



Neutral Citation Number: [2024] EWHC 3376 (KB)

Claim No: KB-2023-003212

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London
WC2A 2LL

Date: 16 December 2024

Before:

HIS HONOUR JUDGE SHANKS

(sitting as a deputy High Court judge)

Between:

COLLISS KASASA MUGABE

Claimant

- and -

THE HOME OFFICE

Defendant

The Claimant appeared in person

JAMES BERRY (instructed by Government Legal Department) appeared for the **Defendant**

JUDGMENT

HIS HONOUR JUDGE SHANKS :

1. This was the trial of a preliminary issue as to limitation ordered by Master Gidden on 13 February 2024.
2. I had before me a core bundle (CB) prepared by the Home Office and a disclosure bundle (DB) containing other relevant documents. The evidence comprised a statement from Mr Mugabe who was also cross-examined by Mr Berry for the Home Office, statements from two friends of his, Mr Sennoga and Mr Kabonge, a statement from Ms Bagha, a government lawyer acting on behalf of the Home Office who Mr Mugabe did not wish to cross-examine, and a joint statement from two psychiatrists, Dr Das and Dr Pennybacker.
3. Mr Berry and Mr Mugabe put in skeleton arguments and addressed me orally. Although acting in person, Mr Mugabe was both passionate and articulate in putting his case. The written material he put before the court also showed him to be well able to understand the issues and frame an argument.

Background facts

4. Mr Mugabe arrived in the UK on 19 July 1999 and claimed asylum as a Rwandan national shortly thereafter. Following an appeal process, the application was finally refused on the basis that he was not Rwandan on 1 May 2002. Thereafter, although he remained here, he had no permission to stay or work in the UK.
5. On 24 April 2003 he had a daughter with a woman I shall refer to as Ms W. He regarded Ms W as his “common law wife”. She had leave to remain in the UK.

6. On 12 February 2007 he made a new asylum claim based on further submissions. On 25 April 2007 the Home Office wrote a letter (the “2007 letter”) signed by Mr N Nicholas of the Section 4 Asylum Team refusing his application for asylum and stating that he had no basis for staying in the UK and should make arrangements to leave without delay. Among the reasons given for the decision, para 16 of the letter stated:

The Secretary of State has also considered the article 8 implications of your removal from the United Kingdom. The Strasbourg court has established that a person who is subject to removal cannot in principle claim any entitlement to remain in the territory of a contracting state in order to continue to benefit from social or other forms of assistance provided by the removing state. It is noted that you have a child in the United Kingdom with [a woman I shall refer to as Ms X], this however does not make your removal from the United Kingdom disproportionate to the legitimate aim of immigration control. It has been noted that [Ms X] is also an asylum seeker who the ATT have determined has no right to remain in the United Kingdom and should be removed ... therefore your claim that your article 8 rights to a family life is dismissed as you have no right to a family life in the United Kingdom (sic).

The statement in that paragraph that Mr Mugabe had a child by Ms X was wrong. He has no such child and does not even know who Ms X is. It also appears that Mr Mugabe had not made any representations based on Art 8 ECHR himself.

7. On 8 May 2007 Mr Mugabe wrote a detailed letter to his MP raising complaints about the decision and stating, towards the end, that an error had been made by the Secretary of State and that the mother of his daughter was Ms W and not Ms

X, as confirmed in a letter from Ms W which was enclosed. He went on to say that this “gross information misconduct” was damaging to his relationship with Ms W and he asked that the Minister should explain how he had come up with the information. That letter was forwarded to the Home Office. There was apparently no reply.

8. On 6 June 2008 Duncan Lewis & Co solicitors wrote to the Home Office on behalf of Mr Mugabe applying for discretionary leave to remain, relying on Art 8 ECHR and his relationship with Ms W and their daughter. In the final section of the letter the solicitors referred to the error in the 2007 letter; they stated that it was wholly unacceptable that this error had been made and that it had “caused a considerable amount of problems within their relationship however they have worked their way through these problems”; they asked that the matter should be looked into as a matter of urgency and that the Home Office should provide written confirmation that the facts stated in the letter were incorrect. There were three follow-up letters sent by Duncan Lewis in 2008 and 2009 which included complaints about the error in the 2007 letter and they also wrote to Mr Mugabe’s MP in September 2009. There was no substantive reply from the Home Office to that complaint.
9. Mr Mugabe was granted indefinite leave to remain in the UK on 25 March 2010. He received a status letter on 20 April 2010 and Duncan Lewis ceased to act for him in May 2010.
10. In the meantime, in October 2009 Ms W had separated from Mr Mugabe because she believed that there must have been a good reason for the statement

in the 2007 letter. He told me that the separation was on the basis that if written confirmation was obtained that an error had been made she would return to him.

11. On 19 January 2011 Mr Mugabe's MP wrote on his behalf to the Home Office specifically about the error in the 2007 letter, seeking written confirmation from the Home Office that a mistake had been made. The letter enclosed a letter dated 14 January 2011 from Mr Mugabe which recorded the difficulties that the error had caused in his relationship with Ms W and stated that it had caused them to separate and ruined his family and that he was suffering mental and emotional anguish. It stated that the Home Office had acted irrationally, unfairly and negligently and was responsible for the damage caused by the error in the 2007 letter.
12. In March 2012 the Home Office finally instigated an investigation into what had happened and on 2 May 2012 an official wrote to Mr Mugabe stating that the statement that he had a child with Ms X was "incorrect and an administrative error"; that there was no reference to Ms X or any relationship with her in any part of his Home Office files; and that the writer could only apologise for the error. It seems that Mr Mugabe's MP wrote again to the Home Office on 17 December 2013 seeking a more detailed response and a "full apology" (see DB153) but nothing of substance was forthcoming (see DB154).
13. Mr Mugabe attempted to restore his relationship with Ms W on the basis of the letter of 2 May 2012 but she avoided the issue until 2014 when she admitted to him that she was in a new relationship. This threw him into a deep depression which led to him being referred for counselling, a depression which Dr Pennybacker (but not Dr Das) considered to be "acute". The two doctors agreed

that Mr Mugabe had been suffering from “dysthymia” (a mild form of depression) since 2007 partly as a result of the breakdown of his relationship with Ms W. They also agreed that, following treatment, he had recovered from any kind of depression by the end of 2014.

14. In the meantime Mr Mugabe had enrolled on a course in psychology at St Mary’s University in 2012 and he obtained an upper second class degree on 18 June 2015.
15. In the period from 2014 until 2023 Mr Mugabe did not communicate with the Home Office about any claim relating to the error in the 2007 letter. He was able, however, to obtain legal advice about possible claims against the Home Office. He had a conference with Liam Ryan of counsel on 29 June 2014 and was advised that any defamation claim was out of time but that he should seek further advice on claims under the Human Rights Act and the Data Protection Act via the Bar Pro Bono unit (see DB120). On 22 September 2014 he obtained written advice from Ian Helme of counsel who said that a claim for compensation under the Data Protection Act would be out of time but he may want to consider a claim under section 10 of that Act or a complaint to the Parliamentary Ombudsman (DB121). On 10 November 2015 he obtained a letter of advice from Duncan Lewis on the question of limitation which referred to the option of applying to court to extend the limitation period though such an application was unlikely to be successful (see DB128). On 23 August 2017 he was given written advice by Krishnendu Mukherjee of counsel which considered claims for negligent misstatement and misfeasance and under the Human Rights Act 1998; counsel expressed the view that these claims were out

of time but referred to section 33 of Limitation Act 1980 and section 7(5)(b) of the Human Rights Act 1998 albeit without enthusiasm; there was also a suggestion that evidence be obtained from a clinical psychologist which may assist in relation to the “date of knowledge” (see DB135). He told me in evidence that after receiving this advice he obtained a report from a psychologist which cost £1,000 which he did not have and he had to pay for at the rate of £36 per month. On 20 May 2020 he was advised by a solicitor on the telephone that he would need a volunteer expert in personal injury law to help him make an application for an extension of time. On 9 November 2020 he was told by Advocate that a barrister had reviewed his application for assistance and did not consider his case had sufficient chances of success particularly in view of the difficulty in obtaining an extension of time under section 33. He states in his witness statement at para 61 that in relation to the period from 2014 to 2022 that he had “... focused on seeking legal advice on limitation with emphasis on examining [his] reasons for extending limitation”.

16. On 30 April 2023 Mr Mugabe finally lodged a claim form with the High Court followed by particulars of claim running to 68 pages dated 26 May 2023. He sought damages in relation to the Home Office’s error in the 2007 letter based on four causes of action: (a) misfeasance in public office (b) negligent misstatement (c) breach of the Data Protection Act and (d) breach of Art 8 of the ECHR. The damages claimed amounted to pecuniary losses put at £213,517 plus non-pecuniary losses resulting from dysthymia, major depression and the total breakdown of his family and relationship, and included aggravated and exemplary damages. It was acknowledged that the claims had accrued in 2007 and that they were all out of time and an application for an extension of time

was included with the claims. He told me (and I accept) that it took some months for him to obtain a waiver of the £10,000 court fee and the claim form was not therefore sealed until 20 August 2023.

The relevant law

17. Mr Mugabe's claims based on misfeasance in public office, negligent misstatement and the Data Protection Act 1998 are all subject to section 11 of the Limitation Act 1980 which bars a claim which includes a claim for damages for personal injury if it is made more than three years after the date when the cause of action accrued or (if later) the "date of knowledge" as defined by section 14 of the Limitation Act 1980. Mr Mugabe has accepted that time ran in relation to these claims from 2007 and it appears that he was right to do based on section 14(1), since it is plain on his own evidence, including his own document dated 28 January 2009 (CB335), that he knew from the outset that his psychological injury was significant and that it was attributable to the Home Office. Subject to the court's discretion under section 33 of the Limitation Act 1980 those claims were therefore out of time in 2010.
18. Section 33(1) of the Limitation Act 1980 allows the court to disapply section 11 if it considers it would be equitable as between the parties to allow it to proceed. Section 33(3) provides:

In acting under this section the court shall have regard to all the circumstances of the case and in particular to—

(a) the length of, and the reasons for, the delay on the part of the plaintiff;

(b)the extent to which, having regard to the delay, the evidence adduced or likely to be adduced by the plaintiff or the defendant is or is likely to be less cogent than if the action had been brought within the time allowed by section 11 ... ;

(c)the conduct of the defendant after the cause of action arose, including the extent (if any) to which he responded to requests reasonably made by the plaintiff for information or inspection for the purpose of ascertaining facts which were or might be relevant to the plaintiff's cause of action against the defendant;

(d)the duration of any disability of the plaintiff arising after the date of the accrual of the cause of action;

(e)the extent to which the plaintiff acted promptly and reasonably once he knew whether or not the act or omission of the defendant, to which the injury was attributable, might be capable at that time of giving rise to an action for damages;

(f)the steps, if any, taken by the plaintiff to obtain medical, legal or other expert advice and the nature of any such advice he may have received.

19. The claim under the Human Rights Act 1998 is subject to section 7(5) which provides:

(5) Proceedings under subsection (1)(a) must be brought before the end of—

(a)the period of one year beginning with the date on which the act complained of took place; or

(b)such longer period as the court or tribunal considers equitable having regard to all the circumstances ...

Thus the Human Rights Act claim was prima facie barred by virtue of section 7(5)(a) in 2008 and it cannot be pursued unless the court exercises its discretion under section 7(5)(b). It is established that the matters set out in section 33(3) of the Limitation Act 1980 are of relevance to the exercise of the discretion under section 7(5)(b) of the Human Rights Act 1998.

Relevant circumstances for consideration

20. In deciding whether to disapply section 11 of the Limitation Act 1980 or extend time under section 7 of the Human Rights Act 1998 I am to have regard to all the circumstances of the case. I consider below those circumstances identified in section 33(3) of the Limitation Act 1980 and any others that seem relevant.
21. **The length of the delay.** This has been very substantial: 15 years in the case of the claim governed by the Human Rights Act 1998 and 13 years in the other claims. I will consider the reasons for the delay below in the context of considering the Mr Mugabe's conduct.
22. **Cogency of evidence.** It is the unchallenged position of the Home Office that since the claim was brought enquiries have been made and they are unable to trace Mr Nicholas (who wrote the 2007 letter) or the person who carried out the investigation and issued the apology in 2012 and, although they have Mr Mugabe's immigration file, there is no reference on it to Ms X and there is no trace of any papers relating to the investigation. Mr Mugabe was highly critical of the fact that an organisation of the size and power of the Home Office was unable to trace these records or make contact with relevant personnel. I am bound to say that I am not sure, based on Ms Bagha's witness statement, that all was done that could have been done in this respect. But Mr Mugabe did not

seek to cross-examine her and, being realistic, I am not at all surprised that, with the passage of time since 2012, this information is not now available. The inevitable effect of that is that the Home Office will not be able to provide any evidence to explain how the error in the 2007 letter happened. That is likely to prejudice their position in defending Mr Mugabe's claims, which may turn on findings as to how the error occurred and the state of mind of whoever was responsible for the 2007 letter.

23. **The conduct of the Home Office.** Mr Mugabe was extremely critical of the Home Office's failure to respond to his complaints about the error in the 2007 letter. It seems to me that there was considerable force in this criticism. He first complained about the error within a matter of two weeks and there were numerous chasers over the years but it took the Home Office about five years to get around to investigating it and issuing an apology, and then not a very detailed one. However, it appears that he did not communicate with the Home Office about the matter from 2014 until 2023, so that I do not consider that the Home Office can be criticised for its conduct between those dates.
24. **Duration of any disability.** Based on the joint statement by the psychiatrists I do not consider that the Claimant suffered any "disability" (in the sense of lacking capacity to conduct legal proceedings: see definition in section 38 of the Limitation Act 1980), save possibly for a period in 2014 when he may have been suffering an "acute depression" as Dr Pennibacker believes. In any event, it is plain from the medical evidence that after he recovered in 2014 his mental state did not represent any impairment to his ability to bring legal proceedings.

25. **Mr Mugabe's conduct.** I have described above how Mr Mugabe acted in relation to bringing a claim against the Home Office and the advice he obtained.
26. I accept that until he obtained leave to remain in March 2010 he would have been at a very substantial disadvantage in his ability to access information (particularly on the internet) or legal help (though he did have solicitors acting in relation to his immigration status). I also accept that until he received the Home Office's letter of 2 May 2012 he did not know whether there was in fact any fault on their part or whether he should rather be making a claim against Ms X. He was also suffering until the end of 2014 from dysthymia and (possibly) from acute depression during that year. Giving him the benefit of the doubt I am prepared to say that the combination of these things provide an adequate explanation for his failure to start any legal proceedings up to the end of 2014.
27. However, I am quite satisfied on the evidence that by the end of 2014:
- (1) Mr Mugabe was clear that he wished to bring a claim against the Home Office based on the false statement in the letter of 25 April 2007;
 - (2) he was in a fit state mentally to do so;
 - (3) he was no longer subject to the disadvantages of being an asylum seeker;
 - (4) he knew that, however his claim was put, it was out of time and that he would need to apply for an extension of time from the court if it was to go forward; and

(5) he knew that he could not obtain legal aid for such a claim and that it would be difficult to obtain assistance on a pro bono or “no win, no fee” basis (see para 57 and 58 of his witness statement).

28. Although he was therefore on any view in a position to issue a claim as a litigant-in-person (as he has now done) in early 2015 he did not in fact lodge any claim until March 2023 at the earliest, a delay of eight years. By way of explanation for this delay, he reminded me that he was not a lawyer and said that he came from a poor background. He said that he lacked “social capital”. He said that during the whole period he was suffering from a broken heart as a consequence of the break-up of his family and not seeing his daughter; he said that this made him feel demotivated and that there were days when he would not get out of bed and would cry. He said it had been difficult for him to read and understand the relevant legislation and that it had taken him a long time to understand and organise his application for an extension of time.

29. I am afraid that, making as much allowance as I can for the points made by Mr Mugabe and his status as a litigant-in-person, he has not provided me with a satisfactory explanation for the delay in starting his claim between 2014 and 2023. As I have indicated, he is articulate and able to understand the issues (and he was capable of obtaining a good degree in 2015); he was not suffering any recognised psychological illness during this period; he frequently stressed how badly he had been treated by the Home Office and said that he had a thirst for justice, which only led me to ask myself why he did not therefore bring a claim at the earliest opportunity.

30. **Other considerations.** Mr Mugabe argued that the false information about him and Ms X and the delay in acknowledging the mistake were part of a deliberate plot by Home Office officials to cause the break-up of his family and consequently his departure from the UK. He said that it was not in the interests of justice for the Home Office to avoid the consequences of a deliberate breach of the law by a limitation defence. On what I have seen I do not consider that there is any real basis for the allegation that it was all a deliberate plot but in any event, again, the more egregious his characterisation of the Home Office's conduct became, the more I asked myself why he did not therefore act more quickly.

Conclusion

31. I understand Mr Mugabe's indignation at the unexplained error by the Home Office and the effects it has had on his personal life and his desire for justice in this case. But he must understand that any proper legal system must have provision for limitation periods which courts must enforce fairly to all litigants. Taking account of all the circumstances of this case and in particular the very long delay, the lack of any good explanation for it since 2014 and the likely prejudice caused to the Home Office, I am quite clear that this is not a case where it would be equitable to disapply or extend the relevant limitation periods. I therefore refuse the applications under section 33(1) of the Limitation Act 1980 and section 7(5)(b) of the Human Rights Act 1998 and dismiss Mr Mugabe's claims since they are time-barred.

32. The court will issue an order as follows:

- (1) The Claimant's applications under section 33(1) of the Limitation Act 1980 and section 7(5)(b) of the Human Rights Act 1998 are dismissed;
- (2) The Claimant's claims are therefore time-barred and are dismissed;
- (3) If the Defendant wishes to apply for any costs it must lodge and serve a full written application by 10 January 2025;
- (4) If the Claimant wishes to make any representations in response to the application for costs he must lodge and serve written submissions by 24 January 2025;
- (5) Unless otherwise ordered HH Judge Shanks will decide any application on the papers as soon as possible thereafter.