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NCN: [2019] EWHC 2318 (Admin)

IN THE HIGH COURT OF JUSTICE  
QUEEN'S BENCH DIVISION  
ADMINISTRATIVE COURT



No. CO/448/2019

Royal Courts of Justice

Tuesday, 30 July 2019

Before:

LORD JUSTICE SIMON

MRS JUSTICE ANDREWS DBE

B E T W E E N :

THE QUEEN  
ON THE APPLICATION OF  
ARIF AL MAHFUZ & Anor

Claimants

- and -

UPPER TRIBUNAL (IMMIGRATION AND ASYLUM CHAMBER)  
& Anor

Defendants

MR M.E.H. MAZUMDER and MR N. KHAN (Solicitors) appeared in person.

THE DEFENDANTS were not present and not represented.

J U D G M E N T

**LORD JUSTICE SIMON:**

- 1 This is a hearing under the court's inherent jurisdiction to govern its own procedures under what is known as the *Hamid* jurisdiction (see *R (Hamid) v Secretary of State for the Home Department* [2012] EWHC 3070 (Admin) and more recently *R (Sathivel, Ajani v Ncube) v Secretary of State for the Home Department* 2018 EWHC 913 (Admin)), and to refer appropriate cases to the Solicitors Regulation Authority.
  
- 2 Five cases issued in the Administrative Court have been referred to this court because of serious concerns about failures to adhere to proper standards in relation to the conduct of these claims by the respondent to this application, Mr Mohammed Mazumder and others working for Heans Solicitors Limited ("Heans").
  
- 3 The concerns were raised by the Administrative Court Office following an order of 12 April 2019 by Andrews J in *Arif Al Mahfuz v Upper Tribunal ( Immigration & Asylum Chamber) and Secretary of State for the Home Department*, Crown Office reference 448/2019; and a subsequent order of Andrews J dated 22 May 2019, raising questions in relation to four other cases which is it convenient to refer to as *Khan No.1*, *Khan No 2*, *Alauddin* and *Kawser Ahmed*.
  
- 4 Heans is registered in Warrant Crescent, Southampton but has a London branch in Whitechapel Road where the work is carried out. Its principal is Mr Mazumder. He established the firm in January 2018. He is the only fee earner apart from Mr Naser Khan, described as "a fee earning consultant solicitor", who joined the firm in March 2018. Two of the matters of complaint, *Khan No 1* and *Khan No 2* relate not to Mr Naser Khan but to a former paralegal employed by the firm, Saladin Khan. He was both an employee and a named claimant in these two cases. An initial 'show cause' letter was sent by the court on 2

May seeking answers to 10 questions, (a) to (j) identified by Andrews J in relation to the *Al Mahfuz* case. Heans responded by letter dated 16 May 2019 enclosing a witness statement from Mr Mazumder dated 16 May 2019, and a witness statement from Saladin Khan dated 14 May 2019. Following this response, and consideration of the application for permission in Khan No 2 Andrews J, ordered that Mr Mazumder and any other solicitor working at Heans who had conduct of this case or conduct of the four cases identified in the order were to attend a hearing before the Divisional Court to address concerns about their conduct.

- 5 On 23 May the Administrative Court Office wrote to Heans with 14 detailed questions that arose. A response was received on 4 July with a further witness statement from Mr Mazumder on 2 July. The court has considered these matters in detail.

#### The underlying claims

##### *Mahfuz*

- 6 The concerns regarding Heans' conduct first arose in the light of their involvement in the *Mahfuz* case. This was a judicial review claim lodged by Heans in the Administrative Court Office on 28 January 2019 and issued by the court on 1 February. The application for permission was refused on 12 April and the application considered to be totally without merit. On its face, the case appeared to be a CART case, challenging a decision of the Upper Tribunal (the first defendant) and a decision of Judge Kebede said to have been made on 6 September 2018. Upon inquiries made by the Administrative Court Office, it transpired that there was no such order and indeed the Upper Tribunal had no record of any recent appeals involving Mr Mahfuz. In fact, the grounds of appeal made no reference to a decision of the Upper Tribunal. Instead it referred to a decision by the second named defendant, the Secretary of State for the Home Department, refusing an asylum claim. The

grounds of claim contained an accusation that the Secretary of State had acted in bad faith, and ended with a plea that the claimant be released from detention, despite the Government Legal Department on behalf of the Secretary of State confirming the claimant was not then and never had been in immigration detention.

*Khan No 1*

- 7 *Saladin Khan v The Upper Tribunal (Immigration and Asylum Chamber) & Secretary of State for the Home Department* was filed with the Administrative Court on 26 September 2018. The claimant, the employed paralegal Saladin Khan, sought to challenge the decision of Upper Tribunal Judge Kamara refusing his application for permission to appeal from the First-Tier Tribunal. Permission to apply for judicial review was refused on the papers by Lang J on 22 January 2019. Heans has informed the court that Lang J's decision is currently the subject of an application for permission to appeal to the Court of Appeal and that the firm no longer acts for Saladin Khan, who it now appears is represented by Hubers Law. Doubtless they will wish to bring this judgment to the attention of the single Lord Justice considering permission to appeal.

*Alauddin*

- 8 CO/4035 2018 M.D *Alauddin v Upper Tribunal (Immigration and Asylum Chamber) and Secretary of State for Home Department* (as interested party). In this case the claimant sought to challenge the decision of the Upper Tribunal Judge Kebede dated 6 September 2018 refusing his application for permission to appeal from the First-Tier Tribunal. The grounds advanced in this case were very similar to those submitted in *Mahfuz*. Permission to apply for judicial review was refused on the papers by Lang J on 23 January. The claimant applied to the Court of Appeal for permission to appeal from Lang J's decision and

by the order of Asplin LJ dated 14 June 2019, the application for permission to appeal was refused.

*Khan No 2*

- 9 Saladin Khan's second case, CO/1009/2019, *Saladin Khan v Upper Tribunal (Immigration and Asylum Chamber) and Secretary of State for the Home Department*, was filed with the Administrative Court on 7 March 2019. The claimant sought to challenge the decision of Upper Tribunal Judge Smith dated 24 January 2019 to refusing his application for permission to appeal from the First-Tier Tribunal. Permission to appeal was refused on the papers by Andrews J on 22 May 2019 and the case was considered to be totally without merit.

*Kawser Ahmed*

- 10 This was a judicial review claim, JR/5928/2018 *Kawser Ahmed v Secretary of State for the Home Department*. It was filed with the Upper Tribunal on 4 September 2018. The claimant challenged a decision to certify his claim under section 96(1) of the 2002 Immigration Act. A copy of the decision was not included as it should have been. This was because, as her Honour Judge Eady QC found in her order of 30 November 2018, there was no such decision and no basis for a public law challenge. The defendant had merely refused to treat submissions as a fresh claim under para.353 of the Immigration Rules. Permission was therefore refused with an adverse order for costs of £445.

The Respondent's response

- 11 The response on behalf of the firm contains a number of threads but at the heart is a submission that the court should not refer the firm to the SRA.
- 12 Mr Mazumder accepts that it was his responsibility to supervise and oversee work carried out by paralegals, case workers and other members of staff. An unqualified paralegal, Saladin Khan, acted on behalf of himself and the clients Alauddin and Mahfuz, without the knowledge and supervision of Mr Mazumder. The scope of his employment was limited to "carry out preparatory work under supervision". In this Mr Mazumder considered he was qualified. He had come across him working at a firm called Zaman, which is no longer operating. Saladin Khan then worked for AK Solicitors at a time when Mr Mazumder worked in a branch office. By 2014/15 he was working for E1 Solicitor, while Mr Mazumder again worked in another branch office. Thereafter Saladin Khan worked at Huber Solicitors as a senior consultant, and then at Simon Nobel where Mr Mazumder also worked. He had led Mr Mazumder to believe that he was a skilled case worker in the Immigration field and he had received his *curriculum vitae*.
- 13 So far as his involvement in the cases was concerned, Mr Mazumder regarded that any case worker, although not a solicitor, could introduce a client, but he himself always made any submissions and drafted the proceedings on their behalf.
- 14 In the case of *Alauddin*, although the firm had instructions to apply for permission to appeal to the Upper Tribunal, it was not instructed to appeal further. The application form which appears to have been signed by Mr Mazumder contains, he says, a forgery of his signature. He says that he was told by Saladin Khan that the grounds for judicial review were prepared by a barrister, although he was never given a name, despite requests. Heans has received no fee note, nor any communication in relation to this matter. Mr Mazumder indicates that any claim in the Administrative Court should have been approved by him as principal of the

firm; and that the claim should have been founded on advice on the merits, settled by counsel and paid for. However, he acknowledged that he did not have any process for ensuring these important principles until 4 February 2019 - a document which appears at p.120. This was in response to the *Alauddin* order of Lang J dated 29 January. By that stage he must have known that Saladin Khan had bypassed the system. There is a witness statement nevertheless dated 16 May, p.61 in the bundle, in which he says:

"Mr Khan had done a number of applications to the Home Office but this is his first independently worked JR application. It also seems that Mr Khan used the pre-signed form that had my signature on, which had to be used only after I checked the completion bundle that was destined to the court."

- 15 In fact, Saladin Khan had issued the process in the *Alauddin* case on 24 January and he knew this by the date of this witness statement, 16 May. He accepted that what was said in this witness statement was not true.
- 16 In the case of *Khan No 1* and *Khan No 2*, Heans was not instructed, received no fee and did not agree that the firm's name be used, according to Mr Mazumder. Until he was informed by the court on 23 May 2019, he was not aware that Saladin Khan was acting on his own behalf through Heans.
- 17 Mahfuz had instructed Saladin Khan to deal with his immigration matter in January 2018. In March 2018 Mr Mazumder prepared fresh representations to the Home Office and this was the conclusion, he says, of Heans' work, so far as Mr Mazumber was concerned. The application to apply for judicial review was dealt with by Saladin Khan without his permission. Mr Mazumder accepted that he had pre-signed the claim for judicial review,

but says that it was not intended to be used in this particular case. This happened because he was out of the office due to ill health.

18 He asks the court not to refer the case to the Solicitor Regulatory Authority because (a) the firm "rarely deals with judicial review cases", and (b) since 4 February 2019, the firm's internal process requires that all judicial review Administration Court claims should be settled and signed by counsel, and this should happen where costs are allowed for judicial review case in Upper Tribunal. He told the court that he wants to continue the firm. It involves his family and he assures the court that he will deal with all immigration and asylum work himself. He wants the chance to continue with the firm with the current good practice which he says applies.

19 He submits that much of what occurred took place when he was away from the office between January and April 2019 due to ill-health. Since 2 May he has been in the London office every day ensuring that judicial review challenges are all approved by him. He acknowledges that Saladin Khan should not have been able to use the firm's email account to communicate with the court in relation to the *Mahfuz* case without his knowledge or been in a position to use a pre-signed claim form. He says that his wife, who was acting as office manager, was deceived in relation to communications with the Administrative Court office. She has now been warned and has agreed not to allow anyone to use his email address to communicate on behalf of the firm, apart from him.

20 We have also seen a witness statement from Mr Naser Khan. He was engaged by Heans as a "fee earning consultant solicitor" in a contract dated 1 March 2018. The agreement is not well drafted, but it appears to provide that both Mr Mazumder and Mr Naser Khan are collectively responsible for the supervision of the firm's office in Whitechapel Road, (see the preamble in para.3). The fact that he was not an employee of the firm is made clear



from the profit sharing arrangement in para.4.1 (70 % on all immigration work) and the sickness entitlement in para.6 (he was not entitled to any). There is an anomaly in the date he notified the SRA that he had started with Heans. In an email of 28 May 2019, he notified them that he had started on 1 March 2018 and that his notification that it was on 1 May 2019 was a mistake.

21 His witness statement is extremely bland. He says that he prepared the judicial review grounds on behalf of Kawser Ahmed with the knowledge of Mr Mazumder. He advised his client that "there were less merits to success" and that he would get costs awarded against him if the claim were unsuccessful. He advised the client to get the grounds settled by counsel, but the client could not afford this. He was told by his client that if the firm could not deal with the application, he might be detained by immigration officials and returned to Bangladesh where he feared he would be persecuted for his political beliefs. He settled the grounds for judicial review "for the best interest of Mr K Ahmed and as per his instructions". Mr Ahmed paid the fee. He was also, as we have noted, ordered by Court Order to pay the costs.

22 In his oral address to the court Mr Khan said he had only ever done two judicial reviews in the last 18 months, of which the *Ahmed* case was the first. He said, "I made a mistake. I apologise." But he added that he was like any other case worker with no obligations to supervise others.

### Conclusion

23 The explanations of what occurred in these cases reveals a common vice in this type of claim. Those who have no relevant qualifications, in this case Saladin Khan, are employed by a firm of solicitors and put in a position where they are able to advance bogus public law

challenges in the Administrative Court. The supervision of Saladin Khan was, as Mr Mazumder effectively acknowledges, grossly inadequate.

24 Mr Mazumder was the person who was responsible for his supervision. He was the firm's principal and there was no-one else in a position of authority over Saladin Khan, despite the terms of Mr Naser Khan's contract. But neither Mr Mazumber nor any back-up system prevented an unqualified paralegal engaging in litigation on his own behalf and on behalf of others (Alauddin and Mahfuz); and he was put in a position of being able to carry on his misconduct by using the firm's email.

25 Unsurprisingly the claims were regarded as totally without merit. They were, in many respects, entirely bogus. As the Administrative Court Office pointed out, the claim in *Mahfuz* was copied virtually word for word from that of *Alauddin*, including the same typographical errors.

26 It was not only Saladin Khan who advanced wholly insubstantial claims. Mr Naser Khan drafted the claim on behalf of Kawser Ahmed that he appears to have known had no prospect of success and which was entirely misconceived. As I have noted, the Secretary of State had merely refused to entertain "fresh claim" submission under para.353 of the Immigration Rules.

27 Immigration and asylum law is potentially complex and those who practice in this field should be appropriately qualified to do so. Where there is merit in the claim it is vital that it is advanced cogently and dealt with promptly. This is made more difficult if wholly bogus claims are advanced by firms of solicitors who are either inexpert or incompetent, or where the staff are not properly supervised. The system becomes clogged up to the prejudice of valid claims.

28 The impression one gets of Mr Mazumder is of a semi-detached principal who was content to allow those whom the firm employed and its consultant to do anything that the client wanted until such time as the court drew his attention to what was going on. To the extent that his ill health contributed to this, he failed to establish systems that could and should have prevented it.

29 I have no doubt that this is a proper case for referring the case to the SRA for the reasons set out above for a full investigation, accompanied by the entire court files and I would so order.

MRS JUSTICE ANDREWS:

30 I agree.

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**CERTIFICATE**

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