



# EMPLOYMENT TRIBUNALS

**Claimant**  
Mr P Muyembe

and

**Respondent**  
HGP Architects Ltd

## **JUDGMENT ON APPLICATION FOR RECONSIDERATION**

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

### **REASONS**

1. The Claimant has applied for a reconsideration of the Judgment dated 18 September 2022 which was sent to the parties on 22 September 2022. The grounds are set out in his application of 5 October 2022.
2. Schedule 1 of The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 contains the Employment Tribunal Rules of Procedure 2013 ("the Rules"). Under rule 71, an application for reconsideration under rule 70 must be made within 14 days of the date on which the decision (or, if later, the written reasons) were sent to the parties. The application was therefore received inside the relevant time limit.
3. The grounds for reconsideration are only those set out within rule 70, namely that it is necessary in the interests of justice to do so. The earlier case law suggested that the 'interests of justice' ground should be construed restrictively. The Employment Appeal Tribunal in *Trimble-v-Supertravel Ltd* [1982] ICR 440 decided that, if a matter had been ventilated and argued at the hearing, any error of law fell to be corrected on appeal and not by review. In addition, in *Fforde-v-Black* EAT 68/80 (where the applicant was seeking a review in the interests of justice under the former Rules which is analogous to a reconsideration under the current Rules) the EAT decided that the interests of justice ground of review does not mean "*that in every case where a litigant is unsuccessful he is automatically entitled to have the tribunal review it.*"

*Every unsuccessful litigant thinks that the interests of justice require a review. This ground of review only applies in the even more exceptional case where something has gone radically wrong with the procedure involving a denial of natural justice or something of that order".* More recent case law has suggested that the test should not be construed as restrictively as it was prior to the introduction of the overriding objective (which is now set out in rule 2) in order to ensure that cases are dealt with fairly and justly. As confirmed in *Williams-v-Ferrosan Ltd* [2004] IRLR 607 EAT, it is no longer the case that the 'interests of justice' ground was only appropriate in exceptional circumstances. However, in *Newcastle Upon Tyne City Council-v-Marsden* [2010] IRLR 743, the EAT stated that the requirement to deal with cases justly included the need for there to be finality in litigation, which was in the interest of both parties.

4. The Claimant complains that the claims against the Second, Third and Fourth Respondents were dismissed in the Judgment. The explanation for that decision could be found within the Response and the Tribunal's letter of 2 August 2022; since the complaints (unfair dismissal, breach of contract relating to notice, unpaid holiday pay and unlawful deductions from wages) can only, under statute, be brought against the Claimant's employer, and since only the First Respondent was the Claimant's employer, there is no jurisdiction for him to pursue other individuals.
5. In his initial reply to the threat of strike out of 23 July 2022, he asserted that the other Respondents were liable under common law and equity. On 30 August 2022, he argued that their continued inclusion was as a matter of fairness and natural justice. Unfortunately, the Tribunal, as a creature of statute, is only able to consider complaints brought against his employer under the Employment Rights Act 1996, the Working Time Regulations 1998 and the Extension of Jurisdiction Order 1994.
6. In the Claimant's application for reconsideration, he asserted that the Second, Third and Fourth Respondents had all provided false and misleading statements. If so, and if those statements caused or contributed to his resignation and amounted to fundamental breaches of his contract, then his claim may succeed because, as agents or employees of the First Respondent, it may be vicariously liable for their actions. Their inclusion, as Respondents, is not necessary for him to achieve that. He is not, as he has asserted in his application, denied a right to a fair hearing because those Respondents are no longer named parties. The First Respondent may well, of course, choose to call them as its witnesses in defence of the Claimant's claims.
7. Accordingly, the application for reconsideration pursuant to rule 72 (1) is refused because there is no reasonable prospect of the Judgment being varied or revoked.

Employment Judge Livesey  
Date: 12 October 2022

Judgment sent to Parties: 19 October 2022

FOR THE TRIBUNAL OFFICE