

R (DN (Rwanda)) v SSHD [2020] UKSC 7

- 1 Background to the case and *Draga* – Stephen Knafler QC (Landmark)
- 2 What the Supreme Court decided – Yaaser Vanderman (Landmark)
- 3 Public law errors and invalidity – Galina Ward (Landmark)
- 4 Implications of *DN* and *Lumba* – Paul Nettleship (Sutovic & Hartigan)
- 5 Issue estoppel and *res iudicata* – Gordon Lee (Lamb Building)

R (DN (Rwanda)) v SSHD [2020] UKSC 7

What the Supreme Court decided

By Yaaser Vanderman

R (Lumba) v SSHD [2011] UKSC 12

Foreign national convicted of crime and imprisoned



Notice of decision to deport



Unpublished policy of blanket detention pending deportation



Detention (pending making of deportation order)

- Lord Dyson – error must “*bear on and be relevant to the decision to detain*” even if lawful decision could have been made: para 68.

Draga and DN (Rwanda)

Refugee convicted of criminal offence and imprisoned



Presumed to be “*particularly serious crime*” and “*constituted a danger to the community*” pursuant to Nationality, Immigration and Asylum Act 2002 (Specification of Particularly Serious Crimes) Order 2004



Notice of decision to deport



Making of deportation order



Detention

DN (Rwanda)

- **SSHD arguments:**
 - 1 Lord Dyson's approach not *ratio* of *Lumba*.
 - 2 In any event, *Lumba* says that the error must be in the decision to detain. Here, error emanated from decision several steps back and within the deportation process.
 - 3 Decisions to deport upheld in statutory appeals process by tribunals. Undermining legal certainty and finality in litigation to go against that: *Draga*.
 - 4 Deport decision = factual condition precedent: stat construction and *Ullah*.
 - 5 Second actor theory: practical considerations call for invalidity of earlier decision not to lead to invalidity of subsequent decision.

DN (Rwanda)



Lord Kerr



Lord Carnwath

DN (Rwanda)

- Appeal allowed - DN can pursue claim for false imprisonment:
 - *Lumba* applies with full force (paras 17-18 and 37).
 - Detention entirely dependent on – “uniquely linked to” – deport decisions (the “*foundation* of what followed”). So detention “*inevitably tainted by public law error*”. To divorce them would be “*artificial and unwarranted*” (paras 17-18, 20 and 37).
 - They assume Lord Dyson’s judgment is the ratio.
 - But any specific rule of law, statutory or otherwise, to displace *Lumba* in this circumstance?

DN (Rwanda)

- No. Right of appeal does not count (paras 19 and 38). Finality in litigation cannot extinguish clear legal right (paras 20 and 38).
- Second actor theory not applicable where same actor responsible for initial error (paras 40 and 42);
- *Draga* wrongly decided (paras 21 and 38-40)
- *Ullah* wrongly decided (paras 22-25 and 41)

DN (Rwanda)

- Res iudicata and issue estoppel?
 - Lord Kerr, Lord Wilson, Lady Black and Lord Kitchin conclude it would be “*unwise to express even a tentative view as to their possible relevance*” (para 28)
 - Lord Carnwath (paras 44-64!) – “*could provide a complete answer in similar cases in the future*” (para 29)

Thank you for listening

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