



THE HIGH COURT

Record No. H.JR.2023.001323

Neutral Citation [2025] IEHC 92

BETWEEN:

R.M.

APPLICANT

AND

MÁIRE CONNEELY, JUDGE OF THE DISTRICT COURT

RESPONDENT

Judgment of Ms. Justice Mary Rose Gearty delivered on 18th February, 2025

1. Introduction and Summary

1.1 The Applicant alleges bias on the part of a District Judge hearing a family law case.

The core of his complaint is that the Judge showed bias against him generally and, in a specific example, by handing legislation to a lawyer for his opponent during her application to lift the *in camera* rule. That application was made to allow that lawyer to defend herself, by reference to the otherwise private details of the case, in a High Court action in which he accuses the lawyer of professional negligence.

1.2 The Applicant seeks leave to quash the order lifting the *in camera* rule and to quash the Respondent's refusal to recuse herself after repeated requests that she recuse herself for various other reasons. The Applicant also seeks an order preventing this judge from hearing future applications and compelling her to "produce an Order" that would allow him to appeal her decision in respect of the *in camera* rule.

1.3 There is insufficient evidence of bias in this case such as to justify the relief sought.

The appropriate remedy for this Applicant is to appeal the impugned order.

1.4 Finally, the Applicant has complained also of delays in the hearing of this judicial review application. His application was filed in 2023 and sought to challenge an order made on 14th November 2023. He told me that he was directed to await an appeal which, he submitted, never took place. The Applicant first appeared before this Court in the Judicial Review *ex parte* list on 26th November 2024 at which point the only named Respondent was his former wife. Having been directed to join the Judge as a Respondent given the allegations of mala fides made, the Applicant did so, and the matter is now before the Court as a preliminary application for leave to seek the reliefs of certiorari, prohibition and mandamus as described above.

2. Alternative Remedies

2.1 The Applicant has at least one appeal pending in the Circuit Court. He complains that the Respondent, who has been dealing with his case in recent months, does not give him time to appeal, nor does she issue orders sufficiently quickly to allow an appeal. This is no bar to an appeal of a District Court order which can be appealed to the Circuit Court and in respect of which the Applicant is entitled to a *de novo* hearing.

2.2 The Supreme Court in *State (Roche) v Delap* [1980] I.R. 170 refused to grant an order of certiorari even though it accepted that the impugned order in that case was bad on its face. It did so because the applicant had an appeal pending in the Circuit Court. This Applicant is in a similar situation. He seeks to judicially review a case in which at least one appeal is outstanding. As noted, this was why his case was adjourned previously in this Court, as an appeal was pending.

2.3 Nonetheless, and given the claim of bias, I will consider this issue as it is argued that judicial review is the more appropriate remedy here. This is only correct if there is evidence of unfair bias which vitiates the impugned decision.

3. The Law regarding Bias and Leave Applications

- 3.1 The Supreme Court has reviewed the law regarding bias in *Kelly v U.C.D.* [2025] IESC 6. In his judgment, O'Donnell C.J. emphasises the importance of an impartial tribunal, describing it as *"the personal entitlement of the parties and a basic requirement of the administration of justice guaranteed to citizens"* by the Constitution. He notes that within this context, judges are required to hear cases assigned to them, judges are not entitled to choose parties and parties are not entitled to choose judges. The test for bias is confirmed, at paragraph 2, as follows: *"where the reasonable and informed onlooker would have a reasonable apprehension that the judge would not be able to give the matter an impartial hearing and decision by reference only to the facts and law."*
- 3.2 Several potential factors are suggested which might create an apprehension of bias namely: where a judge has an interest (direct or indirect) in the case, has made a prior public commitment to the position of a party relating to the merits of the case, where a judge has connections with a party or witness whose credibility is at issue, or with a lawyer in the case, or where the judge has extraneous information not acquired from the evidence in the case. While this list is not exhaustive, it is a useful checklist against which facts can be assessed.
- 3.3 O'Donnell C.J. notes: *"The test for disqualification is sensitive and may be triggered by matters which are some distance from any actual bias or predisposition"*, reciting the various reasons why this must be so, bolstering the role of the impartial tribunal in ensuring public confidence in our system of justice.
- 3.4 Notwithstanding this reaffirmation of the importance of confidence in the impartiality of our judges, O'Donnell C.J. confirms that measures to guard against perceived bias must have defined limits, including the warning that it cannot be correct to accede to *"any objection however flimsy to avoid controversy"*. He notes the costs to opposing parties and to the administration of justice by claims of bias. Both sides have a right to fair procedures, including the right to finality of litigation. The crucial conclusion of these preliminary remarks reads:

“There must be a cogent and rational link between the issue raised and its capacity to influence the decision to be made; it is not to be determined by some precautionary consideration that it might have been better not to sit, or some wise after-the-fact assessment that a problem might have been avoided by not sitting.”

3.5 The law in relation to leave applications is very well established. The Supreme Court decision in *G v D.P.P.* [1994] 1 I.R. 374 is authority for the following propositions in respect of any application for leave to take judicial review proceedings: the applicant must show that the only effective remedy on the facts of the case is judicial review. If another remedy is available, the applicant must show that the more appropriate remedy is judicial review. The burden of proof is on the applicant, who must establish an arguable case in law. In other words, the applicant must have no better remedy available to him and must persuade the Court that the case has some prospect of success.

3.6 In other words, this Applicant must show that he has an arguable case, or some prospect of success in his argument that the Judge was biased and cannot give the matter an impartial decision by reference only to the facts and law.

4. The History of the Case and the Impugned Decision

4.1 In his most recent affidavit, the Applicant avers that his former partner brought proceedings in the District Court in 2021, seeking what he describes as *“maintenance arrears as extortion”* and noting that the first judge ordered him to pay *“based on fabricated evidence”* in the form of bank withdrawals and transfers. He describes this judge (not the subject of any proceedings) as having *“ridiculed the Employment law and even admitted during proceedings her violation of it”*.

4.2 The next step in the proceedings was that a second judge heard his complaint about the payment of arrears and dismissed it. A third Judge, this Respondent, then took over the relevant court list and he notes that *“his rights were challenged in Dolphin House by [both second and third judges] until I lodged complaints to the Judicial Council. Both Judges then reconsidered their statements regarding my right*

to be accompanied during proceedings in camera..." This refers to the Applicant's request for a McKenzie friend which was permitted, albeit it had initially been refused by the second Judge and this Respondent. He links this change of position with his complaints about the judges in question but either way, it is clear that both reviewed their decisions, in favour of the Applicant. He notes also that neither of his complaints was upheld by the Council.

4.3 The impugned order was made, according to the Applicant, after the second judge had made an order, which the Applicant had appealed, and the Respondent Judge refused his application to await that appeal but went on to consider and rule on the lawyer's motion to lift the *in camera* rule to allow that lawyer to refer to the family law proceedings in a High Court case against her.

4.4 The core complaint, as I have already described it, is set out at paragraph 9 of this latest affidavit as follows: "*Judge Conneely openly supported applicant by handing to her barrister during proceedings legislation and advised her to refer to it.*" In paragraph 10 the Applicant avers that he asked the Judge multiple times to refer the matter to a different judge, but she refused and told him she did not see any reason for him to worry regarding her impartiality and independence. At paragraph 11 the Applicant describes the evidence put before this Judge as *false statements* produced by the lawyer in question.

4.5 Finally, the Applicant also avers that he attended the Circuit Court multiple times, but his appeal was not heard. The Circuit Court judge apparently reserved a slot for the hearing in October of 2024 but a new Judge then sitting in October refused to hear the appeal and in the words of the applicant "*falsely stated that the hearing was for mention only.*" That appeal is due to be heard on the 17th of February, the day before this judgment is being delivered.

4.6 The Applicant concludes this affidavit by swearing that he has attended the High Court multiple times, but the matter was not heard, that he lost his employment in 2024, and one of the reasons was excessive requests for time off. As noted in paragraph 1.4., his case was initially adjourned awaiting his appeal.

5. Evidence of Bias?

5.1 The Supreme Court considered the issue of evidence of bias in *Kelly* and held, for the reasons set out, that calling evidence from a judge was not desirable. Here, this does not arise. In this application for leave, the evidence can be taken at its height and assessed on the basis of the Applicant's description alone.

5.2 On that basis, what occurred here was that over the course of a long-running case, during which at least three judges made decisions with which the Applicant did not agree, he made formal complaints about two of them, and after he asked the Respondent to recuse herself, the Respondent refused to adjourn an application and handed a copy of a statute to a lawyer who was acting for his ex-wife but was, in fact, a party to that motion. He had previously complained about the Respondent and she had, whether due to the complaint or otherwise, revised her stance on his McKenzie friend to allow his attendance. The question is: do these facts create a situation in which a reasonable observer, apprised of all the facts, would have a reasonable apprehension of bias?

5.3 This situation could not possibly create such an apprehension in the mind of a reasonable person, apprised of all the facts. While ours is an adversarial system and that may suggest that the judge sits passively, allowing the parties to frame the case, make their arguments and then she decides who should win, that is far too simplistic a view of what happens in court. It is commonplace for judges to remind counsel and litigants of a case or a piece of legislation.

5.4 At its height, this is a case in which, as the Supreme Court recently described it, the litigant wants to choose his judge. The case has been ongoing for some years and he has been unhappy with decisions made by every judge involved. Repeated applications for recusal do not accumulate to form evidence of bias, otherwise litigants could choose their judge by making groundless applications. Similarly, formal complaints do not create an apprehension of bias as, otherwise, frivolous complaints could force a judge to recuse herself: *Smith v Cisco Systems Internetworking (Ireland) Ltd* [2023] IECA 186.

5.5 Judges are bound by the law, just as litigants are bound by the law. If there is a statute which governs a case and a litigant or lawyer has not cited it, there is no reason why a judge, familiar with the law, should not mention it or even hand a copy to a litigant or lawyer. This assistance is often granted to litigants in person, in particular, who are unfamiliar with court procedure. There is never a suggestion that this constitutes bias towards that litigant or amounts to an ominous sign that the court will not listen to the opposing side.

5.6 The Applicant noted that the Judge laughed and told him that it was in ease of his case that she was reminding the lawyer of the applicable law. Even if this was not in his ease (and if it was, it suggests a further reason not to apprehend bias) the Applicant does not appear to accept that the Judge was entitled to draw the attention of a party to the applicable law and that this may be required rather than allowing a submission that is incorrect or misleading. Confirming the applicable law is not showing bias, it is ensuring that the law is applied.

5.7 The statute in question was never identified. There is no suggestion that it was irrelevant or that it was unfair to rely on it, the Applicant does not suggest that the law was other than as set out in this statute nor does he argue that it was in any way hidden from him such that he did not know what was in the statute or did not know the law that the Respondent considered applicable.

6. Connection of Events to the Decision

6.1 The main event here was that the Judge handed a copy of a statute to a barrister. Such an event is not linked with the outcome of the case other than that the Judge ensured it would be in accordance with law. Unless the Applicant can show that the law was other than that handed to the lawyer in question and that the Judge was unfairly dictating the result of the case, he cannot succeed in obtaining leave for judicial review of the decision on this basis. His account, including formal complaints made, does not show the kind of bias which will, according to *Kelly*, justify a decision that the judge should have recused herself.

- 6.2 One can see from the motion papers, exhibited by the Applicant, that the lawyer's argument was based on the necessity that she defend herself from accusations made by the Applicant in civil proceedings against her. To that extent, her position was more engaged than that of a lawyer in typical family proceedings. The distinction made by McDonald J. in *Allied Irish Banks plc v McQuaid* [2022] IEHC 224 cannot be said to apply here: in the motion, the lawyer was one of the parties and the Applicant was the other party.
- 6.3 Notwithstanding this, the event complained of, handing a statute to a party, remains innocuous. Without more, it remains an act of confirming what the law is, not the conferring of a benefit or privilege on a party nor even a sign of partiality. This is precisely what O'Donnell C.J. warned against in *Kelly*: perhaps with hindsight, the Respondent might have had copies of the legislation for both parties, or perhaps it would have been more prudent to refer to the statute and ask both parties to read it and refer to it in argument, but this is a counsel of perfection. To have done as she did was not a sign of bias, but an efficient way to ensure that the Respondent herself was not misled.
- 6.4 The substance of this application is that the barrister sought permission to use private information in a separate case. The impugned Order allows the barrister to use certain *in camera* information, limits dissemination of the information to her legal team and ensures it is used for the purposes of the anticipated High Court hearing only. Undertakings were sought from the lawyer, who can only obtain the DAR by defraying the cost thereof and the Court ordered that all documents remain subject to the *in camera* rule.
- 6.5 As part of this application, the Applicant has included allegations against this lawyer, including that she fabricated a case in collusion with his ex-wife, and that the lawyer presented "*fabricated evidence*". This gives the gist of the claims made in his civil proceedings. The barrister submitted to the Respondent that this Applicant ought to have obtained permission to refer to the family law proceedings in his High Court claim, to ensure that the *in camera* rule applied

to that case also, but he did not. The Applicant appears to argue that the District Court case is *in camera* and that the motion ought to have been refused on that basis, despite the fact that it is he who necessitated the motion.

6.6 This Court will not comment on the merits of these arguments. The only issue for decision is whether the order was motivated by bias, as contended for by the Applicant. The arguments are set out to show that there is no evidence that this decision was based on anything other than the law and the evidence.

6.7 The Applicant relies on the history of these proceedings, including short adjournments, to argue that the Judge acted out of malice, which accusation ensures that she must be named in the title of the proceedings, despite there being no evidence of *mala fides*: *M. v. M.*, [2019] 2 IR 402. On the height of his evidence, there are assertions of bias but no evidence of same. As for the main complaint of bias, there was no secret about the applicable law and no attempt to show favour to one party. There is no cogent, logical connection between any act complained of and the decision, such as would create a reasonable apprehension that the Respondent failed to decide the case on the merits.

7. Conclusions

7.1 This application is refused. The Applicant's argument has no prospect of success in that his description of events has not established any apprehension of unfair bias on the part of the Judge, these events could not create an apprehension of bias in the mind of a reasonable person. Neither the repeated recusal applications nor the main issue of which he complains has been shown to have had any connection with the Respondent's decision in the case, which was one she was entitled to make on the facts before her.

7.2 The final order is to refuse leave to pursue the reliefs set out in the statement of grounds for the reasons set out above. There is no need for a further court date as there are no costs implications arising from this *ex parte* application.