

**NOTE: COURT OF APPEAL ORDER PROHIBITING PUBLICATION OF
NAMES OR IDENTIFYING PARTICULARS OF MR RADHI'S WIFE AND
CHILDREN REMAINS IN FORCE**

IN THE SUPREME COURT OF NEW ZEALAND

SC 57/2017

BETWEEN

MAYTHEM KAMIL RADHI

Applicant

AND

THE DISTRICT COURT AT MANUKAU

First Respondent

THE COMMONWEALTH OF AUSTRALIA

Second Respondent

Hearing: 17 August 2017

Coram: William Young J
O'Regan J
Ellen France J

Appearances: R M Mansfield for the Applicant
No appearance by or for the First Respondent
M J Lillico and R K Thomson for the
Second Respondent

HEARING FOR APPLICATION FOR LEAVE TO APPEAL

MR MANSFIELD:

Good morning, may it please the Court. Counsel's name is Mansfield and I appear for the appellant/applicant.

WILLIAM YOUNG J:

Thank you Mr Mansfield.

MR LILICO:

May it please the Court. Lillico for the second respondent along with Ms Thomson.

WILLIAM YOUNG J:

Thank you Mr Lillico. Mr Mansfield I've got really three questions, one of which will illustrate that I haven't read through the file with quite the particularity I should have, but is your, is this your client's name, or is it a pseudonym?

MR MANSFIELD:

It's his name as far as I'm aware.

WILLIAM YOUNG J:

He was referred to differently, wasn't he, in Mr –

O'REGAN J:

It was just misspelled on one of the...

WILLIAM YOUNG J:

Oh, was it misspelled, okay, thank you. Secondly, if you look at section 48, let's see if I can find it.

ELLEN FRANCE J:

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WILLIAM YOUNG J:

Section 48(2), is it – section 48(4)(a)(ii), the subsection concludes with the words “before the expiration of a particular period”.

MR MANSFIELD:

Yes Sir.

WILLIAM YOUNG J:

What’s the “particular period” here you rely on or identify?

MR MANSFIELD:

Sir, until such time as the Minister could determine the issue under section 49, would be what I would submit.

WILLIAM YOUNG J:

But the issue for the Minister, as I understand it under section –

MR MANSFIELD:

49.

WILLIAM YOUNG J:

Isn’t it 50? Sorry –

MR MANSFIELD:

I’m relying on section 49(2) being the power that the Minister has that the Court doesn’t have.

WILLIAM YOUNG J:

But isn’t section 48(4)(a)(ii) focused on an objection to surrender before something else happens?

MR MANSFIELD:

Yes, in my submission it's a focus on whether there should be surrender without reference to the Minister, or whether there should be surrender with reference to the Minister, the Minister having greater powers than the Court.

WILLIAM YOUNG J:

Can't the Minister intervene anyway?

MR MANSFIELD:

No. Here it's a, under Part 4 it's a truncated procedure for extradition because of our relationship, or our then relationship with Australia in quality, so it's a very streamlined, or intended to be streamlined process.

WILLIAM YOUNG J:

Does section 30 not apply?

MR MANSFIELD:

Well in my submission if it does apply it hasn't applied here, and I've focused on 49 because that's the application under 48 and 49.

WILLIAM YOUNG J:

But will the Minister, is there not a decision to be made whether extradition be completed, to be made by the Minister?

MR MANSFIELD:

No, it's my understanding that it must go via section 48, then to 49.

ELLEN FRANCE J:

Because Part 4 is a complete procedure, well, little process in itself?

MR MANSFIELD:

Yes, that's how I see it.

WILLIAM YOUNG J:

Well I'll have to get my head around that.

MR MANSFIELD:

That's why it's important. I say section 48 needs to be read with 49. It's not the court making a decision as to whether someone should be surrendered, because that decision has already been made by the time you make an application under section 48. So it's whether it would be unjust to surrender them without recourse to the Minister and the Minister's special powers to impose conditions, or seek undertakings, and it's the seeking undertakings which I rely on because it may not be unjust for the Minister to agree to surrender Mr Radhi, if there are undertakings in relation to his refugee status and how he might be treated.

WILLIAM YOUNG J:

Well I agree with, I understand that, but it's just the particular period, it seems to be a funny way of capturing that.

MR MANSFIELD:

I couldn't agree more with you, as far as what that means, but it seems to me the only thing it can mean is until such time as the Minister has had an opportunity, if the Minister gets that opportunity, to consider the position under section 49.

WILLIAM YOUNG J:

All right.

O'REGAN J:

It seems to be more focused on there being some temporary problem that will resolve itself in a couple of years and then it will be okay to –

MR MANSFIELD:

It might be so Sir, but it's hard to see what that might be with reference to the subsection itself, but I suspect that could be so. But I'm not suggesting –

O'REGAN J:

But in this case there is no suggestion that, I mean you're not suggesting that the need to refer is a temporary phenomenon, are you?

MR MANSFIELD:

No, I'm not. I suppose one could argue, but I don't, that the children over a certain period of time would become legally adults and hence there wouldn't be the same obligation under our international treaties. But in my submission –

O'REGAN J:

That's a pretty long period though.

MR MANSFIELD:

Yes, and then we would have other issues, and I would agree with that. So I suppose what I'm saying is that, look, we can do extradition justly if the Minister considers the position under section 49, or has the opportunity to, because he can require undertakings in relation to how Mr Radhi would be treated if he was acquitted – for example, it took longer than two years, which it could.

WILLIAM YOUNG J:

The third point I wanted to raise with you is this, and which is probably more in your favour really –

MR MANSFIELD:

I like those points.

WILLIAM YOUNG J:

Well I suppose the first one was entirely neutral, it was just the reference to Dr Kirker's evidence.

MR MANSFIELD:

Yes.

WILLIAM YOUNG J:

But in fact it's just the way it's been pronounced.

MR MANSFIELD:

Yes.

WILLIAM YOUNG J:

The differentiation of the words, okay, I understand that now. What troubles me about the case is that it's not so much he's acquitted within two years, because he will be able to come back, but if he's convicted he's then in a sort of a bit of a legal void.

MR MANSFIELD:

Well he is and the maximum sentence is 10 years, as I understand it, for the prosecution under 233A, and a co-defendant has already been convicted and sentenced to nine years with a minimum term of imprisonment of four years, six months. So that gives, I'm not saying he would necessarily get that sentence, but given the nature of the alleged offending it would be a significant term of imprisonment and one might imagine it would be close to that, so we're going to be outside the two-year period, and he would be in a position that he may not be able to rejoin his family at all.

WILLIAM YOUNG J:

Or he may be detained indefinitely.

MR MANSFIELD:

Well, it's a moving feast in Australia for people in that position. It seems to change there quite quickly as to how they deal with people, but there is a concern, which appears to be a legitimate concern, that he could be refouled to Iraq or to some other country, and my concern is that he would not have –

WILLIAM YOUNG J:

But say the Australian Government said “well, we can’t send him back to Iraq, but New Zealand won’t take him, and we won’t take him”, so what would happen to him in that situation?

MR MANSFIELD:

Well he would just, as I understand it, would just remain there detained.

WILLIAM YOUNG J:

Yes, that’s my concern – is that he would face indefinite detention.

MR MANSFIELD:

Yes, that’s right, and that’s why I say it should go to the Minister, and the Minister can sort that out with Australia, and if it can’t be sorted out then the Minister will have to make a very difficult decision.

ELLEN FRANCE J:

Just following up on that, how would you then distinguish his case from those of any other refugee in New Zealand who is subject to the extradition process?

MR MANSFIELD:

Well in my submission refugees who are in New Zealand may all fall within such a category, and one would need to look at their personal circumstances and the charge they face.

ELLEN FRANCE J:

But isn’t the risk of that, that you’re then essentially making a separate category?

MR MANSFIELD:

There is the potential for that, but I would have thought that the Minister would need to deal with applications to him on a fact-by-fact basis. Here, given the nature of the charge, and Mr Radhi’s family and their personal circumstances,

it seems clear that there is a real risk that the proceedings in Australia, at least, including the sentence, may not complete within two years, so he is going to be in that position, we know that. That may not be the case for every refugee Ma'am.

WILLIAM YOUNG J:

Well a number of refugees will have permanent residency I guess by now won't they?

MR MANSFIELD:

Yes.

WILLIAM YOUNG J:

So...

MR MANSFIELD:

It's his particular status. The visa is clear if he leaves he no longer has the ability to come back unless he gets that extension for that two-year period.

ELLEN FRANCE J:

Is that the case for all, do you know, for all UNHCR refugees?

MR MANSFIELD:

My knowledge doesn't extend to that, Ma'am, to be perfectly frank. However, many refugees, after they've been here for a period of time, do move on and obtain citizenship.

O'REGAN J:

He has permanent residency but not citizenship, is that right?

MR MANSFIELD:

That's right Sir, and as part of that he's not to leave New Zealand, so as soon as he leaves, unless he has permission.

WILLIAM YOUNG J:

Does he have permanent residency?

MR MANSFIELD:

He's got residency, yes.

O'REGAN J:

But subject to that, it's not sort of permanent residency, really, is it?

MR MANSFIELD:

No.

O'REGAN J:

It's residency subject to conditions.

MR MANSFIELD:

That's right, and my learned friend says subject to restrictions in relation to travel. So I think we're in agreement in relation to that.

WILLIAM YOUNG J:

Is it not possible for those restrictions in relation to travel to be abandoned?

MR MANSFIELD:

He's got to make an application to leave for a two year period and then –

WILLIAM YOUNG J:

Can they not be completely abandoned?

MR MANSFIELD:

He can apply for a further extension of 12 months but it's at the discretion of the decision-maker.

WILLIAM YOUNG J:

I mean prospectively, so that whatever happens he can come back?

MR MANSFIELD:

No. That's not my understanding. My understanding is he should be able to get an application to be absent from New Zealand for two years. He then can apply for an extension of 12 months but he's meant to have spent some of that time, that two-year period, back in New Zealand, but that requirement can be made.

WILLIAM YOUNG J:

Can the Minister not give an undertaking?

MR MANSFIELD:

Well only if we get to section 49, and that's my point. If we get to section 49 the Minister can require certain undertakings, either from Australia or within New Zealand, as I understand it, as to how he would be treated, and with those undertakings it may be that he can be surrendered without criticism because –

O'REGAN J:

Section 49(2) is only talking about undertakings from Australia.

MR MANSFIELD:

That's right, the requesting nation.

O'REGAN J:

So the Minister could make some sort of assessment about what New Zealand would do, but that would be matter of undertaking presumably.

MR MANSFIELD:

Correct, but it could get an undertaking from Australia as to how they would deal with him at the end, which is all I'm asking.

O'REGAN J:

Yes.

MR MANSFIELD:

Look, I accept that it's a balancing exercise in the interests of the family, the children, versus New Zealand's obligations to extradite to Australia under the Act and given comity –

WILLIAM YOUNG J:

Well I suppose from my point of view I see quite a lot of that as being sort of what you expect in an extradition case. The thing that really troubles me is that he does face a not unsubstantial prospect of indefinite definition.

MR MANSFIELD:

Well I couldn't agree more with what you've just said Sir, so far as look he could be removed, remain in Australia until trial, through trial and until he's completed his sentence. Normally we would like to see someone having the right to see their family, and normally that's what we would encourage in New Zealand, but when you balance the interest of him being prosecuted for a serious crime, versus being absent from his family for that period of time, I don't believe there could be any real criticism. But what we're talking about is after he's completed any lawful sentence he's still going to be in that position and separated from his family, potentially permanently. That's unacceptable in my submission.

O'REGAN J:

Was that canvassed, the risk of indefinite definition, was that canvassed in the Courts below?

MR MANSFIELD:

Certainly canvassed in the Court of Appeal, and my understanding, canvassed in the High Court, but in the High Court –

WILLIAM YOUNG J:

It's alluded to but rather –

O'REGAN J:

It doesn't seem to feature very strongly in the decision.

MR MANSFIELD:

Not greatly, but it was featured in the Court of Appeal. That was the one remaining ground which was advanced there. I wasn't counsel in the first instance in the District Court. I picked it up for the High Court but I have to be frank, extradition, although I'm now involved in probably a significant case, hasn't previously been my area of practice, so I have picked it back up now but the point is, in my submission, of significance. It's untenable, in my submission, that someone could be permanently separated from their family and that, in reality, in this case, is what will happen if the Minister can't make an assessment, and I say the Courts below have focused on whether there should be surrender, rather than focused on whether there should be surrender before it goes to the Minister. So I say that sections 48 and 49 should be read together.

WILLIAM YOUNG J:

Just to complete, the children could go to Australia if they wanted to because they're New Zealand citizens?

MR MANSFIELD:

They could travel if they had funds. They'll be reliant on a benefit. They'll be left in New Zealand with their mum and they will, and that's what the evidence is, will be supported on a benefit. In reality they won't have the ability to travel to Australia and if they do you can anticipate perhaps on one occasion. But if he's permanently detained there, they have no right to go and spend time in Australia for any significant period.

WILLIAM YOUNG J:

Thank you. We're through with the submissions. There were just a few things we wanted to tease out with you and we've done that.

MR MANSFIELD:

I had prepared some oral submissions but I probably just delivered them to be perfectly frank but in a slightly different order.

WILLIAM YOUNG J:

Okay.

ELLEN FRANCE J:

Can I just check, Mr Mansfield, in the Court of Appeal there's an order prohibiting publication of the names or identifying particulars of his wife and children and that's the only suppression order that's necessary?

MR MANSFIELD:

As I understand it.

ELLEN FRANCE J:

Right.

WILLIAM YOUNG J:

Thank you Mr Mansfield. Mr Lillico? Perhaps you could – what's your position on this issue of what the "prescribed period" means?

MR LILLICO:

In my submission it's answered in the Court of Appeal's decision in *Mailley* (there are two decisions in *Mailley* by the Court of Appeal but the one that has a citation *Mailley v District Court at North Shore* [2013] NZCA 266). So the Court at [64] in that case said that: "The phrase is there as a safeguard in case the condition is not permanent. It cannot mean the section only applies to conditions that have a temporal limit. ... The words simply indicate that surrender might be permitted at a later point in time should the compelling or extraordinary circumstances be no longer operative."

WILLIAM YOUNG J:

Okay, so which *Mailley* one is that?

MR LILLICO:

The first one.

O'REGAN J:

The 2013 one.

WILLIAM YOUNG J:

Thank you.

MR LILLICO:

And in terms of Your Honour's questions about the structure of the Act –

WILLIAM YOUNG J:

So it's as though the words "at all or for a prescribed period" should be read as though it said that, which is effectively what *Mailley* seems to be saying.

MR LILLICO:

Yes Sir.

WILLIAM YOUNG J:

Okay, I understand that.

MR LILLICO:

And then in terms of the structure of the Act, this part of the Act is supposed to be the backed warrants system, so it doesn't bolt on a decision-making process by the Minister as of right, and what will happen is if there's no referral to the Minister for a decision, the Minister of Justice, then a surrender order is made by the District Court.

WILLIAM YOUNG J:

And it just operates automatically from that point on.

MR LILLICO:

Yes Sir, so that's section 47(1). So in effect if this review or this appeal from a review fails, the surrender order will take effect and Mr Radhi will be put in the custody of Australia.

WILLIAM YOUNG J:

So what do you say about the problem of indefinite detention?

MR LILLICO:

Yes Sir, well my friend is right when he apprehends that it wasn't an issue or – it's fair to say it wasn't an issue in the District Court. The focus in the District Court were matters of fair trial because you may recall that there was an argument about missing witnesses, or difficulty to get witnesses. There was also a delay aspect, and in terms of refugee obligations they placed it, well Mr Radhi placed it quite highly in the District Court and he said that he was in danger of being refouled to Iraq. Now the way that the Court dealt with that sort of high ground attack was that on the basis of some decisions in the UK, admittedly in the High Court level. *Ignaoua v Judicial Authority of the Courts of Milan* [2008] EWHC 2619 (Admin), was one of them. In that case the High Court examined whether, in terms of anxious scrutiny, Italy had a record of refouling in that case Tunisian refugees to Tunisia. Italy wanted to try Ignaoua and his accomplice in relation to various criminal, serious criminal matters, terrorism, and the Court said, well Italy, if we extradite so that they can face trial on those matters, Italy simply don't have a record of sending people, refugees to Tunisia.

WILLIAM YOUNG J:

It's not really that aspect of the case that troubles me. I mean the answer is that Australia won't send him to Iraq, instead they'll just lock him up until something else can be determined.

MR LILLICO:

No, and so, although that wasn't the focus of the hearing in the District Court, some of the evidence did cover the concern that Your Honour is raising, and it

became apparent in the District Court that the Australians would deal with – so this is, of course, this is –

WILLIAM YOUNG J:

But there's quite a bit of euphemism here. I mean basically my take on it is they'll deal with it by locking him up.

MR LILLICO:

No Sir, that's not at all clear on the evidence, because what the immigration officer said was that firstly he would, and this is if he doesn't gain re-entry –

WILLIAM YOUNG J:

Let's assume he can't come back to New Zealand, and he doesn't want to go back to Iraq, what will happen to him?

MR LILLICO:

Then they've obviously got the same obligations that New Zealand do. They've signed up to the same conventions. So they'll either grant him –

WILLIAM YOUNG J:

But they take them rather differently.

MR LILLICO:

They do Sir, every country does it differently.

ELLEN FRANCE J:

What did the immigration officer say would happen?

MR LILLICO:

So the officer said either they'll be, they'll deal with the refoulement problem either by granting what they call a protection visa. If he doesn't gain a protection visa then he will be given, then the Minister, in the Australian Minister's discretion, he can be granted status in Australia. If that fails they still can't refoule him to Iraq, and obviously they have no control over what New Zealand does, so in that case he will be in detention. But it's important to

note that the evidence about what “detention” was included the idea that it was in the community and that’s as far as it went. I can take you to the relevant evidence.

WILLIAM YOUNG J:

Sure.

MR LILLICO:

Your Honour’s not going to find the point satisfactorily explained but this is as far as the evidence goes I’m afraid, because as I say it wasn’t the point of attack. So the point arises at, and this is in the evidence bundle in the Court of Appeal, page 213 of the main pagination, page 46 of the transcript, and the immigration officer was asked, and this is at line 15 of the transcript, “The Minister can make a community order. The Minister has an intervention power under which he can determine that a person can lead,” or I’ll say “live”, “live in a community in detention,” so presumably in Australia, “in Australia, so they’re living in the community but they’re under detention.” “That’s right.” “How does that work? Do they have to report every day?” “No, no. They would, it varies depending upon the characteristic of the person in community detention.” “They can’t live as they chose can they? They don’t have the full freedom of someone who is a resident?” “No.” So, that’s really as far as the evidence got because, as I say, it wasn’t really the issue before the District Court. So it seems that when we talk about detention we might be talking about an arrangement where the person is under restrictions in the community.

WILLIAM YOUNG J:

So is that subject to the discretion of the Minister?

MR LILLICO:

Yes, Sir, it is.

WILLIAM YOUNG J:

And absent that it’s detention, is it detention in the orthodox sense?

MR LILLICO:

There wasn't any evidence about that. The evidence was – well as I understood it, if the Minister, the Minister had another discretion which was to simply grant the person status even though they didn't get a protection visa, but the evidence emphasised in the District Court that they had non-refoulement obligations, so they would, even if they didn't grant –

WILLIAM YOUNG J:

Yes, I'm not really troubled about, for myself I'm not troubled about the prospect that he's going to be sent back to Iraq. I don't imagine the Australian Government would do that.

MR LILLICO:

No, this is the only –

WILLIAM YOUNG J:

What I'm more concerned about is that he winds up in a legal limbo where he can't go back to Iraq because he's a refugee from there, can't come back to New Zealand because the New Zealand Government won't let him, he's probably not going to be a great candidate for favourable treatment for immigration protection in Australia because of the fact that he was involved, on this hypothesis, in the ship catastrophe, so what's – and it's that sort of legal void that worries me. That hasn't – I mean it agree it doesn't seem to have been explored at all in the District Court. It is mentioned in the Court of Appeal judgment but perhaps slightly glossed over, saying well it might not be as bad as all that.

MR LILLICO:

Yes, well two points I suppose I should make in relation to that. There's another piece of evidence equally not conclusive which I should take you to firstly, and secondly, Mr Radhi has to make out oppression, the other side of the oppression equation which won't be lost on the Court is the imperative nature of extradition. So the main argument really for Australia would have to be that if we are dealing with a case, as we are here, with multiple variables

because Mr Radhi's position will be better, of course, if he's acquitted, or he's dealt with before the two year expiry date, but there's other variables involved in terms of what Australian Ministers, what Australian immigration officials will do, what New Zealand immigration officials will do, and on the oppression test we say that long-term outcome is unclear. The short-term or short to medium-term outcome is quite clear, because he can come back within two years, but as against that uncertainty of showing what might happen to Mr Radhi, we do know that we've got a close neighbour backing – we've backed the warrant, we've endorsed it, we have an obligation to Australia in terms of reciprocal arrangements.

WILLIAM YOUNG J:

Is it not possible for the Minister to give an undertaking that New Zealand will take him back?

MR LILLICO:

Well as Justice O'Regan pointed out, the black letter procedure allows the Minister of Justice to –

WILLIAM YOUNG J:

I know, I understand that, but are undertakings of that sort – I know this is our Minister being expected to give an undertaking, not the Australians – but is it not possible for that sort of undertaking to be given in the context of extradition litigation?

MR LILLICO:

I'm not sure about undertakings Sir but of course the Minister of Immigration has very broad ranging –

WILLIAM YOUNG J:

No, I know that, in a way that's the problem.

MR LILLICO:

So if you're asking whether – I mean if it goes to the Minister it will be dealt with at that executive level, and the Minister of Justice's colleague, sitting around the Cabinet table, has a very broad discretion. I don't know if they would, it would be in the nature of an undertaking but it certainly, these decisions can be made in consultation with Cabinet colleagues of course.

ELLEN FRANCE J:

In terms of the Minister, if you look at the Minister of Immigration, the Minister presumably would have power to alter the terms of his visa?

MR LILLICO:

My understanding in relation to that is that the Minister can make directions about people and visas, and I can't see why that –

ELLEN FRANCE J:

No.

MR LILLICO:

– wouldn't be but I must confess it's not an area of my expertise either but the Minister under section 71(5) of the Immigration Act 2009 seems to have very broad discretion in relation to people and visas and documents, so perhaps – although the one problem there might be that the Act, as my friend Mr Mansfield has said, it has this two plus one arrangement, and whether the Minister could vary something that is in the statute, that says two plus one I don't know, but the Minister could say to Mr Radhi, it's true, we're granting you residence with or without this travel restriction that he's on at the moment. But my point about that really would have to be that it would seem in the case law that section 48 is a gateway and just because the Minister can make concessions or grant things that would be advantageous to Mr Radhi, we still have to give full measure to the oppressive unjust wording which is the gatekeeper to those powers. If we don't, of course, then we tend to undermine what we like to call the fast-track procedure, although this extradition has been on foot since 2011.

WILLIAM YOUNG J:

I mean obviously any occasion where you say there are exceptional circumstances you are suggesting that anyone else in identically the same circumstances will be able to take advantage of it, but are there other cases where people with refugee status have been extradited?

MR LILLICO:

There has been, although that was under the Part 3 procedure, so there have been, there has been a refugee extradited to Switzerland, and so they were a refugee obviously in relation, not in relation to Switzerland, but in relation to a third country, and so they were sent back to stand trial for murder in Switzerland. But Part 3 is different of course because it has an automatic –

WILLIAM YOUNG J:

Yes, okay, this is beginning to dawn on me.

MR LILLICO:

Yes. I was going to bring Your Honour to the other piece of evidence, although again it's not conclusive, but the other piece of evidence that might be useful is that my friend mentioned Mr Daoed who is the co-offender, if you like, in this particular exploit. Now there are other co-offenders. There was another co-offender, Mr Quassey who was dealt with in Egypt, but Mr Daoed is more useful because he was extradited from Sweden to Australia and the evidence about Mr Daoed is that he had been paroled after five years, tried previously, and he was living in Sydney, that's to the knowledge of Mr Wheeler, who was the Australian Federal Police officer, so Mr Daoed is also a refugee, an UNHCR refugee, and that's at page 10 of the transcript in the evidence case. So we're not dealing with a situation where Mr Daoed had been shipped off to one of the detention centres that have become controversial. The question was, the other matter that was raised this morning, was the status of Mr Radhi's alleged co-offender Mr Daoed. Your affidavit refers to him having served a sentence and having been on parole. My question is, can you assist the Court with where he is at the moment. And the answer was, "I believe he may be residing in Sydney. I'm unable to

confirm that at this stage.” “Is he in a detention centre?” “I’m unaware of his residential status.” So he may be detained –

WILLIAM YOUNG J:

It doesn’t take it very far.

MR LILLICO:

Except that the Australians’ controversial treatment of people in this area has been outside of urban areas like Sydney.

WILLIAM YOUNG J:

Is there anything else Mr Lillico?

MR LILLICO:

No Sir, other than to really just emphasise that the oppressive and unjust gateway underpins the scheme of this part of the Act which is that the Minister isn’t usually referred to because it’s a fast-tracked procedure and that’s really the point that should be made.

WILLIAM YOUNG J:

Mr Mansfield, anything in reply?

MR MANSFIELD:

Just briefly if I could. I would be prepared to concede that it’s not oppressive until he’s completed his sentence, but if he remains in Australia detained after he’s completed his lawful sentence, it would then become oppressive and in breach of our international obligations and that’s the point I say is of concern, and it can be addressed, or should be able to be addressed, by the Minister and if the Minister can address it by undertakings with Australia, then the Minister can move to confirm that he should be removed to Australia for that trial.

My learned friend suggests that referring to the Minister for undertakings is advantageous to Mr Radhi. It need not be seen in that way. It’s simply

complying with our international obligations to children which are imperative in my submission. It can't be tenable that a man be permanently removed from his family forever and that potentially is an option, and there is no certainty regarding that. The most likely outcome is that he would be detained in one form or another in Australia. May it please the Court.

WILLIAM YOUNG J:

Thank you Mr Mansfield. We'll take time to consider our decision and deliver it reasonably shortly in writing.

COURT ADJOURNS: 10.31 AM