

**THE HIGH COURT
JUDICIAL REVIEW**

[2019 No. 309 J.R.]

BETWEEN

F.N. (MALAWI) AND C.N.

APPLICANTS

AND

**THE MINISTER FOR JUSTICE AND EQUALITY AND THE COMMISSIONER OF AN GARDA
SÍOCHÁNA**

RESPONDENTS

JUDGMENT of Mr. Justice Richard Humphreys delivered on the 4th day of November, 2019

1. The first-named applicant was born in Malawi in 1984. He came to Ireland lawfully as a student in 2012, returned home in 2014 and then came back to Ireland on 21st June, 2015, when he claimed asylum on a false basis. His partner, the second-named applicant, became pregnant in December, 2018. She is also a protection seeker. The first-named applicant failed to present to the GNIB and was arrested on 9th May, 2019. On 22nd May, 2019, I granted an *ex parte* injunction against deportation. On 27th May, 2019, I continued the injunction and on 6th June, 2019 I granted bail in the proceedings until the determination of the present case.
2. I have heard submissions from Ms. Rosario Boyle S.C. (with Mr. Anthony Hanrahan B.L.) for the applicants and from Ms. Denise Brett S.C. (with Mr. John P. Gallagher B.L.) for the respondents.
3. The primary relief sought was a free standing injunction pending the determination of an application by the first-named applicant to revoke a deportation order against him, which application is premised on the forthcoming birth of a child. The child has since been born and Ms. Boyle now accepts that the proceedings are moot. She seeks her costs, whereas Ms. Brett asks for no order as to costs. Ms. Boyle says that there is an event in the *Godsil v. Ireland* [2015] IESC 103 [2015] 4 I.R. 535 sense and that the event is that the first-named applicant was kept here until the child was born, which was achieved by getting an injunction. The logic of that submission is that all that you need to do to get the costs of the proceedings ultimately is to get an interlocutory injunction on the balance of convenience, but that is not so. The fact that the passage of time following the injunction meant that the applicants got what they were looking for in the short term does not automatically constitute an event and certainly does not do so here. In the absence of an event, the default order is no order as to costs: see the jurisprudence discussed in *M.K.I.A. (Palestine) v. International Protection Appeals Tribunal* [2018] IEHC 134 (Unreported, High Court, 27th February, 2018).

Order

4. Consequently, the order will be
 - (i). that the proceedings be struck out;
 - (ii). that there be no order as to costs; and

(iii). that it be noted that the bail order now comes to end so the first-named applicant should present himself forthwith to the Garda Síochána and in any event is liable to re-arrest without further notice.