

## THE HIGH COURT

## JUDICIAL REVIEW

[2017 No. 94 J.R.]

BETWEEN

SINEAD EVANS AND FAIZAN KHAN

APPLICANTS

AND

THE MINISTER FOR JUSTICE AND EQUALITY

RESPONDENT

**RULING of Mr. Justice Richard Humphreys delivered on the 14th day of December, 2017**

1. This application concerns costs of a judicial review in which *mandamus* to determine a visa application in favour of the first named applicant's spouse was sought. The first-named applicant, Ms. Evans, is a U.K. national and married Mr. Khan, the second named applicant, a national of India, on 28th September, 2015. Ms. Evans came to Ireland in June, 2016, and in the process of relocating here, an application for a visa for her spouse was sought. After seven months of waiting for that visa, the present proceedings seeking mandamus to make a decision were instituted. O'Regan J. refused leave to bring those proceedings (*S.E. v. Minister for Justice and Equality* [2017] IEHC 70). That refusal was appealed to the Court of Appeal, which granted leave. Ultimately, the applicants became unhappy about being separated for so long and the visa application was withdrawn, with the applicants relocating to Sweden (where incidentally a visa was immediately granted to Mr. Khan). The proceedings are therefore moot and the only issue is costs. In respect of that issue, each side applies for costs against the other.

2. I have heard submissions from Mr. Colm O'Dwyer S.C. (with Mr. Ian Whelan B.L.) for the applicants and Ms. Suzanne Kingston B.L. for the respondent. The reason the proceedings have become moot is because Ms. Evans decided to leave Ireland, with the result that the visa application no longer served a purpose and was withdrawn. The reason it was withdrawn was thus that the parties had been separated for too long awaiting a decision and therefore decided to relocate to Sweden. So the proceedings were not rendered moot by a matter independent of the proceedings themselves. The default rule that no order as to costs should be made does not therefore apply here. It seems to me to be nonsense for the State to say that the proceedings were moot due to the "*unilateral act of the applicants*" (para. 12 of the affidavit of Melissa Brennan), or that "*it was the applicants' own decision to withdraw the application, and not any external factors, which rendered the proceedings moot*" (para. 13).

3. Ms. Brennan's affidavit at para. 13 does not merely disagree with the contention that the proceedings became moot as a result of the delay in processing the visa application; it describes this contention as "*plainly factually incorrect, and ... contrary to the evidence before this Court*". That seems to me to be a remarkably arrogant and misconceived averment. Ms. Kingston submitted that the applicants had a choice to let the proceedings run their course, but that would have involved remaining in Ireland. Where an applicant reasonably reaches the point that she feels the need to leave this jurisdiction as a result of the delay in processing the visa application, that is a different situation and that is the situation that applies here.

**Order**

4. For the foregoing reasons I reject the respondent's application for costs and I award costs to the applicants, including reserved costs, to be taxed in default of agreement on the basis that it was appropriate to have solicitors and two counsel at all stages.