Neutral Citation No: [2024] NIKB 95	*Ref:* **COL12653**
	ICOS No: **18/111604/A01**
*Judgment: approved by the court for handing down (subject to editorial corrections)**	*Delivered:* **26/11/2024**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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KING'S BENCH DIVISION

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Between:

RAYMOND NHEMBO

Plaintiff/Appellant

and

ULSTER UNIVERSITY

Defendant/Respondent

_____

The appellant appeared in person
Mr Frank O'Donoghue KC with Ms Bobbie-Leigh Herdman (instructed by Carson McDowell Solicitors) appeared for the Respondent

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COLTON J

Introduction

[1] By these proceedings the appellant has appealed a decision of Her Honour Deputy Judge Murray dated 25 March 2024, whereby she dismissed his claim alleging racial discrimination against the respondent. The complaint related to the decision of the respondent to award a fail in respect of his final year project in the 2015/2016 academic year. Making allowances for the fact that the appellant represented himself at the hearing, it is clear from the written judgment of HHJ Murray, and from the "County Court Final Scott's Schedule" that the substance of the case related to discrimination based on race.

[2] Initially, the plaintiff lodged a small claim application claiming £3,000 plus interest and a court fee.

[3] When it became clear that the plaintiff's claim was one involving allegations of race discrimination, the District Judge transferred the case to the County Court as the small claims court did not enjoy jurisdiction to hear such a claim.

[4] An application to remove the case to the High Court was lodged on 7 December 2020. In support of that application, the plaintiff/appellant lodged an affidavit sworn on 1 August 2022, outlining in para 4 that "the claim valuation is £10m plus maximum legal costs as stated in the County Court HR1 Form and County Court email dated 3 March 2021."

[5] The removal application was opposed by the defendant/respondent arguing, inter alia, that article 54(2) of the Race Relations (Northern Ireland) Order 1997, provided that:

> "… all such remedies shall be obtainable in such proceedings as, apart from this paragraph and article 51(1), would be available in the High Court."

[6] On this basis, the application for removal was refused since it would have been open to the County Court, in theory, to award the amount being claimed by the plaintiff/appellant.

[7] By agreement, the hearing before HHJ Murray proceeded to determine liability issues first.

[8] In the course of argument on the issue of costs, the plaintiff/appellant accepted, by way of email dated 16 June 2024, that his claim had been for £10m.

[9] In accordance with the normal case management procedure, the matter came for review before the High Court on 14 November 2024. At the review hearing, it was indicated by Mr O'Donoghue that it was his client's position that the High Court does not have jurisdiction to hear the appeal and that any appeal could only be brought to the Court of Appeal by way of the case stated mechanism.

[10] I directed the respondent to write to the appellant setting out the basis for this argument. That was done on 20 November 2024.

[11] The matter came before me again, as directed, on 25 November 2024. The appellant appeared in person. He confirmed that he had received the correspondence. He maintained that the matter was properly brought before the High Court.

[12] Mr O'Donoghue relied on the correspondence of 20 November 2024.

[13] The hearing being listed for 4 December 2024; I confirmed that I would give a ruling in writing and send it to the parties prior to the hearing date.

The applicable law

[14] The issue raised by Mr O'Donoghue has been considered by the Court of Appeal in the case of *Deman v Industrial Tribunals and Fair Employment Tribunal and others* [2023] NICA 33.

[15] I adopt the summary of the relevant legislative provisions set out in the judgment of the court by Humphreys J at paras [9]-[21] as follows:

> "**The Statutory Framework**
>
> [9] Article 21 of the 1997 Order makes it unlawful for any person concerned with the provision of goods, facilities, or services to the public to discriminate on racial grounds against a person seeking to obtain them.
>
> [10] Article 54 of the 1997 Order provides that any claim in relation to Article 21 may be made the subject of civil proceedings and shall only be brought in the county court. There is no monetary limit on the jurisdiction of the county court in such cases.
>
> [11] Similar provisions exist in respect of discrimination in the provision of goods and services on the grounds of religious belief or political opinion in the 1998 Order. Article 28 renders such discrimination unlawful, and Article 40 prescribes the remedy by way of civil proceedings in the county court.
>
> [12] In considering what rights of appeal exist from a decision of the county court in relation to such proceedings, it is important to bear in mind what this court said in *DMcA v A Health and Social Care Trust* [2017] NICA 3:
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> > 'In our view it is clear law that the creation of a right of appeal requires legislative authority. An appeal does not lie unless expressly given by statute (see *Re G An Infant* [1960] NI 35 and *Great Northern Railways Board v Minister of Home Affairs* [1962] NI 24).' [para [28]]
>
> [13] Neither the 1997 Order nor the 1998 Order contain any provisions in respect of an appeal from the county court, nor do they state in any case that the decision of the county court is final and binding.

[14] Article 60(1) of the 1980 Order states:

> 'Any party dissatisfied with any decree of a county court made in the exercise of the jurisdiction conferred by Part III may appeal from that decree to the High Court.'

[15] By Article 60(3):

> 'The decision of the High Court on an appeal under this Article shall, except as provided by Article 62, be final.'

[16] Section 35(2)(d) of the Judicature Act (Northern Ireland) 1978 provides that no appeal lies to the Court of Appeal:

> 'from an order or judgment of the High Court or any judge thereof where it is provided by or by virtue of any statutory provision that that order or judgment or the decision or determination upon which it is made or given is to be final.'

[17] Article 62 states that the High Court may, on the application of a party, state a case for the opinion of the Court of Appeal upon a point of law arising on an appeal under Article 60.

[18] There is therefore no general right of appeal to the Court of Appeal from a decision of the High Court on an Article 60 appeal – the only route is to invoke the case stated mechanism.

[19] The jurisdiction conferred by Part III, headed 'Original Civil Jurisdiction', includes any action up to the statutory limit of £30,000, recovery of legacies, actions involving title to land, injunctions, various equity, probate, and administration matters.

[20] Article 61 of the 1980 Order provides:

> '(1) Except where any statutory provision provides that the decision of the county court shall be final, any party dissatisfied with the

> decision of a county court judge upon any point of law may question that decision by applying to the judge to state a case for the opinion of the Court of Appeal on the point of law involved and, subject to this Article, it shall be the duty of the judge to state the case.'
>
> [21] The 1980 Order makes no reference to claims in respect of the statutory torts created by either the 1997 or 1998 Orders. The question then arises as to whether a litigant dissatisfied with the outcome of a claim of race and/or religious discrimination in the county court can appeal, by virtue of Article 60 of the 1980 Order, to the High Court or whether he must seek to have the judge state a case for the opinion of the Court of Appeal under Article 61."

[16] The Court of Appeal went on to consider the implications of the legislative framework for appeals from the County Court to the High Court, in respect of the statutory tort of discrimination on racial grounds. The judgment goes on to say:

> "[23] In his analysis of the appeal right created by Article 60 of the 1980 Order, BJAC Valentine comments:
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> > 'This does not apply to a matter heard by the county court under some other statutory enactment so that in such matters appeal lies to the High Court only in so far as the statute provides … In the absence of such provision for appeal, the High Court has no jurisdiction to hear an appeal from a county court in its appellate jurisdiction.' (Valentine, General Law of Northern Ireland)
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> [24] By contrast, the same author states in relation to the Article 61 appeal right:
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> > 'This applies to any decision made by a county court in the exercise of any jurisdiction under any statute and is thus wider than Article 60.'
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> [25] *Lee v Ashers Baking Company* [2016] NICA 39 and [2018] UKSC 49 represents a high profile example of the use of the Article 61 case stated mechanism in respect of a claimed breach of a statutory tort under the 1998 Order.

[26] The first question to consider is whether the appeal to McAlinden J fell within the ambit of Article 60. In order to do so, the appeal must have been from a county court exercising its original civil jurisdiction as set out in Part III of the 1980 Order. The only possible candidate for this is to be found in Article 10(1): "a county court shall have jurisdiction to hear and determine any action in which the amount claimed … does not exceed £30,000."

[27] "Action" is defined by Article 2(2) as including:

> "Any proceedings which may be commenced as prescribed by civil bill or petition …"

[28] In any claim involving the statutory torts, the county court has power to grant all such remedies as may be available in the High Court – there is no limitation on its monetary jurisdiction. Indeed, in the instant cases, it is apparent that in each of the civil bills the appellant claimed (as he was entitled to do) damages in the sum of £50,000. It is evident therefore that the county court was not exercising its Part III jurisdiction when it heard these claims but was exercising the jurisdiction specifically conferred by the legislative provisions.

[29] As a result, no appeal against the decision of HHJ Devlin in the county court lay to the High Court under Article 60 of the 1980 Order. An aggrieved party can only pursue an appeal by way of case stated under Article 61 in such circumstances.

[30] If the preceding conclusion is wrong and if the High Court did have jurisdiction to hear the appeal by the Article 60 route, it is clear that there is no right of further appeal to this court. The only mechanism open to a party in that case is to apply to the High Court judge to state a case for the opinion of the Court of Appeal pursuant to Article 62.

[31] McAlinden J therefore had no jurisdiction to entertain the appeal from the county court. No appeal therefore lies to this court. If, contrary to our finding, the High Court did have jurisdiction, the appellant has failed to pursue the correct avenue for a further appeal. The rationale of our analysis and conclusion is that the 1997

> Order and the 1998 Order constitute the lex specialis in the fields to which they apply.
>
> [32] If, hypothetically, a plaintiff pursued a claim under the 1997 Order or the 1998 Order for damages for unlawful discrimination but expressly limited the claim to a sum within the general monetary jurisdiction of the county court, the court hearing the claim would not be exercising the original or general civil jurisdiction but would be acting in accordance with the lex specialis. Accordingly, the Article 60 appeal route would not be available."

Conclusion

[17] It is clear from the analysis of the Court of Appeal that the High Court does not have jurisdiction to hear the appellant's appeal from the decision of HHJ Murray. In short, this appeal does not fall within the ambit of article 60 of the County Courts (Northern Ireland) Order 1980. This is evident from the fact that the claim advanced by the appellant before the county court was for the sum of £10m.

[18] Furthermore, in light of the Court of Appeal's decision, even if the appellant had expressly limited his claim to a sum within the general monetary jurisdiction of the county court (£30,000), the county court hearing the claim would not be exercising the original or general civil jurisdiction, but would be acting in accordance with the *lex specialis* in the field of discrimination under the Race Relations (Northern Ireland) Order 1997 and the Fair Employment and Treatment (Northern Ireland) Order 1998. Accordingly, the article 60 appeal route would not be available.

[19] The court, therefore, concludes that it has no jurisdiction to hear the appellant's appeal, and it is, therefore, dismissed.

[20] Should the appellant wish to challenge the decision of HHJ Murray, then he must apply to have her state a case for the opinion of the Court of Appeal under article 61 of the 1980 Order and seek her permission to do so out of time.