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CO/3512/2017

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

THE ADMINISTRATIVE COURT

**[2018] EWHC 198 (Admin)**

Royal Courts of Justice

Tuesday, 30<sup>th</sup> January 2018

Before:

LORD JUSTICE IRWIN

and

MR JUSTICE MALES

BETWEEN :

EMMANUEL SNOWDEN

Appellant

- and -

REPUBLIC OF GHANA

Respondent

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**JUDGMENT**

## **APPEARANCES**

MR RUPERT RUSSELL (instructed by Noble Solicitors) appeared on behalf of the Appellant.

MS ROSEMARY DAVIDSON (instructed by the Crown Prosecution Service) appeared on behalf of the Respondent.

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MR JUSTICE MALES:

The Issue

- 1 This is an appeal pursuant to s.103 of the Extradition Act 2003 from the decision of the Senior District Judge dated 26<sup>th</sup> May 2017 holding that there was no bar to the extradition of the appellant to Ghana. The sole ground of appeal is that assurances received from the authorities in Ghana as to the prison in which the appellant would be held are insufficient such that there remains a real risk that if extradited he would be held in conditions which would breach his rights under Article 3 of the European Convention on Human Rights.

Background

- 2 The appellant was originally known as Howard Johnson but is now called Emmanuel Snowden. His extradition is sought to face trial for offences of fraud and theft. It is alleged that he misappropriated a total of £26,500.
- 3 The first extradition request was issued on 29<sup>th</sup> March 2012. In a judgment dated 23<sup>rd</sup> December 2013 the Senior District Judge found that the formal requirements of the request were met; the request contained evidence amounting to a prima facie case; the request was not an abuse of process; and the request was not barred by reason of the requested person's medical condition, diabetes, or by Article 8 of the ECHR. However, the appellant was discharged because the judge was not satisfied that if returned he would be held at Ankaful Prison and she found, after hearing evidence, that detention at any other prison in Ghana would breach the appellant's rights under Article 3. She made it clear to the appellant that the Ghanaian authorities might well renew the request.
- 4 A second extradition request was issued on 14<sup>th</sup> January 2016. The appellant was arrested on 2<sup>nd</sup> November 2016 and a hearing took place before the Senior District Judge on 21<sup>st</sup> April 2017. The appellant challenged his extradition on two grounds, namely that the assurances now provided by the Government of Ghana were insufficient and the passage of time. The judge rejected the challenge based on the passage of time and that point has not been pursued on appeal. She accepted the assurances given and found that the appellant's extradition would be compatible with his rights under Article 3.

Legal framework.

- 5 The applicable legal principles are not in dispute.
- 6 A requested person will not be extradited if he can show strong grounds for believing that if returned he faces a real risk of being subject to torture or inhumane or degrading treatment: *R (Ullah) v Special Adjudicator* [2004] UKHL 26, [2004] 2 AC 2003 at [24]. Prison conditions in the requesting state may constitute such treatment depending on such matters as overcrowding and sanitation. It is unnecessary to say more about this because it is found as a fact, and is not challenged on appeal, that if the appellant is held in Ankaful Prison, the conditions, although harsh, would not reach the high threshold (or "minimum level of severity") required to give rise to a real risk of inhumane or degrading treatment within the meaning of Article 3, but that conditions in other prisons in Ghana do give rise to such a risk.
- 7 In these circumstances the Ghanaian authorities have provided assurances that if returned the appellant will be held in Ankaful prison. As the judge rightly said, the sufficiency of the assurances is the critical issue in the case.

8 The law relating to such assurances was considered in *MT (Algeria) v Secretary of State for the Home Department* [2009] UKHL 10, [2010] 2 AC 110, where the Supreme Court approved four conditions identified by Mitting J, sometimes called the *Othman* criteria, which had to be satisfied if the assurances were to carry sufficient credibility:

"i) The terms of the assurances had to be such that, if they were fulfilled, the person returned would not be subjected to treatment contrary to Article 3;

ii) The assurances had to be given in good faith;

iii) There had to be a sound objective basis for believing that the assurances would be fulfilled;

iv) Fulfilment of the assurances had to be capable of being verified."

#### The assurances

9 During the first set of extradition proceedings the Attorney General's office of Ghana provided an assurance dated 18<sup>th</sup> June 2013 setting out in detail the conditions at Ankaful Prison. In those proceedings this assurance was found to be insufficient because it did not amount to a "formal written assurance that Mr Johnson will be held at Ankaful".

10 During the second set of extradition proceedings with which we are now concerned, further assurances and diplomatic correspondence were issued as follows.

11 First, on 26<sup>th</sup> January 2017 there was a letter from Mr Emmanuel Adzator, the Director General of Prisons in Ghana. That letter was addressed to the Attorney General and Minister of Justice at the Attorney General's Department and was headed:

"RE: REQUEST FOR THE EXTRADITION OF HAROLD DAVIES JOHNSON TO THE COMPETENT AUTHORITY OF THE UNITED KINGDOM. THE GHANA PRISON SERVICE'S COMMITMENT"

12 The text of the letter read:

"1. Ghana Prisons Services wishes to acknowledge receipt of your letter dated 20<sup>th</sup> January, 2017 on the above-subject and its content duly noted.

2. The Ghana Prisons has in its custody nationals of countries whose extradition protocols have been ratified including the United Kingdom.

3. Given the circumstances of this case, the Ghana Prisons Service wishes to express its preparedness to accommodate Harold Davies Johnson at the Ankaful Maximum Security Prison which is a new purpose built facility designed to hold high risk prisoners as requested."

13 That was followed by a letter dated 1<sup>st</sup> February 2017 from the Attorney General's Department in Ghana, headed:

"COMMITMENT FROM THE PRISONS SERVICE OF GHANA. REQUEST FOR THE EXTRADITION OF HOWARD DAVIES JOHNSON TO THE COMPETENT AUTHORITY OF THE UNITED KINGDOM."

That letter explained that the Director General of the Prisons Service has the capacity to determine where a prisoner should be kept. It encloses an original copy of the Ghana

government's assurance letter from the Ghana Prison Service, signed by the Director General of Prisons in support of the request for assurances. It attached also a photocopy of the Ghana Prisons Service Act 1972.

- 14 On 14<sup>th</sup> February 2017 the Director General of Prisons wrote further, this letter being addressed not only to the Attorney General and Minister of Justice at the Attorney General's Department but also to the Minister of the Interior in Ghana. It was a response to a number of issues which had been raised and began by giving:

"(i) Details of the cell accommodation in which the requested person will be detained."

- 15 It is accepted that the information then provided was information about Ankaful Prison, that being referred to therefore as the accommodation in which the appellant "will be detained" if returned.

- 16 The letter goes on in response to a request for further relevant information and questions expressly asked by reference to the *Othman* criteria, as follows:

"2. The Ghana Prisons Service as the Institution responsible for the safe custody and welfare of inmates can only guarantee its commitment to the extent allowable under its governing laws.

The responses above give an overview of the general conditions in the prisons, but these must be considered in the context of the general public safety and the legal regime of the agency's operations.

The Ghana Prisons Service being one of the agencies under the Ministry of the Interior is not in a position to bind the Government of Ghana, but can only assure requesting agency of its preparedness to deliver its services without compromise to the safety of the general public and the laws relating to the Operations of the Service."

- 17 These assurances were transmitted to the United Kingdom central authority under cover of a letter dated 23<sup>rd</sup> February 2017 from the Attorney General's office. That letter was headed:

"COMMITMENT FROM THE PRISONS SERVICE OF GHANA. REQUEST FOR THE EXTRADITION OF HAROLD DAVIES JOHNSON TO THE COMPETENT AUTHORITY OF THE UNITED KINGDOM."

- 18 Finally, there was a letter dated 18<sup>th</sup> April 2017, also from the Attorney General's Department. This referred to the case and to "the assurances that the Ministry of Justice and Attorney General's Department has provided in respect of the extradition of Harold Davies AKA Snowden."

- 19 It follows that the Attorney General's office regarded the assurances given so far as having been provided by the Ministry of Justice and Attorney General's Department even though the letters which it had sent were from the Ghana Prisons Service.

- 20 The letter goes on to refer to concerns of the judge in this country regarding the assurances given so far that the fugitive would be detained at Ankaful when he is extradited. It provided further clarifications as follows:

"The Ghana Prisons Service, as the institution responsible for the safe custody and welfare of inmates, can only guarantee its commitment to the extent allowable under its governing laws in the context of the general public safety and the legal regime of the agency's operations. What this means is that there may be circumstances in which Mr Snowden might not be held at Ankaful."

21 The letter goes on to refer to conditions of the Prisons Service Act 1972, including s.32 which provides that a person committed to prison in accordance with law may be lawfully confined in any prison and shall be committed to such prison as the Commissioner may direct.

22 After referring to further provisions of the 1972 Act, the letter concludes:

"Thus, subject to the above and the letter dated 4<sup>th</sup> February 2017 from the Prisons Service, I can confirm that Mr Snowden will be held at Ankaful Prison during any period on remand and during the currency of any sentence imposed by the court."

### The appellant's case

23 Mr Rupert Russell submits, as he did before the Senior District Judge, that these assurances are insufficient, failing to satisfy the first condition identified by Mitting J. He submits that they are equivocal and conditional because they indicate a number of circumstances in which the appellant may be detained other than at Ankaful. He makes three points in particular, saying (1) that the assurance is from the Prison Services and not the Ghanaian government; (2) that the assurances do not bind the Government; and (3) that they are in any event subject to the Ghanaian legislation and the discretion of the Commissioner. He says that the combined effect of these letters is that the Commissioner retains an absolute discretion to commit the appellant to any prison he may direct so that there could be a transfer from Ankaful Prison without breach of any assurance. He focuses in particular on the words, "subject to the above", in the final paragraph of the letter dated 18<sup>th</sup> April 2017 and submits that applying the test referred to in the case of *Saadi v Italy* [2009] 40 EHRR 30 at [130], the foreseeable consequence of the assurances is that the appellant will be moved from Ankaful, or at any rate that there is a real risk to that effect.

### Analysis and conclusion

24 I would reject these submissions for the same reasons as given by the Senior District Judge. The question is whether, in the light of the assurances received, there is a real risk that the appellant would be detained elsewhere than at Ankaful. That question must be considered on the basis that, as the judge found and as is expressly accepted on appeal, the assurances were given by the Ghanaian authorities in good faith. The fact that in some circumstances there may be a need for detention elsewhere does not amount to a real risk if those circumstances are remote. As Ms Rosemary Davidson for the respondent submitted, the assurances given must be read in their context. That context includes the fact that Ghana is a country with a history of respect for democracy, human rights and the rule of law (see *Richards v Government of Ghana* [2013] EWHC 1254 (Admin) at [49]). It includes also the fact that, as was obvious, this court was seeking an assurance that the appellant, if extradited, will be held in Ankaful and the assurances were given in response to that request.

25 It is obvious that the Ghanaian Prisons Service is subject to the laws which apply to it and can only give a guarantee in accordance with those laws; that it must have as a first priority the safety of the Ghanaian public; and that no country could guarantee that in all circumstances an individual will be held only in a particular prison. There might, for example, be an outbreak of disease which meant that prisoners had to be transferred temporarily or a fire which necessitated a more permanent transfer. The judge regarded the fact that the assurances given

by the Ghanaian authorities did not promise that the appellant would be held at Ankaful in all circumstances but were expressed cautiously, carefully and with an eye to reality and what might happen in the future as confirming the good faith with which they were given. I agree. The alternative would be to read the assurances as somewhat misleading, giving the impression that the appellant would be held at Ankaful when in fact all options were being kept open and there was an unfettered discretion to move him elsewhere. That is not how I would read the assurances which I have set out. On the contrary, it seems to me that they were carefully expressed, explaining the constitutional position in Ghana.

- 26 The judge concluded, reading the letters described above together, as they must be read, that both the Attorney General and the Director of Prisons had expressed the intention that the appellant would be held at Ankaful subject only to general considerations of public safety and that if the assurances given were fulfilled there was only a minimal chance of the appellant being subjected to treatment contrary to Article 3. That is in my judgment a fair reading of the assurances provided. Moreover, it is clear that the assurances were given not only by the Prisons Service but also by or on behalf of the Government of Ghana through the Attorney General's office. Clearly, that is how the Attorney General's office which gave the assurances understood them.
- 27 There was no challenge in the grounds of appeal concerning the third and fourth conditions identified by Mitting J, although Mr Russell suggested in argument that there was no sound objective basis for believing that the assurances would be fulfilled. The judge dealt with these matters. She considered that there was a sound objective basis for believing that the assurances would be fulfilled, by which she clearly meant that the appellant would in fact be held at Ankaful, because of the senior nature of those who have provided them and Ghana's history of respect for democracy, human rights and the rule of law to which I have referred. She considered that fulfilment of the assurances was capable of being verified by the appellant's own lawyer in Ghana and through access to the appellant by the British High Commission, so that any breach of the assurances, by which she clearly meant transfer of the appellant from Ankaful other than in the kind of limited circumstances to which I have referred, would be discovered easily and would affect adversely any future extradition requests and that the Ghanaian authorities would understand this.
- 28 In my judgment this reasoning, with which I agree, not only demonstrates that the third and fourth conditions are fulfilled but also supports the judge's conclusion in relation to the first condition. It underlines the implausibility of reading the assurances as intended to keep all options open.
- 29 Finally, there was a point in the grounds of appeal that the assurances recognise that owing to the distance between Ankaful and the court in Accra, it may be necessary for the appellant to be detained overnight in a police cell on the night before any court appearances and to be so detained during his trial. However, in his submissions this morning Mr Russell abandoned any point based on this factor. It need not therefore be further considered.
- 30 For these reasons I would accept the assurances now given and dismiss the appeal.

LORD JUSTICE IRWIN:

- 1 I agree.
- 2 The Ghanaian authorities have an established record of respect for law and for human rights in the face of limited resources. This is evidenced, for example, by the introduction to the follow-up report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his follow-up visit to the Republic of Ghana of 25<sup>th</sup> April 2015,

where in paras.5 and 7 of the introduction the Special Rapporteur emphasises (*sic*) the Ghanaian Government for its willingness to engage in discussions at a high level and in the spirit of co-operation and constructive dialogue, and emphasises the authority's goodwill in providing unfettered access to places of detention in line with the relevant terms of reference. He also explicitly welcomes the determination and commitment demonstrated by the Ghanaian authorities to reform of the criminal justice system with a sense of urgency, including in relation to prisoner conditions. The assurances here must be seen in that context. Context is of great importance when considering assurances of this kind and when considering the four criteria formulated by Mitting J in *BB v SSHD*, SC/39/2005 (SIAC), otherwise known as the *Othman* criteria.

- 3 Those criteria have of course been approved on a number of occasions by the Court of Appeal. When a court is addressing the criteria and engaged in the evaluative exercise required as to the real risk of a future breach of Article 3, context must at all times be borne fully in mind. Here, I have no doubt that the decision of the Chief Magistrate was correct in her evaluative judgment, bearing fully in mind, as I am sure she did, the context as well as the correct approach in law.
- 4 I too would dismiss the appeal.

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This transcript has been approved by the Judge.