

THE HIGH COURT

[2023] IEHC 528

Record No: 2022 4507 P

BETWEEN

THE BOARD OF MANAGEMENT OF WILSONS HOSPITAL SCHOOL

APPLICANT

AND

ENOCH BURKE

RESPONDENT

Ex tempore judgment of Mr. Justice Heslin delivered on the 8th day of September 2023

1. I am going to give a decision now in relation to today's application. Very obviously, there is a considerable backdrop in terms of a dispute, going back some time. However, what is before the Court today is, in real terms, a very net issue. There is an order before the Court. It is an order made on the 17th of July 2023. It was made by Mr Justice Owens. It is a perfected order. The Court understands that it has not been the subject of any successful appeal, and turning to the contents of that order, paragraphs two and three, under the words, "*It is ordered...*", state that, and I quote: "*...the defendant be restrained forthwith from entering or trespassing on premises at Wilsons Hospital School, in possession or control of the plaintiff, without the consent of the plaintiff. 3) The Court doth declare that the suspension of the defendant by the plaintiff, from his post as a teacher in Wilson's Hospital School, pending final decision as to whether he should be dismissed for gross misconduct, in accordance with his contract of employment was, and is, lawful.*"
2. The order before the Court today bears a penal endorsement and that is directed to the respondent. It states, and I quote: "*If you, the within named, Enoch Burke, neglect to obey this order, you will be liable to process of execution including imprisonment and/or sequestration for the purposes of compelling you to obey this order.*" It is dated the 25th of August 2023, and signed by the solicitors representing the plaintiff school. There is no issue in respect of service, and there is also an affidavit in that regard before the Court.
3. This ruling is being given in the wake of at least two hours -perhaps more- of a hearing, where Mr White, Senior Counsel for the applicant/plaintiff, made the application with clarity, and the opposition to it was canvassed with equal clarity, and in a comprehensive manner by the respondent. It is a statement of the obvious to say that we are here because the applicant contends that the respondent is in contempt of the Court's order. In other words, that he has refused to comply with its terms. The evidence before the Court puts that beyond doubt, in

particular, affidavits sworn by Mr Frank Milling, the School Principal, an affidavit by Mr John Rogers, the Chairman of the School Board, and the respondent's own affidavit, make clear the respondent's breach of the order by attending on the premises of the school.

4. Paragraph seven of the respondent's affidavit begins with the following sworn averment: "*After the summer holidays I returned to my workplace on Friday the 25th of August 2023, standing outside the office of Mr John Galligan, Deputy Principal. The Deputy Principal in a school has responsible for timetabling and class allocation for staff.*" It is also clear from the respondent's affidavit that he continued to attend the school premises thereafter, the next school day having been Monday the 28th of August. In short, there is no dispute about the fact that the respondent has entered onto the premises of the school, in breach of the explicit terms of the Court's order.
5. In advance of the present application having been brought, the plaintiff's solicitors wrote to the defendant stating inter alia, the following, in a letter dated the 28th of August, and I quote: "*The Board of Management has absolutely no desire to enter into any further litigation with you. However, the board cannot permit an individual to remain on the school premises who is trespassing. Your behaviour cannot be tolerated, and should you fail to comply with the order of Mr Justice Owens, our client will have no option but to apply for your attachment and/or committal, and/or fines, and/or sequestration of your assets. In the circumstances, we are asking you to undertake in writing, by no later than close of business at 5.30 pm on Wednesday the 30th of August 2023, that you will comply with the order of Mr Justice Owens. Should you fail and/or refuse and/or neglect to provide this undertaking and/or continue to attend the school, our client will be left with no option but to apply to the High Court for an order for your attachment and/or committal and/or an order fining you and/or sequestration of your assets. We will rely on the contents of this letter to fix you with the costs of any such application.*" It is common case that no such undertaking was forthcoming, and the respondent continued, notwithstanding, to attend the school.
6. The submissions made today by the respondent, included to describe the application as a "*manifestly diabolical*" one, and wholly contrary to the constitution. According to the respondent/defendant, this is an application which the Court should not countenance, and he submitted that the Court is "*dipping its hands in blood*" by countenancing the application.
7. It is fair to say that much of the respondent's submissions amounted to a setting out, as the respondent sees it, of the history of the substantive dispute. It seems to me that those submissions constituted an invitation to this Court to ignore the order made by Mr Justice Owens, to ignore the proceedings which gave rise to that order and to, instead, embark on a reconsideration of matters, either by way of a re-hearing of the case Mr Justice Owens dealt with or, in substance, an appeal against the decision and order made, or against certain findings made by Mr Justice Owens, or for that matter, his conduct of the case, all of which came in for criticism. To do the foregoing is simply impermissible.

8. In terms of the headings of opposition to the application, these were put in the following terms. First, what was characterised as the fundamentally flawed nature of the hearing before Mr Justice Owens; second, what were characterised as unlawful actions of a solicitor representing the plaintiff; third, what is occurring at the school; and fourth, constitutional issues which the defendant says are engaged. By way of a preliminary comment, it does not seem to me that these submissions, either in headline terms, or in the granular submissions under each heading, truly speak to the net issue before this Court, which is, in very simple terms, a refusal to comply with a valid and subsisting order made by this Court.
9. Among the submissions made by the respondent was to criticise, including in very personal terms, findings made by a Judge of this Court. Accusations were also levelled of lies, fraud and misrepresentation by parties, and the relevant order, which is the subject of today's application, was characterised by the respondent as "*worthless*". It is a topic I will return to, but in any common sense understanding of the word 'contempt', it seems fair to say that the respondent is showing contempt for the order which is the subject of the present application.
10. In his oral submissions, the respondent made clear, again consistent with the averments in his affidavit, that, following the resumption of the school year, he has in fact attended the school, the first day being the 25th of August. The respondent opened a 4th of September 2023 affidavit, sworn by the plaintiff's solicitor and he made submissions in relation to averments made. He also made submissions with reference to the events of January and, in essence, recounted what members of An Garda Síochána are said to have said, and said to have done at the time, in respect of a then arrest and release. He referred to a letter of the 4th of April 2023 from An Garda Síochána, in which Mullingar Garda Station confirmed that the DPP had directed no prosecution. Now, it seems to me that that is not of relevance to the issue the Court has to decide today.
11. The submissions made also were to the effect that the solicitor in question, representing the plaintiff, took it upon herself to compel the Gardaí and to mislead An Garda Síochána, in order to try and secure an unlawful arrest and used subterfuge in that regard. And the application today is characterised by the respondent as the plaintiff's response, to what the defendant characterises as unlawful and inappropriate behaviour. I want to make crystal clear that the evidence does not support any such finding --

THE COURT WAS INTERRUPTED BY MEMBERS OF THE PUBLIC BEFORE RESUMING THE RULING

12. Now, if I am allowed proceed with my ruling, we can all remain. But if there is any interruption, while I proceed to give my ruling, until the ruling concludes, then I will ask members of An Garda Síochána to remove any of those who interrupt. And that is for the simple reason that the Court's business cannot be interrupted by parties who are not the subject of the application, or indeed, the parties, after the application has been made. I am in the process of giving a ruling, so I hope that is clear. I had gotten as far as to say that the evidence does not allow for the findings which

the defendant contends for, in respect of activity on the part of the plaintiff's solicitor. The solicitor in question avers, among other things, that she requested the Gardaí to attend premises to remove the respondent as he was trespassing. The Court has already found him to be trespassing. The Court's order requires him not to *enter* on or *trespass* on the premises. So, contacting the Gardaí in that context is hardly controversial. It certainly does not evidence any impropriety of any description.

- 13.** The proposition that anyone could compel the Gardaí to act in a certain way is both unmoored from any evidence and does not, in my view, reach even the minimum standard of credibility. Nor was there any basis in fact before the Court today, for what was at times, a very personal, and therefore unmerited attack, on a professional who was doubtless acting on foot of instructions, and so far as the evidence before the Court is concerned, it speaks to someone acting in accordance with the appropriate standards in their profession. Insofar as the respondent contends that the solicitor in question has breached the core values of her profession, I am satisfied that this can fairly be characterised as no more than a bald or bare assertion, which is not underpinned by evidence, and far from requiring an apology from Mr White in the manner that the defendant/respondent submits should be required, it seems to me that basic courtesy would, in truth, require an apology to anyone against whom baseless assertions have been made

THE COURT WAS INTERRUPTED BY THE RESPONDENT AND MEMBERS OF THE PUBLIC. THE COURT ROSE AND ISSUED A WARNING THAT FURTHER INTERRUPTIONS WOULD RESULT IN REMOVAL FROM THE COURT ROOM .

THE COURT RESUMED

- 14.** I am going to proceed to give the ruling in this case, and given what's occurred so far, and given the clarity with which I have expressed how the Court's business must be allowed to proceed, anyone who interrupts will be - and I will ask members of An Garda Síochána to be alert to this going forward - anyone who interrupts in any fashion, must be removed. Otherwise the business of the Court cannot continue.
- 15.** To proceed, then, with the ruling. Nothing turns on whether An Garda Síochána did or did not arrest the respondent for criminal trespass. Nothing takes away from the reality of a fact, acknowledged by the respondent, that he has entered the premises in question, something in direct contravention of the 17th of July order.
- 16.** In submissions, the respondent also opened certain averments made in an affidavit which he swore on the 3rd of March of this year, and that affidavit was made in the wake of, and referred to, an order made on the 7th of September, and it concerned the position following the respondent's release from prison in December 2022. I make the obvious point regarding what was then the position - prior orders are not the focus of this application. In that affidavit the respondent directed particular criticisms of Mr Milling, and the affidavit also contains averments in relation to what the respondent characterises as support including from students, and the respondent submitted that these are the facts occurring in the school.

- 17.** Even more important than the fact that the averments made in March 2023 do not speak to the issues in this application is that the personal views of others, be they negative or positive, in relation to the respondent and his stance, is not the issue before the Court today. It was also clear from his submissions that the respondent takes issue with averments made on behalf of the school. In particular, in relation to the adverse effect on others of the respondent continuing to attend the school, and later in this ruling, I will refer to certain of those averments, but I want to make clear that this is not the dispute which this Court is called upon to resolve.
- 18.** The question of whether or if so, how many, of those within or without the school community, be they students or parents or others, who support the respondent's stance, is not at all determinative of this application. Nor, let me say, are the talents of the respondent as a teacher. The respondent stresses, in various ways in submissions, that his actions have not resulted in any party being in fear. Again, this is not the issue which this Court is called on to determine. He submits, among other things, that many including parents, who walk through the school doors, and who engage him in conversation are, as he puts it, accosted by named members of the school, and he submits that this is inconsistent with those persons being fearful. And again, this is not the issue which this Court is called on to determine.
- 19.** Elsewhere in submissions the respondent indicated that students en masse have always been enthusiastically supportive of him. He also submitted, among other things, that students are begging him to sign their shirts or sign photographs or anxious to shake his hand and provide encouragement and this submission was made with particular reference to the outgoing class of 2023. Again, and with respect, this is not the central issue in this case and let me say in general terms this Court is not called upon to resolve a dispute in relation to a great many facts. In other words, let's say, for example, the respondent contends that a particular number of people support him, and there is a contrary contention, it is simply impossible in a 'papers-based' exercise to resolve such a dispute. However, far more importantly is that this Court is not asked to determine any such dispute.

THE COURT WAS INTERRUPTED BY A MEMBER OF THE PUBLIC AND ROSE WHILE THAT MEMBER WAS REMOVED FROM THE COURTROOM

THE COURT RESUMED

- 20.** To continue this ruling; the views, whatever they may be, of, for example, children leaving the school, cannot be determinative of whether or not someone, the subject of a High Court order, obeys it. In his submission, the respondent used terms including "*flash mob*" and that was a reference to the desire of students to get, among other things, his signature. Even of itself, this seems to me to speak to a level of disruption within the school which of course, as a matter of logic, would not occur if the respondent obeyed the obligations resting on him *per* the order.

- 21.** The submissions made by the respondent included to say that these students "*know me, they know their teacher, they know the truth*". He, by contrast, characterises the affidavit sworn on behalf of the school as replete with "*blatant falsehoods*" and "*fraudulent statements*". He also made a submission to the effect that those affidavits contain wording at the suggestion of solicitors. It is fair to say that he rejected their contents in a wholesale manner, subject to one important point and that point is that the respondent does *not* dispute that he has breached the Court's order in that he does not dispute that he has attended at the school premises and it was equally clear from his submission that he was expressing no intention of altering that stance. This is despite a very clear indication made in Mr White's application to the effect that if the respondent is willing to provide an undertaking not to attend the school premises then the present application would go no further. Just as there was no undertaking given in relation in response to the 28th of August letter, that offer of an end to this application in response to an undertaking not to attend the school was not taken up by the respondent.
- 22.** The respondent characterises the defendant as having orchestrated events in the school and this submission, it appears to me, was made with reference to contact with An Garda Síochána. In this context, the defendant made submissions including with respect to words which he says were uttered by individuals and again, and with respect, no narrative of those events and no dispute about who said what or when distracts from the central fact that it was the respondent who chose, in breach of this Court's order, to attend the school premises and to continue to do so.
- 23.** The respondent contends that members of the school, in particular Mr Galligan and Mr Milling, are not people suffering any fear as a result of his attendance at the school and, in doing so, the respondent attributes statements to both, submitting that, and averring that, derogatory comments were made in relation to him and his brother. Again, it is no function of this court to resolve that dispute or to make findings of fact in what I have already described as a purely 'papers-based' exercise. The central point is whether or not there is a willingness on the part of the defendant to obey an order made by the Court which he has been breaching on his own account.
- 24.** The respondent characterises this application as aimed at stripping him of his constitutional rights to religious liberty and, according to the respondent, this is because of him refusing to "*dish out something to young people that could destroy them*". According to the respondent, the Superior Courts have acted and pretended as if his religious freedom rights "*did not exist and were not there*" and he submits that it is "*astonishing*" that there has been no engagement whatsoever by the courts with his Article 44 rights. His submission is that he will "*not rend his conscience in two halves*" and the thrust of his submissions was summarised in the following terms, and I quote: "*This court has no moral or legal authority to make the orders sought.*"
- 25.** On the question of Article 44, the respondent avers as follows at paragraph 27 of his affidavit, and I quote, "*Irish citizens have a right to religious liberty enshrined and protected in the constitution. The courts do not bestow that right and are powerless to take it away. Article 44*

states: The State acknowledges that the homage of public worship is due to Almighty God. It shall hold his name in reverence and shall respect and honour religion, freedom of conscience and the free profession and practice of religion are subject to public order and morality guaranteed to every citizen."

- 26.** With respect, the order of the 17th of July 2023, which is the subject of the present proceedings, does *not* concern the respondent's right to worship or his beliefs, nor does any purported reliance on the well-known decision in *McGee* avail the respondent. The order at issue requires the respondent not to attend at a certain premises. Nor do Article 44 rights entitle the respondent to ignore the order not to attend a particular premises or, for that matter, to take no account of such rights of others as might be affected by the refusal to obey this Court's order.
- 27.** The respondent makes the following averment at paragraph 30, and I quote, "*To compel and coerce someone to profess something they do not believe is immoral. Referring to Article 44 of the constitution the Supreme Court has held: 'what the article guarantees is the right not to be compelled or coerced into living in a way which is contrary to one's conscience'.*" And that is a reference of course from *McGee*. Again, I want to emphasise that the order at issue most certainly does *not* coerce anyone to profess something they do not believe. It, for present purposes, simply requires the respondent not to attend a premises. In his submission the respondent contends that this application is about being forced to deny his conscience in the workplace.

THE COURT WAS INTERRUPTED AND ROSE

THE COURT RESUMED

- 28.** To continue the ruling; averments were made on behalf of the applicant including the following, and I quote from paragraph 14 of the affidavit sworn by Mr Rogers on the 4th of September, Mr Rogers being a chairman of the school Board, the plaintiff Board; "*The plaintiff Board does not want to engage in any further litigation with Mr Burke. Consideration has been given to other options such as engaging a security firm to police the access to the school. I say and believe that neither I, nor the principal, feels that this would be appropriate. As chairman of the Board, I cannot countenance the school being turned into some form of prison patrolled by security contractors.*"
- 29.** At para 15 he proceeds to aver, "*The plaintiff Board has been left with no option but to seek the attachment and committal of the defendant. It is clear from his previous conduct that fines have no impact on the defendant. I am very much aware that imprisoning the defendant in the past did not persuade Mr Burke to comply with a court order. However, I say and believe that the only way to prevent the defendant attending at the school with the associated disruption this causes is by seeking his attachment and committal and it is for this reason that the plaintiff is seeking an order for his attachment and committal. The decision to make this application has not been taken lightly. However, the Board has a responsibility in the first instance to the pupils*

and indeed to the staff and it has become abundantly clear that the school cannot function properly at present because of Mr Burke's unlawful actions." And I pause here to say that it is within the gift of the school to aver that it has become clear to the school that it cannot function properly because of the respondent's unlawful actions, and it cannot be in dispute that the respondent's actions are unlawful, a blatant failure to comply with the terms of the order.

- 30.** Today provided an opportunity for the respondent to 'show cause' as to why he should not be committed for contempt. The averments made by him demonstrate that he continues to refuse to comply with what is required of him by the order. It is fair to say that his averments and his submissions in fact demonstrate contempt for the Court's order and indeed for the Court in every sense in which that term is understood. I take that view having regard to the averments made by the respondent. At paragraph 31 he avers, and I quote, "*The order of Judge Owens, being plainly repugnant to the constitution and unlawful, is invalid. Hence, it is void ab initio, that is without legal effect, an absolute nullity from its inception.*" He proceeds to aver at paragraph 32, "*By reason of all the foregoing the reliefs sought in the notice of motion should be utterly rejected in their entirety. This court has no authority whatsoever, either moral or legal, to order them.*"
- 31.** Furthermore, and reflective of submissions made orally, the respondent's averments at paragraphs 28 and 29 of his affidavit are to the effect that 10 judges of this Court and 3 judges of the Court of Appeal, all of whom are named, have failed to uphold the constitution and the laws and that each of these judges has, and I quote, "*consciously, deliberately and intentionally stripped and defrauded me of my constitutional rights to freedom of religion and freedom of conscience.*" I pause to say that, even if sincerely held, the foregoing view is not based on reality, and it lacks any evidential underpinning. For the purposes of today's application, it is also a view which, with respect, is simply wrongheaded and I emphasise this yet again because the order with which this court is concerned has nothing whatsoever to do with the respondent's religious freedoms, his beliefs, or his conscience. Insofar as relevant to the present application, the order is concerned only with the respondent's physical presence at a particular location. In short, it requires him not to attend the school premises. He insists on attending.
- 32.** An order for committal should be made as a last resort. However, this Court's jurisdiction to make such an order exists for an important reason and the reason is because deliberate disobedience of an order of this Court is an extremely serious matter. And why is this so? It is because the will of the Irish people, as expressed in the Constitution adopted by the people and as expressed in legislation enacted by the Oireachtas, elected by the people, as well as expressed in secondary legislation introduced by elected members of the Executive, is that court orders must be observed. In other words, it is an insult to every law abiding citizen for someone who is the subject of a court order to decide, unilaterally, that it should be ignored and that it is of no force or effect. Yet this, with respect, is the very stance being adopted by the respondent to the order in question.

- 33.** Mr Justice Peart in *Adebayo v. Commissioner of An Garda Síochána* [2004] IEHC 359, put matters succinctly as follows, and I quote, "*It is the affront to the Court itself as an institution of the State, an institution the obedience to whose orders is a foundation stone of this and any democracy, and not any personal affront to the particular judge who made the order in question, which gives rise to the invocation of the Court's jurisdiction to punish the contempt.*" Put crudely, a court order is not an 'à la carte menu' where someone can pick and choose what obligations they will or will not abide by. And I make this point in circumstances where, during his submissions the respondent invoked the rights of citizens in this country. However, it seems to me that underpinning his submissions is the central proposition that he should be treated *differently* to every other citizen, insofar as complying with legal obligations resting on him by way of an extant and valid court order.
- 34.** Furthermore, and speaking to many of the submissions made by the respondent, it is a matter of common sense that the High Court has no jurisdiction to hear an appeal against, or to ignore, a High Court order on the basis of a view that it is invalid. That common sense analysis is, of course, reflected in the will of the Irish people which is for appellate courts to deal with any objection as may be taken to a decision by this court. And the order with which we are concerned has not been struck down or set aside by the Court of Appeal or the Supreme Court. Therefore, it is subsisting. It is valid. And I have no jurisdiction to ignore it in the manner which, with respect, the respondent contends that I should.
- 35.** In the present case the respondent's contempt, in the legal sense, is manifestly clear. His actions, his averments and his submissions constitute a breaching of an order which is flagrant, and an intention to continue doing so. And with respect to that contempt, there has been no purging of it at any stage during the last three hours nor any attempt or indication, even at the eleventh hour, for the respondent to change his mind. And plainly no such option was taken in the wake of the Court order made on the 5th of September by Ms Justice Egan, a copy of which is also before the Court, and which also bears a penal endorsement.
- 36.** In *IBRC v. Quinn* [2012] IESC 51, the late Mr Justice Hardiman made clear at page 10 of that decision by the Supreme Court that, and I quote, "*Coercive imprisonment in order to enforce compliance in the future with a court order is imposed for civil contempt and can be indefinite in duration.*" In light of the analysis I have conducted in this ruling, and for the reasons set out, I am satisfied that, in circumstances where the respondent remains implacably opposed to doing what the Court requires of him by means of the 17th of July 2023 order, it is appropriate to make an order for the indefinite detention of the respondent until such time as he purges his contempt. I want to emphasise also that this Court is guided by the dicta in *Sherry v. Gunning* [2014] 8 JIC 1201 and there the Court stated, and I quote, "*As a matter of practice I consider the better course is to impose a coercive detention of indefinite length until a contempt is purged but to review the detention after a fixed period.*"
- 37.** Now, I want to stress in the very clearest of terms that it is entirely and exclusively within the gift, within the power, of the defendant/respondent to purge his contempt and doing so will bring

about his prompt release. Indeed, given this Court's decision, I want to take the opportunity, right now, to ask the respondent very directly, if, having heard the Court's ruling, he is now willing to give an undertaking to abide by the order to not attend the school premises, because if he is, then that will be an end to this application it seems to me. So, I am handing over to Mr Burke now, to answer that simple question.

THE RESPONDENT MADE NO RESPONSE

- 38.** Mr Burke are you willing to give an undertaking now, in the wake of what you've heard, not to attend the school. In other words, to abide by the terms of the 17th of July 2023 order?

THE RESPONDENT MADE NO RESPONSE

- 39.** Mr Burke I have asked that question twice. I am satisfied that you have heard me, and without meaning any disrespect, it does seem to me that you are ignoring the question. I will ask it for a third but final time, and I will take silence in response to the question as a refusal to provide confirmation, now, of your willingness to abide by the Court's order of the 17th of July 2023. So, are you willing to abide by that order, I ask now for a third time?

THE RESPONDENT MADE NO RESPONSE

- 40.** I take it from the failure, which I have to say, constitutes a refusal to answer a question I put to the respondent, that he is not willing, even at this stage, to make a decision which would avoid his committal, and, that being so, I am going to proceed to make that order, and it will be as I have said, to commit the respondent to a course of detention. It will be of indefinite length until his contempt is purged, but I also want to adjourn the matter to a specific date, and that is for two reasons. First, so that the matter can be reviewed after a specific period, but second, and I want to make this equally clear: at any time in advance of the review date I am now fixing, it is open to the respondent to bring about an end, immediately, to his committal, and that simply means him making a decision which is for him to make. Namely, to change his mind, and to inform the Court that he is willing to do what is required of him, by the Court's order.

- 41.** That is the Court's decision. They are the reasons for it, and I now want to ask Mr White for assistance in relation to, for example, an adjournment date. It seems to me that a date early in term would be appropriate.

Note: An application for costs was made by the Plaintiff/Applicant

- 42.** I just want to make sure Mr Burke is following what's happening. The date - and we will come to a specific one - but it will be in the first week of term, and an application has been made for costs. Is there any submission that you wish to make in response to that application for costs, with respect to today's successful application from the plaintiff's perspective?

COUNSEL FOR THE PLAINTIFF AND THE COURT EXCHANGED IN RELATION TO AN ADJOURNMENT DATE.

INTERRUPTION: THE COURT ROSE. THE COURT RESUMED.

43. I will adjourn the matter to then [Tuesday 3rd October], and the purpose I have made clear, i.e. to ascertain if the respondent's contempt has not been purged in advance, and it is entirely open to him to do that, to review the matter at that stage. Returning then to the issue of costs. Before we were interrupted, I put a question to the defendant/respondent, and the question was whether he had any submission he wished to make, in response to the application for costs, which is made on the plaintiff's behalf. There was, before I rose, silence from the respondent in relation to that question. There is silence again. I will ask it just for a final time, and I will take continued silence as meaning that there is no submission he wishes to make. Do you wish to make submissions of any sort, in relation to the application for costs?

THE RESPONDENT MADE NO RESPONSE

44. That has not elicited any response from Mr Burke. So, therefore, I will consider the application in its terms. This is an application which was brought, notice having been given in advance. I quoted that letter during the course of the Court's ruling, and it is a letter of the 28th of August, which invited the respondent to bring an end to matters by simply giving an undertaking that he would abide by the existing order of the Court. That opportunity was not taken, and in those circumstances, this was an application which was brought and was –

THE COURT WAS AGAIN INTERRUPTED BY A MEMBER OF THE PUBLIC AND ROSE.

THE COURT RESUMED

45. To continue with the ruling in relation to the costs' aspect, I made reference to the letter of the 28th of August because it's of significance in terms of the question of costs. In other words, there was an opportunity for the defendant, presented to him, to avoid the necessity for this application and that opportunity was not taken, and that is of relevance of course, to the question of costs. The second issue which is of fundamental relevance, flows from the rule of longstanding that 'costs' should 'follow the event'. In other words, the successful party is *prima facie* entitled to their costs. Indeed, the 'normal rule' now has statutory expression in section 169 of the Legal Services Regulation Act 2015 and, in effect, that creates a presumptive right on the part of what the section describes as the entirely successful party, and the plaintiff applicant has been entirely successful.

46. Therefore, the starting point is not that this Court is completely 'at large' or has the widest discretion with respect to costs. Its discretion can only be exercised within statutory 'guardrails'. In other words, to depart from the 'normal rule', there has to be a cogent reason advanced, and

that has to have reference to the non-exhaustive list of items, including conduct et cetera, specified in section 169. There is simply nothing by way of fact or circumstance, which would justify, in my view, a departure from the 'normal rule', and it seems to me that it would be inimical to justice if the entirely successful party, who sought to avoid the present application, was not to be awarded the costs of it. So, I am acceding to the application for costs.

47. Mr Hanlon, very sensibly, says that we need a time and then there is the question of a production order and a production order should be made in relation to the respondent for the 3rd, and in relation to time, it does not seem to me, from my reading of the authorities, that I have seisin of it. I am *functus officio* now, having made the decision.

48. [The case] ...will travel in the appropriate list. And again, I want to emphasise that this can all be brought to an end by decisions which are entirely within the power of Mr Burke to make.