

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 91 OF 2017

BETWEEN:

HENRICH SWABY

AND:



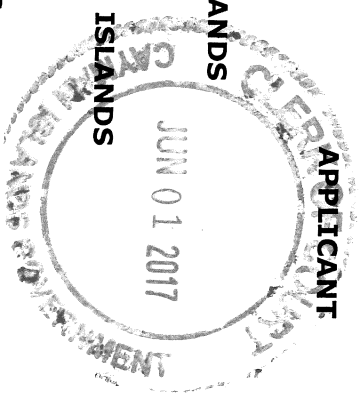
THE ATTORNEY GENERAL OF THE CAYMAN ISLANDS

&

THE CHIEF IMMIGRATION OFFICE OF THE CAYMAN ISLANDS

&

THE GOVERNOR OF THE CAYMAN ISLANDS



RESPONDENTS

APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

To the Clerk of the Court, Law Courts, George Town, Grand Cayman

Name, address and description of applicant	Henricho Swaby, P.O. Box 867, Grand Cayman, KY1-1103, Cayman Islands
Judgment, order, decision or other proceeding in respect of which relief is sought	The decision of the Governor of the Cayman Islands to make a Deportation Order on 23 May 2017 pursuant Sections 89 (1)(a) and 89(2) of the Immigration Law (2015 Revision) to detain and then deport Mr. Henricho Swaby from the Cayman Islands.
Relief Sought	a. A declaration that the decision of the 3 rd Respondent that the Applicant is liable to detention and removal is unlawful, ultra vires and of no force or effect; b. An order of certiorari quashing the decision of the 3 rd Respondent that the Applicant is liable to detention and removal;

- c. An order of mandamus compelling the 3rd Respondent to reconsider the position of the Applicant with full and proper consideration given to the position of him private life, circumstances and his family;
- d. An order of mandamus compelling the Respondents to determine the Applicant's human rights claim and to grant a right of appeal to the Applicant;
- e. An order of prohibition preventing the removal of the Applicant from the jurisdiction of the Cayman Islands until proceedings are concluded
- f. An order releasing the Applicant from detention until proceedings are concluded.
- g. Such further or other relief as this Honourable Court shall deem appropriate
- h. All necessary and consequential directions
- i. Costs

Name and address of applicant's attorneys

KSG Attorneys at Law, 4th Floor Harbour Centre, 42 North Church Street, George Town, Grand Cayman, P.O. Box 2255, KY1-1107

Signed

KSG

Dated

1 June 2017

GROUNDNS ON WHICH RELIEF IS SOUGHT

(If there has been any delay, include reasons here)

Note - Grounds must be supported by an affidavit which verifies the facts relied on.

- a. The removal of the Applicant from the Cayman Islands is contrary to section 24 of the Cayman Islands Constitution 2009, Bill of Rights, Freedoms and Responsibilities, Part 1 ("the Bill of Rights") as it would constitute a disproportionate interference with the right to respect for family life as protected by article 9 of the Bill of Rights.
- b. The Respondent has failed to take into consideration relevant factors when reaching the decision to exercise the discretion under section 89 of the Immigration and therefore has failed to act consistently with the public law duty of having regard to all legally relevant matters. The specific factors that were relevant and were not considered are as follows:

- i. the nature and seriousness of the offence committed by the applicant;
 - ii. the length of the applicant's stay in the country from which he is going to be expelled;
 - iii. the age of the applicant when he first became resident in the Cayman Islands;
 - iv. the time elapsed since the offence was committed as well as the applicant's conduct in that period;
 - v. the future threat that the applicant poses to public order;
 - vi. the nationalities of the various persons concerned;
 - vii. the applicant's family situation;
 - viii. the applicant's ties to the country of deportation.
- c. The Respondent has failed to adopt fair procedural safeguards in exercising the discretion to make a deportation order in breach of section 13 of the Bill of Rights in that the removal has not been carried out in compliance with Section 13(3)(b)&(d).
- d. The Respondent has failed to adopt fair procedural safeguards in exercising the discretion to make a deportation order in breach of section 19 of the Cayman Islands Constitution 2009, Bill of Rights, Freedoms and Responsibilities, Part 1 ("the Bill of Rights").
- e. Section 89 of the Immigration Law must be read and given effect under s25 of the Bill of Rights in a manner that is compatible, so far as it is possible to do so, with the Plaintiffs' rights under the Bill of Rights. As a result, the discretion of the Governor must be exercised in compliance with Section 13(3)(b) and (d) of the Bill of Rights and in compliance with the public law duties inherent in the proper exercise of a discretion as particularised above paragraph (b) i-viii.



KSG Attorneys at Law