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Case No: 380

The Truth, Reconciliation and National Unity Commission

In the Complaint of Susan Moustache

31 December 2022

Determination on the Complaint of Susan Moustache

Complainant:

Susan Moustache

The Truth, Reconciliation and National Unity Commission ("Commission"), seized of the complaint of Ms. Susan Moustache,

OBSERVING that the complaint of Ms. Moustache, who brings her complaint as a victim, was filed on 7 February 2020,[1] in conformity with Sections 3(4) and 3(5) of the Truth Reconciliation and National Unity Act, 2018 ("TRNUC Act");

NOTING that pursuant to Section 2(8) of the TRNUC Act, the complaint must allege an abuse of human rights that was committed during or in relation to the Coup d'état of 1977,[2] and that the complainant alleged wrongful denial of the right to employment,[3] and wrongful denial to housing assistance from 1991, a time period that falls within the primary temporal period of the mandate of the Commission from the Coup d'état of 1977 until the return to multipartyism in 1993, and also satisfies the Commission's thematic mandate as the human rights violations alleged are claimed to have been motivated on political grounds and implemented by the same Government that had taken power with the Coup d'état of 1977;

RECALLING that pursuant to Rule 25 of the Rules of Procedure and Evidence of the Commission, the test for admissibility is low but a "complaint will be deemed inadmissible where the information contained within the complaint falls manifestly outside the mandate of the Commission", and in this case, the Commission rendered the complaint of Ms. Moustache prima facie admissible on 11 May 2020;

RECALLING FURTHER that the Commission, having rendered the complaint prima facie admissible pursuant to Section 3(3) of the TRNUC Act, heard the complaint of Ms. Moustache on 29 July 2021,[4] and on 17 November 2021[5] and investigated the veracity of the complaint as evidenced by the hearing record and the file in this case;

CONSIDERING the evidence heard by the Commission, coupled with the Commission's consideration of similar cases;

HEREBY determines, pursuant to Section 11 of the Truth, Reconciliation and National Unity Commission Act, 2018 ("TRNUC Act"), as follows:

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[1] The Commission notes that the admissibility determination erroneously records the filing date as 18 February 2020, which was the date the complaint gave her statement and not the date of the registration of her complaint.

[2] "[…] (a) unlawful killing; (b) unlawful imprisonment or other deprivations of physical liberty; (c) torture; (d) rape; (e) enforced disappearance of persons; (f) kidnapping; (g) forceful eviction from legally owned building or land; (h) unjustified acquisition or loss of property or business; (i) wrongful denial of the right to employment; (j) wrongful termination of employment; (k) forced exile; (l) abuse of office by a Government official, including the executive, judiciary or legislature; or (m) other acts of a similar character causing suffering or injury to body or to mental or physical health". Truth, Reconciliation and National Unity Commission Act, 2018, Act 9 of 2018 (14 September), sec. 2(8) [hereinafter "TRNUC Act"].

[3] TRNUC Act, sec. 2(8)(i). The Commission has considered the violation of wrongful denial of employment to include a 1) repeated refusal to hire, promote, otherwise interfere with or refuse a person 2) in pursuit of employment in that person's chosen field, 3) for reasons other than business necessity or some other reasonable and articulable basis 4) by a perpetrator. As with the violation of wrongful termination, this violation applies equally to dismissal of employment from either the public or private sector and is a fundamental violation of an individual's rights "to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment". UDHR, art. 23(1).

[4] Hearing No. 186 of Thursday, 29 July 2021.

[5] Hearing No. 228 of Wednesday, 17 November 2021.

1. The Commission recalls Ms. Moustache's evidence that her father, Marcel Moustache, was a democrat supporter and was never afraid to speak out. She stated that he was not afraid of anyone and that he worked at the United States Tracking Station. She recalled that he had died in 1981. Ms. Moustache stated that Royce Dias was her cousin and that she strongly believed that she was victimised for being related to the Dias family;[6]

2. The Commission recalls Ms. Moustache's evidence that in the 1990s, she got her first job with Joe Pool, and worked with him for four years before she was employed at the Casino. She recalled that the Casino became the Hotel Berjaya Beau Vallon Bay, and she remained working there after the change of management. Ms. Moustache stated that at some point, there was a problem with workers stealing money from the Casino, and that all the staff that handled money were asked to write statements about who was taking the money. She claimed that she did not want to write a statement, and so she was arrested and taken to Beau Vallon Police Station, where she was placed in a cell and released the next morning. Ms. Moustache said that she was never charged;

3. The Commission recalls Ms. Moustache's evidence that in 1991, Ms. Moustache applied for housing assistance at the Mont Fleuri District Administration Office, and that after her application, Ms. Moustache heard about the Foret Noire (Tobruk) Flats Project being constructed in Mont Fleuri District. She stated that she went to see the District Administrator, Mrs. Edwina Andre, at Mont Fleuri, and asked her whether she could be allocated a flat from the project, and Mrs. Andre told Mrs. Moustache that there was a list of many applicants and that Ms. Moustache was not on that list. Later, Ms. Moustache heard that her sister had been allocated one of the flats at Foret Noire and her sister had given the flat to someone else, which was prohibited by the Housing Policy. Ms. Moustache claimed that she confronted the new District Administrator, Mrs. Doris Mancienne, who had replaced Mrs. Andre, about the matter, and Mrs. Mancienne told Ms. Moustache that it was an internal arrangement and could not be interfered with;

4. The Commission recalls Ms. Moustache's evidence that as she was no longer working at the Casino, she was cleaning houses, and in 1997, she was employed by an American man, Mr. White. She recalled that she lived in Mr. White's house and Mr. White had trained Ms. Moustache in security, and that with his help, Ms. Moustache obtained a diploma in security. Ms, Moustache claimed that when Mr. White left Seychelles, he left all of his belongings to Ms. Moustache, and she stored them at her mother's house, but then her mother allowed them to be taken;

5. The Commission recalls Ms. Moustache's evidence that because she had struggled to get housing assistance from the Government, in 2001 her mother gave her permission to build a room attached to her mother's house. Ms. Moustache recalled that she got a quotation from a building contractor, and filled in an application for a loan, which she handed to the Member of the National Assembly, Mr. Louis Gopal, to process for her. Ms. Moustache stated that Mr. Gopal told Ms. Moustache that as she was born on 6 June, she had been chosen by President René to be given SR 40,000 to build the extension, but she would need to pay it back. Ms. Moustache stated that when she was called to come and receive the money, she refused it;

[6] *See* Case Determinations No.145 Rita Baillon and No. 213: Christine Dias, in Volume lll.

6. The Commission recalls Ms. Moustache's evidence that she was listed as one of the heirs to her mother's estate when her mother died in October 2006, and Ms. Moustache wanted her share of her mother's property, but that her sister has refused to give it to her;

7. The Commission recalls Ms. Moustache's evidence that she was unable to find a job at any of the hotels after Mr. White left, and Ms. Moustache believed that she had been blacklisted, so she went to see the Minister of Employment, Mr. Dolor Ernesta. She recalled that she told him that she had a diploma in security, and Mr. Ernesta told her that there were jobs at the prison. Ms. Moustache then succeeded in obtaining employment at the prison, but she stated that she was required to bring her own food. She stated that the prison authorities did not give her a stove on which to cook her food. Ms. Moustache claimed that after five months, she was terminated from the prison because she brought things for the prisoners into the prison;

8. The Commission recalls that it requested access to Ms. Moustache's employment file, but that it was informed that the file could not be located;

9. The Commission notes that it accessed Ms. Moustache's housing file, which evidenced that Ms. Moustache was employed following her termination from the prison as a security officer with Pilgrims Security, and in 2012, she began working for Royal Palm Development Ltd as a Security Officer. Notes on the housing file showed that on a number of occasions when the housing authorities sought to meet with Ms. Moustache to discuss her housing problems, they could not locate her or it was ascertained that she was out of the country and could not be reached;

10. The Commission finds that Ms. Moustache was employed in various capacities in the casino and hotel business, until working in the private sector as a house cleaner, and that when she sought to join the public sector, she was assisted by the Minister of Employment in securing employment. The Commission further notes that Ms. Moustache's evidence was that she was terminated within the six-month probationary period at the prison because she had brought in items for the prisoners, which the Commission considers would more likely than not be prohibited by prison rules, and that her termination during the probationary period was thus more likely than not due to infractions of prison rules, demonstrating unsuitability for the position. The Commission finds that her termination was more likely than not on those grounds and not on the politically discriminatory grounds as alleged. As such, the Commission is not satisfied that Ms. Moustache suffered the violation of wrongful denial of employment pursuant to Section 2(8)(i) of the TRNUC Act;

11. The Commission recalls Ms. Moustache's evidence that in 2007, she was living in a flat behind Chaka Brothers, and there was a fire and all of her things were burnt. Ms. Moustache recalled that it was then that she received assistance from the Government. Ms. Moustache claimed that the District Administrator from Bel Air had said she would give her a temporary place, and that Francoise Shroff, who worked with President René, gave her SR 5,000;

12. The Commission recalls that Ms. Moustache provided the Commission with a copy of a letter from the Ministry of Local Government, dated 24 December 2017, which certified that Ms. Moustache had been living in the house of Mrs. Elfrida Sedgewick, who had been deceased for 15 years and that Ms. Moustache had been living in the house for 11 years. The Commission recalls Ms. Moustache's evidence that she continued to reside in the house to date;

13. The Commission notes that Ms. Moustache's housing file showed that her first application for assistance was made on 10 December 1996, and that on 15 February 2010, she enrolled in the Home Savings Scheme. The Commission notes that there was nothing on that file to suggest any political interference or prejudice in the processing of Ms. Moustache's application for assistance but that there was a shortage of housing and that as Ms. Moustache spent prolonged periods outside of Seychelles, in Mauritius, she may have been considered less in need than other applicants;

14. The Commission recalls the pattern of evidence it has received in myriad cases that those perceived as being against the regime that had taken power with the Coup d'état of 1977 were systematically discriminated against on political grounds, and that this discrimination continued well past the so-called re-introduction of the multiparty system. However, the Commission is not satisfied that the alleged acts in this case, however unfair or frustrating Ms. Moustache found them, are sufficiently serious, or connected to the Coup d'état, so as to constitute human rights violations under the TRNUC Act. The Commission here highlights that there is no guaranteed right to purchase land, or receive housing assistance;[7]

15. The Commission is also not satisfied that Ms. Moustache suffered any discrimination on political grounds in relation to the allocation of housing to her by Government authorities;

16. The Commission further notes that the other complaints raised by Ms. Moustache concerning her mother allowing the property of Mr. White to be taken, or her sister refusing to allocate to Ms. Moustache her share of her mother's estate, are personal matters among private individuals that are unrelated to the Coup d'état of 1977 or allegedly committed by the Government, and therefore are inadmissible before the Commission;

17. As such, the Commission is not satisfied that Ms. Moustache suffered any human rights violations under the TRNUC Act;

18. The Commission recalls that it is mandated pursuant to Section 3(7) of its Act to make recommendations for reparations for victims for human rights violation it has determined to have been established as a result of its investigations;

19. The Commission finds therefore that as the complainant in this case has not established any violation of human rights, no reparations are due.

Each of the undersigned Commissioners swears or affirms that he or she has comprehensively familiarised him or herself with the record in Case 380.

On this 31 December 2022

The Commission

Gabrielle McIntyre, Chairperson G. McIntyre

[7] *See* Case Determination No. 122: Rock Jeannie.

Michael Green, Vice Chairperson

Marie-Therese Purvis, Commissioner

Jacques Koui Gbilimou, Commissioner

Archbishop James Wong, Commissioner