Neutral Citation Number: [2008] EWHC 713 (Admin)

Case No: CO/2706/08

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
DIVISIONAL COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 10/04/2008

Before :

THE PRESIDENT OF THE QUEEN'S BENCH DIVISION
MR JUSTICE GROSS
and
MR JUSTICE WALKER

- -

Between :

The Queen on the Application of Mohamed Al Fayed	**Claimant**
- and -	
Assistant Deputy Coroner of Inner West London	**Defendant**

- -
- -

Michael Beloff QC, Alison MacDonald and Janet Kentridge (instructed by Lewis Silkin)
for the Claimant
Ian Burnett QC and Jonathan Hough for the Respondents
Richard Horwell QC for the Commissioner of Police of the Metropolis

Hearing dates : 18th March 2008

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Approved Judgment

President of the Queen's Bench Division :

This is the judgment of the Court

1. On 18 March 2008 we heard and dismissed an application for permission to apply for judicial review of a decision of the Assistant Deputy Coroner of Inner West London (Lord Justice Scott Baker) who refused an application to call His Royal Highness The Duke of Edinburgh to give evidence and to request Her Majesty The Queen to answer a number of specified questions at the Inquests into the deaths of Diana, Princess of Wales and Mr Dodi Al Fayed. These are our reasons, published after the Coroner's jury have returned their verdicts.

2. The Princess of Wales and Mr Dodi Al Fayed died in a road traffic accident in Paris over 10 years ago. For many years Mr Mohamed Al Fayed, Dodi Al Fayed's father, has alleged that they were murdered in a plot overseen by the Duke of Edinburgh and implemented by the Secret Intelligence Service (SIS) on his orders. These allegations were set out in his witness statement dated 5th July 2005. The witness statement contained numerous assertions explaining Mr Al Fayed's belief, but lacked any factual evidence to support them.

3. Before the inquest proper began a number of hearings took place. It was submitted to the Coroner that the Duke of Edinburgh should be called to give evidence and that questions should be put to Her Majesty The Queen. The Coroner gave a clear intimation that he was not disposed to do either, but that he would keep the submissions under consideration. In other words he did not reject the submissions outright, but indicated that he would, if invited to do so, review them in the light of the evidence. The inquests began last October. The Coroner admitted a considerable body of evidence that was only of the "most marginal relevance" to the questions the jury would have to answer. He explained that "if ever there was a case that has generated rumour and suspicion, and indeed it has done so on an international scale, surely this is it". He agreed to allow evidence of marginal relevance because it was "desirable in order to ascertain whether there is any substance in a number of assertions that have either been made by Mr Mohammed Al Fayed or have been circulating in the media or both." Nevertheless, the essential purpose of the inquests, in accordance with the statutory provisions of the Coroners Act 1988, was to ascertain how Diana, Princess of Wales and Mr Dodi Al Fayed came by their deaths.

4. Prior to the opening of the inquests the Coroner identified a list of likely issues. These included:

   (a) Whether, and if so, in what circumstances, Diana, Princess of Wales feared for her life.

   (b) Whether the evidence of (Richard) Tomlinson (an ex-employee of the Secret Intelligence Service) throws any light on the collision.

   (c) Whether the British or any other security services had any involvement in the collision.

(d) Whether correspondence belonging to Diana, Princess of Wales, (including some from the Duke of Edinburgh) had disappeared and, if so, the circumstances.

5. The hearings began in October 2007. One of the witnesses called, Simone Simmons, gave evidence that she had seen a letter from the Duke of Edinburgh to Diana, Princess of Wales containing a passage which was said to be both inflammatory and derogatory. She added that none of the letters she had seen were threatening, and in her opinion the Royal Family would do nothing to harm Princess Diana.

6. On 13 December 2007 Brigadier Sir Miles Hunt-Davies, private secretary to the Duke of Edinburgh, produced copies of letters written by the Duke of Edinburgh to Diana, Princess of Wales and copies of her letters to him, which were presented in redacted form to the jury. After his evidence was concluded, on 17 December 2007 the claimant's solicitors wrote to the solicitor to the inquests contending that there were a number of relevant issues about which Brigadier Hunt-Davies had been unable to assist the Coroner. Mr Michael Mansfield QC, counsel for Mr Al-Fayed, had asked Brigadier Hunt-Davies certain questions, and the Brigadier had replied that he did not know the answer. Accordingly the Coroner was asked to call the Duke of Edinburgh to give evidence. In response the solicitor explained that the request to the Coroner to call the Duke of Edinburgh remained under review. We should however notice that the fact that the Brigadier had been unable to answer questions posed by Mr Mansfield did not carry the consequence that the Duke of Edinburgh should be called instead. The statutory task for the Coroner was to decide whether it would be expedient for the purposes of the inquests for the Duke of Edinburgh to be called to give evidence on these topics.

7. On 29th February the claimant's solicitors requested the Coroner to review his earlier decision and to call the Duke of Edinburgh to give evidence on eight matters which were said to be of relevance and about which Brigadier Hunt-Davies had been unable to assist. In addition, in consequence of oral evidence given by Paul Burrell, the former butler to the Princess of Wales, the Coroner was invited to make arrangements to ask Her Majesty The Queen a number of specified questions.

8. This judgment will be released into the public domain at or about the same time as the reasons given by the Coroner for rejecting those applications. The issues raised in the letters of 29th February 2008 are clearly set out in the Coroner's judgment. We shall not repeat them here.

9. The Coroner made his decisions on 7th March. By then the inquest was, at last, coming to an end. The evidence of nearly 250 witnesses had been called before the jury, and the evidence was virtually complete. Written submissions were invited from all the interested persons. The Coroner was naturally giving his mind to his summing up, but on 12th March, he provided short reasons for his decision. He noted, as we do, that the submission in support of the contention that the Duke of Edinburgh should be called to give evidence, and Her Majesty The Queen asked questions, did not follow the thread of Mr Al Fayed's core belief, and his express evidence at the inquest that the Duke of Edinburgh was a "murderer" who organised the assassination by the SIS of both Diana, Princess of Wales and his son.

10. Mr Mansfield's submissions to him were summarised by the Coroner:

> "(i) He accepted that there was no direct evidence of the Duke directing any plot or giving any order, and he did not at any point indicate that he wished to put to the Duke that he was in any way involved in the death of the Princess:
>
> (ii) He submitted that the jury could conclude that "The Duke of Edinburgh is contributing to a climate of hostility":
>
> (iii) He submitted that a series of events had occurred causing the Princess to represent a threat to the Establishment, and the Duke of Edinburgh should be called to give evidence on the cumulative effect of those events."

11. These submissions represented a new approach to the facts by Mr Al Fayed's legal advisers, inconsistent with his own express beliefs, but said in any event to arise from the evidence before the inquests. This suggestion, advanced for the first time by Mr Mansfield, was based on what was described as a "troublesome" or "turbulent" priest thesis, a reference to the consequences of King Henry II's denigration of Thomas Becket, and the hasty rush in 1170 by four knights to murder him in Canterbury Cathedral. The argument is summarised in the letter before claim from Mr Al Fayed's solicitors dated 14 March 2008:

> "This thesis is based on the proposition that those who are committed to the interests of the Monarchy may form their *own* view as to what would be best in the Monarch's best interests, and how best to protect it from perceived threats. Action may be taken to that end without orders to that effect from any member of the Royal Family; those actions may include acts which would never be countenanced by the Royal Family if they were ever consulted."

12. The central question, it was suggested, was that the jury should determine "whether the Royal Family and HRH The Duke of Edinburgh particularly (in respect of whom Diana, Princess of Wales expressed fears) contributed to a climate in which rogue elements in the SIS "took matters into their own hands" to ensure that Diana, Princess of Wales was killed, injured or frightened in a staged accident. This new theory was advanced at virtually the end of the inquests at which no evidence was called or available to Mr Mansfield to substantiate Mr Al Fayed's belief about the direct involvement of the Duke of Edinburgh, or the SIS at his behest or orders, in the fatal accident.

13. The reasons for the Coroner's decision are clear. He had already called evidence of marginal relevance to the questions the jury had to decide, in order to allay rumour and suspicion. Now the time had come "when a halt has to be called to calling evidence of marginal if any relevance." This was not an inquiry into the life of Diana, Princess of Wales, still less an inquiry into the relationships between the late Princess and other members of the Royal Family. He reflected on his statutory obligation to call as witnesses "all persons who tender evidence as to the facts of the death and all

persons having knowledge of those facts whom he considers it expedient to examine" (section 11(2) of the Coroner's Act 1988). Whether the Duke of Edinburgh should be called to give evidence, or Her Majesty The Queen invited to answer questions, needed to be examined in the light of the evidence that had already been called. In effect, the Coroner concluded that the time had come when sufficient evidence had been called to satisfy the requirement that the relevant facts were "fully, fairly and fearlessly investigated" (per Sir Thomas Bingham MR in *R v HM Coroner for North Humberside and Scunthorpe ex parte Jamieson* [1995] 1 QB 1 at 26).

14. The Coroner first examined the issues identified by the claimant's solicitors in the context of any evidence relating to them which might be given by the Duke of Edinburgh. The mere assertion by solicitors that particular topics were "issues" on which evidence was required did not make them so. The Coroner proceeded to ask himself how the evidence of the Duke of Edinburgh relating to the proposed eight issues could assist the jury in its task. Issue by issue, he examined each of them. His reasoning on each is available in his judgment. He recalled that he had earlier determined to keep an open mind as to whether it might be expedient for the Duke of Edinburgh to be called. He would have been prepared to alter his initial view if it were appropriate to do so. Having reflected on the whole of the evidence, nothing had emerged which persuaded him that it would be expedient to change his mind. He noted that to call the Duke of Edinburgh to give evidence on some of the topics, which were "remote in the extreme" from the allegation that he was directly involved in these deaths, would be detrimental to the process and would serve to justify the description applied to it by some observers, that it was "a circus".

15. The Coroner then reflected on the questions sought to be put to Her Majesty The Queen. He directed himself that he should not accede to the application unless it was expedient for the evidence to be sought. The proposed inquiries would not assist the jury to answer the questions which they would be required to address. A halt had to be called to "evidence of marginal if any relevance".

16. In essence, the submission by Mr Michael Beloff QC on behalf of the claimant is that these conclusions were wrong and that the Divisional Court should interfere. The halt called by the Coroner was premature. His reasoning was illogical and flawed. He misapplied the meaning of "expedient" for the purpose of section 11(2) of the 1988 Act. His decision was unreasonable because it was inconsistent with the approach he had taken throughout the Inquests and his proclaimed objective that the inquest should "confirm or allay rumour and suspicion" as well as fully investigate "how" the deceased met their deaths. The consequence would be what was described as an "inevitable insufficiency" of inquiry, or insufficient evidence to enable the Inquests to fulfil his own declaration of their purpose or their statutory purpose.

17. In the result, submitted Mr Beloff, the approach adopted by the Coroner throughout the inquest had been deprived of its coherence by the decisions now under challenge. Rumour and speculation would continue. In any event the Duke of Edinburgh and Her Majesty The Queen could provide evidence of direct relevance to the issue of "how" the fatal road traffic accident occurred.

18. In our judgment these submissions do not sufficiently address the fact that the Coroner had already called a vast body of evidence before the jury. In essence the basis on which he was now being asked to call the Duke of Edinburgh as a witness

and to address questions to Her Majesty The Queen, was to inquire into a new minted speculative theory. It is clear from his submissions that Mr Mansfield wanted the Duke of Edinburgh to be called in order to cross examine him whether he had expressed himself in such terms of hostility to Diana, Princess of Wales that members of the SIS, without his knowledge, or the knowledge of those responsible for the service, conjured up a plot of their own to arrange for her to be killed.

19. In our judgment the Coroner was entitled to conclude that the new theory, whether it went to rumour and speculation or indeed "how" the deceased met their deaths, when examined in the light of existing evidence, did not make it expedient to ask the questions intended to be raised with the Duke of Edinburgh, and the questions asked of Her Majesty The Queen. As he put it in his judgment, the approach the Coroner had adopted at the outset had led to submissions which in effect said, "the further you have gone, the further you ought to go". The Coroner considered and addressed each of the "issues" identified by the claimant's solicitors in relation to the purpose of the Inquests. The question whether it was expedient for these purposes for any evidence (from whomsoever) to be given on these or any other issues was pre-eminently a matter for his judgment. His analysis of the issues in his ruling demonstrates that there was nothing in the proposed evidence which would be of advantage to the jury when reaching their verdict. The stark reality was that enough was enough.

20. The Coroner's approach was neither illogical nor unreasonable, and his conclusion was not flawed. He was required to make a judgment based on whether it was expedient in the particular context of the facts and issues relevant to these inquests. In that context he was entitled to have regard to the vast amount of evidence which had been called and the very limited evidence which remained to be called. As he put it:

> "in keeping open the question whether it might be expedient to call the Duke of Edinburgh I was anxious to see what evidence emerged during the inquests that might alter my initial view. Looking at the whole of the evidence and keeping firmly in mind that it is for the jury and not me to decide what evidence is to be accepted or rejected, nothing has emerged to persuade me it will be expedient to call the Duke of Edinburgh…Inquiries of Her Majesty The Queen should not be made as suggested by Mr Al Fayed on the basis that they will not assist the jury to answer the statutory questions."

21. In our judgment the contention that this court should interfere with these carefully considered decisions was unarguable. Accordingly the applications were dismissed. The claimant will pay the defendant's costs.