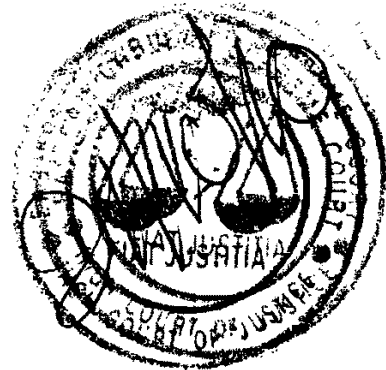


**THE EASTERN CARIBBEAN SUPREME COURT  
IN THE HIGH COURT OF JUSTICE  
SAINT VINCENT AND THE GRENADINES  
HIGH COURT CIVIL CLAIM NO. 232 of 2010**



**BETWEEN:**

**EMMANUAL JOHNSON CHIJOKE**

First Applicant

**AND**

**THE COMMISSIONER OF POLICE OF SAINT VINCENT AND THE  
GRENADINES**

First Respondent

**THE SUPERINTENDENT OF HER MAJESTY'S PRISONS**

Second Respondent

**THE HONOURABLE ATTORNEY GENERAL OF SAINT VINCENT  
AND THE GRENADINES**

Fourth Respondent

**HIGH COURT CIVIL CLAIM NO. 233 of 2010**

**BETWEEN:**

**BENJAMIN FIIFI DANQUAH**

Second Applicant

**AND**

**THE COMMISSIONER OF POLICE OF SAINT VINCENT AND THE  
GRENADINES**

First Respondent

**THE SUPERINTENDENT OF HER MAJESTY'S PRISONS**

Second Respondent

**THE HONOURABLE ATTORNEY GENERAL OF SAINT VINCENT  
AND THE GRENADINES**

Fourth Respondent

**Appearances:** Mr. J. Thomas for the Applicants  
Hon. Judith Jones-Morgan, Attorney General for the Respondents

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2010: July 7  
August 12  
October 21

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## **BACKGROUND**

- [1] **JOSEPH, MONICA J:** This is the hearing on two Writs of Habeas Corpus ad subjiciendum filed on 2nd July 2010, upon application by first applicant Emmanuel Johnson-Chijioke and second applicant Benjamin Fiifi Danquah. The applicants claim that they have been unlawfully detained in prison: the first applicant for four years six months (from 18<sup>th</sup> February 2006) and the second applicant for four years and eight months (from December 2005).
- [2] The applicants seek these reliefs: (1) a declaration that their incarceration was an illegal act of false imprisonment (2) an order that the applicants be immediately released from custody (3) an award of: (i) punitive and exemplary damages; (ii) damages and costs; (4) any further remedy that the court may deem necessary, proper and just.
- [3] At the hearing of the motions the third respondent, the Director of Public Prosecutions, was struck out from the proceedings. It was agreed that the applicants be released from the prison into the care of the Red Cross from 1<sup>st</sup> September 2010, and that counsel would file submissions.

**WRITTEN SUBMISSIONS: 27<sup>TH</sup> AUGUST 2010 and 21<sup>ST</sup> SEPTEMBER 2010**

## **WITNESSES:**

- [4] Affidavits were filed by the applicants. For the respondents, affidavits were filed by Chief Immigration Officer Stanford Hamilton, Commissioner of Police Keith Miller and Superintendent of Prisons McLauren Rodriguez, who were cross examined; Director of

Family Affairs Division, Camie Matthews; Senior Immigration Officer Kurt Noel, Chief Prison Officer Brenton Charles.

## ISSUES

- [5] Issues stated by the Attorney General:
- A. Whether the applicants' detention at Her Majesty's Prison was unlawful.
  - B. The impact, if any, which a prohibited immigrant's marriage may have on his status as a prohibited immigrant;
  - C. Whether the right of the First and Second applicant to be free from torture, or inhuman or degrading punishment or other treatment was violated;
  - D. Whether the first and second applicants are entitled to damages; and
  - E. How should costs be allocated.

## BACKGROUND - THE FIRST APPLICANT

- [6] The first applicant Emmanuel Johnson-Chinoke arrived in St. Vincent in 2001 landing in Bequia by boat - not at a port of entry and without the consent of an immigration officer.
- [7] He lived in Bequia for sometime until he was taken into custody by members of the Royal Saint Vincent and the Grenadines Police Force (the police). He was released into the care of a citizen of the Saint Vincent and the Grenadines, Kenneth Joff, a Nigerian by birth who stood as surety. Information reached the police authorities that Mr. Joff was involved in drug trafficking in the State. Information also reached the police that the first applicant had become involved in an illegal drug trafficking ring operating out of Bequia, through the Southern Grenadines and Grenada. The police tried to pursue him but he eluded them and travelled to Grenada by speedboat.
- [8] In Grenada he married a Vincentian Latoya Williams. He returned to St. Vincent and on 20<sup>th</sup> April 2004 registered in North Windward Constituency and was issued a Vincentian National Identification Card No. 009604. The first applicant travelled to Saint Lucia by boat where he remained for two years.

- [9] About 14<sup>th</sup> May, 2006, the Saint Lucian Immigration authorities arrested the first applicant. He was deported from Saint Lucia to Saint Vincent and the Grenadines.
- [10] On his return to the State he had no valid travel documents. He had a partially burnt Vincentian identification card. The first applicant was charged with a breach of Section 7 of the Immigration (Restriction) Act (Cap 78) of the Revised Laws of Saint Vincent and the Grenadines (The Immigration Act). On 9<sup>th</sup> June 2006, the applicant answered the charge in the Kingstown Magistrate's Court. On 16<sup>th</sup> June, 2006, the Senior Magistrate made a deportation order and ordered that the first applicant be remanded in custody pending deportation.
- [11] While detained in Her Majesty's Prison (the prison) the first applicant, by a letter dated 1<sup>st</sup> November 2007, from Attorney at Law A. Williams to the Secretary to the Cabinet applied, unsuccessfully, to the Government of the State for residency and citizenship. The ground of his application was that, because of the civil war in Liberia, he could not return to that country.
- [12] That letter stated that he was born in the Republic of Liberia on 16<sup>th</sup> January, 1969. Attached was a copy of birth certificate – original of which is in the possession of the Immigration Department.

#### **BACKGROUND - THE SECOND APPLICANT**

- [13] The second applicant Benjamin Fiifi Danquah arrived in the State from Trinidad and Tobago on Caribbean Star Airlines on 5<sup>th</sup> August, 2005. He indicated to an immigration officer that he was Simon Patuka. He presented a South African passport in that name, containing his photograph which bore the number 4153298407, issued on 30<sup>th</sup> July 2001.
- [14] He also presented a valid return ticket to South Africa through Trinidad and Tobago and London. The immigration officer permitted him to enter on a two weeks visitor's visa as authorized by Section 18 of the Immigration Act. He visited the Ministry of Foreign Affairs where he unsuccessfully applied for refugee status.

- [15] On 9<sup>th</sup> August 2005 the second applicant, utilizing the South African passport, left the State for the British Virgin Islands via Antigua. He was denied entry into the British Virgin Islands and was deported, returning to the State without any travel documents. The immigration authorities charged him, in the name of Simon Patuka, with a breach of Section 7 of the Immigration Act, which was heard at the Kingstown Magistrate's Court on 19<sup>th</sup> August, 2005. On a finding of guilty it was ordered that he be deported to South Africa and that he be detained at the prison pending deportation.
- [16] The Immigration Department prepared an emergency travel document for Simon Patuka, and, on 13<sup>th</sup> October 2005, deported him. The second applicant returned to the State on the same day having been denied entry by the immigration authorities in Barbados. He was detained in custody.
- [17] The second applicant (as Simon Patuka) was charged with a breach of Section 7 of the Immigration Act, which charge was heard at the Kingstown Magistrate's Court on 14<sup>th</sup> December 2005. Following a finding of guilty the second applicant was ordered to be deported from the State and to be detained at the prison pending deportation.

#### **SUBMISSIONS by the Attorney General**

- [18] Where the State mounts a response to a writ of habeas corpus which, on its face, demonstrates that the detention of the individual is lawful, an applicant for a writ of habeas corpus bears the burden of proving that his detention in the State is unlawful. The Attorney General cited **Re Wajid Hassan** (1976) 2 AER 123.
- [19] Further, the Attorney General submitted, the legality of an individual's detention should be evaluated with respect to these reference points: the initial arrest of the individual and the procedure observed: the period for which the individual is detained and the necessity and reasonableness of that period.

[20] An individual who enters the state is entitled to the protection of the laws of the State and is subject to its requirements and penalties, thus supporting the legal truism that one cannot have the benefits without the burdens. The Constitution of the State makes provision for the protection of one's liberty but there are exceptions, one such exception is the deprivation of liberty for the purpose of effecting an individual's expulsion, extradition or lawful removal from the jurisdiction.

[21] The Attorney General submitted that the law that provides for the detention of an individual prior to his lawful removal from the State is the Immigration Act which law gives a definition of prohibited immigrant.

[22] That definition includes an individual who did not enter the State at a port of entry, or without the consent of an immigration officer, in the case of the first applicant, or without a passport, in the case of the second applicant. The latter presented a South African passport in the name of Simon Patuka that had not been issued by the South African authorities. Presenting a passport that is not genuine, submitted the Attorney General, is equivalent to being without a passport.

#### **SUBMISSIONS by Mr. Thomas**

[23] The State authorities have a legal right to detain someone ordered deported by the court but legal authorities make the following points:

- (a) The power to detain exists only when removal is pending.
- (b) Removal cannot be said to be pending unless it is possible to effect it within a reasonable time.
- (c) If removal cannot be effected in a reasonable time then the deportee has to be released
- (d) Where removal was not pending detention is unlawful and the detainee must be released and compensated.

- [24] The State did little or nothing to effect the removal and repatriation of the applicants but warehoused the applicants for more than four years and six months, in the case of the first applicant, and four years and eight months in the case of the second applicant. He cited R V Governor of Durham Prison, ex p Hardial Singh (1984) 1 AER 984.
- [25] The State never sought to test the veracity of the information in the possession of the Immigration Department or prison authorities. The respondents now come to the court claiming that the applicants continue to be detained, as they did not cooperate with the State in supplying correct information. The legal authorities make it clear that non-cooperation on the part of a detainee is not a sufficient ground to detain an individual indefinitely.
- [26] Counsel cited a number of authorities including the International Convention on Civil and Political Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms.

### THE LAW APPLIED

- [27] In Hassan case the applicant had been taken in for questioning by immigration authorities during which he claimed that he had lost his passport and had applied for another. The immigration authorities were suspicious and detained him. The Court refused habeas corpus application as the return, being valid on its face, the onus was on the applicant to establish prima facie case to show that his detention was illegal and he had failed so to do. Mr. Thomas sought to discharge that burden by citing from authorities: The International Convention on Civil and Political Rights reads:
- "Article 9 - (1) Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such ground and in accordance with such procedure as are established by law.
- (4) Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful."

And The European Convention for the Protection of Human Rights and Fundamental Freedoms which states:

"(4) Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law."

### CONSTITUTION AND IMMIGRATION ACT

[28] The parallel provision to the provisions of those Conventions is Section 3 of the Constitution that enacts provision for the protection of the right to personal liberty. Subsection (1) enacts:

"No person shall be deprived of his personal liberty save as may be authorized by law in any of the following cases, that is to say:-

(i) For the purpose of preventing the unlawful entry of that person into Saint Vincent, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Saint Vincent or for the purpose of restricting that person while he is being conveyed through Saint Vincent in the course of his extradition or removal as a convicted prisoner from one country to another."

[29] I agree with the Attorney General's submission that, by not entering at a port of entry and not presenting himself to an immigration officer, the first applicant falls under the definition of prohibited immigrant in the Immigration Act

[30] Section 10 of the Immigration Act enacts in subsection (1):

"No person shall enter Saint Vincent and the Grenadines except at a port of entry."

In subsection (2):

"A person entering Saint Vincent and the Grenadines by sea shall not disembark without the consent of an Immigration Officer...."

In subsection (6):

"Any person who contravenes, or fails, or refuses to comply with any of the provisions of subsections (1) to (4) when entering Saint Vincent and the Grenadines shall be deemed to be a prohibited immigrant and may be dealt with as such."



[31] In the case of the second applicant, who entered the State on presentation of a South African passport in the name of Simon Patuka, the Chief Immigration Officer's affidavit discloses: that, from his enquiries, the South African authorities never issued a passport to a Simon Patuka, that the number on the passport was recorded to have been issued to a Johannes Machedi and that the address on the passport does not exist in South Africa.

[32] Section 5 of the Immigration Act enacts:

"(1) A person entering St. Vincent and the Grenadines without a passport shall be deemed to be a prohibited immigrant unless and until he establishes his identity and nationality to the satisfaction of an Immigration Officer.

(2) In this section, "passport" means a passport furnished with a photograph and duly issued, or renewed, ...or some other document establishing the identity and nationality of the immigrant to the satisfaction of an immigration officer."

[33] The Court considers that 'passport' could only mean a valid passport produced by the presenter of that document on entry into the State. To present to an immigration officer, a document that is not genuine or, tells a falsehood about the presenter, is equivalent to a person entering the State without a passport. The second applicant presented a passport that (a) purports to have been issued by an issuing authority which, in fact did not issue it to him, (b) which does not establish his identity, falls within the definition of prohibited immigrant.

[34] Both applicants, having failed to comply with the provisions of the Immigration Act are prohibited immigrants. They were charged; which charges were heard in a Magistrate's Court and deportation orders were made. Their detention was lawful.

[35] Mr. Thomas, while acknowledging that there was a power to detain, submitted that the power to detain an individual pending deportation cannot be without limit. The applicants, he said, have been incarcerated for many years with no effort being made to expedite their removal from the State.

[36] On the other hand, the Attorney General maintained that efforts were made for the removal of the applicants from the State.

### CIRCUMSTANCES AND WHAT IS REASONABLE

[37] In deciding whether detention is unlawful, the legal principle to be applied is that the applicants' detention must not be unreasonable. A period of four years and more in prison pending deportation is extraordinary and would require extraordinary circumstances to be regarded as reasonable. I consider the circumstances of the applicants' detention to determine whether the detention in those circumstances is reasonable. I refer to two cases.

Woolf, J. in R v Governor of Durham Prison, ex p. Singh. Para d stated:

"Although the power which is given to the Secretary of State...to detain individuals is not subject to any express limitation of time, I am quite satisfied that it is subject to limitations. First of all, it can only authorize detention if the individual is being detained...pending his removal. It cannot be used for any other purpose. Secondly, as the power is given in order to enable the machinery of deportation to be carried out, I regard the power of detention as being implicitly limited to a period which is reasonably necessary for that purpose. The period which is reasonable will depend upon the circumstances of the particular case. What is more, if there is a situation where it is apparent to the Secretary of State that he is not going to be able to operate the machinery provided in the Act for removing persons who are intended to be deported within a reasonable period, it seems to me that it would be wrong for the Secretary of State to seek to exercise his power of detention."

In addition, I would regard it as implicit that the Secretary of State should exercise all reasonable expedition to ensure that the steps are taken which will be necessary to ensure the removal of the individual within a reasonable time.

[38] R v Secretary of State for the Home Department (2001) EWHC 1678 (Admin):

"Once the administrative detention of an individual pending his deportation had reached a period of three years and eight months, his continued detention was unlawful. His failure to cooperate with the authorities in acquiring emergency travel documentation and the risk of him absconding if released did not justify his continuing detention, given that the timescale within which his removal was likely to be achieved was

wholly uncertain, and where conditions on release which provided a proportionate measure of security against the risk of him absconding were available".

- [39] The Chief Immigration Officer detailed the deportation machinery: the making of the necessary enquiries in ascertaining the identity of an individual and the attendant travel arrangements. The Chief Immigration Officer deposed that the immigration department must communicate with consulates or embassies, liaise with the Ministry of Foreign Affairs and the Police Force. There are unavoidable delays, not only locally within the respective ministries and departments, but embassies, consulates and other organizations where protocols are to be observed.
- [40] The Chief Immigration Office deposed that a valid ticket to the homeland would be required. The authorities had also to ensure that the applicant is in possession of documentation that would ensure passage through transition ports of the United Kingdom or the United States of America.
- [41] The Court comments that that point was vividly demonstrated in the case of the second applicant who was returned to the State twice, from the British Virgin Islands and from Barbados. I acknowledge the difficulties experienced by the State in making the necessary arrangements. I do not think I can accept those reasons and hold the detention was lawful, but I will take this into consideration when I am considering a longer timeframe for investigation during detention and a compensatory award.

#### **THE FIRST APPLICANT- CIRCUMSTANCES**

- [42] The first applicant was detained in prison under a deportation order made on 19<sup>th</sup> June 2006. While detained in prison the first applicant, by a letter dated 1<sup>st</sup> November 2007 from Attorney at Law A. Williams to the Secretary to the Cabinet, applied unsuccessfully, to the Government of the State for residency and citizenship.
- [43] The ground of his application was that, because of the civil war in Liberia, he could not return to that country where he was born

- [44] So, from late 2007, the State was aware that the first applicant's claim was that he was from Liberia. It is therefore necessary to look at the activity undertaken by immigration authorities to verify that claim between 2007 and 2010. From the Commissioner of Police's affidavit came the information that, although the civil war in Liberia came to an official end in 2005, the after effects continue to affect the governance and infrastructure of that country. A BBC update, he deposed, provided information as to Liberia's unstable condition. That condition, deposed the Commissioner of Police, presented a challenge to the State with respect to verifying the first applicant's identity.
- [45] I have already mentioned that I acknowledge the challenges faced by the State. From decided cases, it must be shown that the authorities made serious efforts to obtain the requisite information by the action they have taken. Was there any attempt to ascertain whether there was a functioning consulate or was it assumed that there was no functioning consulate? I expected to be referred to specific instances of enquiries to a Liberian consulate, or for example, of enquiries to the embassies of neighbouring African countries, that might be in a position to supply an answer as to whether Liberian consulates were functioning.
- [46] If there is an absence of sufficient activity on the part of immigration authorities in the deportation machinery, then the action falls short of what is required of a State and the detention is unlawful. I find that the action falls short of what is required of the State.
- [47] The Superintendent of Prisons' affidavit evidence was that, while in prison, the first applicant was visited by a Sonia Joseph of Paul's Avenue, who claimed to be agent for the first applicant's sister, who was in the United Kingdom. That information was not transmitted to the police and immigration officers. The first applicant received telephone calls from someone who claimed to be the first applicant's sister. That information was not conveyed to police and immigration authorities.
- [48] The bits of information gathered by various departments were not connected, which connection might have moved the deportation machinery forward. Between 2007 and

2010, the first applicant fell through a crack in the deportation machinery. I find that it was not reasonable for the first applicant to be detained for some three plus years. Later, I shall deal with whether because of his conduct, a period of time should be discounted.

#### THE SECOND APPLICANT - CIRCUMSTANCES

- [49] When, on the 19<sup>th</sup> August 2005, the second applicant was ordered to be deported, enquiries were made of the British High Commission in Barbados as to whether a visa was required for travel. Advice was received that it might be wise to alert the consulate for St. Vincent and the Grenadines in the United Kingdom of travel arrangements.
- [50] Concerned individuals produced an airline ticket to South Africa via Barbados and London. The Immigration Department prepared an emergency passport for the second applicant and he was deported from the State on 13<sup>th</sup> October, 2005.
- [51] On arrival in Barbados, the immigration authorities there indicated that if the second applicant was being deported he should have been accompanied by an authorized person from the State and he was returned to the State.
- [52] On 24<sup>th</sup> October, 2005, the Ministry of Foreign Affairs informed the immigration authorities that the information from the South African Consulate in Jamaica was that the South African passport was fraudulent. The South African Consulate expressed doubt that the second applicant is a South African.
- [53] On 14<sup>th</sup> December 2005 following the hearing of a charge of breach of immigration laws, a deportation order was made. On 16<sup>th</sup> December 2005 the second applicant, stating that his name is Simon Patuka (which is incorrect) from Accra, Ghana, wrote the Commissioner of Police. He stated that he had not been taken before a magistrate in this jurisdiction; that when he travelled he was taken to St. Vincent and not Trinidad where there is an embassy, which would ensure his return to his country. He asked for a full investigation into his matter.

- [54] On 3<sup>rd</sup> March, 2006 Constable Lett recorded a statement from the second applicant. According to the affidavit evidence of the Commissioner of Police, information was received that the second applicant was willing to speak to immigration authorities.
- [55] On 21<sup>st</sup> March 2006, Kirk Noel recorded another statement from him. The Chief Immigration Officer deposed that, on this occasion, the second applicant stated that his name is Benjamin Fiifi Danquah and not Simon Patuka, that a friend in South Africa had supplied him with a South African passport in that name.
- [56] The immigration department (now a department separated from the police department ), made enquiries through the Ministry of Foreign Affairs, as to the location of the nearest Ghanaian Embassy, in pursuit of information as to the second applicant's true identity.
- [57] In June 2010, following a request for a social enquiry report, from the Attorney General, Camie Matthews, Director of Family Affairs Division, Ministry of National Mobilisation, Social Development, Youth and Sports, had an interview with the second applicant on 9<sup>th</sup> June 2010.
- [58] According to Mr. Matthews' affidavit, the second applicant told him that he operated under the name of Simon Patuka and that he was from Kasoa, Ghana. He travelled to St. Vincent as he desired to experience a different culture in a foreign land.
- [59] His claim was that he has two siblings, Isaac Dakoa living in Italy and Dinah D. Dakoa whose mailing address is Ghana, with whom he had been in written and telephonic communication.
- [60] The second applicant informed Mr. Matthews that the Tortolan authorities had confiscated his passport and sent him back to the State without it. (Another explanation from him in a recorded statement was that it had been stolen from him while he was asleep in transit in Antigua).

[61] He also stated that the immigration authorities had his ~~license~~'s licence. Two prison officials confirmed to Mr. Matthews that the immigration ~~authorities~~ hold a document that the second applicant claims to be a valid driver's license. ~~Neither~~ the police nor immigration authorities can find any such document).

[62] The authorities do hold a copy of a birth certificate ~~from~~ Ghana bearing the second applicant's name, which was received around April 2001. That is a piece of information that could have been checked to ascertain whether ~~it was~~ a valid birth certificate. I have no evidence on this. The second applicant's prolonged ~~detention~~ retention was unlawful, but I find he contributed to it.

### DEGRADING TREATMENT

[63] The first applicant's affidavit:

"I have been detained at Her Majesty's Prison for 1594 without charge, trial or conviction. This ~~detention~~ amounts to false arrest and imprisonment and denial of my ~~liberty~~ in violation of the Vincentian Constitution, international human ~~rights~~ and international law. In the circumstances, I pray for an end to ~~this~~ dark night..."

[64] The second applicant's affidavit:

"For more than 1460 I have been ~~denied~~ my liberty and human rights and has been falsely and inhumanely, ~~imprisoned~~ by the state authorities of SVG." In the circumstances, I pray ~~for~~ end to this long dark night..."

[65] The applicants do not recount any treatment ~~received~~ them or any circumstance that can be regarded as inhuman or degrading treatment. ~~And~~ that there was no inhuman or degrading treatment of the applicants while they were ~~detained~~.

## MARRIAGE OF FIRST APPLICANT

[66] The Attorney General invited the Court to consider whether or not the first applicant marrying a Vincentian impacts on the first applicant's case, and cited the case of Nielsen v Barker and Another (1982) 32 WIR 254

[67] The first applicant married a Vincentian which union, he deposed, produced a girl now six years of age. He stated that, using his marriage certificate, he obtained a local identification card.

[68] The Constitution provides the route of registration as a citizen for an individual who marries a citizen in Section 93(1):

"The following persons shall be entitled, upon making application, to be registered as citizens –

(a) Any man who is married to a citizen or who has been married to a person who, at any time during the period during which they were married to each other, was a citizen.

An application under this section shall be made in such manner as may be prescribed, as respects that application, by or under a law enacted by Parliament."

[69] In outlining criteria for citizenship two expressions are used in the Constitution: "shall become" and 'shall be entitled'. An individual satisfying criteria in sections 90, 91 and 92 "shall become" a citizen. Under those sections there is an absolute right. There is therefore an automatic transition to citizenship, with no discretion given to any entity to cause or bring about that transition.

[70] By Section 93(1) of the Constitution an individual within a stated category of persons 'shall be entitled' to be registered as a citizen upon the making of an application. Under that section there is no absolute right. There is not an automatic transition to citizenship but an entitlement to citizenship, to be obtained by applying to an entity (who, by the Immigration Act is a Minister). The fact that an application is to be made, strongly suggests that the decision making entity may exercise a discretion and decide on whether that entitlement is



to be translated into the grant of citizenship. The entitlement can be, but may not be (discretion), translated into a grant of citizenship.

[71] Section 93(3) of the Constitution refers to the passing of a law by Parliament that prescribes the manner in which that application may be made. Inherent in that authority is the authority to prescribe conditions. The law enacted by Parliament is the Saint Vincent and the Grenadines Citizenship Act (Cap.80), which gives discretion to the Minister to grant citizenship with directions as to how that discretion is to be exercised. Section 7 enacts:

“A person claiming to be entitled to be registered as a citizen of Saint Vincent and the Grenadines under the provisions of section 93 of the Constitution may make application to the Minister in the prescribed manner and, in any such case if it appears to the Minister that the applicant is entitled to such registration and that all relevant provisions of the constitution have been complied with, he shall cause the applicant to be registered as a citizen of Saint Vincent and the Grenadines.”

[72] Here I find that marrying a Vincentian impacts the first applicant's case by bestowing on him, not an absolute right to citizenship, but rather an entitlement to apply for the grant of citizenship. It does no more than entitle the first applicant to be considered for citizenship. That entitlement is similar to a job situation. The qualifications that an individual holds entitle him to be considered for a particular job, not to be appointed to that job. I have approached this matter a little differently from the Nielsen case but the result is the same. In that case the Court of Appeal at p 284 para. G: said:

“In my understanding, the true position is that any person who marries a Guyanese citizen is entitled to be registered as a Guyanese citizen under the provisions of article 45 of the Constitution, provided, however, that the executive branch of the Government, through a designated Minister, offers no objection. It is important to understand that a person does not on marriage automatically take on his wife's or husband's citizenship.”

### COMPENSATION

[73] Mr. Thomas submitted that false imprisonment is a strict liability wrong and that when it occurs damages are always awarded. He cited R v Governor of Her Majesty's Prisons Brockhill ex parte Evans. 27 July 2000, where

"it was accepted that false imprisonment is a tort of strict liability equally clearly deprivation of liberty may be shown to be lawful or justified."

[74] The Attorney General urged that the applicants' detention was not contrary to the Constitution and any other law and that they are not entitled to damages.

[75] Section 3 (6) of the Constitution authorizes compensation where there is unlawful detention:

"Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefore from that other person or from any other person or authority on whose behalf that other person was acting."

[76] The detention of the applicants was ab initio lawful. The applicants' detention became unlawful when the implementation of the deportation order did not take place within a reasonable time. In considering compensation, I consider the reasons why the State did not act within a reasonable time, in addition to the conduct of the applicants.

[77] Did the applicants contribute to the delay by any tactics they employed? In their desire to be granted citizenship did they embark on a course of conduct that brought about delay or contributed to delay and, consequently, brought the detention within the sphere of unreasonable delay?

[78] The first applicant's intention was quite clear. He married a Vincentian so that he would be entitled to apply for a grant of citizenship. The authorities became aware that Liberia is his country of origin when he submitted a citizenship application in November 2007.

[79] I find that he contributed to the delay in investigation into his identity. At that date the first applicant informed the state that he was from Liberia.

[80] There was no activity by the immigration authorities from November 2007 to 2010 to verify whether that was in fact so. Liberia had been in an unstable situation for many years.

Verifying the information received and obtaining the requisite travel documents might take a longer time than it might take in normal times. I am required to allow a reasonable extended detention timeframe to allow for investigation by the State. Allowing one year for investigation, detention time runs from late 2008 to July 2010. In doing so, I take into consideration that the Commissioner of Police deposed that there were particular challenges related to Liberia, of non functioning government departments.

[81] In The Queen on the application of HY v Secretary of State for the Home Department (2010) EWHC 1678 (Admin) King, J at para. 88:

"Although as I have made clear in my judgment non-cooperation cannot always be a decisive factor so as always to justify a continuing detention no matter how long, I do consider that such non-cooperation may allow as reasonable a substantially longer period of detention than might otherwise be the case.....Once the claimant began to co-operate, a reasonable period of further time had to be allowed the defendant to investigate whether removal within a reasonable time frame was achievable."

[82] The Court has a discretion to make a compensatory award. How do I arrive at a figure? I start by looking at what is claimed. In his submission, Mr. Thomas stated that where, there has been false imprisonment, damages are awarded, and cited Tamara Merson v Drexel Cartwright and the Attorney General Privy Council Appeal No. 61 of 2003 where damages were awarded under several heads.

[83] The Court of Appeal of Bahamas in that case commented that the learned trial judge 'irresistibly found that the police had behaved in a callous, unfeeling, high handed, insulting and malicious and oppressive manner both with respect to the arrest and false imprisonment as well as the malicious prosecution, the latter on the basis that the police falsely alleged that she had abetted the commission of the alleged offences of illegally operating a bank. The charges were clearly a ruse to justify the arrest. All the charges were subsequently withdrawn."

[84] In the instant case, the arrest was lawful and the charges were heard before a Magistrate. There were no oppressive or related oppressive or malicious factors attaching to his arrest and false imprisonment. The first applicant made no such allegation in his affidavit. To

attempt to consider something that is not there would be an exercise in futility. What is left is false imprisonment from 2006 to 2010. I award compensation of \$18,000.00.

[85] I consider the circumstances of the second applicant to determine whether a compensatory award should be made to him. The second applicant was using the name of Simon Patuka and he had given wrong leads that the immigration authorities followed up. The authorities made enquiries as to the country of origin of a Simon Patuka not of Benjamin Danquah. The second applicant was deported on two occasions by the State and he was returned to St. Vincent by the authorities in Barbados and the British Virgin Islands.

[86] In October 2005 the South African Consulate advised the Ministry of Foreign Affairs that the South African passport held by the second applicant is fraudulent.

[87] The second applicant continued to claim that he was Simon Patuka by letter of 16<sup>th</sup> December 2005, and by police recorded statements of 3<sup>rd</sup> March 2006 and 15<sup>th</sup> March 2006.

[88] It was on 21<sup>st</sup> March 2006, when Kurt Noel recorded yet another statement that he stated that his name is Benjamin Danquah from Ghana, born in the Eastern Region Akim Esiem of the Fante Tribe in the Area Care Coste.

[89] Had he given the correct information earlier, the immigration authorities would most likely have acted more promptly. It is to be remembered that their fairly prompt action in deporting him on two occasions resulted in the second applicant being sent back to the State. The immigration authorities were trying to ensure that any action taken would be correct and so avoid the second applicant going back and forth between countries.

[90] The second applicant contributed significantly to his unlawful detention. In the circumstances of this case, I do not make any award.

## **EXEMPLARY DAMAGES**

[91] Mr. Thomas submitted that exemplary damages should be awarded because of the oppressive, arbitrary or unconstitutional actions by the servants of the State and the prolonged detention of the applicants. Counsel submitted that their case cries out for exemplary damages and cited **Attorney General of Trinidad and Tobago v Ramanoop** (2005) UKPC 15: (2005) 2 W.L.R. 1324

The facts of that case: a police officer went to Ramanoop's home handcuffed him, and while he was in his underwear, beat him repeatedly for about ten minutes. He was shoved into a car by the officer and, while being driven, the officer cuffed and slapped him. At the police station, the officer rammed Ramanoop's head against a wall causing a wound from which blood gushed. He was handcuffed to an iron bar. The officer taunted him, then poured rum over his head causing the wound to burn and blood and rum to run into his eyes. He was taken to a bathroom and soaked in the shower while the officer spun him around by the shoulders until he became dizzy. When he refused to do what the officer desired him to do he received more slaps from the officer.

[92] The Attorney General submitted that, in determining whether exemplary damages should be awarded, the Court should consider mitigating circumstances such as where the applicant brings the conduct on the respondent by virtue of his behaviour. Additionally, if the Court decides on a compensatory award then that is sufficient and there should not be an award of exemplary damages.

[93] The Attorney General distinguished this case from **Atain Takitota v The Attorney General, Director of Immigration and Minister of National Security P.C. Appeal No. 71 of 2009**, where an exemplary damages award was held to be justified. In that case the claimant was detained in prison for eight years. He shared a cell that had a filthy floor and

had to pass excrement in one of four buckets which serviced twenty to thirty five persons. The instant case bears no resemblance to the Takitota case.

[94] Para 19 of the Privy Council's judgment in Ramanoop's case:

"An award of compensation will go some distance towards vindicating the infringed constitutional right. How far it goes will depend on the circumstances, but in principle it may well not suffice. The fact that the right violated was a constitutional right adds an extra dimension to the wrong. An additional award, not necessarily of substantial size, may be needed to reflect the sense of public outrage, emphasise the importance of the constitutional right and the gravity of the breach, and deter further breaches..... "Redress" in section 14 (of the Constitution of Trinidad and Tobago) is apt to encompass such an award if the court considers it is required having regard to all the circumstances."

[95] In Ramanoop's case the question of exemplary damages arose because of what that Court found to be 'appalling misbehaviour by a police officer', based on the facts earlier stated. Exemplary damages were ordered to reflect the public outrage on the conduct of that police officer.

[96] The facts of that case are a far cry from the circumstances in this case. In the instant case the applicants have not given any account of the type of misbehaviour (similar to Ramanoop's case), on the part of police or prison authorities. The Court has not been referred to any circumstance that might attract exemplary damages.

[97] The claim by the first applicant refers to detention that amounts to false arrest and imprisonment, and denial of his liberty in violation of the Vincentian Constitution and international human rights and law. I do not consider that the circumstances of this case amount to conduct that attract exemplary damages.

[98] I have made an award for compensatory damages and I consider that that award is adequate to compensate for the unlawful detention of the first applicant in the circumstances of the case, noting that the first applicant contributed to the delay, in investigation and hence in detention. I do not make any exemplary award.

[99] I make no award in respect of the second applicant for the reasons given earlier relative to compensation award.

## CONCLUSION

[100] I have found that the first applicant was unlawfully detained but that he contributed to a certain degree, to the delay in investigation and so to the detention. In the circumstances surrounding the first applicant I have made an award for compensation. I do not think that the circumstances of the first applicant's case give rise to exemplary damages and I do not make an award of exemplary damages.

[101] I find that the second applicant was unlawfully detained but I find that he contributed significantly to the delay in the carrying out of investigations by immigration authorities and hence to the prolonged detention. He gave a false name (Simon Patuka) to the immigration officers. The immigration authorities issued him with an emergency document in that name to facilitate his travel to South Africa. Twice he was deported from the State and twice he was returned to the State from other countries.

[102] The Immigration authorities made enquiries in the name of Simon Patuka until the receipt of information from the South African consulate that the passport the second applicant had presented, was fraudulent. I do not make any monetary awards in respect of the second applicant.

[103] On 12<sup>th</sup> August 2010 the Court released the applicants into the care of the Red Cross, with the State being responsible for accommodation, meals and utility services. I note from the Commissioner of Police's affidavit that Cabinet has taken a decision to provide a ticket to the homeland of the applicants. Alternatively, to facilitate their integration. I note Mr. Thomas' undertaking that the applicants will cooperate in providing information to the State to enable proper investigation to be conducted.

[104] The Court gave a return date of 18<sup>th</sup> November 2010, in the event it is anticipated that the process of repatriation, which would be attempted, might not be concluded within the time specified (which is a period not exceeding three months commencing 1<sup>st</sup> September 2010.).

[105] I will be making an order for the applicants to be released, - which means that from the time of their release they will no longer be in the care of the Red Cross.

[106] I will be making an order for the applicants to report to the Chief Immigration Officer until 15<sup>th</sup> December 2010, as the Court considers that, by that date, arrangements being made will have reached fruition.

### COSTS

[107] Mr. Thomas, having been partially successful in his submissions, is entitled to costs. I say partially as the detention of the applicants was ab initio lawful and their prolonged detention was contributed to, in varying degrees. I invite counsel for both sides to address the Court on costs, in chambers.

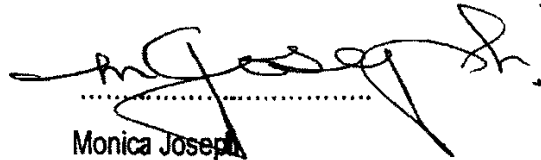
[108] I thank the Attorney General and Mr. Thomas for the many authorities they cited. I have referred only to those I directly rely on.

[109] It is ordered:

- (1) Both applicants to be released not later than 4.00 p.m., on 21<sup>st</sup> October, 2010, subject to the Court's order being prepared and served on them before that time.
- (2) Both applicants to report to the Chief Immigration Officer, or person named by him, between the hours of 10.00 a.m. to 4.00 p.m. every Monday commencing on 25<sup>th</sup> October, 2010, until 15<sup>th</sup> December 2010.



- (3) Compensatory award of \$18,000.00 to the first applicant.
- (4) Costs to counsel for the applicant for chambers.



Monica Joseph

**HIGH COURT JUDGE (Acting)**

20<sup>th</sup> October, 2010