



THE SUPREME COURT

[RECORD NO.: 29/2019]

**O'Donnell C.J.
MacMenamin J.
Dunne J.
Charleton J.
O'Malley J.**

BETWEEN:

RORY ENNIS

DEFENDANT/APPELLANT

AND

ALLIED IRISH BANKS PLC

PLAINTIFF/RESPONDENT

**Ruling on Costs delivered by Mr. Justice John MacMenamin on the 1st day
of December, 2021**

1. This is a ruling on costs in the above matter. The Court delivered judgment in this appeal on the 15th March, 2021. It allowed the appeal of the defendant/appellant and set aside the orders of the High Court and the Court of Appeal, granting summary judgment to the respondent Bank. Prior to the appeal to this Court, the appellant, Mr. Ennis, for the first time, retained solicitor and counsel. The judgment delivered by this Court considered the circumstances in which an appellant against a summary judgment, may, in certain limited instances identified, be permitted to advance arguments on appeal which had not been argued at first instance. Taken together, the factors in this exceptional case were such that the Court was persuaded that the summary judgment against the appellant, who had represented himself, should be set aside, and an order was made remitting the matter to the High Court for plenary hearing.

2. The respondent Bank now submits that costs should be costs in the cause for the summary judgment proceedings, relying on the judgment of *ACC Bank Plc. v. Hanrahan* [2014] IESC 40, [2014] 1 I.R. 1, where Clarke J. considered that, in principle, in the majority of cases, the costs of a summary judgment motion, as a result of which the proceedings were remitted to plenary hearing, should either be reserved or become costs in the cause. Clarke J. observed that costs in the cause might be an appropriate measure, unless it might be the case that the judge adjudicating on the summary judgment motion felt that it was possible that the detail in which the trial judge determines the ultimate issues in

the case could have a bearing on the justice of where the costs should lie. In those circumstances, a reservation of the costs might be more appropriate.

3. Insofar as the respondent Bank accepts that the appellant was successful in the appeal (cf. s.169 Legal Services Regulations Act, 2015), it points out that the appellant failed to put his entire case before the High Court, and that the appeals to the Court of Appeal, and even this Court, were conducted in a less than optimal way.

4. Against this, however, the issue which came before this Court was an issue of law; that is, whether the Court of Appeal applied the correct legal principles in dismissing Mr. Ennis's appeal from summary judgment granted in the High Court. It is to be borne in mind that there was substantial default on the part of the appellant in not putting forward his case either fully in the High Court, or in an appropriate manner in the Court of Appeal. The issues upon which this Court reached its conclusion were not fully addressed in the appellant's appeal papers. The Court was invited to reach conclusions on the ECHR Act 2003 which were not properly raised earlier in a full or substantial way and which, in any case, were not material to the substantive issue upon which the Court reached its conclusion.

5. The law provides the Court must have regard to the "event" in this Court (Order 99, RSC 1986, as amended, and s.169 Legal Services Regulation Act, 2015). But the law also provides that a court may order that a party, even if successful, will not always to be entitled to their full costs. Section 169 of the

2015 Act provides that the Court must have regard to the “*nature and circumstances of the case*”, including:-

“ 169 (1) (b) *whether it was reasonable for a party to raise, pursue or contest one or more issues in the proceedings,*
(c) the manner in which the parties conducted all or any part of their cases”.

6. In this case, the appropriate and just order would be to allow the appellant two thirds of the costs of the appeal to this Court, and to make the costs of the High Court, and the Court of Appeal, costs in the cause.

7. The Court will, therefore, award the appellant two thirds of the costs of the appeal to this Court, but hold that the costs of the High Court, and Court of Appeal, will be costs in the cause.