



**First-tier Tribunal
(General Regulatory Chamber)
Charity**

Appeal Reference: CA/2019/0007

Between

SAMSON OCHIENG

Appellant

and

THE CHARITY COMMISSION FOR ENGLAND AND WALES

Respondent

Judge

PETER HINCHLIFFE

RULING ON APPLICATION FOR PERMISSION TO APPEAL

1. The Appellant's application for permission to appeal dated 8 May 2020 is refused.

REASONS

2. The Appellant applies for permission to appeal against the decision issued in this case by the First-tier Tribunal (General Regulatory Chamber) (Charity) and promulgated on 24 March 2020 (the "Decision").

3. The Decision set out the Tribunal's conclusions on the appeal brought by the Appellant, Mr Ochieng, against an order made by the Respondents, the Charity Commission, on 13 February 2019 to disqualify him from being a trustee for any and all charities and from holding any office or employment with senior management functions in any or all charities for a period of eight years (the "Order"). The Order was made under s.181A of the Charities Act 2011 (the "Act").

4. The Tribunal concluded in its Decision that the appeal should be rejected and that the Order in the form issued by the Charity Commission represented a proportionate and reasonable means of achieving a necessary level of protection.

5. The Appellant sets out the grounds of his appeal against the Decision in the application for permission to appeal. The Appellant state that there is an error in law in the Decision and in the reasoning of the Tribunal in making the Decision: The error of law is that the Tribunal failed to provide adequate reasons for their decision insofar as they failed to outline and explain for each of their findings of fact the burden and standard of proof required and in any event failed to set that out in their written reasons to the Appellant.

6. In accordance with rule 44 of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009, I have considered whether to review the Decision. I have decided not to review it, as I am satisfied that there is no error of law in the Decision.

7. Permission to appeal the Decision can only be granted if the application identifies an alleged error or errors of law in the Decision. I accept that a failure by a Tribunal to provide adequate reasons for its decision could, if correct, justify the granting of permission to appeal.

8. The Decision of the Tribunal sought to address and to reach findings on the evidence and submission by both parties on matters of fact that both parties recognised were complex and uncertain. The Tribunal is required to consider afresh the order being appealed against and it may consider, and in this case did consider, evidence that was not available to the Respondent. The Decision make it clear at para 52 of the Decision that the Tribunal did not accept the factual position advanced by either party in full. In particular, it found that the assertion that the Appellant had committed fraud was not made out and the Tribunal reached its decision on the basis that the Appellant had not committed fraud. The Tribunal was unable to accept either of the different explanations offered by the parties about the extent to which charitable funds had been misappropriated and by whom.

9. The Appellant sets out at paragraph 19 of the application for permission to appeal a number of issues that they believe needed to be determined in order to decide the appeal. The Tribunal expressly stated in the Decision that it did not need to reach a conclusion on such issues in order to decide if the Order was appropriate or not.

10. The Tribunal stated in the Decision that it was necessary to reach a conclusion on whether the conditions set out in s.181A of the Act had been satisfied. In order to do so, the Tribunal found that it was sufficient in the particular circumstances of this case to find that the funds and the reputation of the charity had been put at risk by the Appellant's misconduct and mismanagement. The Tribunal heard extensive evidence and submissions by the parties on the facts and issues in this case and was able to come to a clear conclusion on the relevant facts and law.

11. The Tribunal's findings of fact on matters that were key to its decision are set out in the Decision, in particular at paragraphs 65-72. The evidence and submissions that the Tribunal took in to account in reaching these findings are also set out in the Decision. In reaching its decision on the evidence, the Tribunal applied the ordinary civil standard of proof and this was referred to in the hearing. There is nothing exceptional or particular in this case that required an express explanation in the Decision of the standard or burden of proof.

12. In all of the circumstances, I conclude that this application does not set out an arguable case that there has been an error of law in the Decision.

13. Accordingly, I refuse the application for permission to appeal.

Decision

14. This application for permission to appeal against the Decision is refused.

15. In accordance with Rule 43 of the Rules, the Appellant is advised of its right to make an application to the Upper Tribunal in writing for permission to appeal the Decision 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
26th May 2019