

AB v HM Assistant Coroner for Inner South London

CO/663/2019

1. Ella Kissi-Debrah died on 15th February 2013. She was 9 years old. She died from a severe asthma attack.
2. Her death was reported to the coroner and in due course Mr Philip Barlow, an Assistant Coroner in the Inner South London Coroner area conducted an inquest into the death. The Inquest focused on the medical cause of Ella's death and the medical care provided in the short time between the asthma attack and death. The Inquest concluded that Ella suffered an asthma attack followed by a seizure and died after unsuccessful resuscitation.
3. The applicant, AB, a child sibling of Ella applies, under the authority of a fiat granted by Her Majesty's Attorney General on 8 January 2019, for an order pursuant to s.13 of the Coroner's Act 1988 quashing the inquest held on 26 September 2014 and directing a fresh investigation pursuant to part 1 of the Coroners and Justice Act 2009.
4. Section 13 of the 1988 Act gives this court the power to quash a finding made at an inquest and direct a further investigation into a death if the court is satisfied "*that (whether by reason of fraud, rejection or evidence, irregularity of proceedings, insufficiency of inquiry, the discovery of new facts or evidence or otherwise) it is necessary or desirable in the interests of justice that an investigation (or as the case may be, another investigation) should be held.*"
5. In this case the applicant submits that new evidence has come to light since the inquest relating to the extreme air pollution in the area where Ella lived and the contribution of this to Ella's severe asthma and ultimately her death. Reliance is placed on an expert report by Professor Holgate, a professor of immunopharmacology and consultant respiratory physician, which concludes that it is likely that unlawful levels of air pollution contributed to the cause and severity of Ella's fatal asthma attack, and that there is a real prospect that without unlawful levels of air pollution, Ella would not have died. This report has led to further evidence being obtained which, it is submitted, indicates that there was an arguable failure by the state to reduce the air pollution which was connected to Ella's death.

6. No criticism is made of the Defendant coroner or of the original investigation and Inquest. This is clearly correct. The Defendant coroner was supplied with the Application for the Attorney-General's Fiat and the expert report of Professor Holgate and accepted that there was new evidence relevant to the question of how Ella came by her death and in those circumstances gave his support to this application.
7. The applicant submits that there is a high level of public and media interest in the risks posed by air pollution and the role of this may have played in Ella's death.
8. In the application reference is made to *R (Client Earth) v Secretary of State for the Environment, Food and Rural Affairs* [2013] UKSC 25; 3 CMLR 29, in which the Supreme Court explained that the statutory limit values for Nitrogen Dioxide and other harmful particulates set out in the Air Quality (Standards) Regulations 2010 (which transposes into domestic law European Directive 2008/50/EC) were imposed specifically to prevent deaths, and that the government was in breach of its obligations to comply with Article 13 of the Directive. The Administrative Court has since reiterated that the government must produce action plans which address the breach and reduce exposure as quickly as possible (*R (Client Earth) v Secretary of State for Food, Environment and Rural Affairs (No.3)* [2018] EWHC 315 (Admin)).
9. It is submitted on behalf of the applicant that this new material demonstrates there was an arguable failure by the state to comply with the substantive duties within Article 2 ECHR, which requires a thorough investigation. As the Defendant coroner identified in his letter in support of this application he noted the applicant's stance as to Art 2, but stated that as he is yet to hear argument from all Interested Persons on this point, he expressed no view himself. The applicability of Art 2 is clearly a matter for the Defendant coroner to resolve as part of the fresh investigation and Inquest process. It is not an implication of this ruling that Article 2 is engaged, or that there has been any violation of Article 2 rights.
9. In our judgment, the discovery of new evidence makes it necessary in the interests of justice that a fresh inquest be held. We therefore make an order in the terms which have helpfully been agreed between the parties as follows:

(1) The conclusion of the inquest of 26 February 2014 relating to the death of Ella Kissi-Debrah be quashed.

(2) A fresh investigation shall be held into by the Defendant into the death of Ella Kissi-Debrah.

(3) There is no order for costs.