

THE HIGH COURT

BETWEEN:

MARGARET ROSE McMEEL & ORS

Plaintiffs

and

THE MINISTER FOR HEALTH AND
THE NORTH EASTERN HEALTH BOARD

Defendants

Judgment of Mr. Justice Keane delivered the 7th day of March
1986.

This is an application on behalf of the Plaintiffs for an Order against the first-named Defendant in respect of costs awarded against the Plaintiffs in favour of the second-named Defendants.

The history of the matter is briefly this. The Plaintiffs issued proceedings to restrain the threatened discontinuance of certain medical services being provided at the County Hospital in Monaghan. When the case was opened for the Plaintiffs in this Court, Counsel for the second-named Defendants applied to have the proceedings against his clients dismissed as disclosing no cause of action. I acceded to this application. The action against the first-named Defendant was based, broadly speaking, on two grounds. The first was that his order discontinuing the services was ultra vires. The second was that, even if valid, the order was made in disregard of constitutional and natural justice. By consent of the parties, the ultra vires issue was dealt with first so that an appeal could be taken by either side from my finding to the Supreme Court,

thereby avoiding the expense of a lengthy hearing on the second issue, if the Plaintiffs' contention should transpire to be correct. I decided in favour of the first-named Defendant on the ultra vires issue and reserved the costs of the second-named Defendants until such time as the matter had been dealt with on appeal in the Supreme Court. The Supreme Court allowed the Plaintiffs' appeal and awarded them the costs of the proceedings in the High Court and in that Court. Accordingly, the only matter that remained for determination in the High Court was the question of the second-named Defendants' costs. Having heard arguments from Counsel for the Plaintiffs and the second-named Defendants, I allowed the second-named Defendants their costs against the Plaintiffs. It is in those circumstances that the Plaintiffs have brought the present application.

Section 78 of the Courts of Justice Act, 1936 provides as follows:-

"Where, in a civil proceeding in any court, there are two or more defendants and the plaintiff succeeds against one or more of the defendants and fails against the others or other of the defendants, it shall be lawful for the Court, if having regard to all the circumstances it thinks proper so to do, to order that the defendant or defendants against whom the plaintiff has succeeded shall (in addition to the plaintiff's own costs) pay to the plaintiff by way of recoupment the costs which the plaintiff is liable to pay and pays to the defendant or defendants against whom he has failed."

When the substantive proceedings in the present case were

being opened to me, it was made clear that the second-named Defendants fully supported the attitude of the Plaintiffs and would only discontinue the provision of the services in controversy if they were compelled so to do by an Order of the first-named Defendant lawfully made. In such circumstances, if it was necessary to join them at all in the proceedings, one would have expected that the proceedings would have made it abundantly clear that they were being joined in the proceedings for conformity only and that no relief by way of costs would be sought against them. At paragraph 12 of the Statement of Claim, however, it is alleged that a particular resolution of the second-named Defendants passed on July 18th 1983 constituted a breach and/or non-discharge by the second-named Defendants of its functions and obligations under the relevant legislation. It was also claimed that the second-named Defendants had acted in contravention of the Plaintiffs constitutional rights and that inter alia the passing of the resolution

"constituted a gross failure by the (second-named Defendants) to administer its functions and expend its funds on a proper costs benefit basis and with maximum efficiency."

No attempt was made at the hearing to substantiate any of these allegations. The only basis on which it was sought to retain the second-named Defendants in the proceedings was to ensure that they would, in the event of the Court finding that the Minister's Order had been made ultra vires, observe that finding and continue to provide the services in question. It was said on behalf of the Plaintiffs that, if the second-named

Defendants were prepared to give an undertaking that they would comply with the law in this regard, they could be dismissed from the proceedings. Counsel for the second-named Defendants having properly refused to give any such undertaking in circumstances where his clients had never been in breach of any legal requirement, I dismissed the action as against them. From that decision, no appeal was taken to the Supreme Court. I am satisfied that no good reason was adduced then or now for joining the second-named Defendants in these proceedings and, accordingly, this is not a proper case in which to order recoupment of the costs in question.

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