



THE SUPREME COURT

DETERMINATION

BETWEEN/

PRINCE ADEMOLA ADEKOYA

PLAINTIFF

AND

IBM INTERNATIONAL HOLDINGS IRELAND

DEFENDANT

Neutral Citation: [2021] IESCDET 39

Supreme Court Record No.: S:AP:IE:2020:000098

Court of Appeal Record No.: A:AP:IE:2018:000327

High Court Record No: 2014/543S

Date of Determination: Monday, 12th April, 2021

Composition of Court: O'Donnell J., Dunne J., Woulfe J.

Status: Approved

**APPLICATION FOR LEAVE TO APPEAL TO WHICH ARTICLE 34.5.3° OF THE
CONSTITUTION APPLIES**

RESULT: The Court does not grant leave to the Plaintiff / applicant to appeal to this Court from the Court of Appeal.

ORDER SOUGHT TO BE APPEALED

COURT: COURT OF APPEAL
DATE OF JUDGMENT OR RULING: 16 th July, 2020
DATE OF ORDER: 16 th July, 2020
DATE OF PERFECTION OF ORDER: 30 th July, 2020
THE APPLICATION FOR LEAVE TO APPEAL WAS MADE ON 20 th AUGUST, 2020 AND WAS IN TIME.

REASONS GIVEN:

General Considerations

- 1.** The general principles applied by this Court in determining whether to grant or refuse leave to appeal, having regard to the criteria incorporated into the Constitution as a result of the Thirty-third Amendment, have now been considered in a large number of determinations and are fully addressed in both a determination issued by a panel consisting of all of the members of this Court in *BS v. Director of Public Prosecutions* [2017] IESCDT 134, (Unreported, Supreme Court, 6 December 2017) and in a unanimous judgment of a full Court delivered by O'Donnell J. in *Quinn Insurance Ltd. v. PricewaterhouseCoopers* [2017] IESC 73, [2017] 3 I.R. 812. It follows that it is unnecessary to revisit the new constitutional architecture for the purposes of this determination.
- 2.** It should be noted that any ruling in a determination is between the parties. It is final and conclusive as far as the parties are concerned, and is a decision in relation to that application only. The issue determined on the application for leave is whether the facts and legal issues meet the constitutional criteria to enable this Court to hear an appeal. It will not, save in the rarest of circumstances, be appropriate to rely on a refusal of leave as having a precedential value in relation to the substantive issues in the context of a different case. Where leave is granted, any issue canvassed in the application will in due course be disposed of in the substantive decision of the Court.

Practice Direction

- 3.** The application comes before this Court on foot of Practice Direction 19 of this Court. The applicant was placed on notice in correspondence that all of the appropriate documentation for the purposes of an appeal had not been filed. In a letter from the Supreme Court Office dated the 20th August, 2020 the applicant was informed that, pursuant to Practice Direction SC19, para. 8, he was required, within seven weeks from the perfecting of the order from which the application was sought, and such extended time as may have been allowed, to file in the Office four hard copies of additional documents. In this instance the Office has completed the book of additional documents with the necessary orders and the ex tempore judgment from the CA which it is under no obligation to complete. The last correspondence from Mr Adekoya was on the 9th December saying that he would complete the books but he did not do so. The nature of the documents required was set out in the correspondence. The applicant was warned that, in the absence of compliance with the Practice Direction, and in the absence of the required documentation being filed, a panel of this Court might dismiss the application. It was the responsibility of the applicant to comply with the Practice Direction. This the applicant has failed to do. Even those facts alone would warrant an order dismissing the application. While this was a referral under the Practice Direction because the paperwork was not complete, the Court is in a position nonetheless to deal with the matter on this occasion.

The Application

- 4.** This determination concerns a decision of the Court of Appeal (Haughton J.; Whelan J. and Donnelly J. concurring) which dismissed an appeal by the applicant against the order of the High Court (Meenan J.) made on the 19th July, 2018. The High Court had dismissed the applicant's application for summary judgment in the sum of €247,776 in respect of what he claimed was a loss of long term disability benefit covering a period from April 2004 until April 2014.

Background

- 5.** The proceedings have been the subject of several judgments of the Superior Courts, there have also been proceedings before the Employment Appeals Tribunal (hereafter "the EAT") and earlier personal injury proceedings.
- 6.** The applicant was employed by the respondent from 1999 to 2004. There is a history of him having suffered a back injury at work and that led him to institute personal injury proceedings, originally in the Circuit Court, in December, 2003. The action was subsequently transferred up to the High Court where it was dismissed in July 2009. The applicant appealed and the Supreme Court overturned the High Court decision and remitted the case for rehearing. It was ultimately heard by Cross J. on the 17th April, 2012. He awarded the applicant the sum of €25,000, and in the course of his judgment Cross J. stated in respect of the applicant:-

"He claimed that he was unable to work, he is certified as being sick by his general practitioner, is in receipt of disability and claims he will never work again and also claims he is entitled to his loss of earnings to date and into the future. The Court does not accept there is reality to that claim."

The judgment of Cross J. was appealed to the Supreme Court who dismissed the appeal and affirmed the order of the High Court.

- 7.** In June, 2004 the applicant claimed that his employment with the respondent had been wrongfully terminated in March, 2004, and he commenced proceedings before the EAT for unfair dismissal and seeking financial compensation. There was no claim under the Minimum Notice and Terms of Employment Acts, 1973 – 2001.
- 8.** That brings us to the present summary proceedings commenced in February 2014, in which the applicant claimed loss of earnings arising from the respondent's alleged breach of contract for failure to provide him with a continuing source of income until retirement age as he was disabled through sickness or accident. He referred to a provision of the permanent employee handbook. In response, the respondent issued a motion seeking to dismiss the proceedings on the basis that they were an abuse of process. In March 2015 the High Court (White J.) acceded to this application, on the

grounds *inter alia* that the claim for loss of earnings should have been included in the personal injuries action. The applicant appealed and the Court of Appeal decided in December 2015 that the long term disability claim was a separate claim which could not have been brought in the personal injury proceedings, or in the EAT claim, and it held that the applicant could potentially seek re-engagement or reinstatement in the EAT proceedings, and therefore the claim in these proceedings could proceed.

- 9.** By letter dated the 20th June, 2016, the EAT informed the applicant that his claim would be heard on the 14th July, 2016. There was no appearance by or on behalf of the applicant on that date and the EAT dismissed his claim. This was confirmed by notice in writing to the applicant dated the 22nd July, 2016. The applicant did not appeal this determination.
- 10.** Instead, the applicant brought an application to the High Court to amend his summary summons proceedings to include a claim for re-engagement or reinstatement. This was refused by the High Court on the 17th October, 2016 and an appeal from that order to the Court of Appeal was unsuccessful in January 2017.
- 11.** These proceedings came on for hearing before the High Court (Meenan J.) on the 12th July, 2018. In essence, Meenan J. found that during the period after April, 2004, the applicant was not employed by the respondent and accordingly, was not entitled to maintain the claim. His claim for benefits available under a long-term disability plan put in place by the respondent was dependent upon the applicant being an employee of the respondent. However, the applicant did not have a contract of employment with the respondent from April, 2004, and he had failed to seek the remedy of reinstatement or reengagement during the EAT proceedings. Thus, the applicant could not claim the benefits he was seeking. The Court of Appeal dismissed the applicant's appeal, being of the view that there was ample evidence to support the conclusion arrived at by the trial judge.

Decision

- 12.** In his application for leave the applicant contends that the decision of the Court of Appeal involves a number of matters of general public importance. The matters set out are of a very general and abstract nature, including matters relating to the Constitution, the European Convention on Human Rights, a European Regulation on the law applicable to contractual obligations, and the EU Charter of Fundamental Rights.
- 13.** The respondent contends that there is no point at issue in these proceedings concerning any matter of general public importance.
- 14.** The application for leave filed, and the respondent's notice in response thereto, are both published along with this determination (subject only to any redaction required by law), and it is therefore unnecessary to set out the position of the parties in further detail.
- 15.** The Court is satisfied that the decision of the Court of Appeal does not involve any matter of general public importance. The decision involved the application of well-established principles of contract law and employment law, and did not involve any of the more general matters now put forward by the applicant.
- 16.** The Court is not satisfied that it is necessary in the interests of justice that there be an appeal to the Supreme Court. Further, insofar as the applicant has sought a reference to the Court of Justice of the European Union, it is clear that no referable issue of European Union law arises. What is involved here is a matter concerning the applicant's employment contract with the respondent, which does not engage any issue of European Union law.
- 17.** The Court therefore refuses the application for leave to appeal.

AND IT IS HEREBY SO ORDERED ACCORDINGLY