



Informing Progress - Shaping the Future

FOIL Update 3rd July 2024



The case of **Elbanna v Clark (Re Consequential Matters) [2024] EWHC 1471 (KB)** provides significant insights into procedural issues surrounding appeals and the importance of adhering to proper legal process. This case, which originated from a rugby injury dispute, ultimately centered on the defendant's failed attempt to appeal the initial judgment.

The facts of the case and Chronology are as follows:

Mr. Omar Elbanna (claimant) sued Mr. Tom Clark (defendant) for an injury sustained during a rugby match. The initial judgment on March 20, 2024, found in favour of Mr. Elbanna. The draft judgment was circulated on March 11, and the defendant was permitted to share it with his insurer.

The defendant's solicitor requested a delay in handing down the judgment due to lack of communication with counsel, nevertheless the court proceeded to rule in favour of the Claimant on the 24 March 2024.

Subsequently on April 10, 2024, the defendant filed an appellant's notice with the Court of Appeal, however without finalizing an order with the claimant. The notice was therefore filed prematurely and required an extension of time.

The defendant's counsel sent a competing draft order, marking the first substantive response since the initial judgment on April 24, 2024.

The lower court no longer had jurisdiction to hear an application for an extension of time or for permission to appeal. Accordingly, the appeal was dismissed.

Throughout the process the court found several procedural missteps, noting that the defendant's actions were inconsistent with the guidance provided in *McDonald v Rose*.

Finally, the court concluded that the parties should have the opportunity to agree on an Order considering the rulings and discussions at the hearing.

These steps outline the complicated and erroneous procedural journey and the actions taken by both parties in the appeal process.

The Court of Appeal noted these issues and procedural errors.

the appellant's notice was filed prematurely and required an extension of time.
the defendant's counsel failed to respond promptly to the claimant's draft order and quantum case management conference requests.

In conclusion, they found that the defendant's actions were inconsistent with the guidance provided in *McDonald v. Rose*. Crucially, the court concluded that it no longer had jurisdiction to hear an application for an extension of time or permission to appeal.

The rationale behind this decision stems from the principle that once a judgment is handed down, the trial judge loses jurisdiction to extend time for appeals. This highlights the critical importance of applying to the original judge and agreeing on a draft Order promptly.

The effect of this judgment on civil litigation and the defendant insurance industry is significant:

- 1. Procedural Diligence:** It underscores the necessity for defendants and their insurers to be vigilant about procedural requirements, especially regarding timelines for appeals.
- 2. Communication Importance:** The case emphasizes the critical nature of prompt and clear communication between parties, particularly in agreeing on draft Orders.
- 3. Appeal Strategy:** It highlights the risks of bypassing the trial judge when seeking permission to appeal, potentially leading to jurisdictional issues.
- 4. Time Management:** The judgment stresses the importance of managing time effectively within the 21-day appeal period, including finalising necessary documentation.
- 5. Cost Implications:** increased costs for those who fail to adhere to proper appeal procedures.

Accordingly, *Elbanna v Clark* serves as a cautionary tale for legal practitioners and the insurance industry underscoring the importance of adhering to procedural rules, maintaining clear communication, and acting promptly in post-judgment scenarios.

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