

THE HIGH COURT

JUDICIAL REVIEW

[2018 No. 875 JR]

BETWEEN

L.M.

APPLICANT

AND

**NIALL ROONEY COUNTY REGISTRAR OF WATERFORD
SITTING AS COUNTY REGISTRAR OF CORK (SITTING AS
TAXING MASTER)**

RESPONDENT

AND

A.M.

NOTICE PARTY

JUDGMENT of Mr. Justice Meenan delivered on the 31st day of January, 2020

Introduction

1. This is an application by the applicant, who appears in person, seeking, *inter alia*, an order of *certiorari* to quash Certificates of Taxation signed and issued by the respondent. By Order of Court, dated 26 November 2018, Noonan J. directed that this application for leave be made on notice to the respondent and the notice party.
2. The respondent who, at the relevant time, was County Registrar of Waterford sitting as County Registrar of Cork, took only a limited part in these proceedings. The

notice party is the former wife of the applicant and opposed the application for leave. The applicant issued a further Notice of Motion wherein he seeks, *inter alia*, a declaration that s. 27 of the Courts and Court Officers Act, 1995 is repugnant to the Constitution insofar as same ousts the jurisdiction of the High Court to conduct a judicial review of a determination by a County Registrar made in a taxation of costs.

Background

3. I propose to set out the background to these proceedings, not because it is determinative of the issues herein, but rather to set out the context against which I will make a number of observations at the conclusion of this judgment.

4. On 4 December 2001, Judicial Separation proceedings were issued by the notice party. On 4 October 2002, the applicant herein delivered his Defence and sought to bring a counterclaim seeking a decree of nullity. The nullity claim was refused on 11 May 2007 and the applicant sought to judicially review those proceedings. This matter was heard on 20 March 2009, with the application being refused. Following this, the applicant appealed the matter to the Supreme Court against the refusal for judicial review. Judgment was delivered on 12 July 2011, dismissing his appeal.

5. Divorce proceedings followed the Judicial Separation proceedings and were heard in the Circuit Court on 23 October 2009. The following Orders were granted on that date: -

- (a) A decree of divorce pursuant to s. 5(1) of the 1996 Act;
- (b) A property adjustment order, which transferred property being the family home of the notice party; and
- (c) Certain lands at Ballinhassing be transferred into the joint names of the applicant and the notice party, to be held as tenants in common.

6. On 29 October 2009, the applicant served a notice of appeal in the High Court against the said Order. This matter was adjourned from time to time as a result of the judicial review proceedings, referred to in the previous paragraphs. On 1 November 2011, the applicant withdrew his appeal.

7. Unfortunately, the folio number for the lands at Ballinhassing was incorrect as it appeared in the Order of the Court. The applicant refused to consent to an amendment of the Order so an application was brought to amend the Order under the “*slip rule*”. On 16 May 2012, the Order was granted. On 25 May 2012, the applicant served a notice of appeal to the High Court in respect of this Order and, on 31 July 2012, was granted leave to bring judicial review proceedings. By consent, it was agreed that the issue raised in the judicial review proceedings would be considered at the hearing of the High Court appeal. On 30 January 2013, the applicant’s appeal was struck out and the Order of the Circuit Court was affirmed.

8. On 23 June 2014, the notice party issued an Equity Civil Bill seeking partition. The matter was heard on 14 April 2015, resulting in an Order granting the sale of the said folios and division of the proceeds on an equal basis between the parties. On 23 April 2015, the applicant appealed this Order to the High Court. The appeal was heard on 25 and 26 January 2016 and the Order of the Circuit Court was affirmed. Subsequently, it was discovered that one folio had already been disposed of by the applicant. On 29 January 2016, a Mareva Injunction was granted and an Order was made that the proceeds of this sale were to be lodged in court.

9. On 25 January 2017, a final Order was made dealing with the distribution of funds between the parties, and it was also directed that a sum of €75,000, which would have been otherwise payable to the applicant, be retained in court pending the taxation of various costs Orders in favour of the notice party.

10. These judicial review proceedings concern the taxation of the notice party's costs in the Circuit Court proceedings, together with the costs of the subsequent appeal to the High Court. The taxation of costs proceeded by way of an oral hearing on 24 and 25 July 2018. The applicant appeared in person at these hearings.

11. The respondent issued two Certificates: firstly, in respect of the costs of the hearing in the Circuit Court and, secondly, in respect of the High Court proceedings to include the appeal.

Issues to be considered

12. The following are the issues which this Court has to consider: -

- (i) Whether the application is in time under the provisions of O. 84, r. 21 of the Rules of the Superior Courts (RSC); and
- (ii) If the application is in time, whether the applicant has satisfied the Court that he has met the test set out in *G v. Director of Public Prosecutions* [1994] 1 I.R. 374, namely, that he has averred facts to support a stateable ground for the reliefs sought, and that on those facts an arguable case can be made that the applicant is entitled to the reliefs sought.

Time

13. The Certificates of Taxation were issued by the respondent on 24/25 July 2018, the reasons in writing being given on 2 August 2018.

14. The applicant states that he filed the original Statement of Grounds and verifying affidavit on 24 October 2018, and that he was informed that he must make his application on the following Monday, which turned out to be a Bank Holiday. The applicant states that the first available Monday thereafter was 5 November 2018, and

it appears that the application was only moved on 12 November 2018 whereupon the application was adjourned to 26 November 2018.

15. The applicant has made no serious attempt to explain why he waited until the last days of October, 2018 to make his application. Also, this was not the first time that the applicant had been faced with the issue of time in the bringing of judicial review proceedings. I refer to the decision of O’Neill J., and the subsequent appeal to the Supreme Court in *L.M. v. Judge O’Donnabhainn* [2011] IESC 22, which involved the applicant and notice party. The Supreme Court allowed the appeal against the decision of the High Court refusing to extend time, but refused the substantive application for judicial review.

16. Though I have serious doubts, the applicant did clearly have an intention to seek *certiorari* by way of judicial review within the three-month period and appeared to be under the impression that a leave application could only be heard on a Monday, even in circumstances where time was running out. The first available Monday was a Bank Holiday, and so the matter was not heard until after the time had expired. Therefore, I am prepared to grant the applicant an extension of time, as is allowed for under O. 84, r. 21(3) – (4) RSC.

Application for leave

17. The applicant is seeking leave for the following reliefs, *inter alia*, by way of judicial review: -

- (i) An order of *certiorari* to quash the respective Certificates of Taxation signed and issued by the respondent;
- (ii) A declaration that the respondent erred in law, acted in excess of jurisdiction, and acted in breach of fair procedures;

- (iii) An order directing that when taxing costs of those proceedings, recited in the Order made by this Honourable Court on the 29 of January 2016, the County Registrar should not consider matters or issues which are *res judicata* between the parties or matters or issues, such that are outside his jurisdiction, and should consider only material, issues, and facts relating directly to those proceedings recited in the Order of 29 January 2016; and
- (iv) An order directing that when submitting material in support of the claim for costs to the County Registrar, the Solicitor for the notice party should provide only such material as contains those proceedings recited in the Order made by this Honourable Court of 29 January 2016.

18. In his Statement of Grounds, the applicant states, *inter alia*, that the respondent erred in signing the respective Certificates of Taxation prior to giving reasons for his initial determinations and, thereby, denied the applicant the opportunity to consider the said reasons for the purpose of bringing in objections to the initial determinations. The applicant refers to the Supreme Court decision in *D.M.P.T. v. Moran* [2015] 3 IR 224.

Proceedings before the County Registrar

19. In his replying affidavit, sworn 30 January 2019, Mr. Colm Burke, Solicitor on behalf of the notice party, exhibits the correspondence that passed between the applicant, the respondent and the notice party. It is abundantly clear that the date for the hearing on the issue of taxation of costs was fixed to facilitate the applicant, that the applicant was furnished well in advance of the hearing with all relevant documentation and had ample time to consider same. Mr. Burke made arrangements

for the applicant to inspect all relevant documentation and stated that the applicant attended Mr. Burke's office, on 18 July 2018, for a number of hours and also again on the following day. All files and documents were made available to him. Certain documents were not made available on the advice of counsel. Mr. Burke estimates that the applicant spent some nine and a half hours over the two days inspecting files and documents.

20. The taxation of costs commenced before the respondent on 24 July 2018 and he went through each and every item claimed, together with invoices and summaries. The applicant was provided an opportunity to contest each item during the course of the taxation, which apparently lasted for two full days finishing approximately at 20:00 on 25 July 2018.

21. There is nothing in the lengthy affidavit filed by the applicant in this application that seriously disputes any of this. However, in the course of making replying submissions to this Court, the applicant raised a complaint in respect of the chronology of material received by the respondent. Even though this material was in the possession of the applicant, there is no reference to this complaint in the applicant's Statement of Grounds, or his proposed amended Statement of Grounds. Having heard this complaint, I directed that Mr. Burke lodge a booklet of the relevant correspondence. This was to be submitted to the Court prior to me reaching a decision in the matter. Mr. Burke complied with this and swore a further affidavit, on 17 July 2019, exhibiting a booklet of the relevant correspondence. This affidavit also set out a detailed chronology of the events and the various steps that were taken prior to and during the hearing before the respondent.

22. The matter came back before the Court in August, 2019, and the applicant was invited to make submissions on the said affidavit and exhibits of Mr. Burke. No such

submissions were made by the applicant, though he did attempt to make more general submissions. The Court pointed out to the applicant that at this stage the matter had been heard and that the only outstanding issue was the affidavit and exhibits of Mr. Burke.

23. Having considered the affidavits, exhibits and various submissions made, I am satisfied that the proceedings, both prior to and during the hearing before the respondent, were entirely fair and that the correct procedures were followed. The applicant was furnished well in advance of the hearing with all relevant documentation and was afforded every opportunity by the respondent to make what submissions he wished to.

24. In the course of the hearing before this Court, the applicant sought to criticise Mr. Colm Burke, Solicitor, for the manner in which he dealt with the application before the County Registrar. There is no foundation to this criticism and it is clear to the Court that, at all stages in the taxation proceedings, Mr. Burke acted fairly and appropriately.

25. In his submission, the applicant makes complaint that the respondent did not provide him with the “*initial determinations*” prior to reaching his decision. There is no basis for this complaint, and it arises from confusion, on the applicant’s part, between the procedures before a Taxing Master under the Rules of the Superior Courts and the provisions of the Circuit Court Rules, as deal with the taxation of costs. There is clearly a difference in the rules which is not appreciated by the applicant. In the circumstances, the applicant’s reliance upon *D.M.P.T. v. Moran* [2015] 3 IR 224 is wrong as that decision refers to proceedings before the Taxing Master under the Rules of the Superior Courts.

26. In conclusion, in this aspect of the leave application, I am satisfied that the applicant has failed to disclose any arguable case as would entitle the Court to grant the leave sought.

Determinations of the respondent

27. The respondent, at the request of the applicant, provided a detailed written determination in respect of both Certificates. The first of these determinations is for the costs associated with the equity proceedings in the Cork Circuit Court. This determination sets out the background to the proceedings in a form that appears in many judgments of the Superior Courts. Setting out the background does not reopen the matters referred to nor does it revisit the various issues already determined. The respondent correctly identified the legal authority *Sheehan (an Infant) v. Corr* [2016] IESCDT 114 and the relevant statutory provisions. There then follows an analysis of the various amounts claimed with the appropriate legal principles and statutory provisions being applied.

28. The second written determination deals with the costs arising from the applicant's unsuccessful appeal to the High Court of the Circuit Court Order. This determination also contains an analysis of the costs being claimed and the application of the appropriate legal principles and statutory provisions. In his application to this Court, the applicant claims that the Registrar "*should not consider matters or issues which are res judicata between the parties...*". In fact, the person who attempted to introduce earlier proceedings was the applicant himself. I refer to the following passage from the determination of the respondent: -

"The defendant (the applicant in these proceedings) introduced two cases by way of comparison for consideration. One was the costs of the notice party on

his judicial review in the family law proceedings, which he said were comparable for consideration in dealing with the Circuit Court costs...”.

29. It is clear to this Court, having reviewed the written determinations of the respondent, that the taxation of costs was carried out on the application of the correct legal principles and statutory provisions. If the applicant, as he was, felt aggrieved by these determinations, then the appropriate course for him was to appeal them. He chose not to do so.

30. By reason of the foregoing, I am satisfied that the applicant has not established any arguable case to review the determinations of the respondent and so I refuse his application for leave. The declarations sought by the applicant in his further Notice of Motion do not arise.

Conclusion

31. The applicant has, once again, failed in his legal proceedings. This failure can be added to a list of failures on the part of the applicant over the past 17 years or so. These failures come at a cost, both financially and emotionally, to the notice party, his former wife.

32. This application highlights a difficult issue which occurs frequently. Access to the courts is a fundamental right that must be protected by law. However, at the same time, what we have in this case is a litigant who has engaged in repeated and unsuccessful litigation over the past 17 years or so, a fact that has been referred to in earlier decisions on his various applications. At this stage, it is hard not to reach the conclusion that the applicant is exercising his right of access to the courts, not for the purposes of vindicating his rights, but rather as a means of wrongly pursuing the notice party. The notice party has a right not to be subject to litigation without end.

33. It may be that the answer to this problem is a wider jurisdiction for the courts to dismiss proceedings, at an early stage, which are frivolous and vexatious or the granting of orders for security for costs or the making of Isaac Wunder orders.