



THE COURT OF APPEAL

Record Number: 2022/61

Edwards J.
Kennedy J.
Ní Raifeartaigh J.

BETWEEN/

OLIVER NATALE

APPLICANT

-v-

THE COMMISSIONER OF AN GARDA SÍOCHÁNA

and

THE MINISTER FOR JUSTICE AND EQUALITY

RESPONDENTS

JUDGMENT of the Court (*ex tempore*) delivered on 1st July 2022 by Mr Justice

Edwards

1. At the outset this Court would like to thank the parties on both sides for their helpful submissions. The Court has arrived at a clear view in relation to this matter.
2. The motion before the Court today arises out of proceedings brought by the applicant, Mr. Natale, against The Commissioner of An Garda Síochána and The Minister for Justice and Equality. In these proceedings, notwithstanding that we do not have the pleadings, we understand it to be the case that Mr. Natale is seeking damages and other reliefs against the respondents, being the first and third named defendants named in his said proceedings (“the defendants”), arising out of claims that his dwelling was wrongfully invaded, that he was wrongfully arrested and detained, that there was subsequently an

attempt to maliciously prosecute him and that there was negligence also on the part of the defendants in failing to apprehend and prosecute the perpetrator of the crime of which Mr. Natale was briefly suspected, but in respect of which he was reasonably and promptly excluded as a suspect. He complains, not unreasonably, that there were a number of unfortunate consequences to him having been briefly involved as a suspect in this matter, not least of which is that he claims to have lost his job as a result of it, and that he was evicted from his place of residence in the aftermath.

3. These issues were ventilated before a jury at a jury trial in the High Court presided over by Ms. Justice Reynolds and we understand that at the close of Mr. Natale's case there was an application on behalf of the defendants that the matter would be withdrawn from the jury on the basis that the evidence adduced by the plaintiff did not disclose any case in law for the jury to determine. Following a consideration of the issues and having heard the submissions of both parties Ms. Justice Reynolds decided that she would withdraw the case from the jury, and she gave her reasons in a written ruling delivered on the 17th of November 2021. Mr. Natale was unhappy with Ms. Justice Reynolds's ruling and he maintains that he quite quickly decided that he wished to appeal against it.

4. The Order of the High Court was not perfected until 1st December 2021. Order 86A, Rule 6(3) of the Rules of the Superior Courts provides that an applicant must file a Notice of Appeal within 28 days of the perfection of the Order being appealed against. It was thus incumbent on Mr. Natale to file his Notice of Appeal within 28 days of 1st December 2021.

5. He did not attempt to do so until 5th January 2022, and the Court of Appeal Office refused to accept it on the basis that it was ostensibly out of time. He was advised, quite properly, that if he could get the consent of the defendants to a late filing of the Notice of Appeal the office would then accept his Notice of Appeal. However, having subsequently

contacted the solicitors for the defendants seeking such consent, he was told that they were not willing to furnish the consent that he was seeking.

6. In those circumstances Mr Natale's only alternative was to apply to this Court for an extension of time within which to appeal and to that end he has issued the motion that is presently before us.

7. The motion is grounded upon an affidavit sworn by him on 10th March 2022. We have considered the contents of that affidavit and have had regard to what has been said in it.

8. It was replied to in an affidavit filed on behalf of the defendants by Ms. Rachel Dando, a solicitor in the Chief State Solicitors Office, and again we have considered Ms. Dando's affidavit and what has been said in response to Mr. Natale's affidavit.

9. It is not necessary to review the affidavits in detail for the purposes of this Ruling.

10. Both parties have filed written submissions in support of their respective cases on this motion to which the Court has given consideration.

11. In that regard, although Mr. Natale is a lay litigant, it has been clearly identified to him in the paperwork that the guiding authority and seminal case in the area governing the issue of whether or not a person should be granted an extension of time within which to appeal is the case of *Eire Continental Trading Company v. Clonmel Foods* [1955] IR 170. It has been expressly explained to him both in writing in his opponent's submissions, and again by this Court in the course of this hearing, that the *Eire Continental* jurisprudence sets out a three-limb test which must be satisfied by any applicant seeking an extension of time.

12. The first limb requires that the applicant must show that he/she had formed a *bona fide* intention to appeal within the permitted time, and in the case of Mr. Natale he contends that he formed the intention within the time and the respondents do not contest

this. They accept that *prima facie* he did form the intention within the time. Accordingly, it is accepted that he can satisfy the first limb of the test.

13. The second limb of the test, which again has been explained to Mr Natale, is that he must show the existence of something like a mistake, and he contends that he can satisfy that requirement, although this is disputed by the respondents. The applicant addresses the issue in his affidavit in that he maintains that effectively he was not aware of the 28 day rule, was not aware that time was running against him and only discovered when he went to file his Notice of Appeal that the time had run out. He points to the fact that he is a lay litigant.

14. Whether the second limb can be satisfied in the circumstances of Mr Natale's case is perhaps a finely balanced issue. Had that been the only issue in contest between the parties on this motion, the Court might have been prepared to give him, what would be colloquially referred to as, "the bounce of the ball" on that, and allow for an extension of time in which to file a Notice of Appeal. However, it is not the only issue.

15. A significant problem for Mr Natale in his application to this Court for an extension of time rests with the third limb of the *Eire Continental* test. The third limb requires that he must be able to establish that an arguable ground of appeal exists.

16. During this hearing the Court has tried to elicit from Mr Natale where he says that Judge Reynolds was legally in error. In that regard, we have impressed upon him that demonstration of a legal error requires more than mere assertion by him that he thinks the judge was wrong or that he disagrees with her decision.

17. A person who is contending that there was a legal error must be able to point to the relevant principle of law and demonstrate how the judge failed to apply the law correctly. We do not believe that Mr. Natale has been able to point to any stateable legal error, or to any basis for believing that the decisions arrived at by Ms. Justice Reynolds in respect of

any of the five key issues she identified in her judgment of 17th November 2021 were erroneous and wrong. For that reason, we don't believe that he has established that an arguable ground of appeal exists such as would enable him to satisfy the third limb of the *Eire Continental* test.

18. Just for the avoidance of doubt, the five issues in question were whether Mr Natale had shown that he had arguable grounds to challenge the validity of the search warrant, to challenge his arrest as being wrongful, to challenge the lawfulness of his detention, to show that there had been an attempt to maliciously prosecute him, and to contend that the State defendants had been guilty of actionable negligence and breach of duty towards him.

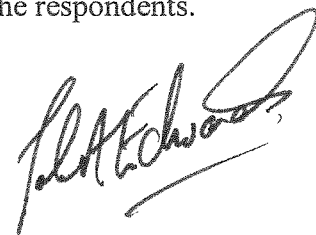
19. We do not believe that anything that has been put before us this afternoon establishes that the rulings of Ms. Justice Reynolds on those issues, or any of them, were incorrect or that Mr. Natale would have a prospect of succeeding in his litigation in establishing liability on the part of the State defendants under any of those headings.

20. We therefore believe that if he could appeal he would fail a second time.

21. In those circumstances we do not consider that he has satisfied the third limb of the test set out in *Eire Continental Trading Co. Ltd.* and the decision of the Court in those circumstances is that we must refuse the motion.

22. We are not prepared to grant an extension of time and so the application for an extension of time is refused.

23. In circumstances where the respondents have been wholly successful in resisting the applicant's motion, the costs of the motion are awarded to the respondents.

A handwritten signature in black ink, appearing to read 'Paul Edwards', with a horizontal line underneath.

Approved Judgment