

O. 58, r. 18(1)

No. 2



SUPREME COURT

Record No:

2019/000035

Respondent's Notice

Part I

The information contained in this part will be published. It is the respondent's responsibility to also provide electronically to the Office a redacted version of this part if it contains information the publication of which is prohibited by any enactment or rule of law or order of the Court

1. Title of the Proceedings:

SHYANI DEVI OMRAWOO

APPLICANT

-v-

THE MINISTER FOR JUSTICE AND EQUALITY

RESPONDENT

2. Name of Respondent:

THE MINISTER FOR JUSTICE AND EQUALITY

3. Application to extend time:

NO

If an application is being made to extend time for the filing of this Notice, please set out concisely the grounds upon which it is contended time should be extended.

N/A

4. Do you oppose the applicant's application to extend time: [Agent please insert]

Yes

No

If an application by the applicant to extend time is being opposed please set out concisely the grounds on which it is being opposed.

5. Do you oppose the applicant's application for leave to appeal:

Yes

6. **Matter of general public importance:**

Please set out precisely and concisely, in numbered paragraphs, the grounds upon which it is contended, that the matter does not involve a matter of general public importance. If the application is not opposed please set out precisely and concisely the grounds upon which it is contended that the matter involves a matter of general public importance. This section should contain no more than 500 words and the word count should appear at the end of the text.

1. The Court of Appeal has resolved the conflict between the High Court judgments in this case and the related case of *Rughoonauth v Minister for Justice and Equality*. No uncertainty remains such that there is any necessity for an Appeal to this Honourable Court.
2. The within proceedings relate to the deportation of a person who was once lawfully present in the State on a student immigration permission but who then unlawfully overstayed this limited and conditional permission for a number of years. Her situation by definition cannot constitute a matter of general public importance.
3. The issue raised is not closely related to the judgment of this Court in *Luximon and Balchand v Minister for Justice and Equality* [2018] 2 ILRM 153. The facts, status and legal context in those cases were entirely different notwithstanding that the appellants in those cases also held student permissions and this Court was required to consider the refusal by the Respondent to consider asserted Article 8 ECHR rights in the context of a change of immigration status under Section 4(7) of the Immigration Act, 2004. There was no such refusal in the present case which fell to be considered under Section 3 of the Immigration Act, 1999. Whilst the appellants in *Luximon & Balchand* were granted student immigration permissions they never fell into unlawfulness (save for a short period in respect of Ms. Luximon in respect of which this Court noted that the Respondent had not taken issue in the decision impugned in that case). By contrast in the present case the Applicant's student permission expired in September 2012 but she remained unlawfully in the State until January 2017 when she was deported. Moreover, the principal issue in *Luximon & Balchand* was the Respondent's refusal to carry out any consideration of asserted Article 8 ECHR rights in an application for the variation of an immigration permission pursuant to Section 4(7) of the Immigration Act, 2004.
4. Insofar as there are other cases awaiting the outcome of these proceedings, this factor in and of itself is not dispositive of the question of whether the proceedings are of general public importance. The Applicant is part of a small number of persons in the State who resided here lawfully on student immigration permissions but who have

since overstayed. The award of partial costs in the court below does not result in the matter being of such importance that an appeal should be accepted.

5. Finally there has been no attempt by the Applicant to show how at this remove the case is not moot.

Word count – 429

7. Interests of Justice:

Please set out precisely and concisely, in numbered paragraphs, the grounds upon which it is alleged, that the interests of justice do not require an appeal. If the application is not opposed please set out precisely and concisely the grounds upon which it is contended, that the interests of justice require an appeal.

This section should contain no more than 300 words and the word count should appear at the end of the text.

1. The *Luximon & Balchand* judgment does not impose any obligation on the Respondent to carry out an Article 8(2) assessment and the Applicant misunderstands the use of the term 'engaged' used at paragraph 86 of that judgment in this context. Rather, the judgment means that the *issue* of the applicants' rights in *Luximon and Balchand* should have been *considered* by the Respondent. Indeed, this Honourable Court also stated at paragraph 86 of that case:

"What weight is placed on Article 8 private and family-life criteria is a matter for the Minister. "

2. At paragraph 57 of the Court of Appeal decision herein the Court of Appeal notes the differences between the within proceedings and those in *Luximon & Balchand*. There is therefore no disparity between the judgment of this Honourable Court in *Luximon & Balchand* and that of the Court of Appeal herein in relation to the applicable legal principles. The facts, legal context and issues in both cases are readily distinguishable especially in circumstances where in the present case the Applicant's student permission expired in September 2012 but she remained unlawfully in the State until January 2017 when she was deported.
3. There was no obligation in law on the Court of Appeal to assess the case through what is referred to by the Applicant as the "*settled migrant prism*". The Applicant cannot dictate the manner in which the Court of Appeal should have considered its judgment given the engagement with the issues by that Court and by definition this cannot constitute a ground based on the interests of justice such that the application for leave to appeal should be granted.
4. Again the Applicant does not seek to show how the case is not moot.

Word count – 289

8. Exceptional Circumstances Article 34.5.4.:

Where it is sought to apply for leave to appeal direct from a decision of the High Court pursuant to Article 34.5.4, please set out concisely, in numbered paragraphs, the grounds upon which it is contended that there are no exceptional circumstances justifying such an appeal. If the application is not opposed please set out precisely and concisely the grounds

upon which it is contended that there are exceptional circumstances justifying such an appeal.

This section should contain no more than 300 words and the word count should appear at the end of the text.

N/A

Word count – 0

9. Respondent's grounds for opposing an appeal if leave to appeal is granted:

Please set out in the Appendix attached hereto the Respondent's grounds of opposition to the Grounds of Appeal set out in the Appellant's Notice of Appeal.

Please see appendix

10. Cross Application for Leave:

If it is intended to make a cross application for leave to appeal please set out here precisely and concisely, in numbered paragraphs, the matter(s) alleged to be matter(s) of general public importance or the interests of justice justifying a cross appeal to the Supreme Court.

If it is sought to make a cross application for leave to appeal direct from a decision of the High Court, please also set out precisely and concisely, in numbered paragraphs, the exceptional circumstances upon which it is contended that such a course is necessary.

This section should contain no more than 500 words and the word count should appear at the end of the text.

The Respondent seeks to cross-appeal the order of the Court of Appeal dated 14th December 2018 and perfected on 31st January 2019 insofar as it awarded 50% of the costs of the appeal to the Court of Appeal (together with appeal no. 2017/392 in *Rughoonauth v. Minister for Justice and Equality*) on the basis of a single appeal to be taxed in default of agreement in favour of the Applicants.

Word count: 70

11. Additional Grounds on which the decision should be affirmed and Grounds of Cross Appeal

Please set out in the Appendix attached hereto any grounds other than those set out in the decision of the Court of Appeal or the High Court respectively, on which the Respondent claims the Supreme Court should affirm the decision of the Court of Appeal or the High Court and / or the grounds of cross appeal that would be relied upon if leave to appeal were to be granted.

Please see appendix.

12. Priority Hearing:

Yes

If a priority hearing is sought please set out concisely the grounds upon which it is alleged that such a hearing is necessary.

This section should contain no more than 100 words and the word count should appear at the end of the text.

If the Court grants leave to appeal, priority should be granted as there are approximately 20 cases raising similar issues at present in the holding list in the High Court.

Word count: 30

13. Reference to CJEU:

If it is contended that it is necessary to refer matters to the Court of Justice of the European Union, please identify the matter, and set out the question or questions which it is alleged it is necessary to refer.

This section should contain no more than 100 words and the word count should appear at the end of the text.

N/A

Word count: 0

Part II