

THE SUPREME COURT

**Murray C.J.
Kearns P.
Denham J.
Hardiman J.
Fennelly J.**

[S.C. No. 419 of 2003]

**IN THE MATTER OF THE REFUGEE ACT, 1996 AS AMENDED
and IN THE MATTER OF THE ILLEGAL IMMIGRANTS
(TRAFFICKING) ACT, 2000**

BETWEEN:

ABOSEDE ALUNWATOYN MEADOWS

APPLICANT/APPELLANT

AND

**THE MINISTER FOR JUSTICE EQUALITY AND
LAW REFORM, IRELAND**

AND

THE ATTORNEY GENERAL

RESPONDENTS

JUDGMENT of Kearns P. delivered on the 21st day of January

2010.

I have read the comprehensive judgment about to be delivered by Hardiman J. and agree entirely with the reasoning and conclusions which he expresses in it.

This is a case where there have already been two merit-based hearings which have been the subject of adjudications adverse to the applicant and in respect of which no judicial review remedy was sought. The final step in the elaborate procedures for protecting the rights of this applicant then lay in her entitlement under S.3(3)(b) of the Immigration Act, 1999 to have the Minister consider representations as to why she should not be deported. This stage of the process can only be seen as an *ad misericordiam* application. It is not a revisitation of every aspect of the earlier hearings and decisions. As such it seems to me that there are very few ways in which the decision arrived at by the Minister at this stage of the procedures can be challenged. One might be where the relevant materials were never before the Minister. Another might arise where significant new or additional factual information became available which had not been available at the time of the merit-based hearings. Neither of those circumstances arose in the instant case.

I do not believe the test of proportionality has a role to play in determining whether the court should intervene to quash a decision of the kind given here – by which I mean a decision on an *ad misericordiam* plea made after two merit-based hearings which were not themselves

challenged. It is a test more appropriate to determine if a statutory provision is compatible with the Constitution or to consider if it invades a constitutional right more than is necessary. While it may serve well as a test for assessing first instance decisions in the context of judicial review it is in my view a quite inappropriate test to apply to a decision made by the Minister at the *ad misericordiam* stage of the decision-making process. It cannot but plunge the court into a further consideration of the merits and demerits of the particular case which have long since been determined.

Nor do I believe that the Minister in this context is required to give detailed or elaborate reasons for his decision and I would entirely agree with the views expressed in this sort of context by Geoghegan J. in *Laurentiu v. Minister for Justice* [1999] 4 I.R. 26 when he stated (at p.34):-

“I do not think there was any obligation, constitutional or otherwise, to set out specific or more elaborate reasons in that letter as to why the application on humanitarian grounds was being refused. The letter makes clear that all the points made on behalf of the applicant had been taken into account and of course they were set out in a very detailed manner. The letter is simply stating that the (Minister) did not consider the detailed reasons sufficient to warrant granting the permission to remain in Ireland on humanitarian grounds. It was open to the (Minister) to take that view and no court can interfere with the decision in those circumstances.”

I believe that to expand the criteria for judicial review beyond those stated in *O’Keeffe v. An Bord Pleanála* [1993] 1 I.R. 39 or *Keegan v. Stardust Victims Compensation Tribunal* [1986] I.R. 642 would represent a significant hiking up of judicial activism which would, in this case at least, result in a quite inappropriate encroachment into the decision-making functions of the Executive. No matter how such an extended role might be presented or justified, the expanded meaning extended now to those decisions by the majority judgments in this case will involve a merit- based review of a ministerial decision by judges who lack any particular constitutional mandate to adopt such a role, and who may be far less qualified for that purpose than the decision-maker. If such an expanded view of the role of judges is to extend to all areas of judicial review it will engulf the courts in a greatly increased volume of cases which will be of even greater length than at present, given that decision-makers will inexorably be constrained in consequence to justify their decisions to the courts. It will in my view render our judicial review system, already struggling in one respect under the vast weight of asylum related court applications, virtually inoperable.

I believe the decisions in *Keegan* and *O’Keeffe* have, as stated by Hardiman J., provided a set of coherent principles which have stood the test of time and which are, in his words, “*transparent, stable and readily understandable*”. I do not favour recalibrating the principles in a way

which would create uncertainty and confusion as to where the parameters for intervention by a court would now lie.

I believe the applicant's constitutional rights have been fully vindicated by the process of hearings, appeals, judicial review options and the final *ad misericordiam* application in this case.

I would therefore answer the question posed in the certificate in the affirmative. I would refuse to grant leave on any ground and would dismiss the appeal.