

**THE HIGH COURT
JUDICIAL REVIEW**

[2023] IEHC 120

2023/4 JRP

BETWEEN

STEVEN PENROSE

APPLICANT

AND

**OLIVER HACKETT
AND
RONAN COWLEY**

RESPONDENTS

AND

**THE HIGH COURT
JUDICIAL REVIEW**

2023 5 JRP

BETWEEN

STEVEN PENROSE

APPLICANT

AND

**OLIVER HACKETT,
RONAN COWLEY
AND
GNDOCB**

RESPONDENTS

JUDGMENT of Mr. Justice David Holland delivered on 13 March 2023

1. These proceedings are applications by the above-entitled applicant, Mr Penrose, acting as a lay litigant in seeking leave to seek judicial review. Mr Penrose identifies himself as detained in Mountjoy Prison and the papers were filed in the Central Office pursuant to the written procedure made available to prisoners seeking leave to seek judicial review.

2. Oliver Hackett and Ronan Cowley are identified in the papers as members of An Garda Síochána.

3. In proceedings **2023/4 JRP** the papers seeking leave to seek judicial review were stamped received in the Principal Registrar's Office of the High Court on 6 March 2023. However they are also

stamped 7 March 2023 and 21 February 2023. I am informed by the staff of the Central Office of the High Court that the papers were in fact received there on 6 March 2023. It is not apparent to me that anything turns on any resultant lack of clarity.

4. In proceedings **2023/4 JRP** the Statement of Grounds is dated 1 October 2022. It is headed, in the title, "*Civil Case*". On its face it seeks Certiorari, Mandamus and Prohibition. However, §E, identifying the grounds upon which relief is sought, states "*sue for damages for assault, read document attached*". It is verified by a brief verifying affidavit, in usual form, sworn by Mr Penrose in Mountjoy Prison on 1 October 2022 and citing the "*attached letter*".

5. Attached is a 2-page handwritten document which commences with the assertion that Mr Penrose "*wants to lodge a civil case to sue two Garda for damages over a vicious assault they subjected me to for no reason*". There follows a description of injuries alleged to have resulted from such assault, for which Mr Penrose states "*I should be compensated for the damage and suffering caused by reckless guards*". It is apparent from this document that the assault is alleged to have occurred on 15 May 2017.

6. The handwritten document continues by way of allegations that the Gardaí in question made false statements as to the circumstances of the alleged assault. Mr Penrose asserts that, at a Circuit Court trial in 2018 he was acquitted of unspecified charges, on the basis of which acquittal he asserts that the jury rejected the version of relevant events given by the Gardaí. There follows a further description of the alleged assault and injuries ensuing.

7. It is clear that Mr Penrose's purpose in these proceedings is to claim, and the nature of the claim made is for, damages for assault. Proceedings to that end ought properly to be prosecuted by way of plenary action and not by way of application for judicial review. His attempt to proceed by way of judicial review is misconceived.

8. Further, it is clear from the papers that any alleged assault occurred in 2017. As recorded above, the Statement of Grounds is dated 1 October 2022 and the verifying affidavit, was sworn on 1 October 2022. The papers were lodged in the Central Office of the High Court, at earliest, on 21 February 2023.

9. By O. 84, r. 21(1) of the Rules of the Superior Courts, "*An application for leave to apply for judicial review shall be made within three months from the date when grounds for the application first arose*". On any view of matters, Mr. Penrose has clearly not complied with that time limit. Accordingly, it falls to me to refuse the application for leave to seek judicial review in this case unless it appears proper to extend that three-month period in Mr. Penrose's favour.

10. O. 84, r. 21(3) of the Rules of the Superior Courts permits the court to extend that time limit. However, the first and explicit requirement of O. 84, r. 21(3), before such an extension shall be granted, is that an application has been made for such an extension. Mr. Penrose in the present case has made no such application.

11. Even had such an application been made, O.84, r.21(3) provides that the court shall:

“only extend such period if it is satisfied that

(a) there is good and sufficient reason for doing so, and

(b) the circumstances that resulted in the failure to make the application for leave within the period mentioned in sub-rule (1) either:

(i) were outside the control of, or

(ii) could not reasonably have been anticipated by the applicant for such extension.”

12. The papers submitted by Mr. Penrose and now before me do not, in any manner, address the criteria of O. 84, r. 21(3) for extension of time, much less satisfy them.

13. Accordingly, I refuse the application made by Mr. Penrose for leave to seek judicial review in proceedings **2023/4 JRP**

- As misconceived in that any action for damages for assault should be prosecuted by plenary proceedings and not by judicial review.
- By reason of his failure to comply with the three-month time limit stipulated by O. 84, r. 21 of the Rules of the Superior Courts.

14. In making that order I have had regard to **A.A.A.**² in which the Supreme Court recited the test for leave to commence judicial review laid down in **G. v. the Director of Public Prosecutions**.³ As applicable to the present case, I am satisfied that Mr. Penrose has failed to satisfy me in a *prima facie* manner and by the facts asserted in the papers before me, that his application has been made within the relevant time limits or that that the only effective remedy, on the basis of those assertions, would be an order by way of judicial review or that procedure by way of judicial review is, in all the circumstances, a more appropriate method of procedure than plenary process. As stated, in my view, and insofar as the relief claimed appears to be in damages, Mr. Penrose’s complaints appear proper to plenary proceedings rather than to judicial review.

² A.A.A. and J.A.A. and E.A.A and S.A.A. v. The Minister for Justice, Ireland and the Attorney General [2017] IESC 80. Charleton J., 21 December 2017.

³ [1994] 1 IR 374.

15. In proceedings **2023/5 JRP**, the papers seeking leave to seek judicial review were stamped received in the Principal Registrar's Office of the High Court on 6 March 2023.

16. The Statement of Grounds is dated 23 December 2022. On its face it seeks Certiorari, Mandamus and Prohibition. However, §E, identifying the grounds upon which relief is sought, states "*vicious assault by these guards for no reason, Civil suit for damages*". It is verified by a brief verifying affidavit, in usual form, sworn by Mr Penrose in Mountjoy Prison on 23 December 2022 and citing the "*Document attached*".

17. The "*Document attached*" is a handwritten and briefer account of the alleged assault alleged to have occurred on 15 May 2017 and allegedly resultant injuries. In substance, if in shorter form, proceedings 2023/5 JRP repeat proceedings 2023/4 JRP. I refuse leave to seek judicial review in the proceedings 2023/5 JRP on the same basis as that on which I refuse leave in proceedings 2023/4 JRP.

18. In the ordinary way the allegations made against them, given my decision to refuse leave to seek judicial review, may not be likely come to the attention of Mr Hackett and Mr Cowley. As this judgment is given in public, I consider that it would be unjust that they would remain unaware of the allegations made against them in this application. I direct that a copy of this judgment be sent to them care of the Commissioner of An Garda Síochána.

19. As will have been seen, proceedings 2023/5 JRP identify as a Respondent "GNDOCB". From the papers it may be inferred that this is an acronymic reference to the Garda National Drugs And Organised Crime Unit to which, it is alleged, Gardaí Hackett and Cowley were attached at the time of the alleged assault. Beyond observing, as to the constitution of the proceedings, that I am not aware of any body of that name having legal personality, it does not seem to me necessary to make any particular order in this regard as I am in any event refusing leave to seek judicial review.

David Holland
13 March 2023