

Claim No: CO/2682/10

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand
London WC2A 2LL

Thursday, 20 May 2010

BEFORE:

LORD JUSTICE ELIAS
MR JUSTICE AIKENHEAD

BETWEEN:

ERICA DUGGAN

Claimant/Respondent

- and -

**HM CORONER FOR NORTHERN DISTRICT
OF GREATER LONDON**

Defendant/Appellant

MR J HYAM (instructed by Leigh Day & Co) appeared on behalf of the Claimant

No appearance on behalf of the Defendant

Proceedings

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A LORD JUSTICE ELIAS: Yes.

MR HYAM: First of all, may I just explain, I am standing in the front row simply for ease of communication with those in front and those behind.

LORD JUSTICE ELIAS: That is fine.

B MR HYAM: This is an application under section 13 of the Coroners Act.

LORD JUSTICE ELIAS: Yes. We have read the papers and read the memorial and, if I may say so, the excellent skeleton argument that sets everything out very fully and very clearly. The only point I wanted to -- and we are satisfied at this time it should go back.

C There are two issues I think that do arise. One is that, for the moment, I am not very keen to explore the question of whether the earlier coroner ought to have adjourned or not adjourned. You have said very little about that. It is an assertion. We have not been taken to the context. I do not know the circumstances. I do not know how long had been available for somebody to provide material or any of that kind and at the moment I would want a lot of convincing that it would be right to pass any comment on that particularly when he is not here and I think he is probably not here because the whole thrust of the memorial, in fact, was the fresh evidence. I see the force of having that fresh evidence and that is a proper basis for going back to the coroner. But I simply make that plain, for the moment. You would have to persuade me and if we felt that there was some potential injustice to the coroner we may have to adjourn this in order for the coroner to be represented, if that were necessary. But I do not think necessarily that anything much would be advanced on that.

D E The second question, sorry three questions really. The second question is whether it goes back for the same coroner or a different one; and the third question is cost but I do not know what the position is on that. You have left it, perfectly properly, very vague. I do not know what you were seeking by way of costs and I do not know whether you are supported by the Attorney-General or whether you have a rectification order.

F MR HYAM: May I deal with the second issue first because I think it is dealt with simply.

LORD JUSTICE ELIAS: Yes.

G MR HYAM: You may have seen in the bundle that there is a letter from Andrew Walker who is now coroner in North London.

LORD JUSTICE ELIAS: Yes.

MR HYAM: I understand that Dr Dolman no longer sits as the coroner in that area.

H LORD JUSTICE ELIAS: Right.

A MR HYAM: We certainly would want another inquest but not before -- well, before Andrew Walker, the person identified in the appropriate area, the North London area, but it would not be Dolman in any event.

LORD JUSTICE ELIAS: It would not, in any event, so that is not a problem.

B MR HYAM: It is not a problem. Were it the case we would -- that is why in the drafting of any particular order we are keen to avoid just a repeat in front of Dr Dolman because his initial position prior to the decision of the Attorney-General, he was asked by the Attorney-General to provide any comments on the evidence and he said, "Well, I do not have anything to what I already knew" and we obviously take a different view from that. We think it would not be appropriate for Dr Dolman to conduct the further inquest.

C As to the first and the third point, I think they are interrelated because as is evident from the structure of section 13 the focus of attention is, in the first instance, as respects a coroner. So one looks to see if there is anything for which the coroner is to blame in respect of why a new inquest should be ordered. Section 13 is of course much wider than that and allows, even if the coroner is blameless, if there is new evidence for there to be a new inquest directed. In the indication that has been given, as I understand it, it could be summarised in this way. But on the basis of the new evidence that has been submitted if this court is satisfied it is appropriate and necessary and desirable in the interests of justice for there to be a fresh inquest before a different coroner.

D LORD JUSTICE ELIAS: Yes.

E MR HYAM: Not before Dr Dolman. The only issue then is the extent to which it is touched on, as you say, but not fully fleshed out in any skeleton argument to the extent to which shortcomings of the earlier inquest are material to your decision. They are not a necessary part but they nonetheless may form a part if I were so to persuade you that they are a material part of your decision.

F As I say, the two are interrelated and if you will forgive me, if I may just very briefly take some instructions on the third issue which is in relation to costs because, as I say, they are interrelated to some extent. May I just be given one minute?

LORD JUSTICE ELIAS: Yes. (pause)

G MR HYAM: The situation is that for the purpose of this application we are legally aided and it is right to say that we have not notified Dr Dolman. Obviously we have been in correspondence with Haringey and you may have seen letters to the effect that we are actively seeking a costs order against the coroner; and I do not today seek an order against the coroner in these proceedings. So that really probably resolves 3 and the proper order -- I think a similar order was made in Re Rapier, one of the bundles in the authorities and there was a decision of no order as to costs. That would probably be an appropriate decision.

H LORD JUSTICE ELIAS: Yes. No order as to costs, yes.

A MR HYAM: That letter really leaves just question 1. On that issue may I at least endeavour not so much to -- allow me just to advance it to a certain extent to make good such points as I can about it because there is behind what we say about them, and we do feel that there was a deficiency in the --

B LORD JUSTICE ELIAS: You may be right but let me just tell you why I start off being unhappy about it. Firstly, it was not really focussed upon in the memorial at all. It is true there is a statement initially in the memorial that it was not properly carried out but nothing was developed at all.

C Secondly, this occurred now, what, in 2003. I do not know what steps were taken at that time to seek to reopen then the decision of the coroner on the basis that it had not been properly conducted at that time. Really, I need to know that kind of thing, what the coroner's response was. We simply have no response. We do not have -- well, you have to take me to the bits in the documents, if they are there, because I have not seen them, which indicates what application was made, the basis on which it was made, why it was sought, why the coroner decided not to adjourn in the circumstances, whether it was essential.

D We really would have to explore all that kind of material. Now, I do understand that Ms Duggan feels that it was not satisfactory and she may or may not be right, but to explore that, for us to come to any ruling about that involves exploring the matter in far more detail than it seems to me it is before us. As I said, I would not be prepared to comment adversely on the behaviour of the coroner if that coroner was not represented and if no indication has been given to him that these sorts of matters are being put then I do not think it is appropriate for them to be put.

E MR HYAM: That is a very helpful indication. I wonder if I may take an unusual course in the circumstances. I certainly do not want to waste the court's time, and that course would be to take specific instructions from those instructing me.

LORD JUSTICE ELIAS: Do you want us to rise? Would that make it easier?

MR HYAM: It would, my Lord.

(A short break)

F MR HYAM: I am extremely grateful for that short adjournment to allow me to take instructions. The position I take in respect of the matters in relation to the shortcomings of the original inquest is that while we do not withdraw the criticisms made of the inquest that we set out in our detailed grounds, and indeed Mrs Duggan does feel that that inquest could have been and should have been conducted in a different way. In the light of the indication that you have given to being satisfied on the basis of the new evidence it is not a matter which we think it is either necessary or proper to pursue before you this morning and therefore do not do so.

G LORD JUSTICE ELIAS: Very grateful.

H MR HYAM: I do not know what, if anything else, you would like me to say but if you would like me to --

A LORD JUSTICE ELIAS: We will not stop you saying anything you would like to say. But I think that, as I said, it has been an extremely helpful skeleton argument that is summarised very well in the documents we have. We are satisfied that this is a proper case to go forward but I should give a judgment indicating why, picking up really on the points in your skeleton, because of course it is for the court to decide the appropriate way to go ahead.

B MR HYAM: It is. Before you do that, may I just ensure that some further evidence that was filed in support of this application is before you?

LORD JUSTICE ELIAS: Yes.

MR HYAM: There was a witness statement of Frances Swaine filed which had three exhibits.

C LORD JUSTICE ELIAS: Yes.

MR HYAM: The first was the signed statement, English translation of a signed statement of Ursula Kaverta(?) and you may have also already read about that.

LORD JUSTICE ELIAS: Yes, we have that. That is already referred to.

D MR HYAM: The reference to her saying, "It is right that he is dead, a traitor or a spy". The second document there is an anonymised statement taken, as I understand it, from a child, and the relevance of the second exhibit is to be found halfway down the second page where it was said that:

E "The witness assumes that the longstanding member of the movement with whom he had spoken had obtained the information about Jeremiah Duggan's whereabouts directly from Helga Zepp-LaRouche and other leading members of the organisation. When asked again about whether Jeremiah had not in fact stayed with the Appels(?) ..."

Do you remember?

F LORD JUSTICE ELIAS: Yes. There was a question where he was --

MR HYAM: Where he was at the time:
"The member said, 'No'. It was clear now that he spent the night at the centre."

G Of course, that is very much closer to the location where the body was ultimately found. There is one further small point that comes out of the third statement that is attached. That is a statement of, again, I think, in translation, Peter(?) Tennenbaum. This is the third exhibit. At the bottom of that page, of the first page, "Affidavit stating facts on information and belief", it says. He gives an account of his own experiences of the LaRouche movement and, in particular, in relation to a death threat that he had received says something which is of relevance to the present case, in the bottom paragraph where he says:

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A “My fear tremendously ...(reading to the words)... about a death threat by my brother’s response saying that they have a way of pulling you in but he was well aware of a threat against our family whilst he was telling me to go along with these people, we are in danger. I anticipated I would stay with my brother that night. Somewhat to my distress JT told me to go with VR and ER. He then vanished. VR took us to some apartment and immediately asked me to give him my passport for safekeeping.”

B The only relevance of that you may have picked up in the evidence that is referred to in Mrs Duggan’s statement is, if you remember, that the passport, Jeremiah’s passport, was not found with him but was produced by someone called Ortrum Cramer and it was bloodstained. It was not with him at the time of his death. That raises a very real concern to the family that a sort of *modus operandi* along these lines was being operated by the LaRouche movement; that is to say, that the passport is removed from person and that might explain why Cramer otherwise inexplicably was in possession of the passport.

C These are strands of information but taken together they add to the general picture of suspicion that is created by the evidence which you have already considered in detail.

D All we would say is that if, as has often been said, one of the purposes of an inquest is to allay rumour and suspicion, the unfortunate consequence of the earlier inquest was that it had precisely the opposite effect. It in fact gave rise to further suspicion and concern on behalf of the family and also had a negative effect which was that in consequence of the inquest’s conclusion it effectively put a brake on further investigation in Germany and each time that Mrs Duggan sought to proceed in Germany she was met with the response, “Well, you have had an inquest in the United Kingdom. No further investigation is appropriate”.

E The current situation in Germany is that the German Constitutional Court, as we understand it, has blocked her and said no to any further investigation there although it is not impossible that that decision will be subject to challenge.

I am very grateful for the fact that you have already read the case in detail which means that I do not have to go through what are, on any view, we say deeply concerning facts, unless you would like me to assist you on any particular issues that arise.

F LORD JUSTICE ELIAS: No.

G MR HYAM: Then I do not propose to say anything save for one point, if I may, and I said to my client Mrs Duggan that I would allude to this. In the earlier proceedings there was some talk of adjourning, when the adjournment application came up, and the possibility of mutual aid treaties or some phrase such as that. It is our view that there is not only precedent but also in fact a clearly proper procedure to be employed by coroners and that was in obtaining through the operation of letters of request now dealt with under (*inaudible*) part 34, of depositions from witnesses abroad who may be reluctant to come to give evidence. Indeed, that mode of operation was employed by Scott-Baker LJ in the (*inaudible*) inquest on particular issues for reluctant French witnesses to obtain depositions and they were admitted as documents, I think, in the inquest.

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It is certainly a possibility if not a probability that a similar application will be made to the coroner to try and seek to obtain in the best documentary form possible evidence from relevant witnesses to support the inquest.

I think I have probably said enough but if you feel I have not addressed any point then ...

LORD JUSTICE ELIAS: No, I am very grateful. Thank you.

(Judgment given)

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