

**AN CHÚIRT UACHTARACH
THE SUPREME COURT**

S:AP:IE:2021:000078

**Dunne J
O'Malley J
Baker J
Woulfe J
Hogan J**

Between/

CLARE COUNTY COUNCIL

Plaintiff/Respondent

AND

BERNARD MCDONAGH AND HELEN MCDONAGH

Defendants/Appellants

AND

IRISH HUMAN RIGHTS AND EQUALITY COMMISSION

Amicus Curiae

RULING of the Court on Costs delivered the 14th day of March 2020

1. In a judgment delivered by Hogan J on 31st January 2022 this Court allowed an appeal by the defendants/appellants from the grant of mandatory interlocutory injunctions requiring them to vacate certain lands which are the property of the plaintiff Council: see *Clare County Council v. McDonagh* [2022] IESC 2. It is now necessary for the Court to address the issue of the costs of the plaintiff and the defendants, it being understood that the Irish Human Rights and Equality Commission will, qua *amicus curiae*, abide its own costs. The parties have filed written submissions on this issue and they have both indicated that they

are content that this Court should rule on this question without the necessity for a further oral hearing.

Costs in this Court

2. Having deliberated on the matter, the Court proposes first to deal with the costs incurred in this Court. We consider that, as the judgment of Hogan J illustrates, the defendants/appellants raised important issues of principle which required to be determined by this Court. Some of these questions had not, perhaps, been fully ventilated by the parties in either the High Court or the Court of Appeal. Given that in these circumstances the defendants/appellants have prevailed, the Court considers that it is appropriate that they should have their costs in this Court, such costs to be taxed in default of agreement in the manner envisaged by the Legal Services Regulation Act 2015. We do not consider that this order for costs in favour of the defendants/appellants should be stayed in the manner urged by the Council.

Costs in the High Court and Court of Appeal

3. The Council have fairly (and properly) conceded that the original orders for costs which they obtained in the High Court and Court of Appeal should now be vacated in the light of the decision of this Court. We accept, however, that there are important issues of fact which remain to be determined by the High Court once the matter proceeds to a full hearing. It may well be – although we naturally refrain from expressing any view on this issue - that those issues of fact will be determined in the plaintiff Council's favour in the manner in which they contend in their written submissions.
4. In these circumstances the Court considers that the fairest outcome on this point is that these costs (i.e., the costs of the interlocutory injunction hearings in the High Court and Court of Appeal) should be reserved to the trial judge who, having had the benefit of a full plenary hearing, will be in a better position to assess them.

Proposed Order of the Court

5. The Court accordingly proposes that the defendants/appellants should have their costs in this Court, such costs to be taxed in default of agreement in the manner envisaged by the Legal Services Regulation Act 2015. There will be no stay on this order for costs.
6. The Court further proposes that the costs of the interlocutory injunction applications in both the High Court and the Court of Appeal should be reserved to the trial of the action and that the existing orders for costs in favour of the Council should be vacated.