PTA Template 269E1 - OCT16 – JR (Admin)

IN THE COURT OF APPEAL, CIVIL DIVISION

REF: **CA-2021-003448**

HER MAJESTY'S COURT OF APPEAL CIVIL DIVISION (:GS:18.12.19) [SEAL] 18 Mar 2022

CA-2021-003448

The Queen, on the application of

Plan B Earth & Ors –v– Prime Minister & Ors

ORDER made by the Rt. Hon. Lord Justice Singh

On consideration of the appellant's notice and accompanying documents, but without an oral hearing, in respect of an application for permission to appeal, against the refusal of the High Court to grant permission to apply for judicial review

Decision: Refused

An order granting permission may limit the issues to be heard or be made subject to conditions

Permission to appeal: Refused

OR

Permission to apply for judicial review: Granted in part (delete as necessary)

Where permission to apply for judicial review is granted, the application should be returned to the Administrative Court ☐

OR

There are special reasons (set out below) why the application should be retained in the Court of Appeal ☐

Reasons

See attached.

Where permission has been granted, or the application adjourned, any directions to the parties (including, if appropriate, any abridgement of the 35 day time limit for filing evidence provided for in CPR 54.14)

Signed:
Date: BY THE COURT
18 March 2022

Notes

(1) Rule 52.6(1) provides that permission to appeal may be given only where –
   a) the Court considers that the appeal would have a real prospect of success; or
   b) there is some other compelling reason why the appeal should be heard.

(2) Where permission to appeal has been refused on the papers, that decision is final and cannot be further reviewed or appealed. See rule 52.5 and section 54(4) of the Access to Justice Act 1999.

(3) Rule 52.15 provides that, in granting permission, the Court of Appeal may grant permission to appeal or permission to apply for judicial review. Where the Court grants permission to apply for judicial review, the Court may direct that the matter be retained by the Court of Appeal or returned to the Administrative Court.

Case Number: **CA-2021-003448**

R (Plan B Earth & Ors) v Prime Minister & Ors

Reasons

1. The Claimants apply for permission to appeal against the order of Bourne J dated 21 December 2021, refusing a renewed application for permission to bring a claim for judicial review in the Administrative Court. Bourne J conducted an oral hearing on 25 November 2021 and gave a reserved judgment on 21 December 2021. I have found that judgment to be commendably thorough, although it is also rightly succinct, as is warranted on a renewed application for permission.

2. Before the Judge the Claimants advanced grounds of challenge which were based on (1) the Climate Change Act 2008 ("the 2008 Act"), in particular sections 13 and 58; and (2) the Human Rights Act 1998 ("HRA"), in particular Articles 2, 8 and 14. On this application the Claimants do not pursue the grounds of challenge based on the 2008 Act. They do rely on the HRA. They submit that the Judge made five errors, which can be addressed under the following grounds of appeal.

3. Ground 1 is that the Judge wrongly held that the Claimants' reliance upon the 1.5ºC temperature limit as a benchmark for assessing the Respondents' obligations arising under the HRA contravenes the Supreme Court's decision in *R (SC) v Secretary of State for Work and Pensions* [2021] UKSC 26, on the ground that it features in the Paris Agreement on Climate Change, which is an unincorporated international treaty.

4. The Claimants disavow any such submission. At para. 55 of their skeleton argument in support of the present application, they state that they do not invite this Court to rule that a specific provision of the Paris Agreement has been breached and accept that would fall foul of the decision in *SC*. Rather, they say that they simply refer to the Paris Agreement temperature limit of 1.5ºC as evidence of the international consensus on what must be done to avoid intolerable risks to life and to family life.

5. In my judgement, that is a distinction without a difference in substance. The fundamental difficulty which the Claimants face is that there is no authority from the European Court of Human Rights on which they can rely, citing the Paris Agreement as being relevant to the interpretation of the ECHR, Articles 2 and 8. They do rely on decisions of the highest courts of other parties to the ECHR, in particular the Supreme Court of the Netherlands, but, as the Judge observed in the present case, we do not know what the constitutional context was for such decisions. Section 2 of the HRA requires courts in this country to take into account relevant decisions of the European Court of Human Rights. In general, we follow those decisions.

6. Ground 2 is that the Judge wrongly held that the 2008 Act satisfies the positive obligations which arise under the HRA, without consideration as to whether that legislation provides practical and effective deterrence against interference with the Claimants' rights or a system of redress, contrary to the established case law.

7. It is submitted, at para. 60 of the Claimants' skeleton argument, that the Judge was wrong because, once Article 2 is engaged, it is a specific requirement that the legal and administrative framework must provide "effective deterrence" against the relevant threat; and that a practical and effective system is implemented to ensure justice and compensation for loss of life.

8. In my judgement, this is not a matter for the courts of this country, in our constitutional context. The fact is that the Government and Parliament take the view that the 2008 Act is sufficient. Others (such as these Claimants) disagree. As the Judge observed, that debate is very much a matter for debate in the democratic forum and is not for the courts.

9. Ground 3 is that the Judge wrongly held that any failure on the part of the Respondents was incapable of interfering with the family life of the Claimants and, in particular, was wrong to treat as irrelevant the family and cultural ties of the second to fourth Claimants to regions of the world exposed to extreme risks from the Respondents' inaction.

10. At para. 67 of their skeleton argument, the Claimants state that their case relates in part to the impact on their family life within the UK but also to the evidence that the science predicts that whole regions of the world, including regions where the second to fourth Claimants have strong family ties and cultural connections, will be rendered uninhabitable.

11. The fundamental difficulty with this submission is that it simply does not fall within the concept of "family life" in the case law on Article 8. Further, the submission at para. 69 of the Claimants' skeleton argument, that failing to take practical and effective measures to conserve the conditions which make the planet habitable, which denies the younger generation a responsible choice to raise a family is the most fundamental violation of the right to family life, simply not reflect the concept of family life in the case law on Article 8. The skeleton argument goes on to submit that to permit activities which tend to the destruction of a person's cultural heritage is a clear violation of the right to family life. That is too broad a proposition and is not supported by any authority on Article 8.

12. Ground 4 is that the Judge wrongly held that the Claimants are not "victims" for the purposes of section 7 of the HRA.

13. I note, first, that this argument will not suffice for the Claimants to succeed on any appeal. The fact is that the Judge considered the legal merits of their grounds of challenge and did not refuse permission simply on the ground that the Claimants were not victims. This was an additional reason for his conclusion. In any event, I do not consider the Judge was arguably wrong in his conclusion on this issue.

14. Ground 5 is that the Judge wrongly held that the claim was beyond the competence of the Court in the sense of its jurisdiction: see his judgment, at para. 54. When read in the context of the judgment as a whole, it does not seem to me that the Judge was saying that the case was outside the Court's jurisdiction. He was simply referring to the well-established principle of law that, in cases under the HRA, such as *SC*, the Court must keep well in mind its relative competence as compared with the other branches of the state, in particular Parliament. This is for both institutional reasons and democratic reasons.

15. In summary, I have reached the clear conclusion that the grounds of appeal have no real prospect of success. Nor, in my view, is there any other compelling reason why this Court should consider this case.