



HIGH COURT OF AUSTRALIA

Public Information Officer

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MZXOT v MINISTER FOR IMMIGRATION AND CITIZENSHIP

It was not necessary and incidental to the exercise of the High Court of Australia's original jurisdiction that, in the absence of a law made by Parliament conferring the relevant jurisdiction on the Federal Magistrates Court, the High Court had the power to decline to exercise its jurisdiction and remit a matter to the FMC, the High Court held today.

MZXOT, a Nigerian national, entered Australia in 2006 on a business (short stay) visa. He applied for a protection visa on the basis of persecution due to his religion. The Immigration Department refused the application in April 2006 and sent a letter to his last known address. MZXOT only learned of the decision in January 2007. In February 2007 he applied for judicial review of the decision in the FMC and was given a copy of the letter. The Minister filed an objection to the competency of the application and the proceeding was discontinued. MZXOT also applied to the Refugee Review Tribunal which determined it had no jurisdiction because the application was outside the 28-day time limit. He was deemed to have received the letter 10 days after the letter was posted and the 28-day period for lodging an application expired on 26 May 2006.

The *Migration Act* was amended in 2005 to impose short time limits upon applications to the Federal Magistrates Court, the Federal Court and the High Court. In 2007, the High Court held that the time limits on applications in the Court's original jurisdiction were invalid. MZXOT then invoked the original jurisdiction of the High Court conferred by section 75(v) of the Constitution to seek orders for certiorari to quash the department's decision and mandamus to direct the Minister to determine his visa application. He wanted the High Court, where he was not necessarily barred by time limits, to remit these proceedings for constitutional relief to the FMC where he would be eligible for legal aid. Last November High Court Justice Kenneth Hayne stated a case for the Full Court. This asked questions concerning the validity of provisions of the *Migration Act* and the *Judiciary Act* in so far as they impaired or frustrated the exercise of what MZXOT argued was an implied power in the High Court to remit his application to another court.

The Court unanimously held that remitting MZXOT's application for constitutional relief to the FMC was not possible under the legislation. Section 44 of the *Judiciary Act* would empower the Court to remit the application to the FMC, but section 476B of the *Migration Act* states that the Court must not remit migration matters unless the FMC had jurisdiction under section 476. Section 476 provides that the FMC has the same original jurisdiction under section 75(v) as the High Court, but it has no jurisdiction in relation to "primary decisions" about protection visas that had been reviewed by the RRT if applications were not made within the specified time. The department's decision was a "primary decision". The Court held that the power to invest the Court's original jurisdiction in another court was entirely a matter for Parliament and under section 77 of the Constitution Parliament can define the jurisdiction of any federal court other than the High Court. The FMC lacked authority to deal with the subject matter and accordingly the High Court lacked the authority to remit the matter to the FMC. Because the time limits in relation to the High Court's original jurisdiction have already been held to be invalid, only the High Court may hear cases such as MZXOT's. Four Justices held that the burden of exclusive determination of applications made outside the 2005 Act time limits did not sufficiently impair the discharge of the High Court's constitutional functions so as to call into question the validity of the changes made by that Act.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*