

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 498 OF 2006

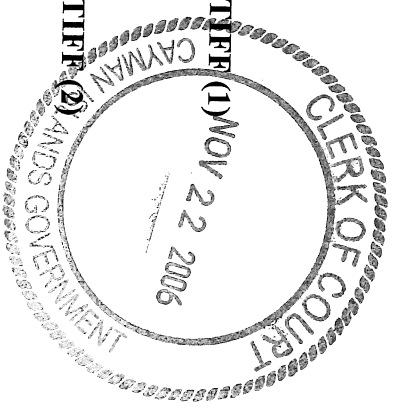
BETWEEN: RICHARD GARY WRIGHT

PLAINTIFF (1)

NOV 22 2006

KARENA CHISOLM-WRIGHT

PLAINTIFF (2)



AND: THE COMMISSIONER OF THE
ROYAL CAYMAN ISLANDS POLICE
FIRST DEFENDANT

AND: THE CHIEF IMMIGRATION OFFICER
SECOND DEFENDANT

AND: THE GOVERNOR IN CABINET OF THE
CAYMAN ISLANDS
THIRD DEFENDANT

EX-PARTE APPLICATION FOR LEAVE
TO APPLY FOR JUDICIAL REVIEW
(GCR 0.53, r.3)

To the Clerk of the Court, Law Courts, George Town, Cayman Islands	
Name, address and description of applicants	
Judgement, order, decision or other proceeding in respect of which relief is sought	<p>(1) <u>Richard Gary Wright</u> of 292 Crewe Road, Palm Dale, George Town, Grand Cayman presently resident at Dunrobin District, Mandeville PO, Mandeville, Jamaica; and</p> <p>(2) Karena Chisholm-Wright of 292 Crewe Road, Palm Dale, George Town, Grand Cayman</p> <p><u>DECISIONS/ACTIONS OF FIRST DEFENDANT</u></p> <p>The decision and subsequent actions of one Detective Inspector Livingston Bailey and one Detective Inspector Palmer both acting for and on behalf of the First Defendant made on or about the 1st September 2006 (1) to arrest the Plaintiff, (2) to detain him in custody without charge or bail and without bringing him before any court and (3) forcibly, wrongfully and illegally to deport the Plaintiff from the Cayman Islands on or about the 8th September 2006 (the “Police Decisions”);</p>

DECISIONS OF SECOND DEFENDANT

The decision and subsequent actions of the Second Defendant made on or about the 1st September 2006 (1) to authorise and procure the arrest of the Plaintiff by the above-named officers of the Royal Cayman Islands Police made on the 8th September 2006, (2) to detain, procure the detention of or authorise the detention of the Plaintiff in custody without charge or bail and without bringing him before any court; (3) forcibly, wrongfully and illegally to deport the Plaintiff from the Cayman Islands on or about the 8th September 2006 and (4) the decision dated the 8th September 2006 to revoke unlawfully and without reasonable or proper cause the Plaintiff's Temporary Work Permit (the "CIO Decisions");

DECISIONS/ACTIONS OF THIRD DEFENDANT

The decision of the Third Defendant dated the 10th October 2006 whereby the

Plaintiff was deemed to be an undesirable inhabitant of or visitor to the Islands purported to have been made pursuant to section 77(g) of the Immigration Law (2006 Revision)

Relief Sought

AS AGAINST THE FIRST DEFENDANT

1. An Order of *Certiorai* to quash the decision of the First Defendant (1) to arrest the Plaintiff, (2) to imprison the Plaintiff and (3) to forcibly deport or assist in the deportation of the Plaintiff;
2. A Declaration that the aforesaid arrest and imprisonment were unlawful and/or false and that the deportation was unlawful;
3. Damages for unlawful arrest and false imprisonment in an amount to be assessed.

AS AGAINST THE SECOND DEFENDANT

1. An Order of *Certiorai* to quash the decision of the Second Defendant (1) to arrest the Plaintiff, (2) to imprison the Plaintiff and (3) to deport the Plaintiff or to authorise and/or procure the same through the agency of the First Defendant;
2. An Order of *Certiorai* to quash the decision of the Second Defendant dated the 8th September 2006 to revoke unlawfully and without reasonable or proper cause the Plaintiff's Temporary Work Permit;

3. A Declaration that the aforesaid arrest and imprisonment were unlawful and/or false;
4. Damages for unlawful arrest and false imprisonment in an amount to be assessed.
5. A Declaration that the purported revocation of the Plaintiff's Work Permit by the Second Defendant was unlawful;
6. An injunction as against the Second Defendant to restrain the second Defendant or his servants or agents from refusing to allow the Plaintiff to return to the Cayman Islands in accordance with the terms of his work Permit;

AS AGAINST THE THIRD DEFENDANT

1. An Order of *Certiorari* to quash the decision of the Third Defendant to deem the Plaintiff to be an undesirable inhabitant of or visitor to the Islands purported to have been made pursuant to section 77(g) of the Immigration Law (2006 Revision):
2. A Declaration that section 77(g) of the Immigration Law (2006 Revision) is ultra vires the constitution as being unreasonable, unfair and in breach of the rules of procedural fairness and natural justice.

AS AGAINST ALL DEFENDANTS

1. An Order that the Defendants and each of them disclose and discover to the

Plaintiff's attorneys copies of all documents in the possession or control of the Defendants relevant to the Plaintiff and or touching and concerning any of the decisions or actions taken by the Defendants and each of them with respect to the Plaintiff's arrest, imprisonment, deportation, the revocation of the Plaintiff's work permit and decision to deem the Plaintiff an undesirable inhabitant or visitor;

2. Further and/or other relief; and

3. Costs

<p>Plaintiff's Attorneys</p>	<p>DIAMOND LAW ASSOCIATES 4TH FLOOR, CARDINAL PLAZA, CARDINALL AVENUE, PO BOX 2887 GT, GRAND CAYMAN, CAYMAN ISLANDS, TEL: 769-9352, FAX: 769-4352, E-MAIL: <u>INFO@DLA.KY</u>, (REF DLA/SW). CAYMAN ISLANDS</p>
<p>Signed: <i>Stewart MacFarlane</i> DIAMOND LAW ASSOCIATES</p>	<p>Dated: 6th November 2006</p>

GROUNDNS ON WHICH RELIEF IS SOUGHT

The Plaintiffs rely on the following grounds:

A. AS AGAINST THE FIRST DEFENDANT

1. **Illegality:** That the decisions of the First Defendant acting through Detective Inspector Bailey and Inspector Palmer aforesaid and subsequent actions in arresting the Plaintiff and imprisoning the Plaintiff were unlawful in that the

First Defendant had no reasonable grounds to suspect that any offence or any offence justifying arrest and imprisonment had been committed by the Plaintiff;

2. Abdication of duty: That the reliance placed on the information provided to the First Defendant by the Second Defendant in order to procure the arrest, imprisonment and deportation of the Plaintiff was an abdication of the duty incumbent on the First Defendant under the Law to conduct his own independent investigation of the alleged offences and to determine whether any grounds existed for the said unlawful arrest, false imprisonment and deportation;

3. Illegality / Abuse of process / Procedural unfairness: That the imprisonment of the Plaintiff by the First and Second Defendants without the bringing of any charges and without bringing the Plaintiff before the Summary Court as required by law was unlawful, an abuse of the process and the First Defendant acted with procedural unfairness by failing to give the Plaintiff a proper opportunity of appearing before a competent court to challenge the said arrest and imprisonment;

4. Irrelevant consideration: That in taking into account untrue allegations that Plaintiff was guilty of any offences or was otherwise guilty of a breach of any law or had committed any offences in the Cayman Islands the First Defendant took into account an irrelevant consideration thus rendering his decisions and actions illegal;

5. Unreasonableness and/or irrationality: The decision of the Defendant to arrest the Plaintiff, to imprison the Plaintiff and to forcibly deport the Plaintiff without proper authority or reasonable cause was unreasonable and/or irrational in the circumstances;

6. Failure to give adequate reasons for the decision: The Defendant failed to give the Plaintiff any or any full and detailed reasons for the arrest, imprisonment and deportation as he is required by law to do;

B. AS AGAINST THE SECOND DEFENDANT

1. Illegality: That the decisions of the Second Defendant and his actions in authorising and procuring the arrest and imprisonment of the Plaintiff through the agency of Detective Inspector Bailey and Inspector Palmer aforesaid and the Second Defendant's subsequent actions in arresting the Plaintiff and imprisoning the Plaintiff were unlawful in that the Second Defendant had no reasonable grounds to suspect that any offence or any offence justifying arrest and imprisonment had been committed by the Plaintiff;

2. Abdication of duty: That the reliance placed on the information provided to the Second Defendant in order to procure the arrest, imprisonment and deportation of the Plaintiff was an abdication of the duty incumbent on the Second Defendant under the Law to conduct his own independent investigation of the alleged offences and to determine whether any grounds existed for the said unlawful arrest, false imprisonment and deportation;

3. Illegality / Abuse of process / Procedural unfairness: That the imprisonment of the Plaintiff by the First and Second Defendants without the bringing of any charges and without bringing the Plaintiff before the Summary Court as required by law was unlawful, an abuse of the process and the Second Defendant acted with procedural unfairness by failing to give the Plaintiff a

proper opportunity of appearing before a competent court to challenge the said arrest and imprisonment;

4. Irrelevant consideration: That in taking into account untrue allegations that Plaintiff was guilty of any offences or was otherwise guilty of a breach of any law or had committed any offences in the Cayman Islands the Second Defendant took into account an irrelevant consideration thus rendering his decisions and actions illegal;

5. Unreasonableness and/or irrationality: The decision of the Second Defendant to arrest the Plaintiff, to imprison the Plaintiff and to forcibly deport the Plaintiff without proper authority or reasonable cause was unreasonable and/or irrational in the circumstances;

6. Failure to give adequate reasons for the decision: The Second Defendant failed to give the Plaintiff any or any full and detailed reasons for the arrest, imprisonment and deportation as he is required by law to do;

C. AS AGAINST THE THIRD DEFENDANT

1. Unconstitutional: The Immigration Law (2006 Revision) is delegated legislation and as such amenable to judicial review by the Grand Court. The Legislative Assembly is a subordinate body and such powers as it enjoys to legislate are derived from the sovereign United Kingdom Parliament and must be made in accordance with the Colonial Laws Validity Act 1865, the West Indies Act 1962 and Section 29 of the Cayman Islands (Constitution) Order 1972 (as amended) (the “Constitution”). Section 77(g) of the Immigration Law (2006 Revision) as applied by the Third Defendant is

unconstitutional and consequently section 77 of the Immigration Law (2006 Revision) is *ultra vires* the Constitution.

2. Illegality: The decision of the Third Defendant was not made in accordance with section 77(g) of the Immigration Law (2006 Revision) and is therefore illegal and made *ultra vires*;

3. Procedural unfairness: The Third Defendant acted with procedural unfairness by failing to give the Plaintiff adequate or any opportunity to respond or answer any allegations which were placed before the Third Defendant during its deliberations in Cabinet. The Plaintiff was given no notice that the Cabinet was going to consider a case against him that he might be an undesirable inhabitant or visitor and was not able to meet the charge or challenge the evidence nor was he given any copies of any information or other evidence which went to that question.;

4. Irrelevant consideration: That in taking into account an untrue allegation that the Plaintiff had any criminal convictions or had been engaged in criminal acts or associations in Jamaica the Third Defendant took into account an irrelevant consideration;

5. Unreasonableness and/or irrationality: The decision of the Third Defendant to deem the Plaintiff an undesirable inhabitant of or visitor to the Islands was unreasonable and/or irrational in the circumstances;

8. Failure to give adequate reasons for the decision: The Third Defendant failed to give any full and detailed reasons for the decision under section 77(g) of the Immigration Law (2006 Revision) as he is required by law to do;

D. THE CLAIM OF THE SECOND PLAINTIFF

1. The Second Plaintiff's grounds for applying for judicial review of the decisions of the Defendants and each of them are that, by virtue of her status as the First Plaintiff's wife, she has a sufficient interest to apply for leave to apply for judicial review within the meaning of GCR Order 53, rule 3(7). That interest is based on her fundamental right to her husband's presence in the Cayman Islands and on her right to family life.

E. OTHER AND FURTHER GROUNDS

1. The Plaintiffs will further rely on the Affidavit of the Plaintiff and the Plaintiff's wife sworn herein as providing further and other grounds upon which Relief is sought and will apply to amend the Notice of Motion in due course as permitted by GCR Order 53, rule 6(2).

Stephen Hall-Jones

Samuel Anselmi

STEPHEN HALL-JONES
Counsel for the Plaintiff

DIAMOND LAW ASSOCIATES
Attorney for the Plaintiffs