Case No: C4/2011/1990

Neutral Citation Number: [2012] EWCA Civ 414
IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE QUEEN'S BENCH DIVISION
KENNETH PARKER J
EWHC 1200 (ADMIN)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 02/04/2012

Before :

LORD JUSTICE PILL
LORD JUSTICE JACKSON
and
LORD JUSTICE SULLIVAN

- -

Between :

THE QUEEN ON THE APPLICATION OF AMADA BIZIMANA	**Claimant/ Appellant**
- and -	
SECRETARY OF STATE FOR THE HOME DEPARTMENT	**Defendant/ Respondent**

- -
- -

Stephanie Harrison (instructed by **Bhatt Murphy Solicitors**) for the **Claimant/Appellant**
Julie Anderson (instructed by **The Treasury Solicitor**) for the **Defendent/Respondent**

Hearing dates : 7th March 2012

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Judgment

Lord Justice Jackson :

1. This judgment is in five parts, namely,

Part 1. Introduction,

Part 2. The Facts,

Part 3. The Present Proceedings,

Part 4. The Appeal to the Court of Appeal,

Part 5. Decision

Part 1. Introduction

2. This is an appeal by a foreign national, who contends that his detention pending possible deportation was, or at least became, unlawful. The principal statutory provisions which are relevant to this appeal are contained in the Immigration Act 1971. I shall refer to this as "the 1971 Act".

3. Section 3 (5) of the 1971 Act provides:

> "(5) A person who is not a British citizen is liable to deportation from the United Kingdom if –
>
> (a) the Secretary of State deems his deportation to be conducive to the public good;"

4. Section 5 of the 1971 Act provides:

> "5 Procedure for, and further provisions as to, deportation."
>
> (1) Where a person is under section 3 (5) or (6) above liable to deportation, then subject to the following provisions of this Act the Secretary of State may make a deportation order against him, that is to say an order requiring him to leave and prohibiting him from entering the United Kingdom; and a deportation order against a person shall invalidate any leave to enter or remain in the United Kingdom given him before the order is made or while it is in force.
>
> (2) A deportation order against a person may at any time be revoked by a further order of the Secretary of State, and shall cease to have effect if he becomes [a British citizen].
>
> ….
>
> (5) The provisions of Schedule 3 to this Act shall have effect with respect to the removal from the United Kingdom of persons against whom deportation orders are in force and with

respect to the detention or control of persons in connection with deportation."

5. Paragraph 2 of Schedule 3 to the 1971 Act provides:

> "(2) Where notice has been given to a person in accordance with regulations under [section 105 of the Nationality, Immigration and Asylum Act 2002 (notice of decision)] of a decision to make a deportation order against him, [and he is not detained in pursuance of the sentence or order of a court], he may be detained under the authority of the Secretary of State pending the making of the deportation order.
>
> (3) Where a deportation order is in force against any person, he may be detained under the authority of the Secretary of State pending his removal or departure from the United Kingdom (and if already detained by virtue of sub-paragraph (1) or (2) above when the order is made, shall continue to be detained unless [he is released on bail or] the Secretary of State directs otherwise)."

6. I shall refer to the Borders, Citizenship and Immigration Act 2009 as "the 2009 Act". Section 55 of the 2009 Act came into force on 1st November 2009. It provides as follows:

> "Duty regarding the welfare of children
>
> (1) The Secretary of State must make arrangements for ensuring that –
>
> (a) the functions mentioned in subsection (2) are discharged having regard to the need to safeguard and promote the welfare of children who are in the United Kingdom, and
>
> (b) any services provided by another person pursuant to arrangements which are made by the Secretary of State and relate to the discharge of a function mentioned in subsection (2) are provided having regard to that need.
>
> (2) The functions referred to in subsection (1) are –
>
> (a) any function of the Secretary of State in relation to immigration, asylum or nationality;
>
> (b) any function conferred by or by virtue of the Immigration Acts on an immigration officer;
>
> (c) any general customs function of the Secretary of State."

7. In this judgment I shall refer to the United Kingdom Borders Agency as "UKBA". I shall refer to the Democratic Republic of Congo as "the DRC".

8. After these introductory remarks, I must now turn to the facts.

Part 2. The Facts

9. The claimant first became known to the immigration authorities on 29th August 2003, when he made a claim for asylum. He asserted that he was a national of Burundi, born on 12th January 1979. He stated that he had entered the UK clandestinely on 28th August 2003. That last fact may well be true, but there was no evidence to verify it.

10. The Secretary of State rejected the claimant's asylum claim on 25th October 2003. The claimant appealed against that decision, but his appeal was dismissed by an adjudicator on 9th January 2004.

11. Whilst that asylum claim was progressing, the claimant commenced cohabitation with a young woman who also claimed to come from Burundi, Miss. Maumuna Abdallah. Ms. Abdallah had a daughter born in 1999 and a son, Idrissa Mohammed, born on 17th July 2003. The claimant and Ms. Abdallah asserted that their cohabitation was the continuation of a relationship started in Burundi and that the claimant was the father of Idrissa.

12. Ms. Abdallah's claim to come from Burundi was rejected by the Secretary of State. Nevertheless, as time went by, Ms. Abdallah put down roots here and her children became settled in this country. On 30th November 2007 Ms. Abdallah and her children were granted indefinite leave to remain.

13. In the meantime, the claimant's immigration position was more precarious. There came a time when the claimant ceased to report as required. On 12th December 2006 the claimant was listed as an absconder.

14. Although the claimant was an absconder, it appears that he continued to live with Ms. Abdallah. On 19th December 2007 they had a child, who automatically became a British citizen.

15. On a date which is unclear, the claimant came to the attention of the authorities because he was in possession of false identity documents. The claimant was convicted at Coventry Crown Court of possessing those documents with intent. On 31st March 2008 he was sentenced to 12 months imprisonment.

16. On 24th July 2008 the Secretary of State served on the claimant a decision to make a deportation order. The claimant appealed against that decision, but his appeal was dismissed on 15th October 2008. Subsequent applications for reconsideration of this dismissal were unsuccessful.

17. In the meantime, the appellant became due for release on licence on 19th September 2008. On that date he was transferred from his custodial sentence into immigration detention pursuant to paragraph 2 (2) of Schedule 3 to the 1971 Act.

18. On 9th December 2008 the Secretary of State made a deportation order in respect of the claimant, which was served on 10th December 2008. There then began the tortuous process of attempting to obtain travel documents which would enable the claimant to be deported.

19. On 15th December 2008 a verification of Burundian nationality form was sent for the claimant to complete. The claimant completed the verification of Burundian nationality form and the form was sent to the British Embassy liaison office in Burundi in order to arrange for an interview between the claimant and the Burundian authorities.

20. A further set of questions was sent to the claimant by the British Embassy liaison office in Burundi on 18th December 2008. It appears that the claimant had completed the relevant form but that form did not reach the British Embassy liaison office in Burundi. On 6th January 2009 the UKBA indicated to Lindholme Immigration Removal Centre (where the claimant was detained) that the form had not been received. The form was finally received on 27th January 2009.

21. On 18th February 2009 there was a telephone interview between the claimant and the Burundian authorities. The language of that interview was Swahili. As a result of the claimant's performance at that interview, on 25th February 2009 the Burundian authorities refused to issue the claimant with a travel document. This was because they concluded that the claimant was more likely to be a DRC national.

22. On 12th June 2009 a nationality interview was arranged for the claimant for 25th June 2009, but on 17th June 2009 that interview was cancelled. On 24th June 2009 Mr. Brian Finnigan an Assistant Director at the UKBA, noted that the case had stalled as a result of nationality issues. On 2nd July 2009 there was a nationality interview conducted with the claimant. The immigration officer who interviewed the claimant concluded that the claimant was a Burundian national. On 16th July 2009 the claimant's case was referred to the country targeting unit. On 12th August 2009 there was a further detention review at which it was stated that it was not possible to give a timescale for the claimant's removal, as nationality remained in dispute. It was noted that the claimant was insistent that he was a Burundian national; however the Burundian Embassy had stated that they did not believe that he was a national of Burundi but rather a national of the DRC.

23. On 22nd October 2009 the claimant was interviewed by authorities of the DRC. The claimant was taken to the DRC Embassy in London for this purpose. The DRC officials rejected the suggestion that the claimant was a Congolese national. They believe that the claimant came from Burundi.

24. While these debates dragged on, the claimant remained in detention and time ticked by. As mentioned in Part 1 above, section 55 of the 2009 Act came into force on 1st November 2009. This statutory provision strengthened the claimant's claim under Article 8 to remain in the UK.

25. By letter dated 25th November 2009 the claimant's solicitors applied to the Secretary of State to revoke the deportation order against the claimant. Like much else in this case, that letter was far from clear. Nevertheless, when the letter together with its attachment are read carefully, that was the application being made.

26. By late 2009 the claimant took the view that his continued detention was no longer lawful. Accordingly he commenced the present proceedings.

Part 3. The Present Proceedings

27. By a judicial review claim form issued on 25th November 2009 in the Administrative Court against the Secretary of State, the claimant claimed a declaration that his detention was unlawful, revocation of the deportation order and related relief. The claimant also claimed bail pending the resolution of his claim. That application for bail was refused in December 2009.

28. Whilst the litigation was proceeding, the Secretary of State continued his efforts to identify the country to which the claimant might be deported. In January 2010 the Secretary of State obtained a Sprakab report, which noted that the claimant spoke a version of Swahili found in Tanzania. This report concluded that the claimant was a Tanzanian.

29. In the light of the Sprakab report, UKBA officials completed a Tanzanian ETD application and took steps to arrange an interview between the claimant and the Tanzanian authorities. So far as I can discern from the records, that interview never took place. This was because an ETD application form was never submitted to the Tanzanian authorities.

30. By early 2010 the Secretary of State's position was becoming increasingly difficult. The UKBA's efforts to identify a country to which the claimant might be deported had come to nothing. There was an outstanding application to revoke the deportation order, which fell to be dealt with under the new statutory regime, with consequential rights of appeal. The claimant had already been in custody for well over a year. Furthermore the judicial review proceedings were ongoing. On 25th May 2010 the claimant obtained permission to proceed with his judicial review claim pursuant to CPR rule 54.4.

31. After various delays and internal reviews, on 28th June 2010 an immigration judge released the claimant on bail, to which the Secretary of State had objected. This release from detention constituted one element of the relief which the claimant claimed in the judicial review proceedings. The other heads of claim remained outstanding.

32. In December 2011 the Secretary of State conceded another element of the claimant's claim. The Secretary of State revoked the previous deportation order. By letter dated 20th December 2011, the Secretary of State granted to the claimant discretionary leave to remain. Thus all that remained in the litigation was the claimant's claim for relief in respect of his unlawful detention up to 28th June 2010.

33. The remaining elements of the claimant's judicial review claim came on for hearing before Kenneth Parker J on 18th April 2011. The judge delivered his reserved judgment on 17th May 2011. He concluded that the claimant's detention up to 28th June 2010 was lawful. Accordingly the judge dismissed the claimant's claim for Judicial Review.

34. The claimant was aggrieved by the dismissal of his claim. Accordingly he appealed to the Court of Appeal.

Part 4. The Appeal to the Court of Appeal

35. By an appellant's notice dated 27th July 2011 the claimant appealed to the Court of Appeal against the dismissal of his claim. On 27th October 2011 Sir Stephen Sedley granted permission to appeal on one ground only. However, the court has subsequently granted the claimant permission to proceed on his other grounds as well.

36. The appeal came on for hearing on 7th March 2011. On that occasion the court was confronted with two bundles, the second of which ran to 534 pages, almost all of which were irrelevant. Neither counsel prepared a proper chronology and there were no page references to assist the court in finding the needles in the haystack. Fortunately, during the course of the hearing most of the relevant documents were identified through the joint efforts of Sullivan LJ and counsel.

37. The claimant's case on appeal, as finally formulated, may be summarised as follows:

    i) It is accepted that, initially, the Secretary of State was entitled to detain the claimant pending deportation pursuant to paragraphs 2 (2) and 2 (3) of Schedule 3 to the 1971 Act.

    ii) It is also accepted that throughout the period of the claimant's detention there remained some prospect that the claimant would be successfully deported.

    iii) Nevertheless, as time went on the prospects of successful deportation diminished and the likely delay before any such deportation increased.

    iv) Accordingly, on the principles established in *R v Governor of Durham Prison ex parte Hardial Singh* [1984] 1 WLR 704, at some point during that period the claimant's detention became unlawful.

38. In the course of her submissions Ms. Stephanie Harrison for the claimant offered a range of possible points in the story when it may be said that the claimant's detention became unlawful. Understandably Ms. Harrison sought to argue that this occurred at an early date. Nevertheless I think she recognised that her case became stronger in the latter period, especially after the events of November 2009.

39. Ms. Harrison placed emphasis on a number of features of the present case. First the claimant's offending had been documentary, rather than violent or sexual. Thus he presented less risk to the public then many of the detainees in the reported cases. See for example *R (I) v The Secretary of State for the Home Department* [2002] EWCA Civ 888, [2003] INLR 196; *R (A) v The Secretary of State for the Home Department* [2007] EWCA Civ 804; *R (MH) v The Secretary of State for the Home Department* [2010] EWCA Civ 1112; *R (Lumba) v The Secretary of State for the Home Department* [2011] UKSC 12, [2011] 2 WLR 671.

40. Secondly, the appellant's risk of absconding, though real, was not high. He had an established home life with Ms. Abdallah and the children. Thirdly, as can be seen from the story (when finally disentangled from the documents) the likely delays before any deportation steadily increased. His claim became stronger after section 55 of the 2009 Act came into force. Also the claimant's relations with his partner and children made his continuing detention difficult to justify.

41. Fourthly, when one looks at the detailed sequence of events in the UKBA's records, one can see that there were all sorts of administrative delays. Overall, there was undue delay by the Secretary of State.

42. Adopting the terminology used by Lord Dyson in paragraph 22 of *Lumba*, Ms. Harrison relies primarily on *Hardial Singh* principle (iii). She relies to a lesser extent on *Hardial Singh* principle (iv).

43. Ms. Julie Anderson for the Secretary of State resists all those contentions. She submits that Burundi was always most likely to be the claimant's country of origin. The possibility of returning the claimant to Burundi was never closed off, even though the UKBA investigated other possible countries which were suggested.

44. Ms. Anderson argued that when one views the UKBA's conduct in the round, it was perfectly proper. As each new avenue appeared, it was duly investigated. Some delays are inevitable before meetings or interviews can be set up. On occasions the claimant did not co-operate. There must be some doubt as to whether the claimant was giving genuine answers during his interview with the Burundi officials.

45. Ms. Anderson said that the Secretary of State postponed dealing with the application for revocation of the deportation order until the claimant's country of origin was established. That was a proper approach. Ms. Anderson argued that, if the claimant was released, there would be a substantial risk of absconding. This was because the claimant had absconded before and he was very keen not to return to East Africa.

46. Ms. Anderson submitted that the claimant's application for revocation of the deportation order would not take long to deal with. So far as ECHR Article 8 and section 55 of the 2009 Act were concerned, the extent of the claimant's links with his partner and children had been fully investigated in earlier hearings. Any appeal against refusal to revoke would be dealt with swiftly.

47. Ms. Anderson further argued that the claimant's detention was always and always would be kept under review. He was released on bail by an Immigration judge. There was no breach of *Hardial Singh* principles (iii) or (iv).

48. Having summarised the arguments as they finally emerged, I must now proceed to a decision.

Part 5. Decision

49. It is first necessary to identify the applicable legal principles. In *R v Governor of Durham Prison ex parte Hardial Singh* [1984] 1 WLR 704 the applicant, an Indian national, was given indefinite leave to remain the UK. Unfortunately he went on to commit burglaries for which he was sentenced to a total of two years imprisonment. The Secretary of State made a deportation order against him. On 20th July 1983, the date when the applicant would have been due for release on parole he was transferred to administrative detention. There followed lengthy delays in procuring the travel documentation that was necessary to effect deportation to India. The applicant brought proceedings for *habeas corpus*. Woolf J made an order to the effect that, unless the Home Office within three days produced evidence to show that the

applicant was about to be deported or that his continued detention was reasonable in the circumstances, the court would order his release.

50. The core of Woolf J's reasoning is at 706 C-F:

> "Since 20th July 1983, the applicant has been detained under the power contained in paragraph 2 (3) of Schedule 3 to the Immigration Act 1971. Although the power which is given to the Secretary of State in paragraph 2 to detain individuals is not subject to any express limitation of time, I am quite satisfied that it is subject to limitations. First of all, it can only authorise detention if the individual is being detained in one case pending the making of a deportation order and, in the other case, pending his removal. It cannot be used for any other purpose. Secondly, as the power is given in order to enable the machinery of deportation to be carried out, I regard the power of detention as being impliedly limited to a period which is reasonably necessary for that purpose. The period which is reasonable will depend upon the circumstances of the particular case. What is more, if there is a situation where it is apparent to the Secretary of State that he is not going to be able to operate the machinery provided in the Act for removing persons who are intended to be deported within a reasonable period, it seems to me that it would be wrong for the Secretary of State to seek to exercise his power of detention.
>
> In addition, I would regard it as implicit that the Secretary of State should exercise all reasonable expedition to ensure that the steps are taken which will be necessary to ensure the removal of the individual within a reasonable time."

51. Woolf J's analysis in *Hardial Singh* has been the subject of much summarising, paraphrasing and debate over the years. Counsel tried to inveigle us into looking as some of the authorities which do this and to consider which passages in those authorities are still good law and which are not.

52. I shall firmly resist that temptation. There is a recent decision of the Supreme Court, which reviews this whole area of the law, namely *R (Lumba) v The Secretary of State for the Home Department* [2011] UK SC12, [2011] 2 WLR 671. I shall take that decision as my starting point and only delve back into earlier authority in so far as it becomes necessary to do so.

53. Lord Dyson dealt with the *Hardial Singh* principles in a passage with which all members of the court except Lord Philips PSC agreed. I shall now set out the relevant parts of that passage:

> "22. It is convenient to introduce the *Hardial Singh* principles at this stage, since they infuse much of the debate on the issues that arise on this appeal. It is common ground that my statement in *R (I) v Secretary of State for the Home Department* [2003] INLR 196, para 46 correctly encapsulates the principles

as follows: (i) the Secretary of State must intend to deport the person and can only use the power to detain for that purpose; (ii) the deportee may only be detained for a period that is reasonable in all the circumstances; (iii) if, before the expiry of the reasonable period, it becomes apparent that the Secretary of State will not be able to effect deportation within a reasonable period, he should not seek to exercise the power of detention; (iv) the Secretary of State should act with reasonable diligence and expedition to effect removal.

23. Lord Phillips PSC says that the first two of these principles cannot properly be derived from *Hardial Singh*. Since their correctness has not been put in issue by the parties to these appeals, I propose to deal with the points shortly. As regards the first principle, I consider that Woolf J was saying unambiguously that the detention must be for the purpose of facilitating the deportation.

….

24. As for the second principle, in my view this too is properly derived from *Hardial Singh*. Woolf J said that (i) the power of detention is limited to a period reasonably necessary for the purpose (as I would say) of facilitating deportation; (ii) what is reasonable depends on the circumstances of the particular case; and (iii) the power to detain ceases where it is apparent that deportation will not be possible "within a reasonable period". It is clear at least from (iii) that Woolf J was not saying that a person can be detained indefinitely provided that the Secretary of State is doing all she reasonably can to effect the deportation.

….

30. But all that the *Hardial Singh* principles do is that which article 5.1 (f) does: they require that the power to detain be exercised reasonably and for the prescribed purpose of facilitating deportation. The requirements of the 1971 Act and the *Hardial Singh* principles are not the only applicable "law". Indeed, as Mr. Fordham QC points out, the *Hardial Singh* principles reflect the basic public law duties to act consistently with the statutory purpose (*Padfield v Minister of Agriculture, Fisheries and Food* [1968] AC 997, 103OB-D) and reasonably in the *Wednesbury* sense: *Associated Provincial Picture Houses Ltd v Wednesbury Corpn* [1948] 1 KB 223. But they are not exhaustive. If they were exhaustive, there could be no room for the public law duty of adherence to published policy, which was rightly acknowledged by the Court of Appeal at paras 51, 52 and 58 of their judgment."

54. At paragraph 121 Lord Dyson noted the particular importance which attached to the risk of absconding.

55. I readily accept, as Ms. Anderson says, that *Lumba* should not be read like a statute. On the other hand, I consider that Lord Dyson's judgment gives quite sufficient guidance for present purposes.

56. Out of deference to counsel's submissions I have read through a number of authorities which pre-date *Lumba*. I have read many illuminating paraphrases of *Hardial Singh* and duly pondered what are said to be inconsistencies between certain of those authorities. I do not find it necessary to set out this material. The guidance given in *Lumba* is sufficient for present purposes and that guidance is firmly grounded in earlier authority.

57. Let me now turn to the issues in the present appeal. When the Secretary of State first decided to deport the claimant, this appeared to be a relatively straightforward case. No one could question, indeed no one does question, the legality of transferring the claimant into administrative detention in September 2008.

58. What I have to consider in this appeal is whether the judge erred in concluding that the claimant's detention remained lawful throughout the period up to 28th June 2010.

59. In relation to the period up to the end of 2009, I do not think that there is any error in the judge's analysis or evaluation. The judge reviewed the UKBA's actions at each stage of the process and noted that the immigration officers were exploring matters which needed to be explored. The judge evaluated the evidence and concluded that there was at all times a real risk of absconding. He concluded that despite the inevitable separation of the claimant from his partner and children, nevertheless detention was reasonable. It was for the judge to carry out that evaluation exercise. He did so entirely properly on the basis of the evidence before him. I see no basis upon which this court could interfere in respect of detention up to the end of 2009.

60. Unfortunately, an issue which has achieved prominence in this court does not appear to have been prominent below and certainly not in the judgment. The argument runs as follows. The claimant's application for revocation of the deportation order was a strong one. He could place reliance on the newly enacted section 55 of the 2009 Act. He could rely on his now well established ties with Ms. Abdallah and the children, one of whom was a British citizen. Furthermore if the claimant's application for revocation was refused, he would have an in country right of appeal: see *R (BA) (Nigeria) v The Secretary of State for the Home Department* [2009] UK SC7, [2010] 1 AC 444. That appeal process would take a long time. By the end of 2009 it became apparent that the Secretary of State would not be able to effect deportation within a reasonable time. Therefore the continued detention of the claimant became unlawful under *Hardial Singh* principle (iii).

61. There was some debate during the hearing as to whether Ms. Harrison should be permitted to develop this new line of argument which her predecessor had not put to the judge below. After hearing submissions this court concluded that the Secretary of State was not substantially prejudiced by the lateness of the argument. The Secretary of State and the court were in a position to deal with the argument. The case concerns

the liberty of the subject and the legality of detention. In the circumstances Ms. Harrison should be allowed to put forward the argument.

62. I consider that the new line of argument developed by Ms. Harrison is, essentially, sound. The application to revoke the deportation order and the coming into force of section 55 of the 2009 Act added a new dimension to the case. The claimant's application for revocation of the deportation order was an arguable one and the Secretary of State ultimately acceded to that application. Furthermore if the application was refused an appeal to the First-Tier Tribunal was bound to follow, which would bring the opportunity for challenges to the First-Tier Tribunal decision. If the Secretary of State certified the decision, so as to shut off any appeal to the First-Tier Tribunal, then it was likely that the claimant would commence judicial review proceedings.

63. The likely delay was compounded by the fact that, as we learnt from Ms. Anderson during the hearing, the Secretary of State did not intend to deal with the revocation application until the claimant's nationality had been sorted out. As time went on the difficulties of establishing the claimant's nationality multiplied. By January 2010 three different countries were under consideration, namely Burundi, the DRC and Tanzania. No country, however, had yet been willing to acknowledge the claimant as one of its nationals. By mid January 2010 this process was set to continue for many months. All that was going to happen before the Secretary of State even started to deal with the revocation application. Furthermore, by this time the claimant had already been in detention for 16 months.

64. I accept that there was a real risk that the claimant would abscond if released. On the other hand, there was a real prospect that he would not abscond. He had a settled home with Ms. Abdallah and the three children. Furthermore his case in the revocation application was based upon the closeness of those ties. If the claimant were to vanish into the night, that would fatally undermine his case.

65. When all these factors are weighed up, I consider that *Hardial Singh* principle (iii) is engaged. I accept that the UKBA would need a couple of weeks to take stock and review matters. Nevertheless, in my view, by late January 2010 it had become apparent that the Secretary of State would not be able to effect deportation within a reasonable period.

66. Accordingly, from then onwards I conclude that the continued detention of the claimant was unlawful. I would take as the cut off date 28th January 2010. In my view therefore the last five months of the claimant's detention were unlawful.

67. Both counsel have asked this court not to deal with the question of remedies, but rather to remit that question to the Administrative Court.

68. Let me now draw the threads together. For the reasons set out above, if my Lords agree, this court will declare that the claimant's detention was unlawful during the period 28th January 2010 to 28th June 2010. The question of what remedy the claimant is entitled to recover will be remitted to the Administrative Court for decision, unless the parties reach agreement on remedies within 21 days.

Lord Justice Sullivan :

69. I agree.

Lord Justice Pill :

70. I also agree.