Neutral Citation Number: [2023] EWHC 2415 (KB)

Case No: QA-2017-000001

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 03/10/2023

Before :

MR JUSTICE SAINI

- -

Between :

MICHAEL EARL WILSON	**Appellant**
- and -	
JOHN FORSTER EMMOTT	**Respondent**

- -
- -

Michael Earl Wilson in person
The Respondent did not appear and was not represented

Hearing dates: 2 October 2023

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Approved Judgment

This judgment was handed down remotely at 10am on 3 October 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE SAINI

Mr Justice Saini :

1. This is my judgment on the renewed oral application by the Appellant ("Mr Wilson") to vary or set aside an order I made on 5 April 2023, dismissing his appeal against an order in relation to costs. My judgment is at [2023] EWHC (QB) 813 ("the Judgment"). I sat on this appeal with Senior Costs Judge Gordon-Saker. I will not repeat the facts which are set out in the Judgment.

2. In the renewed application Mr Wilson appeared in person. Mr Wilson was however represented by Leading Counsel at the appeal hearing which took place at the Royal Courts of Justice on 4 April 2023. Mr Wilson and Mr Emmott (the Respondent, acting in person) attended remotely. They both asked to attend remotely and I agreed to that application in advance of the hearing. Leading Counsel for Mr Wilson attended in person. We received extensive written and oral submissions on behalf of Mr Wilson. Following the conclusion of the oral submissions of his Leading Counsel and having retired and conferred, we stated that: we did not need to hear from Mr Emmott; that the appeal would be dismissed; and that I would provide a written judgment in due course. That was provided in draft in the normal way and handed down the next day following the corrections process. No suggestion came from Leading Counsel in this process that there was some outstanding application to reopen my decision. I refer to this further below.

3. The Order dismissing the appeal ("the Order") was sealed in the normal way, in accordance with CPR 40.2(2), and stamped by the Court, on 5 April 2023. Outside of my knowledge, Mr Wilson had in fact however made an application ("the Application") seeking to set aside the "draft judgment" under the so-called Barrell jurisdiction (referring to In re Barrell Enterprises [1973] 1 WLR 19). He sought an oral hearing with a 2 hour time estimate. The Application made a series of new and alternative arguments, together with a procedural complaint.

4. It is not clear whether the formally issued Application was made before or after the Order was sealed and stamped, but it was not brought to my attention until some months later via the CE Filing Process. There is some correspondence suggesting it may have been sent to my clerk during the Easter vacation (when an out of office response seems to have been sent to Mr Wilson). I am willing to proceed on the basis that the application may have been made before sealing.

5. As soon as it was brought to my attention in July 2023, I considered the Application on the papers. I refused to allow an oral hearing and made an order ("the Refusal Order") on 18 July 2023 dismissing the Application for the reasons which I set out in the order. I also indicated that I considered the Application was totally without merit.

6. My reasons for refusing the Application were recorded on the face of the Refusal Order as follows:

> "…This was a costs appeal in which I sat with a Costs Judge. The facts of the case are set out in my judgment: [2023] EWHC (QB) 813. The applicant was represented at the appeal by experienced costs Leading Counsel, Mr Mallalieu KC. I announced my decision to dismiss the appeal following

argument with reasons to be provided. That was a final decision. Reasons were provided the next day. As is clear from the terms of the application notice this is in effect an appeal against that decision. The applicant seeks to introduce new evidence and arguments under the guise of invoking the Barrell jurisdiction. This is in fact an attempt to reopen and reargue points which, if permissible it all, is a matter for an application for permission to appeal to the Court of Appeal. As to the apparent complaint about process, I am not satisfied that there was any issue which required yet further instructions from the applicant (who asked to attend remotely). In fact, at the time he wanted to give yet further instructions to Leading Counsel I had in fact announced my decision with reasons to be provided (full oral argument from the applicant's Leading Counsel having been completed). Indeed, Leading Counsel gave no indication at any point between that time and receiving the draft judgment, nor indeed after the draft that there was some important issue he had left unaddressed. Had there been some matter of importance which fundamentally affected matters put before the court, I am confident Mr Mallalieu KC would have raised it with me. In any event, I consider this application to be an abuse of process. It is yet another example of the approach to this litigation taken by the applicant, as I noted in my judgment at [6] and which has been identified by other courts including the Court of Appeal (in particular by Peter Jackson LJ). There must be an end to this. Insofar as this is an application for permission to appeal, there is no jurisdiction in the High Court to grant permission for a second appeal. Should the applicant wish to pursue his complaints against my dismissal of his appeal (including claimed unfairness in process), the applicant needs to ask the Court of Appeal for permission to appeal on the second appeal jurisdiction basis. That is the appropriate forum. The applicant should treat this Order as notice that he is at risk of a Civil Restraint Order should he continue to pursue this matter at the level of the High Court. I have noted that the applicant seeks an oral hearing of his application. I refuse to permit the applicant to seek a further 2 hours of court time on what I consider to be an abusive application. This applicant has already had more than a fair share of court resources in this litigation. An oral hearing of 2 hours will simply perpetuate the earlier abuse. It would not be consistent with the overriding objective for the present application to be argued at such length when it is clear there is no jurisdiction. I have provided for the applicant, in accordance with CPR 3.3(5)(a), to apply to set aside or vary this Order but would respectfully caution the Applicant against such a process as opposed to pursuing an appeal".

7. Undeterred, on 26 July 2023, Mr Wilson sought an oral hearing of the Application. Given the substantial historic delays in these costs proceedings (see Judgment para [1] which records the costs assessment proceedings under challenge were as long ago as 28 June 2017), I offered the parties an urgent hearing of the Application in August while I was on Circuit in Exeter hearing a criminal trial. My clerk also offered dates later during the Vacation, and at the start of the current Term, 2 October 2023. Mr Emmott indicated he did not want to participate in the oral hearing of the Application. Mr Wilson opted for the 2 October 2023.

8. I accordingly heard oral argument on 2 October 2023. Mr Wilson appeared on his own behalf and presented his arguments in a structured and polite fashion during a remote hearing of about 1 hour. In advance of the hearing, Mr Wilson served the existing appeal bundle (some 250 pages) and added to it a further bundle of documents of some 250 pages. These included judgments in the multiple other cases that have been litigated between Mr Wilson and Mr Emmott over the past 20 years or so. Just before the hearing, together with some authorities, Mr Wilson sent me a schedule of 444 individual judgments, orders or details of hearings from a number of jurisdictions concerning litigation between Mr Wilson and Mr Emmott. It is clear that not only have these litigants used a substantial share of the resources of the English and Welsh legal system, but also the resources of a range of courts from Almaty to Vancouver. By the end of the hearing, I remained puzzled as to the relevance of these to any use of the Barrell jurisdiction, and the reopening of the appeal I had dismissed earlier this year.

9. I refused the Application. I remain of the view that it is totally without merit. I adopt my reasons above without repeating them but would add that the Court has no jurisdiction to reopen under the Barrell jurisdiction once a final order has been sealed or perfected: see In the matter of L and B (Children) [2013] UKSC 8 at [19], and the notes at White Book Vol 1, 2023, paras. 40.2.6 - 40.2.7. I drew this case to Mr Wilson's attention in advance of the hearing. It was also more recently considered by the Supreme Court in AIC Ltd v Federal Airports Authority of Nigeria [2022] UKSC 16. I do not accept that the court has jurisdiction to reopen, even if the reopening application was made prior to sealing and was in error overlooked.

10. Further, I do not consider a power to vary or revoke an order under CPR 3.1(7) extends to a court reopening a final sealed order following an inter partes appeal. That would undermine the careful system of appeals from the High Court and in particular the rules for second appeals, as well as the principle of finality.

11. For completeness, I would add that even if I had jurisdiction to reopen, I would not have exercised it had the application been brought to my attention before sealing of the Order. This is plainly an abusive application to re-argue an unsuccessful appeal. The test for reopening may not be one of "exceptional circumstances", but I must consider whether it would be fair and just to allow the matter to be reopened, bearing in mind the overriding objective. Leading Counsel for Mr Wilson made detailed written and oral submissions at the hearing of the appeal. Those points were addressed in the Judgment. If my reasons are legally defective no doubt the Court of Appeal will correct them if it grants permission to appeal out of time.

12. In my judgment, no good reason was advanced by Mr Wilson as to why the new and additional points now made were not made in the original appeal. I raised this point at the reopening hearing, but I was not impressed by his submission as to why his Leading Counsel had not made the detailed arguments on the facts he now seeks to make in the Application. I will not recite his arguments save for saying that in my judgment Leading Counsel made clear and well-focussed submissions on the issue on which permission to appeal had been granted. He made all relevant arguments available in support of the appeal. The present application is a simple attempt at a second "bite at the cherry".

13. It would be contrary to the principle of finality to entertain these arguments and to reopen this appeal. As I stated in the Refusal Order, the appropriate procedural route to complain of errors in the Judgment and consequential order dismissing the appeal is the second appeal jurisdiction under CPR 52.7. The Application is dismissed. There will be no order for costs.