

ENGLAND AND WALES / JUDGMENT

Cynthia Nkiruka Tooley v Associated Newspapers Ltd

COURT
IN THE HIGH COURT OF JUSTICE

BEFORE
MRS JUSTICE HEATHER WILLIAMS DBE

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IN THE HIGH COURT OF JUSTICE

KING'S BENCH DIVISION

MEDIA AND COMMUNICATIONS LIST

Royal Courts of Justice

Strand

London, WC2A 2LL

Tuesday, 13 January 2026

BEFORE: MRS JUSTICE HEATHER WILLIAMS DBE

BETWEEN:

CYNTHIA NKIRUKA TOOLEY

- and -

ASSOCIATED NEWSPAPERS LTD

Claimants

Defendant

-and-

GUARDIAN NEWS & MEDIA LTD

Norwich Pharmacal Respondent

MRS C TOOLEY appeared in person.

MR J PRICE KC appeared on behalf of the Defendant

MS C OVERMAN appeared on behalf of Guardian News & Media Ltd

MS GATTRELL appeared on behalf of James Tooley

JUDGMENT

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1. MRS JUSTICE HEATHER WILLIAMS: By an application notice dated 5 January 2026, the claimant applied (amongst other matters) for a Norwich Pharmacal order against Guardian News & Media Ltd, ("The Guardian"). The application notice said the order was necessary to determine the source of a breach of privacy and abuse of non-public court information. 2. The application has been made in proceedings that have been brought against Associated Newspapers Limited, where the claimant also seeks a Norwich Pharmacal order. These are proceedings KB-2025-003959, which is a claim for defamation and malicious falsehood against Associated Newspapers. 3. A draft order provided by the claimant in relation to The Guardian seeks an order in the following terms. That: "[The Guardian] shall, within 72 hours of service of this order (or such shorter period as the court considers appropriate) disclose to the court and to the applicant the following information, Limited to the period January/ February 2025: The identity and professional capacity of the person or persons who supplied information concerning the applicant; The dates and means by which such information was communicated; and whether the source asserted access to non-public court held material or information derived from court proceedings." 4. Strictly speaking, The Guardian has no connection to the KB-2025-003959 claim, but Ms Overman did not take a specific point in relation to that and she was content for me to determine the application. However, as she pointed out, although various parts of the claimant's draft order referred to the determination of this application being necessary for the purposes of those proceedings, plainly that litigation has no relevance to the orders sought against The Guardian. 5. This application was originally before the court on 7 January 2026, during the vacation, when it was considered by Bright J, sitting as the interim applications judge. At that stage, the matter was adjourned on the basis that The Guardian had not had sufficient time to deal with it,

having been given limited notice of the application. It was listed, along with various other applications, before me today, 13 January. For reasons I do not need to go into in this judgment, it was not feasible for me to deal with the other Epiq Europe Ltd, Lower Ground, 46 Chancery Lane, London WC2A 1JE www.epiqglobal.com/en-gb/ applications today, in the sense of arriving at substantive determinations, but this morning I gave detailed directions in relation to them. 6. However, the claimant asked, and the Guardian did not oppose her suggestion that I should deal substantively with this application, the Norwich Pharmacal order application against The Guardian, as a discreet matter today, given there is said to be some inter-relationship with a hearing in other proceedings that the claimant is involved in tomorrow. 7. The basis of the claimants' application has been clarified to some extent during the hearing today. I will not go through each of the documents in which she has set out the basis of her application in the past, but I will refer to what she has said in her Skeleton Argument before coming onto her oral submissions today. 8. At paragraph 44 of her Skeleton Argument, the claimant said that she sought the order in order to confirm the identity of the source that leaked non-public court material. It is clear from what she said earlier in paragraphs 50 to 53 of the Skeleton (the paragraph numbering having gone awry), that the non-public court material referred to was linked to the alleged publication of non-public family court material by The Daily Mail, in an article published on 23 April 2025. 9. From paragraph 44 onwards of her Skeleton, the claimant said that The Guardian had previously verbally identified a specific entity as the source of the confidential court information, and that this material consisted of non-public court documents. She said she had received verbal disclosure from The Guardian as to the identity of the source, and she sought confirmation in the form of a specific witness statement from The Guardian, confirming or denying the verbal identification that had already been made to her. 10. The claimant then proceeded to make a number of points in support of the application, including: that her approach was the least intrusive in the circumstances; that she had no other means of identifying the source; and that it was essential for the order to be made so as to uphold the integrity of the court and court proceedings. Epiq Europe Ltd, Lower Ground, 46 Chancery Lane, London WC2A 1JE www.epiqglobal.com/en-gb/ 11. I have also seen and considered the claimant's letter to the Guardian of 5 January, where she referred to the conduct of the wrongdoer as a tortious wrong, identifying the tort of misuse of public information and/or breach of confidence. She also described it as an interference with the administration of justice. 12. The Daily Mail article of 23 April 2025, refers to civil proceedings in which the claimant was accused of theft by a former employer. The Daily Mail article, or the relevant part of it, is largely a court report of a hearing that took place on 22 April 2025, and the article says that the hearing continues. Other information, including an email from the court and/or HMCTS, confirms that the hearing dates for the civil claim were the 22nd and 23 April 2025.

13. During the course of her oral submissions, the claimant indicated that she was contacted by The Guardian journalist to ask for a comment on these matters, and it was during the course of this conversation that the journalist told her about the source of the information. She was

given to understand by what was said to her, that it had been provided by a law firm called Griffin Law, who were acting for her husband or ex- husband, Professor Tooley, in ongoing family law proceedings. She confirmed it was this name she sought written confirmation of in this application. 14. The claimant also explained in more detail why she sought this material. She said that the firm in question was under investigation by the Solicitors Regulatory Authority ("SRA") in relation to alleged conflict of interest, and she wanted the written confirmation she had sought, if I have understood correctly, to support the allegations she has made to the SRA in relation to Griffin Law. She said the contact she received from the journalist was not at the time of The Daily Mail article but in advance of its publication, on or about 5 February 2025. Accordingly, the person who had given the information to The Guardian journalist was not simply relaying something which had happened in the court hearing, as this was in advance of the hearing taking place. She said this showed that matters had been improperly communicated to The Guardian journalist, including witness statements which had yet to be deployed in those proceedings. Epiq Europe Ltd, Lower Ground, 46 Chancery Lane, London WC2A 1JE www.epiqglobal.com/en-gb/ 15. The claimant also said (I think it is fair to say, introducing this point for the first time by way of her reply), that the conduct of the legal firm that appears to have contacted The Guardian journalist, amounted to a breach of the non-molestation order, or a non-molestation order, that has been made in the family law proceedings. I only have limited information in relation to those proceedings. A large part of what I do have comes from a judgment of DJ Nutley of 13 March 2025, a public judgment, in which, amongst others things, he refers at paragraph 30 to the terms of the non-molestation order made on 13 November 2024, which included the following: "Neither the husband or wife shall speak to or communicate with or otherwise disclose information in respect of the other or themselves to the press directly or indirectly, and neither must they instruct, encourage or otherwise suggest any other person shall do so..."

16. Orally, the claimant said in answer to a question that I asked her, that The Guardian journalist did not facilitate the wrongdoing. They did not publish the information and there was no article in The Guardian (as opposed to The Daily Mail) about the Luton County Court case. However, she said that The Guardian was mixed up in the wrongdoing, in the sense that they were recipients of the information. 17. In relation to matters of potential relevance to the exercise of the court's discretion if the pre-conditions are satisfied, the claimant relied on what she said was the very narrow relief that she sought. In essence, it was simply the name of the person who had provided the information to The Guardian journalist. She contended that it was proportionate to grant the order in the circumstances. 18. The claimant emphasised the importance of preserving the court's integrity in relation to the civil proceedings that I have alluded to. She also submitted that journalistic source privilege did not apply to the material covered by the Norwich Pharmacal order that she sought, because the journalist had already told her the name orally. 19. I turn to The Guardian's position. The Guardian has identified the civil proceedings in question as B-FAB UK Limited v Stroud heard at Luton County Court on the dates I have already referred to. The claimant

has not dissented from that proposition. In summary, The Guardian's position is that the claimant's application fails to satisfy each Epiq Europe Ltd, Lower Ground, 46 Chancery Lane, London WC2A 1JE www.epiqglobal.com/en-gb/ of the three-fold threshold criteria for the grant of a Norwich Pharmacal order. Furthermore, even if the criteria were met, the claimant has failed to demonstrate that the relief sought is an appropriate and proportionate response in all the circumstances. So that if matters get to that stage, the court should not exercise its discretion to grant the order sought. 20. In her Skeleton Argument, Ms Overman clarified that in opposing the application, The Guardian did not waive the rights conferred upon media organisations under Article 10 of the European Convention of Human Rights, ("ECHR") and in domestic law regarding the protection of unpublished journalistic material and the confidentiality of sources. She explained that for the purposes of opposing the claimant's application, The Guardian would refer to the claimant's account of the factual matters that she had set out, without confirming or denying its accuracy. THE LEGAL FRAMEWORK 21. The basis of the jurisdiction was described by the House of Lords in *Norwich Pharmacal Co v Customs and Excise Commissioners* [1974] A. C. 133 (at page 175): "...if through no fault of his own a person gets mixed up in the tortious acts of others so as to facilitate their wrong doing he may incur no personal liability but he comes under a duty to assist the person who has been wronged by giving him full information and disclosing the identity of the wrongdoers." CPR 31.18 expressly preserves this jurisdiction. 22. It is common ground and well-established that there are three basic conditions to be satisfied for the court to exercise this jurisdiction. For example, see *Mitsui & Co Ltd v Nexen Petroleum UK Ltd* [2005] EWHC 625 (Ch) at paragraph 21: " i) a wrong must have been carried out, or arguably carried out, by an ultimate wrongdoer; ii) there must be the need for an order to enable action to be brought against the ultimate wrongdoer; and *Epiq Europe Ltd, Lower Ground, 46 Chancery Lane, London WC2A 1JE* www.epiqglobal.com/en-gb/ iii) the person against whom the order is sought must: (a) be mixed up in so as to have facilitated the wrongdoing; and (b) be able or likely to be able to provide the information necessary to enable the ultimate wrongdoer to be sued." 23. If the three conditions are satisfied, an applicant must also show that requiring disclosure from the respondent is an appropriate and proportionate response in all the circumstances of the case, bearing in mind the exceptional but flexible nature of the jurisdiction: see for example *Collier & Ors v Bennett* [2020] EWHC 1884 (QB) at paragraph 35. Therefore, the court retains a discretion at this stage of the inquiry, even if the three conditions are satisfied. 24. It is well-established that the burden is on the applicant to satisfy the court of each of these matters.: see *Collier* at paragraph 34). 25. Turning to the conditions in a bit more detail, the wrong for the purposes of the first condition may be, for example, a crime, a tort, a breach of contract, an equitable wrong or a contempt of court: see *Ramilos Trading Ltd v Buyanovsky & Ors* [2016] EWHC 3175 (Comm) at paragraph 12. It is insufficient for the claimant to believe there has been wrongdoing, even if honest and reasonable: *Ramilos* at paragraph 17. 26. In relation to the second condition, the order must be necessary to enable the applicant to assert rights against the ultimate wrongdoer, it being recognised that this is a remedy of last resort, not available where the information could be obtained some other way: see for example *Zenith Insurance*

plc v LPS Solicitors Ltd [2020] EWHC 1260 (QB) at paragraph 31. Hence, if the applicant already knows the identify of the wrongdoer and has sufficient information to commence an action, a Norwich Pharmacal order may be unnecessary and so refused: see Zenith. However, Ms Overman accepts that it is not a precondition for the grant of an order that the claimant has no knowledge as to the identity of the wrongdoer at this stage. 27. The third condition regarding being mixed up in the wrongdoing was explained by Nicklin J in Davidoff v Google LLC [2023] EWHC 1958 (KB), [2024] 4 WLR 6 at paragraph 20: Epiq Europe Ltd, Lower Ground, 46 Chancery Lane, London WC2A 1JE www.epiqglobal.com/en-gb/ "It remains important for an applicant to demonstrate that the respondent to a Norwich Pharmacal application has been involved, in some way, in the alleged wrongdoing. In the original Norwich Pharmacal decision, the status of the respondent as beyond something more than a 'spectator', 'mere witness', or 'bystander' was a recognised limit of the jurisdiction: see Lord Reid, 174F; Lord Morris, 180D-E; and Lord Kilbrandon, 188A-C. Similarly, and applying these principles, in Ashworth [35], Lord Woolf CJ drew a distinction between a person who was 'involved' in the wrong and someone who was simply a 'mere onlooker or witness'. Facilitation (as opposed to participation) in the wrongdoing has been held to be sufficient: R (Mohammed) -v- Secretary of State for Foreign and Commonwealth Affairs [2009] 1 WLR 2579 [71]. Indeed, facilitation is what usually satisfies this element for Norwich Pharmacal orders against the operators of websites on which material has been posted by (anonymous) third parties. In such cases, the websites have (at least) facilitated the publication that is the arguable wrong." 28. In the Norwich Pharmacal case itself, the House of Lords made clear that an order may not be granted against a "mere witness". Lord Reid explained the position at page 147: "But that does not mean, as the appellants contend, that discovery will be ordered against anyone who can give information as to the identity of a wrongdoer. There is absolutely no authority for that. A person injured in a road accident might know that a bystander had taken the number of the car which ran him down and have no other means of tracing the driver. Or a person might know that a particular person is in possession of a libellous letter which he has good reason to believe defames him but the author of which he cannot discover. I am satisfied that it would not be proper in either case to order discovery in order that the person who has suffered damage might be able to find and sue the wrongdoer...So discovery to find the identity of a wrongdoer is not available against a person who has no other connection with the wrong than that he was a spectator or has some document relating to it in his possession." 29. In terms of the court's discretion, Lord Carr set out a non-exhaustive list of factors for the court to consider at that stage of the analysis it reached in Rugby Football Union v Viagogo Ltd [2012] 1 WLR 3333. The factors he set out in paragraph 17 were as follows: Epiq Europe Ltd, Lower Ground, 46 Chancery Lane, London WC2A 1JE www.epiqglobal.com/en-gb/

- (i) the strength of the possible cause of action contemplated by the applicant for the order (ii) the strong public interest in allowing an applicant to vindicate his legal rights (iii) whether the making of the order will deter similar wrongdoing in the future (iv) whether the information could be obtained from another source

- (v) whether the respondent to the application knew or ought to have known that he was facilitating arguable wrongdoing (vi) whether the order might reveal the names of innocent persons as well as wrongdoers, and if so whether such innocent persons will suffer any harm as a result (vii) the degree of confidentiality of the information sought (viii) the privacy rights under article 8 of the ECHR of the individuals whose identity is to be disclosed (ix) the rights and freedoms under the EU data protection regime of the individuals whose identity is to be disclosed
- (x) the public interest in maintaining the confidentiality of journalistic sources, as recognised in section 10 of the Contempt of Court Act 1981 and article 10 ECHR. 30. In the Ashworth case, House of Lords said as follows at paragraph 49: "The important protection which both section 10 and article 10 provide for freedom of expression is that they require the court stringently to scrutinise any request for relief which will result in the court interfering with freedom of expression including ordering the disclosure of journalists' sources. Both section 10 and article 10 are one in making it clear that the court has to be sure that a sufficiently strong positive case has been made out in favour of disclosure before disclosure will be ordered." *Epiq Europe Ltd, Lower Ground, 46 Chancery Lane, London WC2A 1JE* www.epiqglobal.com/en-gb/ 31. In *Davidoff* at paragraph 41, Nicklin J indicated in cases engaging countervailing ECHR rights the court should make: "...a careful assessment of whether there has been an arguable wrong and the strength of the identified cause(s) of action, and whether the public interest in allowing an applicant to vindicate his legal rights is outweighed by any countervailing interests of the target."

ANALYSIS

32. I turn to whether the three conditions are satisfied in this instance. As I have indicated, the first condition is that a wrong has been carried out, or arguably carried out, by an ultimate wrongdoer. Ms Overman's central point was that the information in question related to civil proceedings as opposed to, for example, family proceedings and therefore, on the face of it, the proceedings were held in public and there was nothing to suggest that an order had been made in those proceedings making private any part of the evidence given in those proceedings. Accordingly, said Ms Overman, there was no evidential basis for the court to accept the claimant's assertion that the county court proceedings were private. 33. I agree and accept Ms Overman's submissions to that extent. On the face of it, these were public proceedings and nothing has been pointed to that suggests otherwise. The claimant said there were no members of the public present in court but, of course, that does not convert public proceedings into private proceedings. Whilst the claimant relied on an email to her from her barrister written after the hearing (at page 590 of the bundle) as supporting her position, it seems to me to indicate the converse, because it says, "Surprisingly, no members of the public were there". This supports the proposition that members of the public could have attended if they wanted to do so.

34. However, as clarified in her reply, the claimant's central point was that the information that she understands was given to The Guardian journalist, as she subsequently learnt from them, was provided significantly before the April 2025 hearing. As I have indicated, she referred to a telephone conversation on 5 February 2025. It is fair to say that the evidential position in this respect is less than satisfactory. On the one hand, it can be said against the claimant that there is no witness statement from her that clearly Epiq Europe Ltd, Lower Ground, 46 Chancery Lane, London WC2A 1JE www.epiqglobal.com/en-gb/ indicates this, nor is there supporting documentation. I also note, that the relevant part of the claimant's Skeleton Argument seeking the Norwich Pharmacal order was tied very much to her complaint about what was said in The Daily Mail's article published on 23 April, as opposed to her suggesting that the information that was given to The Guardian was something distinct that happened months earlier. On the other hand, the terms of her draft order refer to information dating from January to February 2025, so this affords some support for the point that the claimant has made today, namely what she is really after is material that was given to the media significantly before the court hearing. 35. If the claimant were simply relying on information communicated at the hearing on 22 April, then as I have explained, I cannot see any basis at all for the proposition that that hearing was a private one that could not be reported. However, if and insofar as the claimant is relying on earlier matters, there is some potential for establishing that the information should not have been disclosed at that stage, for example if it was from witness statements that had yet to be used in court. I cannot put it any higher than that because I have been given very little detail about the Luton County Court proceedings. If matters went no further than this, I would have real hesitation as to whether the claimant had satisfied the first condition, given the onus is on her and given, as I have explained, the position is, at best, ambiguous.
36. However, she does have a second string to her bow, namely the terms of the non-molestation order, which I have already read out. It does seem to me that there is a potential argument, on the basis of what she said and, of course, I am not making any evidential findings at this stage, but there is a potential argument that the actions she identifies constituting a breach of that order. 37. I add for completeness that in respect of the claimant's points about conflict of interest and regulatory relief, I am not in a position to form any view as to their merits or otherwise and I do not rely on this aspect. I have very little detail; I am not rejecting the allegations she said she has made.
38. Overall, the claimant just about, and I emphasise "just about" gets over the first condition. Epiq Europe Ltd, Lower Ground, 46 Chancery Lane, London WC2A 1JE www.epiqglobal.com/en-gb/ 39. The second condition, as I have indicated, is a need for an order to be made to enable action to be brought against the ultimate wrongdoer. Ms Overman made a number of points as to why she said there was no such need in this instance. In essence, she said that there were alternative routes open to the claimant; and that in any event, on her own account, the claimant had oral information as to the identity of the person or firm who had contacted The Guardian journalist. 40. The claimant, on the other hand, relied on the delay that would result if she pursued matters via the Information Commissioner's Office which

she had been informed could take up to 18 months. She also referred to the difficulties of obtaining the information that she seeks via a subject access request she made to Griffin Law, in relation to which she has not received a substantive response at this stage. She says in relation to Ms Overman's second point, that she needs written confirmation rather than simply having heard the name orally, in order to advance the regulatory proceedings that she has been involved in.

41. Whilst the claimant's arguments identify reasons for seeking the information sought by this application, I have some doubt as to whether the circumstances meet the strict threshold of necessity. If they do, then as with the first condition, the second condition will have only just been met. 42. It is unnecessary for me to deal with this issue in more detail, because I am quite satisfied that the third condition is not met. The third condition being that the person against whom the order is sought, is mixed up in, so as to have facilitated the wrongdoing. 43. The claimant accepted that The Guardian did not publish any material resulting from the communication in question from the third party. At most, they were a recipient of that information. Quite clearly that does not meet the test. It seems to me to fall pretty squarely within the sort of example that Lord Reid gave in the Norwich Pharmacal case, of where the respondent to the application is no more than a witness or recipient.
44. Ms Tooley relied on the passage in Nicklin J's judgment in paragraph 20 of Davidoff which I have cited, but that does not appear to me to assist her. On the contrary, it Epiq Europe Ltd, Lower Ground, 46 Chancery Lane, London WC2A 1JE www.epiqglobal.com/en-gb/ highlights the importance of this requirement, and it gives an example, which is the opposite of the present case, in that it is a situation where the Internet provider in question, or the owner of the website, publishes the very information that is said to be the subject of the Norwich Pharmacal application.
45. Ms Tooley also submitted that it was unnecessary to satisfy the third condition if the respondent to the application was the only conceivable source of the information. She did not show me any authority that supported this proposition, rather she referred me to paragraph 17 of Lord Kerr's judgment in the Rugby Union case, but that paragraph is concerned with the court's discretion if the pre-conditions are satisfied. 46. Therefore, I am quite clear that the claimant has failed to establish that The Guardian was mixed up in the alleged wrongdoing, so as to have facilitated it. That is the end of the matter, because if the three conditions are not satisfied, the discretion does not arise. 47. I turn to the discretion very briefly, for completeness. I would have dealt with it in more detail were it not for the time of day in a case where I have been asked to give judgment today and were the discretion issue to be crucial to my decision, which it is not, for the reasons I have explained. 48. I have borne in mind all the factors identified by Lord Kerr and the points made in the submissions. However, it seems to me that the two strongest factors in favour of exercising the discretion in the respondent's favour, if the application got to that stage are as follows. First, the strength of the claimant's claim. I have already referred to its weakness and to the vagueness and the ambiguity. I cannot say by any shape or form that this is a

strong case at this stage. 49. The second factor that particularly influences me is the public interest in maintaining the confidentiality of journalistic sources. Whilst in this regard the claimant says the name has already been revealed orally, at the same time her case is that she wants to have a written confirmation of the name in order to use this publicly and formally in the regulatory context that she refers to. The circumstances certainly seem to me to engage the confidentiality of journalistic sources. Epiq Europe Ltd, Lower Ground, 46 Chancery Lane, London WC2A 1JE www.epiqglobal.com/en-gb/

50. Ms Overman accepted that this is not a case where section 10 of the Contempt of Court Act is involved, but it appears to me that Article 10 of the ECHR and the protection that affords is very much engaged and that this a strong factor in the respondent's favour. 51. I indicate for completeness, that I have borne in mind the other factors I listed earlier, including the public interest in allowing the applicant to vindicate her legal rights, but that has to be seen in the context of what I have noted about the apparent lack of strength of her possible causes of action. 52. In terms of privacy considerations, that is to say revealing the name of a potentially innocent person, as the claimant says she knows the name already, this is not a strong factor in itself, one way or the other. 53. In summary, if I was dealing with the discretion, then I would not have been satisfied that I should exercise it in favour of the application. 54. For the reasons I have given, the application is dismissed. Epiq Europe Ltd, Lower Ground, 46 Chancery Lane, London WC2A 1JE www.epiqglobal.com/en-gb/ Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof. Lower Ground, 46 Chancery Lane, London WC2A 1JE Email: civil@epiqglobal.co.uk Epiq Europe Ltd, Lower Ground, 46 Chancery Lane, London WC2A 1JE www.epiqglobal.com/en-gb/

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