



IN THE SUPREME COURT OF

Action No. CL 50/2023

THE TURKS AND CAICOS ISLANDS

**IN THE MATTER OF AN APPLICATION FOR A WRIT OF HABEAS CORPUS AD
SUBJUCIENDUM**

BETWEEN:

CARLOS ALBERTO BAEZ

Applicant

AND

- 1. SHARLENE GRANT RICHARDS, DIRECTOR OF IMMIGRATION**
- 2. THE ATTORNEY GENERAL OF THE TURKS AND CAICOS ISLANDS**

Respondents

BEFORE: **The Honourable Mr. Justice Davidson Kelvin Baptiste (Ag.)**

APPEARANCES: **Sasha Arthur for the applicant**

Clemar B Hippolyte for the respondents

HEARD: **May 3rd 2023**

DELIVERED: **June 27th 2023**



JUDGMENT

1. **BAPTISTE J (AG.):** Prior to 10th April 2023 Carlos Alberto Baez (“Baez”) a national of the Dominican Republic, had entered the Turks and Caicos Islands by air on multiple occasions without let or hindrance relating to his entry. An unremarkable event in itself. What made his entry truly remarkable was that his name was entered on a Stop List since December 2018. Baez’s entry on 10th April 2023 was different. What made it different? On that day, Baez presented himself at the Providenciales International Airport, having arrived on a flight from the Dominican Republic, armed with a work permit. The Stop List alert was triggered. Baez was detained by immigration officials, thus engendering the present application for a writ of habeas corpus ad subjucendum.
2. The affidavit in support of the application stated that there was no legal basis for the detention, as Baez had a valid work permit. Baez’s attorney sent a letter dated 12th April 2023 to the Director of Immigration - Sharlene Grant Richards - (“the Director”) demanding his immediate release. The Director’s email response failed to clarify the specifics and length of the detention and when he would be released, as requested by his attorney. The Director advised that Baez was on a Stop List but it was not indicated why or how he was placed on the Stop List and no evidence of he being on the Stop List was provided. Baez last returned to the Turks and Caicos Islands in January 2023 without any issues with Immigration concerning his work permit card. He had always entered the country legally whether with a visa or work permit and has official travel itineraries from as far back as August 2017 as well as official immigration stamps as proof of legal travel.
3. The Director swore to an affidavit on 21st April 2023 giving an historical account of Baez’s visits to the Turks and Caicos Islands and interaction with the authorities. Baez was apprehended by Law Enforcement officers in Providenciales on 24th March 2018 and escorted to the Immigration Detention Center to be processed. As part of the processing he was examined by an Immigration Officer to ascertain his legal status in the Turks and Caicos Islands. Baez was in possession of a Dominican Republic passport showing entry into the islands on 4th November 2017 with leave to remain until 25th November 2017. He also had receipts showing payment for labour clearance and new work permit payed on 12th August 2017. Inquiries were made with the Labor Department in relation to the receipts

and the then Commissioner informed that the said application was not considered as the proposed employer was not in possession of a business licence.

4. Baez was deemed an over stayer and therefore a person who was in the Turks and Caicos Islands illegally. Although proceedings could have been instituted against him and then a recommendation made for deportation in the usual manner, Baez agreed to be voluntarily repatriated to the Dominican Republic and was further detained pending his voluntary repatriation on 30th March 2018. As Baez was in breach of the Immigration Ordinance, the then Director of Immigration caused his name to be placed on the Stop List. It was so placed on 10th December 2018.
5. The Director further deponed that on 18th August 2022 Baez obtained a work permit and returned to the Turks and Caicos Islands. She has no knowledge as to the basis on which the work permit was obtained and concluded that because of the preceding facts, it is clear that it was obtained erroneously. The acting Labour Commissioner advised that a letter of intention to revoke the existing work permit was sent to Baez's employer inviting him to voluntarily cancel the permit having regard to the facts as deposed in her affidavit and failing that, to give notice of intention to revoke and an opportunity provided to make representations as to why the work permit ought not to be revoked. Baez left the Turks and Caicos Islands on 20th December 2022 and returned in January 2023. He was not flagged at the time as he presented a work permit which on its face appeared to be valid. The Stop List alert was not triggered at that time. Inquiries revealed that the Stop List alert was not triggered as a result of an internal technical failure that occurred from time to time.
6. The Director also stated it appeared that Baez then left the Turks and Caicos Islands subsequently and later presented himself at the Providenciales International Airport on 10th April 2023 seeking leave to enter the Islands. The Stop List alert was triggered. The Supervisor apprised the Director, seeking her directive and advice, in light of the fact that the Stop List alert was triggered and the Baez presented a valid work permit. The Director stated that the situation was of concern to her and she decided to refuse entry and detain

Baez to allow the opportunity for further examination and for a decision as to whether to deport him.

7. The Director deponed that she considered alternatives to detention and whether to release Baez on the surety of his employer, or his mother, and to impose reporting conditions. In deciding against that she took into account that Baez had been in the Turks and Caicos Islands previously, overstayed and repatriated; there was a risk that he would abscond. Having regard to all the circumstances and the issues arising in the face of the Stop List and the existence of the work permit, a proper inquiry was necessary. The period of detention being eleven days was not unreasonable. The process has been set in motion for the revocation of the work permit and once the requisite time has elapsed, the proper and necessary steps would be taken to have Baez deported. In the circumstances, the Director urged the court to dismiss the application.
8. Ms. Arthur, Baez's counsel, made written and oral submissions in support of the Habeas Corpus application. The written submissions were dated and filed 26th April 2023. In a nutshell, Ms. Arthur asserted that there has been no substantiated evidence to prove why Baez was placed on a Stop List given that he voluntarily left the Islands and was placed on the List nearly nine months after voluntarily leaving. There has been no explanation for that gap of nine months between his voluntary repatriation and being placed on the Stop List. He was wrongly added to the Stop List and it was questionable as to why he was so placed. The usual course of action was not taken as stated in the affidavit of the Director. Criminal proceedings were not instituted, there was no recommendation for deportation, nor was a deportation order made.
9. Ms. Arthur posited that Baez had no knowledge that he could not re-enter the Islands as no such indication was given. In December 2019 he was allowed entry on a visa and in January 2023 was allowed entry on his work permit, despite allegedly being on the Stop List on both occasions. Ms. Arthur submitted that Baez's leave to enter the Islands on more than one occasion lawfully suggested that he was not being treated as an individual on the Stop

List, on the basis that he was never an individual suitable to be placed on the said list. Further, when a person is not to be granted leave to enter the Islands, section 52 of the Immigration Ordinance grants the power to Immigration Officers to direct immediate removal of that person. That course was not adopted with Baez; he was taken from the airport and detained at the Immigration Department Center.

10. Ms. Arthur pointed to the absence of documentary evidence supporting that the work permit Baez held when he returned on 10th April 2023 was issued erroneously. Ms. Arthur argued that Baez had a valid work permit. There has been no substantiated evidence to prove why he was placed on the Stop List, given that he voluntarily left the Islands and was able to return on two separate occasions legally. In light of the foregoing Ms. Arthur submitted that he is being detained unlawfully and the court should grant the writ of Habeas Corpus and order his release from the detention of the Immigration Department. Notably, Ms. Arthur stated that Baez was apprehended on 10th April 2023 on arrival and temporarily released by the Director after 11 days.
11. Ms. Hippolyte, the respondents' counsel, addressed the issue of Baez's release stating that he was released temporarily in accordance with section 58 of the Immigration Ordinance. Ms. Hippolyte argued that it was Baez's responsibility to show that his right to liberty has been unduly interfered with and it was incumbent on him to advise the court as to the extent of the release conditions, but this had not been done. Citing Baez's release from detention on conditions, Ms. Hippolyte submitted that the writ must not be issued. In response, Ms. Arthur stated that Baez has to reside at a particular residence and attend to the Immigration Department every week day.
12. In my judgment, the issue of Baez's release from detention is a matter which must be addressed at the outset as it has serious implications for the propriety, efficiency and sustainability of the habeas corpus application. The necessary starting point is undoubtedly a consideration of the nature of the habeas corpus jurisdiction and the purpose for which it was designed and employed. In that regard, there is no want of authority.

13. The subject matter of an application for habeas corpus is the question whether a person is detained and if so, the lawfulness of the detention. In **Cosar and Governor of HMP Wandsworth and Westminster Magistrates' Court** [2022] EWHC 1142 (Admin), Lewis J stated at paragraph 44:

“The writ of habeas corpus is available to determine the lawfulness of the detention by one person of another. It enables the court to enquire into the lawfulness of the detention and, if it is unlawful, to order the release of the person being detained.”

14. Habeas corpus will only lie where there is reason to believe that the detention is unlawful: **C3 C4 and The Secretary of State for Foreign and Commonwealth Office** [2023] EWCA Civ 444 paragraph 22. The writ of habeas corpus has a long and important history in English Law as a remedy against unlawful detention: paragraph 24 of C3 C4. The sole purpose of the writ is to procure the release of a person currently being detained, unless their detention were shown to be lawful, and not to investigate the lawfulness of any past detention with a view to punishment or compensation. In that regard, in **C3, C4 and The Secretary of State for Foreign, Commonwealth & Development Affairs**, at paragraph 28, Underhill LJ, referenced the speeches of Lord Halsbury LC and Lord Watson in **Barnardo v Ford** [1892] AC 326, as an illustration of the specific and limited nature of the habeas corpus jurisdiction.

15. In **Barnardo v Ford**, Lord Halsbury stated at pp 332-333:

“I cannot acquiesce in the view that some of the learned judges below seem to have entertained, that if a Court is satisfied that illegal detention has ceased before application for the writ has been made, nevertheless the writ might issue in order to vindicate the authority of the Court against a person who has once, though not at the time of the issue of the writ, unlawfully detained another or wrongfully parted with the custody of another. My Lords, this is a view that I cannot agree to. I think, under such circumstances, the writ ought not to issue at all, as it not the appropriate procedure for punishing such conduct.”

16. Lord Halsbury then considered the position where a counterfeited release has taken place and a pretended ignorance of the place of the custodian is insisted on. In that scenario, His Lordship opined that a Court may and ought to examine into the facts, by the writ of habeas corpus, because detention is in fact being continued by someone who is really the agent of the original wrong - doer to continue and persist in the unlawful detention. Lord Halsbury concluded thus: “[b]ut, assume the fact that the detention has ceased, then the writ of habeas corpus is, in my judgment, inapplicable.”

17. Lord Watson stated at 333-334:

“The remedy of habeas corpus is, in my opinion, intended to facilitate the release of persons actually detained in unlawful custody, and was not meant to afford the means of inflicting penalties upon those persons by whom they were at some time or other illegally detained. Accordingly, the writ invariably sets forth that the individual whose release is sought, whether adult or infant, is taken and detained in the custody of the person to whom it is addressed, and rightly so, because it is the fact of detention, and nothing else, which gives the Court its jurisdiction.”

18. The opinions of Lord Halsbury and Lord Watson resonated with Lewis J in **Cosar and Governor of HMP Wandsworth and Westminster Magistrates’ Court** [2022] EWHC 1142 (Admin) where, in refusing an application for habeas corpus, stated at paragraph 50:

“The writ of habeas corpus is intended to provide a remedy where a person is in fact detained and the detention or custody is unlawful. The writ will not be granted where the person has ceased to be detained and is no longer in custody: see *Barnado v Ford* [1892] AC 326.”

19. In **Secretary of State for Foreign and Commonwealth Affairs v Rahmatullah** [2012] UKSC 48, [2013] 1 AC 614, Lord Kerr made several observations about the remedy of habeas corpus including:

The object of the writ is not to punish previous illegality and it will only issue to deal with release from current unlawful detention - see Scruton L.J in *Ex p O'Brien* [1923] 2 KB 361,391: paragraph 44. The writ should only be issued where it can be regarded as 'proper and efficient' to do so, per Lord Evershed MR in *Ex p Mwenya* [1960] 1 QB 241, 303. It will not be proper and efficient to issue the writ if the respondent to it does not have custody of the person detained or the means of procuring his release: paragraph 44.

20. In so far as is germane to the present discourse concerning Baez's release from detention, the following principles can be distilled from the authorities. The underlying theme and subject matter of an application for Habeas Corpus is the question whether a person is detained. It applies to a person who is in fact detained and, if so, the lawfulness of detention. The sole purpose of the writ is to procure the release of a person currently being detained, unless the detention were shown to be lawful, and not to investigate the lawfulness of any past detention with a view to punishment or compensation. The writ will not be granted where the person has ceased to be detained and is no longer in custody.

21. Section 58 (1) of the Immigration Ordinance Chapter 5:01 states:

"A person liable to detention or detained under section 54 may, under the written authority of the Director –

- (a) be temporarily admitted to the islands without being detained; or
- (b) be released from detention."

Section 58 (3) provides that as long as a person is at large in the Islands by virtue of this section, he shall be subject to such restrictions as to residence and as to reporting to the police or an immigration officer as may be notified to him in writing.

22. Baez has been released from detention pursuant to section 58 1 (b) of the Immigration Ordinance, subject to reporting conditions to an immigration officer and to restrictions as to residence pursuant to section 58 (3). The conditions attached to Baez's release are that he attends the Immigration Department every day of the week and that he resides in a particular area.

23. It is recognised that a person can be released from detention and still have their liberty interfered with. When conditions are imposed upon release, as in the current case, it is necessary to examine the nature and impact of the conditions and make a determination as to whether the post release conditions amount to continued detention. In order to determine whether someone has been deprived of his liberty, the starting point must be his current situation and account must be taken of a whole range of circumstances such as type, duration, effects and manner of implementation of the measure in question: **Guzzard v Italy** (1980) 3 EHRR 33, para 92.

24. In **Moin Alhashash and Derek Been - Director of Immigration and Attorney General** Appeal No. CL-AP 7/21, Court of Appeal of the Turks and Caicos Islands, Morrison P observed at paragraph 61 that the authorities show:

“an individual's right to live and to come and go as he or she pleases [may be] restricted even though there is no confinement within a given perimeter.” Morrison P however opined that it must always be the case that, as the European Court observed in *Guzzardi v Italy* “[t]he difference between deprivation and restriction upon liberty is ... one of degree or intensity, and not one of nature or substance”.

25. Morrison P found at paragraph 62 that:

“the requirements that MA [Alhashash] should reside at the Airport Inn and report once weekly to the police or immigration authorities were purely minimal

incursions on his otherwise complete freedom to come and go as he pleases. Certainly, there was nothing coming from him to suggest anything to the contrary.”

26. In my opinion, the requirement that Baez attends the Immigration Department every day of the week and that he resides in a particular area, do not unduly interfere with his right to personal liberty. Baez has not demonstrated that *‘the conditions were so onerous and restrictive so as to unjustifiably interfere with his private life’*. The post release conditions were in keeping with the Director’s statutory powers under section 58 (3) of the Immigration Ordinance and are not such as to amount to continued detention so as to found an application for habeas corpus. Given the circumstance of Baez’s release from detention on the conditions previously indicated, he is not in my judgment an appropriate subject for habeas corpus. It would not be proper and efficient to issue the writ. This is sufficient to dismiss the application for the writ of habeas corpus. In deference to the submissions of the parties on the substantive application I proceed to give it my brief consideration.
27. Section 51 (1) of the Immigration Ordinance ordains that an immigration officer may examine a person whom he reasonably suspects of having entered the Islands unlawfully. Section 54 (1) states that: “[a] person who may be required to submit to examination under ... section 51 may be detained under the authority of an immigration officer pending his examination and pending - ... (b) ... a decision whether to recommend his deportation.”
28. Section 52 of the Immigration Ordinance deals with removal of persons refused leave to enter. Section 53 (1) provides that section 52 applies to a person mentioned in any of the following paragraphs as if he had been refused leave to enter by an immigration officer – “(a) if he is found in the Islands after entering in contravention of this Ordinance;”.
29. Section 54 provides that persons who may be required to submit to examination under section 50 (2), (3) or (4) or under section 51, or persons in respect of whom directions may be given under sections 52 or 53, may be detained under the authority of an immigration officer pending their examination or directions respectively, and pending removal pursuant to any directions given.

30. Ms. Hippolyte submitted that the Immigration Ordinance gives broad powers to Immigration officials to examine and give directions to persons seeking to enter the Islands. These powers extend to a power to authorise the detention of such persons in designated detention centres, and to authorize temporary admission to the Islands without detention, subject to such restrictions as to residence and reporting as may be imposed. Provision is also made for detention of persons subject to deportation orders. Having regard to the facts and circumstances of this case, Ms. Hippolyte submitted that Baez was being detained for an immigration related purpose and therefore the detention was lawful.
31. Ms. Hippolyte does not dispute that Baez was in possession of a work permit upon his return to Turks and Caicos Islands on 10th April 2023, but pointed to the evidence that his name was entered on the Stop List and as such was not a person who could lawfully be admitted into the Islands. This, Ms. Hippolyte argued, was sufficient to put the Director of Immigration and other Immigration Officials on inquiry and to cause further examination and inquiry and to ascertain his true status. Further that the decision to detain is one that could lawfully be taken having regard to the circumstances of this case. I agree.
32. The general powers of the Immigration Ordinance provides for an individual who appears on the Stop List to be refused entry and holding a work permit does not supersede this. A work permit does not supersede the power to refuse entry to a person on the Stop List.
33. Ms. Hippolyte concluded that having considered all the evidence and submissions, it is open to the court to be satisfied on a balance of probabilities that the detention of the applicant was not void ab initio. It was properly exercised and there was substantial compliance with the provisions of the Immigration Ordinance. Subsequent to Baez's detention the Director of Immigration took all necessary steps to secure the relevant information to ascertain his true immigration status having regard to the conflicting information. Further, the power to detain was used for immigration related purposes; the period of time for which the applicant was detained was not unreasonable in the

circumstances; there were no identified barriers to the applicant's removal and there is prospect of imminent removal.

34. Having perused the evidence in this matter, I find that there is no contention that Baez was refused entry upon his arrival by air into the Turks and Caicos Islands on 10th April 2023 although he was the holder of a work permit. The refusal of entry on 10th April, was triggered by an alert that he was a person whose name was added on the Stop List. His name was so added on 10th December 2018 consequent upon having overstayed his time in the Islands on an earlier visit. Critical to this matter is the fact and consequence of Baez's name being entered on the Stop List. This calls for an examination of section 92 of the Immigration Ordinance which provides the statutory underpinning for the Stop List.

35. Section 92 (1) of the Immigration Ordinance states:

“Where the Director is satisfied that any person, other than an Islander, a British overseas territories citizen or a permanent residence, who is for the time being outside the Islands -

(a) is a person who has, while in the Islands conducted himself in an undesirable manner; or

(b) is a person whose entry into the Islands in the opinion of the Director appears undesirable in view of the information or advice received from any source which the Director considers reliable,

the Director may cause that person's name to be entered on a list to be called the Stop List to be maintained by him, whereupon such person shall be prohibited from entering the Islands.”

Section 92 (3) provides that “[i]f a deportation order has been made against a person and he is removed from the Islands, his name shall be entered on the Stop List.”

36. The undisputed evidence of the Director, is that Baez had entered the Islands on 4th November 2017 with leave to remain until 25th November 2017. He was apprehended by Law enforcement officials on 24th March 2018. He was deemed an over-stayer, a person

who was in the Islands illegally and in breach of the Immigration Ordinance. His name was placed on the Stop List.

37. In my judgment, Baez, being a person who had overstayed and therefore in breach of the Immigration Ordinance, is a person to whom section 92 (1) (a) of the Immigration Ordinance applied: a person who has, while in the Islands had conducted himself in an undesirable manner. This clearly provided a basis for his name to have been entered on the Stop List. In the premises I do not find favour with or accept Ms. Arthur's submission that the evidence of the Director does not indicate any of the criteria of section 92 (1) (a) or (b) or that Baez was wrongfully added to the Stop List. *Au contraire*, the Director's evidence does provide the requisite evidence.
38. Further, having examined sections 92 (1) (a) and (b) of the Immigration Ordinance, I do not share Ms. Arthur's view that they are quite vague. It appears to me that it would be a matter of fact for the Director to determine, whether a person conducted himself in an undesirable manner under section 92 (1) (a) and what weight to ascribe to that evidence; weight is a matter of judgment. A court would be loathe to interfere with such a finding. Section 92 (1) (b) engages the judgment of the Director; it is the Director's opinion. Ms. Arthur's argument essentially boils down to a disagreement with the finding of the Director. Such a disagreement does not properly lend itself to a conclusion that the provision of the Ordinance is vague.
39. Section 92 (1) provides in terms which are beyond peradventure that a person whose name is on the Stop List shall be prevented from entering the Island. There is no indication or suggestion that the Governor has exercised his discretion pursuant to section 92 (2) of the Immigration Ordinance to require the Director to remove Baez's name from the Stop List.
40. The fact that Baez had a work permit when he entered on 10th April does not trump the fact that his name was on the Stop List and he could not have been lawfully admitted into the Turks and Caicos Islands. There is no evidence that his name was removed from the Stop List. Given the prevailing inconsistency of possession of a work permit and being on the

Stop List, it certainly was incumbent upon the Director to exercise the powers granted to her by the Ordinance.

41. Having regard to Baez's name being placed on the Stop List, I agree with Ms. Hippolyte that it was not unreasonable for the Director to conclude that Baez was a person to whom section 53 of the Immigration Ordinance refers and liable to an examination and removal in accordance with section 54. From a reading of section 54, the Immigration Officer has the power to detain pending an inquiry or examination and pending a recommendation for removal or deportation. In my view, Baez was lawfully detained.

42. In conclusion, the habeas corpus application is dismissed on the grounds that Baez was not a person currently in detention. Given Baez's release from detention, the post release conditions are not such as to amount to continued detention so as to found an application for habeas corpus. Further, Baez's detention was not unlawful.

43. The respondents are to have their costs, to be taxed if not agreed within 21 days.

The Hon. Mr. Justice Davidson Kelvin Baptiste

Judge (Ag) of The Supreme Court

