



**Finlay Geoghegan J.  
Peart J.  
Hogan J.  
BETWEEN**

**NACER BENLOULOU**

**APPLICANT/RESPONDENT**

**AND**

**MINISTER FOR JUSTICE AND EQUALITY,  
IRELAND AND THE ATTORNEY GENERAL**

**RESPONDENTSAPPELLANTS**

**JUDGMENT (ex tempore) delivered on the 13th day of June 2016, by Ms. Justice Finlay Geoghegan**

1. This is an appeal against the order of the High Court of the 3rd December, 2015, (Barrett J.) in which he awarded to the applicant, who is the respondent to this appeal (to whom I will refer as the applicant), costs against the respondents, who are the appellants to this appeal, the Minister, Ireland and the Attorney General (to whom I will refer as the appellants).
2. The order for costs was an order for the costs of an application for leave to issue judicial review proceedings. I note in passing that the order is for costs to include all reserved and there were reserved and costs of discovery, I am not clear if there were any costs of discovery but that is a minor issue.
3. The application for judicial review arose in the following manner. The appellant is an Algerian national who had been living in France, held a valid "carte de séjour" in France and came to Ireland in a year preceding 2014, apparently using his brother's passport to travel to Ireland. Whilst in Ireland there was allegedly an incident which subsequently gave rise to an application after the applicant had returned to France that he be transferred from France to Ireland pursuant to a European Arrest Warrant to face prosecution in Ireland in relation to the alleged offence while he was in Ireland.
4. He was returned by the French Authorities to Ireland on the 19th February, 2014, and he subsequently remained in custody in Ireland until the 17th July, 2015, when he was acquitted for all the charges laid against him and immediately released. He then found himself in Ireland without any means of support and in particular without the ability to return to France and in part that inability related to the absence of any passport. Apparently, there is no Algerian Embassy in Dublin. He was not entitled to a French passport and he was without support.
5. His solicitors commenced correspondence on or about the 21st July, initially with garda and prison authorities looking for a number of matters, but ultimately by the 29th July, 2015, when he had sought to leave Ireland on an Air France flight and was refused by reason of the absence of any travel documents, on the papers before us correspondence commenced with the Minister, asking that the Minister make a formal request to the French authorities to take the applicant back to France and make the necessary travel arrangements and make interim temporary accommodation arrangements. The Minister undoubtedly was given a very short time limit within which to provide that assurance. An application was then made in the absence of any such assurance on the following day, the 30th July, to the then President of the High Court for leave and he refused to determine the matter on an ex parte basis and he directed it should proceed on notice to be heard initially on the 5th August. There was then service on the appellants and then a number of adjournments between the 5th and the 12th August 13th or 14th.
6. In the interim period a decision was made on behalf of the Minister to assist the applicant to return to France and what the trial judge described as a humane letter was written and an affidavit was sworn by Mr. Fennell, Principal Officer in the Department of Justice, setting out the steps which the Minister was prepared to take which was in essence to issue a temporary travel document on the provision by the applicant of true and accurate information on an application form.
7. Whilst the Minister indicates in the application form which has been provided to us, that such a temporary travel document may be issued in exceptional circumstances it is normally only issued in accordance with its terms to a person who is currently resident in Ireland. It was necessary, therefore, for the Minister in exercising her discretion in favour of the applicant to make a concession that she would provide him with the temporary travel document notwithstanding that he was not considered, certainly, to be lawfully resident in Ireland at the time.
8. Mr. Fennell in his affidavit sworn in response to the application for leave stated at para. 6:-

"I say, believe and I am so advised that there is no basis for the applicant's proposed claim herein and that in any event there would be no necessity or utility in granting the applicant leave to seek the sole substantive relief sought in circumstances where the respondent although clearly not responsible for assisting the applicant has already suggested a course of action which would enable the applicant to travel to France."
9. I am satisfied that the Minister made very clear that whilst she was assisting the applicant, she did not consider that she was under any legal obligation to assist the applicant for any of the reasons set out in the statement of grounds. Happily the applicant completed the application and was granted the travel document and then returned to France, not at the Minister's expense. In those circumstances the application for leave was not proceeded with and the only matter remaining which was decided by Barrett J. in his judgment of the 3rd December was the application for costs on behalf of the applicant.
10. In the statement of grounds for leave the first relief sought was an order directing the respondent to "promptly take all steps to enable the applicant to be returned to France". There were secondary reliefs sought in relation to seeking an order directing the respondent to pay and to cover his reasonable living expenses until such time as he is returned to France and to reimburse such

parties as had advanced funds to him in the last two weeks and there was a claim for damages.

11. In the manner in which the application did not proceed, it is correct to say that the applicant determined not to proceed with those remaining claims which as Mr. Forde on his behalf here has indicated given the time scale in which he was able to return to France with was either the 11th or 12th August were minimal in any event.

12. The trial judge on hearing the application took the view that the facts of this application were governed by the Supreme Court judgment in *Godsil v. Ireland and the Attorney General* [2015] IESC 103, in which the single judgment with which the two other members of the court agreed was delivered by McKechnie J. and the trial judge applied the approach of McKechnie J. in *Godsil* to the facts of this case.

13. The appellants seek to distinguish this case from the position in *Godsil* and in my view there is not a basis for so distinguishing. In my view the trial judge was entitled to consider on the facts herein that the approach of the Supreme Court in *Godsil* was the one which should apply. My reasoning for this is based upon the approach of McKechnie J. in *Godsil*. I should just indicate that *Godsil* concerned proceedings in which the applicant, an undischarged bankrupt, had sought relief which would in effect have allowed her to stand for election notwithstanding the then legislative disqualification and before the proceedings were determined, legislation which in effect so permitted her was passed.

14. The first question which McKechnie J. addressed was whether or not the legislation which in effect rendered the *Godsil* proceedings moot was to be considered an "event" for the purposes of O. 99, r. 14. He concluded at para. 58 of the judgment that the question, as he put it, which "arises, is whether an examination of the circumstances of this case an 'event' in the sense understood by O. 99, r. 1(4) can be identified by reference to which the cost issue can be determined". He concluded: "In my view there is".

15. It must be recalled that O. 99, r. 1(4) provides, insofar as relevant, that "the costs of every issue of fact or law **raised** upon a claim or counterclaim shall unless otherwise ordered follow the event". I would simply draw attention to the fact that it is the costs of every issue of fact or law raised upon a claim or counterclaim as distinct from determined, which must, unless otherwise ordered follow the event.

16. McKechnie J. at para. 57 of his judgment expressly dissented from a stricter and more technical approach to that sub rule as indicated by Cooke J. in *Nearing v. Minister for Justice, Equality and Law Reform* [2010] 4 I.R. 211. It is apparent from the judgment in *Godsil* that McKechnie J. took the view that the legislation which had been passed was to be considered as the "event" for the purposes of Order 99 rule 1(4). It appears to me that in taking that approach which obviously bound the High Court as it does this court, the question which the High Court had to address and which this Court has to address is whether the step taken by the respondent in a humane way and without acknowledgment of any legal liability, but which rendered the proceedings moot were to be considered as an event for the purposes of O. 99, r. 1(4). *Godsil* suggests that such a step should be considered to be an "event" for the purposes of Order 99 rule 1(4) in circumstances where it can only reasonably be understood as being in direct response to the proceeding. In *Godsil* it was the proceedings as issued, in this case it is that the step taken by the Minister which rendered the application for leave moot can only be reasonably to be understood as being in direct response to the application for leave and having viewed it in that way it appears to me that the trial judge was entitled to consider that applying the approach of *Godsil* that he should consider that there was an event which indicated that the costs should follow that event and be awarded in favour of the applicant.

17. I wish to add that the appellants in their submissions accepted at para. 3.7 as counsel has in oral submission that the court should not be asked to determine the issue which has been rendered moot by the issue of the temporary travel document, but did yet ask the court to reject the costs claimed upon the basis that the application for leave was unstateable and had no legal basis. It appears to me that the court cannot be asked to make such a determination without determining the issues and that such a submission is not a consistent submission and the court cannot take that approach.

18. The remaining two matters that I have considered are first whether there should be any diminution in the full order for costs by reason of the fact that the applicant did not proceed with certain of the remaining claims. On the particular facts it does not appear to me that there is any basis to interfere with the trial judge's discretion in awarding the full costs of the application for leave only. Insofar as there was no discovery that is irrelevant.

19. The second matter is that there appears, from the written submissions to have been some concern on behalf of the Minister that the trial judge may have expressed a view even by implication as to whether the Minister was under any legal obligation to assist the applicant to return to France in circumstances where he had been brought here on a European Arrest Warrant and then had been acquitted of the charges which he was brought back to face.

20. For my part I do not read the judgment with that implication, but to make the matter absolutely clear insofar as my judgment is concerned it forms no part of the my judgment that the court has given any consideration to the question as to whether the Minister is or is not under a legal obligation to assist a person in the circumstances of the applicant to return to the country from which he was transferred pursuant to a European Arrest Warrant. That is an issue which remains for another day in the event it ever becomes the subject matter of an application.

21. For all those reasons I would dismiss the appeal.