THE COURT OF APPEAL

Neutral Citation Number: [2019] IECA 90

Record No. 2017/165

Peart J.
McGovern J.
Costello J.

BETWEEN/

RUTH MORAM

PLAINTIFF/APPELLANT

- AND–

WATCHTOWER BIBLE AND TRACT SOCIETY OF IRELAND, ANDREW BEESTON, PETER VAN BENTHEM AND MARTYN BELL,

DEFENDANTS/RESPONDENTS

JUDGMENT of Ms. Justice Costello delivered on the 28th day of March, 2019

1. This is an appeal against the judgment of Baker J. delivered on the 23rd March 2017 where she struck out the plaintiff's claim on the basis that the matter constituted an abuse of process of the court, was *res judicata*, the claim was statute barred and was not justiciable. She also made an order restraining the plaintiff from instituting any further proceedings against the defendants or any of them without prior leave of the court. Background

2. There has been a very lengthy unhappy history between the appellant and the respondents going back more than twenty years. These proceedings are the third set of proceedings which the appellant has brought against the respondents.

3. The first named respondent is a company limited by guarantee and is the representative body of Jehovah's Witnesses in Ireland, a religious corporation with charitable status. The second and third named respondents are elders (that is religious ministers) in the congregation and the fourth named respondent is a member of the Killarney Congregation of Jehovah's Witnesses.

4. In or around 2004 an internal disciplinary process was conducted by the elders of the Killarney Congregation of Jehovah's Witnesses in relation to the appellant. The appellant is seriously critical of the manner in which the elders conducted this disciplinary procedure which she says is ultimately at the haert of her complaints against the respondents.

5. The elders determined that she was guilty of certain charges laid against her and decided she should be "disfellowshipped", that is expelled, from the congregation. She appealed this decision and a committee of elders upheld the decision to disfellowship the appellant. Finally, the appellant asked the branch office of the Jehovah's Witnesses in Greystones County Wicklow to review the matter and that branch office decided that the appellant should not be disfellowshipped. The appellant argued that this meant that she was not guilty of the charges levelled against her and that she had been falsely accused by the second, third and fourth named respondents on the basis of unlawful procedures.

6. The appellant says that the respondents ought to have informed other members of the congregation of the fact that she was not a slanderer. This did not occur and relations continued to be cantankerous. In 2009 the appellant contemplated instituting proceedings against the respondents, but she was dissuaded from doing so by a member of the organisation, Mr McCaslin, who promised the appellant that he would or could resolve her issues with the respondents. The appellant subsequently was very critical of this representation as shall appear below. Relations were not restored, as according to the appellant, the fourth named respondent continued to make accusations against her. She says that as a result she was obliged to leave the organisation in 2010.

7. On the 17th January 2011 the plaintiff commenced defamation proceedings against the second to fourth named respondents herein in proceedings entitled "Ruth Moram v. Martyn Bell, Peter Van Bentham and Andrew Beeston, South Western Circuit Record No. 2011/18" (the 2011 proceedings).

8. The second to fourth named respondents applied to have the 2011 proceedings struck out pursuant to O.21 of the Rules of the Circuit Court on the grounds that they involved litigating issues relating to the merits of religious beliefs and practices, ecclesiastical rules of conduct and/or discipline which were not justiciable, were specifically prohibited from the jurisdiction of the secular courts at common law and/or under Art. 44 of the Constitution or alternatively they were statute barred and bound to fail by virtue of the provisions of the Statute of Limitations 1957(as amended). On the 2nd June 2011 Judge O'Sullivan struck out the 2011 proceedings.

9. On the 7th November 2011, the High Court (Edwards J) sitting in Tralee dismissed the appellant's appeal against the dismissal of her Circuit Court proceedings on the basis that any such appeal required to be brought to the High Court in Dublin and not the High Court on Circuit in Tralee. On the 21st December 2011 the appellant applied to the Master of the High Court for an extension of time to appeal the order of the Kerry Circuit Court striking out the 2011 proceedings. The Master granted the appellant the extension of time sought and the appellant lodged an appeal against both the order of the Circuit Court and the order of Edwards J of 7th November, 2011

10. The second to fourth named respondents brought an application seeking orders to set aside the order of the Master extending time in which to appeal the order of Judge O'Sullivan and confirming that the appeal to the High Court in the 2011 proceedings had already been determined by Edwards J. All matters were heard before the High Court in Dublin (Hedigan J) on the 5th March 2012. Hedigan J. permitted the appellant's appeal to proceed and, in a written judgment fully considering the merits of her case, he dismissed the appeal from the decision of Judge O'Sullivan.

11. The appellant then issued a second set of proceedings against the respondents in the High Court on 23rd May 2013 claiming damages for personal injury arising out of the congregation's disciplinary process in proceedings entitled "Ruth Moram v.Watchtower Bible and Tract Society of Ireland, Andrew Beeston, Peter Van Benthem and Martyn Bell, Record No.2013/5238P" (the 2013 proceedings).

12. The appellant pleaded that in March 2011 and December 2012 the appellant discovered a conspiracy on the part of the respondents to allow the appellant to be considered a slanderer in order to cover up their wrongful acts. She pleaded that the wrongful acts were done or permitted in accordance with secret procedures of the first named respondent. She said that the first named respondent has a secret book issued to elders appointed by the organisation containing secret instructions. She pleaded that the secret procedures were in violation of her human rights and her right to fair procedures. She said that the first named respondent knowingly and recklessly acted fraudulently and that the second to fourth named respondents concurred with this. They concealed their actions so as to prevent the appellant from taking legal action consequent to her injury and that they conspired to keep all matters secret so that the appellant could not bring proceedings against them. She said that her injuries were attributable to those wrongful acts. At para. O of her personal injury summons, she stated that:-

> *"each time the plaintiff discovers procedures which affected her badly and which were kept secret from her, she is unable to cope with the stress involved. The stress from the discovery of 18th December 2012 [of certain secret procedures] provoked a nightmare which was so bad the plaintiff's heart went into atrial fibrillation and the acute traumatic stress lasted for many days."*

13. At para. 6 of the personal injury summons she pleaded that if, in 2004, the respondents had not concealed the matters she discovered in March 2011 and December 2012, she could have prevented her injuries (apart from some loss of weight and some traumatic stress), by way of a successful legal case and other measures, which would have prevented any further false accusations and injuries that she suffered as a result of those further false accusations.

14. The respondents applied to have the 2013 proceedings struck out on the same grounds upon which the 2011 proceedings had been struck out in the Circuit Court. On the 28th March 2014, Barrett J. in the High Court struck out the 2013 proceedings on the basis that they were statute barred. He did not consider it necessary to address any of the other grounds advanced by the respondents.

15. On the 9th May 2014, the plaintiff appealed that order to the Supreme Court. She then brought an application to the Supreme Court for liberty to adduce new evidence at the hearing of her appeal in the 2013 proceedings. The new evidence was based upon the submission of counsel for the respondents at the hearing before Barrett J. that persons subjected to disciplinary procedures by the first named respondent were notified in "broad terms" of the allegations, not the precise details of what was alleged against them. On the 27th June 2014 the Supreme Court refused the application.

16. The appeal was transferred from the Supreme Court to the Court of Appeal pursuant to Article 64 of the Constitution and on the 20th July 2015 the appeal was heard by the Court of Appeal. Kelly J. delivered an *ex tempore* judgment on behalf of the court dismissing the appeal. Kelly J stated that the sole issue which fell for determination was whether or not Barrett J was correct in concluding that the litigation which began in May 2013 was statute barred. He referred to the 2013 proceedings, he noted that at a time when the appellant was represented by a solicitor, in 2009, she was aware that she sustained personal injury that might ground an action in negligence against the respondents in 2009 or even earlier. Notwithstanding the fact that she had the benefit of legal assistance in 2009 she did not proceed with her claim until the 23rd May 2013, which he held was a period of about three years and seven months after the confirmatory diagnosis of her heart condition in October 2009. It followed that the proceedings were commenced well outside the applicable limitation period and the trial judge was correct to hold that the proceedings were statute barred.

17. He acknowledged that further information which was not available to her in 2009 came her way in 2011 and 2012 but he held:-

> *"that, to my mind would not have made any difference save as to the quality of the evidence that she would be able to lead at trial"*

He then addressed the question whether the limitation period could be extended by reason of the provisions of s.71 of the Statute of Limitations. Section 71 provides :-

> *"(1) Where, in the case of an action for which a period of limitation is fixed by this Act, either—*
>
> *(a) the action is based upon the fraud of the defendant or his agent…,or*
>
> *(b) the right of action is concealed by the fraud of any such person,*

the period of limitation shall not begin to run until the plaintiff has discovered the fraud or could with reasonable diligence have discovered it."

18. Kelly J. noted that the appellant alleged that the later information which she obtained was subject to some form of concealed fraud in the technical sense used in this section. At para. 11 and 12 of his judgment he held as follows:-

> *"I am unable to accede to the argument which Ms, Moram makes in that regard, just as Barrett J. was unable to do so in the High Court. Indeed, from the answers which she gave this afternoon, it appears this material became known to her as a result of her finding it on the internet, rather that it being the subject of any misrepresentation of the true position to her by the defendants. Notwithstanding the volume of paper which has been furnished to the court, there is, as far as I can ascertain, no material there which would support her claim of some form of misrepresentation or dishonesty or suppression of information on the part of the defendants.*
>
> *When Barrett J came to the conclusion which he did:-*
>
> > *"in the course of her pleadings, the plaintiff alleged that in March 2011 to December 2012 she discovered a conspiracy on the part of all of the defendants against which had it not occurred, could have led to the prevention of the personal injuries that she allegedly sustained" [Sic]"*

19. Kelly J agreed with Barrett J that even if there was such conspiracy (which neither court accepted), this did not alter the fact that the personal injuries appear to have been suffered prior to the later factors which the appellant asserted caused those personal injuries. The Court of Appeal upheld the decision of Barrett J and refused her appeal.

20. The appellant applied to the Supreme Court for leave to appeal. This was refused by a determination of the Supreme Court on the 20th July 2015. The Supreme Court said that they saw no error in the decision of the Court of Appeal and the appellant had not raised a point of substance sufficient to invoke the jurisdiction of the Supreme Court.

The 2016 proceedings

21. In 2016, the appellant applied to the Personal Injuries Assessment Board for an authorisation under s.17 of the Personal Injuries Assessment Board Acts 2003 and 2007 to sue the respondents. On the 1st March 2016, the board authorised the appellant to sue Watchtower Society of Ireland, Andrew Beeston, Peter Van Benthem and Martyn Bell in respect of alleged personal injury. The date of the relevant claim was March 2010 and December 2012. A second authorisation under s.46 of the Acts issued in respect of the same claims and naming the respondent as Watchtower Bible and Tract Society of Ireland. The appellant then issued her personal injury summons on the 29th August 2016 against the respondents and attached the two authorisations from the Board to her personal injury summons.

22. The appellant pleads that the respondents were guilty of assault causing harm, harassment and fraud. She also pleads that the respondents misled the courts previously by nondisclosure of vital facts. She says in 2009 she was wrongfully induced not to sue the respondents in respect of the damage she had suffered at that point in time. She said that the assault causing harm occurred between May 2004 and February 2010 and that "a further shock incurring injury was caused by the defendants' fraud in December 2012 when the plaintiff discovered some vital facts." She said her latest injury was caused by the long term effects of the assaults and only became apparent in January 2016. She says that the 18th December 2012 was the earliest date that she had any evidence that the respondents were acting deliberately, as opposed to incompetently or negligently.

23. She sets out a history of her complaints against the respondents which commences in 1994/1995 until January 2013. At para. 34 of the indorsement of claim and following she deals with matters from December 2012. She says there were many consequences to her health in December 2012 including the fact that she had developed allergies. She attributes this to the stress she suffered as a result of the treatment she received at the hand of the respondents between 1994 and 2012. She says that in the spring in 2016 she developed haematuria and hydronephrosis. She says that her ill health could have been prevented if the respondents had firstly not used procedures which breached the laws of natural justice and, secondly, if they had not concealed their secret unlawful procedures. She pleads that some time in 2014 she discovered additional secret rules other than those which were the subject of the decisions of Barrett J. and the Court of Appeal in the 2013 proceedings. She again pleads that if she had realised the existence of the secret rules she could have acted differently back in 1994/5 and avoided damage to both her daughter and herself. She says in addition, that people she thought were trustworthy are, in the light of these secret rules, not trustworthy at all and alleges that the statement made to her in 2009 by Mr McCaslin claiming that he could sort out the problem the appellant had with the organisation was untrue because this was not possible, according to the appellant, in light of these secret rules. She says that from 2014 she realised that the problems were not caused by incompetence or negligence but were done deliberately and in breach of her human rights. She therefore characterised this as "an attack" and an assault.

24. The respondents brought a motion seeking to dismiss the 2016 proceedings on the grounds that they were an attempt to litigate issues relating to the merits of religious beliefs and practices, ecclesiastical rules of conduct and/or discipline and were not justiciable, the proceedings were *res judicata* and/or subject to issue estoppel and/or offended the rule against *Henderson v Henderson*, that they were statute barred and bound to fail by virtue of the provisions of s.3(1) of the Statute of Limitations (amendment) 1991 as amended by s.7 of the Civil Liability in Courts Act 2004 and that they were frivolous, vexatious and/or represented an abuse of process. They also sought an order pursuant to the inherent jurisdiction of the court preventing the appellant from commencing any further civil proceedings against the respondents or each of them without obtaining the prior leave of the High Court.

25. The respondents argued that the proceedings contained no fresh allegations which were not considered or which could not have been brought in the 2013 proceedings. They argued that the discovery by the appellant of what she described as the secret rules of the respondents in 2014 was not relevant to the substance of her claim, which was a personal injury claim relating to matters which first occurred in 2004 and culminating in her withdrawal from Jehovah's Witnesses in 2010.

26. The appellant filed a replying affidavit opposing the motion. It consists largely of argument rather that averment of fact, though at para. 9 she avers:-

> *"I noticed that the nervous shock had caused me to become allergic to several food stuffs in January 2013. This caused hydronephrosis, discovered on the 14th January 2016"*

Later in that paragraph she says that a cause of action arises every time she suffers a nightmare which results in atrial fibrillation. One such attack occurred on the 10th March 2014 and a second attack occurred on the 21st December 2016.

The Judgment of the High Court

27. In the High Court, Baker J. held that it was clear from the evidence of the appellant and from the findings already made by Barrett J. and confirmed by Kelly J. in the 2013 proceedings that the appellant knew that she had suffered an injury in 2004. She had the benefit of legal advice up to and including April or May 2009 when her solicitors wrote complaining that the respondents had caused her to suffer personal injuries as a result of their "unlawful activity". The trial judge held that by 2009 at the absolute latest the appellant was aware that she had suffered an injury and that the injury was, in her view, capable of being attributed to some unlawful activity of the respondents.

28. The High Court held that the evidence the appellant says she discovered in 2011, 2013 and 2014 may be evidence of a different nature or quality to that which she already had before but it did not change her *cause of action*. This remained a cause of action for damages for assault and harassment, breach of her rights to fairness of process and/or some class of conspiracy. Baker J expressly held that the appellant had sufficient information to mount a case in October 2009 at the very latest when her doctor confirmed that she had a heart condition. She already knew that her solicitor considered that there was a causative connection between the unlawful activity of the respondents and her injury. This last piece of information enabled her to allege that she suffered damage as a result of the wrongs she alleged. She had sufficient evidence, information and knowledge to commence the proceedings in the middle of 2009 and therefore an action commenced by her in 2016 is was statute barred.

29. Baker J. also held that the claim ought to be struck out as an abuse of process as the 2016 proceedings in effect repackaged her claim and there existed a *res judicata*, and/or an application of the rule in *Henderson v Henderson* meant that she could not maintain

the action.

30. She also held that the action was not an action which was justiciable as a matter of law. The appellant was arguing that the respondents had failed to afford her fair procedures in the conduct of the disciplinary hearing conducted by them and that the conduct of the disciplinary hearing was such as to cause her grave health difficulties and those difficulties have been exacerbated by later circumstances. However, the law in this regard has been long established and she referred to the well-known jurisprudence of *O'Dea v O Briain* [1992] ILRM 364 and *Fitzpatrick v FK* [2009] 2 I.R. 7. She distinguished the appellant's case from the case of *McGrath v Maynooth* [1979] ILRM 166.

31. She considered in the circumstances of the case that an Isaac Wunder order preventing the plaintiff without leave of the court from commencing any action against any of the four respondents without leave of the court was warranted and made such an order. At para. 24 of her judgment, Baker J. noted that the plaintiff had already had the benefit of a Circuit Court case, two appeals to the High Court, a High Court case, an appeal to the Court of Appeal and an appeal to the Supreme Court in respect of the matters complained of. She emphasised that although an Isaac Wunder order is one which limits, but does not preclude, the constitutional right to litigate, that right is tempered by the obligation of the court to prevent the continuation of litigation which is completed, having regard to the right of a defendant in such circumstances to have further litigation quietened. Accordingly, she held that the balancing of the interests between the parties in the case justified the granting of an Isaac Wunder order.

Discussion
32. Two issues arise in this appeal. First, do these proceedings raise a new cause of action which could not have been brought in the 2013 proceedings prior to their dismissal by Barrett J. in March 2014? Second, what is the impact of the decisions of Barrett J and the Court of Appeal in the 2013 proceedings on these 2016 proceedings?

33. If the claims advanced in these personal injury proceedings are not new causes of action, as opposed to further manifestations of damage, they are statute barred. If the appellant can show that they are not, then the proceedings are not so barred. The appellant argued that her claim for personal injuries was a new cause of action that arose after the judgment of 28th March 2014 in the High Court in the 2013 proceedings. She said that she only became aware of the fact that she had been deceived as to the secret rules of the first named respondent at the hearing before Barrett J. Previously she had a cause of action based on negligence or inadvertence, now her claim was one of fraudulent concealment.

34. She identified her cause of action in these proceedings as an injury causing her to suffer from hydronephrosis. In discussion with the court, the appellant accepted that if her 2013 proceedings had proceeded to trial and if she had succeeded in obtaining an award of damages, she could not in the circumstances have brought the 2016 proceedings. She accepted that in 2012 she developed allergies. She argues that the problem was not grave when she instituted the 2013 proceedings but became very serious when she instituted the 2016 proceedings. She also says that her 2016 injuries stem from the years of stress she suffered commencing in 1994/1995 and continuing to this day which she attributes to the wrongful acts of the respondents. She says that the discovery of the fraud she alleges against the respondents caused her to suffer shock and harassment (sic). This only occurred in 2014 following the hearing in the High Court and this resulted in a new shock which in turn caused her to suffered a new injury. She says this gave rise to a fresh cause of action, not capable of being captured by the 2013 proceedings and therefore she is entitled to maintain this claim in the 2016 proceedings.

35. Her claim is for damages for personal injuries arising from alleged wrongful actions of the respondents, be it based on negligence, harassment or fraud. It is clear from the above that her present claim is not a fresh cause of action. At its height, it amounts to exacerbation of existing symptoms from which she suffered when she instituted her 2013 personal injuries proceedings, even if she can establish a causal connection between the alleged wrongful acts of the respondents and the hydronephrosis diagnosed in 2016. She claimed damages for shock arising from her treatment by the respondents in the 2013 proceedings and her complaint in these proceedings is in reality a continuation of that complaint. She expressly pleaded in her 2013 Personal Injuries Summons *"each time the plaintiff discovers procedures which affected her badly and which were kept secret from her, she is unable to cope with the stress involved"*and therefore suffers a fresh injury. Thus she is repeating this claim in these proceedings based on a later example of that in respect of which she previously sued. The fact that she now asserts a further ground for seeking damages for personal injuries combined with further details of pre-existing injuries does not alter this fact: the claim is not a new claim.

36. Tellingly, when the appellant applied for an authorisation from the Personal Injuries Assessment Board to institute these proceedings she stated that the relevant events occurred in March 2010 and December 2012. That was the basis upon which she was granted an authorisation to bring these proceedings. She may not bring proceedings claiming personal injuries without first obtaining an authorisation from the Personal Injuries Assessment Board. Therefore, she is bound by the authorisation she has obtained. The authorisations are for personal injuries which fell within the scope of the 2013 proceedings and these proceedings have already been determined. She cannot relitigate the issues simply because she has obtained new authorisations in respect of claims which have been dismissed.

37. In my judgement, she has not established that a fresh cause of action which would entitle her to maintain the 2016 proceedings arose against these respondents after the 2013 proceedings were struck out by the High Court. If follows that they claim damages in respect of the cause of action which has been disposed of by the High Court and the Court of Appeal and may not be relitigated.

38. The second argument advanced by the appellant required this court to disregard the orders of the High Court and the Court of Appeal in the 2013 proceedings. It was urged that these judgments had been obtained by fraud in that the respondents had withheld information from the court regarding their secret processes and secret rules. The appellant argued on the basis of her allegation of fraud that she was entitled to argue before this court that the claims which had been struck out on the basis that they were statute barred in the 2013 proceedings were not in fact statute barred.

39. The Supreme Court in *Greendale Developments Ltd.*(No.3) [2000] 2 I.R 514, set out how a party who asserts that a judgment or order made by a court has been obtained by fraud should proceed. The proper method of impeaching a competed judgment on the ground of fraud is by a new action in which the particulars of alleged fraud are exactly set out. It cannot be done in the concluded proceedings.

40. This decision of the Supreme Court is of course not only binding upon this Court but was also accepted by the appellant. It follows that she cannot impeach the orders obtained in the 2013 proceedings on the basis of the fraud she alleges against the respondents in these 2016 personal injury proceedings. Likewise, she cannot challenge the orders in the 2013 proceedings which have concluded. It further follows that it is not open to this Court to disregard those orders and judgments, as she urges. This means that this Court must proceed to deal with this appeal on the basis that her claims encompassed in the 2013 proceedings are statute barred and have been struck out and cannot form any part of these 2016 proceedings.

41. Thus, insofar as the 2016 proceedings claim damages in respect of the exacerbation of the appellant's injuries in 2016 as a matter of law they properly formed part of her claim brought in the 2013 proceedings. These have been struck out and this Court is bound by the judgments in the 2013 proceedings and cannot go behind them. In so far as the appellant asserts that her claim for damages in respect of this injury is not statute barred because it is a new injury and therefore a new cause of action, this is not correct as a matter of fact or law in this case. It follows that the High Court was correct to strike out her proceedings on the basis that they were statute barred.

42. I am also satisfied that the continuation of these proceedings would be an abuse of process. It is clear that these 2016 proceedings in effect comprise two claims: those which were already included in the 2013 proceedings and those which the appellant asserts arose in 2014, though she accepts that these were an exacerbation of a pre-existing condition and symptoms. It follows that these proceedings are either covered by the rule of *res judicata* strictly so applied in respect of the 2013 proceedings or they are caught by the rule in *Henderson v. Henderson* in that they could have been, but were not, brought in the 2013 proceedings. The unavoidable conclusion is that continuance of these proceedings would amount to an abuse of process and accordingly is, as described by the High Court judge, a form of vexatious litigation.

43. In light of these conclusions, I do not believe that it is necessary to consider the other arguments advanced by the respondents to dismiss the proceedings or considered by the trial judge.

An Isaac Wunder order

44. I would agree with the decision of Baker J. that an Isaac Wunder order is warranted in the circumstance of this case. The appellant issued the 2011 proceedings and these were dismissed by the Circuit Court and then by the High Court on appeal. She then instituted the 2013 proceedings which were dismissed by the High Court, which decision was upheld by the Court of Appeal and then the Supreme Court issued a determination refusing her leave to appeal to the Supreme Court. She had a hearing in the 2016 proceedings before Baker J. in the High Court in March 2017. In addition, she unsuccessfully sought an injunction in the High Court restraining the respondents from "unlawful activities" which was refused. She brought a motion before the Court of Appeal which was heard on the 4th December 2017 seeking "to correct the judgment of 20th July 2015". The court refused that relief also.

45. In *Riordan v. Ireland* (No.5) [2001] 4 I.R. 463 at p.465, Ó Caoimh J. identified the jurisdiction to make what is termed an Isaac Wunder Order. He stated:-

> *"Where the court is satisfied that a person has habitually or persistently instituted vexatious or frivolous civil proceedings, it may make an order restraining the institution of further proceedings against parties to those earlier proceedings without prior leave of the court. In assessment of the question whether the proceedings are vexatious, the court is entitled to look at the whole history of the matter and is not confined to consideration as to whether the pleadings disclose a cause of action. The court is entitled in the assessment whether proceedings are vexatious to consider whether they have been brought without any reasonable ground. The court has to determine whether the proceedings being brought are being brought without any reasonable ground or have been brought habitually and persistently without reasonable ground."*

46. In my opinion, in the circumstances of this case and in light of the history of the litigation brought by the appellant, where the 2013 proceedings had been struck out on the basis that they were statute barred, where the High Court held that in the 2016 proceedings the appellant was repackaging her earlier claim, that the proceedings were vexatious and the 2016 proceedings also were statute barred, the trial judge was entitled to exercise her inherent jurisdiction to grant the Isaac Wunder order in the terms she did and I see no error in her application of the relevant principles. The order as framed preserves her constitutional right of access to the courts and merely requires that it be exercised only where she can satisfy the President of the High Court that she ought to be permitted to bring the particular intended proceedings (if any).

47. For all of these reasons I would refuse the appeal and uphold the order of the High Court.