2020-HC-DEM-CIV-FCA-27

IN THE FULL COURT OF THE SUPREME COURT OF JUDICATURE
CIVIL JURISDICTION

BETWEEN:

In the matter of KHALID GOBIN

-and-

In the matter of an Application by KENNARD GOBIN for the Order of Habeas Corpus ad Subjiciendum on behalf of KHALID GOBIN

Applicant

-and-

-and-

1. **ATTORNEY GENERAL OF GUYANA**
2. **CHIEF MEDICAL OFFICER**
3. **CHIEF OF STAFF OF THE GUYANA DEFENCE FORCE**

Respondents

Appearances:-
Mr. Sanjeev Datadin for the Appellant
Mr. Nigel Hawke for the Respondents

2020: April 7

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[1] **SEWNARINE-BEHARRY J**: This appeal stems from a decision of the Honourable Justice Brassington Reynolds delivered on 2nd April, 2020 dismissing FDA 2020-HC DEM CIV FDA-422, an application made by the Appellant for a Writ of Habeas Corpus ad Subjiciendumin.

[2] The Appellant has submitted that the learned judge erred in law in dismissing his application and has lodged several grounds of appeal against the decision of the learned judge which are found at pages 2 to 4 of the Record of Appeal.

Application in the lower court

[3] The Applicant, a Guyanese national and student of the York University in Canada travelled home to Guyana via Barbados through Air Canada and LIAT after the outbreak of COVID-19 Virus (Corona Virus).His flight was scheduled to arrive on 18 March 2020. However, when he arrived in Barbados he was informed that the LIAT flight to Guyana was cancelled. As a result he stayed at a local hotel for seven days. Subsequently, the Applicant learnt that a Trans-Guyana flight was given permission to return students and other passengers to Guyana on condition that the flight crew and passengers must exercise health recommendations as published by the Ministry of Health. According to the Applicant one Rene Seon informed him that the passengers would be tested for the Corona Virus at the Eugene F. Correia International Airport (EFCIA) and he would be allowed at his home to be self –quarantined. He was never told that he would be quarantined at an unknown Government facility. The Applicant travelled to Guyana on board the Trans-Guyana flight on 25 March 2020. On arrival he was met with persons in Hazmat suits. He and other passengers were made to put on masks and taken by bus to Camp Madewini under police escort. The Applicant said that he was told by the armed forces that he could not contact his family pursuant to the Order issued by His Excellency the President David Granger. He said that he and other passengers were questioned by persons appearing to be doctors regarding whether they had any symptoms of the Corona Virus and their travel history. They were then shown to their accommodations. The Applicant said he attempted to update his parents via cellular phone but was prevented from so doing after being informed that he was disclosing classified information. The Applicant said that he refused to sleep in the accommodation because they were deplorable and unsanitary and he was required to share a room with four strangers.

[4] The Applicant contended that the setting at Camp Madewini fails to adhere to the International standards laid down by the World Health Organisation in 'Consideration for quarantine for individuals in the context for containment of the Corona Virus Disease' dated 29th February, 2020 which include:

(1) Those in quarantine to be placed in adequately ventilated, spacious single rooms, with ensuite toilet (hand hygiene and toilet facilities). Where single rooms are unavailable, beds should be placed at least 1 meter apart.

(2) Suitable environmental infection controls, such as adequate air ventilation, filtration systems and waste management protocols.

(3) Maintenance of social distancing (more than 1 meter) of the persons quarantined.

(4) Accommodation with an appropriate level of comfort including: food, water and hygiene provisions.

(5) Protection for baggage and other protections

(6) Appropriate medical treatment for existing conditions

(7) Assistance for quarantined travelers isolated or subject to medical examinations or other procedures for public health purposes

(8) Assistance with communication with family members outside the quarantine facility.

[5] The Applicant said he is required to share a room which is not adequately ventilated with strangers as they are no single rooms with beds less than one meter apart. Further he is forced to share two bathrooms and two toilets which are in deplorable conditions and has no access to sanitation facilities apart from the one bar of soap he given to him. He was provided with cold meals and upon requesting water was told that there was no bottled water and water which would be dispensed from five gallon water bottles would be available by midday. He said he was forced to sleep on a wooden bench outside the rooms for fear of being contaminated with Corona Virus from others. He said that he was told by Officials that if he tested negative for Corona Virus that they will still keep him at the Camp for fourteen days. He said he was not tested and there was no follow up by the doctors at the Camp. The Applicant said he was unaware of the plans of the authorities and his family has not been given any official information. The Applicant contended that he had been unlawfully detained and his constitutional rights had been violated in that he was arbitrarily quarantined and deprived of his personal liberty, subject to inhuman or degrading punishment and deprived of his freedom of movement. Further the Order made by the President was made under the Public Health Ordinance Cap 145 an inapplicable statute. In a supplementary

affidavit the Applicant's father deposed that his son was willing to self-quarantine at his home if he was released.

[6] In an affidavit of Defence deposed to by Karen Gordon-Boyle the Deputy Chief Medical Officer she stated that the Ministry of Public Health mandated that institutional quarantine was mandatory for passengers who arrived in Guyana after the airports were closed. She said that since the Applicant arrived in Guyana after 18 March 2020 after the airports were closed he was subject to institutional quarantine. She stated further that the protocol established by the Ministry of Health in accordance with World Health Organisation guidelines was a requirement of institutional quarantine for a minimum period of fourteen days and if symptoms are detected persons will be subjected to further detention. She said that institutional quarantine served the dual purpose of protecting against potential risk and spread of Covid-19 and provided a secure healthy environment in which suspected persons could be observed in keeping with WHO protocols. She said that to protect the wider society the President gave a clear mandate in a Direction published in the Official Gazette on 16th March 2020 that the Minister of Public Health may cause to be provided in any part of Guyana as he or she may deem fit one or more hospitals or camps for the reception, isolation and treatment of persons suffering from Covid-19 and further that the Minister of Public Health shall take measures to (a) restrain, segregate and isolate persons suffering from the disease or who may be likely from exposure to the infection suffer from the disease. She stated further that persons who are tested constitute suspected cases where persons have severe acute respiratory symptoms and a history of travel to or residence in a location reporting community transmission during the fourteen days prior to symptom onset; persons with acute respiratory symptoms who have been in contact with a confirmed or probable case in 14 days or persons who would have worked in or attended a facility where a probable or confirmed case was attended or treated. She said that certain areas were designated by the Ministry of Public Health as quarantine areas and the Applicant was carried to one such area. She said that the designated quarantine area was equipped with food, water, sanitary equipment, an administrator and medical personnel to address the needs of persons taken there which met WHO standards. Further the designated quarantine area is properly sanitized and social distancing rules are being complied with. She said that that the Applicant is still under observation and within the 14 days incubation and it would be a breach of protocol for him to be released before the expiry of the 14 day

incubation period and that the protocol was for the safety of the Applicant and his family and the wider public. She said that she was advised by her lawyers that the Applicant's fundamental rights are not absolute and may be curtailed for public health reasons. Further that the Applicant was held lawfully in the public interest and in accordance with the direction of the President under the Public Health Ordinance Cap 145 and that the court ought to refrain from addressing issues of policy which ought to be left to the Executive.

Submissions in the lower court

[7] The Applicant complained that the facilities put him at risk of contracting the Corona Virus because the facilities did not provide for isolation of individuals. He argues that the Order made by the President on 16th March 2020 could only be implemented in a manner that does not contravene the rights of the Applicant and that the State must provide facilities commensurate with Corona Virus.

[8] He said that while it is undisputed that persons testing positive for Corona Virus can be quarantined, the Applicant had never been tested and there is no evidence that he had the Corona Virus. The Applicant submitted further that his detention is unlawful and that there is no lawful authority provided by the President's Direction to arbitrarily place persons in group quarantine which is contrary to international standards and the public message of the Ministry of Health. He submitted that persons suspected to have been exposed to the Corona Virus were to be individually isolated and to isolate them in a group puts them all at risk. He said that there is no lawful authority for the State to place a citizen in circumstances that would increase the tendency for that citizen to contract a fatal disease.

[9] The Respondents submitted that the Applicant had not challenged the Directions issued under the Public Health Ordinance as being as unlawful and unconstitutional and as such there remains the presumption of constitutionality and that the Directions are lawful, reasonable and justified given the circumstances surrounding the Global pandemic called COVID-19.The Respondents quoted several cases where the courts ruled in favor of public health policy objectives and held that constitutional rights are subject to reasonable and justifiable limits. They further submitted

that the matters before the court are policy decisions purely for the executive and the court would not be competent to address matters of urgency and necessity to issue public health directives in relation to Covid-19.They submitted that the exercise of power by the State to preserve the public health was reasonably and fairly exercised and has not been abused and there is no evidence of ill intent or arbitrary conduct perpetuated by the Executive against the Applicant. They submitted that the institutional quarantine of the Applicant for a minimum of 14 days, an internationally recognized standard sanctioned by the WHO was intended to safeguard against the spread of the Corona Virus and the facilities met the standards set by the WHO. They argued that the Applicant's release before the 14 day incubation period would expose Guyanese to unnecessary and unavoidable risk and open the floodgates to allow persons in quarantine to defeat the safety objectives that the Ministry of Health are trying to protect against.

[10] The issues for determination of this court are:

(1) Whether this court has jurisdiction to hear the application and the appeal against the decision of the Honourable Justice Brassington Reynolds dated 2 April 2020; and,

(2) Whether the Applicant was unlawfully detained by the Respondents in breach of his fundamental rights guaranteed by the Constitution;

1. Whether this court has jurisdiction to hear the application and the appeal against the decision of the Honourable Justice Brassington Reynolds dated 2 April 2020;

[11] Counsel for the Respondents submitted that this court lacked jurisdiction to hear the Appeal because the Appellant contended that his constitutional rights have been violated and Article 133 provides that appeals from decisions regarding the contravention of the provisions of Articles 138 to 151 lie to the Court of Appeal.

[12] The Appellant filed an application in the court below for the issue of a Writ of Habeas Corpus. The Civil Procedure Rules 2016 Rule 57.01(1) mandates that such an application must be made by way of Fixed Date Application.

[13] In **Chandroutie Persaud & Rafudeen Nizamudin vs. Javen Jason Nizamudin** [2020] CCJ 4(AJ) S the apex court endorsed the Guyana Court of Appeal's finding that Fixed Date Applications were summary proceedings and that an Appeal filed against orders in such cases properly lay to the Full court it being by nature created for expeditious determination.

[14] Discussing this issue at paragraphs 10 to 13 the court had this to say:

> "[10] Based on these points the Court found that 'summary proceedings' under section 6(2)(a)(i) had two main features: being 'short, speedy, without delay or formality' and its process not following that of a full trial or regular common law process. This Court therefore agrees with the Court of Appeal that the combined effect of the provisions leads to the inevitable conclusion that appeals against orders made under Order 12 of the Rules of the Court should lie to the Full Court.
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> [11] The Court also assessed the CPR 2016 and found that generally there were two kinds of originating processes in the civil jurisdiction, those commenced by Statement of Claim and *Fixed Date Application*. The Court noted the differences in proceedings initiated by *Fixed Date Applications as being created for expeditious determination*. *One of the features noted was the prescription by Part 8 of the CPR 2016, that matters commenced by Fixed Date Application must be able to be determined at the date fixed for hearing of the application.* The Court stated that an analysis of the CPR 2016 supported the overriding objective of dealing with cases justly and in pragmatic ways.
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> [12] *The Court found that matters which could be dealt with expeditiously, such as Fixed Date Applications were summary proceedings and if taken on appeal to the Full Court, could be dealt with in a timely manner as opposed to the Court of Appeal.* The effect of this was the increased efficiency of the Guyanese court system. The Court stated that the result of the statutory interpretation, through evaluation of textual meaning, context, local legal custom and policy, aligned with the practical consequences of excluding certain matters from the Court of Appeal's jurisdiction.
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> [13] In the Court's view, an assessment of all these considerations resulted in the - application for special leave being refused. The action commenced by Javen on 16 April 2018 was decided by 12 June 2018 in a relatively swift and simple manner with no need for

a full trial. For the purposes of section 6(2)(a)(i) of the Court of Appeal Act of Guyana, the instant proceedings were found to be summary proceedings and therefore the Full Court of the High Court was the proper place for the appeal. The CCJ found that the Court of Appeal was correct in striking out the Applicants' appeal for lack of jurisdiction and as such the application for special leave in this case had to be refused, since it was 'devoid of merit and bound to fail.'

[15] Notwithstanding, the Appellant's contentions that his fundamental rights were violated, his application by way of Fixed date application sought a writ of Habeas Corpus, relief from his alleged unlawful detention by the State. His application was filed on 27th March 2020 and determined on 2 April, 2020. His application was a summary proceeding it being dealt with expeditiously without a full blown trial.

[16] I find in the circumstances that an appeal from the decision of the Honourable Justice Reynolds dated 2 April, 2020 properly lies to the Full Court of the High Court.

2. Whether the Appellant was unlawfully detained in breach of his fundamental rights;

[17] Article 139(1) (g) provides that no person shall be deprived of his personal liberty save as may be *authorized by law* for the purpose of preventing the spread of an infectious or contagious disease.

[18] Article 148 provides that no person shall be deprived of his freedom of movement. Article 148(3)(b) further provides that nothing contained in or done under the *authority of any law* shall be inconsistent with or in contravention of this article to the extent that the law in question makes provision for the imposition of restrictions on movement within Guyana that are reasonably required in the interests of public health.

[19] The fundamental rights as guaranteed by Articles 139 and 148 are not absolute. These rights may only be curtailed in the case of Article 139(1) (g) by a law authorized to prevent the spread of an infectious disease and in the case of Article 148 a law that provides for the imposition of restrictions of movement reasonably required in the interest of public health.

[20] The Public Health Ordinance Cap 145 is a law that authorizes the imposition of restrictions on movement reasonably required in the interest of public health and deprivation of personal liberty to prevent the spread of infectious diseases. See Section 21(1) (a).

[21] The Ordinance establishes a Central Board of Health. Section 19 of the Ordinance defines the expression "infectious disease" and mentions specific diseases (not Covid-19). However it extends the definition therein to include any other disease the Board may declare to be an infectious disease. Section 21 further provides that the Board shall have the direction of all measures dealing with certain infectious diseases and may make regulations regarding the control of any such disease for the purpose of restraining, segregating and isolating persons suffering from such a disease or *likely from exposure to infection to suffer from any such disease*. This section contains a proviso which allows the President to exercise powers of the Board as it relates to the direction of measures if necessity arises.

[22] This Court has noted that although the Appellant stated in the lower court that the Order of the President was made under an inapplicable statute he abandoned this argument in his submissions concentrating solely on the issue of whether group quarantining breached the President's order and the WHO guidelines. In his written submissions to this court he sought to impugn the validity of that order by arguing that it was not validly made pursuant to the Public Health Ordinance Cap 145. He argued that pursuant to the Ordinance the President could only assume the powers of the Board to issue directions for measures after the Board declared Covid to be an infectious disease.

[23] It is to be noted that no evidence has been led as to whether or not the Central Board of Health has met and so declared. In the absence of such proof there is a presumption of regularity and the court must assume the order was validly issued. See **Surratt Vs Attorney General of Trinidad and Tobago** 71 WIR 391 at 409.

[24] This court must not steer away from the core issue which is to decide whether the learned judge erred in refusing the order sought based on the material that was before him and not what was

not. This argument and the Appellant's new argument raised mere hours before the delivery of this decision was due that the President could not delegate his statutory powers was certainly not raised before the hearing judge and the Appellant cannot be permitted to raise these matters on appeal. In this regard, I must say I have read the decision of my sister Judge and fully agree with and endorse her decision especially those on this issue.

[25] The Order given under the Public Health Ordinance Cap 145 by the President declared COVID-19 an infectious disease and directed certain measures in accordance with the Public Health Ordinance and international standards to prevent and control the disease and enjoined the Minister of Public Health among other things to take measures to restrain, segregate and isolate persons suffering from the disease or *who may be likely from exposure to the infection suffer from the disease*.

[26] In paragraphs 12 of the Appellant's submissions in the lower court and this court he states that the substance of the President's order was that "suspected cases of the corona virus would be subject to self-isolation and confirmed cases would quarantined in groups at designated centers". This is also repeated in paragraph 25 of his Submission in Reply. He further submitted that the order speaks to quarantine for persons who are Covid positive.

[27] Upon reading the order it is apparent that those words and or the effect of those words do not appear anywhere in the order and averments in those paragraphs were clearly a manifestation of the Appellant's subjective interpretation.

[28] The thrust of the Appellant's complaint is that the facilities at Camp Madewini do not meet international standards which require persons who are suspected to have been exposed to the Corona virus to be individually isolated and not group quarantined as the latter puts the Appellant at greater risk for contracting the disease.

[29] According to the WHO Considerations for quarantine of individuals in the context of containment of corona virus disease (COVID -19) Interim guidance dated 29th February 2020 which were exhibited to the Appellant's affidavit in the lower court and which are found at pages 40 to 42 of

the Record and above the ideal quarantine arrangement is to place an individual in a single room. If this is not practical the recommendation is that beds are placed one meter apart and social distancing of more than one meter be observed. Having examined the exhibits attached to the Appellant's affidavit found at pages 43 to 49 of the Record I fail to see how the quarantine setting at Camp Madewini fails to meet the minimum WHO standards. For example, the bunk beds appear to be in excess of three feet apart in height and width. The room is without the usual comforts and fineries one would expect at home and I do not know if the black and white images deceive the court but the room appears to be clean, well ventilated and uncrowded. The Appellant himself said in his affidavit that he was required to share a room with four persons. It is noteworthy that there is no medical evidence called on the part of the Appellant which suggests that his health is put at risk by being in this setting. It is noted that the Applicant mentioned in his submissions that persons were released and or joined the camp before the expiration of 14 days. This information did not form part of the body of evidence contained in the Appellant's affidavit in support of his application which the learned judge had to consider.

[30] The Appellant travelled from countries hit by Corona Virus. He knew prior to coming to Guyana that he had to obey all recommendations as published by the Ministry of Health. In fact before the arrival of the Appellant the Ministry of Health published preventative measures from 17 to 20 March 2020 on the Department of Public Information's website. Under the Head of Ministry of Public Health the measure at No 12 reads: "No more self-quarantine. All suspected probable and confirmed cases of Covid 19 will be quarantined at a Ministry of Public Health facility.

[31] According to WHO quarantining involves the restriction of movement or separation of healthy individuals who may have been exposed to the virus from the rest of the population with the objective of monitoring symptoms and the early detection of cases and is different from isolation which is the separation of ill or infected persons from others so as to prevent the spread of the infection or contamination.

[32] The law leans in favour of limiting fundamental rights in the interest of the public health to detect, prevent contain and eliminate infectious diseases. In this regard the submissions at paragraphs 26 to 42 of the Respondents submissions on this issue are fully endorsed and approved by the court.

[33] This court does not find any merit in the grounds of appeal cited. Despite the fact that the learned judge took into consideration the establishment and work of the Covid 19 National Task Force and the index and mortality rate which were not part of the evidence, this court does not find that the learned judge erred in refusing the order sought in the interest of the public health. The Appellant's detention is lawful. The Appeal is refused. The decision of Justice Brassington Reynolds dated 2 April 2020 is affirmed. Costs are awarded to the Respondents in the sum of 250,000.

[34] It is not in dispute that quarantine is a public health measure to prevent the introduction of the disease to new areas or to reduce human to human transmission in areas where the virus is already circulating.

[35] This court is in no way attempting to usurp the functions of the executive by making policy decisions but encourages the relevant authorities when implementing quarantine to provide to the public with clear, comprehensive and consistent guidelines which are fully respectful of the dignity, human rights and fundamental freedoms of persons. These guidelines should be communicated effectively to reduce panic and promote compliance.

Priya Sewnarine-Beharry
Puisne Judge

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[36] **CORBIN-LINCOLN, J**.: I have read the judgment of my sister Sewnarine-Beharry J and agree with her reasoning and conclusions**.** I would however wish to make a few minor observations

[37] The background of this matter has been extensively detailed by my sister judge. It is important to note that the sole relief sought by the Appellant was for a writ of habeas corpus the "essence" of which is to secure the release of a person in unlawful or unjustified detention.

[38] The Appellant's affidavit in support of the Fixed Date Application states, among other things, that "*The order made by the President was made under the Public Health Ordinance chapter 145 which is an inapplicable statue"*[1]The Appellant contended breaches of Articles 139 and 148 of the Constitution in support of his contention that his detention is unlawful.

[39] It appears to me that the stated challenge to the order made the President was at the heart of the Appellant's claim for a writ of *habeas corpus* since if the President's order upon which the Minister of Health purported to act was unlawful then there would be no lawful or justified basis for the Appellant's detention.

[40] However, notwithstanding the assertion that the order made by the President was made under an **inapplicable** statute this argument was not pursued in the Appellants submissions made before the lower court. Rather, the Appellant shifted its position and argued that the imposition of group quarantine by the Minister of Heath was outside the scope of the order made by the President since the order only provided for the quarantine of persons who tested positive for Covid 19. Counsel for the Appellant submitted:

> " *The order made by the President on 16th March 2020 could only be implemented in a manner that does not contravene the rights of the Applicant. The State must provide facilities that are commensurate with the corona virus. There is no isolation possible in the facilities and the risk of cross contamination is great.*
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> *The Respondents in the affidavit filed herein contend that persons can be quarantined who test positive for the corona virus; this is not disputed, but is of no moment in this case because the Applicant has never been tested and he [sic] there is no evidence that he had the corona virus.*
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> *The Applicant submits that his detention is unlawful. There is no lawful authority provided by the President's order of 16th March 2020 to arbitrarily place persons in group quarantine.*

[1]Paragraph 36 of the appellant's affidavit in support of the Fixed Date Application

This would be contrary to international standard and the public message of the Ministry of Public Health. Persons who are suspected to have been exposed to the corona virus are to be isolated 'individually isolated. To isolate them in a group puts all the other persons in the group at risk.

There is no lawful authority for the State to place a citizen in circumstances that would increase the tendency for that citizen to contract a fatal disease. This is a violation of the Applicant's right to life and liberty. The State cannot place a person in forced custody in a manner that threatens their well being and life without a lawful reason. If the Applicant had tested positive for the corona virus then his quarantine with other persons similarly affected would be lawful. "

[41] The Appellant therefore appeared to have abandoned the issue of the lawfulness of the order made by the President. This was therefore not an issue for determination by the learned trial judge as he so noted.

[42] On appeal to this court the appellant seeks to raise in *written submissions* both issues of fact and law not raised before the trial judge and *not* stated in **his grounds of appeal.**

[43] The Appellant in written submissions to this court contends that the order made by the President under the Public Health Ordinance was invalidly made since the Central Board of Health had to first declare Covid-19 an infectious disease before the President could make the order. Counsel submitted before this court that:

"*The President made an Order on 16th March 2020 (pages 38-41 of the Record) ("the Order"). The Order is purportedly made pursuant to the Public Health Ordinance. The Order is invalidly made; not as a violation of the Constitution (the constitutionality is not admitted) but pursuant to the Ordinance from which it claims validity.*

The Order purports to have been made pursuant to s. 20 and s. 21 of the Public Health Ordinance. It is stated to be founded upon principally on s. 21(1) which would seem to authorise the President to act in relation to any infectious disease without waiting on the Central Board of Health ("CBH") in the case of an emergency. However, he could only act in relation to a 'declared' infectious disease. By s. 19 of the Ordinance only the CBH could declare a disease to be an infectious disease. It would mean that although the President can

act in the case of emergencies he could not so act if it's a 'new' disease. The COVID-19 virus was only discovered in January 2020; so it's fair to say it's new. It is not in dispute that the orders are not made with reference to the Constitutional powers vested in the President."

[44] As stated, the issues of whether or not the CBH complied with the relevant sections of the Public Health Ordinance and whether the President could issue the orders he did in the event it was found that the CBH did not comply with the Ordinance were not raised in the court below either by way of laying some evidential foundation (in affidavits) or in submissions. The Respondents therefore had no opportunity to respond to any evidentiary matters pertaining to these issues. Further, these issues do not form part of the grounds of appeal. Part 62.01 (4) of the **Civil Procedure Rules 2016** states that an appellant may amend his grounds of appeal without permission 7 days before the date fixed for the hearing of the appeal or within 7 days of the date fixed for the hearing where the court considers the interest of justice requires it. There was no application to this court to amend the grounds of appeal.

[45] The Appellant raises what appears to be assertions of facts regarding the CBH for the first time in submissions to this court. Quite apart from submissions not being the place to attempt to give evidence there are established criteria for seeking to adduce fresh evidence on appeal.[2] An appeal court should be cautious before allowing a point to be raised which was not taken in the court below.[3] In the circumstances of this case where the failure to raise these issues (including adducing evidence) in the court below deprived the Respondent of an opportunity to respond I would not entertain these issues on appeal.

[46] In the court below the Appellant contended that the policy measure of quarantining persons who are not tested positive for Covid-19 is outside the scope of the President's order. The President's order gave the Minister of Public Health the power to take measures not only in relation to persons who have tested positive for Covid-9 but also to *"take measures to (a) restrain, segregate and isolate persons suffering from the disease,* ***or who may be likely from exposure to the infection suffer from the disease."***

[2]Ladd v Marshall [1954] 3 All ER 745
[3]Notting Hill Finance Limited v Sheikh [2019] EWCA Civ 1337

[47] The order made by the President therefore gives the Minister of Health a wide discretion to take whatever measures she deems necessary both in relation to persons who are suffering from the virus and those who are likely to have been exposed to the virus. The Minister of Heath clearly deemed the Appellant and other persons who were on the flight from Barbados as persons who may likely to have been exposed to the virus and therefore chose to implement the measure of quarantining those persons. There is nothing in the Presidential order which restrains the Minister of Health from imposing group quarantine and only imposing individual isolation

[48] The assertion by the Appellant that his quarantine is unlawful because he has not tested positive for Corono-19 and because he has been subject to group quarantine which is outside the scope of the order by the President is without merit.

[49] The Appellant failed to establish even a prima facie case that his detention was unlawful or unjustified and consequently the learned trial judge did not err in refusing the application.

Fidela Corbin Lincoln

Puisne Judge