In The Supreme Court of Bermuda

CIVIL JURISDICTION

2021: No. 128

BETWEEN:

BRITTONIE TAYLOR

Applicant

- and -

HER EXCELLENCY THE GOVERNOR

First Respondent

- and -

THE MINISTER OF IMMIGRATION

Second Respondent

JUDGMENT

Judicial Review of the Decision of the Minister and H.E. the Governor to make a Deportation Order without full disclosure and a fair hearing; execution of the statutory process and no more; temporary stay of the Deportation Order to allow for full disclosure and reply.

Date of Hearing: **12 October 2021**

Date of Ruling: **29 October 2021**

Appearances: **Victoria Greening, Resolution Chambers, for the Applicant**

Lauren Sadler-Best, Attorney General's Chambers, for the Respondents

JUDGMENT of Mussenden J

Introduction

1. This is an application by the Applicant for judicial review of the Respondents' Decision to deport the Applicant from Bermuda (the "**Decision**") by way of a Deportation Order dated 19 November 2020 pursuant to section 106(1)(c) of the Bermuda Immigration and Protection Act 1956 ("**the 1956 Act**"). The Applicant sought relief as follows:
   i. An order staying the Deportation Order;
   ii. An order of certiorari quashing the Deportation Order;
   iii. An order pursuant to Order 53, Rule 9(4) of the Rules of the Supreme Court remitting the matter to a full and fair hearing, with directions and guidance to consider and to reach a decision in accordance with the findings of this Court; and
   iv. An order for a declaration that the decision by the Second Respondent to detain the Applicant pending deportation before due process was complete was unlawful, unfair and in breach of natural justice.

2. The First Respondent is Her Excellency the Governor (the "**Governor**") although the Deportation Order was signed by her predecessor. The Second Respondent is the Minister with responsibility for Immigration (the "**Minister**").

3. In a Ruling dated 17 May 2021 related to this matter, I (a) dismissed the Applicant's application to find that his detention was unlawful; (b) stayed the execution of the Deportation Order pending the determination of the judicial review proceedings; and (c)

declined to make an order releasing the Applicant from detention pending the judicial review proceedings and any deportation. I had anticipated that the judicial review proceedings would come on for hearing on an expedited basis as the Applicant was detained in custody pending the determination of such proceedings.

4. The application is supported by the First Affidavit of Brittonie Lloyd Taylor (the "**Applicant**" or "**Mr. Taylor**") sworn on 18 April 2021 at Westgate Correctional Facility ("**Westgate**") in Sandys Parish.

5. The Applicant states in his evidence that he is a Jamaican national who has lived in Bermuda since 2000. He married a Bermudian 18 years ago here in Bermuda. He has 4 Bermudian children with his wife: a daughter who is 23 years old (his step-daughter), twins who are 17 years old and a son who is 10 years old, all born in Bermuda. In 2012 he was sentenced to 16 years imprisonment at Westgate for the offence of serious sexual assault and intrusion on the privacy of a female. On 9 October 2020 he was released from Westgate. He says that since his release he has had stable living arrangements and has been working for Millwood's Construction and Maintenance. He further states that he has a close relationship with his children, particularly his 17 year old son, who since his release, he has spent regular and quality time with, fishing and making up for lost time. He states that his son was and is extremely distressed when he learned that he was returned to Westgate pending deportation. He states that he has not been before the Courts since his release into the community from Westgate in October 2020. He states that he applied for and was granted legal aid and instructed two lawyers to resist his deportation and appeal any deportation order made, but that they both failed to carry out his instructions.

Background

6. Dr. Danette Ming, Chief Immigration Officer, filed an affidavit sworn 28 September 2021 along with her Exhibit "**DM 1**" exhibiting the affidavit of Marita Grimes ("**Mrs. Grimes**"), the then Acting Chief Immigration Officer, sworn on 20 April 2021 along with Exhibit "**MG-1**" on behalf of the Minister. Mrs. Grimes set out a detailed background of the involvement of officials of the Department of Immigration (the **"Department**") with the

Applicant. She states that on 14 February 2012 and 12 March 2012, the Applicant was convicted in Supreme Court of serious sexual assault and bodily harm and intruding on the privacy of a female. He was sentenced to 16 years and 12 months imprisonment respectively, which he started serving at Westgate.

7. On 9 October 2020 the Applicant was released from Westgate and on that date he was served with a written notice (the "**Deportation Notice**") advising him, that in light of his convictions and in the best interests of the public, the Minister was considering making a recommendation to the Governor to have him deported from Bermuda. He was given 14 days to respond.

8. On 13 October 2020 the Department requested a Home Study Report from the Department of Child and Family Services ("**DCFS**") concerning the Applicant's family life, his relationship with his family and the impact his deportation may have on his family. It sought its views on whether he would be able to maintain a relationship with his children whilst in Jamaica.

9. On 22 October 2020, the Department received the Applicant's response to the Deportation Notice. He had apologized for his actions and indicated a desire to remain in Bermuda to care for his children since he had already missed portions of their lives.

10. On 4 November 2020 the Department received the Home Study Report from DCFS (the **"DCFS Report**"). It referred to interviews with the Applicant's wife, his son's mother and his three children. The DCFS Report concluded that it did not appear that the Applicant's return to Jamaica would harm his relationship with his wife as she had no plans to reconcile with him, and having recognized the wishes of the Applicant's children to have him remain in Bermuda, it indicated that they would be able to maintain contact with him if he returned to Jamaica. The Report recommended (a) that the Applicant be returned to Jamaica; (b) that he have ongoing contact with his children by electronic means; and (c) that DCFS will ensure that electronic communication with the Applicant and all his children continues.

11. On 12 November 2020 Mrs. Grimes sent to the Minister the following documents: (a) a "**Recommendation Memorandum"** dated 10 November 2020; (b) a cover Memorandum dated 12 November 2020 recommending deportation; and (c) a copy of the Applicant's immigration file. This would have included the DCFS Report and a copy of a Psychological Assessment dated 3 April 2020 (the "**Psychological Assessment**").

12. On 12 November 2020 the Minister fully and carefully considered the circumstances of the Applicant's convictions including the extremely serious and violent nature of the same, the Applicant's representations on his own behalf, the contents of the Psychological Assessment and the DCFS Report. The Minister recommended to the Governor that the Applicant be deported and placed on the Bermuda Immigration Stop List.

13. On 18 November 2020, the Applicant was served with a letter from the Department informing him that the Minister made the recommendation of deportation to the Governor (the "**Deportation Recommendation Letter**"). That letter listed the information that the Minister considered in making his recommendation for deportation, including the previous convictions of the Applicant, the DCFS Report, the Psychological Assessment, the Applicant's letter and request to not be deported and his relationship with his Bermudian spouse, children and step-daughter.

14. On 19 November 2020, the Governor issued a Deportation Order.

15. Thereafter, there were difficulties in arranging the Applicant's deportation including an expired passport, lack of a visa to travel through the United States, anticipation of US authorities' hesitation, the current Covid-19 situation and delay in scheduling flights from Bermuda.

16. On 26 March 2021 the Department received permission from the US authorities to proceed with the deportation to Jamaica via the US. That evening the Applicant was informed that he would be deported on 29 March 2021 and that arrangements were being made to serve the Deportation Order on him. The Applicant stated his disagreement with being deported, referencing his marriage to a Bermudian, the children of the marriage and that his lawyer was working on appealing the deportation. The Officers noted this and informed him they

were prepared to meet him in person to answer any questions. Later that evening, the Officers met with the Applicant, explaining to him the deportation process. He repeated his reservations about being deported.

17. On 27 March 2021 the Applicant was detained and on 28 March 2021 the Applicant was shown and read the Deportation Order along with a letter informing him of his right to sue out a writ of habeas corpus. The Applicant was eventually taken before a Magistrate and an order was made confirming the Applicant's detention. As I stated above, the Applicant was detained until the determination of these proceedings.

The Law on Deportation

18. The 1956 Act sets out relevant provisions as follows:

> *"103 In this Part, unless the context otherwise requires—*
> *...*
> *"person charged" means a person in respect of whom it is alleged that there are grounds for making a deportation order, and includes a person in respect of whom a deportation order has been made.*
>
> *Power of Governor to make deportation order*
> *106 (1) The Governor may, if he thinks fit, make a deportation order in respect of a person charged—*
>
> *(a) who is a convicted person in respect of whom the court, certifying to the Governor that he has been convicted, recommends that a deportation order should be made in his case, either in addition to or in lieu of dealing with him in any other way in which the court had power to deal with him; or*
> *(b) who is a destitute person; or*
> *(c) who is a person in respect of whom the Governor considers it conducive to the public good to make a deportation order; or*
> *(d) who is a person whose presence in Bermuda is unlawful by reason of a contravention of any provision of this Act.*

106 (4) Before the Minister makes any recommendation to the Governor under subsection (1) (c) in respect of a person charged whose presence in Bermuda is lawful, he shall cause a notification in writing to be served upon the person charged that he proposes to make such a recommendation in his case at the expiration of fourteen days or such longer period as may be specified.

Power to detain, etc., person charged

107 (1) When a court recommends the making of a deportation order in respect of a convicted person such person may, if the court so orders, be detained in such manner as the court may direct for a period not exceeding twenty-eight days pending the decision of the Governor with regard to the making of a deportation order; and any person shall, whilst so detained, be deemed to be in lawful custody.

(2) A person in respect of whom a deportation order has been made may be detained in such manner as may be directed by the Governor, and may be placed on board a ship or aircraft about to leave Bermuda, and shall be deemed to be in lawful custody whilst so detained and until the ship or aircraft finally leaves Bermuda:

Provided that—

(a) no person shall be detained under subsection (1) for a period exceeding twenty-eight days, and

(b) nothing in this proviso shall derogate from any power mentioned in subsection (2) to place any person in respect of whom a deportation order is in force on a ship or aircraft, or derogate from any provision whereby any such person is to be deemed to be in lawful custody thereafter until such time as the ship or aircraft finally leaves Bermuda.

Duty to comply with deportation order

110 (1) A person in respect of whom a deportation order is made shall leave Bermuda in accordance with the terms of the order, and shall thereafter so long as the order is in force remain out of Bermuda.

(2) Any person who contravenes subsection (1) commits an offence against this Act."

The Applicant's Case

19. Ms. Greening headed her submissions with the quote "***No man is to be judged unheard***" which she cited was a precept known to the Greeks, inscribed in ancient times upon images in places where justice was administered, proclaimed in Seneca's Medea, enshrined in the scriptures, mentioned by St. Augustine, embodied in Germanic as well as African proverbs, ascribed in the Year Books to the law of nature, asserted by Coke to be a principle of divine justice, and traced by an 18th-century judge to the events in the Garden of Eden.

20. It is against this backdrop that the Applicant complains that the Decision was in breach of natural justice, was unlawful, unfair and unreasonable. Further, that the Applicant had a legitimate expectation that the Governor would afford him the opportunity to make proper representations before making the final decision to deport him and that the decision maker will at least take into account international obligations under the ECHR where such obligations are engaged in making public law decisions.

21. Ms. Greening posed several questions that she submitted should be asked in reaching a decision in this matter:
    i. Are there Immigration rules regulating how the discretion to deport is to be exercised?
    ii. In the absence of any rules, did the Governor, pursuant to the right to a fair and rational process, take into account the Applicant's views, his right to family life, and the overlapping rights of his children, in arriving at an impugned decision?
    iii. Was it fair and/or reasonable of the Minister to obtain, rely on and provide reports in support of the Applicant's deportation for consideration by the Governor, and not share them with the Applicant before making the decision?

22. Ms. Greening submitted that the Minister failed to disclose information to the Applicant before the Deportation Order was made, such information including the Psychological Assessment[1], the DCFS Report[2], and an Anonymous Letter received 16 October 2020 expressing concerns about the Applicant remaining in Bermuda and enclosing a report from Dr. Marcel Westerlund of Bermuda Hospitals' Board dated 24 April 2021 (the "**Wunderland Report**"). Further, in respect of the Deportation Notice, the Minister did not inform the Applicant of what information he had for consideration and he did not provide a copy of such information to the Applicant. I refer to all the afore-mentioned information as "**Deportation Information**".

23. Ms. Greening submits that the Recommendation Memorandum, which relied on the Deportation Information, was submitted to the Minister without the Applicant having the opportunity to address the same. In turn, the Deportation Recommendation Letter referred to the Psychological Assessment and the DCFS Report but still they were not disclosed to the Applicant.

24. Ms. Greening submits that when the Immigration Officers served the Deportation Order and letter on the Applicant, they never arranged for him to meet with the Minister. Thereafter, the process moved to the Courts.

25. Ms. Greening accepted that the Applicant was considered a convicted person under section 106(1)(a) of the 1956 Act and was subject to deportation. However, I agree with Mrs. Sadler-Best who countered that the Applicant fell under section 103 as a "*person charged*" and section 106(1)(c) of the 1956 Act as a person in respect of whom the Governor considers it conducive to the public good to make a deportation order.

26. In essence, Ms. Greening submitted that the deportation legislation was draconian and that it provided the Respondents with a wide discretion. Therefore, it should be exercised with

[1] In respect of the Psychological Assessment, it was only ever disclosed to the Applicant on 21 April 2021 in reply to the and for the purpose of defending the Applicant's application for Habeus Corpus and the application for Leave to Apply for Judicial Review
[2] In respect of the DCFS Report, it was only ever disclosed to the Applicant on 20 April 2021 in reply to the and for the purpose of defending the Applicant's application for Habeus Corpus and the application for Leave to Apply for Judicial Review

extreme caution and with the principles of natural justice in mind at all stages of the process, more so in the Applicant's circumstances where he resided in Bermuda since a young age and now had familial ties. The main thrust of her arguments was that these circumstances called for disclosure of all the information available to the Minister so that the Applicant could make any appropriate challenge and have a fair hearing or have his views properly considered by the Minister. She submitted that the Defendant had raised a defence but did not have the opportunity to argue his defence.

27. Ms. Greening did not mount a challenge to Section 104 of the 1956 Act on the basis that Section 11(5)(c) of the Bermuda Constitution did not define the Applicant as "*belonging to Bermuda*" as he was the foreign husband of a Bermudian wife which was different from the position of a foreign wife of a Bermudian husband.

The Respondent's Case

28. Counsel for the Respondent submitted that the Deportation Order was lawful for several reasons. First, Mrs. Sadler-Best submitted that the Applicant had failed to identify any fatal failures to follow the statutory procedures in the 1956 Act. She argued that the Applicant bears the burden of persuading the Court that the statutory deportation process fell so short of the fairness requirement that it invalidated the Deportation Order. She submitted that the Applicant is unable to do so and relied on the case of *Davis v Minister of Economy and Trade and anor*[3] where Kawaley CJ (as he then was) said "*bearing in mind that the remedy of judicial review can only be utilised to correct errors of law or perverse findings of fact*."

29. Mrs. Sadler-Best submitted that the case law did not accede to the contention, or otherwise find, that natural justice or fairness required more than what was provided for in the statutory scheme. She relied on the cases of *Davey and Davey v Minister of Home Affairs*[4];

[3] [2012] Bda LR 58, para 14
[4] [1986] Bda LR 52

Sefton Gunness v Deputy Governor et al[5]; *Graham v Minister of Labour & Home Affairs*[6]; and *Davis & Davis v Governor and Minister for National Security*[7].

30. Mrs. Sadler-Best submitted that there was no statutory scheme for a full hearing on the issue of deportation as sought by the Applicant as the statutory procedure was sufficient to afford fairness. She relied on the case of *Cheyra Bell v Attorney-General et al* where Hargun CJ cited *Lloyd v McMahon* where Lord Bridge of Harwich stated the rules of natural justice "*are not engraved on tablets of stone. To use the phrase which better expresses the underlying concept, what the requirements of fairness demand when any body, domestic, administrative or judicial, has to make a decision which will affect the rights of individuals depends on the character of the decision-making body, the kind of decision it has to make and the statutory or other framework in which it operates. In particular, it is well-established that when a statute has conferred on any body the power to make decisions affecting individuals, the courts will not only require the procedure prescribed by the statute to be followed, but will readily imply so much and no more to be introduced by way of additional procedural safeguards as will ensure the attainment of fairness*.[8]" *[emphasis added by Mrs. Sadler-Best]*

31. Mrs. Sadler-Best submitted that the requirements of fairness or natural justice were not rigid but flexible citing the case of *Re Corporation of Hamilton et al* where it stated that the requirements of fairness *"depends on the nature of the investigation and the consequences which it may have on persons affected by it. The fundamental rule is that, if a person may be subjected to pains or penalties, or be exposed to prosecution or proceedings, or deprived of remedies or redress, or in some such way adversely affected by the investigation and report, then he should be told the case made against him and be afforded a fair opportunity of answering it. The investigating body is, however, the master of its own procedure. It need not hold a hearing. It can do everything in writing. It need*

[5] [1995] Bda LR 58
[6] [2009] Bda LR 2
[7] [2012] Bda LR 40
[8] *Lloyd v McMahon [1987] AC 625*, pp 702-703, per Lord Bridge of Harwich as applied in *Cheyra Bell v Attorney-General et al* [2019] SC Bda 320 (3 June 2021), para 24-26

not allow lawyers."[9] *[emphasis added by Mrs. Sadler-Best]* Mrs. Sadler-Best submitted that these principles have been accepted in the Bermuda Courts as recently as 3 June 2021 in *Cheyra Bell v Attorney-General et al.*

32. Mrs. Sadler-Best submitted that the Court should look to the statutory framework of the 1956 Act to determine if the Applicant was treated unfairly. The Applicant was a "*person charged*" pursuant to section 103 of the 1956 Act and the Governor considered that there were grounds for making and issuing the Deportation Order pursuant to section 106(1)(cc) of the 1956 Act. Thereafter, the Applicant was duly served with the Deportation Order and informed of his right in writing to sue out a writ of habeus corpus pursuant to section 109 of the 1956 Act.

33. Mrs. Sadler-Best submits that pursuant to section 106(4) of the 1956 Act, the Applicant was informed that the Minister proposed to make a recommendation for deportation. In response, the Applicant did submit representations to the Minister prior to the Minister's recommendation for deportation to the Governor. She relied on the case of *Sefton* where the contention that the applicant in that case was entitled to a hearing from the Governor was rejected.

34. In essence Mrs. Sadler-Best submits (a) that the statutory process was followed as the Applicant was told the case against him and he had a fair opportunity of answering that case by making his representations; (b) the Minister did all that fairness required; (c) the Applicant is unable to establish any illegality, irrationality or procedural impropriety; and (d) the Court should resist any urging to supplement the Act by way of common law or any other principles outside the statutory provisions. In light of those circumstances, the Deportation Order is presumed valid unless the Applicant can prove, on the balance of probabilities that the order is invalid, which the Applicant has failed to do so. She relied on the case of *Re Graham* where Kawaley J (as he then was) stated "*it is not arguable that*

[9] *Re Corporation of Hamilton et al* [2013] Bda LR 74, para 26, citing *Irvine v Canada (Restrictive Trade Practices Commission) [1987] 1 SCR 181* at 217

the deportation decision was on the facts as found by this Court unlawful by reason of either (a) a breach of the rules of natural justice, or (b) irrationality."[10]

Discussion and Analysis

Unfairness of the Process – Lack of Full Disclosure

35. In my view the Deportation Order should be stayed on a temporary basis for several reasons. First, I have noted (a) Mrs. Grimes detailed Recommendation Memorandum dated 10 November 2020 to the Minister setting out a summary of the information, including about the Anonymous Letter and accompanying Wunderland Report in support of her recommendation for deportation; and (b) the Deportation Recommendation Letter to the Applicant which contains a full minute of what the Minister took into account in reaching his recommendation for deportation. In my view, I am bound to accept that the Minister took into account all of the information listed in that letter in accordance with his duty to consider whether he should recommend deportation.

36. However, I am of the view that the Applicant was entitled to have sight of all the information that was relied on, or was going to be relied on, by the Minister in considering his recommendation for deportation. I rely on the case of *Re Corporation of Hamilton et al* in finding that the Minister had a duty to provide full disclosure to the Applicant in order to ensure his right to be heard. It was unfair for the Applicant not to have disclosure of all such information before it was submitted to the Minister and before the Applicant could reply to it in writing. In particular, the Applicant should have had disclosure of the DCFS Report and the Psychological Assessment, which were referred to in the Deportation Recommendation Letter to the Applicant. In respect of the Anonymous Letter and the accompanying Wunderland Report, Mrs. Grimes' Recommendation Memorandum made reference to it although the Deportation Recommendation Letter to the Applicant did not state that the Minister took the Anonymous Letter and accompanying Wunderland Report

[10] *Re Graham* [2009] Bda LR 2, para 13

into account. In my judgment, once the Acting Chief Immigration Officer Mrs. Grimes had compiled the dossier of information that was to be submitted to the Minister, then that dossier should have been disclosed to the Applicant. On this basis, in following *Davis v Minister of Economy and Trade and anor*, I am satisfied that, in respect of full disclosure, the process that was followed fell short of the fairness requirement such that it now requires a temporary stay of the Deportation Order in order to address such shortcomings. Further, in following the cases[11] that Mrs. Sadler-Best cited in respect of the requirements of natural justice or fairness within the statutory scheme, in my view, those principles apply in the statutory scheme for full disclosure to the Applicant of all the information that the Minister is going to consider in determining whether to recommend deportation.

37. Second, the Applicant would then be entitled to mount a fair challenge to whatever relevant part of the information that he disputed. This would entitle the Applicant to his right to be heard in line with Ms. Greening's opening quotation that "***No man is to be judged unheard***". I rely on the case of *Re Corporation of Hamilton et al* in that the draconian consequences of deportation require that the Applicant be told the full case against him and that he be afforded a fair opportunity of answering it. The Applicant's reply would have been added to the dossier and then the Acting Chief Immigration Officer could draft her Recommendation Memorandum to the Minister giving a summary of the factors for deportation and the Applicant's full reply against deportation. In turn, the Minister could then consider the Applicant's submissions in light of all the circumstances.

38. Third, in this case, the Applicant had on various occasions stated that he did not wish to be deported and stated the reasons why. However, he also stated that he had engaged lawyers to argue on his behalf. In my view, some regard should have been given to his plea about retaining counsel. It is likely that counsel acting on his behalf would have sought full disclosure from the Minister in representing the Applicant in any deportation proceedings.

39. Fourth, in my view, deportation proceedings are draconian in nature in that they can compel a person to be removed from Bermuda as well as prevent the person from returning to

[11] *Davey and Davey v Minister of Home Affairs*; *Sefton Gunness v Deputy Governor et al*; *Graham v Minister of Labour & Home Affairs*; and *Davis & Davis v Governor and Minister for National Security*

Bermuda. In light of such harsh provisions, I again rely on the case of *Re Corporation of Hamilton et al* in finding that the Minister had a duty to provide full disclosure to the Applicant in order to ensure his right to be heard. In my judgment, the duty for full disclosure was even more evident in light of the Applicant's ties to Bermuda in that he was married to a Bermudian, albeit the marriage was estranged, and he had Bermudian children. It may have been that the DCFS Report indicated that the Applicant could have a positive long-distance relationship with his children but the Applicant may have disagreed with it. In my view, the Minister was entitled to have the specific views of the Applicant on points such as these.

40. Fifth, in the main, the statutory process has been followed according to the statutory procedure and as I indicated above, the Minister has given full consideration to all the information that was placed before him. In my view, what is now required is that further disclosure should be made to the Applicant allowing him to make submissions in reply to the Minister. The Applicant has by way of these proceedings had disclosure of the DCFS Report and the Psychological Assessment. In my view, it would not be an effective use of time and resources to quash the Deportation Order and recommence the process. An effective and efficient resolution would be to stay the deportation on a temporary basis to allow the deficiency in the disclosure to be addressed and for the Applicant to file written submissions if desired with the Minister for his consideration. The Minister could then confirm his position of deportation or rescind it. If the Minister stands by his recommendation then the Governor can then proceed with her duties in respect of the Minister's recommendation. On that basis, I will set out terms for an order arising from this Judgment for the further disclosure and consideration subject to any submissions on the precise terms by Counsel before settling the same.

41. In respect of the Anonymous Letter and the accompanying Wunderland Report, as stated above, the Deportation Recommendation Letter does not indicate that they were taken into consideration by the Minster. On that basis, in my view there is no need for the Anonymous Letter and the accompanying Wunderland Report to be disclosed to the Applicant. It follows that the Minister in further consideration of the Deportation Recommendation,

should not take into account the Anonymous Letter and the accompanying Wunderland Report.

Refusal to Quash the Deportation Order

42. For the reasons set out above, I decline to quash the Deportation Order as the exigencies of the present matter can be dealt with by a temporary stay of the Deportation Order and further disclosure and consideration as set out above and in the orders as set out below.

Refusal to remit matter for a full hearing

43. In respect of the relief sought to have a full hearing, I decline to grant that order for several reasons. The 1956 Act does not provide a mechanism for a hearing before the Minister or the Governor. I find this to be surprising in light of the draconian nature of deportation which has the serious and potentially permanent effects of removing a person from Bermuda and in some cases like the present, from their Bermudian families as well as prohibiting the deported person from returning to Bermuda for a period of time or forever. I note that in other areas in Bermuda law, for example, employment law and industrial matters, where there are also serious consequences for the parties, there are provisions for tribunal hearings.

44. Be that as it may, the case authorities do not provide authority for me to grant an order for a full hearing before a tribunal, before the Minister or the Governor. I rely on the case of *Cheyra Bell v Attorney-General et al* where Hargun CJ cited *Lloyd v McMahon* where it stated that it was well established that the Court will only require the procedure prescribed by the statute to be followed but will imply no more to be introduced by way of procedural safeguards as will ensure the attainment of fairness. I also rely on the case of *Sefton* which rejected the contention that the applicant in that case was entitled to a hearing from the Governor. It may be at some point that Parliament would recognise the draconian nature of deportation and its effect on Bermudian relatives, in particular children, of a subject of deportation and provide for a tribunal or other hearing mechanism for all or some categories of subjects of deportation. However, for the present moment, I am obliged to

decline the relief sought for a hearing before the Minister or the Governor. Further, I am satisfied that, as the statutory scheme provides, the Applicant will have the full and fair consideration of all the information of the Minister and the Governor.

Conclusion

45. In light of the reasons as set out above, I am satisfied on the balance of probabilities that the process was unfair because of the failure to make full disclosure of the information to be provided to the Minster in the circumstances of the draconian nature of deportation. However, I find that the lack of full disclosure can be remedied in this case by further disclosure and the opportunity for the Applicant to make further submissions as desired which in effect answers the main thrust of his case.

46. For the reasons set out above, I will make an order for a temporary stay of the Deportation Order. I will also make orders for the completion of the disclosure which is aimed at the stage in the process when the Acting Chief Immigration Officer has compiled all the information that will be submitted to the Minister. It is at that stage when that dossier of information should be disclosed to the Applicant following which the Applicant can make any replies if desired within a reasonable period of time.

47. Therefore, in respect of the relief sought in the Notice of Application, and in respect of the case management and timeliness of this matter, I make the following Orders in furtherance of section 106 of the 1956 Act:
    i. In respect of the relief sought to stay the Deportation Order dated 19 November 2020, for the reasons set out above, I do temporarily stay that Deportation Order dated 19 November 2020 for the limited purpose as follows:
        1. The matter is remitted to the Respondents.
        2. Within 14 days of this Order, the Minister shall cause disclosure to be made to the Applicant, if not already disclosed, all information relied upon by him in making his Deportation Recommendation to the Governor, including the DCFS Report and the Psychological Assessment, but not

including the Anonymous Letter and the accompanying Wunderland Report.

3. Within 14 days thereafter, the Applicant shall have the right to file a written reply to the Minister in respect of the further disclosure of the information and any reasons why he should not be deported or placed on the Bermuda Stop List.
4. Within 14 days thereafter, the Minister shall (a) consider any reply by the Applicant and whether to confirm, amend or rescind his recommendation for deportation to the Governor, such consideration not to include the Anonymous Letter and the accompanying Wunderland Report; and (b) via counsel for the parties, inform the Applicant of his decision on the recommendation.
5. Within 14 days thereafter, the Governor shall (a) consider any recommendation from the Minister and whether to confirm, amend or rescind the Deportation Order; and (b) inform the Minister of such decision which shall be communicated via counsel for the parties to the Applicant.
6. Within 14 days thereafter, the matter is to be heard before this Court on an expedited basis to consider, as necessary, lifting the temporary stay of the Deportation Order in light of any decision for deportation made by the Governor.
7. The parties are at liberty to apply in respect of the process and timeline as set out above.

ii. I decline the request for an order of certiorari quashing the Deportation Order.

iii. In respect of the relief sought for an order to remit the matter to a full and fair hearing before a tribunal, I decline to grant such an order.

iv. In respect of the relief sought for an order for a declaration that the Applicant's detention pending deportation was unlawful, unfair and in breach of natural justice, I decline to grant such an order on the basis that I already dealt with the issue of detention in my Ruling dated 17 May 2021 where I dismissed the Applicant's application to find that his detention was unlawful.

48. Unless either party files a Form 31TC within 7 days of the date of this Judgment to be heard on the subject of costs, I direct that costs shall follow the event in favour of the Applicant against the Respondents on a standard basis, to be taxed by the Registrar if not agreed.

Dated 29 October 2021

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HON. MR. JUSTICE LARRY MUSSENDEN
PUISNE JUDGE OF THE SUPREME COURT