

THE HIGH COURT
JUDICIAL REVIEW

[2015 No. 43 J.R.]

BETWEEN

A.O.M.

APPLICANT

AND

MINISTER FOR JUSTICE AND EQUALITY

RESPONDENT

JUDGMENT of Mr. Justice Richard Humphreys delivered on the 11th day of May, 2016

1. The applicant is a national of Nigeria who is the subject of the deportation order dated 8th January, 2003. The applicant applied for revocation of that order. That application was refused on 3rd December, 2014. The applicant then brought the present judicial review proceedings seeking to quash the latter decision.

2. The applicant and Ms. N.F. are the parents of an Irish citizen child born on 14th December 2005.

3. The relationship between the parents subsequently broke down. The applicant was ultimately deported to Nigeria on 17th December, 2007. District Court access proceedings brought by the applicant were struck out due to his having been deported.

4. Ms. Catherine Forde B.L. now brings an application on behalf of Ms. N.F. for liberty to bring a notice of motion permitting her to be joined as a notice party in the proceedings. The application is resisted by Ms. Teresa Blake S.C. (with Mr. Femi Daniyan B.L.) for the applicant. The respondent consented to the application and did not appear.

5. The basic reason why the mother should be refused liberty to bring such a motion is that there is no legal basis whatsoever for her to get involved in the proceedings between the applicant and the Minister regarding the revocation of the deportation order. As with the distinction between the public interest and what the public may be interested in, Ms. F. may be interested in the matter in a non-legal sense but she has no legal interest in whether the refusal to revoke the deportation order is set aside or not.

6. Ms. Forde submits that she does not know what is being said by the applicant about her client. That is not in of itself a basis to become involved in the proceedings in the manner sought, whether as a notice party or otherwise.

7. It is true that if the applicant is ultimately successful it could have some downstream impact on Ms. F., in the sense that if the applicant is eventually allowed back in the State, it will be easier for him to pursue family law applications against the mother. But it cannot be the case that downstream indirect consequences of that nature give a basis to allow a party to become involved in judicial review proceedings of this type. Whether it was permissible for the Minister to decide not to revoke the deportation order is, in law, a matter between the Minister and the applicant. There is no basis for the mother to intermeddle in these proceedings.

8. Ms. Forde also states that she is concerned about what she says are threats (denied by Ms. Blake) regarding the possible removal of the child from the jurisdiction. Even assuming that she would be in a position to put forward an evidential basis for that concern, that is so contingent a matter as not to be relevant to these judicial review proceedings. It only arises if the applicant is returned to this jurisdiction and is a matter that can be ventilated in any family law proceedings that may be brought in due course.

9. The application as originally drafted included a relief numbered (iv) which would have sought to make the applicant's daughter a party to the proceedings. Even if this could potentially have provided some basis for an argument for involvement in this case by the mother, that does not now arise because Ms. Blake informs me that this relief is not being pursued.

10. Finally, I might observe that it seems unacceptable that simply because he is not being permitted to return to the country, the applicant is effectively stating that he is being denied any effective access to the District Court. Such access could for example be simply for telephone or skype contact with his daughter pending his return to Ireland (if it ever occurs). An obstacle to a parent applying for appropriate means of communication with a child, if there is any such obstacle, may be contrary to the constitutional and ECHR rights of the applicant and indeed of the child, in particular by virtue of Article 42A of the Constitution. If the applicant wishes to contend that he should be permitted to make a District Court access application by video link, that would need to be pursued in a separate application.

11. For the foregoing reasons I will order:

(a) that the order under s. 45 of the Courts (Supplemental Provisions) Act 1961 restraining the publication of information that could tend to identify the child of the applicant continue on a permanent basis and

(b) that the application by Ms. N.F. for liberty to bring a notice of motion to be joined as a notice party in these proceedings be refused.