

HIGH COURT OF AUSTRALIA

GAUDRON J

IN THE MATTER OF AN APPLICATION BY
ADIL SAFWAN ZABALAWI FOR LEAVE
TO ISSUE A PROCEEDING

Re Zabalawi's Application
[2002] HCA 15
11 April 2002
S297/2001

ORDER

Application refused.

Notice: This copy of the Court's Reasons for Judgment is subject to formal revision prior to publication in the Commonwealth Law Reports.

1 GAUDRON J. Mr Zabalawi has filed a writ of summons in this Court seeking compensation from the Commonwealth of Australia for pain and suffering because of "unlawful Court Proceedings" and because of "inefficient and negligent handling of this matter by the Minister for Foreign affairs Department". On 13 December 2001, Callinan J directed the Registrar, pursuant to O 58 r 4(3) of the High Court Rules, not to issue the writ without the leave of a Justice of this Court. Mr Zabalawi now seeks that leave.

2 It appears from an affidavit filed and documents provided by Mr Zabalawi that his former wife, who resides in Poland, commenced proceedings in the District Court in Gdansk, Poland with respect to the maintenance of their daughter, who also resides in Poland. The initiating process was served on Mr Zabalawi in Australia pursuant to a Treaty entered into between the United Kingdom and Poland in 1931 and subsequently extended to Australia in 1933.

3 It seems that the rules of the District Court of Gdansk require a person against whom proceedings are brought to provide an address for service in Poland if that person wishes to be informed of further steps in the proceedings. According to the documents provided by Mr Zabalawi, he was unable to provide an address for service in Poland. On this account, he sought the assistance of the Department of Foreign Affairs and, later, his local Member of Parliament who, in due course, referred his concerns to the Attorney-General.

4 The Attorney-General subsequently informed Mr Zabalawi's local Member that the purpose of his former wife's proceedings was to enable her to obtain social security payments which would accrue as a debt against Mr Zabalawi and the non-payment of which would carry "criminal penalties". It seems that such a debt, if any there be, can be enforced against Mr Zabalawi only if he travels to Poland, for example, to visit his daughter.

5 In his affidavit, Mr Zabalawi states that he holds the Department of Foreign Affairs responsible for:

- "I Allowing a Foreign Court, through a Treaty between Australia and Poland ... to take a decision in a case belonging to the domain of Australian Courts, violating in this way my right for fair trial,
- II Imposing on me a Foreign Court case, in which I was not informed about the contents of the claim(s), and agreeing on proceedings to create a Court Order despite the fact that I did not read the claim(s) of the introduced case,
- III Agreeing with the Foreign side in the Treaty to practically deny my right for unobstructed access to a legal document in a case of family and financial nature, creating in this way an unknown to me

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Court Order, which established an unknown financial debt under my name overseas,

IV Agreeing with the Foreign side in the Treaty to add the word 'Criminal' to my family file because of the introduced case. This treatment to my dignity and the deep hurt I feel is beyond my ability to describe. The word 'Criminal' was introduced to my life with the knowledge and agreement of the Australian side in the Treaty.

V Agreeing on using a Treaty to introduce a case, which resulted in creating circumstances which prevent me from travelling to visit my daughter."

6 So far as can be ascertained from the writ and affidavit filed by Mr Zabalawi, the five matters above specified constitute the gist of the complaint which he seeks to agitate against the Commonwealth in this Court. However, his complaints misunderstand the effect of the Treaty pursuant to which the process of the Polish Court was served. So far as is presently relevant, the Treaty simply permits service of process in this country. The matters of which he complains, if they be true, are matters which flow from the laws of Poland. They are not matters which Australia has any power to alter or mitigate. Certainly, they are not matters which are agreed in the Treaty or, upon which, the agreement of the Australian government has any relevance.

7 The application for leave to issue process is refused.