

R. (on the application of Giwa) v Lewisham LBC

Queen's Bench Division (Administrative Court)

10 April 2015

Case Analysis**Where Reported**

Unreported

Case Digest**Subject:** Housing **Other related subjects:** Immigration**Keywords:** Children's welfare; Homelessness; Housing provision; Immigration status; Leave to remain; Local authorities' powers and duties

Summary: A local authority had not erred in refusing a family accommodation under the Children Act 1989 s.17. The Nationality, Immigration and Asylum Act 2002 Sch.3 taken with the decision in *R. (on the application of Clue) v Birmingham City Council* [2010] EWCA Civ 460, [2011] 1 W.L.R. 99 meant that such local authority assistance could be refused where, as in the instant case, the applicant was in the UK in breach of immigration rules and any outstanding application for leave to remain was hopeless or abusive.

Abstract: The applicant Nigerian national applied for interim relief in the form of accommodation for her family under the Children Act 1989 s.17, pending permission to apply for judicial review of a refusal to allow her leave to remain in the UK. The applicant had entered the UK in 2004 on a visitor's visa, which had been extended until 2007, after which she had remained in the UK in breach of immigration control. Her husband and three children were also in the UK unlawfully. The applicant had made several unsuccessful applications for leave to remain on human rights grounds, the latest appeal of which had been rejected by the First-tier Tribunal. She had applied for permission to appeal that decision. The applicant, her husband, and their three children were subsequently evicted from their rented accommodation and were staying with a friend temporarily. The applicant contacted the respondent local authority looking for accommodation. The local authority's assessment concluded that it was not satisfied that they needed support. The applicant submitted that the local authority had not carried out an appropriate assessment, as required under the 1989 Act, and had turned them away because of their immigration status, which was unlawful following *R. (on the application of Clue) v Birmingham City Council* [2010] EWCA Civ 460, [2011] 1 W.L.R. 99.

Application refused. There was no dispute that a child whose parents were homeless was a child in need for the purpose of s.17. However, an application for mandatory interim relief needed strong prima facie evidence that the local authority's decision was unlawful. The evidence was that the local authority had considered the application by looking at the family's immigration status, finances and support network in the UK. The argument

that it had not conducted a proper initial assessment was very weak. The local authority had not been satisfied that the applicant had no support network in the UK; she had only disclosed one of three bank statements and inconsistent information had been given as to her husband's work. As to the applicant's immigration status, the Nationality, Immigration and Asylum Act 2002 Sch.3 stated that s.17 of the 1989 Act did not apply to a person who was in the UK in breach of immigration rules. *Clue* had held that a local authority, faced with an application for assistance under s.17, and pending the determination of an arguable application for leave to remain on ECHR grounds, should not refuse assistance if that had the effect of requiring the applicant to leave the UK and thereby forfeiting her claim, unless the immigration application was hopeless or abusive, *Clue* followed. *Clue* thus made clear that a local authority had to be satisfied that the immigration application was not obviously hopeless. A local authority was not precluded from considering the applicant's immigration status; otherwise *Clue* would not have excluded obviously hopeless or abusive cases. In the instant case, the application for leave to remain on human rights grounds had been rejected, as had an appeal. There was no outstanding application for leave to remain. The FTT had found that there had been no breach of the applicant's human rights and an appeal against that decision could only lie on a point of law. The local authority had considered that there was no merit in the application for permission to apply for judicial review of the FTT decision, and that the applicant's position with regard to leave was hopeless.

Judge: Judge Robinson

Significant Cases Cited

R. (on the application of Clue) v Birmingham City Council

[2010] EWCA Civ 460; [2011] 1 W.L.R. 99; [2010] 4 All E.R. 423; [2010] P.T.S.R. 2051; [2010] 2 F.L.R. 1011; [2010] 3 F.C.R. 475; [2010] B.L.G.R. 485; (2010) 13 C.C.L. Rep. 276; [2010] Fam. Law 802; (2010) 154(18) S.J.L.B. 29; Times, May 7, 2010; Official Transcript; CA (Civ Div); 29 April 2010

All Cases Cited

R. (on the application of Clue) v Birmingham City Council

[2010] EWCA Civ 460; [2011] 1 W.L.R. 99; [2010] 4 All E.R. 423; [2010] P.T.S.R. 2051; [2010] 2 F.L.R. 1011; [2010] 3 F.C.R. 475; [2010] B.L.G.R. 485; (2010) 13 C.C.L. Rep. 276; [2010] Fam. Law 802; (2010) 154(18) S.J.L.B. 29; Times, May 7, 2010; Official Transcript; CA (Civ Div); 29 April 2010

Significant Legislation Cited

Children Act 1989 (c.41) s.17

ECHR

Nationality, Immigration and Asylum Act 2002 (c.41) Sch.3

Legislation Cited

Children Act 1989 (c.41) s.17

ECHR

Nationality, Immigration and Asylum Act 2002 (c.41) Sch.3

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