COURT OF APPEAL FOR YUKON

Citation: *Ausiku v. Yukon Human Rights Commission*
2012 YKCA 5

Date: 20120604
Docket: CA10-YU670

Between:

David Kudomo Ausiku

Appellant
(Plaintiff)

And

Yukon Human Rights Commission

Respondent
(Defendant)

Before: The Honourable Mr. Justice Tysoe
The Honourable Mr. Justice Groberman
The Honourable Mr. Justice Hinkson

On appeal from: Supreme Court of the Yukon Territory, February 8, 2011, (*Ausiku v. Yukon Human Rights Commission*, unreported, Whitehorse Registry No. 10-A0130)

Oral Reasons for Judgment

Counsel for the Appellant:	In Person
Counsel for the Respondent:	C. Harrington
Place and Date of Hearing:	Whitehorse, Yukon Territory June 4, 2012
Place and Date of Judgment:	Whitehorse, Yukon Territory June 4, 2012

[1] **HINKSON J.A.**: On Tuesday, February 8, 2011, Mr. Justice Veale granted an order in the Supreme Court of the Yukon Territory striking the appellant's statement of claim and dismissing his action against the respondent pursuant to Rule 20(26) of the *Yukon Rules of Court*, promulgated pursuant to s. 38 of the *Judicature Act*, R.S.Y. 2002, c. 128. The appellant filed a notice of appeal from that order on February 21, 2011. His notice of appeal asserts that Veale J. used threatening language to dissuade him from his action against the respondent, and erred in dismissing his action without a trial.

[2] The respondent applies for an order that the appeal herein be dismissed as being so entirely devoid of merit or substance as to constitute an abuse of process.

[3] The appellant was employed by Filipina Cleaners, which was under contract with the City of Whitehorse to clean the Canada Games Centre. In November of 2008, pursuant to the contract, the City requested that the appellant's employer remove him from working at the Games Centre.

[4] The employer attempted to discuss the City's request, but the City's acting Associate Manager of the Indoor Facilities at the Games Center declined to do so. The appellant's employer then reassigned him to another work location. He was not prohibited from attending at the Games Centre in his personal capacity.

[5] In 2008, the appellant filed a complaint against his employer with the Yukon Human Rights Commission.

[6] The appellant then commenced an action against City's acting Associate Manager alleging a variety of torts. He also commenced this action against the Human Rights Commission alleging discrimination. The statement of claim in this action asserted that the appellant had been denied services by the respondent since 1994, and described six complaints that he had made to the respondent, including his final complaint against the City's acting Associate Manager in 2008.

[7] Mr. Justice Gower found that a settlement of Mr. Ausiku's claim against the City had been agreed to, so the statement of claim in the action against the City's

Acting Associate Manager was struck out and the action dismissed. The appellant filed a notice of appeal from the dismissal of that action. That appeal was dismissed by this Court on August 30, 2011. The reasons for that dismissal are indexed as 2011 YKCA 5.

[8] This appeal relates to the dismissal of the claim against the Yukon Human Rights Commission. In his statement of claim in this action, the appellant alleges that his action was based upon:

a) Systematic denial of service to an individual like me;
b) Discrimination against certain individual like me;
c) Defraudation [sic] of perverting the truth from my writing; and
d) Causing events [to] occur negatively instead of making them simple.

[9] Veale J. ordered Mr. Ausiku's statement of claim in this action struck and dismissed the action without costs. He did so on the basis that if the appellant was dissatisfied with the respondent's dismissals of his complaints, he had to appeal those dismissals within the proper timeframe and through the appeal process as set out in the *Yukon Human Rights Act* R.S.Y 2002, c. 116 ("*Act*"), or must bring a new complaint alleging discrimination against the Yukon Human Rights Commission directly, or in the alternative, that the appellant's statement of claim discloses no claim in law.

MOTION TO DISMISS

[10] Rather than proceed with the appeal, the respondent instead seeks an order dismissing the appeal as being devoid of any merit. The respondent does not offer any statutory basis for its application, and its submission is really an effort to establish the correctness of the decision appealed from.

[11] The jurisdiction for this Court to grant the relief sought by the respondent is found within the Court's inherent jurisdiction, as explained by Gibbs J.A. for the British Columbia Court of Appeal in *Wiens et al v. Vancouver (City)et al* (1992), 74 B.C.L.R. (2d) 154 at paras. 2-3:

> 2. There is ample authority for the principle that this Court has inherent jurisdiction to quash an appeal which is so devoid of merit or substance as to constitute an abuse of the Court's own procedure. See, for example, *Re Bank of Montreal and Singh* (1979), 109 D.L.R. (3d) 117 (B.C.C.A.) and this passage from *National Life Insurance Company* v. *McCowbrey*, [1926] 2 D.L.R. 550 (S.C.C.) quoted therein:
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> > Every Court of Justice has an inherent jurisdiction to prevent such an abuse of its own procedure (*Reichel v. Magrath* (1889), 14 App. Cas. 665 at p. 669). If an appeal, though within its jurisdiction, be manifestly devoid of merit or substance, this Court will entertain favourably a motion to quash it, as it does in cases where costs only are involved ... as a convenient way of disposing of the appeal before further costs have been incurred.
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> 3. The question is whether the Court should, on these applications, exercise the inherent jurisdiction. The answer turns on whether there is any merit or substance in the appeal. And the answer to that turns upon the content of the statement of claim and the reasons given by the chambers judge when ordering that it be struck out as against these applicants.

[12] In order for a court to strike out a claim under Rule 20(26) of the *Yukon Rules of Court* it must be "plain and obvious" that the statement of claim does not disclose a reasonable cause of action: *Stephen v. British Columbia (Ministry of Children and Family Development)*, 2008 BCSC 1656.

[13] In his notice of appeal, the appellant contends that the trial judge threatened him with a "heavy penalty" if he proceeded with his case against the respondent. The transcript of the proceedings before Veale J. does not support such a contention.

[14] The proceedings before Veale J. included a discussion about the usual order that costs will follow the event in a situation where pleadings are struck as disclosing no cause of action. The judge made a point of explaining to the appellant that the respondent had chosen not to pursue costs against him. This explanation seems to have been misunderstood by the appellant, and his contention with respect to a threat by Veale J. is without merit.

[15] The balance of the appellant's claim against the respondent was that it discriminated against him by dismissing his claims or in the fashion in which it dismissed his claims. The trial judge was correct in commenting that the only procedure open to the appellant with respect to his dissatisfaction with the respondent's dismissal of his claims was to file a claim with the respondent, and then, if necessary, after exhausting his remedy at that tribunal, to appeal that decision of the Board to the Supreme Court by filing a notice of appeal with the Court within 30 days after the order of the Board is pronounced, in accordance with s. 28 of the *Act*.

[16] Such steps are necessary because in Canada it has long been recognized that there is no cause of action for a tort of discrimination: *Seneca College of Applied Arts and Technology* v. *Bhadauria*, [1981] 2 S.C.R. 181; *Haje* v. *College of Teachers*, 95 B.C.A.C. 266 at paras. 14-19.

[17] Furthermore, it is an abuse of court process to use a civil action to collaterally challenge decisions of an administrative tribunal that are otherwise subject to a statutory right of appeal or review: *Stephen v. British Columbia (Ministry of Children and Family Development)*, 2008 BCSC 1656; *Act,* s. 28.

[18] For these reasons, there is no merit in the appellant's appeal. This is therefore a proper case in which this Court may exercise its inherent jurisdiction to prevent an abuse of its own procedure and so dismiss the appeal, and I would so order.

[19] **GROBERMAN J.A.** I agree.

[20] **TYSOE J.A.**: I agree.

The Honourable Mr. Justice Hinkson