

EMPLOYMENT APPEAL TRIBUNAL
FLEETBANK HOUSE, 2-6 SALISBURY SQUARE, LONDON EC4Y 8JX

At the Tribunal
On 7 December 2012

Before

HIS HONOUR JUDGE McMULLEN QC

(SITTING ALONE)

PA/1424/11/ZT

MR G UZOR

APPELLANT

(1) MS F A SAFIU

(2) MRS A UZOR

(3) VERRIOTT INTERNATIONAL GROUP LTD FORMERLY VARIETY
GROUP LTD

RESPONDENTS

PA/1425/11/ZT

MRS A UZOR

APPELLANT

(1) MS F A SAFIU

(2) MR G UZOR

(3) VERRIOTT INTERNATIONAL GROUP LTD FORMERLY VARIETY
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RESPONDENTS

Transcript of Proceedings

JUDGMENT

RULE 3(10) APPLICATION - APPELLANT ONLY

APPEARANCES

PA/1424/11/ZT

For Mr G Uzor

MR A OTCHIE
(of Counsel)
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PA/1425/11/ZT

For Mrs A Uzor

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SUMMARY

JURISDICTIONAL POINTS

Extension of time: reasonably practicable

Worker, employee or neither

There was no error in the Employment Tribunal's finding that a domestic servant was jointly employed on a contract of employment by a husband and wife and liability for substantial compensation was joint and several. The Employment Tribunal could not be faulted on its assessment of what was reasonably practicable, and what is a reasonable time for presenting non-discrimination claims.

HIS HONOUR JUDGE McMULLEN QC

Introduction

1. The proceedings were constituted as a claim by the Claimant against what she maintained were her employers Mr and Mrs Uzor, sued separately, and the corporation Verriott International which appears to have gone into liquidation or disappeared in some way. The Claimant made 16 claims against the Respondents. She succeeded on 15 of these. She failed to show that there was a public interest disclosure dismissal but she did show public interest disclosure detriment and breaches of just about every part of the anti-discrimination canon.

2. The Claimant was represented by counsel. Mr Uzor, was represented by an advocate and today by Mr Otchie of counsel. Mrs Uzor, was represented by Miss Godwins-Falade, a legal consultant who appears today.

3. The Judgment is 33 pages, sent with Reasons on 9 August 2011. The facts of the case disclose very unsatisfactory treatment by the Uzors of the Claimant throughout her period of engagement with them. The Tribunal found that she was employed by both of the Respondents. Mrs Uzor takes no issue with that. Mr Uzor, through Mr Otchie, says that he was not and that the Tribunal has failed to address the correct tests for establishing an employment relationship.

4. Mr Uzor secondly contends that liability should have been apportioned as between the two of them. I am told very substantial compensation was awarded. Many of the acts were done by Mrs Uzor and the Tribunal erred in imposing joint and several liability on both of the Uzors. Thirdly, he contends that the Tribunal was wrong to extend time for entering complaints in respect of three statutory grounds; unauthorised deductions, minimum wage and an itemised pay statement together with terms and conditions of employment. The last point is also made

on behalf of Mrs Uzor, however her main contention is that the Tribunal was perverse in its finding of discrimination based upon its assessment of the credibility of the parties.

Contentions and conclusions

5. It is common ground now that the Claimant's engagement ended on 16 July 2009 when her suitcase was put out of the door. She is from Benin, has little command of English and was vulnerable. The claim form was presented on 15 October 2009 by those acting for her at North Kensington Law Centre through a support group called Kalayaan which helps migrant domestic staff. The first issue was to determine who the employer was. No doubt arises about Mrs Uzor but as to Mr Uzor the Tribunal examined the facts relating to his involvement in the household. It was shown a document relating to separation; it heard the accounts given by Mr Uzor and by the Claimant about his involvement in the household.

6. It criticised Mr Uzor for failing to call relevant evidence that might have assisted him as to his living elsewhere. It found that he was the employer with his wife for they together gave instructions about what to do, when to do it and specific tasks directed particularly to care for Mr Uzor himself such as washing his car and ironing his clothes, He also on occasion paid her.

7. In my judgment the Tribunal reached a permissible conclusion on the employment relationship. When this case was dealt with on paper the Appellate Judge said that this case could go no further for he said the following:

"Employment

1. There was no need for any sophisticated analysis of the various tests for the existence of a contract of employment. The Appellant does not dispute that the Claimant was employed; whether by both Mr and Mrs Uzor or only by Mrs Uzor was essentially a question of fact for the Employment Tribunal.

2. This is not a case about mutuality; the issue is whether Mr Uzor was also an employer. The Employment Tribunal set out at paragraph 53 the tasks that the Claimant performed for him and on his instructions.

3. None of the grounds in the new Notice of Appeal against the conclusion that the Appellant was employed by both Mr and Mrs Uzor have a reasonable prospect of success.

Mr Uzor's Liability

It is not at all clear that it was argued that, if Mr Uzor was an employer with his wife, he would not be liable for her acts. No such submission appears in the Employment Tribunal's judgment. Assuming that it was so argued, this is not a case of pure vicarious liability - as in *JGE v English Province of our Lady Charity* - but of a husband and wife who were employers together. In this area too there is no reasonable prospect of success.

The Time Issue

The appeal as to time limits arises only in the case of the failures to provide a contract of employment and pay slips and the making of unauthorised deductions. As to those failures the time limit is 3 months from termination. As to deductions, paragraph 54 of the judgment makes clear that there was a continuing under-payment and S 23 (3) of the Employment Rights Act 1996 applies. In any event the Tribunal did not arguably err in law."

8. I respectfully agree. There is no error in the Tribunal's classification of the relationship between the Claimant and Mr Uzor as being one of employment. It therefore followed that both he and his wife were jointly and severally liable for the statutory torts committed in the course of that relationship by either one of them and there was no need for any apportionment.

9. In the circumstances, therefore, I see no error of law in the first two grounds advanced by Mr Otchie. As to the material adduced in respect of perversity by Ms Godwins-Falade, there is no legal error. Quite correctly on the papers, Mr Recorder Luba QC sent the Appellants off to the Employment Tribunal to raise new questions of fact, if that was what was necessary following the practice statement of the President this year but that was refused and in my judgment that is an end to it.

10. The very few documents Miss Godwins-Falade has shown me do not indicate the overwhelming case which is necessary in order to overturn the judgment on the ground of perversity; see **Yeboah v Crofton** [2002] IRLR 634 CA.

11. I then turn to the final ground which is as to the presentation of the claim. The sole document Miss Godwins-Falade relies on is an email from the Claimant of 10 August 2009 indicating that she has spoken to a solicitor which I infer is North Kensington Law Centre and that the claim was not presented until 15 October.

12. As I understand it the award includes payment in respect of unauthorised deductions throughout the whole of the life of this contract of employment. There is, therefore, a kind of continuing act in respect of those but that is not a ground of appeal and I set that on one side. There is no ground of appeal against the finding that the discrimination cases were continuing acts and therefore ended on 16 July 2009. The claim was therefore presented within time.

13. The self contained individual acts, if this is the correct analysis of them, were all out of time some time in 2008. The question in these specific (non-discrimination) jurisdictions is whether it was reasonably practicable for her to present the claims within that time. The Tribunal found that it was not reasonable practicable and on the basis proceeded to conduct the exercise in discretion. There is no error of law in the finding that it was not reasonably practicable because of the particular circumstances of the Claimant being described as:

“74. Claimant is new to this country. She was vulnerable, did not have any friends or relations in the UK to whom she could have turned for advice and assistance. She has a low intellectual level and did not know about her rights in this country in relation to itemised pay statements, terms and conditions of employment, unauthorised deductions from wages, and the provisions of the Working Time Regulations. She worked long hours for the respondents and did not have regular rest breaks. It was difficult for her to leave the home to find out where she could obtain legal advice and assistance. Applying the judgment in the case of Palmer v Saunders-on-Sea, we conclude that it was not reasonably practicable for the claimant to have pursued those complaints within three months from their effective dates. It was reasonably practicable for her to seek legal advice, for all relevant information to be obtained prior to presenting her claim form to this tribunal. It was, in the circumstances, presented within a reasonable time. Accordingly, we extend time in respect of the complaints.”

14. The real focus of the attack by the advocates before me today is upon the decision by the Tribunal to extend time. The moment that it does become practicable, this is when the

Claimant sought advice from the law centre in August 2009, the claim should be presented within a reasonable period thereafter; we are dealing here with the period from about 10 August to 15 October 2009.

15. The assessment of what is reasonable is one of discretion, it obviously has to have an objective consideration in it. The Tribunal has set out of the reasons for considering that this period from August to October was not an unreasonable period of time for her to wait because she had to collect information in order to seek advice and for all relevant information to be obtained prior to presenting the claim. The Tribunal found that a grievance was lodged on 2 October and a questionnaire on 13 October which indicates that the Tribunal had in mind the collection of data properly and assiduously done by the solicitors following no doubt the taking of detailed instructions from the Claimant.

16. No question of law arises as to whether this period in the circumstances could be said to be wholly unreasonable. In my judgment it was open to the Tribunal to accept the Uzors' contention as to these three or four statutory grounds being out of time. The Tribunal cannot be impugned for having accepted the Claimant's argument.

17. In those circumstances, the two appeals will be taken no further and they are effectively dismissed.