



DECISION NOTICE OF SHERIFF IAN H L MILLER

ON AN APPLICATION FOR PERMISSION TO APPEAL (DECISION OF UPPER
TRIBUNAL FOR SCOTLAND)

in the case of

MR AZHIR SHARIF, 202 Ayr Road, Glasgow, G77 6DT

Appellant

and

DR MOHAMMED SHOAIB MOUGHAL, 15 Alder Road, Newlands, Glasgow, G42 2UU per
Patten & Prentice

Respondent

FTT Case Reference FTS/HPC/EV/19/2306

3 March 2020

Decision

The applicant's request for permission to appeal to the Court of Session under and in terms of section 48 of the Tribunals (Scotland) Act 2014 is refused.

Introduction

[1] The applicant, by application dated 27 February 2020, seeks the permission of the Upper Tribunal to appeal to the Court of Session against the decision of the Upper Tribunal dated 27 January 2020 which refused his request for an extension of the time limit for

requesting permission to appeal against a decision of the First-tier Tribunal dated 21 October 2019 and declined to admit his notice of appeal.

Grounds of appeal

[2] The application sets out in paragraph 2 what the applicant describes as “errors of law” and in paragraph 3 “important points of principle and practice” that he says are raised by the application.

[3] Paragraph 2 raises two matters: (i) that “the Tribunal, both Lower and Upper, have refused to exercise [their] discretionary power, to the prejudice of the Appellant”; and (ii) that “the decisions reached in the present proceedings, at every level, have denied him an opportunity to be heard” in particular about what he says are the personal circumstances of the landlord respondent.

[4] Paragraph 3 also raises two matters which he describes as being “in the interests of justice: (i) that he is not removed from the property in question “without the opportunity of making oral representations to the Tribunal in support of representations, previously intimated”; and (ii) that the “upper court” be allowed to consider the circumstances in which the Tribunal at any level exercise its inherent discretionary power in applying the rules contained in the Tribunals (Scotland) act 2014 and to determine whether the Tribunals, at every level, have discharged their obligations to act fairly.”

Discussion

[5] The application is presented under and in terms of section 48 of the Tribunals (Scotland) Act 2014. Subsection (2) sets out the two requirements that an appeal to the Court of Session is made (a) by a party to the case and (b) on a point of law only and subsection (3)

provides that an appeal to the Court of Session requires (in the first instance) the permission of the Upper Tribunal. These are mandatory requirements. A point of law includes an error of law. Subsection (4) states that the permission sought may be given in relation to an appeal under section 48 only if (in the first instance) the Upper Tribunal is satisfied that there are arguable grounds for the appeal. This provision confers on the Upper Tribunal a discretion to grant or refuse permission. Neither sections 43(4) nor 55(2) come into play with regard to this application.

[6] The application has been presented timeously. The applicant has complied with subsection (2)(a). In respect of subsection (2)(b) he relies upon what he says in the application.

[7] The questions that his application poses and requires to be answered are:

(1) has the applicant indicated a point of law in his application?

(2) if he has, does it satisfy the test of being an arguable ground of appeal?

Question (1)

[8] The appeal has been taken against the decision dated 27 January 2020. That decision was founded in the provisions and requirements of rule 3(5) of The Upper Tribunal for Scotland (Rules of Procedure) Regulations 2016. That rule is concerned with the power conferred upon the Upper Tribunal to extend the time for lodging a notice of appeal. It is a discretionary power. The Upper Tribunal sought to apply that rule in reaching its decision as narrated in paragraphs [4] and [5]. It did that on the factual basis contained in the material indicated in paragraph [6] of the decision. Its decision is given in paragraphs [7] to [17] of the decision. They are held to be repeated herein breviter causa.

[9] The “errors of law” and the “important points of principle and practice” on which the applicant founds in his application raise matters that are nothing to do with the decision appealed against and, with one exception, were never under consideration in making that decision. That exception was the first matter raised in paragraph 2 and that was dealt with by the Upper Tribunal at paragraph [9] of the decision. The Upper Tribunal, in the context of that decision, observed that the matter repeated what he had said previously and concluded that it did not have “anything to say about why his appeal was not made in time”. His current application makes no criticism of that exercise of discretion or of the conclusion reached.

[10] The matters in paragraph 3 do not progress beyond general statements about where he considers lie “the interests of justice”.

[11] Neither paragraph 2 nor 3 poses or raises any recognisable point of law arising out of the issue with which the decision appealed against had to deal or any specific respect in which the decision fell into an error of law.

[12] In the absence of a point of law that arises out of that decision, the applicant has not complied with the mandatory requirement of subsection (2)(b) and therefore I must answer this question in the negative. For that reason his application must be refused in this ground.

Question (2)

[13] I do not need to answer this question because of my answer to the first question.

Conclusion

[14] For the foregoing reasons the applicant's request for permission to appeal to the Court of Session under and in terms of section 48 of the Tribunals (Scotland) Act 2014 is refused in respect that he has failed to comply with subsection (2)(b) of that section.