

THE HIGH COURT  
JUDICIAL REVIEW

[2018 No. 264 J.R.]

BETWEEN

SALUD PADUANGA

APPLICANT

AND

THE MINISTER FOR JUSTICE AND EQUALITY

RESPONDENT

**JUDGMENT of Mr. Justice Richard Humphreys delivered on the 8th day of October, 2019**

1. On 31st August, 2017, the applicant sought permission to remain in the State under s. 4 of the Immigration Act 2004. The Minister for Justice and Equality refused to process that application on 12th March, 2018. I granted leave in the present proceedings on 9th April, 2018 in which that refusal was challenged. Shortly thereafter, the applicant applied to me for a stay on the process of a making a possible deportation order under s. 3 of the Immigration Act 1999, an application which I refused on the basis that it was more appropriate to let the Minister make a decision and then consider a stay on any adverse decision if one was made.
2. Submissions under s. 3 of the 1999 Act were then made on 3rd May, 2018 and on 3rd July, 2018 the Minister made a decision in favour of the applicant, and granted Stamp 4 permission for one year based on the s. 3 representations. That positive decision would not have happened if I had granted the stay sought by the applicant. As it is legitimately put in correspondence dated 10th December, 2018 on behalf of the respondent "*it is apparent that the proceedings were misconceived and indeed contrary to the applicant's best interests. [The applicant] applied to restrain the Minister from making a decision in the s. 3 process. The court refused the application for an injunction. In the event that the injunction had been granted the applicant would have prevented the Minister from making a decision which was favourable*". This shows the procedural inappropriateness of seeking or worse still granting injunctions which prevent a decision from being made. By all means, applicants can seek to challenge or to stay any adverse decision once made but generally the public interest very much militates against an interference in the decision-making process so as to prevent the decision from being made in the first place. Things may be different if injustice is inevitable, but that is rarely the case. That is the problem with over-recourse to prohibition or similar pre-emptive attempts to cut off a process which has yet to take place.
3. On 31st July, 2018, the respondent applied to put the proceedings into the settlement list for cases associated with *Luximon v. Minister for Justice and Equality* [2018] IESC 24 [2018] 2 I.R. 542. On 3rd September, 2018, and on various subsequent dates, the respondent sought his full costs of the proceedings by way of correspondence with the applicant's solicitor.
4. While it is agreed now that the case can be struck out, the issue before the court is one of costs and in that regard I have received helpful submissions from Mr. Anthony Hanrahan

B.L. for the applicant, who asks some portion of his costs, and from Mr. Daniel Donnelly  
B.L. for the respondent, who asks for all of the respondent's costs.

5. I dealt with the issue of costs in moot proceedings in *M.K.I.A. (Palestine) v. International Protection Appeals Tribunal* [2018] IEHC 134 (Unreported, High Court, 27th February, 2018) drawing on the Supreme Court jurisprudence in *Cunningham v. President of Circuit Court* [2012] IESC 39 [2012] 3 I.R. 222, *Godsil v. Ireland* [2015] IESC 103 [2015] 4 I.R. 535 and *Matta v. Minister for Justice and Equality* [2016] IESC 45 (Unreported, Supreme Court, 26th July, 2016).
6. The really central issue is whether there is a causal nexus between the matter that has made the case moot and the proceedings themselves. Here, what made the case moot was the grant of permission under s. 3 of the 1999 Act and the only link with the proceedings is the negative one that I refused to stop something happening that would have happened anyway. In the absence of such a nexus the default order in accordance with the Supreme Court jurisprudence is no order as to costs.
7. The objectives of that jurisprudence would be somewhat undermined if having made no order as to the costs of a moot case, parties were then to engage in a further arm-wrestle about the costs of that costs hearing itself. In complex contested matters there may be a discrete issue about the costs of a costs hearing, but that has limited relevance generally and virtually no relevance to the costs of a moot case.
8. Even if it was relevant, neither side had actually argued for no order as to costs so therefore neither side can be said to have prevailed on the issue of costs. Maybe if the applicant had at all times limited the request to the costs of dealing with the State's demand for costs I might have been more sympathetic, particularly given that the tenor of the correspondence of Ms. Berkeley, solicitor for the applicant, was quite reasonable. But for the reasons I have set out in the circumstances the default order of no order as to costs is the appropriate one in this case.