R (on the application of Munyua) v Secretary of State for the Home Department (Parties' responsibility to agree costs) [2017] UKUT 00078 (IAC)

Upper Tribunal
Immigration and Asylum Chamber

Judicial Review

Order

The Queen on the application of

MUNYUA

Applicant

Secretary of State for the Home Department

Respondent

Before Upper Tribunal Judge John FREEMAN

Where judicial review proceedings are resolved by settlement, the parties are responsible for doing all they can to agree costs, both as to liability and amount, rather than leaving this to the decision of the Tribunal, which is likely to carry its own penalty.

On reading the parties' costs submissions, I decide as follows:

1. Judge Plimmer granted permission on 23 August 2016 on the basis of the evidence put in before the decision of 3 March 2016, particularly the letter of 21 May 2015. While she referred to post-decision evidence as well, she made it clear that permission was not, and could not be granted on that basis, though she encouraged the parties to reach a reasonable resolution in the light of it.

2. It follows that the further evidence did not lead to the grant of permission, though it may have had a good deal to do with how the parties went on with the case after that. The terms of the consent order sealed on 24 November 2016 show that the remedy achieved by the applicant involved not the reconsideration of the decision under challenge on the basis of the material before the decision-maker; but a fresh decision on fresh submissions.

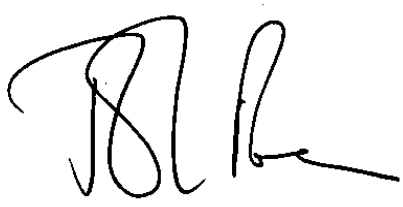
3. I bear in mind the guidance in *M v London Borough of Croydon* [2012] EWCA Civ 595, especially at paragraphs 52 – 65, and particularly at 57. The terms of the grant of permission make it clear that the applicant was fully entitled to bring this claim on the grounds pleaded: if she had chosen to pursue it on the grounds set out in the grant, costs would have followed the outcome.

4. However, both parties sensibly followed the judge's indication, and some encouragement ought to be given for that to be done in future cases. The respondent's letter of 30 September offered essentially the result now achieved, but with no order as to costs. The letter of 7 November made an offer in the same or very similar terms to the consent order, and there is nothing to suggest any unreasonable delay on the part of the applicant in taking it up.

5. I should like at this point to draw both parties' attention to what Stanley Burnton LJ said at paragraphs 75 – 77 of the *Croydon* decision: there are too many cases in which courts, or now this Tribunal, are left to decide the question of costs, because the parties have found that the easiest solution from their own point of view. While resolution of the substantive issues is to be encouraged, it is also necessary to encourage the actual resolution of costs issues, if judicial time is not to be spent on them which could better be used in dealing with substantive issues in other cases.

6. While I do not aim to give any comprehensive guidance as to how this should be done, in this case an offer by the respondent in the letter of 30 September in the terms put forward, but including an offer of costs up to and including the grant of permission, would most likely have been accepted. If not, it would certainly have put the applicant at risk of paying the respondent's costs from then on.

7. The result is that the respondent is to pay the applicant's reasonable costs to date, to be assessed if not agreed. However on this I repeat, with even greater force, my reference to what Stanley Burnton said: any unreasonable failure by the parties to reach an agreement between themselves is likely to be penalized in costs.



(Judge of the Upper Tribunal)
25.01.2017