



EUROPEAN COURT OF HUMAN RIGHTS  
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

DECISION

Application no. 8276/07  
Ali Muhamad MUSA against the United Kingdom  
and 175 other applications  
(see list appended)

The European Court of Human Rights (Fourth Section), sitting on  
26 June 2012 as a Chamber composed of:

Lech Garlicki, *President*,  
David Thór Björgvinsson,  
Nicolas Bratza,  
Päivi Hirvelä,  
George Nicolaou,  
Ledi Bianku,  
Nebojša Vučinić, *judges*,

and Lawrence Early, *Section Registrar*,

Having regard to the above applications,

Having regard to the decisions to apply Rule 39 in these cases,

Having deliberated, decides as follows:

THE FACTS

1. A list of the applicants is set out in the appendix.

**A. The circumstances of the case**

The facts of the case, as submitted by the applicants, may be summarised  
as follows.

Each of the applicants has been served with removal directions to Mogadishu. Following an application to the Court, interim measures under Rule 39 of the Rules of Court were granted to prevent their removal.

On 28 June 2011 the Court gave its judgment in *Sufi and Elmi v. the United Kingdom*, nos. 8319/07 and 11449/07, 28 June 2011, in which it gave detailed guidance on the compatibility of the removal of Somali nationals to Mogadishu with the respondent State's obligations under Articles 2 and 3 of the Convention.

On 10 February 2012 the Government wrote to the Court setting out the following proposals:

“Cases pending before the Court

The Government consider that where an application challenging removal to Somalia (but not Somaliland or Puntland) is pending before the Court it would be appropriate to consider whether the reasoning of the Court in the **Sufi** and **Elmi** judgment, together with a more recent country guidance case in the Immigration and Asylum Tribunal (*AMM & Others*) (Conflict; Humanitarian Crisis; Returnees; FGM) Somalia CG[2011] UKUT 445 (IAC) (28 November 2011)) have any impact on the decision to remove that individual. In light of the significant numbers of such cases pending before the Court, the Government propose that the following procedure be put in place to accomplish this.

The Court would inform the applicants contesting removal to Somalia and in respect of whom the Court has previously applied Rule 39 measures, that the following procedure would apply to their case. The Court would lift the Rule 39 measure in each such case in order to allow the procedure to be followed; and would inform the applicant that any new application for Rule 39 would not normally be considered until such time as the procedure and any consequent judicial remedies, including application for judicial review, had been exhausted;

The Court would notify the Government of those applicants to whom it had written in these terms;

Upon receipt of such notification, UKBA would write to the applicant or his or her representative, inviting them to submit further representations in their case;

UKBA would assess each such case in light of any representations submitted, applying new guidance that takes account both of the **Sufi** and **Elmi** judgments and the *AMM* decision of the domestic courts;

If UKBA conclude that in light of the new guidance and any representations made, removal should not be ordered, appropriate leave to remain in the United Kingdom will be granted; if in light of the new guidance removal to Somalia is appropriate, the application will be refused and new removal directions may be set;

In the event of a decision to refuse an application, the applicant will have the following remedies. If the representations submitted are considered to amount to a fresh claim, any decision to refuse the application will, in most cases, attract an in-country right of appeal to the AIT. If the representations are considered to amount to further submissions, any decision to reject those submissions would not attract a right

of appeal. It would, however, be open to the applicant to apply to the High Court to have the decision of the Secretary of State for the Home Department judicially reviewed. An application for judicial review would normally suspend removal; and the High Court would consider any review on the basis of the current state of the law including the Court's judgments in **Sufi** and **Elmi** and the *AMM* decision. There is also a further option to apply to the High Court for any injunction to prevent removal.

The Government's assumption is that, in light of the judgment in **Sufi** and **Elmi** and the *AMM* judgment, Rule 39 measures will be lifted in respect of those applications currently pending before the Court that challenge removal to Somalia; and these applications will be declared inadmissible or otherwise disposed of by the Court.

The Government are confident these arrangements would ensure that the appropriate domestic authorities have an opportunity to reconsider the cases of those whose claims currently pending before the Court might be affected by the reasoning set out in the Court's judgment and would provide such applicants with appropriate judicial remedies in the domestic courts.

#### Cases not currently pending before the Court

The Government also propose that, before setting removal directions for removal to Somalia (but not Somaliland or Puntland) in any future case (i.e. including cases not currently pending before the Court), the case will be assessed against the new guidance, taking account of both **Sufi** and **Elmi** and *AMM*. It will, of course, still be open to the individual applicants to submit further representations on the basis of **Sufi** and **Elmi** and *AMM* if they wish to do so. Remedies set out in paragraph (f) above would apply to any individual whose applications were rejected applying the new guidance, i.e. they would have the opportunity either to appeal against the decision to the AIT or to apply for judicial review in the High Court.

The Court can therefore be confident that in any case in which removal directions for Somalia have been set after 22 February 2012, UKBA will have considered the case against the new guidance. Furthermore the Court can also be confident that a judicial remedy would be available to any such applicant. In these circumstances, the Government will respectfully request the Court to require any new applicants to make fresh representations to UKBA if they have not already done so and to exhaust the possibility of a domestic appeal and/or judicial review before the Court considers granting a request for Rule 39 to be applied in their cases so as to halt removal to Somalia."

In a decision dated 10 April 2012, the Court accepted the Government's proposal and notified the applicants accordingly.

## COMPLAINTS

The applicants all complained under Articles 2 and/or 3 of the Convention about their removal to Mogadishu.

## THE LAW

Article 37 of the Convention provides:

“1. The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that

(a) the applicant does not intend to pursue his application; or

(b) the matter has been resolved; or

(c) for any other reason established by the Court, it is no longer justified to continue the examination of the application.

However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires.

2. The Court may decide to restore an application to its list of cases if it considers that the circumstances justify such a course.”

In order to determine whether an application should be struck out of the list pursuant to Article 37 § 1 (c) the Court must consider whether the circumstances lead it to conclude that “for any other reason....it is no longer justified to continue the examination of [it]”. The Court recalls that it enjoys a wide discretion in identifying grounds capable of being relied upon in a strike out application on this basis; however, it also recalls that such grounds must reside in the particular circumstances of each case (*Association SOS Attentats and de Boery v. France* [GC], (dec.), no. 76642/01, § 37, ECHR 2006 ...; *M.H. and A.S. v. the United Kingdom* (dec.), nos. 38267/07 and 14293/07, 16 December 2008).

In the Court’s view, the particular circumstances of these applications are such that it is no longer justified to continue their examination.

The applicants will now benefit from the undertakings of the Government set out in the letter of 10 February 2012. The practical effect of these undertakings is that they will not be returned to Mogadishu without a full examination of their claims by the Government of the United Kingdom and, moreover, they will have the opportunity to lodge new applications with the Court (including the possibility of requesting an interim measure under Rule 39 of the Rules of Court) should that need arise.

In accordance with Article 37 § 1 *in fine*, the Court finds no special circumstances regarding respect for human rights as defined in the Convention and its Protocols which require the continued examination of the cases. Accordingly, it is appropriate to lift the interim measures indicated under Rule 39 of the Rules of Court and strike the cases out of the list.

For these reasons, the Court unanimously

*Decides* to join the applications; and

*Decides* to strike the applications out of its list of cases.

Lawrence Early  
Registrar

Lech Garlicki  
President

**APPENDIX**

Application No.	Case Title	Intro. Date
8276/07	MUSA v. the United Kingdom	19/02/2007
12835/07	NOOR v. the United Kingdom	22/03/2007
26814/07	AHMED v. the United Kingdom	18/06/2007
31363/07	OSMAN v. the United Kingdom	20/07/2007
31669/07	ODOWA v. the United Kingdom	25/07/2007
41294/07	YASSIN v. the United Kingdom	24/07/2007
42673/07	BASHIR v. the United Kingdom	01/10/2007
44132/07	MATAN v. the United Kingdom	09/10/2007
49978/07	IBRAHIM v. the United Kingdom	19/11/2007
50373/07	SAID v. the United Kingdom	20/11/2007
51121/07	WARSAME v. the United Kingdom	22/11/2007
52672/07	MAREY v. the United Kingdom	30/11/2007
52876/07	MUSSA v. the United Kingdom	30/11/2007
52894/07	ABUKAR v. the United Kingdom	30/11/2007
52897/07	ABDI v. the United Kingdom	30/11/2007
52991/07	MAINA v. the United Kingdom	03/12/2007
53417/07	HASSAN v. the United Kingdom	04/12/2007
53557/07	ABDULLAHI v. the United Kingdom	06/12/2007
53769/07	FARAH v. the United Kingdom	07/12/2007
54029/07	ABDULLAHI v. the United Kingdom	10/12/2007
56585/07	HASSAN v. the United Kingdom	21/12/2007
32/08	SHIDANE v. the United Kingdom	23/12/2007
41/08	ABUKAR v. the United Kingdom	24/12/2007
633/08	ISMAIL v. the United Kingdom	07/01/2008
702/08	AHMED v. the United Kingdom	07/01/2008
1723/08	SHARIF v. the United Kingdom	10/01/2008
1812/08	MOHAMED v. the United Kingdom	27/12/2007
1839/08	ALI v. the United Kingdom	21/12/2007
2451/08	SABRIYE v. the United Kingdom	05/12/2007
3160/08	OMAR v. the United Kingdom	18/01/2008
3162/08	HASSAN v. the United Kingdom	18/01/2008
4633/08	AHMED v. the United Kingdom	20/01/2008
5874/08	IBRAHIM v. the United Kingdom	02/02/2008

6209/08	NOOR v. the United Kingdom	11/01/2008
7209/08	OMAR v. the United Kingdom	31/01/2008
7293/08	OMAR v. the United Kingdom	11/02/2008
7790/08	AHMED v. the United Kingdom	14/02/2008
8194/08	BILE v. the United Kingdom	18/02/2008
8210/08	ABDIRASHID v. the United Kingdom	28/01/2008
8272/08	SHARIF v. the United Kingdom	18/02/2008
8279/08	HIRAB (aka HARIB) v. the United Kingdom	18/02/2008
8563/08	SHARIF v. the United Kingdom	19/02/2008
9255/08	ILQAYTE v. the United Kingdom	22/02/2008
10196/08	HURSHE v. the United Kingdom	06/02/2008
10722/08	YASIN v. the United Kingdom	04/03/2008
10924/08	YOUSUF v. the United Kingdom	05/03/2008
11735/08	AHMED v. the United Kingdom	10/03/2008
12151/08	FARAH v. the United Kingdom	11/03/2008
14159/08	DUALEH v. the United Kingdom	25/03/2008
16517/08	DALAB v. the United Kingdom	04/04/2008
16681/08	ALLOUE v. the United Kingdom	07/04/2008
16700/08	SIDOW v. the United Kingdom	07/04/2008
16737/08	MOHAMED v. the United Kingdom	07/04/2008
16813/08	MOHAMED v. the United Kingdom	07/04/2008
16816/08	ABDALLA v. the United Kingdom	07/04/2008
18474/08	GUTALE v. the United Kingdom	15/04/2008
19474/08	ALI v. the United Kingdom	19/04/2008
19497/08	SAEED v. the United Kingdom	19/04/2008
19554/08	HUSSEIN v. the United Kingdom	21/04/2008
20782/08	JIBRIL v. the United Kingdom	28/04/2008
21894/08	BARROW v. the United Kingdom	08/05/2008
21911/08	FARAH v. the United Kingdom	07/05/2008
22853/08	KULAH v. the United Kingdom	18/05/2008
23027/08	ABDI v. the United Kingdom	19/05/2008
23078/08	SHARIF v. the United Kingdom	19/05/2008
23103/08	ABDI v. the United Kingdom	19/05/2008
23470/08	WARSAME v. the United Kingdom	21/05/2008
24141/08	SHARIF ABDI v. the United Kingdom	24/05/2008
24743/08	ALI v. the United Kingdom	27/05/2008

25732/08	DIINI v. the United Kingdom	30/05/2008
25965/08	HASSAN v. the United Kingdom	02/06/2008
26650/08	AHMED v. the United Kingdom	02/06/2008
26958/08	AFRAH v. the United Kingdom	06/06/2008
28348/08	ERIBAY v. the United Kingdom	13/06/2008
28785/08	IBRAHIM v. the United Kingdom	16/06/2008
29328/08	ISMAIL v. the United Kingdom	18/06/2008
31137/08	ALI v. the United Kingdom	25/06/2008
31367/08	HASSAN v. the United Kingdom	30/06/2008
32767/08	FARAH v. the United Kingdom	10/07/2008
32995/08	SHEIKH v. the United Kingdom	12/07/2008
33243/08	OMAR v. the United Kingdom	10/07/2008
34084/08	SHARIF v. the United Kingdom	15/07/2008
35490/08	DEENI v. the United Kingdom	28/07/2008
35801/08	MOHAMUD v. the United Kingdom	21/07/2008
35994/08	NUR v. the United Kingdom	20/07/2008
36596/08	ABDI v. the United Kingdom	31/07/2008
37039/08	AHMED v. the United Kingdom	24/07/2008
37813/08	ISMAN v. the United Kingdom	07/08/2008
37894/08	HERSI v. the United Kingdom	11/08/2008
38260/08	ALI v. the United Kingdom	11/08/2008
39333/08	ALI v. the United Kingdom	13/08/2008
40622/08	HUSSEIN v. the United Kingdom	25/08/2008
41960/08	MOHAMED v. the United Kingdom	02/09/2008
42086/08	OSMAN v. the United Kingdom	04/09/2008
43602/08	ALI v. the United Kingdom	15/09/2008
44512/08	KOLON v. the United Kingdom	16/09/2008
44839/08	ALI v. the United Kingdom	20/09/2008
44848/08	DULEH v. the United Kingdom	15/09/2008
51018/08	MOHAMMED v. the United Kingdom	24/10/2008
52561/08	AHMED v. the United Kingdom	02/11/2008
54973/08	MOHAMMAD v. the United Kingdom	14/11/2008
57787/08	HASSAN v. the United Kingdom	01/12/2008
58620/08	ABDIRAHMAN v. the United Kingdom	28/11/2008
60015/08	HILOWLE v. the United Kingdom	11/12/2008
60583/08	ALI v. the United Kingdom	01/12/2008
272/09	MOHAMED v. the United Kingdom	30/12/2008



587/09	KHAURE v. the United Kingdom	05/01/2009
2107/09	ELMI v. the United Kingdom	15/01/2009
4042/09	DAHIR v. the United Kingdom	22/01/2009
4061/09	AWEYS v. the United Kingdom	22/01/2009
4068/09	ABDI v. the United Kingdom	22/01/2009
4225/09	RASHEED v. the United Kingdom	23/01/2009
5570/09	DIISHRE v. the United Kingdom	26/01/2009
6600/09	LOLO v. the United Kingdom	04/02/2009
7526/09	MOHAMUD v. the United Kingdom	09/02/2009
7634/09	OSMAN v. the United Kingdom	04/02/2009
8892/09	MOHAMED v. the United Kingdom	13/02/2009
9006/09	SHEIKH v. the United Kingdom	14/02/2009
9227/09	ABDULLAHI v. the United Kingdom	16/02/2009
10618/09	HASSAN v. the United Kingdom	23/02/2009
10987/09	AHMED v. the United Kingdom	24/02/2009
11879/09	MOHAMED v. the United Kingdom	02/03/2009
12659/09	ABDURAHMAN v. the United Kingdom	06/03/2009
12882/09	ABDI v. the United Kingdom	08/03/2009
13633/09	MOHAMMED v. the United Kingdom	12/03/2009
14648/09	SHARIF v. the United Kingdom	17/03/2009
15902/09	ALI v. the United Kingdom	23/03/2009
17081/09	AHAMAD v. the United Kingdom	29/03/2009
19184/09	FARAH v. the United Kingdom	13/04/2009
20031/09	HASHI v. the United Kingdom	17/04/2009
21356/09	ABDULLAHI v. the United Kingdom	23/04/2009
23197/09	MOHAMMED v. the United Kingdom	02/05/2009
26023/09	MUQTAAR v. the United Kingdom	15/05/2009
28567/09	MUSSE v. the United Kingdom	29/05/2009
28632/09	UKUROW v. the United Kingdom	30/05/2009
29350/09	HASAN v. the United Kingdom	04/06/2009
32656/09	GULED v. the United Kingdom	19/06/2009
32683/09	SABRIYE v. the United Kingdom	19/06/2009
33342/09	HASSAN v. the United Kingdom	23/06/2009
34542/09	ALI v. the United Kingdom	29/06/2009
35298/09	MUSE v. the United Kingdom	01/07/2009
39063/09	ABDI v. the United Kingdom	23/07/2009
39169/09	SUFI v. the United Kingdom	21/07/2009

40033/09	RABBI v. the United Kingdom	23/07/2009
42876/09	SHUKRI v. the United Kingdom	08/08/2009
42963/09	MUGHAAN v. the United Kingdom	10/08/2009
43328/09	OMAR v. the United Kingdom	12/08/2009
43771/09	HASSAN v. the United Kingdom	13/08/2009
44786/09	OMAR v. the United Kingdom	18/08/2009
46347/09	SAEED v. the United Kingdom	26/08/2009
47122/09	OMAR v. the United Kingdom	01/09/2009
47620/09	SAYID v. the United Kingdom	04/09/2009
49394/09	MAHAMED v. the United Kingdom	12/09/2009
50203/09	MANE v. the United Kingdom	17/09/2009
53851/09	NOOR v. the United Kingdom	09/10/2009
55564/09	OMAR (AKA HUSSEIN) v. the United Kingdom	15/10/2009
56241/09	HASSAN v. the United Kingdom	21/10/2009
58043/09	OMAR CHARD v. the United Kingdom	30/10/2009
7991/10	CADE v. the United Kingdom	08/02/2010
10944/10	IBRAHIM v. the United Kingdom	24/02/2010
18164/10	SULTAN v. the United Kingdom	31/03/2010
23731/10	FARAH (AKA HASSAN MOHAMED AHMED) v. the United Kingdom	28/04/2010
24730/10	ISAAK v. the United Kingdom	03/05/2010
28186/10	KHALAF v. the United Kingdom	22/05/2010
28997/10	MIRREH v. the United Kingdom	27/05/2010
31161/10	SULIEMAN-HUSSEIN v. the United Kingdom	07/06/2010
33534/10	SHARIF v. the United Kingdom	16/06/2010
37923/10	SHEIKNUR v. the United Kingdom	08/07/2010
56505/10	HASSAN v. the United Kingdom	01/10/2010
75490/10	YUSUF v. the United Kingdom	28/12/2010
5752/11	MOHAMMED v. the United Kingdom	26/01/2011
15421/11	MOHAMMED v. the United Kingdom	09/03/2011
20912/11	ALI v. the United Kingdom	01/04/2011
27135/11	ISMAIL v. the United Kingdom	03/05/2011
69581/11	HASSAN v. the United Kingdom	10/11/2011
2091/12	A.M.A. v. the United Kingdom	10/01/2012