

THE HIGH COURT

JUDICIAL REVIEW

[2016 No. 743 J.R.]

BETWEEN

O.M.R.

APPLICANT

AND

MINISTER FOR JUSTICE AND EQUALITY, THE REFUGEE APPEALS TRIBUNAL, IRELAND AND THE ATTORNEY GENERAL

RESPONDENTS

(No. 2)

JUDGMENT of Mr. Justice Richard Humphreys delivered on the 14th day of November, 2016

1. The applicant has brought judicial review proceedings challenging a decision of the Refugee Applications Commissioner, and has contended that he should not be required to exhaust the remedy of appeal to the Refugee Appeals Tribunal. These proceedings *O.M.R. v. Minister for Justice Equality (No. 1)* [2016] IEHC 532 (unreported, High Court, 6th September 2016) have recently been dismissed by Faherty J. An application for leave to appeal is currently pending.

2. On foot of the decision in *O.M.R. (No. 1)*, the tribunal listed the applicant's appeal for hearing on 28th September, 2016, in accordance with the judgment of MacEochaidh J. in *H.T.K. v. Minister for Justice Equality* [2016] IEHC 43 (unreported, High Court, 15th January 2016).

3. On foot of that development, rather than apply for a stay in his listing proceedings, the applicant has launched new judicial review proceedings seeking an injunction restraining the tribunal from processing the appeal and seeking a declaration that the tribunal should be precluded from processing the appeal until the first set of proceedings have been determined.

4. Mr. Paul O'Shea B.L. for the applicant contends that a second set of proceedings was required because the Tribunal was not a party to the No. 1 proceedings.

5. This is a misconception. Where a decision is stayed in judicial review proceedings, that stay also has the effect of staying any consequent action. Thus for example when a criminal conviction in the District Court is stayed pending challenge, the stay binds the Garda Síochána, the Probation Service, the Prison Service, the Circuit Court, and anybody else who might be interested in acting upon the conviction. Where a stay is required in judicial review proceedings, the appropriate step is to apply in those proceedings, and not to launch a second set of judicial review proceedings (see my decision in *Sfar v. Minister for Agriculture Food and Marine* [2016] IEHC 165 (unreported, High Court, 5th April 2016) where a lay litigant had adopted the inappropriate course that has now also been taken by the applicant in these proceedings).

6. While I appreciate that the applicant has secured leave in the present (No. 2) proceedings, and that I am now considering the injunction in a post-leave context, on further examination it is clear to me that the proceedings are fundamentally misconceived. The appropriate step is to apply to Faherty J. in the existing No. 1 proceedings for a stay pending either the finalisation of the leave to appeal application or pending the appeal if leave is granted. Ms. Kilda Mooney B.L. for the respondent informs me that the tribunal take a generally neutral stance on the application. Solicitors for the applicant wrote to the respondents to the effect that an injunction had been granted up to the 17th of October, although this does not appear in the order granting leave. The injunction, even on the applicant's version, expired on that date. The present application for an injunction by way of separate judicial review proceedings is fundamentally misconceived.

7. For the foregoing reasons I will order that the application to extend the injunction be refused.