CO/8833/2009

Neutral Citation Number: [2009] EWHC 2254 (Admin)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
THE ADMINISTRATIVE COURT

Royal Courts of Justice
Strand
London WC2A 2LL

Thursday, 20th August 2009

B e f o r e:

MR JUSTICE CRANSTON

Between:
THE QUEEN ON THE APPLICATION OF TSEGA BERHE GEBREMARIUM
Claimant

v

CITY OF WESTMINSTER
Defendant

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(Official Shorthand Writers to the Court)

Mr A Badejo (instructed by Messrs Duncan Lewis & CO) appeared on behalf of the **Claimant**
Mr J Peacock (instructed by City of Westminster Litigation Section) appeared on behalf of the **Defendant**

J U D G M E N T
(As Approved by the Court)

1. MR JUSTICE CRANSTON: This is an application for permission to apply for judicial review and interim relief. The claimant applied to the Lord Mayor and Citizens of the City of Westminster ("the Council") for housing assistance under the provisions of Part 7 of the Housing Act 1996. That was on 1st June of this year. The claimant was provided with interim accommodation pursuant to section 188(1) pending the Council's decision under section 184.

2. On 17th July, the Council announced its decision under section 184 to the effect that the claimant was homeless, eligible for assistance and in priority need, and did not become homeless intentionally. However, the Council decided that the claimant had no local connection with Westminster but that she had a local connection with Cardiff. As a result, the Council decided that the conditions for referral of the claimant's case to Cardiff City Council ("Cardiff") were met. Subsequently, Cardiff accepted the referral of the claimant's case. Accordingly, the Council decided that it would cease to provide interim accommodation to the claimant on 8th August.

3. On 5th August, the claimant's solicitors requested a review of the decision and they asked the Council to provide interim accommodation pending the outcome of the review. By a letter dated 7th August, the Council said that it had decided against exercising its discretion to provide interim accommodation. There were further representations which I will describe later in this judgment.

4. On 10th August, the duty judge ordered interim accommodation overnight and that there should be a hearing on the 11th. The matter came before Dobbs J on 11th August. In her order, she adjourned the matter for a week. Her order read:

> "The Defendant to serve a decision regarding the issue of the children's place of worship by 4.30 on Thursday, 13th August 2009."

When the papers reached me, I assumed that that was the only outstanding matter to be decided on the application for permission and for interim relief. Notwithstanding that there had been a hearing before Dobbs J, counsel told me that I had to hear the whole matter afresh. That occurred yesterday and took approximately an hour. I refused permission and interim relief. Because I was hearing a day case, I was not able to give judgment. Consequently I give the reasons this morning for my decision yesterday.

5. The relevant legal background is accepted by both sides. In particular, section 188(3) of the Housing Act 1996 provides that a local housing authority may provide accommodation to an applicant pending a decision on a review. That statutory provision is mirrored in section 200(5), which is the provision applicable in this case. It reads:

> "The duty under subsection (1) ... ceases as provided in that subsection even if the applicant requests a review of the authority's decision (see section 202).
>
> The authority may continue to secure that accommodation is available for

the applicant's occupation pending the decision on a review."

6. Both counsel accepted that the principles pertinent to the exercise of discretion under that statutory provision are provided for in R v Camden London Borough Council, ex parte Mohammed [1997] 30 HLR 315 at page 321. In that case, Latham J considered the factors which a local authority should consider in deciding whether to exercise its discretion under this type of provision. Three factors were identified: first, the merits of the case, and that means, in the light of later authority, the merits of an applicant's case that the authority's original decision was flawed; secondly, whether or not there is new material, information or argument; and, thirdly, the applicant's personal circumstances.

7. The upshot of the authorities following Mohammed is that this court will only intervene in the exercise of a local authority's housing discretion under a statutory provision like section 200(5) in an exceptional case. In particular, that proposition is contained in Lord Woolf's decision in R v Brighton and Hove Council, ex parte Nacion [1991] 31 HLR 1095 at page 1101.

8. The facts in this case are that the claimant comes from Eritrea. She arrived in this country in the middle of 2006. Under the dispersal policy for asylum seekers, she was accommodated in Cardiff by NASS. She was ultimately successful in her asylum application and, as a result, the NASS accommodation provided to her ceased in October 2007. From that time, until 29th May of this year, she rented privately in Cardiff at two different addresses. She was there by herself but ultimately her four children, aged between 4 and 16 years, were granted family reunion visas and arrived in Cardiff.

9. She stayed with her children for only a week and then came to London. She had only a one bedroom flat in Cardiff and it was too small. Moreover, on her account she did not want her children to be isolated in Cardiff. When she came to London she approached the Council. That was on 1st June of this year. She was interviewed by housing officers. In the interview she said that she wanted to come to London for her church and community. The housing notes record that she was informed of the possibility of a local connection referral. The notes for 13th July record that the case officer, Anish Patel, had made enquiries with the claimant's former landlord in relation to the Cardiff accommodation. The notes record that the claimant had no local connection with Westminster as she lived in Cardiff between 2007 and 1st June of this year.

10. The housing notes, dated 16th July, record that Mr Patel had advised Cardiff that he would be making a referral to it on the grounds that the claimant had a local connection with them. The case notes for 17th July record that Mr Patel telephoned the claimant to advise her that he would refer her case to Cardiff as she had a local connection there. The notes record that she was unhappy with the decision and said that she felt isolated in Cardiff. The notes record that Mr Patel explained that there was support available in Cardiff. On 17th July, the Council wrote to the claimant, confirming its decision in what is known as a section 198 letter. There is no need to explore the details of that letter. However, there is one passage, which states that Mr Patel had called the claimant on 17th June to inform her that he was minded to refer her case to Cardiff and

he requested her view on whether she wished to make further representations. In the claimant's submissions before me, it was said that there was no evidence to support that telephone call being made. I have considered the case notes in combination with the section 198 letter, and it seems to me that the only conclusion that can be drawn is that Mr Patel did make that call on 17th June.

11. As I mentioned, the claimant solicitors became involved and wrote to the Council on 5th August. In the course of their letter, they asked the Council to exercise its discretion to grant interim accommodation pending review. They explained that the claimant did not want to return to Cardiff, that in Cardiff she felt lonely and isolated because there was no Eritrean community and that in Cardiff she had suffered from depression. All her family and friends lived in London. Moreover, the letter explained that the claimant's children were of the Christian Orthodox faith and that the only church they could attend was the Eritrean Christian Orthodox church in Southwark. They would be unable to attend church if relocated to Cardiff. The letter continued that the claimant and her children had many friends in London from the Sudan and Eritrea and that the children were registered to start school in September. In London the claimant had friends who were able to care for the children.

12. The Council replied to that letter on 7th August. The letter used the decision in Mohammed as a structuring device. Under the heading "Merits of the Case", the Council explained they were satisfied that the claimant had established a residence connection in Cardiff and that she had had two privately rented flats by her own choice there. The claimant's children were of the Christian Orthodox faith but there were Pentecostal churches in Cardiff with Eritrean worshippers. Although the children were registered to start school and there would be some disruption in their move to Cardiff, that would not be detrimental in the long term. The claimant would not be isolated because she now had her four daughters with her.

13. Under the heading "New Information, Material and Argument", the second of the Mohammed factors, the Council said it was not aware of any such new information, material or argument. Under the heading "Personal Circumstances", the Council wrote that they had considered the claimant's personal circumstances. The decision reached was that the claimant had a local connection with Cardiff. Cardiff had accepted the referral and was prepared to offer her suitable accommodation. Therefore technically she was not homeless. The letter concluded by saying that, taking into account all those matters, the Council declined to exercise its discretion to provide interim accommodation.

14. The solicitors sent a pre-action protocol letter on 7th August and the Council replied on the same date. In that letter, the Council explained that its letter of the 7th clearly demonstrated that it had considered the Mohammed factors. Cardiff had accepted the referral and had agreed to accommodate the claimant and her children. Therefore the claimant was not street homeless.

15. There was a further letter from the solicitors on 10th August. The solicitors explained that they had now received the client's housing file and in the light of that wished to make further representations. After canvassing the relevant law, the letter explained

that, as the housing file recorded, the claimant had said at the initial interview that she had wanted to come to London for her church and community. There was no evidence that the Council had made enquiries before deciding to refer the matter back to Cardiff. No enquiries in particular were made that the claimant might have a local connection with Westminster on the grounds of special circumstances:

> "It appears that the decision to refer the client to Cardiff was purely based on the period of time that she resided in Cardiff."

Even when the claimant said she was unhappy with the decision to refer her back to Cardiff, no further enquiries were undertaken to discover the source of her unhappiness. The letter also raised the issue of whether or not Mr Patel had made the call on 17th June. The letter then said:

> "The council's response to the client's statement that she wants to remain in London to be close to her church is that enquiries have demonstrated that Pentecostal Churches exist in Cardiff and these have Eritrean worshippers. The council have appeared not to understand that as Orthodox Christians the children are forbidden from attending Pentecostal churches."

In the light of all those reasons, the solicitors submitted that the Council's decision regarding interim accommodation was flawed.

16. When the matter came before Dobbs J, she identified the issue of the church attended by the children in Southwark as the central issue. As I have described, the order drawn up as a result of the hearing before her directed the Council to address that issue. It did that in a letter dated 13th August. In that letter, it asserted that Mr Patel had clearly considered special circumstances before reaching the decision to refer the claimant and her family to Cardiff. The Council carefully considered the feeling of isolation and the absence of an Eritrean community there. Nonetheless, it was not satisfied that those were special circumstances in the light of her previous residence in Cardiff by her own choice and the fact that she had managed there without her community.

17. The 13th August letter then addressed the issue of the children's church. The letter explained that the Council had conducted a call with the assistance of a Tigrinya interpreter. The letter stated that, in contacting the Southwark church, the Council had been able to speak to the Deacon. He had confirmed that the children had attended the church, although not to the extent which the claimant apparently had advanced. Importantly, the Deacon confirmed that, although the children followed the Orthodox faith, they could attend any Orthodox church. The Council had therefore carried out a search and found that there was a Greek Orthodox church in Cardiff which the children could attend. The letter records that the Council accepted that there might be a language barrier at the initial stage but, once the children started school in Cardiff, they would improve their English. In addition, the letter explained that the Council had contacted the Secretary of the Greek Orthodox Church in Cardiff and he confirmed that there were at present people from about 20 different countries following the Orthodox faith who attended the church. The Council's letter also made the point that the

Orthodox church which the children currently attended was located in Camberwell, which was in the London Borough of Southwark, and that the need for the children to attend that church would not give rise to any legal connection with Westminster.

18. Finally, I should refer to the letter of the claimant's solicitors dated 14th August where they contend that there are only two Orthodox churches in the country where church services are conducted in the Tigrinya language, the children's native language, and one of those is the one in Southwark.

19. Before me, the claimant contended that the Council had not addressed its mind to the discretion it had under section 200(5) of the Housing Act 1999. In relation to the three factors identified in Mohammed, the claimant submitted that the Council's officials had failed to address their mind to the existence of a discretion not to refer the applicant to Cardiff. In particular, in the letter of 10th August the claimant's solicitors had raised the serious issue of the lack of sufficient enquiries before the matter was referred back to Cardiff. In the claimant's submissions, the Council could well have decided, having made the enquiries which it ought to have made, that the support networks available in its area far exceeded those which existed in Cardiff. It might well have exercised its discretion in favour of the claimant. The issue of the call of 17th June was also raised under this head.

20. Under the second Mohammed factor - new material, information and argument - the submission on behalf of the claimant was that the claimant's solicitors in their letter of 10th August had raised new arguments which could have a real effect on the decision under review. In particular, there was the issue of the children's attendance at an Orthodox church. The earlier contention of the Council that they could attend a Pentecostal church in Cardiff was clearly wrong. The fact was that the services and the additional lessons provided by the Southwark church were in the children's own language. There were no Eritrean Orthodox churches in Cardiff. Although the Council appeared to accept that there would be a language barrier, they failed to take into account that during the short review period it was unlikely that the children would have picked up sufficient English to enable them to worship at the Greek Orthodox church in Cardiff.

21. Subsequently, the claimant submitted, the Council's decision was flawed. It placed an undue emphasis on the existence of the Greek Orthodox church in Cardiff. The issue was whether the claimant's children would be able to take part fully in religious worship during the review period if the claimant was not granted interim accommodation in London. Given that the claimant and her children had a very strong support network in Southwark, although the Council was not initially under a duty to enquire into the local connection with Southwark, they might well have done so. The Council failed to carry out any enquiries about a possible local connection with the London Borough of Southwark.

22. As to the third Mohammed factor, personal circumstances, the submissions on behalf of the claimant were that she would become street homeless in London if she was not provided with interim accommodation pending review. The Council had said that Cardiff had accepted the referral and therefore technically she was not homeless. That

was a misdirection in law. It ignored the provisions of section 200(5), which gave a local housing authority the discretion to continue interim accommodation. To refuse to exercise the discretion to provide interim accommodation pending review on the basis that the claimant was technically not homeless was wrong in law as the Council had not addressed its mind to the powers enabling accommodation to be provided in circumstances where the notifying authority had accepted a referral.

23. In my view, the Council's letters of 7th August and 13th August clearly demonstrate that the Council has considered the Mohammed factors. The letters set out the Council's findings in relation to each of the three factors in that case. In terms of the authority binding on me, that is the end of any possible challenge to the Council's refusal to exercise its discretion to provide interim accommodation, pending review.

24. In their letter the claimant's solicitors accept that the claimant can only have a local connection with Westminster because of special circumstances, yet the only special circumstances which seem to be advanced relate to the children's need to attend the Eritrean Orthodox church in Southwark. The Council letter of 13th August meets that point: enquiries have uncovered that the children can worship at any Orthodox church and there is at least one Greek Orthodox church in Cardiff. The Council has taken into account the difficulties that the children might initially face with the language barrier but have said that that problem should diminish with time. In any event, I underline the point made in the letter of 13th August: it is difficult to see how the children's need to attend a church in Southwark can give rise to a local connection with Westminster.

25. In my view, therefore, the Council's decision on the issue of the children's need to attend church cannot be said to be flawed in public law terms. That letter of 13th August considers the one issue which Dobbs J regarded as outstanding, in other words the need for the children to attend the Southwark church. The letter demonstrates that the Council has considered that issue.

26. In the course of the claimant's submissions, it was said that the Council had given too much weight to the fact that accommodation was available for the claimant in Cardiff. The issue of weight, however, is a matter for the Council. In any event, there are no exceptional circumstances in this case, such as the need for the claimant to obtain medical treatment, which is only available in Westminster. That is the type of exceptional factor which would lead me to conclude that the Council had not approached the issue correctly.

27. In the result, I refuse permission and refuse to order interim relief.