

THE HIGH COURT

[2014 No. 564 SS]

IN THE MATTER OF AN INQUIRY PURSUANT TO ARTICLE 40.4 OF THE CONSTITUTION

BETWEEN

NAWAL GUMSAN OMAR (NAWAL KHAMIL MAHMUD)

APPLICANT

AND

THE GOVERNOR OF THE DOCHAS CENTRE AND THE GARDA NATIONAL IMMIGRATION BUREAU

RESPONDENTS

JUDGMENT of Mr. Justice Mac Eochaidh delivered on the 11th day of April 2014

1. The High Court ordered an inquiry into the detention of the applicant on 2nd April 2014. Certification, signed by the Assistant Governor, refers to a notification of detention of the applicant on the basis of her failure to comply with a Deportation Order.

2. The applicant's detention is said to be unlawful because Garda Sinead Lynch, an Immigration Officer, is alleged to have unlawfully entered the apartment where the applicant lives, effectively arrested and detained her in the apartment, brought her by Garda vehicle to a Garda station, interviewed her there and eventually formally arrested and detained her. The argument made is that the eventual formal arrest and detention of the applicant is tainted by her earlier unlawful arrest and detention.

3. The Court has heard the evidence of the applicant and of the Immigration Officer over the course of a number of hours on the evening of 3rd April 2014. Garda Lynch has also sworn an affidavit on 3rd April 2014. Legal submissions were made on April 4th and written submissions were delivered on Monday 7th April 2014.

4. Garda Lynch is stationed at Longford Garda Station. On 1st April 2014, she sought to make contact with someone whose last known address was Apartment 3, Curbo House, Great Water Street, Longford. The purpose of the contact was to return this person's Driver's Licence and to issue a warning that the person was not entitled to work in Ireland. At about 2.00pm, Garda Lynch went to the address in a patrol car which was driven by her colleague, Garda Diffley. A resident of the apartment complex assisted Garda Lynch entering the premises by supplying a numeric code which opened a door. Garda Lynch says that she was in uniform but did not have handcuffs, radio or other paraphernalia attached to her clothing. She knocked on the door of the apartment and it was answered by the applicant. Garda Lynch explained the reason for her presence. The applicant said that the person in question did not live at the apartment. The exchange was friendly. They discussed the applicant's accent which Garda Lynch thought was American. Garda Lynch did not recognise the applicant and had not encountered her in her role as Immigration Officer. She asked the applicant where she was from. The applicant answered that she was from Tanzania. Garda Lynch then asked her to produce identification. The applicant said she would get some form of identification and asked the garda to wait. The applicant closed the door, leaving Garda Lynch outside in the corridor.

5. The applicant did not attempt to find or produce identification. Instead, she immediately telephoned a man called Mr. Saju and asked for his assistance. The applicant knew that she was the addressee of a Deportation Order and that she had failed to comply with its terms. Her mother was in the apartment also and she, too, was the addressee of a Deportation Order and was in breach of its terms. The applicant told the Court that Mr. Saju told her to wait at the apartment and that he would find a lawyer and come to the apartment.

6. Approximately five to six minutes elapsed before the applicant returned and opened the door to Garda Lynch who was waiting. During those minutes, Garda Lynch telephoned her colleague in the patrol car and expressed the view that something was not quite right. Garda Lynch's evidence was that in the short encounter with the applicant, the applicant had retreated into shadow and behaved as if she were hiding as soon as she was questioned as to where she was from and about her identification documents. The fact that the door was closed further aroused the suspicion of the Garda.

7. The applicant's evidence was that when she returned to the door on which Garda Lynch had been banging and opened it, Garda Lynch enquired as to where she had been and where her piece of identification was. The applicant says that she gave no response to this question, but turned around and walked towards the living room. Her evidence was that she knew that Garda Lynch would follow her.

8. Garda Lynch's evidence is not quite the same. Her evidence is that having been waiting a few minutes at the door, she began knocking, not banging, on the door. She admits to having been somewhat exasperated by the length of time she was left at the door and because of the suspicions she had that something was awry. She says that when the applicant opened the door, the applicant said, "I'm sorry" and made a gesture with her hand and arm in a swinging movement inviting Garda Lynch to enter. Garda Lynch says that she followed the applicant, who had walked ahead of her, to the living room.

9. Once in the living room, the applicant and the Garda sat down and the applicant informed Garda Lynch that she had no identification document because she had given her passport to a man called Mr. Saju. She explained that Mr. Saju owned the apartment and allowed her to stay there with her mother, rent free. It emerged that the applicant's mother was in a bedroom close to the living room, the door of which was locked. The applicant informed Garda Lynch that she had been living in the apartment for about nine months. According to Garda Lynch, the applicant indicated, gesturing to her mobile phone, that she had been speaking to her solicitor. Garda Lynch noticed a man in the background. It emerged that two men also lived in the apartment, about whom the applicant knew very little. The man in the background, it later emerged, was Mr. Ram.

10. During the time when the garda and the applicant were in the living room, the applicant took a phone call. The applicant says it

was Mr. Saju who again told her to remain *in situ* and to wait for him and the solicitor to arrive. Garda Lynch gave different evidence to this, and said that at no point did the applicant ever say that she wished to wait in the apartment until Mr. Saju and/or a solicitor arrived. The garda and the applicant then went to the door of the bedroom and the applicant spoke through the door to her mother. The mother opened the door. The garda says that she observed a bedroom with one double bed and with many items of clothing around the bedroom. There was a kettle and a water filter. The applicant told the Garda that her mother's leg was sore and she had difficulty walking.

11. The evidence of Garda Lynch is that she was very suspicious about the circumstances of the applicant. She suspected that someone was controlling the applicant and her mother. Bearing in mind that some man had possession and control of the applicant's passport and accommodated the applicant and her mother rent free in an apartment and provided food, Garda Lynch suspected that the applicant's welfare was in danger and expressed these fears to the applicant and her mother in a way which led them to understand that Garda Lynch believed that there was a possibility that the applicant was engaged, against her will, in prostitution and that they were both being detained against their will. The applicant denied this and ultimately much later, Garda Lynch's fears in this respect receded. The applicant told the court (and Garda Lynch) that she was not involved in any such conduct and that she had a friendship with Mr. Saju and his young son for whom she did some babysitting.

12. Garda Lynch's evidence is that she invited the applicant and her mother to come to the police station so that they could talk more freely. Garda Lynch said she could provide housing and legal advice if they needed it. Her evidence is that they agreed to accompany her. Garda Lynch's further evidence is that on three occasions, twice in the apartment and once outside the patrol car, she indicated, in express terms, that the applicant and her mother were not under arrest and were not under any obligation to come to the police station.

13. The applicant recalls at least one occasion when Garda Lynch indicated that they were not under arrest and did not have to accompany the Garda to the police station. However, her evidence is that she felt that if she did not accompany Garda Lynch, she would "leave the place in handcuffs". The applicant's evidence and the case made on her behalf, is that Garda Lynch exercised dominion over the applicant (and her mother) such that the applicant felt that she had no choice but to accompany Garda Lynch in the patrol car to the garda station.

14. It transpires that Mr. Ram, who accompanied the applicant and her mother to the garda station, works in a restaurant owned by Mr. Saju to whom reference was made earlier. Mr. Ram is a non-national who has permission to be in the State but he does not have permission to work. Garda Diffley and Garda Lynch sat in the front of the car and the three residents of No. 3, Curbo House, sat in the back. They drove to the garda station and entered the station by the back door. Mr. Ram sat in the public area of the garda station and the applicant and her mother accompanied Garda Lynch to her office where further questions and conversation took place about the nature of their status in Ireland and their relationship with this Mr. Saju. Garda Lynch repeated the offer of assistance and eventually the applicant and her mother opened up and told Garda Lynch that they had made false (failed) asylum applications and they told Garda Lynch their real names and their aliases.

15. Garda Lynch, because of her concerns about the welfare of the applicant and her mother, telephoned an Immigration Officer in Sligo Garda Station to discuss how the matter might be handled and what steps might be taken in a case where trafficking, enforced prostitution or other mischief is suspected. In the course of this conversation, Garda Lynch gave the names and aliases of the applicant and her mother to her colleague. At this stage, Mr. Saju arrived at the garda station. Garda Lynch asked the applicant and her mother to wait in a public room in an unguarded and unwatched part of the garda station premises, next to the main door. She then conducted an interview with Mr. Saju and Mr. Ram. During the course of that interview, Garda Lynch's colleague from Sligo telephoned her to say that he had checked the names and had established that there were extant Deportation Orders against the applicant and her mother and that they were in breach of the orders.

16. Garda Lynch went immediately to the room in the public part of the garda station where the applicant and her mother were waiting. Garda Lynch's evidence is that she was aware that they were unguarded and could at any time leave the station and they would be so entitled. She informed them that she knew of the Deportation Orders. She cautioned them, arrested them and accompanied them from the public area to the custody suite in the garda station. Later, she accompanied them to the D6chas Centre in Mountjoy Prison.

The Applicant's Credibility:

17. When the applicant was giving evidence to this Court, she said that she could not remember the names of the two men who shared the apartment with her and her mother. Later, she used names for both men and when questioned about this by the Court, she admitted that she had lied about not being able to remember their names. My view is that the applicant has lied on a significant number of occasions, not only under oath but also to Garda Lynch. The untruths which I have been able to identify are as follows:

- a. She said she could not remember the names of the men who lived in the apartment and later admitted that she had lied about this.
- b. She told Garda Lynch that she would get some form of ID when she knew that she had no ID in the apartment.
- c. She told Garda Lynch that she had been on the phone to a solicitor when her evidence to the Court was that she was on the phone to Mr. Saju.
- d. She told Garda Lynch she had been living in the apartment for nine months but she subsequently told this Court that she had lived there for three weeks.
- e. She told Garda Lynch and she told this Court that she had given her passport to Mr. Saju for safekeeping so that it would not be lost. She eventually admitted that she had given her passport to Mr. Saju so that it would not be found on her person or amongst her things.
- f. She has admitted to making a false asylum claim, falsely asserting a nationality and name though she says this was done without her consent by her mother. (I note that she was 17 or 18 when the application for asylum was made.)

18. I find that the applicant is an unreliable witness who was willing to lie under oath. Garda Lynch, by way of contrast, was scrupulously honest. There are points of contrast between the evidence of Garda Lynch and the applicant and I have no hesitation in preferring the evidence of Garda Lynch in respect of each point of conflict that has arisen in this case.

19. In particular, I accept the evidence of Garda Lynch that the applicant nonverbally invited Garda Lynch into her home. I also

accept the evidence of Garda Lynch that this invitation was further extended when the applicant brought her to the bedroom where her mother was situated. I also accept the evidence of Garda Lynch that at no point did the applicant ever tell Garda Lynch that she wished to wait in the apartment until her solicitor arrived. Again, I fully accept the evidence that Garda Lynch on three occasions informed the applicant and her mother that they were not under arrest and were not required to accompany her to the garda station. I believe that Garda Lynch was at all times motivated by a genuine concern, based on the facts as she saw them, for the welfare of the applicant and of her mother. Garda Lynch was entitled to be deeply suspicious about circumstances in which a young girl is living in an apartment with two men whose names she appears not to know, which is owned by a man who controls her passport, where she does not have any recognisable means of income, where she does not have to pay rent, where food is provided without charge and where her mother is in a locked bedroom. It was entirely appropriate for Garda Lynch to encourage the applicant and her mother to seek assistance and I find that she displayed kindness and concern for the applicant and her mother. I should add that the applicant also accepts that Garda Lynch was similarly well disposed to her.

20. In retrospect, one can say that the applicant and her mother had important information which was not available to Garda Lynch during the time they were in the apartment together, in the patrol car going to the garda station and for much of the time at the garda station which was that there were Deportation Orders against them in existence. The applicant and her mother knew well they were in serious difficulty now that an Immigration Officer was in their home and was inviting them to the garda station. Given that Garda Lynch did not know who they were and had not been looking for them in the first instance, the applicant knew that the Garda was not aware of the Deportation Orders.

21. Other small and seemingly insignificant facts assist with an understanding of the nature of the exchange between Garda Lynch and the applicant and her mother. When the three of them were in the bedroom, the applicant having been told that she was under no compulsion to go, agreed to accompany Garda Lynch to the garda station, but said she had to change her clothing. Garda Lynch said that she would step outside the door but the applicant insisted that the garda could stay in the bedroom, which Garda Lynch did, closing the door and turning away to respect her privacy. In addition, the garda station is close to the apartment block, no more than a two to three minute drive on the evidence of Garda Lynch. The garda says that she offered the applicant and her mother a lift because she knew that the applicant's mother had a sore leg. I accept that this was the reason why the parties went in a patrol car from the apartment complex to the garda station. Finally, it seems to me to be significant that the applicant and her mother were permitted to wait in the public waiting room beside the main door of the garda station during the time when Garda Lynch was interviewing Mr. Saju and Mr. Ram. At any time, the applicant and her mother could have walked out of the door of the garda station. Garda Lynch's evidence is that they were not watched and I believe this to be true.

22. It is also of significance that before Garda Lynch discovered that there were Deportation Orders in being, she was entitled to arrest the applicant and her mother because of their failure to provide valid identification on demand. Section 12 of the Immigration Act 2004 (as amended by s. 34 of the Civil Law (Miscellaneous Provisions) Act 2011), empowers an Immigration Officer such as Garda Lynch to ask a non-national to produce a form of ID and failure to produce it is an offence. Section 13 of the 2004 Act empowers a member of the Gardaí to arrest without warrant a person reasonably suspected of having committed an offence under the Act. Further, although Garda Lynch discovered that the applicant and her mother had used aliases in an asylum claim and were thereby guilty of an offence, no arrest was attempted notwithstanding the power to arrest without warrant in those circumstances, pursuant to section 20 (6) of the Refugee Act 1996 (as amended by section 11 of the Immigration Act 1999). That Garda Lynch had two legitimate causes to arrest the applicant and her mother but did not, suggests that her predominant concern was with their welfare and that they might be victims of serious crime rather than the offences they had committed.

The Applicant's Submissions:

23. Mr. Lowry B.L, for the applicant, says that s. 12 of the Immigration Act 2004 (as inserted by s. 34 of the Civil Law (Miscellaneous Provisions) Act 2011, is the only power available to an Immigration Officer to demand production of a non-national's Registration Certificate or passport. The section provides as follows:

"(1) Every non-national present in the State (other than a non-national under the age of 16 years) shall produce on demand -

(a) a valid passport or other equivalent document, issued by or on behalf of an authority recognised by the Government, which establishes his or her identity and nationality, and

(b) in case he or she is registered or deemed to be registered under this Act, his or her Registration Certificate.

(2)(a) a non-national who contravenes this section shall be guilty of an offence;

(b) in proceedings brought against a person for an offence under this section, it shall be a defence for the person to prove that, at the time of the alleged offence, he or she had reasonable cause for not complying with the requirement of the section to which the offence relates.

(3) In this section, 'on demand' means on demand made at any time by the Minister, any Immigration Officer or a member of the Garda Síochána, for the purposes of establishing that the presence in the State of the non national concerned is not in contravention of section 5."

24. Mr. Lowry B.L. argues that Garda Lynch was not entitled to request identification documents at a time when the applicant was in her home, notwithstanding the fact that the request was made when Garda Lynch was outside the home, in the common area. The request, it is argued, breaches Article 40.5 of the Constitution which provides that:

"(5) The dwelling of every citizen is inviolable and shall not be forcibly entered save in accordance with law."

25. It was submitted that the request constituted an unlawful search of the dwelling. In addition, it was argued that because the request created circumstances in which a criminal offence might be committed if the demand were not answered, this too constituted a breach of the inviolability of the dwelling and the demand for identification was therefore unlawful.

26. My view is that the request made by Garda Lynch that the applicant produce identification could not tenably be deemed a search of her dwelling. Further, the fact that the failure, without lawful excuse, to produce identification constitutes a criminal offence does not, where the failure to produce happens within a dwelling, result in a violation of the dwelling. The State is not precluded by the provisions of Article 40.5 from criminalising conduct which occurs in a dwelling. I reject this argument. In consequence, I reject the ultimate argument made here which is that where the initial demand for identification documents was unlawful, then the applicant could not give her consent to Garda Lynch to enter her home.

27. The applicant argues that the only legislative bases permitting entry to a dwelling in connection with immigration matters are s. 15 of the Immigration Act 2004, and s. 7 of the Aliens Act 1935 (as amended) and that both require a search warrant and neither authorise entry for the purpose of arrest. In this connection, reference is made to the recent decision of Hogan J. in *Omar v. The Governor of Cloverhill Prison* [2013] IEHC 579, where he said:

"It is clear ... that the Oireachtas has not given the Gardaí the power to enter a dwelling - even pursuant to a search warrant - for the purposes of an arrest in order to give effect to a deportation order."

28. The argument sought to be advanced here can be disposed of summarily by noting that Garda Lynch did not enter the dwelling of the applicant to make an arrest or to give effect to a Deportation Order. She entered the dwelling at the invitation of the applicant.

29. In this connection, Counsel for the applicant urges the Court to view such consent as lacking the character of true consent freely given. The Court is asked to bear in mind the disparity in position between a uniformed Immigration Officer and a vulnerable, failed asylum seeker who knew that there was a Deportation Order in existence and that she was in breach of its terms. In this regard, the applicant again refers to the decision of Hogan J. in *Omar* where he said at para. 35, "consent to enter a dwelling must be 'a true and genuine consent'". Reference is made by the applicant to a passage in Professor Casey's work '*Constitutional Law in Ireland*', at p. 513, where the learned author said:

"Absent a warrant, or a specific authority, Garda officers or other State agents may enter a dwelling only by invitation or permission. Such invitation or permission may be express, or it may be inferred from the circumstances: thus a failure to refuse entry might be construed as an implied permission to enter. But everything depends on the circumstances of the particular case."

30. It is argued that the Court must analyse the facts to see whether there was evidence of coercive police behaviour which might cause a person to believe they had no choice but to cooperate with the police. Counsel for the applicant refers to the decision of the Supreme Court of the United States in *Johnson v. The United States* 333 US 10 (1948) which addressed circumstances involving entry by police agents into a hotel room following the police identifying themselves as police and the bedroom door being opened and the applicant stepping back acquiescently. The Court made the following observation upon which reliance is placed by the applicant in this case:

"An officer gaining access to private living quarters under colour of his office and of the law which he personifies must then have some valid basis in law for the intrusion. Any other rule would undermine 'the right of the people to be secure in their persons, houses, papers and effects,' and would obliterate one of the most fundamental distinctions between our form of government, where officers are under the law, and the police-state where they are the law."

31. The Court held that:

"Entry to defendant's living quarters, which was the beginning of the search, was demanded under colour of office. It was granted in submission to authority rather than as an understanding and intentional waiver of a constitutional right."

32. In *Minister for Justice (at the suit of Detective Garda Brendan Clarke) v. Wang Zhu Jie* [1993] 1 I.R. 626, Costello J., in an ex tempore judgment, found that Gardaí who entered a restaurant for the purpose of making routine enquiries in relation to the enforcement of the Aliens Act 1935, without applying for a search warrant, had not acted unlawfully because the proprietor of the restaurant did not object to the presence on the premises of the Gardaí and, in fact, offered hospitality to the investigating Gardaí. Costello J. distinguished the case from a decision in *DPP v. McMahon* [1986] I.R. 393, where Gardaí had entered premises in plain clothes without a search warrant for the purposes of discovering whether offences under the Gaming and Lotteries Act 1936, were being committed. What was observed by the Gardaí was sought to be adduced in evidence. Objection was taken thereto on the basis that it was unlawfully obtained evidence. Finlay C.J. held that the Gardaí did not have an implied invitation to enter the premises, having regard to the purpose of that entry. They were, in law, trespassers. The evidence was consequently unlawfully obtained and the trial judge had a discretion to exclude it "where it appears to him that public policy, based on a balancing of public interests, requires such a solution" (see *The People (Attorney General) v. O'Brien* [1965] I.R. 14), Kingsmill Moore J. at p. 161.)

33. What is clear from that brief survey of case law is that members of the Gardaí, no more than any other member of the public, absent statutory authority, have no right to enter a dwelling unless consent to such entry has been granted. Consent must be given freely. What is expressed as consent may be viewed differently when the conduct of the police is subsequently reviewed by a court.

34. It seems to me that there are two compelling features of the interaction between the Garda. and the applicant in this case. Notwithstanding the fact that Garda Lynch presented in uniform, identified herself as an Immigration Officer and clearly displayed the authority and colour of her office, to borrow phraseology from US decisions, the undocumented non-national applicant in breach of a deportation order had no hesitation in asking the garda to wait outside the apartment, to close the door on the garda and to take five to six minutes to make a phone call to see what she might do. This fact indicates that the applicant was aware of her entitlement to exclude Garda Lynch from her dwelling and she achieved this exclusion, as was her lawful entitlement, by closing the door on the garda following the garda's request that she produce identification. On her return to the door, I find that the applicant had decided that she would permit Garda Lynch to enter the apartment. It is significant that the applicant informed the court that when she turned away from Garda passivity and signs of resignation in these moments. My view is that the applicant knew that she was in trouble and that the presence of an Immigration Officer in her home in circumstances where she was an evader of a Deportation Order, as was her mother, was likely to lead to difficulties for her, but that such difficulties were unavoidable. Thus, though it is likely that the applicant would prefer not to face an interview, whether in her home or anywhere else with an Immigration Officer about her circumstances, having been discovered, albeit accidentally, she knew that her unlawful status in the State would inevitably be revealed.

35. I find that the applicant gave full and genuine consent to Garda Lynch to enter the dwelling though this was done reluctantly. In a similar vein, I reject the argument that the applicant and her mother were compelled to accompany Garda Lynch and Garda Diffley on a journey to the garda station and were further compelled to remain there under questioning. It is my view that the applicant and her mother consented to the journey to the garda station and further consented to their presence at the garda station. I reject the argument that this consent was not free on the basis of the applicant's assertion that if she did not accompany Garda Lynch on a voluntary basis, that she would leave the apartment in handcuffs. Garda Lynch had no intention of arresting or detaining the applicant or her mother. I accept the evidence that her sole concern was as to the welfare of these people, having regard to the peculiar circumstances in which they were living. When I questioned the applicant as to why she thought she would leave the apartment in handcuffs, the applicant was unable to give any real answer to this question. My view is that what the applicant was expressing was her knowledge that the inevitable result of her interaction with the gardaí would lead to the discovery by the gardaí of the existence

of the Deportation Order. That the applicant had this fear, not created by any act or suggestion or conduct of Garda Lynch or her colleague, is not enough to cause her consent to accompany the Gardaí to the garda station to have been less than freely given and genuine in nature. Though reluctantly or resignedly given, the applicant voluntarily went to the Garda Station.

36. In reviewing the legality of the exchange between the Gardaí and the applicant in this case, it is instructive to consider the matters condemned by Hogan J. in *Omar v. The Governor of Cloverhill Prison* (supra). In that case, Gardaí, armed with Deportation Orders, came to the home of a Tanzanian family comprising mother, father and 7-year old son. The family was in bed and the son was asleep. A member of the Gardaí entered the son's bedroom in the company of the mother and gave directions as to the packing of clothes and what time the child should be woken from his sleep. Hogan J. found that at no stage were the Omars told that they were under no legal obligation to accompany the Gardaí. He found that "the entire impression given to the Omars ... was that they had no alternative other than to go along with that which the Gardaí required and that they were, to that extent, under a *de facto* compulsion to follow those directions". The judge noted that the Omars were put into the back of a garda car at 12.30am and their luggage was placed in another car. They were driven by the Garda Escort Team to Dublin Airport where they arrived at 2.30am. The judge found that the family was locked in the car and that it was likely that the locks had been deliberately applied. On arrival at Dublin Airport, the Omar Family was escorted to a detention room and the door was then locked. The learned judge's conclusions are stated as follows:

"42. Returning again to the question of whether the entry of the Garda team into the Omars dwelling was a lawful one and whether they freely and voluntarily consented to their conveyance from Limerick to Dublin Airport., I am prepared to allow that the initial entry into the dwelling was lawful in the sense that the Gardaí were genuinely invited into the dwelling. But it is clear that the Gardaí quickly exceeded the boundaries of that implied consent to come into the premises and because no sooner had they entered the dwelling that they subjected Mr. and Ms. Omar to a form of *de facto* restraint and arrest. What really happened is that the Gardaí entered the dwelling for the purposes of *de facto* arresting the Omars in order to give effect to the deportation order. The Oireachtas has, however, never given such a power to enter a dwelling for this purpose."

37. Points of contrast with the present case are obvious. In *Omar* as described by Hogan J., the Gardaí arrived armed with Deportation Orders and their sole purpose was to remove the family from the State. In this case, Garda Lynch was not aware of the Deportation Orders during the long initial stages of her exchanges with the applicant and her mother and she did not arrive at the applicant's house with any intention with respect to the applicant. As indicated above, Garda Lynch, in evidence which I fully accept, said that on three occasions she informed the applicant and her mother that they were not required to come to the garda station. That Garda Lynch could have arrested the applicant and her mother for failure to produce valid identification and for falsifying an asylum claim but did not indicates that the garda was genuinely concerned about the welfare of the applicant and her mother and that is why she asked them to come to the police station. That Garda Lynch accommodated the applicant and her mother in a public room near the open door of the police station when she was interviewing Mr. Ram and Mr. Saju is illustrative of the lack of restraint placed by the Gardaí on the liberty of the applicant and her mother. Unlike the facts in the decision given by Hogan J. in *Omar*, here, there were no locked doors, no directions given or anything that resembled dominion by the Gardaí over the applicant and her mother, or involuntary submission by them to such dominion.

Conclusion:

38. Having carefully reviewed detailed accounts of what happened on 1st April 2014 at the home of the applicant and her mother, in the garda car and ultimately at the garda station, I can find no trace of unlawful action by Garda Lynch or any of her colleagues. I find as a fact that the applicant invited the garda into her home and that Garda Lynch was at all times lawfully present in that apartment. I also find that no question of deprivation of liberty arises in respect of the circumstances which pertained in the apartment. Garda Lynch did not exercise control and dominion over the applicant and her mother, such that they were not free to come and go as they pleased. I have not been able to find any trace of illegality in the events that unfolded. Any nervousness or anxiety felt by the applicant as to her circumstances was brought about exclusively by the fact that she knew that there was a Deportation Order in existence against her.

39. Garda Lynch, on discovering the existence of Deportation Orders, lawfully arrested, cautioned and detained the applicant and her mother. In those circumstances, I decline to grant the orders sought.