Neutral Citation Number: [2018] EWCA Civ 2686

Case No: A2/2018/0538 & 0605

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
MRS JUSTICE MAY
HQ16X00733

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 12 June 2018

Before :

LORD JUSTICE DAVIS
and
LORD JUSTICE MOYLAN

- -

Between :

EDWARD WILLIAM ELLIS	**Appellant**
- and -	
MINISTRY OF JUSTICE	**Respondent**

- -

Transcript of Epiq Europe Ltd 165 Fleet Street London EC4A 2DY
Tel No: 020 7404 1400 Email: civil@epiqglobal.co.uk (Official Shorthand Writers to the Court)

- -

The Appellant appeared in person
Mr A Eardley (instructed by The Government Legal Department) on behalf of the Respondent

Hearing date : 12 June 2018

- -

JUDGMENT

Lord Justice Moylan :

Introduction

1. Mr Ellis, the Appellant in this case, appeals from the suspended committal order made by May J on 22 February 2018 for breaches of an order made on 8 March 2016. The latter order restrained Mr Ellis from "issuing claims on behalf of others or from assisting others to bring claims in contravention of the Legal Services Act 2007." Mr Ellis also applies for permission to appeal from the general civil restraint order made by May J on 22 February 2018.

2. The Applicant below, and the Respondent to this appeal, is the Ministry of Justice represented by Mr Eardley. Mr Ellis has, throughout, appeared in person. He confirmed at the outset of this hearing that he did not want legal representation.

3. At the beginning of the hearing, and at times during the course of his submissions, Mr Ellis raised some procedural points including in respect of the bundles prepared for this hearing and of what took place at the hearing before Turner J on 6th November 2017. We are satisfied that there has been no procedural unfairness to Mr Ellis. He was fully aware, both before May J and at the hearing before us, of the case he has had to meet. Indeed, it is our assessment that the points he raised go towards and in support of his overarching case as to fraud and corruption which I come to later.

Background

4. Mr Ellis is a former solicitor. He was suspended from practice indefinitely in 2006 and struck off in 2013. His appeal against being struck off was dismissed in February 2015. On 8 March 2016 Senior Master Fontaine made the following order:

> "**UPON** it being brought to the attention of the court that.
>
> (1) Mr Edward William Ellis, not being an authorised person entitled to carry on a reserved legal activity or a legal activity under the Legal Services Act 2007, has issued claim forms and applications in the above and other proceedings on behalf of others and
>
> (2) The claim forms issued by Mr Edward William Ellis and the particulars of the claim therein have been declared to constitute an abuse of process and a number of claims have also been found to be wholly devoid of merit.
>
> It is ordered that:
>
> 1. Mr Edward William Ellis is restrained from issuing claims on behalf of others or from assisting others to bring claims in contravention of the Legal Services Act 2007."

5. The "above … proceedings" referred to in the recital to the order were four claims brought by claimants against the Attorney General, against the Ministry of Justice (in three of those cases) and against varying numbers (between six and 36) of other defendants.

6. May J's judgment sets out more detail of the background. I quote:

> "1. (Mr Ellis) has a fully formed and apparently internally consistent belief system focused on corruption. He believes that some - perhaps all - previous Prime Ministers, all judges and magistrates, the Government Legal Service and Ministry of Justice together with "State officers", by which I took him to mean police and court staff, and probably all sorts of other people and institutions, are corrupt and that the decisions they make are, without exception, fraudulent; hence his destination of judicial decisions as "frauds": for instance, an "evidence irrelevance fraud" when I refused to consider a sheaf of documents he handed up as being of no relevance to the issues I had to decide on this application, or a "jurisdiction fraud" when I determined that I did have jurisdiction to hear the application. The list goes on.
>
> 2. These beliefs would have just been sad had Mr Ellis not acted upon them or if his "philosophy" (his word) had not attracted adherents. But he has acted, unceasingly and vexatiously over many years, and persons with grievances against the justice system have been attracted and recruited. The result is that claim forms, application notices, appeals are issued and documents purportedly filed or served at various courts, bearing all the hallmarks of Mr Ellis's unmistakable drafting. These are prolix, tendentious, mostly incomprehensible screeds, making the same assertions of fraud and corruption again and again.
>
> 3. Consistent with his activity in drafting and promoting the issue of claims, Mr Ellis would also attend hearings in courts and tribunals with litigants to conduct cases on their behalf, using the occasions to repeat in oral representation the turgid, inchoate passages made in documentary form. Increasing and unwelcome familiarly with Mr Ellis in the Masters Office led Senior Master Fontaine to issue her order of 8 March 2016."

Committal Application

7. On 9 August 2016 the Ministry of Justice issued an application for Mr Ellis' committal to prison for allegedly being in breach of the March 2016 order. On 6 November 2017 Turner J gave the Ministry of Justice permission to amend the application to include a schedule setting out 24 alleged acts of contempt. He also dismissed a number of oral applications made by Mr Ellis as being totally without merit, including applications for witness protection orders and for trial by jury.

8. Turner J made a representation order in favour of Mr Ellis, but Mr Ellis did not take advantage of this order informing May J, as he informed us, that he had decided not to instruct a legal representative.

9. The committal application was determined at a three day hearing concluding on 23 February 2018. At the outset Mr Ellis applied for May J to recuse herself. The basis of the application, as set out in the judge's short judgment on this issue, was that she had previously decided a case involving another litigant which concerned a road traffic accident and a no win and no fee agreement. May J rejected the application. She decided that her decision in that unrelated case provided no ground for recusing herself.

10. The judge proceeded to determine the applications. She had a considerable volume of evidence from the Ministry of Justice. She also heard evidence and submissions from Mr Ellis. The judge sets out some of the difficulties she encountered during the course of the hearing:

> "7. One only has to read the transcripts of the hearings before Mr Justice Jay in 2016 and then before Mr Justice Turner in November 2017 to understand the difficulties in keeping Mr Ellis's oratory within any kind of reasonable parameters. There are constant references to a criminal conspiracy involving courts, court officers, judges at all levels, persons in Government, Government Legal Service, the Law Society and any number of others. The Crown, Lord Bishops and Cabinet are frequently mentioned, I think as some kind of corruption court. Once tuned into his language, it is possible to identify and link the beliefs giving rise to Mr Ellis's interminable ramblings but for the most part his lengthy perorations are utterly incomprehensible and very tedious.
>
> 8. The persistence of his delivery, combined with Mr Ellis's inability or refusal - it does not matter which - to focus and confine himself to the issues arising at this hearing, required me to impose a timetable as a way of keeping the case within reasonable bounds consistent with the overriding objective. As this was a committal hearing, with imprisonment of possible outcome if contempt were found, it was clearly appropriate to err on the generous side. I allowed Mr Ellis two hours to present his evidence, freestyle, after we had already had his answers given over two hours of questioning by Mr Eardley on the activities alleged to constitute breaches. During Mr Eardley's questions Mr Ellis continually diverted into his own preoccupations with corruption. I explained to Mr Ellis that if his freestyle presentation was relevant to the issues arising on this application. and remained so after the two hours was up, then I would be prepared to allow him more time; but if what he was saying was not relevant, then the time limit would stand. I am bound to say that nothing of what Mr Ellis relayed in his two hours was helpful to me in deciding whether or not

> he had acted in persistent breach of Master Fontaine's orders, but that was Mr Ellis's choice.
>
> 9. Mr Eardley thereafter addressed me on the law, as applied to the alleged breaches, taking about an hour and three-quarters to do so, after which I allowed Mr Ellis a further one and three-quarter hours to respond and address me further. His "response", like his earlier "evidence", failed to focus on the specific matters alleged against him in this contempt application."

11. The judge set out the legal framework, specifically the provisions of the Legal Services Act 2007 ("the 2007 Act"), including as to the definition of the "conduct of litigation". This was for the purposes of determining whether Mr Ellis' actions were "in contravention of" the 2007 Act and therefore in breach of the 2016 order.

12. The "conduct of litigation" is defined by paragraph 4 of Schedule 2 to the 2007 Act, as follows:

> "The 'conduct of litigation' means—
>
> (a) the issuing of proceedings before any court in England and Wales
>
> (b) the commencement, prosecution and defence of such proceedings, and
>
> (c) the performance of any ancillary functions in relation to such proceedings (such as entering appearances to actions)."

13. The judge made a number of general findings about Mr Ellis' activities:

> "14. So far as it may be necessary for me to do so, I find so that I am sure that Mr Ellis is the driver of the vexatious, meritless claims and applications issued in the names of other persons who form the subject matter of this application. He has, in his own words, "recruited" people to the cause of compiling evidence to support "a mass remedy corruption process". According to him, the evidence-gathering process requires the issuing of a large number of claims and applications and attendance at court. He described himself as the "case manager" of this process. He accepted as accurate his description of himself given in one of the claim forms as "Equity lawyer, recruited citizens, managed cases'. Moreover, in his evidence he referred to one citizen … who was misguided enough to reject his philosophy. "She did not cooperate", were his words, so he turned instead to her co-defendant in the same criminal case … who did.

> 15. The picture is of Mr Ellis looking for willing subjects whose own grievances could be turned to the service of Mr Ellis's "corruption remedy process". I interpose here that it is very sad that people whose dissatisfaction with their own experience of the justice system, regrettable in itself, should have their grievances falsely oxygenated by the beliefs of Mr Ellis. He described his supporters as "desperate" which makes their adherence to his belief system the more tragic for them.
>
> 16. I have no doubt that in their eyes Mr Ellis's past profession lends credence to what he is telling them."

14. In respect of the alleged breaches, as set out in the schedule, the judge found seven were proved to the criminal standard of proof. She made findings as to what Mr Ellis had done and decided those activities comprised the "conduct of litigation" within the meaning of the 2007 Act and that they involved the prosecution of proceedings and/or the performance of ancillary functions in relation to proceedings.

15. In summary the activities involved: (i) two instances of serving or attempting to serve documents including on the Government Legal Department; (ii) one instance of seeking to file documents at court both on behalf of another person and on behalf of himself; (iii) two occasions on which Mr Ellis gave assistance to other people at court hearings in one case "instructing (the litigant) what to say to the Tribunal" and in the other "driving what happened at the hearing"; (iv) on two occasions providing his address as an address for service.

16. May J did not find the other alleged breaches proved in particular because she was not satisfied that "drafting alone" constituted a breach of the March 2016 order.

17. May J sentenced Mr Ellis to 3 months' imprisonment suspended for 1 year. She described the breaches as being of "high severity". The courts had been:

> "... obliged to deal with vexatious, prolix documents, generating costs, time, delay and confusion in many court offices. That impacts the ability of those offices to deal with perfectly valid claims where ordinary people are seeking justice in an appropriate manner. It is not fair to them or to the court staff to have to deal with this kind of activity."

18. She also decided that Mr Ellis had "shown complete disregard for the authority of the court". She was satisfied that the custody threshold had been crossed but decided to suspend the sentence of 3 months.

19. The judge was also satisfied that she should make a general civil restraint order because Mr Ellis had "engaged upon … persistent, vexatious, litigious conduct most often through using other people as claimants" and because he had made applications on his own behalf which had been found to be totally without merit.

20. In her assessment Mr Ellis was “the “real” claimant or applicant in the claims that have been issued in the names of people who are adherents to his philosophy". In coming to this conclusion she applied, in particular, what Newey J (as he then was) had said in CFC v Brian Shipley & Ors [2017] EWHC 1594 (Ch).

21. The order made by May J prohibits Mr Ellis from issuing any claim or making any application in the High Court or any County Court or procuring others to do so for a period of 2 years.

Legal Framework

22. The 2007 Act contains provisions regulating who can carry on certain legal activities. By section 13, a person is entitled to carry on what is called "a reserved legal activity" if they are a person who is "an authorised person in relation to the relevant activity" or is an “exempt person”. Otherwise, no person is entitled to carry on any such activity and by section 14, it is an offence to do so.

23. Mr Ellis is not an authorised person. During the course of his submissions he asserted that he has some form of immunity from at least criminal prosecution under the 2007 Act. There is nothing which supports this submission and, in any event, we are concerned with the 2016 order which expressly prohibits Mr Ellis from assisting others in contravention of that Act.

24. The 2007 Act was preceded by the Courts and Legal Services Act 1990. That Act, as amended, by the Access to Justice Act 1999, defined the right to conduct litigation as the right “(a) to issue proceedings before any court and (b) to perform any ancillary functions in relation to proceedings (such as entering appearances to actions)”.

25. The judge referred to a number of authorities including Gregory v Turner [2003] 1 WLR 1149; Agassi v Robinson (Inspector of Taxes) [2006] 1 WLR 2126, Heron Bros Ltd v Central Bedfordshire Council (No 2) [2015] BLR 514; Ndole Assets Ltd v Designer M&E Services UK Ltd [2017] 1 WLR 4367 and Moosun v HSBC Bank Ltd [2015] EWCA 3308 (Ch) and CFC v Brian Shipley (supra).

This Appeal

26. Mr Ellis' written grounds of appeal and written submissions are long, diffuse and, frankly, very difficult to understand. It was also clear from his protestations during the hearing that he felt he was being, as he put it, "interrupted" during the course of his submissions in ways which he considered suspicious and which served, in his view, to demonstrate that the courts are as corrupted as he says. Given Mr Ellis' very full written documents we were, in my view, doing no more than seeking to ensure his submissions were directed to this appeal, so that we had a proper understanding of the basis on which he sought to challenge the judge's determination and orders. In fairness to Mr Ellis, although his submissions included many of the issues he considers support his assessment of the corruptness of the entire system, he

did make clear the core of his case. Before setting this out, I first propose to quote some of the broader assertions made by Mr Ellis in his written document and during the course of this hearing.

27. His first ground of appeal from the committal order reads as follows:

> "Superior Jurisdiction Corruption Remedy Jurisdictions Admissions by the Court of Appeal for the Citizen, Crown and Parliament against the Inferior Jurisdictions of the State, Profession Authorities and Law Courts."

28. Paragraph 38 of his submissions in the same document reads as follows:

> "The Equity Lawyer has managed the Contempt Trial Fraud to get either Fraud Enforcement or Fraud Remedies. It got Fraud Enforcement using Trial Directions Frauds by the High Court, the Trial Directions Fraud Appeal 2017 3169 Interim Remedy Denial Frauds that got Trial Fraud Joint Liability for the Court of Appeal, Final Trial Frauds that included many Trial Management Frauds and the Trial Result Frauds consisting of a Restraint Breach Finding Fraud + Contempt Finding Fraud + Remedy Entitlement Finding Fraud + 1 Year Suspended 3 Month Imprisonment Fraud + General Civil Restraint Fraud. The Prison Committal Fraud has Automatic Appeal Rights."

29. During the course of his oral submissions Mr Ellis used phrases such as "corruption remedy proof standard" and "criminal conspiracy proof set". He also, with frankness, told us that he needed a few cases to run in order to prove the scale of judicial corruption.

30. The core of Mr Ellis' case is (i) that the judge should have recused herself and (ii), more broadly, that the judge was disqualified, or had no jurisdiction to determine the committal application or make the civil restraint order because the whole judicial system is corrupt. He put the key issue this way:

> "The Crown and the Lord Bishops required the re-setting of a fraud invalidity precedent and a conflict of disqualification precedent. They imposed these conditions in the 2015 Parliament Session Agreement."

31. The courts claim, what Mr Ellis describes as, a "conflict jurisdiction" that they do not have. They do not have it, he asserts, because there is “compelling proof” that all or nearly all judges are disqualified from sitting as judges because of pervasive corruption in manifest forms. In simple terms he says that the whole system is corrupt or so corrupt that the courts are unable to determine cases and sit in judgment.

32. In addition to May J being disqualified because all judges are disqualified, she was disqualified in particular (a) because "she conspired to service the trial fraud; she went into court as a representative of organised crime not as a representative of the Crown"; and (b) because she had committed trial fraud in

the costs decision (to which I have referred above) which should have led her to recuse herself.

33. As to this court, Mr Ellis submits that the only jurisdiction we have is to allow his appeal. He said:

> "You may think that this is my appeal; it is in fact a corruption trial of you."

34. If we did not allow his appeal, in his submission we would also be engaging in corruption or fraud. In addition, the rules governing appeals are, in Mr Ellis' submission, "service context fragmentation frauds".

35. Summarising Mr Eardley's written and oral submissions briefly, he submits that the judge was entitled to find that Mr Ellis had acted in breach of the 2016 order and that the penalty imposed by the judge was a proper exercise of her discretion. In respect of the general civil restraint order he submits simply that there are no grounds for giving permission to appeal.

Determination

36. Turning now to the determination of this appeal.

37. It is clear to me that May J was right not to recuse herself from hearing this case. Mr Ellis told us specifically that he - I emphasise - had not been involved in the other case on which he relied in support of his application that she could recuse herself. The simple fact that the judge had made a decision in another case involving someone other than Mr Ellis could not possibly cause anyone to conclude that there was any possibility that she was or might be biased.

38. There is also, in my view, no merit in Mr Ellis' submission that May J was disqualified from hearing the case. His general submission, and the additional specific points he relies on, provide no basis for concluding that May J did not have jurisdiction to determine the committal application or to make a civil restraint order. In simple terms, she clearly had jurisdiction to determine both applications because she was not disqualified. Accordingly, I reject Mr Ellis' submission that the whole process was a fraud.

39. The issues which to my mind arise in respect of the appeal from the committal order are:

    (1) Was the judge entitled to make the factual findings she did as to Mr Ellis' activities?

    (2) Was she right to decide that those activities constituted breaches of the March 2016 order?

    (3) Was the sentence she imposed outside the bracket of appropriate penalties?

40. As to (1) the judge was, in my view, plainly entitled on the evidence to find that Mr Ellis had acted as alleged. Indeed, Mr Ellis seems to have accepted that he had acted as alleged and had assisted with and managed cases for other people.

41. As to (2), this is not the right occasion to embark on a consideration of the meaning and scope of the phrase "the conduct of litigation" in the 2007 Act. I would only note that, since Agassi and Robinson were decided, the words "the commencement, prosecution and defence of such proceedings" have been included in the definition in sub-paragraph (b). This will clearly impact on the scope of what is included within "ancillary functions", appearing in sub-paragraph (c), as well as the scope of what is caught more generally by sub-paragraph (b) itself.

42. Briefly considering the breaches found by the judge: two of them, as I have said, involved Mr Ellis seeking to serve documents on the Government Legal Department. The judge was plainly entitled to decide that those actions constituted both the prosecution of proceedings and the performance of an ancillary function. In my view, the opposite contention is unarguable.

43. One of the breaches involved Mr Ellis seeking to file documents at court. Again, in my view, the judge was plainly right to decide that this activity constituted both the prosecution of proceedings and the performance of an ancillary function.

44. Two of the breaches involved Mr Ellis giving assistance to other people at court hearings as referred to earlier in this judgment. Again, I consider that the judge was right to decide that those activities involved the prosecution of proceedings and/or the performance of an ancillary function. I have reached the same conclusion in relation to Mr Ellis giving his address as an address for service.

45. Accordingly, in my view, if my Lord agrees, the appeal from the committal order must be dismissed.

46. I now turn to the sentence imposed by the judge. The judge has explained why she considered the breaches were sufficiently serious to justify the imposition of a term of imprisonment. The judge described the breaches, rightly in my view, as being of "high severity". She was also, in my view, clearly right to describe Mr Ellis as having "shown complete disregard for the authority of the court". The term imposed by the judge cannot possibly be described as excessive and her decision to suspend the sentence could well be described as merciful.

47. Finally, I turn to the application for permission to appeal the civil restraint order. In my view, the order made by the judge was clearly justified based on the judge's conclusion that Mr Ellis had engaged in "persistent, vexatious, litigious conduct".

48. Paragraph 4.1 of Practice Direction 3C (the Civil Procedure Rules 1998) provides that a general civil restraint order "may be made … where the party

against whom the order is made persists in issuing claims or making applications which are totally without merit". The judge decided that, because Mr Ellis had been "driving proceedings", he could properly be described as the "real" party. Whilst the circumstances of this case may not be on all fours with the first instance decisions of Moosun v HSBC Bank Ltd and CFC v Brian Shipley, it is clear to me that the judge was entitled to conclude that Mr Ellis was "the "real" claimant or applicant" in the claims in which he had been involved. The judge had expressly found, as referred to above, that he had engaged in "persistent, vexatious, litigious conduct most often through using other people as claimants". She also found that Mr Ellis issued claims or made applications on behalf of himself which were, or had been found to be, wholly without merit.

49. In those circumstances, there is, in my view, no prospect of the Court of Appeal deciding that the judge was wrong to make the civil restraint order which she did. Accordingly, and again, if my Lord agrees, I would propose refusing the application for permission to appeal from that order.

Lord Justice Davis :

50. I agree with the judgment of Moylan J.