

**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Criminal Law Division
2021/CRI/CON/007**

BETWEEN

Fitzroy Edwards

Applicant

AND

Vonette Flowers

Immigration Officer at the Carmichael Detention Center

1st Respondent

Clarence A. Russell

In his capacity as Director of Immigration

2nd Respondent

Fausteen Major Smith

In her capacity as Officer in Charge of the Carmichael
Detention Center

3rd Respondent

The Hon. Keith Ricardo Bell

In his capacity as Minister of Immigration

4th Respondent

The Hon. Ryan Pinder

In his capacity as Attorney General of The Bahamas

5th Respondent

BEFORE:

The Honourable Mr Senior Justice Bernard Turner

APPEARANCES: Mr Frederick Smith KC, and Ms Raven Rolle for the Applicants

Ms Cordell Frazier and Ms Karine Macvean for the Respondents

HEARING DATES: 14 October 2021 & 13 January 2022

DECISION

TURNER Snr J

The Applicant applied by way of an ex parte summons filed 22 September 2021 for leave to issue a writ of habeas corpus. On 28 September 2021 leave was granted, with a return date of 7 October 2021.

2. On that date it was indicated by counsel for the applicant that the applicant had been released. The matter was then adjourned to 14 October 2021.

3. The issue of costs having being raised in the ex parte summons, that matter was adjourned for consideration.

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

5. The ex parte summons sought:

“1. Leave to issue a Writ of Habeas Corpus ad Subjiciendum as against the Respondents herein on the ground that the Applicant has been in unlawful custody since on or about February 14 2021 and the Respondents continue to falsely imprison the Applicant in breach of his Constitutional Rights; and

2. An Order that the Respondents, or any of them, shall not, whether acting by themselves, or by any person under them in their chain of command, or by any agent, or by giving any direction or consent or permission or encouragement to any person, deport or otherwise remove the Applicant from The Bahamas.

3. An Order that the Costs of and occasioned by this Application be costs in the cause.”

6. The affidavit in support of the application was not filed by the applicant but by a Wislande Geffrard, described as being a Legal Assistant in the Chambers of counsel for the applicant. The information contained in the affidavit was deposed to as follows:

“I depose hereto from my personal knowledge and where otherwise I state the grounds and sources of my information which I believe to be true. Callenders is instructed to act on behalf of Mr. Edwards and the information herein has been provided to Callenders by his wife Keora Carey Edwards (Mrs Edwards), who is a citizen of The Bahamas.”

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 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 Center, 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 the 22nd February, 2021 the Applicant, a Jamaican national was admitted to the Bahamas Department of Correctional Services (BDOCS) on the charges of Damage and Stealing and released on 22nd of April, 2021 after completing his sentence into the custody of the 1st through 3rd Respondents.

The Immigration Officers upon reasonable suspicion asked the Applicant to show proof of legal status. He could not show proof of the same. However, he claimed that he was married to a Bahamian woman. According to our records, on the 6th October, 2010 the Applicant married Keora Adeline Edward, a Bahamian and was granted a Resident Spouse Permit on the 18th April, 2011 to the 6th October, 2015. That from the 6th October, 2015 to the time the Applicant was arrested by police in respect to the aforementioned charges and subsequently admitted to BDOCS on the 22nd February, 2021 no application was received by the 1st through 3rd Respondents from the Applicant or on his behalf for the renewal of his Resident Spouse Permit.


I do hereby certify that on the 1st of October, 2021 FITZROY EDWARDS, the subject named herein was released from the custody of the 1st through 3rd Respondents since the writ was issued and since a Notice of the same was served on the Respondents herein.

For the reasons above, the Respondents pray that the writ herein be dismissed.

10. The question of the right to costs in respect of this habeas corpus application falls to be considered on the basis of this court's recent decision in **Wilkins Garcon v Vonette Flowers et al (2021/CRI/CON/008) 6 October 2022**, wherein I found that these types of habeas corpus applications are criminal in nature and that since no prevailing practice to award costs in criminal matters had demonstrated to the court, that I would make no award of costs.

11. For these reason, I hereby dismiss the application for costs by the applicant, and I order that each party is to bear their own costs.

Dated this 19 day of October AD 2022

 *Sr. J.*

**Bernard S A Turner
Senior Justice**