In the High Court of Justice
Queen's Bench Division
Administrative Court

CO/1587/2021

In the matter of an application for judicial review

THE QUEEN

on the application of

(1) Plan B Earth
(2) Adetola Stephanie Kezia Onamade
(3) Jerry Noel Amokwandoh
(4) Marina Xochitl
(5) Timothy Crosland

Claimants

-and-

(1) Prime Minister
(2) Chancellor of the Exchequer
(3) Secretary of State for Business Energy and Industrial Strategy

Defendants

Following consideration of the documents lodged by the Claimants and the Acknowledgement of Service and other documents filed by the Defendants

ORDER by the Honourable Mr Justice Cavanagh

1. The application for permission to apply for judicial review is refused;

2. The Defendants' application for their costs of preparing the AOS in the sum of £21,549.67 is adjourned to an oral hearing with a time estimate of 2 hours. The Claimants' contention that they are entitled to Aarhus Protection under CPR Part 45.43 should be addressed at this hearing.

3. The parties are to provide a written estimate within 7 days of service of this order if they disagree with the estimate at 2 above.

4. The parties each must file and serve a written skeleton argument, limited to the costs/Aarhus issue, 7 days before the hearing referred to in 2.

Reasons

1. The Claimants rely on four grounds of challenge, but each ground essentially relies on the same three principal contentions, namely that (1) the Defendants are in breach of their obligations under the

Climate Change Act 2008; (2) the Defendants are in breach of the UK's obligations under the Paris Agreement on climate change the Defendants' policies and actions in relation to climate change; and (3) the Defendants are in breach of Arts 2, 8 and 14 of the European Convention on Human Rights because they threaten the Claimants' rights to life and/or family life.

2. The four grounds are, in short summary, that:

   (1) The Defendants have failed to take practical and effective measures to align UK greenhouse gas emissions to the Paris Temperature Limit;
   (2) The Defendant have failed to take practical and effective measures to adapt and prepare for the current and projected impacts of climate change and to support others to do so, including through education and awareness raising;
   (3) The Defendants have failed to take practical and effective measures to align UK financial flows to the Paris Temperature Limit; and
   (4) The Defendants have failed to implement the polluter pays principle, which is a fundamental principle of both economics and law, and have failed to implement a legal and administrative framework to provide consistent and principled compensation for those suffering climate change loss and damage whether in the UK or beyond.

3. The claim suffers from a number of serious procedural defects. In particular:

   (1) The claim has not been prepared or filed by solicitors or counsel who are authorised to conduct litigation in the High Court. The documents appear to have been drafted by the Fifth Claimant who does not claim to have Higher Rights of Audience in the High Court and so who cannot represent anyone but himself. It follows that the four other Claimants are not properly represented in the Claim;
   (2) For the reasons given by the Defendants in the AOS, even if the Claim Form gave rise to arguable claims, the Prime Minister is not an appropriate Defendant and HM Treasury (in place of the Chancellor of the Exchequer) can only arguably be an appropriate Defendant in relation to Ground 3; and
   (3) The Statement of Facts and Grounds is unduly and unnecessarily lengthy (80 pages long) and much of the content of the Statement of Facts and Grounds and supporting documents would be more appropriate for lobbying material rather than legal argument. I give two examples. First, the events referred to in the Chronology begin 25 million years ago. Second, in the Reply, the Fifth Claimant asserts, "If playing Russian Roulette with the Claimants' lives, with three bullets in the Chamber, does not meet the test in Tauira, then it is difficult to imagine any circumstance which would meet the test.

The claims of breach of the CCA 2008

4. The Claimants contend that the Defendants are in breach of section 13 (ground 1) and section 58 (ground 2).

5. Section 13 imposes a duty on the Secretary of State to prepare proposals and policies that he considers will enable the carbon budgets that have been set under the Act to be met. There is no arguable case that the Secretary of State has failed to do this. The Secretary of State published the CGS in 2018 and intends to propose a Net Zero Strategy in advance of COP26 later this year. The broad discretion afforded to the Secretary of State as to the contents of proposals and policies such as these mean that there is no realistic prospect that the Claimants will persuade a court that the Secretary of State has failed in his s13 Duty.
6. Section 58 imposes an obligation upon the Secretary of State to lay programmed before Parliament setting out objectives in relation to adaptation to climate change, the Government's proposals and policies for meeting these objectives and the time scales for introducing the proposals and policies. Once again, the Secretary of State has laid such programmes before Parliament, on two separate occasions, and there is no realistic prospect of success for the contention that they fail to comply with the minimum standards so as to satisfy the statutory obligations.

The claims of breach of the Paris Agreement

7. These claims are based on the contention that the Claimants have a cause of action derived from the UK's breach of treaty obligations, which have not been incorporated into domestic law. They are hopeless in light of the judgment of the Supreme Court in **R (SC, CB and 8 children) v SSWP** [2021] UKSC 26, in which the Court made clear that UK Courts have no power or jurisdiction to determine whether the UK Government has acted in breach of its obligations under an unincorporated international treaty (see judgment at paragraphs 74-96.

The claims of breach of the Human Rights Act and the European Convention on Human Rights

8. The First Claimant cannot have any claim under this heading, as it is a charity, not a real person. I think that it is highly unlikely that a court would find that the other Claimants' rights under Articles 2 and 8 are engaged: the evidence, as opposed to the assertions made on behalf of the Claimants, does not provide an arguable case that the Claimants are in immediate risk to their lives as a result of climate change, and there is no risk to their rights to a family life in this country. If Arts 2 and 8 are not engaged, then Art 14 cannot have any application.
9. In any event, however, even if the Claimants' rights under Arts 2, 8 and 14 were engaged, there is no realistic prospect of success for the contention that the Defendant's policies have breached those rights. This case is concerned with a field of political choice and policy decision-making in respect of which the Government has a wide margin of discretion. It is not arguable that the decisions and actions that have been taken or that are being proposed go beyond what is permitted within the margin of discretion. An egregious example of this is the assertion that the Government has acted unlawfully because it has not imposed a regime of compensation pursuant to which the polluter pays for remedial measures. This trespasses upon an area of fiscal and tax policy in which the state

has a broad margin of discretion.

Conclusion

10. It follows from the above that, irrespective of the position that a court may take in relation to the major disputes of fact and perspective between the Claimants and the Defendants, the claims have no realistic prospect of success and so are not arguable.

Costs and the issue whether the Claimants are entitled to the costs protection provided for by the Aarhus Convention

11. In the ordinary course of events, the Defendants would be entitled to the costs of preparing their AOS, given that the Claimants have been refused permission. However, the Claimants say that the costs cap in the Aarhus Convention applies. The Defendants dispute this, both on the basis that the subject-matter of the claims is outside the scope of the Convention and that, in any event, the Claimants have failed to provide sufficient information of their financial resources.
12. This is a matter which is not appropriate to be dealt with on the papers. I have therefore ordered that it should be considered at a relatively short inter partes hearing.
13. Such a hearing would not be suitable for a Deputy High Court Judge.

Case NOT suitable for hearing by a Deputy High Court Judge X ☐

Signed**: John Cavanagh** 29 September 2021

The date of service of this order is calculated from the date in the section below

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For completion by the Administrative Court Office

Date:30/9/2021

Solicitors:
Ref No