



IN THE HIGH COURT OF SWAZILAND

RULING

Case No. 705/2017

HELD AT MBABANE

In the matter between:

ZAFAR TAZEEM PARK

Applicant

And

THE NATIONAL COMMISSIONER OF POLICE

1st Respondent

THE COMMISSIONER OF CORRECTIONAL

SERVICES

2nd Respondent

MAGISTRATE M.T. DLAMINI N.O

3rd Respondent

MINISTER OF HOME AFFAIRS

4th Respondent

THE ATTORNEY GENERAL

5th Respondent

Neutral citation:

Zafar Tazeem Park v The National Commissioner of Police, The Commissioner of Correctional Services, Magistrate M.T. Dlamini N.O, Minister of Home Affairs and The Attorney General. (705/17) [2018] SZHC 27

CORAM: C. MAPHANGA, JUDGE OF THE HIGH COURT

HEARD : 26th May 2017

DELIVERED : 16 March 2018

Ruling

The Applicant, a Pakistani national and an immigrant in this country was, on date 11th May 2017, convicted of entering and remaining in the Kingdom illegally. He was, sentenced to a fine of E500 by the trial court at the Manzini Magistrate. In conjunction with this sentence the Magistrate also issued an order for his detention and deportation.

Having paid the fine the Applicant then brought the application on hand in terms of which he challenged and sought to set aside the deportation order issued by the magistrate. In fullness he entreats this court as follows:

[1] Dispensing with the normal provisions and rules of this court as relating to firm, service and time limits and enrolling the matter to be heard as one of urgency.

1.1 Condoning applicants non- compliance with the said Rule of the court.

1.2 Granting an order that the 1st and 3rd Respondents should stay any process of deportation of the Applicant with immediate and within effect, pending finalization of this matter.

1.3 Granting an order reviewing, correcting and setting aside the deportation order and sentence imposed by the Magistrate, the 3rd Respondent.

- 1.4 Declaring that the Applicants detention is unlawful and must set aside**
- 1.5 Granting an order that the 1st Respondent return the Applicant's passport and personal documents to him.**
- 1.6 Granting applicant leave apply to the Chief Immigration Officer to Remedy this status within 30 days.**
- 1.7 That prayers 1.3.1.4,1.5,1.6,4 and 1.7 operate with interim effect pending the finalization of the application.**
- 1.8 That a rule nisi issue calling upon the Respondents to show cause why the orders 3.4,5.6 and 7 should not be made final.**
- 1.9 Granting the applicants costs of this application.**

[2] Evidently by the reference to prayers 3,4,5,6 and 7 was intended to be 1.3 -1.7 in the sequence respectively and I have accordingly assumed this to have been the intent.

[3] The application is opposed. However when the matter was first brought before the court on the 19th May 2017 a consensual interim order staying the deportation of the Applicant was granted by the court. Other than a stay of the deportation the terms of the order are unequivocal and of no further but I gathered from the Applicants attorney, M K W MAGAGULA that the Applicant may have been released from detention, which would explain his subsequent activities.

[4] From the facts emerging from the affidavit, shortly after the granting of the stay to his deportation the Applicant by some obscure means

procured and caused to be issued an entry permit form the Chief Immigration Officer.

That entry permit was dated 24th May 2017 and bears an expiry date of the 24th June 2017.

[5] It is also common cause that on the 23rd of May 2017 the Minister for Home Affairs issued a notice in terms of Section 3 of the Immigration Act 17 of 1982 declaring the applicant to be a prohibited immigrant on current of his conviction said violation of the Immigration Act.

[6] As stated the application has been opposed by the Respondents. A Central in the Respondents answering affidavit is that the application has been rendered ineffectual as any judgment issued by the court would be futile on account of the change of circumstance hence could be ***brutum fulmen***.

[7] It is pertinent for the following reason that the Minister for Home Affairs has been cited in the application and joined in the proceeding as the 4th Respondent of note however, that in the prayers none of the orders brought were directed to or affects her office.

[8] Having said that a curious feature in the papers that I noted is that in the order issued under the in premature of the Registrar, its content and terms substantially differ from the order noted and recorded in the court file in that whilst the prayer 1.3 was for an interim interdict directed at the National Commissioner of Police and the Magistrate

(whose orders were sought to be impugned) the final order issue under the Registrars seal is directed at the 1st and 4th Respondents; namely – the Commissioner of Police and Minister respectively.

[9] The Applicants attorney could not explain how this anomaly came about. To his credit he did however concede that no order against the Minister was ever sought or issued by the court in the cause of his application.

[10] It leads me to the conclusion upon inference that the printed and issued writ under the seal of the Registrar was improperly obtained. This is to be deprecated and I accordingly view this with much disapproval and disquiet as it is indicative of serious dishonest conduct on the part of the responsible individual concerned. It is a matter warranting serious consideration and investigation as it affects the security of integrating of the court records.

[12] I am inclined to agree with the Respondents attorney that in the circumstances of the matter, the application before me, in light of Ministers deportation order, has been overtaken by events and therefore it would serve no practical purpose to entertain the matter further. Its outcome would be ineffectual.

[13] A valid detention and deportation order issued by the appropriate authorities has superseded the proceedings before me as an intervening event.

[14] For this reason I find no merit in the cause as and accordingly dismiss it with costs.

A handwritten signature in black ink, consisting of several loops and a horizontal line, positioned above a solid horizontal line.

MAPHANGA J

Appearances:

For Applicant : Mr K.Q. Magagula

For Defendant : Mr S. Hlawe