

THE HIGH COURT

JUDICIAL REVIEW

[2018 No. 1022 J.R.]

BETWEEN

SHAKEEL AHMED DAR

APPLICANT

AND

THE MINISTER FOR JUSTICE AND EQUALITY

RESPONDENT

JUDGMENT of Mr. Justice Richard Humphreys delivered on the 1st day of April, 2019

1. The applicant, who is a British citizen, applied for a residence card for his mother on 25th August, 2016. That was refused on 12th June, 2017. He requested a review of the refusal on 23rd June, 2017. On 16th October, 2018 the respondent's Department wrote to his solicitor to say that "*your client[s] review is in the queue to be processed. The length of time it takes to process your clients application may vary depending on a number of factors, including the volume of applications on hand. A decision may issue to your client[s] at any point once your client has submitted their request*".

2. On 28th November, 2018 the applicant's solicitors wrote to the Department seeking a decision and indicating that proceedings would issue if such a decision was not notified to them within ten days. On 6th December, 2018, before the ten-day period expired, the applicant filed the present judicial review proceedings seeking *mandamus* to require the Minister to make a decision and a declaration that there had been a breach of the right to an effective remedy.

3. Leave was granted on 10th December, 2018, but in the meantime the decision itself issued on 7th December, 2018 and was received by the applicant on 10th December, 2018, but only came to his lawyers' attention after the leave application had been moved. That decision was unfavourable and the applicant has issued a second set of judicial review proceedings challenging it [2019 No. 121 J.R.].

4. The only issue remaining in the present judicial review proceedings is that of costs and in that regard I have received helpful submissions from Ms. Patricia Brazil B.L. for the applicant and from Ms. Emma Doyle B.L. for the respondent.

5. I previously endeavoured to summarise the Supreme Court's jurisprudence on the issue of costs of moot proceedings in *M.K.I.A. (Palestine) v. International Protection Appeals Tribunal* [2018] IEHC 134 [2018] 2 JIC 2708 (Unreported, High Court, 27th February, 2018), the operative part of which is at para. 6(v) to the effect that if the proceedings are moot due to a factor which is within the control of one party but that has no causal nexus to the proceedings or which relates to an underlying change in circumstances, as its put in the Supreme Court decision in *Cunningham v. President of the Circuit Court* [2012] IESC 39 [2012] 3 I.R. 222, the court should take the view that there is no event in the *Godsil v. Ireland* [2015] IESC 103 [2015] 4 I.R. 535 sense and should therefore lean in favour of no order (see *per MacMenamin J. in Matta v. Minister for Justice and Equality* [2016] IESC 45 (Unreported, Supreme Court, 26th July, 2016) at para. 20).

6. Ms. Brazil broadly accepts that what has made the proceedings moot is the fact that a decision has issued and agreed that because it pre-dated the proceedings it cannot be said to have a causal nexus with the proceedings as such, although she makes a point in relation to the pre-action letter. She also accepts that the logic of *M.K.I.A.* is that the court should lean in favour of no order, but argues that the court's residual or fall-back discretion should be exercised in favour of the applicant, relying essentially on two grounds.

(i). Ms. Brazil stresses that it was reasonable for the applicant to have brought the proceedings, as in *Garibov v. Minister for Justice, Equality and Law Reform* [2006] IEHC 371 (Unreported, Herbert J., 16th November, 2006). However, it is clear following *Matta* that *Garibov* is to be treated as arising on its own facts. The question of whether it is reasonable to bring *mandamus* proceedings after a delay could apply in any case; and the reasonableness of issuing the proceedings is not in itself a reason to award costs of moot proceedings, as that would completely undermine the general position as set out by the Supreme Court.

(ii). Ms. Brazil suggests that it can be inferred that the threat of proceedings brought about the decision. That is somewhat negated by the correspondence sent by the Department to the effect that the matter was in a queue and would be dealt with essentially in the normal way. The fact that the applicant jumped the gun by filing proceedings before the expiry of the ten days his solicitors had specified in the warning letter doesn't particularly help his position under this heading.

7. Overall, the position here is that there are insufficient special factors to displace the default order of no order as set out in the Supreme Court jurisprudence.

Order

8. Accordingly, there will be no order as to costs.