



Appeal number: CA/2014/0016

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

Decided without a hearing
On 9th May 2017

Before

JUDGE PETER HINCHLIFFE

BETWEEN:

MOHAMMED ANIQUE

Appellant

- and -

**THE CHARITY COMMISSION FOR ENGLAND
AND WALES**

Respondent

- and -

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

Applicants

**RULING ON APPLICATION FOR PERMISSION TO APPEAL A REFUSAL TO
ADD THE APPLICANTS AS PARTIES**

The Applicants' application for permission to appeal dated 20th April 2017 is refused.

REASONS

- 1) The Applicants applied for permission to appeal against the decision of the First-tier Tribunal (General Regulatory Chamber) (Charity) dated 24th March 2017 (the "Decision") refusing their application to be added as parties to these proceedings.

Background

- 2) This application was made following the decision of 8 January 2016 by a differently constituted First-tier Tribunal to dismiss the appeal brought by Mr Anique against an order of the Respondent dated 9 September 2014 (the "Order") vesting title to land belonging to the Blackheath Jamia Mosque (the "Charity") in new holding trustees. The Charity is a charity regulated by the Respondent of which the Applicants and Mr Anique are members with a long and close involvement.
- 3) The Applicants wish to appeal against the decision of 8 January 2016. 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 of 8 January 2016. 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 wish to become parties to the appeal brought by Mr Anique against the making of the Order by the Respondent in order to have the standing to apply for permission to appeal the decision of 8 January 2016.
- 4) The First-tier Tribunal initially 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 the First-tier Tribunal for a fresh determination.
- 5) In the Decision I decided that the application to add the Applicants as parties to the appeal should be refused.

The Application

- 6) The Applicants submitted an application for permission to appeal the Decision on the basis that the Decision contained a number of errors of law. The application sets out extensive and wide ranging reasons for arguing that the Decision contained errors of law and highlights the following as grounds of appeal:
 - a) The decision was beyond what was required of the tribunal to determine.
 - b) Rule 2 and rule 9 of the Rules and CPR 19.2 and s.15 of the Charities Act 2011 were not observed.
 - c) The Decision wrongly relied upon the case of John Nicholson v The Charity Commission for England and Wales 920160 UKUT 0198 (TCC).

- d) The tribunal erred in law by not observing the Charity's constitution.
 - e) The tribunal erred in law in considering that the property of the Charity could be transferred to those who were not legally and validly elected as trustees.
 - f) The tribunal had no jurisdiction to uphold the Order .
 - g) The Decision was contradictory to the findings set out therein.
- 7) In accordance with rule 44 of the Rules, I have considered whether to review the Decision. I have decided not to review that decision as I am satisfied that there was no error of law in that decision.
- 8) I note that that the Applicants were provided with notification of their right to appeal against the Decision and the time within which, and the manner in which, such right of appeal may be exercised in the e-mail that accompanied the Decision.
- 9) I have carefully considered each of the Applicants' grounds of appeal and their submissions. I am not satisfied that any of these grounds or submissions raises arguable errors of law.
- 10) The Applicants appear to have misunderstood the scope of the Decision. It relate to the exercise of the tribunal's discretion under rule 9 to add a party to the proceedings once they have commenced. The Applicants seek to address many of the substantive issues in the appeal in their grounds of appeal. These issues have only limited relevance to the exercise of the tribunal discretion to add new parties to the appeal.
- 11) I would like to specifically address one aspect of the Applicants submission in support of their request for permission to appeal. The Applicants refer to a contradiction between a part of a sentence in paragraph 18 of the Decision and the final outcome. The relevant section of paragraph 18 is set out in context and marked in bold below:

*“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.”*

- 12) The paragraph refers to the submissions by both the Applicants and Respondent on the issue of whether the Applicants would have had the standing to bring the appeal

at the outset if Mr Anique had not done so. The section marked in bold sets out my response to these submissions. I accepted that confirming whether or not the Applicants had the standing to bring an appeal against the Order when it was first made was relevant in considering if it is just for the Applicants to be added as parties to the proceedings at this late stage. It does not set out my conclusion on this issue. The Decision then goes on to consider whether the Applicants did have such standing and concludes in paragraph 22; *“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. However, for the reasons set out below I do not find it necessary to come to a definitive conclusion in this point.”*

- 13) My conclusions in relation to the exercise of the discretion to add parties to the proceedings pursuant to Rule 9 are set out at paragraphs 23 and 24 of the Decision. The Applicants’ application for permission to appeal does not identify any error of law in these conclusions.

Decision

- 14) This application for permission to appeal against the Decision is refused.
- 15) In accordance with Rule 43 of the Rules, the Applicants are advised of their right to make an application to the Upper Tribunal in writing for permission to appeal the Decision refusing to join the Applicants as parties to these proceedings within one month of this decision being issued. Any such application must include a copy of this decision, the Decision and any accompanying letters in relation to each decision. See <https://www.gov.uk/tax-upper-tribunal/how-to-appeal>

Signed

Peter Hinchliffe
Judge of the First-tier Tribunal

Date: 9th May 2017

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