

Neutral Citation No: [2019] NIQB 72

Ref: KEE10972

*Judgment: approved by the Court for handing down
(subject to editorial corrections)**

Delivered: 03/05/2019

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

RADKO BELKOVIC

v

BHSCT

KEEGAN J

Ex Tempore ruling

[1] I delivered a judgment in this case on 9 April 2018 wherein I dismissed Radko Belkovic's appeal in relation to medical evidence and adjourned his recusal appeal. I also adjourned Marek Belkovic's appeals and enlisted the assistance of the Attorney General.

[2] At the outset I should say it is difficult to get a clear picture of each brother's specific case on appeal. However, I can see that in terms of the substantive claim Radko Belkovic has a civil claim in relation to eye treatment. It also appears that Marek Belkovic has a civil claim outstanding in relation to his own medical treatment.

[3] I have managed this case since it first came to me in early 2018 and I have now reached a stage where I consider it proper to finally determine matters as follows in relation to these appeals from what are clearly interlocutory orders. Firstly, regarding Radko Belkovic's remaining appeal which I categorise as the recusal appeal the Attorney General's position paper of 3 April 2019 helpfully sets out the law in this area. As stated in the paper, the law is found in a case of *Porter v Magill* [2001] UKHL 67 which stated as a basic principle that a judge should not sit to hear a case in which the fair-minded and informed observer having considered the facts would conclude that there was a real possibility that he was biased. It is an even more fundamental principle that a judge should not try a case if he is actually

biased against a party and bias includes personal interest, friendship with the participants but also any real possibility that the judge would approach the case with a closed mind. Bias can be actual OR perceived. Further helpful judicial guidance is found in the case of *Locabail UK Ltd v Bayfield* [2000] QB 451 which has been recited many times. An important feature of that decision was Lord Bingham's observation that the mere fact that a judge has commented adversely against a party or witness in a case could not without more found a sustainable objection. Otherwise to state the obvious our legal system could not operate.

[4] A recusal application is also fact sensitive. It is a very personal matter for a judge and I consider that an appellate court should be slow to interfere with that jurisdiction. In my view it is also a matter best dealt with at the conclusion of proceedings when the appellate court has a clear view of outcomes. This was the point made by Mr Justice Stephens (as he was) in previous hearings of this case.

[5] I have read the voluminous papers filed by Radko Belkovic whereby he criticises Judge Devlin and indeed makes claims against opposing counsel and solicitors. I have allowed Mr Belkovic to explain the position in this court in oral submissions as well. A particular focus for Mr Belkovic appears to be Judge Devlin's refusal to allow Radko Belkovic advocacy rights for his brother a fact that helpfully he now recognises as having merit as he says he does not wish to represent his brother as this is not the ideal scenario.

[6] The papers Radko Belkovic puts before the court of course extend into wider allegations which I am not going to recite in full but broadly these seem to place all of his woes including racial abuse, intimidation and criminal charges at Judge Devlin's door. I see no evidence for that and such wild allegations have not assisted me in dealing with this case in any way. Looking at the test for recusal I cannot see that it is met in this case in terms of actual or perceived bias. As far as Radko Belkovic is concerned he is not happy with Judge Devlin's case management particularly ON the advocacy issue but that is not enough to found a case for recusal. I see no basis upon which Judge Devlin can be said to have closed his mind or pre-judged the merits of Radko Belkovic's civil claim. In my view that case should be listed immediately, that is the civil claim before the County Court. There is no reason why Judge Devlin cannot hear Radko Belkovic's case although given the matter was last before the County Court over a year ago it will simply as I understand it be sent back to the Recorder of Belfast for relisting in the usual way.

[7] Finally, I state that I do not encourage such satellite litigation from Radko Belkovic or indeed any other coming to the High Court again in relation to interlocutory matters such as this. Mr Belkovic is well able to conduct his case and has appeared in front of me and conducted his own case as a personal litigant and he can conduct his case going forward as he wishes and then if he is dissatisfied with the result in his case in relation to his civil claim he may bring an appeal on a substantive basis. I bear in mind, of course, and Mr Radko Belkovic should be comforted by the fact that an appeal is a complete rehearing if it is an appeal on the

merits from a County Court Division. Radko Belkovic's appeals are therefore dismissed.

[8] I then turn to Marek Belkovic's appeals. This is the more difficult issue in this litigation given that Marek Belkovic has not appeared before me and I am told that he has physical and cognitive difficulties. I allowed Radko Belkovic to make submissions on his brother's behalf in those circumstances and I also received assistance from the Official Solicitor and the Attorney General. My view of his case is as follows. Marek's appeals, as far as I can discern, appear to encompass recusal and refusal of advocacy rights to his brother. The problem in this case is to ensure a fair trial for this man and given that I have Article 6 obligations I have tried to assist in this. The appeals it seems to me are effectively from case management decisions of the judge dealing with Marek's case. The issues are now much clearer because I have already said Radko Belkovic does not want to represent him. So I think Marek's case should also be listed before the County Court but only for case management at this stage. Also, it is my view that Marek Belkovic's case should be separated from Radko Belkovic's case which as I have already said can proceed immediately.

[9] It seems to me that having the two brothers' cases heard together given the different issues has added to the tensions firstly and complications secondly and has distracted from the real issues in each case. Marek Belkovic's cases cannot be listed for hearing immediately but should be listed for case management to determine the representation issue as soon as possible. I assume that the Official Solicitor and Attorney General will continue to assist. Marek Belkovic may also write to the Law Society with the assistance of his brother or the Official Solicitor seeking a solicitor. His appeals will be dismissed on the basis that the current appeals have no purpose and these issues remain part of the case management by the County Court judge who will be a different judge given that the two cases will be separated out. As with Radko Belkovic's case I discourage anymore satellite litigation which is clearly adding to the distress, delay and costs in this case. It is fundamentally in both brothers' interests that their cases are heard.

[10] In conclusion, Marek Belkovic's appeals will be dismissed with my direction that his case be listed for case management direction only with the Attorney General and the Official Solicitor on notice before a different County Court on a date to be fixed. I direct that this judgment be transcribed for the benefit of all the parties.

[11] In answer to Mr Millar's query at the end of this hearing, I confirmed that all appeals have now been dealt with. I allowed Radko Belkovic to address me in this court by way of submission for the reasons I have given. He acted appropriately before me. I also heard submissions on costs after which I allowed costs against Radko Belkovic and I made no order as to costs in Marek Belkovic's appeals.