Neutral Citation Number [2017] EWHC 3749 (QB)

Case No: HQ17X01827

IN THE HIGH COURT OF JUSTICE
QUEENS BENCH DIVISION

The Royal Courts of Justice
Strand
London WC2A 2LL

Tuesday, 10 October 2017

BEFORE:

MR JUSTICE JEREMY BAKER

BETWEEN:

(1) SIR DAVID ROBERT FOSKETT
(2) EMMA KATE PETERS
(3) SUKI KAUR WASHCKUHN

Claimant

- and -

EZE KINSLEY EZEUGO

Defendant

Representation not provided

JUDGMENT

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(Official Shorthand Writers to the Court)

1. MR JUSTICE JEREMY BAKER: This case concerns claims for injunctive relief under the Protection from Harassment Act 1997. The three claimants are David Robert Foskett (first clamant), Emma Kate Peters (second claimant) and Suki Kaur Washckuhn (third claimant). The first claimant is a Justice of the High Court. The second claimant is a circuit judge and the third claimant is a member of the Bar, but who sits as a District Judge in civil and family matters.

2. The common link between the three claimants is that, sitting in their judicial capacity, each of them have either made, or are perceived to have made, adverse judicial decisions against the defendant, or in the case of the second claimant, has presided over a trial in the Crown Court in which adverse decisions have been made by a jury.

3. The defendant is Eze Kinsley Ezeugo. He is a litigant in person, whereas the three claimants are represented by leading and junior counsel. I mention that at the outset because it is a matter which has been referred to from time to time both in writing and in oral submissions to me yesterday by the defendant. I also, of course, have regard to the fact that where case management matters are being dealt with, the civil procedure rules expressly require that the court should have regard to the fact that a litigant is unrepresented under CPR 3.1(a)(ii). However, it is correct for me to set out that having now heard extensively from the defendant yesterday, during which he made oral submissions which occupied most of the court day, and also read his extensive written material which has been presented to me, it is clear that the defendant is well versed in litigation. He is intelligent and undoubtedly has an encyclopaedic, if not obsessive, knowledge of the history of not only this, but the various other pieces of litigation in which he has been involved over the past few years. I am satisfied that he has brought to my attention either orally or in writing all the matters which he would wish to urge upon me in respect of the applications before the court.

4. The history of the decisions which have been reached by the various claimants are set out in their three witness statements.

5. In so far as the first claimant is concerned, he has provided a witness statement dated 24 May 2017. He points out that his first involvement with the defendant was when he was appointed by the President of the Queen's Bench Division as the case management judge for the defendant's claim against the Metropolitan Police, under reference HQ07X01650. Its subject matter was a series of alleged incidents between 1995 through to 2011 centring upon alleged harassment and mistreatment by the police in the Colindale area against the defendant and members of his family. The first claimant was appointed as the case management judge in early 2011 and he held three hearings in the period from March to May of 2011. On 27 May 2011 the first claimant considered an application by the defendant for an interim injunction against the police. The first claimant rejected that application. I have seen and read a copy of that decision dated 27 May 2011.

6. The history of that litigation was, to the extent that it is relevant, one in which prior to the commencement of proceedings Langstaff J on 25 April 2007 had granted injunctive relief in favour of the defendant against the police to prevent what was alleged to be

harassment by them against the defendant. That injunctive relief was on an interim basis and indeed was subsequently discharged. Thereafter, various judges dealt with various aspects of the litigation. In particular on 14 December 2007 Royce J made an unless order in respect of default by the defendant. There was an application considered by Treacy J (as he then was) on 8 February 2008 whereby the defendant had sought to adjourn the proceedings. Treacy J refused that application. The defendant sought permission to appeal against that refusal. Permission was granted by Ward LJ. The Court of Appeal Civil Division heard the appeal against that order on 9 June 2010. Once again, I have seen and read a copy of that judgment which is reported at *[2010] EWCA Civ 953*. The Court of Appeal allowed the appeal against the order of Treacy J.

7. In the course of the judgments, Ward LJ ordered that the litigation should thereafter be case managed by a judge appointed by the President of the Queen's Bench Division and that is how it was that in 2011 the first claimant came to be appointed by the then President of the Queen's Bench Division as the case management judge for the litigation between the defendant and the Metropolitan Police. The application that came before the first claimant in that litigation, and which was dealt with on 27 May 2011, was an application for further injunctive relief. There was also an application for permission by the defendant to amend his particulars of claim to add incidents that had occurred since his original particulars of claim dated 16 May 2007. The first claimant refused the application for interim injunctive relief, but did give permission for the defendant to amend his particulars of claim. He stated in terms at paragraph 40 of his judgment:

> "Notwithstanding my decision not to grant the interim relief he seeks, he will be able to claim relief in the substantive proceedings which is where his focus ought to be. The sooner he can get his LSC funding in place, the better, and the quicker those proceedings can be brought forward …"

8. The second occasion upon which the first claimant provided a judicial decision in other proceedings in which the defendant was involved was on 7 October 2014. That concerned a statutory appeal to the High Court from the decision of an employment tribunal which had refused to set aside or quash certain prohibition notices served upon the defendant by the Health and Safety Executive concerning a property known as Parkeston House in Harwich. Once again, the decision of the first claimant made in that appeal hearing has been provided to me and I have read the judgment which is reported at *2014 [EWHC] 3474 (Admin)*.

9. In short summary, Parkeston House in Harwich was a property which was owned by the defendant's wife and in-laws, and for which he had received permission to convert the office premises into residential premises. However, after the commencement of building work there had been complaints by local residents which had been investigated by the Health and Safety Executive whose inspectors formed the view that the works were being carried out in a dangerous fashion and had issued prohibition notices. It was submitted on behalf of the defendant that the prohibition notices were invalid and that the works being carried out at Parkeston House were being carried out by independent contractors. Therefore he argued that he was not liable as was not in control of those building works. In the course of his decision in respect of that appeal,

the first claimant found that the employment tribunal had erred in law and had asked itself the wrong question as to the validity of the prohibition notices. However, the first claimant went on to determine that had the employment tribunal asked itself the correct question, then on the basis of the findings of fact it had made, the conclusion that the defendant was in sole control of the site would have been justified and he therefore upheld the validity of the prohibition notices against the defendant. However, the first claimant went on to determine that the employment tribunal had fallen into error in affirming the notices in respect of the defendant's wife and therefore allowed the appeal in respect of the prohibition notices which had been issued against her.

10. The third set of proceedings in which the first claimant was the judge involved a renewed application for permission to apply for judicial review made by the defendant against the Secretary of State for the Home Department. It concerned a dispute between the defendant and the Secretary of State about the issuing of passports for the defendant's children. The dispute revolved around the Secretary of State's refusal to grant passports on the basis that the application had not been correctly completed, in that the defendant's wife's signature should have been put in one of the boxes and not just the names of the respective children. Once again, I have seen a copy of the order made in those proceedings under CAO reference 1055/2014 which was an order dated 14 October 2014 following a hearing on 8 October. Although it was apparent that the passport application had been incorrectly completed, instead of simply refusing permission to apply for judicial review, the first claimant stayed the claimant's judicial review for a period of eight weeks for the express purpose of enabling further applications relating to each of the children to be properly completed and submitted to the Secretary of State. Indeed, for the purposes of enabling that to take place, the first claimant made the defendant's wife an interested party to the application for judicial review.

11. In his written reasons, the first claimant stated that the passport application form had been incorrectly completed but pointed out that contrary to the defendant's submission, the Administrative Court had no power to direct the Secretary of State to grant passports. All he had the power to do was to quash a refusal to grant a passport. However, he went on to state:

> "On that basis the judicial review application is ultimately doomed to fail and consequently the application ought to be dismissed. However, I was concerned that the children received their passports. They are entitled to them (and I do not think there is any substantive reason why they should not receive them) and, accordingly, with Mr Fayman's co-operation, the arrangement reflected in the above order was formulated. It is designed to enable applications to be made for the children's passports <u>for no fee</u> if submitted (in correct form) to the person identified in the order of the address given by 4 p.m. on Tuesday, 9 December. Because Mr Kingsley is currently in prison and his wife in any event has made the two previous applications, I have directed that she be made an interested party with permission to apply for an extension of time if it has proved impossible to make the applications by the deadline imposed."

12. Turning to the second claimant, in 2014 the second claimant was a member of the Bar and a Recorder. She had been required to sit as the trial judge at Chelmsford Crown Court on a trial which commenced on 16 June 2014. The defendant faced an indictment containing five counts. Three counts concerned the alleged breach of prohibition notices and two counts concerned the alleged breaches of his duties to otherwise ensure the safety of those working on a building site. The building site being that of Parkeston House in Harwich and the prohibition notices were the self-same notices which had been issued by the Health and Safety Executive which had been considered both by the employment tribunal and by the first claimant on appeal from the decision of the employment tribunal to the High Court, the details of which I have already set out when referring to the history of the matter in respect of the first claimant.

13. The trial was listed on 16 June 2014 when the defendant applied for an adjournment. Although the second defendant refused to adjourn the trial out of the list, she did agree to adjourn the matter until the next day for the defendant to organise legal representation to be present to represent him. On the following day, the defendant apparently requested another adjournment, and, again, although the second defendant as the trial judge refused to adjourn the trial out of the list, she did allow him more time and the court staff also gave assistance so as to ensure that legal aid was in place for him. On the following day, which was 18 June, defence counsel representing the defendant asked for time to obtain instructions from the defendant and that was granted and eventually the jury in the case was finally sworn on 19 June. According to the second claimant in her witness statement dated 24 May 2017, the defendant was legally represented throughout the prosecution case, but prior to the commencement of the defence case, defence trial counsel withdrew and the trial continued with the defendant representing himself.

14. On Friday, 27 June 2014 the jury convicted the defendant unanimously on all the counts. Thereafter, on 18 July the second claimant sentenced the defendant to imprisonment in a total term of 30 months. The defendant sought permission to appeal against his convictions and sentence and the applications for permission were considered by the single judge and refused under CAO reference 201403540.

15. In so far as the third claimant is concerned, she has provided a witness statement in these proceedings dated 24 May 2017 and states that she sat as a deputy District Judge at the Clerkenwell and Shoreditch County Court on 26 September 2016. One of the small claims which was listed before her involved a finance company First Credit (Finance) Limited against Hara, which involved a claim for a credit card debt issued against the defendant's wife, the case number being B4FG9M5W. According to the third claimant, during the course of the proceedings the defendant requested to be able to make representations on behalf of his wife and handed a bundle of documents to the third claimant for her consideration. The third claimant stated that she required some time to read those documents and would require the case to be put back in the list to enable her to do so. However, the defendant indicated that he had family commitments and, according to the third claimant, became aggressive in court towards her. He apparently stated that he had had dealings with previous judges, he mentioned the names of the first claimant and the second claimant, and handed to her a document headed "Defence - CMC on 2.5.16 - DDJ Wright" which contained the following

passage which appeared above various hyperlinks to web pages created by the defendant against the first claimant and the second claimant:

> "Below is a just a reminder of my ongoing campaign against Mr "Justice" Foskett and "Judge" Emma Kate Peters. The campaign has barely begun. Do justice and you have nothing to worry about, but any pervert judge will face similar life-long consequences. The decision is yours to make."

According to the third claimant, the defendant continued to raise his voice to her and eventually security personnel at the court conducted the defendant from the court room.

16. The defendant made a complaint about the third claimant's conduct during the course of that hearing to the Judicial Conduct Investigations Office (JCIO), which was investigated by the JCIO and the investigation concluded in February 2017. I have seen a letter from Neil Dixon, a case worker from the Judicial Conduct Investigations Office dated 13 February 2017 in which it is stated that the investigation had concluded and the complaint by the defendant against the third claimant had been dismissed.

17. It is apparent from this chronology of events that in the various ways that I have described the defendant has come into contact with the three claimants and has been the subject of judicial decisions which have either been adverse to him, perceived to be adverse or, as I have said, in the case of the second claimant she has presided over a trial in which adverse decisions have been made by a jury. In the main, the defendant has sought to appeal or complain about those decisions through appropriate appeal procedures.

18. However, it is equally clear that when those appeals have been refused or dismissed, the defendant has embarked upon and pursued a different strategy, namely a campaign of alternative action.

19. The first aspect of the alternative action involved the first claimant. However, he was largely, if not completely unaware that any such action was being taken by the defendant against him until he was notified about the matter by the second claimant. It appears that the defendant was released on licence from his sentence of imprisonment in the autumn of 2015, following his convictions at the Chelmsford Crown Court. In November of 2015 the second claimant became aware of documents and petitions posted online by the defendant asserting that he had had an unfair trial before the second claimant and that she was a racist. Those posts also heavily criticised the first claimant in similar terms and it was because of this that the second claimant alerted the first claimant to the existence of those online statements.

20. The history of the alternative action taken by the defendant against each of the claimants is set out in their various witness statements together with the attitude of the various claimants towards the alternative action.

21. When the first claimant first became aware of the alternative action by the posting of material about him on the internet, quite understandably his view was largely to ignore

the matter. As he has stated in the course of his witness statement, as a judge he works in the public arena making decisions, which one side or another from time to time find controversial. It is right that individuals are able to criticise a finding which they consider to be adverse and indeed he anticipates that this on occasions can be in relatively strong terms. He hoped and anticipated that the defendant, after an initial flurry of such alternative action, would desist from doing so and lose interest.

22. However, it became clear that this was not the trajectory which was taken by the defendant's actions because there was a series of similar emails during 2016, in particular an email dated 2 March 2016 which referred to the first claimant as a child abuser. Around that time there were a number of other emails sent to the first claimant in which the defendant described the first and second claimants as, amongst other things, "corrupt racists" and an "evil pair". The emails demanded the dismissal of the first and second claimants and were sent to a large number of recipients, including politicians, journalists and barristers' chambers.

23. From about April 2016 the defendant's alternative action intensified. He began appearing outside the Royal Courts of Justice, which is the location where the first claimant sits as a judge. The defendant had a megaphone and used it to denounce the first claimant. Furthermore, he sent emails, one in particular dated 18 April 2016 in which he described the first claimant as a "pervert racist crook/unfit judge - abuser of my wife and kids" and a "sickly filthy crook". It contained a large number of attachments and it also referred to the fact that the first and second claimants were not only child abusers but also members of the Ku Klux Klan. Emails of an identical type were also sent to various bodies with which the first claimant had personal contacts, namely the university which he had attended and in which he had since then played an active part, and also his School Alumni Association. In addition, a similar email on 26 May 2016 was sent to the clerk of the chambers at which the first claimant's daughter practices. In addition, the defendant continued to appear outside the Royal Courts of Justice with a megaphone and continued his alternative action in that manner.

24. It was during the course of the alternative action that was being taken by the defendant against the first and second claimants that on 26 September 2016 the defendant appeared before the third claimant at the Clerkenwell and Shoreditch County Court. Therefore, the campaign which he referred to in the documentation which he provided to the third claimant on that date was obviously a reference to the various emails he had sent and the demonstrations he was conducting outside the Royal Courts of Justice. It was two days later on 28 September 2016 that the defendant sent an email to the third claimant's chamber's email address which alleged that the third claimant had put his wife and his children in danger and described her as an "absolute disgrace". That conduct has continued and further intensified in 2017. There have been a number of occasions during the earlier part of this year 2017 when the claimant has posted critical descriptions of the three claimants on Facebook, Twitter and other social media sites, and has also continued to regularly appear outside the Royal Courts of Justice. Indeed, during 2017 images of the first claimant's wife were added to some of the banners which the defendant placed on the railings outside the Royal Courts of Justice.

25. Furthermore, in so far as the first claimant is concerned, the defendant has on more than one occasion encountered the first claimant and shouted after him. On one

occasion following him from the Royal Courts of Justice and shouting abusive comments towards him in similar terms to those which he has posted on the electronic media.

26. In essence, although each of the three claimants, as was articulated by the first claimant in particular, anticipates a reasonable degree of criticism where appropriate in relation to their judicial conduct, the criticism which has been levelled against each of them in the defendant's alternative action has, at its core, described each of them as being corrupt, racists and child abusers. In order to highlight the latter two aspects of the allegations, the images of known child abusers such as Jimmy Saville have also been posted and there has, as I have said, been mention of the Ku Klux Klan. It is as a result of the alarm and distress that this has caused to each of the claimants that on 24 May 2017 proceedings were commenced on behalf of the three claimants against the defendant. Those proceedings were served on the defendant on 25 May of this year and they claim injunctive relief under the Protection from Harassment Act 1997.

27. On 26 May of this year an application for interim injunctive relief was heard and determined after a hearing at which the defendant was present by Jay J. I have seen a copy of that judgment reported at *[2017] EWHC 1426 (QB)*. At the conclusion of the hearing Jay J granted interim injunctive relief under the 1997 Act against the defendant. He considered whether or not the actions of the defendant against each of the claimants were on the face of it likely to amount to harassment under the Act and concluded that they were and went on to consider whether or not the defendant was likely to make out any of the defences under section 1(3) of the 1997 Act. In doing so, he considered the balance between the protection of the claimants' rights under ECHR 8 for the protection of their private and family life, and also the balance that had to be struck with the defendant's right of freedom of expression and of peaceful assembly under ECHR Articles 10 and 11. He concluded thus in paragraph 29:

> "I have considered very carefully the freedom of expression aspects of Mr Ezeugo's case. I have considered the nature of his grievances which I have outlined and I have considered his arguments. I am fully satisfied that he cannot begin to demonstrate that the course of conduct was reasonable. My reasons are as follows: that there is no nexus in law, morality or common sense between the grievances which Mr Ezeugo believes exist and the campaign which Mr Ezeugo has launched; that which he has done is completely unreasonable, disproportionate and I would go so far as to say malicious. He knows full well that his actions are intended to, and will cause upset, distress and harassment. That is their purpose. Whatever the underlying grievance, what he is doing, is so far removed from point, so unreasonable and so frankly perverse that he could not begin to bring this case under (3) of (1)."

28. Thereafter, on 9 June 2017 the claimants served their particulars of claim on the defendant and an acknowledgement of service and defence was due on 23 June 2017. On 13 July 2017 the claimants applied for judgment in default of acknowledgement of service and/or defence and that application was heard by Turner J on 24 July 2017. Once again, I have the benefit of seeing the judgment in that case at *[2017] EWHC*

2292 (QB). It is right to say that in the course of the ruling Turner J declined to grant the judgment in default and although he found that there had been a failure to assert a defence compliant with the CPR, he determined that it would be more appropriate and proportionate to allow the defendant a further period of time in which to serve a defence and, if he chose, a counterclaim, and ordered him to do so by 4 pm on 31 July of this year. He also made it clear by making an unless order that if no such defence was filed within that period, then the sanction would be judgment in default.

29. The matters which have occurred since then is that on 28 July 2017 and 31 July 2017 a bundle of written material was provided by the defendant to those instructed on behalf of the claimants which purport to be the defendant's defence and counterclaim. The claimants contend that these documents do not amount to CPR compliant pleadings and therefore firstly seek judgment in default as envisaged by the order of Turner J on 24 July 2017 and they apply for judgment in default under CPR rule 12. In the alternative, they apply for the pleadings, if that is what they are, to be struck out under CPR 3, or, again in the alternative, summary judgment under CPR 24.

30. It is also pointed out that according to the claimants the defendant has continued to harass the claimants in breach of the order of Jay J and those matters are set out in the more recent written statement of Henry Ripley, of the Government Legal Department, in his witness statement of 12 July 2017. Essentially, it is stated that there has been a failure to take down the websites which are noted to be harassing the claimants, and, secondly, that the defendant has attended the Royal Courts of Justice without complying with conditions set out in Jay J's order. Also, the defendant has posted new material online which is harassing the claimants.

31. Therefore, the matter which comes before this court for determination is whether or not the claimants are entitled to one or more of the three orders which they seek under CPR 12, 3 and 24, namely judgment in default of service, strike out and/or summary judgment.

32. I turn then to consider first of all the law in relation to harassment to the extent it needs to be considered. The Protection from Harassment Act 1997 provides at section 1:

> "A person must not pursue a course of conduct: (a) which amounts to harassment of another; and (b) which he knows or ought to know amounts to harassment of the other … (2) for the purposes of this section … the person whose course of conduct is in question ought to know that it amounts to [or involves] harassment of another if a reasonable person in possession of the same information would think the course of conduct amounted to [or involve] harassment of the other …
>
> "(3) subsection (1) or (1A) does not apply to a course of conduct if a person who pursued it shows: (a) that it was pursued for the purpose of preventing or detecting crime; (b) that it was pursued under any enactment or rule of law or to comply with any condition or requirement imposed by any person under any

> enactment; or (c) that in the particular circumstances the pursuit of the course of conduct was reasonable."

Section 3 provides for the provision of a civil remedy:

> "(1) an actual or apprehended breach of (section 1(1) may be the subject of a claim in civil proceedings by the person who is or may be the victim of the course of conduct in question …"

There is also an interpretation provision under section 7 which provides as follows:

> "(1) this section applies for the interpretation of sections 1 to 5A; (2) references to harassing a person including alarming the person or causing the person distress; (3) a 'course of conduct' must involve: (a) in the case of conduct in relation to a single person (see section 1(12)) conduct on at least two occasions in relation to that person … (4) 'conduct' includes speech … "

33. The subject matter of harassment has been considered in a number of cases and most recently and helpfully by Warby J in the case of *Hourani v Thompson & Others [2017] EWHC 432 (QB)*. He pointed out at paragraph 140:

> "There must, therefore, be conduct on at least two occasions which is, from an objective standpoint, calculated to cause alarm or distress and oppressive, and unacceptable to such a degree that it would sustain criminal liability: see Dowson v Chief Constable of Northumbria Police [2010] EWHC 2612 (QB) [142] (Simon J)."

He went on to state that the statute was required to be interpreted and applied compatibly with the right to freedom of expression which must be given its due importance. He pointed out that where events which are the subject matter of complaint involved street demonstrations as in the present case, then not only the right to freedom of expression is involved, but also the right to freedom of assembly is engaged under Article 11 of the ECHR. However, he went on to state at paragraph 146:

> "When applying these principles, it is necessary to have in mind not only the rights under Articles 10(1) and 11(1) are qualified rights but also that in this, as in many publication cases, the countervailing rights to be considered appear to include the fundamental right to respect for private and family life under Article 8 of the Convention …"

Clearly, a careful balancing act is therefore required.

34. In relation to the defences to harassment are set out under section 1(3) of the 1997 Act, and in particular section 1(3)(a), namely the prevention or detecting of crime, Warby J

made reference to the explanation provided by Lord Sumption in *Hayes v Willoughby [2013] UKSC 17* where he stated:

> "Before an alleged harasser can be said to have had the purpose of preventing or detecting crime, he must have sufficiently applied his mind to the matter. He must have thought rationally about the material suggesting the possibility of criminality and formed the view that the conduct said to constitute harassment was appropriate for the purpose of preventing or detecting it. If he has done these things, then he has the relevant purpose. The court will not test his conclusions by reference to the view which a hypothetical reasonable man in his position would have formed. If, on the other hand, he has not engaged in these minimum mental processes necessary to acquire the relevant state of mind, but proceeds anyway on the footing that he is acting to prevent or detect crime, then he acts irrationally... The effect of applying a test of rationality to the question of purpose is to enable the court to apply to private persons a test which would in any event apply to public authorities engaged in the prevention or detection of crime as a matter of public law. It is not a demanding test, and it is hard to imagine that Parliament can have intended anything less."

Warby J went on to point out that the defence is only available if the purpose of prevention or detection of crime is the "dominant" purpose of the course of conduct.

35. In relation to the defence under (1)(3)(c), namely whether the pursuit of the course of conduct was reasonable, Warby J at paragraph 184 referred to the judgment of Tugendhat J in the case of *Trimingham v Associated Newspapers Limited [2012] EWHC 1296 (QB)* where he stated:

> "... for the court to comply with HRA s 3, it must hold that a course of conduct in the form of journalistic speech is reasonable under ... s 1(3)(c) [of the 1997 Act] unless, in the particular circumstances of the case, the course of conduct is so unreasonable that it is necessary (in the sense of a pressing social need) and proportionate to prohibit or sanction the speech in pursuit of one of the aims listed in Art 10(2), including, in particular, for the protection of the rights of others under Article 8. ..."

At paragraph 85 of Warby J's judgment he stated:

> "This passage helpfully emphasises the important point, that the exercise of the freedom of speech should only be found to involve unacceptable harassment if certain stringent conditions are clearly satisfied. But it should not be read as placing the onus entirely on the claimant. The burden of proof under s 1(3)(c) lies on the defendant. More importantly, a competing fundamental right is engaged and, as Tugendhat J noted in Trimingham at [55]: "...

> where the rights of a claimant under Article 8 and of a defendant under Article 10 are in issue. The court is required to follow the guidance of the House of Lords in Re S (A child)(Identification: Restriction on Publication) [2004] UKHL 47 at para [17], as follows: (i) neither Article as such has precedence over the other; (ii) where the values under the two Articles are in conflict, an intense focus on the comparative importance of the specific rights being claimed in the individual case is necessary; (iii) the justifications for interfering with or restricting each right must be taken into account; (iv) finally, the proportionality test – or "ultimate balancing test" - must be applied to each. ... s 1(3)(c) [of the 1997 Act] requires the court apply that test to "the pursuit of the course of conduct."""

Although some of the matters referred to in the judgment involved the press, they have resonance in cases such as the present one which involve publications by an individual such as the defendant.

36. I then turn to deal with the applications that are before me. Firstly, as to whether or not the documentation which has been provided by the defendant to the claimants on 28 and 31 July of this year comprises a CPR compliant defence and to the extent that it is pursued, a counterclaim. Under CPR 16.5 the contents of a defence must provide as follows:

> "(1) In his defence, the defendant must state – (a) which of the allegations in the particulars of claim he denies; (b) which allegations he is unable to admit or deny, but which he requires the claimant to prove; and (c) which allegations he admits.
>
> "(2) Where the defendant denies an allegation – (a) he must state his reasons for doing so; and (b) if he intends to put forward a different version of events from that given by the claimant, he must state his own version.
>
> "(3) A defendant who – (a) fails to deal with an allegation; but (b) has set out in his defence the nature of his case in relation to the issue to which that allegation is relevant, shall be taken to require that allegation to be proved."

37. There are similar provisions under CPR 16.4 in relation to the contents of the particulars of claim, or in this case, to the extent it is pursued, a counterclaim, namely under 16.4-1:

> "Particulars of claim must include: "(a) a concise statement of facts on which the claimant relies (b) if the clamant is seeking interest, a stay to that effect and the details set out in paragraph 2 …"

38. I have read the documents which were provided by the defendant to the claimants on 28 July and 31 July. There are effectively four sets of documents in each of those

bundles. In relation to 28 July there was a document entitled "counterclaim particulars of claim", a document entitled "defence and counterclaim plus grounds of appeal of perverse interim order by Jay J …" a document entitled "defence and counterclaim and defendant's draft, interim and final orders" and various other documents including photographs and correspondence going back a number of years.

39. The contents of those documents, and in particular the first of those documents, contains a rehearsal of much of the contents of the various electronic material of which complaint is made by the claimants as amounting to harassment, namely there are allegations against the claimants that they are child abusers and they have abused the defendant's children and that they have conspired with others, including members of parliament and the Ministry of Justice and others to ensure that from time to time the defendant has been in custody and that they have otherwise committed criminal activities at his premises or in relation to him, and indeed are members of, or associated with, the Ku Klux Klan. The second of those documents, as by its title is envisaged, focuses to an extent on criticisms of the decision reached by Jay J, but again repeats the allegations that the claimants are racist child abusers. The other documentation is effectively a history of some of the orders which have been made in the case together with other photographs.

40. In so far as the more recent bundle of documentation of 31 July is concerned, that is comprised of again four sets of documents, one titled "CPR Part 20 defendant's counterclaim particulars of claim", another which purports to be an email to the first claimant, thirdly a completed defence and counterclaim Form NYM9D, and finally a document headed "defence and counterclaim plus grounds of appeal for the first interim order by Jay J …"

41. In contrast to some of the previous documents sent on 28 July there is a signed statement of truth in relation to these documents. However, the first of these documents is largely a reiteration of the first of the documents sent on 28 July, namely the "counterclaim particulars of claim." The second document requests that the first claimant should consider resigning as the case manager of the claim by the defendant against the Metropolitan Police. The third document which is the M9D form suggests in terms that the defendant will be providing in due course a defence and counterclaim. The final document is a reiteration of one of the previous documents sent on 28 July relating to the judgment of Jay J.

42. I have considered with care, especially as the defendant is a litigant in person and therefore cannot be expected to draft documents with the same precision that would be expected of a qualified lawyer, as to whether or not any of the documentation can be said to amount to a defence which complies with CPR 16.5 and/or a counterclaim which complies with 16.4.

43. The particulars of the claimants' case have been drafted by a lawyer on behalf of the claimants and, as one would expect, is clear and comprehensible and relatively concise in its formulation. In complete contrast to that, none of the documentation to which I have referred and which has been provided by the defendant to the claimants either on 28 July or 31 July can be described in that manner. In particular, there is no detail as to which of the allegations he admits or denies and to the extent that he denies any

allegation, his reason for doing so. In reality this documentation is a “defence” in name only. However, in order to comply with the rules there must be some degree of substance and in my judgment the documents do not provide that which is required for the reasonably efficient litigation of proceedings before the court. In reality, what those documents are is a rehearsal of the underlying history of all of the various pieces of litigation in which the defendant has been involved, either against the Metropolitan Police or involved as a person who has had decisions decided against him by one of the claimants, or in which they have acted as the judge. As is characteristic of the emails at which complaint is made, the documentation makes accusations against the claimants which are mere conjecture, and fail to provide by way of any evidential detail as to how the claimants or any of them are corrupt, racist or indeed child abusers, which in essence are the complaints made by the defendant against the claimants in the documentation.

44. For the purpose of determining these applications, I have not only read the documentation which has been provided to the claimants, but I have also read three files of documents which have been provided to the Court of Appeal by the defendant as the basis for his application for permission to appeal against the order of Jay J, which will no doubt be considered in due course by the Court of Appeal and is under reference apparently A2/2017/1805. This is an even more voluminous set of documentation which again in large measure is either a history of the various pieces of litigation in which the defendant has been involved over the years, or the making of the type of allegations which is the basis of the complaints made by the three claimants and which forms the basis of his allegations set out in the documents which have been provided by way of defence in this case on 28 and 31 July.

45. Having carried out this exercise I have come to the conclusion that none of the documentation could be remotely described as being a CPR compliant defence and counterclaim in this case. This is a conclusion which I would reach with a great deal of hesitation in view of the fact that the defendant is a litigant in person, if, for one moment, I thought there was any viable defence and/or counterclaim to the present proceedings. However, for reasons which I will make clear in relation to the next two applications, I do not consider that there is such a defence in this case and therefore feel fortified in the view that it would be unfair for the claimants in this case to have to proceed to a full trial based on the set of documentation provided on 28 and 31 July when they would be unable to know the basis of the defendant's defence and/or counterclaim, over and above the mere assertion which the defendant has made orally in the course of this hearing, namely that he was simply pursuing a lawful 'protest'.

46. In so far as the power of the court to strike out a statement of case, which of course includes a defence, this is to be found in CPR 3.4 which states:

> "(2) the court may strike out a statement of case if it appears to the court (a) that the statement of case discloses no reasonable grounds for bringing or defending the claim; (b) that the statement of case is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings, or (c) that there has been a failure to comply with a rule, practice direction or court order."

In so far as the power of the court to provide for summary judgment, that is to be found in CPR 24.2 which states:

> " The court may give summary judgment against a claimant or defendant on the whole of a claim or on a particular issue if – (a) it considers that (i) that claimant has no real prospect of succeeding on the claim or issue; or (ii) that defendant has no real prospect of successfully defending the claim or issue; and (b) there is no other compelling reason why the case or issue should be disposed of at a trial."

In relation to the power of strike out, the practice direction 3A contains guidance on the exercise of the power to strike out a statement of case.

> "1.4: The following are examples of cases where the court may conclude that particulars of claim (whether contained in a claim form or filed separately) fall within rule 3.4(2)(a): (1) those which set out no facts indicating what the claim is about, for example 'Money owed £5000', (2) those which are incoherent and make no sense …
>
> "1.5: A claim may fall within rule 3.4(2)(b) where it is vexatious, scurrilous or obviously ill-founded.
> 1.6 A defence may fall within rule 3.4(2)(a) where:
>
> "(1) it consists of a bare denial or otherwise sets out no coherent statement of facts
> 1.8: the examples set out above are intended only as illustrations."

47. It is clear from *Secretary of State of Trade v Bairstow [2004] Ch 1* at page 38 that where litigation is pursued for the purposes of mounting a collateral attack upon the final decision made by another court of competent jurisdiction, then that can amount to an abuse of the court's process or otherwise be likely to obstruct the just disposal of the proceedings under CPR 3.2(b).

48. It has become clear during the course of oral submissions, that in large measure the defendant does not dispute either having posted the electronic material, which is alleged to have been posted by him concerning the claimants, or indeed attending outside the Royal Courts of Justice in person on a number of occasions and displaying the type of material which is alleged. Therefore, the focus of attention really becomes upon whether or not there is any prospect of the defendant being able to succeed in a defence under section (1)(3) of the 1997 Act. It is not suggested, nor could it be, that subsection (b) applies, namely that there is any enactment or rule of law which would justify such conduct. During the course of his oral submissions the defendant appeared to suggest that the claimants may be involved in criminality. However, not only is there not a shred of evidential basis for such an allegation, but there are not even particulars of any criminality. Moreover, even if there was, the defendant would be unable to show how the conduct alleged against him, namely the alleged harassment,

was an appropriate manner in which to prevent or detect crime, and to that extent, the words of Lord Sumption *in Hayes v Willoughby* would apply.

49. In reality the focus in this case is upon the reasonableness of the defendant's conduct. In this regard it is implicit from what the defendant submits that all of the material which he has posted both electronically and physically outside the Royal Courts of Justice, and orally during the occasions when he has been using a megaphone that the claimants are corrupt, that they are racist and that they are child abusers who abuse their judicial positions to cause harm to himself and his family, is reasonable conduct on his part. As I have already alluded to, the assertions that the claimants are racist is made with reference to membership of the Ku Klux Klan and the assertions that they are child abusers, is made with reference to Jimmy Saville. What is wholly missing, however, from the making of these allegations, is any evidential or rational link between the making of those allegations of corruption, racism and child abuse and any of the decisions made by the claimants concerning the defendant and of course their various proceedings in which they have acted in a judicial capacity.

50. In my judgment it is no coincidence that an allegation of corruption in the case of an individual in judicial office is potentially the most harmful type of allegation which could be made because, if true, it strikes at the most fundamental attribute which is required to be possessed by somebody dispensing justice, namely integrity, and, likewise, one can think of little other potentially damaging allegation to make against an individual in a civilised society other than those of racism and child abuse.

51. The subject matter of those allegations and the manner in which they have been sought to be pursued have all the hallmarks of someone intent not on exposing any genuine injustice, but to punish those who have either made adverse judicial decisions against the defendant and/or decisions which are perceived by him to be adverse to him or, as I said in the case of the second defendant, presided over the trial in which adverse decisions had been made by a jury, and in respect of which the defendant has either failed to overturn those decisions or verdicts through either appropriate appeal or complaint procedures.

52. To the extent that the defendant genuinely holds any of these views against the claimants, it is clear that there is no evidential foundation, and is bare assertion on his part, as reflected in the wholly unparticularised allegations.

53. If one looks at the legality of the decisions themselves, as is clear, in respect of the first claimant, and contrary to the defendant's oral assertions before me that the first claimant has stifled his litigation over the last seven years, it is quite clear that, save for the decision in respect of his application for interim injunctive relief against the Metropolitan Police, the first claimant has done no such thing and has in fact facilitated the progress of that litigation which has not been pursued by the defendant himself. Likewise, in respect of the appeal from the employment tribunal, although he did not uphold the appeal in respect of the defendant, the first claimant upheld the appeal in respect of his wife, and, finally, in respect of the litigation arising out of the refusal of the Home Secretary to grant passports to his children, the first claimant went out of his way to ensure and facilitate the provision of passports which is entirely contrary to the oral submission that he made to me, namely that the first

claimant holds his children's passports and is refusing to release them to him. There simply is no rational basis for the allegation that any corruption is involved by the first claimant or in particular that he is either racist or a child abuser.

54. Likewise, with the second and third claimants, the second claimant was the trial judge and therefore the only role was to ensure that the defendant received a fair trial. The decision whether the defendant was criminally liable was entirely a matter for the jury. Furthermore the defendant pursued an appeal against the conviction and sentence to the single judge which was refused. Therefore, there can be no question as to the fairness of the trial or indeed the appropriateness of the sentence imposed on him.

55. Finally, in relation to the third claimant, she conducted a hearing in which the defendant sought to be a McKenzie Friend to his wife and although there was criticism made by the defendant of the third claimant in that respect, this was not upheld on complaint to the JCIO which dismissed his complaint. In those circumstances, again, there can be no evidential basis at all for any of the allegations which lie at the heart of this case and in respect of which complaint is made by each of the three claimants, namely that they are alleged to be corrupt, racist and/ or child abusers.

56. In those circumstances and having again considered the documents which the defendant has provided in this case, none of them disclose any reasonable grounds for defending the claim or providing any counterclaim. As I have already indicated, there has under 3.4(2)(c) been a failure to comply, and I am also satisfied that the basis of the defendant's campaign against each of these claimants amounts to a collateral attack upon lawful decisions which have been made by them which have been the subject matter of appeals to appropriate courts. In that sense, the manner in which the defendant seeks to defend this matter is an abuse of the court's process.

57. Even if I had considered that the documentation disclosed a defence, I am satisfied that there should be a summary judgment for the claimants, in that in my judgment the defendant has no real prospect of successfully defending the claim and that there is no other compelling reason why the case should be disposed of at the trial rather than disposed of at this stage. In this regard, although it is not at the forefront of my reasoning, (because each of the claimants brings these proceedings in their personal capacity), the European Court of Human Rights has recognised in *Morice v France [2016] 62 EHRR1* that where there are unfounded attacks made upon the judiciary of a greatly damaging nature, a degree of protection should also be provided to the system of justice itself less it be damaged by the making of such claims; a matter which is properly alluded to by the first claimant in the course of his witness statement, where he alludes to the damage which these unfounded allegations have caused not only to him personally, but potentially in his judicial capacity, a matter which would similarly affect all three of the claimants.

58. In these circumstances, and for the reasons I have given, there will be judgment for the three claimants against the defendant at this stage. Moreover, I am satisfied that the claimants are, as a result, also entitled to the injunctive relief which is sought to restrain the defendant from acting in a similar manner in the future, which as requested will be for a period of two years.

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This transcript has been approved by the Judge