APPROVED **[2023] IEHC 142**

THE HIGH COURT
JUDICIAL REVIEW

2021 No. 493 JR

BETWEEN

G.

APPLICANT

AND

A JUDGE OF THE DISTRICT COURT
BLANCHARDSTOWN DISTRICT COURT OFFICE

RESPONDENTS

PAUL DOLAN
CRAIG GEOGHEGAN
EOIN KELLY
JOHN PAUL COCHIN

NOTICE PARTIES

JUDGMENT of Mr. Justice Garrett Simons delivered on 27 March 2023

INTRODUCTION

1. This judgment is delivered in respect of an *inter partes* application for leave to apply for judicial review. The judicial review proceedings arise out of a decision of the District Court to refuse to issue summonses against named members of

An Garda Síochána. The application to issue the summonses had been made by the applicant in these judicial review proceedings on the basis of the common informer procedure. One of the principal issues which arises in the judicial review proceedings is whether the common informer procedure is available in circumstances where the common informer is himself the subject of a criminal prosecution and seeks to issue summonses against members of An Garda Síochána who are involved, directly or indirectly, in that criminal prosecution. The District Court had refused to issue the summonses on the grounds, *inter alia*, that the application to issue the summonses represented an abuse of process in circumstances where criminal proceedings were in being.

THRESHOLD FOR THE GRANT OF LEAVE TO APPLY

2. 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 his 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."

3. The Chief Justice also confirmed that the same threshold test applies irrespective of whether the application for leave is made *ex parte*, or, as in the present case, is made on notice to the other parties.

COMMON INFORMER PROCEDURE

4. It may be of assistance to the reader in understanding the discussion which follows to pause here and to explain briefly the nature of the common informer procedure. Notwithstanding the significant legislative reforms which have been introduced in respect of the prosecution of criminal offences, vestiges of an ancient procedure whereby any member of the public could apply for the issue of a criminal summons have survived. A person who makes such an application is referred to as a "*common informer*". The procedure involves the making of a complaint to a judge of the District Court pursuant to the provisions of Section 10 of the Petty Sessions (Ireland) Act 1851.

5. The nature of the common informer procedure has been discussed in some detail by the Supreme Court in its judgment in *Kelly v. Ryan* [2015] IESC 69, [2015] 1 I.R. 360. The limited role of the procedure in the context of indictable offences is summarised as follows (at paragraph 62 of the reported judgment):

> "[…] In the light of the legislative developments which I have sought to analyse it is impossible for a private prosecution commenced under the common informer system to progress to trial (or, indeed, to sentence on a plea of guilty) at all without a positive decision on the part of the D.P.P. At its height, all it can be said that may be achieved by the initiation, in the context of an indictable offence, of a private prosecution is that it would bring to the attention of the D.P.P. the possibility that an offence of the type alleged may have been committed. Even if relevant investigative authorities may have chosen either not to investigate or to recommend a prosecution, nonetheless, the fact that a private individual has persuaded a District Judge to issue a summons might be considered of some value in that regard."

6. The Supreme Court judgment does not expressly address the issue which arises in the present case, namely whether the common informer procedure is available in circumstances where the common informer is himself the subject of a criminal prosecution.

7. The common informer procedure is regulated under Order 15 of the District Court Rules. Relevantly, an application to issue a summons pursuant to Section 10 of the Petty Sessions (Ireland) Act 1851 must be made to a judge of the District Court. In contrast to the position in respect of summonses issued pursuant to the Courts (No. 3) Act 1986, such a summons cannot be issued by the District Court Office.

PROCEDURAL HISTORY

8. The dispute in the present case has its genesis in an incident which occurred on 25 August 2019. It is sufficient for the purpose of this judgment to summarise the incident as follows. It seems that the applicant had left one of his sons, who was asleep at the time, unattended in a parked car for a brief period while he (the applicant) made a purchase at a shop. On his return to the car, the applicant says his son was well, content and fast asleep. It appears that the applicant was then approached by two members of An Garda Síochána. The applicant was arrested and has since been charged with the following alleged offences: (i) the failure to provide his name and address; (ii) the failure to comply with a direction given by a member of An Garda Síochána; and (iii) the use or engagement in threatening, abusive or insulting words or behaviour with intent to provoke a breach of the peace or being reckless as to whether a breach of the peace might have been occasioned. The applicant denies these charges.

9. In March 2021, the applicant sought to issue a number of criminal summonses against members of An Garda Síochána. (These individuals have been named as notice parties to these judicial review proceedings). By way of illustration: it is alleged that one of the two guards who had been directly involved in the events of 25 August 2019 is guilty of making gain or causing loss by deception; assault causing harm; and false imprisonment. It is also alleged that a Garda Superintendent is guilty of withholding information.

10. It appears from the exhibits in these judicial review proceedings that the applicant had emailed Blanchardstown District Court Office on the afternoon of 24 February 2021 enclosing a draft summons and requesting that the office review same. The email reads as follows:

> "Many thanks. I will attend Court tomorrow.
>
> May I ask that your Office review the attached form that I intend to present to this Honourable Court? Especially, I am most unsure in relation to the District Number which should apply.
>
> Your most immediate attention would be very much appreciated as I believe same should be statute barred afterwards".

11. An official replied by email the next day (25 February 2021) stating as follows:

> "We are sorry but it wouldn't be our place to advise you as we are not legally trained.
> The Jurisdiction is Dublin Metropolitan District and there is no district number – that's for provinces only
> We note that you have a solicitor so perhaps you should seek advice from them"

12. It appears that the applicant travelled to Blanchardstown District Court on the afternoon of 25 February 2021. It further appears that, by the time the applicant arrived, the day's sittings had already concluded. It further appears that the applicant subsequently spoke to an official on the telephone. The applicant

alleges that the official told him that the District Court Office "*can only accept prosecution from Gardaí and cannot accept a private prosecution*".

13. The applicant sent an email to the District Court Office on 5 March 2021 setting out a series of criticisms of the official and concluded by stating as follows:

> "D/ I will attend Blanchardstown District Court next week with a new private prosecution against Garda Geoghegan and I hope that this time, no one will prevent me to address same to the sitting judge.
>
> I look forward to hearing from your Office to confirm the above-mentioned point D."

14. The District Court Office replied by email dated 8 March 2021 and indicated that the applicant might attend on 10 March 2021 at 10.30 o'clock to make his application to the District Court. The email went on to state that if that date did not suit, the applicant might let the official know what day he could attend. The email concluded by asking the applicant to email a copy of his application in advance.

15. The applicant duly attended before Blanchardstown District Court on the morning of 10 March 2021 and his application was called first in the list. A transcript of the hearing before the District Court has since been obtained by the office of the Chief State Solicitor and has been exhibited as part of these judicial review proceedings. The transcript was not available at the time that the judicial review proceedings were initially instituted.

16. (In fairness to the applicant, it should be recorded that it is apparent from the transcript that the applicant himself had, in fact, applied to the District Court to be allowed to take up a transcript of the digital audio recording of the hearing on 10 March 2021 but this had been refused by the judge).

17. It appears from the transcript that the District Court judge had indicated to the applicant that he had read the papers in advance including, in particular, the informations. The applicant was invited to make submissions to the court. Thereafter, the judge delivered a ruling as follows:

> "Okay. This is an application brought by Mr G— seeking an issue of a private summons against certain gardaí at Ronanstown Garda Station in respect of an alleged incident which is supposed to have occurred on August 21st at Liffey Valley Shopping Centre and later at Ronanstown Garda Station. There is no doubt that private prosecutions have survived the various legislative enactments over the years, but they are extremely rare. The ultimate purpose of a private prosecution is to bring to the attention of the Director of Public Prosecutions some criminal wrongdoing and at that point, the Director of Public Prosecutions would consider taking the proceedings over.
>
> In looking at the unsworn information of Mr G—, which I've had the benefit of reading and considering, and hearing what he has had to say, I note that the subject matter of the -- his complaint, relates to certain charges which now are before the courts, brought by the Director of Public Prosecutions at the suit of various gardaí in respect of the alleged events of the 21st of August 2021 (*recte*, 2019), that is to say the 25th of August 2021 (*recte*, 2019). Therefore, it can be said as a matter of certainty the Director of Public Prosecutions is aware of the matter.
>
> On looking at the substance of the application brought by Mr G—, the Court has considered all that has been written and all that has been said, and I am satisfied in relation to the matter that any further consideration of the substance of the proceedings, they being presently extant before the Court, would cause substantial risk of prejudice in those criminal proceedings. In respect of the procedural aspects of the case presently brought before the Court by Mr G—, I consider the application to be premature. I also consider it to be a procedural abuse of the proceedings of the process of the Court where criminal proceedings are presently in being and will be determined in due course. For these reasons, I refuse the application. Thank you, next case."

18. The applicant instituted these judicial review proceedings on 24 May 2021. By order dated 21 June 2021, the High Court (Meenan J.) directed that the

application for leave be made on notice to the other parties. As part of the same order, the title of the proceedings was amended so that the title of the first named respondent now simply reads "*A Judge of the District Court*". The statement of grounds, as originally filed, had described the first named respondent by reference to his full name. As discussed at paragraph 24 below, the applicant has since brought an appeal against this aspect of the order to the Court of Appeal.

19. The applicant issued a notice of motion out of the Central Office of the High Court on 12 July 2021. The motion seeks, first, the (substantive) reliefs in the judicial review proceedings, and, secondly, an order for liberty to amend the statement of grounds. The motion does not make it clear that what was being sought was leave to apply for judicial review, and that the High Court had directed that the application for leave be made on notice. This omission resulted in the second named respondent mistakenly thinking that leave to apply for judicial review had already been granted.

20. The applicant's motion had been returnable before the High Court on 12 October 2021. On that date, the High Court (Meenan J.) made an order that the motion and the proceedings be adjourned generally with liberty to re-enter pending the outcome of the applicant's appeal to the Court of Appeal.

21. As noted earlier, the second named respondent mistakenly thought that leave to apply for judicial review had been granted on 21 June 2021. The second named respondent issued a motion on 7 February 2022 seeking to set aside the (non-existent) grant of leave ("*the set aside motion*"). The set aside motion has since been withdrawn, and the application for leave to apply for judicial review ultimately came on for hearing before me on 21 November 2022. The hearing

was staggered over a number of dates in circumstances where it took longer than the one hour originally allocated. The final part of the hearing took place on 20 February 2023 and judgment was reserved.

22. It should be noted that this sequence of events has resulted in the leave application having been heard by the High Court prior to the determination of the appeal in respect of the proper title of the proceedings. It seems that it had originally been envisaged that the appeal would be determined first, but that following the issue of the set aside motion, both parties were content to reverse the sequence.

23. Finally, the parties had been offered the option, in accordance with Order 84, rule 24 of the Rules of the Superior Courts, of having the leave application treated as if it were the hearing of the application for judicial review. The parties were unable to agree to this.

APPEAL TO COURT OF APPEAL

24. On 23 July 2021, the applicant lodged an appeal with the Court of Appeal against aspects of the order of 21 June 2021. The appeal bears the record number 2021 No. 188 and is next listed before the Court of Appeal for directions on 21 April 2023. The appeal seeks, *inter alia*, to amend the title of the proceedings so as to refer to the District Court judge by his full name. It is apparent from the notice of appeal that the applicant seeks to challenge the validity of Order 84, rule 22(2A) of the Rules of the Superior Courts. This rule was inserted by way of amendment under the Rules of the Superior Courts (Judicial Review) 2015 (S.I. No. 345 of 2015). In brief, the rule provides that a judge should not be named in the title of judicial review proceedings unless the relief sought in those

proceedings is grounded on an allegation of mala fides or other form of personal misconduct by that judge such as would deprive that judge of immunity from suit.

OPPOSITION TO GRANT OF LEAVE

25. The application for leave to apply for judicial review was opposed by the second named respondent, namely Blanchardstown District Court Office. The District Court judge has separate legal representation in the proceedings but did not make any submissions on the application for leave. The Director of Public Prosecutions maintained a watching brief at the final stages of the application for leave.

26. The grounds of opposition might conveniently be considered under three broad headings as follows. First, it is said that the form of the statement of grounds is irregular and does not comply with the requirements of Order 84 of the Rules of the Superior Courts. Secondly, it is said that it is evident from the transcript that the applicant received a fair hearing before the District Court. Thirdly, it is said that the High Court should only intervene with the District Court's exercise of its discretion in respect of the common informer procedure where the decision is "*unreasonable*". It is said that this threshold has not been met on the facts of the present case.

27. For completeness, it should be recorded that no detailed argument was addressed to the High Court in respect of the following. First, no submissions were made on the question of whether the content of the various informations put before the District Court would meet the threshold for the respective criminal offences alleged. This was one of the grounds upon which the summonses in *Kelly v.*

Ryan [2015] IESC 69, [2015] 1 I.R. 360 had been set aside by the Supreme Court: see paragraphs 50 to 60 of the reported judgment. Secondly, no detailed submissions were made on the question of the interaction between the common informer procedure and existing criminal proceedings taken as against the common informer himself. It will be a matter for the trial judge hearing the substantive application for judicial review to consider these issues.

DISCUSSION AND DECISION

28. It is proposed to consider the reliefs sought at paragraph 5 A of the statement of grounds first, before turning to the balance of the reliefs.

29. Order 84, rule 20(3) of the Rules of the Superior Courts provides as follows:

> "It shall not be sufficient for an applicant to give as any of his grounds for the purposes of paragraphs (ii) or (iii) of sub-rule (2)(a) an assertion in general terms of the ground concerned, but the applicant should state precisely each such ground, giving particulars where appropriate, and identify in respect of each ground the facts or matters relied upon as supporting that ground."

30. The second named respondent makes the objection that the statement of grounds is not in the correct form and that the reliefs sought, and the grounds upon which those reliefs are sought, are very unclear. It is submitted that the statement of grounds merely identifies the *reliefs* sought by the applicant but does not set out the grounds and facts upon which the relief is sought. This objection is well founded insofar as the balance of the reliefs sought in the proceedings are concerned: see paragraphs 38 and following below.

31. Insofar as the reliefs sought at paragraphs 5 A are concerned, however, I am satisfied that there is sufficient in the statement of grounds to identify the gravamen of the case being made in respect of the claim for an order of *certiorari*

setting aside the decision of the District Court on 10 March 2021. The applicant's case is that the decision to refuse to issue the summonses against the members of An Garda Síochána does not comply with the criteria identified by the Supreme Court in *Kelly v. Ryan* [2015] IESC 69, [2015] 1 I.R. 360. This judgment is expressly cited in the statement of grounds. It is pleaded, variously, that the refusal is in contravention of the Supreme Court judgment, and that the allowable grounds for the refusal to issue a summons are confined to the absence of a *prima facie* and arguable case and the absence of a *bona fide* desire to invoke the criminal process.

32. The second and third grounds of opposition can conveniently be considered together. It is correct to say, as counsel for the second named respondent does, that the exercise of the *discretion* by the District Court as to whether or not to issue a summons is entitled to deference and will not be set aside by the court of judicial review save where it can be shown to be unreasonable. The grounds of judicial review in the present case, are, however, subtly different. Here, the complaint is that the District Court judge applied the incorrect legal test and took into account considerations other than those expressly identified by the Supreme Court in *Kelly v. Ryan* [2015] IESC 69, [2015] 1 I.R. 360. Without deciding the point, the challenge in the present proceedings would appear to involve an allegation that the District Court asked itself the wrong question, rather than an allegation that the assessment by the District Court of the evidence before it was erroneous. This ground meets the threshold of arguability.

33. For similar reasons, the second named respondent's contention that it is apparent from the transcript that the applicant received a fair hearing is not an answer to

the allegation that the District Court applied the incorrect legal test and took into account irrelevant considerations.

34. There is no direct case law on the question of the interaction between the common informer procedure and existing criminal proceedings taken as against the common informer himself. It was unnecessary for the Supreme Court to address this issue in *Kelly v. Ryan* in circumstances where there were no parallel proceedings in that case. In the absence of any decided case law on the specific point, it seems to me that the applicant has done enough to pass the admittedly low threshold for the grant of leave to apply for judicial review. The common informer procedure is, in a sense, an historical anomaly, and the precise contours or parameters of same in the modern context have yet to be worked out. It would not be appropriate for the court to determine these legal issues on a leave application, especially in the absence of detailed submissions.

35. Accordingly, the applicant will be granted leave to seek an order of *certiorari* setting aside the District Court's decision of 10 March 2021 to refuse to issue the summonses. I turn now to consider the balance of the reliefs sought.

36. Leave to apply is refused in respect of the mandatory reliefs sought at paragraph 5 B of the statement of grounds. The decision on whether or not to issue a summons pursuant to Section 10 of the Petty Sessions (Ireland) Act 1851 is ultimately a matter for the District Court. Whereas the High Court exercises a supervisory jurisdiction over the District Court by way of judicial review, and can set aside an invalid exercise of that statutory power, it would represent a usurpation for the High Court to make a mandatory order directing that summonses be issued. The High Court cannot simply step into the shoes of the District Court and decide *de novo* whether or not a summons should be issued.

37. In the event that the applicant were to succeed in his judicial review proceedings, the appropriate relief would be an order setting aside the impugned decision together with an order for remittal, i.e. an order pursuant to Order 84, rule 27 of the Rules of the Superior Courts remitting the matter to the District Court with a direction to reconsider it and reach a decision in accordance with the findings of the High Court.

38. Leave to apply is also refused in respect of the grounds directed against Blanchardstown District Court Office. The allegation made against Blanchardstown District Court Office is that the applicant was refused "*access*" to the District Court on the sole ground that "*only the Director of Public Prosecutions can issue Criminal summons*". It appears to be suggested, at paragraph C (iv) of the statement of grounds, that an assertion by a District Court Office that "*it can only accept prosecution from Gardai and can not accept private prosecution*" represents an attempt to pervert the course of justice or an offence against the administration of justice pursuant to Section 7 of the Criminal Procedure Act 2010.

39. The statement of grounds fails to disclose an arguable case against either the office as an entity or any individual official within that office. The allegation that the applicant was refused access to the District Court is not borne out by the evidence. The first time that the applicant formally requested that the matter be listed before the District Court was on 5 March 2021. The matter was then given a listing on 10 March 2021. The applicant had not applied to have the matter listed in his emails of 24 February and 25 February 2021; rather, the applicant had unilaterally stated that he would be attending court on 25 February 2021. In the event, it appears that, by the time the applicant arrived, the day's sittings had

already concluded. None of this amounts to a refusal of access nor to a perversion of justice. The officials in the District Court Office acted reasonably at all times and scheduled a hearing date promptly once they were formally requested to do so by the applicant.

40. Any criticism that the District Court Office failed to review the draft summons or to provide advice to the applicant is unfounded. An application pursuant to Section 10 of the Petty Sessions (Ireland) Act 1851 may only be made to a judge. See Order 15 of the District Court Rules. This is in contrast to the position in respect of summonses issued pursuant to the Courts (No. 3) Act 1986. The District Court Office does not have any adjudicative or advisory role in respect of the common informer procedure. It is certainly no part of the function of the officials in the District Court Office to review draft summonses or informations at the request of members of the public.

41. The applicant has sought a series of declaratory reliefs at paragraph 5 C of the statement of grounds as follows:

> "(iv) a Declaration that a District Court Office asserting that '*it can only accept prosecution from Gardai and can not accept private prosecution*' is neither committing an attempt to pervert the course of justice nor an offence against the administration of justice pursuant to Section 7 of the Criminal Procedure Act 2010.
>
> (v) a Declaration that 'the qualification of a solemnly & sincerely affirmed Affirmation as unsworn evidence' is not discriminatory;
>
> (vi) a Declaration that a solemnly & sincerely affirmed Affirmation should have at least weight or even more weight than any evidence sworn on the Bible. Indeed any evidence sworn on the Bible should amount to perjury based on its following verses in Matthew 5:
>
>> '*34. But I tell you, do not swear an oath at all: either by heaven, for it is God's throne;*

> *35. or by the earth, for it is his footstool; or by Jerusalem, for it is the city of the Great King.*
> *36. And do not swear by your head, for you cannot make even one hair white or black.*
> *37. All you need to say is simply 'Yes' or 'No'; anything beyond this comes from the evil one.*'

(vii) a Declaration that 'the Issuance of Criminal Summons by A against B does not prevent the issuance of Criminal Summons by B against A, even on the basis of a possible risk of prejudice;

(viii) a Declaration that there is no statute of limitation on the issuance of criminal summons by way of private prosecution against member of An Garda Síochána;

(ix) a Declaration that the Director of Public Prosecution is to defend a member of An Garda Siochana object of a summons for an indictable offence (as alleged by the first named Respondent);

(x) a Declaration that the Director of Public Prosecutions can issue a positive decision for progressing a private prosecution of an indictable offence against a member of An Garda Síochána.

(xi) a Declaration that a judgement being read can be called *ex tempore*."

42. Leave to apply is refused in respect of these declaratory reliefs. The statement of grounds fails to disclose an arguable case in respect of any of the declarations sought. The statement of grounds simply recites a series of declarations. There is nothing in the statement of grounds which sets out the legal basis for seeking those declarations. Nor has a factual basis been set out for those declarations.

43. In particular, no factual basis has been laid for the declarations sought in respect of the status of an affirmation nor in respect of the limitation period applicable to the issuing of summonses. There is nothing in the District Court's ruling of 10 March 2021 which suggests that the refusal to issue the summonses had been for the reason that the informations were unsworn or that the application was statute-barred. Rather, as the applicant himself correctly identifies at

paragraph 14 of his verifying affidavit of 24 May 2021, the applications were refused on the grounds that the District Court judge was satisfied that:

(i) there was a risk of prejudice;

(ii) those applications were premature;

(iii) those applications were an abuse of process.

44. Leave to apply is also refused in respect of the injunctions sought at paragraph D of the statement of grounds. If and insofar as the applicant still has a concern in respect of the disclosure of material, such as CCTV footage, this is a matter which should be addressed, in the first instance, before the District Court. As to the request that the proceedings be heard *in camera*, I understood from submissions at the hearing on 21 November 2022 that the applicant is no longer seeking this relief. Rather, the applicant's minor children's privacy is protected by the reporting restrictions imposed on 21 June 2021.

APPLICATION FOR LIBERTY TO AMEND

45. The applicant has sought, as part of the motion issued on 12 July 2021, liberty to amend his statement of grounds by adding the following paragraph:

> "*As mentioned at paragraph 14 of the Grounding affirmation, the first named respondent read his ex tempore decision which he had prepared before the hearing. As such, what ensued was a premeditated unfair hearing, an infringement of the Applicant's constitutional right to a fair hearing and a contempt of the Court (as upheld by the Supreme Court in State (Quinn) v Ryan [1965] 1 IR 70. This purported hearing was all but made in good faith / bona fide, demonstrating mala fide of the first named respondent.*"

46. An applicant for judicial review who seeks leave to amend his grounds must explain his failure to include the proposed new ground in his original application: *Keegan v. An Garda Síochána Ombudsman Commission* [2012] IESC 29,

[2012] 2 I.R. 570 (at paragraph 34). No proper explanation has been provided on affidavit by the applicant in the present case for not including these allegations in his original statement of grounds.

47. Even if the applicant had provided an explanation for his delay, leave to amend would still have to be refused because the amended ground fails to meet the threshold of an arguable case. There is nothing in the verifying affidavit of 24 May 2021 which alleges that the District Court judge had prepared his decision before the hearing, still less that there had been a "*premeditated unfair hearing*" or "*contempt of the Court*". To say that the District Court judge read his *ex tempore* decision is, at most, ambiguous. To describe a decision as being *ex tempore* indicates that it has not been prepared in advance. It certainly does not convey the allegations of mala fides contained in the amended ground. Tellingly, in his subsequent affidavit of 11 November 2022, the applicant expressly says that his "*initial application for leave to apply for judicial review was not based on the criteria of fairness or unfairness of the judge*".

48. Finally, if and insofar as the High Court is being asked to infer, in the absence of any direct affidavit evidence to that effect, that the District Court judge had notes in front of him at the time he delivered his ruling, same would not support an arguable case in respect of the amended ground. The applicant had furnished papers to the District Court Office in advance of the hearing on 10 March 2021, and the District Court judge had told the applicant on a number of occasions that he had read those papers. The applicant was expressly asked whether he wanted to add anything to the "*informations*" which had been forwarded to and read by the judge. In the event, the applicant did not make any detailed oral submission. The fact, if fact it be, that the District Court judge may have referred to notes

when delivering his ruling would not have been improper in the circumstances. See, by analogy, *Lohan v. Solicitors Disciplinary Tribunal* [2023] IECA 18 (at paragraphs 52 to 66).

49. For all of these reasons, the application for liberty to amend the statement of grounds is refused.

ORDER 84, RULE 27(5)

50. The statement of grounds includes a plea for an order, if necessary, for these proceedings to continue as if they had begun by plenary summons, pursuant to Order 84, rule 27(5) of the Rules of the Superior Courts. That rule provides as follows:

> "Where the relief sought is a declaration, an injunction or damages and the Court considers that it should not be granted on an application for judicial review but might have been granted if it had been sought in a civil action against any respondent or respondents begun by plenary summons by the applicant at the time of making his application, the Court may, instead of refusing the application, order the proceedings to continue as if they had been begun by plenary summons."

51. I am satisfied that such an order is not appropriate in the present case. This rule is intended to address the contingency of a party mistakenly invoking the judicial review procedure in respect of proceedings which are, in substance, private law proceedings. No such contingency arises here. A challenge to a decision made by the District Court is quintessentially a public law proceeding and is thus properly brought by way of judicial review pursuant to Order 84.

CONCLUSION AND FORM OF ORDER

52. For the reasons explained herein, leave to apply for judicial review is granted in respect of the following relief only: the order of *certiorari* sought at paragraph 5 A (ii) of the statement of grounds. This relief seeks to set aside the decision of the District Court of 10 March 2021. Leave to apply is refused in respect of the balance of the reliefs sought in the statement of grounds. The application for liberty to amend the statement of grounds is also refused.

53. An order has previously been made on 21 June 2021 prohibiting the publication of, or broadcast of, any matter relating to these proceedings which would or could identify the applicant or his minor children. I direct that those reporting restrictions are to continue until the hearing and determination of these judicial review proceedings or further order of the High Court.

54. This judgment does not address the question of whether the first named respondent should be described in the title of the proceedings by reference to his full name. This is a matter which is currently before the Court of Appeal in the context of the applicant's appeal against the High Court order of 21 June 2021. The parties may wish to consider whether the hearing of the substantive application for judicial review should be adjourned pending the determination of the appeal.

55. The next step in the proceedings is for the applicant to issue an originating notice of motion pursuant to Order 84, rule 22. The motion should be made returnable to the Judicial Review List on 15 May 2023.

Approved Garrett Simons