Upper Tribunal for Scotland

[2020] UT40
UTS/AP/20/0009; UTS/AP/20/0010;
UTS/AP/20/0011; UTP/AP/20/0012

DECISION NOTICE OF SHERIFF NIGEL ROSS

On an application for permission to appeal (decision of first-tier tribunal for Scotland)
in the case of

Mr Pradip Sutare, 372 Colinton Mains Road, Edinburgh, EH13 9BS

Appellant

and

Mr Ramesh Golkonda, 19 Craigmount Brae, MIDLOTHIAN, EH12 8XD
per TC Young Solicitors,
7 West George Street, Glasgow, G2 1BA

Respondent

FTT Case Reference FTS/HPC/EV/18/1995; FTS/HPC/CV/18/1997; FTS/HPC/CV/18/3052; FTS/HPC/PR/19/0072

20 October 2020

Decision

In respect of the appellant's motion for leave to appeal against the decision dated 21 January 2020 by the First-Tier Tribunal, leave to appeal already having been refused by that tribunal, leave to appeal is refused in terms of rule 3(6)The Upper Tribunal for Scotland (Rules of Procedure) Regulations 2016 (the "2016 Regulations").

Note

[1] This is one of four appeals lodged by the appellant against separate decisions of the First-tier Tribunal ("FtT") dated 27 January 2020, in respect of various claims arising out of the appellant's former tenancy in Edinburgh. The respondent is the appellant's former landlord.

[2] The appellant applied to the FtT for permission to appeal all four cases, which was refused by decisions all dated 15 April 2020. The appellant therefore required the permission of this tribunal ("UT") before any appeal could proceed, and duly applied for permission in respect of all four cases.

[3] While the UT has power to decide the matter without a hearing, that course was not followed in these cases. A hearing was allocated for 3 August 2020, which was then discharged at the appellant's request. A further hearing was allocated for 27 August 2020, which was then discharged at the appellant's request. A further hearing was appointed for 16 October 2020. The appellant did not appear, did not enter into any communication, and provided no representation. Permission to appeal was duly refused at that hearing. This note is provided in terms of rule 3(6) of the 2016 Regulations, and sets out the reasons for refusal of permission. There were four reasons.

Failure to appear

[4] A hearing on permission to appeal was arranged for 3 August 2020. The appellant contacted the UT to request that the hearing be postponed, for medical reasons. He subsequently supplied a GP certificate which indicated "acute tonsillitis". The hearing was duly discharged and a further hearing arranged for 27 August 2020.

[5] On 24 August, the appellant emailed to inform the UT that he would not be attending on 27 August. He wrote:

> "I am now in India and on the way to my hometown as I had to travel urgently due to medical emergency in the family…I have no access to internet in native place at the moment so I will not able to reply your emails hereafter for a few weeks…its in the interest of justice to postpone 27 Aug hearing and sist or halt proceedings of these cases till I am back in UK i.e. for 1 month and I will keep you updated. Apologies for any inconvenience caused."

[6] This was not a request but in effect a directive that the hearing should be postponed. This was the second postponement for the appellant's private interests, and displayed no concern for the effect on the respondent, or arrangements of the UT. The reason given was urgent family illness. Out of possibly an excess of care about being fair to the appellant, I gave him a third opportunity to appear. A further hearing (requiring further administrative arrangements) was fixed for 16 October 2020. The appellant was informed by the customary method, namely email. He was informed that there would be no further continuation. The date of 16 October was selected to allow him his requested period of one month, and a generous further three weeks or so to make arrangements. As this was a telephone hearing, there was no requirement for the appellant to return to the UK. This arrangement was made partly on reliance on the appellant's promise to "keep you informed". A few days prior to 16 October he was sent an email reminder of the hearing.

[7] He did not keep that promise. He either closed down or did not check the customary method of communication. He did not show any concern for his case, which he had unilaterally postponed without the consent of any other party. His actings were focused only on his own and family interests and took no responsibility for the conduct of his appeals. He has relied heavily throughout proceedings on his being a lay litigant, although

he has quoted frequently from legal texts. None of these issues required any legal knowledge.

[8] For those reasons, I formed the view that his failure to appear was not excusable, and this application should not be indulged further. The respondent is entitled to finality of a decision which is now nine months old. I accordingly made the decision, at a hearing, to refuse permission. Because the decision was at a hearing, the appellant is not entitled to seek a reconsideration hearing in terms of rule 3(7) of the 2016 Regulations.

[9] That was not the only reason, however, for refusal.

The arguability of the appeal

[10] Mr Sutare has submitted four appeals. He summarises these as:-

> "I am the Defendant for 2 applications of Mr. Ramesh Golkonda (Claimant) to First-tier Tribunal for Housing and Property Chambers. Mr Golkonda claimed of around £10,000 of rent arrears in his application FTS/HPC/CV/18/1997 under Rule 70 of FTSHPC and his second application FTS/HPC/EV/18/1995 for possession of the property based on his claims. After that, I have made 2 counterclaim applications, first FTS/HPC/CV/18/3052 to recover losses around £20,000 (fixed damages) due to breach of landlord duties and loss incurred due to repairs under Rule 70 of FTSHPC, it also raised a compensation due to distress, harassment by landlord during tenancy and second application FTS/HPC/PR/19/0072 sought £1,080 for fixed damages as Mr. Golkonda failed to put a deposit in deposit scheme under Rule 103 of FTSHPC and also sanctions against the landlord."

[11] The grounds of appeal are similar in each case, and repeat many of the same assertions. The grounds are extremely long, and range widely over a number of legal and factual points. For that reason they are extremely hard to summarise succinctly, not helped by the lack of organization and structure. Unfortunately, the quantity of points does not translate into quality.

[12] The grounds raise a number of points of law which are largely irrelevant (such as various alleged failures to carry out the obligation of a landlord to issue notices or to register

owners, which have no bearing on the claims). Most of these points do not assist Mr Sutare, because even if true they don't allow him to succeed in his claim, or resist Mr Golkanda's claim, as the case may be.

[13] On the facts, there are a large number of issues where Mr Sutare simply disagrees with the FtT, and says the FtT made the wrong findings and came to the wrong conclusions. Unfortunately, that does not allow an appeal to succeed. An appeal is not a rehearing of the case from the beginning. An appeal court is not allowed to overturn a decision at first instance just because the appeal court disagrees (on the hypothesis that it disagrees). That is because the FtT had the benefit of seeing and hearing witnesses, and assessing the whole of the evidence, and it was their task to make findings about the truth of the matters. An appeal court cannot go behind that, unless the appellant shows that their findings of fact are not rational, or fail to take proper account of the accepted evidence, or were otherwise findings which a reasonable court could not make. Where a case involves two opposing versions of the truth it is the duty of the court or tribunal to decide which evidence it accepts, and to explain why it has reached a particular conclusion. In this case, the FtT performed their duty and carried out such an exercise, in proceedings which are remarkable for their length and the number of issues raised. The FtT's findings on the evidence are fully explained and exhibit no error. There is no basis to identify that they carried out that task wrongly. The mere fact that the appellant disagrees with their findings is not enough to allow an appeal.

[14] It was because I could see no error in what the FtT had done, that I decided to put the matter out for a hearing, to give the appellant a chance to explain further. The hearing was for Mr Sutare's benefit. He has chosen not to participate.

[15] There is no evident error in what the FtT decided. The appellant disagrees, but cannot explain what was logically wrong with the FtT's reasoning process. His central point, repeatedly made, is that the FtT erred because they did not accept his version of events. That disagreement does not support an appeal.

[16] Accordingly, for that reason also, I refused permission to appeal as the appeal was not arguable.

The history of the litigation

[17] I also reviewed the history of the proceedings, to make sure that the appellant had not been treated unfairly, and had had every opportunity to make his case.

[18] The underlying merits of the case were dealt with by four decisions, based on similar evidence but dealing with different claims, of the FtT, all dated 27 January 2020. These decisions are of remarkable length, quite out of proportion to any other proceedings this tribunal has seen, and the findings exhibit a high degree of care in both recording and assessing evidence, and a careful application of the facts to the relevant law. The cases are too lengthy and detailed to repeat here.

[19] It became evident that the appellant has been involved in very large amounts of correspondence throughout the case before the FtT, involving large amounts of materials being produced, continual delays for largely unvouched reasons, and raising of a large number of irrelevant issues. Some indication of this is to be found in the FtT decision about the rental deposit (concluding that the landlord was not obliged to repay a deposit, because Mr Sutare had not paid one) of 27 January 2020, in the closing remarks at paragraph 341:

[20] The FtT concluded:

> "This has been a very protracted application due in no small part to Mr Sutare's insistence on querying many of this Tribunal and a previous Tribunal's decisions and taking up significant parts of several days' hearings with applications for late productions to be allowed or for postponements and objections to the Tribunals conduct of the proceedings. The Tribunal does not consider it can address any of the issues raised in proceedings before a previous Tribunal. That would have been a matter for that Tribunal to determine. With regards to this Tribunal's involvement it is noted that Mr Sutare has provided as documentary evidence of his trip to London that necessitated the postponement of the hearing on 8 October 2019 a receipt from Superdrug in Kilburn London dated 8 October 2019. This was perhaps less convincing than the Tribunal would have wished as it could have been obtained by anyone and sent to Mr Sutare in the post. However, as the Tribunal did not spell out exactly what type of vouching it might require it has accepted it. The Tribunal did however find that throughout this application Mr Sutare's conduct increased the length of time that this application has taken by leading unnecessary evidence, persisting with lines of argument despite being advised that they were likely to be irrelevant, causing delay by seeking to introduce late productions and seeking unnecessary postponements and submitting vast quantities of emails and documents."

[21] This approach continued through the UT proceedings. Helpfully, owing to the large amounts of correspondence from Mr Sutare, the staff at the UT compiled the following brief summary of proceedings:-

> 15th April 2020 – Mr Sutare lodges four permission to appeal applications with the Upper Tribunal for Scotland. Included in the body of his email is a request for the Orders dated 27th January 2020 to be suspended while Mr Sutare recovers from COVID-19;
>
> 17th April 2020 –The Upper Tribunal for Scotland receives 19 emails from Mr Sutare. These initially relate to his applications and suspending the eviction order. Mr Sutare claims this is urgent as he is required to vacate the premises that day. An interim decision refusing to suspend the eviction order is issued by the Upper Tribunal for Scotland. Mr Sutare's later emails express his dissatisfaction with this and include requests for this is to be reconsidered and another member to be

allocated to the appeals. Mr Sutare also send emails with additional submissions advising he needs to revise his applications to the Upper Tribunal for Scotland;

19th April 2020 – The Upper Tribunal for Scotland receives 2 emails from Mr Sutare advising he wishes to recall several of the emails sent on 17th April 2020;

20th April 2020 – Mr Sutare sends a further email clarifying what emails should be deleted;

21st April 2020 – The Upper Tribunal for Scotland receives 7 emails from Mr Sutare. These include a further request for the decision to be reconsidered and the appeals to be allocated to another member. These emails also include over 300 pages of additional submissions;

22nd April 2020 – The Upper Tribunal for Scotland explains that these appeals are sisted following the order issued with the decision on 17th April 2020. The Upper Tribunal also reiterates that a decision on permission to appeal has not yet been made and so the decision cannot be reconsidered. Information on how to appeal a decision is re-sent to Mr Sutare. Mr Sutare is also advised of the complaints procedure. Mr Sutare responds expressing his dissatisfaction with the Upper Tribunal for Scotland, this is referred to the Operations Manager to be dealt with as a complaint;

24th April 2020 – Operations Manager issues full response to complaints made by Mr Sutare. All complaints are deemed to be unfounded. The appeals process is again explained to Mr Sutare and he is advised that parties to an appeal do not have any role in determining what member is allocated to their appeal. Mr Sutare is provided with the details of the Scottish Public Service Ombudsman should he wish to escalate his administrative complaints. Mr Sutare responds to reiterate his dissatisfaction and makes further accusations regarding the Upper Tribunal for Scotland administration. Mr Sutare suggests he may seek to request a review of the decision dated 17th April 2020. Mr Sutare sends a further email requesting a review of the decision dated 17th April 2020;

28th April 2020 – The Upper Tribunal for Scotland acknowledges the review request by Mr Sutare. The respondent is invited to make representations in relation to the request;

4th May 2020 – The respondent makes submissions in relation to the review request. These are sent to Mr Sutare. Mr Sutare sends further submissions in response to this.

5th May 2020 – The Upper Tribunal for Scotland receives multiple emails from Mr Sutare. Mr Sutare advises he is due to be evicted from the property on 7th May 2020. Mr Sutare seeks clarification on what it means for the appeals to be sisted. Mr Sutare is referred to previous emails sent to him explaining this;

6th May 2020 - The Upper Tribunal receives email correspondence from the respondent's representative advising the eviction will no longer take place on 7th May 2020. This is crossed over to Mr Sutare. Mr Sutare responds to advise that he intends to submit amended permission to appeal applications. Mr Sutare sends a follow up email to confirm that the eviction is not going ahead on 7th May 2020. Mr Sutare advises his requests for the suspension of the orders are no longer urgent. Mr Sutare requests that the Upper Tribunal for Scotland waits for him to submit updated permission to appeal applications before making a decision on his review request, or to suspend the orders if the tribunal are satisfied with the reasons he has provided in his review applications;

11th May 2020 – Sheriff Ross makes a decision on the review request;

13th May 2020 – The decision on the review request is issued to the parties;

17th May 2020 – Mr Sutare provides four additional UTS-1 applications and supporting documents to the Upper Tribunal for Scotland. Mr Sutare advises these are applications for an extension of time but they appear to be amended applications for permission to appeal;

22nd May 2020 - Mr Sutare is asked to advise the tribunal by email: what his motion is, under what rule it is made, and provide reasons why the Upper Tribunal would be justified in granting it;

29th May 2020 – Mr Sutare advises this his applications are self-explanatory. He accuses the Upper Tribunal administration of withholding documentation from the tribunal member and does not provide the information requested;

26th June 2020 – The Upper Tribunal for Scotland issues an order recalling the sisted appeals;

29th June 2020 – The Upper Tribunal for Scotland receives correspondence from Mr Sutare advising he intends to submit an amended section 7 of the UTS-1 forms within the next 3 working days;

30th June 2020 – The Upper Tribunal for Scotland acknowledges this email and refers back to the correspondence issued to Mr Sutare on 19th June 2020 in relation to submitting further documents;

3rd July 2020 – Mr Sutare apologies for not submitting further information. He advises his health has been poor and he would provide medical documentation to prove this. He advises that he hopes to provide the further information later that day or over the weekend and asks that a decision is not made until this is provided;

6th July 2020 – Mr Sutare provides amended documentation in relation to his appeal;

7th July 2020 – Mr Sutare accuses the Upper Tribunal administration of discriminating against him and obstructing the course of justice. Mr Sutare sends

further correspondence accusing the Upper Tribunal administration of maligning his image in front of the Sheriff;

10th July 2020 – Mr Sutare contacts the Upper Tribunal for Scotland seeking an update on his applications sent 6th July 2020;

20th July 2020 – Mr Sutare contacts the Upper Tribunal for Scotland seeking a further update on his applications sent 6th July 2020. An update is issued to Mr Sutare;

21st July 2020 – Mr Sutare accuses the Upper Tribunal administration of making decisions on behalf of the tribunal;

23rd July 2020 – Mr Sutare submits a further application to suspend the order for eviction. Mr Sutare advises he is due to be evicted on 27th July 2020;

24th July 2020 – Mr Sutare makes further submissions in relation to his application to suspend the order for eviction. There is a high volume of correspondence between the Upper Tribunal and Mr Sutare as arrangements are made for a hearing in relation to the application to suspend the order for eviction. Sheriff Dickson hears this application in the absence of Sheriff Ross. Sheriff Dickson suspends the order for eviction until 4th August 2020 when a telephone hearing in relation to the appeal is scheduled to take place with Sheriff Ross. Mr Sutare later advises the Upper Tribunal for Scotland that the decision of Sheriff Dickson does not address the suspension of the order for payment;

28th July 2020 – The Upper Tribunal for Scotland clarifies that Sheriff Dickson's decision is only in relation to the eviction order and requests further information from Mr Sutare on why the order for payment should be suspended and should be dealt with before the hearing on 4th August 2020. Mr Sutare is advised that if the request is deemed urgent then he should also confirm his availability for a hearing later that day or the next day. Mr Sutare provides representations on this and confirms his availability for a hearing in relation to this. Mr Sutare provides further correspondence advising he does not understand why an urgent hearing is required and why this cannot be decided without one. He claims to have accepted the hearing on 4th August 2020 under duress and advises that he feels coerced by emails from the Upper Tribunal administration to accept hearings at short notice. Mr Sutare makes further complaints about the attitude of the Upper Tribunal administration and again accuses them of making decisions on behalf of the tribunal;

29th July – a further telephone hearing by the UT to suspend the orders in the other three appeals;

3rd August 2020 – Mr Sutare seeks a postponement of the hearing set down for 4th August 2020 due to ill health. Mr Sutare also requests the suspension of the orders is continued until the rescheduled hearing. The hearing is postponed and Mr Sutare is asked to provide evidence of his medical condition and availability for a further hearing. Mr Sutare confirms he would be available for a hearing on 27th August 2020. This is the latest of three dates that are offered to him. He

confirms that he will vacate the premises voluntarily, so the eviction proceedings are no longer an issue;

24th August 2020 – Mr Sutare emailed again on 24 August 2020 intimate that he was now in Mumbai and travelling to his home town due to a medical emergency in the family. He was responding to a call from a doctor consultant to go there urgently. He stated that later he would sort out internet access at home or he would travel back to a city area to check emails. He stated it was in the interests of justice to postpone the 27 August hearing, that he would be back in the UK in one month, and he would "keep us updated".

[22] Because Mr Sutare claimed medical emergency (without vouching), the hearing was postponed, this time to 16 October 2020. That date allowed Mr Sutare approximately 7 weeks to quarantine, organise his affairs, and make contact again with the UT as he promised to do. It was several weeks more time than he requested. The respondent, who wished to listen to proceedings, made arrangements to attend for the third time.

[23] This procedural history shows a history of chaotic presentation and failures to comply with requests. The appellant has continually complicated matters to the point of making them unintelligible. He has a practice of submitting emails at random intervals, asking for various parts of the case to be addressed, for reasons which often appear to require unnecessary procedure. He submitted supplementary form UTS-1s for each case, and requested that parts of his original application be amended, without sufficient details to identify which parts, or the reason for amendment. He has submitted many emails, mostly containing requests to suspend orders the FtT or the UT, but without clear structure as to

what he requests and the reasoning. All of this was done almost entirely without regard to rules of procedure, or any recognition that he requires permission to amend or alter his case. His cases have absorbed a very considerable amount of time, mainly from the UT staff, in attempting to organise and respond to his applications. He is not entitled unilaterally to change his case without warning, because that has consequences for the respondent and the tribunal, but shows no recognition of this.

[24] In making my decision as to whether further indulgence of time should be granted, this history showed that further time would bring neither clarity nor likely progress, and was a further reason to refuse permission.

Prejudice to the respondent

[25] In all of this, the interests of the respondent have gone entirely unaddressed by the appellant. The respondent has required to undergo, as the FtT records, many days of proof in four cases, in all of which he was successful. The decisions were issued almost nine months ago. He cannot enforce them. He cannot close the chapter on the appellant's unsuccessful claims, for substantial sums, against him. He remains without remedy, without influence and without justice, all because of the present appeal proceedings, which are taking on an endless character. He has had to respond to continual requests and changes of position. The only justification for that would be if the appeals were sound. There is no indication that they are.

[26] For all these reasons, separately and cumulatively, permission to appeal was refused.