

COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

THIRD SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 74660/01
by Joseph Dwight LAWRENCE
against the United Kingdom

The European Court of Human Rights (Third Section), sitting on 24 January 2002 as a Chamber composed of

Mr G. RESS, *President*,
Sir Nicolas BRATZA,
Mr L. CAFLISCH,
Mr P. KŪRIS,
Mr R. TÜRMEN,
Mr J. HEDIGAN,
Mrs M. TSATSA-NIKOLOVSKA, *judges*,
and Mr V. BERGER, *Section Registrar*,

Having regard to the above application introduced on 25 May 2001 and registered on 4 October 2001,

Having deliberated, decides as follows:

THE FACTS

The applicant, Joseph Dwight Lawrence, is a United Kingdom national, born in the United States of America in 1952 and living in Northwood, Middlesex.

The facts of the case, as set out in documents submitted by the applicant, may be summarised as follows.

The applicant was involved in a boundary dispute with his neighbours. In March 1997 he had built a brick wall on an area which the neighbours claimed was their land, with the result that the neighbours commenced a civil action in trespass against the applicant in the Watford County Court in June 1997. The neighbours instructed a partner in the litigation department at a local firm of solicitors, Matthew, Arnold and Baldwin ("MAB"), to act for them in connection with the dispute. The firm was the largest in Watford.

The case was originally to be heard by a County Court Judge who, following the hearing of a number of preliminary issues on the case, became unavailable and was replaced by another such Judge ("the Deputy Judge") on 11 August 1999. The applicant disputes the unavailability of the first Judge to preside over the proceedings after that date.

The Deputy Judge and his wife had instructed the private client partner at MAB to prepare their wills in November 1995. MAB had thereafter kept custody of the wills and, in late October or early November 1999, the Deputy Judge and his wife instructed the same partner at MAB to amend their wills by way of new codicils. They made an appointment to call in at MAB's offices on the evening of 11 November 1999 which, as the Deputy Judge was aware, would coincide with his presiding over the trespass proceedings.

The trial commenced on 16 August 1999 in order to allow one of the neighbours' witnesses to give evidence, since he would not be available on the dates listed for trial between 9 and 12 November. On 21 September 1999, the District Judge heard the applicant's request that he withdraw from the case in favour of the original County Court Judge on the basis that the latter had been involved in the case throughout. The Deputy Judge refused the application. On 28 October 1999, the Deputy Judge heard an application by the applicant for summary judgment on the basis of alleged deliberate failure by the claimants, their expert and MAB to obey Court Orders. At the hearing, the Deputy Judge asked the applicant whether he was making a complaint about the conduct of MAB, to which the applicant responded that he was not. The applicant maintains that the Deputy Judge's question was aimed only at a specific part of the application for summary judgment,

which part concerned failures only on the part of the neighbours' expert witness.

The Deputy Judge informed the applicant upon resumption of the trial on 9 November that MAB had made his will some years previously, and that they still held it, and the applicant took no point on the issue. By the end of that day two of the neighbours', and one of the applicant's, witnesses of fact had been examined at length. On the morning of 12 November, the Deputy Judge or one of his assistant staff approached the neighbours' counsel outside the judges' robing room and informed him of the Deputy Judge's intention to impose a timetable for the trial, including a limit on the time to be allowed for examination-in-chief of outstanding witnesses of both parties. The neighbours' counsel passed on this message to the applicant as requested by the person who had spoken to him, and the Deputy Judge, upon resumption of the hearing, announced a five minute limit upon examination-in-chief of the remaining witnesses. As a result, the applicant decided not to call his second witness of fact, who was to travel to the hearing from Israel to testify, and that witness's written statement was not admitted into evidence.

The hearing ended on the afternoon of 11 November 1999 and the Deputy Judge rose to consider his judgment overnight. He and his wife arrived at the offices of MAB and signed the codicils as previously arranged, meeting a solicitor and a paralegal who each witnessed the signatures. The paralegal had been waiting to meet a colleague in the reception area and was asked to witness the codicil on the spur of the moment. She had worked at MAB since around 1995 in the firm's debt collection department and had assisted in typing some letters in connection with the neighbours' case against the applicant in 1997, 1998 and 2000. MAB subsequently wrote to the applicant and named the solicitor as a member of the firm's tax, trusts and probate department, but this identification is disputed by the applicant.

The following morning the Deputy Judge delivered judgement in the County Court proceedings in favour of the neighbours. The applicant was required to remove the wall which he had built on the land at issue, which was held to constitute part of the applicant's property. The applicant was also made subject to an injunction prohibiting him from entering onto the neighbour's land or interfering with it. The applicant was ordered to pay GBP 190 in damages to the neighbours and a proportion of their costs.

The applicant was granted leave to appeal to the Court of Appeal by that court in March 2000. He raised three grounds of appeal: that the Deputy Judge had misunderstood or misdirected himself with regard to the necessary components of an "adverse possession" claim in that the neighbours had never had the necessary intention to possess; that because the Deputy Judge before and during the trial had dealings with the solicitors acting for the neighbours, there was an appearance of bias; and that the

Deputy Judge conducted the hearing in an unfair manner, limiting the applicant's examination of his witnesses in a way in which the neighbours had not been so limited. Lord Justice Mantell, in granting leave, commented that he considered all three grounds arguable, but that the third was of lesser weight.

The applicant found out about the Deputy Judge's 11 November 1999 meeting at MAB shortly afterwards.

At the hearing of the appeal before the Court of Appeal on 25 January 2001, the applicant confined his grounds of appeal to the first two grounds considered at the leave stage, although the court did comment on all three grounds in its judgment. On the first ground, following a fresh examination of the facts, the court concluded that adverse possession had been established in favour of the neighbours, and that such possession had continued for more than twelve years thereby extinguishing the applicant's predecessor-in-title's ownership of the land. Lord Justice Gibson went on to comment on the second and third grounds of appeal as follows:

> "22. It seems to me that the fair-minded and informed observer would recognise that every judge lives in the community and that in his private life, away from his judicial life, he may need to use the services of service providers, including solicitors. That observer would also appreciate that solicitors, by the very nature of their work, have many clients the affairs of each of whom must be kept separate from those of another client. The use by a judge of the services of a firm of solicitors for his personal purposes, such as for drafting his will, would not, I think, give rise to any expectation, or even any suspicion, in the fair-minded and informed observer that the judge in his judicial capacity would, by reason of that connection over his will, be untrue to his judicial oath and favour another client of those solicitors. The observer would take note of the fact that at the time when the Deputy Judge heard the evidence of Mr Moore [the applicant's predecessor-in-title] he was not aware who were the solicitors of the claimants [ie the applicant's neighbours] and that, having heard that evidence, the Deputy Judge was the obvious person to complete the hearing of the trial. Indeed, if he had stood down, there would at least have been a risk that Mr Moore's evidence would have to be taken in front of another judge, thereby adding disproportionately to the costs of what is essentially a very minor dispute. The observer would take note of the fact that the Deputy Judge volunteered the information that the claimants' solicitors had acted for him in preparing his will and that the Deputy Judge had obtained the express confirmation of the parties that there was no objection to him continuing to preside in the case. The observer would, in my view, have attached particular importance to the fact that the will, as the Deputy Judge told the defendants [ie the applicant] was being kept by the claimants' solicitors. That in itself would indicate that there was a continuing relationship with the solicitors and that it was possible that the will might need to be altered in some way (and codicils are frequently made after a will has been executed), when probably there would be contact between the Deputy Judge and those solicitors. As the Deputy Judge obtained confirmation from the defendants that despite his connection with the solicitors over his will there was no objection to him continuing to sit, the observer would reasonably regard the completion of a codicil, which the solicitors had been asked by the Deputy Judge to prepare, as within the reasonable scope of what had been cleared with the parties.

23. The witnessing of the signature of the testator on a testamentary document, as the informed observer would know, is a mere ministerial task, and the fact that a secretary in the litigation department of the solicitors happened to be available to be such a witness is in itself neither sinister nor significant. The observer would note that the Deputy Judge as made clear that he did not discuss the claimants' case against the defendants when he went to complete his codicil.

24. The passing of a message to the claimants' counsel by the Deputy Judge, or the court usher, or the Deputy Judge's clerk would not, in my view, be regarded by the observer as of any significance whatsoever. There is no evidence that the Deputy Judge was consulting Mr Cowen in passing that message to Mr Cowen and Mr Lawrence. I have already stated that what Mr Cowen has said occurred. In my judgment, it is impossible to regard that incident as indicating any appearance of bias.

25. ... the mere fact that a witness of the Deputy Judge's signature to his codicil was a secretary who had some connection with the case, in that her initials appear (with the initials of another) on letters to the defendants in relation to this case, would not appear to the fair-minded observer to be of any importance. Nor, in my judgment, can there possibly be some sort of duty on the Deputy Judge to have investigated precisely what functions were performed in the affairs of the claimants' solicitors by a mere witness to his signature.

26. Looking at the matter objectively, I am wholly unable to see that the fair-minded and informed observer would conclude from the various matters to which Mr Lawrence has attached importance that this was a case in which there has been an appearance of bias. For this reasons, therefore, I do not accept his arguments on this ground.

27. For completeness I should also deal briefly with Mr Lawrence's further objection that the Deputy Judge conducted the trial unfairly in imposing a timetable on the trial at the start of the second day, only allowing five minutes for the examination in chief of further witnesses. Mr Lawrence submits that this is quite unfair, because two witnesses for the claimants were examined in chief at greater length on the first day.

28. In my judgment there is nothing in this point either. The chief witness of fact for the defendants was Mr Moore. It is apparent from the transcript of the hearing in August that Mr Moore was examined by Mr Lawrence in chief at some length. The fact that the two sons of the late Mr Griffiths were examined on 9th November for rather longer than five minutes does not, to my mind, lead to the conclusion that on 10th November the Deputy Judge, exercising his case management powers and imposing a rather more rigorous timetable from then on, was showing bias or acting unfairly. The Deputy Judge's direction also applied to the further witnesses of the claimants. In any event, as I have said, the main witness of the defendants had already given evidence without any time limit. Further the other witnesses had produced witness statements and there was no need for there to be a lengthy examination in chief. (...)"

The Court of Appeal therefore dismissed the appeal.

The applicant has recently discovered that the Deputy Judge was never charged by MAB for the work done in connection with the codicils signed on 11 November 1999. In this connection, the Deputy Judge wrote to the

head of the Civil Appeals Office in November 2001 indicating that the purpose of the codicils was to delete a charitable gift that he and his wife had decided to give instead in celebration of his wife's seventieth birthday. He attached a letter dated 30 October 2001 from MAB, which explains that the codicil involved the deletion of one clause of the wills of the Deputy Judge and his wife and that, given the simplicity of the work, it would have been uneconomic to render an account for it.

The applicant has informed the Court that be a further hearing is listed before the Court of Appeal for mid-December 2001 on the question of whether or not that court has jurisdiction to re-open the matter in light of the recent developments.

COMPLAINTS

The applicant complains under Article 6 § 1 about the fairness of the proceedings before the Watford County Court and Court of Appeal. He complains also under that Article that the Deputy Judge was not impartial.

LAW

The applicant complains under Article 6 § 1 about the fairness of the proceedings before the Watford County Court and on his application for leave to appeal to Court of Appeal. In particular, he complains about the Deputy Judge's decision to impose a timetable on the second day of the trial and about the Court of Appeal's failure to disclose details of the Deputy Judge's meeting at the solicitor's office on 11 November 1999. He complains also that the Deputy Judge's relationship with MAB and conduct at the trial was such that he was not impartial, and that the involvement of the Deputy Judge in the proceedings was "contrived from the start".

Article 6 § 1 of the Convention provides, so far as relevant, as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal ... "

1. Fairness of the proceedings

The applicant complains about the unfairness of the proceedings before the Watford County Court and on his application for leave to appeal to the Court of Appeal. In particular, he complains about the Deputy Judge's decision to impose a timetable on the second day of the trial and about the Court of Appeal's failure to disclose details of the Deputy Judge's meeting at the solicitor's office on 11 November 1999. He also alleges that the

involvement of the Deputy Judge in the proceedings was "contrived from the start" in that his efforts to have the initial County Court judge re-instated were frustrated by untrue statements by the County Court offices about that judge's availability.

The Court recalls that the principle of equality of arms, which forms a component of the broader concept of a fair trial, requires that each party must be afforded a reasonable opportunity to present his case under conditions that do not place him at a substantial disadvantage vis-à-vis his opponent (see, among other authorities, the De Haes and Gijsels v. Belgium judgment of 24 February 1997, *Reports* 1997-IV, § 53).

The Court notes that, at the hearing conducted on the merits by the Court of Appeal, the applicant did not seek to pursue that part of the appeal alleging unfairness on the part of the Deputy Judge in limiting the applicant's examination of witnesses on the second day of the trial. However, that court did address that ground of appeal in its judgment of 25 January 2001, concluding that it was without foundation since the applicant's chief witness of fact had been examined at length by the applicant on the first day of the trial, and that the Deputy Judge had chosen properly to exercise his case management powers the following day so as to limit the time given thereafter for examination of both parties' witnesses.

The Court notes also that the applicant chose not to call his outstanding witness of fact on the second day of the trial in light of the Deputy Judge's decision limiting examination-in-chief of witnesses. He failed to request the Deputy Judge to accept the witness's written statement into evidence in the proceedings, though the applicant claims that he was unaware of the provisions which would have allowed him to do so.

In all the circumstances, the Court concludes that the Deputy Judge's decision to impose a timetable on the second day of the trial did not place the applicant at a substantial disadvantage vis-à-vis his opponent, and did not therefore prejudice the fairness of the proceedings.

Turning to the failure by the Court of Appeal, at the hearing of the applicant's application for leave to appeal in March 2000, to inform the applicant of the Deputy Judge's attendance at MAB's offices during the trial, the Court notes that the application concerned was granted in full by that court. Furthermore, by the time of the hearing on the merits of the appeal in January 2001, the applicant was in full knowledge of the visit. The Court thus concludes that the applicant cannot complain about the failure by the Court of Appeal to disclose the facts concerned at the leave stage since he did not suffer any prejudice as a result.

As for the applicant's allegations that the involvement of the Deputy Judge in the proceedings was "contrived from the start" and that the County Court offices misled him about the availability of the original County Court judge, the Court considers this to be unsubstantiated.

It follows that that part of the application relating to the fairness of the proceedings before the Deputy Judge and the Court of Appeal is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected pursuant to Article 35 § 4.

2. Impartiality of the Deputy Judge

The applicant complains that the Deputy Judge's relationship with MAB and conduct at the trial was such that he was not impartial.

The Court recalls that there are two aspects to the "impartiality" requirement under Article 6 of the Convention. First, the tribunal must be subjectively free from personal prejudice or bias. Secondly, it must also be impartial from an objective viewpoint, that is, it must offer sufficient guarantees to exclude any legitimate doubt in this respect (see, among other authorities, the Findlay v. the United Kingdom judgment of 25 February 1997, *Reports* 1997-I, § 73).

The Court observes that there is no evidence to support an allegation of subjective bias on the part of the Deputy Judge on the facts of this case. It will thus restrict its analysis to the question of objective bias.

The Court notes that the Court of Appeal reached the view that the use by a judge of a particular firm of solicitors for the purposes of drafting his will should not of itself give rise to any expectation, or even any suspicion, that the judge would be untrue to his judicial oath and favour another client of those solicitors in proceedings before him. It highlighted the fact that the Deputy Judge did not know, when he presided over the first day of the trial in August 1999, that the applicant's opponents were represented by MAB and that, when the trial re-commenced in November 1999, he had obtained the express confirmation of both parties to the litigation that there was no objection to him continuing to hear the case.

The Court notes further that the partner who was instructed by the Deputy Judge in the present case, being a private client specialist, was from an entirely different department of MAB to the partner representing the applicant's neighbours in the civil proceedings, who was a litigation specialist. The firm was the largest in the Watford area. Also, at the hearing on an application by the applicant for summary judgement in October 1999, the Deputy Judge specifically asked the applicant whether or not, in light of the wording of the application, he was making a complaint about the conduct of MAB, to which the applicant responded in the negative.

Insofar as the approach by the Deputy Judge, or one of his staff, to the applicant's neighbours' counsel outside the courtroom on the morning of 12 November 1999 is concerned, the Court observes that the Court of Appeal concluded that this could not be regarded as indicating any appearance of bias, particularly as there was no evidence of any consultations having taken place during the course of that encounter.

As for the Deputy Judge's attendance at MAB's offices on the evening before delivering judgment, the Court notes that the applicant was not given any advance notice of the meeting, nor indeed did he find out about it until sometime after the event. However, the applicant did know about that meeting by the time of the substantive hearing of his appeal. Furthermore, the meeting was extremely brief, being for the purposes only of allowing the Deputy Judge and his wife to execute simple codicils to their wills. There is no indication that the Deputy Judge met anyone who had had any substantive involvement in the proceedings, nor that the paralegal who witnessed the execution was present through any reason other than coincidence.

Finally, the Court notes that the Deputy Judge was never charged for the preparation of the codicils concerned, but considers that this was unsurprising given their extremely simple nature.

In all the circumstances, and in particular for the reasons given by the Court of Appeal in its detailed judgment of 25 January 2001, the Court concludes that the applicant's misgivings about the impartiality of the Deputy Judge are not objectively justified.

It follows that the part of the application relating to the impartiality of the Deputy Judge is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected pursuant to Article 35 § 4.

For these reasons, the Court by a majority

Declares the application inadmissible.

Vincent BERGER
Registrar

Georg RESS
President