

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)**

GRENADA

CLAIM NO. GDAHCV2015/0394

**IN THE MATTER OF A DECISION BY THE MINISTER OF NATIONAL SECURITY TO
ISSUE A DEPORTATION ORDER AGAINST NADIA SARA LOBO DATED 17 APRIL 2015
PURSUANT TO SECTION 26(1) OF THE IMMIGRATION ACT OF GRENADA**

AND

**IN THE MATTER OF DEPORTATION OF NADIA SARA LOBO FROM GRENADA ON 18
APRIL 2015**

AND

**IN THE MATTER AN APPLICATION FOR JUDICIAL REVIEW OF THE SAID DECISION
OF THE MINISTER AND OF THE SAID ACTION DEPORTING THE SAID NADIA SARA
LOBO FOR AN ORDER OF CERTIORARI QUASHING THE DEPORTATION ORDER OF
THE MINISTER**

BETWEEN:

TERRON HOSTEN

Claimant

and

**[1] MINISTER OF NATIONAL SECURITY
[2] COMMISSIONER OF POLICE**

Defendants

Before:

The Hon. Mde. Justice Agnes Actie

High Court Judge

Appearances:

Mr. Ruggles Ferguson for the Claimant
Ms. Caryn Adams for the Defendants

2021: April 23;
2022: January 11.

JUDGMENT

- [1] **ACTIE, J.:** This is an application for judicial review filed by Terron Hosten (Mr. Hosten) which challenges a deportation order dated 17th April 2015 and signed by Dr. Keith Mitchell, the Prime Minister of Grenada and Minister of National Security (with responsibility for immigration) (the Minister) ordering Nadia Sara Lobo (Ms. Lobo) to be deported from the State of Grenada.

Background

- [2] On 15th September 2014, Ms. Lobo, a national of the Republic of India and medical doctor by profession, arrived in Grenada. Upon Ms. Lobo's entry into Grenada, she was granted a 90 day visa which was thereafter extended to 14th July 2015. While in Grenada Ms. Lobo resided with Mr. Hosten, a medical doctor and citizen of Grenada at Frequente, Saint George.
- [3] On 17th April 2015, the Minister executed a deportation order pursuant to section 26(1) of the Immigration Act¹. The order stated that based on confidential security intelligence and information received and gathered by the Minister, Ms. Lobo rendered herself a "prohibited alien" within the meaning of section 26(2)(d) of the Immigration Act. Further, the order was addressed to the Chief Immigration Officer and all other immigration and police officers and authorised them to detain Ms. Lobo in custody pending her removal from the State of Grenada.
- [4] On 18th April 2015, Ms. Lobo was taken into custody by agents of the State from her residence at Frequente, Saint George and was detained at a police station and subsequently deported to India in accordance with the deportation order. Being

¹ Cap. 145 of the 2010 Continuous Revised Laws of Grenada.

dissatisfied with these events, Mr. Hosten filed these proceedings to challenge the decision of the Minister ordering the deportation of Ms. Lobo to India. Mr. Hosten in his claim seeks declaratory orders, among other reliefs.

- [5] By order of Theodore J dated 18th November 2015, Mr. Hosten was granted leave to apply for judicial review of the decision of the Minister to issue an order of deportation dated 17th April 2015 and of the actions of the agents of the State in execution of that order.

Claimant's evidence

- [6] Mr. Hosten filed an affidavit in support of the claim and deposes that:
- (1) During his medical training in the People's Republic of China, he met Ms. Lobo.
 - (2) Thereafter, the parties became engaged to be married.
 - (3) At that time Ms. Lobo was also undergoing medical studies in the area of dermatology in China.
 - (4) Upon completion of his medical studies, Mr. Hosten returned to Grenada sometime in July 2014. While in Grenada he made arrangements for Ms. Lobo to join him on the island and purchased a one-way ticket for her to travel to Grenada.
 - (5) Ms. Lobo arrived in Grenada on 15th September 2014 and was given a 90-day visa that was subsequently extended until 14th July 2015.
 - (6) He and Ms. Lobo first resided together at Laura Land in the parish of Saint David. Thereafter, they moved to Frequente in the parish of Saint George.

- (7) On 18th April 2015 at around 8:00 am two men dressed in casual clothing and a woman dressed in the uniform of an immigration officer, came to their residence at Frequente.
- (8) The group inquired of him whether Ms. Lobo was at home which he answered in the affirmative. When he asked the group what was the purpose of their visit, they informed him that Ms. Lobo was to accompany them to the South St. George police station for an interview.
- (9) While Ms. Lobo was at the police station, he received a call from her stating that the police required her passport and that she was being moved to the St. Paul's police station.
- (10) He made several calls to the police and visited Police Headquarters and Criminal Investigation Department (CID) to request information on what was happening. Eventually, he was able to contact the then Commissioner of Police, Winston James, who informed him that the matter was one of national security and he could not disclose any further information. Later he contacted Inspector Leroy Joseph, who also informed him that he was not authorised to disclose any information concerning Ms. Lobo's detention.
- (11) Later that day at about 1:45 pm, he was informed that Ms. Lobo was being deported from Grenada. He was not given any reasons for the deportation, save and except that she was alleged to be an illegal person. Subsequently later, Inspector Joseph informed him that Ms. Lobo was being deported to India.
- (12) Ms. Lobo was not offered the basic courtesy of being allowed to return home to retrieve her belongings. Ms. Lobo informed him that

during her detention in Grenada she was not informed of the reason why she was being detained despite making repeated inquiries.

- (13) The sudden separation from Ms. Lobo has caused him a great deal of psycho trauma and stress. Based on his constant communication with Ms. Lobo he is of the view that she is also experiencing the same psycho trauma.
- (14) They are committed to reuniting. Ms. Lobo is a law abiding citizen and is optimistic that the matter will be resolved soon.
- (15) In the premises, he asks that the relief sought in the claim be granted as prayed.

Defendants' evidence

[7] On 3rd December 2020, Ms. Kim Frederick, Permanent Secretary with responsibility for National Security, Youth Development and Home Affairs filed an affidavit in response to the claim and deposes as follows:

- (1) Although she was not the holder of the office of permanent secretary in the Ministry of National Security when the incident occurred, she saw the records in relation to the matter and was briefed by the Minister on the matter.
- (2) On 26th March 2015, Ms. Lobo and Mr. Hosten applied for a firearm licence in Grenada. Subsequently, due diligence checks were carried out on Ms. Lobo which revealed that she:
 - (a) is a medical doctor who was born in Karachi, Pakistan.
 - (b) is a Muslim and believes in Islamic teachings.
 - (c) had no official firearm training;

- (d) was said to be a sympathizer and strong supporter of ISIS, a powerful terrorist organisation, which is known for its deadly assaults and violence on civilians.
- (3) The information received on Ms. Lobo was drawn to the attention of the Minister of National Security who is also responsible for immigration under the Immigration Act. The Minister considered the information and a decision was taken on 17th April 2015 pursuant to section 26(1) of the Immigration Act to require Ms. Lobo to be removed from Grenada. Ms. Lobo was deemed a prohibited alien pursuant to section 26(2)(d) of the Immigration Act.
- (4) On 18th April 2015, Ms. Lobo was detained and subsequently deported.
- (5) The Minister in executing the deportation order acted solely under his executive power and there is no statutory requirement that the principles of natural justice should be observed.
- (6) The pleadings in Mr. Hosten's claim fail to show that the Minister did not act in good faith or was motivated by some improper purpose.
- (7) There is nothing on the face of the pleadings which show that the Minister did not act in accordance with Immigration Act or exceeded the statutory power conferred on him.
- (8) At the time of deportation, Ms. Lobo was an alien, who at all times was subject to the provisions of the Immigration Act.
- (9) There was no breach of Ms. Lobo's right to remain or reside in Grenada under section 12(3)(d) of the Constitution.

- (10) In light of the above, Mr. Hosten's request for declarations and costs should be refused.

Issue

- [8] The main issue for determination is whether the Minister's decision to deport Ms. Lobo is subject to judicial review. If yes, what is the scope of that power to review?

Discussion

- [9] Counsel for Mr. Hosten, Mr. Ruggles Ferguson, submits that the power exercised by public authorities are subject to control by judicial review in exercise of the supervisory power of the court aimed at ensuring that public powers are exercised lawfully. Mr. Ferguson submits that such powers can be challenged under three heads, namely illegality, irrationality and procedural impropriety. Mr. Ferguson further submits that judicial review is available even where statute provides that the decision maker's decision is final or conclusive. Mr. Ferguson referred the court to the decisions in **Anisminic Ltd v The Foreign Compensation Commission and Another**² and the Privy Council in the Antigua and Barbuda case of **HMB Holdings Ltd v Cabinet of Antigua and Barbuda**³ in support of those submissions.
- [10] Mr. Ferguson further relies on the House of Lords landmark decision in **Council of Civil Service Unions and others v Minister for the Civil Service**⁴ (Civil Service Unions decision) which was adopted by then Blenman J in the Eastern Caribbean Supreme Court decision in **Clive Oliveira v The Attorney General and Another**⁵. which distilled the following principles:
- (1) Where a decision was taken employing an unfair procedure, but the process was necessitated by the requirements of national security such a decision would be non-justiciable.

² [1969] 1 All ER 208.

³ [2007] UKPC 37.

⁴ [1984] 3 All ER 935.

⁵ ANUHCV2008/0449 at paragraph 35.

- (2) The executive is the sole judge of what national security requires and it alone has access to information that enables the exercise of its judgment as to what is required.
- (3) However, where the executive sought to rely on reason of national security to justify a decision, the courts would not accept a mere assertion to the effect that the process was required by reasons of national security. The court will require evidence that the process was in fact required for reasons of national security.

Analysis

[11] The scope of the court's power to review an executive decision taken by the State in the interest of national security has been subject to judicial pronouncement and is well settled. In the Court of Appeal decision of **Minister of Immigration and Another v Sharon Nettlefield & Beat Wild**⁶, Redhead JA, pronounced on the Minister's power to deport a person under the provisions of Grenada's Immigration Act. His Lordship at para. 42 of the judgment stated:

"Secondly, the authorities to which I have referred clearly show that the Minister when he is making a deportation order he is not even performing a quasi-judicial function but an executive function. **If that is so then of course the learned trial Judge cannot interfere with the exercise of that power unless it is shown that he exceeded the power given to him under the Act**". (My emphasis)

[12] In essence, the Court of Appeal in the **Sharon Nettlefield** decision explained that the court can only interfere with the executive power of the Minister in making a deportation order, where it is shown that he has exceeded that power. Therefore, in this case, the court is not tasked with reviewing the Minister's decision to deport Ms. Lobo on the grounds that it was arbitrary, unreasonable, and irrational. The court is only required to examine the provisions of the statute to determine whether the Minister exceeded his executive power conferred on him by the Immigration Act.

⁶ GDA CIVIL APPEAL NO.6 OF 2002

[13] **Section 26(2) of the Immigration Act** confers on the Minister with responsibility for Immigration the power to make deportation orders with respect to certain persons.

The section provides:

- (1) The Minister may in any of the cases mentioned in subsection (2) make a deportation order requiring an alien to leave or to be removed from and to remain out of Grenada.
- (2) Subject to the provisions of this Act, the Minister may make a deportation order in the case of an alien who is—
 - (a) a convicted person in respect of whom a court certifies to the Minister that the alien has been convicted and recommends that a deportation order should be made in his or her case, either in addition to or in lieu of sentence;
 - (b) an undesirable person.
 - (c) a destitute person; or
 - (d) a prohibited alien.

[14] On the face of the deportation order, the Minister exercised his power to deport Ms. Lobo on the basis that she rendered herself a prohibited alien within the meaning of section 26(2)(d) of the Immigration Act. **Section 4 of the Immigration Act** defines who is deemed a “prohibited alien” as follows:

- (1) Except with the authority of the Minister and subject to such conditions as to duration and place of residence, occupation, or any other matter or thing as the Minister may think expedient, an immigration officer shall not grant leave to an alien to enter Grenada if the alien is a prohibited alien that is to say—

.....

(f) **a person who, from information or advice received from the government of any other country through official or diplomatic channels, is deemed by the Minister to be an undesirable inhabitant of or visitor to Grenada;**

(g) ...

(h) ...

...

(2) The decision of the Minister under subsection (1)(f) and (g) shall not be brought into question in any court. (Emphasis added)

[15] Mr. Hosten in his pleadings complains that Ms. Lobo was:

- (1) not was provided with adequate reasons for her deportation.

(2) not afforded an opportunity to explain her situation.

(3) not given the basic courtesy of being allowed to return to their home to retrieve her academic documents or to obtain a change of clothing before being deported.

(4) held in a cold, dark, foul-smelling cell at a police station.

(5) treated in an oppressive manner.

[16] The above pleadings do not suggest that Mr. Hosten is challenging the Minister's power to deport Ms. Lobo, but reveal that he is challenging the manner in which Ms. Lobo was treated pending her deportation and whether the execution of the order was carried out fairly. Notwithstanding the above pleadings, Mr. Hosten has failed to plead or assert that the Minister exceeded his powers under section 26 of the Immigration Act.

[17] It is the evidence of Ms. Frederick that the Minister exercised his power acting on intelligence and information received from a due diligence check which was carried out on Ms. Lobo when she applied for a firearm licence. The Minister in the exercise of his power and acting on the intelligence he received deemed Ms. Lobo a prohibited alien and made a deportation order against her.

[18] Having regard to the provisions of section 26 of the Immigration Act, the court is satisfied that the Minister's decision to deport Ms. Lobo was a lawful exercise of his statutory power. The pleadings on their face do not show that the Minister exceeded his power under the provisions of section 26(1) of the Immigration Act. In any event, Mr. Hosten has failed to plead facts which tend to show that the Minister exceeded his power. In the premises, the court is of the view that the Minister did not exceed his powers under sections 26(1) and 26(2)(d) of the Immigration Act when he issued the deportation order against Ms. Lobo.

Whether the decision was arbitrary, unreasonable or irrational

- [19] Having found that the Minister did not exceed his powers under the Immigration Act, there is no need to consider whether the Minister's decision to deport Ms. Lobo was arbitrary, unreasonable, and irrational and or in breach of the principles of natural justice. However, for the sake of completeness, the court will address Mr. Hosten's pleadings.
- [20] It is Mr. Hosten's case is that neither he nor Ms. Lobo was provided with reasons for her deportation to India, save and except that she was deemed an "illegal person". Counsel, Mr. Ferguson, submits that the reasons, assertions or evidence provided on behalf of the State do not reveal that there was a threat to national security which required the removal or deportation of Ms. Lobo from the country in the manner in which she was removed. Mr. Ferguson relies on the **Civil Service Unions**⁷ decision to submit that the Minister must lead evidence to establish that there was a "real risk" to national security and not merely assert it.
- [21] In respect of the requirement for evidence, where national security is pleaded as the basis for a decision, Lord Fraser, in the **Civil Service Unions** decision at page 944 opined that:
- "The question is one of evidence. **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.** But if the decision is successfully challenged, on the ground that it has been reached by a process which is unfair, then the government is under an obligation to produce evidence that the decision was in fact based on grounds of national security." (My emphasis)
- [22] In essence, Lord Fraser explains that a decision made in the interest of national security is a matter for the government, since it alone has access to the necessary information to reach such a decision. His Lordship went further to explain that even

⁷ [1984] 3 All ER 935 at page 960 per Lord Brightman.

where a case has been made out that the decision process was unfair, the government must produce evidence that the decision was based in the interest of national security. However, the court notes that both Redhead JA in the **Sharon Nettlefield**⁸ decision and Lord Scarman in the **Civil Service Unions** decision have held that the court's power to review is very limited and the court should only review a decision to "correct excess or abuse of power."⁹

[23] With respect to the bases for the deportation order, Ms. Frederick on behalf of the Minister deposed that:

- (1) Ms. Lobo applied for a firearm licence, but had no formal firearm training.
- (2) Ms. Lobo was said to be sympathizer of ISIS, a terrorist organisation.
- (3) Ms. Lobo was reported as stating that she is strong supporter of ISIS and spoke about making bombs.
- (4) Mr. Hosten also made comments that Ms. Lobo could easily blow up a boat if she so desired. (A statement vehemently denied by Mr Hosten at the trial).

[24] Given the above evidence and the authorities, the court is of the view that the Minister has provided reasons why the order was made in the interests of national security. It is not within the court's scope of power to determine whether the Minister tendered sufficient evidence or reasons to justify his decision to deport Ms. Lobo nor whether Ms. Lobo was a "real risk" or threat to national security. As the

⁸ Grenada Civil Appeal No. 6 of 2002 at para. 42.

⁹ [1984] 3 All ER 935 at page 946 per Lord Scarman.

authorities have stated such decision is for the government which alone has access to the necessary information and intelligence.

- [25] Moreover, the court is of the view that it would not be in the best interests of national security for the government to fully disclose all of the information it received from its intelligence and information gathered on Ms. Lobo. Additionally, the Minister is not under any obligation to provide full disclosure to a person who is affected or is likely to be affected by his decision to make a deportation order. It is not unreasonable to form the view that full disclosure of the Minister's information, intelligence and sources may compromise the interests of national security and can negatively affect its diplomatic relationship with its sources and channels of information. Accordingly, Mr. Hosten's relief seeking declarations that the Minister's decisions was arbitrary, unreasonable and irrational are refused.

Procedural impropriety and natural justice

- [26] Mr. Hosten complains that Ms. Lobo was not afforded an opportunity to be heard before she was deported. In relation to procedural impropriety, this principle was considered by the court in the **Civil Service Unions** and deals with the circumstances where a decision maker has failed to exercise his duty or power fairly. The question then arises whether the Minister must have afforded Ms. Lobo with an opportunity to be heard before her deportation to India.
- [27] The principles of natural justice are well-known and need not be restated. A fair reading of section 26 of Immigration Act does not reveal any obligation or requirement on the Minister to provide Ms. Lobo or anyone for that matter with reasons for his decision to execute a deportation order. Further, there is no obligation on the Minister under section 26 of the Act to provide a person with an opportunity to be heard who is likely to be affected by his decision especially on issues of national security.

[28] This question of procedural propriety was raised in the **Civil Service Unions** where Lord Diplock¹⁰ held that procedural propriety or fairness must give way to the decisions taken in the interests of national security. It cannot be argued that the power to remove non-nationals from the country in the interests of national security does not lie with the government. Therefore, it is within the purview of the government to decide whether in the interests of the national security it would be necessary to provide the affected person with an opportunity to be heard or reasons for their deportation.

[29] The court is of the view that, having regard to the evidence from the Minister and the circumstances of this case, there was no obligation to provide Ms. Lobo with an opportunity to be heard before or during her deportation to India. Accordingly, Mr. Hosten's pleadings on procedural impropriety and breach of the principles of natural justice must fail.

Conclusion

[30] For all these reasons, the claimant's fixed date claim filed on 2nd December 2015 is dismissed and the reliefs sought therein are refused. There shall be no order as to costs as the court is not satisfied that the claim was brought unreasonably.

Agnes Actie

High Court Judge

By the Court

Registrar

¹⁰ at page 952.