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IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Case No: KA-2023-000211

Royal Courts of Justice
Strand, London WC2A 2LL

Friday, 8 November 2024

BEFORE:

SIR PETER LANE

BETWEEN:

PATIENCE IDARA

Appellant

- and -

LONDON BOROUGH OF SOUTHWARK

Respondent

MR T VANHEGAN appeared on behalf of the Appellant
MS C ROWLANDS appeared on behalf of the Respondent

JUDGMENT

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Sir Peter Lane :

1. This is an appeal brought by Ms Idara ("the appellant") against the order of HHJ Hellman dated 9 October 2023 in which he dismissed the appellant's application for permission to bring an appeal out of time and so struck out the appeal.

2. The appellant had applied out of time for permission to appeal against the review decision of the London Borough of Southwark ("the respondent") dated 23 March 2023, taken pursuant to section 202 of the Housing Act 1996 ("the 1996 Act").

3. The review decision concerned the respondent's earlier assessment that its offer to the appellant of accommodation at Flat 13 Mayfair House, London SE1 was suitable for the appellant and that since the appellant had refused the property, the respondent's duty towards the appellant under the 1996 Act had been discharged. The review decision maintained the respondent's assessment. That review decision was sent to the appellant on 23 March 2023.

4. Section 204(1)(a) of the 1996 Act makes provision for an applicant for assistance in obtaining accommodation who is dissatisfied with the decision on a review under section 202 to appeal to the county court on any point of law arising from the review decision or, as the case may be, the original decision. Section 204(2) provides that an appeal must be brought within 21 days of the applicant being notified of the decision.

5. Section 204(2A) provides as follows:

> "(2A) The court may give permission for an appeal to be brought after the end of the period allowed by subsection (2) but only if it is satisfied:
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> (a) where permission is sought before the end of that period, that there is a good reason for the applicant to be unable to bring the appeal in time; or
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> (b) where permission is sought after that time, that there was a good reason for the applicant's failure to bring the appeal in time and for any delay in applying for permission."

6. On 10 April 2023 the appellant purported to ask for a review of a letter of 16 March 2023 from the respondent which was merely a communication that the respondent was at that stage minded to maintain the assessment concerning the offer of Flat 13. The appellant was advised of the need to appeal the review decision of 23 March. She responded on 17 April to say that no one was helping her. She told the respondent's reviewing officer that she had contacted various law firms and only one had got back to her. The appellant admitted she had made a mistake in rejecting Flat 13 when it had first been offered to her. By that stage, however, it appears that the flat had been accepted by someone else.

7. At this point it is convenient to take up the history as recorded in the judgment of HHJ Hellman, paragraph 13:

> "I have also seen a witness statement from Ms Charlotte Wood, a paralegal at Law Stop Solicitors who now acts for Ms Idara. She explains that Ms Idara became a client of Law Stop Solicitors on 20 April 2023. Ms Wood says that she took immediate conduct of the case.
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> [14] After taking instructions from Ms Idara, it became apparent that the timeframe for bringing a section 204 appeal within the statutory time limit had passed. After discussing the limitation period for an appeal with her client Ms Wood immediately made inquiries as to available counsel. Counsel was then briefed and asked to provide advice as soon as possible. Counsel provided advice on 21 April 2023.
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> [15] From 21 April 2023 to 3 May 2023 Ms Wood was on a period of leave and away from the office. A colleague was asked to look after her cases whilst she was away. When she returned after her leave, the next steps in the case had not been actioned as requested by counsel who had advised that they should be done immediately.
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> [16] On 3 May 2023 as soon as she realised the appeal had not been issued Ms Wood prepared the appeal that morning and it was filed with the court around midday. The appellant's notice is stamped as having been filed on 4 May but I accept that it may not have been processed, i.e. stamped until the day after it was filed.
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> [17] Ms Wood states that her firm have looked into why action was not actioned sooner. The person with conduct of the file in her absence explained that they received the grounds but did not know what to do. They now understand that they should have contacted

> a supervisor but they did not and instead waited for Ms Wood to return from leave. Ms Wood accepts that in the circumstances the further delay was the fault of the solicitors Law Stop and not Ms Idara."

8. At paragraph 18 of his judgment, HHJ Hellman made reference to the judgment of the Court of Appeal in *Tower Hamlets LBC v Al Ahmed* [2020] 1 WLR 1546. In *Al Ahmed* the effect of the Court of Appeal's judgment was to restore the decision of HHJ Hellman in a case where he had granted the application to appeal out of time in a section 204(2A)(b) case on the basis that difficulties in finding a legal aid solicitor willing to take on Mr Al Ahmed's appeal constituted a "good reason" for the purposes of subsection (2A)(b).

9. Sir Stephen Richards gave a judgment of the court. He held that the High Court had been wrong to overturn HHJ Hellman's decision to extend time. The statutory test was whether there was a "good reason." Sir Stephen Richards held at paragraph 24 that the correct approach followed in cases such as *Barratt v Southwark LBC* [2008] EWHC 1568 was to treat the requirement of "good reason" as "a straightforward statutory test to which no gloss is or should be applied." That approach was followed by Lewis J in *Peake v Hackney LBC* [2013] EWHC 2528.

10. In *Al Ahmed*, the High Court had erred by importing into the test the principles to be applied in deciding whether to grant relief from sanctions in cases involving CPR 3.9 where there had been a failure to meet a procedural requirement of the CPR and also in deciding whether time should be extended under CPR 3.1(2)(a).

11. Those principles were articulated in *Mitchell v News Group Newspapers Ltd* [2014] 1 WLR 795; *Denton & Ors v TH White Ltd & Ors* [2014] 1 WLR 3926 and *R (on the application of Hysaj and Others) v Secretary of State for the Home Department* [2015] 1 WLR 1633.

12. At paragraphs 31 to 33 of his judgment, Sir Stephen Richards said this:

> "[31] The appropriateness of applying the Mitchell/Denton principles to the statutory test in section 204(2A) is underlined by

the fact that under those principles the question of good reason is only one factor, and not necessarily a determinative factor, in the assessment to be made. The Mitchell/Denton approach, as set out in *Hysaj* at [38] is this: "A judge should address an application for relief from sanctions in three stages. The first stage is to identify and assess the seriousness and significance of the "failure to comply with any rule, practice direction or court order" which engages Rule 3.9(1). If the breach is neither serious nor significant, the court is unlikely to need to spend much time on the second and third stages. The second stage is to consider why the default occurred. The third stage is to evaluate "all the circumstances of the case, so as to enable the court to deal justly with the application.""

It is at the second stage that the question of good reason arises. A strict approach towards the question of good reason can more readily be justified in a situation where the potential for unjust consequences can be mitigated at the third stage, where the court evaluates all the circumstances. By contrast, there is no scope for a three-stage analysis under section 204(2A), where consideration of the merits and any other matters can arise only if good reason is established. To restrict, by reference to the Mitchell/Denton approach, the circumstances that can be taken into account in the assessment of good reason under section 204(2A) would therefore open the door to unjust outcomes, which Parliament cannot have intended.

[32] That different approaches may be taken in different contexts is illustrated by *Green v Mears Ltd* [2018] EWCA Civ 751, in which it was held that the even stricter approach previously applied to applications for an extension of time for appealing to the Employment Appeal Tribunal was not to be treated as superseded by the Mitchell/Denton principles. As Underhill LJ said at [40], "how strict an approach should be taken to non-compliance with time limits is not a question to which one answer is necessarily better or worse than another. A balance has to be struck between two interests which weigh on opposite sides. Different courts or tribunals may legitimately choose to strike the balance differently." In this case the point is an even stronger one, in that the test of good reason in section 204(2A) has been laid down by Parliament and it is not open to the courts to strike a different balance by reading limitations into that test.

[33] The same point may be made about *Barton v Wright Hassall LLP* [2018] UKSC 12, which concerned an application by the claimant, a litigant in person, for an order under CPR 6.15 validating service of the claim form retrospectively. Lord Sumption stated at [18] that a lack of representation will not usually justify applying to litigants in person a lower standard of

> compliance with rules or orders of the court. He pointed to the "disciplinary factor" in the cases on relief from sanctions, a factor which was less significant in the case of applications to validate defective service of a claim form. He continued:
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> "There are, however, good reasons for applying the same policy to applications under CPR 6.15(2) simply as a matter of basic fairness. The rules provide a framework within which to balance the interests of both sides. That balance is inevitably disturbed if an unrepresented litigant is entitled to greater indulgence in complying with them than his represented opponent. Unless the rules and practice directions are particularly inaccessible or obscure, it is reasonable to expect a litigant in person to familiarise himself with the rules which apply to any step which he is about to take." Again, the reasoning relates to the balance to be struck by the courts in relation to compliance with rules of court. It cannot be read across to the context of section 204(2A) so as to alter the content of effect of the test laid down by Parliament."

13. Sir Stephen Richards was however at pains to point out the following:

> "[35] In no way does that view give carte blanche to delay. The basis cruel remains the 21 day limit, with which Parliament mist have intended applicants in general to comply. Compliance may present little difficulty in practice if an applicant already has a solicitor acting for him in relation to the review (as might have been the position in Mr Al Almed's case had it not been for a breakdown in the relationship between him and his solicitor). Where an applicant relies on the fact that he was unrepresented and was seeking legal aid as a reason for non-compliance, the circumstances will need to be examined with care, including scrutiny of the diligence with which he acted in seeking legal aid. And even if the court is satisfied as to good reason, that simply opens up a discretion to give permission for an appeal to be brought out of time. At that stage the court is able to take into account all other relevant considerations, including the position of the local authority, in deciding how to exercise its discretion."

14. I now return to the judgment of HHJ Hellman in the present case. The judge noted it was common ground that if there was a good reason for the applicable delays, the court should exercise its discretion to give permission to appeal. Each of the appellant's three grounds of appeal had in the judge's view a real prospect of success. He referred to each ground briefly but it is unnecessary for me to go into them in this appeal.

15. Beginning at paragraph 24, HHJ Hellman turned to the nub of the matter:

"But is there a good reason for the applicable delays? There are two parts to section 204(2A)(b). It is agreed that in asking whether I am satisfied that there was a good reason for the applicant's failure to bring the appeal in time, the question I should ask is whether there is a good reason for the applicant's failure to bring the appeal within 21 days, not whether there is a good reason for the applicant not bringing the appeal until 3 May 2023.

[25] I accept the evidence of Ms Idara. I am satisfied that she had a good reason for wanting the solicitors to assist her in bringing the appeal and would have found it extremely challenging to do so without them. Moreover, little practical purpose would have been served by her filing a holding appeal because the court could not do anything with it until such time as fully particularised grounds of appeal were filed. As set out above, Ms Idara has explained the steps she took to find a solicitor. Moreover, although she had an imperfect understanding of what she needed to do, she did notify the respondent before the expiry of the 21 days that she wanted to challenge the decision.

[26] Therefore I am satisfied that she had a good reason for not filing an appellant's notice as a litigant in person but instructing solicitors to do that. In addition, I am satisfied that she took reasonable steps to find solicitors, albeit she was not successful until after the expiry of the 21-day period.

[27] The reason therefore that Ms Idara failed to bring the appeal in time was that she was unable to find a solicitor in time. Had she found a solicitor, the appeal would have been brought in time. I can say that with confidence because the paralegal with conduct of the case would not by that stage have gone on holiday. The first limb of subsection 2(A)(b) is satisfied.

[28] However, I must also be satisfied that there was a good reason for any delay in applying for permission. In my judgment, this does not mean simply that I must be satisfied that there was a good reason for a delay, it means that I must be satisfied that there was a good reason for the period of delay as a whole.

[29] For example, suppose that there was a good reason for a delay of 10 days. If the total period of delay was 10.5 days then the court might well conclude that taken as a whole, there was a good reason for the period of delay, even though there was not a good reason for every single bit of it. If the total period of delay was 2 years, the court might well conclude that taken as a whole there was not a good reason for the period of delay even though there was a good reason for a small part of it. This construction of the statute strikes me as practical and fair and I am satisfied that it gives effect to the legislative intent.

> [30] In this particular case, I must be satisfied that there was a good reason why the application for permission was not brought until 3 May 2023.
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> [31] The difficulty for the applicant is the delay by her solicitors. I accept that Ms Idara had done everything that she could reasonably have been expected of her, that could reasonably have been expected of her and I accept that Ms Wood acted promptly both before and after going on leave and that steps were taken to deal with the conduct of her cases in her absence.
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> [32] However, in my judgment there was not a good reason why this case was not dealt with in her absence. The person with temporary conduct of it, as acknowledged, should have contacted their supervisor if they did not know what to do and really the appellant's notice should have been filed promptly after the solicitors were instructed.
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> [33] In those circumstances, I am not satisfied that there was a good reason for the period of delay as a whole. The larger part of that delay was the period for which there was no good reason where the delay was due to the administrative shortcomings of the solicitors. As there was not a good reason for any delay, the opportunity for me to exercise a discretion does not arise. It is with regret therefore that the application for permission for an appeal to be brought after the end of the 21-day period is dismissed."

16. In this appeal before me, Mr Toby Vanhegan appears for the appellant. The respondent is represented by Ms Catherine Rowlands. I am indebted to them for their helpful written and oral submissions.

17. Mr Vanhegan's written submissions proceed as follows. He says that HHJ Hellman decided that the requirement in the subsection to show good reason for any delay in apply for permission required the appellant to show good reason for the entirety of the period from the expiry of the 21-day time limit of the appeal until the date when the permission application was made. Mr Vanhegan submits that that was a wrong interpretation of the meaning of section 204(2A)(b). He says that the word "any" in the phrase, "and any delay," in subsection (2A)(b) is used to distinguish between (a) the situation where the application for permission to extend time for the appeal is brought within the time allowed for bringing an homelessness appeal which is covered by subsection (2A)(a) and (b) the different situation covered by subsection (2A)(b) which is where the application to extend time has been made after the 21-day time limit set

out in section 204(2) of the Act. The judge was therefore wrong to decide that the appellant had to show a different "good reason" for the delay in applying for permission from the "good reason" for the appeal being out of time.

18. The appellant, Mr Vanhegan says, could rely upon the same "good reason" for both. He submits that although there appears to be no case on point, the authorities do not support HHJ Hellman's interpretation of the same "good reason," could not be used to justify both the late appeal and the late application for permission. Further, they do not, he says, support the interpretation that the appellant must show a "good reason" for the entirety of the delay in applying for permission. T cases are said to be usefully summarised in *Al Ahmed,* where Mr Vanhegan says the court interpreted the subsection as requiring only one "good reason."

19. Having found that the "good reason" for not bringing the appeal in time was the appellant's inability to find a solicitor willing to take her case within the 21 days, Mr Vanhegan submits that HHJ Hellman should have gone on to find that the same "good reason" applied to the late application. That was because the application was made on the appellant's notice; the application was made late because the appeal was lodged late; and the appeal was lodged late because the appellant could not find a solicitor to help her bring her appeal in time. The question being asked by the subsection, according to Mr Vanhegan, is why was the application for permission made after the 21-day time limit. The answer, according to Mr Vanhegan, was because the appeal was made late and that was because no solicitor could be found to lodge the appeal in time.

20. Contrary to what the judge found, Mr Vanhegan submits that the subsection is not asking for a "good reason" to explain the entirety of the delay in bringing the application to extend time. That, he says, required the judge to read into the subsection a considerable number of additional words. The subsection would have to ask for a good reason for "all" the delay or the "whole period" of the delay in applying for permission; it does not.

21. Mr Vanhegan says that the wording of the subsection reflects the fact that there is no time limit for applying for permission but there is a time limit for lodging the appeal.

This is why the subsection asks for a "good reason" for not bringing the appeal "in time" but cannot then use the same phrase when considering the delay in applying for permission.

DISCUSSION

22. It is necessary first to address the submission that Sir Stephen Richards in *Al Ahmed* interpreted subsection (2A)(b) as requiring only one "good reason." I can detect no such interpretation in his judgment. The appeal was concerned with whether HHJ Hellman had been entitled to find that a "good reason" for the entire period of delay lay in the inability of Mr Al Ahmed and the charity Crisis who were helping him in that regard to find a solicitor who could articulate the necessary legal challenge to the review decision. There was no issue as to whether there was any unexplained or otherwise problematic delay once such solicitors had been instructed. On the contrary, as paragraph 8 of the judgment states:

> "The evidence was that matters moved very swiftly once Tyrer Roxburgh became involved. A legal advisor saw Mr Al Ahmed on 23 May, counsel was instructed and an appellant's notice containing an application for leave to appeal out of time and grounds of appeal [were] lodged on 25 May."

23. In *Short v Birmingham City Council* [2005] HLR 6 Tugendhat J in paragraph 16 found that:

> "HHJ Harris QC considered the evidence of the applicant in detail and concluded that he was not satisfied that there was a good reason for her failure to bring the appeal in time, nor for any delay in applying for permission afterwards."

24. The application for permission to appeal in that case was made some three months out of time. On page 68 of the Housing Law Report, it is said that "the judge" (that is the county court judge:)

> "Held that there was no good reason for the applicant's delay in making her application for permission because she had failed to explain why she had not obtained an appointment with the solicitors who had said that they could see her within four to five weeks of the review decision."

25. I observe that four to five weeks would, of course, have been outside the statutory 21-day period for appealing. The case of *Short* therefore appears to me to be an example where the judge refused to extend time because there was no "good reason" for the delay in applying for permission to appeal out of time.

26. There are also indications in other cases that the courts have proceeded on the basis that the phrase "and for any delay in applying for permission" falls to be understood in the same way as HHJ Hellman found. In *Barratt v London Borough of Southwark*, Sir Thomas Morrison found at paragraph 25(v) that:

> "It would be inappropriate for this court to form its own view as to whether Ms Barratt has shown a good reason for not starting proceedings before 6 March and for not making it earlier than she did after 6 March."

27. I note that 6 March was the expiry of the 21-day period in that case. Mr Vanhegan says that if and insofar as judges may have based their decisions on such a view of section 204(2A)(b) they were wrong. The fact remains however that there is some support in these cases for the interpretation adopted by the judge in the present case.

28. I am unable to accept Mr Vanhegan's submission that HHJ Hellman erred in requiring the good reason for any delay in applying for permission to be a different "good reason" from that going to explain the failure to bring the appeal in time. Had the judge found that, because the delay in finding a solicitor was a good reason for not meeting the 21-day deadline, that very reason could not as a matter of law explain the delay in applying for permission to appeal, then that would plainly have been an erroneous interpretation of the legislation. However, that is not what HHJ Hellman found. Instead, he found that there was no "good reason" for the delay from the point when solicitors were instructed to the making of the application for permission. That finding by the judge was one of fact and the application of a value judgment inherent in the test of "good reason." As such, the finding can be disturbed by an appellate court only if the finding is "wrong": paragraph 23 of the judgment of Lewis J in *Peake*.

29. As developed in Mr Vanhegan's helpful oral submissions, the heart of the appellant's case is that the phrase "and for any delay in applying for permission" relates only to the 21-day period in section 204(2). Section 204(2B)(b) requires the applicant to do two

things, according to Mr Vanhegan. First, she must show a good reason why she did not bring the appeal within that period. Second, Mr Vanhegan says she must show that there was a good reason why she did not within that same period apply for permission for her appeal to be brought outside the 21 days.

30. In the case of the appellant, it is said the good reason had to be the same ;namely that the appellant had been unable to find a solicitor in that period. Since the judge concluded that the appellant had a good reason for the first limb of subsection (2A)(b), he must therefore have concluded she had the same good reason for the second limb, had he interpreted the law correctly.

31. I do not accept that this is the correct interpretation of the provision. The problem for the appellant lies with Parliament's use of the word "delay" in the phrase "any delay in applying for permission." Since it is the appellant's own case that Parliament has laid down no specific time limit for making an application to bring an appeal out of time, there can be no question of any "delay" occurring during the 21-day period referred to in subsection (2A)(a). The word "delay" in subsection (2A)(b) has, therefore ,to be understood in the context of subsection (2A)(a). That deals with the situation where the application for permission to bring an appeal outside the 21 days is made within the 21 day period. The focus of the last eight words of subsection (2A)(b) is accordingly on the period from the end of the 21-days until the making of the application for permission, whenever that may be. The good reason for the failure to meet the 21 day deadline for bringing the appeal may as a matter of fact be the same as the good reason for the delay in applying for permission; but it does not need to be.

32. Mr Vanhegan submits that the interpretation adopted by HHJ Hellman requires words to be read into subsection (2A)(b). For the reason just given, I disagree. In fact it is the appellant's interpretation that requires a rewriting of the final words so that they read something like, "and for not applying for permission within the period referred to in paragraph (a) above."

33. Applying ordinary principles of statutory construction, there is no justification for such an approach. The ordinary meaning of the words suffices. No mischief is caused by accepting that meaning. In this regard, I accept what Ms Rowlands says about the

legislative history of section 204. The 21-day time limit was originally unextendible. Subsection (2A) was inserted in 2002 to provide appropriate latitude for the court to accept late appeals; but this was still against the background that homelessness requires swift action by the participants.

34. Mr Vanhegan submitted that the appellant's construction did not mean that an applicant could sit back and do nothing for an unreasonably long time without fear of consequences. Subsection (2A) provides a power for the court to prevent a late appeal even where the requirements of paragraph (a) or (b) are met. In this way, the court can he says prevent the bringing of unjustifiably late appeals.

35. I do not accept that this consideration requires this court to adopt the appellant's interpretation of the provision. It is far from showing that the construction I favour has such negative consequences as to require departure from the ordinary meaning of the words. On the contrary, to require matters of timeliness to be adjudicated through the operation of the court's general discretion runs counter to Parliament's evident aim to have those matters assessed through the test of "good reason." Considerable uncertainty would thus result if the appellant was right.

36. Mr Vanhegan submitted that it made no sense for the court to be required to assess the subsection (2A)(b) delay, only to be required to address it again in the context of the court's general discretion. I do not accept this. If an applicant passes through the subsection (2A)(b) gateway, any discretion to be exercised would need to take account of that fact. Discretion could still, however, be important in permission being refused where, for instance, matters have moved on circumstances have materially changed during the period in question. Conversely, failing to pass the gateway will mean that the court will not even have to be concerned with any general discretion.

37. Mr Vanhegan was particularly critical of paragraph 29 of HHJ Hellman's judgment. Mr Vanhegan said that this showed the difficulties inherent in reading the words, "any delay" as encompassing the entire period up to the making of the application for permission to appeal out of time. The first response to this is to observe that if there are any such difficulties, the appellant's interpretation does not solve them. It merely moves them into the area of the court's general discretion. Secondly, and more

importantly, the criticism of paragraph 29 of the judgment is misplaced. The point there being made by HHJ Hellman is not that an examination of the entire period of delay has to be conducted at a microscopic level. On the contrary, the judge was envisaging a broad analysis of whether overall the delay could be explained by reference to a "good reason."

38. For these reasons, the appeal is dismissed.

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