Neutral Citation: [2013] IEHC 416

THE HIGH COURT

JUDICIAL REVIEW

[2009 No. 308 JR]

BETWEEN

R. R.

APPLICANT

AND

BERNARD MCCABE SITTING AS THE REFUGEE APPEALS TRIBUNAL

RESPONDENT

JUDGMENT of Mr. Justice Colm Mac Eochaidh delivered on the 25th day of July 2013

1. This is an application to amend the statement of grounds in these proceedings which challenge a decision of the Refugee Appeals Tribunal of 24th February 2009. The proceedings were instituted on 23rd March 2009. On the 17th of July 2013 I gave my decision in this matter stating that I would indicate my reasons later, this I now so do.

2. The judicial review came on for a 'telescoped' hearing on 12th April 2013. Certain matters were sought to be argued which did not appear to have been pleaded. Ultimately, counsel for the applicant argued that ground 15 of the pleadings was sufficiently broad to capture the new grounds. Ground 15 is as follows:

> "The respondent acted irrationally and unreasonable [sic] in reaching his decision."

3. That submission ignored the fact that ground 15 had been withdrawn, along with other grounds, in a letter addressed to the respondent's solicitors on 9th April 2013. I granted the applicant liberty to bring a motion to amend the proceedings and that motion is the matter which is before the court now. Ten new grounds are sought to be added.

4. Section 5 of the Illegal Immigrants (Trafficking) Act 2000 provides that proceedings challenging a decision of the Tribunal be made within 14 days unless the High Court considers that there is good and sufficient reason for extending the period within which the application shall be made.

5. Counsel for the applicant has explained that the reason the grounds were not included in the original pleading is that they were overlooked. I am sympathetic to the views expressed by Mr. Hynes S.C. (for the applicant) who said that the 14-day time period within which to take instructions, consider the papers, conduct legal research, instruct counsel, draft pleadings and process the papers at the Central Office explains why sometimes points relevant and useful to an applicant might be overlooked. The court accepts that is a proper explanation for how the matters now sought to be pleaded were not originally advanced.

6. What of the four years or so between the filing of the papers in 2009 and the matter being called on for hearing in April 2013? Counsel explained that the state of pleadings would not, in normal course, come to be reviewed by counsel until some time close to the hearing of the action. In his submission, the four year delay, though lengthy by any standard, is excusable.

7. Extremely detailed submissions were received by the court from the respondent on this motion to amend. Many authorities have been referred to and there is much helpful guidance available for the court on the issues at stake. I have found the decision of Finlay Geoghegan J. in *Muresan v. Minister for Justice* [2004] 2 ILRM 364, most instructive, and in particular, the following passage:

> "It is inevitable that different counsel will take a different view of the same case. It appears to me that if the courts were to permit an extension of the period provided for under section 5(2) of the Act of 2000 simply upon the grounds that a new counsel had come into a case and had taken a view that a differing and additional claim on new and distinct grounds should be made that this would defeat the legislative intent as expressed in section 5(2) of the Act of 2000. It may be that on certain facts the clear oversight or errors by lawyers acting for an applicant may amount to a good and sufficient reason for extending this period under section 5(2). There was no such clear error in this case."

8. The heart of the applicant's submission is that the applicant's lawyers overlooked pleading the case in sufficient breadth. As Finlay Geoghegan J. says, there are circumstances in which lawyers' errors may constitute good and sufficient reason for extending time. However, in this case, it seems to me that the pleadings were carefully reviewed in the weeks prior to the hearing of the action. Written submissions were prepared and signed by Junior and Senior Counsel dated March 21st 2013. By that date, at the latest, the absence of adequate pleading was known or should have been known but no step was taken to remedy the deficiency. Not only that, but the pleadings were sought to be changed by reducing the number of grounds and a letter announcing this was sent on 9th April 2013. Thus, the pleadings were reviewed again and still no decision was taken in respect of any deficiency.

9. In my view, an application to amend proceedings commenced under s. 5 of the Illegal Immigrants (Trafficking) Act 2000, must be brought as soon as practicably possible once a pleading error is identified. In this case, the applicant, who knew or ought to have known of the deficiency in the months before the hearing of the action, delayed seeking the necessary relief until the case was at hearing. No excuse for this delay has been offered to the court. On this ground alone, I refuse the application to extend time to permit amendments to the pleadings.

10. There is merit in the submissions made by Mr. Barron S.C., on behalf of the respondent, that applicants seeking to extend time to amend pleadings in these types of cases must persuade the court that the new grounds are sharply different from the case already pleaded such that the legal point simply did not occur to the drafters of the pleadings. In this instance, Mr. Barron says that the new grounds sought to be introduced are similar or of the same general nature as the grounds already pleaded such that they could have

been pleaded with a little more diligence or had there been a little more time available to prepare the pleadings This is an attractive argument but one that I do not need to decide in this case, having regard to my decision to refuse the amendment on the basis that the application to extend time has itself been delayed without explanation or justification.

11. Finally, I am not of the view that the four year period which elapsed between the institution of the proceedings and the application to amend is, of itself, a bar to the amendment. I accept that it is reasonable for lawyers in cases such as these which are usually not funded, to postpone active work on the case until the weeks leading up to the hearing of the action. If the High Court had more resources, a case such as this would have come on for hearing in a short few weeks or possibly months after the filing of the papers, and thus, the review of the paperwork and preparation for trial would have happened in 2009 and not in 2013. In my opinion, this submission is well founded. Thus, that delay, though extremely lengthy, is possible to be excused within an application of the 'good and sufficient reason' standard.

12. I grant the applicant permission to reintroduce ground 15 on rationality which was perhaps rashly withdrawn in correspondence three days before the hearing of this case. I do so on the basis that no real prejudice could accrue to the respondent given that the ground was withdrawn so late in the day.