

**IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND**

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**IN THE MATTER OF APPLICATIONS BY HUGH JORDAN FOR  
JUDICIAL REVIEW**

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**CARSWELL LCJ**

The immediate issue which we have to consider is whether the appeal against the decision of Kerr J dismissing the appellant's applications for judicial review should be adjourned pending final determination of the proceedings in the English cases of *R (Middleton) v HM Coroner for the Western District of Somerset* and *R (Amin) v Secretary of State for the Home Department*. We received extended skeleton arguments on this issue from the appellant's counsel, supplemented by oral argument from counsel on each side presented to us yesterday, and reserved our decision until this morning in order to consider the arguments.

We were informed by counsel that the Secretary of State wished to seek permission to appeal to the House of Lords against the decision of the Court of Appeal in *Middleton* and that a draft petition had been prepared, but that the order of the court had not been finalised and the petition had not been presented by 16 May, the latest date of information. It was expected that the petition would be presented at an early date, if it had not already been done

by now, and that it was possible that a petition would be presented in the conjoined case of *Amin*. It appeared, however, that for the reasons set out in note 3 to the draft petition (a copy of which was furnished to us) it was uncertain whether the Secretary of State would seek permission to appeal to the House of Lords in that case. It was hoped that the House of Lords would give a decision on the application in *Middleton* by 31 July: if they refused permission, then the present appeal could go ahead early next term, but if they gave permission it appeared unlikely that a final decision would be received before the end of this year.

Mr Treacy QC on behalf of the appellant urged us to hear the appeal now, without awaiting the result of the application to the House of Lords. He submitted, first, that their decision in *Middleton* would not necessarily govern the present case and, secondly, that to grant an adjournment now would in essence prejudice the appellant's claim against the Lord Chancellor in the present case in respect of delay.

We have considered carefully the issues in *Middleton* and the reasons put forward in the draft petition. There are central issues which are common to *Middleton* and the present appeal. Mr Treacy pointed out that of the three reasons advanced by the Secretary of State in the prayer of the draft petition only the first is relevant to this appeal. Accordingly if the House of Lords were to decide the appeal on the second or third ground, without ruling on the first issue, the decision would not rule the present appeal and might give no guidance on it. It is very clear, however, that the first issue, whether the

requirements of Article 2 of the Convention make it necessary that an inquest jury should give a verdict on culpability in the case of a death caused by agents of the State, will be at the centre of the arguments advanced on behalf of the Secretary of State. While we would not attempt to anticipate the approach of the House of Lords to the case, it seems to us that there must be a strong probability that they will rule one way or the other on the first question, which is of considerable public importance. In these circumstances it would be most desirable that we should have their Lordships' ruling on the issue – assuming they grant permission to appeal -- before we attempt to decide it. We consider that the suggestion advanced by the appellant's counsel that we should hear the appeal, then the losing party could seek permission to appeal and to have the case conjoined with *Middleton*, would be extremely cumbersome and expensive and productive of very little saving in time, since we could arrange to hear this appeal very quickly after the House of Lords' decision was given.

We are very conscious of the very substantial length of time which has passed since the death of Pearse Jordan and of the desirability of concluding the inquest and of conducting the other inquests whose hearing is being held up pending the determination of the issue in question. As we stated at the last sitting, we are ready and willing to hear and determine the appeal and appreciate the desire of all parties to proceed as soon as is reasonably possible. At the same time, that factor has to be balanced against which those operate in favour of putting back the hearing. Moreover, it has to be borne in

mind that the loss of time involved in waiting until the final determination of *Middleton* would not in reality be very great. If the House of Lords refuses permission to appeal, the present appeal can go ahead without delay, and the loss of time is that which will elapse between our provisional listing date of 18 June and that hearing date. If their Lordships decide to grant permission, then the present issue could not in any event be resolved until their decision in *Middleton* is given, whether or not we proceed now to hear this appeal. In that event the loss of time would be only the few weeks between the receipt of the *Middleton* decision and our proceeding with this appeal. We consider, having looked at all the factors, that the most appropriate course is to adjourn this appeal now and to proceed as soon the final determination of *Middleton* is known.

We do not think that there is any substance in the appellant's second point. The justification of delay in any case depends on the material facts, in particular the reasons why the delay was incurred and what alternative course was open to incurring it. In adjourning this case now we are far from ruling that a delay of six months is justifiable in all circumstances; it simply depends on the circumstances of the particular case, which the court will have to consider in the light of the facts and arguments presented to us in due course.

We do not propose to rule now on the recusal application. We shall deal with that when the hearing date is known and it is possible to ascertain who will be available to sit on the appeal.

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