

APPROVED

[2023] IEHC 134



THE HIGH COURT
JUDICIAL REVIEW

2023 No. 207 J.R.

BETWEEN

G.

APPLICANT

AND

DIRECTOR OF PUBLIC PROSECUTIONS
(AT THE SUIT OF GARDA CRAIG GEOGHEGAN)

RESPONDENT

JUDGMENT of Mr. Justice Garrett Simons delivered on 14 March 2023

INTRODUCTION

1. This judgment is delivered in respect of an *ex parte* application for leave to apply for judicial review. The principal relief sought in the proceedings is an order directing that a criminal prosecution currently pending before the District Court be heard on an anonymised basis. The anonymisation of the parties to the criminal proceedings is sought in circumstances where those proceedings arise out of an incident involving the minor children of the accused. Separately, the applicant for judicial review also seeks to challenge the District Court Rules

NO FURTHER REDACTION REQUIRED

insofar as they relate to the taking up of a copy of the transcript of the digital audio recording (DAR).

PROCEDURAL HISTORY

2. These judicial review proceedings concern a criminal prosecution which is currently pending before the District Court. The applicant for judicial review has been charged with a number of alleged public order offences. It is sufficient for the purpose of this judgment to summarise the events leading up to the alleged offences as follows. It seems that the applicant had left one of his sons, who was asleep at the time, unattended in a parked car for a brief period while he (the applicant) made a purchase at a shop. On his return to the car, the applicant says his son was well, content and fast asleep. It appears that the applicant was then approached by two members of An Garda Síochána. The applicant was arrested and has since been charged with the following alleged offences: (i) the failure to provide his name and address; (ii) the failure to comply with a direction given by a member of An Garda Síochána; and (iii) the use or engagement in threatening, abusive or insulting words or behaviour with intent to provoke a breach of the peace or being reckless as to whether a breach of the peace might have been occasioned. The applicant denies these charges.
3. Thereafter, the applicant himself made application for the issuance of summonses against certain members of An Garda Síochána. These applications were made pursuant to what is known as “*the common informer*” procedure. The District Court refused to issue the summonses. That refusal is the subject-matter of related judicial review proceedings (“*the first judicial review proceedings*”).

The application for leave in the first judicial review proceedings was heard by me on an *inter partes* basis and judgment has been reserved.

4. The criminal proceedings were listed before the District Court on 19 January 2023. On that date, the applicant avers that he applied to have the proceedings anonymised. This application was refused. This refusal is the subject-matter of the present judicial review proceedings.
5. The leave application in the first judicial review proceedings had been at hearing before me on 20 February 2023. Towards the end of that hearing, the applicant sought liberty to bring a leave application before me in respect of the anonymisation issue. In circumstances where I am familiar with the background to the overall case, I directed that the leave application in any further judicial review proceedings should be made to me. My intention had been that the leave application would be made on an *ex parte* basis.
6. The applicant subsequently prepared the necessary papers for the leave application in the present proceedings. It appears that these papers have been copied to the Office of the Chief State Solicitor. I will return to the significance of this shortly. The leave application was listed for hearing on 13 March 2023.
7. The principal relief sought is in relation to the anonymisation of the parties to the criminal proceedings. I am satisfied, having regard to the low threshold applicable to an application for leave to apply for judicial review, that the applicant has an arguable case that some form of reporting restrictions should be imposed in respect of the criminal proceedings. It is arguable that the criminal proceedings relate, at least indirectly, to the care and welfare of minor children. The applicant has exhibited correspondence which indicates that An Garda Síochána had made a referral to the Child and Family Agency (TUSLA). The

letter confirms that the Agency considers that there is “*no on-going role for social work*” and that the referral is now closed.

8. Separately, the applicant seeks to challenge the District Court rules insofar as they regulate the taking up of the transcript of the digital audio recording of proceedings before that court. The relevant rule, Order 12B, rule 5, provides that any party or person who seeks access to any part of a record of proceedings must issue and serve a notice of application (in prescribed form) grounded upon an affidavit.
9. The applicant seeks the following declarations:
 - “(ii) that section 5 of the Order 12B of the District Court Rules does not invalidate an application for the Digital Audio Recording, put before a Judge, in Open Court, in presence of the party;
 - (iv) that section 5 of Order 12B of the District Court Rules is unconstitutional as against the principle of Open Justice at large;
 - (v) a declaration that Digital Audio Recording should be available to the public at large, free of charge, to ensure proper scrutiny of the Judicial Process and accountability of Judges (embedded in the principle of Open Justice affirmed in the Constitution and upheld by the Supreme Court)”.
10. The proper respondents to such a challenge would be the District Court Rules Committee and the Attorney General. Neither of these parties has been named in the present proceedings. If the applicant wishes to pursue this aspect of the application for judicial review, it will be necessary for him to amend the title of the proceedings so as to join the District Court Rules Committee and the Attorney General. It will also be necessary for the applicant to amend his statement of grounds to elaborate upon the basis for this challenge. The current statement of grounds does not set out an arguable case as to why it is

impermissible to regulate the procedure by which a transcript of the digital audio recording may be taken up.

11. At the hearing of the *ex parte* leave application, the applicant was offered the option of either having the entire leave application adjourned to allow the amendments to be made, or, alternatively, of having the court deal with the principal issue, namely the anonymisation of the criminal proceedings, with the balance of the leave application adjourned generally with liberty to bring an application to amend the statement of grounds. The applicant elected for the second option.

NAMING OF DISTRICT COURT JUDGE

12. The applicant has sought to name the District Court judge as the first respondent in the proceedings. The second respondent is the member of An Garda Síochána who appears to have carriage of the criminal prosecution.

13. Order 84, rule 22 (2A) of the Rules of the Superior Courts provides as follows:

“Where the application for judicial review relates to any proceedings in or before a court and the object of the application is either to compel that court or an officer of that court to do any act in relation to the proceedings or to quash them or any order made therein—

- (a) the judge of the court concerned shall not be named in the title of the proceedings by way of judicial review, either as a respondent or as a notice party, or served, unless the relief sought in those proceedings is grounded on an allegation of mala fides or other form of personal misconduct by that judge in the conduct of the proceedings the subject of the application for judicial review such as would deprive that judge of immunity from suit,
- (b) the other party or parties to the proceedings in the court concerned shall be named as the respondent or respondents, and

- (c) a copy of the notice of motion or summons must also be sent to the Clerk or Registrar of the court concerned.”

14. As appears, a judge should not normally be named in the title of the proceedings by way of judicial review, either as a respondent or as a notice party. The reference to a judge not being “*named*” in the title of the proceedings indicates that the judge should not be “*joined*” in the proceedings as a respondent or notice party. The intention of the rule is not that a judge’s actual name be redacted in the title of the proceedings but rather that the judge will not normally be joined in judicial review proceedings at all. The normal position is that the proper respondent will be the other party to the proceedings in the lower court. In the present case, therefore, the normal position would be that the Director of Public Prosecutions would be the only respondent to the judicial review proceedings.
15. The rule provides that it is only appropriate to name a judge as a respondent where the relief sought in the judicial review proceedings is grounded on an allegation of mala fides or other form of personal misconduct by that judge in the conduct of the proceedings the subject of the application for judicial review such as would deprive that judge of immunity from suit. These criteria are not fulfilled in the present case. The most that is said against the District Court judge in the present case is that he may have erred in law in refusing to make an order anonymising the criminal proceedings. Such a decision, even if ultimately found to be incorrect by the High Court in these judicial review proceedings, does not amount to mala fides or personal misconduct. An error of law on the part of the District Court judge could not, without more, meet the criteria specified.
16. In the present case, the legal question of whether reporting restrictions should be imposed in respect of the criminal proceedings is not clear-cut. The role of the

minor children in the criminal proceedings is peripheral, and the case can be contrasted, for example, with a case where the accused person is a minor child.

In such a case, reporting restrictions would apply under the Children Act 2001.

17. The present case is a borderline case, and whereas I have been satisfied, on the low threshold applicable to an application for leave to apply for judicial review, that there are arguable grounds for contending that an anonymisation order should be made, there are respectable arguments in the other direction.
18. Accordingly, as part of my order granting leave, I direct that the title of the proceedings be amended so as to remove the District Court judge as a respondent. The sole respondent to the proceedings will be the Director of Public Prosecutions. The title will refer to the respondent as “*Director of Public Prosecutions (at the suit of Garda Craig Geoghegan)*”.
19. I am also making an order directing that the clerk of the District Court provide a transcript of the record of the proceedings before that court on 19 January 2023. Alternatively, either the applicant or the respondent is at liberty to arrange to take up a transcript of the hearing on 19 January 2023. These orders are made pursuant to Order 84, rule 27(2A).

APPLICATION FOR INTERIM RELIEF

20. The applicant has sought, as part of his *ex parte* docket, an interim order in the following terms:

“An interlocutory order of mandamus (Pursuant to rule 18(1) of Order 84 of the RSC) against District Judge [redacted] to issue an anonymisation order of the proceedings in relation to the proceedings [Details redacted];

21. For the reasons which follow, the application for interim relief is refused. It is a fundamental principle of constitutional justice that a party who is affected by an

order should be heard in relation to same. The High Court does have jurisdiction, in certain limited circumstances, to make orders on an *ex parte* basis. The relief sought by the applicant goes far beyond anything which could reasonably be granted on an *ex parte* basis. The practical effect of the interim relief, if granted, would be that the applicant would have achieved the principal relief sought by him in the judicial review proceedings, without the other side having had an opportunity to be heard by the High Court. It seems to be envisaged by the applicant that the hearing before the District Court would proceed on 30 March 2023, with the direction of the High Court that it be on an anonymised basis. It would be too late thereafter for the Director of Public Prosecutions to contest these judicial review proceedings.

22. The applicant has suggested that it is the respondent's own fault that they did not have an opportunity to be heard on the leave application. It is said that they were copied in on the correspondence which contained the papers for the leave application. With respect, the liberty which I gave to the applicant on 20 February 2023 was to make an *ex parte* leave application before me. The extent of my direction was that a leave application which, in the ordinary way, would be made in the general *ex parte* leave application list on a Monday morning, would instead be heard by me. This was done for pragmatic reasons, in circumstances where, as explained earlier, I have seisin of the related judicial review proceedings, and, therefore, have an understanding of the circumstances of the case. I did not direct that the application for leave be made on notice. The respondent would not, therefore, have been entitled to make submissions had they sought to intervene at the hearing. Moreover, there is nothing in the statement of grounds which indicates that the applicant is seeking mandatory

orders on an interim basis. This was only flagged for the first time in the *ex parte* docket.

23. The justice of the case is met, instead, by the imposition of a stay on the criminal prosecution before the District Court pending the determination of the judicial review proceedings or further order of the High Court. This will ensure that both parties have an opportunity to make detailed submissions in relation to the judicial review proceedings before the hearing in the District Court is resumed. As a stay has been granted on an *ex parte* basis, it will be provided as part of the order that the respondent have liberty to apply, if they wish, to set aside or vary that order. Any such application would have to be on notice to the applicant.

SUMMARY OF PROPOSED ORDERS

24. The applicant is granted leave to apply for judicial review in respect of the reliefs sought at 5 A and B of the statement of grounds. The balance of the leave application is adjourned generally, with liberty to bring an application to amend the statement of grounds and to join the District Court Rules Committee and the Attorney General as parties.
25. The title of the proceedings is amended so as to remove the District Court judge as a respondent. The sole respondent to the proceedings will be the Director of Public Prosecutions. The title will refer to the respondent as “*Director of Public Prosecutions (at the suit of Garda Craig Geoghegan)*”.
26. A stay is imposed on the criminal prosecution before the District Court pending the determination of the judicial review proceedings or further order of the High Court. As a stay has been granted on an *ex parte* basis, it will be provided as part of the order that the respondent have liberty to apply, if they wish, to set

aside or vary that order. Any such application would have to be on notice to the applicant.

27. An order will be made directing that the clerk of the District Court provide a transcript of the record of the proceedings before that court on 19 January 2023. Alternatively, either the applicant or the respondent is at liberty to arrange to take up a transcript of the hearing on 19 January 2023. These orders are made pursuant to Order 84, rule 27(2A).
28. Finally, I have previously directed that reporting restrictions apply to these judicial review proceedings *pro tempore*. It would render the proceedings nugatory if such an order were not imposed because the identity of the parties, which is the very thing that the applicant seeks to protect, would have been disclosed,
29. I propose to list these judicial review proceedings for further directions on Monday 27 of March 2023 at 10:30 AM. The applicant should make his motion returnable for that date.

Approved
Sandra Simons