



**IN THE SUPREME COURT OF  
THE TURKS AND CAICOS ISLANDS**

**Action No. CL 94/21**

**BETWEEN**



**THE QUEEN ON THE APPLICATION OF**

**1.KAJEEPAN, PAINTAMILKAVALAN  
2.RASARATNAM, VARATHARAJ  
3.SIVAPALAN, JESEEPAN SWAPALAN**

**Applicants**

**-and-**

**1. HONOURABLE ARLINGTON MUSGROVE, MINISTER OF IMMIGRATION,  
CITIZENSHIP, LABOUR AND BORDER CONTROL (HER MAJESTY'S  
GOVERNMENT OF THE TURKS AND CAICOS ISLANDS)**

**2. THE ATTORNEY GENERAL OF THE TURKS AND CAICOS ISLANDS**

**Respondents**

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**JUDGMENT**

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**CORAM:** The Hon. Mr. Justice B. St. Michael Hylton QC (Ag)

**Appearances:** Mr Tim Prudhoe and Ms Andwena Lockhart for the applicants

Ms Clemar Hippolyte for the respondents

**Hearing Date:** 15 August 2022

**Venue:** Court No. 5, Graceway Plaza, Providenciales

**Date Delivered:** 29 August 2022

1. This matter has had a long, unfortunate and in some ways curious history. The basic facts are not in dispute. The Applicants are Sri Lankan nationals who arrived in the Turk and Caicos Islands in October 2019. They were detained on arrival. In June 2020 Immigration Officials secured the assistance of the UNHCR to conduct Asylum Interviews and to report to the TCI Government on their findings. On 19 June, 22 June and 23 June 2020, the UNHCR's Registration Associate and RSD Associate interviewed the Applicants.
2. On 25 September 2020, the Applicants applied for asylum in the Turks and Caicos Islands, and on 24 December 2020 the 1<sup>st</sup> Respondent (“the Minister”) refused the applications. The Applicants have issued various proceedings, related to their asylum applications or their detention, including these judicial review proceedings.
3. The “dispute” that led to these proceedings involved a decision to re-interview the Applicants. The relevant chronology can be summarised in the following way:

24 December, 2020: The Applicants were notified of the Minister’s decisions to refuse the grant of asylum.

8 January, 2021: The Applicants appealed to His Excellency the Governor against the Minister’s refusal decisions.

1 October, 2021: The Minister wrote a letter to the Applicants asking them to attend re-interviews.

14 October, 2021: The Minister wrote a second letter to the Applicants asking them to attend re-interviews.

8 November, 2021: The Applicants initiated the judicial review process by applying for and obtaining leave.

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4. The court was told that the re-interviews have taken place.
5. The Applicants contend that having made his decisions on 24 December 2020, the Minister was *functus officio*, and had no power to ask or require the Applicants to attend a second set of interviews. The fact that he did so, they argue, indicates that he must have abandoned his original decisions, and the court should therefore quash those decisions.
6. In their submissions before the court, the Respondents accepted that the Minister is *functus officio* and that the applications are not pending before him. They say that His Excellency the Governor requested the re-interviews to assist him in making a decision on the pending appeals, and that in the absence of any statutory restrictions on procedure, he is entitled to determine the procedure he will follow in deciding appeals.
7. In some respects, the evidence is not consistent with the Respondents' position. The Minister's letter dated 1 October 2021, is headed "Pending Asylum Applications in respect of Sri Lankan Nationals". Furthermore, in the letter the applications are referred to as "pending asylum applications" and the Minister indicated that the "...Asylum Applications are being progressed".
8. The Respondents' written submissions also suggest that the Minister is treating the applications as still before him and that he will be making a new decision. For example, the Respondents submitted that "the Appellants would be issued with the decision of the Minister, with a comprehensive reason for the decision and matters considered in arriving at same...The Appellants will receive detailed reasons for the decision in order to rule out any suggestions of arbitrariness and to enable them to adequately lodge any appeal in accordance with section 86 of the Immigration Ordinance." (My emphasis)
9. They then continued: "The question which the Court must consider is whether the requirement to submit to a further interview for the purposes of obtaining a complete and adequate

information in order to determine the pending application is unreasonable or unlawful". (My emphasis).

10. For the reasons that follow however, it is not necessary for me to resolve that factual dispute.
11. Pursuant to the grant of leave, the Applicants filed a notice of motion for judicial review seeking *inter alia*, an order to quash the Minister's refusal decisions. The motion does not set out any grounds. In response to a question from the court during oral submissions, the Applicants' counsel said that the grounds were the irrationality and illegality of the Minister's actions, referring specifically to steps taken to re-interview the Applicants.
12. The Applicants may well be right to question the legality or rationality of those actions, but those actions are not the subject of the notice of motion. These proceedings seek an order to quash the Minister's refusal decisions, and those decisions cannot be rendered irrational or illegal by his subsequent actions, even if those actions are themselves irrational or illegal.
13. On any view of the matter, the Minister's refusal decisions are the subject of pending appeals before the Governor. In those circumstances, any possibly viable judicial review challenge must relate to His Excellency's decisions on those appeals or his failure to make a decision.
14. As I observed at the start of this judgment, these matters have had a long and unfortunate history. There have been undue, unexplained delays and the State has taken questionable and sometimes inconsistent positions. However, the remedy cannot be to make an order that would also be questionable and contrary to principle.

15. In the circumstances and for these reasons, I dismiss the notice of motion. In view of the orders made by this court and the Court of Appeal in related proceedings ([2021] TCASC11, and [2022] TCACA, respectively), I make no orders as to costs.

**B. St. Michael Hylton QC**  
**Acting Judge of the Supreme Court**  
**29 August 2022**

