

Neutral Citation Number: [2014] EWCA Civ 1005

Case No: B2/2014/0611

IN THE COURT OF APPEAL (CIVIL DIVISION)  
ON APPEAL FROM CENTRAL LONDON CIVIL JUSTICE CENTRE  
(HHJ HAND QC)

Royal Courts of Justice  
Strand, London, WC2A 2LL

Tuesday, 1 July 2014

B E F O R E:

**LORD JUSTICE KITCHIN**

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**BOSTRIDGE**

**Applicant**

-v-

**OXLEAS NHS FOUNDATION TRUST**

**Respondent**

(DAR Transcript of  
WordWave International Limited  
A Merrill Communications Company  
165 Fleet Street, London EC4A 2DY  
Tel No: 020 7404 1400 Fax No: 020 7831 8838  
Official Shorthand Writers to the Court)

**Mr Drabble QC & Mr Edwards** (instructed by RCT Solicitors) appeared on behalf of the  
Applicant

The Respondent did not appear and was not represented

J U D G M E N T  
(Approved)

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1. LORD JUSTICE KITCHIN: This is an application for permission to appeal against the order of His Honour Judge Hand QC dated 5 February 2014 giving judgment for the appellant but awarding him only nominal damages in respect of his claim for false imprisonment by the respondent. The application for permission to appeal was refused on the papers by Floyd LJ by order dated 2 April 2014. The appellant has requested that refusal be reconsidered at an oral hearing which has come on before me today. The appellant has been represented at this hearing by Mr Drabble QC and Mr Edwards.
2. The facts were agreed and are set out by the judge in his clear and concise judgment. In short, the appellant is a schizophrenic who has from time to time been admitted to hospital and detained pursuant to section 3 of the Mental Health Act 1983.
3. On 19 August 2009 the respondent recalled the appellant to hospital purportedly pursuant to section 17E(6) of the Act on the basis that he was the subject of a valid Community Treatment Order (CTO). However, the CTO was in fact unlawful because when it was made the appellant had been discharged from hospital.
4. From 19 August 2009 the appellant was unlawfully detained by the respondent for a total period of 442 days. It was not until 3 November 2010 that the unlawfulness of his detention was appreciated. On that day he was released but immediately admitted and detained pursuant to section 3 of the Act.
5. It was accepted that throughout the period of his unlawful detention the appellant was ill. He never appreciated that his detention was unlawful and he was treated in the same way that he would have been had his detention been lawful. An independent psychiatrist reported that there was no evidence that his clinical condition had improved sufficiently for him to have been considered no longer liable to detention; nor was there any evidence that he had suffered damage as a result of his unlawful detention. Further, the problems which he displayed were those of his constitutional disorder. Had he been detained lawfully he would have suffered the same unhappiness and distress.
6. The judge recognised that the tort of fault imprisonment is actionable regardless of whether the victim has suffered harm. However, he considered that he was bound by the decisions of the Supreme Court in Lumba & Mighty v SSHD [2011] UKSC 12 and Kambadzi v SSHD [2011] UKSC 32 to award the appellant nominal damages only because he had suffered no loss as a result of his unlawful detention.
7. Mr Drabble submits that in approaching the matter as he did the judge fell into error because the decisions of the Supreme Court in Lumba and Kambadzi do not establish that only nominal damages follow where there was a complete absence of statutory authority for a detention. To the contrary, Mr Drabble argues, there is a distinction between an unlawful detention where there was no threshold power to detain and detention which is unlawful on other grounds despite there having been lawful authority to detain in the first place. Moreover, Mr Drabble continues, the Act reflects the particular importance of compliance with the procedural requirements for lawful detention and it is simply no answer to the appellant's claim to say that he could have been detained had the appropriate procedures been followed. What is more, says Mr

Drabble, the appellant has lost the protection of the rights and procedures which Parliament has provided in the Act for vulnerable persons such as him. That, he says, is a real not a nominal loss.

8. I have been persuaded that these are points which merit consideration by this court, both because an appeal would have a reasonable prospect of success and because the appeal raises a point of principle, namely the approach to be adopted where a person responsible for an unlawful detention was not in a position lawfully to detain the subject without ensuring that an important condition precedent had been fulfilled, the condition precedent being compliance with the safeguards contained in section 3 of the Act. Further, in the circumstances of this case, compliance with those safeguards was not a matter which lay wholly within the power of the respondent.
9. Accordingly I have decided that it is appropriate to grant permission to appeal.