

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO: 973 OF 1999

BETWEEN

SMART DUAH

Applicant

And

**SUPERINTENDENT OF PRISONS
CHIEF IMMIGRATION OFFICER
ATTORNEY GENERAL**

Respondents

Appearances:

Mr. Collin Foster for Applicant

Miss Cheryl Mathurin Senior Crown Counsel in association with Miss
Viki Ann Elis Crown Counsel for the Respondents

2000: January 17
February 21, 24
March 7

JUDGMENT

[1] **d'Auvergne, J.:** On the 23rd day of December 1999 the applicant sought and was granted leave to file **Summons for Writ of Habeas Corpus ad Subjiciendum** on the Respondents for his release forthwith from his detention at the St Lucia Royal Gaol and further to grant the following

1. "A Declaration that I am entitled to have my refugee status determined properly and by law and that pending such application I should be released from my illegal detention forthwith.

2. An order preventing the Chief Immigration Officer, his Immigration Officers or Constables from removing me from the State of St. Lucia pending the outcome of these proceedings or pending the outcome of the review by this Honourable Court of my illegal detention and refugee status.
3. A Declaration that the decision of the Respondents were made in breach of the Rules of Natural Justice.
4. A Declaration that I am illegally detained by the Superintendent at the Royal Gaol St. Lucia Castries.
5. Further or other relief.”

[2] On the 17th day of January 2000 the said summons was set down for hearing and Counsel for the Respondents took a point in limine under **Order 41, Rule 6 of the Rule of the Supreme Court 1970** that paragraphs 1,2,3,4,5 and 9 of the applicant’s affidavit be struck out. **Order 41 Rule 6** of the above noted rules reads as follows:
“The Court may order to be struck out of any affidavit any matter which is scandalous, irrelevant or otherwise oppressive.”

[3] In order to appreciate what was being sought, the various affidavits and exhibits filed in this case must be perused. I therefore note them in this order.

[4] Affidavit of Smart Duah and exhibit.

Affidavit of Smart Duah

I SMART DUAH a Citizen of Nigeria born on the 21st June 1975 and now illegally detained in the State of St. Lucia make oath and say as follows:-

1. I am the applicant in the present action and make this Affidavit in support of my applicant for a writ of Habeas corpus against the Respondents who are responsible for my illegal detention at the Royal Goal St. Lucia Castries in the State of St. Lucia. The matters which I hereinafter declare are true to the best of my knowledge and belief and are within my personal knowledge unless stated otherwise. On 18th June 1996 I arrived in the State of St. Lucia having journeyed from Nigeria via the republic of Benin. My arrival in St. Lucia was to seek political asylum because my life in Nigeria was at threat due to my activities as a student engaged in pro democratic activities, demonstrating against the oppressive dictatorial regime of Sani Abcha the then Military leader.

2. Between 1993 and 1996 I attended Bayaro University situated in Kano State, Nigeria. I studied Petro Chemical Engineering whilst simultaneously engaging myself in a student pro democratic movement. Nigeria under Sani Abcha's Military Regime was expelled from the Commonwealth due to his regime's excessive violation of human rights.

3. My departure for St. Lucia was preceded by my unlawful detention for seven days in or about May 1994 by the said Military Government simply because I helped organise a peaceful student

demonstration for democracy and democratic rule in the State of Nigeria.

4. After my release I observed that I was under constant surveillance and was followed everywhere by the secret police whilst suffering anonymous threats from unknown persons against my life.
5. In May 1996 in fear of my life I fled from Kano State to the Republic of Benin where I was able to secure a Ghanian Passport from an associate at Immigration Headquarters enabling me to leave the entire region so as to ensure the safety of my life and liberty.
6. I chose St Lucia to seek Asylum as a Political refugee from oppression. I chose St. Lucia, because I was informed that St. Lucia was and is a Democratic State and because a cousin of mine who had visited St. Lucia in the early 90's had a friend on the Island with whom it was intimated I could reside with.
7. I have been informed by my Solicitors and verily believe that under the Universal Declaration of Human Rights Article 14(1) that everyone has the right to seek and enjoy in other countries asylum from persecution and, that in consideration thereof my decision to come to St. Lucia cannot be construed as improper.
8. In error, on my arrival in St. Lucia in June 1996 I did not seek refugee status and or political asylum at the port of entry because I was afraid to do so then, fearing the incompetence of the Airport Immigration Authority to manage my refugee status adequately or at all. I also then decided that I would subsequently seek the aid of a Human Rights Organisation in St. Lucia or anywhere else to

manage my refugee status, if St Lucia was uncooperative to my human plight. To date St. Lucia remains uncooperative by refusing to address seriously or at all my refugee status in particular now that I have been informed and verily believe that the previous Government under Sani Abcha is no longer in power.

9. In the course of my stay in St. Lucia I was unable to effectively engage any established Human Rights Organisation in which I had the complete confidence to advance my cause for refugee status. As a result I unwittingly decided to maintain a low profile in the hope that in the near future some solution to my refugee status would result. I am of good character and have no previous criminal convictions recorded against me in the State of St. Lucia or anywhere else in the world. In an effort to pursue my refugee status I commenced in July 1996 communicating with my family in Nigeria with the view to determine whether the previous problems I encounter in Nigeria still persisted. Notwithstanding such communication was severely curtailed when I was arrested. The present situation is that I remain ignorant of my fate where my life and liberty is concerned in the State of Nigeria.
10. On the 21st October **1996** I was arrested and detained by way of an order under Section 33(2) of the Immigration Ordinance Chapter 76 Vol. 1 of the 1957 Revised Laws of Saint Lucia. This Order was made to the Superintendent of Prisons, Castries classifying me as a Prohibited Immigrant.
11. Pursuant to this Order I was detained for five months before being brought before the Senior Magistrate Florita Nicholas on March 21st 1997.

12. I am informed by my Solicitors and I verily believe that my detention for as long as five months between 21st October 1996 and 21st March 1997 was in direct contravention of Section 33(3) of the said Ordinance which required inter alia that no person should be detained in custody for any period than is necessary for the purpose of any inquiry under the said Ordinance.
13. It is inconceivable that the issue around my prohibited status should have at first instance taken so very long before coming to the Magistrate's Court. In consideration thereof my detention of five months, almost equaled the sentence under the charge which was preferred against me namely Section 13 and 36(K) of the said Immigration Ordinance Chapter 76 Vol 1. Of the Revised Laws of Saint Lucia 1957 as amended by Section 8 of the Immigration Amendment Act and #15 of 83.
14. On 21 March 1997 I appeared before the Learned Senior Magistrate to specifically answer charges preferred against me under Section 13 and 36(K) of the Immigration Ordinance Chapter 76 Vol. 1 of the Revised Laws of Saint Lucia 1957 as amended by Section 8 of the Immigration Amendment Act and #15/83. I was found guilty of the said charges. I am informed by my Solicitors and verily believe that the penalty for such conviction is limited in terms of detention and fines to a maximum period of detention of six months or to a fine penalty of \$2500.00 or to both such penalties and imprisonment.
15. Notwithstanding this clear law on sentence and procedure I have been in custody for three years and two months and my immediate detention therefore is without the force of law and is unconstitutional. There is now produced and shown to me and

exhibited herewith marked DS1 a true copy of the extract of conviction for penalty taken out from the First District Court concerning the said charges.

16. Further, I am informed by my Solicitors and I verily believe that the Learned Magistrate acted Ultra Vires in her decision and sentence of 21st March 1997 in that she ordered that I be Deported out of the State of St. Lucia as soon as possible when she has no authority to do so. It is my respectful submission that a Deportation Order is considered so severe that only the Ministry of Home Affairs and or the Secretary of State may carry out such an Order at the instigation of the Courts. In consideration thereof I am informed by my Solicitors and verily believe that the Senior Magistrate did not address her sentence to the particular conviction under which I was charged.

17. As a result of the aforementioned the following is
PARTICULARISED:
 - (a) That my refugee status was not considered adequately or at all. On the 21st March 1997 I addressed my refugee status to the Learned Senior Magistrate who wrongly directed that the question of refugee's status could not be considered. Further in view of the present Political developments in Nigeria I remain anxious and willing to determine my refugee status appropriately.

 - (b) That my original period of detention before being brought to court on 21st of March 1997 as a prohibited immigrant was improper and illegal and signified undue delay.

- © That I have from the 21st March 1997 served an ongoing sentence far in excess of that which I was charged with under Section 13 and 36(K) of the Immigration Ordinance Chapter 76 Vol. 1 of the Revised Laws of Saint Lucia 1957 as amended by Section 8 of the Immigration Amendment Act and #15 of 83; and as such my immediate detention is illegal and unconstitutional.
- (d) That the Learned Senior Magistrate had no authority to unilaterally order my Deportation from the State of St. Lucia as such Order is only exercisable by the Minister of Home Affairs at the instigation of the court and the Immigration Authorities.
- (e) That even if the Learned Senior Magistrate did not intend in her sentence “Deportation”, which is not admitted, then her Provision for my removal which was indicated in her judgment is still to date not executed properly or at all, thereby signifying, that my immediate detention is illegal and unconstitutional. Further it is inconceivable that her direction “as soon as possible since March 21st 1997” could signify or encourage or maintain my immediate and present detention of two years and seven months to date. There is now produced and shown to me and exhibited herewith marked DS1 a true copy of the extract of conviction for penalty taken out against me from the First District Court and showing the Learned Senior Magistrate direction that I be Deported “as soon as possible”.
18. Accordingly I respectfully urge this Honourable Court for the reasons given in the grounds of my application that I have good grounds for seeking a Writ of Habeas Corpus and I respectfully request the Court to move and to grant such writ releasing me

forthwith from detention at the St. Lucia Royal Gaol and further to grant:

1. A Declaration that I am entitled to have my refugee status determined properly and by law and that pending such application I should be released from my illegal detention forthwith.
2. An order preventing the Chief Immigration Officer, his Immigration Officers or Constables from removing me from the State of St. Lucia pending the outcome of these proceedings or pending the outcome of the review by this Honourable Court of my illegal detention and refugee status.
3. A Declaration that the decision of the respondents were made in breach of the Rules of Natural Justice.
4. A Declaration that I am illegally detained by the Superintendent at the Royal Gaol St Lucia Castries.
5. Further or other relief.

SWORN BEFORE ME

at _____)

this _____ Day of1999)

)

)

.....

)

DEPONENT

.....

JUSTICE OF THE PEACE

This Affidavit was issued by Foster, Foster & Foster of Chambers Broglie & Grass Street, Solicitors for the Applicant whose address for service is same.

[5] Extract of Conviction for Smart Duah dated 21st March 1997 and was referred to as SD1.

SD1

SAINT LUCIA. 627/97

**EXTRACT OF CONVICTION FOR PENALTY, OR OF ORDER
FOR PAYMENT OF MONEY, AND IN DEFAULT OF PAYMENT,
IMPRISONMENT**

Form 200 (b) Crim.

Code

**IN THE FIRST DISTRICT OCURT
CORINA MONTOUTE WPC 393
POLICE HEARQUARTERS**

Complainant

vs

**SMART DUAH
NIGERIA**

Defendant

It was adjudged and ordered by the said Court sitting at **Castries** (A Court) on the **21st** day of **March 1997**, that the Defendant.

To be deported out of the State as early as possible.

The said adjudication was consequent on conviction in respect of a charge against the Defendant that **on Tuesday the 18th day of June, 1996 having arrived in the State of St. Lucia, by air and was granted a permit to remain in the State, as a visitor until 18th June, 1996 failed to have the said permit renewed or leave the State on or before the expiry the date of the said permit.**

Contrary to Section 13 & 36(K) of the Immigration Ordinance, Chapter 76 Vol. 1 of the Revised Laws of St. Luica, 1957 as amended by Section 8 of the Imm. Amendment Act #15 of 1983

.....

Clerk of the said District Court

[6] On the 11th day of January 2000 the Respondents filed three affidavits with supporting exhibits.

Affidavit of Floretta Nicholas

I, FLORETA NICHOLAS, Senior Magistrate of the District Court residing at La Clery, Castries in the state of Saint Lucia, make oath and say as follows:-

1. That I am the Magistrate who adjudicated I the case #627 of 1997 to which the Extract of conviction dated 5/12/99 attached as an exhibit to the Application of the writ of Habeus Corpus refers.
2. The said Extract of Conviction is erroneous.
3. The Applicant SMART DUAH was charged with a breach of sections 13 and 36 (k) of the Immigration Ordinance (1957) Vol. 1; Ch. 76. The Applicant pleaded guilty and was cautioned.
4. I have attached hereto a proper Extract of Conviction for Case No. 627 of 1997 exhibited hereto as FN(1).
5. The Applicant SMART DUAH on Tuesday the 18th February 1997 acknowledge receipt of the Notice dated 11th October 1996 that he is a Prohibited Immigrant and stated in Court that his father was a politician and that he the Applicant left Nigeria going through political crisis and for fear of victimisation, his father sent him out of the country. The notice is herein attached and referred to as Exhibit FN. (2).

6. The Applicant never appealed against the said Notice in accordance with section 23 of the Immigration Ordinance 1957 Volume (1) Chapter 76.
7. On the 21st March 1997, I signed an Order that the Applicant SMART DUAH be removed from the State and in the meantime be detained in custody in response to an application by the Immigration authorities for a removal and Detention Order. I also made a verbal Order that the Applicant be deported as soon as possible. The Order and Application are attached herein and referred to as Exhibits FN (3) and (4) respectively.
8. The said case 627 of 1997 was adjourned to 27th February 1997, 7th March 1997 and 14th March 1997 pursuant to the request of the Applicant SMART DUAH THAT HE WAS AWAITING A TICKET FROM HIS PARENTS IN Ghana.

FN(1)

[7] SAINT LUCIA 627/97

EXTRACT OF CONVICTION FOR PENALTY, OR OF ORDER FOR
PAYMENT OF MONEY, AND IN DEFAULT OF PAYMENT,
IMPRISONMENT

Form 200 (b) Crim. Code

IN THE FIRST DISTRICT OCCUR

**CORINA MONTOUTE WPC 393
POLICE HEADQUARTERS**

Complainant

vs

**SMART DUAH
NO. 5 GOLD COAST ROAD, NIGERIA**

Defendant

It was adjudged and ordered by the said Court sitting at **Castries** on the
21st day of **March 1997**, that the Defendant was **CAUTIONED AND
REPRIMANDED.**

The said adjudication was consequent on conviction in respect of a charge against the Defendant that **on Tuesday 18th June 1996 having arrived in the State of St. Lucia by air and was granted a permit to remain in the State as a Visitor until 18th July, 1996, failed to have the said permit renewed or leave the State on or before the expiry date of the said permit.**

Contrary to Sections 13 & 36 (k) of the Immigration Ordinance, Chapter 76, Volume 1 of the Revised Laws of St. Lucia 1957. As amended by Section 8 of the Immigration Amend. Act No. 15 of 1983.

.....

Clerk of the said District Court

FN(2)

IMMIGRATION ORDINANCE, 1957
Notice under Section 23 that an Immigrant is a
Prohibited Immigrant

To: SMART DUAH

Notice is hereby given that I have decided that you are a Prohibited Immigrant within the meaning of the Immigration Ordinance, 1957, and that the grounds of my decision are as hereunder: **You on Tuesday 18th June 1996 having arrive in the State of St Lucia by air and was granted a permit to remain I the State as a visitor, failed to renew your permit or leave the State on or before the expiry date of the said permit.**

Contrary to Section 13 of the Immigration Ordinance Chapter 76 Volume 1 of the Revised Laws of St Lucia 1957.

You may, if you think fit, appeal from this decision to the nearest Magistrate's Court, and, if you so request, you will be supplied with a copy of the form of notice of appeal.

Your dependants are:

Dated this **11th** day of **October 1990**

.....
Immigration Officer

FN(3)

IN THE FIRST DISTRICT COURT

ORDER

**SECTION 29 (1) IMMIGRATION ORDINANCE, CHAPTER 76,
VOLUME 1 OF THE LAW OF SAINT LUCIA**

Whereas application has been made to by **W.P.C. 398 Montoute** an immigration officer for an order for the removal of **SMART DUAH A CITIZEN OF NIGERIA** from the State.

And whereas I have perused a notice dated **11th October 1996** with the said application and served upon the said **SMART DUAH** declaiming him a prohibited immigrant in that he having arrived in the State of Saint Lucia by air on **18th June 1996** and was granted a permit to remain in the Island as a visitor until the **18th July 1996** failed to have the said permit renewed or leave the Island on or before the expiry date.

Contrary to Section 13 of the Immigration Ordinance Chapter 76 Volume 1 of the Revised Laws of St. Lucia 1957.

And whereas it appears to me that no notice of appeal has been lodged by the said **SMART DUAH** from the said declaration.

NOW I, THE UNDERSIGNED DO HEREBY ORDER THAT THE SAID SMART DUAH BE REMOVED FROM THE STATE AND IN THE MEEANTIME BE DETAINED IN CUSTODY.

.....
MAGISTRATE FIRST DISTRICT COURT

FN(4)

SAINT LUCIA

IMMIGRATION RESTRICTION ORDINANCE

Chapter 76, volume 1 of the 1957 Revised Laws of Saint Lucia
(Section 29)

APPLICATION FOR REMOVAL AND DETENTION ORDER

TO MAGISTRATE FIRST DISTRICT COURT

Whereas **SMART DUAH** a citizen of **Nigeria** at present in Police
Custody in the City of Castries was before me on

.....

And whereas I have examined the said **SMART DUAH** to ascertain
whether the said **SMART DUAH** is a Prohibited Immigrant.

And whereas I have decided that the said **SMART DUAH** is a Prohibited
Immigrant and have caused him to be detained on such grounds that he
having arrived in the State of Saint Lucia by air on **18th June 1996** and
was granted a permit to remain in the Island as a visitor until the **18th July
1996**. Failed to have the said permit renewed or leave the island on or
before the expiry date.

Contrary to Section 13 of the Immigration Ordinance Chapter 76 volume 1
of the Revised laws of Saint Lucia 1957.

And whereas in compliance with Section 23 of chapter 76, volume 1, I
gave the said **SMART DUAH** notice of these facts on **11th October 1996**

and whereas **SMART DUAH** has not appealed against my decision that he is a Prohibited Immigrant.

I have therefore, brought the said **SMART DUAH** before you and hereby make application for an Order that the said **SMART DUAH** be removed from the State and in the meantime be detailed in custody in pursuant to Chapter 76, volume 1, Section 29 (1).

.....

- [8] A perusal of SD1 and FN1 though purporting to be the same extract of conviction of the Applicant much difference will be observed namely in the space for the name of the Defendant.
- [9] SD1 has Smart Duah Nigerian whereas in FN(1) there is noted Smart Duah No 5 Gold Coast Road Nigeria.
SD1 states that the Order of the Senior Magistrate was that the Defendant “.....be deported out of the State as soon as possible”. Whereas FN1 states that the Defendant was “Cautioned and reprimanded”.
It is to be further noted that SD1 carries a date stamp of the 7th of December 1999 whereas FN(1) carries a date stamp of 11th January 2000.
- [10] FN2 shows that the Applicant on the 11th day of October 1996 almost four months after his entry into St Lucia was given notice that he was declared a Prohibited Immigrant and FN3 shows that the said notice having been served on the Applicant, the matter was brought to Court and was ordered to be removed from the State and in the meantime be detained in Custody. It is also noted that exhibits FN3 and FN4 are undated.

[11] Affidavit of **Francis Augustus Nelson**, Chief Immigration Officer and exhibits.

Affidavit of Francis Augustus Nelson

I, FRANCIS AUGUSTUS NELSON, Chief Immigration officer of La Clery, Castries make oath and state as follows:-

1. I am a Respondent in the present action and the matters which I hereinafter declare are true to the best of my knowledge and belief and are within my personal knowledge unless stated otherwise.
2. On 15th June 1996, the Applicant SMART DUAH arrived in Saint Lucia and was granted a permit under Section 12 (1) of the Immigration Ordinance 1957 Vol 1 Ch 76 for a period of one month such permit to be found on page 7 of his passport attached herein and exhibited as EX FAN (1).
3. On 11th October 1996, the Applicant SMART DUAH was detained and served with a Notice under Section 23 that he was a Prohibited Immigrant on the grounds that he failed to renew his permit or leave the State before the expiry date of the said permit. The Applicant never appealed against this notice in accordance with section 23 of the Immigration Order (1950 Vol 1 Ch 76. The said Notice is attached herein as Exhibit FAN (2)
4. During the detention of the Applicant, SMART DUAH, I am advised that he constantly reassured the Immigration Officer in charge of his matter that he would be receiving a return ticket to Ghana from his parents in Ghana.

5. On the 18th February 1997, the Applicant had still not received the said ticket and he was charged and brought before the District Court for overstaying his permit pursuant to sections 13 and 36 (k) of the Immigration Ordinance (1987) Vol 1 Ch 76.
6. On the 21st March 1997 the Applicant SMART DUAH was cautioned for the said charge and Magistrate Nicholas signed an Order pursuant to an application by the said Immigration Officer that the Applicant be removed from the State and in the meantime be detained in custody. The Application and Order are attached herein and exhibited as Exhibits FAN (3) and (4) respectively.
7. The Applicant was thereby detained at her Majesty's prison by virtue of such Order.
8. The Immigration Office has made efforts to have the Applicant returned to Ghana but such efforts have been frustrated because of the inability to get a visa to access a route to Ghana. Communication from the Immigration Department are attached hereto and exhibited as Fan(5), (6) and (8) respectively.
9. The Government of Saint Lucia has made funds available to meet the cost of travel for the Applicant SMART DUAH of Ghana. Payment vouchers for such travel are attached herein and Exhibited as FAN (9).
10. A flight through Germany has been obtained to Ghana on Condor Airlines without the use of a transit visa for the Applicant SMART DUAH as soon as he may be able to leave the State.

FAN 1

[12] FAN(1) Ghanaian passport of Smart Duah.

PASSPORT

There are to request and require
The name of the President of the
Republic of Ghana all those whom it
May concern to allow the bearer to
Pass freely without let or hindrance
And to afford him or her every

Assistance and protection of which
He or she may stand I need.

.....

Director of Passports

Given at ACCRA

This 30th day of May 1996

PASSPORT

PASSPORT
REPUBLIC OF GHANA
REPUBLIQUE DU GHANA
CAUTION
This passport remains the property
of the Government of Ghana and
may be
withdrawn at any time.
It is a valuable document and
should not
Be altered in any way or allowed to
pass
into the possession of an
unauthorised
person. If lost or destroyed, the
facts
and circumstances should
immediately reported to the
Passport Office, Accra, or the
nearest Ghana Mission or Consulate
and to the local police. New
passports can only be issued in such
cases after exhaustive enquires.
Attention is directed to the notices
on the inside backcover.

Name of Bearer) Smart
Duah
Nom du
titulaire).....

Maiden name)
Nom de Jeune fille)

Signature of bearer)
Signature du titulaire

A506723

This Passport contains 36 pages

Ce passeport contient 36 pages

FAN2 is a duplicate of FN2 noted earlier.

FAN3 is also a duplication of FN4 and FAN4 is a further duplication of FN3 both noted earlier.

- [13] **FAN5** is a correspondence dated 27th April 1998 from Chief Immigration Officer to Permanent Secretary from the Ministry of Health Human Services, Family and Women Affairs requesting assistance to meet the cost of air fare for the applicant.
- [14] **FAN6** another letter for assistance from the Immigration authority to the British High Commissioner dated 16th June 1998. This request was for a Transit Visa on behalf of the applicant to travel on British Airways Flight No BA2154 on Saturday 20th June 1998 Via London to Ghana.
- [15] FAN7 and FAN8 dated March 8th 1999 and 15th March, 1999 respectively again showed efforts made to deport the applicant. The last correspondence further stated that transit visas were not granted to deportees therefore another route had to be sought namely from St. Lucia to Accra via Germany.
- [16] The affidavit of Victor Pierre, Superintendent of Prisons stated that the Applicant was in his custody as a result of Order of the Immigration Officer dated 21st October 1996 and Order of Senior Magistrate dated 21st March 1997 noted earlier.

[17] At the conclusion of the arguments with regard to the point in limine the judgment was reserved and delivered on the 18th of February 2000. The point in limine was overruled and the paragraphs were allowed to remain. The matter would have proceeded with on that day but Counsel for the Applicant informed the Court that he mistakenly thought that only the decision would be given and was not prepared for argument. The matter was then adjourned to the 21st of February 2000.

[18] It is significant to note that no supplementary affidavit or affidavit in reply was filed by the Applicant who attempted to introduce fresh evidence through his solicitor.

[19] The substantive application commenced on the 21st of February 2000 and completed on the 24th day of February 2000.

[20] **Arguments**

Learned Counsel for the Applicant contended that the Applicant's detention was illegal and prolonged and that the writ under which he was charged was bad and dubious.

[21] He argued that the Learned magistrate was in duty bound to consider the Refugee Status of the applicant. He conceded that the Applicant did not seek Refugee Status at the point of entry into St Lucia, but said that was through fear of being returned to Nigeria and because he hoped to seek the assistance of Human Rights Organisations in St Lucia.

[22] He contended that the long period of incarceration from 11th October 1996 when the Applicant was arrested to the 17th of February 1997 when he was brought before the magistrate was illegal and **Contrary to Police and**

Criminal Evidence Act Secs 34 to 52 The St Lucia Criminal Code, and the St. Lucia Constitution.

- [23] He further argued that to date the Applicant is still detained.
- [24] He argued that the Applicant should be released while seeking Refugee Status and that it was incumbent on the Ministry of Legal Affairs and Home Affairs to consider the plight of the Applicant having regard to any conditions he may be forced to in Nigeria and quoted the case of **Amekrane v United Kingdom 1973EC JH**
Universal Declaration of Human Rights Article 14 (1)
American Convention (Articles 22(7) African Charter Article 12(3)
RV Holmes ex parte Sherman 1981 2 ALLER 612
- [25] He further argued that the Learned Senior Magistrate acted ultra virus and beyond her powers and quoted **RV Governor of Brixton Prison Ex Parte Armah 1968 A. C 192**. That despite her clarification of the word deportation, that order was out of her jurisdiction and therefore her decision must be quashed, thus signifying that the applicant's detention is illegal and quoted.
Hatcher v Critchlow (Inspector of Police) (1969) 14 WIR42.
- [26] He also further argued that in the alternative that under **The undesirable Aliens Expulsion Ordinance Chapter 80 Vol 1 Revised Laws of St Lucia 1957 Section 4 (2)** an individual could only be held in custody for a maximum of eight weeks.
- [27] He argued that there was an error on the face of the record, the conflict in evidence of what the extract of conviction actually stands for and that should be sufficient to quash the Order and consequent detention of the

said Learned Senior magistrate and again quoted **R V Governor of Brixton Prison exparte Armah.**

[28] Learned Counsel compared the instant case to that of **R V Governor of Durham Prison exparte Hardial Singh 1984 1 ALLR 983** and in particular the words of **Woolf J.**

[29] Learned Counsel for the Respondents contended that the grounds on which the Applicant has sought the said Writ of Habeas Corpus is nothing but a fabrication and that the reliefs sought should be refused. She said that the Applicant told a lie at point of entry and was granted a period of one month vacation in this island, that he claims to be a Nigerian awaiting a ticket from his parents in Ghana and that he left Nigeria in May 1996 whereas he has a Ghanaian passport with an International Certificate of vaccination affixed which indicates that he was in Ghana in December 1995 and January 1996.

[30] She conceded that the Applicant has a right to visit St Lucia but his entry into St Lucia has to be in compliance with St. Lucian law and quoted **Section 9** of the **Immigration Order** which states.
“Every person entering St Lucia shall truthfully answer all proper questions put to him by the Immigration officer for the purpose of this Ordinance.”

[31] She then quoted **Bugdaycay v Secretary of Home Department (1987) 2 WLR 606 note H at 607** where entry had been gained on the basis of untrue statements of facts. It was held that the Immigration officers were entitled to treat such persons as illegal entrants upon discovery of the true facts and that it was not open to them to contend that had they given the true facts to the Immigration Officer he might have given them leave to enter and that by extension, the reverse applies and that it was not open to

the Applicant to contend that had he given the true facts he would **Not** have been given leave to enter.

She then quoted **Section 12 of the Immigration Act** mentioned earlier.

[32] She summarized the case for the Respondents by stating that the Applicant having obtained a visitor's permit by deceit and allowed to remain in the island of St Lucia did not renew the permit and was therefore rightly deemed a Prohibited Immigrant on the 11th October 1996, that his long detention before being brought before the magistrate was self-induced since he was being accommodated with his request to await the arrival of his ticket from Ghana that he was not "**found**" guilty but pleaded guilty to the offence of overstaying his permit.

[33] She quoted **Section 1389 of the Criminal Code of St Lucia**.

She argued that the Application's detention was not illegal and quoted **Section 3(1)(i) of the Constitution of St Lucia**.

She quoted Sections 15 and 29 (1) of the Immigration Ordinance Chapter 76 Vol 1 of the Revised Laws of Saint Lucia 1957

She forcibly argued that the magistrate had not acted Ultra Vires by ordering the Applicant out of the State of St Lucia.

[34] She distinguished the case of **Hatcher v Crichlow** mentioned earlier and said that in that case the removal order was only invalid because the magistrate had no jurisdiction to deem the Applicant in that case a prohibited immigrant – therefore he was not lawfully deemed a prohibited immigrant and consequently the order and detention were invalid.

[35] She argued that there was no legislation in St Lucia dealing with Deportation except **British Deportation (Subjects) Ordinance Chapter 79 Vol 1 Revised Laws of St Lucia 1957**. Moreover that a reading of the St Lucia Immigration Ordinance would clearly indicate that the words

“removal order” and “deportation” are being used interchangeably and that in the absence of specific definition to the contrary they must be taken as the same.

- [36] She then clarified certain aspects of points raised in the arguments of Learned Counsel for the Applicant.
- [37] She said firstly that the Applicant was not ‘locked up’ for seeking Refugee Status but rather pursuant to the Immigration Order, that to date the Ministry of Legal Affairs had not received the applicant’s call for Refugee Status and that St Lucia was not a signatory to the Conventions that Learned Counsel for the applicant quoted and that Refugee Status is the domain of the Executive.
- [38] She quoted the case of **Neilson v Barker 32 WIR Page 254** as authority that the detention of the Applicant was and is not illegal.
- [39] She said that the **Undesirable Aliens Expulsion Ordinance** bears no relevance to this case and therefore does not apply.
- [40] She concluded by clarifying the affidavit of the Learned Senior magistrate and to state the administrative difficulties experienced in processing the removal of the applicant from the state of St Lucia, and that to date the Ministry of Foreign Affairs through the British High Commission is willing to have the Applicant removed out of St Lucia within two weeks of the Court’s decision.
- [41] **Conclusion**
Much argument and the application of many different statutes and laws were advanced during the addresses by both counsel on behalf of their clients but I must stress and remind myself that I must not lose sight of the

matter which I have been called upon to decide. Whether the applicant is illegally detained at Her Majesty's Prison, Castries in the State of St Lucia?

[42] **Sections 12(1),(3), 13, 15, 16(1) (1)© 23, 28, 29(1) (2) of the Immigration Ordinance 1957 Vol 1 chapter 76 St Lucia** reads:

12. (1) An immigration officer, without deciding whether or not an immigrant is a prohibited immigrant, may at the request of the immigrant grant him a permit to enter and remain in the Colony for such period not exceeding three months as may be specified in the permit –

- (a) as a passenger in transit; or
- (b) for medical treatment; or
- © as a visitor; or
- (d) for purposes of employment; or
- (e) for purposes of trade or business; or
- (f) for any other purpose of a temporary nature, where the

immigration officer is satisfied that the immigrant's request for such permit is made in good faith.

(3) Where a permit under this section has been granted by an immigration officer, the Chief Immigration Officer may from time to time extend the period specified in the permit up to a maximum of one year from the date of entry into the Colony of the immigrant to whom the permit relates.

13. If an immigrant to whom a permit has been granted under section twelve fails to leave the Colony on or before the expiration of the period for which the permit has been granted, he shall, unless such period has been extended as provided in subsection three of that section, be deemed to be a prohibited immigrant.

15. Except as otherwise provided by this Ordinance, no person-

- (a) who is a prohibited immigrant; or
- (b) who being deemed under this Ordinance to be a prohibited immigrant, is dealt with as such, - shall enter or remain in the Colony.

16. (1) An immigration officer who decides that an immigrant is a prohibited immigrant may in his discretion –

- © cause him to be arrested and brought before a District Court with a view to an order being made for his removal from the Colony.

23. Where an immigration officer decides that an immigrant is a prohibited immigrant, he shall give to the immigrant, in the prescribed form, notice of his decision and of the grounds thereof and at the same time inform him that he may, if he think fit, appeal to a Magistrate.....

28. (1) Where notice under section twenty-three is given to an immigrant, the immigrant may appeal to the nearest District Court, from the decision specified in the notice by giving notice of appeal in the prescribed form to the immigration officer within seven days after the date on which the notice under section twenty-three was given to the immigrant;

29. (1) If any immigrant is a prohibited immigrant then, subject to the provisions of this Ordinance and the terms of any permit granted thereunder, any Magistrate may, on the application of an immigration officer or any person deputed in writing by the Chief Immigration Officer for the purpose of making such application, order the immigrant to be removed from the Colony and in the meantime to be detained in custody.

(2) Where an order is made under this section for the removal of an immigrant from the Colony, he shall be removed therefrom at such time and in such manner as the Chief Immigration Officer may direct, and in giving such directions the Chief Immigration Officer shall have regard to place from which the immigrant came when he entered the Colony, the country of which he is a subject of citizen, the place therein to which he is alleged to belong, the country which is willing to receive him, and the wishes and the means of the immigrant.

[43] The Applicant was charged under **Sections 13 and 36K** of the said Immigration Ordinance (**Section 36** deals with offences and penalties). The undisputed facts are that the applicant arrived in St Lucia by air in possession of a Ghanaian passport on the 18th day of June 1996 and was granted a permit to remain in the State as a visitor until the 18th of July 1996, that he failed to have the permit renewed or leave the State on or before the expiry date, that he was arrested in October 1996 and served with a Notice dated 11th October 1996 declaring him to be a Prohibited Immigrant (A perusal of **Section 13** will indicate that the Immigration Officer was fully empowered to do so). That in accordance with Section 16(1) © he was brought before the magistrate on the 17th of February 1997. It will be noted that **Section 23** permits an appeal of such notice by the applicant to the magistrate. The notice was not appealed, and on the 21st March 1997 the applicant pleaded guilty to being a Prohibited Immigrant; that there are two conflicting exhibits of Extract of Conviction and that the applicant is still being detained at the said prison to date.

[44] Firstly I must point out that a plea of guilty is not equivalent to a conviction.

Hatcher v Critchlow (Inspector of Police) 14 WIR Page 426 at 428 and that much care should be exercised in the granting and drawing up of orders, so as to avoid confusion and to prevent the drawing of adverse

inferences. I pause here to state that I accept the submission of Learned Counsel for the Respondents that the word “deportation” was used by the Learned Senior Magistrate though what she meant was the Applicant’s removal from the state.

[45] Now, from the above it is clear that the procedure for bringing the applicant before the magistrate was correctly followed and that the Magistrate is empowered by **Section 29** of above noted **Immigration Act** to order his removal from the State. The applicant over stayed his permit, was arrested and deemed a Prohibited Immigrant by the Immigration Authorities, that he was served with a notice which disclosed the ground on which he was so deemed. He did not appeal. What in my judgment is now the question in issue is, having been deemed a Prohibited Immigrant and ordered to be removed from the state and in the meantime be detained in custody, whether this valid order has now lost its validity due to the passage of time.

[46] It is established law that the ‘removal’ or “deportation” of someone must be done within a reasonable time, after the order has been given, that there must not be any undue delay.

[47] In **RV Governor of Durham Prison exParte Singh 1984 1 AER Page 983** it was held that the authorities concerned should exercise all reasonable expedition to ensure that steps are taken which will be necessary to ensure the removal of the individual within a reasonable time. While it was shown by the affidavit and exhibits of Francis Augustus Nelson Chief Immigration Officer that steps had been taken for the removal of the applicant after the granting of the order by the Learned Senior Magistrate (which she was legally empowered to issue). It will be observed that the order was granted on the 21st of March 1997 and that the first correspondence seeking assistance for the airfare for the applicant

from the appropriate authority is dated 27th April 1998, 13 months after the order was granted for the applicant's removal.

- [48] A transit visa via England was applied for on the 16th of June 1998. The next correspondence with regard to the said execution of the removal of the applicant from the state of St Lucia is dated 8th March 1999. In the said **R V Governor of Dunham Prison exParte Singh; Woolf J**, held that “the period which is reasonable will depend on the circumstances of the particular case.”

In **R V Governor of Richmond Remand Centre exParte Asghar 1971 1 WLR 129 Lord Parker CJ** said at (132) “It quite clearly contemplates, of course, that there will be some interval of time between the giving of the directions and their implementation and for that period of time there is authority to detain.”

- [49] Learned Counsel for the applicant forcibly argued that the applicant was illegally detained even before the directions were issued by the Learned Senior Magistrate on the 21st day of March 1997 for the applicant's constitutional rights had been breached in that he should have been brought before the Magistrate seventy two hours after his arrest in October 1996 and not on the 21st of March 1997. I agree with that submission of Learned Counsel.

- [50] In my considered judgment the detention of the applicant at her Majesty's Prison, Castries is illegal for two reasons Firstly his constitutional right under **Section 3(3)** has been breached he was not “brought before a court without undue delay and in any case not later than seventy two hours after such arrest.....”

Secondly that the period of detention at her Majesty's Prison is excessive, the order of removal was given by the Learned Senior Magistrate on the

21st of March 1997 and the applicant is still awaiting his removal from the State. It is to be noted that this Court has no jurisdiction to determine the Refugee Status of an individual. I do not think that the Respondents were in breach of the rules of natural justice in their dealings with the Applicant. My order is therefore as follows:

That the applicant Smart Duah be released forthwith and that he leaves the state of St Lucia on or before the 21st day of March 2000.

Costs to the Applicant to be agreed or otherwise taxed.

[51] I must commend both Counsels for their industry and assistance given in clarifying the legal position of immigrants generally.

.....

**Suzie d’Auvergne
High Court Judge**