



**D COURT OF THE CAYMAN ISLANDS**

**CAUSE: G OF 2023**

**IR OF: Section 23(2) of the Immigration (Transition) Law 2018**

**AND: IN THE MATTER OF: Section 24 of the Cayman Islands Constitution Order 2009**

**AND: IN THE MATTER OF SECTION 21 OF THE IMMIGRATION (TRANSITION) ACT (2022 REVISION)**

**AND: IN THE MATTER OF ORDER 55 RULE 4(2) OF THE GRAND COURT RULES 1995 (REVISED)**

**BETWEEN: KENNIE LEE EDWARDS APPELLANT**

**AND: IMMIGRATION APPEALS TRIBUNAL RESPONDENT**

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**NOTICE OF MOTION**

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**TAKE NOTICE THAT** the Court at the Law Courts, George Town, Grand Cayman will be moved on at on the day of or as soon thereafter as counsel can be heard, by counsel for **THE APPELLANT** for the following relief namely :-

1. An Order setting aside the Decisions of the Immigration Appeals Tribunal as relates to the refusal, of the grant of Residency and Employment Rights Certificate made by the Appellant; on the ground that the decisions are erroneous, and in breach of natural justice. A copy of this decision is produced as **Exhibit "KE1"**

**BACKGROUND**

1. The Appellant first filed Notice of Appeal on July 22 2022 with the Respondent against the decision of the Director of WORC to refuse the grant of permanent residence. A copy of this letter is produced as **Exhibit "KE2"**
2. **THAT** by a letter dated January 4 2023, the Respondent advised the Appellant that "...no grounds of appeal had been submitted by the **appellant** or his employer/agent despite follow up emails/letters from the Secretariat of the following dates: 1<sup>st</sup> December 2021, 11<sup>th</sup> February 2022 and 9<sup>th</sup> June 2022"...no grounds of appeal had been put forward by the Appellant... Therefore the Tribunal...quashed the appeal without a hearing ...Accordingly the appeal is unanimously quashed"...

**PROCEDURAL IRREGULARITY**

1. **THAT** at all material times, it was open to the Respondent to communicate its observations to the Appellants employers or the Appellant directly, so that the Respondent's assertion in its letter dated January 4 2023, was factually incorrect, as relates to any assertion that the "Appellant" [filed] "no detailed grounds"...
  
2. **THAT** as in the case of *Mohanty v Medical Board*, where the issue of unreasonableness was considered; it is submitted that a similar scenario is here being played out. What is more, is that it states in **Section 24 of the Cayman Islands Constitution Order 2009**, that decisions of public officials must be "**lawful, rational, proportionate and procedurally fair**". Quite apart from the fact that this is an obligation that applies to all decisions of the Respondent, and it is submitted that the conduct of the Respondent was not in accordance with the principles of natural justice in all the circumstances, in that it offered the Appellant no "opportunity" to make representation or further representation, as is recommended by the court in the Cayman Islands, Court of Appeal's case of **Immigration Board and Governor in Council v Streeter and K Coast Development 1999 CILR**, which case traversed the statement which was made by Lord Green in the **Wednesbury** case, at p229 and 233-234... There he stated..."**It is true the discretion must be exercised reasonably...a person entrusted with a discretion must, so to speak direct himself properly...He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he is to consider. If he does not obey these rules he may truly be said, and often is said to be acting unreasonably ... The court is entitled to investigate the action of the local authority with a view to seeing whether they have taken into account matters which they ought not to take into account, or, conversely have refused to take into account or neglected to take into account matters which they ought to take into account...it may still be possible to say that although the local authority have kept within the four corners they ought to consider, they have nevertheless come to a conclusion so unreasonable that no reasonable authority could ever have come to it. In such a case, again, I think the court can interfere**"... Respectfully it is submitted, that the Appellant was never advised, nor indeed was served notice of any of the "**requirements**" on the basis of which the Respondent came to conclude that the Appellant ..."**had failed to comply**"...
  
3. **THAT** furthermore, it was also said that..."**Where an Act of Parliament confers an administrative power [on a statutory body] there is a presumption that it will be exercised in a manner which is fair in all the circumstances...Fairness will very often require that a person who may be adversely affected...will have an opportunity to make representation...before...or after it is taken, with a view to procuring its modification...**" (see Lord Mustill in *ex-parte Doody* [1994]1 AC 531 . It is submitted that the decision of the Respondent, in these given circumstances, falls squarely within the realms of the foregoing statement of Lord Greene; thus rendering the decision, as being also "**unreasonable**" in all the circumstances.

4. **THAT** in the decided local case of **Hutchinson-Green and Alisha Myriah Racz (2015)(2) CILR 75 (Grand Court)**, the Chief Justice referring to the duty of the court, opined that there would be times where the court in some cases would be more stringent in scrutinizing the decisions made by a body such as this honourable tribunal is. He said..." **It is a duty that will arise depending on the context of the case, so as to place the focus more closely upon the details of the decision making of the authority whose decision is brought into question. In such cases, which will more readily arise in the human rights context, the court should not necessarily be looking for an extreme degree of unreasonableness, capriciousness or absurdity on the part of the decision maker before intervening, something less will do"**...

**AS SUCH** the Appellant prays that the Decision imposed by the Respondent be set aside, and a Declaration made to order a rehearing of the Appellant's appeal.

  
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**KENNIE LEE EDWARDS**

Dated the 31 day of January 2023

**TO:** The Clerk of the Court  
**AND TO:** The Director of Border Control  
**AND TO:** The Attorney General