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*Judgment: approved by the court for handing down (subject to editorial corrections)**	*ICOS:* **15/95516/A01**
	Delivered: **05/05/2023**

IN HIS MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

ON APPEAL FROM THE HIGH COURT OF JUSTICE (KING'S BENCH DIVISION)

BETWEEN:

SURESH DEMAN

Appellant

and

(1) THE INDUSTRIAL TRIBUNALS AND FAIR EMPLOYMENT TRIBUNAL, PATRICIA McVEIGH AND RENE MURRAY

(2) THE EQUALITY COMMISSION FOR NORTHERN IRELAND, EVELYN COLLINS, JOAN HARBINSON AND BOB COLLINS

Respondents

The Appellant appeared in person
Joseph Aiken KC (instructed by the Departmental Solicitor's Office) for the first Respondents
Philip McAteer (instructed by the Equality Commission) for the second Respondents

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Before: McCloskey LJ and Humphreys J

HUMPHREYS J *(delivering the judgment of the court)*

Introduction

[1] The appellant has been a regular litigant in the courts and tribunals in this jurisdiction and in those of England and Wales. The history of some of this litigation is set out in the judgment of this court in *Deman v Queens University Belfast* [2022] NICA 23 at paras [4] to [8].

[2] Many of the proceedings initiated by the appellant have the same underlying theme, namely that he has been subjected to unlawful discrimination on the grounds of his race and/or religion. In recent years he has chosen to make such allegations against many members of the judiciary, counsel, solicitors, and court staff.

[3] This appeal concerns two sets of proceedings commenced by the appellant which allege discrimination on the grounds of race and religious belief as follows:

(i) Against the first respondents in respect of the operation of systems to handle and process discrimination proceedings against a union and officers of his former employer; and

(ii) Against the second respondents on the basis of a failure to support these claims.

[4] The appellant originally brought proceedings by way of writs of summons issued in the High Court, but these were struck out by Master McCorry, a decision upheld by Higgins LJ. This court refused leave to appeal in a judgment reported at [2014] NICA 30. Since these were claims relying on the statutory torts created by the Race Relations (Northern Ireland) Order 1997 ("the 1997 Order") and the Fair Employment and Treatment (Northern Ireland) Order 1998 ("the 1998 Order"), exclusive jurisdiction to hear and determine such claims was vested in the county court.

[5] The appellant then issued civil bills in each case on 30 September 2015, seeking £50,000 damages for injury to feelings caused to him by reason of the alleged unlawful racial and religious discrimination.

[6] On 12 June 2017 His Honour Judge Devlin held that, in each case, the claims were out of time, and he refused to exercise the statutory discretion to extend time in the appellant's favour. The cases were thereby dismissed.

[7] The appellant pursued an appeal against these decisions and on 10 October 2019 McAlinden J dismissed these appeals and affirmed the orders of HHJ Devlin. The appellant now seeks to appeal to this court.

[8] The court raised the issue of whether or not, on a proper interpretation of the 1997 Order, the 1998 Order and the County Courts (Northern Ireland) Order 1980 ("the 1980 Order"), it had jurisdiction to hear and determine these appeals.

The Statutory Framework

[9] Article 21 of the 1997 Order makes it unlawful for any person concerned with the provision of goods, facilities, or services to the public to discriminate on racial grounds against a person seeking to obtain them.

[10] Article 54 of the 1997 Order provides that any claim in relation to Article 21 may be made the subject of civil proceedings and shall only be brought in the county court. There is no monetary limit on the jurisdiction of the county court in such cases.

[11] Similar provisions exist in respect of discrimination in the provision of goods and services on the grounds of religious belief or political opinion in the 1998 Order. Article 28 renders such discrimination unlawful and Article 40 prescribes the remedy by way of civil proceedings in the county court.

[12] In considering what rights of appeal exist from a decision of the county court in relation to such proceedings, it is important to bear in mind what this court said in *DMcA v A Health and Social Care Trust* [2017] NICA 3:

> "In our view it is clear law that the creation of a right of appeal requires legislative authority. An appeal does not lie unless expressly given by statute (see re *G An Infant* [1960] NI 35 and *Great Northern Railways Board v Minister of Home Affairs* [1962] NI 24)." [para [28]]

[13] Neither the 1997 Order nor the 1998 Order contain any provisions in respect of an appeal from the county court, nor do they state in any case that the decision of the county court is final and binding.

[14] Article 60(1) of the 1980 Order states:

> "Any party dissatisfied with any decree of a county court made in the exercise of the jurisdiction conferred by Part III may appeal from that decree to the High Court."

[15] By Article 60(3):

> "The decision of the High Court on an appeal under this Article shall, except as provided by Article 62, be final."

[16] Section 35(2)(d) of the Judicature Act (Northern Ireland) 1978 provides that no appeal lies to the Court of Appeal:

> "from an order or judgment of the High Court or any judge thereof where it is provided by or by virtue of any statutory provision that that order or judgment or the decision or determination upon which it is made or given is to be final."

[17] Article 62 states that the High Court may, on the application of a party, state a case for the opinion of the Court of Appeal upon a point of law arising on an appeal under Article 60.

[18] There is therefore no general right of appeal to the Court of Appeal from a decision of the High Court on an Article 60 appeal – the only route is to invoke the case stated mechanism.

[19] The jurisdiction conferred by Part III, headed 'Original Civil Jurisdiction', includes any action up to the statutory limit of £30,000, recovery of legacies, actions involving title to land, injunctions, various equity, probate, and administration matters.

[20] Article 61 of the 1980 Order provides:

> "(1) Except where any statutory provision provides that the decision of the county court shall be final, any party dissatisfied with the decision of a county court judge upon any point of law may question that decision by applying to the judge to state a case for the opinion of the Court of Appeal on the point of law involved and, subject to this Article, it shall be the duty of the judge to state the case."

[21] The 1980 Order makes no reference to claims in respect of the statutory torts created by either the 1997 or 1998 Orders. The question then arises as to whether a litigant dissatisfied with the outcome of a claim of race and/or religious discrimination in the county court can appeal, by virtue of Article 60 of the 1980 Order, to the High Court or whether he must seek to have the judge state a case for the opinion of the Court of Appeal under Article 61.

[22] It is apparent that, for whatever reason, this issue was not raised or considered in the course of the appeal before McAlinden J. The parties and the court proceeded on the basis that the appellant was entitled to appeal the decision of HHJ Devlin under Article 60.

Consideration

[23] In his analysis of the appeal right created by Article 60 of the 1980 Order, BJAC Valentine comments:

> "This does not apply to a matter heard by the county court under some other statutory enactment so that in such matters appeal lies to the High Court only in so far as the statute provides … In the absence of such provision for appeal, the High Court has no jurisdiction to hear an appeal from a county court in its appellate jurisdiction." (Valentine, General Law of Northern Ireland)

[24] By contrast, the same author states in relation to the Article 61 appeal right:

> "This applies to any decision made by a county court in the exercise of any jurisdiction under any statute and is thus wider than Article 60."

[25] *Lee v Ashers Baking Company* [2016] NICA 39 and [2018] UKSC 49 represents a high profile example of the use of the Article 61 case stated mechanism in respect of a claimed breach of a statutory tort under the 1998 Order.

[26] The first question to consider is whether the appeal to McAlinden J fell within the ambit of Article 60. In order to do so, the appeal must have been from a county court exercising its original civil jurisdiction as set out in Part III of the 1980 Order. The only possible candidate for this is to be found in Article 10(1):

> "a county court shall have jurisdiction to hear and determine any action in which the amount claimed … does not exceed £30,000."

[27] "Action" is defined by Article 2(2) as including:

> "Any proceedings which may be commenced as prescribed by civil bill or petition …"

[28] In any claim involving the statutory torts, the county court has power to grant all such remedies as may be available in the High Court – there is no limitation on its monetary jurisdiction. Indeed, in the instant cases, it is apparent that in each of the civil bills the appellant claimed (as he was entitled to do) damages in the sum of £50,000. It is evident therefore that the county court was not exercising its Part III jurisdiction when it heard these claims but was exercising the jurisdiction specifically conferred by the legislative provisions.

[29] As a result, no appeal against the decision of HHJ Devlin in the county court lay to the High Court under Article 60 of the 1980 Order. An aggrieved party can only pursue an appeal by way of case stated under Article 61 in such circumstances.

[30] If the preceding conclusion is wrong and if the High Court did have jurisdiction to hear the appeal by the Article 60 route, it is clear that there is no right of further appeal to this court. The only mechanism open to a party in that case is to apply to the High Court judge to state a case for the opinion of the Court of Appeal pursuant to Article 62.

[31] McAlinden J therefore had no jurisdiction to entertain the appeal from the county court. No appeal therefore lies to this court. If, contrary to our finding, the High Court did have jurisdiction, the appellant has failed to pursue the correct avenue for a further appeal. The rationale of our analysis and conclusion is that the 1997 Order and the 1998 Order constitute the *lex specialis* in the fields to which they apply.

[32] If, hypothetically, a plaintiff pursued a claim under the 1997 Order or the 1998 Order for damages for unlawful discrimination but expressly limited the claim to a sum within the general monetary jurisdiction of the county court, the court hearing the claim would not be exercising the original or general civil jurisdiction but would be acting in accordance with the *lex specialis*. Accordingly, the Article 60 appeal route would not be available.

Recusal

[33] At the outset of the hearing Dr Deman applied for the recusal of McCloskey LJ on the ground that this judge had made a decision adverse to him (noted in para [1] above). No other reason was advanced. The court determined to complete the hearing, reserving its ruling on this issue. In one of the leading authorities on this subject, *Locabail Properties v Bayfield* [2000] QB 451, Lord Bingham CJ stated at para [25]:

> "The mere fact that a judge, earlier in the same case or in a previous case, had commented adversely on a party or witness, or found the evidence of a party or witness to be unreliable, would not without more found a sustainable objection."

[34] While this passage provides a complete answer to the recusal application, this court is confident that the hypothetical observer, having considered the earlier judgment, would harbour no reservations about the impartiality or fairness of either member of the judicial panel. The application is refused accordingly.

Conclusion

[35] This court has no jurisdiction to hear the appellant's appeal and it is therefore dismissed. We will hear the parties on the question of costs.