

Adesina v Nursing and Midwifery Council

Baines v Nursing and Midwifery Council

Also known as:

R. (on the application of Adesina) v Nursing and Midwifery Council

Court of Appeal (Civil Division)

09 July 2013

Case Analysis

Where Reported

[2013] EWCA Civ 818; [2013] 1 W.L.R. 3156; (2013) 133 B.M.L.R. 196; Times, July 22, 2013; Official Transcript;

Case Digest

Subject: Health **Other related subjects:** Civil procedure; Professions

Keywords: Appeals; Nursing and Midwifery Council; Registers; Removal; Right to fair trial; Time limits

Summary: The approach in *Pomiechowski v Poland* [2012] UKSC 20, [2012] 1 W.L.R. 1604, that an ostensibly non-extendable time limit should be read down so as to comply with the European Convention on Human Rights 1950 art.6, applied to the 28-day time limit to bring an appeal provided for in the Nursing and Midwifery Order (2001) 2002 art.29(10). The court's discretion to extend time could only arise in exceptional circumstances and where the appellant personally had done all he could to bring the appeal timeously.

Abstract: The appellants (B) appealed against a decision ([2012] EWHC 2615 (Admin)) that their appeals against decisions of the respondent Nursing and Midwifery Council to remove them from its register were brought out of time.

B were found to have brought their appeals outside the 28-day time limit provided for in the Nursing and Midwifery Order (2001) 2002 art.29(10). On the basis that the time limit was absolute, the court found that no extension of time was possible.

B argued that the absolute approach exemplified by cases such as *Mitchell v Nursing and Midwifery Council* [2009] EWHC 1045 (Admin) and *Reddy v General Medical Council* [2012] EWCA Civ 310, [2012] C.P. Rep. 27 had to be revisited in the light of the decision, relating to extradition, in *Pomiechowski v Poland* [2012] UKSC 20, [2012] 1 W.L.R. 1604: the Human Rights Act 1998 s.3 required that an ostensibly non-extendable time limit should be read down so as to comply with the European Convention on Human Rights 1950 art.6.

Held: Appeals dismissed.

(1) There were obvious differences between extradition appeals and appeals in disciplinary or regulatory cases: the consequences of removal from the register, while serious, were not as grave as the prospect of loss of liberty and removal to another country; the time limits in extradition were significantly shorter than the 28 days in the

instant case; the putative extradition appellant would have to cope with the shorter time limits in the more difficult position of custody; and there was widespread recognition of the problems created by short time limits in extradition, but there was no such evidence in relation to disciplinary appeals. Those differences, however, were not enough to leave the *Mitchell* and *Reddy* line of authority untouched by *Pomiechowski*, *Mitchell* overruled, *Reddy* not followed. Exclusion from a profession was still of great importance to an appellant. There was good reason for time limits with a high degree of strictness, but without some margin for discretion, circumstances could cause absolute time limits to impair the very essence of the right of appeal conferred by statute. The real difficulty was where to draw the line. Parliament's omission of any general discretion to extend time was no doubt deliberate. If art.6 of the Convention and s.3 of the Act required art.29(10) of the Order to be read down, that had to be to the minimum extent necessary to secure Convention compliance. That required the same approach as in *Pomiechowski*: a discretion could only arise in exceptional circumstances and where the appellant personally had done all he could to bring the appeal timeously, *Pomiechowski* applied (see paras 13-15 of judgment). (2) The scope for departure from the 28-day time limit was extremely narrow and did not extend to B's cases. Their circumstances were not exceptional: they had simply left it too late (paras 16-18).

Judge: Maurice Kay LJ; Patten LJ; Floyd LJ

Counsel: For the appellants: Matthew Pascall. For the respondent: Timothy Otty QC.

Solicitor: For the appellants: Lester Morrill inc Davies Gore Lomax. For the respondent: In-house solicitor.

Appellate History & Status

Queen's Bench Division (Administrative Court); 16 July 2012

Adesina v Nursing and Midwifery Council

[2012] EWHC 2615 (Admin)

Affirmed

Court of Appeal (Civil Division); 09 July 2013

Adesina v Nursing and Midwifery Council

[2013] EWCA Civ 818; [2013] 1 W.L.R. 3156; (2013) 133 B.M.L.R. 196; Times, July 22, 2013

Significant Cases Cited

Pomiechowski v Poland

[2012] UKSC 20; [2012] 1 W.L.R. 1604; [2012] 4 All E.R. 667; [2012] H.R.L.R. 22; Times, June 7, 2012; [2013] Crim. L.R. 147; (2012) 162 N.L.J. 749; SC; 23 May 2012

Reddy v General Medical Council

[2012] EWCA Civ 310; [2012] C.P. Rep. 27; CA (Civ Div); 14 March 2012

Mitchell v Nursing and Midwifery Council

[2009] EWHC 1045 (Admin); QBD (Admin); 06 May 2009

All Cases Cited

Pomiechowski v Poland

[2012] UKSC 20; [2012] 1 W.L.R. 1604; [2012] 4 All E.R. 667; [2012] H.R.L.R. 22; Times, June 7, 2012; [2013] Crim. L.R. 147; (2012) 162 N.L.J. 749; SC; 23 May 2012

Reddy v General Medical Council

[2012] EWCA Civ 310; [2012] C.P. Rep. 27; CA (Civ Div); 14 March 2012

Massan v Secretary of State for the Home Department

[2011] EWCA Civ 686; CA (Civ Div); 25 May 2011

Mitchell v Nursing and Midwifery Council

[2009] EWHC 1045 (Admin); QBD (Admin); 06 May 2009

Mucelli v Albania

[2009] UKHL 2; [2009] 1 W.L.R. 276; [2009] 3 All E.R. 1035; [2009] Extradition L.R. 122; Times, January 27, 2009; (2009) 153(4) S.J.L.B. 28; HL; 21 January 2009

Jurkowska v Hlmad Ltd

[2008] EWCA Civ 231; [2008] C.P. Rep. 27; [2008] I.C.R. 841; [2008] I.R.L.R. 430; CA (Civ Div); 19 March 2008

R. (on the application of Animal Defenders International) v Secretary of State for Culture, Media and Sport

[2008] UKHL 15; [2008] 1 A.C. 1312; [2008] 2 W.L.R. 781; [2008] 3 All E.R. 193; [2008] E.M.L.R. 8; [2008] H.R.L.R. 25; [2008] U.K.H.R.R. 477; 24 B.H.R.C. 217; Times, March 17, 2008; (2008) 152(12) S.J.L.B. 30; HL; 12 March 2008

Perez de Rada Cavanilles v Spain (28090/95)

(2000) 29 E.H.R.R. 109; [1998] H.R.C.D. 981; ECHR; 28 October 1998

Tolstoy Miloslavsky v United Kingdom (18139/91)

[1996] E.M.L.R. 152; (1995) 20 E.H.R.R. 442; Times, July 19, 1995; Independent, September 22, 1995; ECHR; 13 July 1995

United Arab Emirates v Abdelghafar

[1995] I.C.R. 65; [1995] I.R.L.R. 243; EAT; 29 July 1994

Key Cases Citing

Applied

Darfoor v General Dental Council

[2016] EWHC 2715 (Admin); QBD (Admin); 12 October 2016

Leeks v Health and Care Professions Council

[2016] EWHC 826 (Admin); QBD (Admin); 14 January 2016

Considered

Mishra v Colchester Magistrates' Court

[2017] EWHC 2869 (Admin); [2018] 1 W.L.R. 1351; [2018] 1 Cr. App. R. 24; (2018) 182 J.P. 89; [2018] L.L.R. 92; [2018] Crim. L.R. 245; DC; 14 November 2017

EI-Huseini v General Medical Council

[2016] EWHC 2326 (Admin); [2016] Med. L.R. 647; (2016) 152 B.M.L.R. 133; QBD (Admin); 23 September 2016

Burmis v Secretary of State for Education

[2015] EWHC 1018 (Admin); QBD (Admin); 12 March 2015

X (A Child) (Parental Order: Time Limit), Re

[2014] EWHC 3135 (Fam); [2015] Fam. 186; [2015] 2 W.L.R. 745; [2015] 1 F.L.R. 349; [2014] Fam. Law 1681; Fam Div (Birmingham); 03 October 2014

Adegbulugbe v Nursing and Midwifery Council

[2014] EWHC 405 (Admin); QBD (Admin); 10 February 2014

Followed

Stevenson v General Optical Council

[2015] EWHC 3099 (Admin); QBD (Admin); 30 September 2015

Daniels v Nursing and Midwifery Council

[2015] EWCA Civ 225; [2015] Med. L.R. 255; (2015) 144 B.M.L.R. 40; CA (Civ Div); 20 March 2015

Heron Bros Ltd v Central Bedfordshire Council

[2015] EWHC 604 (TCC); [2015] P.T.S.R. 1146; [2015] B.L.R. 362; 160 Con. L.R. 199; QBD (TCC); 20 March 2015

Shanker v General Medical Council

Unreported ; QBD (Admin); 13 January 2015

Pinto v Nursing and Midwifery Council

[2014] EWHC 403 (Admin); QBD (Admin); 04 February 2014

Parkin v Nursing and Midwifery Council

[2014] EWHC 519 (Admin); QBD (Admin); 30 January 2014

Adegbulugbe v Nursing and Midwifery Council

[2013] EWHC 3301 (Admin); (2014) 135 B.M.L.R. 171; QBD (Admin); 30 October 2013

All Cases Citing

Considered

Mishra v Colchester Magistrates' Court

[2017] EWHC 2869 (Admin); [2018] 1 W.L.R. 1351; [2018] 1 Cr. App. R. 24; (2018) 182 J.P. 89; [2018] L.L.R. 92; [2018] Crim. L.R. 245; DC; 14 November 2017

Mentioned by

AH v Secretary of State for Work and Pensions (Child Support Agency)

Unreported ; Fam Ct; 20 January 2017

Mentioned by

Yadly Marketing Co Ltd v Secretary of State for the Home Department

[2016] EWCA Civ 1143; [2017] 1 W.L.R. 1041; [2017] C.P. Rep. 12; [2017] Imm. A.R. 701; CA (Civ Div); 23 November 2016

Applied

Darfoor v General Dental Council

[2016] EWHC 2715 (Admin); QBD (Admin); 12 October 2016

Considered

EI-Huseini v General Medical Council

[2016] EWHC 2326 (Admin); [2016] Med. L.R. 647; (2016) 152 B.M.L.R. 133; QBD (Admin); 23 September 2016

Mentioned by

K v Revenue and Customs Commissioners

[2016] UKUT 331 (AAC); UT (AAC); 11 July 2016

Mentioned by

Hamilton v Glasgow Community and Safety Services

[2016] SAC (Civ) 3; 2016 S.C. (S.A.C.) 5; 2016 S.L.T. (Sh Ct) 367; 2016 G.W.D. 21-363; SAC; 01 June 2016

Mentioned by

Kabba v Nursing and Midwifery Council

[2016] EWHC 3677 (Admin); QBD (Admin); 01 February 2016

Applied

Leeks v Health and Care Professions Council

[2016] EWHC 826 (Admin); QBD (Admin); 14 January 2016

Followed

Stevenson v General Optical Council

[2015] EWHC 3099 (Admin); QBD (Admin); 30 September 2015

Mentioned by

Majekodunmi v City Facilities Management UK Ltd

[2016] I.C.R. D5; EAT; 25 September 2015

Mentioned by

A (Human Fertilisation and Embryology Act 2008: Assisted Reproduction: Parent), Re

[2015] EWHC 2602 (Fam); [2016] 1 W.L.R. 1325; [2016] 1 All E.R. 273; [2017] 1 F.L.R. 366; [2015] 3 F.C.R. 555; (2015) 146 B.M.L.R. 123; [2015] Fam. Law 1333; FAM; 11 September 2015

Mentioned by

Szegfu v Hungary

[2015] EWHC 1764 (Admin); [2016] 1 W.L.R. 322; DC; 24 June 2015

Mentioned by

National Bank of Greece (Cyprus) Ltd v Christofi

[2015] EWHC 986 (QB); [2015] 1 W.L.R. 5405; [2015] 2 All E.R. (Comm) 844; [2015] 1 C.L.C. 625; QBD; 14 April 2015

Mentioned by

D v ED (Parental Order: Time Limit)

[2015] EWHC 911 (Fam); [2016] 2 F.L.R. 530; [2017] 1 F.C.R. 77; [2015] Fam. Law 1052; FAM; 01 April 2015

Followed

Daniels v Nursing and Midwifery Council

[2015] EWCA Civ 225; [2015] Med. L.R. 255; (2015) 144 B.M.L.R. 40; CA (Civ Div); 20 March 2015

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Heron Bros Ltd v Central Bedfordshire Council

[2015] EWHC 604 (TCC); [2015] P.T.S.R. 1146; [2015] B.L.R. 362; 160 Con. L.R. 199; QBD (TCC); 20 March 2015

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Burmis v Secretary of State for Education

[2015] EWHC 1018 (Admin); QBD (Admin); 12 March 2015

Mentioned by

AB v CT (Parental Order: Consent of Surrogate Mother)

[2015] EWFC 12; [2016] 1 F.L.R. 41; [2015] Fam. Law 643; Fam Ct; 13 February 2015

Followed

Shanker v General Medical Council

Unreported ; QBD (Admin); 13 January 2015

Mentioned by

Shanker v General Medical Council

[2015] EWHC 2421 (Admin); QBD (Admin); 13 January 2015

Mentioned by

Agardi v Hungary

[2014] EWHC 3433 (Admin); [2016] 1 W.L.R. 3009; [2016] 1 All E.R. 745; [2015] A.C.D. 29; DC; 30 October 2014

Considered

X (A Child) (Parental Order: Time Limit), Re

[2014] EWHC 3135 (Fam); [2015] Fam. 186; [2015] 2 W.L.R. 745; [2015] 1 F.L.R. 349; [2014] Fam. Law 1681; Fam Div (Birmingham); 03 October 2014

Mentioned by

Daniels v Nursing and Midwifery Council

[2014] EWHC 3287 (Admin); QBD (Admin); 12 August 2014

Considered

Adegbulugbe v Nursing and Midwifery Council

[2014] EWHC 405 (Admin); QBD (Admin); 10 February 2014

Followed

Pinto v Nursing and Midwifery Council

[2014] EWHC 403 (Admin); QBD (Admin); 04 February 2014

Followed

Parkin v Nursing and Midwifery Council

[2014] EWHC 519 (Admin); QBD (Admin); 30 January 2014

Followed

Adegbulugbe v Nursing and Midwifery Council

[2013] EWHC 3301 (Admin); (2014) 135 B.M.L.R. 171; QBD (Admin); 30 October 2013

Significant Legislation Cited

ECHR art.6

Human Rights Act 1998 (c.42) s.3

Nursing and Midwifery Order (2001) 2002 (SI 2002/253) art.29(10)

Legislation Cited

ECHR

ECHR art.6

Employment Rights Act 1996 (c.18) s.111(2)

Extradition Act 2003 (c.41)

Human Rights Act 1998 (c.42)

Human Rights Act 1998 (c.42) s.3

Nursing and Midwifery Council (Fitness to Practise) (Amendment) Rules 2011 Order of Council 2012 (SI 2012/17) Sch.1

Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004 (SI 2004/1761)

Nursing and Midwifery Order (2001) 2002 (SI 2002/253) art.29(10)

Journal Articles

Right to a fair hearing - disciplinary proceedings

Appeals; Nursing and Midwifery Council; Right to fair trial; Time limits.

H.R.U. 2013, 129(Jul), 6-7

Books

Jackson & Powell on Professional Liability 8th Ed. Incorporating First Supplement

Chapter: Chapter 7 - Human Rights and Judicial Review in Professional Liability

Documents: (b) - Procedural Guarantees

Jackson & Powell on Professional Liability 8th Ed.

Chapter: Chapter 7 - Human Rights and Judicial Review in Professional Liability

Documents: (b) - Procedural Guarantees

Judicial Remedies in Public Law 5th Ed.

Chapter: Chapter 14 - Appeals and Statutory Applications

Documents: Section I. - Statutory Applications to Quash

White Book 2018

Chapter: Section A - Civil Procedure Rules 1998 and Practice Directions

Documents: Rule 52.12 - Appellant's notice

Zuckerman on Civil Procedure: Principles of Practice 3rd Ed.

Chapter: Chapter 24 - Appeal

Documents: Time Limits