

**THE HIGH COURT**

**JUDICIAL REVIEW**

**[2014 No. 521JR]**

**BETWEEN:**

**HAPPY AGAMAH**

**APPLICANT**

**AND**

**SOUTH DUBLIN COUNTY COUNCIL**

**RESPONDENT**

**AND**

**COMMISSIONER OF AN GARDA SÍOCHÁNA**

**JUDGMENT of Kearns P. delivered on the 2nd day of July, 2015**

The applicant herein seeks a declaration that the failure by the respondent to provide the applicant with alternative accommodation is a breach of the respondent's obligations under the provisions of the European Convention on Human Rights Act, 2003. The respondent's decision to refuse to re-accommodate the applicant is said to be irrational by reference to evidence available to the respondents showing that the applicant is subject to targeted criminal violence at his current accommodation. A mandatory injunction is also sought requiring the respondent to accommodate the applicant in alternative housing.

**BACKGROUND**

The applicant is a German citizen of Ghanaian origin. He has been resident in this State since 2008. The applicant is an engineer by profession but was made redundant in 2008 and now works as a taxi-driver.

After renting private accommodation for a period of time upon his arrival in the State, the applicant applied to the respondent Council for social housing when he became unable to afford private accommodation, and was allocated a one-bedroom flat at No. 7 Glenmore Green, Ballyboden, County Dublin. The applicant has resided at this address since 2010.

In November 2012 the door of the applicant's property was damaged by another tenant at the complex using a hammer. The applicant reported the incident to gardaí and informed them that the perpetrator also shouted racist abuse as they carried out the attack. The applicant submits that his son was staying with him at the time of the attack and was left upset and afraid. Another tenant, who apparently suffers from schizophrenia, was subsequently convicted of this attack.

In another incident in late 2013 the applicant contends that his taxi was vandalised by other residents of the complex. This matter was reported to the gardaí but no arrests have been made. The applicant further alleges that a number of other residents attempted to 'entrap' him in an incident involving a woman who was found lying unconscious on the grounds of the flat complex.

On 9th June, 2014 a fire was started to the rear of the applicant's property which the applicant believes to have been a targeted racist attack. Emergency services attended the scene and a garda investigation was commenced. Two tenants at the property were believed to be involved in the incident and a file has since been sent to the DPP in respect of one suspect. As a result of these incidents the applicant submits that he was left in fear for his life and unable to remain residing at the property. The applicant attended at the public counter of the respondent housing authority on 23rd June, 2014 with a view to urgently receiving alternative accommodation and an appointment was made to meet with the allocation support unit on the 25th June.

The applicant subsequently contacted a solicitor and, following this Court directing discovery of various documents by the respondent, a series of letters between the solicitor, the respondent and local gardai in relation to the prospect of arranging alternative accommodation, as well as a number of documents which the local authority had on file in relation to the applicant and other tenants at the apartment complex, are exhibited in these proceedings.

Throughout the months of June and July the applicant's solicitor sent a number of letters to the respondent and the superintendent of Tallaght Garda Station requesting the urgent transfer of the applicant to alternative accommodation.

On 11th July, 2014 Dr. Denis J. Donohoe wrote to the respondent in support of the applicant's application for an urgent transfer, indicating that, as a result of the latest attack, the applicant was now too terrified to go home as the alleged perpetrators still lived nearby and he is instead sleeping in his car. Various file notes are also exhibited which detail the respondent's records of incidents of anti-social behaviour and complaints from and about tenants at the complex.

By letter dated 14th July, 2014 Inspector Raymond Blake informed the applicant's solicitor that while An Garda Síochána processes requests for information from housing authorities under the provisions of the Housing (Miscellaneous Provisions) Act when requested to do so by the housing authority, they do not issue letters to individuals to support housing applications.

Subsequently, on 17th July, 2014 Mr. Hugh Hogan, senior executive officer with the respondent, wrote to Superintendent Peter Duff of Tallaght Garda Station requesting information in relation to the incident where he was attacked by another tenant and also any information the gardaí had in relation to the fire of 9th June. The letter states:-

*"I would be most obliged if you would let me have your thoughts and observations on this issue. Specifically I would be happy to hear your opinion on the alleged danger to Mr. Agamah and if these attacks are in fact racist in origin. On*

*receipt of same we will be in a position to make a proper informed decision..."*

By letter dated 8th August, 2014 Inspector Raymond Burke (Acting Superintendent) replied to the council's request and indicated that a file had been sent to the DPP in relation to the fire. He further states that *"there is no evidence in the file to suggest a racist incident however Mr Agamah does allege that he was subject to racist abuse by the suspect previously"*. Inspector Blake advises in his letter that the suspect in the fire offence is a tenant at the complex and recommends that the respondent interview her in relation to her engagement in anti-social behaviour. Details surrounding the 'hammer attack' of 20th November, 2012 and subsequent prosecution of the same tenant for this offence are also provided. In relation to a report by Mr. Agamah on 30th July, 2014 that material had been left outside his window in preparation for another arson attack, Inspector Blake states that *"from a preliminary examination it is clear that they are bush cuttings most likely dumped over his wall and possibly from a neighbour."*

By letter dated 12th August, 2014 the respondent informed the applicant that because of the advice received from the gardaí *"[we] do not consider that a Priority Transfer is warranted in this particular case."* The letter further advises that Mr. Agamah should make arrangements to continuing occupying the property at 7 Glenmore Green as his normal place of residence.

#### **SUBMISSIONS OF THE APPLICANT**

Counsel on behalf of the applicant submits that the decision not to re-accommodate the applicant amounts to a breach of the respondent's duties under the provisions of the European Convention on Human Rights. It is submitted that there has been a total failure on the part of the respondent to consider relevant medical evidence in relation to the applicant's application. The letter of Dr. Donohoe is not referred to in the respondent's letter of 12th August nor in the affidavit of Mr. Hugh Hogan in these proceedings.

Counsel for the applicant submits that the respondent's housing allocation scheme expressly states that medical and compassionate grounds should be taken into account in relation to transfers of tenants. It is submitted that this is precisely what occurred in the case of the tenant about whom the applicant had raised concerns and who was convicted in respect of the November 2012 offence. This tenant was afforded a transfer to alternative accommodation. The applicant denies that this particular tenant's transfer renders the present application moot as a number of other tenants who have been the subject of complaints or who were believed to be involved starting the fire of 9th June, 2014 remain living at the complex.

It is further submitted that the respondent unlawfully delegated its decision making authority to the notice party. It is submitted that while the gardaí informed the respondent that they were satisfied that there was no risk to the applicant's life and that there was no evidence to suggest any of the attacks were racially motivated, the respondent is nevertheless required to carry out its own investigation into the applicant's living conditions. However, counsel contends that it is clear from the respondent's letter of 12th August that they relied solely on the opinion of the gardaí despite the respondent's assertion in the same letter that *"the decision to grant a Priority Transfer is purely a matter for the Local Authority."*

In all of the circumstances it is submitted that the respondent's decision is irrational, unreasonable, and disproportionate and continues to endanger the applicant's person and health and cause ongoing distress, loss, and damage.

#### **SUBMISSIONS OF THE RESPONDENT**

The respondent local authority contends that careful consideration was given to the applicant's request for a priority transfer and that it decided that, having regard to all the circumstances, there were insufficient grounds to grant him a priority transfer to alternative accommodation. It is submitted that, apart from the fire of 9th June and one other previous noise complaint by the applicant, the respondent was unaware of any incidents involving the applicant and the decision arrived at by the respondent was partly based on the absence of significant and/or timely complaints from or on behalf of the applicant.

A number of other factors influenced the respondent's decision, including a letter of 18th June, 2014 from Dublin Fire Brigade in relation to the 9th June fire, the report of An Garda Síochána dated 8th August, 2014 and the requirements of the respondent's allocation scheme regarding the allocation of priority status to persons for accommodation. It is submitted that the respondent has at all times exercised its statutory functions and powers reasonable and proportionately in relation to the applicant.

The affidavit of Hugh Hogan, senior executive officer with the respondent, states that under the respondent's Allocation Scheme which was adopted on 13th June 2011, tenants can apply for a transfer to another dwelling on the grounds of anti-social behaviour where the Council's Estate Management Liaison Officer and a Garda Superintendent support the application and provided the tenant satisfies a number of requirements which largely relate to compliance with the conditions of their tenancy. Priority under the scheme is given to persons who are rendered homeless through no fault of their own if there is no accommodation available which, in the opinion of the Council, he/she might reasonably be expected to occupy or remain in occupation of. It is submitted that the applicant herein made no complaints to the Council aside from one complaint about a party and damage to his door in November 2012 and when he attended at the public counter in June 2014 in relation to the fire.

Mr. Hogan states that he contacted the gardaí for more information to assist the respondent in considering the applicant's request and was informed that there was no evidence to suggest any of the alleged attacks were racist in nature and there was no evidence that the applicant's life is in danger.

Counsel for the respondent submits that in order for the applicant to succeed in these proceedings, he must show that there was no information or good reason before the respondent which they could rely upon to refuse the transfer. While it is submitted that the respondent did carry out its own investigation, counsel contends that in any event, the information obtained from the gardaí is a sufficient basis for the respondent's decision. The gardaí were aware of the previous incidents involving another tenant and that they had been forced to utilise their powers of committal under the Mental Health Act on previous occasions. Nevertheless, the gardaí still formed the view that there was no danger to the applicant.

The respondent local authority deals with a large number of priority transfer requests each week and it is submitted that, in all of the circumstances, the decision arrived at was reasonable and the applicant's claim should be dismissed.

#### **DISCUSSION**

In the absence of any relevant authorities being opened to the Court, this matter falls to be considered and determined by reference to basic principles governing judicial review. Ultimately there are three claims made in this case. The first is that the decision not to rehouse the applicant is irrational having regard to the evidence available to the respondents. Second, it is claimed that the respondents failed to have regard to a relevant consideration when making the decision, namely the existence of medical evidence and compassionate grounds which would have led to a different decision. Third, the respondents failed to exercise their statutory function by delegating all inquiries to An Garda Síochána and in failing to conduct their own investigation into the background circumstances of this case.

The respondent's Allocations Scheme was established in accordance with section 22 of the Housing (Miscellaneous Provisions) Act 2009 and the Social Housing Allocation Regulations 2011 (S.I. No. 198 of 2011). It is well established that in reviewing decisions of expert administrative bodies the courts are required to have regard to the doctrine of curial deference and should be slow to interfere with such decisions. However having carefully considered the submissions of both parties and am satisfied that the decision of the respondent dated 12th August, 2014 not to afford the applicant a priority transfer is irrational in a number of respects.

It is repeatedly stated in the documents emanating from the local authority exhibited in these proceedings that the decision to grant a priority transfer is purely a matter for the local authority. The respondent's Allocation Scheme sets out the circumstances to be considered when deciding whether or not a person should be afforded priority status. The scheme states that persons who are regarded as being homeless through no fault of their own if there is no accommodation available which, in the opinion of the Council, he/she might reasonably be expected to occupy or remain in occupation of. Exceptional medical or compassionate grounds may also be considered.

The documents obtained by discovery in these proceedings show a pattern of anti-social behaviour at the apartment complex in which the applicant resides. While the applicant only made two complaints to the respondent authority during his tenancy, it is clear that these two incidents, namely, the 'hammer attack' in November 2012 which the applicant reported to gardaí and which resulted in a prosecution, and the fire to the rear of the applicant's property in June 2014, were very serious in nature. The letter from Inspector Blake also makes clear that the applicant had previously made allegations of racist behaviour by other tenants to the gardaí. Taking these two incidents on their own and the apparently personal nature of them, together with the documents which emerged on discovery, the evidence in this case was clearly such that the refusal can only be regarded as irrational.

Furthermore, in arriving at its decision, the respondent has offered no opinion whatsoever in relation to the applicant's medical or compassionate grounds for a transfer, which factors are expressly referred to in the allocations scheme. The applicant is in his 60's and is a non-national who has reported experiencing racial abuse. He was the victim of a frightening attack in November 2012 perpetrated by a person suffering from schizophrenia for whom, it is worth noting, the respondent did facilitate a priority transfer. This decision to provide a transfer to the perpetrator of anti-social behaviour while denying a transfer to the victim, who had complained about such behaviour, is self evidently irrational.

A letter in support of the applicant's transfer was tendered by his GP and the gardaí confirm previous allegations of racist abuse. It is clear that the applicant herein holds a genuine and, in the Court's view, entirely understandable belief that he can no longer reside safely at the complex and is left in the wholly unsatisfactory situation of sleeping in his car. These are matters which the respondent did not direct its mind to when arriving at its decision in relation to the circumstances of the applicant's accommodation. If the respondent did do so, it is not stated in the decision of 12th August, 2014.

In order to arrive at an informed independent opinion, in accordance with the provisions of the Allocations Scheme, as to whether or not the applicant could reasonably be expected to occupy or remain in occupation of the accommodation available, the respondent local authority was required to conduct its own assessment rather than relying solely on the opinion of the gardaí. However, the Court is satisfied that the respondent relied almost exclusively on the report obtained from An Garda Síochana such that the respondent delegated its decision making authority, rendering the decision of 12th August, 2014 irrational.

While the seeking the opinion of the gardaí was undoubtedly helpful and a necessary step in informing the respondent's opinion, it can not be conclusive. The gardaí regularly attended at the apartment complex for reasons such as anti-social behaviour, suicide attempts by a tenant suffering from a mental illness, and on emergency calls including the fire on 9th June. It is likely that different gardaí were present on different occasions and their function on such occasions was not to carry out an individual assessment of the risks to this particular applicant. The role of the gardaí in the housing allocation scheme is limited. The opinion of Inspector Blake should only have assisted in informing the respondent's decision, rather than determining the issue entirely.

## **DECISION**

In light of the foregoing, the Court is of the view that decision of the respondent authority not to re-accommodate the applicant should be quashed. The Court would express the wish that the respondent authority should facilitate the priority transfer of the applicant to alternative accommodation. The Court does not deem it appropriate to make any further declaration or to grant injunctive relief.