



IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. G251 OF 2023

IN THE MATTER OF ORDER 55 OF THE GRAND COURT RULES

IN THE MATTER OF THE BILL OF RIGHTS

CRAIGGOY DAVIAN DACOSTA

Appellant

-v-

IMMIGRATION APPEALS TRIBUNAL (1)

ATTORNEY GENERAL OF THE CAYMAN ISLANDS (2)

Respondents

IN CHAMBERS

Before: The Hon. Justice Kawaley

Appearances: The Appellant in person

Dr Jevon Alcock, Deputy Solicitor General, for the Respondents

Heard: 19 December 2023

Judgment Delivered: 19 December 2023

HEADNOTE

Appeal against decision of Immigration Appeal Tribunal refusing the appellant's application for permanent residency-alleged contravention of right to private and family life-application for stay of decision pending appeal-Cayman Islands Constitution Order 2009, section 9-Grand Court Rules Order 55 rule 3 (3)

EX TEMPORE JUDGMENT

Introductory

1. In this matter, the Appellant has filed a Notice of Originating Motion, which was sealed yesterday 18 December 2023, seeking to appeal the decision of the Immigration Appeals Tribunal to, in substance, refuse him Permanent Residency and Employment Rights.
2. The decision of the Tribunal contains one material averment which is particularly relevant to how I should dispose of this matter today. At page 3 of the letter dated 20 November 2023, the Tribunal determined that there was a need to consider section 9 of the Bill of Rights (“*Private and family life*”). At page 6, the decision letter stated that:

“...the Tribunal was not satisfied that having reached a decision that no grounds of appeal were made out, that it would necessarily result in the removal of the Appellant from the Islands giving rise to a breach of the Appellant's rights to private and family life”.

3. The way the matter has come before me today is somewhat unusual. The Appellant is represented by Mr James Chapman of Chapmans, who filed a Notice of Originating Motion which set out various carefully crafted grounds of appeal. They include the complaint that the Tribunal failed to properly consider the interaction between the decision they were making and the Appellant's rights under Section 9 of the Bill of Rights.

4. I was told, before this matter was assigned to me administratively, that Mr Chapman had very recently left the jurisdiction. The Appellant, with his mother, appeared before me concerned as a result of interactions between them and members of what Dr Alcock has referred to as Customs and Border Control. The Appellant feared that he may be imminently deported on the grounds that he was regarded as an over-stayer. That gives rise to the need to consider whether or not the Court should exercise its jurisdiction under Order 55 of the Grand Court Rules¹ to grant a stay of the decision of the Tribunal with a view to ensuring that the Appellant is not deported pending the determination of his appeal.
5. Dr Alcock has helpfully appeared before the Court in his capacity as Deputy Solicitor General. Because, after initially hearing from the Appellant, I felt that the Court could not properly proceed to consider granting a Stay without giving notice to the Crown and affording the Crown an opportunity to make representations to the Court.
6. In the event, Dr Alcock is without formal instructions as to how to deal with this matter. He has indicated that no undertaking has been given by the Customs and Border Control Department not to proceed with any action that they may be considering to take. And he has very fairly, as an officer of the Court, acknowledged that in these circumstances it would not be surprising for the Court to deem it appropriate to grant a stay, which is precisely what I propose to do.
7. Clearly it would be wrong for the Appellant's right of access to the Court to be compromised by having the impending decision implemented while it is subject to an appeal.
8. In considering that a stay is appropriate, I also know note that it also appears to me that the appeal is at least arguable as regards to section 9 of the Bill of Rights point.
9. I say that because it appears to me that the approach that was adopted by the Tribunal in deciding, in effect, that they did not need to consider the legal issue of section 9 is in my judgment an arguable legal complaint.

¹ GCR Order 55 rule 3 provides:

“(3) The bringing of such an appeal shall not operate as a stay of proceedings on the order, determination, award or other decision against which the appeal is brought unless the Court by which the appeal is to be heard or the Cabinet, the Registrar of Lands, tribunal, arbitrator or person by which or by whom the decision was given so orders.”
[Emphasis added]

Conclusion

10. For these reasons I grant an order staying the decision of the Immigration Appeal Tribunal dated 20 November 2023, until the determination of the Appellant's appeal before this Court.
11. It follows that the Immigration authorities cannot implement the decision and, for the avoidance of doubt, I will add into the Order express language which makes it clear that the Appellant cannot be deported pending the determination of his appeal.
12. In view of the fact that the Appellant has appeared in person and the Deputy-Solicitor General assisted the Court without positively opposing the application, it seems to me to be appropriate that I make no Order as to costs.



THE HONOURABLE MR JUSTICE IAN RC KAWALEY
JUDGE OF THE GRAND COURT