THE HIGH COURT
JUDICIAL REVIEW

[2016 No. 356 JR]

BETWEEN

MARIA LUFEYO
AND
TAYEDZA LUKE KASUWANGA
(AN INFANT SUING BY HIS MOTHER AND NEXT FRIEND MARIA LUFEYO)

APPLICANTS

AND
THE MINISTER FOR JUSTICE AND EQUALITY

RESPONDENT

JUDGMENT of Mr Justice David Keane delivered on the 3rd September 2018

Introduction
1. This is an application for the costs of judicial review proceedings that have become moot.

2. The first applicant, Maria Lufeyo, is a citizen of Malawi and the mother of the second applicant, Tayedza Luke Kasuwanga, who was born in the State on 10 July 2015 and is a citizen of Ireland.

3. Ms Lufeyo entered the State in October 2013 on a student visa. On 25 September 2015, through her solicitors, she wrote to the Irish Naturalisation and Immigration Service ('INIS'), seeking permission to reside in the State based on her parentage of an Irish citizen child, in reliance upon the principle identified by the Court of Justice of the European Union ('CJEU') in Case C-34/09 *Gerardo Ruiz Zambrano v Office national de l'emploi* EU:C:2011:124 ('the *Zambrano* principle').

4. I am given to understand that, by order made on 30 May 2016, Mac Eochaidh J granted the applicants leave to seek an order of *mandamus* compelling the respondent, the Minister for Justice and Equality ('the Minister'), to issue a decision on that application, although a copy of that order has not been produced.

5. On 22 June 2016, the INIS wrote to Ms Lufeyo granting her permission to remain in the State until 22 June 2019 on what the Minister describes (unhelpfully, without explanation) as a 'Stamp 4 basis.' It is necessary to consult the Department of Justice website to discover that, under a non-statutory administrative scheme created by the Department, a Stamp 4 placed on a person's passport 'indicates permission to stay in Ireland for a specified period, subject to conditions', and may be given, in amongst other circumstances, if that person has permission to join his or her Irish citizen minor child. That very broad and, thus, unenlightening definition becomes a little clearer when contrasted with that of a Stamp 3 permission, under which the holder cannot work or engage in any business, trade or profession in the State, leading to the inference that a Stamp 4 permission holder may be permitted to do so. While everyone is presumed to know the law, no such presumption applies to non-statutory administrative schemes. The terms used in such schemes, unless and until they are defined or explained, are simply jargon. In public administration, as in the teaching of mathematics, the aim must surely be to pull down barriers to understanding, not to erect them: see Flegg, *Numbers: Their History and Meaning* (1983).

6. Ms Lufeyo and her son now seek their costs of the proceedings against the Minister.

The correct approach to the costs of moot proceedings
7. The principles I distil from the leading cases on the correct approach to the costs of moot proceedings are the following:

> (a) Under O. 99, r. 1(4) of the Rules of the Superior Courts, the general rule on the costs of proceedings is that they follow the event, although there is a discretion to order otherwise; *Grimes v Punchestown Developments Co. Ltd* [2002] 4 IR 515 (at 522).
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> (b) Even where the substantive point has become moot, the first inquiry which a court must make on a follow on costs application is to decide whether or not there exists an "event" to which the general rule can be applied; *Godsil v Ireland* [2015] 4 IR 535 at 555-6. Such an event may exist where, for example, the actions that rendered the proceedings moot were carried out in direct response to the issue of the proceedings; *ibid* (at 557).
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> (c) Where there is no 'event', the basic rule, though not one that should be applied over-prescriptively, is that, in the absence of significant countervailing factors, the court should lean ordinarily in favour of making no order as to costs where a case has become moot due to a factor or occurrence outside the control of the parties but should lean in favour of awarding costs against a party through whose unilateral action the proceedings have become moot; *Cunningham v. President of the Circuit Court* [2012] IESC 39 , [2012] 3 I.R. 222 (at 230).
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> (d) There are hybrid cases that do not fit neatly into either category; *Cunningham* (at 23). The most obvious instance of such a case is where a statutory officer or body, whose conduct is under challenge, has changed position, to a greater or lesser extent, due to wholly external factors. Statutory authorities have an obligation to exercise their powers in a proper manner. Where circumstances change, it is not only reasonable but necessary for them to take that into account, which may result in a change of position, rendering proceedings moot. When that happens, it may be inappropriate to characterise the proceedings as having become moot by the unilateral action of that authority, whereas it may be appropriate to do so if there has simply been a change of mind or the adoption of a new and different view. Where the immediate or proximate cause of mootness is an act or omission of a statutory body or officer, which that body or officer claims was precipitated by an external factor or factors, that body or officer bears the evidential burden in that regard; *Cunningham* (at 230-2)
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> (e) The court cannot and should not form a view on the merits of the proceedings - i.e. whether the substantive application for judicial review would have succeeded or failed; *Cunningham* (at 233).
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> (e) The quite different test for determining the issue of liability for the costs of moot proceedings posited in *S.G. and N.G. v The Minister for Justice* [2006] IEHC 371, (Unreported, High Court (Herbert J), 16th November, 2006) - i.e. whether in the circumstances it was reasonable for the applicants to have commenced their application for leave to seek judicial

review - must now be viewed as one limited in its application to the facts of that case; *Matta v Minister for Justice* [2016] IESC 45 (Unreported, Supreme Court (MacMenamin J; Dunne and O'Malley JJ concurring), 26th July, 2016) (at para. 22).

The *Zambrano* principle

8. Article 20(1) of the Treaty on the Functioning of the European Union ('TFEU') establishes the concept of European Union citizenship by providing that every person holding the nationality of a Member State shall be a citizen of the Union. Under Article 20(2) of the TFEU the rights of the Union citizen are expressed to include the right to move and reside freely within the territory of the Member States.

9. In *Zambrano*, the CJEU ruled:

> 'Article 20 TFEU is to be interpreted as meaning that it precludes a Member State from refusing a third country national upon whom his minor children, who are European Union citizens, are dependent, a right of residence in the Member State of residence and nationality of those children, and from refusing to grant a work permit to that third country national, in so far as such decisions deprive those children of the genuine enjoyment of the substance of the rights attaching to the status of European Union citizen.'

10. This is the *Zambrano* principle, upon which Ms Lufeyo, as the third country national ('TCN') parent of an infant Irish - and, hence, Union - citizen son, sought to rely.

11. How may the decision to refuse permission to a third country national to work or reside in the Member State of the nationality of his or her dependent Union citizen child deprive that child of the genuine enjoyment of the substance of the rights attaching to the status of European Union citizenship? In Case C-256/11 *Murat Dereci v Bundesministerium für Inneres* EU:C:2011:734, the CJEU first noted (at para 65) that, in *Zambrano*, the Court was satisfied that the refusal to grant the right of residence sought would require the Union citizen children concerned to leave the territory of the Union with their TCN parents, before concluding (at para 66):

> 'It follows that the criterion relating to the denial of the genuine enjoyment of the substance of the rights conferred by virtue of European Union citizen status refers to situations in which the Union citizen has, in fact, to leave not only the territory of the Member State of which he is a national but also the territory of the Union as a whole.'

12. The judgment of the CJEU continues:

> '67 That criterion is specific in character inasmuch as it relates to situations in which, although subordinate legislation on the right of residence of third country nationals is not applicable, a right of residence may not, exceptionally, be refused to a third country national, who is a family member of a Member State national, as the effectiveness of Union citizenship enjoyed by that national would otherwise be undermined.
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> 68 Consequently, the mere fact that it might appear desirable to a national of a Member State, for economic reasons or in order to keep his family together in the territory of the Union, for the members of his family who do not have the nationality of a Member State to be able to reside with him in the territory of the Union, is not sufficient in itself to support the view that the Union citizen will be forced to leave Union territory if such a right is not granted.'

13. In *Bakare v Minister for Justice* [2016] IECA 292, (Unreported, Court of Appeal (Hogan J; Birmingham and Irvine JJ concurring), 19th October, 2016), the Court of Appeal summarised the position on what amounts to a denial of the genuine enjoyment of the substance of the rights of EU citizenship in this context (at para. 24):

> 'It is accordingly clear from a consideration of post-*Zambrano* case-law that the critical consideration is whether the denial of residency or similar rights to one or both third country nationals who the parents of EU citizen children is likely to bring about a situation where those children are in practice compelled to leave the territory of the Union.'

14. At the risk of over-simplification, I conclude that a third country national who wishes to establish an entitlement to reside in the State under the *Zambrano* principle must establish:

> (a) parentage of a European Union citizen child;
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> (b) the dependence of that Union citizen child upon that parent; and
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> (c) as an exceptional situation, a real risk because of the nature or extent of that dependence that the Union citizen child will be compelled to leave the territory of the Union if that parent is not permitted to reside in the State.

15. The CJEU has addressed the proper approach to the assessment of whether there is a relationship of dependency sufficient to compel a Union citizen child to leave the territory of the Union in Case C-133/15 *Chavez-Vilchez v Raad van bestuur van de Sociale verzekeringsbank* EU:C:2017:354, ruling:

> '1. Article 20 TFEU must be interpreted as meaning that for the purposes of assessing whether a child who is a citizen of the European Union would be compelled to leave the territory of the European Union as a whole and thereby deprived of the genuine enjoyment of the substance of the rights conferred on him by that article if the child's third-country national parent were refused a right of residence in the Member State concerned, the fact that the other parent, who is a Union citizen, is actually able and willing to assume sole responsibility for the primary day-to-day care of the child is a relevant factor, but it is not in itself a sufficient ground for a conclusion that there is not, between the third-country national parent and the child, such a relationship of dependency that the child would indeed be so compelled were there to be such a refusal of a right of residence. Such an assessment must take into account, in the best interests of the child concerned, all the specific circumstances, including the age of the child, the child's physical and emotional development, the extent of his emotional ties both to the Union citizen parent and to the third-country national parent, and the risks which separation from the latter might entail for the child's equilibrium.
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> 2. Article 20 TFEU must be interpreted as not precluding a Member State from providing that the right of residence in its territory of a third-country national, who is a parent of a minor child that is a national of that Member State and who is

> responsible for the primary day-to-day care of that child, is subject to the requirement that the third-country national must provide evidence to prove that a refusal of a right of residence to the third-country national parent would deprive the child of the genuine enjoyment of the substance of the rights pertaining to the child's status as a Union citizen, by obliging the child to leave the territory of the European Union, as a whole. It is however for the competent authorities of the Member State concerned to undertake, on the basis of the evidence provided by the third-country national, the necessary enquiries in order to be able to assess, in the light of all the specific circumstances, whether a refusal would have such consequences.'

16. It seems to me that the ruling encapsulates two principles of particular relevance to the present application for costs. The first is that a wide range of factors are relevant to the determination of whether such a relationship of dependency exists between the third country national parent and the Union citizen child that refusal of the permission sought would compel departure from the territory of the Union, including: whether the other parent of the child is entitled to remain in the territory of the Union and is able and willing to assume sole responsibility for the primary day-to-day care of the child; and what is in the best interests of the child concerned in all of the circumstances, including the age of the child, the child's physical and emotional development, the extent of his or her emotional ties both to the other parent entitled to remain and to the third-country national parent, and the risks, if any, which separation from the latter might entail for the child's equilibrium.

17. The second principle is that it is for the third country national concerned to provide the relevant Member State with the evidence to enable it to carry out the necessary enquiries to conduct that assessment.

Background

18. In order to properly address the question of why these proceedings became moot, it is necessary to consider briefly the chronology of relevant events.

19. The solicitors for Ms Lufeyo wrote to the INIS on 25 September 2015, seeking permission for her to reside in the State on the *Zambrano* principle as the TCN parent of an Irish citizen child but providing only the most limited evidence in support of that application; specifically, copies of her passport and that of her child; a copy of the child's birth certificate; a copy of the registration certificate issued to her by the Garda National Immigration Bureau ('GNIB'); and a copy of a the cover letter from her bank enclosing a debit card that it issued to her (presumably as evidence of her permanent address).

20. It seems that, through her legal representatives, Ms Lufeyo adopted the following position. First, that it was for the Minister to conduct an inquiry from scratch into whether her Union citizen child was dependent upon her and, if so, whether the nature and extent of that dependence gave rise to a real risk that the child would be compelled to leave the territory of the Union if Ms Lufeyo was not permitted to reside in the State. Second, that her stance on the provision by her of evidence for the purpose of that inquiry should be entirely reactive rather than proactive in the smallest degree. And third, that the Minister should nonetheless conduct that inquiry within a short or limited timeframe.

21. The solicitors for Ms Lufeyo wrote again on 5 November 2015 requesting an acknowledgment that her application had been received and notification of any further information or documentation the INIS required from her. I pause again here to note what seems to me to be the implicit assumption that it was for the Minister to advise Ms Lufeyo from the outset concerning the evidence she should present in support of her claim that her particular personal and family circumstances brought her within the *Zambrano* principle.

22. The INIS replied by letter dated 23 November 2015, requesting that Ms Lufeyo provide a range of documents, including documentary evidence of, amongst other things: her son's residence in the State from birth; her own residence in the State during that period; her relationship with the child's father; any financial support provided by the child's father; the father's role and involvement in the child's upbringing; any relevant family law court orders; and anything else that Ms Lufeyo considered relevant.

23. Through her solicitors, Ms Lufeyo replied on 27 November 2011, enclosing additional documentation including; a letter from the child's father confirming that the couple were cohabiting and raising the child together; a copy of selected bank statements from an account held by Ms Lufeyo and a separate account held by the child's father, both giving the same address for the account holder; and a letter dated 20 July 2015 from the maternity hospital to Ms Lufeyo, confirming a screening appointment for the child.

24. The INIS wrote again on 1 December 2015, confirming receipt of Ms Lufeyo's correspondence and enclosures of 27 November 2015, and repeating its request for documentation evidencing: the child's residence in the State from birth; Ms Lufeyo's role in the child's life from birth; and Ms Lufeyo's relationship with the child's father.

25. On 9 December 2015, Ms Lufeyo's solicitors wrote back, enclosing: a letter from the child's GP dated 3 December 2015, enclosing a copy of the child's immunisation record; a undated letter from the GP who provided Ms Lufeyo with antenatal and postnatal care, as well as neonatal care for the child, until mother and child moved away from the area; a letter from a public health nurse, dated 8 December 2015, confirming Ms Lufeyo's impeccable record of engagement with the public health nursing service; a letter from her parish priest, dated 5 December 2015, confirming that she and her partner had been his parishioners since June 2015 and on some occasions brought their infant child to church with them; and two photographs of mother, partner and infant child together

26. Ms Lufeyo's solicitors next wrote to the INIS on 6 May 2016, enquiring when a decision would be made and whether anything further was required. The INIS replied promptly on 10 May 2016, stating in material part:

> 'Please note that your client's case is amongst many to be considered by the Minister at present and, as such, at this point in time, it is not possible to provide a specific indication as to when your client's case will be finalised. However, be assured that there will be no avoidable delay in having your client's case brought to finality.'

27. Three days later, on 13 May 2016, the solicitors for Ms Lufeyo wrote a letter before action, threatening judicial review proceedings to compel a decision if one was not made within a further 14 days, on the basis that there had been a breach of the right of Ms Lufeyo to good administration under Article 41 of the Charter of Fundamental Rights of the European Union and an unspecified breach of the child's constitutional rights and of his free movement rights in EU law.

28. The INIS wrote in reply on 20 May 2016, stating, in relevant part:

> 'We note that you are seeking to have an early decision made in your client's case and while we would have no wish to delay the processing of your client's case, you will appreciate that your client's application is one of a sizeable number of such applications that we have on hand.

> Additionally, we endeavour to deal with such applications on a chronological basis and, as such, there will inevitably be applications ahead of your client's in the queue. It is therefore not possible to give a commitment to having a decision in your client's case within a period of 14 days due to the high volume of applications received in this decision.
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> However, in the event that all information and documentation required to make a decision is already on file, and there are no criminality issues associated with his (*sic*) case, then it is reasonable for our client to expect a decision in her case by the 20th August, 2016.'

29. Nonetheless, as previously noted, it appears that on 30 May 2016, application was made ex parte to Mac Eochaidh J for leave to seek an order of mandamus compelling the Minister to issue a decision on Ms Lufeyo's application. That application was grounded on an affidavit sworn by Ms Lufeyo on 25 May 2016. Although I have not had sight of a copy of the relevant order, it would appear that leave to seek judicial review was granted and a notice of motion subsequently issued, returnable for 18 July 2016.

30. On 22 June 2016, the INIS wrote to Ms Lufeyo granting her permission to remain in the State until 22 June 2019, thereby rendering these proceedings moot.

31. On 24 March 2017, Eileen O'Reilly, a higher executive officer in the Immigration and Naturalisation Service of the Department of Justice and Equality, swore an affidavit on behalf of the Minister for the purpose of resisting the present application for costs. In that affidavit, having deposed to the chronology of events that have just endeavoured to summarise, Ms O'Reilly goes on to aver as follows:

> '12. I say that the said decision [to grant Ms Lufeyo permission to remain in the State] was made at that time as it was the next application to be considered in the chronological system operated in the Unit. I say and believe that the issuing of the within proceedings did not have any effect on the processing of this application which was processed in the normal course at the time it reached the top of the queue.
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> 13. I say that there was no undue delay in the processing of the application the subject matter of the within proceedings and that the decision issued in the ordinary course and within the time period outlined to the Applicant.
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> 14. I say that after the decision was issued, as the proceedings were clearly moot, the Chief State Solicitor was requested to write to the the Applicants proposing that the proceedings could be struck out with no order as to costs and this was done by letter dated the 22nd November 2016.'

Arguments

32. Counsel for Ms Lufeyo submits that the correct test to be applied to the issue of costs in proceeding that have become moot is that applied by MacDermott J in *Mansouri v Minister for Justice and Law Reform* [2013] IEHC 274, (Unreported, High Court, 29th January, 2013), following Herbert J in *S.G. and N.G. v Minister for Justice, Equality and Law Reform & Ors* [2006] IEHC 371 (Unreported, High Court, 16th November, 2008), namely whether in the circumstances it was reasonable for the applicants to have commenced their application for leave to seek judicial review.

33. The written submissions filed on behalf of Ms Lufeyo go on to assert bluntly and unhelpfully that the decision of *Matta v Minister for Justice* is 'relied upon and is of relevance.' No citation is provided. No attempt is made to identify the principle or principles for which it is authority. And not attempt is made to identify the issue or issues in the present application to which it is relevant.

34. I am left to infer that this is a reference to the decision of the Supreme Court reported as *Matta v Minister for Justice* [2016] IESC 45 (Unreported, Supreme Court (MacMenamin J; Dunne and O'Malley JJ concurring), 26th July, 2016), rather than to that of the High Court in the same case, reported as *Matta v Minister for Justice* [2010] IEHC 488 (Unreported, High Court (Clark J), 21st July, 2010). And yet, it was in that appeal that MacMenamin J (Dunne and O'Malley JJ concurring) concluded that the decision in *S.G. and N.G.* must now be viewed as one limited in its application to its own facts.

35. On the basis of this apparent misconception, Counsel for Ms Lufeyo has mounted an elaborate argument that it was reasonable for Ms Lufeyo to apply for an order of *mandamus* when she did.

36. In her statement of grounds, Ms Lufeyo contends, in effect, that the Minister's failure by 30 May 2016 to make a decision on her claim to a derived right of residence in the State on the basis of the *Zambrano* principle, first intimated to the Minister on her behalf on 25 September 2015, was: (a) a breach of Ms Lufeyo's administrative law entitlement to a decision within a reasonable time as an aspect of her entitlement to fair procedures; and (b) a breach of both Ms Lufeyo's EU law right to good administration under Art. 41 of the CFEU and her child's right to free movement within the EU as a Union citizen.

37. I will briefly address each of those two points in turn. *Nearing v Minister for Justice* [2010] 4 IR 211 was an application for the costs of an application for judicial review that had become moot. In April 2009, the TCN applicant in that case had commenced judicial review proceedings for an order of *mandamus* directing the Minister to make a decision on an application he had made in August 2007 for long term residency permission under a non-statutory administrative scheme operated by the Minister. The Minister wrote granting that application in May 2009, rendering the proceedings moot.

38. Having accepted that the applicant was entitled as a matter of law to have a decision made on his application within a reasonable time, Cooke J went on to State (at 217):

> '[21] Thus, the issue in this case is one as to what is "a reasonable time" in these circumstances. It goes without saying, perhaps, that what is reasonable depends on the circumstances of each case, including what is the decision sought, the particularities of the applicant's position, and the impact that any delay may have and also on the conduct of the administrative decision maker in dealing with applications, together with any explanation given for the time taken. Mandamus does issue against an administrative decision maker simply because there is a duty to make a decision. Mandamus lies to make good an illegal default in the discharge of a public duty. There must have been, either expressly or by implication, a wrongful refusal to make a decision or such an egregious and unjustified delay in dealing with the application as to be tantamount to a refusal in effect.'

39. In that case, Cooke J concluded that, had the application for judicial review come on for hearing in the first week of May 2009, he had no doubt that mandamus would not have issued and that, in those circumstances, the applicant was not entitled to his costs of

the moot proceedings.

40. If I were required to conduct the same exercise in this case (although, on the authority of *Cunningham* and *Matta*, already discussed, I do not believe I am), I have no doubt that I would have come to the same conclusion. Ms Lufeyo submits that a claim to a derived right of residence as a TCN parent covered by the *Zambrano* principle is one that can be decided very quickly in all cases and cannot reasonably take longer than six months in any case. I do not accept that proposition for two principal reasons: first, because of the broad range of specific circumstances that need to be taken into account by the competent authorities in conducting the necessary inquiry into this type of claim; and second, because of the extent to which the relevant time scale for such an inquiry must inevitably be affected by how promptly the TCN parent provides the evidence on which he or she relies and by the nature and quality of that evidence.

41. Amongst the particularities of Ms Lufeyo's position in this case was her evident belief and that of her legal representatives that it was for the Minister to advise them on the specific evidence they should produce to establish the particular relationship of dependency between Ms Lufeyo and her Union citizen child that would compel the child's departure from the territory of the Union if Ms Lufeyo, as his mother, was refused a right of residence.

42. Ms Lufeyo has adduced no evidence of any urgency associated with her application, or prejudice caused by the time it had taken to consider it when she sought *mandamus*. In that context, it is particularly striking that, although the INIS wrote to the solicitors for Ms Lufeyo on 20 May 2016, indicating that she could expect a decision by 20 August 2016, her legal representatives proceeded to apply for leave to seek judicial review on her behalf on 30 May 2016.

43. As to the conduct of the Minister as the decision-maker concerned, there is the uncontroverted evidence of Ms O'Reilly that it was at all material times the Minister's position, communicated to Ms Lufeyo through her legal representatives, that there were a significant number of such claims before the Department and that those claims were being dealt with in strict chronological order. Counsel on behalf of Ms Lufeyo criticises the relevant averments for not providing the sort of detailed statistics on the number of cases being dealt with that were included in an affidavit sworn by the Financial Services Ombudsman in *O'Brien v Financial Services Ombudsman* [2014] IEHC 268. While the provision of that level of detail may be preferable and perhaps even necessary where there is a controversy about the accuracy or *bona fides* of such a claim, there is no such controversy in this case and, hence, no strict requirement to provide it.

44. Thus, I conclude that, had Ms Lufeyo's application for judicial review come on for hearing in the first week of June 2016, *mandamus* would not have issued and that, if that were the appropriate test to apply (although I am satisfied that it is not) Ms Lufeyo would not have been entitled to her costs of the moot proceedings.

45. The second argument made by Counsel for Ms Lufeyo is that the time taken to make a decision on his claim to residence permission under the *Zambrano* principle was a breach of both her EU law right to good administration under Art. 41 of the CFEU and her child's right to free movement within the EU as a Union citizen.

46. Article 41(1) of the CFEU provides: 'Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union.' Thus, the first problem with Ms Lufeyo's argument is that Art. 41(1) is specifically addressed to the institutions and bodies of the Union, rather than the Member States (in contrast to, for example, the general provision of Art. 51(1), which states that the provision of the CFEU are addressed to 'the institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law').

47. The second problem with Ms Lufeyo's argument is that the Court of Appeal has stated in *Bakare* (*per* Hogan J at para. 31) that the State is not implementing Union law in deciding whether to grant a residence permission in a case of this kind but is, rather, exercising its sovereign authority to control and regulate the status of third country nationals, as an exercise of the executive power of the State in accordance with Art. 28.2 of the Constitution.

48. The third problem with Ms Lufeyo's argument is that it necessarily entails the proposition that the entitlement to have one's affairs handled within a reasonable time under Art. 41 of the CFEU (where applicable) is a different and more rigorous requirement than the administrative law entitlement to have a decision made within a reasonable time as an aspect of the right to natural and constitutional justice and fair procedures. Although Art. 6 of the European Convention on Human Rights recognises an entitlement to a fair and public hearing with a reasonable time by an independent and impartial tribunal established by law in the determination of his or her civil rights and obligations, and Art. 52.3 of the CFEU provides that where it provides rights that correspond to rights guaranteed by the ECHR, the meaning and scope of those rights shall be the same as those laid down in that Convention, Ms Lufeyo could cite nothing in the jurisprudence of either the CJEU or the European Court of Human Rights that would suggest, much less establish, any such proposition.

49. Quite separately, Ms Lufeyo invokes the EU law principles of equivalence and effectiveness, which apply where, in the absence of Community Rules, it is for the domestic legal system of each Member State to designate the courts and lay down the rules governing actions intended to ensure the protection of rights conferred by Community law: see, for example, the commentary in Tridimas, *The General Principles of EU Law*, 2nd edn. (London, 2006) at pp. 423-7.

50. Ms Lufeyo argues that, under the principle of equivalence, she was entitled to a procedure in the determination of whether she was entitled to claim a derived right of residence in the State by operation of the *Zambrano* principle that is in every respect no less favourable than that applicable to TCN family members of Union citizens applying for a residence card under the European Communities (Free Movement of Persons) Regulations 2015 ('the 2015 Regulations) that transpose Directive 2004/38/EC ('the Citizens' Rights Directive') into the law of the State.

51. In particular, Ms Lufeyo argues that, under the principle of equivalence, she was entitled to a decision on her application for a residence permission under the *Zambrano* principle within 6 months of her application for that residence permission in the same way as a family member of a Union citizen is entitled to a decision on his or her application for a residence card within 6 months of the date on which the Minister received that application under Reg. 7(5) of the 2015 Regulations, transposing Art. 10(1) of the Citizens' Rights Directive.

52. In my judgment, that submission is based on a misconception concerning the nature of the principle of equivalence. That principle requires that claims based on Community law must be subject to rules which are no less favourable than those governing similar claims based on national law.

53. The equivalence that Ms Lufeyo seeks to draw for the purpose of the argument she now seeks to make is not one between claims based on Community law and similar claims based on national law, but one between two separate kinds of claim based on Community law: first, the claim of a family member of a Union citizen exercising free movement rights to the derivative free movement and residence rights conferred on such persons under the Citizens' Rights Directive; and second, the claim of a parent of a dependent Union citizen child to the derivative free movement and residence rights that must afforded to that parent to avoid depriving that child of the genuine enjoyment of the substance of the rights attaching to the status of European Union citizen under Art. 20(2) of the TFEU. Since there is no basis for the argument that the principle of equivalence requires persons in the second category to be afforded precisely the same procedural rights as persons in the first category as a matter of EU law, there is no basis for the argument that persons in the second category are entitled to a decision within six months.

Conclusion

54. Applying the principles summarised earlier in this judgment (at paragraph 7) to the circumstances of the present case, I have come to the following conclusions:

> (a) These judicial review proceedings became moot on 22 June 2016, when the INIS wrote to Ms Lufeyo, informing her of the Minister's decision to grant her permission to reside and work in the State under the *Zambrano* principle
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> (b) On the evidence before me, I am satisfied that the Minister's decision was due to what was, from the Minister's perspective, an external factor, namely the arrival of Ms Lufeyo's application at the top of a queue of such claims that were being dealt with strictly in chronological order.
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> (c) It follows that, on that evidence, I am satisfied that the Minister's decision was not made in direct response to the issue of the proceedings, hence there was no 'event' in this case, comparable to the one that was at issue in *Godsil*, to which the general rule on costs under O. 99, r. 1(4) of the RSC can be applied.
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> (d) Insofar as the Minister's decision can be correctly characterised as a change of position on the Minister's part (and I do not think it can), it was a reasonable, indeed appropriate, response to the change of circumstances represented by the fact that Ms Lufeyo's application had arrived at the top of the queue. It would be inappropriate, therefore, to characterise the proceedings as having become moot by the unilateral action of the Minister.

55. For those reasons, I will make no order on the costs of these proceedings.