

Egeneonu v Egeneonu & Anor (2018)

[2018] EWHC 1392 (Fam)

06/06/2018

Barristers

Alistair G Perkins
Paul Hepher

Court

Family Division

Practice Areas

International Children Law

Judgment of Williams J concerning committal proceedings and an application to exclude improperly obtained evidence

The mother brought applications for committal against the father and a third party (“V”) and applied for permission to pursue grounds that the father had (i) interfered with the due administration of justice and (ii) had made false statements of truth.

The father applied unsuccessfully to exclude improperly obtained telephone transcripts from the committal proceedings. The transcripts were the only evidence relied on by the mother in support of her application for permission. Williams J found they had been obtained in a manner that was ‘regrettable’ but not ‘malign’. He went on to grant the mother’s application for permission.

Admissibility of Evidence

The transcripts upon which the mother sought to rely were of conversations between the father and V, recorded by the prison service. Williams J found that the transcripts had been released as a result of a mistake on both the part of the prison service and the mother’s solicitors. A High Court order had been made at the time of the release “which plainly envisaged a further application would be made to this court to seek an order that the transcripts or recordings be provided”.

Williams J considered both the criminal and civil rules of evidence in respect of improperly obtained evidence. The fact that contempt taking the form of an interference with the administration of justice is criminal contempt – Egeneonu-v-Egeneonu [2017] EWHC 43 (Fam), gave rise to the question as to whether the criminal rules of evidence applied or not.

The statutory provision governing the exclusion of evidence in criminal proceedings is section 78 of the Police and Criminal Evidence Act 1984. The admissibility of improperly obtained criminal evidence had been considered in Regina-v-Khan (Sultan) [1997] AC 558, Regina-v-P [2002] 1 AC 146, and Regina-v-SL and Others [2001] EWCA Crim 1829.

In civil proceedings, CPR 32.1 provides that the court may exclude evidence which would otherwise be admissible. Improperly obtained evidence in the civil context was considered in *Jones-v-University of Warwick* [2003] 1 WLR 954.

Williams J concluded at [15] that whether he applied the criminal or civil approach the result was broadly the same:

“...There is no automatic exclusion unless the circumstances reach such a high level of impropriety as to offend the courts conscience or sense of justice. The court must consider all the circumstances and decide whether relevant evidence should be excluded so as to ensure a fair hearing.”

The transcript evidence of the conversations between F and V were admitted for reasons which included that:

- i) The transcripts were strong evidence in support of the mother’s grounds of committal and without it the grounds could not be pursued;
- ii) The transcripts were not obtained illegally or dishonestly or as a result of behaviour that might qualify as a gross misuse of process or abuse;
- iii) As the father would have the opportunity to challenge the contents of the conversations in his own evidence there was no ambush;
- iv) It would be to ignore reality to exclude the evidence.

Permission to pursue committal

Where the ground for committal is that a party is alleged to have made false statements, the test for permission was considered in *KJM Superbikes Limited-v-Hinton* [2009] 1 WLR 2406 by Moore-Bick LJ.

Williams J extracted the propositions from that judgment at [21]. In determining permission the court must have regard to the public interest alone. Usually it is for public authorities to determine whether to bring legal proceedings in respect of acts which interfere with the course of justice. When deciding whether it is in the public interest to grant permission to a private individual, the court will consider many factors, which include:

- i) The strength of the evidence showing not only that the statement was false but that it was known to be so
- ii) The circumstances in which it was made,
- iii) Its significance having regard to the proceedings in which it was made,
- iv) Such evidence as there is as to the maker’s state of mind including his understanding of the use to which it would be put and the likely effect, and
- v) The use to which it was actually put
- vi) The over-riding objective, proportionality, and the question of whether the matter justifies the use of court resources

At [21] (vi), Williams J also derived from Moore-Bick LJ’s judgment the proposition that:

“...probably only where there is a strong case that both the statement is untrue and that the maker knew it was untrue when he made it should permission be granted.”

The mother was granted permission in respect of her grounds for reasons which Williams J gives at [24]. They included the strength of the evidence against the father and the seriousness of the contempts if proved.

Permission

 **Family Law Week**