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Judgment: approved by the Court for handing down | *Delivered:* **29/01/2014**
*(subject to editorial corrections)**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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QUEEN'S BENCH DIVISION

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Amaechi's (Uchenna Victor) Application [2014] NIQB 42

IN THE MATTER OF AN APPLICATION BY UCHENNA VICTOR AMAECHI FOR JUDICIAL REVIEW

AND

IN THE MATTER OF A DECISION OF THE SECRETARY OF STATE FOR THE HOME DEPARTMENT (UKBA)

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TREACY J

Introduction

[1] The applicant is an American National who is currently detained under the Immigration Acts, pending his removal to the United States. Originally that was scheduled to take place at 11.10 am on Thursday 23 January 2014 but this judicial review application was introduced as an emergency. He challenges a decision of the Home Office dated 20 January 2014, setting the removal directions to the United States, notwithstanding that there was on-going proceeds of crime litigation in Northern Ireland relating to the seizure of a large amount of cash at Aldergrove Airport.

Order 53 Statement

[2] The applicant sought the following relief:

> "(a) An Order of Certiorari to quash the impugned decision;
> (b) An Order of Mandamus to compel the respondent to stay removal to the United States pending the final

resolution of the proceeds of crime proceedings in Northern Ireland;
(c) A declaration that the impugned decision was unlawful, ultra vires and of no force or effect;
(d) And the applicant seeks interim relief in the form of an order prohibiting his removal from the United Kingdom until further order of this Honourable Court;
..."

[3] The grounds on which this relief was sought included:

"(a) The impugned decision was unlawful as irrational in so far as the respondent failed to take into account, or give any adequate weight to a relevant factor namely, the ongoing proceeds of crime proceedings in Northern Ireland which relate to the applicant;

(b) The impugned decision was unlawful as ultra vires section 6 of the Human Rights Act 1998 as in breach of article 6 ECHR in so far as that decision required the applicant to leave the United Kingdom on 23 January 2014 and thereby undermined the applicant's ability to defend proceeds of crime proceedings in Northern Ireland. The applicant relies upon the decision in *R (on the application of Quaquah) v Chief Immigration Officer* [2000] HRLR 225 in respect of a challenge. Inter alia, the applicant will be denied a right of [meaningful] access to a court and will be denied a right to a fair hearing and equality of arms in the said proceedings.

(c) The impugned decision was unlawful as in breach of the respondent's own policy guidance per the Enforcement Instructions and Guidance document issued by the respondent in respect of the article 6 issues that have been raised by the applicant. In particular the respondent has failed to consider and/or properly apply the said guidance at, inter alia, paragraphs 21.2 to 21.9 therein. In addition the respondent has, if departing from the said guidance, failed to give any adequate reasons for doing so.

(d) The impugned decision is unlawful as ultra vires section 6 of the Human Rights Act 1998 as in breach of article 1 of the First Protocol regarding protection of the applicant's property as it would have the effect of effectively depriving him of the property currently

detained under section 295(4) of the Proceeds of Crime Act 2002."

[4] The principal ground relied upon was ground (c).

Background

[5] The applicant was born on 24 October 1969 and is an American National. His home address is recorded as being in Nigeria. The account that now follows in this paragraph emanates from the applicant and is not to be taken as necessarily accepted by the proposed respondent. Although the applicant's home address is in Nigeria he spends six months of the year in New Jersey and 6 months in Nigeria. On 16 January 2014 he travelled from Nigeria to Dublin arriving on 17 January. His plane was stopped in Paris en route to Dublin where he declared $33,000US and £3,000 cash in Paris. The purpose of the applicant's trip was to attend a business meeting in Dublin with a company called the Makani Group who are based in Poland. After this meeting he travelled from Dublin to Belfast in order to take a flight from Belfast to London to visit his sister who he was going to stay with until 24 January 2014. He was then going to travel back to Dublin and meet with the representatives of Makani Group and travel with them to Poland. He was then going to travel back to Dublin on 1 February 2014 and then travel on to the USA on 2 February 2014.

[6] On 17 January 2014 the applicant was arrested at Belfast International Airport before he could board a flight to London. He was detained at Larne House Detention Centre and issued with Removal Directions on 20 January 2014. Upon arrest the applicant had $33,000US and almost £3,000 seized under the Proceeds of Crime Act 2002 ("the 2002 Act").

[7] During interview by police, the applicant admitted flying from Paris to Ireland with the intention of entering the UK aware that he was barred from entering the UK. He said the purpose of this was to see his sister following his alleged business meeting in Dublin and that it was, in his words, "a random thing".

[8] According to the applicant the cash was a mixture of money that he was going to survive on and also use as part of his business to purchase used cars at an auction in the US for resale. $20,000US was to be used for the purchase of cars at auction and the subsequent shipping of the cars to Nigeria. The applicant was going to be attending a car auction in New Jersey held three times a week on a Tuesday, Wednesday and a Thursday. The remaining $13,000US and £2,950 was for the applicant to survive on until he returned to Nigeria. Out of the $13,000US he was going to pay $6,500US towards tuition fees due for one of his two children currently studying in the United States and was also going to provide for both his children currently studying in the United States. In summary, the applicant's two eldest daughters study at universities in the United States.

[9] The applicant has three other children currently living in Nigeria. In summary, the two youngest study at school in Nigeria while the third intends to study at university. All hold US passports.

[10] In this application the applicant challenged the decision of the UK Border Agency to refuse to cancel removal directions issued on 20 January 2014 to remove him to the United States on 23 January despite the submission of a pre-action protocol letter made on his behalf on 21 January 2014.

[11] The applicant was removed from the UK in 1992. The Home Office visa system shows visa refusals for someone with the applicant's name and date of birth for applications made on 6 November 2002, 19 May 2003, 13 July 2004, 26 January 2005, 11 April 2005, 6 October 2006, 5 January 2007 and 5 May 2008. On 23 February 2007 the applicant appears to have tried to gain entry using a South African passport in the name of Simon Mopotoga Maphosa and he was removed to Switzerland two days later. On 29 February 2012 he was also refused entry using his American passport.

[12] In a letter from the Home Office to the applicant's solicitor dated 23 January 2014 they were advised that it was no longer Home Office policy to defer removal where an intention to apply for permission to seek judicial review is notified. The letter referred to Chapter 60 of the EIG entitled, "Judicial Review Injunctions" which sets out the procedure for dealing with cases with removal directions in place. The letter stated:

> "… deferral will only be considered if, in addition to obtaining a court reference number, the procedures set out in the Practice Directions have been fully complied with or, in the alternative, an injunction has been obtained."

Discussion

[13] The District Judge at Antrim Magistrates' Court, on 21 January 2014, granted a three month detention order under s229 of the 2002 Act to allow the police/customs to further investigate. The applicant's solicitor averred that police can apply for a further detention order after the initial three months if they require more time to investigate and that once the police have concluded their investigation, the case will either be listed for a contested hearing or else a forfeiture order will be made by the court if consented to by the respondent. The applicant's solicitor anticipates that the case will take approximately 5 months at the very least for reasons which are explained in his affidavit.

[14] At para18 the applicant's solicitor records his instructions from the applicant to the effect that if the applicant were removed to the United States of America without his cash he would have no means to support himself financially. The

applicant also instructed his solicitor that he wished to be present in court to enable the best possible evidence to be presented and to cross-examine any witnesses.

[15] At the time of the hearing of this application the investigations had not been completed. If a hearing is required and assuming Art6 is engaged, it will be incumbent on the court to guarantee the applicant's Art6 rights.

[16] The availability of video link, if required, and whether such a procedure complies with Article 6, will be a matter for the court determining the application following any submissions and at a time when the precise contours of any case are clear. We are a long way from that at the moment and the investigation into the substantial cash amounts that were seized, appear to be at a very early and preliminary stage. No doubt the applicant will want to co-operate, so the matter can be promptly resolved since, if his account is accepted, the speedy return of apparently much needed cash will thereby be facilitated. I observe that his co-operation with the relevant authorities does not require him to be physically present in this jurisdiction.

[17] If the applicant's account is accepted then no hearing may be necessary. If a hearing does become necessary, the procedure to be adopted in compliance with Art6, if engaged, will be for the court determining the matter.

[18] In its letter of 23 January 2014 the Home Office, at para4 stated:

> "… the right to a fair hearing, as guaranteed by Article 6, does not mean that removal of a person from the United Kingdom will breach his Article 6 rights in all cases where he is pursuing civil litigation in the United Kingdom. If the person can conduct the litigation from abroad, his removal will not breach Article 6. The test which is applied in these cases is essentially whether the individual concerned in conducting the civil action from abroad will be deprived of a reasonable opportunity of presenting his case under conditions that do not place him at a substantial disadvantage vis-à-vis his opponent. In deciding whether this is the case all relevant facts and circumstances are considered including the complexity of the case, the stage the proceedings have reached, the availability of communications facilities in the country of return and whether the proceedings were instituted expeditiously."

[19] At para5 the letter goes on to contend that the civil court has no jurisdiction in immigration matters, cannot prevent the applicant's removal and they contend that

the applicant does not have to be present in the UK to pursue his litigation and that his removal would not breach Art6.

[20] In my view it is premature to allege any breach of Art6, since it is not known whether there will be any hearing and, if so, what procedures are to be adopted. The guidance that the applicant asserts has been breached is just that, guidance. The aspect of the guidance relied upon is concerned with Art6, equality of arms issues.

[21] The primary concern of the applicant appears to be that any such hearing be Art6 compliant. I can see no basis at the moment for contending that the applicant's removal at this time would not be Art6 compliant. The investigation can continue in his absence and he will not and should not be deprived of a full opportunity of co-operating with the investigating authorities. To the extent, if any, that his absence may compromise his ability to co-operate (although at the moment I fail to see how) the use of mitigating measures may have to be considered by those conducting the investigation.

[22] The current application appears to assume three things. First, that there will be a hearing under the Proceeds of Crime legislation. Secondly, that if there is a hearing it will be by video link and thirdly, that such a procedure would violate Art6. All of these assumptions might prove completely unfounded. The applicant's assertion that, if removed to the United States without the cash, he would have no means to support himself financially and his desire to remain in the UK pending any potential hearing is scarcely credible. If the applicant is allowed to stay in the UK in the meantime, he would be living in a foreign country equally bereft of the cash with no or little means to support himself financially and away from his family, friends, business and associates. In truth, it seems more likely that the applicant is trying to manipulate the situation to his advantage so as to be allowed to remain in the UK for a substantial period of time. This would certainly be consistent with his unsatisfactory immigration history to which I earlier referred.

Conclusion

[23] Against that background I consider that none of the grounds advanced on behalf of the applicant have crossed the threshold of arguability and accordingly the application is dismissed.