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# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs K Nasreen  
**1<sup>st</sup> Respondent:** Malik Law Chambers (in intervention)  
**2<sup>nd</sup> Respondent:** Dr Malik  
**Heard at:** East London Hearing Centre  
**On:** 18 November 2019  
**Before:** Employment Judge Jones

## Representation

**Claimant:** In person (accompanied by her husband, Mr Mehmood)  
**Respondent:** Mr Green (Lay Representative)

## JUDGMENT ON RECONSIDERATION

- 1 The judgment of 12 October 2018 is set aside.
- 2 The complaint of pregnancy/sex discrimination continues against the 2<sup>nd</sup> Respondent, Dr Malik.
- 3 The complaints of unfair dismissal, pregnancy-related dismissal, failure to pay holiday pay and unlawful deduction of wages continue against the 1<sup>st</sup> Respondent and the Claimant will consider applying to the liquidators for permission to continue with her claim.
- 4 The complaint against Dr Malik will be heard by a full tribunal at a final hearing on 23 April 2020 at East London Hearing Centre, 2<sup>nd</sup> Floor, Import Building, 2 Clove Crescent, London E14 2BE.
- 5 The Tribunal gave Orders for the preparation of the case against Dr Malik to continue to a hearing. Both parties are to comply with these court orders.

# REASONS

1 The Claimant made complaints of sex discrimination, unfair dismissal, failure to pay holiday pay, pregnancy dismissal, unlawful deduction of wages against Dr Malik t/a Malik Law Solicitors by the presentation of an ET1 complaint form on 31 May 2018.

2 The Claimant named Dr Malik as her employer in that ET1 complaint form. The legal practice of Malik Law Solicitors was intervened by the Solicitors Regulation Authority on or around 18 April 2018. Devonshires Solicitors were appointed by the Solicitors Regulation Authority (SRA) to deal with matters arising from the intervention. However, the Tribunal finds that Dr Malik was served with the proceedings as he knew of them and took possession of the agenda form for the Preliminary Hearing on 12 October enclosed with them, which he returned, completed, to the Tribunal on 8 October. Dr Malik did not complete the ET3 form. That meant that the matter was undefended.

3 In a note attached to his agenda form, Dr Malik submitted that the claim had been brought against the incorrect party. He also disputed that he had anything to do with the firm and stated instead that he had been self-employed, had only been engaged as a consultant at the firm in February 2018, after the Claimant's employment had already been terminated around Christmas 2017. Despite claiming to have no knowledge of her employment with Malik Law Chambers, he stated that the Claimant's claim was frivolous and should be dismissed.

4 He stated that he was unwell and on medication due to poor health. No medical records or further details was submitted to the Tribunal in respect of Dr Malik's health. Dr Malik did not attend the Preliminary Hearing on 12 October. As the matter was undefended, the Tribunal considered whether it was appropriate to make a Rule 21 judgment but waited until the Preliminary Hearing to see whether Dr Malik would attend and make any applications with regard to the filing of a response to the claim. There was no attendance on behalf of the Respondent and no further representations were received.

5 As the firm was intervened, there was no ET3 filed on behalf of the firm. The Tribunal later heard from Devonshires Solicitors on behalf of the SRA on 16 May 2019 to notify the Tribunal that it did not have any instructions to act on behalf of any former clients of Malik Law Chambers solicitors. Devonshires Solicitors only had instructions from the SRA to respond to Malik Law Chambers' mail.

6 Devonshires also responded to the judgment of the Tribunal sent out later on 10 May 2019. This was following the Respondent's request for written reasons.

7 At the preliminary hearing on 13 October 2018, the Tribunal heard sworn evidence from the Claimant and considered the documents in its possession. On the basis of that evidence and of the documents submitted to the Tribunal including Dr Malik's agenda form and his written submissions attached to the agenda form, the Tribunal made findings of fact and the judgment in favour of the Claimant for all her complaints. That judgment was made against Dr Malik personally.

8 Dr Malik requested written reasons which was supplied in May, as already stated. Dr Malik appealed to the Employment Appeal Tribunal against the Tribunal's judgment against him. In an order by Judge Barklem of the EAT on 15 August 2019, the EAT stayed the appeal for 21 days to give Dr Malik the opportunity to submit an application for reconsideration, out of time, to the Employment Tribunal.

9 Dr Malik submitted an application for reconsideration on 18 September 2019 and today's hearing was listed to consider that application.

10 Dr Malik did not attend today's hearing but submissions were made on his behalf by Mr Green. The Claimant attended and opposed the application.

### ***Application for reconsideration***

11 Dr Malik's application was based on the following points:

11.1 That he was never the Claimant's employer.

11.2 That the Tribunal breached Rule 48 of the Employment Tribunal Rules of Procedure as it converted a Preliminary Hearing into a final hearing in the absence of the Respondent and that he had good reasons for not attending the hearing on 12 October due to his ill health.

12 The Tribunal considered that under Rule 21 of the Employment Tribunal Rules of Procedure it had jurisdiction to make a judgment in the absence of an ET3 response having been filed by anyone related to these proceedings. Dr Malik clearly received the ET1 form and chose not to file a response. Dr Malik may have been unwell at the time that he received the claim form but he was well enough and had capacity so that he could complete an agenda form and make written submissions on his behalf in relation to the claim.

13 The company searches conducted by the Tribunal at the October hearing revealed that Dr Malik had been a partner in the business of Malik Law Chambers and appeared to call into question the veracity of the information given in the note attached to the completed Agenda sent to the Tribunal by Dr Malik. That and the other evidence the Tribunal considered were all considered in October and are discussed in the full written reasons sent to the parties on 10 May 2019 following the EAT's direction.

14 The Claimant attend the Tribunal today with copy bank statements showing payments of salary made to her by Malik Law Chambers.

15 It is also her case that Dr Malik was the person who interviewed her, appointed her to her post and dealt with her in relation to her employment throughout her employment, including her termination.

16 The Claimant applied today to be allowed to continue her discrimination complaint against Dr Malik personally. She also applied for the Tribunal to be permitted to continue with her complaints of unlawful deduction of wages and holiday pay against Dr Malik personally.

17 Having considered the documents submitted by the Claimant and the Respondent's submissions, it is the Tribunal's judgment that the judgment against Dr Malik in relation to the Claimant's dismissal cannot stand as it is unlikely that Dr Malik employed her personally even though he was the main person who dealt with her in relation to her employment.

18 Legally, she was employed by Malik Law Chambers.

19 It is therefore appropriate that the judgment of unfair dismissal, unlawful deductions of wages and holiday pay which will have arisen out of the contract of employment, are dismissed against Dr Malik. Those complaints are more correctly brought against the Claimant's employer, Malik Law Solicitors/Malik Law Chambers.

20 The Tribunal will allow the Claimant to continue with her discrimination complaint against Dr Malik. The Claimant makes the following complaint against Dr Malik:

***Claim and issues:***

***Sex and pregnancy/maternity discrimination (Section 13 and 18 of the Equality Act 2010)***

21 The Claimant makes complaint of sex discrimination and pregnancy discrimination against Dr Malik. It is her complaint that Dr Malik discriminated against her, because of her pregnancy and because of illness suffered by her as a result of it in the following way:

- 21.1 Informing the Claimant's husband in mid-February 2018 that she was no longer required.
- 21.2 By refusing to accept sick certificates when those were brought to him by her husband up to mid-March 2018.
- 21.3 Informing the Claimant and her husband in February when they telephoned to speak to him at the end of her pregnancy-related illness to arrange her return to work, that she was no longer needed; and
- 21.4 Informing the Citizens Advice Bureau when they contacted him following his termination of her employment, that Claimant had been dismissed because she had taken unauthorised holidays in 2017.

22 The issues before the Tribunal conducting the final hearing will be whether the above occurred and if so, did they occur because the Claimant was pregnant or because she suffered from pregnancy related illness/because of her sex? If so, what remedy is the Claimant entitled to?

23 The Claimant is to seek legal advice about the contractual claims set out above that she has against Malik Law Chambers at 233 Bethnal Green Road, London E2 6AB. The solicitors' law practice, Malik Law Chambers, was intervened on 18 April 2018 and Devonshires solicitors are acting on behalf of the SRA in relation to its affairs. That may be the starting point for the Claimant's enquiries.

24 After discussion between the parties and the Tribunal, the Tribunal made the attached orders. The parties are to comply with those to ensure that the matter is ready for hearing on 23 April 2020.

Employment Judge Jones

26 November 2019