

IN THE GRAND COURT OF THE CAYMAN ISLANDS

365
CAUSE OF 2013

IN THE MATTER OF THE IMMIGRATION LAW (2012 REVISION) SECTION 33(1)(e)(iii)

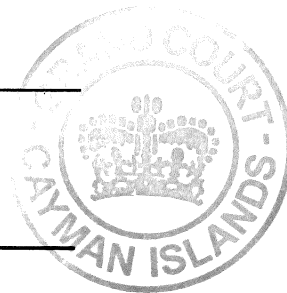
AND IN THE MATTER OF THE IMMIGRATION LAW (2012 REVISION) SECTION 31(8)(b)

AND IN THE MATTER OF THE CAYMAN ISLANDS CONSTITUTION ORDER 2009 SECTION
13(d)(iii) and 13(3)(a-d)

AND IN THE MATTER OF THE GRAND COURT RULES ORDER 77A

AND IN THE MATTER OF THE CAYMAN ISLANDS CONSTITUTION ORDER 2009 SECTIONS 23
AND 26

PETITION



TO HER MAJESTY'S GRAND COURT OF THE CAYMAN ISLANDS

The Humble Petition of and on behalf of **JERRY KORBLA KPESUNU**

SHOWETH as follows:

1. The Petitioner is charged with Overstaying; Remaining in the Cayman Islands without authorization, Contrary to section 78(1)(c) of the Immigration Law 2012 Revision.
2. The Petitioner was arrested on April 11 2013.
3. The Petitioner was married at the time of his arrest, to a Caymanian named Darlene Manzanares.
4. By a letter from the Caymanian Status and Permanent Residency Board and dated February 15 2013, the Petitioner was informed that his Residency and Employment Rights Certificate had been revoked, following upon a complaint being made against him, by the Caymanian spouse, and dated November 15 2012; that his marriage to her was "a marriage of convenience".
5. On February 26 2013, the Petitioner responded to this allegation in writing, and also lodged an appeal to the Immigration Appeals Tribunal. In addition he same day made an application to the Chief Immigration Officer via his counsel, seeking that the Petitioner

be allowed to continue to work; under the provisions contained in section 31(8)(b) of the Immigration Law 2012.

6. The Petitioner informed and presented to one Ms. Roseta Moore, a “public official” employed within the Department of Immigration, documents which showed that he had appealed the revocation of his residency and had also applied to the Chief Immigration Officer for the right to continue working by virtue of section 31(8) (b) of the Immigration Law 2012 Revision; which states in part...“where the holder of a Residency and Employment Rights Certificate granted by the Board...may continue working after it has expired until such time...as his [appeal] is determined...where he has appealed the Board’s decision, by the Immigration Appeals Tribunal”.
7. The Petitioner was duly given a Working By Operation of Law Application Form for him to complete and submit as a consequence, but when he attempted to submit same, it was not accepted by the said “public official” and employee of the Immigration Department, namely Roseta Moore. Ms Moore instead informed the Petitioner that he had no right to be on island and demanded that he depart immediately.
8. The Petitioner submits that that act of refusing to receive his application to continue working, pending his appeal and the fact of him providing the required proof of having lodged his appeal, constitutes discrimination on the part of Ms. Moore and the Chief Immigration Officer, upon whose instructions she purported to and indeed stated she was acting, against the Petitioner.
9. This act of discrimination continues at present, as the Petitioner’s appeal still remains pending, which discriminatory act was and continues to be, in breach of Article 16; 24 and Article 26(1) of the Bill of Rights, in the Cayman Islands Constitution Order 2009. It also contravenes section 31(8)(b) of the Immigration Law 2012 Revision; which allowed the Petitioner to work while his appeal remains to be determined” by the Immigration Appeals Tribunal”.
10. Further or alternatively, the act of discrimination was manifest, in that an ordinary “Worker” as defined in section 2 of the Immigration Law 2012 Revision, whose work permit is denied or revoked, and who has appealed that action to the Immigration Appeals Tribunal, is allowed the privilege to Work by Operation of Law, whilst his appeal is pending. In the circumstance, the Petitioner, as the spouse of a Caymanian was denied the said privilege, and that act by a public official was discriminatory and not for any of

the reasons for which derogation is permitted under the Bill of Rights and more specifically under the provisions of section 16(4)(b); and is therefore incompatible with the Bill of Rights.

11. Further and alternatively the Petitioner's being charged with a criminal offence by the said "public or governmental body" as defined in section 28(c) of the Bill of Rights, was oppressive and disproportionate, since for all intents and purposes the Petitioner had made every possible effort, to observe the several provisions contained in the Immigration Law 2012 Revision, in order to continue his employment, and lawfully reside in the islands, by accessing the appeal process and duly filing an appeal and by his making of the application to the Chief Immigration Officer, to work by operation of law, and the Chief Immigration Officer in the circumstances, was the issuing authority for Working By Operation of Law licences in the Cayman Islands; and who refused to accept and or adequately consider the said application, or to recognize the fact of an appeal filed and pending, which had been made and remained pending, by the Petitioner; and therefore in all the circumstances this was an act in breach of Article 7(1) of the Bill of Rights.
12. Further or alternatively, the Petitioner had a basic human right, to reside in the same place as his Caymanian spouse, and thereby be afforded the ability to reconcile any differences that are endemic to matrimonial relationships, as at the time, he had not been divorced but was merely separated from the said Caymanian spouse, and therefore he had a basic right to reside in the islands as the "spouse of a Caymanian", as provided for in Article 9(1) of the Bill of Rights, as to his Private and Family life, as well as in accordance with the formalities required to be observed in Article 13(1)(d)(iii) and 13(3)((a-d) of the said Bill of Rights, none of which were at the time being taken into account, by the said public officials, and therefore in direct breach of the Cayman Islands Constitution Order 2009, by virtue of which, the demand that he leave the islands immediately; was in violation of these collective prescribed rights and incompatible with the enshrined rights afforded to the Petitioner.
13. Ms Moore had remained unmoved throughout her interaction with the Petitioner, and insisted that the Petitioner make plans to depart the islands immediately. The Petitioner told her that he was still married to a Caymanian and that he did not have a ticket for return to Ghana. She told him that was his business, his problem, but he must depart immediately.

14. The Petitioner's was arrested on the 11th of April 2013, and at the time of his arrest, he was still married to his Caymanian spouse. Ms Moore attested to the fact that it was her information and advice to the Enforcement Division, which resulted in his arrest and charge. He was cautioned, questioned, kept in custody and processed, at the Enforcement Section of the Department of Immigration and such action was incompatible with Articles 9 and 14 of the Bill of Rights.
15. On the 26th of September 2013, the Petitioner appeared before His Honour Magistrate Foldats in the Criminal Summary Court, at which time the court expressed the view to the Petitioner, that the nature of his defence raised matters which prima facie claimed to be in breach of the Constitution Order 2009 and the Court was then petitioned to stay and adjourn the criminal proceedings, associated with the charge of Overstaying, laid against the Petitioner, on the basis of all of the reasons alluded to in the preceding paragraphs.

ORDERS SOUGHT

THE PETITIONER THEREFORE HUMBLY PRAYS as follows:-

16. An Order of *Mandamus* under the provisions contained in GCR Order 77A, and pursuant to Article 23 of the Bill of Rights, prohibiting the Chief Immigration Officer, whether by his/her servants, agents or otherwise to refrain from any and all actions pursuant to the provisions of Article 13(2) and 13 (2)(a-c) of the Bill of Rights in the Cayman Islands Constitution Order 2009, unless and or until the protections afforded to the Petitioner, by the provisions contained within Article 13(2)(d)(iii) and 13(3)(a-d) of the said Constitution Order are observed, and this petition is determined.
17. A Declaration that the refusal to accept the fact of the Petitioner's lawful appeal to the Immigration Appeals Tribunal and the application for the right to continue to work, followed by the subsequent arrest and prosecution of the Petitioner, in all the circumstances, was orchestrated, disproportionate, unlawful, oppressive and manifested discriminatory action, exacerbated by the verbal demand that the Petitioner immediately leave the Cayman Islands by Ms Moore, a public official of the Department of Immigration, and such action was in direct breach of the Bill of Rights Article 13(2)(iii) and 13(3) (a-d) and Article 14(1), and that there was [no]...'reasonable proportionality between the means employed and the purpose sought to be realized"...in all the circumstances, as stipulated in Article 16(4)(d)of the Bill of Rights, and that the Chief Immigration Officer, whether by his/ her servant , agents or otherwise, be restrained and

prohibited from any and all actions, the objective of which is the conviction and expulsion of the Petitioner, under any provision of the Immigration Law (2012 Revision) until this Petition is determined; as to allow the said actions against the Petitioner, would be in violation of the provisions contained in Articles 7(1) and 8(1) of the Bill of Rights and is therefore incompatible.

18. A Declaration that the refusal by Ms Moore and the Chief Immigration Officer to accept and respond to the application for authority to Work by Operation of Law by the Petitioner, was a demonstration and an expression of bias and discrimination against the Petitioner, a breach of natural justice, and was not “objectively and reasonably justifiable in a democratic society...between the means employed and the purpose sought to be realized”; as provided for in Article 16(4)(d) of the Cayman Islands Constitution Order 2009 and is incompatible with Article 16(2) of the Bill of Rights.
19. A declaration that, the demand made by Ms Moore and the Chief Immigration Officer to the Petitioner, to immediately depart the Cayman Islands, when he was at the time, the spouse of a Caymanian, and had an inferred basic human right to reside as a consequence in the islands, and had appealed the revocation of his right to reside and work, were tantamount to an attempt to deport the Petitioner from the Cayman Islands, such attempted deportation being unlawful, as it was neither ordered or recommended by the Governor, having been reported to him by a Magistrate, and therefore that action by Ms Moore and the Chief Immigration Officer, amounted to an attempt to usurp the jurisdiction of the court and the Governor, in circumstances where the Petitioner had not been convicted for any crime and deemed to be a convicted and deportable person, as per the provisions contained in section 88(1)(a) of the Immigration Law 2012 Revision; and the collective actions of these public officials were incompatible with the safeguards codified in Article 13(2)(d)(iii) and 13(3)(a-d) of the Bill of Rights.
20. A declaration that the arrest of the Petitioner, who hitherto and currently is a man of good character and who had committed no breach of any law whether locally or internationally, nor did he have any previous conviction, to disqualify him from holding or being granted a work permit within the Cayman Islands, and therefore the fact of his arrest places him at risk of being declared a criminal by virtue of any subsequent conviction, in relation to a charge which is not consequential upon or attributable to him, but for the actions of the public official, which actions denied him access to legislated due processes such as if lawfully accommodated by the said officials would have resulted in no accusations of violation of the Immigration Law 2012 Revision, and that the actions of the public officials, demonstrated a policy position, which was in

breach of natural justice, disproportionate, and a violation of the Petitioner's rights as the spouse of a Caymanian, insofar as those rights entitled the Petitioner to earn a living from ..."the employment, engaging in any business or profession, movement or residence within, the Cayman Islands of persons who are not Caymanian..." and is therefore incompatible, as provided for in Article 16(4)b of the Bill of Rights.

21. Costs and such further, consequential, or other relief as this Honourable Court seems just.

AND YOUR PETITIONER will ever pray etc

Dated this 23rd day of October 2013



Dennis E. Brady

FOR AND ON BEHALF OF THE PETITIONER

Note: This Petition is intended to be served on the Attorney General of the Cayman Islands

ENDORSEMENT

This Petition, having been presented to the Grand Court of the Cayman Islands will be heard at the Grand Court of the Cayman Islands on day of 2013.

(or as soon thereafter as the Petition can be heard)

THIS PETITION was **FILED** by Dennis Brady, Attorney-at-Law for and on behalf of the Petitioner whose address for service is that of their said Attorney-at-Law, Trinity Square, Building B-3, Eastern Avenue, P.O. Box 1671, Grand Cayman KY1-1109, Cayman Islands.