Case No: A2/2012/3336

Neutral Citation Number: [2013] EWCA Civ 742
IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE EMPLOYMENT APPEAL TRIBUNAL
His Honour Judge Peter Clark
Case No: UKEATPA/0401/12/SM

Royal Courts of Justice
Strand, London, WC2A 2LL
Friday, 10th May 2013

Before:

LORD JUSTICE RIMER

- -

AYODELE ADELE VAUGHAN

Applicant

- and -

LONDON BOROUGH OF LEWISHAM & OTHERS

Respondents

- -

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The **Applicant** appeared in person
The **Respondents** did not appear and were not represented

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Judgment
(As approved by the Court)

Lord Justice Rimer:

1. This is a renewed application for permission to appeal. Mummery LJ refused permission on the papers on 22 February 2013 on the grounds that in his view an appeal would have no real prospect of success.

2. The applicant is Ms Ayodele Vaughan, who appears in person, as she has at all stages. She was the claimant in three sets of employment proceedings against the London Borough of Lewisham, her former employer, and nine other respondents. She asserted race discrimination, disability discrimination, victimisation, harassment, and public interest disclosure detriment. Her claim was heard over some 20 days in January and February 2012 by the London South Employment Tribunal (Employment Judge Balogun and members). The outcome of the tribunal's ostensibly meticulous 179-paragraph judgment, sent with reasons to the parties on 2 March 2012, was the dismissal of all the applicant's claims.

3. The applicant thereafter followed a path well-trodden by unsuccessful claimants before employment tribunals. She sought a review of the tribunal's decision, which was refused. She sought to appeal to the Employment Appeal Tribunal, but her Notice of Appeal was rejected at the paper sift stage under rule 3(7) of the Employment Appeal Tribunal Rules 1993, as amended. She then sought an oral hearing under rule 3(10), at which she attempted to persuade HHJ Clark that she had grounds of appeal with a real prospect of success. In a short judgment dealing also with other applications that she had, HHJ Clark expressed himself as satisfied that the proposed appeal was no more than an appeal on fact that was, as he put it,

"dressed up as a perversity appeal". No appeal lies to the Appeal Tribunal against decisions of employment tribunals on questions of fact and so HHJ Clark dismissed the applicant's application and her appeal.

4. There followed the application for permission to this court for permission. All I have read, although I have, as I have explained to the applicant, certainly not read the entirety of the material in the two substantial files with which I have been provided, which run to over 1,000 pages, suggests to me, as both HHJ Clark and Mummery LJ have concluded, that there is likely to be nothing in the applicant's proposed appeal. It is, however, difficult on a short application like this to identify and deal separately with the countless points that the applicant wishes to make. That is because, with respect, she expresses herself at excessive length on paper and often with some lack of precision. Her closing submissions to the employment tribunal occupy 361 pages, her Notice of Appeal to the Appeal Tribunal 53 pages, her Grounds of Appeal to this court 23 pages, and her supporting skeleton argument 25 pages.

5. The applicant asserts countless matters of complaint as to just about every aspect of the hearing before the employment tribunal and its substantive outcome. She listed some nine or ten of them this morning in opening her submissions to me. By way of a non-exhaustive elaboration, she complains that the hearing was unfair; that the tribunal's findings of fact were perverse; that neither the employment tribunal nor the Appeal Tribunal gave adequate reasons for their decisions; that both tribunals failed to identify the applicable legal tests and misapplied them; that the employment tribunal acted in breach of the rules of natural justice; that it failed to make essential findings of fact; failed to give weight to the respondents' admissions when giving their evidence; failed to have regard to the fact that, so the applicant asserts, the

respondents gave perjured evidence; failed to deal properly with, or give adequate weight to, the oral evidence; and failed to give adequate consideration to the drawing of inferences. To that list, as I have said, the applicant added this morning by saying that the employment tribunal failed to have regard to the questionnaires which had been served or to the answers to them; made errors of law in relation to harassment and in relation to the burden of proof; and dealt inadequately with the question of reasonable adjustments and also with other matters which I need not list.

6. I am, as I say, unconvinced from what I have read and heard so far that there is any substance in any of the complaints. I suspect that, on analysis, this is simply a case in which, as the employment tribunal in effect explained in paragraph 28 of its reasons, the applicant is just incapable of accepting that her perception of the relevant events is not the only true one. When faced with such a tirade of complaints, it is however impracticable in what is listed as a 30-minute hearing, with a further application in this court to follow immediately afterwards, to attempt to deal *seriatim* with all the points that the applicant seeks to raise. There is simply not the time for the applicant to explain them sufficiently in order to be able to see whether there is in fact any arguable substance in them, or for a judgment thereafter to be delivered that deals with them adequately.

7. In the circumstances, as I have explained to the applicant, I propose simply to adjourn this permission application, on notice to the respondents, to a court that I direct should consist of two Lords Justices, including one Lord Justice with employment law experience. If permission should be given on any ground or grounds, the appeal on

such ground or grounds will follow immediately. I direct that one day be allowed for the hearing.

8. I add that one feature of the present application that has influenced my decision to adjourn it is that the applicant was ordered to pay a proportion of the respondent's costs of her failed applications to the employment tribunal, which she assesses as likely to expose her to a liability of something in the order of £92,000, although I believe the costs remain to be assessed. The applicant was permitted to and did appeal against that order to the Appeal Tribunal, but the Appeal Tribunal reserved its judgment on that issue, and the applicant tells me that judgment has not yet been delivered. If, however, the judgment goes against the applicant, the existence of that liability obviously lends added significance to the importance to her of her proposed appeal.

9. On the topic of costs, I add finally this, to which the applicant should pay careful attention. Since the adjourned application is to be on notice, with the appeal to follow if permission is given on any ground, the applicant should understand that if, as I assess to be quite likely, her application and any appeal fails, it is also likely that she will be ordered to pay the respondents' costs. That is the usual order in the Court of Appeal. The applicant should, therefore, consider carefully whether she is prepared to incur that risk. She has been warned of it.

Order: Application adjourned on notice