

NEUTRAL CITATION NUMBER: [2024] EWHC 2721 (Ch)

Ref. CH-2023-000224

**IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
APPEALS (ChD)**

On appeal from the County Court at Willesden (Recorder Aldous KC)

7 Rolls Buildings,
Fetter Lane, London,
EC4A 1NL

**Before: Mr Nicholas Thompsell
(sitting as a Deputy Judge of the High Court)**

B E T W E E N:-

- (1) EB PENSION FUND**
- (2) EBELE MUORAH**
- (3) AARON MUORAH**
- (4) DUCHESS HOME LIMITED**

Appellants

-and-

NICHOLAS FROGGATT

Respondent

APPROVED JUDGMENT

27 JUNE 2024

Mr Jamal Demachkie (instructed under the pro bono direct access scheme) for the **Appellants**

Reissue 2

MR NICHOLAS THOMPSELL:

1. First, I must record the court's thanks to Mr Demachkie for stepping in here. This is a case where there is a great need for counsel to be involved and the court is very grateful to Mr Demachkie for dealing with this under the pro bono scheme.
2. Secondly, I note that the defendant has not chosen to come. It is believed that he has been served; he could have come if he wished. There was no reason for him to come. There is something of a convention that appeals are a matter between the appellant and the court so I think it is entirely correct and certainly within my powers of case management that I should have gone ahead and heard this appeal in his absence.
3. This is an appeal of the order of Recorder Aldous KC dated 13 October 2023 made at the County Court at Willesden concerning the refusal to adjourn a hearing. The appeal is advanced on grounds related to the correctness of that decision, as I will discuss. If that appeal fails, I am requested also to consider an oral application for permission to appeal with an appeal to follow if successful concerning the allocation of the matter to the recorder.
4. The litigation of which this appeal forms part has had a complicated and long history. It concerns a dispute between the Claimants, representing the landlord and occupier of ground floor commercial premises of a property in Willesden, and the Defendant, who is the tenant of the upper floor. It relates to alleged breaches of the leases of that property and alleged wrongdoing in relation to the conduct of the action. Fortunately, I do not need to record the full history of the dispute except to describe matters leading up to the hearing giving rise to this application.
5. That hearing related to an appeal. The appeal related to Ms Muorah's claim on 22 March 2021 at the County Court at Willesden, claim number H00W1240 (“**the H00 Claim**”), seeking damages relating to £60,000 for breach of covenant.
6. By an application notice dated 22 February 2022 (“**the February 2022 Application**”), Ms Muorah further sought an urgent instruction to gain access to an area that she had been locked out of by Mr Froggatt, the defendant and respondent. The strikeout of Mr Froggatt’s earlier claim relating to the extent of his demise and relief from sanctions in relation to that claim as well as consolidation of that claim with the H00 claim.
7. By his order of 22 July 2022, Kumrai DJ struck out both the February 2022 Application and the H00 Claim.
8. Ms Muorah sought permission to appeal the order of Kumrai DJ. That application for permission to appeal was originally dismissed on the papers on 5 December 2022 by Saggerson HHJ on the grounds that there was no real prospect of success and no other compelling reason why an appeal should be heard and no satisfactory explanation as to why it was being made out of time. But he did give Ms Muorah seven days from receipt of the order to lodge a renewed oral application for permission to appeal.
9. By his order of 30 May 2023, Saggerson HHJ adjourned the renewed permission to appeal application and directed Ms Muorah to ensure she had representation at the adjourned hearing as she was having problems getting responses from her solicitors.
10. After this hearing, on 31 May 2023, Ms Muorah filed an N434 notice of change to bring her solicitors off the record. It is unclear what happened to this application but certainly it was not actioned by the court.

11. On 22 September 2023, Ms Muorah applied to adjourn the upcoming hearing and the application was transferred to Willesden County Court. On around 5 October 2023, Ms Muorah refiled her application to adjourn.

12. The court's failure to deal with the Form N434 led Ms Muorah into difficulties as she had sought to instruct Direct Access counsel to represent her at the adjourned permission to appeal application. I am satisfied that she tried diligently to obtain representation but was advised, quite correctly, that counsel could not be instructed whilst her solicitors remained on the record. The fact that they remained on the record was not her fault but that of the court.

13. On 13 October 2023, the much-adjourned application for permission to appeal came before Recorder Aldous KC. At the start of that hearing, the recorder dealt with the application to adjourn. After a short exchange, Recorder Aldous considered there was no good reason for an adjournment and proceeded to order refusal of the application for permission to appeal. He did not give reasons for this decision. His order also did not record the fact that the formal application to adjourn which had been received by the court had been refused.

14. Ms Muorah has obtained permission to appeal this case management decision relating to adjournment of Recorder Aldous. Under the order of Bacon J, which follows an earlier order of Richards J of 21 November 2023, allowed the hearing of the appeal only on one ground: the argument that the Recorder should have adjourned the hearing to enable Ms Muorah to obtain legal representation. Permission was refused in relation to a further argument that the Recorder lacked jurisdiction, although this question was not entirely closed.

15. The allowed ground of appeal essentially involves overturning a case management decision. As Bacon J noted, an appeal court will not lightly interfere with a case management decision. However, she considered in this case the appellant had a real prospect of showing that the decision not to allow an adjournment was wrong in all the circumstances that I have set out above. I have today had the opportunity to consider those arguments in more detail.

16. The Bacon Order also allowed more time for the filing of an appeal bundle. As it was made without a hearing, it was provided that any party affected by that order may apply to have it aside or varied within seven days of service upon that person. I understand there has been no such application.

17. An appeal was served as ordered and Ms Muorah's counsel has also compiled an additional bundle which has been very helpful to the court and which I am happy to accept into evidence despite it being filed late.

18. The Bacon Order also required a short witness statement setting out the position of the second and third appellants in relation to the first and fourth appellants, EB Pension Fund and Duchess Home Limited. This was provided and indeed a copy of that was handed up to me during the hearing today.

19. I come then to the meat of the reasons why it is said I should overturn Recorder Aldous' order. It is argued that the decision of the lower court was wrong in law in misapplying the test for adjournments and/or was unjust because of a serious procedural or other irregularity.

20. As regards the test for adjournment, CPR Rule 3.1(2)(b) provides a general power of the court to manage hearings, including by adjourning them or to bring them forward. As with other powers of the court, these should be used in furtherance of the overriding objectively to act justly and in a manner that is proportionate to the money or other matters involved.

21. I was referred to the case of *Bilta (UK) Ltd (In Liquidation) v Tradition Financial Services Ltd* [2021] EWCA Civ 221 at [30]. There, Nugee LJ held that:

“...the guiding principle in an application to adjourn of this type is whether if the trial goes ahead it will be fair in all the circumstances; that the assessment of what is fair is a fact-sensitive one, and not one to be judged by the mechanistic application of any particular checklist”.

22. He also went on at [49] to enumerate a number of propositions that could be taken from his extensive review of the case law which for reasons of time I will not reproduce fully except to note that:

- a. they are squarely focused on the question of a fair outcome;
- b. the question on appeal is whether the lower court was entitled to reach the decision it did and in this particular context it is clear from the authorities that the appellate court must itself be satisfied that a decision to refuse an adjournment was not such as to cause injustice or an unfairness.

23. The commentary in the White Book at paragraph 3.1.3 mentions a case very similar to the one before me. This is *Bowden v Homerton University Hospital NHS Foundation Trust* [2012] EWCA Civ 245. This was a case where the claimant solicitors came off the record shortly before a trial on quantum. The claimant, acting as a litigant in person, issued an application to adjourn the trial and to allow for fresh representation.

24. The judge refused that application. The Court of Appeal held that the judge had failed to give adequate weight in the balancing of prejudice to the extremely difficult position that the claimant would be in if the claimant had had to represent himself. The overriding factor was the dilemma into which the claimant had been placed shortly before Christmas in circumstances which the judge expressly said were not his fault.

25. This seems to me to be very much on all fours with the current case. By his order of 30 May 2023, Saggerson HHJ adjourned the renewed permission to appeal application directing Ms Muorah to ensure she had representation at the adjourned hearing. He acknowledged thereby the complexity of the matters under consideration.

26. Ms Muorah did her best to secure legal representation. She was thwarted in this by the inaction of the court administration in not processing her Form N434 notice of change to take her erstwhile solicitors off the record. Whilst this remained unprocessed, no direct access counsel could represent her. She applied for an adjournment and this was refused with no reasons being given and no acknowledgement that she had made an application for an adjournment in the resulting order.

27. I agree with Saggerson HHJ that it was in the interests of justice to allow her to at least have an opportunity to obtain representation. When this opportunity was denied her through

the fault of the court, an adjournment was enormously prejudicial to her. That prejudice should have been foremost in the mind of the court whereas it appears to have been dismissed as a reason without any countervailing reason being given for doing so.

28. In fact, the transcript does not show the Recorder giving very much attention to understanding the application for adjournment. He did understand that Ms Muorah wanted to adjourn to obtain representation, but it is not apparent that he took pains to understand why it had not been possible for her to obtain representation earlier.

29. He did not give reasons, so we cannot know why the application for adjournment was dismissed, but on the balance of probabilities I consider that he had not taken the time to listen to the circumstances and had not given them due weight. This may be understandable given the pressure that recorders are under to deal with matters quickly and the number of unmeritorious requests for adjournment that they receive, but in this case I fear that there was a very real risk of injustice that was not properly considered.

30. The failure to give reasons, and indeed the failure to provide an order in relation to the adjournment application, was another reason that I think militates in favour of allowing the permission to appeal and indeed allowing the appeal. As recorded in the White Book at Section 52.21.7:

“In *English v Emery Reimbold & Strick Ltd* [2002] EWCA Civ 605; [2002] 1 WLR 2409 CA, the Court of Appeal enumerated why a trial judge must give adequate reasons. Reasons are necessary in order to render practicable the exercise of any right of appeal. Justice must be seen to be done. It must be apparent both to the parties and to the public why one party has won and the other has lost. The giving of reasons provides a necessary discipline for judges and it contributes to the setting of precedents for the future. The judge does not have to deal with every argument presented but must make plain the principles on which they have acted and the reasons which have led them to this decision. The duty to give decisions is a function of due process and therefore justice both at common law and under Article 6 of the Human Rights Convention. Justice will not be done if it is not apparent to the parties why one has lost and the other has won. Fairness requires the parties, especially the losing party, should be left in no doubt why they have won or lost.”

31. In the instant case, it is impossible to understand from the transcript or from the order why the recorder dismissed the application. It is unclear from the one-line judgment to what extent the Recorder in fact considered Ms Muorah’s reasons for seeking the adjournment or her evidence supporting this; what test he applied in deciding whether to adjourn; whether he considered whether the refusal of an adjournment would be unfair to Ms Muorah; and, if so, what counterbalance, if any, there was for such unfairness.

32. In the absence of reasons being given and it being clear that there were very good reasons why an adjournment should be given based on fairness and precedent, I consider that I should allow the appeal.

33. On the basis that I am allowing the appeal as regard to the adjournment decision, I think it follows that I am quashing the decision that was made at that hearing. It is appropriate that this matter should be reheard in the County Court. I would also request the County Court in allocating this matter to allocate it to a full time judge in order to avoid any further need to consider the jurisdiction issue which has also been raised but which, happily, I do not need to determine in this case.

This transcript has been approved by the Judge