



Appeal number: CA/2014/0016

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

MOHAMMED ANIQUE

Appellant

- and -

**THE CHARITY COMMISSION
FOR ENGLAND AND WALES**

Respondents

TRIBUNAL: JUDGE ALISON MCKENNA

Sitting in Chambers on 2 February 2015

RULING ON STRIKE OUT APPLICATION

Background

1. On 24 November 2014, I ruled that Mr Anique was a person falling within column 2 of schedule 6 to the Charities Act 2011 and also that his application to the Tribunal should be permitted to proceed out of time. I directed the Charity Commission to file its Response to his appeal.
2. On 22 December 2014 the Charity Commission filed its Response, which contained an application for Mr Anique's appeal to be struck out on the basis that it had no reasonable prospects of success.
3. On 26 January 2015 Mr Anique filed his Reply to the Charity Commission's Response, which includes his comments on the strike out application. He also sent me a file of papers which I have read with interest. He asks the Tribunal not to strike out his appeal and asserts that it has a reasonable prospect of success.

4. This is my ruling on the Charity Commission's application for a strike out, having considered Mr Anique's representations for the purposes of rule 8 (4) of the Tribunal's rules.

The Appeal

5. This matter concerns an Order made by the Charity Commission under s. 69 (1) (c) of the Charities Act 2011, concerning the charity known as Blackheath Jamia Mosque Trust (1025081).
6. The Order, made on 9 September 2014, vests the charity's property in new holding trustees. Mr Anique is one of the previous holding trustees.
7. Mr Anique made representations to the Charity Commission on the contents of a published draft Order and took his objections to it through the Charity Commission's internal review process. I have read the Decision Review dated 6 August 2014. Following the conclusion of the Decisions Review process, the Charity Commission proceeded to make the Order of 9 September 2014.
8. Mr Anique now wishes the Tribunal to hear his appeal against the Charity Commission's Order. As noted above, I have already ruled that Mr Anique is a person who is or may be affected by the Order.

The Strike Out Application

9. In its Response, the Charity Commission explained that it has been engaged with the charity for a number of years, regarding a long-running dispute about control of the charity and the identity of its trustees. The Charity Commission authorised the holding of elections for the posts of members of the management committee and for the positions of holding trustees in 2011. The Charity Commission was satisfied that the elections were conducted in accordance with the charity's governing document. As new holding trustees had been elected, it was necessary for the previous holding trustees to transfer the title in the charity's property to the new holding trustees. As the transfer documents were not signed by the previous holding trustees, solicitors acting for the management committee made an application to the Charity Commission for an Order under s. 69 (1) (c) of the 2011 Act. The Charity Commission decided to make the Order, after receiving objections during the consultation on the draft Order and conducting a Decision Review, as noted above. The Order was finally sealed on 9 September 2014.
10. The Charity Commission now applies for a Strike Out of Mr Anique's appeal on the basis that it has no reasonable prospect of success and that it would be contrary to the overriding objective for it to proceed to a hearing. This is on the basis that (i) the Charity Commission is satisfied that the proposed holding trustees were properly appointed in 2011 and (ii) it is also satisfied as to the identity of the proposed holding trustees.

Mr Anique's Representations on the Strike Out Application

11. Mr Anique has included in his submissions considerable detail about the regrettable on-going charity dispute. He explains that he refused to sign the transfer documents because two of the names of new holding trustees shown on the Land Registry form TR1 did not match the names of persons elected as

holding trustees, when compared with the ballot paper produced for the election. He explained that he has always been willing to sign the papers, but that before he does so he requires proof that the persons named on the ballot paper and the persons named on the form TR1 are the same persons. He says such proof has not been forthcoming. It is clear that Mr Anique also disputes the validity of the 2011 (and subsequent) elections.

12. In respect of the strike out application, he states that (i) he has a good prospect of succeeding in this appeal; (ii) the proposed holding trustees were not, in his view, properly elected and may have misrepresented themselves in the 2011 elections; (iii) it is not the Charity Commission but rather the members of the charity who need to be satisfied as to the identity of the proposed holding trustees and they have not been able to satisfy themselves on this issue.

Ruling

13. The Charity Commission presumably relies upon rule 8 (3) (c) of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 in making this application, although it has not specifically referred to that rule. Its reference to the overriding objective as a basis for striking out an appeal is erroneous, as whilst the overriding objective must be taken into account in exercising any power under the Rules, it does not found a basis for any action by itself.
14. The Charity Commission submits that before it makes an Order under s. 69 (1) (c) of the 2011 Act, it has to be satisfied that that the land in question belongs to the charity and that those in whom it will vest the land have been properly appointed. They do not refer to the provenance of this test, but I note that the question of whether the appointment of the holding trustees has been properly made is the central issue raised by Mr Anique in his appeal.
15. I further note that the Tribunal's jurisdiction in this matter is *de novo* so that the Tribunal is effectively stepping into the Charity Commission's shoes and deciding afresh whether the Order should be made. This involves the Tribunal satisfying itself that the Order should be made. Accordingly, it does not seem to me that the fact that the Respondent to an appeal has satisfied itself about disputed issues should, ordinarily, deprive an Appellant of a right of appeal where the Tribunal's role is to consider the matter *de novo*. To put it another way, the fact that the appeal is opposed by the Charity Commission does not without more meet the test for "no reasonable prospects of success". In considering the meaning of that phrase I have considered case law which I know is familiar to the Charity Commission, although it has not referred to it in this application.
16. I have considered the Upper Tribunal's decision in *HMRC v Fairford Group (in liquidation) and Fairford Partnership Limited (in liquidation)* [2014] UKUT 0329 (TCC), in which it is stated at [41] that

...an application to strike out in the FTT under rule 8 (3) (c) should be considered in a similar way to an application under CPR 3.4 in civil proceedings (whilst recognising that there is no equivalent jurisdiction in the First-tier to summary judgement under Part 24). The Tribunal must consider whether there is a realistic, as opposed to a fanciful (in

the sense of it being entirely without substance) prospect of succeeding on the issue at a full hearing...The Tribunal must avoid conducting a “mini-trial”. As Lord Hope observed in *Three Rivers* the strike out procedure is to deal with cases that are not fit for a full hearing at all.

17. Applying this approach, I have concluded that the Appellant’s prospects of success in this appeal fall into the “realistic” rather than the “fanciful” category of cases. Mr Anique has asked the Tribunal to consider afresh the issues in dispute, and those issues concern the propriety of the Charity Commission having made the Order in question. Such an appeal cannot be described as “entirely without substance”. Accordingly, I am satisfied that Mr Anique’s appeal involves issues which should be decided by the Tribunal after a hearing and that it would not be fair and just to strike out his appeal at this point. I therefore refuse the Charity Commission’s application.
18. I have attached to this Ruling some draft case management directions. I would be grateful if the parties could consider in particular the matters shown in bold and indicate within 14 days of the date appearing below whether the directions are agreed or whether they would like me to convene a directions hearing.

ALISON MCKENNA
PRINCIPAL JUDGE
2 February 2015

© CROWN COPYRIGHT 2015

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

MOHAMMED ANIQUE

Appellant

- and -

**THE CHARITY COMMISSION
FOR ENGLAND AND WALES**

Respondents

DRAFT DIRECTIONS

Upon the parties agreeing the following directions **IT IS DIRECTED** as follows:

Mode and length of hearing

1. This appeal is to be listed for an oral hearing in **Birmingham**, with a time estimate of **one day**. The parties are requested to provide the Tribunal with the dates to avoid for their representatives and witnesses during the period **7 April to 29 May 2015** as soon as possible, following which the Tribunal will notify them of the hearing date and venue;

Agreed bundle of documents

2. The parties are to use their best endeavours to agree the contents of a bundle of documents for the Tribunal hearing, in accordance with the arrangements set out below;
3. The first draft of the index to the hearing bundle is to be prepared by the Respondent and served on the Appellants by 5pm on **2 March 2015**;
4. By 5pm on **9 March 2015**, the Appellant is to notify the Respondent whether there are any additional documents in his possession that he wishes to add to the bundle. The Appellant is to supply a copy of any documents to the Respondent if so requested;

5. A consolidated version of the bundle is to be prepared by the Respondent and forwarded to the Appellant by 5pm on **23 March 2015**;

Witness statements

6. By 5pm on **16 March 2015** the parties are to exchange with each other any written witness statements on which they wish to rely at the hearing or to confirm that they will not be calling witness evidence. If witness statements refer to any documents in the bundle, the relevant page number is to be used in the statement;
7. The witness statements (which must contain a statement of truth) are to stand as evidence in chief at the hearing, although supplementary questions may be asked with the permission of the Tribunal. No party is to call any witness in respect of whom a written statement has not been exchanged without the Tribunal's permission. Each party is to notify the other if they wish to cross examine any witness in respect of whom a statement has been filed by 5pm on **23 March 2015**.

Lodging of bundles with the Tribunal

8. A final version of the hearing bundle, to include any witness statements and any exhibits, is to be prepared by the Respondent and four copies are to be lodged with the Tribunal **no later than seven days before the hearing date**. A further copy is also to be brought by the Respondent to the hearing for use by witnesses (if any).

Skeleton arguments

9. Statements of Case (Skeleton arguments) are to be exchanged by the parties and lodged with the Tribunal by e mail, by **no later than 7 days before the hearing date**.

Bundle of authorities and statutory materials

10. The parties are to use their best endeavours to agree a bundle of authorities and statutory materials, in accordance with the directions below.

11. The first draft of the index to the authorities bundle is to be prepared by the Respondent and served on the Appellant by no later than **fourteen days before the hearing date;**
12. The Appellant is to notify the Respondent whether there are additional materials which he wishes to be included in the authorities bundle **by no later than ten days before the hearing date;**
13. A consolidated version of the authorities bundle is to be prepared by the Respondent and provided to the Appellant **by no later than seven days before the hearing date.** The index (only) to this bundle is to be sent by e mail to the Tribunal **by no later than three days prior to the hearing date** and **three hard copies are to be lodged with the Tribunal at the hearing.** **The Authorities bundle must contain only those authorities specifically referred to in the skeleton arguments.**

Other

14. The parties have permission to apply to vary these directions or to apply for further directions provided such application is in writing setting out the full reasons for the application and (where applicable) before the time limit for complying with the direction has been reached.