

Neutral Citation Number: [2003] EWHC 394 (Admin)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
DIVISIONAL COURT

Royal Courts of Justice
Strand
London WC2

Monday, 17 February 2003

B E F O R E:

LORD JUSTICE ROSE
(Vice President of the Court of Appeal, Criminal Division)

MR JUSTICE HENRIQUES

HER MAJESTY'S ATTORNEY GENERAL

(CLAIMANT)

-v-

KAY ETIENNE BADIBANGA

(DEFENDANT)

Computer-Aided Transcript of the Stenograph Notes of
Smith Bernal Wordwave Limited
190 Fleet Street London EC4A 2AG
Tel No: 020 7404 1400 Fax No: 020 7831 8838
(Official Shorthand Writers to the Court)

MR ADAM TOLLEY (instructed by Treasury Solicitor, London SW1H 9JS) appeared on behalf of
the CLAIMANT
DEFENDANT APPEARED IN PERSON

J U D G M E N T

1. LORD JUSTICE ROSE: The Solicitor General for the Attorney General seeks an all proceedings order pursuant to section 42 of the Supreme Court Act 1981 against Mr Badibanga. It is said that he has habitually and persistently and without reasonable ground instituted vexatious civil legal proceedings and applications in those proceedings, and has instituted vexatious criminal prosecutions. Much of the litigation has been in the Ipswich County Court, but there has also been litigation in the Administrative Court, including attempts to institute proceedings by way of judicial review. The attempted criminal proceedings took place in the Ipswich Magistrates' Court. In due course I shall refer in a little more detail to the matters upon which the Attorney General relies.
2. First, it is convenient briefly to set out the legal considerations which are pertinent in an application of this kind. It must be shown that the person against whom the order is sought has behaved both habitually and persistently, and furthermore, that his litigation has been vexatious and without reasonable ground. It is unnecessary to review the relevant authorities in detail. It suffices to say that the Divisional Court, in a judgment approved in the Court of Appeal, held in Re Vernazza [1959] 1 WLR 622, that, in considering whether proceedings are vexatious, the court should look at the whole history of the matter. Furthermore, the litigant on an application of this kind is not permitted to challenge conclusions of other courts, initially or on appeal, that the actions before them have been vexatious or have involved an abuse of process. For, if the court's decision in those respects was wrong, the proper method of challenge to that decision is by way of appeal: see Attorney General V Jones [1990] 1 WLR 859 at 863 D to F. In Attorney General v Barker [2000] 1 FLR 759 at 764 F to H, Lord Bingham of Cornhill CJ identified the characteristics of habitual and persistent litigious activity as usually involving one or more of several features: namely, suing the same party repeatedly in reliance on essentially the same cause of action after it has been ruled upon; or relying on essentially the same cause of action against successive parties after it has already been ruled upon as failing against the initial party; or the automatic challenge to every adverse decision on appeal and refusing to take notice of, or give effect to, orders of the court. Lord Bingham said the essential vice of habitual and persistent litigation is keeping on litigating when earlier litigation has been unsuccessful and when, on any rational and objective assessment, the time has come to stop. All applications of this kind have to be examined by reference to their own individual circumstances.
3. The background to the litigation involving Mr Badibanga can be, I think, fairly summarised in this way. Mr Badibanga came to this country some 30 or more years ago and lived initially in London. He formed a relationship with a Mrs Mayhew and in 1990 they lived together at Diss in Norfolk. There was an attempt by them to finance the purchase of the property, which at that time was in the name of Mrs Mayhew and her husband Mr Mayhew. The property was charged to Barclay's Bank and, attempts at re-financing having apparently failed, the bank then started possession proceedings against the Mayhews. Mr Badibanga sought, unsuccessfully, to be joined in those proceedings. He also sought to stay the execution of a possession order obtained by the bank. By the time the possession order was enforced, Mrs Mayhew had apparently left the property. Mr Badibanga remained there initially, but left before the eviction date leaving his personal belongings there. Thereafter, he started proceedings against the manager of the bank, Mr and Mrs Mayhew and others, alleging negligence and fraud and racial discrimination. That claim was eventually struck out. But it seems to have been a catalyst to a series of claims by Mr Badibanga against a large number of people not necessarily connected with each other, save that they had been involved in decisions with which Mr Badibanga did not agree. Among those persons were a variety of individuals and bodies, particularly in or around the region of Ipswich.

4. Against that summarily rehearsed background, I turn to the schedule of actions by Mr Badibanga which is exhibited in SPO1 to the affidavit of the solicitor acting for the attorney in connection with these proceedings. There are 26 actions or matters there identified. But for present purposes, two of them, numbers 19 and 26, can be set aside: number 19 because it relates to proceedings in the Employment Tribunal and number 26 because it relates to an application by Mr Badibanga for leave to appeal against his conviction of possessing cannabis which he renewed in his absence before the full Court of Appeal (Criminal Division).
5. So far as the other 24 matters are concerned, it is necessary to refer to the way in which, it is said by Mr Tolley on behalf of the prosecution, they show the basis for the making of the all proceedings order which is sought. As to habitual and persistent proceedings, there have, over a period -- certainly from 1993 onwards -- been some 20 separate civil actions and four criminal prosecutions. There have also been 23 separate applications or appeals. All of these proceedings have been unsuccessful. Mr Badibanga has sued the same party repeatedly on reliance on essentially the same cause of action in relation to a number of claims of which I shall give some examples.
6. Claim 1, which was against the Mayhews and others, and claim 10, which had similar if not identical defendants, including solicitors who had been acting in relation to the events which I briefly sought earlier to summarise, were brought 6 years apart; they had not just the same defendants, but the same subject matter. In claim 14, which related to a credit agreement, Mr Badibanga was the defendant in proceedings brought by the Student Loans Company. He sought to join, as part 20 defendants, the Benefits Agency, Anglia Polytechnic University and District Judge Bazley-White. That is despite the fact that claims in respect of the same subject matter (which was essentially the refusal of benefit to Mr Badibanga) had previously been made against these defendants and dismissed in claims numbered 3, 4 and 13 in the schedule. Claim 3 had been struck out in February 1996, and Mr Badibanga subsequently sought, in claim 22, before the Ipswich Magistrates, to institute a criminal prosecution against the same defendants in relation to the same subject matter. Claim 1 having been struck out in December 1993 and an appeal by Mr Badibanga dismissed in 1994, in 1997 and 1998 an attempt was made by Mr Badibanga to institute proceedings before the Ipswich Magistrates against the same defendants in relation to the same subject matter. Claim 7, which included allegations of racial discrimination, breach of trust, and invasion of Mr Badibanga's bodily security, integrity and freedom of reputation, was struck out in the summer of 1998. In November of that year, in claim number 25, Mr Badibanga again sought to institute proceedings before the Ipswich Magistrates in relation to the same defendants and subject matter. He has sought almost automatically to challenge every adverse decision by way of appeal or further application (see claims 1, 3, 7, 8, 9, 11, 12, 13, 14, 17 and 20). So far as the last of those matters is concerned, there have been attempts, in September of 2002, to keep those proceedings alive by way of an application to set aside the order striking out the claim. Notwithstanding the striking out, an attempt was made to join a further defendant. It is further said that Mr Badibanga has refused to take any notice of orders of the court. In claims 1 and 12 he has openly acted in disobedience, with Grepe v Loam orders made against him. In claim 7, he failed to comply with an unless order so that the balance of the claim, the bulk of it having earlier being struck out as disclosing no cause of action, was dismissed. He failed to comply with an unless order in claim 9, whereby his renewed application for permission to seek judicial review was dismissed.
7. So far as keeping on litigating when earlier litigation has been unsuccessful without rational or objective cause is concerned, claim 1 provides an example. It was struck out in December 1993 as disclosing no reasonable cause of action and being vexatious and an abuse of process. An appeal, as I said earlier, was dismissed in February 1994. Three years

later, Mr Badibanga sought to reinstate the action and that application was dismissed and a Grepe v Loam order made. In breach of that order, Mr Badibanga sought to transfer the case from Ipswich to Central London County Court, notwithstanding that it had been dismissed 3 years previously. A further application was made and dismissed on 5 November 1999 when a second Grepe v Loam order was made. Yet another application was made by Mr Badibanga to transfer the case to Central London in December 1999, but that was dismissed in February 2000. A fifth and final application was refused in March 2000.

8. Claim 10 was an attempt to transfer, from Ipswich to Central London, a claim after it had been dismissed. Claim 11 sought judicial review of the orders of the county courts in claims 1 and 10. Claim 12 was brought against the Deputy District Judge who had struck out claim 1 in which £75,000 had been sought by way of damages. The claim was brought after the misconceived attempts at transfer and judicial review in claims 10 and 11 had been dismissed.
9. In relation to proceeding vexatiously and without reasonable ground, as I have already said, none of Mr Badibanga's proceedings have been successful. Many of his claims have been struck out on the basis that they disclosed no cause of action, were vexatious, or an abuse of process. Claims 1, 3, 6, 7, 8, 10, 12, 13, 20, and 21 are in that category. Judicial review applications in claims 2, 4, 9, 11, 17 and 18 have proved equally groundless.
10. The 23 further applications and appeals, to which earlier I referred, have all failed. Furthermore, there have been the Grepe v Loam orders in claims 1, 12 and 13 to which I have referred. Furthermore, Mr Badibanga has on a number of occasions sought, inappropriately, to bring proceedings against individuals, rather than against their respective employers against whom properly the claim would lie. I give two examples: claim 3, which was a claim for benefits and failure to pay benefits, and claim 22, which was a criminal prosecution-sought redress against individuals, rather than their employers who had the relevant responsibility. Claim number 16, which was not issued, but which was served on the Employment Service, was actually made against named individuals. The final point on this aspect made by Mr Tolley is that much of Mr Badibanga's litigious activity has been obscured by the nature of his written communications these have often been difficult to follow, thereby increasing the burden on those in court offices and elsewhere who have had the task of seeking to ascertain what the claims were about.
11. As I have already said, there was activity by Mr Badibanga towards the end of last year which shows that there is no sign of abatement in his litigation. Indeed, something which he said to this court this morning to which in a moment I shall come, tends to demonstrate that that is the case.
12. Mr Badibanga, in his courteous submissions to this court, objects to the making of the order sought. He seeks to oppose such an order, the effect of which, he says, would be to imprison him in Suffolk and is likely to lead to him losing his flat and losing benefits if he is to be prevented from setting foot in a court of law. He says that he will pursue matters by appeal after appeal. Such a course on his part would, he says, not be necessary if he were allowed to pursue CO/260/2002, which, effectively, holds the key to all these matters and is the kernel of his complaint. His complaints, as I understand them, are that, in none of the cases to which I have referred has he ever been able to call any evidence to support the facts on which he relies. This, he says, is his grievance. He accepted, as was explained to him in the light of the Authority of Jones to which I have already referred, that it was not open to him before this court to adduce evidence of the facts on which he relies. He furthermore poses the question: should it be vexatious to pursue prominent figures such as solicitors or judges who were wrong and who have completely destroyed his life? He said that claims 7 and 8 related to his employment. He said that he has some difficulty in communicating. He hoped that he would

have been on a 3-year assessment course to train him in this respect, but that, as I understand it, has not materialised. All of these matters I take into account.

13. As it seems to me, the material before this court clearly demonstrates that Mr Badibanga has habitually and persistently and without reasonable ground instituted vexatious civil legal proceedings and applications and appeals in those proceedings, and has instituted or sought to institute, vexatious criminal prosecutions.
14. I am satisfied for my part, that unless the order which is sought is made, Mr Badibanga will go on, as he has told this court he will go on, litigating. I very much hope that he understands that if the court makes the order which is sought, that does not shut him out for ever from litigation. What it means is that he will only be able to litigate if he first gets the permission of the court to do so. If he has good grounds for litigating then no doubt the court will give him permission to institute appropriate proceedings. But in the exercise of the discretion which this court has, I have no doubt that it should be exercised in favour of making an all proceedings order under section 42 of the Supreme Court Act.
15. MR JUSTICE HENRIQUES: I agree.
16. MR A TOLLEY: Most grateful, my Lord. I have prepared a draft order. It simply recites the formalities and in five numbered paragraphs takes up the matters that are prohibited by a proceedings order under section 42. Point 6, in relation to costs, my Lord, is common place in these applications. The Attorney General does not seek orders for costs in relation to these applications.
17. LORD JUSTICE ROSE: That order will be drawn up.
18. MR A TOLLEY: I am grateful, my Lord.