Neutral Citation No. [2005] IEHC 37

THE HIGH COURT
Record Number: 2003 No. 255 JR

BETWEEN:
ADEGBOYEGA GABRIEL ADESINA OKENLA
APPLICANT
AND

THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM, ANGELA WILLIS, IRELAND, AND THE ATTORNEY GENERAL

RESPONDENTS

Judgment of Mr Justice Michael Peart delivered the 10th day of February 2005:

"Oh, what a tangled web we weave when first we practise to deceive" – Sir Walter Scott, Marmion, 1808.

The experience of having listened to the affidavits opened to the Court in this case, the arguments ably made by Counsel on both sides, and my re-reading of those affidavits and exhibits for the purpose of deciding whether to grant leave in this case, has immediately put in mind the above quotation. Seldom has it seemed so apt in a legal context. Even allowing for the fact that some of the content of the respondents' replying affidavit is to be regarded as hearsay, and perhaps inadmissible on a certain view of the nature of the Court's decision in the event that leave be refused, it is impossible to escape a conclusion that in the months and years leading up to the final events which give rise to the present application, this applicant, under various different versions of his name, and indeed possibly under different names, and using different passports, has played 'ducks and drakes' with the immigration and asylum procedures in this State. If sympathy on the part of the Court for what befell him eventually was a requirement of justice, he would surely be entitled to none.

I do not propose to set out, or perhaps I should say more accurately, attempt to set out in any detail the web of deceit and intrigue indulged in by this applicant lest by so doing I stray upon the ground to be travelled over again in the hearing of the substantive application which with great hesitation and some regret I feel compelled to allow. I will add for the sake of completeness that no view I have formed as to the bona fides of this applicant and the lack of candour, honesty and openness which he has shown in his dealings with the agencies of this State, should in any way influence any Judge called upon to hear the substantive application, and who will have to form his/her own view.

The only merit which I can see in the present application arises from a point in time after the involvement of the applicant's present solicitors. It would appear that the notification of the proposal to make a deportation order was, while sent to the address which the Minister had on file for the applicant, was not in fact or reality received by him since he was outside the State temporarily, or at least it is averred that this was the situation. After his return on the 15th November 2002, there was some difficulty arising from the fact that the applicant on arrival was in possession of two passports, and the applicant as arrested but eventually released allowed to re-enter the State. His solicitors wrote to the GNIB at the end of November 2002 to inform them that the applicant was again intending to leave the State and seeking the return of his passports. It is averred that while this correspondence was acknowledged there was no mention made of any notification having been sent informing the applicant of an intention to make a deportation order, and neither was the applicant's solicitor informed of the fact when he spoke to a Supt. Mulligan. Matters are further complicated around this time by the fact that the applicant at this time appears to have had two firms of solicitors acting for him, each of which was in communication with the authorities concerning the movements of the applicant to and from the State.

The applicant left the State on 6th December 2002 without his travel documents apparently, because the applicant's solicitor, Mr Farrell deposes that he wrote on the 10th December 2002 seeking these documents and telling the GNIB of the applicant's departure from the State. It is further averred that inspite of this information having been transmitted to GNIB the Minister proceeded to make the Deportation Order in this case on or about the 10th January 2003. The notification of the making of this Deportation Order was again, according to the affidavits filed, not received by the applicant because he was not in the State at the time.

The applicant was arrested on the 4th March 2003 and was detained in Cloverhill Prison to await his deportation.

From this point onwards, events occurred which in my view produce substantial grounds for arguing that the applicant has been denied a reasonable opportunity to avail of his constitutional right of access to the Court for the purpose of bringing judicial review proceedings and that he ought not to have been deported. It is true that at the time of his deportation he had

not actually commenced judicial review proceedings, and to that extent this case differs from the facts in another series of applications where I granted leave, namely **Adebayo and others v. The Commissioner of An Garda Siochana and others, unreported, 27th October 2004**, but nevertheless the situation is that the applicant's solicitor had written to the Minister's office seeking the applicant's file and informing them that he was instructed to commence Judicial Review proceedings and furthermore stating that at the conclusion thereof:

"*Please note that delay in furnishing Mr Okenla's file could amount to impeding his access to the courts to vindicate his rights. Please note that any attempt to deport Mr Okenla before Judicial Review proceedings can be initiated would amount to a clear attempt to frustrate his access to the courts."*

On the 7th March 2003 the Minister faxed a letter in response to this letter stating *"This office requires your above named client's written authorisation confirming that you are acting on his behalf."*

Later that afternoon Mr Farrell rang the Minister's office and spoke to an official there to tell her that he was getting the written authorisation which was sought, and that it might be the following Monday (the 10th March 2003) by the time the authorisation arrived. However it appears that inspite of these communications the applicant was removed from his cell on Saturday the 8th March 2003 and deported from the State without any prior notification to the applicant or his legal adviser. It is these events which in my view give rise to substantial grounds for the purpose of leave in relation to at least some of the reliefs sought. My judgment in **Botusha v. Minister for Justice, Equality and Law Reform, unreported, 29th October 2003** is relevant to this aspect of the case.

Since I am granting leave I do not propose to deal more extensively with the significant legal submissions made on both sides of the argument, as to do so might be to rehearse what will have to be done in any event at the substantive application.

I will extend the time for the bringing of the application under s.5 of the Illegal Immigrants (Trafficking) Act, 2000 given the circumstances and facts of the case as outlined by Mr Farrell in his grounding affidavit.

I am not however prepared in this case to grant at this stage any relief in the form of an injunction requiring the Minister to permit the applicant to return to the State for the purpose of this application. The applicant is no longer relying on persecution, and it is clear that he has already been fully capable of instructing his lawyers in the matter of this application and will not be prejudiced in that regard.

In relation to the reliefs sought under O.84 RSC I am satisfied that arguable grounds have been shown and I will allow leave in that regard.

I will therefore grant leave to seek the reliefs set forth in paragraph (d) subparagraphs C 1, 2 and 3; D 1, 2, 3, 4, and 5; and F of the Statement of Grounds filed herein, and on the grounds set forth at paragraph (e) subparagraphs 1-11 inclusive.