THE HIGH COURT

JUDICIAL REVIEW

[2017 No. 324 J.R.]

BETWEEN

DJAMBA AND OTHERS

APPLICANTS

AND

THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM

RESPONDENT

JUDGMENT of Ms. Justice O'Regan delivered on the 8th day of May, 2017

1. The applicants herein are seeking leave to apply for judicial review of a decision of the respondent notified to the applicants on 31st March 2017 to the effect that the first named applicant is no longer entitled to apply for family reunification in respect of the second to fifth applicants, all of whom are minors.

2. The grounds supporting the application are to the effect that by virtue of s. 27 of the Interpretation Act 2005 the repeal of the relevant subsidiary protection Regulations (Statutory Instrument 426 of 2013) by s. 6 (2) (n) of the International Protection Act of 2015 does not affect the first applicant's right to apply for family reunification that was acquired or accrued under the 2013 Regulations without being subject to a time limit of twelve months.

3. Written submissions have been tendered. These identify that since the coming into force of the International Protection Act 2015 there is now a time limit of twelve months from the given, under s. 47, of the refugee declaration, or, as the case may be, subsidiary protection declaration, to the sponsor to apply for family reunification by virtue of s. 56 (8) of the 2015 Act. The first applicant's argument was to the effect that he was granted subsidiary protection in February 2015 at which time there was no time limit within which he might make the application the subject matter of the impugned decision of 31st March 2017.

4. The applicant relies upon s. 27 (1) (c) of the Interpretation Act 2005 which provides that where an enactment is repealed the repeal does not affect any right, privilege, obligation or liability acquired accrued or accord under the enactment.

5. The applicants rely on the U.K. Court of Appeal judgment in *Chief Adjudicating Officer and another v. Maguire* [1999] 1 WLR 1778 where the applicant was seeking a special hardship allowance however before he made his claim and within the period during which he was permitted to make same the statute providing for the benefit was repealed. The court held that the applicant was entitled to the benefits nevertheless. The court did indicate that within the period permitted to move the claim a distinction between what is and what is not a right must often be one of great finesse. Any hope or expectation of acquiring a right is insufficient although an entitlement suffices.

6. The applicant argues this decision was followed in Ireland in the matter of *McEnery v. Sheahan* [2012] IEHC 331 in a judgment of Feeney J. of 30th July 2012.

7. It is noteworthy that the decision of Feeney J. was not followed by O'Malley J. in a subsequent matter of *McEnteer v. Sheahan* [2013] 2 IR 328 and the court was faced with the option of following an earlier decision of Dunne J. in *Start Mortgages Ltd. v. Gunn and Ors.* [2011] IEHC 275 or the decision of Feeney J. aforesaid.

8. In addition the impact of s. 27 of the Interpretation Act 2005 aforesaid was considered by the Supreme Court in the matter of *Minister for Justice, Equality and Law Reform v. Tobin (No.2)* [2012] IESC 37. In the judgment of O'Donnell J. consideration was afforded as to a change in legislation removing the word "fled" in respect of granting of an order of surrender in respect of the European Arrest Warrant. The U.K. Court of Appeal *Maguire* judgment was considered under this umbrella at para. 66 of O'Donnell J's judgment.

9. At para. 67 O'Donnell J. stated:

> "To some extent therefore it can be said much legislation interferes with existing rights in that sense, and indeed is intended to do so. In identifying what can be said to be "vested" rights which trigger the presumption in s. 27 there is I think much useful guidance to be gained in *Bennion*, Statutory Interpretation (*4th Ed. Butterworths*, 2002) which states that "the right must have become in some way vested by the date of a repeal, i.e. it must not have been a mere right to take advantage of the enactment now repealed".

10. At para. 74 the court states:

> "The mere existence of a right does not preclude statutory interference with that right. Indeed, it may be relatively easy to infer such an intention in many cases. As Lord Rodger observed in *Wilson v. First County Trust* the presumption is a weak one and easily rebutted. All that the presumption requires is that the intention clearly appear either from the text of the specific words used, or from the context of the amending legislation."

11. Statutory Instrument No. 426 of 2013 was repealed by s. 6 (2) (n) of the 2015 Act. An alternate provision was incorporated by s. 56 of the 2015 Act including *inter alia* subs. 8 aforesaid.

12. Section 69 of 2015 Act incorporated certain transition provisions relating to declarations and permissions under the repealed enactments and did not incorporate any reference to additional arrangements in respect of rights to enter and reside for members of the family of qualified persons.

13. No application was in being on the part of the Applicants at the date of coming into force of the 2015 Act. The right asserted

therefore is a mere right to take advantage of an enactment now repealed. Such claimed right is not a vested right therefore the presumption in s.27 is not triggered (see para. 9 above). It is evident from foregoing that the argument of the applicants is not sustainable and therefore the application for leave is refused.