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IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT



No. CO/916/2019

NCN: [2020] EWHC 2756 (Admin)

Royal Courts of Justice

Tuesday, 22 September 2020

Before:

MRS JUSTICE WHIPPLE

B E T W E E N :

PIOTR STEPIEN

Appellant

- and -

CIRCUIT COURT IN SWIDNICA (POLAND)

Respondent

MS G. LINDFIELD (instructed by McMillan Williams) appeared on behalf of the Appellant.

MR B. JOYES appeared on behalf of the Respondent.

J U D G M E N T

(Transcript prepared from Skype for Business recording)

MRS JUSTICE WHIPPLE:

- 1 I have before me an application for adjournment advanced on behalf of the Judicial Authority, that being Poland. That application is, regrettably, late.

- 2 There are two reasons underpinning the application for adjournment. The first is that EAW2 was defective. It is said by Mr Joyes, on behalf of the Judicial Authority, that the defect relating to EAW2 must be cured. That is a defect as to its date; it was originally said to have been issued on 9 April 2014 but, in fact, it was issued on 20 January 2016. Once the defect has been cured the amended EAW (“EAW2”) must be re-served and that means that EAW is not, for technical reasons, before me on the appeal today. The second reason for the adjournment is the appearance of another EAW (“EAW3”), which relates to a 2007 conviction for burglary of some magazines. EAW3 has not yet been served.

- 3 In light of those problems in relation to EAW2 and EAW3, Mr Joyes invites me to adjourn this appeal hearing, effectively parking the appeal in relation to EAW1. EAW1 did have some difficulties attached to it, but those have been resolved and everybody agrees that that EAW is validly before this court.

- 4 Ms Lindfield, who appears for the appellant, resists that course and she invites me to hear this appeal today on the basis of EAW1 only. She says that is the only EAW which is validly before this court and she is entitled to press her appeal, noting the Judicial Authority’s delay in addressing its mind to these other matters which have now emerged in relation to EAW2 and EAW3.

- 5 I should add that the appellant has permission to appeal in relation to Art.8 only, that permission having been granted by Sir Wyn Williams on 14 August 2009.
- 6 I am grateful to both counsel for their submissions. On any view, this is an unattractive procedural wrangle.
- 7 I have decided to grant this application to adjourn. The main reason for coming to that conclusion is that any judge assessing the Art.8 balance will wish to have full facts before him or her. As matters stand, there is other criminal conduct to take into account, as reflected in EAW2 (even after it is amended) and EAW3. That criminal conduct is mixed; it includes both accusation and convictions. But the judge would not wish to be in a position of determining this appeal on Art.8 grounds without the full picture being before him or her. So, in my judgment, the process for EAW2 and EAW3 must run its course before this appeal is determined. If the Judicial Authority is at fault in producing or perfecting EAW2 late in the day, and/or discovering the facts giving rise to EAW3 very late, then those are factors to be taken into account. Those factors should first be considered by the district judge in the Magistrates' Court, if there is an appeal against EAW2 (as amended and reserved) and EAW3. Once the district judge has considered those matters, any appeal court, if leave were granted, would be in a better position to assess the merits of the appeal if that appeal is advanced on Art.8 grounds, by looking at the picture overall.
- 8 I consider the outcome for which Ms Lindfield argues to be contrived, because it takes from my review matters which I know to be in existence.
- 9 Further and in any event, by adjourning in this way I leave all options open, and the appellant can remain in the UK until his appeal is determined. His appeal is based on Art 8. That is likely to present a challenge for him. I have not heard full argument in this appeal

and I would not wish, by this very short judgment, to give any firm indication of which way I might have decided the appeal, but it is far from certain that I would have allowed this appeal, even had it proceeded on the basis of EAW1 only. Given that the appellant's ultimate appeal may become stronger the longer the delay, it seems to me that it may in all the circumstances, from his point of view, be preferable to adjourn. I understand that he may not see it that way. Certainly, Ms Lindfield does not see it that way, because she and he are keen for certainty of outcome, but not, I suspect, if that resulted in the appeal being dismissed.

10 I therefore adjourn this appeal, pending the outcome of proceedings in relation to EAW2 (as it is to be amended) and EAW3.

11 I will hear submissions on precisely how the order should be framed and I am going to ask Mr Joyes to draw up the order, but what I suspect the court will want is communication from the parties within a short time after the conclusion of any proceedings related to EAWs 2 and 3, indicating their intentions in relation to any appeals against decisions in EAWs 2 and 3, and indicating their view of the way in which this adjourned appeal should be picked up or resurrected at that stage.

MRS JUSTICE WHIPPLE: So, Mr Joyes, if I was to direct that the parties write to the court within 21 days of the conclusion of any proceedings in the Magistrates' Court in consequence of the amended EAW2 and/or EAW3, does that strike you as a sensible way forward?

MR JOYES: Yes, my Lady.

MRS JUSTICE WHIPPLE: Ms Lindfield, have you got anything to say in terms of mechanics?

MS LINDFIELD: No, thank you. I think that is the sensible way forward.

MRS JUSTICE WHIPPLE: All right. Well, then, I am very grateful to both of you for your assistance. Mr Joyes, can you draw up an order----

MR JOYES: Yes, my Lady.

MRS JUSTICE WHIPPLE: -- get Ms Lindfield to agree it, please, and then lodge it with my clerk,
whose details I think you have.

MR JOYES: Yes, I will do it immediately.

MRS JUSTICE WHIPPLE: Thank you very much, indeed. This hearing, then, is concluded.

MR JOYES: Thank you.

MRS JUSTICE WHIPPLE: Thank you.

CERTIFICATE

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