Appeal No. UKEAT/0435/13/RN

EMPLOYMENT APPEAL TRIBUNAL

FLEETBANK HOUSE, 2-6 SALISBURY SQUARE, LONDON EC4Y 8AE

At the Tribunal
On 12 March 2014

Before

THE HONOURABLE MR JUSTICE MITTING

(SITTING ALONE)

HER MAJESTY'S ATTORNEY GENERAL — APPELLANT

MR J ITESHI — RESPONDENT

Transcript of Proceedings

JUDGMENT

RESTRICTION OF PROCEEDINGS APPLICATION

APPEARANCES

For the Appellant	MR DAVID BLUNDELL (of Counsel) Instructed by: The Treasury Solicitor Employment Law Team One Kemble Street London WC2B 4TS
For the Respondent	No appearance or representation by or on behalf of the Respondent

SUMMARY

PRACTICE AND PROCEDURE – Restrictions of proceedings order/vexatious litigant

30 claims and numerous applications within claims brought in the Employment Tribunal, almost all were weak or hopeless and conducted vexatiously. S.33 order made

THE HONOURABLE MR JUSTICE MITTING

1. Mr Iteshi is a national of Nigeria, married to an EEA national, exercising treaty rights in the United Kingdom. He is, as far as I can judge, an intelligent and articulate man. He obtained a 2:2 first degree in psychology at the University of Nigeria, a Master's degree in Employment Studies and Human Resources Management at the University of North London in 2003, a post-graduate Diploma in Law at London Metropolitan University in 2004. He completed the Bar Vocational Course in 2007 and was called to the Bar in October 2007. He was unable to obtain a pupillage or work in which he could put his legal knowledge to productive use. Instead, he has litigated on his own behalf, in all but one case in Employment Tribunals and on appeal to the Employment Appeal Tribunal and the Court of Appeal and, it seems, has also represented other litigants in employment cases in the Tribunals. In the four years from 19 November 2007 until 16 November 2011 he made 30 claims in Employment Tribunals, mostly in London. One of them was against the Bar Council. Four were against his own employers, Transport for London and London Underground Ltd, and 25 were against recruitment agencies and employers recruiting staff, mostly in the public sector, mostly for positions in which legal qualifications or experience were required.

2. All claims have alleged direct and indirect race discrimination. All but one have alleged at the start sex discrimination as well, and some have alleged victimisation. None has succeeded. Many have been struck out as having no reasonable prospect of success. In almost every case respondents to the claim have put in detailed responses accounting for their actions and have been required to, and have, responded to pre-claim questionnaires. Although it is impossible for me to state any precise figure for the costs incurred by respondents, I have no doubt that they are substantial. I take but one example. In one of the cases, an order for costs was made against Mr Iteshi. The respondents claimed they had incurred £17,000 worth of

costs. I suspect that their experience is not untypical. It follows, therefore, that Mr Iteshi's 30 unsuccessful claims will have put a variety of prospective employers and recruitment agencies, as well as the Bar Council, to expense amounting in total to a substantial six-figure sum.

3. I turn, therefore, to the individual claims. A schedule has been prepared allocating a number to each claims. I propose to deal with them in chronological order, that is to say in the order in which they were issued, with one exception for a reason which will be apparent. I will therefore give two numbers to each claim: my own, signifying chronological order, and in square brackets the number adopted by the Claimant.

1. [1] An ET1 claim form 2203604/2007 was issued in the London (Central) Tribunal on 19 November 2007 against Transport for London, London Underground Ltd and, added on 18 December 2007, Reed Consulting Ltd. Mr Iteshi was employed by London Underground Ltd as a Customer Service Assistant. As far as I know, he has ever since been so employed. Between 5 December 2005 and 17 August 2007 he applied unsuccessfully for eight posts: Station Supervisor, Service Manager, Service Controller, Compliance Adviser, Revenue Control Inspector, Case Progression Officer, Principal Employment Lawyer, Network Operations Controller. He also sat unsuccessfully the first stage of tests for two further posts: Train Operator and a Duty Manager. He complained that his lack of success was due to systematic race and sex discrimination as was the rejection of his complaint. He also complained that he had been adversely treated because he had complained, a victimisation claim.

2. [2] An ET1 claim form 2201707/08 was issued in the London (Central) Tribunal on 30 May 2008 against Transport for London and London Underground Ltd. Mr Iteshi complained that he had not been considered for secondment to the Private Prosecution

Unit in August 2007 and had sat unsuccessfully the first-stage test for Service Controller in December 2007 and a second-stage test for Supervisor in September 2008. He complained that his lack of success was due to race and sex discrimination. He also complained of victimisation because he had complained.

3. [4] An ET1 claim form 2203362/08 was issued in the London (Central) Tribunal on 15 October 2008 against Transport for London, London Underground Ltd and Kate Brownlee. Mr Iteshi complained that he had sat unsuccessfully an assessment for the post of Duty Station Manager on 23 May 2008 and applied on the same date, also unsuccessfully, for the post of Associate Lawyer. He alleged that Kate Brownlee was responsible for his lack of success in that application and that he had been blacklisted because of his complaints. He claimed to have been made ill by this conduct.

4. [11] By an ET1 claim form 2201942/09, issued in the London (Central) Tribunal in April 2009 against Transport for London, London Underground Ltd and, later added, Kate Brownlee. Mr Iteshi complained that between August 2008 and November 2008 he had applied unsuccessfully for the post of Service Manager and Associate Lawyer. He claimed that his lack of success was due to race and sex discrimination and to victimisation. He reiterated that he had been caused injury to his health. I have taken this case out of chronological order because it was eventually dealt with with the first three by the London (Central) Tribunal.

4. The first four cases were eventually heard by the Employment Tribunal together over 23 days between 2 June 2010 and 11 November 2010. Before then, each case generated numerous case management applications and decisions and four appeals by Mr Iteshi to the Employment Appeal Tribunal. Cases 1 and 2 were managed together, as were cases 3 and 4.

An order was made for all four to be heard together on 9 February 2010. In Cases 1 and 2 Mr Iteshi had applied unsuccessfully for orders striking out the Respondent's responses, but did obtain on 4 September 2009 an unless order against them. Mr Iteshi appealed that order to the Employment Appeal Tribunal. No order was made under rule 3(7) on the sift. He failed to comply with an unless made against him and his claim was struck out. That gave rise to an application to reinstate, which was refused, and an application to review refusal, which was likewise unsuccessful. Two appeals then followed to the Employment Appeal Tribunal against those orders. They were eventually withdrawn. It seems that the claims were reinstated because, as I have indicated, they did proceed to a full hearing. Thus far, Mr Iteshi's conduct of claims 1 and 2 were burdensome for the Respondent and the Tribunal but not clearly vexatious.

5. Not so claims 3 and 4. Directions were given on 14 August 2009 and 20 November 2009 for extensive disclosure of documents by the Respondents. Mr Iteshi claimed they were "false and manipulated". Employment Judge Mrs Pontac heard evidence from the Respondent's witnesses on 3 December 2009 and concluded that they were genuine. Mr Iteshi would not accept her conclusion. She recorded what happened in her determination and Reasons sent to the parties on 7 December 2009 in paragraphs 24 and 38-39:

> **"24. At 4.28 pm, I pointed out the time to the Claimant and said that in my view he so far had not produced evidence which might persuade me that the documents disclosed were not genuine. He raised his voice and replied 'Madam, you have not been listening to me.' I asked him if he understood that such a comment from a lawyer might amount to a contempt. He simply glared at me. I raised my voice again and asked again and he apologised. [I asked him to move on to order 4 of 20 November 2009. I found the Respondents had complied with order 3.**
>
> **...**
>
> **38. At some point during the discussion the Claimant indicated that the disclosure of applications in a campaign not previously mentioned to me would show him to be correct in his allegations regarding the documents disclosed in this case. I speculated aloud that perhaps he wanted to see them so that he could bring further claims. That comment was uncalled for and discourteous and I apologise unreservedly to the Claimant.**
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> **39. On the other hand, I was concerned during the hearing, and upon reflection I remain concerned that this claimant, who is a member of the Bar, chose to employ his legal knowledge and training in a hectic attempt to discredit the respondents' evidence without evidence of his own to found his allegations. He used the Tribunal's scarce time and resources to pursue a**

> **course without substance but at such length and so vehemently that it appeared he may have known his allegations were unmeritorious."**

6. Mr Iteshi appealed that order in a 51-paragraph Notice of Appeal. No order was made on the sift under rule 3(7). A renewed oral application was dismissed under rule 3(10).

7. At the substantive hearing, the Employment Tribunal heard evidence from 20 witnesses and from Mr Iteshi. Mr Iteshi restated his complaint that the Respondent's documents were bogus and the Respondent's witnesses and their counsel had made false representations. The Employment Tribunal found "no grounds whatsoever" for the allegation against counsel and that the Respondent's difficulties with documents stemmed from incompetence not dishonesty, and that no document was suspect on its face. The Employment Tribunal analysed the reasons for Mr Iteshi's failure in each job application in detail and concluded that there had been no discrimination against him or victimisation of him. It was also satisfied that the overall picture did not raise any suspicions over and above the conclusions it had reached on the individual complaints.

8. The decision was sent to the parties on 6 January 2011. Mr Iteshi appealed to the Employment Appeal Tribunal on 17 February 2011. His Notice of Appeal ran to 130 paragraphs. He re-stated that the Employment Tribunal had been misled at the case management stage by lies told on oath by the Respondent's witnesses and by "the sweet-sounding lies of the Respondent's counsel and witness."

9. As to their conduct at the substantive hearing, he made the following allegation, in paragraph 44 of his grounds:

> **"Despite severally begging the Tribunal not to be evasive like other previous Tribunals it went ahead to make evasive decision on all interlocutory applications I brought which showed that**

> **the Respondents and their lawyers were acting fraudulently. It frequently claimed it was going to address the issues in the final Judgment, but in the end the ET carefully manipulated all the evidence that undermined the Respondents."**

10. His grounds of appeal widened his attack to include both the Tribunal and the Appeal Tribunal:

> **"I believe the Tribunal has deliberately promulgated a false judgment as part of a fraudulent scheme to shut me out of justice, frustrate me financially and present me as a trouble maker. I believe I am being goaded to accuse everyone of fraud in order to weaken my reputation and the impression the reception of my complaints by external bodies (based on the notion that one cannot be right over all Judges in England and Wales). I also believe that Judges in the Employment Appeal Tribunal are queuing up to shoot down my appeal in concert."**

11. The appeal notice was not accompanied by necessary documents and was therefore deemed to be out of time by the Registrar in accordance with the strict interpretation placed upon appeal requirements and the time for bringing appeals in the Employment Appeal Tribunal. The Registrar refused to extend time on 23 June 2011. This prompted a response from Mr Iteshi on 26 June 2011:

> **"I wish to state that this is yet another manifestation that the Employment Tribunal system including the Employment Appeal Tribunal is a false judicial system."**

12. Mr Iteshi appealed that decision successfully. On 28 October 2011 HHJ Hand QC directed that his application should be considered at a sift. An order was made by HHJ Peter Clark on 3 December 2011 under rule 3(7) directing that no further action be taken on the Notice of Appeal on the ground that it disclosed no reasonable grounds of appeal. The same grounds of appeal were re-submitted as new grounds under rule 3(8) which then, unlike now, applied and a "summary ground of appeal", which included the following;

> **"11. Judicial fraud**
>
> **I boldly stated it as strongly as possible that I accused the Tribunal that heard my claim of deliberately promulgating a fraudulent Judgment in order to cover up the series of fraud and inhuman acts already committed against me by previous Tribunals.**

[12. It is fraudulent of a judicial panel to help a party in suppressing or undermining or unreasonably overlook a deliberate subversion of justice only to turn around in its judgment that there is not enough evidence on the issue.

13. Among other instances the Tribunal acted fraudulently in

Failing to make honest findings of fact both in relation to the conduct of the Respondents and their representatives (even those played in their presence and in relation to all the evidence placed before it) and

Dishonesty in interpreting the law relating to continuing act and dispute resolution (a grievance letter)]"

13. A further order was made under rule 3(7) directing that no further action be taken on the Notice of Appeal on the standard ground by Mr Recorder Luba QC on 12 April 2012. On 26 September 2012 Lady Smith directed that no action be taken on the appeal under rule 3(10) after an oral hearing.

14. The conduct of cases 3 and 4 was plainly vexatious, almost from the start. The conduct of all four cases, as and after the substantive hearing, was also vexatious.

15. Whilst conducting this litigation against his own employers and an employee of theirs, Mr Iteshi instituted four claims in rapid succession against two local authorities, the CPS and the Ministry of Justice.

16. Case 5 [7] was commenced by an ET1 claim form 3302527/08 issued in the Watford Tribunal on 2 October 2008. The Respondents were the London Borough of Harrow, Ms J Farmer and Ms S Clarke, employees of that Borough. Mr Iteshi claimed, unusually, that he had successfully applied for the post of Legal Assistant at the London Borough of Harrow but that Ms Farmer and Ms Clarke had delayed confirming an offer of employment to him, leading the Borough to treat it as withdrawn. Mr Iteshi complained that the withdrawal was due to race and sex discrimination. The substantive hearing took place over three days from 5-7 May 2009. The claim of race discrimination was dismissed and that of sex discrimination

withdrawn before the hearing. The Employment Tribunal heard six witnesses and Mr Iteshi. It found that a job offer had been made and withdrawn, but not for the post of Legal Assistant, for which Mr Iteshi was not qualified. The offer had been for the post of Legal Services Officer, which had been withdrawn because of Mr Iteshi's hectoring manner when Ms Farmer and Ms Clarke attempted to explain to him why there had been a delay in confirming it. The Employment Tribunal found that his insistence that the Tribunal rule on his application for the position of Legal Assistant was unreasonable and ordered him to pay £220 costs. The Employment Tribunal's judgment and Reasons were sent to the parties on 16 July 2009. A Notice of Appeal to the Employment Appeal Tribunal was filed on 26 August 2009. It attacked the conduct of the Employment Tribunal Judge.

17. I take two examples, first from paragraph 21(g):

> **"The judge bullied me throughout my case. He interrupted me, often in my cross-examination of witnesses, only to blame me for taking too long. When I tried to hurry up witnesses the same judge rushing me through would accuse me of speaking over the witnesses, thereby affirming the Respondent's 'false' accusation against me."**

18. And from paragraph 27:

> **"Further, or alternatively, the Tribunal members probably allowed their racial stereotypes of black men as aggressive and rude to cloud their Judgment of issues despite my repeated protestations and plea to avoid such sentiments. The Judge even tested this out by pushing me through only to shout 'You are speaking over her' when I tried to hurry a witness through a question. It was like the Tribunal members got taken in from the beginning by their assumptions that I might have been rude from the very beginning of the case and this overshadowed their entire perception of my person and everything I had to say."**

19. On 7 December 2009 Mr Iteshi was ordered to file an affidavit setting out his allegations of bias against the Tribunal by 21 October 2009 in default of which the grounds alleging bias would be dismissed. He failed to do so. He was granted an extension of time in which to appeal the order of 7 December 2009 on 25 March 2010. Soon after, Mr Iteshi withdrew the allegations of bias. His appeal was dismissed after a full hearing on 3 August 2011. The

Employment Tribunal dealt comprehensively with Mr Iteshi's detailed submissions but concluded, at paragraph 59:

> **"We have gone through the Appellant's argument and dealt with his points at some length out of defence to the industry with which he has assembled his case, but that we have dealt with his case discursively should not be misunderstood. We have no difficulty in thinking that there is no merit in any of his arguments and that in reality the appeal is simply an attempt to re-argue the facts. Consequently the appeal will be dismissed."**

20. There are elements of vexatiousness in this claim, especially the pursuit of the hopeless case about the failure to succeed in his application for the post of Legal Assistant and in the bringing and conduct of his appeal to the Employment Appeal Tribunal. Significantly, Mr Iteshi also sought permission to appeal to the Court of Appeal. That was refused by Elias LJ on 18 October 2011 as totally without merit.

21. Claim 6 [5] was brought by an ET1 claim form 2203660/08 in London (Central) Tribunal on 11 November 2008 against the CPS. Mr Iteshi claimed that he had applied unsuccessfully between December 2007 and July 2008 for a variety of posts: Legal Trainee, Casework Support Officer, Casework Assistant, Witness Case Officer, Caseworker, Administrative Officer; some of them more than once. He complained that his lack of success was due to race and sex discrimination. The Respondent applied to have the claim struck out on the ground that it had no reasonable prospect of success. Employment Judge Pearl heard the application on 23 March 2009. It was supported by live evidence of the Respondent's North Region Business Manager, Mr King. Mr Iteshi's case was that Mr King's evidence was untrue, as set out by Judge Pearl in his judgment and Reasons, sent to the parties on 7 May 2009:

> **"Mr King was cross-examined and he convincingly explained how this administrative muddle developed. There was no point during the cross-examination when I had the slightest doubt about either the accuracy of his evidence or his own credibility. I should add that when I considered matters at the conclusion of all the evidence in the case including the Claimant's this remained my clear view. The Claimant did not really pull his punches in cross-examination and he put to Mr King that he was not describing a genuine situation and that his evidence was clearly untrue. In my opinion there is not the slightest basis for so concluding."**

22. Mr Iteshi accused the central recruitment unit of the Respondent of manipulation of information. Employment Judge Pearl's conclusion, set out at paragraph 15 of his Reasons, was :

> **"The overall evidence I have seen shows he could not raise any prima facie case of any discrimination. In other words I wholly discount the possibility that he could adduce evidence from which a properly directed Tribunal could find or infer, in the absence of an adequate explanation from the Respondent, that it would have shortlisted a female or a person of a different race or ethnic origin. On this ground alone, I consider that the whole claim should be struck out."**

23. Judge Pearl also concluded that the first seven of the eight claims brought were out of time. After the judgment and Reasons had been sent to the parties on 7 May 2009, Mr Iteshi applied for a review. His application was rejected on 9 June 2009. A Notice of Appeal to the Employment Appeal Tribunal followed on 17 June 2009. It was founded in part on an allegation of bias against Employment Judge Pearl. Underhill J, as President, directed that no further application on the appeal be taken under rule 3(7) for the usual reason, but an application under rule 3(10) at an oral hearing was in part allowed by Slade J on 18 November 2009 on the last claim only but not on the seven struck out as being out of time. Mr Iteshi sought a review of that decision on 17 December 2009, which was refused. Mr Iteshi then withdrew his Notice of Appeal but then applied to withdraw his withdrawal. That was rejected by HHJ David Richardson on 17 March 2010, who also rejected an application for him to review that decision on 20 April 2010.

24. Viewed overall, the conduct of this claim was clearly unreasonable and in substantial part vexatious. Mr Iteshi's claim was struck out as having no reasonable prospect of success. When on appeal he was allowed by Slade J to appeal on two issues relating to the last job application to a full hearing, he withdrew his appeal and then tried fruitlessly to reinstate it.

25. Case 7 [8] was an ET1 claim form 3302975/08, issued at the Watford Tribunal on 24 November 2008 against the London Borough of Enfield. Mr Iteshi had applied unsuccessfully for four posts on 23 July 2008 of a Lawyer and a Legal Officer. He claimed that his lack of success was due to race and sex discrimination. An application was made by the Respondent to strike out the claim because it had no reasonable prospect of success. At the Pre-Hearing Review, on 24 April 2009, the Respondent was ordered to disclose anonymised details of other applicants for the posts and did so. The Respondent again invited Mr Iteshi to withdraw his claim and said it would not claim costs if he did so before noon on 8 June 2009. Mr Iteshi claimed that the disclosure was incomplete and less than honest. At 9.02am on 9 June 2009, the day on which the Respondent's application was to be heard, Mr Iteshi did withdraw "for health reasons". The Employment Tribunal awarded £5,000 of costs against Mr Iteshi on the basis that his conduct after 24 April 2009 was unreasonable. After review, on 22 December 2009, the Tribunal reduced the costs order to £750 but only on account of his lack of means. Meanwhile Mr Iteshi appealed to the Employment Appeal Tribunal on 23 September 2009. A rule 3(7) order that no further action be taken on the Notice of Appeal was made on 30 March 2010 and again on 24 May 2010. An oral application was made under rule 3(10) by ELAAS counsel on behalf of Mr Iteshi and dismissed. Mr Iteshi's conduct after 24 April 2009 was unreasonable and vexatious save for the application for a review by the Employment Tribunal of the order for costs against him, which secured a reduction in the amount on account of his means.

26. Case 8 [6] was an ET1 claim 2203976/08, issued in the London (Central) Tribunal on 1 December 2008 against the Ministry of Justice. Between February and November 2008 Mr Iteshi applied unsuccessfully for eight posts as Legal Adviser at magistrates' courts in different parts of England. He complained about his lack of success to the Ministry of Justice and then complained to the Tribunal that his lack of success in his applications and in his

complaints to the Ministry were due to race and sex discrimination and victimisation. His claim was heard over six days in May 2009 and January 2010. In a judgment and Reasons sent to the parties on 23 February 2010 the Employment Tribunal rejected all but three claims as being out of time and all of them as being ill-founded. It dismissed the three which were not out of time.

27. On 5 April 2010 Mr Iteshi appealed to the Employment Appeal Tribunal in a 25-page, 129-paragraph, Notice of Appeal. On 14 May 2010 Underhill J made a direction under rule 3(7) that no further action be taken on his Notice of Appeal. On 10 June 2010 Mr Iteshi filed fresh grounds of appeal of 26 pages and 136 paragraphs. On 23 July 2010 Wilkie J directed that no further action be taken on the fresh Notice of Appeal under rule 3(9). His observations in doing so are of interest.

> **"Despite the comments of the President, the Notice of Appeal is virtually identical to the original. To the extent that is altered, in particular paragraph 105 and the section on perversity, it no more discloses any arguably grounds of appeal than did the original, merely a continuing disagreement with the conclusions of the Employment Tribunal."**

28. On 28 January 2011 he renewed his application to an oral hearing and on that day HHJ Richardson made an order under rule 3(10) that no further action be taken on his Notice of Appeal. In so doing, he observed:

> **"The second is that I do not have sympathy with a Notice of Appeal of the kind which the Claimant put forward in this case. There is, as he should know, being a qualified barrister and having brought many appeals, only an appeal to the Appeal Tribunal on a question of law. Notices of Appeal which seek to reargue the facts at length where there is in truth no point of law are a waste of time for the person who drafts them and for the Judges and Tribunals which have to deal with them. The comfort for the Claimant is that the Appeal Tribunal has a sifting procedure. If this case had gone to a hearing at which the other side were required to be present he would have been likely to pay substantial costs."**

29. In refusing permission to appeal to the Court of Appeal, Judge Richardson observed that:

> **"I consider that there are no real prospects of success in an appeal to the Court of Appeal and no other compelling reason for such an appeal to be heard"**

having set out his conclusions that there were no reasonable grounds for appealing to the Employment Appeal Tribunal. The conduct of the claim, in part by bringing claims that were plainly out of time and throughout on appeal, was clearly vexatious.

30. I then turn to 2009. In 2009 Mr Iteshi issued 18 ET1 claim forms: nine against a local authority, sometimes together with recruitment agents acting on their behalf, five against recruitment agents alone, two against Transport for London, one against the Bar Council and one against British Telecom. Two of the files are incomplete and therefore my attempt to set out the claims in chronological order of issue may be imperfect.

31. Case 9 [24] was an ET1 claim form 3200029/09, issued in the London (East) Tribunal on 4 January 2009 against the London Borough of Barking and Dagenham. On 14 August 2008 Mr Iteshi had unsuccessfully applied for two posts as a lawyer. On 30 October 2008 he sent a questionnaire, as he habitually did to employers who had declined to offer him employment, to the London Borough, seeking anonymised details of other applicants. He claimed that the answers demonstrated that he had been the victim of discrimination on grounds of race and sex. The London Borough applied to have his claim struck out on 21 July 2009. Mr Iteshi withdrew his claim "because I feel frustrated by the Tribunal's inefficiency and wish to concentrate more on my pursuits of a job".

32. Case 10 [25] was an ET1 claim form 3200466/09, issued in the London (Central) Tribunal on 8 February 2009 against the London Borough of Havering. On 26 September 2008 Mr Iteshi had unsuccessfully applied for the post of employment lawyer. On 17 November 2008 he sent a questionnaire to the Borough about the details of other applicants. He claimed the response to the questionnaire was incomplete and that his lack of success

demonstrated race and sex discrimination. On 20 June 2008 he withdrew his claim "because the Respondent has disclosed the application forms of those shortlisted".

33. These two claims perhaps disclosed a measure of realism on the part of Mr Iteshi in that he withdrew them soon after they had been issued. That restraint was, however, not shown in the remainder of his litigation in 2009.

34. Case 11 [10] was an ET1 claim form 2201179/09, issued in the London (Central) Tribunal on 4 March 2009 against the General Council of the Bar. By it he challenged the requirement for barristers' chambers to pay £5,000 to pupils in the first six months of pupillage and £5,000 in the second six months less fees received on the basis that it indirectly discriminated against him on the grounds of race. This uniquely was the one claim in which he did not claim sex discrimination. After a two-day hearing, on 3 and 4 February 2010 the Employment Tribunal dismissed his claim in a judgment and Reasons sent to the parties on 19 March 2010. A well-reasoned judgment of just over six pages generated a Notice of Appeal filed on 30 April 2010 of 12 pages. The last paragraph concluded "This is a Judgment that makes a mockery of the ET system...". On 21 June 2010 a rule 3(7) Order was made by Underhill J on the sift. On 19 July 2010 a substantially identical Notice of Appeal was filed. On 8 September 2010 a rule 3(9) order was made by Underhill J. On 30 March 2012 a rule 3(10) order was made after an oral hearing by an Employment Appeal Tribunal panel chaired by Lady Smith, at which Mr Iteshi was represented by ELAAS counsel. The penultimate paragraph is of note:

> **"45. We should add that on 22 September 2011, the Claimant sent an email to his MP, Simon Hughes, copied to this Tribunal, in which he accused the Employment Judge, [Ms] Wade, of fraudulent manipulation of evidence and of the lay members who sat with her as being dubious, accused this Tribunal as having operated a scam at the earlier sifting stages, as being a self constituted panel of deities and, in particular, stated that our chair, Lady Smith was a 'woman famed by ordinary victims for being manipulative and conscience ridden.' A copy of that email was made available to** [Mr Morton, the ELAAS Counsel instructed to represent Mr Iteshi] **prior to the start of the appeal hearing and, at the outset, he was asked if he had**

> **anything to say regarding it. He said that he had nothing to say in respect of it. We observe that notwithstanding the strong if not inflammatory words of his email, no motion for recusal of Lady Smith or of the lay members of this court was made."**

35. An application was made for permission to appeal to the Court of Appeal. It was refused on paper by Sir Richard Buxton. It was renewed orally to Sir Stanley Burnton, who refused it on 12 December 2012, as it happens the last step in any of the claims brought by Mr Iteshi. In his short oral judgment, Sir Stanley Burnton said the following:

> **"I have to say that some of the allegations made by Mr Iteshi before me have been at the extreme end of seriousness. He alleges dishonesty on the part of those who have been examining his claim, including as I understand it Sir Richard Buxton. Similarly, the tribunals. He accused the Employment Tribunal of dreaming up statistics, fabricating statistics used in their order. On examination, I think, so far as he identified the statistics, he accepted that they had been produced by the respondent, by a witness who was before the tribunal. In my judgment it is regrettable that those allegations have been made and there is nothing to show that there is anything in them at all."**

36. This claim was not obviously vexatious. It deals with an issue which is after all of general concern to many of those who wish to practise at the self-employed Bar, but his conduct of the appeals against the cogent judgment and Reasons of the Employment Tribunal was clearly vexatious.

37. The next claim in chronological order was 4 [11] with which I have already dealt.

38. Case 12 [21] was an ET1 claim form 2222688/09, issued in the London (South) Tribunal on 14 July 2009 against the London Borough of Southwark. On 25 March 2009 Mr Iteshi applied unsuccessfully for the post of Legal Assistant. He claimed that his lack of success had been due to race or sex discrimination. In their response, the Borough stated its intention to apply to strike out the claim as misconceived and without reasonable prospect of success. On 1 December 2009 the Employment Tribunal ordered a full hearing at the case management hearing. That was to take place on 15 and 16 March 2010. However, it gave a clear indication

that the claim had little prospect of success. At 4.45pm on the first day of the hearing, the Claimant withdrew all of his claims. The Borough applied for its costs on the basis that the claim was doomed to fail from the start.

39. In correspondence before the hearing, Mr Iteshi had replied to a letter from the Borough's solicitor in the following terms;

> **"Dear Mr Kilfoyle**
>
> **I know that in England you do not call a person a liar even if you see him telling a big fat lie, but I am convinced that only an idiot would buy your childish story here."**

40. The Employment Tribunal's conclusion, in a judgment sent to the parties on 23 April 2010, was as follows:

> **"We are satisfied that the claims were misconceived and that the claimant in pursuing the claims in the face of the warnings he had received was acting unreasonably.**
>
> **The claimant is not a typical litigant in person. The Claimant is far more informed [than] most litigants in person, being a qualified barrister who has experience of advising on employment law matters. He also has a recent history of being a Claimant in tribunal proceedings in circumstances which bear a remarkable similarity to the present case, such that he is bordering on being a vexatious litigant. He is therefore very familiar with the costs regime and the potential consequences of his actions."**

The Tribunal ordered him to pay costs of £5,000.

41. On 4 April 2010 Mr Iteshi applied to Employment Tribunal for a review of the costs order. That was refused on 5 May 2010. Meanwhile, on 30 April 2010 he filed a Notice of Appeal with the Employment Appeal Tribunal. On 13 July 2010 HHJ Ansell made an order under rule 3(7) directing that no further action be taken on the Notice of Appeal for the usual reason.

42. On 1 October 2010, at an oral hearing, Mr Iteshi was represented by Ms Jennifer Eady QC pro bono. Langstaff J concluded:

> **"There is absolutely no merit in the appeal insofar as it seeks to query or challenge the conclusion that a costs order should be made."**

But he held that it was arguable that the amount ordered was too high.

43. On 24 February 2011 Mr Iteshi applied for permission to appeal to the Court of Appeal. That was refused by Smith LJ. On 26 May 2011 HHJ Serota QC allowed Mr Iteshi's appeal in part and remitted the assessment of costs to the Employment Tribunal.

44. Save for that limited success, Mr Iteshi's conduct of this case was clearly vexatious. Even the opportunity for that limited success would not have occurred if he had conducted it reasonably from the start.

45. Case 13 [12] is an ET1 claim form 2204868/09, issued in the London (Central) Tribunal on 11 September 2009 against Badenoch and Clark Ltd, the London Borough of Hounslow and the London Borough of Havering. Between 4 June 2009 and 13 August 2009 Mr Iteshi applied unsuccessfully for 12 posts by forwarding his CV to Badenoch and Clark. He submitted a race and sex discrimination questionnaire to them, to which they did not respond. They said it was for sensitive information which they could not disclose. Two of the posts for which Mr Iteshi had applied were with the two London boroughs. He claimed that his lack of success was due to race and sex discrimination. On 2 December 2009 Mr Iteshi withdrew his sex discrimination claim. The Employment Tribunal ordered a Pre-Hearing Review to consider applications by the London Borough of Hounslow to strike out his claim against them as having no reasonable prospect of success. It was to be heard on 21 December 2009, and directions for the remainder

of the claims to be heard at substantive hearings on 11, 12 and 15 February 2010 were also given. After the hearing of the London Borough of Hounslow's application on 21 December 2009 the Claimant's claim against that Borough was struck out as having no reasonable prospect of success. In a decision sent to the parties on 13 January 2010 the Tribunal observed:

> **"There is no evidence nor likely to be that the London Borough of Havering knew of the Claimant's gender or race etc at any time relevant to his application for employment."**

and none which could establish a prima facie of indirect discrimination.

46. On 26 February 2010 Mr Iteshi filed a seven-page ground of appeal, dated 24 February 2010, against the Employment Tribunal's decision. His appeal was two days out of time. On 27 July 2010 his application to extend time was refused by the Registrar. On 10 August 2010 he applied to the Registrar to review that decision, which was refused on 23 August 2010. On 27 August 2010 Mr Iteshi requested an oral hearing of his appeal against that decision. On 17 January 2010 HHJ Richardson, after an oral hearing not attended by Mr Iteshi, dismissed his appeal on the ground that he had no good excuse for the late filing of his Notice of Appeal and no arguable error identified on the part of the Employment Tribunal in any event. Meanwhile, the claim against Badenoch and Clark and the London Borough of Hounslow took place over eight days between May and October 2010. At one stage Mr Iteshi requested an independent observer of the hearing to satisfy him "that it was not 'a mere charade'". He also made repeated applications for disclosure of additional documents. The Employment Tribunal carefully examined the parties' cases about each post for which Mr Iteshi had applied. It dismissed all of his claims in a decision and Reasons sent to the parties on 13 January 2011. The Tribunal found "in the case of both Respondents the allegations he makes are wholly unsupported and amount to mere speculation".

47. On 24 February 2010, a 12-page Notice of Appeal, including the assertion that "this is a judgment that makes a mockery of the Employment Tribunal system..." was filed. On 15 July 2011 HHJ Peter Clark made the usual rule 3(7) order. On 30 November 2011 HHJ Birtles ordered Mr Iteshi to file an affidavit about his accusations of bias on the part of the Employment Tribunal. On this occasion he did so. His affidavit included the following:

> **"ix The Employment Tribunal, in specific display of opulent bias and determined aim to subvert the course of justice went to the extreme in completely evading my complaints and evidence supporting my complaints where it mattered most."**

48. On 12 September 2011 HHJ Serota made an order under rule 3(10) that no further action be taken on the appeal. In his detailed judgment he made a number of observations of note:

> **"40. In oral submissions the Claimant informed me that he had made enquiries about me and discovered that I was a member of an ethnic minority. The judicial system, he told me, had systematically subverted the Race Relations Act and deliberately evaded claims of direct race discrimination. For an Employment Tribunal to engage in the deliberate subversion of the Act was damaging to ethnic minorities, as I should bear in mind, being a member of an ethnic minority; it is the biggest experiment in history and would have serious consequences if Tribunals and Courts failed to apply the RRA so as to further the cause of multiculturalism. He then referred to the Holocaust, discrimination against Jews, he suggested (if I understood the submission correctly) that Nazi Germany has acted within the law and that discrimination has continued and intensified, and that it was necessary for the judiciary to combat the resurgence of Nazism and racism.**
>
> **41. I have to say that I found these submissions both disagreeable and unhelpful."**

49. About the hearing he observed the following:

> **"43. He told me that the Respondent did not give adequate disclosure to start with, but after an initial adjournment it produced CVs at the last minute. It got a tip-off that it should produce any documents and he, Mr Iteshi, would lose the case. It had a hint 'obviously based on my experiences', strong indications that Employment Tribunals and ACAS somehow tell Respondents 'not to worry'. He is seeing clear signs of this."**

And later on:

> **"He continued to assert that the CVs were not genuine and that there had been manipulations In relation to 362014 he asked forensically why an employer should advertise for a discrimination lawyer when it wanted an immigration lawyer. It was absurd of the Employment Tribunal to accept that. He maintained that he was a qualified employment**

> **lawyer. Accepting Mr Burrows' evidence the Employment Tribunal was 'committing a fraud'. The Employment Tribunal did not explain why it had accepted such an implausible argument."**

Judge Serota concluded:

> **"I now turn to my conclusions. This appeal is largely an attempt to re-argue facts coupled with wholly unmeritorious allegations of bias, fraud, forgery and manipulation. There is no basis whatever for challenging the decision of the Employment Tribunal."**

And:

> **"All grounds of appeal, in my opinion, are devoid of merit. The Notice of Appeal discloses no reasonable grounds for bringing the appeal and I direct that it be disposed of under Rule 3(10) of Appeal Tribunal's Rules of Procedure."**

50. Mr Iteshi applied to the Court of Appeal for permission to appeal in this case and case 21 [17]. It was refused on the papers by Mummery LJ and after a hearing by Maurice Kay LJ on 15 November 2011. This claim, its conduct, and the conduct of the appeals was clearly vexatious.

51. I turn now to four claims brought against recruitment agencies. Case 14 [9] was an ET1 claim form 1313718/09, issued in the Birmingham Tribunal on 14 September 2009 against BCL Legal. Between May and August 2009 Mr Iteshi made eight unsuccessful applications for posts as a Lawyer or Paralegal. He claimed that his lack of success was due to race or sex discrimination. At the Pre-Hearing Review on 24 March 2010 the Employment Tribunal ordered Mr Iteshi to deposit £250 as a condition of being permitted to continue to take part in the proceedings on the ground that his claim had little reasonable prospect of success. On 30 April 2010 Mr Iteshi's application for review was refused. He then withdrew the claim.

52. Case 15 [13] was an ET1 claim form 2205027/09, issued in London (Central) Tribunal on 21 September 2009 against Career Legal Ltd. Between April and August 2009 Mr Iteshi

had made 11 unsuccessful applications for posts as an Employment Lawyer, Advisor, or Paralegal or Litigation Lawyer or Legal Assistant or Compliance Officer or Assistant. He claimed that his lack of success because of race and sex discrimination and that Career Legal Ltd did not respond to his questionnaire. At the case management hearing on 14 January 2010 Mr Iteshi expressed concern that the Tribunal which would hear his claim may be "mad", by which he meant "on another planet". At the Pre-Hearing Review on 16 February 2010 he withdrew his claim of sex discrimination and of indirect race discrimination except in one case and of direct discrimination in three cases. The Employment Tribunal struck out all the remaining direct race discrimination claims as having no reasonable prospect of success and ordered him to pay a £250 deposit as a condition of being permitted to continue to pursue the remaining single claim of indirect discrimination on the ground that it had little prospect of success.

53. The Tribunal gave detailed and coherent reasons for making that order in a judgment and Reasons sent to the parties on 9 April 2010. Mr Iteshi did not pay the deposit so his remaining claim was struck out on 27 May 2010. He appealed to the Employment Appeal Tribunal by a Notice of Appeal dated 21 May 2010 but did so out of time because necessary documents were missing. On 9 August 2010 the Registrar refused to extend time. On 16 August 2010 Mr Iteshi applied for a review of that decision, which was refused on 27 August. On 4 March 2011 his appeal against that refusal was dismissed by Underhill J.

54. Case 16 [15] was an ET1 claim form 2205477/09, issued in the London (Central) Tribunal on 21 September 2009 against Venn Group Ltd. Between May and August 2009 Mr Iteshi had applied unsuccessfully for 14 legal posts. He claimed that his lack of success was due to race or sex discrimination. The Respondent applied for his claim to be struck out as having no reasonable prospect of success. On 26 August 2010 Employment Judge Snelson

struck out the claim for that reason. In a detailed judgment and Reasons sent to the parties on 6 September 2010 he explained why. He concluded that the claim was "baseless". He spoke words of caution to Mr Iteshi in the final paragraph:

> **"But I wish also to take this opportunity to sound a note of caution. The right to litigate carries with it responsibilities. Unfounded and unsustainable allegations of discrimination put those on the receiving end to much trouble and expense. They can also damage, or at least put at risk, the reputations of organisations. And it should not be forgotten that, regardless of the entity named as respondent, the ultimate target of any claim is the flesh and blood person whose act or decision is under challenge. Unwarranted charges of discrimination often cause individuals considerable anxiety and distress. To make such charges when there is no basis for them is irresponsible and unreasonable. The Claimant, as a professional person, should learn from his experience in this case and be careful not to level accusations of discrimination again unless he has sustainable grounds for doing so. To do otherwise could well be seen as unreasonable, or even vexatious."**

Mr Iteshi did not heed that warning. On 18 October 2010 he filed a Notice of Appeal with the Employment Appeal Tribunal alleging bias. A flavour of the allegation can be gained from paragraph 15:

> **"The EJ was supposed to be seen to be unbiased, but from the resentful tone of his Judgment, it is quite clear that he was a helplessly biased mind sitting in Judgment against a person he probably did not consider to be a proper human being."**

55. Again the Notice of Appeal was not accompanied by necessary documents and was treated as out of time by the Registrar. On 21 December 2010 an application to extend time was refused. Mr Iteshi appealed the refusal on 8 April 2011. Underhill J dismissed the appeal.

56. Case 17 [14] was an ET1 claim form 2205376/09 issued at London (Central) Tribunal on 28 September 2009 against Law Absolute Ltd. Between June and September 2009 Mr Iteshi had made 20 unsuccessful applications for posts, mostly as an Employment Lawyer or Locum Lawyer. He claimed as usual that his lack of success was due to race or sex discrimination. On 18 February 2010 directions were given for a hearing on 20 and 21 April 2010. On 19 April 2010 Mr Iteshi withdrew his claim.

> **"I write to withdraw my claim in protest against the one-sided and prejudicial manner the Employment Tribunal has handled my claims since the Case Management Discussion. I have also considered the excruciating witness statement of the Respondent along with the bundle of dubious documents presented for the hearing. I do not feel it is wise for me to go to a hearing that seems to have been designed to go against me. I feel very disappointed that the Employment Tribunal has frustrated my claim by shielding the Respondent from making full disclosures of relevant documents."**

57. Mr Iteshi's conduct of all four claims against recruitment agencies arising out of job applications made between April and September 2009 were, from the start and throughout, vexatious.

58. Next, there are four claims against local authorities. In the first two, parts of the files are missing but both claims were issued in the London (South) Tribunal against the London Borough of Lambeth and consolidated at a case management hearing. In cases 18 [22] and 19 [26] Mr Iteshi applied unsuccessfully for five legal posts between July 2008 and April 2009. He claimed that his lack of success was as usual due to race and sex discrimination. His ET1 claim form was presented late but the Tribunal extended time. It ordered him to pay a deposit of £250 on the ground that his claim had little prospect of success. By way of example, the two successful candidates for one of the posts for which he applied, a Childcare Paralegal, were both Asian females. Mr Iteshi did not claim to have any relevant legal experience for that post. The London Borough of Southwark did not consider candidates who did not have such experience. Mr Iteshi withdrew both claims.

59. The next two claims were against both recruitment agencies and the local authority for which they were seeking to recruit staff. Claim 20 [16] was an ET1 claim form 2221830/09, issued in the London (Central) Tribunal on 1 November 2009 against Law Support Ltd and the London Borough of Waltham Forest. On its face, it was a standard claim arising out of an unsuccessful application for the post of a Locum Employment Lawyer with the Borough, submitted on 29 July 2009 to Law Support Ltd. It revealed something of interest. Law Support

Ltd's response stated that after an initial hitch Mr Iteshi's CV was sent to an organisation called "Commensura", an intermediary between recruitment agencies and prospective employers in the public sector. The Borough's response stated that it had not received a CV from Law Support Ltd. Law Support Ltd accepted that, by an administrative error, it had not sent on Mr Iteshi's CV. In an e-mail to the Employment Tribunal on 29 March 2010 Mr Iteshi asked for this claim to be consolidated with several of his other claims, which I have identified as Cases 12, 24, 17, 21 and 13. Mr Iteshi said that it had been revealed by Law Support Ltd in Case 20 that an e-mail had been circulated to all recruitment agencies about him to blacklist him. The truth of this claim was never tested, nor the existence of the e-mail, because on 7 May 2010 Mr Iteshi withdrew this claim.

60. Case 21 [17] was an ET1 claim form 2222221/09, issued in the London (Central) Tribunal on 30 November 2009 against Badenoch and Clark and Norfolk County Council. Mr Iteshi claimed that he had submitted numerous unsuccessful applications to Badenoch and Clark who had also refused to reply to a questionnaire issued by him in respect of which he had made a claim to the Employment Tribunal. That was a reference to Case 13. In September and October 2009 he had unsuccessfully submitted an application for four legal posts through Badenoch and Clark, the last of them for the post of Legal Advisor with Norfolk County Council. He claimed that Badenoch and Clark had told him that they would not accept any more applications from him. He claimed that his lack of success was due to race or sex discrimination.

61. On 2 December 2009 Mr Iteshi applied in one of the related claims, Case 13, to add a claim of victimisation. That was rejected. He did not tell the Employment Tribunal that he had, two days before, issued Claim 21 against the same Respondents. This prompted their

solicitors to apply to have Claim 21 struck out as an abuse of process. Mr Iteshi responded on 9 January 2010:

> **"I am writing further to the First Respondent's letter to the Tribunal dated 4 January 2010 in which it is claimed it was making an application for my claim to be struck out. I thought about not responding to this application at all as it simply deserves no reply but on a second thought I decided to save the Tribunal the time and resources of having to pay serious attention to what might count as the most idiotic and incompetent application ever made in history. Without wasting any time I wish to take you straight to the point. The Respondent's solicitors, a supposedly competent firm, has simply failed to respond to my second claim on time, and rather than go through the normal procedure of pleading for relief, they devised this completely bizarre claim that I have committed an abuse of Tribunal process by bringing in another claim against the first Respondent. What has happened here, in a nutshell, is that the First Respondent and his lawyers have fallen into a deep pit. But rather than strive to claim out or be lifted out, they are instead throwing up stones at an innocent. They have made completely false claim against me to divert attention from their failures."**

And:

> **"Accepting the out-of-time response of the First Respondent being represented a team of supposedly competent lawyers even while they have coated their default with a fraudulent act against the party not in default with the aim of misleading the Tribunal would make a mockery of the employment system. The discretionary power available to the Tribunal is not an invitation for personal bias. No reasonable Judgment should grant this bungling Respondent any relief here whenever it properly seeks one."**

62. Despite the florid language, Mr Iteshi was right about the fundamental point. The Respondent should have put in a response. Their solicitors had indeed fallen into a trap by failing to file a response on time. On 26 March 2010 Employment Judge Pearl decided that the claim against Badenoch and Clark should proceed as an undefended claim. The County Council, however, applied to have the claim against them struck out as having no reasonable prospect of success. Their application succeeded. On 17 September 2010 Judge Pearl decided that it was plain and unambiguously clear that there were no reasonable prospects of success. His decision was sent to the parties on 12 October 2010. On 17 September 2010 and 18 October 2010 Judge Pearl considered an application by Badenoch and Clark for a review of the decision of 26 March 2010 that the claim should proceed undefended. The application succeeded. Judge Pearl concluded that the interest of justice demanded that the application should be allowed notwithstanding Badenoch and Clark's

culpable failure to file their ET3 response in time. His judgment and Reasons were sent to the parties on 27 October 2010. Two passages are of note:

> **"27. The Claimant makes some of his submissions in rather extreme language. He refers to a judicial atrocity', a 'judicial fraud'. The Employment Tribunal at one point was 'scheming'. The Respondent has various points behaved fraudulently may itself be affected by 'a mysterious wind'."**

And again in paragraph 32:

> **"Mr Iteshi asserts that it would be wholly unjust to allow the Respondent to defend but he is not very forthcoming with the specific grounds of injustice in that he has retreated to very sizeable allegations of fraud and malpractice and the like rather demonstrates this approach. I acknowledge of course that he feels enormously strongly about this case, so strongly that when I gave the formal Judgment he left the Tribunal."**

A Notice of Appeal was filed by Mr Iteshi on 7 December 2010. The grounds of appeal included allegations of bias and "unreasonably failing to make dispassionate and honest findings of fact".

63. On 10 January 2011 HHJ McMullen QC made an order under rule 3(7). On 6 February 2011 Mr Iteshi applied for an oral hearing. Meanwhile the claim against Badenoch and Clark was listed for a full hearing in the Employment Tribunal on 23-25 February 2011. Mr Iteshi evidently applied to have it adjourned. His application was refused on 22 February 2011. The reasons for that were set out in a decision sent to the parties on 16 March 2011. On 23 February 2011 his claim was dismissed when he did not appear to pursue it. That decision too was sent to the parties on 16 March 2011. He appealed against the decision to refuse an adjournment in a Notice of Appeal filed on 5 April 2011. He also appealed against the dismissal of his claim in a further Notice of Appeal filed on 26 April 2011. On 12 May 2011 HHJ Richardson made an order under rule 3(10) after hearing counsel for Mr Iteshi. On the second of the two Notices of Appeal, that filed on 7 December 2010, he summarily rejected the accusation of bias and made the following observations when doing so:

> **"I do not expect that I have dealt to the satisfaction of the Claimant with each of the many points that he has raised in this case. Suffice it to say that I am entirely satisfied that the Employment Judge's exercise of judgement in this case contained no arguable error of law.**
>
> **20. I should add, for the sake of completeness, that the Claimant sent to the Tribunal at 10 o'clock this morning for my attention a document entitled 'Please against continued torture by [HHJ] Richardson and colleagues.' He wished to record a contemporaneous protest against the false judgment which he said, 'HHJ Richardson is predictably going to promulgate against a vulnerable person today'. He did not ask me to recuse myself."**

64. On 2 August 2011 Wilkie J made an order under rule 3(7) in respect of the Notice of Appeal filed on 5 April 2011, observing "This is completely hopeless and an abuse of the system". On 7 September 2011 HHJ Richardson made a rule 3(7) direction in respect of the Notice of Appeal filed on 26 April 2011. Meanwhile, on 16 September 2011, the Employment Tribunal ordered Mr Iteshi to pay £2,000 of costs to Badenoch and Clark because his failure to appear at the substantive hearing was deliberate. He had booked a holiday flight to Nigeria on 22 February 2010 after he had been notified of the hearing date. The decision and Reasons arising out of that order were sent to the parties on 27 October 2011. Mr Iteshi appealed that decision. The Notice of Appeal is missing. On 24 February 2011 Langstaff J made a rule 3(7) order. On 23 March 2012 Mr Iteshi filed a further Notice of Appeal. On 12 July 2012 HHJ Peter Clark made a direction under rule 3(9), and there it stopped in the Employment Appeal Tribunal. Mr Iteshi had, however, already sought permission to appeal from the Court of Appeal against the refusal of his first appeal, as already noted. It was refused on paper by Mummery LJ and, after an oral hearing, by Maurice Kay LJ on 27 November 2011. This claim, its conduct, and the conduct of all appeals arising out of it were clearly vexatious. The claim against the County Council was struck out as having no reasonable prospect of success. It failed against Badenoch and Clark because Mr Iteshi deliberately failed to attend the substantive hearing. One claim generated four appeals to the Employment Appeal Tribunal and two applications for reconsideration, all of which were rejected. Two applications were made to the Court of Appeal for permission to appeal. They too were rejected.

65. Case 22 [18] is an ET1 claim form 2222559/09, issued in the London (Central) Tribunal on 9 December 2009 against Transport for London and London Underground Ltd. On 11 August 2009 Mr Iteshi applied, unsuccessfully, for the post of Junior Lawyer. He claimed as usual that his lack of success was due to race and sex discrimination and also claimed to have been victimised. He repeated the claims which he made, curiously, only against his employers of injury to his health. On 25 March 2010 he withdrew the claim on the day fixed for the case management hearing.

66. Case 23 [19] is an ET1 claim form 2222642/09, issued in the London (Central) Tribunal on 16 December 2009 against BT Group plc. On 4 and 7 September 2009 Mr Iteshi unsuccessfully applied for the post of Employment Lawyer and Employment Tribunal Paralegal. He claimed that his lack of success was due to race and sex discrimination. His claim was heard on 17 and 18 December 2010 in a decision and Reasons sent to the parties on 3 February 2011. The Employment Tribunal noted what were for the panel who heard the case clearly unusual features of Mr Iteshi's conduct of his claim:

> **"On the morning of the hearing the panel were handed copies of an email the Claimant sent to London Central ET dated 17 November 2010 headed: 'another false injustice is set to happen in the Central London Employment Tribunal (between today and tomorrow).' The email covers two and a half sides of A4, summarises the points that the Claimant wishes to make, and expresses concern 'that the tribunal will ignore' these points in its decision, and says 'the Tribunal will most likely promulgate an evasive judgment adopting everything BT is saying despite my challenges without any justification as to why what I say cannot be believed. The Tribunal will equally fail to draw any inference from the failure to disclose relevant documents.'"**

67. The Tribunal also noted that it had had to put a time limit on Mr Iteshi's cross-examination, which it described as repetitive and in parts irrelevant and directed as showing that documents were forged, inaccurate or taken out of another file. On 17 March 2011 Mr Iteshi appealed to the Employment Appeal Tribunal in a Notice of Appeal of 11 pages under the heading "Evasiveness and perversity". He said the following:

> **"The Tribunal's judgment is replete with unreasonable and deliberate manipulations and twisting of facts before it. The Tribunal's conclusion in paragraph 4 is a conning scheme to disguise its highly dishonourable false findings of facts in paragraphs 5-32 of the judgment."**

It also alleged unparticularised bias against the panel.

68. On 10 May 2011 HHJ Richardson made a rule 3(7) order at the sift. On 30 August 2011 the inevitable oral renewal application was heard by HHJ McMullen QC. Mr Iteshi applied for him to recuse himself in terms which Judge McMullen summarized:

> **"At the outset of today's hearing Mr Iteshi made clear and straightforward allegations against me of fraud, lack of credibility, evasion, dodging and failing to respond. The same allegations were made against HHJ Richardson. Mr Iteshi contends that his antecedents describe his torture in court, during the course of which he has remained cool. All he seeks to do is express his displeasure at a fraudulent Judge sitting on his case, the Judge having lost all moral ground. If I were to recuse myself, another fraudulent Judge would be appointed. All Judges of the EAT are discredited, but in particular Judge Richardson and myself. The same allegation is made against HHJ Peter Clark, both of those Judges having given full Judgments in respect of appeals made by Mr Iteshi that failed, as has HHJ Hand QC, and so Mr Iteshi said that in the light of these accusations I should recuse myself from today's hearing."**

69. Case 24 [20] is an ET1 claim form 2222688/09, issued at the London (Central) Tribunal on 20 December 2009 against Synergy Group and the London Borough of Tower Hamlets. Between June and October 2009 Mr Iteshi had unsuccessfully applied via the Synergy Group for legal posts, one of which was with the Borough. He claimed that the lack of success was due to race and sex discrimination. On 31 March 2010, at a case management hearing not attended by Mr Iteshi, that Employment Tribunal rejected his application to add a victimisation claim to his ET1 claim form. The Respondents indicated an intention to apply to have the claim struck out: as to ten of them out of time and as to the remainder having no reasonable prospect of success. A Pre-Hearing Review was fixed for 13 May 2010 to consider those applications. On 12 May 2010 Mr Iteshi e-mailed the Employment Tribunal to withdraw his claims:

> **"I am writing to withdraw my claim because I have no confidence in the ability of the Central London Employment Tribunal to dispose my claim judiciously... I believe it would be a waste of time to go before an Employment Tribunal that has refused or not prepared to treat me fairly."**

70. Claim 25 [23] was an ET1 claim form 2412835/09, issued in the Manchester Tribunal on 27 December 2009 against Sellick Partnership Ltd. Between June 2009 and December 2009 Mr Iteshi had unsuccessfully applied for 12 legal posts. He claimed his lack of success was due to race or sex discrimination. Two case management hearings were listed, which Mr Iteshi did not attend either in person or by telephone. On 5 May 2010 Employment Judge Perry ordered Mr Iteshi to file a schedule of loss and full particulars of his race discrimination, sex discrimination having been as usual withdrawn by 12 May 2010, and that in default his claim would be struck out. On 24 May 2010 that order was revoked and an order substituted for particulars of Mr Iteshi to be given by 11 June 2010, in default of which his claim would be struck out. He did not provide the particulars. His claim was struck out. He applied for a review. His application was dismissed on 20 October 2010.

71. Judge Perry, in her judgment and Reasons, sent to the parties on 25 November 2010 cited from this e-mail:

> **"I have concluded based on the treatment I received in the Employment Tribunal yesterday that it would be foolhardy to leave my three-month little children and waste my resources running to Manchester for a review hearing which should not have been in the first place. The ET claims it sent me a letter which I never received and which it has no proof that I received...The Employment Judge can therefore conduct the Review Hearing as it pleases him in my absence. If it pleases him to do justice I will appreciate. If he chooses to do otherwise I will not even the space to hold any grudge against him because I have seen far worse than I can possibly get in this claim from other Employment Judges."**

There, this claim ended.

72. Case 26 [28] was an ET1 claim form 320035/2010, issued in the London (Central) Tribunal on 5 January 2010 against the London Borough of Waltham Forest and Jepson Holt Ltd. On 3 September 2009 Mr Iteshi had unsuccessfully applied for a post as a Paralegal with the Borough via Jepson Holt Ltd. He claimed that his lack of success was due to race and sex

discrimination. In its response Jepson Holt Ltd indicated an intention to apply to strike out the claim as having no reasonable prospect of success. On 29 March 2010 Mr Iteshi withdrew his claims "on compassionate grounds" because Ms Courtney, who had dealt with his job application for Jepson Holt Ltd was on maternity leave and "in appreciation of the fact she submitted my CV to another Council". On 10 May 2010 the claim was dismissed.

73. Case 27 [29] was an ET1 claim form 33000069/2010, issued in the London (Northwest) Tribunal on – the date is significant – 5 January 2010 against the London Borough of Hammersmith and Fulham. Mr Iteshi said that in February 2008 and on 1 January 2009 he had unsuccessfully applied for three legal posts: an Employment Lawyer, a Legal Assistant and a Legal Assistant. He claimed his lack of success was due to race and sex discrimination. He was notified of the failure of his last application on 5 October 2009. In its response the Borough indicated an intention to apply to strike out the claims as being out of time and as having no reasonable prospect of success and for costs. On 9 June 2010 Employment Judge Manley struck out the claim as out of time and as having no reasonable prospect of success but declined to make an order for costs. Mr Iteshi did not attend the hearing. On 26 June 2010 he applied for a review, which was refused by Judge Manley on 15 July 2010. On 30 July 2010 Mr Iteshi filed a Notice of Appeal with the Employment Appeal Tribunal. He was permitted to adduce fresh evidence to show that the ET1 claim form had in fact been received by the Employment Tribunal at 23.37 on 4 January 2010: in other words just in time for the claim arising out of the unsuccessful application made on 1 September 2009, which had been rejected on 5 October 2009. HHJ Peter Clark accepted that claim but did not accept that the first two claims were in time. Nevertheless he upheld the Employment Tribunal's finding that the in-time claim had no reasonable prospect of success, so the appeal was dismissed. As already noted, in respect of Case 13, against the same London Borough, an

application for permission to appeal to the Court of Appeal was refused on the papers by Mummery LJ and at an oral hearing by Maurice Kay LJ.

74. Case 28 [27] is an ET1 claim form 1300344/2010, issued in the Birmingham Tribunal on 10 January 2010 against OFWAT. On 5 October 2009 Mr Iteshi had unsuccessfully applied for the position of Legal Advisor. He claimed that his lack of success was due to race and sex discrimination. In their response the Respondent indicated an intention to apply to strike out the claim has having no reasonable prospect of success. On 24 April 2010 the claim was struck out for that reason. Mr Iteshi did not attend the hearing but submitted written grounds of opposition. In a detailed and careful judgment and Reasons, sent to the parties on 28 July 2010 Employment Judge Dean described the claim as being "totally and inexplicably inconsistent with the undisputed contemporaneous documentation", a category of discrimination case which Maurice Kay LJ had observed in **North Glamorgan NHS Trust v Ezsias** [2007] IRLR 603 could exceptionally properly be struck out as having no reasonable prospect of success. On 6 September 2010 Mr Iteshi filed a Notice of Appeal with the Employment Appeal Tribunal. On 26 October 2010 HHJ Birtles made an order under rule 3(7). On 20 April 2011, at an oral hearing, Bean J ordered that the race discrimination appeal be determined at a full hearing. On 22 September 2011 HHJ McMullen dismissed the appeal and ordered Mr Iteshi to pay £750 towards the Respondent's costs. In explaining that conclusion he made the following observations:

> **"4. In my judgment this is a proper case in which to exercise the exceptional jurisdiction and to make an award of costs. The conduct of the claimant is unreasonable. It is disgraceful from whomever it comes, let alone from a barrister."**

And**:**

> **"He is seeking to wage a campaign beyond the narrow remit of the claim and appeal which he made against this Respondent. It is in my judgment vexatious."**

And:

> **'...that this claim is unreasonably conducted. It had no reasonable prospect of success and by the time the claim was issued the competition was known. It was misconceived as it was bound to fail, as he from his background should have known. So was the appeal in the light of the finding."**

There that claim ended.

75. Case 29 [30] is an ET1 claim form 3203486/2010, issued in the London (North West) Tribunal on 13 October 2010 against the London Borough of Hackney. On 7 June 2010 Mr Iteshi had applied unsuccessfully for two legal posts of a Lawyer and a Paralegal. He complained his lack of success was due to race or sex discrimination. On 9 September 2011, at a case management hearing which he did not attend until after it concluded, Employment Judge Lamb listed a Pre-Hearing Review for 31 October 2011 to consider whether the claim should be struck out as having no reasonable prospect of success. On 25 October 2011 Mr Iteshi emailed to express his "disgust" and state that Employment Judge Lamb had "acted most disgracefully". On 28 October 2011 he filed a Notice of Appeal with the Employment Appeal Tribunal. Meanwhile, on 22 December 2011, at another hearing which Mr Iteshi did not attend, Employment Judge Ferris ordered that the claim be struck out as having no reasonable prospect of success, which was also not being actively pursued and because Mr Iteshi had failed to comply with a direction to set out the facts on which his claim was based. On 30 December 2011 HHJ Peter Clark, in the Employment Appeal Tribunal, made a rule 3(7) order which, exceptionally, ended that appeal.

76. The final case, 30 [31], was an ET1 claim form 3304163/2011, issued in the London (North West) Tribunal on 6 November 2011 against the London Borough of Harrow. On 28 July 2011 Mr Iteshi had applied unsuccessfully for two posts of Legal Assistant. He claimed

his lack of success was due to race or sex discrimination. On 1 March 2012 he withdrew his claim "for health reasons and other reasons".

77. There remains one case in the list prepared by Attorney General to which I have not referred because it does not fall within the ambit of section 33 of the **Employment Rights Act 1996**, it being a claim for judicial review.

78. The law is clearly established. It is set out in unmistakable terms in section 33, which provides:

> **"33. Restriction of vexatious proceedings**
>
> **1. If, on an application made by the Attorney General… under this section the Appeal Tribunal is satisfied that a person has habitually and persistently and without any reasonable ground—**
>
> **(a) instituted vexatious proceedings, whether...in an Employment Tribunal or before the Appeal Tribunal, and whether against the same person or against different persons; or**
>
> **(b) made vexatious applications in any proceedings, whether ...in an Employment Tribunal or before the Appeal Tribunal,**
>
> **the Appeal Tribunal may, after hearing the person or giving him an opportunity of being heard, make a restriction of proceedings order."**

Mr Iteshi was given the opportunity of being heard. He did appear briefly a quarter of an hour into the proceedings to renew an application that he had made on paper to have the Attorney General's application struck out as an abuse of process, which I summarily refused as being groundless. Thereupon, after expressing views which he has stated before, such as that the judicial system was committing atrocities against him, he departed.

79. It is unnecessary for me to identify the characteristics of vexatious litigation which have been set out by Lord Bingham of Cornhill CJ in **Attorney General v Barker** [2001] FLR 759 in the case of ordinary civil litigation because they are so well known and uncontroversial but I

do refer to the observations of Rimer J as then was in **Her Majesty's Attorney General v Mr S Kuttappan** UKEAT/0478/05/RN at paragraph 5:

> **"Cases of allegedly vexatious litigants in ordinary civil litigation usually concern repeated claims or applications against the same defendant or defendants in respect of a particular matter by which the litigant has become obsessed. In the employment law field what is more commonly seen is the making of repeated Tribunal applications of a like type against different Respondents, the claims often following an unsuccessful job application. Section 33(1)(a) shows, however, that this difference is no bar to a case being made out under section 33."**

80. I wish to add to those observations, which I accept without hesitation, the following. In discrimination claims employers and recruitment agencies are caught in a trap from which there is no easy escape. It is set by section 27 and by the case-law of the Supreme Court and the Court of Appeal. Section 27 of the **Equality Act 2010** provides:

> **"A person (A) victimises another person (B) if A subjects B to a detriment**
>
> **because—**
>
> **(a) B does a protected act, or**
>
> **(b) A believes that B has done, or may do, a protected act.**
>
> **(2) Each of the following is a protected act—**
>
> **(a) bringing proceedings under this Act;**
>
> **....**
>
> **(3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith."**

81. In the case of an ordinary target of civil litigation, it is often possible for the target to avoid further litigation by avoiding further contact with the claimant. That opportunity is not available to employers advertising for employees or with recruitment agencies acting directly or indirectly on their behalf. They can take no step to avoid contact with a vexatious litigant by attempting to have no dealing with him because the effect of section 27 is to put them at risk of a victimisation claim. Furthermore, on high authority, only in exceptional cases will discrimination claims be struck out at an early stage in proceedings. It is a testament to the vexatiousness and lack of reason of these claims that so many of them were. I have never

encountered and am unaware of any other case in which so many claims of this nature have been brought by one individual over a period of no more than four years. Each of them has common characteristics, with the exception of that brought against the Bar Council. Mr Iteshi has applied for jobs; he has been turned down; he has accused the recruitment agencies if they were involved or the employers if only they were involved or both of race and sex discrimination when he proved unsuccessful. He has never had any basis for making that allegation. Yet on many occasions employers and recruitment agencies have been put to the trouble of explaining their actions in detail and have done so to the complete satisfaction of Employment Tribunals. In others they have been able to apply successfully to have the claims struck out but only on the basis of detailed evidence deployed by them at a Pre-Hearing Review. I have no doubt at all that the history which I have related in detail shows that Mr Iteshi has both instituted vexatious proceedings in the Employment Tribunal and in the Appeal Tribunal and has made vexatious applications in both sets of proceedings on numerous occasions. The conditions for the making of an order under section 33 are accordingly satisfied.

82. I turn to one unusual feature of this case, on which Mr Iteshi I believe would wish to rely. He points out, correctly, that the last ET1 claim form issued by him was issued on 6 November 2011 and that the last step taken in any litigation initiated by him was taken when his application for permission to appeal to the Court of Appeal in two of the cases was refused in December 2012. As the case of **Barker** shows, a litigant who has conducted vexatious and unreasonable litigation but who then stops and undertakes not to do so in the future, can avoid an order being made against him. In the case of **Barker**, a particular problem combined with a mental illness, had caused Mr Barker to behave in an otherwise uncharacteristic manner. In the event the court accepted that it was not necessary to make an order under section 42 of the Senior Courts Act against him.

83. Given the history which I have recited, I would be reluctant to take the chance that Mr Iteshi has put litigation in the Employment Tribunal and Employment Appeal Tribunal behind him. Even if he had told me that he had seen the error of his ways, there would always be the possibility that he would revert to his former conduct. But the affidavit which he has sworn in these proceedings on 18 October 2013 demonstrates that he has, in truth, had no change of heart. He states in it that he has "demonstrably lost confidence in the Employment Tribunal system and refrained from pursuing any further claim within the very judicial system I have unequivocally ascertained to be a complete sham". He continued:

> **"8 Having encountered no single Judge with any integrity in the Employment Tribunal system, I should be as foolish as being fraudulently portrayed, to devote a significant time and resources in rebutting the totally false claims responding or even defending this application.**
>
> **9 However, I must highlight the shamelessness of the crooked individuals hiding behind judicial immunity and their evil cloak of infallibility, who are pursuing this claim.**
>
> **10. In response to my portrayal as some idiot that went on bringing hopeless claims and appeals in the Employment Tribunal system, I wish to state as follows, not to sway the crooks in the Employment Appeal Tribunal but simply for the records..."**

And finally:

> **"11. I do not expect anything good to come from the crop of judicial crooks that populate the Employment Tribunal system, but I must point the impropriety of the Applicant's reliance on the alleged grievance with my employer as their sole evidence that I still wish to pursue claims."**

That causes me to have no confidence at all that if I do not make an order under section 33 Mr Iteshi will see the error of his ways and litigate, if at all, only in cases where the facts justify it. I am satisfied that it is necessary to make an order under section 33 and that the order should be indefinite.