

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ANTIGUA AND BARBUDA**

CLAIM NO: ANUHCV 2010/0291

**IN THE MATTER OF SECTIONS 3 AND 18 OF THE
ANTIGUA AND BARBUDA CONSTITUTION ORDER 1981**

**IN THE MATTER OF SECTIONS 22 AND 39 OF
THE IMMIGRATION AND PASSPORT ACT**

**IN THE MATTER OF A DECISION OF THE CHIEF IMMIGRATION OFFICER
DATED 2ND SEPTEMBER 2009 DENYING RITA CARMICHAEL AN EXTENSION
OF TIME TO REMAIN IN THE STATE OF ANTIGUA AND BARBUDA**

**IN THE MATTER OF A DECISION OF THE CHIEF MAGISTRATE
DECLARING RITA CARMICHAEL A PROHIBITED IMMIGRANT
AND ISSUING A WARRANT FOR HER REMOVAL**

**IN THE MATTER OF THE REMOVAL OF RITA CARMICHAEL ON
25TH APRIL 2010, A PERSON HAVING QUALIFIED AND APPLIED
TO BE REGISTERED A CITIZEN OF ANTIGUA AND BARBUDA**

**IN THE MATTER OF THE DEPORTATION OF RITA
CARMICHAEL ON 25TH APRIL 2010, WHICH DECISION AFFECTED
KEYA SOPHIA BROWN, A CITIZEN OF ANTIGUA AND BARBUDA, A MINOR,
DAUGHTER OF RITA CARMICHAEL AND CLAUDY KELVIN BROWN,
A CITIZEN OF ANTIGUA AND BARBUDA**

IN THE MATTER OF AN APPLICATION FOR LEAVE FOR JUDICIAL REVIEW

IN THE MATTER OF AN APPLICATION FOR AN ADMINISTRATIVE ORDER

ORIGINATING MOTION

BETWEEN:

CLAUDY KELVIN BROWN

Applicant/Claimant

and

**(1) THE ATTORNEY GENERAL
(2) THE CHIEF IMMIGRATION OFFICER
(3) THE CHIEF MAGISTRATE**

Respondents/Defendants

Appearances:

Dr. David Dorsett for the Applicant/Claimant

Ms. Alicia Aska, Ms. Carla Harris and Ms. Luan Da Costa for the Respondents/Defendants

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2010: July 22
August 9
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JUDGMENT

- [1] **MICHEL, J.:** By Notice of Application, with Affidavit in Support, filed on 12th May 2010 the Applicant (Claudy Kelvin Brown) sought leave to apply for judicial review of decisions made by the Third Respondent (the Chief Magistrate) and the Second Respondent (the Chief Immigration Officer) as officers of the Crown represented by the First Respondent (the Attorney General).
- [2] By Order made in Chambers on 13th May 2010 Harris, J. gave leave to the Applicant to apply for judicial review and to file and serve a Fixed Date Claim Form, with Affidavit in Support, within 14 days of the date of the Order.
- [3] By Fixed Date Claim Form, with Affidavit in Support, filed on 19th May 2010 the Applicant sought constitutional relief with respect to his right to protection of his family life as

guaranteed by section 3 (c) of the Antigua and Barbuda Constitution Order 1981 and judicial review of the actions which resulted in the removal of members of his family from the State, namely, Keya Sophia Brown and Rita Carmichael.

- [4] On 7th June 2010 the Attorney General's Chambers filed an Acknowledgement of Service on behalf of the Respondents and on 17th June 2010 made application for extension of time within which to file an Affidavit in Response, which extension was granted until 19th July 2010.
- [5] On 25th June 2010 the Applicant filed an application, with Affidavit in Support, seeking the following interim relief:
1. An order of prohibition prohibiting the Second Respondent from denying Rita Carmichael – the mother of the Applicant's daughter – entry into the State of Antigua and Barbuda, the said Rita Carmichael being entitled to citizenship and having applied for same;
 2. An order of mandamus requiring the Second Respondent to grant to the said Rita Carmichael leave to enter and remain in the State of Antigua and Barbuda until the determination of the instant matter or until further order of the Court.
- [6] By Notice of Hearing dated 1st July 2010 the application for interim relief filed on 25th June 2010 was scheduled for hearing on 13th July 2010.
- [7] On 12th July 2010 – the day preceding the scheduled hearing of the application for interim relief – the Respondents filed an Affidavit in Response to the application and affidavit of 25th June 2010.
- [8] The hearing of the application was adjourned to 22nd July 2010.

- [9] On 16th July 2010 the Applicant filed an Affidavit in Response to the Respondents' Affidavit of 12th July 2010.
- [10] On 19th July 2010 the Second Respondent filed an Affidavit in Response to the Fixed Date Claim and Affidavit in Support thereof, together with several exhibits.
- [11] On 22nd July 2010 the matter came before the Court, with the Applicant giving evidence on oath and being cross examined and the Second Respondent giving evidence on oath and being cross examined. Counsel for the parties then made oral submissions to the Court, which were followed up with written submissions (with authorities) filed on 30th July 2010.
- [12] The Applicant contended that his constitutionally-guaranteed right to protection for his family life was violated when the mother of his minor child was removed from Antigua and Barbuda with the result that his aforesaid minor child (although being a citizen of Antigua and Barbuda) had to leave the State in order to continue to remain in the custody of her mother, thus depriving him of the companionship of his daughter which he had become accustomed to for all of her life, in addition to being deprived of the companionship of Rita Carmichael (the mother of his daughter) which he had become accustomed to for the preceding fourteen years. The family unit of father, mother and daughter - which had subsisted for the entire life of Keya Sophia Brown - was thus broken, in contravention of section 3 (c) of the Constitution of Antigua and Barbuda.
- [13] The Applicant, having been granted leave to apply for judicial review of the decision to remove Rita Carmichael from Antigua and Barbuda in breach of his constitutionally-guaranteed right to protection for his family life, sought interim relief in the form of prohibition, prohibiting the Second Respondent from denying Rita Carmichael entry into Antigua and Barbuda pending the determination of the application for judicial review, and/or in the form of mandamus, requiring the Second Respondent to grant Rita Carmichael leave to enter and remain in Antigua and Barbuda pending the determination of the application for judicial review.

- [14] The Court offered the opportunity to the parties to avoid the need for interim relief by advancing the hearing of the application for judicial review instead of hearing an application for interim relief and then later hearing the application for judicial review. This was welcomed by Counsel for the Applicant but was resisted by Counsel for the Respondents, who insisted on proceeding with the application for interim relief on 22nd July 2010 and then hearing the application for judicial review in the new term.
- [15] Despite the position taken by Counsel for the Respondents, however, the submission made on behalf of the Respondents in the application for interim relief was essentially that the claim for interim relief should be dismissed because the substantive claim for judicial review and constitutional relief will not succeed at trial.
- [16] The tenor of the submission by Counsel for the Respondents should have inclined them to the position that the claim for judicial review should be heard by the Court at the earliest opportunity rather than the Court first hearing a claim for interim relief (which the Respondents oppose on the basis that the claim for actual judicial review will be unsuccessful) and then later hearing the claim for judicial review.
- [17] The Court finds itself being completely unimpressed with the Respondents' logic of resisting the early hearing of the application for judicial review but opposing the claim for interim relief on the basis that the Applicant will not prevail in the application for judicial review, and the Court will grant interim relief to the Applicant on the basis that there is a serious issue to be tried, the balance of convenience favours the granting of the interim relief and no irremediable prejudice will be occasioned to the Respondents by granting the interim relief. The interim relief granted will however be limited to enabling Rita Carmichael to return to and remain in the State if she should seek to do so pending the hearing and determination of the application for judicial review. The prohibition sought on the basis that Rita Carmichael - having applied for citizenship of Antigua and Barbuda - is entitled to same is not one that the Court is prepared to grant at this time, because this is not a determination that the Court has made at this juncture, nor is it a determination which

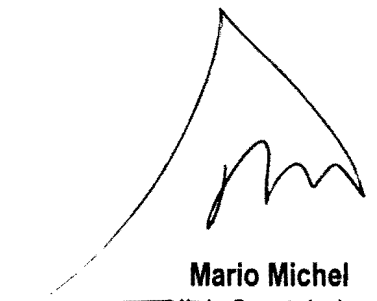
follows from the alleged violation of the Applicant's constitutional right to protection of his family life as opposed to a determination of a right of Rita Carmichael.

[18] The Court notes that the parties have marshalled a not insubstantial list of authorities in support of their submissions to the Court, which should serve them well in the determination of the actual application for judicial review, and which application should be heard early in the new term on a date to be fixed by the Registrar and notified to the parties.

[19] The Court makes the following interim order:

A mandatory injunction is hereby issued requiring the Second Respondent to grant to Rita Carmichael leave to enter and remain in Antigua and Barbuda (if she should seek to do so) pending the hearing and determination of the application for judicial review or until further order of the Court.

[20] Costs of this application shall be costs in the cause.



Mario Michel
High Court Judge