IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

SAINT LUCIA

CLAIM NO. SLUHCV 2006/0895

BETWEEN:

MC ANTHONY OMENICHEKWA
SAMUEL FREEMAN

Applicants

and

THE ATTORNEY GENERAL

Respondent

Appearances :
Mr. G. Williams for Applicants
Mrs. G. Taylor Alexander and
Ms. B. Portland for Respondent

2007: January 17;
February 21;
March 12;
May 22.

JUDGMENT

Introduction

[1] EDWARDS; J.: This is a decision on the return to the 2 Writs of Habeas Corpus ad subjuciendum, issued on the 11th December 2006 by this Court, and the subsequent proceedings.

[2] The 2 Writs were issued upon the Application of 2 prohibited immigrants Mr. Mc Anthony Omenichekwa and Mr. Samuel Freeman, filed on the 17th November 2006, pursuant to Article 856 of the Civil Code of St. Lucia Cap. 242, and PART 57 of the CPR 2000.

[3] Both Applicants claim that they are Liberian nationals. They have no identification papers or Passports. They are in custody at the Bordelais Correctional Facility, awaiting their removal from St. Lucia. The difficulties the Immigration Authorities are encountering in confirming their nationality and pinpointing a country willing to receive them, raises the probability that they may be 'stateless'.

[4] They contend in their Application, that the protracted period of time which has passed since they were deemed prohibited immigrants, pursuant to Section 23 of the Revised Laws of St. Lucia 1957 (the Act), and the failure of the Chief Immigration Officer to cause their removal from St. Lucia pursuant to the Order of the District Magistrate made on the 16th September 2006, constitute an unlawful detention and an abuse of process.

THE HEARING

[5] At the hearing on the 21st February and 12th March 2007, the head of the Immigration Department, Inspector of Police Mr. Moses James was cross examined on his Affidavit filed on the 6th December 2006. The 2 Applicants were also cross-examined on their Affidavit.

[6] Learned Counsel Mr. Williams has identified the issue to be: Whether it is reasonable to detain the Applicants for the period which they have been detained in order to effect their removal from St. Lucia?

[7] It is necessary to state the facts relevant to resolving the issue before considering the law and submissions of Counsel. In doing so, the biographical summary for each Applicant will be related.

MR. OMENICHEKWA

[8] Mr. Omenichekwa testified that he was born on the 16th June 1974 in Liberia, son of Paulinus and Rosemary Francis Omenichekwa.

[9] He left No. 34 Umuatako, Monrovia where he last lived in Liberia in 1997, because he feared for his life, as his father was against the Government of Liberia.

[10] In the absence of any evidence regarding the existing political conditions in Liberia in 1997 and thereafter, the Court has taken judicial notice of the prolonged political turmoil in Liberia since 1989. The state of affairs in Liberia has been well documented in Immigration Cases before the United Kingdom Asylum and Immigration Tribunal: See T vs Secretary of State for the Home Department (Liberia) [2003] UKAIT 00164, 8/12/03; Appellant v Secretary of State for the Home Department AS (Rule 30.1: when reply required) Liberia [2005] UKAIT 0015, 27/10/05; LB vs Secretary of State for the Home Department (Article 3, Monrovia, Security) Liberia CG, [2004] UKAIT 00299, 28/4/04.

[11] The Case Minin vs Commission (Common Foreign & Security Policy) [2007] EUECJ T-362/04, and Government Paper – History of Liberia: A Time Line (1815 to 1997 (http://memory.loc.gov/ammem/gmhtml/liberia.html) also provide relevant information.

POLITICAL TURMOIL IN LIBERIA

[12] In 1980, the peace and tranquility that Liberians had hither to enjoyed, came to an end. There was then a military coup led by Samuel K. Doe, which overthrew the

Government, and assassinated the duly elected President Tolbert. On the establishment of a new Constitution in 1986, Samuel K. Doe retained power as head of State. He too suffered a similar fate as President Tolbert. In 1989 he was toppled by Charles Taylor, resulting in a civil war, when various ethnic factions fought for control of the nation. In 1990 rebel forces executed Samuel K. Doe.

[13] The Secretary Council of the United Nations has passed numerous Resolutions since 1992, in response to the serious threats to peace in Liberia. In 1995 a peace treaty was brokered between the warring factions by the 16 member Economic Community of West Africa States. In 1996 the peace accord granted a general amnesty to faction fighters for abuses committed in the course of "military engagements." Following peace negotiations, Charles Taylor was elected President.

[14] For the next 6 years former faction fighters, particularly Charles Taylor's faction the NPFL, continued to act with impunity, and remained a serious impediment to continued peace. Crippling poverty, multiple displacements, and continuous war has decimated Liberia's infrastructure. The civilian population in many villages have been 'wiped out'. Villages have been destroyed a significant portion of the population in Liberia have fled to neighbouring African countries and elsewhere, as refugees.

[15] Although Charles Taylor was ousted from power in August 2003, Liberia continues to be the subject of Security Council Resolutions, for securing peace and security in Liberia and in the region.

[16] Mr. Omenichekwa said that when he fled from Monrovia in 1997 as a refugee, he traveled by road to Mali where he spent 8 months. He next moved from Mali by road to Ethiopia, and from there to Johannesburg, South Africa in 1999.

[17] He spent 9 months in South Africa, where he worked at Sunville Guest House and Restaurant with a family. He worked there for one Peter whose surname he does not remember. He testified that he lived with one Charles as a squatter whilst in South Africa. His Employer assisted him in obtaining a South African Passport as a refugee, he said, and thereafter, he traveled to Zurich in Switzerland.

[18] From Zurich he traveled to Amsterdam and from there he went to Quito in Ecuador because that was where most Liberian refugees were heading at the time he said.

[19] He has a Liberian cousin in Quito named Omushola Johnny Yorke who is legally resident there.

[20] Mr. Omenichekwa married an Ecuadorian lady, and they had a baby daughter during the 3 years he lived in Ecuador, named Mitchell Chidirna. He left Ecuador when his daughter was 3 years old apparently. His wife Valencia Bahola was then working at a Restaurant in Quito, and living at 18 Avenida, Caro Pago, Quito, Ecuador.

[21] He said that Omushola takes care of his daughter in his absence, and he gave the Police Omushola's telephone number 01159394 096491, which is also his wife's number.

[22] He testified that he left Ecuador in 2005 because he was not legally there. He said that though he cannot return to Ecuador since he was not legally there, he is willing to return there if the Ecuadorian Authorities will accept him. His father is now dead he said, and he does not know if his mother who was mentally ill is still alive. He has no known friends or relatives in Liberia.

[23] He decided to come to St. Lucia because this was the only island he was hearing about, so he left Ecuador and went to Venezuela. From there he went to Trinidad,

and in June 2005 he arrived in St. Lucia by plane from Trinidad. He traveled on his South African Passport all this time.

[24] On arrival in St. Lucia he stayed at a Guest House, and then went to another Guest House in Grand Riviere.

[25] In July 2005 he began living in a rented room at Morne Du Don and subsequently linked up with Mr. Freeman who had arrived in St. Lucia on an unnamed Cargo boat in May 2005.

MR. FREEMAN

[26] Although Mr. Omenichekwa and Mr. Freeman resemble each other, they have each denied that they are related, or knew each other before arriving in St. Lucia.

[27] Mr. Freeman testified that he grew up in Isika Village, Imo, Liberia, having been born in Liberia. In the notes he made in his own handwriting and gave to the Police, he gave his date of birth as 25th October 1972, and his place of birth as "Libaria Moriovia".

[28] In his handwritten notes he gave his address as "No. 34 Morovia Street Libaria School: Primary Isika Libaria" He gave his parents' names as "Deceased Anna Freeman (Mother) No. 4 Onyebis Street Libar
Freeman – Chibueze Father"

[29] He testified that his brother, Chiboyez Freeman, his father and his mother all died by the war. He said that he did have a Liberian Passport which his mother had gotten for him since he was 10 years old. He decided to leave Liberia because his parents and his brother were killed and he had nobody, not even friends left in Liberia to assist him.

[30] It must be noted, that Mr. Freeman deposed to an Affidavit in Claim No. SLUHCV 2006/0417 on the 22nd May 2006 relating to other proceedings. In this Affidavit he stated that he was formerly of "47 Church Road, Murovia, Liberia."

[31] Under cross-examination by the Learned Solicitor General Mrs. Taylor-Alexander, he was asked if "4 Onyebis Street" means anything to him. His answer was – "I remember my father was living there before he moved my mother."

[32] Travelling with his Passport, he said he left Liberia on an unnamed ship which stopped at several places in Africa before he got to Ecuador. He was then 32 to 33 years old he stated.

[33] On entering Quito, Ecuador, he spent 1 month in Hotel Esmerada. He also testified that he spent one week in a hotel and got broke. Thereafter he got assistance from a Spanish lady called Nancy. He could not say what street or number Nancy lived, and he explained that "frustration and things I going through feel like I going off my head".

[34] He said he had no friends in Ecuador, and was never employed there. He subsequently left Ecuador traveling by road until he got to Venezuela. In the course of this journey, he said he lost his Passport at the border.

[35] According to him the Venezuelan authorities allowed him to enter Venezuela without any identification papers. In Venezuela, he boarded the unnamed Cargo boat, after the "ship man" agreed to assist him for $50.00 which was the only money he possessed. He said that the Immigration Authorities in Venezuela allowed to him leave on this boat without an official identification after he had explained that his Passport was lost.

[36] He arrived in St. Lucia in about May 2005, and the boat dropped him off by the harbour. He then entered St. Lucia without any Passport. He subsequently met Mr. Omenichekwa and began living with him at Morne Du Don.

APPREHENSION OF APPLICANTS

[37] Both Applicants had their first encounter with the Police on the 17th and 18th October 2005, when they were arrested and charged with breaches of the Immigration Act. The charges were never proven, and on the 18th May 2006 they were dismissed by the Magistrate.

[38] Since then they have enjoyed brief intermittent periods of liberty. On each occasion that they had successfully challenged their detention by the Police in Court, they were shortly thereafter re-arrested.

[39] On the 31st May 2006, they were deemed prohibited immigrants after their re-arrest on the 29th May 2006, pursuant to Sections 4 (1) (a) and 23 of the Act which states:

> "4 (1) Except as otherwise provided in this Ordinance the Immigration into . . . [St. Lucia] by sea or by air of any person being or appearing to be of any of the classes specified in this subsection is prohibited:
>
> (a) any person who is without visible means of support or is likely to become a pauper or public charge;
>
> (b)-(h) . . ."
>
> "23. Where an immigration officer decides that an immigrant 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.

[40] There being no appeal from the Applicants, Applications were made on the 6th June 2006 for their removal from St. Lucia by virtue of Section 29 of the Act which states:

> "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 of any person deputed in writing by the Chief Immigration Officer for the purpose of making such application, order the immigrant to be detained in custody.
>
> (2) Where an order is made under this section for the removal of an immigrant from . . . [St. Lucia], 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 the place from which the immigrant came when he entered . . . [St. Lucia], the country of which he is a subject or 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.

[41] Section 33 of the Act states that: "(1) Where a person is detained in custody under this Ordinance on the Regulations made hereunder; he may be so detained in a prison or in a place from time to time appointed by the Governor for the purpose of such detention in custody. Provided that where any such person is detained in a prison he shall be treated in the same manner as if he were a person awaiting trial. (2) Any person in charge of a

prison, and any member of the police force, may, on the written order of an immigration officer, accept custody of any person, and detain such person in custody under this Ordinance. (3) No person shall be so detained in custody for any longer period than is necessary for the purpose of any inquiry under this Ordinance or the Regulations made hereunder, or for the completion by the immigration officer of arrangements for the removal of such person (being a prohibited immigrant) from . . . [St. Lucia] at the first reasonable opportunity."

SUBMISSIONS

[42] Learned Counsel Mr. Williams contends that implied within the meaning of Section 29 (2) and 33 (3) of the Act is that the detention of the Applicants must be limited to the period which is reasonable necessary for that purpose. Mr. Williams has invoked 3 authorities in support of this submission: (1) Regina v Governor of Durham Prison Ex parte Hardial Singh [1984] 1 WLR 704; (2) Liew Kar-Seng v The Governor in Council and Director of Immigration (1989) 1 H.K.L.R. 607; (3) Lam and Others v Superintendent of Tai A. Chau Detention Centre and Others (Hong Kong) [1996] U.K. P.C. 5.

[43] Mr. Williams reviewed the evidence of Inspector James as to the efforts the Immigration Department had made to remove the Applicants from the State.

[44] Inspector James testified that the following things had been done:

(1) Cpl Joseph in October 2006 spoke to the 2 Applicants concerning their identification information and each of them supplied the information previously mentioned in this judgment in note form in their own handwriting.
(2) A transcript of the Applicants' notes was prepared and transmitted to the International Criminal Police Investigation (INTERPOL), whose

assistance was solicited on the 6th November 2006. INTERPOL is used by Police agencies throughout the world for getting information other than about criminals.

(3) On the 7th November INTERPOL replied by electronic mail, that the name of the Applicants' schools and the addresses provided by the Applicants were fake and could not be found in Liberia.

(4) Two subsequent attempts to elicit further information from the Applicants have proven futile as they have been unco-operative and hostile.

(5) On the 1st December 2006 Mr. Omenichekwa's cousin Omushola, by telephone confirmed that Mr. Omenichekwa is a Liberian national, and that he had lived in Ecuador with his wife and child prior to coming to St. Lucia, at the address that was given by Mr. Omenichekwa in his handwritten note.

(6) Omushola also indicated that he believes that he met Mr. Freeman when he was in Ecuador.

(7) On the 4th December 2006 he sought the assistance of the Ministry of External Affairs after contacting the Washington Office. He requested the Ministry of External Affairs here to make contact with the Authorities in Ecuador, but he has received no response.

(8) On 5/12/06 he requested INTERPOL to contact Mr. Omenchekwa's family in Ecuador. INTERPOL informed him that it would take some time for this to be done.

(9) He has not directly tried to contact the Foreign Officer in Liberia.

(10) No Airline will take the Applicants from St. Lucia without any Identification documents.

[45] Learned Counsel Mr. Williams submitted that although Inspector James' evidence seemed to be placing blame on the Applicants for the lack of success in having them removed from St. Lucia, they did give their true and correct information about themselves and their last addresses in Liberia. He questioned the accuracy of the Interpol electronic mail that the Applicants' information was fake, and urged the Court to view Interpol's communication as an unproven allegation.

[46] Mr. Williams contends that since Inspector James had admitted that he was stuck, what with having difficulties in resolving Mr. Omenichekwa's situation, and having had no information on Mr. Freeman, the Immigration Department cannot say with any degree of certainty when the Applicants will be removed from St. Lucia. This predicament translates into the absence of any real prospect that they will ever be removed from St. Lucia. In these circumstances, Mr. Williams maintains that the Applicants' detention can no longer be justified on the basis of their impending removal, and it cannot be argued that they are being held 'pending their removal'. For these reasons Mr. Williams argues, their detention is illegal.

[47] Counsel for the Applicants also focused on the Chief Immigration Officer's failure to do what Section 29 (2) of the Act mandated him to do in order to secure their removal from St. Lucia. Inspector James has testified that the Chief Immigration Officer/the Commissioner of Police had told him only to do everything possible to remove the Applicants from St. Lucia.

[48] This, Mr. Williams argued, is evidence that the Chief Immigration Officer has failed to comply with the requirements of Section 29 (2) of the Act. It demonstrates a lack of interest in the Chief Immigration Officer's function under the Act.

[49] Mr. Williams developed this submission, arguing as if the Court was exercising jurisdiction on a judicial review claim, concerning the exercise of the Chief Immigration Officer's discretion, on principles in Associated Provincial Picture Houses Ltd v Wednesbury Corporation [1947] 1 KB 223 and Burroughs and Another v Rampagat Katwaroo (1985) 40 W.I.R. 287. I have mentioned this submission in deference to Counsel, though I consider it to be tangential and immaterial for the present proceedings.

[50] Learned Counsel for the Respondent referred to the judicial pronouncements of Woolf J in Hardial Singh supra which was a case involving an Application for habeas corpus. Woolf J considered the effect of paragraph 2 (3) of Schedule 3 of the Immigration Act 1971 (U.K.). Paragraph 2 (3) gave the Secretary of State power to detain an individual who is the subject of a deportation order pending that person's removal from the U.K. Woolf J. concluded that the power to detain under paragraph 2 (3) may only be used: (i) for the purpose of detaining the individual concerned pending his removal from the State; (ii) the power is limited to a period which is reasonably necessary for that purpose; and (iii) the Secretary of State must exercise all reasonable expedition to ensure that steps are taken to secure the person's removal from the United Kingdom, within a reasonable time; (iv) that the Secretary of State should not exercise the power at all if it appears to him that he is not going to be able, within a reasonable period of time to operate the machinery provided under the Act, for the removal of the person who is to be deported.

[51] In determining whether the Applicants' continued incarceration is justified, regard must be had to the efforts and the investigations required of the Chief Immigration Officer under Section 29 (2) of the Act, Mrs. Taylor Alexander argued. Further, the Court has to consider whether there is a possibility within a reasonable period of time that the Applicants can be removed from St. Lucia, she said.

[52] Contending that the requirements of Section 29 (2) of the Act placed obligations on both the Chief Immigration Officer to solicit the information, and on the Applicants to be forthcoming with reliable information, the Learned Solicitor General analysed the evidence before the Court.

[53] Mrs. Taylor Alexander maintains that the Applicants have not given cogent evidence of their citizenship, location of identification documents, a country which can properly receive them, and a country to which they are willing to go. She contends that before they testified in Court, they had not been co-operative and forthcoming in providing the information necessary to facilitate their removal from the State.

[54] She submitted further, that the oral testimony of the Applicants demonstrates deliberate evasiveness, where they failed to recall surnames of persons they lived with, worked with, or interacted with for extensive periods, and remembered no Street names or proper addresses where they worked in various countries.

[55] Counsel questioned the credibility of the Applicants as to their true identity and nationality, in the absence of any identification documents. She emphasized the evidence of information from Interpol that the information given by the Applicants had fake addresses, places and schools. She referred to Mr. Omenichekwa's evidence which discloses that he may be able to obtain citizenship and return to Ecuador through his Ecuadorian wife. It was possible she said, that he may have had a connection with South Africa since he has disclosed that he had a South African Passport.

[56] Counsel submitted speculatively, that the leads on Omenichekwa may provide the Immigration Authorities here with some insight on Freeman, since it is by no sheer coincidence that the 2 Applicants are here together. She alluded to the evidence of Inspector Moses that Omushola told him on the telephone that he may have met Freeman in Ecuador.

[57] She referred to the testimony of Inspector James concerning their attempts to use a Liberian area code with the telephone number Mr. Omenichekwa had provided. The evidence was that it was not until the 1st December 2006 when that number was tried with an Ecudorian area code was there some element of lead in this case in relation to Mr. Omenichekwa. I do not understand how Mr. Omenichekwa can be blamed for the Immigration Officer's blinkered judgment concerning the country where the telephone number was relevant. A look at Mr. Omenichekwa's notes clearly shows that this telephone number relates to his wife's address in Ecuador, so I cannot understand why this information was misapplied to Liberia.

[58] Inspector James also testified that Omushola had told him that he had sent a passport for Mr. Omenichekwa via UPS to facilitate his travel out of the State. Mr. Omenichekwa has denied receiving this passport.

[59] Mrs. Taylor Alexander concluded that Inspector James' evidence clearly shows that there has been earnest attempts, and within a reasonable time frame of the Court order, to secure the removal of the Applicants from St. Lucia.

[60] She urged the Court to consider all the hindrances and obstacles that have interfered with the ability to execute the order with due expedience. She referred to Smart Duah v Superintendent of Prisons and Others Civil Suit No. 973 of 1999 Unreported Judgment of d'Auvergne J delivered 7/3/00 (St. Lucia). This was a Habeas Corpus Application by a Nigerian Citizen, who had lawfully landed in St. Lucia on a Ghanan passport, and was deemed to be a prohibited immigrant after he had failed to leave St. Lucia on or before the expiration of his permit period. The Order granted for the Applicant's removal from St. Lucia was made on the 21st March 1997. The first attempt by the Chief Immigration Officer to obtain assistance for the airfare of the Applicant had been made on the 27th April 1998. A subsequent correspondence concerning the Applicant's removal was dated 8th March 1999. The Court applied Hardial Singh supra and found among other things, that the period of detention for the Applicant was excessive. D'Auvergne J

ordered his release from detention forthwith and that he leaves St. Lucia on or before the 21st March 2000.

[61] The Learned Solicitor General distinguished the Smart Duah facts from the facts in the instant case. She also invited the Court to consider the attitude of the Applicants in facilitating and assisting their removal, which has contributed to delaying their ultimate removal from St. Lucia. She invoked the judicial statements of Lord Woolf in R v Governor of Brixton Ex Parte Osman (No. 4) [1992] 1 All E.R. 579 at page 587 para f to h, which was relied on in Alexander Yakovlevich Rodionov v Superintendent of Prisons (St. Christopher & Nevis Suit No. SK BHCV 2001/0180 (Unreported Judgment delivered by Baptiste J. on 2/8/02) at paras. 19 to 24. In all of these cases, there was an application for habeas corpus, for an alleged fugitive offender who was the subject of an Extradition committal order.

[62] Lord Woolf, in explaining the judicial statements of Lord Diplock in Kakis v Government of the Republic of Cyprus [1978] 2 All E.R. 634 at 638-639, (another such case), said that: ". . . Lord Diplock . . . was indicating that if the applicant has brought the delay [in the commencement or conduct of extradition proceedings] upon himself by his own acts then that delay was not generally relevant; . . ."

[63] Lord Woolf said further at pages 594 h to j and 595, b to c:

> "There is no doubt it is deeply disturbing that after this period of time [1985 to 1991], after Mr. Osman has been in custody in prison in this country for far too long, it should still be uncertain whether he is to be returned to Hong Kong. However, when you look at the history as I have sought to outline it (and I emphasize I have only outlined it) in the course of this judgment, it appears clear to me that this is a situation that Mr. Osman has brought upon himself by his own

actions, as the result of a deliberate course of conduct upon which he has embarked designed to use the machinery of this Court and other Courts as a way of preventing has return to Hong Kong."

"It appears to me that this is a situation where he has embarked upon a war of attrition designed to wear down the Hong Kong government so as to prevent his return. I have no doubt whatsoever that when the present application is considered in the context of [5] previous applications [all of which were unsuccessful] it is indeed an abuse of process of the Court. It is using the machinery of the Court for purposes for which it should not be used . . . Therefore it seems to me that not only should this application be dismissed on the merits, the merits which I have sought to set out in the course of this judgment, but also this application should be regarded as an abuse of the process of the Court."

Discussion on Law and Findings

[64] The electronic mail from Interpol has to be looked at within the confines of the Evidence Act No. 5 of 2002. The electronic mail was never tendered as evidence, though Mrs. Alexander Taylor produced it in Court for scrutiny. The criteria laid down in Sections 55 and 122 of the Evidence Act have not been met, for the Court to accept the statement in the Interpol electronic mail as an exception to the Hearsay Rule. Section 55 (1) of the Evidence Act states that "A statement in a document is admissible in any proceedings of any fact stated therein of which direct oral evidence would be admissible . . ." where certain statutory conditions in Section 55 (1) (a) (b) and (2) are met. Where the electronic mail is seen as a business document, Sections 55 (7) to (9) apply. Section 56 (10) and 57 of the Evidence Act would also be applicable.

[65] It appears to me therefore that by virtue of these and other provisions in the Evidence Act, I should disregard and attach no weight whatsoever to the INTERPOl statement that the Applicants' information is fake. I therefore accept Counsel Mr. William's submission that this is an unproven allegation.

[66] In Hardial Singh supra the Secretary of State had decided to make a deportation order on 4/3/83 and the order was served on him on 16/3/83. The Home Office had filed evidence referring to the interviews which took place between the police and Mr. Singh on 24/1/83 in order to locate Mr. Singh's Passport so that he could be deported. In September 1983 the Durham police indicated the difficulties they were having in obtaining a travel document for Mr. Singh. This had prevented them from proceeding with his deportation. On 17/10/83 the Durham police had reported that the Indian High Commission were making inquiries in relation to establishing the Applicant's identity and no travel document was yet forthcoming. On the 24/10/83 for the first time there was written communication between the Home Office and the Indian High Commission. When the Home Office was asked to provided further information concerning the district of birth of the Applicant. There was no evidence that Durham Police to whom this request was communicated, had complied by obtaining this information. On 10/11/83 the Home Office wrote a letter to the High Commission pointing out the difficulties the Home Office were under, in deporting the Applicant and other persons in a similar predicament.

The letter pointed out that Mr. Singh had been detained 'well beyond the normal period' and that the Home Office was anxious to avoid any further untoward delay in his departure, especially since he had expressed a wish to return to India as soon as possible.

[67] Against this background Woolf J at page 987 stated: "There has been no reply to that letter and, apart from the fact . . . that there was an inquiry made yesterday of the Indian High Commission, apparently nothing has occurred

since . . . The Applicant had been taking what steps he could to achieve a satisfactory resolution of his problem. He is quite prepared to return to India . . . Counsel for the Home Office points out difficulties that the Home Office are under. If they sought to remove this man then the possibilities are that he would not be accepted in India, or by any other country, so he would merely be returned to this country, and if this country did not accept him on his return, he would pass to and fro; back and forth. Counsel for the Respondent has also pointed out the problem of trying to achieve a more expeditious result from the Indian High Commission. I fully recognize and appreciate these difficulties, but it does seem to me that on the limited material which is before me, the Home Office not taken the action they should have taken and neither have they taken that action sufficiently promptly. The question of deporting this man has clearly been under consideration at least since January 1983. Apparently no direct action was taken by the Home Office until October. The matter was left in the hand of the Durham police since October. It does seem that more activity could have taken place, particularly bearing in mind that applicant's Solicitors had made it abundantly clear that if no action was taken they were proposing to apply to the Court. What is more, there is the disturbing fact that the applicant had become distressed by his continuing detention and had made an attempt to take his own life. If the matter ended there, for my part I would regard this as a case where this applicant was now entitled to a writ of habeas corpus, or an order for his release. I would take the view that the implicit limitations imposed on the power of detention contained in the Act had not been complied with . . ."

[68] Adopting the analytic approach of Woolf J to the instant case, it has been more than 16 months since the 2 Applicants first came under the scrutiny of the Immigration Authorities in St. Lucia. It is reasonable to assume that at earliest, since October/November 2005, the Immigration Department must have been aware that the 2 Applicants were illegally in St. Lucia, and were claiming to be

Liberian nationals or probably nationals of another country. In the case of Mr. Omenichekwa, since he arrived in St. Lucia by Air from Trinidad sometime in June 2005, he would have filled out an Immigration form which an Immigration Officer at the Airport would have retained. Section 118 of the Evidence Act permits me to take judicial notice of this.

[69] No evidence has been adduced concerning the information that the police and/or Immigration officers had on the 2 Applicants from their initial encounter in October 2005. I have heard nothing about any attempts to recover the Immigration identity form of Mr. Omenichekwa which is in the custody of the Immigration Department.

[70] It was not until October 2006 that Cpl. Joseph attempted to obtain information from the 2 Applicants, resulting n their 2 handwritten notes exhibited.

[71] Apart from the electronic mail response from Interpol which was made available for scrutiny in Court, no documentation of any written request to, and/or correspondence from the Ministry of Foreign Affairs has been disclosed to this Court.

[72] We are now in the age of advanced technology which permits us to acquire information globally, and from a country in the African Continent with the click of the mouse. There is no evidence of any Internet search carried out by the Immigration Department relating to the names of the places disclosed in the exhibited handwritten notes for Liberia. For example, Maps of Liberia could have been easily obtained form the internet and shown to the Applicants, for them to identify where exactly they were from in Liberia. No evidence has been adduced concerning any direct attempts made to ascertain information on the Internet, concerning the appropriate Government Department to contact in Liberia in order to obtain information relating to the identity of the Applicants.

[73] The Immigration Authorities misapplied the information they had, regarding the Ecuador telephone number, thus retarding their progress in relation to Mr. Omenichekwa's removal.

[74] It cannot be said therefore that the Immigration Department have made any satisfactory effort, in my view, to confirm the information provided by the 2 Applicants about their nationality. The steps taken by Inspector James, according to his evidence, falls woefully short of the minimum standard that is to be expected in difficult cases, applying the Hardial Singh approach in my judgment.

[75] Concerning the submissions on Lord Woolf's judicial statements in Osman supra, the factual context within which these statements were uttered are to be distinguished from the facts in the instant case. It cannot reasonably be said in my view, that the 2 Applicants have brought upon themselves the delay in their removal, by their own actions, and their deliberate conduct, designed to frustrate their return to Liberia, or their removal from St. Lucia. Apart from Haiti, we in the Caribbean have been extremely fortunate not to have been exposed to civil war, and the atrocities of civil war that have existed in Liberia and other African countries. Our experiences regarding Refugees, and how to deal with such a crisis have been limited. It appears to me without any extensive research that the law of St. Lucia, makes no express provision for dealing with such matters. It is therefore understandable why the circumstances surrounding the arrival of these 2 Applicants in St. Lucia is perceived by the Immigration Officers as an overwhelming difficulty, posing great challenge for the Immigration Authorities, in seeking to have them removed from St. Lucia.

[76] The Applicants' perceived evasiveness and uncooperativeness, in communicating with the police and Immigration Officers, according to the evidence of Inspector James, ought to be viewed within the context of their past experiences in Africa and elsewhere in my view. Part 57.7 of CPR 2000 provides the avenue for the Immigration Authorities to lawfully obtain information from the Applicants where

they are evasive and uncooperative whilst in custody awaiting removal. It is not acceptable therefore in my view, to sit back and without using the available legal process, blame the delay in making arrangements for their removal on the Applicants, or use their perceived evasiveness and uncooperativeness as the basis for their indefinite detention.

[77] In the same breath, I hasten to add, that the Applicants cannot in effect, create circumstances which negative any reasonable likelihood that they can be removed in the foreseeable future, by giving false information or withholding information, or failing to cooperate so as to bring about their expeditious removal from St. Lucia within a reasonable time, and then accuse the Immigration authorities of not making any arrangements for their removal.

[78] Looking at the relevant statutory provisions, the words "No person shall be detained in custody for any period longer than is necessary for the completion . . . of arrangements for the removal of such person . . . at the first reasonable opportunity," in Section 33 (3) of the Act, must be interpreted within the context of the Section 29 (2) mandate to the Chief Immigration Officer.

[79] It is immediately obvious therefore, that the detention of the 2 Applicants is for an administrative purpose i.e. to remove them from St. Lucia, and that the duration of this detention is not indefinite, it is to be limited to the time that it will reasonably take to make the arrangements for their removal.

[80] The arrangements depend on the 6 matters stipulated in Section 29 (2):

(1) the place from which the immigrant came when he entered St. Lucia;
(2) the country of which he is a subject or citizen (connoting that he may be a naturalized citizen of a country);
(3) the place where he belongs (i.e. his nationality);

(4) the country which is willing to receive him;
(5) the wishes of the immigrant; and
(6) the means of the immigrant.

[81] According to the evidence that I have accepted, the Immigration Authorities are aware that the 2 Applicants are Nationals of Liberia, though they have not been able to independently confirm this, in the absence of identification documents or other credible evidence.

[82] There is information that Mr. Omenichekwa may be regarded as a South African citizen, since he obtained and traveled on a South African Passport. It is possible for the Immigration Department to confirm right here in St. Lucia, whether Mr. Omenichekwa did in fact arrive in St. Lucia, by air from Trinidad, and the origin of the Passport he traveled on, and other details. On Mr. Freeman's evidence, it appears that he is a citizen of no country other than Liberia.

[83] The Immigration Authorities have information that the 2 Applicants came from Ecuador when they entered St. Lucia through Venezuela, and in the case of Mr. Omenichekwa, intransit probably through Trinidad.

[84] There is no evidence concerning the wishes of Mr. Freeman, apart from the Application which implicitly states that he wishes to be released from custody pending removal. Although the same thing can be said for Mr. Omenichekwa, the Immigration Authorities had information from October 2006 that he had an Ecuadorian wife in Ecuador. There is no evidence that Mr. Omenichekwa or Mr. Freeman was ever asked by the Police/Immigration Officer who interviewed them in October 2006, what were their wishes.

[85] As for the means of the Applicants, that speaks for itself. They have no visible means and they obviously are a liability on the State, if they cannot lawfully work in St. Lucia.

[86] Having regard to the lack of progress by the Chief Immigration Officer in identifying a country that is willing to receive the 2 Applicants, and in obtaining identification documents for the Applicants to travel on, it is not enough for Inspector James merely to point to his half-hearted attempts since October 2006, and say that attempts are being made to effect their removal.

[87] In one of the cases relied on by Learned Counsel Mr. Williams: LAM supra [1997] A.C. 97, the Privy Council in their judgment delivered by Lord Browne – Wilkinson (at 111) unequivocally approved the Hardial Singh principles in the following manner:

> "Section 13 D (1) [of the Immigration Ordinance (Laws of Hong Kong, 1981 rev. c 115)] confers a power to detain a Vietnamese migrant 'pending his removal from Hong Kong.' Their Lordships have no doubt that in conferring such a power to interfere with individual liberty, the legislature intended that such power could only be exercised reasonably and that accordingly it was implicitly so limited. The principles enunciated by Woolf J. in the Hardial Singh case [1984] 1 W.L.R. 704 are statements of the limitations on a statutory power of detention pending removal. In the absence of contrary indications in the statute which confers the power to detain 'pending removal' their Lordships agree with the principles stated by Woolf J. First, the power can only be exercised during the period necessary, in all the circumstances of the particular case, to effect removal. Secondly, if it becomes clear that removal is not going to be possible within a reasonable time, further detention is not authorized. Thirdly, the person seeking to exercise the power of detention must take all reasonable steps within his power to ensure the removal within a reasonable time.
>
> Although these restrictions are to be implied where a statute confers simply a power to detain 'pending removal' without more, it is plainly possible for the legislature by express provision in the statute to

exclude such implied restrictions. Subject to any constitutional change (which does not arise in this case) the legislature can vary or exclude the Hardial Singh principles. But in their Lordships' view the Courts should construe strictly any statutory provision purporting to allow the deprivation of individual liberty by administrative detention and should be slow to hold that statutory provisions authorize administrative detention for unreasonable periods in unreasonable circumstances."

[88] In the other case Liew Kar-Seng (supra) the High Court of Hong Kong in the Judgment of the Hon. Mr. Justice Godfrey delivered 17/1/89, took the Hardial Singh principles even further. At page 5 in his judgment he said that: ". . . once the authorities have had what, in all the circumstances of the case, is a reasonable time to resolve the matter, and yet (even though it be through no fault of theirs) the matter remains unresolved, then the detainee must be released."

[89] Counsel Mr. Williams specifically referred to the Statement of Godfrey J at page 3 to 4 where he said: "A power to detain a person who is the subject of a Deportation Order 'pending his removal' from Hong Kong means just that. If the authorities say: "We will not remove the detainee" or "We cannot remove the detainee" or "Heaven knows when we will be able to remove the detainee . . . then, in my judgment, they cease to hold the detainee "pending his removal" and the Court can and should intervene to secure his release from detention."

[90] In Liew Kar-Seng the deportation order was made on the 21st October 1988, believing that the Applicant's claim that his wife, 2 children, parents, and 4 siblings all resided in Malaysia, was true. The Malaysian Authorities subsequently informed the Hong Kong Authorities that the Applicant was not a Malaysian citizen. The plan the Malaysian Authorities had, to put him on a plane to Malaysia and hope for the

best, notwithstanding this information, was found by the Court to be unsatisfactory with no reasonable prospect of the Malaysian authorities accepting him. The Court held that the Application for Habeas Corpus should succeed and that he should be released from custody immediately as his continued detention was unlawful.

CONCLUSIONS

[91] It is evident to me that there are no statutory provisions under the Immigration Act or elsewhere, which show a manifest intention of the legislator that the detention of these Applicants is to continue for as long as may be necessary, without foreseeable end, irrespective of the circumstances, including these peculiar personal circumstances of each Applicant. The legislator did not, in my view, contemplate that a prohibited immigrant may be stateless as is probably the situation of the 2 Applicants, or that a stateless prohibited immigrant should be detained forever.

[92] Taking all of the evidence and applicable law into account, it cannot be said on a balance of probability that there is a real chance of a reasonable imminent removal, as distinct from a merely theoretical possibility that these Applicants might be removed. It appears to me that what has been shown, is that their removal might occur at some time far into the future, or that it may probably never occur.

[93] Applying the judicial pronouncements of Lord Browne – Williamson in LAM (supra). I hold that the further detention of the 2 Applicants is no longer authorized by Section 33 (3) of the Act. The 2 Applicants should therefore be released from detention.

[94] PART 57.6 of CPR 2000 empowers the Court to make such orders as are just.

[95] Having regard to the fact that the release of the 2 Applicants is no indication that hey have any right to be in St. Lucia, or to remain in St. Lucia, the 2 Applicants' duty to remove from St. Lucia still remains, subject to any decision of the Governor General or an Immigration Officer to grant a permit to them to remain in St. Lucia, pursuant to Section 17 of the Act.

[96] I am of the view that the Immigration Officer's powers and duty to detain may be resurrected again when, or if, there is a real likelihood or prospect of the removal of the 2 Applicants from St. Lucia in the reasonably foreseeable future. During their release, if they commit any offence in St. Lucia, they should be dealt with according to law and or detained according to law.

[97] I am therefore imposing a qualification upon the release of the 2 Applicants. This appears to me to be right and just. The 2 Applicants are to report to the Head of the Immigration Department on Friday the 25th May 2007 and thereafter once weekly at a time and place designated by the Head of the Immigration Department.

[98] I therefore make the following Order –

(i) The 2 Applicants are to be immediately released from custody at the Bordelais Correctional Facility pending their removal from St. Lucia.

(ii) They are to report to the Head of the Immigration Department on Friday the 25th May 2007, and thereafter once weekly at a time and place designated by the Head of the Immigration Department.

Dated this 10th May, 2007

_____

OLA MAE EDWARDS
HIGH COURT JUDGE