

Between:

MIGUEL NKOLOVATA NSUNGANI
 – and –
MINISTER FOR JUSTICE AND EQUALITY

Applicant

Respondent

JUDGMENT of Mr Justice Max Barrett dated 21st December, 2018.

1. Mr Nsungani's naturalisation application has been refused by the Minister. Under s.15 of the Irish Nationality and Citizenship Act, 1956, as amended, an applicant for naturalisation must be of good character. In this regard, the Minister considered a Garda report concerning Mr Nsungani which, per the internal departmental documentation concerning the application, "*details motoring offences... and an alleged incident where Section 12 [of the] Child Care Act was invoked*".

2. The Minister's wide discretion regarding naturalisations is identified in, e.g., *AA (Algeria) v. Minister for Justice and Equality* [2016] IEHC 416, *AMA v. Minister for Justice and Equality* [2016] IEHC 466 and *AA v. Minister for Justice and Equality* [2017] IEHC 491. These cases show that the court is limited to reviewing whether the Minister acted arbitrarily/capriciously/autocratically in reaching his conclusions or in the conclusions reached. The Minister has not so acted: he considered submissions made and the Garda report; he did not consider the "*alleged incident*" as more than alleged; and it is clear since *Tabi v. Minister for Justice, Equality and Law Reform* [2010] IEHC 109 that the Minister may consider motor offences when assessing character. As to proportionality, this Court considers, consistent with the later *AA* decision, that proportionality plays a part in the Minister's exercise of his discretion (e.g., in distinguishing between the differing seriousness of different criminal behaviours). In any one case a want in proportionality might conceivably impact on the issue of whether the Minister acted arbitrarily/capriciously/autocratically. Here no such want is evidenced or presents.

3. Three points remain. Mr Nsungani claims that: (1) EU law is engaged in his naturalisation application. But Cooke J. in *Mallak v. Minister for Justice, Equality and Law Reform* [2011] IEHC 306, para.24 (which aspect of his judgment did not require to be addressed, and was not reversed, on appeal) indicates that acquisition of national citizenship is a sovereign matter for Member States, so EU law is not engaged; (2) his submissions of 06.11.2017 were not considered. But a senior department official has averred that they were considered and that following consideration his view was that the recommendation to refuse should stay as was, which averments have not been controverted; (3) the naturalisation process breached Art.6 and/or 8 ECHR. This line of argument was not greatly developed in submission; however, the court sees no such breach to present.

4. Mr Nsungani has sought an order of *certiorari* as well as certain declarations and other reliefs. For the above reasons, all the reliefs sought by him are respectfully refused.