



**SUPREME COURT OF BARBADOS  
IN THE HIGH COURT OF JUSTICE**

**CLAIM NO.** 377/2016

<b>BETWEEN:</b>	<b>DAVID ANDRE COMISSIONG</b>	<b>CLAIMANT</b>
<b>AND</b>	<b>FREUNDEL STUART MINISTER RESPONSIBLE FOR IMMIGRATION</b>	<b>FIRST DEFENDANT</b>
	<b>ADRIEL BRATHWAITE THE ATTORNEY GENERAL</b>	<b>SECOND DEFENDANT</b>
	<b>WAYNE MARSHALL CHIEF IMMIGRATION OFFICER</b>	<b>THIRD DEFENDANT</b>

**ORDER**

**Before:** The Honourable Madam Justice  
Pamela Beckles, Judge of the High Court

**Dated:** Thursday, the 30<sup>th</sup> day of June, 2016

**Entered:** \_\_\_\_\_, 2016

**UPON THIS MATTER** coming on for hearing by way of **FIXED DATE CLAIM FORM** filed on the 24<sup>th</sup> day of March, 2016 and **UPON READING** the Affidavit in Support of the Claimant, David Andre Comissiong, deponed to on the 24<sup>th</sup> day of March, 2016 and filed on the same date and **UPON HEARING** Mr. Edmund G. Hinkson in association with Mr. Lalu Hanuman, Attorneys-at-Law for the Claimant,

and Mr. Jared Richards, Crown Counsel of the Solicitor General's Chambers, Attorney-at-Law for the First, Second and Third Defendants, **IT IS ORDERED THAT** the following **DECLARATIONS BE GRANTED:-**

1. The **Immigration (Biometrics) Regulations, 2015** have the effect of:-

(a) giving an Immigration Officer in Barbados the right and the power to prohibit or restrain a Citizen or Permanent Resident of Barbados from leaving Barbados in the event that said Citizen or Permanent Resident refuses to provide said Immigration Officer with biometric data specified by the Chief Immigration Officer under the **Immigration (Biometrics) Regulations, 2015** ; and

(b) prohibiting a Citizen or Permanent Resident from entering Barbados in circumstances in which said Citizen or Permanent Resident refuses to comply with the request of an Immigration Officer to provide specified biometrics data upon such Citizen or Permanent Resident seeking to re-enter Barbados after having left Barbados and at the time of such leaving, having complied with the request of an Immigration Officer to provide specified biometric data.

2. The **Immigration (Biometrics) Regulations, 2015** are therefore in breach of Section 22 of the Constitution of Barbados in that they infringe the constitutional right of a Citizen or Permanent Resident of Barbados to enter Barbados and are therefore null and void.

3. The **Immigration (Biometrics) Regulations, 2015** are in breach of Section 22 of the Constitution of Barbados in that they infringe the constitutional right of a Citizen or Permanent Resident of Barbados to leave Barbados and such

infringement is not reasonably required in the interest of the defence, public safety or public order of Barbados.

4. The **Immigration (Biometrics) Regulations, 2015** are in breach of Section 4(1) of the **Immigration Act** Chapter 190 of the Laws of Barbados, the parent Act of the said Regulations, in that they infringe the statutory and lawful right of a Citizen of Barbados to enter Barbados and are also in breach of Section 4(2) of the said **Immigration Act** in that they infringe the statutory and lawful right of a Permanent Resident of Barbados, so long as he continues to be a Permanent Resident, to be permitted to enter Barbados.
5. The decision and/or order and/or regulation made by the Chief Immigration Officer under the power granted to the Chief Immigration Officer by Section 3(2) of the said Regulations to the effect that all persons leaving or entering Barbados, with the exception of the holders of diplomatic passports or children under the age of 16 years, shall be obligated to provide their fingerprints to Immigration Officers at all ports in Barbados from 1<sup>st</sup> of April 2016 is in breach of Section 22 of the Constitution of Barbados and in breach of Sections 4(1) and 4(2) of the **Immigration Act**, Chapter 190 of the Laws of Barbados.
6. The **Immigration (Biometrics) Regulations, 2015** were not properly and lawfully enacted in accordance with the provisions contained in Section 41 of the **Interpretation Act** Chapter 1 of the Laws of Barbados for the enacting of regulations that are subject to negative resolution and as a result are null and void and of no legal effect.

**AND IT IS FURTHER ORDERED THAT:-**

7. An order of certiorari is granted quashing the said decision and/or order and/or regulation made by the Chief Immigration Officer stipulating that Citizens and Permanent Residents of Barbados who are not the holders of diplomatic passports or children under the age of 16 years are from the 1<sup>st</sup> day of April, 2016 and continuing thereafter obligated to provide Immigration Officers with their fingerprints whenever they seek to enter or leave Barbados at ports of entry or departure.
8. An order of certiorari is granted quashing the **Immigration (Biometrics) Regulations, 2015.**
9. Cost in favour of the Claimant fit for two Counsels be agreed or assessed.

Dated the            day of           , 2016

**REGISTRAR OF THE SUPREME COURT**

BARBADOS

No. 377 of 2016

IN THE HIGH COURT OF JUSTICE

CIVIL DIVISION

BETWEEN: DAVID ANDRE COMISSIONG CLAIMANT

AND FREUNDEL STUART  
MINISTER RESPONSIBLE FOR  
IMMIGRATION FIRST DEFENDANT

ADRIEL BRATHWAITE  
THE ATTORNEY GENERAL SECOND DEFENDANT

WAYNE MARSHALL  
CHIEF IMMIGRATION OFFICER THIRD DEFENDANT

ORDER

EDMUND G. HINKSON  
Attorney-at-Law