

Neutral Citation Number: [2014] EWHC 3286 (Admin)

IN PRIVATE

CO/17406/2013

IN THE HIGH COURT OF JUSTICE  
QUEEN'S BENCH DIVISION  
THE ADMINISTRATIVE COURT

Royal Courts of Justice  
Strand  
London WC2A 2LL

Tuesday, 18 March 2014

**B e f o r e:**

**LORD JUSTICE MOSES**

**MR JUSTICE MITTING**

**Between:**

**THE QUEEN ON THE APPLICATION OF ABC\_**

**Claimant**

**v**

**DIRECTOR OF PUBLIC PROSECUTIONS\_**

**Defendant**

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(Official Shorthand Writers to the Court)

**Mr B Jaffey** (instructed by Leigh Day) appeared on behalf of the **Claimant**  
**Mr K Qureshi QC** (instructed by the CPS) appeared on behalf of the **Defendant**

**J U D G M E N T**  
(As approved by the court)

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## IN PRIVATE

1. LORD JUSTICE MOSES: This is another wholly laudable application by the Claimant, who, for reasons of anonymity, is to be called "ABC" (not my praise but the praise from the Director of Public Prosecutions) in resisting this application for permission to challenge by way of Judicial Review what is said to be the Director of Public Prosecution's failure to exercise powers under section 40 of the Proceeds of Crime Act 2002 to restrain what is said to be funds available for restraint of US\$215,000,000; or, alternatively, to refer the papers to the enforcement authority, the National Crime Agency, for taking civil proceedings pursuant to section 246 on the basis that there is to be no criminal prosecution.
2. The background to the application is an allegation that there has been corruption, contrary both to Nigerian law and the law of the United Kingdom, in relation to an oil price prospecting licence in offshore territorial waters, Nigeria. This had been the subject of a civil claim for payment of fees by Energy Venture Partners Limited against a company, Malabu Oil and Gas Limited, in respect of the sale of Malabu's ownership of that licence. It is said that the funds represent the proceeds of money laundering in that the deal involved bribery of a public official in Nigeria who was said to be (and, indeed, found to be) the beneficial owner of all the shares in Malabu.
3. The assets are at the moment the subject of a civil freezing order, but ABC's concern is that there is to be an oral hearing for permission to appeal (permission in writing having already been refused) which may lead to the removal of the freezing order (indeed, the funds have been brought into court) on application to the High Court. Thus any continuing investigation would, so they suggest, lack the benefit recognised in the policy of the Director of Public Prosecutions, namely the public interest in ensuring that the Defendant has not benefited from criminal conduct. Or, if there is to be no prosecution because there is no very obvious defendant, then at least civil proceedings would no longer be possible for recovery because the funds, once the High Court has ordered them to be released, would have been dissipated. There are, in my view, as there appeared to be to Carr J, who refused application to apply back in January 2014, insuperable problems in relation to this application.
4. The Director of Public Prosecutions, through the CPS, has asserted that the investigation is ongoing, that its exercise of power -- and it is only a power -- whether to seek a restraint is still being considered and that although the Applicant has cited in his grounds information received from the Proceeds of Crime Unit ("the POCU") that the assets are not available for restraint and that the law is not such that it is possible to restrain them, nevertheless the state of the evidence is that the CPS is still considering both the exercise of its power and the ongoing investigation. This seems to me fundamental to consideration of this application. The most this court could do, even if permission were granted and the full case aired, would be to order the Director of Public Prosecutions to consider its powers and review its decisions as to whether to apply for a restraining order in the light of any decision made by the Court of Appeal



and the High Court in relation to the civil appeal and the release of the funds. That, so the evidence shows, is exactly what the DPP is doing now. ABC, perfectly properly, particularly in the context of its excellent relationship with the POCU, accepts that is going on. It does not assert any lack of bad faith. In those circumstances, it seems to me completely pointless to grant permission since it will achieve nothing further than that which is the situation as it stands at the moment.

5. There are further insuperable difficulties. It is unnecessary to repeat the well-known reluctance as a matter of principle of the courts to interfere with the conduct of any investigation. This is indeed a far more stringent reluctance than in relation to challenges to a decision not to prosecute (see L v DPP and others [2013] EWHC, recitation of the well-known principles set out by the President between paragraphs 2 and 5). The allegation is that the Director has failed to follow its own policy in relation to restraint orders where it is generally in the public interest to apply for a restraint order unless the investigation is likely to be compromised to a significant extent where there are reasonable grounds to suspect the defendant has benefited from criminal conduct. But any assertion of the court's role in relation to Judicial Review would require examination of the stage the investigation has been reached and the extent to which it might be compromised. That is a wholly inappropriate task for this court to undertake. It simply is not proper during the course of an ongoing investigation for this court to attempt to scrutinise, still less second-guess, decisions which are not final.
6. The other main allegation made is that no reasons have been given for what is known, namely that hitherto no application has been made. But there is absolutely no obligation whatever, not even arguably an obligation on the part of the Director to give reasons why it has not taken action because to do so would itself require revelation of the stage the investigation has been reached and the considerations which have played upon the minds responsible for conducting the investigation and for making decisions as to whether to exercise the power to ask for a restraining order. There is no question of civil recovery until a final decision has been made. No final decision has been made and it is not suggested that the failure to make a final decision is itself colourable.
7. In those circumstances, it seems to me unarguable to suggest that there has been any public law error in the conduct of the Director of Public Prosecutions at this stage, still less that it is capable of exciting the court to making any grant of relief that will be of any use to ABC at all.
8. In those circumstances I would refuse permission.
9. MR JUSTICE MITTING: So, too, would I.
10. MR QURESHI: My Lord, I am instructed to seek costs. There is a predictive order in place. That's the first point. The second point is, with respect to the presence of a lady from an interested party, Eni, the oil company, what my learned friend Mr Jaffey has identified is concern on his part, and certainly on the part of those instructing me as to how it is that, notwithstanding the order --

11. LORD JUSTICE MOSES: Can we deal with costs first of all?
12. MR JAFFEY: I can't oppose costs and I don't, subject to the limits set by Mr Justice Lewis.
13. LORD JUSTICE MOSES: Yes, subject to the limit we'll make no order as to costs.
14. MR QURESHI: On the question of access to the court file, dissemination of information that should have been protected by the order of Mr Justice Lewis and Mrs Justice Carr, we're really in the court's hands as to --
15. LORD JUSTICE MOSES: What are you asking us to do?
16. MR QURESHI: My learned friend is suggesting that there ought to be some research or investigation, call it what you will, undertaken as to how it is that this information was passed from the court file, which ought to have been sealed, to an interested --
17. LORD JUSTICE MOSES: Who is to conduct that investigation?
18. MR QURESHI: My Lord, I'm only articulating a point that my learned friend has raised. I'm not sure whether there is some other way for the Admin Court to look into this further.
19. LORD JUSTICE MOSES: I'm not sure. I think it is most unfortunate. You may want to but we're not going to make any order about that.
20. MR QURESHI: My Lord, I appreciate that.
21. LORD JUSTICE MOSES: So what about the secrecy of the judgment?
22. MR QURESHI: Your Lordship's judgment refers to certain individuals, Chief Eteti, Malabu, EVP.
23. LORD JUSTICE MOSES: But that's all referred to in the civil proceedings. I'm not sure I've said anything. Why don't we just keep the order that it remains not to be disclosed and then it's up to people to apply and then there can be a debate about it. What about that?
24. MR JAFFEY: My Lord, I respectfully agree with that. Can I add in the light of what Mr Qureshi just said about the lady in Eni, I think I should say that what I saw and she had with her was a copy of the order of Mrs Justice Carr, which on its face says that the interested parties are not to be given a copy of that order and Eni is listed as one of the interested parties. So even on reading it, she should have known that she wasn't entitled to have it.
25. LORD JUSTICE MOSES: We're not going to set in train a great investigation, simply because I'm not quite sure how to do it. I could ask the office but believe you me, justice requires that they devote their very limited resources to helping other people, like your clients, to bring other cases. There may be somebody from the DPP. They



could indeed ring up the office and say, "Does anybody here at the office know anything about it?" because it could have been carelessness of the office. Anyway, I'm not going to say anything about it.

26. MR JAFFEY: It's probably a matter for Mr Qureshi's client to investigate, but I just wanted to mention it.
27. LORD JUSTICE MOSES: Thank you, that's very helpful. We'll order, so far as the judgment is concerned, not to be disclosed without further order.
28. MR QURESHI: I am obliged, my Lord.
29. LORD JUSTICE MOSES: Thank you both very much.