



Neutral Citation Number: [2023] EWHC 445 (Admin)

Case No: CO/2979/2022

**IN THE HIGH COURT OF JUSTICE**  
**KING'S BENCH DIVISION**  
**ADMINISTRATIVE COURT**

Royal Courts of Justice  
Strand, London, WC2A 2LL

1<sup>st</sup> March 2023

**Before :**

**MR JUSTICE FORDHAM**

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**Between :**

**RAHIM ABDI OMAR**  
**- and -**  
**GREEK JUDICIAL AUTHORITY**

**Appellant**

**Respondent**

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**Alex Du Sautoy** (instructed by CS Solicitors) for the **Appellant**  
The **Respondent** did not appear and was not represented

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Hearing date: 1.3.23

Judgment as delivered in open court at the hearing

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**Approved Judgment**

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....  
THE HON. MR JUSTICE FORDHAM

Note: This judgment was produced and approved by the Judge, after using voice-recognition software during an ex tempore judgment.

**MR JUSTICE FORDHAM :**

Introduction

1. The sole ground of appeal advanced on this renewed application for permission to appeal concerns Article 8 ECHR: the right to respect for private and family life. The Appellant is aged 49 and originally from Somalia, having come to the UK in 1997 which was not contested. She is wanted for extradition to Greece. That is in conjunction with a conviction Extradition Arrest Warrant issued on 3 September 2020 and certified on 24 March 2021. The index offending is facilitating the unlawful entry into the UK by air transport of two Somali individuals who had entered Greece illegally, whom the Appellant had provided false UK passports and who she had accompanied on that journey. She then gave dishonest information when questioned by the police, claiming that the two individuals were her adopted daughter and a family friend. After a preliminary hearing before the Greek Magistrates' Court, which she attended, she was subsequently tried in her absence, convicted and sentenced to 6½ years custody. She is wanted to serve that sentence in Greece, less three days or so while detained on remand in Greece and 4 months qualifying remand between arrest in the extradition proceedings on 7 April 2021 and her release on bail in July 2021. Her extradition was ordered by District Judge Zani ("the Judge") on 11 August 2022 after oral hearings on 7 March 2022 and 20 July 2022 at which the Appellant gave evidence. The position at the hearing before the Judge was (as it still is) that the Appellant lives in three bedroomed fixed rented accommodation with her three youngest children who were aged nearly 20, 14 and 12 (and are now aged 20½, nearly 15 and 13).

Fugitivity

2. The first issue raised by Mr Du Sautoy is that the Judge arguably went wrong in finding the Appellant to be a fugitive, with the infecting consequence that the Article 8 balance sheet assessment was itself arguably wrong. The Judge accepted the Respondent's position, based on Further Information, namely: (a) that the Appellant had been informed at the Magistrates preliminary hearing in December 2014 of her obligation to keep the Greek authorities informed of her address; and (b) she subsequently left Greece without notifying an address. The Judge rejected the Appellant's evidence. She had denied that she owed any obligation to state an address. She had claimed that she had understood the Magistrates' hearing to have been her trial, at which she had not been convicted but rather had been expelled from Greece and ordered not to return. The Judge disbelieved that account, observing that there was no corroboration from 2014 for what she claimed. The essential arguments are: that the Judge overlooked the burden of proof being on the Respondent; and that the Judge overlooked the standard of proof being the criminal standard; these being indicated by the reference to no corroboration; and in any event that the evidence supports the Appellant as having simply returned home to the UK where her children were, with the implied permission of the Greek court. Mr Du Sautoy spelled out orally that he does not accept that knowingly leaving Greece and coming to the UK without performing a known obligation to notify a change of address would render the Appellant a fugitive.
3. This is a new ground of appeal – or a new ground in support of Article 8 – sought to be raised for the first time in a renewal bundle lodged on 1 February 2023 by new

lawyers, the previous lawyers having come off the record on 19 February 2023. The point did not appear in the Grounds of Appeal in August and September 2022. It was therefore not responded to in the Respondent's Notice of September 2022. Nor was it raised when Bourne J refused permission to appeal on 11 January 2023. Mr Du Sautoy accepts that a covering email dated 1 February 2023 did not draw the Respondent's attention specifically to the amended Grounds of Renewal in the bundle then being served; nor was there any application for permission to amend. I cannot in these circumstances be sure that the Respondent has had a fair opportunity to react to the fact that a new point was being advanced. On the other hand, the amended Renewal Grounds were within the bundle itself, and the point is in the Skeleton Argument (22.2.23), both of which were served on the Respondent. I decided to consider the point on its merits and see where we went from there.

4. Having done so, I am satisfied that there is nothing in the point. There is no question of the Judge having overlooked the burden and standard of proof. The finding on fugitivity clearly reflects the fact that the Judge was persuaded by the Respondent, based on its evidence and submissions, that the Appellant was a fugitive. The Judge did not say or suggest that the Appellant had failed to persuade him that she was not a fugitive. He clearly had in mind the relevant standard of proof. Indeed, he referred expressly to the "required standard" in relation to bars on extradition. It was plainly open to the Judge to accept the Respondent's evidence and submissions and to reject the Appellant's assertions. It was also plainly open to him, in the course of rejecting those assertions, to take account of the fact that there was no material to corroborate what the Appellant was claiming. The Judge made unassailable findings of fact which amply support the conclusion of fugitivity as a matter of law. In my judgment, knowingly leaving Greece and coming to the UK without performing a known obligation to notify a change of address would indeed, beyond argument, render the Appellant a fugitive.

#### Impact on the Children

5. The second topic raised squarely concerns the Article 8 balancing exercise and in particular the third-party rights of the three youngest children and the impact of extradition of their mother for each of them. The key points advanced on the Appellant's behalf are these. Their mother, the Appellant, has the current caring responsibilities for the two youngest children. If she is extradited, the 20 year old sister – who I will describe as "[J]" – would need to care for the two younger siblings. This would constitute a severe impact, for all three of them. In writing, Mr Du Sautoy says the Judge gave "no meaningful consideration" of these issues and those impacts. Orally, he put it this way: the Judge did not "interrogate" the impacts. He further submits that the Judge "speculated" about other help being available from the wider family, a point which had not been made in a social worker report. It is reasonably arguable that the Judge's approach to the evidence, or the outcome on Article 8, was wrong. That, as I saw it, is the essence of the argument.
6. I am satisfied that there is no reasonable prospect of success on Article 8. The Appellant is wanted to serve a substantial 6½ year custodial sentence. The public interest considerations in favour of extradition are weighty. The Judge has found the Appellant to be a fugitive, and I have dealt with the challenge that finding. The Judge also rejected any 'false sense of security' because he unassailably disbelieved the Appellant's account of the circumstances and her state of mind in and after leaving

Greece following the magistrates hearing . The Judge also had regard, rightly, to the fact that the Appellant does not have an unblemished record here in the United Kingdom: in 2016 she was convicted of fraud and given a suspended custodial sentence.

7. It is plain, beyond argument, that the Judge gave full and anxious consideration to the third party Article 8 rights, including all three of the relevant and youngest children. In fact, the Judge had himself adjourned the earlier oral hearing on 7 March 2022. That was because he regarded it necessary that there be a welfare report under section 7 of the Children Act 1989. The whole point was to ensure that he was fully informed as to the implications for the three younger children. And he was. The social worker's report dated 5 July 2022 was duly produced and the hearing reconvened, with arguments made. The Appellant was represented by Counsel. The process enabled all these considerations to be fully ventilated.
8. The Judge in his judgment carefully set out, thematically, the contents of the social worker's report in 12 paragraphs extending over some 7 pages. The headings were these: how the children's needs are currently being met within the family; how the children will be affected by any change in their circumstances arising from the extradition of the Appellant; the Appellant; the father of the children; the older sister; any harm the children have suffered or are at risk of suffering including if extradition is ordered; the proposed care arrangements for the children in the event of the Appellant's extradition, including any proposals by the local authority to accommodate the children; the ascertainable wishes and feelings of each of the children; the home conditions and suitability of the accommodation; and any other welfare issues.
9. Later in the judgment, in the Judge's careful 'balance sheet' exercise, he said this:

*the welfare of the two youngest children of the family has to be in the forefront of the Court's mind in considering their Article 8 rights along with those of their mother.*

That, of course, properly reflected the importance of children's best interests.

10. The Judge's careful consideration of the issues, again within that 'balance sheet' exercise, then included the following:

*It is appreciated that there will be hardship caused to [the Appellant] and to her younger children, and that is something that I have kept well in mind. However, that of itself is not sufficient to prevent an order for extradition from being made... Their sister [J] became their primary carer while their mother was on remand in the UK. Social Services have stated in the s.7 report that [J] was somewhat 'ill-prepared' as she had been given no opportunity to prepare for what then occurred. Nevertheless she appears to have been able to cope and while the children will, of course, have found it difficult to adjust, they appear to have shown resilience in difficult circumstances.*

*This Court discounts the possibility of the children's father becoming involved in their care. He appears to show a total disinterest in the welfare of his children and I doubt that will change were extradition to be ordered. It appears that the care responsibilities will again fall on [J].*

*I need to return to consider the s.7 report which provides the following information in relation to the proposed arrangements for the care of the children in the event of extradition being ordered:*

- *The local authority has supported the family to make arrangements for the children to continue to reside at the family home. This is the preferred option for the children, and it is in their best interest to prevent further disruptions in their stability. As mentioned previously, [the two youngest children] will be cared for by their elder sister [J].*
- *The Local Authority has facilitated a Family Group Conference to explore arrangements proposed by the family and extended family to ensure the basic needs of the children will be met in the possibility of [the Appellant] being extradited. The Family Group Conference has identified the difficulties [J] may potentially be experiencing given her young age and the extent of her responsibilities as a long-term carer for [the two youngest children]. The difficulties were centred around financial and emotional wellbeing support. The local authority will support [J] under a Stronger Families Support Package to ensure that this arrangement is effective, and the children's needs are being met.*
- *One concern that has been raised by [the Appellant] during the assessment is the influence that her older children may have on [the 15 year old] given their criminal history. This was explored with [J] to understand her ability to protect [the two youngest children] given that she will be the long-term carer. [J] shares that although her brothers have criminal involvement, this has never and continues to not be displayed within the family home.*
- *[The two youngest children] and [J] have a good relationship and I believe that with support from [Children Services] in equipping [J] to set boundaries and expectations, talking with children, and encouraging positive relationships amongst them, can counteract and stifle any negative influencing that exists.*

*[J] will have had the earlier experience to reflect on and learn from, regarding looking after her younger siblings, when their mother was being held on remand. If [the Appellant] is to be required to return to Greece, [J] will have some time to prepare.*

*This court can take judicial notice of other situations when the court is told that other family members are unavailable to assist, only to learn that, once extradition takes place, the family come together and offer assistance (as they and other members of the community have done in gathering the £9,300 cash security).*

*[The Appellant] has a large family, many of them live relatively close by (including both her parents who reside circa 30 minutes away from her home).*

*I am satisfied that the 2 youngest children will be adequately cared for if extradition takes place.*

11. In my judgment, there was no arguable error in the Judge's approach. Nor is the outcome arguably wrong. It was, beyond argument, open to the Judge to take into account: the prospect that although said to be unavailable, other family members would rally round; the fact that family members and members of the community had rallied round to gather £9,300 cash security when the Appellant was bailed in July 2021; and the fact that there was a large family many of whom lived relatively close by including both grandparents. None of these observations conflicted with the section 7 report. They were, moreover, additional points which, as I have demonstrated, were further to a very detailed consideration of the position as reflected in that report.

### Conclusion

12. I agree with Bourne J who refused permission to appeal on the papers. This appeal is not reasonably arguable. Permission to appeal is refused.