

**APPROVED**

**[2024] IEHC 433**



**THE HIGH COURT  
JUDICIAL REVIEW**

2024 688 JR

**BETWEEN**

**CAROLINE BARNES**

**APPLICANT**

**AND**

**LIMERICK CITY AND COUNTY COUNCIL  
A JUDGE OF THE DISTRICT COURT**

**RESPONDENTS**

**JUDGMENT of Mr. Justice Garrett Simons delivered on 16 July 2024**

**INTRODUCTION**

1. This judgment is delivered in respect of an application for leave to apply for judicial review. The Applicant is a litigant in person. The leave application was moved *ex parte* on 1 July 2024. Judgment was reserved to today's date.

**FACTUAL BACKGROUND**

2. The Applicant has been convicted by the District Court of an offence under section 70 of the Roads Act 1993. This legislative provision empowers the local roads authority to serve a statutory notice requiring the owner or occupier of land

**NO REDACTION REQUIRED**

to remove a tree, shrub, hedge or other vegetation which is a hazard or potential hazard to persons using a public road.

3. The prosecution arose out of a statutory notice issued by Limerick City and County Council (*“the Local Authority”*). The statutory notice is dated 8 November 2022 and is directed to the Applicant. The Applicant contends that this statutory notice was not delivered to her address until 1 December 2022.
4. The statutory notice directed that the hedges, at a specified section of the public road, were to be fully cut and trimmed back to a minimum width of one metre from the existing road verge. The statutory notice stipulated that the listed action must be undertaken by 9 December 2022. The Applicant contends that this timeframe was unreasonable in circumstances where, or so it is alleged, the statutory notice had only been properly served a week prior to the stipulated date.
5. The Local Authority subsequently made application, on 10 January 2023, to the District Court Office for the issuance of a summons alleging a failure to comply with this statutory notice. Following a series of adjournments, the criminal prosecution was ultimately heard and determined by the District Court on 2 January 2024. The Applicant was convicted of an offence under section 70 of the Roads Act 1993 and ordered to pay a fine of €500 and costs of €3,000, i.e. an aggregate sum of €3,500, within a period of six months. The formal order of the District Court was drawn up on 18 January 2024.
6. The Applicant is critical of the manner in which the hearing before the District Court was conducted. In particular, the Applicant is aggrieved that an official of the Local Authority was permitted to give evidence in relation to a road traffic accident which had occurred on the public road several years earlier. It seems

that the official gave evidence that there had been a road traffic accident, which had resulted in a fatality, on 24 February 2015.

7. The Applicant is also aggrieved that a local newspaper, namely, *The Limerick Leader*, published an article describing the events before the District Court. The article makes reference to the Local Authority's official's evidence in relation to the road traffic accident as follows:

“Mr Richardson said the stretch of road is just off the main N69.

‘There have been issues with the maintenance of the hedge. There has been a number of near misses. There was a fatality a number of years ago – I’m not blaming Ms Barnes. The hedge is overgrown.

‘Vehicles can’t stay in tight to the edge of the road to allow traffic to pass each other – especially coming from the Ballybrown side there are a sightline and safety issues,’ said Mr Richardson, who confirmed to Judge Carol Anne Coolican that Ms Barnes ‘did a bit of trimming in January 2023’.”

8. The gravamen of the Applicant's case is summarised as follows at paragraph (e) 7 of the statement of grounds of 23 May 2024:

“The First Named Respondent wrongfully and mistakenly relied on a timelimit in said notice which they failed to amend in December 2022 pursuant to section 70 sub-section 2 and sub-section 3 of the Roads Act, 1993 and on testimony with respect to a ‘fatality’ which occurred in 2015 in front of a neighbours property to secure a purported conviction on 2nd of January 2024 when the Summons dated the 10th of January 2023 came before the District Court in Newcastlewest in the County of Limerick for a second hearing and then proceeded to publish a defamatory article in the Limerick Leader Newspaper and on-line referred to in the Affidavit of Caroline Barnes as exhibit ‘H’, this is an unsafe conviction and a malicious and vexatious act.”

## **LEGAL TEST GOVERNING LEAVE APPLICATION**

9. The legal test governing an application for leave to apply for judicial review has recently been considered by the Supreme Court in *O’Doherty v. Minister for*

*Health* [2022] IESC 32, [2022] 1 I.L.R.M. 421. The Chief Justice, O'Donnell C.J., explained at paragraph 39 of the judgment that the threshold to be met is that of arguability:

“[...] The threshold is a familiar one in the law. It is, in essence, the same test which arises when proceedings are sought to be struck out on the grounds that they are bound to fail, or the test that is normally required in order to seek an interlocutory injunction. It must be a case that has a prospect of success (otherwise it would not be an arguable case) but does not require more than that. While, inevitably, individual judges may differ on the application of the test in individual cases at the margins, the test itself is clear. This test – it must be stressed – is solely one of arguability: it is emphatically not a test framed by reference to whether a case enjoys a reasonable prospect of success, still less a likelihood of success. Any such language obscures the nature of the test and may on occasion lead to misunderstanding, appeal and consequent delay.”

10. The Chief Justice also confirmed (at paragraph 40) that the same threshold test pertains irrespective of whether the application for leave is made *ex parte* or is made on notice to the respondent.
11. It follows, therefore, that in assessing the merits of the grounds of judicial review pleaded, the High Court must do so by reference to the low threshold of arguability.
12. The approach to be taken in respect of time-limits is somewhat different. Order 84 of the Rules of the Superior Courts indicates that the question of whether the leave application has been made within the time-limit prescribed is a matter which should normally be decided at the leave stage. If it is obvious that the leave application is out of time, then the judge hearing the leave application may properly refuse leave on this basis. This is so notwithstanding that the grant of leave does not necessarily preclude these issues from being revisited at the full hearing. In a complex case, the judge subsequently hearing

the substantive application for judicial review may be prepared to revisit the question of delay having had the benefit of arguments from the respondent.

### **ORDER 84, RULE 21**

13. Order 84, rule 21 of the Rules of the Superior Courts provides that an application for leave to apply for judicial review shall be made within three months from the date when grounds for the application first arose. It is further provided that where the relief sought is an order of *certiorari* in respect of any conviction, the date when grounds for the application “*first arose*” shall be taken to be the date of that conviction. An application for leave is regarded as having been “*made*” once the statement of grounds and verifying affidavit are filed in the Central Office of the High Court: see Rules of the Superior Courts (Order 84) 2024.
14. Order 84, rule 21(3) and (4) confer discretion on the High Court to extend time as follows:
  - “(3) Notwithstanding sub-rule (1), the Court may, on an application for that purpose, extend the period within which an application for leave to apply for judicial review may be made, but the Court shall only extend such period if it is satisfied that:
    - (a) there is good and sufficient reason for doing so, and
    - (b) the circumstances that resulted in the failure to make the application for leave within the period mentioned in sub-rule (1) either:
      - (i) were outside the control of, or
      - (ii) could not reasonably have been anticipated by the applicant for such extension.
  - (4) In considering whether good and sufficient reason exists for the purposes of sub-rule (3), the court may have regard to the effect which an extension of the period referred to in that sub-rule might have on a respondent or third party.”

15. The obligations to be complied with by an applicant who seeks an extension of time are prescribed under Order 84, rule 21(5). This rule provides that an application for an extension of time shall be grounded upon an affidavit sworn by or on behalf of the applicant which shall set out the reasons for the applicant's failure to make the application for leave within the period prescribed and shall verify any facts relied on in support of those reasons.
16. The Supreme Court in *M. O'S. v. Residential Institutions Redress Board* [2018] IESC 61, [2019] 1 I.L.R.M. 149 has confirmed that an applicant, who does not apply for leave to issue judicial review within the time specified, is required to furnish good reasons which explain and objectively justify the failure to make the application within the time-limit, and which would justify an extension of time up to the date of institution of the proceedings.
17. The majority judgment in *M. O'S.* (at paragraph 60 thereof) contains the following statement of general principle as to the exercise of the court's discretion:

“I have concluded that the case law cited above, insofar as it applies to the extension of the time specified under Ord.84 for the bringing of judicial review proceedings, makes clear that the jurisdiction which the court is to exercise on an application to extend time is a discretionary jurisdiction which must be exercised in accordance with the relevant principles in the interests of justice. It clearly requires an applicant to satisfy the court of the reasons for which the application was not brought both within the time specified in the rule and also during any subsequent period up to the date upon which the application for leave was brought. It also requires the court to consider whether the reasons proffered by an applicant objectively explain and justify the failure to apply within the time specified and any subsequent period prior to the application and are sufficient to justify the court exercising its discretion to extend time. The inclusion of sub-rule (4) indicates expressly that the court may have regard to the impact of an extension of time on any respondent or notice party. The case law makes clear that the court must also have regard to all the relevant facts and

circumstances, which include the decision sought to be challenged, the nature of the claim made that it is invalid or unlawful and any relevant facts and circumstances pertaining to the parties, and must ultimately determine in accordance with the interests of justice whether or not the extension should be granted. The decision may require the court to balance rights of an applicant with those of a respondent or notice party. The judgments cited do not, in my view, admit of a bright line principle which precludes a court taking into account a relevant change in the jurisprudence of the courts when deciding whether an applicant has established a good and sufficient reason for an extension of time. Further, the judgments cited above do not envisage any absolute rule in relation to what may or may not be taken into account or constitute a good reason or a good and sufficient reason. The court, in an application for an extension of time, is exercising a discretionary jurisdiction and in the words of Denham J. in *De Roiste*, “[t]here are no absolutes in the exercise of a discretion. An absolute rule is the antithesis of discretion. The exercise of a discretion is the balancing of factors – a judgement.”

18. I consider the application of these principles to the circumstances of the present proceedings at paragraph 25 *et seq.* below.

#### **JUDICIAL REVIEW OR APPEAL**

19. An application for judicial review will not normally be appropriate where an applicant has an adequate alternative remedy by way of an appeal. This is especially so in the context of a criminal conviction entered in the District Court or the Circuit Court. This is because an appeal to the Circuit Court or the Court of Appeal, respectively, will generally represent an adequate alternative remedy. Indeed, an appeal is almost always the *preferable* remedy from an accused’s perspective because of the inherent limitations on the judicial review jurisdiction.
20. Judicial review is concerned principally with the legality of the decision-making process, and not with the underlying merits of the decision under challenge (save

in cases of irrationality). Put otherwise, the function which the High Court exercises in determining judicial review proceedings is far more limited than that which the Circuit Court and the Court of Appeal, respectively, would exercise in determining an appeal against conviction and sentence.

21. The inherent limitations on the High Court’s judicial review jurisdiction have been described, in more eloquent terms, by the Supreme Court in *E.R. v.*

*Director of Public Prosecutions* [2019] IESC 86 as follows (at paragraph 17):

“[...] an accused in a criminal trial who is advised to forego an appeal and instead pursue a judicial review, faces a burden different to an argument as to right and wrong. Judicial review is not about the correctness of decision-making, nor is it the substitution by one court of a legal analysis or factual decision for that of the court under scrutiny. On judicial review, where successful, the High Court returns the administrative or judicial decision to the original source and, implicitly in the judgment overturning the impugned decision, requires that it be redone in accordance with jurisdiction or that fundamentally fair procedures be followed. If the decision-maker has no jurisdiction, that may be the end of the matter but the High Court never acts as if a Circuit Court case were being reconsidered through a rehearing, which is a circumstance where a court will be entitled to substitute its own decision. Judicial review is about process, jurisdiction and adherence to a basic level of sound procedures. It is not a reanalysis.”

22. The Supreme Court judgment goes on, in the next paragraph, to emphasise that an applicant for judicial review in criminal proceedings has the “*substantial burden*” of showing the deprivation of a right. It is not enough to ground a successful application for judicial review that the trial judge might have made an error of fact, nor even an incorrect decision of law.

23. The circumstances in which judicial review may be appropriate, notwithstanding the availability of a right of appeal, have been summarised as follows by Clarke J. (as he then was) in *Sweeney v. District Judge Fahy* [2014] IESC 50 (at paragraphs 3.14 and 3.15):



“Thus, it is clear that a court may refuse to consider a judicial review application where it is apparent that the complaint made is one which is more appropriately dealt with by means of a form of appeal which the law allows. There can, of course, be cases where the nature of the allegation made is such that, if it be true, the person concerned will have, in substance, been deprived of any real first instance hearing at all or at least one which broadly complies with the constitutional requirements of fairness. To say that someone, who has been deprived of a proper first instance hearing at all, has, as their remedy, an appeal is to miss the point. In such circumstances what the law allows is a first hearing and an appeal. If there has, in truth, been no proper first hearing at all, then the person will be deprived of what the law confers on them by being confined, as a remedy, to an appeal. In such a case, judicial review lies to ensure that the person at least gets a first instance hearing which is constitutionally proper and against which they can, if they wish, appeal on the merits in due course.

Where, however, a person has had a constitutionally fair first instance hearing and where their complaint is that the decision maker was wrong, then there are strong grounds for suggesting that an appeal, if it be available, is the appropriate remedy.”

24. These, then, are the principles to be followed in deciding whether to grant leave to apply for judicial review in this case.

## **DISCUSSION**

25. The first issue to be addressed is whether the application for leave to apply for judicial review has been made within time. The relevant hearing and determination took place before the District Court on 2 January 2024. The formal order was drawn up on 18 January 2024. As explained at paragraph 13 above, the three month time-limit runs from the date of the conviction order. The within judicial review proceedings were not, however, instituted until 23 May 2024. On that date, the statement of grounds and verifying affidavit were filed in the Central Office of the High Court. The proceedings are, therefore, out of time by a period of some five weeks.

26. The Applicant has not sought, as is required under Order 84, rule 21, an extension of time as part of her leave papers. Still less has the Applicant advanced on affidavit any reason as to why the proceedings were not instituted within time. In the course of her oral submission on 1 July 2024, the Applicant suggested that it had been necessary for her to research the circumstances surrounding the road traffic accident (which had been referred to in evidence before the District Court). The Applicant has included, as an exhibit to her verifying affidavit, an article from *The Limerick Post* published on 14 December 2019. This article refers to the circumstances of the road traffic accident. It appears from this report that one of the drivers involved had a previously diagnosed psychotic condition and had not been taking his medication at the time of the accident. The gist of the Applicant's case seems to be that it was these medical factors, rather than any danger created by obstruction, that had contributed to the occurrence of the road traffic accident.
27. The Applicant confirmed, in response to a direct question from the bench, that she had seen this newspaper article of 14 December 2019 at the time it was published. The Applicant explained that she had, in fact, retained a copy of the article on file. The article is also available online on the website of *The Limerick Post*.
28. If and insofar as the Applicant thought that this newspaper article was a necessary proof for her application for judicial review, the article was already in her possession at the commencement of the three month limitation period. Moreover, a copy of same could readily have been secured online by the expedient of carrying out a simple search on the website of the relevant newspaper. The logistics of obtaining a copy of the newspaper article cannot,

therefore, represent a good and sufficient reason for an extension of time, still less a circumstance outside the control of the Applicant.

29. The Applicant has also explained, in oral submission, that she had, mistakenly, thought that the time-limit for judicial review proceedings seeking an order of *certiorari* is six months not three. This is incorrect. The three month time-limit has been in place since January 2012: see Rules of the Superior Courts (Judicial Review) 2011. The Applicant cannot rely on the fact that she is a lay litigant nor on her ignorance of a longstanding and well publicised time-limit as a basis for seeking an extension of time. The Rules of the Superior Courts apply equally to lay litigants as they do to those with the benefit of legal representation.
30. There is no basis upon which the High Court could grant an extension of time under Order 84, rule 21.
31. Aside entirely from the time-limit point, there is another fundamental difficulty with the application for leave to apply for judicial review. The Applicant had a statutory right of appeal to the Circuit Court against the decision of the District Court. As is apparent from the case law discussed earlier, in the context of criminal proceedings, an appeal will, in almost all cases, be a more appropriate remedy than judicial review. Thus, if and insofar as the Applicant had wished to challenge the findings of the District Court in relation to matters such as the timing of the service of the statutory notice and the reasonableness of the time period afforded to her for the carrying out of the hedge trimming works post-service, these are all matters which could have been fully ventilated by way of a statutory appeal. The appeal before the Circuit Court takes the form of a *de novo* hearing.

32. If and insofar as the Applicant seeks to make a complaint about the decision of the District Court judge to admit certain evidence, i.e. the evidence in relation to a road traffic accident on the relevant public road, this is not something which could ground an application for judicial review. A decision on the admissibility of evidence is a matter which is quintessentially within the jurisdiction of the District Court.
33. As an aside, it should be observed that the District Court appears to have acted entirely properly in admitting the evidence. The Applicant has not sought to take up a transcript of the hearing before the District Court. The only evidence before the High Court as to what was said before the District Court in relation to the road traffic accident is the description as *per* the newspaper article (cited at paragraph 7 above). Although the newspaper article is hearsay evidence only, the Applicant has not disputed the accuracy of the description of the events before the District Court. On the Applicant's own paperwork, it appears that whereas the relevant official of the Local Authority did refer to the road traffic accident, he expressly stated that the Applicant was not to blame for same.
34. The Applicant was asked, at the hearing of the leave application on 1 July 2024, as to why it is that she did not pursue an appeal to the Circuit Court. The only response given by the Applicant is that she has had previous experience of litigation and that she had chosen the judicial review route in that context. The Applicant explained that this is a reference to separate proceedings which she had instituted against the Property Registration Authority in or about 2009. This does not provide a good reason for failing to avail of the statutory right of appeal to the Circuit Court. No applicant can rely on their ignorance of court procedures

as a reason to pursue an avenue of attack, which in the particular circumstances of the case, is entirely inappropriate.

### **CONCLUSION AND FORM OF ORDER**

35. For the reasons explained above, the application for leave to apply for judicial review is refused. In summary: (i) the leave application was made outside the three month time-limit prescribed under Order 84, rule 21; and (ii) the Applicant had available to her an adequate alternative remedy by way of a statutory appeal to the Circuit Court.
36. As the leave application was heard *ex parte*, the question of making an order for costs in favour of the (intended) respondents does not arise.