[IE] High Court rules on order to reveal Facebook user's identity

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On 8 February 2017, the High Court refused an application for an order against Facebook Ireland Ltd to identify an anonymous source for defamatory postings on their platforms on the basis that the right to a person's good name must give way to the right to life and bodily integrity of another in the event of a conflict.

In a previous decision in 2016, Justice Binchy had refused the plaintiff, Mr Fred Muwema, certain orders which would have had the effect of requiring Facebook to take down certain defamatory postings concerning him which were posted by a pseudonymous source:"Tom Voltaire Okwalinga" ("TVO") on Facebook (see IRIS 2016-10/16). Conversely, Justice Binchy had indicated that he would grant Mr. Muwema's application for a "Norwich Pharmacal Order" (court order for the disclosure of documents or information) with the intent of "revealing the identity and location of the person(s) operating under the name of "TVO" and Facebook had chosen not to oppose that order. However, "before the order could be perfected" Facebook sought leave to introduce "new evidence" with a view to opposing the order, notwithstanding that the interlocutory hearing had concluded. Facebook's application was opposed by Mr Muwema.

The new evidence put forward by Facebook was that they had became aware of the possibility that revealing the identity of TVO, "a political activist" who has been 'marked for arrest' by the Ugandan Government" could pose a risk to his/her safety and that he/she may be "likely to suffer torture, cruel, inhumane treatment" at the hands of State agents of Uganda. Facebook stated that it had received multiple requests from Ugandan Government actors to "take down the contents from TVO's page, to shut down the page and/or to reveal TVO's personally identifiable information." Attempts had also been made "to call Facebook before Uganda's Parliament to compel it to produce the information that would facilitate the arrest of the person(s) behind TVO's account". Various reports on infringements of the rights to freedom of expression, assembly and association in Uganda were also adduced in evidence.

In reaching his decision to allow Facebook to admit the new evidence, which Mr Muwema had argued was "grounded upon hearsay", Justice Binchy was satisfied that the evidence was "sufficient to raise serious concerns about the possible impact of a Norwich Pharmacal Order upon the safety and welfare of TVO, if identified." According to Justice Binchy, Facebook was to be "commended for

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taking the trouble to bring this evidence to the attention of the court, given that it has no vested interest in doing so." Taking all of the evidence into account, including evidence put forward by the executive director of a human rights organisation in Uganda, Justice Binchy stated that by granting the relief sought, it was "probable that TVO will suffer human rights abuses at the hands of the Ugandan authorities." The judge recognised that he had already found the postings concerning Mr Muwema to be defamatory and if the identity of TVO was not revealed then Mr Muwema would be "left without any relief to vindicate his good name." The issue was therefore a "weighing of the right of Mr Muwema to vindicate his good name on the one hand and the right to life and bodily integrity of TVO on the other." Justice Binchy stated that "it must be correct to say that a person's right to his good name must take second place to the right to life and bodily integrity of another where the threat to bodily integrity is sufficiently serious" as he believed it to be in this case. Justice Binchy refused the application by Mr Muwema on a conditional basis; that Facebook having the means to communicate with TVO, "should notify TVO that unless the offending postings are removed within fourteen days from the date of delivery of this judgment" then Mr Muwema "will be entitled to renew his application for Norwich Pharmacal relief which will be duty granted."

Muwema v Facebook (No. 2) [2017] IEHC 69

http://www.bailii.org/ie/cases/IEHC/2017/H69.html

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