

**THE EASTERN CARIBBEAN SUPREME COURT  
IN THE HIGH COURT OF JUSTICE  
COMMONWEALTH OF DOMINICA  
(CIVIL)  
A.D. 2021**

**Claim No.**

IN THE MATTER OF SECTIONS 1(a), 3, 8, 12 and 16 OF THE CONSTITUTION OF THE  
COMMONWEALTH OF DOMINICA

AND

IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW  
OF THE DECISION OF THE CHIEF OF POLICE AND/OR OFFICER ALLEYNE MAXIME TO  
FILE AND/OR CAUSE A CRIMINAL COMPLAINT TO BE LAID AGAINST THE APPLICANT  
FOR ILLEGAL ENTRY INTO DOMINICA CONTRARY TO SECTION 27A OF THE  
IMMIGRATION AND PASSPORT ACT CHAPTER 18:01

AND

IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW  
OF THE DECISION OF THE MINISTER OF NATIONAL SECURITY CONTAINED IN A  
LETTER DATED 25<sup>TH</sup> MAY 2021 DECLARING  
THE APPLICANT A PROHIBITED IMMIGRANT

BETWEEN

MEHUL CHOKSI

CLAIMANT/APPLICANT

AND

THE CHIEF OF POLICE

1<sup>ST</sup> RESPONDENT

ALLEYNE MAXIMEA

2<sup>ND</sup> RESPONDENT

THE MINISTER RESPONSIBLE FOR IMMIGRATION AND  
NATIONAL SECURITY OF THE COMMONWEALTH OF DOMINICA

3<sup>RD</sup> RESPONDENT

THE CHIEF MAGISTRATE

4<sup>TH</sup> RESPONDENT

**NOTICE OF APPLICATION FOR LEAVE TO FILE JUDICIAL REVIEW**

**Name, Address and Description of the Applicant**

The Applicant's name is MEHUL CHOKSI. He is a businessman and a citizen of Antigua and Barbuda. His usual address is Jolly Harbour, in the island of Antigua & Barbuda,

but he is presently in custody of the Police at the Dominica China Friendship Hospital in the Commonwealth of Dominica.

**Name, Address and Description of the Respondents**

The 1<sup>st</sup> Respondent is Lincoln Corbette. He is the Chief of Police (Acting) of Roseau, in the Commonwealth of Dominica. His address is c/o Police Headquarters, Roseau, in the Commonwealth of Dominica.

The 2<sup>nd</sup> Respondent is Alleyne Maximea, a Sergeant in the employment of the Commonwealth of Dominica Police Force. His address is c/o Police Headquarters, Roseau, in the Commonwealth of Dominica.

The 3<sup>rd</sup> Respondent is Rayburn Blackmore. He is the Minister of Immigration and National Security of the Commonwealth of Dominica. His address is c/o the Financial Center, in Roseau, in the Commonwealth of Dominica.

**The decisions in respect of which leave to apply for judicial review is sought**

The decisions in respect of which leave to apply for judicial review is sought are:

- i) The decision of the 1<sup>st</sup> and/or the 2<sup>nd</sup> Respondents to lay a criminal charge against the Applicant for illegal entry into Dominica contrary to section 27A of the Immigration and Passport Act, Chap 18:01;
- ii) The decision of the 3<sup>rd</sup> Respondent to declare the Applicant a prohibited immigrant pursuant to section 5(1)(f) of the Immigration and Passport Act, Chapter 18:01.

**The relief sought including particulars of any interim relief**

The Applicant hereby applies to the Court for leave to apply for Judicial Review of the said decisions in order to obtain the following relief:

- i) An order of certiorari to move into the High Court and quash the said decision of the 1<sup>st</sup> and/or 2<sup>nd</sup> Respondents;

- ii) A declaration that the said decision of the 1<sup>st</sup> Respondent and/or 2<sup>nd</sup> Respondent is an abuse or the process of the court and/or a violation of the rule of law and is accordingly unlawful null and void and of no effect;
- iii) A declaration that the said decision of the 1<sup>st</sup> Respondent and/or 2<sup>nd</sup> Respondent was not the product of their own independent judgments and/or that they allowed themselves to be dictated to by third parties, namely representatives of the Indian Government, and is accordingly unlawful null and void and of no effect;
- iv) A declaration that the said decision of the 1<sup>st</sup> Respondent and/or 2<sup>nd</sup> Respondent is in violation of the Applicant's right to the protection of the law guaranteed to him by sections 1(a) and 8 of the Constitution of Dominica, his right to liberty guaranteed to him by sections 1(a) and 3 of the said Constitution and freedom of movement guaranteed to him by section 12 of the said Constitution;
- v) An order quashing the criminal charge brought against the Applicant for breach of section 27A of the Immigration and Passport Act;
- vi) A permanent order staying the criminal charge brought against the Applicant for breach of section 27A of the Immigration and Passport Act;
- vii) An order of prohibition prohibiting the 4<sup>th</sup> named Respondent whether by herself or by or through any Magistrate within the jurisdiction of Magistrate's District "E" or otherwise from hearing, adjudicating or otherwise exercising any magisterial functions with respect to the criminal complaint against the Applicant;
- viii) An interim Order pursuant to the Civil Procedure Rules Part 56.4 (8) staying the criminal proceedings in respect of the charge brought against the applicant for breach of section 27A of the Immigration and Passport Act pending the final hearing and determination of the application for leave to apply for judicial review herein;
- ix) An interim Order pursuant to the Civil Procedure Rules Part 56.4 (8) staying the criminal proceedings brought against the Applicant for breach of section 27A of the Immigration and Passport Act pending the final hearing and determination of the application for judicial review or until further Order;
- x) An order of certiorari quashing the said decision of the 3<sup>rd</sup> Respondent

- x) An order declaring that the said decision of the 3<sup>rd</sup> Respondent is contrary to sections 2(2)(c) and 7(a) of the Immigration and Passport Act and is accordingly null and void and of no effect;
- xii) An order that the said decision of the 3<sup>rd</sup> Respondent's decision was taken in breach of the principles of natural justice and is accordingly null and void and of no effect;
- xiii) An interim order restraining the 3<sup>rd</sup> Respondent, whether by himself or through his servants and/or agents or otherwise howsoever from removing the Applicant from Dominica until the hearing and determination of the application for leave to apply for judicial review and/or until the hearing and determination of the application for judicial review, if such leave is granted;
- xiv) Costs
- xv) Damages, including exemplary and/or aggravated and/or vindictory damages;
- xvi) Such further Orders, Writs or Directions as may be necessary or appropriate to give effect to the relief claimed by the Applicant.

**The grounds upon which relief is sought**

- (i) The Applicant is a citizen of Antigua and Barbuda;
- (ii) There are criminal proceedings pending against him in India
- (iii) In July 2018, upon the Minister responsible for External Affairs in Antigua declaring publicly that he would honour any request made by the Indian Government for the extradition of the Applicant to face the charges pending against him, the Applicant filed proceedings in Antigua in which he seeks declarations that he is an Antiguan citizen, that there is no extradition agreement between Antigua and India, that in the absence of such an agreement the Minister cannot act on the Government of India's request and that he cannot be detained pursuant to such request, that section 9(4) of the Extradition Act of Antigua & Barbuda violates his right to equal protection under the law, and that the Minister should be restrained from acting on any such Indian request;

- (iv) On 3<sup>rd</sup> August 2018, India made an extradition request to Antigua on the same day that their Extradition Act was extended to Antigua;
- (v) On 12<sup>th</sup> November 2018, the Applicant amended his claim to challenge the legality of the extradition agreement between Antigua and India and the constitutionality of the arrangement allowing the Minister of External Affairs to give effect to an extradition request of a foreign state;
- (vi) On 14<sup>th</sup> October 2019, while the extradition proceedings were pending, the Prime Minister of Antigua issued a notice to the Applicant stating that he, as the Minister responsible for Citizenship in Antigua and Barbuda, proposed to make an order pursuant to Section 8 of the Antigua and Barbuda Citizenship Act, Cap. 22 to deprive the Applicant of his Antigua and Barbuda Citizenship on the ground that the Applicant had willfully concealed material facts and made false representations;
- (vii) The Applicant thereafter commenced proceedings challenging the said notice dated 14<sup>th</sup> October 2019 and also the constitutionality of the Citizenship Act in so far as it permitted the Prime Minister to deprive the Applicant of citizenship;
- (viii) The trial of both claims in Antigua & Barbuda is fixed for a date no earlier than November 2021;
- (ix) Pending the hearing of those proceedings, it was ordered by the High Court that the Applicant was not to be extradited from Antigua;
- (x) The Applicant continues to be a citizen of Antigua;
- (xi) On 23<sup>rd</sup> May 2021, the Applicant was kidnapped from Antigua by persons of Indian nationality and forcibly taken by boat to Dominica. There he was handed over to members of the Coast Guard of Dominica and then to the Chief of Police of Dominica;
- (xii) The Applicant informed police officers who interacted with him that he had been kidnapped and brought to Dominica and that he wished to be returned to Antigua;
- (xiii) The question whether the Applicant was kidnapped and brought forcibly to Dominica is under investigation by the police force in Antigua;

- (xiv) The 1<sup>st</sup> and 2<sup>nd</sup> Respondents have not launched or caused to be launched any investigation into the Applicant's complaint that he was kidnapped and forcibly brought to Dominica from Antigua;
- (xv) Despite the foregoing, the Applicant has been charged with the offence of entering Dominica otherwise through an approved port of entry, contrary to section 27A of the Immigration and Passport Act on a complaint laid by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents;
- (xvi) The arrest and prosecution of the Applicant is an abuse of the process of the court because the police who charged the Applicant participated in and/or colluded with the Applicant's kidnappers in and/or condoned the forced entry of the Applicant into Dominica;
- (xvii) The 1<sup>st</sup> and 2<sup>nd</sup> Respondent's decision to charge the Applicant with the offence against section 27A was not made independently but on the direction or under the influence of Indian and/or Dominican and/or Antiguan officials;
- (xviii) The decision to charge the Applicant without first investigating his complaint that he had been kidnapped and brought forcibly to Dominica was made contrary to the 1<sup>st</sup> and 2<sup>nd</sup> Respondent's common law and statutory duty to investigate the Applicant's complaint (as provided for in section 12 of the Police Act Chap: 14:01) and/or contrary to his constitutional right to the protection of the law, and in all of the circumstances was arbitrary and irrational, made without taking into account a relevant consideration, namely that his complaint that he had been kidnapped and brought forcibly to Dominica and was made for an improper purpose and in bad faith, namely to satisfy the wishes of the Indian and/or the Antiguan Governments and is accordingly null and void and of no effect;
- (xix) By virtue of his citizenship in Antigua and Barbuda, the Applicant is citizen of a Member State of the Community as that term is defined in the Immigration and Passport Act. By virtue of section 2(2) thereof, the Applicant is deemed to belong to Dominica and by section 7(a) is deemed not to be a prohibited immigrant;
- (xx) The decision of the Minister declaring the Applicant to be a prohibited immigrant is ultra vires the Immigration and Passport Act, null and void and of no effect;

- (xxi) Before making his decision to declare the Applicant to be a prohibited immigrant, the Minister failed to give the Applicant an opportunity to be heard;
- (xxii) The Minister did not serve the Applicant with the decision to declare him a prohibited immigrant and accordingly the decision is of no effect and the Applicant continues to be a person who belongs to Dominica;
- (xxiii) The applicant will rely on the facts and matters contained in the affidavit filed in support of his application for leave.

**The grounds on which the Application for Interim Injunctive relief is based:**

- i) The Applicant has good arguable grounds for the grant of leave to apply for judicial review;
- ii) Should a stay of the criminal proceedings not be granted, the criminal proceedings will be continued in circumstances where the Applicant alleges that it is an abuse of process to prosecute him. His claim not to be prosecuted will accordingly be rendered nugatory;
- iii) Likewise, should the Applicant be removed from Dominica before his claim that it is unlawful to declare him a prohibited immigrant is determined, his claim would be rendered nugatory;
- iv) In the premises, if the stay and injunction are not granted irreparable harm will be caused to the applicant;
- v) The balance of justice favours the grant of a stay.

**The applicants' address for service:**

The Applicant's address for service is c/o Dyer and Dyer, Solicitors Chambers, 19 Fields Lane, Roseau, Commonwealth of Dominica.

**Whether an alternative form of redress exists and, if so, why judicial review is more appropriate or why the alternative has not been pursued:**

There is no alternative form of redress. The claim that the criminal charge is an abuse of process in the circumstances of this case is one which must be determined by the High Court.

**Details of any consideration which the applicant knows the Respondents have given to the matter in question in response to a complaint made by or on behalf of the applicant:**

The Applicant is not aware of any consideration the Respondents have given the concerns which he wishes to raise.

**Whether any time limit for making the application has been exceeded and, if so, why:**

No time limit has been exceeded.

**Whether the Applicant is personally or directly affected by the decision about which complaint is made:**

The Applicant is personally and directly affected by the decisions which he wishes to challenge. He is the one who has been unlawfully charged and declared to be a prohibited immigrant.

**The name and address of the applicant's legal practitioners:**

The Applicant's legal practitioners are Dyer and Dyer Solicitors, Chambers, 19 Fields Lane, Roseau, Commonwealth of Dominica.

Tel: 1-767-449-9498/1-767-448-2617 Fax: 1-767-448-7810 E-mail: dyerndyer@gmail.com/dyer@cwdom.dm.

Affidavits in Support accompany this Application.

Dated this                      day of July, 2021

.....  
DYER & DYER  
SOLICITORS FOR THE APPLICANT



**NOTICE:**

This Application will be heard by the Honourable Judge on the     day of                     2021  
at                     p.m. at the High Court, Bay Front, Roseau, Commonwealth of Dominica.

**If you do not attend this hearing an order may be made in your absence.**

OR

The Honourable Judge will deal with this application by -

NB This Notice must be served as quickly as possible on the respondent to the application.

The court office is at Dame Eugenia Charles Blvd, Bay Front, Roseau, Commonwealth of Dominica, telephone number 4482401 ext 3388,3110, fax number 4487400 The office is open between 8am and 4pm Monday to Friday except Saturdays and public holidays.

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