

**THE COURT OF APPEAL**

Appeal Number: 2022/41
High Court Record No. 2021/02CAB

Donnelly J.
Binchy J.
Butler J.

Neutral Citation Number [2023] IECA 95

BETWEEN/

CRIMINAL ASSETS BUREAU

APPLICANT/RESPONDENT

- AND -

GRAHAM WHELAN

RESPONDENT/APPELLANT

JUDGMENT of Ms. Justice Butler delivered on the 24th day of April 2023

1. In a judgement dated 23 December 2022 I rejected an appeal brought by the appellant from a decision of the High Court making an order in favour of the respondent under section 3 of the Proceeds of Crime Act 1996. I invited the parties to make any submissions they might wish to make in respect of costs within 28 days of that judgement. Submissions were received from CAB on 12 January 2023. In the course of subsequent communication, the solicitor for the appellant indicated that he was awaiting instructions from his client relating to costs. Consequently, a further period of time was allowed to him for the purposes of making a submission on costs. As that extended period has now expired and no submissions have been received, it is appropriate to proceed to determine the costs of the appeal.
2. Under section 169(1) of the Legal Services Regulation Act 2015 a party who is entirely successful in civil proceedings is entitled to an award of costs against a party who is not



successful in those proceedings unless the court orders otherwise. In deciding whether to make a different order, a court must have regard to the nature and circumstances of the case, the conduct of the proceedings by the parties and to a list of factors set out in subparagraphs (a) to (g) of s.169(1). Those factors are not necessarily exhaustive and may or may not be relevant to the circumstances of any individual case. These provisions give statutory expression to the principal that “*costs follow the event*” subject to the overriding discretion of a court to make an appropriate order for costs in any particular case.

3. Unsurprisingly, the submission made on behalf of CAB relies on section 169(1) and cites a number of cases as illustrative of how the court’s discretion might be exercised. The overriding thrust of these submissions is that there is no basis upon which the normal “*costs follow the event*” rule should be departed from in this appeal which did not raise issues of general importance nor concern issues of constitutional or European law. In any event, it is submitted that the nature of the proceedings and of the order made was such that public policy considerations tended against it being in the interests of justice to make a costs order in ease of the appellant.

4. Where an appeal has been successfully defended, the successful respondent is entitled to an award of costs against the unsuccessful appellant unless there are particular circumstances which warrant the making of a different order. As a matter of general principle, it is incumbent on a party who wishes a court to make a costs order which departs from the default position now set out in s.169(1) to satisfy the court that, having regard to s.169(1), the circumstances are such that a different order should be made. The appellant in this case has not made any submissions at all much less submissions which suggest that such circumstances exist in this case. As the appellant lost on all issues raised on the appeal and has not advanced any argument as to why an order for costs should not be made against him, it is unnecessary to consider in any detail the arguments made by CAB as to how the courts discretion might properly be exercised. I am satisfied that the basic submission made by CAB to the effect that, having succeeded, it is entitled to an order for costs is correct. Consequently, I will make an order granting the respondent the costs of the appeal against the appellant.

APPROVED

NO REDACTION NEEDED



5. Judge Donnelly and Judge Binchy have read this judgment prior to its delivery and agree with its contents.