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*Judgment: approved by the Court for handing down (subject to editorial corrections)**	*Delivered:* **09/03/2022** *Ex tempore*

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

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ON APPEAL FROM A DECISION OF THE INDUSTRIAL TRIBUNAL MADE ON 11 OCTOBER 2021

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BETWEEN:

AHMED BELHASSEN

Appellant:

-and-

DOBHAN LIMITED

Respondent:

_____

Representation:

Appellant: Mr Neil Richards, of counsel, instructed by Campbell Stafford Solicitors
Respondent: Mr Simon Chambers of Russell and Company Solicitors

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Before: McCloskey LJ and Maguire LJ

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McCLOSKEY LJ (delivering the judgment of the court)

[1] A short preamble is necessary before identifying of the orders of the Industrial Tribunal ("the Tribunal") under challenge in this appeal.

[2] Ahmed Belhassen (the "appellant") formerly worked in a commercial entity known as Yaks Restaurant (the "restaurant"). The appellant is a Moroccan national. It appears that he has resided in this jurisdiction for some years.

[3] On 20 June 2019 the appellant, then unrepresented, initiated proceedings in the Tribunal. His claim form identified as the sole respondent "Mr Sabin Pandey Yanks Restaurant." In response to the question "What is or was your relationship to the Respondent?" He stated "**Other** … employee not under contract", identifying the period as 3 December 2017 to 20 May 2019 and describing his job as "kitchen assistant", working 40 hours per week with gross pay of £210. He specified his claims against the named respondent as (a) unfair dismissal, (b) a failure to provide

him with a "contract or pay slip" and (c) payment "below the national minimum wage." He asserted:

> "I was unfairly dismissed due to my pleading with them for pay slips and a contract from I started."

[4] The formal response of the only named respondent was compiled and filed on his behalf by Russell and Co solicitors. This indicated that the correct title of the business in question was "Yaks" Restaurant. It contains the following material passage:

> "Mr Pandey served as the Applicant's manager; in effect, he was a fellow employee of Dobhan Limited (NI 645393), the liquidated company (see Notice of Dissolution attached)."

(We shall employ the description "Dobhan" for convenience.) It was asserted that the appellant's period of employment was "not known." Elaborating, it was stated that Dobhan "… was dissolved on 11/06/2019." Finally, it was asserted that the appellant "… left his employ voluntarily."

[5] During a period in excess of two years thereafter the appellant's case made some stuttering progress through the tribunal system. This consisted of four case management listings: on 31 October 2019, 16 January 2020, 21 August 2020 and 5 October 2021. (The third anniversary of the proceedings is imminent). At the first of these, consistent with the formal response of the respondent noted above, the Tribunal was reminded unequivocally by the respondent's solicitor that Dobhan "… was dissolved on 11 June 2019 and therefore it no longer exists …" Next, following the ensuing case management listing on 16 January 2020, the Tribunal, acceding to the appellant's application, made the following order:

> "Lilaram Niure t/a Yaks Restaurant is joined to the proceedings as a party without prejudice to any application by the newly joined party to set aside the joinder."

The original respondent's solicitor consented to this order.

[6] Next, following the third case management listing on 21 August 2020, the Tribunal made the following order dated 10 September 2020:

> "Following a review case management preliminary hearing on 21 August 2020, the first and second respondents above are dismissed from the proceedings.

The respondents specified in this order are the aforementioned Mr Pandey,

Mr Niure and Dobhan. This incongruity is partly explained by the passage in the related record of proceedings:

> "… the claims against the two named respondents were withdrawn and dismissed and the claim shall proceed solely against Dobhan Limited."

Herein lies another incongruity: by its second order of 10 September 2020 the Tribunal ruled:

> "… Dobhan Limited is added to the proceedings as a **notice party** pursuant to Rule 29 of the [2020 Rules], without prejudice to any application by the newly added party to set aside the said order."
> [Our emphasis.]

Pausing, there is no way of reconciling the two formal orders of the Tribunal and the formal record of proceedings.

[7] Next, by a formal "Response Form – ET3" dated 29 September 2020 the solicitors who had thitherto represented the two named respondents made a formal response on behalf of Dobhan. In the body of this form it is stated that the appellant "… was employed by the restaurant respondent …" It continues:

> "The claimant was treated as a shift worker and paid accordingly cash in hand for what shifts he worked …
>
> Finally, the Respondent Company was dissolved on 11 June 2019. A copy of the Dissolution Notice has been provided to the Tribunal. The Respondent Company assigned its interest in the leasehold premises on 24 April 2019. There was no transfer of undertakings entered into with the new restaurant owners."

The formal response further states:

> "I have been instructed to complete this Response by the restaurant's new owners, but I will not be in a position to represent the Respondent at a full hearing as the Respondent is dissolved and no longer a valid legal entity which can participate in these proceedings."

[8] Following a hiatus of 13 months the Tribunal convened a further case management fixture (the third). On this occasion the appellant was legally represented, by his solicitor Mr Campbell, for the first time. The respondent, identified as "Dobhan Limited" was represented by counsel. This was a Webex

listing. With reference to the formal record of proceedings:

(i) Paragraph 2 contains a date which is manifestly incorrect.

(ii) Paragraph 4 contains the assertion that the appellant "… accepted in the most recent case management discussion that he had been employed by Dobhan Limited and that the claims that he had brought could only legally lie against his employer. It was on that basis, ie the claimant's clear acceptance and agreement, that the two claims against the two named individuals were withdrawn and therefore dismissed." All of this is said to have occurred on **11 June 2019**. In the evidence before this court there is no record of hearing or related order of, or proximate to, this date.

(iii) If and insofar as the passage quoted immediately above is a reference to the case management listing before the Tribunal on 21 August 2020 (which remains unclear), the record of proceedings on the latter date is irreconcilable with the statements in paragraphs 2 and 4 of the record of proceedings relating to the later case management listing on 5 October 2021.

(iv) This observation is made having considered both the presiding judge's record of proceedings and the formal transcript of the hearing.

(v) There is a clear disconnect between the presiding judge's record of the proceedings (and the transcript thereof) and the preceding application to the Tribunal notified by the appellant's newly instructed solicitors by their electronic communication of 10 September 2021, namely:

> "This is an application pursuant to rule 25(1) of the [2020 Regulations] to review and set aside an earlier order on the grounds that it is in the interests of justice. Our client was not represented at any previous hearings, he is not legally qualified and does not speak English as his first language. It is likely that he failed to appreciate the legal distinction between individuals and limited companies. We invite the tribunal to consider the making of an order to discharge the order made on 9th September 2020 and to retain the first and second respondents in these proceedings."

(vi) In the Tribunal's record of proceedings/order the appellant is unequivocally castigated for his failure to obtain legal representation at an earlier date. There is no evidential foundation warranting this.

(vii) The newly instructed solicitors specifically made their application under rule 25(1). The Tribunal did not engage with this. Rather in its record of proceedings it described the application as one "… presumably to reconsider

the judgement under Rule 64 ….” This is fallacious.

(viii) From the transcribed record of proceedings it is apparent that the presiding judge did not appreciate that Dobhan had ceased to be a legal entity with effect from 11 June 2019.

Our Conclusions

[9] The orders of the Tribunal impugned by this appeal are the dismissal of the appellant's applications (a) to extend time and (b) to reconsider the Tribunal's earlier decision of 10 September 2020, which dismissed two previously named respondents from the proceedings and substituted Dobhan.

[10] Dobhan was neither a natural nor legal person with effect from 11 June 2019. The first consequence of this is that the appellant could not commence proceedings against a non-existent natural or legal person. The second is that the Tribunal could not order the joinder of Dobhan, in whatever capacity, thereafter. The impugned orders of the Tribunal are unmistakably inter-related. By virtue of the foregoing simple analysis they are unsustainable in law.

[11] There are other features of the impugned orders which render them unsustainable in law on further and separate grounds. These are, in brief, the absence of any evidential foundation for the "concession" attributed to the appellant at the case management review listing on 21 August 2020; the unsustainability of a conclusion based on the premise that the appellant, a self-representing foreign national, fully understood the intricacies of the laws of this jurisdiction relating to the identification of a worker's employer and, in this instance, the provisions of company law viz the Companies Act 2006 and its 1,000 plus sections pertaining thereto; the unwarranted castigation of the appellant for being unrepresented; the inconsistencies and incongruities arising from a simple analysis of the Tribunal's records of proceedings and consequential orders; the fundamentally incongruent nature of the order joining Dobhan as a "notice party"; and the shortcomings of the Tribunal hearing on 5 October 2021 giving rise to the impugned orders and the consequential appeal to this court.

[12] Consequential upon the immediately preceding analysis and conclusions, it falls to this court to exercise the powers available to it under section 38(1)(a) of the Judicature (NI) Act 1978 reversing the impugned orders of the Tribunal. The practical and legal effect of this is that the appellant's Tribunal claim will continue against Messrs Pandey and Niure only.

[12] The third anniversary of the initiation of the appellant's Tribunal claim is fast approaching. This court earnestly hopes that a hearing to determine the merits of the claim will proceed sooner rather than later.

[13] Each party shall, by 18 March 2022, provide its submission regarding costs:

one A4 page maximum, font size 12 minimum.