

APPROVED



THE HIGH COURT

[2024] IEHC 358

Record No. 2022/586SS

BETWEEN/

DONEGAL COUNTY COUNCIL

PROSECUTOR

-AND-

CONOR QUINN

ACCUSED

-AND-

THE ATTORNEY GENERAL

NOTICE PARTY

(NO.2)

JUDGMENT of Mr. Justice Conleth Bradley delivered on the 29th day of May 2024

INTRODUCTION

Preliminary

1. In *Donegal County Council v Quinn* [2024] IEHC 160 (Unreported, High Court, 1st March 2024), I addressed the following question posed by Judge Sandra Murphy on 2nd March 2022 by way of a consultative case stated, brought pursuant to section 52(1) of the Courts (Supplemental Provisions) Act 1961, as amended and substituted (“the 1961 Act”):

“Does section 1 of the Courts (No.3) Act, 1986 (as amended) authorise the issue of a summons on the application of “V.P. McMullin” being a firm of solicitors and an unincorporated body of persons?”

2. For the reasons set out in that judgment, I answered the question posed by Judge Murphy by determining that section 1 of the Courts (No. 3) Act 1986 (as amended) (“the 1986 Act”) did not authorise the issue of a summons on the application of “VP McMullin” being a firm of solicitors and an unincorporated body of persons.
3. On 9th April 2024, after hearing from the Prosecutor and the Accused, I granted the Accused the costs of the consultative case stated application, with a stay on those costs pending an application for an appeal of the decision of this court. On that date, I also acceded to the application of the Notice Party to be joined to the proceedings for the purpose of being heard in relation to the Prosecutor’s application for leave to appeal from my judgment delivered on 1st March 2024.

4. The application for leave to appeal was heard on 10th May 2024 and this is my judgment arising from that hearing.

5. In summary, the Notice Party supported the Prosecutor’s application for an appeal. The Accused adopted a neutral position, and whilst he was satisfied to only respond to the Prosecutor’s application for leave to appeal through the written submissions furnished, he opposed the Notice Party’s submissions seeking leave to appeal independent of the application by the Prosecutor, and also opposed the grounds which were relied upon by the Notice Party in their seeking leave to appeal.

THE STATUTORY PROVISIONS

6. Section 52(2) of the 1961 Act provides as follows:

“An appeal shall lie by leave of the High Court to the Supreme Court from every determination of the High Court on a question of law referred to the High Court under subsection (1) of this section.”

7. This is a reference to the initial question of law posed by the District Court pursuant to section 52(1) of the 1961 Act.

8. By virtue of section 74(1) of the Court of Appeal Act 2014, all previous statutory references to the Supreme Court are read as referring to the Court of Appeal.

DISCUSSION AND DECISION

9. I shall, for the following reasons, grant the Prosecutor's application for leave to appeal to the Court of Appeal from my judgment delivered on 1st March 2024.

10. In granting leave to appeal to the Court of Appeal, I have limited my consideration of the grounds of appeal to those put forward by the Prosecutor and to the facts as initially found by Judge Murphy in her consultative case stated dated 2nd March 2022. Insofar as the submissions of the Notice Party go further than supporting the Prosecutor's particular grounds of appeal or refer to facts, other than those as found by Judge Murphy, I do not consider it necessary to refer to same for the purposes of considering this application.

11. First, section 52(2) of the 1961 Act must be viewed against the constitutional architecture in the Thirty-third Amendment of the Constitution Act 2013 which provided for the establishment of the Court of Appeal and the new basis upon which that court and the Supreme Court would operate. The re-numbered Article 34.4.1° of the Constitution provides, for example, that the Court of Appeal shall, with such exceptions and subject to such regulations as may be prescribed by law, have appellate jurisdiction from all decisions of the High Court. Accordingly, the jurisprudence which addressed the Supreme Court's previous appellate jurisdiction (under Article 34.3.3° of the Constitution) applies to the Court of Appeal's appellate jurisdiction (under Article 34.4.1° of the Constitution). The question on this application is solely whether the Prosecutor should be granted *leave* to appeal to the Court of Appeal.

12. As a matter of general principle, a statutory provision regulating (or excepting) the Court of Appeal’s appellate jurisdiction must be clear and unambiguous, given that its jurisdiction flows directly from the Constitution: *People (AG) v Conmey* [1975] 1 I.R. 341 at 360 per Walsh J.; *Canty v Private Residential Tenancies Board* [2008] IESC 24; [2008] 4 I.R. 592 at 596 per Kearns J. (as he then was); *Minister for Justice v Wang Zhu Jie* [1993] 1 I.R. 426 at 434 per Finlay CJ.; *Governey v Financial Services Ombudsman* [2015] IESC 38; [2015] 2 I.R. 616 at paragraph 3.4 per Clarke J. (as he then was); *Galfer Filling Station Limited v Superintendent Patrick O’Callaghan* [2023] IECA 184 at paragraph 23 per Whelan J.
13. Therefore, insofar as section 52(2) of the 1961 Act regulates the right of an appeal to the Court of Appeal, the starting point or presumed inclination, upon consideration of the Prosecutor’s application for leave to appeal, is to lean in favour of there being an appeal. In *Galfer Filling Station Limited v Superintendent Patrick O’Callaghan* [2023] IECA 184 at paragraph 44, Whelan J. observed that “*at most, section 52(2) imposes a qualified prohibition on appealing the determination of the High Court on the question of law as was referred to the High Court unless in the first instance leave of the High Court has been obtained*” (and on the facts of that case, unlike the application here, the ambit of the appeal did “*not seek to challenge or interfere with the determination of the High Court judge on the two questions of law posed by the District Judge.*”)
14. Second, the standard or threshold which applies in the exercise of my jurisdiction on this application is the relatively low threshold of where a stateable basis for appeal has been established: *Governey v Financial Services Ombudsman* [2015] IESC 38 at

paragraph 6.2 per Clarke J.; *Galfer Filling Station Limited v Superintendent Patrick O'Callaghan* [2023] IECA 184 at paragraph 48 per Whelan J.

15. Third, turning to the grounds of appeal, in summary, the Prosecutor has suggested the following grounds of appeal: (a) given that the starting point in my analysis was that the use of the word “person” imports an unincorporated body of persons by virtue of sections 4(1) and 18(c) of the Interpretation Act 2005, it was at least arguable that the starting point provides the answer to the consultative case stated; (b) there was no express displacement of the meaning of “person” in section 18(c) of the Interpretation Act 2005; (c) the construction which I applied was inconsistent with the administrative process set out in the 1986 Act or with the substance and tenor of that Act; (d) as there was no previous authority, it is arguable that the Court of Appeal could come to a different conclusion; and (e) legal writs are often issued by referring to the names of the firm of solicitors and not individually named solicitors.

16. The ultimate merits of these grounds of appeal are, of course, a matter for determination by the Court of Appeal. I consider that they meet the low threshold of stability which applies on this application. Indeed, the Prosecutor is entitled, upon the grant of leave to appeal, to add to the grounds of appeal which were referred to during the making of this application for leave to appeal: by analogy, see *Clinton v An Bord Pleanála* [2007] 1 I.R. 272 at 280 to 284 per Denham J. (as she then was); *L. O'S v The Minister for Health and Children* [2015] IESC 61 per Clarke J. (as he then was) at paragraphs 3.4, 3.5, 3.12 and 3.13.

17. In *Galfer Filling Station Limited v Superintendent Patrick O’Callaghan* [2023] IECA 184, the Court of Appeal (Whelan J.) determined that section 52(2) of the 1961 Act was not clear and unambiguous insofar as the issue of the costs of the consultative case stated were concerned and held that there was a significant alignment between section 52(2) of the 1961 Act and section 123(4) of the Residential Tenancies Act 2004 which was at issue in *Canty v Private Residential Tenancies Board* [2008] IESC 24; [2008] 4 I.R. 592 (section 123(4) of the Residential Tenancies Act 2004 Act states that “[t]he determination of the High Court on such an appeal in relation to the point of law concerned shall be final and conclusive”). At paragraph 42 of her judgment, Whelan J. made the following observations:

“(a) Section 52(2) contemplates that appeals can lie to the Supreme Court from a determination of the High Court on a case stated under s. 52(1).

(b) The language indicates that two categories of appeal are contemplated:

(i) Appeals which are subject to an application to the High Court for leave to appeal; and

(ii) Appeals in respect of which leave is not required.

*(c) This does not appear to be a provision which regulates by subtraction from the appellate jurisdiction of the kind contemplated by O’Higgins C.J. in *The People (DPP) v O’Shea* [1982] IR 384 at p. 403. Such a regulation by statute is required to be done expressly as that decision illustrates. Rather, as McCarthy J. observed in *Wang Zhu Jie* at p. 437 –*

“...it is simply regulation in that the right of appeal is identified but made subject to leave being obtained.”

The language contemplates that the determination in respect of which leave of the High Court must be sought in advance is the question of law referred to the High Court under subsection 1.”

18. The “*question of law referred to the High Court under subsection 1*” in the case before me refers to the question posed by Judge Sandra Murphy on 2nd March 2022 pursuant to section 52(1) of the 1961 Act, *i.e.*, “[d]oes section 1 of the Courts (No.3) Act, 1986 (as amended) authorise the issue of a summons on the application of “*V.P. McMullin*” being a firm of solicitors and an unincorporated body of persons?”. Adapting and paraphrasing the observations of O’Donnell J. (as he then was) in *Lough Swilly Shellfish Growers Co-Operative Society Limited & Atlanfish Ltd v Danny Bradley & Anor* [2013] IESC 16; [2013] 1 I.R. 227 at paragraph 27, “[w]hat the Constitution requires is an appeal which permits ... [the Court of Appeal in this case] to consider whether the result in the High Court is correct”.

19. Accordingly, pursuant to section 52(2) of the 1961 Act, I shall grant leave to the Prosecutor to appeal to the Court of Appeal against the determination of the question of law, referred by Judge Sandra Murphy on 2nd March 2022, contained in my judgment in *Donegal County Council v Quinn* [2024] IEHC 160 (Unreported, High Court, 1st March 2024).

PROPOSED ORDER

20. I shall make an Order pursuant to section 52(2) of the Courts (Supplemental Provisions) Act 1961, as amended and substituted, granting leave to the Prosecutor to appeal to the Court of Appeal against the determination of the question of law, referred by Judge Sandra Murphy on 2nd March 2022, contained in my judgment in *Donegal County Council v Quinn* [2024] IEHC 160 (Unreported, High Court, 1st March 2024).

21. I shall put this matter in For Mention before me at 10:45 on Friday 14th June 2024 to address the question of costs and any further ancillary or consequential matters which arise.