

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

No. HQ13D02410

Royal Courts of Justice

Monday, 10th February, 2014

Before:

MASTER EASTMAN

B E T W E E N :

OGOLE

Claimant

- and -

EGWEA

Defendant

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THE CLAIMANT did not appear and was not represented.

MR. D. J. PRICE QC (instructed by David Price Solicitors and Advocates) appeared on behalf of the Defendant.

J U D G M E N T

(As approved by the Judge)

MASTER EASTMAN:

1. This is an extempore judgement.
2. I have before me an application that this action should be struck out. As defamation actions go, it has something of a chequered history in terms of its progress. The court's indulgence in terms of timetabling in respect of the necessary pleadings to advance the defamation claim has been granted twice already, because I initially gave the claimant chance to file a proper reply. That was not capable of being done within time, and an extension was granted until 24 January when a reply signed by the claimant but drafted by counsel, who I have seen in this action, was served. I also extended time for costs budgets. The claimant's cost budget did come but was a day late. The defendant has complied with timetables.
3. The claimant is sadly in Central Middlesex Hospital at the moment suffering, it would appear from documents that I have seen, from serious prostate cancer complicated by the fact that his pelvis was broken, it would appear, in a move from one hospital to another which has necessitated surgery.
4. His sister has come to court today to advance such matters as she can on his behalf. She is not his lawyer and, as far as I am concerned, there are solicitors still on the record for him. I am not satisfied that his sister has any right of audience before me on the Claimant's behalf. The position is complicated by the fact that it would appear that a notice of change was served on Friday in Form N434 signed by the claimant, saying that Cohen Kramer, solicitors of St. George House, Great St. George Street, Leeds, have ceased to act for the claimant and that he will now be acting in person. It is signed from his sister's address. That confuses me when I have received an email from the solicitor on the record as acting for him complaining about another email sent by an earlier solicitor. The email from Emily Slater which I received at 13.46 today says:

“Dear Sirs, please disregard the contents of this email.” - I interpose referring to the one I mentioned earlier coming from Dr. Mashate – “This is entirely in breach of client confidence and the previous firm of solicitors and Mr. Mashate personally will now be reported to the Solicitors' Regulation Authority. Yours faithfully, Emily Slater.”
5. As Mr. Price QC quite rightly points out, it is slightly odd that she should be bothering herself with writing such an email if she was no longer acting for the claimant. I have no idea whether she has been told that this notice of

change has been filed. The position is ambiguous. This action has had, as I have said, a chequered history.

6. I am asked to strike it out on the basis of the lack of progress that has been made in it so far and the apparent lack of progress that is likely to be made in it in the future. From documents I have seen, it would appear that from a letter dated as long ago as 27 January 2014 from Dr. Chattergee, a consultant physician at Central Middlesex Hospital, which says:

“The above named patient is currently an in-patient at Central Middlesex Hospital under the care of Dr. McCree, Dr. Chattergee, consultant physicians. He was transferred to our care from Northwick Park Hospital on 17 January 2014. He is likely to remain an in-patient for the foreseeable future.”

7. As I have already indicated, from other documents I have seen, it appears that he has prostate cancer, sadly, and is on chemotherapy. I cannot see when this action is ever going to be realistically progressed. There is no information before me that suggests that it will actually be progressed or that the claimant will be in a position to progress this action himself, as he is now said to be acting in person, in the foreseeable future because the only information I have is that indeed he will remain in hospital for the foreseeable future, because that is what the letter of 27 January 2014 says. There is no suggestion that anyone else competent to act for him has been instructed, if I take at face value the assertion that Cohen Kramer has ceased to act.
8. It is quite right, as Mr. Price QC has pointed out, relying upon the old case of *Robbitt v Doctor*, particularly these days when there is a greater impetus for litigation to be got on with than there was when that case was decided back in 1997, one of the purposes of the overriding objective is a move to speedy finality in litigation. It is unjust to defendants to have litigation hanging over them with a claimant who is not in a position to actually progress the matter. There are all manner of other uncertainties about the way in which this litigation has been conducted to date that I do not need to go into for the purposes of my decision now, but it does have a very, very unusual past. That is all I need to say.
9. The fact of the matter is that, as Mr. Price in correspondence fairly points out, if sadly the claimant were to pass away, in the ordinary course of events, there would be no possibility of the defendant being able to recover any costs that he may have so far incurred because the action, being a defamation action, would pass with the claimant and could not be carried on on his behalf.

10. Taking all of those factors into account, I am satisfied that the only fair and proper thing to do with this action is to nip it in the bud now and to strike it out and that is what I hereby do. The action is now struck out.
