



**THE SUPREME COURT**

**[APPEAL NO. 355/2006]**

**MacMenamin J.  
Dunne J.  
Charleton J.**

**BETWEEN:**

**KEVIN TRACEY**

**APPELLANT**

**AND**

**DISTRICT JUDGE HUGH O'DONNELL, AND PADRAIG O'MEARA,  
FRIEDA McILHENNEY, THE DIRECTOR OF PUBLIC PROSECUTIONS,  
THE STATE, IRELAND, ATTORNEY GENERAL, MINISTER FOR  
JUSTICE, COMMISSIONER OF AN GARDA SIOCHANA**

**RESPONDENTS**

**Judgment of Mr. Justice John MacMenamin dated the 30<sup>th</sup> day of April, 2020**

1. This is an appeal against a refusal of leave to seek judicial review made in the High Court by McGovern J. on the 11<sup>th</sup> August, 2006. In the High Court, the appellant sought leave to seek judicial review by way of *certiorari* in relation to rulings made by the first-named respondent, Judge Hugh O'Donnell, on the 17<sup>th</sup> July 2006. The application for leave was made *ex parte*. The nature of the ruling is a central issue to McGovern J.'s decision.

2. By way of background, it appears that the appellant had been convicted of a road traffic offence on the 30<sup>th</sup> May 2006, but in his absence. The appellant stated that he had never received notification of those District Court proceedings. He subsequently brought the fact that he had not been properly served with any District Court proceedings to the attention of Judge O'Donnell, who vacated his earlier order of the 30<sup>th</sup> May 2006, and indicated that he was relisting the matter for a rehearing before another District judge, Judge Anderson.

3. The application for judicial review before McGovern J. was in fact made in the morning of the day Judge Anderson was to hear the District Court prosecution in the afternoon.

4. Before McGovern J., the appellant submitted that what had occurred before District Judge O'Donnell was part of a long-term vindictive campaign of wrongdoing and abuse against himself. The appellant complained that, when the matter had been before Judge O'Donnell on the 17<sup>th</sup> July 2006, he had requested to

be allowed the services of a stenographer who he had hired for that purpose. He complained that Judge O'Donnell refused this request after the prosecuting garda had indicated, by a shake of the head, that he was opposing that application.

5. It must be said that, if this happened, the prosecuting garda had no such entitlement. Whether or not the appellant wished to have a stenographer available to him in the District Court proceeding was entirely a matter for him. The District Court is a court of record. The appellant was entitled to have a stenographer if he wished.

6. But Judge O'Donnell's order was extremely limited. He merely vacated the earlier order which had been made in the appellant's absence on the 30<sup>th</sup> May, 2006, and remitted the matter for hearing before another judge. Whatever about the right to a stenographer, the appellant did not suffer any detriment as a result of the order actually made. In fact, from a legal perspective, the order was to his benefit. What occurred could not provide any basis for quashing Judge O'Donnell's order, or, for that matter, granting an injunction restraining the hearing which was to take place anew before Judge Anderson that same afternoon.

7. The High Court judge refused the application for judicial review on the basis that Judge O'Donnell had granted leave to have the matter re-entered on the same day, and that it had in fact been listed in Court 51 before Judge Anderson on that same afternoon. He advised that the appellant should wait and see how the hearing panned out, and that it would be in his own interest to attend and defend his position

in the District Court. McGovern J. observed that, if there had been any problem earlier, it had been cured in that the appellant had been granted a complete rehearing and could now defend his position in the District Court. McGovern J. held that, if Judge O'Donnell had not made that order, it would have been an entirely different matter.

8. I am unable to see that the learned High Court judge erred in ordering as he did. At one level, the appellant's application must be seen as premature. It cannot be said that he was going to suffer any injustice by being heard by Judge Anderson that afternoon. At another level, it has to be said that the appellant cannot demonstrate that he had suffered any detriment in the hearing before Judge O'Donnell.

9. The appellant makes his case on the grounds that his constitutional right to a fair trial had been affected. I am unable to see that there is any basis for this submission.

10. The appellant says that the conviction took place because the gardaí prosecuting him were involved in a long-term vindictive campaign of wrongdoing and abuse against him. But an allegation of that type would require clear and cogent evidence, and that issue was not sufficiently argued or determined in the High Court for it to give rise to any right of appeal to this Court. What is in question here is simply an appeal against a refusal to grant an *ex parte* order. I am unable to find there was any basis for an interim or interlocutory injunction restraining the

prosecution as sought by the appellant. The appellant is not entitled to damages. I would dismiss the appeal. The learned High Court judge acted correctly in this matter.

*Judith*  
5/5/2020.