



**THE COURT OF APPEAL
CIVIL**

**Record Number: 2023/69
Neutral Citation Number [2023] IECA 270**

Costello J.

Burns J.

O'Moore J.

BETWEEN/

REGINALD CARROLL

APPELLANT/APPLICANT

-AND-

COMMISSIONER OF AN GARDA SÍOCHÁNA

RESPONDENT

JUDGMENT of Mr. Justice Brian O'Moore delivered on the 8th day of November, 2023

1. The appellant, Mr. Carroll, lives at Mullaghderg Mountain, Burtonport, County Donegal. He rents his dwelling from his landlord, Terry Rowland. Mr. Carroll has rented these premises since the 1st March, 2020. On the 17th January, 2021 there was an altercation between Mr. Carroll, Mr. Rowland and Mr. Rowland's wife (Margaret Rowland). Mr. Carroll claims that Mr. Rowland "*threw rocks at [his] bedroom window as [he] slept and later [the Rowlands] attacked [him] with a Garden Spade causing 14 injuries ...*"; see para. 2 of the Grounds of Appeal.

2. Whatever the details of the altercation, the end result is that both Mr. Carroll and Mr. Rowland are subject to criminal charges before the District Court.

3. On the 8th February, 2022 Mr. Carroll presented submissions to the local District Court. These submissions contained a number of very serious allegations, including an allegation that the prosecuting officer had perjured himself, that the prosecution officer was biased, and that more serious assault charges should have been levied against Mr. Rowland. Written legal submissions, prepared for and presented to Dungloe District Court on the 8th February, 2022 by Mr. Carroll, were put before this court during the course of the hearing of the current appeal. These legal submissions are typewritten, and run to four pages. Towards the start of the document, Mr. Carroll states that he requests “the Analysis/Results of” a spade and rocks which featured in the incident. At the end of the submissions, there is a heading “*Other items requested*”. The first of these “*other items*” is: -

“(a) *Forensic evidence Spade/Rocks taken 12.2.21.*”

4. On the 7th July, 2022 Mr. Carroll lodged papers seeking leave to bring judicial review proceedings against the Garda Commissioner. The affidavit sworn by Mr. Carroll on the 7th July, 2022 was not available to this court, but Mr. Carroll assured us that it went no further than verifying the statement grounding the application for judicial review.

5. The reliefs sought against the Garda Commissioner were as follows: -

“1. *I am applying for an order of mandamus for discovery order, as a motion/affidavit accompanying, for provision of essential forensic evidence of garden spade and rocks thrown by T. Rowland at my window on 17.1.21, an incident the subject of below assault case in District Court ...*

2. *I am also applying in same Statement Grounding Application for Judicial Review to the Judge of this Honourable Court for an Order of certiorari staying/quashing criminal assault case ... against Applicant on Landlord T. Rowland on 17.1.21 as above. This is pending the provision of essential forensic evidence of garden spade and rocks thrown by T. Rowland at my window as noted above, which are essential to prove Applicant was innocent victim of assault by T. and M. Rowland landlords, who should then be charged with Assault causing Serious Harm, as this might well have been fatal*

3. *There is a Final DC [District Court] Hearing in this matter on 14.6.22. Forensic evidence to be first made available initially, as above and prosecution be then Reviewed under mandamus thereafter. T. and M. Rowland landlords, should then be charged with Assault causing Serious Harm, as this might well have been fatal, with decision to be presented/explained to the High Court."*

Further adjectival reliefs, such as the costs of the application, are then sought.

6. The Grounds on which judicial review is sought against the Garda Commissioner include an assertion that, on the 8th February, 2022, the District Court judge handling the matter "*was requested to provide Forensics or instruct police to so do ... but was unable to do so, suggested the Applicant request them direct from police and if necessary then get them analysed himself.*" It is complained, in the Grounds, that these requests were made to the gardaí by Mr. Carroll, "*but only an acknowledgment was ever received.*"

7. The Grounds conclude: -

“If the [District Court] had evidence of my Blood/DNA on sharp end of Spade and Landlord’s on Rocks allegedly thrown at window there is little scope to actually find against me.”

8. While the papers seeking leave to bring judicial review proceedings against the Garda Commissioner were filed on the 7th July, 2022, the application was not heard until the 12th September, 2022. Having heard Mr. Carroll’s application, Dignam J. made the following order: -

“(1) That the within application do stand refused.

(2) That the within proceedings be adjourned generally with liberty to re-enter.”

The refusal of the application for leave was not appealed by Mr. Carroll.

9. In a subsequent ruling of the 14th March, 2023, and which is the subject of the current appeal, Dignam J. explained why he made the Order that he did in September 2022. The learned High Court judge said: -

“2. When this matter was before me in September 2022, I refused the applicant leave to apply for judicial review on the basis that he, in circumstances where he was seeking an order directing disclosure of material in the context of a criminal trial in the District Court, had not formally applied to the Court for such an order.

3. Having given my decision and the reasons for it, Mr. Carroll then asked that I adjourn the matter generally and give liberty to re-enter in case the District Court did not accede to any such application which might be made by him. He explains specifically that the reason for his application to grant liberty to re-enter the case was to save costs in circumstances where he explained his financial situation and the

costs of travelling to and from Donegal. In circumstances where I have refused the application, I very reluctantly acceded to the request to grant liberty to re-enter. When doing so I made it clear that if the District Court refuse any such application which might be made by Mr. Carroll, then the appropriate course will be to appeal the District Court decision or launch judicial review proceedings against that District Court decision and I did not think Mr. Carroll will be entitled to raise that point in these proceedings. I went on to say that it would be a matter for the applicant to decide which course of action to take at his own risk."

10. The learned High Court judge therefore, entirely in ease of Mr. Carroll and his specific personal circumstances, fashioned an order which may be of some assistance to Mr. Carroll on a practical level. However, in doing so it was made clear to Mr. Carroll that the appropriate way of progressing matters might well be an application to the District Court which (if unsuccessful) could lead not to a revival of the original judicial review proceedings but rather the taking of fresh procedural steps (whether by means of a new judicial review application or by an appeal of any decision that the District Court might make).

11. Ultimately, Mr. Carroll succeeded in getting the District Court to fix a specific disclosures hearing for the 8th November, 2022. According to the Transcript of that hearing, Mr. Carroll explained to the District Judge that he wished disclosure of two items. The first was the garden spade with which Mr. Carroll claims he was assaulted. He submitted to the court that forensic examination of the garden spade would show that his blood and DNA were on the spade. The second item of which he sought disclosure were the rocks which he claims were thrown at his window by Mr. Rowland. These will be relevant, or so Mr. Carroll maintained, as it would show Mr. Rowland's DNA on the rocks.

12. Both the garden spade and the rocks were produced to the District Court judge. Mr. Carroll was invited to inspect them, though it was difficult to see how any sophisticated forensic analysis (such as searching for DNA samples) could be conducted by the consideration of three rocks and a spade in a courtroom.

13. The court then heard from Inspector McGonagle, who gave evidence that: -

“... The professional scenes of crime officer checked out the items that were produced in court this afternoon. The officer is of the view that no evidence that would lead towards proving guilt or innocence of any party could be gleaned from these objects ... That, again, was recorded on the Garda PULSE system at the time by the scenes of crime officer who made that professional call on it at the time.”

14. Mr. Carroll described it as *“a ridiculous assertion”* the proposition that the scene of crimes officer was able to *“look at something and say there’s no DNA on it .. without a laboratory analysis.”*

15. The District Court judge concluded that the State was not relying on forensic evidence, that it was open to Mr. Carroll at the hearing of the assault charges to submit that there should have been relevant forensic analysis, and that Mr. Carroll could seek a direction on that basis. The judge concluded that: -

“So for the purposes of today’s preliminary application with regard to the disclosure of the garden spade and the rocks for the purposes of the forensic examination, I am satisfied that the Inspector has indicated that the State will not be offering any evidence with regard to proving guilt or innocence with regard to those exhibits. And I am not going to make an order with regard to having both of those items forensically examined, alright?”

16. Towards the end of the hearing before the District Judge on the 8th November, 2022, Mr. Carroll asserted that he would be going back to the High Court in respect of his disclosure requests.

17. For the sake of completeness, it should be noted that the hearing before the District Judge on the 8th November, 2022 was preceded by the delivery (by Mr. Carroll) of further legal submissions, this time running to 13 typewritten pages (to include photographs, court documents, and the correspondence).

18. On the 14th March, 2023, Mr. Carroll made an application to Dignam J. seeking a number of orders. Very importantly, at least as far as Mr. Carroll was concerned, there had been a significant development in litigation between himself and his landlord. On the 23rd June, 2021, and in the course of the landlord and tenant dispute, a tenancy tribunal constituted pursuant to ss. 102 and 103 of the Residential Tenancies Act, 2004 reported to the Residential Tenancies Board. The determination of that Tribunal was: -

- “1. [Mr. Carroll] breached his obligations pursuant to section 16(h) of the Act on the 17th January 2021 by engaging in antisocial behaviour within the meaning of section 17(1)(b) of the Act, in respect of the tenancy of the dwelling at Mullaghderg Mountain, Burtonport, County Donegal.*
- 2. The notice of termination served by [Mr. Rowland] on the 18th January 2021 in respect of the tenancy ... is valid.*
- 3. [Mr. Carroll] and all persons residing in the above dwelling shall vacate and give up vacant possession of the above dwelling within 21 days of the date of issue of the Determination Order.*

4. *[Mr. Carroll] is in breach of his obligations under the tenancy agreement by keeping a cat in the dwelling without the prior written permission of [Mr. Rowland]*”

Further determinations were made in respect of the refund of Mr. Carroll’s security deposit, and the payment of rent.

19. While this determination was the subject of subsequent litigation in the High Court, ultimately an enforcement hearing was listed for the District Court on the 10th January, 2023. This was the same District Court handling the criminal assault charges against Mr. Carroll and Mr. Rowland. Mr. Carroll prepared legal submissions for that hearing. These submissions (at para. 7) include the following information: -

“On 16.11.22 Judge Cunningham in a virtual hearing relented somewhat and stated she would release the items to R. Carroll for Private analysis. Unfortunately it was not possible to find a private co who would obliged and it was considered potentially expensive. Accordingly under HCJR 578/22 Forensics Discovery has been requested, has Liberty to Re-Enter under Judge Dignam’s order of 12.9.22 allowed it be further considered, along with a Notice to Enjoin/Stay these Enforcement proceedings, as notice of re-entry and further notice of motion attached. At present we await a date with Judge Dignam as requested by principal registrar.”

20. Accordingly, Mr. Carroll requested an adjournment of the enforcement hearing (for mention only) for a period of at least three months. In doing so, Mr. Carroll drew a connection between the landlord and tenant proceedings and the assault proceedings, in particular the request for forensic examination of the three rocks and spade.

21. The relevance of these submissions is that they disclose that District Judge Cunningham decided that a direction would be made that the spade and the three rocks could be forensically analysed by Mr. Carroll's own expert. This opportunity was not taken up by Mr. Carroll.

22. No further affidavit was sworn by Mr. Carroll for the application before Dignam J. on the 14th March, 2023. However a further legal submission was put before the court for that application. It runs to 17 typewritten pages. Critically, much of the document deals with the events which post-dated the original hearing before Dignam J. in September 2022. It sets out a summary of the disclosures hearing on the 8th November, 2022 before the District Court. It does not recite the fact (as asserted in the legal submissions for the enforcement hearing of the 10th January, 2023) that the District Court Judge had (subsequent to the 8th November hearing) on the 16th November stated that the spade and the rocks would be made available (by order of that court) to Mr. Carroll for any private analysis he may wish to carry out. The March 2023 submissions go on to complain about the way in which the District Court has dealt with both the enforcement hearings (in the landlord and tenant dispute) and the application for disclosure and forensic examination of the rocks and the spade. The submissions made to Dignam J. in March indicate unhappiness about the receipt of DAR transcripts ordered on the 19th January, 2023, and blames "*... Clerks who seemed to be acting on judge's instructions to obfuscate and delay applicant's legal right to transcripts which would expose previous abuse regarding disclosures etc. for use in High Court.*" Needless to say, there is no coherent or persuasive evidence put forward to support either the giving of these instructions or the acting on these instructions by court officials. The submission is based solely upon groundless supposition on the part of Mr Carroll. The March 2023 submissions to Dignam J. complain about the amount of time set aside for the hearing of the 10th January, 2023 for "*Final Enforcement hearing ...*" to be held in May of 2023. In

addition, the written submissions complain in some detail about what is described as “*a further impromptu Enforcement hearing ...*” arranged for the 14th February, 2023.

23. The legal submissions put before Dignam J. on the 14th March, 2023 go on to assert that the District Court had “*engaged in dubious practices*”, raised what Mr. Carroll described as “*inexorably serious doubts about RTB determination ...*”, and raised legal issues about the validity of the RTB determination. On p. 17 of these submissions, Mr. Carroll sought that Dignam J. issue an injunction “*to initially stop the setting of a Final short notice Enforcement hearing, which has been set for today in Dungloe 14.3.23.*”

24. In other words, Dignam J. was asked by Mr. Carroll on the 14th March, 2023 there and then to make an order restraining the District Court from proceeding later that day to hear an application in a landlord and tenant dispute between the Mr Rowland and Mr. Carroll.

25. The same document, at the same page, asked for the following reliefs: -

“Discovery as draft Motion/Affidavit under RSC order 31 for Forensics on Spade/Rocks and leaks that statements landlords might have made to police Feb. 21. They deny this but Offr. Steede said on 12.2.21 they had made such statements first week of Feb. 21.

Enjoinment of enforcement case hereto with landlords Terry and Margaret Rowland and RTB with their solicitor Kieran, Hickman O’Donnell of Ennis.

Review of Assault case to be by chief superintendent’s office Letterkenny not Milford DS.

Assault Final hearing/judgment to precede that of Enforcement

Recusal of Judge Cunningham and both cases to be transferred direct to High Court or Circuit Court Letterkenny.

Other matters as court direct.”

26. Dignam J. refused to grant Mr. Carroll liberty to re-enter the original application for judicial review. In his ruling, he gives a number of reasons as to why he came to that conclusion. They are: -

“5. I am of the view that it would not be appropriate to re-enter the judicial review proceedings in order for Mr. Carroll to challenge that decision or raise the matters he now seeks to raise. I am of that view for the following reasons. Firstly, it is clear that the interactions with the District Court have been extensive since the matter was first before the court last September and in those circumstances, this is an entirely new factual and legal background. Any challenge to the decision on foot of that new factual and legal background should be brought by a fresh case either by way of an appeal or a judicial review. Secondly even without such extensive background, I would be of the view that the decision which has now been made, but which had not been made prior to the original application for leave to apply for judicial review, should be challenged by separate proceedings either by way of an appeal or judicial review. Thirdly, the case that is now sought to be brought also includes what Mr. Carroll describes as an enforcement hearing and relates to a District Court matter and a PRTB matter. In this regard, it is worth referring to the applicant’s Mr. Carroll’s, submissions for today’s hearing where he sets out the relief he is seeking ...”

Dignam J. then lists the various reliefs sought by Mr. Carroll in the context of the proceedings which he sought to re-enter.

27. Dignam J. went on: -

“6. Some of these matters, and in particular the enforcement case and the issue of the timing of the various District Court matters, were not the subject of the original application for leave. Even if they had been, it is clear there are new facts in relation to these.

7. In short it seems to me that if Mr. Carroll wishes to challenge the decisions and to seek the relief which is set out in his submissions, which I have just quoted, that must be done in a fresh proceeding. If he wishes to do so by judicial review proceedings then an application for leave to apply for judicial review must be made in accordance with the Rules of the Superior Courts. I wish to emphasise this does not determine Mr. Carroll’s application for leave at all, it only determines the application as to whether to re-enter the original judicial review proceedings or not.”

28. It is important to note that, in his Notice of Appeal, Mr. Carroll continues to seek from this court the expanded range of orders that he sought from Dignam J. on the 14th March. Under the heading *“Orders sought”* at Part 4 of the Notice of Appeal, Mr. Carroll states that (if his appeal is successful) he will ask this court to make the following orders: -

“1. I request an interlocutory injunction or other means Court can provide to initially stop the setting of a Final short notice Enforcement hearing.

2. Also to stay the Assault case as initial JR until Forensics provided, a Review can be undertaken by Ch. Supt’s Office under observation by High Court.

3. Similarly ordering of Forensisc Evidence pending further Motion/Affidavits as permission granted to issue.

4. Permission is also requested to issue/file Motions Affidavits ordering: -

5. *Discovery as draft Motion/Affidavit under RSC Order 31 for Forensics on Spade/Rocks and Leixlip (sic) statements landlords might have made to police Feb. 21. They deny this but Offr. Steede said on 12.2.21 they had made such statements first week of Feb. 21.*
6. *Enjoinment of Enforcement case hereto with landlords Terry and Margaret Rowland and RTB with their solicitor Kiran Hickman O'Donnell of Ennis.*
7. *Review of Assault case to be by Ch. Supt's office Letterkenny not Milford DS.*
8. *Assault Final hearing/judgement to precede that of Enforcement.*
9. *Recusal of Judge Cunningham and both cases to be transferred direct to High court or Circuit Court Letterkenny.*
10. *Other matters as Court directs."*

These reliefs are strikingly similar, if not identical, to the reliefs which Mr. Carroll sought from Dignam J. in the original judicial review proceedings when asking that those proceedings be re-entered.

29. In this appeal, no challenge is made to the decision by Dignam J. to refuse leave to seek judicial review in September 2022. The only order which is sought to upset is the decision not to grant liberty to re-enter the original judicial review proceedings. The reliefs now claimed are radically more extensive than the original reliefs sought by Mr. Carroll against the Garda Commissioner. The reliefs now sought by Mr. Carroll cannot logically be confined to the Commissioner, but would involve orders against the Rowlands, against their solicitors, and against District Judge Cunningham. The scope of the issues that Mr. Carroll now wants to agitate in these proceedings simply bears no comparison to the scope of the original proposed judicial review. In the course of his submissions to this court, Mr. Carroll erroneously argued that the original order of Dignam J. (in September 2022) was in effect to

give leave to seek judicial review. In fact, it was the polar opposite. However, even this misunderstanding on the part of Mr. Carroll does not explain how it could be thought that he has any entitlement to re-enter the original judicial review proceedings when the complaints he now wishes to agitate differ so significantly from the original proceedings which he sought to bring.

30. If one considers the three reasons given by Dignam J. (at para. 5 of his judgment) as to why it would not be appropriate to re-enter the original judicial review proceedings, it is clear that there is merit in each of these. Firstly, the learned High Court judge was correct to say that there was “*an entirely new factual and legal background ...*” to the case which Mr. Carroll now wants to make. Secondly, the decision of the 8th November, 2022 of the District Court had not been made at the time of the original application for leave, and should now be challenged either by appeal or by judicial review. Indeed, this is a possibility contemplated by Dignam J. in September of last year and, according to his ruling, expressed by him to Mr. Carroll. Finally, the claim Mr. Carroll now wishes to advance is one which trenches on a completely different civil dispute (the landlord and tenant proceedings). It would be quite inappropriate to try to decant that dispute into the original judicial review action. New proceedings are therefore required.

31. As a touchstone, it is worth considering just one of the reliefs which Mr. Carroll sought from Dignam J. this March, and which he continues to seek from this court. This is the injunction preventing the District Court from dealing (on the 14th March, 2023) with the landlord and tenant proceedings. That application is nowhere to be found in the original judicial review proceedings, nor is it in any meaningful way foreshadowed by the contents of the papers in those proceedings. It seeks to restrain parties who are not respondents to the original judicial review proceedings. It seeks to disturb the exercise in civil proceedings of

private law rights, which is a completely different line of country to the original judicial review proceedings which were focused on the criminal process.

32. I have concluded that Dignam J. was quite entitled, in the exercise of his discretion as to whether or not to grant liberty to re-enter the original judicial review application, to act as he did for the reasons which he has set out in his ruling. In this appeal, while expressing disagreement with this decision of the High Court judge, Mr. Carroll has not made out any stateable case as to how Dignam J erred in law. I would dismiss the appeal. Given that the appeal is against a decision on an ex parte application, there is no question of any award of costs either against or in favour of Mr. Carroll.

33. Costello and Burns JJ have authorised me to indicate their agreement with this judgment.