

IN THE GRAND COURT OF THE CAYMAN ISLANDS

GO273  
CAUSE NO: OF 2014

IN THE MATTER OF SECTION 67 OF THE IMMIGRATION LAW (2014 REVISION)

AND IN THE MATTER OF SECTION 74(1) OF THE IMMIGRATION LAW (2014 REVISION)

AND: IN THE MATTER OF THE CAYMAN ISLANDS CONSTITUTION ORDER 2009 pursuant to Order 77A Rule 4 for a Declaration to prohibit the expulsion from the Cayman Islands and Damages for Discrimination

AND: IN THE MATTER OF ARTICLE 13(2) and 13 (2) (a-c); 13(2)(d)(iii) and 13(3)(a-d) of the CAYMAN ISLANDS CONSTITUTION ORDER 2009.

AND: IN THE MATTER OF ARTICLE 17(b) and 17(2) OF THE CAYMAN ISLANDS CONSTITUTION ORDER 2009

AND: IN THE MATTER OF ARTICLES 23 and 24 OF THE CAYMAN ISLANDS CONSTITUTION ORDER 2009

AND: IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW pursuant to Order 53 of the Grand Court Rules

AND IN THE MATTER OF ARTICLE 16 OF THE CAYMAN ISLANDS CONSTITUTIONAL ORDER 2009

BETWEEN: HAROLD ASHLEY SPENCE

APPLICANT

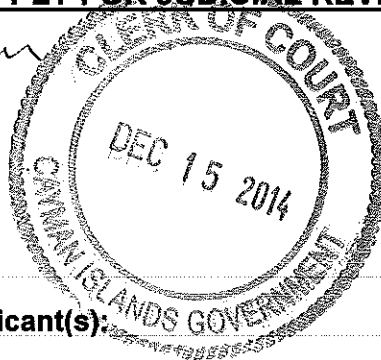
AND: CHIEF IMMIGRATION OFFICER

RESPONDENT

**NOTICE OF EXPARTE APPLICATION  
FOR LEAVE TO APPLY FOR JUDICIAL REVIEW**

11<sup>th</sup> March, 2015 @ 9.30am

To: The Clerk of the Court  
Law Courts Building  
George Town  
Grand Cayman



**Name, address and description of applicant(s):**

Harold Ashley Spence  
Building A-3 Trinity Square  
Eastern Avenue  
George Town  
Grand Cayman KY1-1009,  
Cayman Islands

**Decision in respect of which relief is sought:**

A Decision purporting to be made pursuant to Section 74(1) of the Immigration Law (2014 Revision) and taken by Deputy Chief Immigration Officer Garfield Wong, to deny the Applicant any further extension of authority to remain within the Cayman Islands and to demand that he depart from the Islands by the 26<sup>th</sup> day of December 2014, on the grounds that the Applicant's ...**"appeal before the Immigration Appeals Tribunal has been dismissed and there is no permission to remain in the Cayman Islands; your remaining in the Islands would not in the opinion of the Chief Immigration Officer be conducive to the public. Failure to adhere to the terms of this notice will result in your detention pending immediate arrangements to aid in the enforcement of this notice"**.

**Relief Sought:**

1. An Order of *Mandamus* under the provisions contained in **GCR Order 77A**, directing and prohibiting the Respondent, whether by his/her servants, agents or otherwise to refrain from any and all actions pursuant to the provisions of **Section 74(1) as read with Article 13(2) and 13 (2)(a-c) of the Cayman Islands Constitution Order 2009**, unless and or until the protections afforded to the Applicant, in the provisions contained within section **13(2)(d)(iii) and 13(3)(a-d) of the said Constitution Order** are observed, and this Judicial Review application is determined.
2. A Declaration that the Respondent whether by his/ her servant, agents or otherwise be restrained and prohibited from any and all actions, the objective of which is the detention and or removal from the Cayman Islands, of the Applicant, under any provision of the Immigration Law (2014 Revision) until this Judicial Review application is determined.
3. A Declaration that any removal of the Applicant from the Cayman Islands, will be in breach of the Applicant's rights under **Article 9 and Article 14(4) and 17(b) and 17(2) of the Cayman Islands Constitution Order 2009**.
4. That the Removal Notice dated December 12 2014 and issued by the Respondent in respect of the Applicant be set aside.
5. Costs and such further, consequential, or other relief as this Honourable Court seems just.

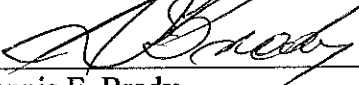
**Grounds on which relief sought are:-**

- (i) **Wednesbury unreasonableness:** The decision of the Respondent to remove the Applicant from the Cayman Islands, by applying a law and policy but failing to adequately or at all consider, the peculiar circumstances of the Applicant, is Wednesbury unreasonable and should be set aside, for the reasons that that the circumstances of the Applicant did not fall to be considered as being capable of applying derogation under the provisions contained in **Article 13(2)(a)(i) or (ii) of the Constitution Order 2009**, in that the Applicant posed no threat to the interests of the state's defences, so as to justify the opinion purportedly expressed by the Chief Immigration Officer to not be "**conducive to the public**" or indeed public safety, public order, public morality or public health, or to provide any such grounds for derogation from the provisions of the protections offered, by **Article 13(2) (d) and (3) of the Cayman Islands Constitution Order 2009**, nor indeed has his peculiar circumstances been fairly, adequately and properly considered by the Respondent; in light of the fact that at all material times, the Respondent was always aware and in fact directly connected with, the facts and circumstances which drove the decision which required that the Applicant be mandatorily present within the Cayman Islands, in order to fulfil appearances before the national Courts, and indeed the Respondent was at all material times, aware of this obligation on the part of the Applicant and in fact the Respondent was in possession of the Applicant's travel document; which fact prohibited his departure from the Cayman Islands of his own volition.
- (ii) That the Respondent was at all material times made aware, that the Applicant was at all material times, and indeed since the issuance of a Grand Court Order dated August 9 2007, under a legal obligation to pay the sum of CI\$500.00 monthly into the Court Funds Office of the Cayman Islands, in respect of his ex-spouse Dara Andrea Scott Spence and under a similar Order dated August 6 2008, to pay the sum of CI\$260.00 weekly plus half the cost of all medical, dental and optical treatments, in respect of the child of the union Kaleb Spence, and that despite the existence of these Orders, the Applicant was denied the grant of a Work Permit or indeed Permanent Residence, by which facility he might have earned monies to satisfy the said Order, nor indeed was the Applicant granted any facility whatsoever by the Respondent; by which he might have satisfied the said Court Orders; within the Cayman Islands.
- (iii) That the Respondent was aware that the Letter of Dismissal of the Applicant's appeal against the refusal of the grant of Permanent Residency dated April 15

2014, was received by the Applicant, as on the date of May 23 2014 when the Respondent interviewed the Applicant under arrest, having arrested him on suspicion for Overstaying, so that the Respondent was always aware as to the facts and circumstances of the Applicant being present in the Cayman Islands and that the said due process commenced by the interview process, which was initiated by the Respondent, and which process commenced on May 23 2014, remained pending and incomplete by virtue of the conduct of the Respondent and due to no fault of the Applicant, on the 12<sup>th</sup> of December 2014 and at the time when the Respondent issued the Removal Notice of the said date, against the Plaintiff; which act by the Respondent is in violation and breach of the rules of natural justice and indeed Article 7 of the Cayman Islands Constitutional Order 2009.

- (iv) That the actions of the Respondent in the circumstances, is unlawful and disproportionate, and that the said decisions of the Respondent are 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 therefore discriminatory and should be set aside.

Dated the 15<sup>th</sup> day of December 2014

  
Dennis E. Brady  
Attorney-at-Law

**TO:** The Clerk of the Court  
**AND TO:** The Chief Immigration Officer  
**AND TO:** The Attorney General

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