, the *Immigration Act Regulations* provide as follows:

Section 15 – In the event of an immigration officer becoming aware of any circumstances constituting reasonable grounds for suspecting that any person within Montserrat is a

prohibited immigrant in Montserrat he shall apply to a magistrate for an arrest warrant, in Form I of the Schedule, and shall cause such person to be brought before the him and thereupon proceed to examine him in order to ascertain whether such person is a prohibited immigrant, and such person may, if necessary, be detained pending the completion of such inquiry, and may be further detained thereafter as hereinafter provided if it is found that he is a prohibited immigrant, or shall otherwise proceed in terms of section 26 of the Act.

Section 20(1) – Any gaoler or other officer shall accept custody of any person on the order of the immigration officer, or on the order of a magistrate issued at the request of the immigration officer, but no person shall be so detained in custody for any longer period than is necessary for the purpose of any prescribed enquiry or for the completion by the immigration officer of arrangements for the removal of such person from Montserrat at the first reasonable opportunity.

[28] Reference must also be made to the *Police Act* where it states:

Section 23(1) – A police officer may arrest without a warrant -

- a) Any person whom he suspects upon reasonable ground of having committed a felony.*

Section 23(2) – Without prejudice to the generality of the powers conferred upon a police officer by subsection (1), It shall be lawful for any police officer, and for all persons whom he shall call to his assistance, to arrest without a warrant any person who within view of such police officer offends in a manner against any law and whose name and residence are unknown to such police officer and cannot be ascertained by him.

[29] The *Montserrat Constitution* also addresses the power to detain someone who has entered unlawfully as follows:

Section 6(1) – No person shall be deprived of his or her personal liberty save in any of the following cases where reasonably required and in accordance with a procedure prescribed by law -

e) *On reasonable suspicion that he or she has committed, is committing or is about to commit a criminal offence;*

i) *For the purpose of preventing the unlawful entry of that person into Montserrat or for the purpose of effecting the expulsion, extradition or other lawful removal from Montserrat of that person or the taking of proceedings relating thereto.*

Section 6(5) – Any person who is arrested or detained in such a case as is mentioned in subsection (1)(d) or (e) and who is not released shall be brought promptly before a judge or other officer authorised to exercise judicial power.

[30] Lastly, reference must be made to the *Interpretation Act* which offers the following assistance:

Section 13 – In computing time for the purposes of any law –

- a) *A period of days from the happening of an event or the doing of any act or things is considered to be exclusive of the day on which the event happens or the act or thing is done;*
- b) *If the last period of the day is Sunday or a public holiday (which days in this section are referred to as excluded days) the period is to include the next following day not being an excluded day;*
- d) *When an act or proceeding is directed or allowed to be done or taken within any time not exceeding six days, excluded days shall not be reckoned in the computation of time.*

Section 14(2) – Where there is a reference to a number of days, not expressed to be clear days, between two events, in calculating the number of days the day on which the first event happens is excluded and the day on which the second event happens is included.

Analysis

[31] The Accused submits that none of the proceedings he finds himself in make any sense.

- [32] This Court is hard pressed to disagree with the Accused's sentiment given the legislative maze, foreshadowed above, that one must travel in an effort to find rationality in particular pertaining to the detention without warrant issue. It is more than slightly bewildering to this Court that the determination of the facially straightforward issues raised in the Accused Application requires consideration of no less than four legislated Acts, one Regulation and the *Constitution*.
- [33] The Accused alleges that his right to be brought before the Magistrate Court within seventy hours of being charged pursuant to *CPC* 24(a) was violated.
- [34] The first thing to note is that the obligation to bring an accused person who has not otherwise been granted release, referred to as "station bail", is triggered only upon charge not simply arrest. This is clear from *CPC* section 23 and the related opening terms of section 24 that state criminal proceedings are instituted "by preparing and signing a formal charge in accordance with the provisions relating to form and content of charge in Part 24".
- [35] The Accused was presented with the formal charge sheet on February 9th at approximately 3:55 p.m. As such, the seventy hour deadline for him to have been brought before the Magistrate's Court was 3:54 p.m. on Tuesday, February 13th given Sunday is an excluded day in the calculation of time pursuant to section 13 of the *Interpretation Act*.
- [36] As noted, the Accused fell ill from consuming dishwashing fluid and/or a seizure on February 11th. He was that day taken by ambulance to the hospital where he remained under care until returned to HMRP on February 16th. Clearly, the Accused's illness prevented him from being brought before the Magistrate's Court within the initial seventy hour period following his formal charge.
- [37] The Accused was returned from the hospital to HMRP on Friday, February 16th. The record before me does not fix the precise time the Accused was returned to HMRP. In any event, reasonably and in keeping with his *CPC* section 24(a) right, the Accused should have been brought before the Magistrate's Court the next available day. The next available day for Magistrate's Court would have been Monday, February 19th given

the intervening weekend when there is no court. The Accused was in fact brought before the Magistrate's Court on February 19th for a hearing.

[38] It cannot be said that the police or prosecution violated the rights of the Accused pursuant to *CPC* section 24(a) in these circumstances. The only reason that the Accused was delayed in appearing before the Magistrate's Court was his health issues and related timing.

[39] Even if, technically, it could be said that the right of the Accused pursuant to *CPC* section 24(a) was violated in these circumstances, the Accused has not suggested let alone established any prejudice flowing from this technical breach. The relief he seeks is the most drastic of any available to this Court, namely dismissal of the charges. Any remedy must be proportionate to the breach or violation in issue.

[40] Here, at worst, there was a technical breach of the Accused's right to be brought before the Magistrate's Court within seventy two hours subsequent to charge. Tending to the acute health issue of the Accused was the sole cause for the breach. That said, the *CPC* does not seem to provide any discretion to extend the timing set forth in section 24(a), which is something that should be allowed with appropriate parameters set. Again, there was no prejudice to the Accused flowing from this technical breach.

[41] In these circumstances, the fit, proportionate relief is to note the technical breach and advise that this can be considered in the cumulative should this Court be considering a remedy for any further violations of the Accused's rights in this proceeding.

[42] The Accused makes a similar argument to the above in relation to his right to be brought before the Magistrate's Court for an Initial Hearing within seventy two hours of arrest pursuant to *CPC* section 66, which speaks to "either way" charges and/or 67, which addresses indictable offences. It must be noted that this issue was not initially raised by the Accused in his Application and was not argued before the Court. That said, the issue can be determined with little additional effort and based upon the overall submissions made during the Application hearing.

[43] Here, again, the legislative language is clumsy requiring some brief, additional comments. The Accused, fairly, focusses on the words "arrest" and "Initial Hearing"

found in *CPC* sections 66 and 67 suggesting there is some right afforded to him in addition to those articulated in *CPC* section 24.

- [44] The meaning of any phrase or section cannot be considered in isolation. The statute must be considered as a whole in harmony and not read as creating a conflict wherever possible.
- [45] *CPC* sections 66 and 67 do not create another right independent of section 24. As discussed above, the right of the Accused to be brought before the Magistrate's Court within seventy hours is engaged only upon an individual being charged as set forth in *CPC* section 24(a). This right is particularized and amplified by *CPC* sections 66 and 67 requiring that an Initial Hearing must commence within the same seventy hours if station bail has not been granted. The Initial Hearing could cover a variety of the matters itemized in sections 66 and 67, including bail.
- [46] The requirement is for the accused person to be brought before the Magistrate's Court within seventy hours of being charged for the Initial Hearing to commence. There is no requirement that the Initial Hearing be completed within seventy hours. One can imagine a number of circumstances whereby the Initial Hearing could commence and be completed over more than one court date depending on the issues being addressed.
- [47] The confusion in the statute is the use of the word arrest in *CPC* sections 66 and 67 instead of the word charge used in section 24. Reading the *CPC* as a whole it is clear that a criminal proceeding and related right of an accused to be brought before the Magistrate's Court is initiated upon the person being arrested **and** charged. If bail is not given by the police then the accused must be brought before the Magistrate's Court within seventy hours for the commencement of an Initial Hearing, which would include the consideration of bail.
- [48] There is no doubt that sections 66 and 67 should use the word "charge" instead of "arrest" for consistency. However, the right afforded by *CPC* sections 24, 66 and 67 is clear and consistent when read together. These sections speak to the same right, namely of the accused person to be brought before the Magistrate Court for a hearing within seventy two hours of being charged.

- [49] In summary, the same analysis and conclusion of this Court applies to any alleged violation of the Accused's right to be brought before the Magistrate's Court within seventy hours whether pursuant to *CPC* section 24(a) and/or sections 66 and 67.
- [50] The second issue raised by the Accused is whether his rights have been violated by his being held in custody without a warrant. The main argument made by the Accused is that he could not be held without a written warrant document authorizing his detention. That argument is rejected for the reasons that follow.
- [51] The starting point is to recall that the Accused was initially detained as part of the investigation into the status of all boat occupants by the Immigration Department upon arrival in Montserrat on January 30th.
- [52] The Chief Immigration Officer, Mr. Thompson, requested and received the assistance of the RMPS members given the number of boat occupants and limited Immigration Department staff.
- [53] Both the Immigration Department and the RMPS were then and thereafter investigating the status of the boat occupants and the overall circumstances.
- [54] The Accused along with all other boat occupants were detained by the Immigration Department on January 30th and housed at either the St. John's Centre or the Salem Police Station. The Accused does not appear to take issue with this initial detention.
- [55] The Accused was arrested by the RMPS on January 31st on suspicion of smuggling the other boat occupants and placed into their custody.
- [56] The Accused was interviewed following his arrest by the RMPS on February 3rd. He was told that the police investigation into his alleged offence was still ongoing. This interview was undertaken with the Accused in the presence of his counsel.
- [57] The Accused was charged by the RMPS on February 9th. The events following are detailed above.

[58] The real confusion respecting authorized detention flows from these parallel activities of the Immigration Department and the RMPS made more complicated by the materials filed by each on this Application.

[59] Detective Sergeant [Ag.] Lynch provided an initial statement dated February 9, 2024. In that statement, D.S. Lynch says that he attended with Detective Constable Lewis at the Accused's cell on February 9th at about 3:55 p.m. D. S. Lynch further states that he then had in his possession a charge sheet in the name of the Accused to serve. D.S. Lynch read the charges to him but the Accused refused to accept an original copy of the charge sheet.

[60] Detective Sergeant [Ag.] Lynch provided a second statement dated May 1, 2024. In that statement, D.S. Lynch says that he attended with Inspector Antoine at the Accused's cell on February 9th at about 4:00 p.m., being about five minutes after his attendance to serve the charge sheet. D. S. Lynch further states that Inspector Antoine then had in his possession a document to serve to "bail the accused into the Immigration Department custody, as he was being investigated by the Immigration Department". Again, the Accused refused to accept an original copy of the so called bail document.

[61] The Chief Immigration Officer, Charles Thompson, swore an affidavit on July 1, 2024 stating the following:

- a) That the Immigration Department initially had "primacy" of the investigations assisted by RMPS members;
- b) That Mr. Thompson "directed that all persons on board be detained at police Headquarters as there is no detention facility for immigration cases except for His Majesty's Prison";
- c) That the Immigration Department and the RMPS were running "parallel investigations";
- d) That on February 9th he became aware that the Accused had been charged with human smuggling by the RMPS;
- e) That he wrote the Superintendent of Prison on February 9th to hold the Accused and that later that day the Accused was bailed into Immigration Department custody "as there were further immigration investigations to be done";

- f) That he received information from colleagues in the Royal Virgin Islands Police on February 9th confirming that the Accused had been imprisoned there for smuggling offences and formed the opinion that the Accused was a prohibited immigrant as defined by section 9(a) of the *Immigration Act*; and,
- g) That the Accused was detained under the *Immigration Act* for the “purpose of conducting inquiries...inasmuch as the investigation was primarily done by the police.”

[62] A cursory review of the above confirms that the Accused was initially detained by the Immigration Department on January 30th but from January 31st forward by both the Immigration Department and the RMPS simultaneously. Neither the Immigration Department nor the RMPS detained the Accused on the basis of a warrant. The question then is upon what authority did each detain the Accused?

[63] The authority of the Immigration Department and/or the RMPS must be addressed separately given they are independent agencies.

[64] Starting with the RMPS, section 23(1) of the *Police Act* allowed for the arrest of the Accused without a warrant for the indictable offence of smuggling the boat occupants. Section 6(1)(e) of the Montserrat *Constitution* provides that a person can be detained on reasonable suspicion of committing a criminal offence.

[65] *CPC* section 24 states that a police officer **may** charge a person who has been arrested and thereby commence a criminal proceeding triggering the right to be brought before the Magistrate’s Court within seventy hours.

[66] It needs to be noted that there is no term in either the *CPC* or the *Police Act* that specifies how long an arrested person can be detained without a charge being made. The only limit on the length of time an arrested person can be held without charge is found in section 6(5) of the *Constitution* where stipulating that a person detained on reasonable suspicion of committing a criminal offence who is not released must be brought before a judicial officer “promptly”.

- [67] The RMPS officers involved with the investigation of the Accused were authorized to arrest and detain him pursuant to the combination of section 23 of the *Police Act*, CPC section 24 and sections 6(1)(e) and (5) of the *Constitution*. Is it explicit? The answer is clearly no given reference needs to be made to two statutes and the *Constitution* to cobble the necessary authority. Ideally, the *Police Act* and/or the *CPC* would expressly provide for the authority to detain upon arrest but prior to charge with necessary direction on permissible timeline and process.
- [68] Given the above, this Court is satisfied that the Accused was lawfully detained without a warrant by the RMPS from January 31st until ordered into custody by the Chief Magistrate on February 19th.
- [69] The remaining issue to be addressed is whether the Immigration Department also had the authority to detain the Accused without a warrant. The simple answer is yes that Department did have such authority from numerous sources.
- [70] To start, members of the Immigration Department in the exercise of their duties are imbued with all of the powers of the police pursuant to section 3(3) of the *Immigration Act*. These powers would include making an arrest without warrant pursuant to *Police Act* section 23 and related initial detention.
- [71] It appears that the very broad language of section 3(3) provides immigration officers with the same authority to arrest and detain without a warrant as for the RMPS summarized at paragraph 67. above. This would be a complete answer to the question raised by the Accused about the source of the Immigration Department's power to detain him without a warrant. That said, there exists additional authority for the Immigration Department to so act.
- [72] A further source for the Immigration Department's authority to detain the Accused without a warrant is found in section 20(1) of Regulation 40 to the *Immigration Act* along with section 13(1) of that *Act*. Another source is section 6(1)(i) of the *Montserrat Constitution*.
- [73] *Immigration Act* Regulation 20(1) provides that an immigration officer can have a person detained in the custody of a gaoler for such period as necessary for the purpose of making "prescribed enquiry" or for the making of arrangements for the removal of such

person from Montserrat at the first reasonable opportunity. Clearly, a prescribed enquiry is whether a person is a prohibited immigrant.

[74] *Immigration Act* section 13(1) allows the Chief Immigration to postpone making a decision as to whether a person is a prohibited immigrant for so long as is necessary to make further inquiry.

[75] The Montserrat *Constitution* section 6(1)(i) provides that a person can be detained for the purpose of preventing an individual's unlawful entry into Montserrat or to effect the lawful removal of such person or the taking of proceedings relating thereto. This, obviously, applies to the circumstances for the Accused.

[76] The combination of the *Constitution* section 6(1)(i), *Immigration Act* sections 3(3) and 13(1) along with Regulation 20(1) and *Police Act* section 23 allowed the Immigration Department and, more particularly, Chief Immigration Officer, Mr. Thompson to detain the Accused for as long as necessary to investigate whether he was a prohibited immigrant and take related proceedings.

[77] Mr. Thompson's affidavit stated that part of his investigation was done through contact with colleagues with the Royal Virgin Islands Police who, on February 9th, who confirmed that the Accused had been imprisoned there for similar smuggling offences. Mr. Thompson then formed the opinion that the Accused was a prohibited immigrant as defined by section 9(a) of the *Immigration Act*.

[78] The Court was advised during the hearing of the Application that the Immigration Department proceeding for the removal of the Accused is currently in abeyance deferred to the outcome of the ongoing criminal prosecution. This is not unusual where there are cases running simultaneously.

[79] Given the above, this Court is satisfied that the Accused was lawfully detained without a warrant by the Immigration Department from January 30th to the present.

[80] As noted, the Accused expressed his frustration and confusion with the proceedings. Although lawful, the Court acknowledges there are concerns in the legislation and the related authority for the process followed here.

- [81] The Accused did not challenge the validity of any of the legislation applicable here. However, in response to the frustration expressed by both the Accused and the Crown, this Court feels compelled to say that the *Immigration Act* is poorly formed and needs amendment.
- [82] One explicit concern is found in Regulation section 15 where stating that an immigration officer **must** obtain an arrest warrant upon forming reasonable suspicion of a person being a prohibited immigrant and thereafter allowing detention for inquiry. This appears to stand in conflict with the warrantless detention and inquiry permitted by the combination of the *Constitution* section 6(1)(i), *Immigration Act* sections 3(3) and 13(1) along with Regulation 20(1) and *Police Act* section 23 discussed above.
- [83] Ideally, the *Immigration Act* would expressly provide for the authority to detain without warrant for investigative purposes with necessary direction on permissible timeline and process.
- [84] The *Act* lacks clarity, completeness and harmony. It is, to say the least, vulnerable to challenge should such an application be made.
- [85] The other fundamental problem on this Application is the narrative presented in the materials provided by the RMPS and the Immigration Department. Each seems to treat the custody of the Accused as if he were a baton to pass between them whenever convenient.
- [86] D.S. Lynch describes how the Accused was in police custody from the time of his arrest on January 31st. D.S. Lynch tells us how he attended at the Accused's cell on February 9th at about 3:55 p.m. to serve a charge sheet. Clearly, the Accused is detained and at that point charged criminally by the RMPS initiating their obligation to bring the Accused before the Magistrate's Court within seventy hours.
- [87] Five minutes later on February 9th at 4:00 p.m., D.S. Lynch attends again at the Accused's cell this time with Inspector Antoine who served a document to "bail the accused into the Immigration Department custody, as he was being investigated by the Immigration Department."

[88] Chief Immigration Officer, Mr. Thompson in his affidavit confirms that the Accused, late in the afternoon on February 9th, was “bail into Immigration custody as there were further investigations to be done.” As an aside, this statement about further investigations being required seems at odds with the decision Mr. Thompson had by then already made that the Accused was a prohibited immigrant on the basis of information received from the Royal Virgin Islands Police.

[89] The point being made is that above narrative defies penetration of rationality or common sense. Why is the RMPS bailing a person in their custody then charged with serious criminal offences into the Immigration Department? What authority does the RMPS rely on for this? What authority does the Immigration Department rely on to direct that the Accused be “bailed” into their custody? More fundamental, what does that mean? Perhaps it is a deficiency in the materials but it appears to this Court well beyond confusing and without legal foundation.

[90] The Court has made it clear that each of the RMPS and the Immigration Department had the authority to detain and process the Accused in their respective jurisdictions. None of the above detracts from that conclusion but speaks directly to the need for clarity in how parallel investigations and related court proceedings properly function.

[91] Respectfully, these processes need to remain segregated. The RMPS should not be “bailing” anyone into the custody of another department. The RMPS either itself has authority to detain or it does not and the individual should be released. Should another department or agency have the independent authority to detain the same person then it should act accordingly and independently. The apparent communion of departments, functions and authority risks successful challenge in different circumstances. As important, the current practice projects inappropriate, unacceptable optics.

Conclusion

[92] The draft Indictment filed by the Crown charges the Accused with eighteen counts of smuggling migrants contrary to *Penal Code* section 226(1) with other related offences. This is an indictable class of offence that carries a potential sentence of twenty years imprisonment and/or a \$500,000.00 fine per count.

- [93] The Accused filed an application on May 13, 2024 seeking the dismissal of all criminal charges on the basis he was held in custody without a warrant and/or the violation of his right to be brought before a magistrate within seventy two hours after being charged pursuant to *CPC* section 24 (the “Accused Application”).
- [94] Dealing first with the alleged violation of a timely appearance before the Magistrate’s Court, it cannot be said that the police or prosecution violated the rights of the Accused pursuant to *CPC* section 24(a) in these circumstances. The only reason that the Accused was delayed in appearing before the Magistrate’s Court was addressing his acute health issues and related timing.
- [95] Even if, technically, it could be said that the right of the Accused pursuant to *CPC* section 24(a) was violated in these circumstances, the Accused has not suggested let alone established any prejudice flowing from this technical breach. The relief he seeks is the most drastic of any available to this Court, namely dismissal of the charges.
- [96] It is trite to state that any breach of an accused’s rights is serious and warrants the intervention of this Court. That said, any remedy must be measured in proportion to the circumstances of the violation. Dismissal of charges is the remedy of last resort that should be reserved for only the most serious, flagrant breaches of an accused’s rights.
- [97] This Court finds that there was no true breach of the Accused’s right to be brought before the Magistrate’s Court within seventy hours subsequent to charge as provided by *CPC* section 24(a). Here, at worst, there was a technical breach of the Accused’s right to be brought before the Magistrate’s Court within seventy two hours subsequent to charge. Tending to the acute health issues of the Accused was the sole cause for the breach. There was no prejudice to the Accused flowing from this technical breach.
- [98] In these circumstances, the appropriate, proportionate relief is to note the breach and advise that this can be considered in the cumulative should this Court be considering a remedy for any further violations of the Accused’s rights in this proceeding.
- [99] Dealing with the alleged unlawful, warrantless detention issue, this argument is also rejected. This Court is satisfied that the Accused was lawfully detained without a warrant by the RMPS from January 31st until ordered into custody by the Chief Magistrate on

February 19th. Similarly, this Court is satisfied that the Accused was lawfully detained without a warrant by the Immigration Department from January 30th to the present.

[100] The above conclusions should not be interpreted as a wholesale endorsement for the applicable legislative framework or the related practices of the RMPS or Immigration Department in relation to the Accused. All require reform as set out above.

[101] In conclusion, the Accused Application is dismissed.

IT IS HEREBY ORDERED THAT:

1. The Application of Crawford Sabaroche filed on May 13, 2024 seeking the dismissal of all criminal charges before the High Court against him on the basis he was held in custody without a warrant and/or flowing from the violation of his right to be brought before a magistrate within seventy two hours after being charged pursuant to *CPC* section 24 is dismissed.

The Hon. Dale Fitzpatrick
(Ag) High Court Judge

By the Court

REGISTRAR