

Neutral Citation Number: [2018] EWHC 2565 (Ch)

Case No. CH-2017-000293

**IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
APPEALS (ChD)**

Rolls Building
7 Rolls Building
Fetter Lane
London
EC4A 1NL

Date: 17 July 2018

BEFORE:

THE HONOURABLE MR. JUSTICE MARCUS SMITH

BETWEEN:

DR ETEDAL KHUDADOS

Applicant

-and-

ARROW GLOBAL ACCOUNTS MANAGEMENT LIMITED

Respondent

The Applicant appeared in person. The Respondent did not attend and was not represented.

Hearing date: 17 July 2018

Approved Judgment

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Mr. Justice Marcus Smith

Mr Justice Marcus Smith

1. This is an application for permission to appeal an order made by Mr Recorder Widdup, sitting at the County Court at Oxford and made on 30 November 2017. The Applicant for permission to appeal is Dr Khudados, who appears before me in person today. I decided the application for permission to appeal on the papers in an order dated 18 May 2018 and, in that order, I refused Dr Khudados permission to appeal. But I noted that, because I had decided the matter on the papers and without a hearing, Dr Khudados could seek reconsideration of this decision at an oral hearing, pursuant to CPR 54.4(2). The hearing today is Dr Khudados' request that I reconsider my decision.

2. The application for permission to appeal in this case is a relatively unusual one. I say that because the thrust of the application for permission is permission to appeal a case management decision of the Recorder, which was to decline to accede to Dr Khudados' application to adjourn the trial before the Recorder, in which Dr Khudados was the defendant.

3. The adjournment application was made on multiple occasions by Dr Khudados. It was made before the trial, which began on 28 November 2017; it was made at the trial; and, indeed, it was made during the trial.

4. The usual rule, as I noted in my grounds for refusing permission to appeal, is that an appeal court should be slow to interfere with the case management decision of the judge at first instance. *Civil Procedure 2018* notes at paragraph 52.3.9:

"A party seeking to appeal a case management decision must cross a high threshold."

5. I noted that the Recorder gave two reasoned judgments, dismissing Dr Khudados' applications to adjourn. I then said:

"I can find no error in terms of how the Recorder determined these applications and he was, on the facts, fully entitled to reach the decisions he did. He took account of all relevant factors and he did not take account of irrelevant factors."

6. At the hearing today, Dr Khudados has taken me through a number of the documents regarding the background to her grant of Legal Aid. She has shown me:

- (1) A notice of the issue of a Legal Aid certificate from the Legal Aid Agency. That certificate is in relation to the case number in these proceedings: 4PA17867. The certificate is dated 30 July 2015 and is issued to Dr Khudados. The entitlement conferred by the certificate is substantive and the level of service covered by the certificate is full representation. The scope of the certificate is that Dr Khudados be represented in an action for the possession of property under a legal charge against the opponent, which is the subject of the action against Dr Khudados.
- (2) A civil Legal Aid certificate which summarises the representation conferred and again confirms that a substantive certificate for full representation was issued on 30 July 2015 and an amendment was issued on 16 October 2015.
- (3) Moving on from the formal documentation regarding Legal Aid, there is an email from the Legal Aid Agency, responding to a conversation that Ms Khudados had

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with the Legal Aid Agency, after court, on 28 November 2017, confirming that the Legal Aid certificate was live.

(4) That confirmation has been repeated in a document dated 2 February 2018.

7. I have gone into the Legal Aid position in some detail because the Recorder, in his ruling or one of his rulings regarding adjournment, made the following statement. In paragraph 3 of his judgment dated 27 November 2017, he said:

“4. She has said that the forfeiture proceedings against her have now finished and the Legal Aid certificate she says that she has can now be extended to cover these proceedings. As far as that Legal Aid certificate is concerned, the only certificate I have seen expired in July 2015. It may well be that there are other certificates or extensions of that but I have not seen them. She tells me that she has been advised throughout by a counsel, Mr Brown, who is very familiar with the case and she would like him, quite understandably, to represent her in these proceedings. She feels very much at a disadvantage and says it would be unfair to her if this hearing were to proceed and she is unrepresented.

5. As far as that issue is concerned, firstly I cannot be sure that, if I were to adjourn this, this Legal Aid certificate would be extended to cover representation, either by Mr Brown or by anyone else, at an adjourned hearing. Mr Ross, on behalf of the claimants, has observed that Dr Khudados is a very intelligent person. She is a very well qualified doctor.”

8. This, to my mind, shows a material error in the understanding of the Recorder. The fact is, when he refers to seeing a Legal Aid certificate dated July 2015 as an expired certificate, he could only have been looking at the Legal Aid certificate which was issued on 30 July 2015 and referred to in paragraph 6(1) above. The Legal Aid certificate had not expired, and the Recorder’s description of the Legal Aid position materially wrong. Given the way in which these certificates present, the error is perhaps an understandable one: but it is clear that the Recorder has misconstrued as the expiry date of the certificate its date of issue.

9. It therefore seems to me that what I said in my order refusing permission to appeal, that there was no error on the face of the Recorder’s reasoning and that the Recorder took account of all relevant factors and did not take into account irrelevant factors, is wrong. The Recorder misdirected himself as to the existence of a Legal Aid certificate and it does seem to me, therefore, that in these circumstances the exercise of his discretion is one that ought to be revisited on appeal and that it cannot be said that the prospects of success on appeal are fanciful.

10. I consider that there is, on the face of it, a reasonable prospect of Dr Khudados showing that the decision on adjournment was an erroneous one. The fact is there is considerable difference to my mind between a judge being in some doubt as to whether a Legal Aid certificate has been issued to cover the proceedings and the case where it clear that the civil Legal Aid has been granted to extent to the very trial before him.

11. So, for these reasons, I give permission to appeal in respect of the decision to adjourn, limited to Ground 1 of Dr Khudados’ application for permission to appeal, which relates to the failure to take account of the issue of the Legal Aid certificate. I do not consider that it is appropriate to give permission in relation to Ground 3, which relates to the Recorder’s lack of preparedness; nor do I think it is appropriate to give permission in relation to Ground 5. The question is whether I should give permission in relation to Grounds 2, 4 and 6. Ground 2 relates to the injustice that would arise if there was no adjournment granted. I consider

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that this Ground is sufficiently closely related to Ground 1 for permission to be granted. Ground 4 relates to the prejudice that would be suffered if there was no representation. I am not going to give permission on Ground 4 nor on Ground 6. I do not consider that this is an Article 6 human rights question. So, for the reasons I have given, I give permission to appeal on Grounds 1 and 2 and I will make an order accordingly.