

Neutral Citation Number: [2016] EWCA Civ 991

B5/2015/4255

**IN THE COURT OF APPEAL (CIVIL DIVISION)**  
**ON APPEAL FROM CENTRAL LONDON COUNTY COURT**  
(HIS HONOUR JUDGE SAGGERSON)

Royal Courts of Justice  
Strand  
London, WC2A 2LL

Thursday, 7 July 2016

B E F O R E:

**LORD JUSTICE FLOYD**

**POWELL**

**Applicant**

v

**LONDON BOROUGH OF SOUTHWARK**

**Respondent**

(DAR Transcript of  
WordWave International Limited  
Trading as DTI  
8th Floor, 165 Fleet Street, London EC4A 2DY  
Tel No: 020 7404 1400 Fax No: 020 7831 8838  
Official Shorthand Writers to the Court)

**Miss S Steinhardt** (instructed by Hansen Palomares) appeared on behalf of the **Applicant**

**Mr M Paget** (instructed by Southwark Council) appeared on behalf of the **Respondent**

J U D G M E N T  
(Approved)

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1. LORD JUSTICE FLOYD: The Applicant, Miss Michelle Powell, suffers from severe learning difficulties, anxiety and depression. She is represented in these proceedings by the Official Solicitor because she is a protected party and he acts as her litigation friend.
2. She seeks permission to appeal from the decision of His Honour Judge Saggerson dated 25 November 2015. By his decision, the judge who was sitting in the Central London County Court refused Miss Powell's application for interim relief under section 204A of the Housing Act 1996 which gives the court power to order the local authority, in this case the London Borough of Southwark, to accommodate an applicant pending a substantive appeal to the County Court under section 204 of that Act, namely a decision to refuse to house her.
3. This application for permission came on before Lindblom LJ on 17 December 2015 when he adjourned both the application for permission and her application for interim relief pending the determination of the appeal to an oral hearing with the Respondent to attend. This afternoon Miss Steinhardt has appeared on behalf of Miss Powell as she did below and Mr Paget has appeared on behalf of the Respondent local authority.
4. Lindblom LJ was not satisfied that the interim relief was justified at that stage. He was satisfied that there was no question of the Applicant being rendered street homeless. The evidence before him at that stage consisted of a first witness statement of the Applicant's daughter, Miss Elisha Powell, who said that the conditions in which the Applicant was living with her were very overcrowded. Not only was Elisha, the daughter, living there, but Elisha's children were as well and the sister of the Applicant, Ricky, who was staying in the flat had nowhere else to stay. Another sister, Cherie, who was sofa surfing at present, would come to stay if the Applicant left.
5. It is now some seven months later. Owing to a certain amount of confusion in the Central London County Court, the main section 204 appeal has still not been heard. It is now fixed for the end of September, which is less than three months away.
6. As the only purpose of this appeal can be to obtain temporary accommodation pending the main section 204 appeal in the County Court, the present appeal is becoming

increasingly academic. Indeed, Miss Steinhardt accepts that there is no real prospect of this appeal coming on before the end of September in view of the intervention of the long vacation. I know from other inquiries that I have made that there is simply no capacity in this court to hear appeals between now and the end of term.

7. Since the application came on before Lindblom LJ, two further witness statements have been served by the Applicant made by her daughter. These are the witness statements of 22 January and 16 June. In her second statement, Miss Powell indicates that her mother is still living with her, but that she has now moved from the one bedroom apartment into a three bedroom property which was a council flat arranged for her by Croydon Council in discharge of their homelessness duty towards her, her children and her sister, Ricky.
8. Ricky was part of the homelessness application, but she was not staying in the flat at present because her mother was there. Instead, Ricky was staying with another relative. Ricky found it particularly difficult living with the Applicant. The Applicant was liable to panic, sometimes got nervous and shouted and the children were frightened and found it difficult to understand her behaviour. Miss Elisha Powell explains that although she loves her mother, she did not want to see her and she did not want to see her on the streets. Living with her was, as she put it, very difficult indeed at present.
9. In her third statement, Miss Powell provides an update. She says that the circumstances had deteriorated since her previous statement in January. Her mother was still behaving erratically. The children were not speaking to her and the mother was not answering when they did speak. The conditions in the property were interfering with Elisha Powell's ability to get on with her work as a student. A family meeting had been attempted in April 2016 to try and sort things out, but this had resulted in her mother becoming upset and locking herself in the bedroom. Miss Powell says she is finding the situation unbearable. Her mother wants her own place and is clearly distressed.
10. Discretion to grant temporary accommodation is a discretion which is vested in the local authority and may be reviewed in a review decision within the statutory appeal procedure. In conducting such a review, authorities such as Camden London Borough Council v Mohammed make clear that the local authority must keep well in mind the

objective of fairness between those who are homeless in circumstances where the local authority has in its first decision decided there is no duty to the particular applicant and on the other hand give proper consideration to the possibility that the applicant may be right and that to deprive him or her of accommodation could result in a denial of an entitlement.

11. That authority goes on to point out three matters which, as is well-known to those who practice in this field, will always require consideration in carrying out the balancing exercise: (1) the merits of the case itself, (2) whether there is any new information or argument put before the local authority which could have a real effect upon the decision under review, and (3) the personal circumstances of the applicant and the consequences to him or her of an adverse decision on the exercise of discretion. Other circumstances and considerations may, of course, prove to be relevant as well. The effect of section 204A of the Housing Act 1996 is to give to the County Court a very limited power of intervention that had previously existed on a judicial review application against such a decision.
12. The parties have argued the case before me this afternoon on the basis that in order to obtain interim relief of a mandatory character, as is sought here, it is necessary for the applicant to show, firstly, that she has a strong prima facie case and secondly, that the balance of convenience favours the grant of relief. I have heard a considerable amount of argument about the merits of not only this particular appeal but also, as will inevitably happen, the overlapping the merits of the section 204 appeal itself.
13. On this appeal, there are in essence two points which have been ventilated. The first concerns a failure to serve a new regulation 8(2) "minded to" letter. The second is concerned with the extent of consideration of the personal circumstances of the Applicant in the grant of interim relief.
14. There is a further complication, of course, in the present case which is that if permission to appeal were granted, this would be a second appeal. Permission for a second appeal can only be given where the appeal would raise an important point of principle or practice or there was some other compelling reason to hear the appeal.

15. I have to confess that I have approached this case with one consideration at the forefront of my mind. If permission to appeal is granted, it is in the highest degree likely that the appeal will be completely academic. The decision on the section 204 appeal marks the end point of the power to grant interim relief of this kind. So much has been decided at this level in the case of Johnson v Westminster City Council [2013] HLR 45. I propose, therefore, to proceed on the basis that there is an arguable point in the present appeal which would meet the description of a strong prima facie case and further to assume in the Applicant's favour that she can get over the hurdle of showing that it is an important point of principle or practice which would justify the time and effort of a second appeal. I propose instead to consider whether this is a case where it could ever be justified on the balance of convenience to grant temporary relief at this stage.
16. I say at the outset that I recognise that the current conditions under which the Applicant is housed are unsatisfactory. The description of home life given by Elisha Powell in her various witness statements is not something one would wish on anyone. But I have to bear in mind that she is not homeless. She has a home and she has a family who, despite the difficulties which they encounter with living with her, still love her. In one sense it has got better because of the more spacious accommodation and in one sense it has got worse because of a deteriorating relationship, but that position has existed since the hearing before the Lord Justice on the papers.
17. I am unable really to say that it is not likely to continue as a viable modus operandi until the hearing of the appeal in the County Court. Miss Steinhardt points out that there is a risk that relations will get so bad that Elisha Powell will evict her mother. I am not persuaded that that is a sufficient likelihood to justify this court taking the exceptional step of ordering mandatory relief.
18. The balancing exercise has to take into account the interests of others who are competing for housing stock in the borough in question. There are those who, as the evidence recognises, are street homeless. In those circumstances, it does not seem to me that I would be justified in the present case in ordering the local authority to provide accommodation pending the hearing of an appeal.

19. If this is, as I decide it is, a case in which there is to be no interim relief and if it is, as it would then appear to be, a completely academic appeal, it does not seem to me that this is a case in which I should grant permission. The Court of Appeal will not grant permission unless it considers that an appeal has a realistic prospect of success, but that does not mean that in every appeal which has a realistic prospect of success the court grants permission. The court will refuse permission for academic appeals and that is so even if they have the potential to raise interesting questions.
20. Miss Steinhardt makes a good point when she says that it is some time since these provisions have been considered in this court, but these are matters which do arise. If she is right that they are causing difficulties in housing authorities up and down the country an appropriate case for this court to consider will arise in the not too far distant future. If such a case does arise, it will be vital for the parties to get it on quickly so that there is at least some prospect of the court granting useful relief in an appropriate case.
21. But for the reasons I have given, I will refuse permission to appeal and it follows that there will be no interim relief.