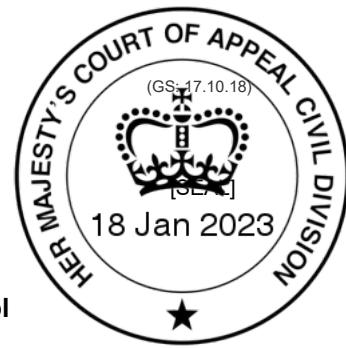




# IN THE COURT OF APPEAL, CIVIL DIVISION

REF: CA-2020-000690 C



Mark Howell –v– David Evans AND Iain McNicol

CA-2020-000690-C

## ORDER made by the Rt. Hon. Lord Justice Warby

On consideration of an application to reopen an application or appeal, previously refused or dismissed

### Decision:

Application referred to another Lady/Lord Justice.

ORDER AMENDED UNDER THE SLIP RULE UNDERLINED IN RED THIS 20 JANUARY 2022-2023ORDER RE-AMENDED UNDER THE SLIP RULE UNDERLINED IN GREEN THIS 23 JANUARY 2023

### Reasons

1. In this action Mr Howell complained that Labour Party officials had acted dishonestly in a way that sabotaged the Party's chances of winning the 2017 General Election (GE). In his capacity as a member of the Party he claimed remedies for breach of contract, breach of fiduciary duty, an equitable right to a restitutionary remedy, and alleged fraud.
2. On 30 July 2020 Tipples J ordered that Mr Howell's claims be struck out on the basis that his statement of case disclosed no reasonable basis for a claim. On 11 September 2020 Tipples J granted a General Civil Restraint Order (GCRO) against Mr Howell. This restrained him for two years from that date from issuing any further claims or applications without the permission of Tipples J.
3. On 14 May 2021 Nicola Davies LJ refused permission to appeal (PTA) against the order striking out this claim. ~~She certified the application for PTA as totally without merit (TWM).~~ This is the third application pursuant to CPR 52.30 to reopen the application for PTA notwithstanding that decision of Nicola Davies LJ.
4. The first application to reopen was refused by Nicola Davies LJ herself, on 18 August 2021. The second was referred to me. I refused it and certified it as TWM by order dated 21 December 2021. On 10 November 2022, Mr Howell made this further application for which he sought a 1-hour hearing.
5. The general background is set out in detail in my order dated 21 December 2021 which also explains my reasons for refusing the second application. It is unnecessary to set all that out again here. But it is relevant to note some of the points I made.
6. I said that a second application to re-open on the same grounds would not be permissible in the absence of a change of circumstances; and that a second application on different grounds which could have been advanced before would be liable to dismissal as an abuse of the *Henderson v Henderson* variety. I went on to analyse the first application to re-open and the one with which I was then dealing. My conclusion was that the current application consisted of (a) an untenable suggestion of corruption, based on nothing more than the brevity of the judge's reasoning; and (b) complaints that either were or could have been raised on the initial application, which were an abuse of process. I went on "for good measure" to consider the adequacy of Nicola Davies LJ's reasoning, concluding that all Mr Howell's three original grounds of appeal had been addressed and sufficient reasons given for rejecting them.
7. The present application relies on what is said to be fresh evidence. The application notice seeks an order re-opening the appeal "to reflect new evidence not before available of judicial misconduct denying my right to be heard". It is said that the new evidence "supplements two such instances in the grounds of

appeal". It is further said that "Misconduct combined with having disposed of the wrong case suggests bias."

8. The "new evidence" has two aspects: a further allegation of misconduct on the part of Tipples J (two specific allegations of that nature having been made in early documents), and *The Forde Report* – the report of an inquiry established by the Labour Party National Executive Committee on 1 May 2020 and Chaired by Martin Forde KC.
9. The Forde Report was first published on 15 July 2022. It is relied on for several propositions, the gist of them being findings that Labour Party HQ secretly took strategic decisions in the 2017 GE campaign that were wrongfully concealed from the Campaign Committee, Campaign Co-Ordinator and Leader of the Opposition (LOTO), and that this was arguably a breach of an implied duty of good faith.
10. The further alleged misconduct by Tipples J is a failure to comply with her own GCRO by determining an application which Mr Howell says he made on 21 October 2021. That misconduct is said to have "crystallised" on 11 September 2022, that being the date of expiry of the GCRO.
11. The application to reopen has been referred to me, as is the normal procedure where an application to reopen is made after a judge of this court has dealt with the case.
12. I have considered whether I should deal with the matter. I have concluded that would be better if it were dealt with by another member of the court.
13. As my above quotation from his application notice implies, Mr Howell maintains his earlier contentions. He contends that his grounds of appeal have still not been adequately addressed by this court. That is clear from his "reasons for reopening the application for permission to appeal." The new evidence may be relied on as in itself sufficient to justify re-opening the application. I am not entirely clear as to that. But it is certainly relied on as supporting and bolstering the points he made earlier so as to justify a different decision from the one that I made. And my reasons for that decision (as well as those given by Nicola Davies LJ) are said to be inadequate.
14. I do not believe I could fairly be accused of actual or apparent bias if I did decide this application. Calling on another member of the court to review the case will consume additional judicial resources. But in all the circumstances I have nevertheless decided that is the best course to take.

Note: Where the application is refused the decision of the judge is final and the application cannot be renewed to an oral hearing - see rule 52.30(7) and *Taylor v Lawrence [2002] EWCA Civ 90*

Signed:  
Date: Lord Justice Warby  
18 January 2023  
BY THE COURT