

**COMMONWEALTH OF THE BAHAMAS  
IN THE SUPREME COURT  
Criminal Law Division  
2021/CRI/CON/00016**

**BETWEEN**

**Nathalie Palacious Morffis**

**Applicants**

**AND**

**The Hon. Ryan Pinder**  
(Attorney General of The Bahamas)

**1<sup>st</sup> Respondent**

**The Hon. Keith Ricardo Bell**  
(Minister of Immigration)

**2<sup>nd</sup> Respondent**

**Clarence A. Russell**  
(Director of Immigration)

**3<sup>rd</sup> Respondent**

**Fausteen Major-Smith**  
(Officer in Charge of the Detention Center)

**4<sup>th</sup> Respondent**

**Dr. Raymond King**  
(Commander of the Royal Bahamas Defence Force)

**5<sup>th</sup> Respondent**

**BEFORE: The Honourable Mr Senior Justice Bernard Turner**

**APPEARANCES: Mr Frederick Smith KC, and Ms Candice Maycock  
for the Applicants**

**Mr Keith Cargill and Mr Kingsley Rolle for the Respondents**

**HEARING DATES: 2 December 2021 & 17 February 2022**

**DECISION**

**TURNER Snr J**

The Applicant applied by way of an ex parte summons filed 16 November 2021 for what is described in the heading of the summons as:

**“Ex Parte Summons under Order 53 RSC**

**And**

**Constitutional Relief under Article 28**

**[for leave to issue writ of habeas corpus subjiciendum and injunction and for constitutional relief]”**

2. On 17 November 2021, at the ex parte hearing, leave was granted with a return date of 2 December 2021, an injunction was also issued to prevent the removal of the applicant from the jurisdiction.

3. The ex parte summons sought the following reliefs:

**“1. Leave to issue a writ of habeas corpus ad subjiciendum against the Respondents on the ground that the Applicant has been in their unlawful custody since 7 September 2021 and the Respondents continue to falsely imprison the Applicant in breach of his constitutional rights.**

**2. An Order under the inherent jurisdiction of this Court and or under Article 28 of the Constitution that the Respondents be restrained and shall not, whether acting by themselves or by any person under them in their chain of command or otherwise by giving any direction, consent, permission or encouragement to any person, remove, deport, expel or repatriate the Applicant from The Bahamas until-**

- a. the determination of this Action and/or**
- b. until the Applicant's application for refugee and political asylum status has been determined and/or**
- c. until further order**

**3. An immediate Order under the inherent jurisdiction of this Court and or under Article 28 of the Constitution that provision be made by the Respondents at the Carmichael Detention Centre to allow counsel to promptly and without delay speak, receive instructions and communicate as necessary with the Applicant subject to any reasonable and necessary health and safety protocols**

**4. An Order under Article 28 of the Constitution at the trial of this action, that the Applicant's rights under Article 19 or otherwise having been breached, the Applicant shall be ordered to be immediately released from, the unlawful custody of the Respondents.**

**5. An Order under Article 19 (4) and 28 of the Constitution at the trial of this action, for compensation to be assessed and paid by the Respondents for their unlawful detention of the Applicant.**

**6. An Order that the costs of and occasioned by this application be costs in the cause.**

**7. Under Article 28, such further or other relief as may be granted by the Court on this ex parte summons and or as may be granted at the trial of this action.”**

4. I have been advised that the applicant may have filed a separate Writ of Summons in relation to matters which may or may not be related to the instant matter, that Writ is not before me and I am not addressing any issue in relation to any such Writ.

5. This is my decision in respect of the application for costs for a habeas corpus application.

6. The Ex Parte Summons has been laid out in paragraph three (supra). The affidavit in support of the application was not filed by the applicant but by a Shannon Dawkins, described as being a Legal Assistant in the Chambers of counsel for the applicant. The information in the affidavit was said to have been provided as follows:

**“I depose to facts herein relating to Ms. Morffis upon instructions received from Ms. Morffis’ mother, Maria Morffis which I believe to be true.”**

7. The affidavit asserts that the applicants could not swear the affidavit themselves due to the Covid protocols in place at the Carmichael Detention Centre.

8. This is mentioned, having regard to the decision of The Bahamas Court of Appeal in the matter of **Hon. Carl Bethel et al v Jean-Rony Jean-Charles**

**No. 26 of 2018**, wherein the Court stated, under the rubric **“Was the Judge Correct to Dismiss the Writ of Habeas Corpus and the Motion for Contempt?”** the following:

**“28. In my judgment not only was the judge correct to dismiss or discharge the Writ of habeas corpus on the material that was before him, the judge ought not in my judgment to have caused the writ to be issued.**

**.....**

**32. Further, in paragraph 4 of the Clotilde affidavit she states that the affidavit contains statements of facts which are not of her own knowledge. This is impermissible. Order 41 rule 5 states,**

**“5. (1) Subject to Order 14, rules 2(2) and 4(2), to paragraph (2) of this rule and to any order made under Order 38, rule 3, an affidavit may contain only such facts as the deponent is able of his own knowledge to prove.”**

**An application for a writ of habeas corpus is not an interlocutory application.**

**33. In paragraph 17 she states categorically that her brother is still “unlawfully in prison” this was not a matter of which she had any knowledge at the time she made her affidavit. Her affidavit does not state that she ever saw her brother at the detention camp nor did it state the basis upon which she knew at the time the affidavit was sworn that he was still being detained at the detention camp.**

**34. These defects illustrate why it was important and why the rules require that an affidavit be made by the applicant himself.”**

9. The return to the Writ, filed 1 December 2021 reads:

**“The return to this writ on behalf of the Respondents herein appears by Schedule annexed to the said writ as follows:**

**Schedule**

**I, FAUSTEEN MAJOR-SMITH, Officer-in-Charge of the Carmichael Detention Centre, declare that I am duly authorized to make this return on behalf of myself and the Respondents named in the writ to which this return is annexed.**

**I do hereby certify that on Wednesday, 8th September, 2021 at 0900 hrs., acting on the instructions of Chief Immigration Officer Harold Thurston, a team of officers operating under the supervision of Senior Immigration Officer Wyberg Brown, arrived at the Coral Harbor Base for the collection of nine (9) Cuban Nationals that were found on or near Green Cay, located just south-east of South Andros, by the Royal Bahamas Defence Force ("RBDF") Safe Boat.**

**RBDF Able Seaman Norelus reported that the Safe Boat, under the command of Petty Officer Eric Rolle, was informed by the operators of the fishing vessel 'Reel Deep' of nine (9) Cuban Nationals (8 males and 1 female) that they had rescued off Green Cay after a vessel carrying the Cuban Nationals had capsized. 'Reel Deep' was intercepted by Petty Officer Eric Rolle's Safe Boat at about 0400 hrs, and they arrived at the RBDF base at about 0430 hrs. All of the detainees received a rapid antigen Covid-19 test and medical attention before the processing began. The initial testing indicated that a Cuban male had tested positive for Covid-19. Therefore, he was isolated from the other detainees during transport in order to prevent any further spread of the disease.**

At about 0950 hrs., all of the detainees were surrendered into Immigration, in accordance with Article 19 (1) (f) & (g) of The Constitution of The Bahamas and section 25 (4) of the Immigration Act, Statute Law of The Bahamas, and transported to the Department of Immigration Detention Centre for further processing and medical screening by the Surveillance Unit for the Coronavirus.

A check of the border control system and permit issuance reveals that the subjects did not enter The Bahamas legally, nor that there is any application submitted for residence or work permits on their behalf.

The subjects were all found to have illegally landed in The Bahamas contrary to section 19(1) and (2) of the Immigration Act, Chapter 191, Statute Law of The Bahamas.

The Applicant made a claim relating to her refugee status, and she was interviewed by the Refugee Administration Unit of the Department of Immigration.

The Applicant indicated that she was seeking asylum because she claims to be a victim of the Cuban system. She describes the life she came from as difficult, stating that although she grew up with love in her home, her mother struggled as they suffered financial troubles. She further stated that she made an honest living working for the Cuban government and that she took care of her children to the best of her ability.

The Applicant indicated that although she had minor issues due to her opposing government rules and regulations, it was never unbearable until two (2) years ago when she admitted her real troubles began. She indicated that it was at this time when she

manifested her ideas. She explained that she just got fed up with the way she claimed she was forced to live and not being able to say or do anything about it. She alleges that this led to her being arrested and spending time in jail.

The Applicant indicated that on the 10th August, 2020, that she was accused of stealing a motorcycle, and that a few days later she was arrested for it. She claimed that no charges were ever brought up, but that she was detained at the Police Department. She indicated that there were never any court proceedings for this allegation, and that she was released pending further investigation. She indicated that it has been eight (8) months since that happened and has still yet to be charged.

The Applicant further stated that on the 17th December, 2020 that she was arrested again for the motorcycle incident, and that she was detained for 13 days at UPOC (a technical unit). On the 30th December, 2020, she was transferred to Prison and released on the 5th February, 2021.

The Applicant indicated that she began to speak openly about her feelings about injustice. She alleges that the incident with the motorcycle was the Police way of trapping her into an arrest.

In July of this year, she indicated that she participated in a National Protest. She stated, however, that due to her previous involvement with the law, she attempted to remain incognito at the event in order to avoid any further problems. She admits that she holds no positions in any social or political groups, but she claimed to be an active member of a group called "Partido Politico Democrata Cristiano".



The Applicant indicated that she was made aware of police presence around her mother's home and her son's school. She said that she believes that police officers threatened her mother and tried to intimidate her son. She stated that she never returned home after the protest, and that she was unsure if they wanted to arrest her for her involvement with the protest; or if they wanted to take her into custody for the previous incident concerning the motorcycle. She indicated that the only thing she knew was that she did not want to return to jail and was fearful of the outcome.

The Applicant stated that her and her current boyfriend, Maikel Rodriguez Jimenez began planning their escape from Cuba in search of a better life outside of Cuba.

On the 13th October, 2021 and as a result of information gathered during the interview, it was determined that the Applicant was not a migrant in need of protection in accordance with the IINHCR's 1951 convention and its 1957 protocol.

On 9th November, 2021 the Department of Immigration sought permission from the Ministry of Foreign Affairs to repatriate 109 Cuban Nationals into Havana, Cuba, which included the Applicant. On 19th November with the permission granted from the Ministry of Foreign Affairs in relation to the aforementioned request, the Department of Immigration scheduled a repatriation flight for all 109 Cuban Nationals (including the Applicant) via Bahamasair Charter Flight UP900 Aircraft Registration C6-BFY to depart Nassau, The Bahamas at 8:30 a.m. and to arrive in Havana, Cuba at 09:55 a.m. on Tuesday, 23<sup>rd</sup> November, 2021.

**By an Ex-Parte Summons supported by an Affidavit of Shawn Dawkins filed 16th November, 2021 and heard on the 17th November, 2021 before the Honourable Justice Bernard Turner, it was ordered that leave be granted to issue a Writ of Habeas Corpus Ad Subjiciendum against the Respondents, and that the Respondents be restrained from removing, deporting, expelling or repatriating the Applicant from the Bahamas.**

**On 19th November, 2021 and pursuant to a request by the Director of Immigration the Applicant was removed from the list of persons scheduled for the said repatriation and now remain committed to the Carmichael Detention Centre as a result.**

**That there is a Detention and Deportation Order for the Applicant's removal from The Bahamas.**

**I do hereby certify and return in obedience to the said writ that NATHALIE PALACIOUS MORFFIS, the subject named therein, at the time of the application for the writ and the issuing of the said writ was detained at the Carmichael Detention Centre pending her removal from the Bahamas.**

**For the reason above, the Respondents pray that the writ herein be dismissed."**

10. The Respondent's contend that in as much as the applicant had been released without a full Habeas Corpus hearing that costs, even if they applied to this matter, should not be awarded.

11. The Applicant asserts that he was unlawfully detained and that therefore he should be awarded his costs of applying for Habeas Corpus to seek his

release. They submitted that the Respondents did not seek to justify the detention of the applicant in their submissions.

12. In light of the decision of this court in **Wilkins Garcon v Vonette Flowers et al (2021/CRI/CON/008) 6 October 2022**, I find that, by parity of reasoning, that decision is applicable to this application and in the circumstances constitutes a basis for the rejection of an application for costs.

13. For this reason, I hereby dismiss the application for costs by the applicants, and I order that each party is to bear their own costs.

**Dated this 20 day of June AD 2023**



**Bernard S A Turner  
Senior Justice**

