

**IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE OF
GUYANA**

**PROCEEDING FOR RELIEF UNDER THE SUPREME COURT OF
GUYANA CIVIL PROCEDURE RULES 2016 AND THE CONSTITUTION
OF THE CO-OPERATIVE REPUBLIC OF GUYANA**

2020-HC DEM-CIV-FDA-

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-

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

Respondents

APPEARANCES:

Mr S Datadin for the Applicant

Mr B Williams, SC, Attorney General, In Person

Mr N Hawke, Ms D Kumar, and Ms B Bishop-Cheddie for the Second
and Third-named Respondent

RULING IN APPLICATION BY KENNARD GOBIN

The fixed date application before this court dated 27th March 2020 prays for the issuance of a writ of habeas corpus pursuant to Part 57 of CPR 06, and for the release of the applicant from institutional quarantine imposed by the state of Guyana upon his return to this country on the 25th of March 2020. The Repondents consolidated their defences and relied upon the same submissions. The court exercised the discretion conferred upon it by Part 57:01(1) (b), opting in the prevailing Covid-19 circumstances to first cause notice to be sent to the Respondents to determine whether a prima facie case could be established.

BACKGROUND

The deadly coronavirus covid-19 made landfall in Guyana on the 7th of March 2020 with the arrival from the United States of its first confirmed case of the disease. This index case succumbed to the disease on the 11th of March 2020.

Since then Guyana has joined the rest of the world in its attempt to stem the spread of this dreaded pandemic.

The daily figures posted in various sites across the globe continue unabatedly to drive fear and terror into the hearts of many. Guyana's tally of confirmed cases now stands at 19, up 7 from 12 in the last 36 hours.

The death toll locally stands at 4, ranking Guyana's death to infection ratio at close to 25%, being way above, the 2% maximum death to infection ration projected for more developed jurisdictions with significantly greater capacities to treat with the virus.

It is incontestable that every living human, bar none, has a vested interest in checking the spread of this pandemic.

The State's efforts at interdicting this scourge places an incalculable burden on the state. It puts at risk all front-liners who must leave their homes and families and place themselves at risk and in harm's way, in the line of duty, to ensure citizens compliance with nationally approved protocols.

The State has a constitutional duty to the citizens of Guyana to protect them from anything that would put at risk their well-being, safety and security. In some instances that means curtailing the freedoms we all hold so dearly. That is why the government imprisons people who commit heinous crimes; that is why the government quarantines animals.

Cumulatively articles 139 (1)(g) and 148(3)(b) of the Constitution create these duties, obligations and responsibilities in the State and through its enabling legislation the Public Health Ordinance, Cap 147 invests the Minister of Public Health and related state agencies with the requisite authority to discharge and enforce these obligations.

The government would be remiss in its duty if it were not to exercise such due care as it is required by the Constitution and the enabling legislation made pursuant thereto

The President appointed Prime Minister Moses Nagamootoo Chairman of the National COVID-19 Task Force. The Task Force has drafted a

National Strategic Master Plan that guides our approach to combatting the Novel Coronavirus Disease.

On Monday, 16TH March 2020, the President issued directions under the Public Health Ordinance (Cap.145) and international standard to prevent and control the spread of this disease.

By that Order, the President has directed ed the Minister of Public Health to take all measures considered necessary to restrain, segregate and isolate persons suffering from the disease and, or who may be likely to be suffering from the disease.

The public must adhere to infection prevention and control measures as personal conduct is the single most important element in preventing the spread of this deadly disease.

The Minister of Public Health has established the Health Emergency Operations Centre. The Centre has been conducting screening, testing and quarantining and, when necessary, isolating those who have been

suspected in having contracted the virus or those who may have come into contact with infected persons.

The National Task Force continues to monitor the situation in Guyana, including importantly, the conduct of citizens in response to the measures rolled out by the Public Health Ministry in this regard. Concerns have been expressed that too many citizens and businesses have been ignoring public advisories and warnings.

There can be no doubt that the cavalier conduct by persons in the face of this global pandemic can seriously impair the State's efforts to combat COVID -19 and cause devastating consequences for our entire nation.

ANALYSIS

The President has invoked the Constitution of Guyana and the provisions of the public health ordinance and has given express directions to curb the spread of covid-19. These directions apply to everyone within Guyana.

It is worthy to note that no matter how careful and diligent the applicant undertakes to conduct himself, nor how extensive the measures he may propose to guarantee same, as outlined in his supplementary affidavit, if granted, the relief which he seeks, would serve not only expose his own family to unnecessary risk, and possibly death, but to expose hundreds and quite possibly hundreds of others. The logistics and other responsibilities for enforcing the arrangements he proposes remains that of the State's constitutionally and statutorily and could not be delegated or outsourced for any reason whatsoever.

Nothing averred therefore in the affidavit in support of his application nor in the supplementary affidavit meets the threshold of sufficiency required to warrant the intervention which he seeks.

While the applicant does not dispute the validity of the order but rather takes issue more particularly in paragraphs 24 and 34 of his affidavit with its implementation or execution, the court is mindful of the unchallenged evidence disclosed in the Affidavit of the deputy chief medical officer, Dr Karen Boyle which clearly discounts his claims insofar as the sufficiency

of the measures put in place by the state are concerned. See paragraphs 29 through 40 of her Affidavit. The applicant's claim remains therefore, for the most part, speculative and unsupported either by data or medical theory.

The observations of the Supreme Court Canada in the case of the **R v Oakes, 10 B.C.R 99** bears repetition in this regard -

" Central criteria must be satisfied to establish that the limit is reasonable and demonstrably justified in a free and democratic Society. First, the objective to be served by the measures limiting a right must be sufficiently important to warrant overriding a constitutionally-protected right or freedom... at a minimum, an objective must relate to societal concerns which are pressing and substantial in a free and democratic society before it can be characterized as sufficiently important".

This court is satisfied on the evidence, that when placed in the national context, the measures introduced by the government of Guyana are not arbitrary, and they accord reasonably with International guidelines to

prevent, detect, contain and eliminate the spread of the deadly virus covid-19.

In resolving the collision of the legitimate, meaning the constitutional rights contended by the applicant and those of the wider Guyanese community inclusive of his own family) the court had recourse to the proportionality test, a legal method used by courts, typically constitutional courts, to decide such cases, where legitimate rights collide.

It is common in such cases that a resolution necessarily leads to one right prevailing at the expense of another. In order to decide such cases correctly, the court must balance (or weigh) the respective rights against the damage likely to accrue from a judgment resulting in their denial.

In applying the theory of proportionality in that regard, the court considered that it was the applicant who first placed himself voluntarily in a small plane with other similarly circumstanced citizens, with limited ventilation and recycled air and traveled together with them in that confined space for close to three hours being fully aware that he and the

other passengers would be institutionally quarantined upon arrival in Guyana.

The test discloses that the risk of damage which would accrue to the wider community if the Court were to accede to the applicants request far outweighs those which would accrue to the applicant were his request to be denied.

Paragraph 1(a) of the Directions Order issued by the President on 16th March, 2020 invests the Minister of Public Health with the requisite authority to prescribe measures for the isolation of persons who may have been so exposed. The applicant by travelling voluntarily on 25th March from Barbados on a small aircraft with other persons from countries known to have persons infected through local transmission, placed himself squarely into the category of persons so exposed.

That the measures have not yet been sufficiently detailed or reduced into writing for that matter are not without more grounds for releasing the

applicant from institutional quarantine. In fact, with the fluidity of the situation which confronts us, it may never become practicable to do so.

DECISION

The court being satisfied that the terms and conditions under which the applicant is currently institutionally quarantined fall well within the guidelines provided by the World Health Organization for such isolation, rules that the threshold of sufficiency (no prima facie case) has not been achieved by the applicant so as to warrant the issuance of a writ of habeas corpus.

In the premises the application is dismissed.

COSTS

In view of the profound public interest attending the resolution of this issue there shall be no order as to costs.

B G REYNOLDS, MSM

Judge

2020-04-02