Wee Soon Kim Anthony v UBS AG
[2002] SGHC 213

Case Number : Suit 834/2001

Decision Date : 16 September 2002

Tribunal/Court : High Court

Coram : Kan Ting Chiu J

Counsel Name(s) : Anthony Wee Soon Kim in person; Davinder Singh SC, Hri Kumar and Gary Low (Drew & Napier LLC) for the Defendant

Parties : Wee Soon Kim Anthony — UBS AG

Administrative Law – Right to legal representation – Whether litigant in person could have practising lawyer present arguments for him as his friend – Whether within scope of "McKenzie friend"

Judgment

GROUNDS OF DECISION

1. The plaintiff was medically unfit to attend at a hearing before me. A practising lawyer came in his place with instructions to argue the matter for him. The lawyer did not come as the plaintiff's counsel, but as his friend.

2. When the plaintiff commenced this action against the defendant bank a law corporation acted for him. The law corporation filed the cause papers and represented him in the interlocutory hearings and the first tranche of hearing between 26 February 2002 and 15 March 2002. The solicitor-client relationship did not last. On 15 June 2002 the plaintiff filed a notice that he was acting in person. Then on 8 July 2002, a law firm, Goh Aik Leng & Partners filed a notice that it had been appointed to act for him in place of the law corporation.

3. On 15 July 2002, an application by the defendant for interrogatories served by the plaintiff to be withdrawn came on for hearing. The plaintiff came to the hearing with Mr Goh Aik Leng and Mr Mohan Singh, a practising lawyer from another firm. At the outset, Mr Goh informed me that the plaintiff was still a litigant in person. Mr Goh described himself as the solicitor on record whose function was to file documents for the plaintiff and to accept service of documents on his behalf, while the plaintiff present arguments himself.

4. I was not persuaded that a party who has appointed counsel to act for him can consider himself to be a litigant in person and retain the right to argue his case himself. I stood down the matter for the plaintiff and Mr Goh to consider the matter. When the hearing resumed, they decided that the plaintiff would continue with the argument. Mr Goh withdrew as solicitor, but remained to assist the plaintiff while he presented the arguments himself.

5. On 22 July, the action came on for continued hearing scheduled to go on to 30 August 2002. However the plaintiff was not in court. Mr Goh appeared and informed me that the plaintiff was in hospital undergoing medical tests. Mr Mohan Singh was also present, and Mr Goh introduced him as the co-counsel of the plaintiff.[1] However Mr Mohan Singh was unsure whether he could be a co-counsel to a litigant in person, and wanted to give further thought to that.

6. Mr Goh raised the question of his own status again. He applied that he be accorded the right of audience as the plaintiff's friend. He took pains to state that he was not claiming any right by himself as a "McKenzie friend" because he acknowledged on the authority of *R v Leicester City Justices Ex parte Barrow* [1991] 2 QB 260 that he cannot claim the right himself.[2] He submitted on the authority of that case that "(I)n the light of [the plaintiff's] health and the complexity of the case, he is entitled to appoint me as his friend and he is also entitled to instruct me to speak on his behalf."[3] and that the plaintiff had a choice to present his case himself, personally or to have a friend present it on his behalf.[4]

7. The application was adjourned for further hearing on 24 July. When hearing resumed, Mr Goh returned alone. He informed me that Mr Mohan Singh had withdrawn from further participation in the case. The arguments on Mr Goh's right to argue the case on the plaintiff's

behalf continued. After hearing the submissions, I ruled that Mr Goh cannot present arguments for the plaintiff as his friend.[5]

8. The plaintiff now appeals against this order by a notice of appeal filed by Goh Aik Leng & Partners as his solicitors.

9. The McKenzie friend takes his name from the case *McKenzie v McKenzie* [1970] 3 All ER 1034. This was a divorce case heard in England. The husband Mr McKenzie was not represented by counsel, but Mr Hanger, an Australian barrister was in court with him. Mr Hanger had been attached to a firm of solicitors which acted for the husband previously, and he attended the hearing to assist him to conduct his case. However the trial judge did not allow him to do that.

10. The husband who was left to fend for himself in the hearing appealed to the Court of Appeal against the judge's decision. The Court allowed the appeal. Davies LJ referred to Lord Tenterden's statement in *Collier v Hicks* (1831) 2 B & Ad 663 that

> Any person, whether he be a professional man or not, may attend as a friend of either party, may take notes, may quietly make suggestions, and give advice, but no one can demand to take part in the proceedings as an advocate, contrary to the regulations of the court as settled by the discretion of the justice.

and held that Mr Hanger should not have been excluded because

> Mr Hanger was not there to take part in the proceedings in any sort of way. He was merely there to prompt and to make suggestions to the husband in the conduct of his case, the calling of his witnesses and, perhaps more importantly, on the very critical and difficult questions of fact in this case, to assist him by making suggestions as to the cross-examination of the wife and her witnesses.

11. Sachs LJ agreed with Davies LJ noting that

> Mr Hanger, … had done nothing, so far as this court has been able to ascertain, other than sit quietly beside the husband and give him from time to time some quiet advice or prompting. In those circumstances, the husband was fully entitled to have that assistance, and Mr Hanger was fully entitled to give it.

12. Counsel also referred me to *R v Leicester City Justices Ex parte Barrow* [1991] 2 QB 260. This case arose from summonses issued for the non-payment of community charges or poll tax in England, a matter of considerable controversy at that time. The defendants on whom summonses were issued were not represented. In the place of counsel, they wanted Mr John, a member of the Anti-Poll Tax Federation to assist them in their defence. Their request was refused.

13. Their appeal to the Divisional Court also failed. It then went to the Court of Appeal which reversed the Divisional Court's decision.

14. Lord Donaldson expressed reservations over the use of the term "McKenzie friend", but was clear in his views of the role such a person performs at a hearing. He said (at pp 285-6)

> References to "McKenzie friends" and still more to a "right to a McKenzie friend" mislead, because they suggest that someone who seeks to assist a litigant in person has a special status akin to, if less than, that of one who has a right of audience or a right to conduct litigation. The "McKenzie friend" does not exist at all as such and has neither status nor rights. The only right is that of the litigant and his right is to reasonable assistance which can take many forms. If he is blind, he may need someone to read documents to him, if he is hard of hearing, he may need someone sitting next to him who can make a note so that he can read what he cannot hear. The possibilities, if not endless, are at least extensive.

and elaborated that (at pp 289)

> A party to proceedings has a right to present his own case and in so doing to arm himself with such assistance as he thinks appropriate, subject to the right of the court to intervene. … If he wishes to have an adviser, as contrasted with an advocate, it is convenient that he should mention this fact to the justices or to their clerk in order that they may know why the person concerned is sitting next to the defendant, rather than in the space reserved for the general public. But if a party arms himself with assistance in order the better himself to present his case, it is not a question of seeking the leave of the court. It is a question of the court objecting and restricting him in the use of this assistance, if it is clearly unreasonable in nature or degree or if it becomes apparent that the "assistance" is not being provided bona fide, but for an improper purpose or is being provided in a way which is inimical to the proper and efficient administration of justice by, for example, causing the party to waste time, advising the introduction of irrelevant issues or the asking of irrelevant or repetitious questions.

15. Staughton LJ also agreed that Mr John should have been allowed to remain to assist the defendants. He said (at p 290)

> In my opinion there are in general no grounds for objecting to a litigant in person being accompanied by an assistant, who will sit beside him, take notes and advise sotto voce on the conduct of his case. If the court is open to the public, the assistant is entitled to be present in his own right provided that there is room; and if the litigant wishes him as an assistant, he should be accorded priority over the public in general. Any member of the public is entitled to take notes. And I can see no reason why a litigant in person should not, if he wishes, receive quiet and unobtrusive advice from a member of the public.

16. I should also mention *R v Bow County Court Ex parte Pelling* [1999] 1 WLR 1807, another decision of the English Court of Appeal. The Court was dealing with the role of a McKenzie friend again. The applicant before the court was not the party who was denied the assistance of a friend, but the intended friend Dr Pelling, a campaigner for the rights of fathers and their children in family disputes. He applied to quash an order which refused him permission to appear as a McKenzie friend in family proceedings in chambers.

17. The Court saved the McKenzie friend from extinction when it elected to retain that description despite the views expressed in *Leicester City Justices*. Lord Woolf MR reviewed the authorities on the McKenzie friend and found (at p 1824)

> (i) that the authorities lay down that a McKenzie friend has personally no rights with regard to litigation, it is the litigants who have the right;
>
> (ii) that a McKenzie friend has no right to be an advocate;
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> (iii) that both in proceedings in chambers and in proceedings in open court, the court has a discretion to exclude a McKenzie friend;
>
> (iv) that the difference between the position in open court and in chambers is one of degree.

and he added (at p 1825) that "(a) litigant in person has an entitlement to be heard and if he or she needs assistance for this purpose, then the court should not unless there is reason deprive that person of that assistance." I respectfully agree with those views.

18. A McKenzie friend who takes his responsibilities seriously is a help not only to the litigant who seeks his assistance, but also to the

court. He should be permitted to stay. On the other hand, one who abuses the privilege by disregarding the directions of the court, who pursues an agenda beyond helping the litigant, or who uses the privilege as a back door to a legal practice he is not qualified for should not be allowed to carry on.

19. Reverting to the present case, Mr Goh was not seeking permission to be present to take notes for the plaintiff, or to whisper into his ear during the hearing. He intended to argue by himself. If he had continued he was going to be in complete charge, making the arguments, responding to the submissions of the defendants' counsel and to the court, and do everything an advocate would do, while the plaintiff is absent. That goes beyond a McKenzie friend's role. Mr Goh can assist the plaintiff when the latter conducts his case, but he cannot be the advocate for the plaintiff who elects to be a litigant in person.

Sgd:

Kan Ting Chiu

Judge

[1] Notes of Evidence page 919

[2] Notes of Evidence pages 924-5

[3] Notes of Evidence page 929

[4] Notes of Evidence pages 942-3

[5] Notes of Evidence page 954