Case No. **2300351/2020**

EMPLOYMENT TRIBUNALS

Claimant: Jennifer Ndhlovu

Respondent: Hestia Housing and Support

Heard at: **London South** **On:** **09 March 2021**

Before: **Employment Judge Housego**

Representation

Claimant: None – paper application
Respondent: None

JUDGMENT ON RECONSIDERATION

The judgment of the Tribunal is that the Claimant's application for reconsideration is refused because there is no reasonable prospect of the decision being varied or revoked.

REASONS

1. Subsequent to a hearing on 11 December 2020 I promulgated a judgment which struck out the claim for reasons there set out.

2. By email of 27 December 2020 at 08:37 the Claimant's representative made submissions which, inter alia, amount to a request for a reconsideration.

3. The email, in full, read (sic):

"**From:** Treaty Room Ambassadors [mailto:admin@compassionatelegacy.org]
Sent: 27 December 2020 23:41
To: jennndh@gmail.com; LONDONSOUTHET <londonsouthet@Justice.gov.uk>; james.townsend@howardkennedy.com; Domonique.McRae@howardkennedy.com
Subject: URGENT ATTENTION OF THE EJ: HOUSEGO - CASE NO: 2300351/2020 RE: CLAIMANT'S APPLICATION FOR RECONSIDERATION OF THE EJ DECISION SENT TO THE PARTIES ON 12/12/2020 [AMENDED APPLICATION TO EARLIER COPY FILED AND SERVED 25/12/2020]

The Claimant Grounds

1. The Employment Judge judgement leading to his decision was draconian and indicative of the existence of barriers to access court and access to justice.
1. Apprehension or Appearances of Biased existed in the judgement and reasoning by the judge
2. That the Employment Judge was a pervert
3. That the Judge decision and judgement was disproportionate
4. Deliberate avoidance by failure to allow the Claimant's equal footing having regard to the complexity if the case including that, the Claimant made application to adjourn the hearing because she requested, she did like to be properly represented.
5. That she raised the detriment generated by the lockdown, which caused her mental and emotional impact. The Claimant claim that, at the time of the hearing she was under NHS restriction and that she and her family were in isolation. As a result, the Claimant submits that the Judge's judgement and the decision were wholly disproportionate to proceed with the hearing without proper and fair consideration of her oral submission.
6. That the Employment Judge took a biased view of the entire circumstances of the case including the manner she was addressed and that the EJ acted vexatiously about the behaviour of the Claimant to have her baby on her lap whilst addressing him together the Claimant formed the belief that the Employment Judge exceeded his discretion by deliberately failing to take those dangers she raised during the oral hearing into consideration.

1. The Claimant wish to bring the application, because it is just and equitable that the Employment Judge reconsider the decision which is viewed not only draconian but was surprisingly disproportionate in the circumstances.
2. The Claimant submits that, the Judge did not have an open mind whilst conducting the proceeding and it appeared that the judge reasoning was premeditated to the extent that had the employment tribunal Judge has been open and not prejudicial [biases] by the judgement leading to the decision he made to reject the Claimant's case been heard; there was the possibility that a reasonable and unbiased Employment Judge could have made the alternative decision to hold that the Claimant case, particularly, having regard to the overall circumstances which the Claimant relied upon in seeking that her case merited exceptional case for an extension of time in accordance with the relevant test should have been extended, thus, proceeded.
3. However, it appeared that the employment Judge applied the wrong test, on the balance of probability, the employment Judge applied the not 'reasonably practicable' test which in most circumstances, risk producing arbitrary and unjust outcome; limiting the relevant question to one of "reasonable

practicability" prevents some deserving cases from proceeding even where there is good reason to extend the limitation period and extension would not have been prejudicial to the respondent such as in this case.

4. The Claimant seeks reconsideration by reasons that the Claimant's claims were diverse across the board; these were claims involving discrimination, unfair dismissal, harassment, and pregnancy and maternity [Gender Discrimination] and defective or oppressive COT3 Agreement and that it was unjust that the Employment Judge chooses to dismiss the case in entirety and without the appropriate test.
5. The Claimant's application for reconsideration should be viewed from the detailed explanation of why the Judge should reconsider his judgement and decision dated 11/12/2020 such that, he should reverse in favour of extension of time because of the Claimant pregnancy and maternity in the light of the following:
6. *Estimating the financial costs of pregnancy and maternity-related discrimination and disadvantage*, EHRC Research Report 105, p 13, https://www.equalityhumanrights.com/sites/default/files/research-report-105- cost-of-pregnancy-maternity-discrimination.pdf (last visited 24/12/2020).
7. [2]EHRC, *Pregnancy and Maternity-Related Discrimination and Disadvantage: Summary of key findings*, p 5, https://www.equalityhumanrights.com/en/managing-pregnancy-and-maternity-workplace/pregnancy-and- maternity-discrimination-research-findings (last visited 24/12/ 2020); Official Statistics, *Tribunals and gender recognition certificate statistics quarterly: July to September 2018, Annex C: Employment Tribunal Receipts Tables* (September 2018), https://www.gov.uk/government/statistics/tribunals-and-gender-recognition-certificate-statistics-quarterly-July-to-September-2018 (last visited 24 December 2020).
8. See Pregnancy and maternity discrimination, Report of the Women and Equalities Committee (2016-17) HC 90, para 143, https://publications.parliament.uk/pa/cm201617/cmselect/cmwomeq/90/90.pdf (last visited 21 August 2019). EHRC, *Pregnancy and maternity discrimination in the workplace: Recommendations for change* (March 2016), p 15, https://www.equalityhumanrights.com/en/managing-pregnancy-and-maternity- workplace/our-recommendations-tackle-pregnancy-and-maternity (visited 24/12/2020).
9. The EHRC's response supported extending the time limit for all types of discrimination and harassment claims.
10. EHRC, *Turning the tables: Ending sexual harassment at work* (March 2018), p 18, https://www.equalityhumanrights.com/sites/default/files/ending-sexual-harassment-at-work.pdf (last visited 25/12/2020).

11. It is submitted that the Judge tactic failed to apply the proportionate test and failed to understand the natural implication of women undergoing pregnancy and maternity duties, which means that the employment Judge should have been flexible in this case. The Claimant was a distressed party and required reasonable time to seek legal advice and take highly stressful action during a very vulnerable period of her life, as a result, the Judge failed to take relevant material into consideration and took irrelevant material or issue with the case; particularly, the manner of his judgement related to the time limit.

12. The Claimant explained in her ET1 that the period under reconsideration was indeed a stressful and emotional time for her; she was in the later stages of pregnancy and or looking after a very young baby. At the same time, she was coming to terms with the complexities of new motherhood and the period was extremely time-poor, exhausted, and possibly lacking in confidence and complicated with sickness diagnoses by reasons of the medical evidence supplied to the employment tribunal which looks like the judge deliberately avoided and never read as no references were made to those significant bodies of proof deployed by the Claimant.
13. Therefore, it is the Claimant's case that, the Employment Judge by failing to consider those viable material supplied to the employment Judge, there was existential nature of biased in implication to the extent that, she submitted that the Judge, acted with perversity as it appears that he acted under the impression that, pregnant women should be afforded the same treatment as in the ability to conduct employment tribunal cases unsupported or and without flexible treatment been afforded them because of the additional stressful nature of the complicity of their duties overall; particularly, when they are mentally and physically very vulnerable. Therefore, it is respectfully submitted that the decision of the Employment Judge was inconsistent with the principle of 'just and equitable' disposition. As well as the improper use of the employment Judge's discretion.
14. It is submitted that there is a legitimate and the recognisable issue that arises from the nature of the claim that is being made aforesaid, that an individual may be facing particular difficulties at this the point in their life and the commencing of litigation may seem like one battle too many when they are juggling so many issues such that not to extend time in such a genuine event would be seen impartial and indicating the existence of barriers to access to justice and access to the court.
15. In Hutchison v Westward Television Ltd, Mr Justice Phillips commented that a proper and fair application of the just and the equitable test gives a tribunal:
    1. … a wide discretion to do what it thinks is just and equitable in the circumstances. Those are very wide words. They entitle the industrial tribunal to take into account anything which it judges to be relevant.
16. This discretion, however, on this occasion was entirely fettered in his judgement of the "just and equitable" test such that the Judge premeditated his decision in the form of expressed biases. As a result, failed to exercise his discretion, by refusing to the idea and or principle of broadening his assessment, when making the determination as to whether an extension of time would be just and equitable but avoided to consider the list of statutory factors that judges must consider when exercising discretion under section 33 of the Limitation Act 1980.
17. There is a wide discretion afforded to the Judges to balance the Claimant's right against that of the Respondent and other legal considerations), however, the Judge on this occasion failed to properly balance the rights of fairness even though, the Respondent could not have suffered prejudice having regard to the overall circumstances of the issues, the nature and unique factual matters which was required to be revolved, before the employment tribunals were indeed never considered.

18. In the Claimant's statement: " I believe that the judgment was premeditated, the EJ said it loud and clear that this case can't go on, he didn't even look into the medical evidences that I submitted, even when I raised those issues that I am unrepresented, my household is in isolation and reiterated that the case be adjourned, he didn't care. The EJ told me that my case was hopeless, I had to correct him on two occasions when he made assumptions. At one point I asked him if he actually looked at my case notes, the statement or any evidence. There was an email sent advising ACAS I was in labor in hospital and he said to me that this case resolved before my baby was born. That is the point I asked him if he actually read any of the evidence submitted. He made me feel worthless, helpless and less human, I felt he looked down on me. Whenever I look back to how I was treated by Hestia, my heart bleeds and I do want justice served.

    Please help me as my perspective representative and as a charity. Yours sincerely,

    Jennifer Ndhlovu"
19. In view of the aforesaid, it is submitted that fairness required that she be permitted to return to the employment tribunal, to participate in the process. Because her right to access to court and access to justice would be systematically fettered and unlawfully restraint in ways which is unfair or ineffective if she was not permitted to proceed with her claim, pressing on with the proceeding would not be "unthinkable" but staying (pausing) the proceedings was wrong, as it would render the EJ's decision wholly effectively capable of a challenge because it failed to take account of ongoing risks that she was suffering mistreatment from the Respondent's behaviours which were continuing into her delivery and maternity – post-traumatic distress by the manner the Respondent unlawfully sacked her whilst been pregnant, similarly, her issues of stress and distress were compounded with the lockdown and being remanded on isolation at the time the case was called for a preliminary hearing into the issues before the employment tribunal.
20. it is the Claimants who were hunting, and who was also without representation at the hearing on 11/12/2020 even though, she took relevant steps to ensure she was represented and secured a potential organisation CAMC Christian Charity, who was prepared to assist her with the proceeding had an adjournment granted but for the EJ's decision to allow the hearing to go ahead on 11/12/2020, the Claimant was left unrepresented. The EJ failed to consider the exceptional circumstances facing a litigant in person in securing a qualified representative, Counsel, Solicitors because of the lockdown and financial implications and the extent of the mental health created by the pandemic. It was indeed oppressive to assume that the Claimant who just put to bed to be in the best health and safety for her to be conducting tribunal proceeding.
21. It is submitted that it cannot be and is not in the interests of justice for a public interest race discrimination case such as the present to be case managed in such a manner that the Claimants, who make the present application was prejudiced by being unrepresented at the 11 December

hearing. The Claimants was not on an equal footing, the case was not being managed in a way that was proportionate to the complexity of the issues, and any delay was, in any event, could have been compatible with proper consideration of the issues.

22. It is in the Claimants' best interest for this application to be heard as expeditiously as possible, but only if she can be properly and adequately represented at any hearing. It is submitted that the Claimants were gravely prejudiced because of the manner and judgement at the oral hearing where it was recorded that the Claimant reiterated her plea to be allowed an adjournment so that she can at least afford a representative. Again, she recorded that her plea was rejected and EJ premeditated the decision to strike out her claim because of biases which predetermined the judgement and beclouded the EJ's mind especially, by the EJ without reading through and seeing evidence prejudged her claim to be utterly "hopeless hence struck out her claim. At least, the Claimant submits that if the claims before the tribunal were hopeless, the EJ would at least had allowed an adjournment for the benefits of the doubt so that she can at least benefit from the support of a representative. It is submitted that this would be neither fair nor proportionate that her claim in entirety were struck out.
23. The present application is not merely one for a "reconsideration" within the meaning of …….it is an application for the hearing to be relisted.
24. Without a doubt, it is respectfully submitted that, the Employment Judge wholly ignored the publish Presidential guidance 'as to matters of practice and as to how the powers conferred by these Rules may be exercised' (rule 7). When making decisions, employment judges must have regard to any Presidential Guidance issued.
25. And however, on this occasion, even though the Claimant written application to adjourn came at a short notice; however, The claimant was not represented and her application sought to be represented as a matter of justice and explain why she considers it was in accordance with the 'overriding objective' for the tribunal to grant the postponement (ie (a) ensuring that the parties are on an equal footing; (b) dealing with cases in ways which are proportionate to the complexity and importance of the issues; (c) avoiding unnecessary formality and seeking flexibility in the proceedings; (d) avoiding delay, so far as compatible with proper consideration of the issues; and/or (e) saving expense); in all the circumstances, it is submitted that the EJ decision would be neither fair nor proportionate that her claim in the entirety was struck out, as a result, the Claimant seeks the interest of justice and the fair administration of justice that her case be relisted to be heard by a way of a hearing either way, that the EJ list the case for reconsideration to be heard or and set a direction that the Claimant's case be relisted to be properly heard.
26. There is no hard evidence in the reasons provided by the EJ why it was not reasonably practicable or just and equitable to reject the Claimant application for extension of time. Therefore, the Claimant repeat the application for extension of time and seek to be heard at a hearing.

Yours sincerely,

CAMC CHARITY"

4. The relevant procedural rules are in Schedule 1 of the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013. Those relevant Rules are as follows:

> *RECONSIDERATION OF JUDGMENTS*
> ***Principles***
>
> ***70.*** *A Tribunal may, either on its own initiative (which may reflect a request from the Employment Appeal Tribunal) or on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration, the decision ("the original decision") may be confirmed, varied or revoked. If it is revoked it may be taken again.*
>
> ***Application***
> ***71.*** *Except where it is made in the course of a hearing, an application for reconsideration shall be presented in writing (and copied to all the other parties) within 14 days of the date on which the written record, or other written communication, of the original decision was sent to the parties or within 14 days of the date that the written reasons were sent (if later) and shall set out why reconsideration of the original decision is necessary.*
> ***Process***
>
> ***72.****—(1) An Employment Judge shall consider any application made under rule 71. If the Judge considers that there is no reasonable prospect of the original decision being varied or revoked (including, unless there are special reasons, where substantially the same application has already been made and refused), the application shall be refused and the Tribunal shall inform the parties of the refusal. Otherwise the Tribunal shall send a notice to the parties setting a time limit for any response to the application by the other parties and seeking the views of the parties on whether the application can be determined without a hearing. The notice may set out the Judge's provisional views on the application.*
>
> *(2) If the application has not been refused under paragraph (1), the original decision shall be reconsidered at a hearing unless the Employment Judge considers, having regard to any response to the notice provided under paragraph (1), that a hearing is not necessary in the interests of justice. If the reconsideration proceeds without a hearing the parties shall be given a reasonable opportunity to make further written representations.*
>
> *(3) Where practicable, the consideration under paragraph (1) shall be by the Employment Judge who made the original decision or, as the case may be, chaired the full tribunal which made it; and any reconsideration under paragraph (2) shall be made by the Judge or, as the case may be, the full*

tribunal which made the original decision. Where that is not practicable, the President, Vice President or a Regional Employment Judge shall appoint another Employment Judge to deal with the application or, in the case of a decision of a full tribunal, shall either direct that the reconsideration be by such members of the original Tribunal as remain available or reconstitute the Tribunal in whole or in part.

Reconsideration by the Tribunal on its own initiative
73. *Where the Tribunal proposes to reconsider a decision on its own initiative, it shall inform the parties of the reasons why the decision is being reconsidered and the decision shall be reconsidered in accordance with rule 72(2) (as if an application had been made and not refused).*

5. The application was made within 14 days of promulgation. The Respondent has not made any observations on it. It appears that they were copied into the email.

6. The substance of the application is a discursive disagreement with points fully addressed in the decision. There is no reasonable prospect of the decision being varied or revoked as the Claimant is essentially seeking to re-argue submissions already made or that she had been given the opportunity to make.

7. Accordingly, I decline to reconsider the judgment, as the application is no more than a disagreement with its conclusions.

8. The remainder of the email does not warrant a response.

Employment Judge Housego
Dated: 09 March 2021