

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE 19 OF 2018

AND IN THE MATTER OF SECTION 67 (4) and (6) OF THE IMMIGRATION LAW (2015 REVISION)

AND IN THE MATTER OF SECTION 74(1) and (2) OF THE IMMIGRATION LAW (2015 REVISION)

AND IN THE MATTER OF ARTICLE 9 OF THE CAYMAN ISLANDS CONSTITUTION ORDER 2009

AND: IN THE MATTER OF THE CAYMAN ISLANDS CONSTITUTION ORDER 2009 pursuant to Article 13(d)(i) and(iii) for a Declaration to prohibit the expulsion from the Cayman Islands

AND: IN THE MATTER OF ARTICLE 13(3)(a-d) OF THE CAYMAN ISLANDS CONSTITUTION ORDER 2009

AND: IN THE MATTER OF ARTICLE 24 OF THE CAYMAN ISLANDS CONSTITUTION ORDER 2009

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



BETWEEN: JOSE RAMON SIERRA ALVARENGA

APPLICANT

AND: CHIEF IMMIGRATION OFFICER

FIRST RESPONDENT

AND: COMMISSIONER OF POLICE

SECOND RESPONDENT

EX PARTE NOTICE OF MOTION

TAKE NOTICE THAT the Court at the Law Courts, George Town, Grand Cayman will be moved on the 2 day of February at 12:00pm or as soon thereafter as counsel can be heard, for THE APPLICANT for the following relief namely :-

1. An Order of *Mandamus* directing the First Respondent, whether by his/her servants, agents or otherwise to refrain from any and all actions, pursuant to the provisions contained in Article 13(2) and 13 (2)(a-c) of the Cayman Islands Constitution Order 2009, ("**the Order**") unless and or until, the protections afforded to the Applicant, in the provisions contained within Article 13(2)(d)(iii) and 13(3)(a-d) of the said Order are observed, and a comprehensive investigation of the Applicant's criminal complaint against Delcia Watler; is lawfully received and conducted by the Second Respondent. and this application for Leave to Apply for Judicial Review is determined.
2. An Order that the First 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 of the Applicant, under any provision of the Immigration Law (2015 Revision) until this leave to apply for Judicial Review application is determined.

3. An Order that the Respondent whether by his/ her servants, agents or otherwise be restrained and prohibited from any and all actions, the objective of which is the detention and expulsion of the Applicant from the Cayman Islands, under any provision of the Immigration Law (2015 Revision) until his complaint against Delcia Watler has been fully and comprehensively investigated by the Second Respondent, and a determination made by the Director of Public Prosecutions.
4. That the Second Respondent be directed to accept and by due process investigate, the legitimate criminal complaint of the Applicant; as it pertains to the Theft of his Honduran Passport and the Threat to Kill made against him by the said Delcia Watler.

AND FURTHER TAKE NOTICE that the grounds of this application are:-

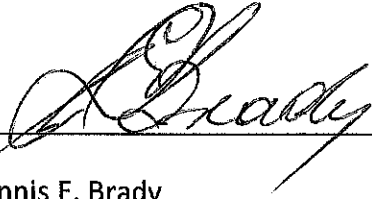
1. **Wednesbury unreasonableness:** The decision of the First Respondent to require the departure of the Applicant from the Cayman Islands, was a fettering and an improper exercise of his discretion, by applying a policy and failing to adequately or at all consider, the peculiar circumstances of the Applicant, is Wednesbury unreasonable and should be set aside, for the reasons set out.
2. That the First Respondent wrongly decided, that the circumstances of the Applicant did not fall to be considered as “exceptional circumstances”, and by which decision he failed to take into account-
 - (i) That the Applicant was in the process of filing a criminal allegation complaint to the Royal Cayman Islands Police, regarding the theft of his Honduran Passport and that such formalities were yet to be completed.
 - (ii) That the Applicant, at the material time, posed no threat to the interests of the state’s defences, public safety, public order, public morality or public health, to provide grounds for derogation from the provisions of the protections offered by section 13(2) (d) and (3) of the Cayman Islands Constitution Order 2009, and therefore the said decision of the Respondent was not **“objectively and reasonably justifiable in a democratic society...between the means employed and the purpose sought to be realized”**.
 - (iii) That the First Respondent has demonstrated by his conduct, a definite breach of Article 24 of the Cayman Islands Constitution Order 2009, by demanding that the Applicant depart the Cayman Islands, by Friday February 2 2018 or else be arrested and forcibly removed, in light of the fact that he has a fundamental and qualified right under the Law, by virtue of the fact that he had been issued a

legitimate right to reside under Section 67 of the Immigration Law 2015 Revision, within the Islands until February 28 2018 and the decision to revoke this right to reside, was Wednesbury unreasonable and discriminatory, as provided for and prohibited; under section 16(4)b) of the Cayman Islands Constitution Order 2009.

3. That the declaration made by the First Respondent to the Applicant and the resultant decision attributed to the First Respondent in this regard, was a decision made with prejudice and bias towards the First Applicant, who had committed no breach of any law whether locally or internationally, nor did he have any previous conviction, to disqualify him from continuing to enter and reside in the Islands.

4. That the Second Respondent has demonstrated by his action, a breach of Article 24 of the Constitutional Order when the Second Respondent failed to appropriately receive and adequately investigate, the criminal allegation of Theft of the Applicant's Honduran Passport as well as the Threat by Delcia Watler to have him killed; when it was the Second Respondent's constitutional duty to do so

Dated the ^{FEBRUARY} 9th day of December 2018



Dennis E. Brady

Attorney-at-Law

TO: The Clerk of the Court

AND TO: The Chief Immigration Officer

THIS NOTICE OF MOTION was FILED by Dennis Brady, Attorney-at-Law for and on behalf of the Applicant whose address for service is that of his said Attorney-at-Law, Crown Square, Building B-6, Eastern Avenue, P.O. Box 11740 APO, Grand Cayman KY1-1009, Cayman Islands.