Neutral Citation: [2018] EWHC 2603 (Admin)

Case No. CO/754/2018

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
THE ADMINISTRATIVE COURT

Royal Courts of Justice
Wednesday, 3 October 2018

Before:

THE HONOURABLE MR JUSTICE SUPPERSTONE

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B E T W E E N :

THE NATIONAL CRIME AGENCY — Applicant

- and -

MRS A — Respondent

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A P P E A R A N C E S

MR J HALL QC and MR T RAINSBURY (instructed by The National Crime Agency) appeared on behalf of the Applicant.

MR J LEWIS QC and MR B WATSON (instructed by Gherson) appeared on behalf of the Respondent.

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RULING ON ANONYMITY

MR JUSTICE SUPPERSTONE:

On 27 February this year, I made an Unexplained Wealth Order against Mrs A, following a without notice application by the NCA and a hearing in private in accordance with the practice direction for civil recovery proceedings.

On 24 July, at the start of the hearing of an application to discharge the order Mr James Lewis QC, who appears on behalf of Mrs A, applied for an order that the hearing of the application be in private.

I did not accept that the hearing should be heard in private for reasons I then gave. However, Mr Jonathan Hall QC, on behalf the NCA, accepted that on the evidence adduced by Mrs A it was appropriate for an anonymity order to be made to protect the identity of certain individuals involved in these proceedings.

The anonymity order I made, to remain in force until further order, protected the identity of the respondent, that is Mrs A, her husband, Mr A, and the two lawyers who acted on his behalf at his trial and on his appeal.

Before handing down judgment, I have invited the parties to address the issue as to whether the anonymity order should remain in force.

I have received written submissions from the parties, and I have heard oral submissions from Mr Lewis and Mr Hall. I have also heard submissions from representatives of the Press.

Mr Lewis invites me to continue the order and Mr Hall invites me to discharge it.

In support of his submission that the order should continue Mr Lewis refers to the evidence of Mrs A as to her position. The personal position of Mrs A featured more at the July hearing than it has done today. As for her personal position, it was said she is at risk of unfair criminal proceedings and thereafter of detention in conditions which it is said would violate Art.3 ECHR if she were ever to return to the non-EEA Country. The NCA accept that Mrs A was arrested *in absentia* by the authorities for the non-EEA Country and declared 'wanted' in connection with avoiding the investigation into the bank.

Mrs A also fears the effects of any disclosure on her husband's position if any information she provides to the NCA was disclosed to the authorities in the non-EEA Country. It is Mr A's position that Mr Lewis focuses on. In this regard, Mr Lewis refers me to the decision in *Kalma & Ors v African Minerals Ltd & Ors* [2018] EWHC 120 (QB) and the need to protect a person who is not even a witness in these proceedings.

Mr Lewis submits that identification of Mrs A and of her husband would have a significant impact on her right to a family and private life under Art.8 ECHR.

Mr Lewis submits that weighing the Art.8 rights of Mrs A and her husband against the Art.10 rights of the public, the balance comes down firmly in favour of maintaining anonymity.

Further, relying on the evidence of Lawyer 1, Mr Lewis submits that Mr A's current circumstances in detention are extremely precarious. He has, he says, been subjected to atrocious conditions; he has been denied access to medical care (and as a result his health has deteriorated); he has been denied access to lawyers and he faces direct threats and attempts at extortion unless he signs over various assets. It is Lawyer 1's assessment that there would be real risks to Mr A if his name were to be published in association with these proceedings. In support of this submission, Mr Lewis prays in aid the evidence of Professor Bowring as to prison conditions in the non-EEA Country and mistreatment of inmates.

Mr Lewis submits that events in the non-EEA Country since the July hearing have underlined the ongoing risks to Mr A and his legal representatives. Mr Lewis refers to instructions taken from Mrs A and Mr A's lawyers since that hearing and what they say as to the extent of any ongoing risks to Mr A and themselves.

Mr Lewis has referred me to a recent decision of the European Court of Human Rights concerning the non-EEA Country where the applicant is a well-known human rights lawyer and civil society activist. He complained of his conditions of detention and a failure to provide him with medical treatment in breach of Art.3 of the Convention. The court found that he been deprived of his liberty in the absence of reasonable suspicion of criminal offences, and therefore there had been a violation of Art.5. There had also been a violation of Art.8, in that there was no lawful reason for conducting a search of his home. However, the court found no violation of Art.3 in relation to his medical treatment or in relation to certain periods of detention, but only that there was a violation in relation to one short period when there had been detention in a pre-trial detention facility.

CPR 39.2(4) provides that:

> "The court may order that the identity of any party or witness must not be disclosed if it considers non-disclosure necessary in order to protect the interests of that party or witness."

The general rule is that a hearing is to be in public (CPR 39.2).

There are two aspects to the principle of open justice, as Lady Hale observed in *R (on the application of C) v Secretary of State for Justice* [2016] UKSC 2:

> "The first is that justice should be done in open court, so that the people interested in the case, the wider public and the media can know what is going on. … The second is that the names of the people whose cases are being decided, and others involved in the hearing, should be public knowledge."

An order for anonymity is a derogation from the principle of open justice and an interference with the Art.10 ECHR rights of the public at large, which requires close scrutiny in order to determine whether such restraint from publication is necessary (see general guidance given by Lord Neuberger MR in *JIH v News Group Newspapers Ltd* [2011] EWCA Civ 44 at para.21).

In the light of the facts now known to me following a hearing that extended into a third day, and having considered the evidence in detail and the submissions of counsel, I am not

satisfied that non-disclosure of the identity of Mrs A or her husband is necessary in order to protect their interests.

I am not persuaded that identification of Mrs A or her husband would interfere with her or their rights under Art.8. This will only be the case if the consequences of identification reach a certain level of seriousness (see *Armes v Nottinghamshire County Council* [2016] EWHC 2864 (QB)). I consider that any interference with their Art.8 rights is unlikely to be severe.

However, even if identification would interfere with their Art.8 rights, the question is whether that interference is justified by the requirement of freedom of expression and open justice.

As for Mrs A, there is no evidence that she will suffer adverse consequences. There is no evidence that she proposes to return to the non-EEA Country.

Further, I do not consider that there is a proper basis for her concerns that the information she gives to the NCA will be transmitted to the authorities in the non-EEA Country. There is no suggestion that the NCA would use or disclose information sought otherwise than for the purposes of the statute. In my judgment I refer to the duties imposed on the NCA as a public body, which includes specific processes for deciding whether disclosure to a third party would give rise to an impermissible risk.

Similarly, in my view, there is no evidence that Mr A will suffer adverse consequences. He has been convicted of crimes of fraud and embezzlement from the bank, for which he has been sentenced to 15 years' imprisonment and ordered to pay the bank a sum of approximately $39 million US.

Mr Lewis informs me that since the July hearing, Mr A has been served with a considerable amount of materials in an apparent new criminal investigation.

However, there is no evidence that Mr A would be at risk of further criminal proceedings in the non-EEA Country as a result of the disclosure of his identity in these proceedings.

There is evidence which suggests that the authorities of the non-EEA Country are already aware of his connection to property obtained through his criminal activities. Lawyer 1 reports that the authorities have continued to pressure Mr A to sign over various assets. It appears that the authorities already know that Mr A has assets abroad.

In my view the identification of Mrs A and her husband, the non-EEA Country involved, and the State-owned enterprise that employed him are all matters of very real public interest. On the other hand, the evidence relating to any interference with her or his private and family life is very general and I do not consider that the evidence supports the contention that their identification will put them at risk. As I have made clear in my judgment, the requirements relating to PEPs are of a preventive and not criminal nature, and should not be interpreted as stigmatising PEPs as being involved in criminal activity.

I am satisfied that the public interest in publishing a full report of these proceedings concerning the first Unexplained Wealth Order outweighs any concerns that the respondent may have about herself or her husband.

Refusing the earlier application for a hearing in private I said there is a clear public interest in the public understanding the legal basis upon which UWOs can be applied for and made, and how these provisions operate in practice. I consider there is a similar public interest in

publishing a full report of the judgment, identifying the individuals and the non-EEA Country involved, and the basis on which the respondent of the application is found to be a "Politically Exposed Person".

I now turn to consider the position of Mr A's lawyers. I accept that the lawyers have the concerns they express and that I should have regard to their subjective concerns. However, the criticisms that Lawyer 1 makes of Mr A's trial are, one would assume, the same criticisms that he and Lawyer 2 made on Mr A's behalf when appealing to the Appeal Court for a rehearing and to the Supreme Court against the decision of the Appeal Court refusing a rehearing. It is, therefore, not clear why the statements made by Lawyer 1 in these proceedings should have the consequences he fears.

Mr Lewis relies on the fact that the two lawyers have been subject to disciplinary proceedings for having acted in Mr A's defence. Referring to evidence of Lawyer 2, he contends that they are both at risk of further reprisals - including suspension from practice and even detention - if their role and evidence in these proceedings were to become known. However, I note that the disciplinary proceedings were taken, not by the authorities in the non-EEA Country but by the Bar Association, the lawyers' professional regulatory body.

Since the July hearing, Lawyer 1 has been contacted by the Bar Association of the non-EEA Country and warned that he may face further disciplinary proceedings or even disbarment. This, as I understand it, followed Lawyer 1's emergency application to the European Court of Human Rights in connection with Mr A's treatment and detention and Mr A's sister publishing an open letter to the authorities of the non-EEA Country, in which she highlighted the oppressive conditions in which Mr A is being held. The non-EEA Country as the respondent to the Strasbourg application, will know of that application by Mr A, filed by Lawyer 1.

Plainly the evidence of prison conditions in the non-EEA Country and the mistreatment of inmates is a matter of considerable concern. However, I am not persuaded on the evidence that the treatment of Mr A is likely to worsen as a consequence of the authorities in the non-EEA Country learning of the evidence in these proceedings; nor do I consider that there is evidence to support the contention that any action that may be taken against Mr A's lawyers would lead to their detention by the non-EEA authorities.

Mr Hall has referred me to press reports in the non-EEA Country relating to the July hearing and Mr and Mrs A's involvement in these proceedings. Mr Lewis contends that this reporting has, in the absence of any official confirmation from the UK court or authorities, been speculative in nature. It seems to me from the content of the reports that the authorities in the non-EEA Country would have little reason to doubt that there are court proceedings in the UK relating to assets of Mr and Mrs A.

In the light of the facts now known to me I am not satisfied that there should be any derogation from open justice. The public interest in publishing a full report of the proceedings, in my view, outweighs any concerns that the respondent may have about herself or her husband. I do not consider that any anonymity order is necessary in the interests of the respondent, or her husband, or his lawyers.

That being so, the anonymity order will be discharged.

CERTIFICATE

Opus 2 International Ltd. Hereby certifies that the above is an accurate and complete record of the judgment or part thereof.

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This transcript has been approved by the Judge