Neutral Citation Number: [2010] IEHC 297

THE HIGH COURT

JUDICIAL REVIEW

2010 843 JR

BETWEEN

A. P. A. (A MINOR,) A. S. (A MINOR,) A. R. A. AND T. A.

APPLICANTS

AND

THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM, IRELAND AND THE ATTORNEY GENERAL

RESPONDENTS

AND

THE HUMAN RIGHTS COMMISSIION

NOTICE PARTY

JUDGMENT of Mr. Justice Cooke delivered 20th day July, 2010.

1. This is an application for an interlocutory injunction to restrain the deportation of the third named applicant ("the father",) in circumstances where the application for judicial review was commenced within the fourteen day period prescribed by s. 5 of the Illegal Immigrants (Trafficking) Act 2000 and the Minister has declined to give an undertaking not to deport him pending the return date of the notice of motion for the leave application.

2. Because of the very large number of similar applications recently made to this Court, it is impossible to deal simultaneously with the application for an interlocutory injunction and the application for leave to seek judicial review quite apart from the inequity of permitting the application for injunction to act as a mechanism to accelerate the application for leave ahead of the very many other similar applications which await hearing by the Court. In those circumstances an issue has arisen as to the approach which the Court should take to the application for interlocutory relief. In particular, the argument is made that because the application has been commenced within fourteen days and no extension of time will be required, the applicant is entitled, as it were, almost as of right to have a stay put upon the implementation of the deportation order so that he is not expelled from the State before he can effectively exercise his right of access to the High Court in order to challenge the validity of the deportation order. In this connection counsel for the applicant has relied upon observations made in judgments in the Supreme Court in the case of *Adebayo v. Commissioner of An Garda Síochána* [2006] 2 I.R. 298, to the effect that an application for judicial review of a deportation order when commenced within the fourteen day period ought to operate as a stay upon the implementation of the order until the issue as to the validity of the deportation order has been determined. Reliance is also placed upon Article 13 of the European Convention of Human Rights to the effect that the State is under an obligation to provide an effective remedy when an administrative decision is challenged by reference to an alleged violation of a right or freedom under the Convention. It is submitted that such an effective remedy requires that the commencement of a proceeding to avail of the remedy should have suspensory effect upon the deportation decision.

3. While the domestic arrangements of the father are somewhat complex, the immediate background to the present application can be briefly stated. He is a native of Nigeria who arrived in the State in March, 2007 and was unsuccessful in a claim for asylum. He is a polygynist. He is married to one woman residing in Nigeria with whom he has two daughters who live in Nigeria. He is also the father of two sons by another woman to whom he is not married who live with their mother in Nigeria. Under Nigerian law he claims also to be married to the fourth named applicant ("the mother"). Together they have two sons who live in Nigeria and one daughter, the first named applicant ("the Irish daughter"), who was born in Ireland after her mother's arrival here. This daughter is an Irish citizen. The mother arrived here in 2003 while pregnant and the first named applicant was born here on 7th December, 2003. On that basis she has had permission to reside with her Irish citizen daughter under the IBC 05 Scheme since 14th June, 2005 and that permission is currently extended until 2013. The father and mother therefore voluntarily lived separately in Ireland and Nigeria between the dates of their respective arrivals in the State in 2003 and 2007. The second named applicant ("the stepdaughter",) is the daughter of the mother from a previous marriage who arrived in the State with her mother and has leave to remain on a similar basis. She is now approaching her 18th birthday and has recently sat her Leaving Certificate.

4. Although it is not directly relevant to the issue as to the nature or extent of the constitutional rights of the Irish daughter as an Irish citizen vis-à-vis her father or the right to respect for family life under Article 8 of the ECHR, it is to be noted that Irish law does not recognise a polygamous marriage as a valid marriage. (See *Conlon v. Mohammed* [1989] ILRM 523.)

5. Having failed in his asylum application the father duly received the usual "proposal letter" from the Minister under s. 3 of the Immigration Act 1999 to the effect that the Minister was considering the making of a deportation order against him. On foot of the invitation contained in that letter representations were made on his behalf by his former solicitors on 18th February, 2008, against the making of such an order and putting forward reasons why the applicant should be granted temporary leave to remain upon humanitarian grounds.

6. On 16th June, 2010, the father received a letter dated 10th June, 2010 enclosing a deportation order dated 3rd June, 2010 together with the "Examination of File" memorandum dated 5th May, 2010, setting out the analysis and appraisal made on behalf of the Minister as the basis of the reasons for making such an order. The father has, accordingly, been required to report to the office of the Garda National Immigration Bureau for the purpose of making arrangements for his removal from the State on foot of the deportation order. It is in these circumstances that the judicial review proceeding has been commenced and the present application is made for an injunction to restrain the implementation of that deportation order upon the basis that it is unlawful. In the affidavit grounding the present application emphasis is placed upon the fact that "it should have been clear from the representations made on my behalf that my wife would be unwilling to travel to Nigeria with the first two applicants herein in the event of my being deported

there".

7. It is necessary to deal first with the argument to the effect that, at least until the determination of the application for leave, the father is entitled as of right to an injunction either because an application under s. 5 of the 2000 Act should be construed as operating to stay the order or because Article 13 of the Convention requires that the application to the High Court should have a suspensory effect on the order if it is to be an effective remedy.

8. As mentioned, the former proposition received some consideration in two judgments of the Supreme Court in *Adebayo v. Commissioner of An Garda Síochána* [2006] 2 I.R. 298. The judgments in that case were primarily concerned with issues relating to contempt of court and the jurisdiction of the High Court to make an order under Article 40 of the Constitution when the person concerned was outside the State. It is only in relation to those issues, therefore, that the law expounded in the judgments could be said to provide any authoritative guidance for this Court. Geoghegan J. however, considered – in expressly tentative terms but in some detail - the possibility that s. 5 should be treated as operating to place a stay on a deportation order when the judicial review application is commenced within the fourteen day limit. He said:

> "… I find it inconceivable that the Oireachtas ever intended that a person having exercised his statutory entitlement to bring the application within the fourteen days may, nevertheless, be deported in the meantime against his will unless he obtains an interim injunction, a procedure not mentioned or in any way provided for under the Act itself …my view is based on the interpretation of the (Act of 2000) itself. This Act is concerned with individuals being forced against their will to leave the country. If there is a time limit provided by the Act to enable them to challenge such an event, it does not seem to me to be a sensible interpretation of that Act to suggest that, notwithstanding the exercise of the statutory entitlement to apply for leave for judicial review requiring no extension of time, they may nevertheless be spirited out of the country. On any reasonable and purposive interpretation of the Act that cannot be so. It is not, therefore, a question of an implied statutory stay. It is simply a matter of substantive interpretation of the Act though, of course, the end result is the same as if a stay was expressly provided for."

9. Fennelly J., on the other hand, found himself "unpersuaded" and took the opposing view. He said:

> "… I would be reluctant to reach a conclusion that the Act of 2000 impliedly imposes a restraint on the implementation of orders duly made. Undoubtedly the points made by Geoghegan J. strongly suggest that there should be such a stay. The problem is that there is simply no statutory provision for it. I find myself in agreement with the submission made on behalf of the respondent and notice party that it has never been the law that the mere institution of proceedings would operate with the same effect as a court order."

10. McGuinness J. agreed with the judgment of Geoghegan J. without distinguishing between the ruling on the substantive issues and the "tentative" observations on section 5. The other two judges expressly reserved their opinions in relation to that issue. It is clear, accordingly, that the *Adebayo* case contains no authoritative ruling on the part of the Supreme Court in relation to the issue.

11. One aspect of this matter which was not, obviously, considered by the Supreme Court in that case because it did not arise, is the possible impact of ss. 2 and 3 of the European Convention of Human Rights Act 2003 in these circumstances. Section 2 (1) provides:

> "In interpreting and applying any statutory provision or rule of law, a court shall, insofar as is possible, subject to the rules of law relating to such interpretation and application, do so in a manner compatible with the State's obligations under the Convention provisions."

Section 3 (1) provides:

> "Subject to any statutory provision (other than this Act) or rule of law, every organ of the State shall perform its functions in a manner compatible with the State's obligations under the Convention provisions."

12. Clearly, therefore, this Court is entitled and obliged, to the extent that it is possible, to interpret and apply a provision such as s. 5 of the Act of 2000 in a manner which will be compatible with the Convention provisions. Similarly, the Minister is obliged in discharging his functions under s. 3 of the Act of 1999, including the implementation of a deportation order, to do so in a manner which is compatible with those provisions.

13. As counsel for the applicants has argued, there is authority in the case law of the Strasbourg Court for the proposition that the obligation of the Contracting States to provide an effective remedy where violation of a Convention right or freedom is in issue, may include as a facet of the effectiveness of a judicial remedy a requirement that the making of the application should have suspensory effect upon the challenged act or measure. The authority is to be found for example in a deportation case of *Conka v. Belgium* [2002] 34 EHRR 54 where the court found a violation of Article 13 on this basis:

> " *The Court considers that the notion of an effective remedy under Article 13 requires that the remedy may prevent the execution of measures that are contrary to the Convention and whose effects are potentially irreversible ….Consequently, it is inconsistent with Article 13 for such measures to be executed before the national authorities have examined whether they are compatible with the Convention, although Contracting States are afforded some discretion as to the manner in which they conform to their obligations under this provision."*

In another deportation case of *Abdolkhani & Karimnia v. Turkey* (22nd September, 2009), the applicants had been arrested carrying false passports in Turkey and were to be deported to either Iran or Iraq where, they claimed, they would be exposed to a clear risk of death or ill-treatment such that the deportation would violate their rights under Articles 2 and 3 of the Convention. At para. 116 of the judgment the court said:

> *"… the applicants could not apply to the administrative and judicial authorities for annulment of the decision to deport them to Iraq or Iran as they were never served with the deportation orders made in their respect. Nor were they notified of the reasons for their threatened removal from Turkey. In any case, judicial review in deportation cases in Turkey cannot be regarded as an effective remedy since an application for annulment of a deportation order does not have suspensive effect unless the administrative court specifically orders a stay of execution on that order."*

(See also the judgments in *Jabari v. Turkey* [2001] 29 EHRR CD 178 at para. 50 and *Mumenov v. Russia* (11th December 2008) at para. 101.)

14. It will be noted that all of the cases involved alleged violations of Article 3 (the prohibition of torture). Thus, at least in a case where the Convention violation alleged would result in some irreversible harm to an applicant if the feared event occurs, it is clear that the Strasbourg Court regards suspensive effect as a necessary characteristic of a remedy under Article 13 if it is to be fully effective. It is not clear, however, whether the same principle applies where the event alleged to cause the infringement of the Convention right is not necessarily irreversible but might be rectified at a later date by restoring the applicant to his or her previous position. That might be said to be the position in a case such as this where a deportation in violation of Article 8 could be remedied subsequently by facilitating the return of the deportee within the State.

15. In the judgment of this Court, however, it is both feasible and appropriate as a matter of Irish law to apply s. 5 of the Act of 2000 and to require the Minister to exercise his functions under s. 3 of the 1999 Act, in a manner which takes account of the Article 13 obligation. It does not, it seems to the Court, involve any necessary purposive interpretation of s. 5 as suggested by Geoghegan J. and objected to by Fennelly J.. It is a matter of ensuring that steps taken by the Minister in implementing a deportation order take into account the need to apply s. 5 in a manner which ensures that the right of access to the Court within the fourteen day period is not frustrated or disadvantaged by the precipitate deportation of an applicant. This approach accords with the Court's obligation under the Convention as an organ of the State. At paragraph 84 of the *Conka* case, in answering arguments based on pressure of the caseload and possible abuse of the system the Court pointed out:

> *"As to the overloading of the Conseil d'Etat's list and the risks of abuse of process, the Court considers that, as with Article 6 of the Convention, Article 13 imposes on the Contracting States the duty to organise their judicial systems in such a way that their courts can meet its requirements (see mutatis mutandis, Sussmann v. Germany, judgment of 16th September 1996, [1996] IV-1174 at para 55)."*

Where it is possible for the High Court within the conditions of s. 2(1) of the Act of 2003 to apply the existing law so as to secure an obligation arising under the Convention, it must clearly do so.

16. Taking that approach to the application of s. 5, the following propositions can, in the judgment of the Court, be stated:

> (a) By deporting a failed asylum seeker within fourteen days of the communication of a deportation order under s. 3 of the Act of 1999 the Minister would act in a manner which is incompatible with his obligations under the Act of 2003 unless the person concerned has expressly waived his entitlement to make an application for judicial review:
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> (b) Where an application for judicial review of a deportation order is made within the fourteen day period and alleges that the order is unlawful as a violation of a right or freedom under the Convention, the Minister would act in a manner incompatible with his obligations under the Act of 2003 by deporting the person concerned prior to the return date of the motion for the leave application:
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> (c) The Minister is not obliged to give an undertaking not to deport but in a case where there is good reason to believe that deportation is about to take place within the 14 day period or prior to the return date of an application for leave commenced within that period, the Court should exercise its discretion to restrain deportation in order to preserve the effectiveness of the remedy consistently with the obligations of the State under Article 13:
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> (d) Where no application for judicial review is commenced within the fourteen day period, the Minister is entitled to assume that no challenge to the validity of the order is to be made and that the deportation may therefore be implemented:
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> (e) When the application for leave to seek judicial review commenced with the 14 day period comes before the Court or upon an earlier application on the part of the Minister to have the proceeding dismissed as unfounded, any continuing restraint upon the implementation of the deportation order is dependent upon the applicant establishing an entitlement to an interlocutory injunction to restrain deportation. This follows from Order 84, r. 20 (7) of the Rules of the Superior Courts which provides that where an order of *certiorari* is sought the grant of leave only operates as a stay where "the Court so directs":
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> (f) The grant of an injunction remains a matter for the discretion of the Court according to the established principles and, bearing in mind the duty to make the application in good faith and with full, honest disclosure of all relevant information, the application of s. 5 by the court in a manner compatible with the Article 13 obligation does not deprive it of its entitlement to refuse relief, even on an *ex parte* application, if there is compelling reason to consider the application unfounded, vexatious or made in bad faith. . Article 13 requires that the remedy be genuinely available and that it be effective in preventing the threatened violation of the Convention when necessary; it does not guarantee the applicant a favourable outcome to every application:
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> (g) Where an application for judicial review is commenced after the expiry of the 14 day period, the Minister is entitled to proceed with the deportation unless an interim injunction to restrain the deportation has been obtained. (See the observations to that effect of Geoghegan J. in *Adebayo* at page 314.) Furthermore, upon such an application the Court has no jurisdiction to grant an injunction unless it is satisfied that there is good and sufficient reason to extend the time in order to enable leave to be sought. The validity of the order may only be questioned by the making of an application under Order 84 so that the Court cannot grant an injunction which questions the validity of the order unless it is satisfied that it will have jurisdiction to entertain the application for leave.

17. If approached in this manner it seems to the Court that s. 5 of the Act of 2000 can be applied in a manner which provides an effective remedy for the protection of a deportee against an order which violates a Convention right or freedom while at the same time providing the Minister, after the expiry of the 14 day period, with a means of avoiding the postponement of implementation of deportation orders by the initiation of unfounded or vexatious proceedings.

18. With regard to the exercise of the Court's jurisdiction to grant an injunction in this context, it is important to draw attention again to the emphasis placed in the case law of the Strasbourg Court on the connection between the effectiveness of the remedy and the irreversible character of the violation of the Convention alleged. At paragraph 101 of its judgment in the Mumenov case the court pointed out that:

> *"…the scope of the State's obligation under Article 13 varies depending on the nature of the applicant's complaint under the Convention. Given the irreversible nature of the harm that might occur if the alleged risk of torture or ill-treatment materialised and the importance the Court attaches to Article 3, the notion of an effective remedy under Article 13*

requires (i) independent and rigorous scrutiny of a claim that there exist substantial grounds for believing that there was a real risk of treatment contrary to Article 3 in the event of the applicant's expulsion to the country of destination, and (ii) the provision of an effective possibility of suspending the enforcement of measures whose effects are potentially irreversible (or "a remedy with automatic suspensive effect" as it is phrased in Gebremedhin v. France, application no. 25638/05 para 66 in fine.)"

(See also the *Jabari* judgment at para 50.) Thus where the possible consequence of the act or measure alleged to violate a right is clearly reversible the effective remedy may not require that its invocation have automatic suspensive effect.

19. It remains therefore to determine whether in this instance a case for the grant of an interlocutory injunction has been made out. The immediate issue, accordingly, is whether a fair issue to be tried is raised as to the existence of a substantial ground as to why the deportation decision ought to be quashed and, if so, whether damages would be an adequate remedy if the injunction is refused and the father succeeds in the application for judicial review having been deported in the meantime.

20. Although the Statement of Grounds puts forward a total of 32 grounds in support of the reliefs claimed, many of them are of a very general, even generic, type and lacking in any particularity by reference to the reasons relied upon by the Minister for his decision in the file note. As such, they are incapable of constituting the basis for an application for judicial review. In arguing the case, however, counsel for the applicants focussed on the lack of reasonableness in the analysis made by the Minister in the memorandum and the disproportionality of the conclusion reached in balancing the interests of the State in implementing the deportation against the rights of the applicants to respect for their family life and the private life of the third named applicant together with the constitutional rights of the first named applicant as an Irish born child. In addition, counsel took issue with a number of specific aspects of the file note such as the absence of any consideration of the interests of the second named applicant as stepdaughter of the father; the fact that his position as a failed asylum seeker appears to be held against him unfairly when the Minister has looked in detail at the substantive rights under Article 8 of the Convention; and the failure, in breach of fair procedures, to inform the applicants that the father would not be permitted to re-enter the State if he opted to apply for humanitarian leave to remain in response to the proposal letter.

21. Before dealing with the specific arguments raised, a number of general observations appear to the Court to be appropriate. First, the Minister has in the file note, on the face of it, approached the making of the decision to deport the applicant in the manner required under s. 3 of the Immigration Act 1999 as explained by the case law of the Supreme Court including, in particular, the list of guidelines set out for this purpose in the judgments of Denham J. in the cases of *Dimbo* [2008] IESC 26 and *Oguekwe* [2008] IESC 25. The file note identifies two substantial reasons which are considered to justify the deportation namely the needs to safeguard the economic wellbeing of the country and to maintain control of the State's borders and operate a regulated system for the control, processing and monitoring of non-national persons in the State. In the first part of the file note, the author has addressed *seriatim* each of the factors required to be taken into consideration in paras. (a) – (k) of s. 3 (6) of the Act. Each of these matters is addressed by reference to the particular circumstances of the applicants individually and as a family unit. Next, the writer has considered the two statutory prohibitions against refoulement. Finally, more than half of the memorandum is devoted to an assessment of the impact of deportation upon the rights of the applicants individually and collectively to respect for private life and family life under Article 8 of the Constitution and the constitutional rights of the Irish daughter as an Irish citizen. An assessment is made of the balance between these rights and the interest of the State in implementing the deportation and a conclusion is reached that on balance the interests of the State should prevail.

22. In those circumstances it is not sufficient, in the judgment of the Court, to ground an application for judicial review of the deportation order to simply allege that the conclusion reached is unreasonable, unbalanced or disproportionate. It must be borne in mind that when considering the possible deportation of a non-national which will separate the deportee from family members who are settled residents in the State or Irish citizens, the judgment which falls to be made as to whether the interests of the State should prevail over the rights and interests of those concerned, falls to be made by the Minister. As the Supreme Court has emphasised, the analysis and assessment must be made objectively and reasonably and must arrive at a proportionate result. It remains, however, an assessment and judgment that must be made by the Minister and the High Court cannot substitute its own evaluation and conclusion. It can quash the deportation order if it is shown to have been made in a manner which is legally flawed including that it is unlawful by reason of the clear disproportionality of its effect. In order to establish an entitlement to an order of *certiorari* in such circumstances, however, it is necessary to demonstrate that the approach by which the conclusion has been reached on the part of the Minister and which has produced the disproportionate or unreasonable conclusion has been vitiated by one or more material defects in the approach to the analysis and appraisal such as, for example, some specific mistake whether of fact or law; some significant failure to consider a factor required to be taken into account; or an influential reliance placed upon some irrelevant consideration.

23. Secondly, it is clear to the Court that this is not a case in which any serious issue could be said to be raised by reference to the assessment made in the memorandum or the conclusion reached in relation to the factors required to be taken into account by reference to Article 8 of the Convention. In the application of Article 8 to cases involving the refusal of entry to or the expulsion of a family member, the predominant consideration is the degree to which the family life alleged to be interfered with is demonstrated to be a settled one established in the Contracting State. According to the representations made on their behalf by Ceemax & Co., solicitors, on 18th February, 2008, the father and mother started living together in Nigeria in 1997 and married there in a traditional ceremony in 1998. They lived together as a couple until the mother came to Ireland in 2003 when she was already pregnant with their first child. As already mentioned, they voluntarily lived apart for a period of four years until the father's arrival in the State in 2007 during which their only child was born in Ireland. The father having arrived in the State illegally in order to join the mother and Irish daughter and having made what appears to have been an unfounded application for asylum, it could not be said that such family life as they have had together in the State since 2007 has any of the qualities of duration and permanence in the State which would give rise to a right to protection under Article 8. As the file note explains, the father and mother are entitled to reside in Nigeria as are the two daughters: it is the clearly established case law relating to Article 8 that the Contracting States are not in such circumstances obliged to respect choices of matrimonial residence made by non-nationals. In circumstances where the mother deliberately chose to separate herself from the father in 2003, it could not be said to be unreasonable or disproportionate to return the applicants to the status quo they created for themselves in that year when the mother left Nigeria by deporting the father.

24. It is complained that the file note makes no reference to the position of the stepdaughter and that there has been a failure by the Minister to enquire into the impact of a deportation of her stepfather on her rights to respect for private and family life. In the judgment of the Court there was no such obligation upon the Minister to undertake a particular enquiry into her position in this case. No reference whatsoever is made to any interest of the stepdaughter in the representations made on 18th February, 2008. Thus no particular case was advanced as to the removal of the father having any impact upon her wellbeing or on an established way of life in the State. The presence of the stepdaughter in the household is acknowledged as is her age. Having regard to the fact that she lived her life in Nigeria prior to arrival here in 2003; will shortly be an adult in her own right and has, one would assume, a natural father as well as two half brothers in Nigeria, it could not be seriously suggested that the expulsion of the stepfather whose company she has

had for only three years, could constitute an interference with her Article 8 rights which could be of such gravity as to be unlawful when, particularly, no case to that effect has been made. In the case law of the Strasbourg Court in this regard it is clear that the relationship of a parent and an adult child will not necessarily attract the protection of Article 8 without evidence of dependency or more than normal emotional ties. No such evidence has been put before the Minister in this case nor was there any explanation of the role, if any, the stepfather played in the life of the stepdaughter in Nigeria prior to 2003. (See, for example, *Mokrani v. France* [2003] 14 EHRR 123.) In the absence of specific facts put to the Minister as to the details of the stepdaughter's private life or links to her stepfather, the Minister cannot be required to undertake what would be a speculative enquiry.

25. A criticism is made of the file note to the effect that while the assessment of the interference with family life was addressed in detail, this was not done in the analysis of the impact of the deportation on the father's right to respect for private life. Again, quite apart from the fact that, as the Court has indicated, no serious issue in relation to Article 8 can be said to arise in this case, no particular case was made in the representations of 18th February, 2008 as to the manner in which deportation might impact on identified aspects of private life. The representations were directed exclusively at considerations of family life and the rights of an Irish daughter as an Irish citizen.

26. The argument to the effect that there has been some form of breach of fair procedures in failing to warn the applicants that if the option of asking for humanitarian leave to remain was chosen and failed, the father would not be able to return when deported is clearly unfounded on the facts. The "proposal letter" dated 7th September 2009 contained the express warning as to what would happen if a deportation order was made: "A deportation order will require you to leave Ireland and to remain outside the State."

27. There remains, accordingly, the complaint made in relation to the assessment made of the impact of a deportation upon the rights of the Irish daughter as an Irish citizen. Again, the law in this regard is now well settled and is expressly referred to in the file note:

> "It is acknowledged that as an Irish citizen (the first named applicant) has rights of residence in Ireland, the right to be reared and educated with due regard to her welfare, the right to the society, care and company of her parents. However, as held by the Supreme Court in *Lobe* and *Osayande*, it does not flow from the rights of the child that the family or parents and siblings of Irish children have a right to reside in Ireland. While there is an obligation on the Minister to consider each case on its individual merits, he is entitled to take into account the consequences of allowing a particular applicant to remain in the State where that would inevitably lead to similar decisions in other cases."

28. Insofar as it is alleged that the file note is inadequate in its consideration of the best interests of the Irish daughter, the argument is, in the view of the Court, without foundation. While it is acknowledged that although young, she has established links and ties to her community in the State, it is also the case that she is of adaptable age and if the family chose to relocate to Nigeria with the father, she would be entitled to Nigerian citizenship and would have the company and support of her father's extended family in Nigeria. While the Minister is obliged for the purposes of the impact of a deportation on rights under Article 8 of the Convention to enquire as to whether the family has an entitlement to choose to relocate to Nigeria and the absence of any insurmountable obstacles to them doing so, those factors are, in a sense, irrelevant in this case. The first named applicant, as an Irish citizen, cannot be deported and her mother and half sister are entitled to remain here with her as matters stand. It is one of the complaints made by the father that the Minister has failed to give adequate consideration to the fact that the mother and her two daughters will not move to Nigeria if he is deported. In his affidavit he says: "I say that it should have been clear from the representations made on my behalf that my wife would be unwilling to travel to Nigeria with the first two applicants herein in the event of my being deported there." That is a choice they are entitled to make. It does not follow, however, that the Minister's conclusion in favour of the prevailing interests of the State is irrational, unreasonable or disproportionate in circumstances where the mother deliberately and voluntarily came to the State while pregnant leaving the father behind and established a way of life without him in the State for four years prior to his illegal arrival.

29. For all of these reasons the Court is satisfied that no fair issue has been established for trial in this case. Moreover, even if it could be said that any one of the arguments advanced could so qualify, it is clear that this is a case in which damages would in any event be an adequate remedy. The father is illegally present in the State and the deportation order is to be taken as valid until it is proved otherwise. The implementation of the deportation order restores the applicants to the position in which they were prior to the father's illegal entry into the State. Should the deportation order ultimately be quashed in a successful outcome to the judicial review application, the cost of returning him to the State and any loss incurred through the temporary disruption of their family life in circumstances where the third named applicant is not in employment and contributing to living expenses, can clearly be compensated for by an award of damages.

30. For these reasons, the application for an interlocutory injunction is refused.