



Neutral Citation Number: [2024] EWHC 2681 (KB)

Case No: KA-2023-000122

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

ON APPEAL FROM THE ORDER OF MASTER EASTMAN

Dated 23 June 2023

Case No. KB-2022-006398

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 23/10/2024

Before :

MRS JUSTICE HILL

Between :

BRYN DUVAL RICHARDS

Appellant

-and-

(1) THE CROWN PROSECUTION SERVICE
(2) GREAT YARMOUTH MAGISTRATES COURT

Respondents

The **Appellant** appeared in person
Victoria Ailes (instructed by the **Government Legal Department**) for the **Respondents**

Hearing date: 17 October 2024

Approved Judgment

This judgment was handed down remotely at 10.30am on 23 October 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MRS JUSTICE HILL

Mrs Justice Hill:

Introduction

1. This is a renewed application for permission to appeal against the order of Master Eastman dated 23 June 2023, permission having been refused on the papers by Sir Stephen Stewart on 29 July 2024.
2. The Appellant, Mr Bryn Richards, was the Claimant in KB-2022-006398. This was a claim under the Human Rights Act 1998 (“the HRA”) against the Crown Prosecution Service (“the CPS”) and Great Yarmouth Magistrates Court (“the Magistrates Court”). By the Master’s order dated 23 June 2023, the claim was struck out.
3. The Appellant represented himself before me as he has done throughout these proceedings. The hearing was listed remotely for his convenience. He made his submissions very clearly and comprehensively.
4. I was also greatly assisted by Victoria Ailes of counsel who appeared on behalf of the Respondents, as Defendants, before the Master. She furnished me with a copy of the Skeleton Argument she had provided the Master which provided important context for his judgment. This document had not been included in the appeal bundle.

The legal framework

5. Under **CPR 3.4(2)**, the court may strike out a statement of case if it appears to the court **(a)** that the statement of case discloses no reasonable grounds for bringing or defending the claim; **(b)** that the statement of case is an abuse of the court’s process or is otherwise likely to obstruct the just disposal of the proceedings; or **(c)** that there has been a failure to comply with a rule, practice direction or court order.
6. Under **CPR 52.6**, except where rule 52.7 applies (which it does not here), permission to appeal may be given only where **(a)** the court considers that the appeal would have a real prospect of success; or **(b)** there is some other compelling reason for the appeal to be heard.
7. Under **CPR 52.21(3)** the appeal court will allow an appeal where the decision of the lower court was **(a)** wrong; or **(b)** unjust because of a serious procedural or other irregularity in the proceedings in the lower court.

The factual background

8. On 9 September 2021 the Appellant was tried at the Magistrates Court for three offences relating to breaches of the Covid regulations following an incident in Norwich on 7 November 2020. The Appellant was found guilty. He was fined £1,250 and ordered to pay costs of £620 and a victim surcharge of £125, giving a total of £1,995.
9. A person who wishes to appeal a conviction in the Magistrates Court is required to appeal within 15 business days after sentence. Accordingly the deadline for the Appellant to appeal his conviction was 30 September 2021.

10. There was some documentation before the Master suggesting that on 10 September 2021 (and so the day after his conviction) the Appellant indicated that he intended to appeal. However there was further evidence from the Crown Court at Norwich to the effect that the appeal he had lodged was out of time. There was a later suggestion that this was because the Appellant had put insufficient postage stamps on it. The Crown Court indicated that even if this reason had been initially given, that would not have amounted to a good reason for appealing out of time and permission to appeal out of time would, in any event, have been refused.
11. The Appellant was very aggrieved at the way in which the CPS had addressed the issue of the body worn camera footage relating to the charges against him. According to the Particulars of Claim, the CPS had offered to allow him to view the footage but would only let him have his own copy if he signed an “NDA” (a Non-Disclosure Agreement). He told me in submissions that this was a form of undertaking requiring him to agree not to put the footage on social media. He objected to this.
12. The Appellant complained to the Information Commissioner’s Office. His Particulars of Claim assert that they found the CPS to have breached his rights.

The procedural history

13. The Appellant initially sought to commence a damages claim against the Defendants in the Aberystwyth Justice Centre. I have seen a draft claim form stamped by them on 25 August 2022.
14. He was directed to bring his claim in the King’s Bench Division of the High Court. He did so, and his High Court claim form was sealed on 20 December 2022. Service of the claim on the Defendants was said to have been effected on 23 March 2023.
15. The Appellant’s Particulars of Claim asserted that the CPS had unlawfully withheld the footage from him and that the Magistrates Court had sanctioned this illegality. The Appellant contended that he had not had a fair trial in breach of his rights under Article 6 of the European Convention on Human Rights, as incorporated into domestic law by Schedule 1 to the HRA. By way of remedy the Appellant sought an order that his conviction be overturned and damages.
16. By an application notice dated 3 April 2023 the Defendants sought to strike out the Appellant’s claims or for summary judgment to be granted in the Defendants’ favour.
17. The application was supported by a witness statement from Rakesh Dhanak, a Grade 7 lawyer for the Government Legal Department dated 3 April 2023. The statement contended that the claim should be struck out for the following reasons.
18. *First*, it was said that the claim against the Magistrates Court had been improperly commenced and served. This was because pursuant to the Crown Proceedings Act 1947, section 17(3) and various Civil Procedure Rules, the claim should have been brought against, and served on, the Ministry of Justice (“**the procedural issues**”).

19. *Second*, it was said that the claim was out of time because it had been commenced more than one year after the acts complained of, noting that the HRA, section 7(5) provides for a primary time limit of one year (“**the limitation issue**”).
20. *Third*, it was argued that the statement of claim disclosed no reasonable grounds for bringing the claim: there was no legally recognisable claim and civil proceedings are not the appropriate forum to appeal a criminal conviction (“**the merits issues**”).
21. The merits issues were developed in some detail in the Defendants’ Skeleton Argument and oral submissions before the Master. The two key points advanced were as follows:
 - (i) The matters in respect of which the Appellant complained were “judicial acts” which fell within the HRA, section 9, such that the claim should be struck out under CPR 3.4(2)(a);
 - (ii) Alternatively, because the Appellant’s proper recourse lay in a criminal appeal, the claim should be struck out as an abuse of process under CPR 3.4(2)(b).
22. The application was argued before the Master at a remote hearing on 23 June 2023.

The Master’s order and judgment

23. By his order the Master struck the claim out under CPR 3.4(2)(a). He also certified the claim as totally without merit and ordered the Appellant to pay the Defendants’ costs of the application to be assessed if not agreed.
24. Counsel prepared a note of the Master’s judgment, which he approved. His reasons for striking out the claim was as follows:

“...The Queen’s Bench Division is not allowed to and is not there to revisit and be a second line of attack on convictions in criminal courts. That is a matter of established law. Mr Richards’ course of action should have been to pursue his appeal in the Magistrates’ and take it through to the Crown Court should he have chosen to do so. It appears he was not assisted by his local Magistrates Court. He showed the court a document of how he attempted to involve Aberystwyth Magistrates Court in his exercise. He could have pursued that further and pursued efforts to appeal out of time in light of procedural errors by other people.

The law does not allow a criminal conviction to be impugned in an action for damages. This case has no merits in this court whatever Mr Richards may think. It cannot go forward in this court and it will now be struck out.

I am ignoring the potential procedural irregularities in relation to the identity of the defendant because if the claim had any merit they could be corrected. I would have exercised my discretion to permit the Claimant to amend the Defendants to the correct legal entity. It is indeed as Ms Ailes indicates, whatever its intrinsic merits in terms of criticism

of the way in which rights may have been misused, it is insofar as a claim for damages wholly without merit and I so find”.

25. In effect, therefore, the Master struck the claim out on the basis of the merits issues. He “waived” the procedural issues and made no decision on the limitation issue.

The Appellant’s grounds

26. The Appellant’s Grounds of Appeal contend that the Master’s decision was wrong and unjust for two reasons.

Ground (1): The Master erroneously dismissed the case on the basis that a criminal appeal via a lower court would have been the appropriate course of action. The Appellant contends that his claim involved allegations of serious human rights violations by the Magistrates for which the High Court is the only appropriate forum.

Ground (2): When the Master said the Appellant should have completed an out of time appeal form he failed to consider that he was unrepresented and he was misinformed by the Magistrates Court and the King’s Bench Division about his rights of appeal.

27. During the hearing Mr Richards sought to develop a third ground of appeal, but this was effectively an amplification of Ground (1).

Ground (2)

28. I deal with Ground (2) first.

29. It is clear from the Appellant’s written grounds and his oral submissions that by this ground he is complaining about the fact that it was not clear where and how he should commence his damages claim in the King’s Bench Division: he referred throughout to the difficulties he had had in lodging his “N1” (ie. his claim form).

30. These arguments would conceivably be relevant if the Master had struck the claim out on the basis that it had been brought out of time, ie. if he had acceded to the Defendants’ arguments on the limitation issue summarised at [19] above.

31. However the Master did not strike out the claim on the basis of limitation: in fact, as is clear from his judgment, he made no findings either way on the limitation issue. Accordingly it is not arguable that the Master erred in the way Ground (2) alleges.

32. Insofar as the Master referred to the need for the Appellant to have pursued an “appeal out of time”, he was referring to an appeal against his conviction by the Magistrates Court. This issue falls to be considered under Ground (1).

Ground (1)

CPR 3.4(2)(a) and the HRA, section 9

(i): *The legal framework*

33. The HRA, section 9(1) relates to proceedings under the HRA, section 7(1)(a). This was the sort of claim the Appellant was bringing.
34. The section applies “in respect of a judicial act”.
35. The section provides that such claims “may be brought only (a) by exercising a right of appeal; (b) on an application...for judicial review; or (c) in such other forum as may be prescribed by rules.”

(ii): *Applicability of section 9 to the claim against the Magistrates Court*

36. The acts of the Magistrates Court of which the Appellant complained were clearly “judicial act[s]” within section 9(1).
37. Accordingly, the effect of section 9(1) is that the Appellant was explicitly precluded from bringing this kind of claim against the Magistrates: rather, he was only permitted to argue a breach of his Article 6 rights by the Magistrates by exercising his right of appeal or on an application for judicial review under section 9(1)(a) or (b).
38. Section 9(1)(c) did not assist him for the reasons explained in the Defendants’ submissions. In summary, this is because case-law has made clear that this section only applies where there is a claim for damages for unlawful detention contrary to Article 5: see *Mazhar v Lord Chancellor* [2019] EWCA Civ 1558 (“*Mazhar No. 1*”) at [54] and *Mazhar v Birmingham Community Healthcare NHS Trust* [2021] 1 WLR 1217 at [24]. The Appellant brought no claim under Article 5.
39. In *Mazhar No. 1* the Court of Appeal made clear at [98] that a claim in respect of a judicial act for anything other than damages – such as the order overturning his conviction which the Appellant sought – could not be brought at all:

“...the central question which arises in the present appeal...[is]...whether an action for a remedy other than damages (for example a declaration as is sought in the present case) can be brought by way of an originating process under section 9(1)(c). As we have explained above, in our view, such an action cannot be brought: in those circumstances a judicial act must be either appealed or (where it is available) can be the subject of judicial review”.
40. This provided a further reason why the Appellant’s claim for an order overturning his conviction was legally unsustainable.
41. The Master’s reasons do not refer in terms to section 9. However his order made clear that he struck the claim out under CPR 3.4(2)(a). All of the Defendants’ arguments under CPR 3.4(2)(a) had related to section 9. It follows, in my judgment, that he had accepted them.
42. In my judgment he was entirely right to do so. Section 9 was a complete answer to the claim against the Magistrates Court. It is not, therefore, arguable that the Master erred.

(iii): Applicability of section 9 to the claim against the CPS

43. The Defendants had highlighted in their submissions to the Master that the focus of the Appellant's claim was, in truth, the Magistrates Court, not the CPS.
44. This was clear from the remedies he sought, namely (i) an order overturning his conviction; and (ii) damages equating to "at an absolute bare minimum...all the money that was taken from me (~£2000) returned to me" (which was clearly a reference to the financial penalties imposed on him, albeit that the total of those was £1,995: see [8] above).
45. The acts of convicting him and imposing financial penalties on him were acts of the Magistrates Court, not the CPS.
46. It could therefore be said that the Appellant's claim against the CPS was, in substance, one "in respect of" judicial acts, such that section 9 also required this claim to be struck out.

CPR 3.4(2)(b)

47. The Defendants had also invited the Master to strike the claims out under CPR 3.4(2)(b).
48. They relied on the fact that it is ultimately the responsibility of the courts to ensure that a trial is fair under Article 6. This meant that the Appellant's proper remedy to address any failings by the CPS was to raise those concerns within the Magistrates Court process and then appeal the convictions.
49. The Defendants deployed this argument to argue that the claim against the CPS (as well as that against the Magistrates Court) should be struck out as an abuse of process under CPR 3.4(2)(b).
50. They relied on general principles to the effect that where a second claim reflects the issues in an earlier case, the court needs to assess whether, applying a broad merits-based approach, the second claim is an abuse of process: see, for example, *Dexter Ltd v Vlieland-Boddy* [2003] EWCA Civ 14 at [49], summarising the principles from *Johnson v Gore Wood & Co* [2002] 2 AC 1.
51. They also drew support from *Mazhar No. 1* at [63] where the court noted that it may be an abuse of process to make a claim for damages in respect of a judicial act where as a matter of proper process, an order "can and ought to have been appealed" (ie. even in a case which could be brought under section 9 because it concerns Article 5 detention).
52. The Master's order did not refer to CPR 3.4(2)(b). However it appears likely from the repeated references in his judgment to the criminal appeal route that he accepted the Defendants' arguments under this rule in respect of both claims.

53. Assuming he did, or even if he did not, the Defendants' submissions under CPR 3.4(2)(b) provided a clear, legally sound basis for striking out the claim against the CPS (as well as that against the Magistrates Court).

Conclusion

54. For all these reasons I do not consider that an appeal would have a real prospect of success, or that there is some other compelling reason for the appeal to be heard. I therefore refuse permission to appeal.