

# THE HIGH COURT

[2024] IEHC 21

[Record No. 2022/225MCA]

IN THE MATTER OF AN APPEAL PURSUANT TO SECTION 90(1) OF THE  
EMPLOYMENT EQUALITY ACT 1998, AS AMENDED

BETWEEN

PETER ONYENEKEIHIA

APPELLANT

AND

THE MINISTER FOR JUSTICE AND EQUALITY

RESPONDENT

AND

THE LABOUR COURT

NOTICE PARTY

**JUDGMENT on costs of Ms Justice O'Regan delivered on 18 January 2024.**

1. This judgment is supplemental to the principal judgment in this matter (2023 IEHC 697) wherein the appellant's appeal from the decision of the Labour Court of 22 July 2022 was successful on the basis of the decision being irrational, failure to

provide adequate reasons and failure to deal with the appellant's claim based on indirect discrimination on the grounds of race.

The parties were invited to make submissions in respect of costs which they have done.

**2.** The respondent argues that notwithstanding that the appellant has been entirely successful, because the findings relate to the manner in which the Labour Court itself dealt with the matter before it, no order for costs should be made against the respondent as the error identified came within the ambit of the notice party's statutory duty to deal properly with claims and appeals brought before it.

**3.** The respondent relies on O.105, r.7 of the Rules of the Superior Courts which was introduced by Statutory Instrument No. 257/2020 on 07 August 2020. In r.7 under the heading of "Order 105" contained within the Schedule, it is provided,

"no costs shall be allowed of any proceedings under this order unless the court shall by special order allow such costs."

Thereafter, within the Schedule, there is a further heading entitled "Order 106". This rule relates to, among other matters, appeals brought under s.90(1) of the 1998 Act as amended. Within this portion of the statutory instrument there is no like reference to O.105, r.7 limiting the award of costs by special order only. O.105 does not make reference to S.90(1) of the 1998 Act.

**4.** Previously under O.106, r.5, contained in the Rules of the Superior Courts 1986, it was provided that no order for costs could be awarded in an appeal on a point of law from the Labour Court under the Employment Equality Act 1977 (the precursor to S.90(1) of the 1998 Act) save by special leave. This limitation on costs was subsequently omitted when replacing O.106 by Statutory Instrument 293/2005. It was not reintroduced under Statutory Instrument No. 257/2020 in respect of O.106.

5. The respondent relies on two High Court decisions to support the argument that O.105, r.7 applies generally to all Labour Court decisions involving a broad range of employment statutes.

In *Conway v Department of Agriculture* [2021] IEHC 503 Hyland J in an application under the Protective Disclosures Act 2014 (which is not referenced in SI 257/2020 under the heading of O.105), expressed herself satisfied that it was the intention of the rules committee that no order for costs be allowed in appeals from the Labour Court without a special order.

In *Power v HSE* [2021] IEHC 454, where the matter before the court was under the Protection of Employees (Fixed Term Work) Act 2003, which also was not referenced in the statutory instrument aforesaid, Simons J expressed himself satisfied that the rationale underlining O.105, r.7 is to the effect that parties to an employment law dispute should not normally be on the hazard of having to pay costs. The Court also referenced the fact that the Labour Court did not have jurisdiction to award costs under the Workplace Relations Act 2015. The Court did however in the special circumstances of that case make a special order for costs on the basis that the principal judgment corrected a long-standing error on the part of the Labour Court in its interpretation of the legislation.

6. Finally, the respondent also relied on the fact that the appellant was represented by the Irish Human Rights and Equality Commission which is resourced to represent litigants in matters such as arose in the instant case.

7. I am of the view that O.105, r.7 as comprised in SI 257/2020 does not apply in the instant matter because: -

- a. In the statutory instrument incorporating O.105, r.7 there is a separate section in respect of O.106. Accordingly, assuming that O.105, r.7

applies to all disputes against Labour Court decisions such a principle has to be read on the basis of an exception in respect of matters coming within O.106;

- b. (b) in respect of O.105 the S.I. of 2020 specifically limits the circumstances where an award of costs might be made however it does not incorporate a similar limitation on the award of costs under O.106.
- c. the history of the development of the provisions of O.106 aforesaid established that initially there was a limitation on the award of costs in the instant type appeal. However, such limitation was removed in 2005 and it was not reintroduced in the provisions relative to O.106 in 2020.

**8.** In the events therefore it does appear to me that s.169(1) of the Legal Services Regulation Act 2015 applies and that the appellant was entirely successful in respect of his appeal. None of the factors enumerated in that provision have been argued as applicable to the extent that costs should not follow the event. The Respondent has confined her argument against the Appellant's costs in reliance on O.105, r.7 and the fact that the Irish Human Rights and Equality Commission is resourced to represent litigants. It appears to me that such resources available to the Irish Human Rights and Equality Commission does not amount to a factor to disentitle an otherwise successful litigant recovering costs.

The appellant's proceedings have been justified by the result of the principal judgment and it was necessary for the appellant to maintain the within proceedings, which were fully defended.

**9.** In the circumstances an order will be made providing for the appellant's costs against the respondent to be adjudicated upon a default of agreement.