THE HIGH COURT

[2023] IEHC 316

[Record No. 2022/553JR]

BETWEEN

**FAAISA SHARIFF HUSSEIN, FARDOOWSA SHARIFF,
APPLICANT NO. 3 (A MINOR), APPLICANT NO. 4
(A MINOR), APPLICANT NO. 5 (A MINOR), APPLICANT NO. 6 (A MINOR)**

APPLICANTS

AND

THE MINISTER FOR JUSTICE

RESPONDENT

JUDGMENT of Mr. Justice Barr delivered electronically on the 14th day of June, 2023.

Introduction.

1. The first applicant is a Somali citizen. She has lawfully resided in Ireland since October 2021. She is the mother of the third to sixth named applicants, who are all minors. The second applicant is a Somali national and an Irish citizen. She has been in Ireland since 2004. She is the sister of the first applicant.

2. In this application, the applicants challenge the legality of a decision of the respondent to refuse long stay visas to the third to sixth named applicants. The Minister has refused them permission to come to Ireland to reside with their mother and their aunt.

3. The essence of the applicants' case is that, in considering the applications on behalf of the minors, the Minister applied the Policy Document on Non-EEA Family Reunification (hereinafter "the policy"), in an inflexible and irrational way, by failing to have any, or any adequate, regard to the exceptional circumstances of a humanitarian nature of this case; which, the applicants submit, would have justified a departure from the strict requirements of the policy, in favour of the grant of visas to the minor applicants. In essence, they rely in this regard on the existence of exceptional humanitarian circumstances in the case.

4. To properly understand the applicants' case and the rationale for the respondent's decision, it is necessary to set out the background to this matter in some detail.

Background.

5. The second applicant, who is the aunt of the minor applicants, was born in Somalia on 28th November, 1979. She came to Ireland on 13th October, 2004. She applied for

asylum and was declared a refugee by the respondent on 26th July, 2005. On 13th December, 2012, she became a naturalised Irish citizen. Having separated from her husband, the second applicant made a family reunification application in respect of her daughter, who had been born on 5th November, 2000, which application was granted in 2009.

6. The second applicant's current partner is a UK citizen. He resides with the second applicant in this country. They have seven children born between 2008 and 2015, all of whom are Irish citizens.

7. The second applicant's father, was killed in 2005. The second applicant applied for refugee family reunification in respect of her mother in December 2010. That was granted in 2014. The second applicant's mother came to Ireland on 25th July, 2014. She lives with the second applicant.

8. The second applicant had four sisters and three brothers, five of whom were killed in a bomb attack on the family home in 2009. One of her other siblings died in 2013. The second applicant's younger sister, is the first applicant herein. She is the second applicant's only remaining sibling. The first applicant was born in Somalia on 20th August, 1997.

9. It is stated that the second applicant did not know the whereabouts of her sister for many years after the bomb attack on the family home. She tried several times to find the first applicant using the Red Cross tracing service, but was unsuccessful in so doing. Eventually, the second applicant made contact with the first applicant in July 2015, when an old friend got in touch with the second applicant and told her that the first applicant was living in Addis Ababa, Ethiopia. She gave the second applicant a contact number for the first applicant. The first applicant informed the second applicant that after the bomb attack on the family home, she had spent a number of years moving around Somalia, running from the Al Shabab militia. She stated that she had gone to Addis Ababa, Ethiopia in or about May 2011. She had moved back to Somalia for some time, before returning again to Addis Ababa in April 2015.

10. The first applicant was married in Mogadishu on 10th April, 2011. She and her husband had four children, being the third to sixth named applicants. The first applicant stated that in or about 2014, her husband and her son, Ibdirahim, were taken hostage after they were attacked by the Al Shabab militia. The first applicant was reunited with her

husband and son in or around February 2016. She became pregnant with her youngest child at that time. She stated that she had to again flee from where they had been staying in March 2016; at which time, the first applicant lost contact with her husband and has not heard from him since.

11. In 2016, the second applicant applied for family reunification in respect of the first applicant under s.18(4) of the Refugee Act 1996. That application was not granted until February 2021, due to an initial 2017 refusal and subsequent judicial review proceedings.

12. Subsequent to settlement of the judicial review proceedings, the solicitors acting for the first applicant wrote to the respondent on 23rd December, 2020, in which they referred to the wish of the first and second applicants to have the first applicant's four children, being the third to sixth named applicants, included in the application for visas. They queried whether the respondent's Family Reunification Unit (hereinafter "FRU") would deal with the application, or whether the visa application should be made through the Embassy in Addis Ababa. On 18th January, 2021, the respondent indicated that the FRU would not deal with the application in relation to the children. The family reunification application in respect of the first applicant, was ultimately granted in February 2021.

13. The first applicant's solicitors submitted an application for the first applicant's visa to travel to Ireland on 6th April, 2021, notifying the respondent in the letter, that she would be applying for visas for her four children to travel with her. On 28th July, 2021, the first applicant's solicitor submitted D visa applications in relation to the first applicant's four children. It was pointed out that the first applicant's own visa was valid for travel to Ireland between 11th June, 2021 and 10th December, 2021. The respondent was requested to determine the visa applications in respect of the first applicant's children, in the shortest possible timeframe. The respondent was informed that the children would have no other family support in Ethiopia without their mother, when she came to Ireland. It was pointed out that the first applicant had at all times been open about her intention to apply for visas for her children to travel with her.

14. By emails dated 24th September, 2021, the D visa applications in respect of the four children were refused. The emails contained shorthand visa refusal reasons. They were not accompanied by a detailed consideration document. Lack of finances and lack of proof of routine contact/family relationship were referred to, amongst other reasons, such as issues with the spelling of names on documents.

15. The first applicant travelled to Ireland on 16th October, 2021, having returned to Somalia from Ethiopia one week previously, for the purpose of leaving her children in the care of her sister-in-law in Mogadishu. The children were to reside with her sister-in-law on a temporary basis, as she already had five children of her own.

16. Solicitors acting for the first applicant submitted an appeal in respect of the four visa refusals on 23rd November, 2021, describing the living arrangement for the children in Mogadishu as being a "last resort", resulting from the first instant visa refusals. The appeal letter dealt with the first instance refusal reasons in turn. It was submitted that the finding that an exceptional set of circumstances did not exist, was at complete odds with the reality of the case. Legal submissions were made in support of the applicants' appeal. Further documentation in support of the appeal was submitted on 21st December, 2021, including documents in relation to financial assistance and contact between the second applicant and the first applicant's sister-in-law, who was caring for the children in Somalia. Further documentation, concerning identity documents and payslips, was submitted on 7th February, 2022.

17. The appeals against the refusal of the D visas in respect of the minor applicants, were refused in four separate letters dated 14th April, 2022, accompanied by a single consideration document, which covered all four appeals. It is that decision which is challenged in the within proceedings.

Submissions on behalf of the Applicants.

18. On behalf of the applicants, it was submitted by Mr. Power SC, that the decision of the respondent on appeal, was vitiated by a number of legal errors and was also irrational in the legal sense, in respect of a number of findings that had been made in it. It was submitted firstly, that the decision maker had been wrong to have excluded the first applicant (the mother) as a sponsor on the grounds that she was not eligible to act as a sponsor having regard to the terms of the policy document, and in particular having regard to the provisions of para. 16.4 thereof, which provided a number of categories of people who would be eligible to sponsor applications for family reunification, but only after they had been twelve months lawfully in the country.

19. It was submitted that the Minister should always be free to exercise her discretion in whatever way she thought was most appropriate in the circumstances. The policy document could not be used as a means of setting out an inflexible policy, which had to be

followed by the Minister and her staff in all cases. It was submitted that in this case, the decision maker should have been prepared to depart from the eligibility criteria, if she was satisfied that exceptional circumstances warranted her so doing. It was submitted that the decision maker had not had regard to the fact that the basis of the applications in the present case was due to the existence of exceptional circumstances of a humanitarian character and that these would have justified a departure from the strict adherence to the eligibility criteria.

20. It was submitted that by failing to adopt a flexible approach to the issue of eligibility to act as a sponsor and by refusing to regard the first applicant as a sponsor for the minor applicants, that had a very significant consequence, as it meant that the second applicant, the aunt, was deemed to be the sole sponsor in respect of the minor applicants. It was submitted that this rigid adherence to the provisions of the policy was contrary to relevant authorities on the exercise of discretionary powers by a Minister and the relevance of policy documents in respect of such exercise: see *Ezenwaka v. Minister for Justice* [2011] IEHC 328; *Mishra v. Minister for Justice* [1996] 1 IR 189; *DE v. Minister for Justice and Equality* [2018] IESC 16; *Bracken v. Minister for Employment Affairs and Social Protection* [2020] IEHC 394; *A&B v. Minister for Justice* [2022] IESC 35. It was submitted that such approach was also contrary to the provisions of the policy itself: see para. 1.12 thereof.

21. It was submitted that the decision maker acted irrationally in holding that there was no sufficient evidence of family life between the mother and the minor applicants before the departure of the mother in October 2021. It was noted that the decision maker had accepted that the first applicant was the biological mother of the minor applicants. It was submitted that the mother had given an extensive account of how she had to flee to Ethiopia for safety after the kidnapping of her husband and son for a period in 2014. It was submitted that it was unrealistic for the decision maker to hold that there would be documentary evidence in existence, which would show that the first applicant and her children lived together as a family in the years prior to the first applicant coming to Ireland in October 2021. It was submitted that the finding that there was insufficient documentary evidence establishing that they had lived together as a family prior to October 2021, was irrational.

22. Thirdly, it was submitted that while the finding that there was no evidence of consent on the part of the father of the children to their removal from Somalia, nor any documentary evidence showing that the mother had been awarded sole custody of the children, were correct as matters of fact; the overall finding ignored the fact that the mother had given a detailed account of how she had not seen her husband in the years after the kidnapping in 2014, until she had met him again briefly in late 2015/early 2016, at which time she had become pregnant with their fourth child and that she had not seen him since. She had stated that she was not aware of his current whereabouts. She was not aware if he was alive or dead.

23. It was submitted that having regard to the level of political and civil unrest in Somalia at the present time, it was not the general practice to get custody orders when people had gone missing. It was submitted that the decision maker had failed to have regard to the particular circumstances of this case, which indicated that it was not likely that the first applicant was abducting the children against the wishes of their father, when the children were currently in the custody of the first applicant's sister-in-law. It was submitted that in all the circumstances, the requirement of the decision maker that documentation should be produced to establish either the consent of the father, or an order granting sole custody to the mother, was unreasonable.

24. Fourthly, it was submitted that the decision maker had acted irrationally and unreasonably in focussing exclusively on mistakes in relation to the spelling of the first applicant's name and of the name of her mother in various official documents. That had been explained by the first applicant on the basis that the translation from the Somali spelling to the English spelling had given rise to very minor discrepancies in the spelling between the various documents.

25. It was pointed out that the decision maker had found that the documents were authentic, but questioned the credibility of the documents due to these minor discrepancies. It was submitted that such minor errors in spelling as existed in this case, (a) did not seriously impugn the credibility of the documents and (b) such errors were not the fault of the first applicant and did not affect the authenticity of the document, as found by the decision maker; therefore, they did not afford a good reason on which to refuse the applications for visas made by and on behalf of the minor applicants.

26. Fifthly, it was submitted that the decision maker had not had sufficient regard to the truly exceptional humanitarian circumstances of this case, which included the following: that the first applicant's family had been almost entirely destroyed by the bomb attack in 2009, which event had been accepted in the grant of refugee status to the second applicant; that after the death of the remaining sibling of the first and second applicant in 2013, the first applicant was the only remaining member of the family in Somalia; that in holding that the first applicant had intentionally sundered the family relationship between her and her children, the decision maker had not had sufficient regard to the fact that the first applicant had had to take up her visa in the six month window between June to December 2021; nor had she had regard to the fact that all along the first applicant had made it clear that she wanted to bring her children with her, as they were entirely dependent upon her and through her, on their aunt, for financial support.

27. It was submitted that the decision maker had not had regard to the fact that the first applicant's sister-in-law was looking after the four minor applicants, along with her own five children on a temporary basis, while they appealed the first instance refusal; nor had she had regard to the circumstances in which the children were living in Mogadishu, where the food supply was limited and where they were not attending school. In addition, it was submitted that there was a risk to the female minors, due to the fact that the first applicant's sister-in-law had teenage sons.

28. It was submitted that the decision maker had not had regard to these exceptional circumstances when holding that the grant of visas would cause a financial burden on the State. It was submitted that that finding ignored the fact that the financial requirements of the policy could be ignored in circumstances of exceptional humanitarian need, such as those that arose in this case.

29. Sixthly, it was submitted that the decision maker had applied the wrong test, in finding that while the plight of the minor applicants in Somalia was "unenviable", they were not any worse off than other children in Somalia; therefore, they could not be said to have met the criterion of exceptional circumstances as required by the policy, to justify a departure from its terms. Counsel submitted that that test was wrong in law. It was submitted that it was not necessary for the applicants to establish that they were worse off than other children in Somalia; it would suffice if they could establish that having regard to their living conditions in that country, in the family circumstances that pertained, their

circumstances amounted to exceptional circumstances of a humanitarian character. It was submitted that the decision maker had applied the wrong test in law in this regard.

30. It was submitted that having regard to all the deficiencies in the findings and reasoning set out in the appeal decision, the court should hold that the wrong legal tests had been applied and that the decision maker had acted in an irrational way in reaching the findings that she had done and therefore the decision should be set aside.

Submissions on behalf of the Respondent.

31. On behalf of the respondent, Ms. Mooney BL, submitted that the present application was not an appeal from the decision made by the respondent on 14th April, 2022. It was submitted that the court could only grant relief if it was satisfied that the decision maker had made an error in reaching her decision, or had acted irrationally in the legal sense, when arriving at her decision.

32. It was accepted that the policy in question was flexible in its terms and could not be operated in such a way as to remove the discretion of the Minister when considering any applications for a visa. Counsel submitted that the essential point in this case was that the applicants had only presented a "story", or made assertions, which had been put forward by the first applicant in support of the applications for visas in respect of the minor applicants.

33. It was submitted that no documentary evidence had been provided to show the existence of family life between the first applicant and the minor applicants before 2016. There was insufficient evidence of any communications between the first applicant and the children, since her arrival in Ireland. It was stated that she had made contact *via* WhatsApp messages on the phone of the son of her sister-in-law, but there was no documentary evidence of this. Nor was there any documentary evidence in the form of text messages, greeting cards, *etc*, showing any ongoing communication between the first applicant and her children. It was submitted that the decision maker had been entitled to have regard to the absence of this documentary evidence.

34. In relation to the lack of consent of the father, or the lack of any order giving sole custody of the children to the first applicant, it was submitted that this was a major issue to which the Minister was obliged to have regard. It was submitted that the State was obliged to ensure that in granting visas, it was not aiding a case of child abduction. In this case, there was no evidence of consent of the father to removal of the children from

Somalia. Nor was there evidence that sole custody of the children had been granted to the first applicant. It was submitted that one or other of these proofs, was an essential requirement to ensure that the child abduction across international borders did not take place.

35. Counsel pointed out that this lacuna in the evidence had been pointed out in the first instance refusal in September 2021; yet it had not been rectified prior to the hearing of the appeal in April 2022.

36. It was submitted that the decision maker had been perfectly correct to take account of the likely financial burden on the State in the event that visas were granted to the minor applicants. It was submitted that this burden was likely to be considerable, as there were already five adults and seven children residing in the aunt's house, which was social housing provided by the local authority. To that number, would be added the four minor applicants, if visas were granted to them. There was no evidence that any consent had been obtained from the landlord to the house being used by such a large number of people.

37. It was submitted that the evidence suggested that the second applicant was the only person earning money in the household. She had recently obtained a job as a care assistant. It was submitted that it was reasonable to assume that in these circumstances, the State would have to provide for the accommodation, education and subsistence needs of the four minor applicants, if visas were given to them. It was submitted that having regard to the terms of the policy document, it was entirely appropriate for the decision maker to have had regard to these issues when reaching her decision.

38. It was submitted that when one read the whole decision, which was a lengthy and considered decision, it was clear that the decision maker had had regard to a wide range of relevant factors. In particular, the decision maker had looked to see what tangible or real evidence existed to back up the assertions that had been made by the first and second applicants on behalf of the minor applicants. It was submitted that when one looked for actual evidence, there was very little forthcoming. It was submitted that the decision maker had acted rationally on the evidence that was actually presented as part of the appeal and had reached rational conclusions on the merits of the appeal before her. The matter boiled down to the fact that there was a lack of hard evidence to back up the story that was put forward by the first and second applicants. For example, there was almost no

evidence of any ongoing relationship between the first applicant and her children, who were aged 4, 6, 8 and 9 years at the time of the appeal decision.

39. It was submitted that the decision maker was not entitled to act on unsubstantiated assertions of hardship, or special circumstances. She would need evidence that supported the story that was being told on behalf of the applicants. There was very little evidence to back up the story that had been told in this case. It was submitted that in these circumstances, the decision reached by the decision maker was both fair and rational. Accordingly, it was submitted that the court should refuse the reliefs sought by the applicants herein.

Conclusions.

40. While the decision on appeal in this case is lengthy, and in many places is repetitious, its overall tone and conclusions were summarised in the following paragraphs:

> "*In the case of the second sponsor [the mother], she is the biological mother of the applicants. This office is informed that she was the primary caretaker of the applicants before entering the State. However, as outlined elsewhere in this consideration, there has been insufficient evidence submitted to corroborate this. This visa appeals officer notes that the children's application was refused at first instance on 24 September 2021, with the refusal letter issued on 30 September 2021, and the second sponsor entered the State on 16 October 2021. The appeal was launched on 30 November 2021. The second sponsor departed Somalia without her children, with the knowledge that their application had been refused for a variety of reasons. While she was completely within her rights to appeal the decision on behalf of the applicants, there is no guarantee that the appeal would be successful. As she relinquished her role as the primary caregiver, with the knowledge that the Family Reunification appeal may be refused, her claims to reconstitution have been diluted. Therefore, while it may be in the best interests of the children to reside with their mother, it was a decision undertaken by the mother to cease residing with the children. As a result, weighed against the rights of the State, her claim has been significantly weakened.*
>
> *Details regarding the financial situation of the first sponsor [the aunt] and the second sponsor [the mother] have been set out earlier in the consideration, and in the event of a visa being granted to the minor applicants, there is a reasonably*

founded risk that they may become a burden on public funds and public resources. The granting of a visa to the minor applicants would result in an immediate obligation by the State to provide education to the minor applicants. This office has not been informed that the second sponsor is receiving an income independent of the first sponsor. It is estimated that the annual cost of school education is approximately €8,000 per child. As there are four minor children, it is immediately clear that there will be an immediate and significant cost to the State should the within applicants be allowed to reside here."

41. When one reads the decision as a whole, it is clear that the decision maker adopted a harsh and in some respects, unfair approach to the applications made on behalf of the minor applicants.

42. First, the decision maker applied a strict eligibility test to the first applicant acting as a sponsor. She held that the first applicant was not eligible to sponsor the minor applicants because she had not resided for longer than one year in the State as required by para. 16.4 of the policy.

43. While that finding may be correct from a strict interpretation of the policy; it ignored the fact that the policy can be departed from in exceptional circumstances. That is recognised in the policy document itself, which provides at para. 1.12.

"While this document sets down guidelines for the processing of cases, it is intended that decision makers will retain the discretion to grant family reunification in cases that on the face of it do not appear to meet the requirements of the policy. This is to allow the system to deal with those rare cases that present an exceptional set of circumstances, normally humanitarian, that would suggest that the appropriate and proportionate decision should be positive."

44. Secondly, the finding that there was insufficient documentary evidence provided of any family life between the first applicant and her children, before she left Somalia in October 2021, is extraordinary. That issue was not raised in the first instance decision. Nor was it put to the first applicant that her account of having to move with the children to Ethiopia for safety, was a huge lie. It begs the question that if she did not have family life with her children, who was minding them prior to October 2021? If she had not been minding them, why would she want the children in Ireland now? What sort of documentary

evidence would be required to show the existence of family life? It appears to this Court that this was a most unfair finding to make in all the circumstances.

45. It would also appear that the finding is inconsistent with other findings made by the Minister: first, in the family reunification application made by the second applicant on behalf of the first applicant, it had always been part of that case that the aunt had been supporting her sister and through her, had been supporting her nieces and nephews. The first applicant had been allowed entry to the country on the basis that she was financially dependent upon her sister, the second applicant. It was not possible for the children to gain entry under that method, as financial dependency of nieces and nephews is not sufficient to allow family reunification at the behest of an aunt or uncle. Secondly, in the appeal decision at section 5, which considered whether there was any breach of Art. 8 of the European Convention on Human Rights, the decision maker stated as follows:

> *"For the sole purposes of this consideration however, it is accepted that family life exists between the second sponsor [the mother] and the applicants within the meaning of Article 8 of the European Convention of Human Rights."*

46. For the reasons set out above, the court is satisfied that the finding that there was sufficient evidence of family life between the mother and the children prior to October 2021, is both unfair and irrational.

47. The finding made by the decision maker that there was no evidence of consent on the part of the father to the removal of the minor applicants from Somalia, nor was there any court order granting sole custody of the children to their mother; while factually correct, it ignored the fact that Somalia is a country with deep political and social unrest. That fact had been accepted by the decision maker. While it is accepted that the State must be vigilant to ensure that a visa application is not a case of child abduction, in the circumstances of this case it seems unlikely that the first applicant was taking the children against the wishes of their father, when they are in the care of his sister at present. Thus, this finding has to be seen as being irrational in the particular circumstances of this case.

48. The court is satisfied that the decision maker applied the wrong test in holding that the minor applicants in this case were no worse off than other children in Somalia. In this regard she had found as follows:

> *"The Visa Appeals Officer accepts that the children's circumstances in Somalia may be unenviable, yet it is much the same as the circumstances as other Somali*

> *citizens. The desire to have the children reside with their mother in the State is understandable. However, the applicants have failed to demonstrate that their circumstances are more severe to that of other Somali citizens to the extent that their situation is more exceptional."*

49. The court is satisfied that in applying that test, the decision maker fell into error. In order for the minor applicants to be successful in their visa application, it is not necessary for them to prove that they are in a worse off position than other children in Somalia. In order to circumvent the requirements of the policy document, it is only necessary for them to establish that they constitute "*an exceptional set of circumstances, normally humanitarian, that would suggest that the appropriate and proportionate decision should be positive*". This means that they only have to prove that their circumstances are exceptional from a humanitarian point of view. It does not mean that they have to prove that their circumstances within the particular country in question, are exceptional by the standards of that country.

50. The court is satisfied that the decision maker, in focussing on the minor discrepancies in spelling that arose in the various official documents that had been issued, such as the spelling of the first applicant's name in her passport and other identity documents, were not errors that arose as a result of the fault of the first applicant. The explanation given by the first applicant was reasonable, that these minor discrepancies in spelling probably arose from the translation of the Somali version of her name into the English spelling of her name. Given that the decision maker had found that the documents were authentic, it appears to the court that these errors were not of any probative value. Accordingly, the decision maker acted irrationally and unfairly in finding that these errors adversely affected the applications made on behalf of the minor applicants.

51. In relation to the finding that there was a lack of finances on the part of the first and second applicants to support the additional four minor applicants and that in these circumstances they were likely to become a financial burden on the State; while that finding is probably factually correct, it ignores the fact that the applicants were making the case that due to exceptional circumstances the usual requirements of being in Ireland for one year in order to sponsor an applicant and the financial requirements under the policy, should be waived. The applicants were not realistically making the case that they could financially support the four minor applicants. Their case was based on a different premise;

namely that due to exceptional humanitarian circumstances, the financial requirements of the policy document should be waived. That was not addressed adequately by the decision maker.

52. This brings the court to the key issue in this case. The court is satisfied that there was no evidence that the decision maker engaged in a real way with the exceptional circumstances in this case. Those exceptional circumstances stretch back to 2009, when the first applicant's family of origin was largely destroyed by a bomb attack, when she was 12 years old. The occurrence of that atrocity was accepted by the Minister in the application for refugee status that was brought by the second applicant when she arrived in Ireland.

53. The decision maker did not appear to have regard to the following factual circumstances, which appear to the court to be most relevant: the first applicant married on 10th April, 2011, when she was aged 13 years and 8 months. She had her first child when she was 14 years. Her second child was born when she was 15 years; her third child was born when she was 17 years and her fourth child was born when she was 19 years. Thus, the first applicant had had three children, while she was still a child herself. The significance of those circumstances are not referred to in the appeal decision.

54. When the first applicant was a very young woman, she had to travel to Ethiopia with her young children in order to find safety. She was still only 24 years of age, at the time of the appeal hearing in April 2022. At that time her children were being cared for on a temporary and emergency basis by her sister-in-law, who had five children of her own. There was evidence that she had very limited financial means. The children had very little to eat and were not attending school.

55. It is against that background, that the finding that the first applicant elected to sunder her family ties, by coming to Ireland in October 2021, ignores the fact that she had to take up her visa within a certain window of time and that her chances of getting her children to Ireland, were greatly enhanced by her being lawfully present in this country. It is against that background that the findings that she "relinquished her role as the primary caregiver" and that she "elected to move to the State", are particularly harsh and do not appear to this Court, to take account of the very significant personal dilemma that faced her at that time. The fact that she may have made a decision to leave her children and come to Ireland, in what she perceived to be the best long-term interests of her family,

seems to have been ignored by the decision maker. For those reasons, the court holds the findings to be irrational, in the particular circumstances of the case.

56. In summary, the court holds that to have applied the eligibility criteria and the financial requirements of the policy in refusing the visa applications on behalf of the minor applicants, while effectively ignoring the past circumstances of the first applicant and her children, together with their present circumstances in Somalia, and in not considering whether these constituted exceptional circumstances, which warranted a departure from the strict requirements of the policy, rendered the decision irrational and unfair. On this basis it has to be set aside.

Proposed final order.

57. Having regard to the findings made by the court in its judgment herein, the court would propose to make the following final orders:

(a) An order of *certiorari* quashing the appeal decision of the respondent of 14th April, 2022 refusing the applications of the third applicant, the fourth applicant, the fifth applicant and the sixth applicant, for D visas to join the first and second applicants in the State;

(b) An order remitting the applications on behalf of the third to sixth named applicants back for reconsideration by a different decision maker on behalf of the respondent.

58. As this judgment is being delivered electronically, the parties shall have two weeks within which to furnish brief written submissions on the terms of the final order and on costs and on any other matters that may arise.

59. The matter shall be listed for mention at 10.30 hours on 5th July, 2023 for the purpose of making final orders.