

**APPROVED**

**[2021] IEHC 560**

THE HIGH COURT

2021 No. 43 MCA

IN THE MATTER OF SECTION 2 OF THE SUMMARY JURISDICTION ACT 1857  
(AS EXTENDED BY SECTION 51 OF THE COURTS (SUPPLEMENTAL PROVISIONS)  
ACT 1961)

BETWEEN

NATIONAL TRANSPORT AUTHORITY

APPELLANT

AND

EXPRESS BUS LIMITED  
ALAN MARTIN  
KATHLEEN MARTIN

RESPONDENTS

**JUDGMENT of Mr. Justice Garrett Simons delivered on 25 August 2021**

**INTRODUCTION**

1. This judgment is delivered in respect of an application to enlarge time for the transmission of a case stated to the High Court. The application is made pursuant to Order 122, rule 7 of the Rules of the Superior Courts. The principal justification advanced for the delay involves an allegation that the Central Office of the High Court erred in refusing to accept the paperwork lodged.

**PROCEDURAL HISTORY**

2. This putative case stated arises out of a prosecution before the District Court. The three respondents to these proceedings (collectively, “*the accused*”) had each been charged

NO REDACTION REQUIRED

with an offence contrary to the Public Transport Regulation Act 2009, namely, providing a public bus passenger service without a licence. The charges relate to an incident on 30 September 2017 when, or so it is alleged, the accused provided a bus service to a music festival at Fairyhouse Racecourse.

3. The prosecution of the offences ultimately came on for hearing before the District Court on 21 March 2019. On that date, the accused were all acquitted of the alleged offences. The prosecutor, namely the National Transport Authority, subsequently lodged an application with the District Court seeking to appeal the acquittals by way of a case stated.
4. It should be emphasised that the case stated takes the form of an appeal, rather than a consultative case stated. A failure to distinguish between the two forms of case stated is said to lie behind the refusal of the Central Office to accept the paperwork subsequently lodged on behalf of the National Transport Authority.
5. The District Court Rules provide that a judge shall prepare and sign a case stated within six months of the date of application (O.102, r.12). The case law indicates that a failure to comply with this time-limit does not invalidate a “late” case stated. Importantly, however, once the six-month time-limit has expired, the party seeking the case stated is entitled to apply for an order directing the District Court to prepare same (*Irish Refining Plc v. Commissioner of Valuation* [1990] 1 I.R. 568 at 572).
6. There was considerable delay in the preparation of the case stated in these proceedings. A signed version of the case stated was ultimately received by the National Transport Authority on 1 October 2020, that is, some eighteen months following the acquittal. Thereafter, the National Transport Authority was required to transmit the case stated to the Central Office of the High Court within fourteen days. It was also required to notify the intended appeal to the accused, who would be the respondents to the appeal.

7. Certain paperwork was lodged with the Central Office of the High Court on 12 October 2020. This paperwork was, however, rejected by the Central Office. The National Transport Authority maintains the position that the Central Office erred in refusing to accept the case stated. In particular, it is said that the Central Office, mistakenly, were seeking documentation which is only appropriate to a consultative case stated, as opposed to an appeal by way of case stated.
8. It would have been open to the National Transport Authority to make an application to the High Court for directions following upon the rejection of the paperwork by the Central Office. Directions could have been sought to the effect that the case stated had been properly lodged, or, alternatively, an extension of time could have been sought. Instead, however, the National Transport Authority chose to enter into a lengthy and repetitive exchange of correspondence with the Central Office. This was so notwithstanding that the fourteen day time-limit had long since expired. It was only on 10 March 2021, that is some five months after the time-limit had expired, that the National Transport Authority finally issued a motion returnable before the High Court. The motion seeks an extension of time *simpliciter*. It has not been argued before this court that the case stated had been validly transmitted on 12 October 2020.
9. The original return date for the motion was 12 April 2021. The motion ultimately came on for hearing before me on 5 July 2021. On that occasion, both parties provided very helpful written and oral submissions to the court. Judgment was reserved until today's date.

## **LEGISLATIVE FRAMEWORK**

10. The time-limit originally prescribed for the transmission of a case stated had been three days. This was provided for under the original version of section 2 of the Summary

Jurisdiction Act 1857. The section was subsequently amended by section 45 of the Criminal Justice (Miscellaneous) Provisions Act 2009. The additional words “or such longer period as may be provided for by Rules of Court” were inserted. It was not until July 2014, however, that a longer period was actually provided for: Order 62, rule 1 of the Rules of the Superior Courts was amended then, so as to introduce a new time-limit of fourteen days. See the Rules of the Superior Courts (Case Stated) 2014 (S.I. No. 293 of 2014).

11. This fourteen day time-limit is subject to the possibility of an enlargement under Order 122, rule 7. (See, by analogy, the judgment of the High Court (O’Neill J.) in *Director of Public Prosecutions v. Kudriacevas* [2014] IEHC 53 (at paragraph 29)).
12. The nature of the court’s discretion under Order 122, rule 7 has been described as follows by the Supreme Court in *Kavanagh v. Healy* [2015] IESC 37 (at paragraphs 3.6 and 3.7):

“Furthermore, it is absolutely clear from the wording of Rule 7 that an extension of time can be given even after the original time limit has expired. Finally, it is clear that the power of the Court to enlarge time extends to enlarging a time which is ‘fixed by any order enlarging time’. Thus it is absolutely clear that the fact that time has been enlarged once does not operate as a barrier to a second or subsequent enlargement of time. The wording of the rule is absolutely clear and there can be no room for doubt about what it means. A court can extend time for any action required to be taken by the rules, can do so even if the time originally fixed has expired and can do so a second time even if there has already been one extension.

It should, of course, be noted that the fact that a court has a jurisdiction to extend time does not mean that the Court must extend time in all cases. The question of the extent of leeway which should be given to any party which is in default of complying with time limits set out in the rules of court is a matter to be considered on the merits in all the circumstances of the individual case. But there is a significant difference between the question of whether the Court has a power to extend time at all and the question of whether any such power as might exist was properly exercised in all the circumstances of the case in question.”

## DISCUSSION AND DECISION

13. The paramount objective in the exercise of the discretion to enlarge time must be to do justice between the parties. Factors to be considered in this regard include the length of the delay relative to the time-limit; the explanation for the delay; and the prejudice, if any, caused to the other side by the delay.
14. On the facts of the present case, I have concluded that the balance of justice lies against granting an enlargement of time, for the following reasons.
15. First, the grant of an enlargement of time would prejudice the putative respondents to the appeal, i.e. the accused. The alleged offences are ones which fell to be dealt with summarily before the District Court. The accused had been *acquitted* of the alleged offences as long ago as 21 March 2019. The alleged offences are said to have occurred on 30 September 2017, that is almost four years ago now. It would be inconsistent with the expedition required of a summary prosecution to entertain an appeal at such a late remove.
16. In this regard, I adopt the approach of the High Court in *Director of Public Prosecution v. Rice* [2000] 2 I.L.R.M. 393. On the facts of *Rice*, there had been a significant delay in the finalisation of an appeal by way of case stated. The respondent to the appeal brought an application to dismiss the case stated on the grounds of delay. The High Court (Kelly J.) acceded to the application. Kelly J. cited the judgment of the Supreme Court in *Director of Public Prosecutions v. Flahive* [1988] I.L.R.M. 133 (at page 136) as follows:

“There is one matter which was canvassed on the appeal on behalf of the respondent and on which I should make comment and that issue is the question of delay, even though in the instant case it is in no way prejudicial to the defendant/respondent’s chance of a fair trial ...

In my view any party seeking a case stated in the High Court has an obligation to diligently prosecute the appeal and if there is any undue delay, I am of opinion that the High Court would be entitled to refuse

to deal with the case, and where the High Court was of opinion that to deal with the case after a long delay would be prejudicial or unjust to the other party, should refuse to entertain the case. Again, if there is an undue and unexplained delay in appealing from the High Court to this Court, this Court should reserve to itself also the right to refuse to hear such an appeal.”

17. Applying these principles to the facts of the case before him, Kelly J. held that the respondent’s right to a trial in due course of law under Article 38.1 of the Constitution of Ireland would possibly be jeopardised if the case stated were entertained at such a lengthy remove. This was so notwithstanding that the respondent in *Rice* had not shown that he had suffered any actual prejudice as a consequence of the delay that had arisen.
18. I am satisfied that similar considerations apply in this case. Whereas the delay in the finalisation of the case stated was not as great as that at issue in *Rice*, the cumulative delay in the present case is already in the order of two and a half years. If the National Transport Authority were to be permitted to pursue an appeal by way of case stated at this late remove, it presents the risk that—in the event the appeal were to be successful on the merits—there would be a retrial in 2021 or 2022 in respect of offences alleged to have been committed in September 2017.
19. Secondly, the enlargement of time sought is a *multiple* of the prescribed time-limit. The motion seeking an extension of time was only issued on 10 March 2021. As of that date, the National Transport Authority was already five months out of time. Given the importance attached to compliance with time-limits in the context of cases stated in criminal proceedings, it was unreasonable for the National Transport Authority to have delayed in issuing its motion. Once it became apparent that the Central Office would not accept the paperwork in the form lodged, an application for directions should have been made to the High Court. The Central Office’s position had been apparent since October 2020. Even if one takes the date of the final ultimatum from the Central Office

(25 January 2021), the National Transport Authority acted unreasonably in delaying for another six weeks before issuing their motion.

20. Thirdly, in determining the application for an enlargement of time, it is legitimate to have regard to the overall conduct of the criminal prosecution by the National Transport Authority. There had been considerable delay in the finalisation of the case stated. There was an onus upon the National Transport Authority, as the putative appellant, to seek to ensure that the six-month time-limit was complied with. Once the time-limit had expired, it would have been open to the National Transport Authority to apply for an order directing the preparation of a case stated. The Authority failed to do so.

#### **CONCLUSION AND FORM OF ORDER**

21. The application for an enlargement of time is refused. It follows that the appeal by way of case stated is inadmissible by reason of delay and must be dismissed.
22. As to costs, the respondents to the putative appeal have been “entirely successful” in resisting the application to extend time and have succeeded in having the appeal dismissed. Were the default position under the Legal Services Regulation Act 2015 to apply, the respondents would be entitled to recover their costs as against the losing party, i.e. the National Transport Authority. If either party wishes to contend for a different form of costs order, then short written legal submissions should be filed by 4 October 2021.

#### *Appearances*

Remy Farrell, SC and Diarmuid Collins for the appellant instructed by Coughlan White & Partners  
Frank Crean for the respondents instructed by McGarr Solicitors

Approved  
Garratt S.M.A.S.