Ref. PT-2023-000576

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
CHANCERY DIVISION

7 Rolls Building
Fetter Lane
London

Before DEPUTY MASTER JEFFERIS

IN THE MATTER OF

CHIPAMPE MULOMBE (Claimant)

- v -

SARAH CHILTAU KASOMA (Defendant)

MR ARFAN KHAN appeared on behalf of the Claimant
THE DEFENDANT appeared in Person

JUDGMENT
25th JULY 2025
(AS APPROVED)
Reissue 1

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MASTER JEFFERIS:

1. I now have to rule on this application for an adjournment of the trial made by the defendant. This is not a complex case. It effectively has only one issue and the issue is whether the claimant was adopted by the deceased.

2. Now, the parties instructed jointly experts in Zambia, some of whom are advocates, who have provided a report. They made enquiries of the proper sources and have reached the conclusion that, despite what was then the position in absence of an adoption certificate, the claimant probably was adopted by the deceased.

3. Now, this is the defendant's third application for an adjournment made by letter yesterday and ably presented orally by her son today. None of the three applications have been made by a proper application notice and none of them is supported by a witness statement. They have not instructed solicitors to make the application for an adjournment, despite having apparently contacted a number of solicitors and direct access barristers.

4. The first application for an adjournment was made by an email which was put on the court file on 22nd July - that is to say, the very day before the commencement of the trial - and this email was written as if it came from the defendant, albeit it was sent by her son. That email which is dated 18th July and, as I say, was filed on 22nd July, says: "Subject: Request for an adjournment and update on representation" and provides the case number:

> "I am writing in relation to the above matter currently before the High Court, which I am a party.
>
> I would like to formally notify the court that I instructed Mr Prakash Patel of Spencer West LLP on 11th July that I wished to withdraw from the proceedings and no longer wished to proceed to trial. Despite this clear instruction. *(sic)* I also sent across other instructions to him including adjourning due to waiting on documents to which he did not follow instructions or give any reason. Mr Patel did not act in accordance with my wishes and instead submitted an application to withdraw himself from the record as legal representative. I did not authorise this course of action, nor did I sign any such notice.
>
> In view of this, I respectfully request that the court acknowledges my instructions and notes that I do not wish to proceed to trial under the current circumstances.
>
> Additionally, I am now unrepresented and require time to secure alternative legal representation. I therefore request reasonable adjournment of the trial date to allow me to do so.
>
> Please confirm receipt of this letter and advise on the court's position regarding an adjournment, as well as any further steps required of me at this stage."

Then on the footer of that page there is an email on 22nd July, which says:

> "Good morning.

> Yesterday I spoke to Jack regarding a letter needing to be sent to the Masters regarding a trial listed for tomorrow and need to adjourn. I am just wondering if there is an update."

That was sent by, it says, Kenneth Tahindi, who is the son of the defendant who has appeared before me on Wednesday and today.

5. I treated that letter as an application for an adjournment which I heard at the start of the trial and I allowed the defendant's son to address me as a McKenzie friend. I refused the application for reasons which I gave at that time and Mr Kasoma continued to represent his mother during the rest of the morning and part of the afternoon, for example, cross examining the claimant himself.

6. The second application was made orally by Mr Kenneth Kasoma on the afternoon of the first day of the trial and I refused that for the reasons which I gave at that time.

7. The third application was made and it was received by the courts on 24th July. Apparently, it was hand-delivered by the defendant and it reads:

> "I am writing to respectfully make a formal in-person application for an adjournment in the above-captioned matter. This is now the third application for an adjournment I have had to make. The previous two applications were made in writing and my son, Kenneth Tahindi, was forced to be absent from work to make this application in my stead and clearly explaining that I was unwell and unrepresented. Despite this, both were declined.
>
> Since my solicitor, (Mr Prakash Patel), resigned on 18th July 2025, I have been left without legal representation. His resignation occurred just four working days before the trial, despite my clear instructions given on 11th July."

That is presumably referring back to the instructions she mentions in her first email on 11th July namely that:

> "I wish to withdraw from proceedings and I no longer wish to proceed to trial. So despite my clear instructions which were, as we can see, to withdraw, …"

The email received on 24th July 2025 continues:

"His failure to follow the instructions left me without support at a critical point in proceedings.

Due to this, and in genuine respect for the court, I have forced myself to attend in person despite experiencing significant physical illness, severe anxiety and depression. I am in no fit state to represent myself, mentally or legally, and I do not have the capacity to instruct new solicitors within such a short time frame.

Furthermore, I have sought advice and all legal professionals consulted have confirmed that no barrister or solicitor will be able to step in at this stage without proper time to understand the complexity and volume of this case."

It then reads:

> Legal Grounds for Adjournment
>
> I rely on Article 6 of the Human Rights Act 1998, which ensures:
>
> > "Forcing a party to proceed
> >
> > without legal representation and
> >
> > whilst unwell or mentally impaired,
> >
> > violates this right to a fair trial, especially in the case with significant factual and legal complexity. The civil procedure rule CPR 3.12(b) also permit the court to adjourn the hearing to deal with the matter justly.
> >
> > **My request**, I respectfully ask the court grants an adjournment to:
> >
> > Allow time for me to secure suitable representation,
> >
> > Protect my health and wellbeing during the ongoing illness, Ensure the matter can be dealt with fairly, proportionately and in the interest of justice.
> >
> > I appreciate the court's time and understanding of the urgency and emotional toil this has taken on me."

8. Attached to that was a document which in the top right hand corner says

> "Belfast Health and Social Care Trust.
>
> Today's Date 23rd July 2025.
>
> Patient: Sarah Kasoma.
>
> Date of visit: 23rd July
>
> Arrival time: 8:38"

So that was the date of the trial and just before the trial opened at 10:30.

> "Document BT Royal Victoria Hospital Emergency Department. Royal Victoria Hospital, 234 Grosvenor Road, Belfast, County Antrim, Northern Ireland.
>
> To whom it may concern, Sarah Kasoma was seen and treated in our Emergency Department on 23/07/25.

> Respectfully,
>
> Emergency Dept. Team."

So she was seen on 23rd July and the document is dated 23rd July.

9. Looking at the background, the defendant's solicitor came off record by an order made on Thursday, 17th July. Now he was not fired, I acknowledge, and have to take into account that he came off the record apparently of his own volition. That was three full working days before the trial and, despite that opportunity of the three working days, the defendant has not obtained other legal advice. It also shows that the defendant was legally represented right the way up to last week.

10. The trial was initially listed for 14th, 15th and 16th January 2025. This was vacated and it was re-listed on Wednesday 29th November 2024, so it has been listed for this Wednesday of this week since November 2024 and therefore it has been listed for six months.

11. The defendant relies on her rights under Art.6 and I acknowledge those rights, but the claimant also has rights under Art.6 to a fair trial and justice delayed is justice denied. The position here is that I have to exercise my discretion. I can adjourn, I have a discretion to adjourn, or I can decide to continue the trial regardless of the defendant saying she is not able to address me properly and not being represented. I have a discretion which I have to exercise.

12. The court also has to consider the court's resources. The court has set aside three days on two occasions and now it is being asked to adjourn this trial. That is not a satisfactory situation when considering the overriding objective. The fact that the solicitor has come off the record is not of itself on its own enough to merit an adjournment. One has to look at the overall circumstances.

13. The defendant says that she is too unwell to appear or her son says so, on her behalf. I have seen the note from the medical people in the A&E department, but in my judgment that is not sufficient to satisfy the court. The court requires cogent evidence to adjourn the case on the basis of somebody's inability to attend.

14. Mr Khan of counsel for the claimant referred me to a passage in the *Financial Conduct Authority v. Avacade Ltd* [2020] EWHC 26 (Ch) at para.59 which points out that:

> "Such evidence should identify the medical attendant and give details of his familiarity with the party's medical condition (detailing all recent consultations), should identify with particularity what the patient's medical condition is and the features of that condition which (in the medical attendant's opinion) prevent participation in the trial process, should provide a reasoned prognosis and should give the court some confidence that what is being expressed is an independent opinion after a proper examination."

It goes on to say this is tendered as expert evidence and I am not bound to accept it. At para.70, it says:

> "If the issues are straightforward and their merits have already been debated in correspondence, or on previous occasions, or both there may be little more that can be usefully be said. If the issues are more complex but the party concerned is capable, financially and otherwise, of instructing legal representatives in his or her place and of giving them adequate instructions their own ill health may be of little or no consequence. All depends on the circumstances as assessed by the court on the evidence put before it."

As I see it, the evidence before me is not cogent and the defendant is here and has been able to address me and also her son has been ably able to address me.

15. I have to also balance, as in that last quote, what would be achieved if I adjourn which would clearly incur a lot of delay and further costs? I have to take into account that the defendant has already in that first application said she wished to withdraw from the case and repeated that was her instruction in her third written application. When we look at the merits of the case, her defence (B19 of the bundle) gives no grounds on the merits for defending the claim. It says in para.2(a) that the wrong type of probate Claim Form was used and that is not a reason for refusing judgment now and then in (b) it says that the defendant is the wrong person to sue. Well, with respect, I do not agree. In para.3 of the directions order (C13), it says:

> "The defendant do represent for the purposes of this claim all those persons who would be interested in the residuary estate of Ethel (deceased) on the footing that she died a spinster without issue, including adoptive issue or parents."

So whether there was a problem at the start of the claim, there has been representation order, so that the defendant is the correct defendant.

16. Furthermore, the defendant counterclaims and in that counterclaim (B23) the defendant asked for grant of letters of administration to herself for the use and benefit of Hilda Mulombe-Kabari. So there is no real defence on the merits. There are a couple of technical points which I have dealt with.

17. Witness statements were ordered to be exchanged on 13th February, in the order that was made on 13th February 2024, so that is well over a year ago, and they were meant to be served by 6th September 2024 which is nearly a year ago. Despite being legally represented at the time right up until last week, no witness statement on behalf of the defendant was served, no application has been made to file one and no relief from sanctions has been sought. No witness statement has been provided. Thus, as it stands the defendant has no entitlement to call evidence and has not done so. Skeleton arguments were ordered to be exchanged seven days before the trial (C15) in the directions order. Again, that did not happen.

18. So, we are now in a situation where the claimant's factual evidence has been given and the claimant himself has been cross examined by the defendant's son. The son did not remain for the full afternoon of the first day and he did not cross examine the second witness, Miriam.

19. The only thing that the court is due to hear now is the expert evidence, (which I am afraid the expert witnesses may have had to wait for our video link), and closing submissions and there will be an opportunity for all parties to ask the experts questions. I should say this that we can see a letter to the experts dated 25th November 2024 (E161) - so not quite a year ago, but coming up to that - and, in that letter, Mwapi Mulombe states:

> "As administrators, we have noticed that the process of adoption certificate was fraudulently obtained and issued without proper guidelines according to the administration as granted by the High Court of Zambia."

Now, that was a very serious allegation saying that there had been fraudulent activity. Since then, there has been no evidence filed of fraud and there has been no documentary evidence supplied to the claimant or filed in court of fraud. The result of that letter to the experts was simply that they said they would continue to act neutrally. They have not changed their report, they have left the report as it stands.

20. The defendant's son, when he was cross examining the claimant, referred to some documents, which were on his phone, of which no copy was given to the court or the witness or the claimant's counsel. Those documents suggested that the defendant had caused the police to make enquiries as to the adoption certificate in Zambia and the police report referred to the order of the High Court in Zambia (C1 and thereafter), so that was nothing new. In one of the documents - and because they were being read from the phone and I had no copy, it was not very clear - there was an allegation that there was a problem with the adoption because the deceased needed to have been resident for three months prior to the adoption whereas she gave an address in the UK. That is a matter which can be addressed by the experts. One of the documents, I was told at that time, may suggest that there was an error as to the mother's name. There was reference to a birth certificate which was not before the court and, as I understood the defendant's son, it had actually been in their possession for a year and so it should have been disclosed a long time ago.

21. Now then, today we have a situation where the defendant has produced some documents which I have been shown and counsel for claimant has been shown and the son has taken them back. They consist of a petition for adoption of a child, Chipampe - who is shown as a child of Richard Mulambe and Emily Jambi Mulambe - and a consent to an adoption order by Lamech, who apparently was the uncle who took guardianship of the claimant and he was the elder brother of the deceased. Then there is a hospital record of a birth on 1st January of Chipampe, where the father is shown as Amon and the mother as Chikiko Bridget.

22. For the purposes of deciding whether an adjournment will be helpful, I have to bear in mind that the issue for me is the single issue as to whether I am satisfied or not that the claimant was adopted. Whether he was the son of Amon or the son of Richard does not affect my decision. In the defence, he is shown as the son of Amon which is corroborated by the birth certificate. In the second document, the petition, it shows a different member of the family, Richard, being the father. Richard is still a sibling of the deceased - so whether Amon or Richard was the father, they are both siblings of the deceased, and so his entitlement runs through the male line - so whichever it was actually makes no difference to me in my judgment. So, we are left in a situation where I am being invited to adjourn because there is some difference in the documentation at the time.

23. In my judgment, given we have now got an expert report and we have now got a certificate of adoption, it seems to me that justice would not be served by adjourning this case now. I have to consider all the circumstances and, in particular, I do not have cogent medical evidence of the defendant's inability to attend. It is not a complex case. We do not know how long any adjournment would be. It is said it is caused by stress, so that stress may come next time it comes up to go to court.

24. I do not consider that there is any significant disadvantage to the defendant in continuing with the case in the very unusual circumstances where she has expressed a desire to withdraw but not withdrawn and where the expert evidence, on her own joint instruction, shows the adoption was made and where, looking at the documents that have been lately provided - which I have accepted to look at and that is all I have been allowed to do - do not actually change the decision that I have to make, so I am going to refuse the application for an adjournment.

This transcript has been approved by the Judge