Neutral Citation: [2016] IEHC 506

**THE HIGH COURT**

**[2016 No. 952 SS]**

**IN THE MATTER OF AN INQUIRY UNDER ARTICLE 40.4.2 OF THE CONSTITUTION OF IRELAND, 1937**

**BETWEEN**

**MOHAMMED LACHHEB (ALSO KNOWN AS ADAM ALAOUI)**

**APPLICANT**

**AND**

**THE GOVERNOR OF CLOVERHILL PRISON**

**RESPONDENT**

**EX TEMPORE JUDGMENT of Ms. Justice O'Regan delivered on the 25th day of August, 2016**

1. The within matter is an inquiry into the detention of the applicant, pursuant to Article 40.4.2 of the Constitution. He is currently held in Cloverhill prison and has been held since the 5th of August, 2016, pursuant to an immigration detention warrant, which was executed by Det. Garda Liam Lawton on the 5th of August, 2016.

2. There is a certificate by the respondent of the 25th of August, 2016, confirming that the detention of the applicant is indeed pursuant to that warrant.

3. In that warrant, the applicant is refused permission to land, pursuant to s. 4(3) of the Immigration Act 2004. Under the provisions of the Act, he can be detained for a period not exceeding eight weeks until he is removed from the State.

4. The applicant's claim is to the effect that there is an error on the face of the warrant, which renders it fatal in that reference is made to a refusal for permission to land as opposed to refusal for permission to be in the State. That is as a consequence of the fact that it is common case that the applicant has been in the State since the 4th of June, 2016.

5. In response to the applicant's claim, the respondent accepts that permission to land is distinct from permission to be in the State. The difference between the parties is the suggestion by the State that, in order to *be*, you must first have permission to land. The applicant does not accept that contingency event.

6. The State claims that you cannot look at s. 4(1) in isolation - you have to have general regard to the balance of the section.

7. Insofar as the case law is concerned, of the numerous cases that I have been referred to, in the limited circumstances of the within application, there are only three which I believe are particularly germane. These include the judgment of Mr. Justice Hardiman's of the 10th of November, 2015, in *Hussein v. The Minister for Justice Equality and Law Reform* [2025] IESC 104, which I referred the applicant to earlier. This decision considered s.4(10) of the Act dealing with the provisions which the immigration officer must have in relation to exercising his decision to grant a permission or not.

8. The applicant suggests that by referring to "a permission" is to conflate one or more of the permissions provided, but, I must say, if there is any conflation going on, it has been conflated already. In the case law, there is reference to "for permission" for example. In Mr. Justice Hogan's decision in *Pachero and Choma v. Minister for Justice and Equality, Ireland and Attorney General* [2011] IEHC 491, there is reference in s.16 of the Act to "a permission", so that the within suggested conflation, if such be the case, I don't believe is sufficiently significant as to suggest that there is an error on the face of the warrant.

9. Returning to the decision of Mr. Justice Hardiman, he refers to the non-national's "first legal entry." There doesn't appear to me to be any dispute between the parties but that the applicant is in the country without having secured any form of lawful permission to either land or be here.

10. In Mr. Justice Hogan's decision in *Pachero* at para. 22 *et seq* he says:-

> "At the heart of this application is the status of the permission to land..."

He deals with that permission to land and he subsequently refers to it as the party must apply "for permission to enter the State." Again, it could be suggested that there is more conflation there in that permission to land and permission to enter appears interchangeable.

11. Having regard to all of the above, I do not believe that the suggested conflation renders the warrant invalid.

12. In the other case of Mr. Justice Hogan, *Toidze v. Governor of Cloverhill Prison* [2011] IEHC 395, at para. 9 he deals with, as was referred to in an earlier decision, the phrase "ordinary residence" and he says this "... connotes a residency which is lawful..."

13. I do not see any reason, therefore, why, having regard to that judgment, and the judgment of Mr. Justice Hardiman, when one is looking at s.4(1) of the 2004 Act, that we are not looking at a landing which is lawful, so that notwithstanding that the applicant may well have been in the State for a preceding two month period, nevertheless, he had not lawfully landed in the State.

14. For that reason, I am satisfied that, irrespective of whether it is the case that 'you must have "a landing" first before you have a "to be"', or not - is actually not relevant to the decision.

15. I think that as the applicant had not lawfully landed in the State, the refusal to give him permission to land was appropriate. I am satisfied that there is no error on the face of the warrant, and there is no basis then to suggest that the applicant is detained unlawfully and should be released pursuant to the provisions of Article 40.