



IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
IN THE COLONY OF
MONTserrat
(Civil)

CASE NO: MNIHCV2015/0017

BETWEEN:

DOUGLAS ANDERSON

Applicant

AND

HON ATTORNEY GENERAL
CHIEF IMMIGRATION OFFICER

Respondents

Appearances:

Mr. Jean Kelsick for the Applicant
MS Karen Reid for the Respondents

2015: June 30

2015: July 24

Judgment

[1] **Redhead, J. (Ag):** The Applicant Douglas Anderson on April 21, 2015 filed an Application for Leave to apply for Judicial Review of the following:

(1) The 2nd Respondent's determination on 24th February 2014 pursuant to Section 5(C) of the Immigration Act, Cap 301 (of the Act) that the Applicant is a prohibited immigrant liable to deportation.

(2) The 2nd Respondent's subsequent deportation of the Applicant from Montserrat on 26th March 2014

(3) The 2nd Respondent's refusal to signify in writing that he will not prevent the Applicant from entering Montserrat, despite the ruling of the Court of Appeal made on 27th November 2014 setting aside a decision of the Magistrate's Court delivered on 26th March 2014 confirming the 2nd Respondent's determination that the Applicant is a prohibited immigrant.

(4) The Applicant is an American Citizen who first took up permanent residence in Montserrat in 2004/2005. He owns a dwelling house at Olveston, Montserrat and vacant land at Drummonds, Montserrat.

(5) The 1st Respondent is the Attorney General and is joined as a party to this Application as the Crown's Legal representative and because the Applicant intends, if this application is granted to seek constitutional and other relief in his claim.

[2] The Second Respondent as the Commissioner of Police has responsibility for all Immigration matters and is the party who deported the Applicant from Montserrat.

[3] The grounds of the Application are as follows:

(a) The Second Respondent's said determination is null and void ultra vires the provisions of the Act and was arrived at in bad faith in that in breach of Section 5(C) thereof, in arriving at his decision, the second Respondent took into consideration matters that were irrelevant and prejudicial thereby rendering his determination bias, unfair, irrational, unreasonable, ultra vires.

(b) As the said determination is null and void and was arrived at in bad faith, the Applicant's subsequent deportation from Montserrat was illegal.

(c) The second Respondent's refusal to signify in writing that he will not prevent the Applicant from entering Montserrat is in contravention of a ruling of the Court of Appeal made on 27th November 2014 setting aside a decision of the Magistrate's Court delivered on 26th March 2014 confirming the Second Respondent's determination that the Applicant is a prohibited immigrant.

(d) Further or in the alternative the Second Respondent's refusal is manifestly unreasonable in that the Applicant has a right to know in advance of travelling to

Montserrat whether or not he will be granted entry there by the Second Respondent thereby avoiding loss and financial hardship of travelling to and from Montserrat if entry is denied.

(e) Further or the alternative the 2nd Respondent's said refusal demonstrates bad faith on his part and is biased, unfair irrational, illegal, unreasonable and in breach of the Applicant's legitimate expectations.

[4] The relief sought by the Applicant, if he is granted leave to apply for Judicial Review is as follows:

(i) A Declaration that the Second Respondent's said determination is null and void and ultra vires the provisions of that Act:

(ii) An order quashing the said determination.

(iii) An order that the Second Respondent's refusal to signify in writing that he will not prevent the Applicant from entering Montserrat is in breach of the ruling of the Court of Appeal made on 27th November 2014. The rules of fairness and the Applicant's legitimate expectations are unfair, irrational, illegal and unreasonable.

(iv) A Declaration that the Applicant is entitled to enter Montserrat and reside thereon unhindered by the Second Respondent.

(v) An order that the Second Respondent do forthwith permit the Applicant to enter Montserrat and reside therein unhindered by him.

(vi) An order that the Respondents pay to the Applicant damages and / or compensation both general and exemplary for the Second Respondent's said determination, his deportation of the Applicant from Montserrat, his refusal to signify in writing that the Applicant will be allowed to enter Montserrat, the emotional distress and embarrassment suffered by the Applicant and the financial loss and hardship incurred by him as a consequence of having to travel to and from Montserrat and being prevented from occupying his said dwelling house.

[5] I have at the forefront of my mind that in this exercise, I am not to engage on a trial but to determine whether there is an arguable ground for judicial review, having a realistic

chance of success. See The Hon. Satnarine Sharma v Carla Browne-Antoine¹. “The Governing principles at paragraph 14(4) as the ordinary rule now is that the Court will refuse leave to Claim Judicial review unless satisfied that there is an arguable ground for judicial review having a realistic prospect of success...”

- [6] Learned Counsel for the Applicant Mr. Kelsick in his written submission contends that the Applicant was deported by the 2nd Respondent on 20th March, 2014. The Second Respondent's refusal to signify in writing that he will not prevent the Applicant from entering Montserrat, despite a ruling of the Court of Appeal made 27th November 2014 setting aside a decision of the Magistrate Court delivered 26th March 2014 confirming the Second Respondent's determination that the Applicant is a prohibited immigrant.
- [7] To put it another way, as I understand the issues, the Applicant was declared a prohibited immigrant by the Second Respondent. The Applicant appealed the decision to the Magistrate who upheld the determination of the Second Respondent. The Applicant appealed the Magistrate's decision to the Court of Appeal. On 27th November 2014, Court of Appeal set aside the decision of the Magistrate. This meant that the Applicant was no longer a prohibited immigrant.
- [8] Learned Counsel contends in his written submission argued: “The Second Respondent's refusal to signify in writing that he will not prevent the Applicant from entering Montserrat despite the ruling of the Court of Appeal made on 27th November 2014, setting aside a decision of the Magistrate's Court delivered on 26th March 2014 confirming the Second Respondent's determination that the Applicant is a prohibited immigrant”.
- [9] The Applicant was deported as a prohibited immigrant. The Court of Appeal's decision is in effect that he was not a prohibited immigrant. In my opinion I do not see that the ruling places an onus on Second Respondent that he, the Second Respondent will not prevent the Applicant from entering Montserrat. As if the Second Respondent were to prevent the

¹ PLA 75 of 2006

