SUPREME COURT OF SEYCHELLES

Reportable
[2021] SCSC 665
MC75/2020

In the matter between:

GIANNI BORDINO

DERBORA MALCUORI **Petitioners**
(rep. by F Elizabeth)

and

MINISTER OF EMPLOYMENT, IMMIGRATION AND CIVIL STATUS **Respondent**
(rep. by Ms Thompson)

Neutral Citation:	*Gianni Bordino and anor v Minister of Employment, Immigration and Civil Status*[2021] SCSC 665 MC 75/ 2020
Before:	Govinden CJ
Summary:	Judicial review; failure to givereasons; failure to be heard. Petition granted
Heard:	20th May 2021
Delivered:	18 October 2021

ORDER

[1] The decision of the Chief Immigration Officer in the Notice to Prohibited Immigrants has been given ultra vires to Section 19(1) (h) (i) and (ii) of the Immigration Decree and further the Respondent has infringedon the Petitioners'rights to fair hearing by failing and or refusing to consider the representation of the Petitioners made on appeal to him in accordance to Section 21 (2) of the same Decree..

[2] A writ of certiorari is issued quashing the decision of the Chief Immigration Officer to serve Notices to Prohibited Immigrants on the Petitioners and a writ of certiorari is issued quashing the decisions of the Respondent received by the Petitioners on the 3rd September 2020 instructing them to leave the country by the 17th of September 2020.

[3] The case isremitted to the Chief Immigration Officer and the Respondent for reconsideration in the light of this judgment.

[4] Cost is awarded in favour of the Petitioners.

JUDGMENT

R GOVINDEN CJ

The background and submissions

[5] The Petitioners invoke the supervisory jurisdiction of this Court by virtue of Article 125(1)(c) of the Constitution and seek a judicial review of the Respondent's decision taken on the 3rd of September 2020 requiring them to leave Seychelles and for a writ certiorari quashing the same. Further writs of Mandamus are called for compelling the Respondent to regularize the gainful occupation of the Petitioners in Seychelles.

[6] The Petitioners are husband and wife. On the 12th of November 2011, they obtained sanction from the Government of Seychelles and they purchased parcel number V17532 at Eden Island. The 1st Petitioner got a Residence Permit which expired on the 24th of October 2017, his wife and his two children were endorsed on this permit. On the 7th of August 2013, he obtained a Gainful Occupation Permit (GOP), which expired on 6th of August 2015. This GOP was later extended for another two years for him to work until 6th of August 2019. On the 18th of October2019, he made an application for a further extension of his GOP and he received a letter in reply dated the 13th of December 2019telling him that his application has not been approved.

[7] On the 16th of December 2019 he was served with a Notice to Prohibited Immigrant(PI Notice) dated 13th December 2019 declaring him a Prohibited Immigrant under Section 19 (1) (h) of the Immigration Decree and requesting him to leave the country before the

December 2019. The reasons given for declaring him a Prohibited Immigrant on the notice was that, *"In the opinion of the Chief Immigration Officer you are not of good Character"*. He gave instruction to his counsel to appeal the Respondent decision on the 16th of December 2019. He then received a letter from the Respondent dared the 17th of December 2019 informing him that he would be informed of the outcome of his appeal in due course. On the 3rd of September 2020 he however received a letter from the Respondent informing him to leave the country by the 17th of September 2020.

[8] As result, the 1st Petitioner avers that this amount to a failure of the Respondent to make a decision on his appeal though she had a statutory duty to do so. He therefore seeks the quashing of the Respondents decision by way of a Writ of Certiorari as he alleged that it amounted to an abused of process and a procedural irregularity; that it amounted to no reasons being given for the Respondents decisions; that it amounted to a breach of natural justice as the 1st Petitioner was not heard before the notice was issue to him and finally that the reason given for the his deportation is unlawful and contrary to Section 19 of the Immigration Decree.

[9] He further request that the court issue a writ of mandamus compelling the Respondent to extend the validity of the 1st Petitioner's Gainful Occupation Permit.

[10] As far as the 2nd Petitioner is concerned, she claims that she has applied for a Dependent's Permit and the Respondent has so far failed, refused or neglected to make a decision on her application.

[11] She also put into cause her non- renewal of a Gainful Occupation Permit. She avers that on the 5th of August 2014 she obtained a GOP with validity date up to 31st of August 2016 and that this permit was renewed up to August 2018. She applied for a new GOP to work for another employer on the 27th of August 2018. She was informed that this application was under consideration by way of a letter dated the 12th of October 2018 and that in the meantime her Visitors Permit had been extended up to 29th of October 2018 and that this permit was further extended until November 2018.

[12] On or around 16th of December 2019 she was, however, served with a Notice to Prohibited Immigrant dated 13th December 2019 declaring her a Prohibited Immigrant under Section 19 (1) (h) of the Immigration Decree and requesting her to leave the country before the 15th December 2019. The reasons given for declaring her a Prohibited Immigrant on the notice was that, *"In the opinion of the Chief Immigration Officer you are not of good Character"*. She appealed to the Respondent against this decision on the 16th of December 2019. On the 17th of December 2019, she received a letter from the Respondent informing her that she would be informed of the outcome of her appeal in due course. However, to date no such decision has been given by the Respondent.

[13] As a result, the 2nd Petitioner avers that this amount to a failure of the Respondent to make a decision on her appeal though she had a statutory duty to do so. She seeks the quashing of the Respondent's decision by way of a Writ of Certiorari as she alleged that it amounted to an abused of process and a procedural irregularity; that it amounted to no reasons being given for the Respondent's decisions; that it amounted to a breach of natural justice as the 2nd Petitioner was not heard before the notice was issue to her and at any rate she finally avers that the reason given for the his deportation is unlawful and contrary to Section 19 of the Immigration Decree.

[14] She further requests that the court issue a writ of mandamus compelling the Respondent to extend the validity of the 1st Petitioner's Gainful Occupation Permit.

[15] In an Affidavit in Reply, Mr Alain Volcere, the Principal Secretary of the Department of Immigration and Civil Status opposed the Petition.

[16] With respect to the claim of the Petitioners, Mr Volcere does not contest the facts as averred by them in their affidavits. However, he states that the last application for the extension of the 1st Petitioner GOP occurred approximately 2.5 months after the permit had expired and as such he had no valid status to reside in Seychelles as from the 7th of August 2019. He also avers that the Petitioners were served with the Notices to Prohibited Immigrants in accordance to law and that their appeals were properly considered by the Respondent.

[17] Mr Volcere avers that he has been advised and that he believes that the Respondent may in any case either refuse or grant a GOP subject to such condition and limitation without assigning any reason for that decision and that in addition that the Respondent may from time to time extend, revoke vary or modify the terms of a GOP and that in so doing he has an absolute discretion. Accordingly, to him, the refusal to extend the permit was reasonable and judicious.

[18] He avers further that in Seychelles there exist no duty for the 1st Petitioner to have been heard before his GOP was refused.

[19] This deponent also states that the decision to declare the 1st Petitioner as a Prohibited Immigrant was made after the Government had received credible information that on the 23rd October 2018 the Petitioners had been sentenced in the court of Busto Arsizo in Italy by the Chief Judge Dr Peragallo on case no 1113 of 2008 for criminal offences including diversion and concealment of assets causing an impoverishment of the company's assets, totalling several million euros. In addition, the Respondent was informed that the same court has declared the Petitioners fugitives from justice. In that respect, he avers that the 1st Petitioner was already a PI when he entered into Seychelles and he mislead the Immigration officer regarding his good standing with the law.

[20] Regarding the claim of the 2nd Petitioner, the deponent refutes the claim that she applied for a Dependent Permit's. To him, this permit can only be issued to a non-Seychellois who is married to a Seychellois and that the 2nd Petitioner's initial status was an endorsee on the 1st Petitioner's Gainful Occupation Permit. The decision on this matter was communicated to the 2nd Petitioner.

[21] When it comes to the claim of the 2nd Petitioner, relating to the failure of extension of her GOP, Mr Volcere used the same argument as put forward in respect of the 1St Petitioner's GOP, namely that Respondent may, in any case, either refuse or grant a GOP subject to such condition and limitation without assigning any reason for that decision. He stated that in addition, the Respondent may from time to time extend, revoke vary or modify the terms of a GOP and that in so doing he has an absolute discretion. Accordingly, to him, the refusal to extend the permit was reasonable and judicious.

[22] Finally, Mr Volcere reminded this court that it cannot compel the Respondent to grant or extend an application for GOP as this would inevitably lead to judicial control of the executive power which would in turn defeat the purpose of judicial review.

[23] For all these reasons, the representative of the Respondent avers that the petition must be denied.

[24] The parties before the court filed Written Submissions basically raising arguments in favour of their respective cases.

The law

[25] The jurisdictional provision under which this suit has been brought in, on the other hand, found in Article 125 of the Constitution, which provides as follows;

> *Article 125 (1) There shall be a Supreme Court which shall, in addition to the jurisdiction and powers conferred by this Constitution, have –*
>
> ...
>
> *(a) supervisory jurisdiction over subordinate courts, tribunals and adjudicating authority and, in this connection, shall have power to issue injunctions, directions, orders or writs including writs or orders in the nature of habeas corpus, certiorari, mandamus, prohibition and quo warranto as may be appropriate for the purpose of enforcing or securing the enforcement of its supervisory jurisdiction;*

[26] The provisions of the Immigration Decree that are relevant for the purpose of this case are as follows;

> *"14. (1) On application being made in the prescribed manner, the Minister may issue a dependant's manner, the Minister may issue a dependant's permit to any spouse or minor child a citizen of Seychelles who is not?*

(a) a prohibited immigrant; or

(b) the holder of a residence permit or a gainful occupation permit.

(2) A dependant's permit shall be issued for such period, and subject to such terms and conditions, as the Minister may determine.

(3) A dependant's permit shall cease to be valid if the holder?

(a) fails to enter Seychelles within 12 months of the date of issue or is absent from Seychelles for any period exceeding 12 months;

(b) is in breach of any condition of the permit;

(c) is convicted of an offence against this Decree; or

(d) is deported from Seychelles under section 23.

(4) The Minister may, from time to time, extend, revoke, vary or modify the terms of a dependant's permit.

(5) A dependant's permit shall not permit the holder to be gainfully occupied in Seychelles.

(6) The Minister may revoke a dependant's permit if?

(a) there has been any breach of any condition of the permit; or

(b) he considers it in the public interest to do so."

PART V – PROHIBITED IMMIGRANTS

19. *(1) The following persons, not being citizens of Seychelles, are prohibited immigrants-*

(a) any person who is infected or inflicted with or is a carrier of a prescribed disease and who is capable or likely to become capable of infecting any other person with such disease or of transmitting to him such disease;

(b) any prostitute or any person who in Seychelles has knowingly lived wholly or in part on the earnings of prostitution or has procured any other person for immoral purposes;

(c) any person who under any law in force at the time has been deported or removed from, required to leave, or prohibited from entering or remaining within, Seychelles:

Provided that a person with respect to whom the Director of Immigration is satisfied that the ground on which he was so dealt with no longer applies shall not be a prohibited immigrant;

(d) any person in Seychelles in respect of whom a permit under this Decree has been revoked or has expired;

(e) any person who-

(i) is likely to become a charge on the Republic in consequence of his inability to support himself or any of his dependants in Seychelles and to provide for the removal of himself or such dependants from Seychelles;

(ii) has contravened any provision of this Decree or has failed to comply with any lawful requirement made under this Decree; or

(iii) has made any false representation to or concealed any information from an immigration officer which is relevant to his entry into or presence within Seychelles;

(f) any person appearing before an immigration officer on entering Seychelles who is of the apparent age of 16 years or more and who, on demand by the immigration officer, fails to establish that he is the holder of a valid passport;

(g) any person entering Seychelles who is required under section 8 to appear before an immigration officer and who fails to comply with that section;

(h) any person who-

(i) has been sentenced in any country including Seychelles to a term of imprisonment following on his conviction for an offence and has not received a free pardon; and

(ii) in the opinion of the Director of Immigration is not of good character;

(i) any person whose presence in Seychelles is declared in writing by the Minister to be inimical to the public interest.

(2) Notwithstanding subsection (1), the Minister may exempt any person from the provisions of that subsection and until such exemption is revoked such person shall not be deemed to be a prohibited immigrant.

20. *(1) An immigration officer may, and, in the case of a person to whom section 19(1)(i) relates, shall, by notice served on any prohibited immigrant, require him to leave Seychelles.*

(2) A notice served under subsection (1) shall specify in relation to the person on whom it is served-

(a) the reason why he is considered to be a prohibited immigrant;

(b) the period within which he is required to leave Seychelles; and

(c) the manner and route by which he shall travel in leaving Seychelles.

(3) The period within which a person shall be required to leave Seychelles shall, except in the case of a person who within 7 days of his appearing before an immigration officer in accordance with section 8 has been served with a notice under this section, be not less than 48 hours and shall commence-

(a) in the case where such person does not make representations under section 21, from the time he is served with the notice requiring him to leave Seychelles; or

(b) in the case where such person makes representations under section 21, from the time he is advised such representations have not been successful.

(4) An immigration officer, may without warrant, arrest and detain a person on whom a notice under subsection (1) has been served while arrangements are made for such person to leave Seychelles.

21. *(1) Any person served with a notice under section 20 to leave Seychelles who, on receipt of such notice, has lawfully remained in Seychelles no longer than 7 days, may, within 48 hours of receiving such notice, deliver to any immigration officer, police officer or prison officer written representations to the Minister against such notice and such representations shall be placed before the Minister without delay.*

(2) If, after considering such representations, the Minister does not think fit to exercise his powers in relation to the issue of permits or the exemption of persons under section 19 (2), the person who made such representations shall be notified that his representations have been unsuccessful.

(3) The decision of the Minister under this section shall be final and shall not be challenged in ay court."

Issues for determination

[27] Having thoroughly considered the facts and circumstances in this case, in the light of the pleadings and the legal arguments presented, I have narrowed the issues left for this court determination to the following questions;

(1) Did the 2nd Petitioner apply for and was she unlawfully denied a Dependent's Permit;

(2) Was there a right for the Petitioners to be heard before decision was taken not to extend their respective GOP's ;

(3) Was there a right for the Petitioners to be given the reasons why they were being declared as Prohibited Immigrants and where they provided reasons for these decisions in this case ;

(4) Did the Respondent hear the appeals of the Petitioners in accordance to law.

Analysis and determination

(1) The denial of the 2nd Petitioner's Dependent's Permit.

[28] The 2nd Petitioner claims that she made two applications for a Dependent's Permit and both were unlawfully refused. The first one being made on the 18th of May 2011 and the second one on the 9th of May 2019. No supporting documents have been produced to support this contention. The Respondent refuted that she made such applications. In the circumstances I reject this claim on the basis of it being unsupported and untrue. Moreover, even if she had made those applications I find that the reply of the Respondent on this issue to be well founded in law as the Respondent under Section 14 (1) of the Decree can only issue a dependant's permit to a spouse or minor child of a citizen of Seychelles. The 2nd Petitioner being not a citizen did not fulfil the legal condition to be issued with a Dependent's Permit.

(2) The right of the Petitioners to be heard before the decision.

[29] An immigration officer, if he is satisfied that a non-Seychellois fits the conditions of Section 19(1) (i) he must, by notice, served upon that person (who is as a result considered as a Prohibited Immigrant), requiring him to leave Seychelles. A notice so served must contain the reason(s) why he is considered to be a prohibited immigrant; the period within which he is required to leave Seychelles; and the manner and route by which he shall travel in leaving Seychelles. This is what the provisions of the statute provides. There is accordingly no statutory requirement for the intended Prohibited Immigrant to be heard before the notice is issued.

[30] The Petitioners are however, inviting this court to read that right within the provisions based on fairness and the right to fair hearing. In order for this court to find in their favour on this issue it needs to be satisfied that there is a constitutional or legal basis for this argument. In exercising its supervisory jurisdiction, this court do not have an unlimited power to supervise the activities of administrative agencies. The principle of separation of powers dictates the various organs of the government are to act within the scope of their respective sphere of powers and refrain from interfering on matters that are exclusively entrusted to others by statutes. Accordingly, judicial review does not authorize the court an outright power to interfere on administrative matters. The rationale behind the need for the determination of the justifiable grounds of judicial review is, thus, to delineate the boundary where judicial review may be available to challenge administrative decisions.

[31] An intervention based on the Petitioners' argument here could only have been justified on the basis that this right is granted under the Constitution or by the provision of an Act.

[32] Article 18(7) of the Constitution provides as follows;

> 18 (7) *Any court or other authority required or empowered by law to determine the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial, and where proceedings for such a determination are*

instituted by any person before such a court or other authority the case shall be given a fair hearing within a reasonable time.

[33] Looking at the facts of the case, in the light of this constitutional provision leads me to the following conclusion. I am not satisfied that the Immigration Officer, when he was acting under section 19 (1) , he did so as an authority that required him to determine the existence or extent of a civil right or obligation. The Petitioners being non-Seychellois had no right to be present in the Republic of Seychelles. Their presence here is a privilege extended to them by the Republic of Seychelles. Though a certain level of fairness should have been granted to them, the law did not as such compel the establishment of a statutory authority under the provisions of the Decree that would have guaranteed them a right to be heard before the decision rendering them Prohibited Immigrants. As such, I am satisfied that this right of *audi alaterm partem* was not applicable to them. At any rate, the Decree does not prescribe such a right.

[34] In the case of *Timonina v Government of Seychelles* (CS 173/2007) [2007] SCSC 135 (12 December 2007) a similar argument as this one was presented by counsel with regards to the issuance of a Notice to a Prohibited Immigrant issued under Section 19 (1) (i) and that court held;

> *"Hence the obtaining of a GOP is not a right but a privilege. It can therefore be revoked in the public interest. If an initial application can be refused under section 17(4) without assigning reasons therefore, it can also be revoked under section 17(9) in a similar manner without reasons. A fortiori. where the Minister declares that the presence of a person who had been granted such GOP has become inimical to the public interest, he or she can be declared a prohibited immigrant under section 19(1)(i) of the Immigration Decree with the concomitant result that that person's GOP becomes revoked. In these circumstances, the decision of the Minister is neither illegal nor irrational."*

[35] It is worth noting that both Petitioners were without a valid permit when they made their application for a Gainful Occupation Permits and at that time, they were deemed Prohibited Immigrants by virtue of the Decree.

[36] Moreover, it appears that under the Decree the right to be heard is only given after the service of the Notice to a Prohibited Immigrant. This right is found under Section 20, which states that a person who is served with a Notice to a Prohibited Immigrant to leave Seychelles may make written representations to the Minister. After considering such representations, the Minister may exempt person under section 19(2) from the application of the notice.

[37] The facts shows that they exercise their right of appeal and to be heard under section 20 and 21 by way of their appeal of the 16th of December 2019. On the 3rd of September, they received letters from the Respondent informing them that they would be informed of the outcome of their appeal in due course. On the 3rd of September 2020, they however received a letter from the Respondent informed them to leave the country by the 17th of December 2020.

[38] Accordingly, I am of the view that the Petitioners had no right to be heard prior to the issuance of the Notice to a Prohibited Immigrant.

(3) Right to be given reasons for decision

[39] The third bone of contention in this case is the alleged breach of the rule of natural justice and the alleged procedural impropriety caused by the fact that no reason was provided for the decision to issue the Notices to Prohibited Immigrants upon the Petitioners and, which was further exacerbated by no reasons being given by the Respondent on appeal by the Petitioners.

[40] It is alleged that no substantial reasons were put forward in order to justify the dismissal of the appeals.

[41] This court in the case of *Sophia Esparon vs Minister of Land Use and Habitat, CS 72/19* granted a petition and justified the right to give reasons as follows, *"To my mind there are many valid reasons to justify the giving of reasons. In order to be acting lawfully, the decision maker must have reasons for the decision. To have to give them is likely to be some assurance that the reasons will be likely to be properly thought out and possibly good in law, for, having made them known, the decision will be open to scrutiny. The decision maker is likely to focus more carefully on the decision and minimise whim and caprice. Giving reasons is also "a self-disciplining exercise", Sir Louis Blom-Cooper, QC. In* R v. Islington LBC, exp. Hinds *(1995) 27 HLR 65 at 75 and in* Tramountana Annadora SA v Atlantic Shipping Co. *(1978) 2 All E.R. 870 at 872 Donaldson J stated "Having to give reasons concentrates the mind wonderfully".*

[42] In addition, to give reasons is to invite accountability and transparency and to expose oneself to criticism; this helps to ensure that power is not abused or arbitrarily exercised. This will in turn promote public confidence in the system.

[43] A further advantage of giving reasons is that the process will facilitate appeals and assist the Courts in performing their supervisory functions to know whether the decision maker or body took into account relevant considerations or acted properly. This might well reduce the number of unsustainable appeals. Reasons also provide guidance for future conduct and so deter applications, which would be unsuccessful. In short, it is essential for the efficient functioning of the machinery of good government.

[44] In the case *of Flannery v. Halifax Estate Agencies Ltd (2000) 1 W.L.R. 337 at 381, Henry LJ* stated that *"The duty is a function of due process, and therefore justice." .According to Lord Donaldson MR in R v. Civil Service Appeal Board, exp. Cunningham* [1991] 4 *All E.R. 310 "There is a principle of natural justice that a public law authority should always or even usually give reasons for its decision." Pill J.* similarly said *in R v. Crown Court at Harrow, exp. Dave, [1994] 1 All E.R. "A refusal to give reasons might amount to a denial of natural justice." Neill LJ. in Reg. V. City of London Corporation, Exp. Matson [1997] 1 W.L.R. 765 at 776 G-H* was also persuaded that natural justice required

that a decision not to confirm the appointment of an alderman should not be allowed to go unexplained and that reasons must be given.

[45] In Seychelles, there is no express general statutory duty to give reasons. However, it is apparent that the common law has developed to a stage that in almost every case where a right is affected or an exercise of discretion is involved, there is a duty on the decision maker to give reasons. Here, this duty has evolved out of the general principle of fairness and fairness runs across our constitution. .Constitutional justice imposes a requirement of procedural fairness and consequentially this necessitates a duty to give reasons. To not give reasons is the very essence of arbitrariness as one's status could be redefined without adequate explanation as to why this was done. Secrecy creates suspicion, justly or unjustly. This secrecy may also be described as the hallmark of inefficient and corrupt administration. Reasons must therefore be disclosed. Besides, the giving of good reasons would inevitably earn respect for the decision maker. Article 19 (7) of our Constitution obliges any authority empowered by law to determine any civil right or obligation the constitutional obligation to act independently; impartially and to give a fair hearing. I read within that the constitutional duty of a person acting as the Respondent, within a quasi-judicial capacity, to give reasons for his or her decision, as without that reason the decision becomes unfair.

[46] Within natural justice is the right to a hearing that is fair, and free from bias. The natural justice principle is bound up with reasons. If reasons are not given, the hearing would be incomplete and therefore unfair. It is for this reason that I find that the decision of the Respondent given in the letter dated the 7th of November 2018 to be procedurally improper and contrary to the duty to act fairly.

[47] In this case, the Petitioners were informed as follows "*"In the opinion of the Chief Immigration Officer you are not of good Character"*. This decision on appeal to the Respondent did not contain anything factual except that it informed them to leave the country by the 17th of December 2020. It is contended on the part of the Respondent, however, that it provided enough reasons to the Petitioners as in any case the Chief Immigration Officer may either refuse or grant a GOP subject to such condition and

limitation without assigning any reason for that decision and that in addition, the Respondent may from time to time extend, revoke vary or modify the terms of a GOP and that in so doing he has an absolute discretion. The Petitioners however argue otherwise and says that this does not amount to a reason at all.

If the Respondent and the serving Immigration officer was relying on the Section quoted in the PI Notice they needed to have substantiated the following provisions of the law upon which the Petitioners were served, namely that they have been sentenced in any country including Seychelles to a term of imprisonment following their conviction for an offence and has not received a free pardon; and in the opinion of the Director of Immigration are not of good character. However, this was not done and the mischief lies in the fact that only part of the reason that should have been given was given to the Petitioners, namely that provided for under Section 19 (h) (h) (ii), being the fact that the Petitioners are not of good characters. The cumulative reasons that they had been sentenced in any country to a term of imprisonment following their convictions for an offence and had not received a free pardon was not imparted to the Petitioners as required under Section 19 (1) (h) (i). This made the decision patently illegal for being ultra vires the said provision, put aside the fact that no or insufficient reason has been provided for the said decision.

[48] From the facts led before me, especially through the supporting Affidavit of the Respondent, it is evident to this court that the Respondent was aware that the Petitioners had been sentenced in the court of Busto Arsizo in Italy by the Chief udge Dr Peragallo on case no 1113 of 2008 for criminal offences including diversion and concealment of assets causing an impoverishment of the company's assets, totalling several million euros. In addition, the Respondent was informed that the same court has declared the Petitioners were fugitives from justice as it transpired from the affidavit of PS Volcere. If that were the case, the Petitioners should have at least been informed of their sentences.

[49] Furthermore, in accordance to section 19 (1) (h) the Petitioners needed not only to have been sentenced for a criminal offence but also that the sentences for this offence was one for a term of imprisonment and that they had not received a free pardon. Yet no averments

has however been made with respect to the nature of their sentences of the Petitioners in Italy and to the fact that they have not been pardoned.

[50] Accordingly, this court finds that the decision given is ultra vires; procedurally irregular; and unreasonable. It amounted to no reason being given at all.

(4) Right to be heard on appeal

[51] The last issue, which comes up for my determination, is whether the Respondent heard the appeals of the Petitioners in accordance to law. It is their cases that the Respondent erred in law when he failed, refused and or neglected to adjudicate upon their appeal but instead to issue the Prohibited Immigrant notices upon them. The uncontested facts of this case shows that both Petitioners appealed against their respective Notices to a Prohibited Immigrant and that on the 3rd of September they received letters from the Respondent informing them that they would be informed of the outcome of their appeals in due course. However, on the 3rd of September 2020 the Petitioners received letters from the Respondent informing them to leave the country by the 17th of December 2020.

[52] The gist of those letters are as follows, *"Further to the prohibited immigrant notice that was served on the 15th December 2019, you are being instructed to leave the country by the 17th September 2020".*

[53] The provision that relates to the adjudication of the appeal to the Respondent in such circumstances is found in Section 21 (2) of the Decree. This provision states as follows,

> *"If, after considering such representations, the Minister does not think fit to exercise his powers in relation to the issue of permits or the exemption of persons under section 19 (2), the person who made such representations shall be notified that his representations have been unsuccessful.*

[54] I need to find out whether the letter of the 3rd of September embraces the statutory requirements of Section 21 (2) of the Decree as there is clearly no right to make viva voce

representation on the appeal. The appeal is considered and determined on the face of the representation.

[55] There is proof of a representation made by counsel for the Petitioners to the Respondent. That is the letter dated the 16th of December 2019. This letter contains grounds appeal that raised numerous points, including some raised in this review. I am unaware whether this was placed before the Respondent without undue delay in accordance to Section 21 (1). However, Mr Volcere in his Affidavit admitted to the Respondent receiving this representation. I will take it therefore that an appeal was effected to the Respondent in accordance to law. That being the case, however, the Respondent's letter of the 3rd of September does not serve to show and in fact does not show that an appeal has been made and considered by the Respondent. It only refers to the original, pre appellate decision, being the Notices to a Prohibited Immigrant and an instruction to leave the country as a result of these notice. In fact, a plain reading of this letter gives the impression that the appeals were not only not considered by the Respondent but that it was also not made. As a result, there is a clear violation of the provisions of Section 21 (1) of the Decree as it denotes a failure or refusal by the Respondent to consider the appeal and representation of the Petitioners.

Final determination

[56] Accordingly, in my final determination, I find that the decision of the Chief Immigration Officer in the Notices to Prohibited Immigrants were given ultra vires to Section 19(1) (h) (i) and (ii) of the Immigration Decree and further that the Respondent infringed the Petitioners' rights to fair hearing by failing and or refusing to consider the representation of the Petitioners made on appeal to her in accordance to Section 21 (2) of the same Decree.

[57] For these reasons, I would issue a writ of certiorari and quash the decisions of the Chief Immigration Officer to issue the Notices to Prohibited Immigrants on the Petitioners and a writ of certiorari quashing the said decisions of the Respondent received by the Petitioners on the 3rd September 2020 instructing them to leave the country by the 17th of September 2020.

[58] The case is remitted to the Chief Immigration Officer and the Respondent for reconsideration in the light of this judgment.

[59] Cost is awarded in favour of the Petitioners.

Signed, dated and delivered at Ile du Port on 18th October 2021

R J Govinden
Chief Justice.