



30 July 2014

PRESS SUMMARY

Hounga (Appellant) v Allen and another (Respondent) [2014] UKSC 47
On appeal from [2012] EWCA Civ 609

JUSTICES: Lady Hale (Deputy President), Lord Kerr, Lord Wilson, Lord Carnwath, Lord Hughes

BACKGROUND TO THE APPEALS

The appellant, Miss Hounga, appears to have a current age of about 21. She is of Nigerian nationality and now resides in England. In January 2007, when she was aged about 14, she came from Nigeria to the UK under arrangements made by the family of the respondent, Mrs Allen, who is of joint Nigerian and British nationality and who resides in England with her children. Pursuant to these arrangements, in which Miss Hounga knowingly participated, her entry was achieved by her presentation to UK immigration authorities of a false identity and their grant to her of a visitor's visa for six months. For the following 18 months Miss Hounga lived in the home of Mrs Allen and of her husband who, although formally a respondent to it, plays no part in this appeal. Although Miss Hounga had no right to work in the UK, and after July 2007 no right to remain in the UK, Mrs Allen employed her, unpaid, to look after her children in the home. There Mrs Allen inflicted serious physical abuse on Miss Hounga and told her that, if she left the home, she would be imprisoned because her presence in the UK was illegal.

In July 2008 Mrs Allen forcibly evicted Miss Hounga from the home and thereby dismissed her from the employment. This appeal proceeds on the basis that, by dismissing her, Mrs Allen discriminated against Miss Hounga in that on racial grounds, namely on ground of nationality, she treated Miss Hounga less favourably than she would have treated others.

In due course Miss Hounga issued a variety of claims and complaints against Mrs Allen in the Employment Tribunal. The one claim which the tribunal upheld was her complaint of unlawful discrimination but only the part of the complaint which related to her dismissal. In this regard it ordered Mrs Allen to pay compensation to Miss Hounga for the resultant injury to her feelings in the sum of £6,187. The Employment Appeal Tribunal dismissed Mrs Allen's cross-appeal against the order. But the Court of Appeal upheld a further cross-appeal brought by Mrs Allen against it and set it aside. The court held that the illegality of the contract of employment formed a material part of Miss Hounga's complaint and that to uphold it would be to condone the illegality. It is against the Court of Appeal's order that Miss Hounga brings her appeal.

JUDGMENT

The Supreme Court unanimously allows the appeal in relation to Miss Hounga's claim for the statutory tort of discrimination, committed in the course of dismissal. Miss Hounga's claim in relation to alleged pre-dismissal harassment on grounds of race or ethnic origin should be remitted to the tribunal to determine whether the ground identified by the Court of Appeal for possible disapplication of the grievance procedure existed and, if so, whether the complaint was established.

Lord Wilson (with whom Lady Hale and Lord Kerr agree) gives the lead judgment. Lord Hughes (with whom Lord Carnwath agrees) gives a concurring judgment.

REASONS FOR THE JUDGMENT

- The main legal issue is whether the Court of Appeal was correct to hold that the illegality defence defeated the complaint of discrimination [23]. Lord Wilson holds that the application of the defence of illegality to claims in tort is problematic [25].
- The Court of Appeal has held in a previous case that the defence of illegality to a complaint of discrimination should succeed only if there is an inextricable link between the complaint and the claimant's illegal conduct. If the test applicable to Mrs Allen's defence of illegality is that of the inextricable link, Lord Wilson would hold the link to be absent. Entry into the illegal contract on 28 January 2007 and its continued operation until 17 July 2008 provided no more than the context in which Mrs Allen then perpetrated the acts of physical, verbal and emotional abuse by which, among other things, she dismissed Miss Houniga from her employment. But Lord Wilson proceeds to ask whether the inextricable link test is applicable to Mrs Allen's defence. [40]
- The defence of illegality rests upon the foundation of public policy. It is necessary, therefore, first to ask what aspect of public policy founds the defence and, second to ask whether there is another aspect of public policy to which application of the defence would run counter. [42]
- On the first question, concern to preserve the integrity of the legal system is a helpful rationale of the aspect of policy which founds the defence but the considerations of public policy which militate in favour of applying the defence so as to defeat Miss Houniga's complaint scarcely exist. [45]
- On the second question, the facts disclose that Mrs Allen and her family were guilty – or close to being guilty – of trafficking Miss Houniga from Nigeria to England. The UK authorities are striving in various ways to combat trafficking and to protect its victims. The decision of the Court of Appeal to uphold Mrs Allen's defence of illegality to Miss Houniga's complaint runs strikingly counter to this prominent strain of public policy. The public policy in support of the application of that defence, to the extent that it exists at all, should give way to the public policy to which its application is an affront. [52]
- Lord Hughes concludes that Miss Houniga succeeds in her appeal on the ground that there is insufficiently close connection between her immigration offences and her claims for the statutory tort of discrimination. But it is not possible to read across from the law of human trafficking to provide a separate or additional reason for this outcome. Even if one assumes in Miss Houniga's favour that her treatment by Mrs Allen in England amounted to slavery or forced labour, and even if one assumes, without any findings of fact, that Mrs Allen brought her to England with the purpose of so treating her, she does not appear to have been compelled to commit the immigration offences which she certainly did commit. [67]

References in square brackets are to paragraphs in the judgment

NOTE

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:

www.supremecourt.uk/decided-cases/index.html