

THE HIGH COURT

[2023] IEHC 30

[2021/728 JR]

BETWEEN

K. [A MINOR] SUING BY THEIR NEXT FRIEND U.

APPLICANT

AND

MINISTER FOR JUSTICE

RESPONDENT

JUDGMENT of Ms Justice Bolger delivered on the 17th day of January, 2023

1. This is an application to add an individual currently identified as the applicant's next friend, Mr. U., as an applicant pursuant to O. 15, r. 13. The application is only to include an additional applicant and not to amend the grounds for seeking judicial review or to seek further reliefs. For the reasons set out below I am allowing this application.
2. A previous amendment was allowed by consent and the Minister relies on this in demonstrating that does she did not object to amendment she considered to be necessary.
3. The current proposed amendment arose because the Minister was concerned that the infant plaintiffs were unaware of the proceedings and their potential cost implications as well as the absence of any consent from their mother. This was resolved to the Minister's satisfaction by the applicants swearing an affidavit and the furnishing of confirmation from the Bangladeshi authorities as to the legal basis for Mr. U. acting as their next friend. However as a result of the Minister's concerns, the applicants' legal advisers took the view that Mr U. should be joined as an applicant rather than just as the applicants' next friend. The Minister contends that this amendment is not required or that her concerns, which were alleviated by the filing of the necessary affidavits, require Mr. U. to be joined as next friend. Nevertheless, the applicants say that the issues caused them concern and motivated their decision to seek to amend the pleadings by adding the next friend as applicant in order to, as their counsel put it, stabilise the proceedings. The applicants relied on the decisions of this Court in *Keegan v. An Garda Síochána Ombuds Commission* [2012] 2 IR 570 and *Voncova v. Criminal Injuries Compensation Tribunal* [2019] IEHC 13 where applications to amend were allowed in order to ensure that the proper issues were before the court.
4. The Minister opposes this application for an amendment because she says that she is prejudiced by the inclusion of Mr. U., an Irish citizen, and the prospect of having to meet a new additional case in relation to the constitutional rights of an Irish citizen which are stronger than any constitutional rights that may be asserted by the non-Irish, non-resident applicants.

Decision

5. Order 15, rule 13 allows the court:-

“...at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the names of any parties improperly joined, whether as plaintiffs or as defendants, be struck out and that the names of any parties, whether plaintiffs or defendants, who ought to have been joined, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the cause or matter, be added.”

6. Thus, an amendment can be made either on the request of a party or on the court’s own volition. Either way, the clear intention of permitting such amendment is to ensure that the correct parties, and thereby the correct issues, are before the court.
7. The applicants are concerned that Mr. U.’s absence as applicant from the proceedings could adversely affect their claim. Whilst the Minister argues his presence is not required, the applicants are minor children resident in a different jurisdiction and that may tip any balance to be drawn in favour of the cautious approach of their legal advisor.
8. The Minister’s primary concern seems to be that she will have to face a different case once Mr. U., an Irish citizen, is included in the proceedings. However the applicants’ counsel has confirmed to this Court that they are not seeking to amend or expand on the grounds or the relief. He describes Mr. U.’s rights as secondary to those of the two infant applicants and maintains that the infant applicants can, themselves, assert constitutional rights as has been pleaded in the original statement to ground the application. The applicants’ counsel also points to the advantage conferred on the Minister by Mr. U.’s inclusion as he is resident in Ireland and is, therefore, a mark for any costs order secured against him, unlike a non-resident infant applicant.
9. I do not accept the Minister’s view that Mr. U.’s inclusion as an applicant renders this a different case to what is and will remain the grounds on which relief is sought. I note the concern of the Minister’s counsel about a broader case potentially being made at the hearing in spite of the concessions and commitments made to this Court by the applicants’ experienced counsel. It was for that reason that I considered it prudent to give a written judgement so that the applicants’ position and the court’s reasons for allowing this application would be clearly recorded.
10. I will allow the application to join Mr. U. as applicant as I am satisfied this will ensure the correct issues are put before the court. The applicants do not seek to expand the grounds or the reliefs and that, combined with the concessions made by their counsel to this Court, means that the Minister is not prejudiced in defending the proceedings by allowing this amendment.

Indicative view on costs

11. As the applicants have succeeded in their application, I consider that, in principle, they are entitled to their costs. I will put the matter in for mention before me at 10:30am on 7 February in order to allow the parties to make such further submissions on costs and final orders as may be required.