Neutral Citation Number: [2022] EAT 24

Case No: EA-2020-000013-OO

EMPLOYMENT APPEAL TRIBUNAL

Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 29 September 2021

Before :

JOHN BOWERS QC, DEPUTY JUDGE OF THE HIGH COURT

- -

Between :

MRS N HEPBURN	**Appellant**
- and -	
CROWN PROSECUTION SERVICE	**Respondent**

- -
- -

Mr D Matovu (Direct Public Access Scheme) for the **Appellant**
Mr A Lyons (instructed by the Government Legal Department) for the **Respondent**

Hearing date: 28 & 29 September 2021

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JUDGMENT

SUMMARY

DISABILITY DISCRIMINATION

The appeal raised the issues of whether the tribunal decision had properly considered the detriments relied on by the claimant before the tribunal and in particular whether the tribunal had given sufficient reasons for its findings that there was no victimisation. The EAT thought that although poorly structured, the tribunal had considered all the detriments put forward, albeit in a compendious form and decided that in each case no detriment was made out because the claimant had an unjustified sense of grievance. The second point taken was that the tribunal had considered the question of detriment purely from the point of view of the employer but this was not borne out.

JOHN BOWERS QC, DEPUTY JUDGE OF THE HIGH COURT:

1. This appeal has been set down for full hearing following a preliminary hearing held remotely before Judge Auerbach on 14 January 2021. The appeal was allowed to proceed in respect of ground 1 only of the notice of appeal as regards particular complaints of victimisation as listed in paragraph 1 of the Employment Appeal Tribunal ("EAT") order dated 1 March 2021.

The eleven claimed detriments

2. In relation to the eleven claimed detriments I am going to set out the detriments by reference to the order in which they appear in that order and also to refer by cross reference to the paragraphs of the further and better particulars before the Employment Tribunal ("ET") so as to deal with the question as to whether they were all within scope of those further and better particulars, an issue to which I will refer later.

a) In or around July 2017 on the claimant's return to work the respondent did not provide any evidence of substantive performance issues, refused to exonerate her and continued to imply that she had serious performance issues contrary to the disciplinary procedures. (paragraph 32 of the further and better particulars).

b) On her return to work, Miss Charlotte Caulston-Scott ("CCS") [the claimant's manager] forced the claimant into a second induction period which to all intents and purposes was a performance improvement plan and forced her to be treated as a new lawyer in the Rape And Serious Sexual Offences team ("RASSO") once again, (paragraphs 37 and 40).

c) In a meeting on 7 August 2017 CCS threatened the claimant with the dignity at work policy in a manner designed to usurp her rights under the **Equality Act 2010** ("**EqA**"), (paragraph 33).

d) In the meeting on 7 August 2017 CCS clearly linked the protected act with a

threat of formal disciplinary action and documented these threats at pages 206, 207 and 209, (paragraph 33).

e) In the meeting on 7 August 2017 CCS gave the claimant a clear ultimatum to not raise similar issues as per her protected act to raise a formal grievance or face a formal disciplinary action, (paragraph 33).

f) On 13 February 2018, CCS indicated that she could no longer work with the claimant and to all intents and purposes CCS then sought to have her removed from the team, (paragraphs 44 and 45).

g) On 13 February 2018 CCS once again gave the claimant a clear ultimatum to "put up or shut up," and if she did not like it then the claimant should raise a grievance, (paragraphs 44 and 45).

h) On 13 February 2018 CCS clearly linked her ultimatum to previous events, namely 7 August, and documentation and therefore also the protected act, (paragraphs 35, 44 and 45).

i) In or around January to March 2018 CCS prepared a dossier of performance evidence against the claimant which included *The Queen v Darwent* case from 2016 as she continued to falsely accuse the claimant of disclosure performance issues, (paragraph 57).

j) [This has been excluded].

k) On or around 19 June 2018 the respondent effectively turned the claimant's grievance into a disciplinary investigation into the claimant, (paragraphs 50 and 51).

l) In October 2018 the respondent released a grievance finding that did not properly investigate the claimant's complaint, but in fact made assertions or recommendations that the claimant should have been disciplined for performance issues against CCS, (paragraph 56).

3. I am satisfied that although put in somewhat different language, the substance of the claims made in the closing submissions were contained in the further and better particulars.

4. The sealed order of the EAT sets out that the only issues to be determined in this Full Hearing is whether in respect of any of the 11 claimed detriments the ET erred by dismissing that particular complaint because:

> "a) it did not properly determine correctly applying the law that that particular claim detriment did not amount to detrimental treatment in law and/or because
>
> b) it did not properly determine correctly applying the law that the claimant was not subjected to that particular claim detriment because of any protected act".

5. The protected characteristics relied on by the claimant as amounting to disability were twofold - migraines and the claimant's right knee. There is no issue that these are protected characteristics within the definition of the **EqA**. By the time of the ET it was also accepted that there were protected acts.

The background

6. In order to make the issues on this appeal understandable, it is necessary to explain some of the background and material facts as follows (and I do this only to the extent necessary).

> a) The claimant was employed by the respondent from November 2005 initially as a crown prosecutor and was the senior crown prosecutor at the time of the acts of which she complains.
>
> b) In December 2015 she joined the RASSO North team based in Nottingham.
>
> c) From October 2016 she was managed by CCS with whom she did not get on.
>
> d) On 8 March 2017 an occupational health ("OH") report was requested by the respondent's HR advisor. The OH recommended adjustments of home working two or three days a week. The claimant was absent from work from on or about 17 March 2017 to 17 July 2017 due to migraines.

e) During the claimant's absence a complaint was sent by a defendant's solicitor in criminal proceedings to the chief crown prosecutor. The claimant was working on that case.

f) The chief crown prosecutor instructed CCS to raise this as a performance issue.

g) On 28 April 2017 CCS wrote to the claimant notifying her of a performance issue.

h) On 5 May 2017, the claimant wrote to CCS with a letter which contained the words "Equality Act" and asserted that she was, "accusing her of performance related issues because of my disability.".

i) On 8 June 2017, the claimant wrote to CCS again with a letter again containing the words "Equality Act 2010." The letter stated that the assertions about her performance were unfounded and that CCS had "groomed" a third party to provide the justification for unfounded allegations.

j) On 19 June 2017, OH suggested various adjustments and a gradual build-up of hours.

k) On 28 June 2017 the claimant responded to CCS again with a letter containing the words "Equality Act 2010" and including this,

> "I was dismayed to learn that despite my objections you have attempted to use the OH third party to further these accusations and link them to my disability."

l) On 3 July 2017, the claimant attended a long-term absence review meeting on 18 July, another return to work meeting and on 7 August 2017 a further meeting took place between the claimant and CCS. According to CCS' notes, CCS denied disliking the claimant and said on the contrary that she liked her but told the claimant that some of her actions and accusations were undermining her dignity at work. There was then further correspondence some of which was very pointed.

m) On 18 August 2017, the claimant responded to CCS again with a letter stating

"Equality Act 2010."

n) On 2 January 2018 HHJ Coupland a Crown Court Judge notified the respondent that he wanted an explanation for various deficiencies in the case on which the claimant was working; otherwise the case would be listed for mention in open court. There was then further correspondence about that.

o) On 13 February 2018 the claimant wrote to CCS saying,

> "I have numerous concerns of the labelling, negative approach being adopted and perpetuated by you. This needs to be discussed with you."

CCS responded the same day,

> "I have asked you numerous times to stop levelling allegations against me."

This gives some flavour of the correspondence and I will need to return to this to some degree.

p) On 2 March 2018, the claimant lodged a grievance against CCS for bullying, discrimination and victimisation. An outside person, Sheila Khilay ("SK") was appointed and did not uphold the grievance. The claimant appealed and this appeal was dismissed by Tracey Easton.

The Employment Tribunal Decision

7. After a long hearing, the ET made trenchant findings about the claimant's evidence and also criticised the way in which the claimant had presented her case. Examples of this can be found in:

a) Rebecca Edwards and Sarah Humphreys, both of whom were called by witness order by the claimant, gave evidence contradicting the claimant's case, (ET judgment paragraphs 50 - 52).

b) questioning CCS that she had manipulated the position of her mother's

cancer to gain an advantage, (paragraph 59 of the judgment).

c) the claim that Denise Meldrum ambushed the claimant and was biased, (paragraphs 67 - 70 of the judgment).

d) the rejection of a claim that a subsequent grievance investigator Sheila Khilay was inappropriately influenced, (paragraph 72).

e) using words such as "grooming" and "witch hunt", (paragraph 74 of the judgment).

8. The ET found that the claimant's evidence was discredited, (paragraph 119) and also said that she was "unreasonably obsessional."

9. I also need to refer to some of the key findings of the ET which I do sequentially as they appear in the ET's decision.

a) Paragraph 19, "the claimant makes serious allegations without stopping to think."

b) Paragraph 24, "the claimant has in her particularisation of her allegations unfortunately distorted the reality."

c) Paragraph 28, "this tribunal is of no doubt there are performance issues. They were not false allegations."

d) Paragraph 27, "there were performance concerns."

e) Paragraph 53, "the picture which the claimant sought to portray of CCS was not supported by two impressive witnesses."

f) Paragraph 59,

"the overarching theme of this case to which we shall return is that the claimant is not entitled to the shield of protection in terms of her victimisation claim because so much of what she is about in this case is an unjustified sense of grievance and an indifference to the impact she has upon others in terms of such strident language or hurtful and in the main unjustified accusations."

g) They referred in paragraph 61 to "paranoia" in the non-medical sense.

h) In Paragraph 67, in respect of the allegation that Dr Scott was smirking was, "There is nothing in it. Again it goes to the credibility of the claimant."

i) Paragraph 100,

"the assertion for the claimant that this was incepted by CCS by way of victimisation because she foresaw that the claimant might be about making a protected act is untenable."

k) Paragraph 119, the "discredited claimant," and that she has, "constructed an interpretation."

l) Paragraph 143, "the Elliott Mather" - they being a firm of solicitors in the Nottingham area - "complaint … did raise justifiable concerns."

m) Paragraph 145, the claimant's "vitriolic, accusative style."

10. The findings by the ET are on any view trenchant and of course are not the subject of appeal as they are findings of fact.

11. There was not much disagreement between the parties on the law. The only legal directions to be found in the ET's judgment are at paragraphs 59, 60, 96 and 101.

12. I deal firstly with the issue of causation and summarise the law in this way.

a) It is sufficient if the protected act is a, "… cause, the activating cause, a substantial and effective cause, a substantial reason or an important factor and it had a significant influence on the outcome." Per **Lord Nicholls in Swiggs and Others v Nagarajan** [1999] ICR page 77.

b) The test in law for determining whether detrimental treatment was because of a protected act in relation to victimisation in the **EqA** is no different from the approach which used to be adopted and the reason why test.

c) There are cases where the victimisation claim may fail for want of a causative link due to some, "… genuinely separable feature", for example, in **Martin and**

Devonshires Solicitors [2011] ICR 352 especially paragraphs 19, 23, 25, 36, although the facts there were treated as quite exceptional by the EAT in **Woodhouse v North West Homes Leeds Limited** [2013] INLR 773 particularly at paragraphs 52, 64, 96 - 99 and 102. I was also addressed on the **Panayiotou v Kerneghan (Victimisation Discrimination Whistleblowing)** [2014] UKEAT 0436_13 case. I also add that it is not necessary to find a specific separable reason for treatment in a case in order to negate causation. The ET may simply find that the detriment was not caused by the protected act.

13. I now need to consider what passes muster as to reasons and was helpfully referred to the Court of Appeal's decision in **English v Emery Reimbold & Strick Limited** [2002] EWCA Civ 605, stating,

"As to the adequacy of reasons as has been said many times this depends on the nature of the case … In the **Eagle Trust** case, Griffiths LJ said that there was no duty on a judge in giving his reasons to deal with every argument presented by counsel in support of his case when dealing with an application to strike out … a judge should give his reasons in sufficient detail to show the Court of Appeal the principles on which he has acted and the reasons which led to his decision. They need not be elaborate … There is no duty to deal with every argument."

14. The respondent took me to the recent case of **DPP Law Ltd v Greenberg** [2021] EWCA Civ 672 ("**DPP v Greenberg**") where Popplewell LJ stated the following at paragraphs 57 - 58 - in material parts:

"57. 1) The decision of an employment tribunal must be read fairly and as a whole without focusing really on the individual phrases or passages in isolation without being hypercritical. In **Fuller v London Borough of Brent** [2011] ICR 806 Mummery LJ said at page 813,

"The reading of an ET decision must not however be so fussy that it produces

pernickety critiques" …

2) A tribunal is not required to identify all the evidence relied on in reaching its conclusions a fact to impose such a requirement would put an intolerable burden on any fact finder. Nor is it required to express every step of its reasoning in any greater degree of detail than that necessary to be **Meek** compliant. (**Meek v Birmingham City Council** [1987] IRLR 250). Expression of the findings and reasoning of the terms which are as simple, clear and concise as possible is to be encouraged …

58. … Where a tribunal has correctly stated the legal principles to be applied an appellate tribunal or court should in my view be slow to conclude that has not applied these principles …"

15. Mr Lyons for the respondents said that judgments can always be improved and warned me not to be hypercritical of this decision and that I should read the decision as a whole and not take passages in isolation.

16. The third area of law I must consider is from what point of view does one look in assessing the question of detriment. The appellant's representative Mr Matovu said that the ET had looked at the question of what is a detriment overwhelmingly from the point of view of the employer and he particularly took me to the contents of paragraph 26 in **St Helens MBC v Derbyshire and Ors** [2007] UKHL 16 ("**St Helens**"), the judgment of Lord Hope which says,

> "The European Court's reference to measures 'liable seriously to jeopardise implementation of the aims pursued by the Directive' provides the key to how the matter should be approached. It looks at the employer's conduct from the standpoint of the employee's interest, not that of the employer. What is 'honest and reasonable' is an objective test. It is designed to guide the tribunal after the event, not the employer who is trying to work out first what he can and cannot do. It carries with it the implication, which I would regard as sound, that the employer is entitled to take steps to protect his own interests. But he must not seriously jeopardise the

> employee's right to pursue her claim. It is the employee's interest in pursuing the claim that provides test of what is and what is not "reasonable." "

17. This feature was emphasised also by Underhill J (as he then was) in **Martin v Devonshire Solicitors** [2011] ICR 352, particularly at paragraph 36 where he said "It is clearly important not to undermine the protection granted by the Act. But it is also apposite to bear in mind that the employer's viewpoint does come in in terms of the reason why question". At paragraph 24 of **St Helens**, Lord Hope said,

> "What is to be said then about the test of "honest and reasonable" conduct? That is not a test which is set out in the statute, and there is a risk that it too may be taken out of context. It has a comfortable ring about it. But it should not be used as a substitute for the statutory test which is whether the employer's conduct was "by reason that" the employee was insisting on her equal pay claim."

I also bear in mind the contents of Lord Neuberger's speech between paragraphs 61 and 70 in the same case.

The Appellant's contentions

18. The appellant contended in out.line that:

> a) The 11 claimed detriments which are the subject of appeal should have been clearly set out and dealt with in the ET's judgment but that however reference was simply made to the fact that the victimisation claim was, "wide ranging but that we could deal with." (paragraph 38).
>
> b) After making some preliminary observations and sketching out the background the ET has taken what might be described as "a broad brush approach to the issues" it had to determine by reference to different time periods and indeed the ET did look at this in five separate areas. He said, "This is an unorthodox approach."
>
> c) The ET judgment contained only sporadic reference to the law in relation to consideration of the victimisation claims other than citing the terms of section 27.

d) It is not easy to see how the ET applies the law to each of the claimed detriments in question.

e) He said as I have already indicated that the ET looked at the question of detriment from the point of view of the employer. He also argued that the ET was misconceived in talking on two occasions about "the shield of an unjustified sense of grievance".

(f) He then went through the detriments and pointed out the inadequacy of the reasons given. I will just take the first claimed detriment which I have already set out as an example.

i) He said firstly, the ET did not properly address whether the claimed detriment amounted in law to a detriment.

ii) Secondly, he said they misinterpreted the nub of what the claimant was complaining about.

iii) Thirdly, it was not explained in the ET reasons how the claimed detriment could be said to involve an unjustified sense of grievance.

iv) Fourthly, the causation issue was not properly addressed by the ET.

v) Fifthly, the ET's attempt to treat false accusations and the language used by the claimant as genuinely separable features is wholly unjustifiable. He says this is nothing like a **Martin** type case.

f) He makes similar submissions in relation to each of the other detriments which I will not set out.

The Respondent's contentions

19. The respondent countered:

i) Firstly he saidthe tribunal does not need to dispose of each and every single issue.

ii) Secondly, the ET clearly correctly applied the test of victimisation. After hearing

the evidence they entirely rejected the claimant's claim and roundly dismissed the suggestion that any detrimental treatment arose out of a protected act. He argued that the further and better particulars were what the ET should have addressed, not the closing submissions which were different and he set out in detail how the closing submissions differed from the further and better particulars and said they are manifestly different.

19. I cannot accept the Respondent's case on that point. I do not think there is much material difference between them and in any event, provided it is fair there is no reason for the ET not to take into account differently phrased submissions made at the end of the case provided the evidential ground has been laid for them.

The reasons point

20. I will first consider whether the reasons pass muster on the **DPP v Greenberg** test, and then whether the ET considered matters purely from the employer's point of view.

21. This is not a well presented decision. It would have been much better if each criterion of the definition of victimisation had been applied to each of the detriments and by that I mean setting out what was the protected act or acts, what was the detriment established, and whether the detriment was substantially influenced by the protected act. Unfortunately this was not done in this logical way.

22. I do however have to apply a benevolent construction and read the decision as a whole. I also note that the best construction of the ET's decision is that they did not find any of the detriments to be made out, so it was unnecessary for them to apply a causation test.

23. I also think that the ET was entitled to take many of the detriments together because they raised similar issues and overlapped and most, if not all, depended on the credibility of the claimant which was a matter on which the ET were quite trenchant in their conclusion as I have already indicated.

24. Overall, I accept what Mr Lyons says that the various detriments are all dealt with and I think

I do need to set out how and where they are dealt with but I summarise where each detrikment was considered

> Detriment (a) at paragraphs 4 - 5, 18 - 19, 24, 27, 32 77 - 78, 95 - 100, 120, 122, 126.
>
> Detriment (b), paragraphs 4 - 5, 18 - 19, 24, 28, 32, 128, 143 - 144.
>
> Detriments (c), (d) and (e), paragraphs 18 - 19, 145 - 147.
>
> Detriments (f), (g) and (h), paragraphs 6, 18 - 19, 159 - 163.
>
> Detriment (i), paragraph 56.
>
> Detriment (k), paragraph 6, 51, 57, 68, and 70.
>
> Detriment (l), paragraphs 6, 27, 28, 51, 71 - 75.

25. Also relevant to the overall rejection of the claimant's case on detriments are paragraphs 38, 59 - 60, 81, 101, 149, 154, 165 - 168.

26. It is important to consider in particular paragraph 168 because that is the overall conclusion of the ET.

> "There has been no victimisation of the claimant as is now self-evident from our findings of fact. The claimant was not subjected to a detriment because either she had done a protected act or CCS … believed that she may do so. Detriment of course means something which is to an individual's advantage. Of course there is an element of subjectivity about it as the jurisprudence makes plain. The context also cannot be ignored. As to whether the claimant was acting in bad faith we leave that to one side and prefer to take the view the claimant was unreasonably obsessional and unable to act in a detached way whereby she stood back and tried to look at matters in a more rational way. It is clear from the facts in this matter that there were issues with the claimant and that they did need addressing and that the claimant reacted unreasonably when there were attempts to do so. Her responses and her protected act were driven by an unjustified sense of grievance.

> The treatment of her by CCS particularly in the honeymoon period flies in the face of the victimisation approach. Put at its simplest CCS was driven beyond endurance by the unreasonable behaviour of the claimant. This is why she reacted as she did in August 2017 and February 2018. Perhaps a more robust manager with many years of experience would not have risen to the bait in that respect, so to speak, although that does not make her a victimiser."

27. I now deal with four aspects of this which were criticised.

28. Firstly, the ET say that they leave on one side bad faith. I take it that means that either they did not need to decide or they did not find that bad faith was proved.

29. Secondly, when they say that the claimant was unreasonably obsessional they are doubting whether there was a justified sense of grievance which it is appropriate for them to decide in relation to detriment and which they refer to in two places.

30. Thirdly, I am mystified by the sentence in the ET Decision, "her responses and her protected acts were driven by an unjustified sense of grievance," but I do bear in mind that it is not appropriate to pick out one sentence in an ET's decision. My mystification is because it does not matter what the protected acts were driven by because unless they were in bad faith they are legitimate protected acts. I do not however think that nullifies the ET's conclusion.

31. Fourthly, the sentence put at its simplest, "CCS was driven beyond endurance by the unreasonable behaviour of the claimant," is a way of saying that the protected acts did not cause the reactions that sparked the detriment.

32. I think one also does need to make allowances for these points:

    a) This was a long hearing of 12 days including the deliberation.

    b) Secondly, the application was not wholly clear. The judge did call for full particularisation. The Further and Better Particulars that were given in response were however still quite diffuse and it would have been difficult I think to address those one by one in any meaningful way.

c) Thirdly, there were several other issues besides victimisation in this case. Reasonable adjustments and section 15 were also before the ET.

d) Fourthly, the ET clearly thought that the Claimant had an unjustified sense of grievance in particular paragraphs 59 and 101 so that they decided there was no detriment, so the causation issue did not arise - as Mr Lyons put it, "they did not get out of the starting block" - and I do think that matters were clarified in the conclusion by paragraph 168.

33. So I think it follows that the claimant does know why she lost on each of the allegations.

34. I do put together these paragraphs insofar as I have not dealt with all of them so far but to deal with them compendiously. I think one has to see this decision spread over paragraphs 4, 5, 19, 24, 27, 28, 51, 53, 56, 59, 68, 71, 72, 78 - 81, 99, 100, 101, 116, 118, 119, 120, 122, 126, 143, 144, 145, 147, 148, 149, 154, 156, 157, and 161.

35. I further remind myself that it is important also not to pick up on the stray words, for example in paragraphs 59 and 101 it is said that an "unjustified sense of grievances" is a shield, which may suggest that the ET thought that it was a defence as of course bad faith would be. But I think it is clear in context that they are saying that it means that no detriment arises.

36. So I apply **DPP v Greenberg** in that I look at the decision as a whole, not take passages in isolation, apply a benevolent construction and find that the reasons although unsatisfactory do pass muster.

Applying the employer's point of view

37. I do not accept that it is borne out that the ET looked at the matter purely from the point of view of the employer. I apply what I have extracted from **St Helens above**. . They looked at it largely if not entirely on the detriment side from the employee's point of view but found that the sense of grievance was unjustified. So I do not think that there is an error of law there.

The shape of the Judgment

38. I do not however want to leave this case without saying that this judgment was not an

appropriate approach to the issues. I do not think the ET erred in law but this is a very unsatisfactory approach. It would be far better to set out as most ETs do, the issues at the start of the judgment, then go through the law to be applied and then look at each detriment - that could be combined with other detriments - and say in relation to each one or each group whether the ET accepted that there was a protected act, that there was a detriment and whether if there was a detriment found, that was cause to the appropriate degree by the protected act or acts. It should then consider any good faith in her defence. I can well see that the claimant has a justifiable sense of grievance in relation to the way in which this ET produced its judgment, but I do not think read as a whole, there was an error of law.

(After further submissions)

Judgment on leave to appeal

1. Mr Matovu has asked for leave to appeal under four headings.
2. Firstly, he says that I have treated this purely as a reasons appeal. His skeleton argument is suffuse with references to the fact that the ET had not given sufficient reasons, for example just taking two - paragraph 6 and 46 - the respondent's response was that full reasons on appropriate reasons had been given. I accept this was not *purely* a reasons appeal but I have not dealt with it purely as a reasons appeal. I do not think that issue raises a point of law for the Court of Appeal.
3. Secondly, he said I have not dealt with a question of why the detriments were not detriments in law. I think I have done. I have decided in effect that the ET have set out the reasons why these were not detriments.
4. Thirdly, he complains that this case gives rise to the possibility that ETs can roll up claimed

detriments together and that that is unreasonable. I merely point out that in Mr Matovu's own skeleton, he effectively rolls up the sixth, seventh and eighth claimed detriments by making the same points on all of them. I do accept that it is appropriate in particular cases for the ET to look at some detriments together. I do not think that is an arguable point of law.

5. Fourthly, in relation to the presentation of a document overnight by Mr Lyons, what actually happened was that Mr Lyons addressed me on the basis that each of the detriments have been covered in particular paragraphs. I merely asked him to put that into an appropriate form that I could use in giving judgment. Of course I checked them after he provided that document. It merely reflected what he had addressed me so I do not think Mr Matovu was prejudiced in any way by this. I also do not think that this case raises any issues of public importance. It is simply applying the well established law in a quite unusual circumstance.

6. So, I reject leave to appeal. Of course it is open to Mr Matovu to apply to the Court of Appeal.