

An Chúirt Uachtarach



The Supreme Court

Dunne J
Charleton J
O'Malley J
Woulfe J
Murray J

Supreme Court appeal number: S:AP:IE:2021:000115
[2022] IESC 33
Court of Appeal record number: A:AP:IE:2020:000202
[2021] IECA 237
Central Criminal Court bill number: CCDP 87/2002
[2020] IEHC 434

Between

**The People (at the suit of the Director of Public Prosecutions)
Prosecutor/Appellant**

- and -

**Yusif Ali Abdi
Accused/Respondents**

Ruling on costs of Friday 29 July 2022

1. The substantive judgment on this appeal was delivered on 30 May 2022. This ruling and that judgment should properly be read together.
2. Because the judgment was delivered electronically, the normally brief submissions heard from the parties as to costs were not engaged, as is usual, immediately after the Court's decision.
3. A submission as to costs in writing, dated 19 July 2022, was furnished by counsel for Mr Abdi. Counsel for the Director of Public Prosecutions replied in writing by a submission dated 21 July 2022.
4. In sum, these submissions are of a level of detail as to the argument advanced and responded to beyond the ordinary oral submissions heard in due course after a judgment is delivered. Hence, there is no necessity to go beyond such submissions or to consider an oral hearing.

5. Costs in the ordinary way are conceded to the winning party, as is proper, by the Director of Public Prosecutions; s 169 of the Legal Services (Regulation) Act 2015. Under criminal legal aid the trial and retrial of Mr Abdi were funded from public money. On the commencement of the application for a certificate of a miscarriage of justice, no application was made for legal aid under the custody and related issues scheme. It is no part of this ruling to address any issue as to the correctness or not of that approach.

6. Instead of costs in the ordinary way, party and party costs, counsel for Mr Abdi seek what they refer to as solicitor and client costs, a level of remuneration beyond the award of party and party costs. This is understood to be an application for legal practitioner and client costs under Order 99 rule 1(1) and 10(3) of the Rules of the Superior courts.

7. It is not necessary to consider the correctness or otherwise of the decision in *Trafalgar v Mazepin* [2020] IEHC 13, which has been cited. Rather, the argument on behalf of Mr Abdi is that this case somehow involves some consideration whereby “the Court should take account of the conduct of the proceedings”.

8. The Director of Public Prosecutions submits at paragraph 2:

It is accepted that an order for costs should extend to one solicitor, one junior counsel, and two senior counsel for the purposes of the Court of Appeal and Supreme Court hearing on a par with the Appellant’s representation. In respect of the hearing before the High Court and the Court of Appeal, costs have already been awarded on the ordinary basis and no application was made for costs on a ‘solicitor and client’ basis.

9. Reverting to the substantive judgment, there was no finding of negligent or dishonest conduct on the part of any State party or witness. It would be an impediment to the proper administration of justice for honest argument and robust evidence in pursuit of a genuine position in a case to be marked by an extraordinary award of costs. There is no basis for that here. There is no parallel with any case cited on behalf of Mr Abdi. No comment is made as to any such case and no argument advanced as to same is to be taken as accepted by the Court. Rather, it is clear to the Court that all the parties pursued their factual and legal stance properly.

10. Costs are awarded on a party and party basis.