



Appeal number: CA/2014/0016

**FIRST-TIER TRIBUNAL (CHARITY)
GENERAL REGULATORY CHAMBER**

BETWEEN:

MOHAMMED ANIQUE

Appellant

- and -

**THE CHARITY COMMISSION FOR ENGLAND AND
WALES**

Respondent

- and -

**(1) ABDUL RAZZAQ
(2) JAVAID MALIK**

Applicants

**DECISION ON APPLICATION TO BE ADDED AS A PARTY TO THE APPEAL AND
APPLICATION FOR PERMISSION TO APPEAL**

**The application to be added as parties to the appeal is refused. As a consequence the
application for permission to appeal cannot proceed.**

REASONS

- 1) The Applicants applied to the Upper Tribunal (Tax and Chancery Chamber) for permission to appeal against the decision of the First-tier Tribunal (General Regulatory Chamber (Charity)) dated 15 February 2016 refusing their application to be added as parties to these proceedings. The Upper Tribunal ruled on 5th December 2016 that there was an error of law in the First-tier Tribunal's ruling and therefore the Applicants appeal against the decision of the First-tier Tribunal succeeded. As a consequence the application to be added as parties to these proceedings was remitted by the Upper Tribunal to this tribunal for a fresh determination by a Judge not previously involved in the appeal.

Background

- 2) This application was made following the decision of 8 January 2016 (the “Decision”) by the First-tier Tribunal to dismiss the appeal brought by Mr Anique against an order of the Charity Commission dated 9 September 2014 vesting title to land belonging to the Blackheath Jamia Mosque in new holding trustees. The order of 9 September 2014 (the “Order”) was made pursuant to s.69 of the Charities Act 2011 (the “Act”). The Blackheath Jamia Mosque (the “Charity”) is a charity regulated by the Charity Commission of which the Applicants and Mr Anique are members with a long and close involvement.
- 3) Mr Anique brought the proceedings to appeal against the Decision in his own name. Mr Anique had been a holding trustee of the land belonging to the Charity and was removed from that position by the Order. The Applicants participated in the bringing of these proceedings; Mr Razzaq acted as Mr Anique’s McKenzie Friend during the First-tier Tribunal hearing and Mr Malik was a witness in these proceedings.
- 4) Mr Anique decided not to make an application for permission to appeal against the Decision. Mr Anique has been kept informed of the progress of these applications and could have participated at each stage of these applications, including at the hearing on 9th March 2017. He has declined to have any involvement in these proceedings, which is his right, and they have proceeded without him.
- 5) The Applicants wish to appeal against the Decision. They made an application, which was received by the First-tier Tribunal on 9 February 2016, to be added as parties to these proceedings. They also made an application at the same time for permission to appeal against the Decision. The application to be added as parties was made under rule 9 of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (the “Rules”). The Applicants have to become parties to these proceedings, (being the appeal brought by Mr Anique against the making of the Order by the Charity Commission), in order to have the standing to apply for permission to appeal the Decision.
- 6) The First-tier Tribunal refused the application to add the Applicants as parties to these proceedings. This refusal was appealed to the Upper Tribunal who ruled on 5th December 2016 that there was an error of law in the First-tier Tribunal’s ruling. As a consequence the application to be added as parties to these proceedings was remitted by the Upper Tribunal to this Tribunal for a fresh determination.

The Applications

- 7) The application to be added as parties to these proceedings and the application for permission to appeal the Decision are to be considered under the Rules. Rule 9 gives the Tribunal the power to add a party to proceedings once they have commenced. It does not set out specific criteria or a procedure that should be followed in deciding whether or not to add a party. It is clear that the process is not automatic and that the Tribunal must exercise its discretion in deciding whether to agree to the application. In doing so the Tribunal must have regard to the overriding objective of the Rules, which is set out in Rule 2 as follows:

“2. (1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.

(2) Dealing with cases fairly and justly includes -

(a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties;

(b) avoiding unnecessary formality and seeking flexibility in the proceedings;

- (c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;
- (d) using any special expertise of the Tribunal effectively;
- (e) avoiding delay, so far as compatible with proper consideration of the issues.”

- 8) In remitting the application to this Tribunal, the Upper Tribunal, declined to offer any guidelines for the exercise of this discretion. It stated that “A decision to allow joinder of a new party to proceedings (particularly when an application is made after judgment) will inevitably turn upon a close examination of the particular circumstances of each case.”
- 9) The Applicants and the Charity Commission submitted detailed representations and arguments in advance of the hearing of this application. The application was heard on 9th March 2017. Mr Malik permitted Mr Razzaq to speak for him and although Mr Malik made some submissions himself, he agreed that his case was largely argued by Mr Razzaq. The Charity Commission attended the hearing and made submissions. As stated above, Mr Anique did not participate.
- 10) The parties’ submissions both before and at the hearing dealt with the application for the Applicants to be added as parties to the appeal and with the application for permission to appeal the Decision. The Charity Commission argued against both applications. It was understood and accepted by the parties that the Tribunal would only need to consider the Applicants’ application for permission to appeal the Decision if their application to be added as parties was successful.

The Applicants Submissions

- 11) The Applicants set out extensive submissions explaining why it was fair and appropriate for them to be added as parties in order to be able to appeal the Decision. I do not believe that it is necessary to fully record all of these in detail, but it is helpful to summarise the main arguments:
 - They were doing their best to protect the Charity and had always acted with this motivation.
 - Their connection with the Charity was long and deep. Both of the Applicants were founder members of the Charity and Mr Razzaq said that the creation of the mosque was his idea and that both of the Applicants had worked to achieve this prior to the Charity being formed. They had worked long and hard to raise the funds and the support that was required to permit the Charity to come into existence. They and their families had made donations over many years and Mr Razzaq stated that he had a significant outstanding loan to the Charity. Mr Razzaq had held office as General Secretary of the Charity.
 - They had taken steps to bring their concerns about the management of the Charity to the Charity Commission from 2011 onwards.
 - They had worked with Mr Anique to bring the appeal and participated throughout the process. Mr Razzaq had acted as Mr Anique’s McKenzie Friend during the hearing of the appeal.
 - They explained in some detail in their written submissions and at the hearing the reasons for their serious concerns about the conduct of the current management of the Charity. In particular they argued that those appointed by the Order to be holding trustees of the land owned by the Charity were not properly appointed to their position as trustees of the Charity. It was argued that the current holding trustees had achieved that position through the manipulation of the charity and its members by others with power in the Charity. There is a dispute over the proper constitution of the Charity, but it was accepted by the Applicants and the Charity Commission that there are two classes of trustees in the Charity; one group are

referred to as the “managing trustees”, who have day to day conduct of the charity and who are regarded by the Charity Commission as the trustees in law; the second group are referred to as the “holding trustees” and have the property of the charity vested in them and have some other powers under the constitution of the Charity. The Applicants alleged malpractice by the managing trustees and the holding trustees.

- Their religious rights as well as their legal rights have been impinged by the way the Charity is being operated. The Blackheath Jamia Mosque is the Applicants’ place of worship and they have no connection with any other mosque.

The Applicants concluded that the extent of their involvement in the Charity gave them the standing to be joined to the appeal and to bring a further appeal against the Decision.

The Respondents’ Submissions

12) The Charity Commission opposed the application to add the Applicants as parties to these proceedings on three principal grounds: Firstly that the Applicants would not have had standing to bring these proceedings at the outset. Secondly that the application was being brought at a very late stage and that there would have to be exceptional reasons to justify joining the Applicants after a decision had been made in these proceedings. The Charity Commission stated that no such exceptional circumstances existed at this time and the Applicants had every opportunity and all of the knowledge required to join the proceedings at an earlier stage. The third ground was that of proportionality, where the Charity Commission argued that the limited practical effect of the Order had to be compared with the significant expenditure of public and charitable resources required to overturn it and due account had to be taken of the fact that new elections for holding trustees of the Charity will be held in 2018 and may result in any outcome of a successful appeal against the Decision being over taken by the results of the election.

13) The Charity Commission opposed the application for permission to appeal on the basis that they believed that the Applicants’ grounds of appeal did not disclose any alleged errors of law, as opposed to alleged errors of facts, and that the Applicants were seeking remedies that were outside the scope of the Decision or of the Upper Tribunal’s jurisdiction.

The issues in these proceedings

14) The Tribunal has to decide whether in all of the circumstances of this application and these proceedings it is fair and just to exercise its discretion to permit the Applicants to be added as parties at this very late stage. It is clear that the only purpose of adding the Applicants is to permit them to pursue an appeal against the Decision in circumstances where the original appellant does not wish to do so. Whilst it is clear from the Upper Tribunal’s decision and the authorities referred to therein, that the application can be made at this stage in the proceedings and that it should be considered on its merits, it is still appropriate for the Tribunal to exercise some greater caution in deciding whether to add a party after the Decision rather than at an early point in the proceedings.

15) In the circumstances of this case the Tribunal has sought to weigh up a number of factors in determining how best to meet the overriding objective in Rule 2 when considering this application. These include:

- Fairness to the Applicants in seeking to continue the proceedings that they have participated in and which they believe are of great importance to them and to the Charity and its members. I have taken account of the extent of the Applicants’ history with and commitment to the Charity and the significance that the issues in this appeal have for them and for their families.

- Fairness to the Charity Commission, who have been successful in these proceedings after having responded to arguments put by the original appellant and who may have to commit further expense and resources and potentially address new arguments from different parties at the appeal stage. In considering this factor, I note that the Applicants were involved in the bringing of the appeal by the Mr Anique and that the grounds of appeal that they wish to pursue closely reflect the basis on which the original appeal was fought.
- Any impact on the Charity and the risk that charity resources will be expended in the course of resolving these proceedings if the Applicants are added as parties in order to pursue an appeal against the Decision.

16) The need to resolve these proceedings fairly and justly also means taking due account of any strength or weakness in the grounds of appeal against the Decision that the Applicants wish to pursue, in so far as these are apparent on the face of the application for permission to appeal and from the limited representations in the hearing of the applications. The Tribunal heard from the Applicants that they wish to pursue all of the issues that were argued in the First-tier Tribunal. The grounds of appeal deal extensively with the facts that were in dispute prior to the Decision. At the hearing of the applications the Applicants sought to dwell at length on the factual history giving rise to their concerns over the management of the Charity. The Applicants confirmed that they understand that an appeal may only be pursued on the basis that there have been errors of law in the Decision. They argue that the First-tier Tribunal reached the wrong conclusion on most matters of fact and law and that the two are intertwined in this case such that it is not possible to consider them separately. In particular they argue that the proper conclusion on the facts is that the holding trustees were not properly appointed and therefore as a matter of law they could not or should not have had the property of the Charity vested in them pursuant to the Order. I have considered the Applicants' grounds of appeal and I find that the application for permission to appeal does not clearly distinguish between alleged errors of law in the Decision and disagreement with the factual conclusions set out in the Decision. The grounds of appeal also gave rise to concerns over the remedies that the Applicants were seeking. The Applicants seek to set aside the Order and the Decision. This is within the scope of these proceedings. However, they also seek to set aside an earlier order of the Charity Commission relating to the Charity, they require a new order by the Charity Commission that new elections be held for the appointment of management trustees and holding trustees of the Charity and they wish the Charity Commission to be obliged to appoint interim trustees of the Charity after consultation with certain classes of members. It is far from clear that all of these remedies would be available in the event that the appeal against the Decision is successful, indeed, it is not clear that the Tribunal has the power to grant some of these remedies in any circumstances. I consider it appropriate to take account of the confusion on the face of the Applicants' grounds of appeal when considering whether this application should be granted in order to deal with these proceedings fairly and justly.

17) The Charity Commission stated that it was not appropriate to add a party at this stage when they could have applied to be joined at a much earlier stage. I have considered this argument and I accept that the Applicants had knowledge of the proceedings at an early stage and were closely involved in the conduct of the case and that therefore they could have applied to be added as parties much earlier. However, I do not consider that the Tribunal's overriding objective would be best served if individuals who may wish to pursue an appeal and who have the standing to be joined to an appeal feel it necessary to seek to be added as parties during the course of the proceedings just in case the case were to go against them and the original party did not wish to appeal. I have not attached great weight to this factor in the particular circumstances of this case.

18) The Charity Commission also argued that it would not be appropriate to permit a party to be joined to an action that they could not have brought at the outset. The Applicants responded

to this argument and explained why they believe they had the standing to bring the action at the outset. I have considered the representations that were made by the parties and I accept that, in considering whether it is just to permit a party to be added to these proceedings, it is appropriate to confirm that they had the standing to bring the proceedings in the first place. The Act identifies the specific classes of persons who can challenge the Charity Commission's acts and omissions in great detail in Schedule 6. Schedule 6 deals with each of the powers of the Charity Commission under the Act individually and sets out whether a right of appeal exists and, where it does, the specific class of persons who may bring an appeal against the Charity Commission's exercise, or failure to exercise, each power. The overriding principle in rule 2 would not be served if rule 9 was used to circumvent the carefully drafted provisions of the Act.

- 19) The Order was made pursuant to s.69 of the Act. Schedule 6 of the Act permits an appeal against an order made under s.69 to be brought only by three categories of persons. It was accepted by the parties that the Applicants do not fit into the first two categories. The third category is;

(c) *"any other person who is or may be affected by the order"*

The Applicants argue that they are each a *"person who is or may be affected by the order"*. They justify this assertion by reference to their close and deep relationship with the Charity. They point to their long history with the Charity and their extensive involvement in the past and their desire to remedy the problems that they perceive with the conduct of the Charity. They also point to the impact that the Order has had and will have on the mosque at which they worship and on their ability to participate in worship and in other events at the mosque and otherwise enjoy the benefit of membership of the Charity. Mr Razzaq stated that he had been asked to leave the mosque twice when attempting to pray there and that he had been refused admittance when he and a large group of friends and family sought to attend a pre-arranged event for which they had brought food. Both Mr Razzaq and Mr Malik referred to their sons not being admitted as members of the mosque.

- 20) The Charity Commission referred to the Upper Tribunal decision in *John Nicholson v The Charity Commission for England and Wales* 920160 UKUT 0198 (TCC) which considered the meaning of the phrase *"affected by the decision"*. The Upper Tribunal found that in deciding if someone was affected by a decision;

"It is necessary, to focus solely upon the particular decision and to determine whether in all the circumstances it has had an effect upon the particular person in question. It seems to me that in order to be affected by the decision, first the decision itself must relate to the person in some way. Secondly, the person's legal rights must have been impinged or affected by the decision and to be a person who "may" be affected, there must be an identifiable impact on the person's legal rights which is likely to occur..."

- 21) It is clear that the dispute between the members of the Charity has had a significant impact on the Applicants. I take account of the fact that the inability to attend the property of a religious charity that offers a place of worship is serious and may be of greater significance than the inability to use the facilities of a charity with other purposes. However, the Applicants were describing the practical effect of their overall dispute with the current management of the Charity when they referred to the difficulties that they and members of their families have had. It seems to me to be appropriate to consider the particular effect of the Order itself when considering if there has been an impact on the Applicants legal rights and whether they have the standing to bring these proceedings at the outset. The Applicants and the Charity Commission addressed this issue in the hearing and in their submissions. The Charity Commission stated that the Order had limited effect and simply appointed the

trustees who could hold the property of the Charity in their name on behalf of the Charity. The operative part of the Order is brief and to the point:

“The title to the land described in part 1 of the schedule is transferred by the order to the holding trustees listed in part 2 of the schedule to this order in trust for the charity”

22) I note that the Order did not appoint trustees who were responsible for the general management and conduct of the Charity. Neither did it give the trustees referred to in the Schedule the other powers given to those acting as “trustees” in either of the disputed versions of the constitution of the Charity. The Applicants argued that the Order vested the property of the Charity in those identified as the “holding trustees” and that these individuals had already been put into that position within the Charity by means that they regarded as unlawful. They stated that the position of holding trustee carries with it other responsibilities that impact upon the running of the Charity and which affect the Applicants personally. I accept that the trustees listed in the order were selected for their role because they were already holding office as “trustees” under the constitution of the Charity. However, they were not “managing trustees” with responsibility for the day to day operation of the Charity and for complying with its responsibilities in charity law. In considering the effect of the Order on the legal rights of the Applicants, it appears to me to be appropriate to consider only those powers that the “holding trustees” acquired by reason of the Order. Other practical consequences may arise as a consequence of the Order, but the approach adopted by the Upper Tribunal in the Nicholson case and the overriding objective of the Tribunal indicate that I should restrict myself to considering if any legal rights of the Applicants have been affected or impinged by the Order. For the purposes of this application I note that the holding trustees acquired control over the property of the Charity. It is reasonable to infer that amongst the powers that they would have as a consequence is a right in law to control entry to the mosque, which could cause some impact on the Applicants’ legal rights. However, there is no reason to conclude or assume that the other legal rights of the Applicants were affected by the vesting of the property of the Charity in the individuals named in the Order. In relation to any exercise of the power to restrict entry to the mosque, the Applicants were in the same position in law as all other members or users of the mosque. The Order did not address their individual rights. In practice, it was apparent from the Applicants’ submissions that they attributed the refusal to permit Mr Razzaq access to the mosque and the inability of their sons to become members of the mosque to the actions of a group within the Charity that included both the managing trustees and the holding trustees. Overall I am left with considerable doubts about whether the Applicants’ legal rights were affected by the Order and whether either Mr Razzaq or Mr Malik would have had the standing to bring the appeal at the outset. The impact on their legal rights of the vesting of the property of the Charity in the individuals named in the Order is hard to discern. The practical consequences of the Order that they describe appear to have their roots in the broader dispute between different groups of users or members of the Blackheath Jamia Mosque. However, for the reasons set out below I do not find it necessary to come to a definitive conclusion in this point.

23) The limited scope of the Order and the limited effect of any successful appeal that causes it to be set aside is relevant in determining this application. Having considered the submissions of the Applicants I cannot see that any of the issues that concern them in relation to the Charity and which motivate them to bring this application and pursue the appeal, would be resolved even if the Order is set aside. In the event that they were to succeed in having the Order set aside, the Charity Commission would need to issue a new order vesting the Charity’s property in some person or persons. These may be individuals connected with the Charity or it may be the Official Custodian. The Charity Commission would not need to take any other steps or exercise any other powers if the Order is set aside. They would not need to appoint new managing trustees, nor would they need to reallocate any other powers under the proper constitution of the charity, there would be no

need to resolve any of the disputes over the constitution of the Charity or to decide upon the validity of the election of the managing trustees of the Charity or intervene in the process by which members of the Charity are identified and elections are conducted in the future. Similarly it would not be necessary for the Charity Commission to address the Applicant's concerns over other alleged failings in the past governance of the Charity. In so far as the Charity Commission believe that any of these issues need to be addressed they may take action irrespective of whether these proceedings continue or not. It is therefore open to the Applicants to raise their broader concerns regarding the Charity, as they have done in the past, whether or not these applications succeed. If the Applicants became parties to these proceedings and pursued an appeal against the Decision the only issue that would be at stake would be the identity of those in whom the property of the Charity is to be vested.

Conclusion

24) I have considered all of the issues referred to above and the submissions of the Applicants and the Charity Commission. I have reached the following conclusions: The Order has limited effect in law and in practice on the Charity and the Applicants. It is not clear that the legal rights of the Applicant have been affected or impinged solely by reason of the Order. The grounds of appeal that the Applicants wish to pursue are confused and the remedies that they seek are not all available to them. Some additional public expenditure will be required if the applications succeed. There is likely to be an impact on the Charity and its resources but it need not be material. The determination of these proceeding will be delayed if the Applicants are added as parties. Continuing these proceedings will not lead to a resolution of the disputes affecting the Charity, nor will it address the Applicants' principal concerns. Permitting the Applicants to be added as parties to these proceedings in order to pursue them further will require a commitment of time, effort and public expenditure that is disproportionate to the very limited prospects of obtaining any outcome that will resolve the Applicants concerns and grievances. In all of the circumstances I conclude that it is neither necessary nor appropriate to add the Applicants as parties to these proceedings in order to deal with them fairly and justly. These proceeding are a mere skirmish in a larger and more protracted dispute and prolonging them will not assist the Applicants, the Charity, the original parties to this case or the interests of justice.

Decision

- 25) The application to add the Applicants as parties to this appeal is therefore dismissed.
- 26) This application for permission to appeal against the Decision cannot be pursued by the Applicants as they have not been added as parties to this appeal.

Tribunal Judge Peter Hinchliffe

Dated 24th March 2017

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