THE SUPREME COURT

Record No. 154/2006

McCracken J.
Kearns J.
Macken J.

BETWEEN:

LIDIA COSMA

APPLICANT/APPELLANT

.v.

THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM

RESPONDENT

<u>Judgment of Mr Justice McCracken delivered the 10th day of July 2006</u>

This is a motion brought by the appellant to the Supreme Court seeking the following reliefs:

"1. Directions for the hearing of an application for an interlocutory injunction.
2. An interim injunction restraining the respondent, his servants or agents from executing a deportation order over the applicant pending the outcome of an application for an interlocutory injunction.
3. An interlocutory injunction restraining the respondent, his servants or agents from executing a deportation order over the applicant pending the determination of the appeal in this matter by this honourable court.
4. A declaration that section 3(11) of the Immigration Act 1999 is not governed by section 5 of the Illegal Immigrants (Trafficking) Act 2000 and therefore that the applicant does and did not require a certificate from a High Court judge in order to institute an appeal before the Supreme Court and has an unfettered right to appeal an order of the High Court.
5. Directions for the hearing of the appeal in this matter.
6. Further or other relief.
7. Liberty to apply.

8. Costs."

In argument before the court the issues were narrowed considerably. It was very properly conceded by Ms. Moorehead S.C. on behalf of the respondent that the provisions of section 5(3) of the Illegal Immigrants (Trafficking) Act 2000, which provided that no appeal should lie from a decision of the High Court in certain immigration and refugee matters without a certificate that the decision involves a point of law of exceptional public importance, does not apply to a challenge by way of judicial review to the refusal by the respondent to amend or revoke the deportation order under section 3(11) of the Immigration Act 1999. Therefore, insofar as this appeal is against such a decision in the case of the appellant, the matter is properly before this court. Equally, and also very properly, it was conceded by Mr O' Dulachain S.C. on behalf of the appellant that this appeal must be limited to the consideration of the refusal of the Minister under section 3(11) of the 1999 Act, as a certificate had been refused in relation to other matters being challenged in these proceedings.

The only issue now remaining before the court is whether an injunction ought to be granted restraining the respondent from deporting the appellant pending the determination of this appeal. There unquestionably is a valid deportation order in being, and the issue in this appeal is whether the Minister ought to have revoked that order, but the validity of the order itself is not being, and cannot be, challenged in this appeal.

On a matter of general principle I am quite satisfied that the Supreme Court has an inherent power to grant interlocutory orders pending the hearing of an appeal where such order is necessary to protect the rights of the parties. An example which immediately comes to mind is that the court may order the preservation of property which is the subject matter of the proceedings. However, any such order must be made sparingly and only in circumstances where it will not conflict with the undisputed rights of any of the parties.

Order 58 rule 18 of the Rules of the Superior Courts provides:-

> *"An appeal to the Supreme Court shall not operate as a stay of execution or of proceedings under the decision appealed from, except so far as the High Court or the Supreme Court may order; and no intermediate act or proceeding shall be thereby invalidated, except so far as the High Court or the Supreme Court may direct."*

In this case the "decision being appealed from" is a decision of the respondent made under section 3(11) not to revoke a deportation order against the appellant. There is no appeal and can be no appeal from the decision of the learned High Court judge refusing relief in relation to the deportation order itself. It has been held by the High Court that the deportation order is valid, and that finding cannot be challenged before this

court. If the court were to grant an injunction such as is being sought by the appellant, the effect would be to thwart the operation of the perfectly valid deportation order and would, at least to some degree, prevent the operation of a perfectly valid and unappealable High Court order.

There might indeed be circumstances, although it is hard to envisage them, where the Supreme Court might exercise its inherent jurisdiction to grant an injunction which could have this effect, for example it might conceivably be exercised when a previously unknown fact comes to light, being a fact which was unknown at the time of making of the deportation order, and which is one of such gravity as might stay implementation of the deportation order. No such case has been made out before us.

In the circumstances I would grant the declaration sought at paragraph 4 of the notice of motion and would refuse all other relief claimed.