

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
APPEAL DIVISION
BETWEEN

2021/CLE/GEN/01050

FITZROY EDWARDS

Applicant

AND

THE HON. FREDERICK MITCHELL M.P.
(Minister of Immigration)

STEPHEN LARODA
(Director of Immigration)

Defendants

Before: The Honourable Madam Joyann Ferguson
Appearances: Mr. Murrio Ducille KC and Mr. Bryan Bastian Counsel for the
Applicant
Mr Kirkland, Mackey, Mr. Randolph Dames, Mrs Chavaz Cassar and
Ms. Anthaya Rolle Counsel for the Defendants
Hearing Date: 15th September, 2026

DECISION

*Writ of Habeas Corpus –Unlawful Detention –Immigration Rights –Interim Relief –Constitution-
Article 19- Article 19(1), Section 40 of the Immigration Act*

Ferguson J.

- [1].This matter comes before the Court with a Certificate of Urgency filed on 31st August, 2026 by Mr. Fitzroy Edwards (“the Applicant”) for a writ of *habeas corpus ad subjiciendum*, requesting his release from detention and interim injunctive relief restraining the Defendants from removing, deporting, or repatriating, him from The Commonwealth of the Bahamas pending the determination of his immigration application.
- [2].The Applicant is a national of Jamaica and is married to a citizen of The Bahamas. By his application, he seeks, among other relief, an order requiring the person or persons having custody or control of him to bring him before the Court and state the lawful basis upon which he is detained; his immediate or conditional release; an injunction restraining his removal from The Bahamas; and declarations concerning the lawfulness of his continued detention and any proposed removal.
- [3].The Applicant had initially joined the Attorney General as a party to the Habeas Corpus application. The Defendants in a preliminary point advanced that the Attorney General was not a proper party in the proceedings as the Attorney General did not have custody of the Applicant. Reliance was placed upon *Nielsen v Barker* (1982) 32 WIR 254, where the Guyana Court of Appeal held that the Director of Public Prosecutions, who was neither responsible for the detention of the immigrants nor a party to their arrest or detention, and ought not to have been made a party to the proceedings. Essential, Counsel for the Applicant conceded that the Attorney General should be removed as a party.

[4].The Court has considered the urgent application of the Applicant and the affidavit of Keora Carey Edwards together with the Certificate of Urgency. The Court has also considered on behalf of the Defendants, the Return and the affidavit of Superintendent Carnie Gibson. The Court further considered the submissions of both Counsel and the exhibits thereto.

Background

[5].The Applicant's case is that he has resided in The Bahamas for a considerable period and is married to a Bahamian citizen. His wife deposes that efforts have been made since approximately 2022 to regularise his immigration status and that an application concerning his immigration status is pending before the Department of Immigration. She contends that his removal before that application is determined would substantially prejudice those efforts.

[6].The Defendants' undisputed evidence is that the Applicant was arrested on 8 August 2026 for **Overstaying**. He was prosecuted, and pleaded guilty and thereafter fined by the Magistrates Court. He paid the fine and subsequently was handed over to the Department of Immigration for processing under the Immigration Act.

[7].The evidence of Superintendent Carnie Gibson is that on 9th August 2026 the Applicant was served with a Deportation Order, which he refused to sign. The Defendants further rely upon a Detention Order and contend that those instruments provide the statutory foundation for the Applicant's continued detention pending his removal from The Bahamas. The Defendants' submissions state that the Minister responsible for Immigration signed the Deportation Order and that the Detention Order was made under the authority contemplated by section 41(4) of the Immigration Act.

[8].The Defendants further contend that attempts have been made to secure the travel documentation necessary to effect the Applicant's removal. Their evidence is that efforts were made to have the Applicant complete the relevant Passport Immigration and Citizenship Agency ("PICA") documentation for the issuance of an emergency travel document but that those efforts were frustrated.

[9].The question for the Court is whether, following completion of the sentence imposed by the Magistrates Court for Overstaying, whether there exists an independent and lawful statutory basis for the Applicants continued detention by the immigration authorities. This is the crux of the application *habeas corpus ad subjiciendum*.

The Law

[10].**Article 19(1)** of the **Constitution** protects the right to personal liberty. That protection is fundamental, although it is subject to the exceptions expressly permitted by the Constitution.

[11].**Article 19(1)(g)**, insofar as material, permits deprivation of liberty:

for the purpose of preventing the unlawful entry of that person into The Bahamas or for the purpose of effecting the expulsion, extradition or other lawful removal from the Bahamas of that person or the taking of proceedings relating thereto...

[12]. **Article 19(2)** further requires that

Any person who is arrested or detained shall be informed as soon as is reasonably practicable, in a language that he understands, of the reasons for his arrest or detention and shall be permitted, at his own expense, to retain and instruct without delay a legal representative of his own choice and to hold private communication with him;

These provisions are reproduced in the Defendants' submissions.

[13]. The relevant statutory framework is contained principally in **sections 40 and 41 of the Immigration Act**.

[14]. **Section 40(1)** provides, insofar as material:

If at any time after a person, other than a citizen of The Bahamas or a permanent resident, has landed in The Bahamas, it shall come to the knowledge of the Minister that such person –

(a) has landed or remained in The Bahamas contrary to any provisions of this Act;

(b) has been convicted of any offence against this Act or of any other offence punishable on indictment with death or imprisonment for two years or upwards; or

(c) is a person whose presence in The Bahamas would in the opinion of the Board be undesirable and not conducive to the public good,

the Minister may make an order (hereinafter referred to as a 'deportation order') requiring such person to leave The Bahamas within the time fixed by the deportation order and thereafter to remain out of The Bahamas.

[15]. **Section 41(4)** is of particular importance. It provides:

"Subject to the provisions of subsection (3) of this section any person in whose case a deportation order has been made may be detained, under the authority of the Governor-General until he is dealt with under subsection (1) of this section..."

[16]. The proper construction of sections 40 and 41 was considered by the Judicial Committee of the Privy Council in *Douglas Ngumi v The Attorney General of The Bahamas and Others* [2023] UKPC 12.

[17]. At paragraph 27 of *Ngumi* (supra), the Board explained:

Section 41(4) has two limbs. The first limb permits detention where a deportation order has been made by the Minister under section 40(1) and the Governor-General authorises it.

[18]. The Board further explained that the exercise of the power of detention under section 41(4) is subject to the limitations established in *R v Governor of Durham Prison, ex parte, Hardial Singh* [1984] 1 WLR 704 and subsequently approved in *R (Lumba) v Secretary of State for the Home Department* [2011] UKSC 12; [2012] 1 AC 245.

[19]. At paragraph 27 of *Ngumi*, the Board stated the applicable principles as follows:

“(i) The Minister must intend to deport the person and the Governor-General can only exercise the power to detain for that purpose.

(ii) The deportee may only be detained for a period that is reasonable in all the circumstances.

(iii) If, before the expiry of the reasonable period, it becomes apparent that there is no realistic prospect that deportation will take place within that reasonable period, continued detention is unlawful and the Governor-General should not seek to exercise the power of detention.

(iv) The Minister and Governor-General should act with reasonable diligence and expedition to effect deportation of the person detained.”

[20]. The passage from **Ngumi** (supra) is reproduced in the Defendants' submissions and is directly applicable to the statutory regime under consideration.

[21]. The significance of these principles is that the existence of a deportation order does not confer an unlimited power of detention. The detention must remain directed towards the purpose for which Parliament authorised it, namely deportation, and the executive must pursue that purpose with reasonable diligence and expedition.

[22]. The principle is similarly expressed in *R v Governor of Durham Prison, ex parte Hardial Singh* [1984] 1 WLR 704. The Respondents rely upon the following passage:

When a deportation order has been made in respect of a person, the Secretary of State's power under the Immigration Act 1971 ... to detain that person until his removal from the United Kingdom is subject to the following limitations: (i) the power may only be used for the purpose of detaining the individual concerned pending his removal ... (ii) the power is limited to a period which is reasonably necessary for that purpose, and (iii) the Secretary of State must exercise all reasonable expedition to ensure that steps are taken to secure the person's removal ... within a reasonable time.

Analysis

[23]. I accept that the Applicant's payment of the fine imposed by the Magistrate's Court brought to an end the punishment imposed upon him for the offence of Overstaying. However, completion of that sentence standing alone cannot provide a lawful basis for his continued detention.

[24]. The Court is of the view that there is a material distinction between a detention pursuant to a criminal sentence and an administrative detention authorised by the Immigration Act for the purpose of effecting the lawful removal of a person from The Bahamas. The Court must therefore determine whether, following satisfaction of the sentence imposed by the Magistrate, there existed a lawful statutory basis for the Applicant's continued detention.

[25]. On the evidence before the Court, the Defendants rely upon a Deportation Order and Detention Order dated 9th August 2026. They say that the Deportation Order was served upon the Applicant, although he refused to sign it.

[26]. The authority to detain under the first limb of section 41(4), as explained by the Privy Council at paragraph 27 of **Ngumi**, arises where a deportation order has been made by the Minister under section 40(1) and detention has been authorised by the Governor-General.

[27]. I am satisfied on the evidence before the Court that there is a significant intention to deport the Applicant. The evidence of the Defendants is that efforts have been undertaken to obtain the necessary travel documentation to facilitate his removal.

[28]. I am not satisfied that his continued detention to date has exceeded what may reasonably be regarded as necessary for the purpose of effecting removal from the Bahamas. The assessment of reasonableness is fact sensitive and must take into account the unique circumstances affecting the authority's ability to carry out the deportation process.

[29]. There is also presently insufficient evidence from which the Court could conclude that there is no realistic prospect of deportation within a reasonable period. Rather, the Defendants' evidence is that removal is intended and that the remaining impediments concern the facilitation of the necessary travel documentation.

[30]. The continued legality of detention must be assessed against the *Hardial Singh* principles as adopted and applied to Bahamian law by the Privy Council in **Ngumi**. If circumstances develop such that there is no realistic prospect of deportation within a reasonable period, or if the authorities fail to act with reasonable diligence and expedition, continued detention may cease to be lawful notwithstanding the existence of the Deportation Order.

Resident Spouse Permit

[31]. I have also considered the Applicant's marriage to a Bahamian citizen and the evidence concerning his application for a Resident Spouse Permit.

[32]. **Section 30(2)** of the **Immigration Act** expressly contemplates an application by a person married to a citizen of The Bahamas. The provision states that, where the statutory requirements are met, the Board "may, in its absolute discretion, grant a permit" permitting that person to remain in The Bahamas for the purpose of residing or engaging in gainful occupation.

[33]. The statutory language is discretionary. The fact that an application is pending does not itself amount to the grant of a permit, nor does it confer lawful immigration status upon an applicant's pending determination.

[34]. The Defendants accept that the Applicant, as the spouse of a Bahamian citizen, may apply for such a permit but contend that the ultimate decision rests within the statutory discretion of the Immigration Board. It remains open to the Competent Immigration Authorities to determine that application according to law.

[35].The pending application without more is solely within the ambit of the Competent Immigration Authority for consideration. It does not give the Applicant a right to remain in the jurisdiction until such a determination is made. The evidence of the Applicants wife that the applicant would substantially be prejudiced by his removal is not sufficiently persuasive to the Court without more.

[36].Having concluded on the evidence presently before the Court that the Applicant's detention is supported by the statutory machinery given under sections 40 and 41 of the Immigration Act, and there being insufficient material presently establishing that the Deportation Order in and of itself is unlawful, I am not satisfied that the circumstances justify an injunction preventing the Defendants from exercising their statutory powers. Accordingly, this Court will not interfere.

Conclusion

[37].In the instant case, the Defendants have produced evidence of a Deportation Order and a Detention Order dated 9th August 2026 and rely upon sections 40 and 41 of the Immigration Act as the statutory foundation for the Applicant's detention. They have further adduced evidence that steps are being taken to secure the Applicants removal from The Bahamas pending the determination of the *habeas corpus* matter.

[38].The Applicants guilty plea on 12th August 2026 before the Magistrate Court to a charge of Overstaying in and of itself is proof of his lack of Immigration status. Furthermore, there is no evidence before this Court that, during the periods between the expiration of the Applicant's spousal permit in 2015 and his detention in August 2026, he took any steps to regularise his Immigration status or otherwise bring himself into compliance with the Immigration Act.

[39].I am therefore not satisfied, on the evidence presently before the Court, that the Applicant's continued detention is unlawful.

[40].This does not confer upon the Defendants an indefinite power to detain the Applicant. His detention remains subject to the requirements identified by the Privy Council at paragraph 27 of *Douglas Ngumi v The Attorney General of The Bahamas and Others* [2023] UKPC 12. If the purpose of detention ceases to be deportation; if the period of detention becomes unreasonable in all the circumstances; if there ceases to be a realistic prospect of deportation within a reasonable period; or if the responsible authorities fail to act with reasonable diligence and expedition, the legal justification for continued detention may fall utterly away.

[41]. The Applicant's application for release pursuant to the writ of *habeas corpus ad subjiciendum* is dismissed.

ORDER

IT IS HEREBY ORDERED that:

- a. The Applicant's application for an interim injunction restraining the Defendants, their servants, agents or officers from removing, deporting,

repatriating or otherwise causing the Applicant to leave the Commonwealth of The Bahamas is refused.

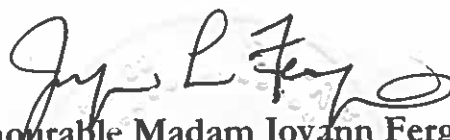
- b. Nothing in this Order shall prevent the Immigration Board or other competent authority from considering and determining the Applicant's pending application for a Resident Spousal Permit in accordance with the Immigration Act.
- c. Nothing in this Order shall preclude the Applicant from making such further application to the Court as may be appropriate should circumstances materially change such that his continued detention becomes unlawful.

Post Script

Before rising from this matter, I consider it appropriate to make one further observation. During the course of the proceedings it came to the Court's attention, that in seeking to obtain the documentation necessary to facilitate the Applicant's removal from the Bahamas, the Applicant declined to sign the requisite document. He attributed his refusal to instructions allegedly given by his Attorney, who was also identified as the Jamaican Consular Officer. That individual has not been before this Court to answer the alleged assertions. However it has not been refuted by the Defendant. Accordingly, I make no finding as to whether such instructions were in fact given.

On the face of it, these circumstances are nonetheless troubling. The function of an Attorney, advising a client and those of a Consular Officer, are separate and distinct, and ought to remain so. Where Consular assistance is required to facilitate the documentation necessary for the lawful removal of a detainee, any overlap between these functions which has the effect of frustrating that process is a matter of serious concern. This is particularly so where the resulting delay may prolong the Applicant's detention. Such circumstances are also relevant in assessing whether any delay is properly attributable to a lack of reasonable diligence and expedition on the part of the Defendants. Further, this action may potentially compromise Diplomatic relations. The alleged conduct of the Consular Officer, and the apparent conflation of her Consular role with that of Counsel and Attorney-at-Law for the Applicant, is in the view of this Court, egregious and wholly inappropriate. Such a conflict of roles should not be countenanced. The Court strongly condemns this conduct and makes it unequivocally clear that it must not be repeated.

Dated this 15th day of September, A.D. 2026.


Honourable Madam Joyann Ferguson
Supreme Court Justice