The Queen on the applications of Sathivel, Ajani and Ncube v Secretary of State for the Home Department [2018] EWHC 913 (Admin)

Lady Justice Sharp and Mr Justice Green

Note of Judgment: This Note is not part of the Judgment. It provides a short summary of the issues arsing. Please refer to the Judgment for a full description of the facts and issues.

1. The judgment concerns three cases referred because of concerns that the lawyers acting have in their professional behaviour fallen far short of the standards required of those conducting proceedings on behalf of clients. In each case the Court file is to be sent to the Solicitors Regulation Authority (SRA).

2. The Court has an inherent jurisdiction to govern its own procedure and this includes ensuring that lawyers conduct themselves according to proper standards of behaviour: See *R (Hamid) v Secretary of State for the Home Department* [2012] EWHC 3070 (Admin) ("*Hamid"*). In the present cases the conduct of the professionals involved amounts in the judgment of the Court to a serious failure to adhere to proper standards. The *Hamid* principle applies equally to the Upper Tribunal for Immigration and Asylum.

3. Very recently the Lord Chief Justice has expressed concern at the lack of the exercise of the duty of candour on the part of certain practitioners in the context of last moment applications for injunctions to restrain removals and he has reiterated the importance of the *Hamid* jurisdiction.

4. Because the problems reflected in these cases are nor unusual the Court is taking the opportunity to lay down a revised procedure for investigating cases of this sort.

5. In future any lawyer responding to a Hamid Show Cause letter will be required to provide detailed information to the Court and to do so in formal witness statements duly signed with a statement of truth by a lawyer with responsibility for the case. If misleading information is then provided the lawyer responsible may be guilty of contempt of court.

6. In many cases the concerns arise following a last moment change of lawyers with the new firm claiming that the inability to put full or accurate information before the court or tribunal is due to the change of instruction. Where there has been a change of lawyers then the full details of that change will have to be set out. If the Court considers that the change of solicitor is part of a strategy between two firms then the Court will consider referring both sets of solicitors to the SRA for investigation.

7. Further, in future the Court will consider making an immediate reference to the SRA without first referring the case to a full hearing before the High Court.

8. There are of course many highly professional practitioners in this complex and difficult field who successfully reconcile the need to act in their client's interests with their duties to the Court. Regrettably there is a substantial cohort of lawyers who consider that litigation is a strategy that can be used to delay and deter removal proceedings.

9. The Judgment describes some features of problem cases which are regularly encountered.

10. First, most of the practitioners do not have legal aid franchises. The clients are privately funded, and they are frequently vulnerable and desperate. To raise funds to pay for legal assistance clients must often seek support from family and friends. Some lawyers promise the highest quality of representation and then provide excellent services but there are other solicitors who having promised high quality specialist services instruct paralegals and unqualified persons to draft applications which fall well below acceptable standards and which judges must reject as unarguable and totally without merit.

11. Second, the incentive of some practitioners in initiating, regardless of merits, court or tribunal proceedings and appeals is simply to delay the immigration process. Whilst proceedings are ongoing repeat "*fresh material*" applications to the Home Office are made with a view to generating new Home Office decisions which then generates further (unmeritorious) appeals which take up more time to resolve and allow for yet more fresh material applications. Such cases may continue for many years, and in extreme cases decades. The longer the case proceeds the more scope there is for an applicant to then advance an Article 8 "*private life*" claim. And where an applicant is detained pending removal the longer that detention persists (which may be a consequence of the applications and appeals being pursued) the greater the scope for the detained person to argue that it is no longer lawful to maintain detention. If a bail application succeeds the applicant might abscond. Sometimes the applicant re-appears years later, and the process beings again.

12. Third, when the Home Office sets arrangements for removal a different dynamic sets in. Last minute applications to restrain removal are made to the High Court, and often to the "out of hours" duty Judge. Frequently, lawyers serve a new "*fresh material*" claim upon the Home Office and then argue before the duty Judge that removal is unlawful pending determination by the Home Office of that new application and/or an appeal therefrom. There is often a lengthy history to such cases but what happens is that at the last moment the applicant changes solicitors. The new solicitors draft the last-minute injunction to restrain removal and explain to the Judge that that they have been instructed late on and have had no time to obtain full instructions (the client will be in detention). Routinely the new lawyers do not have access to the prior documentation and they have not (because of lack of time they argue) sought or obtained the relevant papers.

13. These features play a part in each of the cases before us. The cases involve three firms of solicitor: (a) David Wyld Solicitors (b) Sabz Solicitors and (c) Topstones Solicitors.

Mr Justice Green

26th April 2018