



THE COURT OF APPEAL
CIVIL

[Approved]

[No Redaction Needed]

Court of Appeal Record Number: 2023 62

High Court Record Number: 2021 5778P

Neutral Citation Number [2023] IECA 195

Costello J.
Noonan J.
Haughton J.

BETWEEN

THOMAS MULLANEY

PLAINTIFF/APPELLANT

- AND -

**IRELAND, THE ATTORNEY GENERAL, THE MINISTER FOR JUSTICE AND
EQUALITY AND LAW REFORM**

DEFENDANTS

- AND -

DANSKE BANK A/S TRADING AS DANKSE BANK

DEFENDANT/RESPONDENT

JUDGMENT of Ms. Justice Costello delivered *ex tempore* on the 25th day of July 2023

1. The appellant's claim is set out in full in the judgment of the High Court and it is not necessary to reproduce it here. The essential premise underpinning these proceedings is that emanations of the State, Ministers of the Government, the Attorney General, the DPP are all immune to Court Summons and Court Orders; the appellant is entitled to be held equal before the law under Article 40.1 of the Constitution and, accordingly, he too is immune to

Court Orders and Court Summons, as that equality is guaranteed under Article 40.1 of the Constitution and Article 2 of the TEU.

2. This premise is “based on a hopeless misconception of the meaning and effect of the guarantee of equality under Article 40.1 of the Constitution of Ireland” and is “preposterous”, in the words of Simons J. in *Fennell v Collins* [2019] IEHC 572

3. The State is not immune from suit: *Byrne v Ireland* [1972] IR 241; *Kelly: The Irish Constitution*, 5th ed., para 3.2.01. It follows that there is no basis for the appellant’s assertion that he is entitled to immunity from suit based upon either Article 40.1 of the Constitution, or Article 2 of the TEU. The appellant, like any other person in the state, is subject to the law and may be sued in the courts. The fact that certain cases against the State, a minister, the Attorney General or the DPP may have been dismissed -for whatever reason- does not alter this fundamental principle.

4. This unstateable argument has been rejected by the High Court seven times, including the judgment under appeal.

- *Fennell v Collins* [2019] IEHC 572 (Simons J)
- *Mullins v Ireland and Ors* [2022] IEHC 296 (O’Moore J)
- *Keary v Property Registration Authority* [2022] IEHC 28 (O’Moore J)
- *Towey and anor v Government of Ireland and Ors* [2022] IEHC 559 (Dignam J)
- *Brennan v Ireland and Ors* [2023] IEHC 107 (Roberts J)
- *O’Hara v Ireland and Ors* [2023] IEHC 268 (O’Moore J)

5. For the reasons set out in these judgments, and the judgment under appeal, the proposition underpinning the proceedings is legal nonsense and the High Court was correct to strike out the proceedings against the respondent (“the Bank”) on the basis that they were bound to fail. To bring and maintain these proceedings was vexatious, but to appeal an order

striking them out as being without any legal basis whatsoever compounds the abuse perpetrated by the continuance of these utterly unmeritorious proceedings.

6. If possible, the case is even more preposterous against the Bank. The proceedings disclose no claim against the Bank and there is no suggestion that the Bank is immune from suit. In his affidavit opposing the Bank's application to strike out the proceedings against it, the appellant says these proceedings are "*a Constitutional Case and not a Banking Case.*" He makes no attempt to identify any case or claim against the Bank.

7. The clear intention of bringing the proceedings is to mount a collateral attack on orders which the Bank has obtained against the appellant and which he failed to appeal. They are thus binding orders to which the High Court and this court should give full effect. On 16 October 2016 the Bank obtained judgment against the appellant and Ms Breege Mullaney in two summary proceedings in the sums of €239,095.20 and €69,061.66 respectively. In an application for a PIA under the Personal Insolvency Act 2013, the appellant acknowledged these debts. It is thus not open to him now to contend that the debt is not due to the Bank. On 3 July 2019, the Bank petitioned for the adjudication of the appellant as a bankrupt and on 13 October 2021, the High Court adjudicated him a bankrupt. The day before the order of adjudication, 12 October 2021, the appellant issued these proceedings. The sole purpose of suing the Bank in these proceedings is to mount a collateral attack on the order of adjudication. This is clear from his affidavit where he says the High Court should not have heard the bankruptcy case as his constitutional case "*supersedes all other cases*". Elsewhere he avers that all the courts have been dissolved and that all courts in the state should have been suspended pending the resolution of these proceedings.

8. It is an abuse of process to bring proceedings whose purpose and effect is to launch impermissible collateral attacks on valid, final, un-appealed Orders of the High Court. The Bank is entitled to the benefit of those final Orders.

9. The High Court judgment under appeal sets out carefully the appellant's case, the background, the applicable principles and considers whether the proceedings are bound to fail. In my judgement the trial judge approached the exercise of his task impeccably. The appellant appealed on three grounds:

“(1) The judge erred in law by not upholding his constitutional oath;

(2) The learned judge erred in law by ignoring Article 40.1 of the Constitution;

(3) The Judge erred in law by not addressing any of the constitutional points put forward in my affidavit.”

10. In my view, the appeal is without merit. There is no suggestion whatsoever that the trial judge misconducted the trial in any way. On the contrary, the judgment is careful, considered and fairly addresses the relevant legal issues arising from the pleadings and the affidavits sworn by the parties. He sets out most of the statement of claim and the affidavit of the appellant verbatim. There is no basis for this court to conclude that the trial judge did not “*uphold his constitutional oath*”. The fact that he rejected the appellant's arguments does not support this contention. I would dismiss this ground of appeal.

11. In relation to the second and third grounds of appeal, not only did the High Court clearly set out the appellant's case, he noted that the proceedings “*raise points relating to the Constitution*” and he summarised the claim in para. 56 of the judgment. It is simply factually incorrect to say that the trial judge ignored Article 40.1 of the Constitution or did not address the constitutional points advanced by the appellant. The trial judge considered the allegation that the State, Ministers of Government, the Attorney General and the DPP were immune from suit or Court Orders and at paras 64, 65 and 67 he held:

“64. The asserted facts simply do not and cannot give rise to these inferences and legal conclusions upon which the plaintiff’s claim is based. Even if the Minister for Justice and the Attorney General failed to enter an appearance in an individual case and the case was struck out (2018/9410P or 2021/2308P) and/or the DPP failed to comply with an order (2006/1114P) in another individual case it does not and cannot follow that the Minister, the Attorney General or DPP are immune to summonses and orders respectively. Thus, there is no basis whatsoever in the facts pleaded for the claim that the plaintiff is entitled in accordance with the principle of equality to immunity from court summonses or court orders. Even assuming the facts as asserted to be correct (as I do) there is simply no foundation in those facts for the claim made by the plaintiffs that the Minister, the Attorney General or the DPP is immune from Court Orders or Court Summonses and therefore no basis for the claim that the principle of equality requires the plaintiff to be immune also.

65. Similarly, even if the State has failed to deliver a Defence in a case which challenges all court summonses and orders (which I am taking to be correct for present purposes) there is no basis in that fact upon which to reach the conclusion that all courts must be suspended.

...

67. The plaintiff’s claims are fundamentally misconceived. As discussed in greater detail above, the plaintiff’s claims are grounded squarely on the premise that the Minister for Justice and the Attorney General are immune to court summonses and the DPP is immune to Court Orders. That is simply misconceived and wrong in law and, therefore, the very basis for the plaintiff’s claim of immunity and that the courts should be suspended is wrong. There is no foundation to them whatsoever. Even the most

cursory review of the court lists or of the judgments in the Irish Reports or on the Courts Service website will show the sheer volume of cases involving State bodies, including the Minister for Justice, the Attorney General and the DPP, and the number of cases in which Orders are made against those parties.”

12. The trial judge did not err in the manner alleged and I would dismiss grounds 2 and 3 of this appeal.

13. I should also add that I agree with the trial judge that the appellant has not shown that he has title to pursue the proceedings as he is a bankrupt, and so the right to do so vests in the Official Assignee. The proceedings, although lawfully initiated, cannot be maintained except by or with the leave of the Official Assignee. The appellant did not show that he had the permission of the Official Assignee to prosecute the proceedings, and the Official Assignee was not prosecuting the proceedings. It follows they could not lawfully be prosecuted by the appellant. This constitutes a further reason why the proceedings should be struck out as being bound to fail.

14. For these reasons I would dismiss the appeal and affirm the order of the High Court.