

**IN THE HIGH COURT OF ZAMBIA  
AT THE PRINCIPAL REGISTRY  
HOLDEN AT LUSAKA  
(Civil Jurisdiction)**

**2015/HP/784**

**IN THE MATTER OF: AN APPLICATION FOR ISSUE OF WRIT OF  
HABEAS CORPUS AD SUBJICIENDUM  
PURSUANT TO ORDER 54, RULE 1(2) OF THE  
RULES OF THE SUPREME COURT**

**IN THE MATTER OF: AHMED YOUNIS KAMAL ALDIN**

**BETWEEN:**

**AHMED YOUNIS KAMAL ALDIN**



**APPLICANT**

**AND**

**THE ATTORNEY GENERAL**

**RESPONDENT**

**CORAM: SIAVWAPA J**

***For the Applicant:***

***Ms. M. Marebesa-Mwenya of Messrs  
Legal Counsel, Legal Aid Board***

***For the Respondent:***

***Ms. M. Kapamba, Assistant Senior  
State Advocate, Attorney General's  
Chambers***

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**RULING**

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This is an application on behalf of the Applicant for a writ of habeas corpus ad subjiciendum. The Applicant is seeking an order of release on grounds that his detention is unlawful and malicious.



The originating notice of motion is supported by an affidavit filed into court on 28<sup>th</sup> May, 2015.

The Applicant, an Egyptian National, testified that he was apprehended by immigration officers on 13<sup>th</sup> May, 2015 and has been in detention at Lusaka Central Prison. At the time of his arrest the Applicant was not in possession of his passport as the passport bearing a 30 -day visa had allegedly been stolen, along with other documents, a few days before.

The Applicant's testimony before court was that he was arrested despite producing a police report on the missing passport and lodging an application with the Egyptian Embassy for a new passport.

The Respondent's Witness, King Levis Zulu, an Immigration Officer, testified that the Applicant was arrested for failure to produce his passport and illegal stay during a routine operation.

In her oral submissions in support of the application, on behalf of the Applicant, Ms. Mwenya relied on Sections 2 and 3 (1) of the Immigration and Deportation Act No. 18 of 2010. She submitted that the Act did not apply to the Applicant as he was married to a Zambian woman under customary law.

She, further, submitted that the Immigration Department unreasonably detained the Applicant beyond the stipulated 14 days as necessary verification had been made with the Egyptian embassy as to the truth of the Applicant's claim.

In reply, Ms. Kapamba argued, on behalf of the Respondent, that it was a fact that the Applicant did not possess valid documents at the time of his arrest. She submitted that the Applicant's detention was neither unreasonable



nor illegal, as the law allowed immigration authorities to extend detention for a further period of 14 days.

I have carefully considered both the pleadings filed and the oral submissions by both Counsel and it is not in dispute that the Applicant was not in possession of any document validating his stay in Zambia at the time of his arrest. It is my considered opinion, that the production of a police report and communication with the Egyptian Embassy was sufficient inquiry for the immigration authorities to determine the truth of the Applicant's claim as it relates to the theft of the passport. It was, therefore, inappropriate to detain the Applicant for a period longer than 14 days.

In any event, Section 38 of the Act entitles the immigration officer to detain a person suspected to be a prohibited immigrant for only a period of 14 days. There is no provision for extension. The detention period allows the officer to either confirm or dismiss the suspicion. Since section 38 of the Act does not provide for an extension as purported by both parties, it means that upon the expiry of the 14 days, the immigrant must either be released from detention if not charged with any offence under the Act and made to appear before court. It is clear in this case that the applicant has been in detention since 17<sup>th</sup> May 2015. That means that the 14 days period ended on 30<sup>th</sup> May 2015 two days after the application herein was filed into court.

At paragraph 5 of his affidavit in opposition, RW1, states that the applicant was subsequently charged under section 11(3) of the Immigration and Deportation Act No. 18 of 2010. There is however, no evidence that the applicant was made to appear before court before 30<sup>th</sup> May 2015.

As to whether or not section 3 of the Act applies to the Applicant, it is clear, from his own evidence, that the Applicant was not residing in Zambia under a spouse permit. He purports to have married under customary law and



exhibits a purported undated marriage agreement. However, I am not persuaded by that evidence as its authenticity is doubtful.

The Applicant, who claims to have been previously issued with employment permits, was relying on a visitors' permit as a lifeline to extend his stay in Zambia. And in the unlikely event that he had the full 90-day visa endorsed in his passport, he would have had to leave the country at its expiry.

The end result is that any purported detention after the 30<sup>th</sup> May 2015, without a court order is illegal.

In the circumstances, it is ordered that unless the Respondent presents the applicant before a competent court within 24 hours of this ruling the applicant shall be set at liberty forthwith.

Each party to bear own costs.

DATED AT LUSAKA THIS 15<sup>TH</sup> DAY OF JUNE 2015.



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**J. M. SIAVWAPA**  
**JUDGE**