



# In The Supreme Court of Bermuda

CIVIL JURISDICTION

2016: No. 107

BETWEEN:

FALCON ONENE ANGLIES

Plaintiff

-v-

MINISTER FOR HOME AFFAIRS

Defendant

## EX TEMPORE RULING

(in Chambers)

*Application for interim stay of Minister's decision that estranged husband should leave Bermuda- immigration-loss of special status husband rights-meaning of estranged-section 27A (2) Bermuda Immigration and Protection Act 1956*

Date of hearing: March 24, 2016

Mr. Bruce Swan, Apex Law Limited, for the Plaintiff

Mr. Melvin Douglas, Solicitor-General, for the Defendant

### Introductory

1. In this matter the Applicant has issued an Originating Summons against the Minister of Home Affairs seeking the following substantive relief:

- (a) that the Plaintiff be allowed to remain in Bermuda;
  - (b) that until the decree nisi be made absolute, the Plaintiff shall remain the spouse of a Bermudian;
  - (c) that the Defendant shall not deport the Plaintiff on or before 24<sup>th</sup> March 2016.
2. The background to this matter is that on 18<sup>th</sup> December 2015, the Minister wrote a letter to the Plaintiff advising that the Department of Immigration had received information that he was no longer residing as a husband with his Bermudian spouse. Enquiries had revealed that he had left the matrimonial home in September of 2015. He was accordingly given until 18<sup>th</sup> March 2015 to leave the Island.
  3. A letter was written by Apex Law Group Limited on his behalf to the Department of Immigration on 7<sup>th</sup> March 2016 inviting the Minister to reconsider his decision. It appears that a chasing letter was sent on 22<sup>nd</sup> March 2016 which prompted a response, which is not before the Court, on 23<sup>rd</sup> March 2016 requiring the Plaintiff to leave the jurisdiction on 25<sup>th</sup> March 2016.

#### **The legal basis of the application for interim relief**

4. The Solicitor-General at the outset of the present application, which was for interlocutory relief in support of the Originating Summons, took the preliminary objection that the only conceivable remedy the Plaintiff could have would be by way of judicial review. But it is instructive, in terms of considering the matter as if that sort of application was formally before the Court, to understand the nature of the relief which was being sought on an interim basis. And that was, most significantly:
  - (1) an Order that the Plaintiff be allowed to remain in Bermuda;
  - (2) that until the Decree Nisi be made Absolute, the Plaintiff shall remain the spouse of a Bermudian;
  - (3) that the Minister should not deport the Plaintiff on or before 26<sup>th</sup> March 2016.
5. Mr Swan rightly submitted that if the Court was dealing with a judicial review application, the Plaintiff would challenge the second decision requiring him to leave tomorrow. But on that basis no question of deportation arises because the Plaintiff at this point is not facing deportation, it being explained on behalf of the Minister that persons required to leave would generally do so, rather than face deportation and being placed on the Stop List.

6. And so the question is, looking at this matter broadly, whether this Court (treating this as a judicial review application), should stay the Minister's decision that the Plaintiff should leave the Island tomorrow. The only apparent challenge that has been clearly identified as to the legality of the Minister's decision, there being no clear evidence<sup>1</sup> that the Minister has failed to take into account any relevant matters, or that he has taken into account irrelevant matters, is the interesting legal argument that Mr Swan has advanced. That argument was to the effect that estrangement in the Bermuda Immigration and Protection Act 1956, section 27A, means, in accordance with the dictionary meaning, a state of affairs where the two parties to a marriage are both of the view that a marriage is at an end.

### **Adjudication**

7. The Minister's decision is clearly based on the provisions of section 27A (2) which require various conditions to be fulfilled for a person to be a "*special status husband*" and entitled to remain in Bermuda. Sub-paragraph (e) provides:

*"(e) the Minister must be satisfied that the special status husband and his wife are not estranged."*

8. Mr Douglas for the Minister argues that the parties are clearly estranged based on any common sense interpretation of that section.
9. I note that the language of section 27A (2)(e) requires the Minister "*to be satisfied that the special status husband and his wife are not estranged*". It would be surprising if Parliament intended that a special status husband could satisfy the Minister by merely saying that, 'despite all objective evidence, and despite the view that my wife has, because I do not regard myself as being estranged, I am not estranged'. That seems to me to be the effect of Mr Swan's argument.
10. And while it is not for me to determine that issue today, the argument is not sufficiently strong to justify the Court granting a stay of the Minister's decision of yesterday's date. And in reaching this conclusion, I take into account the fact that the decision of yesterday's date was not really the main substantive decision but merely confirmation of a decision which was made on 18<sup>th</sup> December 2015. And if one takes the timeline back further, it was on 18<sup>th</sup> August 2015 that a letter was written by the lawyers for Mrs Anglies advising Mr Anglies to leave the matrimonial home. And so when he received the letter of 18<sup>th</sup> December 2015, the Plaintiff had considerable time to formulate his response. While I accept that he had limited funds and perhaps could not afford to initiate legal proceedings as a first step, he certainly could have invited the Minister to reconsider before 7<sup>th</sup> March. It is now more than two weeks later that

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<sup>1</sup> No was any such argument advanced.

he is seeking a stay in circumstances where he is unable to identify any strong or convincing legal grounds on which he could invalidate the Minister's decision.

11. In refusing to grant the relief sought today, I bear in mind that this does not in any way prevent Mr Anglies from actually pursuing a judicial review application. It is entirely a matter for his own judgment whether he wishes to leave when required to do so. If he does not do so he must take whatever legal consequences flow from that. He may be prosecuted for breaching the Act. He may be deported, in which case it may well be that he will be placed on the Stop List. It is also possible that if he is exposed to the threat of a deportation order for him to make a further application to the Court with a view to seeking to stay the deportation order. That is not a course I in any way encourage him to take; but it is another avenue of relief which is open to him.
12. And so, on the basis of all of the material presently before the Court, the application for a stay of the decision of the Minister requiring the Plaintiff to leave the Island tomorrow is refused<sup>2</sup>.

### **Costs**

[After hearing counsel]

13. The Minister is awarded the costs of the present application, to be taxed if not agreed.

Dated this 24<sup>th</sup> day of March, 2016 \_\_\_\_\_  
IAN RC KAWALEY CJ

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<sup>2</sup> At the conclusion of the hearing the Court clarified that in light of the way the application was argued, no need to formally deal with the other heads of interim relief arose at the present time.