

**THE HIGH COURT  
JUDICIAL REVIEW**

**[2019 No. 497 J.R.]**

**BETWEEN**

**B.A.L. (DEMOCRATIC REPUBLIC OF CONGO)**

**APPLICANT**

**AND**

**THE MINISTER FOR JUSTICE AND EQUALITY**

**RESPONDENT**

**JUDGMENT of Mr. Justice Richard Humphreys delivered on the 4th day of November, 2019**

1. The applicant was born in the DRC in 1984. He arrived in the State on 12th March, 2015 and applied for international protection. That was refused at first instance and on appeal, and a deportation order was made on 5th June, 2018.
2. On 30th May, 2019, he applied for ministerial consent to re-apply for international protection under s. 22 of the International Protection Act 2015. He sought an undertaking that he would not be deported in the meantime. The Department of Justice and Equality replied negatively on 8th June, 2019 saying that *"we are unable to provide your client with an undertaking at this time. The enforcement of the deportation order remains an operational matter for the Garda National Immigration Bureau"*. The statement of grounds says the applicant *"is unaware of when it may be intended to deport him and is apprehensive that he may be deported prior to a decision being made on his s. 22 application"*. To that extent, the application was inherently speculative. Counsel for the applicant indicated that, for example, the Minister might have maintained that the re-application was abusive.
3. The primary relief sought in these proceedings was a declaration that the execution of the deportation order against the applicant *"would be unlawful at this juncture"*, and an injunction restraining deportation until a lawful decision is made in respect of the applicant's application under s. 22 of the 2015 Act.
4. I granted leave on 22nd July, 2019 and an injunction until 31st July, 2019, although there was some disagreement about whether the injunction was expressly continued thereafter. In fairness to the applicant, it should be noted that the form of injunction for which leave was granted included a claim for an injunction for a reasonable period of time after the s. 22 decision itself. On 30th July, 2019 the s. 22 application was refused. It is agreed by both sides that the case is now moot so the only issue is costs. Mr. Paul O'Shea B.L. for the applicant seeks his costs. Mr. John P. Gallagher B.L. for the respondent also seeks costs, although very reasonably he accepted the potential relevance of the jurisprudence that the default approach in this type of situation is no order as to costs.
5. What made the case moot was the s. 22 decision which was not caused by the proceedings. It would have happened anyway. Therefore, the default order, which I see no pressing basis to depart from here, is no order as to costs. The mere fact that the applicant got the benefit of an interlocutory injunction does not compensate for the

absence of a causal link between what rendered the proceedings moot and the proceedings themselves such that the applicant should get costs.

6. Mr. Gallagher at para. 17 of his written legal submissions eloquently argues that "*it could not be the case that an unmeritorious claim for injunctive relief could be mounted without consequences, save in the knowledge that it will be 'saved by the bell'.*" While Mr. Gallagher formally presses that as an argument as to why he should get costs, conversely it can be said that the fact that the proceedings were unquestionably somewhat speculative does not automatically mean that the respondent must in all circumstances get the costs.
7. Overall the position is that there are not sufficiently strong reasons to depart from the very useful and practical rule of thumb of the default approach that there should be no order as to costs of moot proceedings save in the limited circumstances set out in the Supreme Court jurisprudence (where there is an event that is causally linked to the proceedings themselves, see *Cunningham v. President of the 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) (MacMenamin J.)) which I endeavoured to summarise in *M.K.I.A. (Palestine) v. International Protection Appeals Tribunal* [2018] IEHC 134 (Unreported, High Court, 27th February, 2018)).

#### **Order**

8. Accordingly, the order will be:
  - (i). that the proceedings be struck out;
  - (ii). that the injunction be discharged, as the basis for it has come to an end - that is agreed by the parties; and
  - (iii). that there be no order as to costs.