

**THE HIGH COURT  
JUDICIAL REVIEW**

**[2023] IEHC 702**

**[Record No. 2023/4282P]**

**BETWEEN**

**JOE DOOCEY AND MELISSA KELLY**

**PLAINTIFFS**

**AND**

**FINTAN MURPHY, KBC BANK, AIDEN DEVLIN, IAN GORDON, GS AGENCIES  
LIMITED, TRINITY ASSETS MANAGEMENT, CENTRAL BANK OF IRELAND, THE  
ATTORNEY GENERAL, THE DIRECTOR OF PUBLIC PROSECUTIONS, THE GARDA  
COMMISSIONER, MARTINA BAXTER, THE MINISTER FOR JUSTICE AND EQUALITY  
AND THE GOVERNOR OF CASTLEREA PRISON**

**DEFENDANTS**

**JUDGMENT of Ms Justice Marguerite Bolger delivered on the 8<sup>th</sup> day of December  
2023.**

- 1.** This is the plaintiffs' application for interlocutory reliefs which they brought by motion dated 27 November 2023 after they had applied *ex parte* to Sanfey J. on 6 October 2023. Sanfey J. directed that their applications should proceed on notice to the defendants other than their Article 40 *habeas corpus* application into the detention of one Martin O'Toole (otherwise known as Martin Thomas). Mr O'Toole was convicted of a number of criminal charges on 2 June 2023 and sentenced to fifteen years imprisonment, to run concurrently with other shorter sentences, and is currently incarcerated in Castlerea Prison.
- 2.** Sanfey J. heard the Article 40 *habeas corpus* application and refused to direct an inquiry. A similar application had been made previously to O'Higgins J. who also refused to direct an inquiry.
- 3.** The plaintiffs' motion before this court proceeded against the 1<sup>st</sup>, 8<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup>, 12<sup>th</sup> and 13<sup>th</sup> named defendants who had been put on notice of the application.

**Background**

4. The second plaintiff swore a number of lengthy affidavits setting out the background to her substantive claims and the basis on which she was seeking interlocutory orders. A lengthy plenary summons describes the plaintiffs as, *inter alia*, environmental activists and claims they have written authority to act as what they refer to as "*special trustee/Power of attorney*" for Mr. O'Toole. In their summons they assert the right of the "*indigenous Irish people to repel a foreign invasion by loyalist mercenaries with the intention to displace native farmers from their lands*" and claim that the defendants engaged in "*an unlawful means conspiracy against the indigenous men and women of Eire (sic)*" to which "*resistance is a customary right, as it has echoes of the Land League, the ribbon men and various other republican and nationalist groups throughout history*". They seek to challenge the lawfulness of the offences of "*joint enterprise/common purpose/common design*" of which they claim Mr. O'Toole was wrongly convicted. They claim "*serious breaches of national, EU and international law and serious violations of various human rights violations that they personally witnessed and as environmental and human rights defenders*". They refer to a cross-border element to the matters at issue in the proceedings and say that there are questions about conspiracy "*on an official level between law enforcement/Security forces between the two separate jurisdictions*". Finally, they say that until they receive disclosure of the documents and information sought in this motion, that "*it is impossible for the plaintiffs to know the level of complicity or conspiracy that is attributable to the various named defendants or to assign liability or quantify damages claimed from the individual defendants and/or other parties*".

5. The plaintiffs both claim to have been arrested and detained by An Garda Síochána as a result of their conduct in the Circuit Court during Mr. O'Toole's trial. Whilst the pleadings, including Ms. Kelly's affidavits, refer to unidentified paperwork, there were no documents put before the court relating to their alleged arrests or detention. Neither was there any correspondence seeking voluntary discovery of the documentation now being sought. The only correspondence furnished to the court was addressed to the plaintiffs from solicitors for the 1<sup>st</sup>, 8<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup>, 12<sup>th</sup> and 13<sup>th</sup> named defendants confirming entry of appearances and looking forward to receipt of the plaintiffs' statement of claim. The statement of claim has not yet been filed. Ms. Kelly told the court that this could not be done until the plaintiffs had obtained disclosure of the documentation sought in this application.

**Article 40**

**6.** Ms. Kelly furnished the court with the original document that she said was drawn up by Mr. O'Toole giving her and Mr. Doocey authority to act as Mr. O'Toole's "*special trustee*". The document furnished was not of a type familiar to the court and did not satisfy me that Mr. O'Toole had given either plaintiff authority to act on his behalf in these or any other proceedings. When I asked Ms. Kelly whether she was acting on Mr. O'Toole's behalf, she referred to having accompanied him in a previous application he had sought to bring before O'Moore J. during his trial and prior to his conviction and current detention. She refers in her affidavit to having provided Mr. O'Toole, whom she describes as having dyslexia, with assistance in the preparation of his documents for court. I am not satisfied that this establishes or confirms that Mr. O'Toole authorised her or Mr. Doocey to act on his behalf. Mr. Doocey in his oral submissions to the court clearly stated that he was acting for himself and not on behalf of anyone.

**7.** A person unconnected to a detainee may be able to apply for an Article 40 inquiry, but the situation here does not involve the sort of urgency that would be required for such an application, particularly given that two applications have already been made for an Article 40 inquiry and have been refused by two different High Court judges.

**8.** In addition, the motion served on some of the defendants, including the Governor of Castlerea Prison, does not seek an Article 40 inquiry (although the Ex Parte Docket did) which Ms. Kelly says was because she was told she had to appeal the refusal of her application by Sanfey J. rather than include a further Article 40 application in this interlocutory application. Nevertheless, she did attempt to pursue her Article 40 inquiry or reliefs similar to that before this court, by reference to the injunction sought in the first of the reliefs in the motion, namely:

*"A mandatory injunction for the immediate release of Martin Thomas (O'Toole) to afford him his EU and international law protected justice and due process rights and his constitutional right of access to the courts".*

The wording suggests that the purpose of Mr. O'Toole's requested release is to allow him to assert his right of access to the courts. That is not a ground on which an Article 40 application can be sought or granted as the only basis for such an application is the illegality of a person's detention.

**9.** I refuse to order an inquiry into Mr. O'Toole's detention arising from his conviction and sentence by the Circuit Court because (1) I am not satisfied that there was an application properly before me at all as the relief was not included in the motion; and (2) I am not satisfied that the plaintiffs were acting on Mr. O'Toole's behalf, as is referred to in Article 40.4.2.

**10.** Insofar as the plaintiffs seek an injunction outside of Article 40 for Mr. O'Toole's release, they have established no basis whatsoever for same.

#### **Pre-motion correspondence**

**11.** The remaining orders sought relate to discovery, other injunctive relief, default of appearances, a challenge to the offence with which Mr O'Toole was apparently charged and other matters. Ms. Kelly claimed to have written to the defendants seeking voluntary discovery but their counsel said no such correspondence has been received. There was nothing on affidavit to corroborate Ms. Kelly's claims. Neither was there any correspondence from the plaintiffs seeking undertakings in the form of the mandatory injunctions now sought in this interlocutory application and in the substantive proceedings or any correspondence in relation to the failure of some defendants to file their appearance or any other of the reliefs now sought.

#### **Discovery**

**12.** Much of the documentation the plaintiffs seek relates to Mr. O'Toole and the conduct of his criminal trial. Ms. Kelly referred in her submissions to a *Gary Doyle* order. This relates to the entitlement of an accused to discovery of documentation relating to their criminal trial. This is a very different type of case, being a civil claim for injunctive and declaratory relief and damages including punitive damages arising in substantial part from the conduct of a trial of a person the plaintiffs describe as their friend. Both plaintiffs assert an entitlement to bring this case arising from what they claim was collusion in court and a miscarriage of justice which they say has breached their constitutional rights and the constitutional rights of every citizen. In effect, the plaintiffs assert a right to secure documentation relating to the criminal trial of a person who is not a party to their proceedings but whom they claim is their friend, on the basis of their allegations of collusion, conspiracy and corruption, which they said they are entitled to make as Irish nationalists and as "*environmental defenders*" against what they referred to as "*invading colluders and conspirators*".

**13.** The plaintiffs may be defenders of the environment (a matter on which I am not required by this application to make a finding) but that does not entitle them to say, as Mr. Doocey did in his submissions to me, that this asserted status obliges him to "*put a stop to the legal, judicial and police corruption that's going on*" and that anyone who stands in his way is "*a traitor to this country*". Such language does not belong in a court of law where the parties are entitled and expected to engage in persuasive argument based on law and evidence.

**14.** The plaintiffs sought to rely on the UN Charter against Corruption, the Aarhus Convention, the precautionary principle under Article 191 of the TFEU and Article 6 of the European Charter. These claims were not scoped out in terms of how they fit into a procedural application of the type at issue here. The plaintiffs did not satisfy me that those instruments entitle a litigant to discovery in spite of having failed to comply with the procedural requirements to wait until pleadings are closed, to send a request for voluntary discovery specifying the documents sought and the reasons for same and to send a warning letter if discovery is not forthcoming. Neither lofty principles of international law to which the State has committed nor the plaintiffs' status as lay litigants, can excuse the plaintiffs' failure to comply with those basic procedural obligations in seeking discovery.

**15.** In any event, I am far from satisfied that the exceptional circumstances of directing discovery against the State of documents relating to a criminal trial (as set out in the decision of *Dunphy v. DPP* [2005] 3 IR 585) has been reached here. Further, the plaintiffs have not established that the documentation they seek is sufficiently identified, relevant and/or necessary. The fact the plaintiffs assert a need for this documentation in order to file their statement of claim, combined with the wide scope of the vague nature of the documentation sought, is strongly suggestive of a fishing expedition.

### **Injunctive relief**

**16.** The plaintiffs seek mandatory injunctions as follows:-

*"5. An (sic) mandatory injunction for an investigation into the statement by the Ex PSNI agent that "we were ok without a license because the guards brought us in..."*

*7. An (sic) mandatory injunction on the Gardaí to investigate and on the DPP to prosecute all instances of contradictory evidence, misleading the court and perjury that arose in the trial"*

Identical injunctions are sought in the substantive case. Ms. Kelly set out a large amount of detail on affidavit about what she believes to have been collusion by State officials in various events, most of which pre-dated Mr O'Toole's trial. It was difficult to see how that material is relevant to these proceedings. The plaintiffs did not satisfy me that they have an arguable case that they will succeed at trial or that the balance of convenience favours the granting of the injunctions sought. I refuse the plaintiffs' applications for injunctive relief.

#### **Quo warrant**

**17.** The plaintiffs seek an order for "*[a] writ of Quo Warranto on the Martina Baxter, Tony MacGiollacuddy and Ann Roland to prove their equitable standing and jurisdiction to hear case number 002528*" which is also sought in the substantive proceedings. No evidence or explanation was forthcoming as to why the plaintiffs may be entitled to this relief at this stage or at all. It is an unconventional relief for which no legal and no sufficient evidential basis was put before the court. The plaintiffs did not satisfy me that they have an arguable case that they will succeed at trial or that the balance of convenience favours the granting of the injunctions sought.

#### **Default of appearance**

**18.** An order was sought for leave to proceed in default of appearance with regard to the originating summons or an order compelling the defendants to enter an appearance. The procedural requirements for what seems to be an application arising from some of the defendants' failure to file an appearance, have not been complied with here. There was no pre-motion correspondence to the defendants who have not yet filed an appearance. There is no basis for the interlocutory relief sought.

#### **Challenge to the offence of Joint Enterprise**

**19.** The plaintiffs seek to challenge the legality, including in their oral submission to the constitutionality, of an offence with which they say Mr. O'Toole was charged. The plaintiffs' locus standi to assert such a challenge was not established and, in any event, this is clearly an inappropriate relief to seek at an interlocutory stage.

#### **Reasonable accommodation**

**20.** The plaintiffs' notice of motion applies for "*[r]easonable accommodation as lay litigants and under equality law on disability grounds.*" The reference to reasonable accommodation on grounds of disability can only refer to Mr. O'Toole, whom Ms. Kelly says

is dyslexic, as no disability has been identified in relation to either of the plaintiffs. Any such issue is a matter for Mr. O'Toole and not for the plaintiffs to assert and seek.

**21.** The plaintiffs assert a right to reasonable accommodation for themselves as lay litigants. The concept of reasonable accommodation is specific to disability discrimination law and is not a right of an able-bodied litigant by virtue of their status as a lay litigant. There was nothing put before the court to suggest that either plaintiff, who have both conducted a number of applications before the courts previously, have been improperly treated in their representation of themselves in these proceedings. It was not made clear to the court what accommodations the plaintiffs require or the legal basis for same. The plaintiffs have the same rights, and duties, as any other lay litigants before this court. They have no legal entitlement to additional, unidentified accommodations, in the absence of any evidence of their need for reasonable accommodation as it is understood and applied in the law.

#### **Conclusions**

**22.** The court refuses each of the plaintiffs' applications for interlocutory relief.

#### **Indicative view on costs**

**23.** As the defendants have succeeded in defeating the plaintiffs' interlocutory applications, in accordance with s. 169 of the Legal Services Regulation Act, my indicative view on costs is that the defendants are entitled to their costs to be adjudicated upon in default of agreement. I will hear submissions on costs at 10.30am on 20 December 2023.

The plaintiffs represented themselves.

**Counsel for the 1<sup>st</sup>, 8<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup>, 12<sup>th</sup> and 13<sup>th</sup> named defendants:** Hugh O'Flaherty  
BL.