

CO/3232/2014

Neutral Citation Number: [2014] EWHC 3889 (Admin)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
THE ADMINISTRATIVE COURT

Royal Courts of Justice
Strand
London WC2A 2LL

Wednesday, 16 July 2014

B e f o r e:

MR JUSTICE MITTING
HHJ PETER THORNTON

Between:

THE QUEEN ON THE APPLICATION OF GOLDSTEIN_

Claimant

v

**HER MAJESTY'S CORONER FOR INNER LONDON DISTRICT GREATER
LONDON_**

Defendant

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(Official Shorthand Writers to the Court)

Mr B Kenelly appeared on behalf of the **Claimant**

Mr J Beer appeared on behalf of the **Defendant**

J U D G M E N T
(As Approved by the Court)

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1. MR JUSTICE MITTING: I deal first with the Coroner's application to discharge the injunction granted by Mr Justice Globe restraining, in the words of the Coroner, any postmortem on the deceased.
2. The underlying issue is not whether there should be a postmortem but whether there should be an invasive autopsy. The family proposes that the services of Professor Roberts, an acknowledged expert in the field, should be engaged to conduct, in the first instance, a non-invasive postmortem. That is to say an external examination of the body of the deceased, a CT or MIA full body scan and, if he considers it necessary, a needle biopsy of the heart.
3. In the view of the Coroner, on the basis of equally expert professional advice given to her, a traditional fully invasive autopsy is required to determine the cause of death.
4. However, it is common ground that undertaking, as a first step, non-invasive or minimally invasive procedures would not in any way impair the integrity of a fully invasive autopsy if ultimately required. Indeed, Mr Kenelly for the family, on their instructions, accepts that if in Professor Roberts' view a fully invasive, traditional autopsy is required to ascertain the cause of death then, albeit reluctantly, they would be prepared to accept it.
5. At the interim stage, therefore, we, as a court, are faced with a choice between giving effect to the Coroner's view that a fully invasive, traditional autopsy is required or permitting a step by step approach, approved by Professor Roberts, to take place.
6. Article 9 of the European Convention is engaged, as Mr Beer QC for the Coroner accepts. If this case were ever to proceed to final determination, the likelihood is that the Coroner would have to justify interfering with the rights of the family to freedom of religion by adopting a procedure which conflicts with their religious obligations, by reference to the qualifications set out in Article 9.2. They have not been fully considered or deployed in evidence on the part of the Coroner and, in any event, it would be impossible for us to reach even a provisional view about the qualifications at this stage in this litigation.
7. Two legitimate interests, accordingly, potentially conflict: the obligation of the Coroner to conduct a thorough investigation into the cause of death; and the rights of the family to respect for their religion under Article 9.
8. It should be emphasised on the facts of the case that there is no suspicion or suggestion of foul play and no suggestion, either, that there are lessons to be learned from the circumstances in which the deceased came to die, apparently as a result of a fall at the home of his relation in London, striking the back of his head and causing a subdural hematoma.
9. In those circumstances -- I, for my part, emphasise those circumstances -- it seems to me that there is nothing to be lost and something to be preserved, namely the rights in respect to the religion of the family, by adopting the step by step approach proposed by

Professor Roberts. Accordingly, we do not fully discharge the injunction granted by Mr Justice Globe but propose that a carefully tailored order should be made which permits the following:

- 1) non-invasive procedures performed by Professor Roberts;
- 2) minimally invasive procedures performed by Professor Roberts, should he consider that they are necessary;
- 3) a fully invasive traditional autopsy performed by Professor Roberts, should he consider that necessary to ascertain the cause of death.

All procedures performed by Professor Roberts will, on the undertaking of the family, be paid for directly to him by them.

10. We understand that Professor Roberts is in a position to perform those procedures tonight and to produce a report to the Coroner, having done so, very soon thereafter. If that satisfies the Coroner as to the cause of death then there will be no need for any further litigation. She will have fulfilled her duty on the basis of the procedures performed by Professor Roberts.
11. Only if, as a result of non or minimally invasive procedures performed by Professor Roberts which cause him to be satisfied as to the cause of death but still leaves the Coroner in reasonable doubt about the cause, will any difficulty arise. If that situation arises, then there will be no alternative but to return to the court for further interim directions.
12. I make it clear that the court as currently constituted will be available to do that up until the end of this week but most likely not thereafter.
13. As far as the application for permission to apply for judicial review is concerned, given that the family's principal object is only to ensure that their deceased relative is treated in accordance with his own and their religious obligations, and that his body is returned for burial to Israel as rapidly as is reasonably possible, it is unlikely that they would wish to litigate the difficult questions of principle that underlie the difficulties faced by the parties in this case. If, however, the difficulty remains that I have identified, then further litigation may well be necessary.
14. In those circumstances, I would propose that we grant the Coroner 21 days in which to file an acknowledgement of service and summary grounds of defence. Time to start to run from the date upon which she decides, if she does, that she can not fulfil her duty on the basis of the report produced by Professor Roberts.
15. MR JUSTICE MITTING: Mr Kenelly, Mr Beer, I hope that makes the position clear. If the Chief Coroner agrees with the observations that I have made and the order that I propose, could we invite you to draw it up?
16. MR BEER: Yes.
17. MR KENELLY: My Lord, yes, I would be happy to do so.
18. HHJ PETER THORNTON: I agree.

19. MR BEER: My Lord, is the court remaining in the area?
20. MR JUSTICE MITTING: We are in the building, both of us, and will be for the rest of the day.
21. MR BEER: Thank you very much.
22. MR JUSTICE MITTING: But not at the back of the court. We have other things to do.
23. MR KENELLY: My Lord, if I may, finally, just one housekeeping matter. If I could again take instructions, I am told that Professor Roberts will be able to conduct the examination this afternoon, as soon as the body can be transferred to him. He will be able to provide a report to the Coroner this evening; after hours but this evening. We would hope that we could liaise with the Coroner so that the Coroner can examine and review that today, so that if there is a dispute we can come before you as quickly as possible.
24. MR JUSTICE MITTING: Very good.
25. MR BEER: My Lord, I don't know whether that is going to be possible at all. There are other things that the Coroner has to attend to.
26. MR JUSTICE MITTING: Of course. She has many tasks to perform and the idea that it can all be done by close of play is not, I think, realistic.
27. MR BEER: Thank you.