

THE HIGH COURT

[2024] IEHC 594

RECORD NO. 2023/593 JR

BETWEEN

TINKA ZAPRYNOVA

APPLICANT

AND

THE COMMISSIONER OF AN GARDA SIOCHANA

RESPONDENT

Ex tempore ruling of Mr. Justice Mark Heslin delivered on the 11th day of October 2024

1. I propose to give my decision now and, as I mentioned at the outset this morning when the case began, I took several hours last evening to make sure that I read the entire papers beginning with the *ex parte* motion docket. This was signed by the applicant on the 26th May and filed on that date. This indicated the intention of the applicant, who represents herself here today, to seek leave to apply for judicial review. As is made clear in the *ex parte* docket, the relief which the applicant sought leave to apply for is described in the following terms: -

"...an Order of Mandamus to be issued to compel the Commissioner of An Garda Siochána to provide Tinka Zapryanova with the detailed information regarding the criminal investigations and criminal proceedings against [a named individual "MN"] who caused a RTA on the 13th November 2017 by breaking a "Stop" sign while driving with excessive speed at the junctions of R125 and R122.

The Applicant was the injured party in the accident and by virtue of s. 8 of the Criminal Justice (Victims of Crime) Act 2017 has the right to obtain the information sought by An Garda Siochána."

That relief is replicated in the Applicant's draft statement of ground which is dated the 26th May, also. For the sake of completeness its appropriate to quote *verbatim* the entire of the grounds at s.(e) upon which the relief at s.(d) is based and I now quote *verbatim*: -

"(e) Grounds upon which such relief is sought:

The applicant was injured in the RTA from 13th November 2017. The accident occurred as a result of an offence in respect of the Rules of the Road committed by Mr. [MN].

Therefore, the Applicant has the quality of a victim of crime and as provided in s. 8 Criminal Justice (Victims of Crime) Act 2017, the Applicant should be entitled to obtain the information regarding the investigation and criminal proceedings relevant to alleged offence. Even though the Applicant has requested this information numerous times in the last 2 months and after more than five and a half years from the time of the accident, the right to obtain the information below has been denied:

- *Was the criminal offence in question ever registered by An Garda Siochána?*
- *What PULSE incident number the same (sic) was given?*
- *Did criminal prosecution take place?*
- *Did any Court hear the case? Which Court? When? Who was the Judge? What was the case number, charge sheet summons number? What witness statement was provided to the Court on my behalf? Were there any criminal sanctions imposed on the offender and what they were?"*

2. At this stage it's appropriate for this Court to observe that that is the entire of the relief sought and the entire of the grounds on which an entitlement to relief is based. There is no claim for any declaratory or other relief regarding the investigation of the 2017 road traffic incident. There is no claim for declaratory or other relief as regards the prosecution arising out of the road traffic accident. There is no declaratory or other relief sought in relation to the 2017 Criminal Justice (Victims of Crime) Act which is referred to. There is no relief of any other type, such as damages or otherwise.
3. In terms of its procedural history, the matter came before Mr. Justice Kennedy on the 19th September 2023. Having considered the matter including the applicant's written submissions (which I carefully read last evening and these are dated the 12th September 2023) Mr. Justice Kennedy explained that he was directing that the applicant's leave application be on notice to the respondent, namely, the Garda Commissioner. An order to that effect was made on the 19th September and it was perfected on the 12th October of last year.
4. The applicant issued a motion on the 13th October 2023 grounded on her affidavit sworn on the same date.
5. Mr. Fergal O'Rourke, solicitor, of the Chief State Solicitor's Office swore an affidavit on the 27th November 2023 and its appropriate to turn to that affidavit to note what Mr. O'Rourke avers at paras. 1, 2 and 3:-

"1. I am acting CSSO legal officer responsible for the CSSO's representation of the respondent in these proceedings.

2. I am duly authorised to make this affidavit on behalf of the respondent, and I do so from facts within my own knowledge save where otherwise appears and where so appearing I believe those facts to be true and accurate.

3. I make this affidavit for the purpose of opposing the applicant's application by way of judicial review for the reliefs set out in the statement required to ground the application for judicial review filed on the 26th May 2023.

6. Mr. O'Rourke went on, at para. 4, to exhibit a letter sent to the applicant on the 24th November 2023 by the Chief State Solicitor's Office. In the manner which I will come to, it's clear that Mr. O'Rourke's affidavit was, in effect, an affidavit of service of that 24th November 2023 letter, to ensure that it, as well as its contents, was received by the applicant, in the context of the matter coming back before the court shortly afterwards.
7. It is necessary to look in some detail at this letter. The second paragraph makes clear that the letter was sent without prejudice to the respondent's position that all requests for information made by the applicant in relation to the road traffic accident of the 13th November 2017 and the subsequent proceedings brought against the other driver involved, which were brought pursuant to s. 52 of the 1961 Road Traffic Act, were at all times replied to appropriately and in accordance with statutory duties. The letter went on to identify the various requests for information which the applicant had made, specifically, the following: -
- (a) An email of the 27th March 2023 requesting a written response concerning the s. 52 proceedings which, the letter confirms, resulted in a statement of the 4th April 2023 being provided to the applicant, by email on the 24th April of last year;
 - (b) A subject access request which was made by the applicant on the 21st April 2023, and that request was made to An Garda Síochána, seeking general documentation or information from the 13th November 2017 to the date of the request. The letter confirms that this request was responded to on 19th July 2023 enclosing all requested data, save for that which could not be released pursuant to statutory provisions, which are referred to;
 - (c) An email sent by the applicant on the 26th April 2023 to Detective Garda Delaney, concerning his statement of the 4th April 2023, and reference is made to the response sent to the applicant by the Garda in question.
8. The 24th November letter went on to state that despite the respondent's clear objections to the proceedings, the view was taken that the most appropriate course of action was to provide the answers to the questions set out by the applicant at Part (e) of the statement of grounds and also to enclose "*all relevant documentation and information relating to these questions*". For the sake of clarity and completeness it seems to me to be essential to quote, as follows and *verbatim* from the letter, answers to questions posed at Part (e) of the statement of grounds:

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1. **Was the criminal offence in question ever registered by An Garda Síochána?**

A. The RTA was investigated by the investigating Garda, D/Garda Keith Delaney. A summons was applied for and issued and the s. 52 proceedings were brought as against the driver of the other motor vehicle involved in the accident [and they are identified as "MNN"]. This process to include the outcome of the prosecution was recorded by AGS.

2. **What PULSE incident number the same was given?**

A. PULSE incident number in relation to RTA was 14533437 and 14972201 in relation to the s. 52 proceedings.

3. **Did a criminal prosecution take place?**

A. Yes. MNN was charged with one count of careless driving pursuant to s. 52 of the Road Traffic Act, 1961 (as amended).

4. **Did any Court hear the case?**

A. Yes.

5. **Which Court? And when?**

A. Dublin Metropolitan District Court sitting in Swords was the court that heard the case at first instance on 11 September 2018 and thereafter there was an appeal brought by MNN to Dublin Circuit Criminal Court sitting at the Criminal Courts of Justice hearing the District Court Appeals List on 31 January 2019.

6. **Who was the Judge?**

A. AGS is not privy at this remove to the identity to the judges assigned, respectively, to the Dublin Metropolitan District Court sitting at Swords on 11 September 2018 nor to the District Court appeals list of Dublin Circuit Criminal Court on 31 January 2019."

Clarity has subsequently been given in relation to that issue.

7. **What was the case number, charge sheet, summons number?**

A. AGS are not privy to any case number allocated by the Courts Service. There was no charge sheet as the s. 52 proceedings were prosecuted by way of Summons, bearing the number 6278243.

8. **What witness statement was provided to the Court on my behalf?**

A. No witness statement was provided. As is normal course on a first return date where a plea of guilty is entered in a road traffic prosecution in Dublin Metropolitan District Court the matter was disposed of on a precis of evidence provided orally to the Court by the Court Presenter in attendance, a member of AGS specifically designated for that function. Given the passage of time since the s. 52 proceedings, AGS confirms that it is no longer in possession of a copy of the precis of evidence.

9. **Were there any criminal sanctions imposed on the offender and what were they?**

A. Yes. MNN was fined €300 in the District Court and received a three month driving disqualification. Following an appeal by MNN, the fine was upheld but the disqualification order was overturned."

9. The letter continues:-

"Further please see enclosed all relevant documentation relating to both the RTA and the s. 52 proceedings.

We confirm that the information herein and the documentation enclosed hereto is all that can be provided to you by the respondent in relation to the RTA and the s. 52 proceedings and that the respondent has complied with any statutory duties that might arise in this regard.

Further the information herein and the documentation enclosed hereto comprises of all the information sought by you as per the Notice of Motion and Statement of Grounds filed on the 13th October 2023."

- 10.** The documentation enclosed with the letter included, by way of example, a typed statement dated the 4th April 2023 produced by An Garda Síochána and it states the following:-

"Re: Criminal prosecution, result re: road traffic accident from 13th November 2017" [and the individual "MNN" is named].

"With reference to the above an investigation file was submitted in this matter and directions were received for [MNN] to be charged with one count of Careless Driving. He was summonsed to appear at Swords District Court where he pleaded guilty to the charge and received a €300 fine and a three month driving disqualification on the 11th September 2018. This was subsequently appealed and on the 31st January 2019 before the District Appeals Court where the €300 fine was upheld however the disqualification order was waived.

*For your information, please,
Keith Delaney, D/Garda."*

- 11.** The documentation furnished also includes an email sent on Wednesday the 28th July by the same detective garda to the applicant, which states: *"Typed copy of your statement attached, I do not have the original written one anymore but I would have typed this from the original at the time it was taken, Regards Keith"*.

- 12.** Despite the foregoing, the applicant swore a further affidavit on the 12th December 2023. Among other things, the applicant took issue with the *contents* of the documentation which she was provided with. She claimed *inter alia* that information had been and was being withheld from her and she suggested that the scenario described in the Chief State Solicitor's Office letter of the 24th November last lacked "*credibility*".

- 13.** On the 17th January of this year, Superintendent Ronan Barry swore an affidavit on behalf of the respondent. That affidavit exhibited a copy of the 24th November letter and the attachments to it and Superintendent Barry also made the following averments. At para. 1 and 2 he averred explicitly: -

"1. I am Ronan Barry, Superintendent of An Garda Síochána and I am duly authorised to make this affidavit on behalf of the respondent.

2. I make this affidavit from an examination of all records in the possession of the respondent relating to the investigation of the road traffic accident that occurred on 13 November 2017 [hereinafter, "the 2017 RTA"], involving the applicant and a third-party

motorist, and also all records in the possession of the respondent relating to the prosecution pursuant to s. 52 of the Road Traffic Act, 1961 (as amended) of that third-party motorist [hereinafter, "the s. 52 proceedings"]. I also make this affidavit from facts within my own knowledge, save where otherwise appears and where so otherwise appearing, I believe the same to be true."

In the body of the affidavit, from para. 7 onwards, Superintendent Barry makes *inter alia* the following averments: -

"7. I say that all information in the knowledge or possession of the respondent, and as requested by the applicant in her request for information being the subject matter of these proceedings (to include all available documentation relating to that information), has been provided by way of a letter dated 24 November 2023 addressed to the applicant from the CCSO. Therefore the applicant's application has become plainly moot and I say and I am advised that any order granting leave for an order seeking Mandamus would be futile and unnecessary at this stage." (emphasis added)

At para. 8, it is averred: -

"8. I say that the affidavit of Mr. O'Rourke was filed for the purposes of ensuring that appropriate evidence of the service of the letter dated 24 November 2023, together with the enclosures, was before [the] Court on 21 November 2023."

At para. 9, he avers: -

"9. The letter dated 24 November 2023 was sent by the CSSO on behalf of the respondent in order to reply in full to all requests for information as set out by the applicant in the within proceedings in advance of the last return date."

At para. 10, the following is *inter alia* averred: -

"...The letter dated 24 November 2023 sets out direct answers to all of the particular questions raised by the applicant in these proceedings insofar as the respondent can answer those questions, and also enclosed all documentation to both the 2017 RTA and the s. 52 prosecution..."

At para. 11, it is averred: -

"11. I say that your deponent has reviewed all available files and documentation in the possession of the respondent, and I can confirm that the information provided is the letter dated 24 November 2023 is true and accurate of its contents, and constitutes all information relating to the 2017 RTA and the s. 52 prosecution within the knowledge or possession of your dependent."

At para. 12, it is averred: -

"I say that any information that is unavailable is due to the passage of time since the 2017 RTA and the s. 52 prosecution (a prosecution that occurred at first instance in the District Court on 11 September 2018, and thereafter on appeal to the Circuit Court hearing the District Court appeals list on 31 January 2019)."

At para. 13, it is averred: -

"13. Accordingly, the respondent has provided to the applicant all available information as requested in the applicant's request for information being the subject matter of these

judicial review proceedings, and I say and I am so advised that these proceedings are now moot and there is no necessity for leave to be granted." (emphasis added)

14. The applicant swore a further affidavit on the 7th February and this included *inter alia* assertions as to what communication the applicant believes should have been sent to her at various points in relation to the s. 52 prosecution of the other driver; and the relevant decision-making by the DPP or An Garda Síochána. These criticisms were also made with reference to what the applicant described as "*standard procedure*" in Ireland and what the applicant asserted to be the procedure in the United Kingdom.
15. Despite the explicit averments, which I have already quoted, by Superintendent Barry as to his source and means of knowledge, issue was taken with this. The applicant also described the Chief State Solicitor's Office letter of the 24th November 2023 as "*hearsay evidence*" and, in relation to that letter, the applicant criticized the Chief State Solicitor for not producing "*valid authenticated documents, bearing the signatures of responsible persons at An Garda Síochána to prove the credibility of her assertions*".
16. The applicant also contended that certain records should exist and criticized what she regarded as their absence.
17. The applicant also characterised Mr. O'Rourke's affidavit of November 2023 and Superintendent Barry's affidavit of January 2024 in the following terms. She called these "*inadmissible hearsay evidence, containing inaccurate and misleading assertions...*" (emphasis added)
18. I do feel it is necessary to pause, at this stage, to say that these are obviously very serious allegations. They are an allegation that an officer of this Court and a Garda Superintendent have sworn affidavits containing "*inaccurate*" and "*misleading*" assertions. With all due respect to the applicant, these are as *unsupported* as they are *serious* assertions. They are simply not based in any credible evidence. They 'fly in the face of' sworn averments, and this has to be emphasised.
19. Returning to the applicant's affidavit, criticisms were also made in relation to issues such as record numbers, and the absence of names of judges, and I will presently return to the latter.
20. The applicant also asserted that she had been "*unlawfully mistreated by An Garda Síochána for a period of over 6 years as she has been denied her rights of information as a victim of crime (road traffic offence)*".
21. Two points deserve emphasises at this stage. First, this is a serious but 'bald', or unsupported or mere assertion. Second, it forms no part whatsoever of the case which the applicant has

articulated; and I say this having previously quoted *verbatim* from the applicant's *ex parte docket* and statement of grounds.

- 22.** A supplemental affidavit was sworn by Superintendent Barry on the 14th March of this year and, in that, a typographical error in the summons number was corrected, namely, the correct number was confirmed to be 62782423 instead of 6278243.
- 23.** Superintendent Barry also averred, among other things, that since the swearing of his first affidavit it had come to his knowledge that the judge who presided over the s. 52 proceedings on the 11th September 2018 was Judge Dempsey and the judge who presided over the appeal in January 2019 was his Honour Judge O'Donoghue.
- 24.** Before going further, the evidence before the court allows me to say that, as a matter of fact, every question raised by the applicant in her draft statement of grounds has been answered and the documentation as well as information sought by the applicant has been furnished, with sworn evidence before the court to the effect that there is simply no more documentation available to be furnished.
- 25.** Bearing that in mind, following an application made to this Court, an order was made on the 30th April of this year pursuant to O. 40 of the Superior Court Rules giving leave to the applicant to issue a motion seeking to cross examine deponents who had sworn affidavits on behalf of the respondent. That order provided that the motion in question should be issued within two weeks of the 30th April and listed for mention on the 25th June to the judicial review list.
- 26.** The papers also contain a 30th April 'notice of cross examination', and this was signed by the applicant. It references O. 40 r. 31 and the schedule to the notice names the following: -
 1. Mr. O'Rourke;
 2. The Chief State Solicitor, Ms. Browne;
 3. Superintendent Barry; and
 4. Garda Delaney.
- 27.** As counsel for the respondent referred to, the first observation to make is that no affidavit was ever sworn by Ms. Browne or indeed by Garda Delaney.
- 28.** The relevant motion was issued on the 14th May and seeks liberty to cross examine 3 out of those 4, namely, Mr. O'Rourke, Ms. Browne and Superintendent Barry.
- 29.** My understanding is that, as of today, the application is to cross-examine Mr. O'Rourke and Superintendent Barry who *have* sworn affidavits.

- 30.** The applicant swore an affidavit on the 14th May to ground the application seeking liberty to cross examine and, having carefully considered it, the following summary can be provided.
- 31.** The applicant asserts that the CSSO is, or are, not the solicitors on record for the respondent and do not appear to be authorised to provide any affidavit on behalf of the respondent. For reasons I have already given - having quoted specific averments made by Mr. O'Rourke - these assertions are simply undermined by the facts. Mr. O'Rourke has explicitly averred to the fact that he is the CSSO legal officer responsible for the representation of the respondent in these proceedings. He has explicitly averred that he is authorised to swear the affidavit on behalf of the respondent. At para. 5, although the applicant asserts that Mr. O'Rourke's affidavit does not state his means of knowledge, this is simply incorrect. Mr. O'Rourke explicitly deals with his means of knowledge.
- 32.** It will however be recalled, and it averred to by Superintendent Barry, that the purpose of Mr. O'Rourke's affidavit was simply to ensure proof of service on the applicant of the letter in question. This is in circumstances where as representative of the respondent, Superintendent Barry, has himself exhibited the self-same letter and its attachments and has made explicit averments in relation to these being the entire of the documentation available.
- 33.** He has also made explicit averments in relation to his source of knowledge, including, that he personally has made the enquiries in the manner in which he averred. In other words, unless it was the case that the applicant was asserting that she never received the 24th November 2023 letter - and she makes no such assertion - there is simply no conflict of fact which could conceivably arise from Mr. O'Rourke's affidavit, of any relevance to the proceedings, in respect of which the applicant seeks leave to bring.
- 34.** Returning to her affidavit which grounds the application for liberty to cross examine, there is an assertion made that at least three of the documents provided to her contain what the applicant describes as "*fraudulent information*".
- 35.** Again, I have to say that as well being a very serious allegation not based on any credible evidence, it is important to make clear that fraud, alleged fraud, fraudulent activity or information, forms no part of the case for which the applicant seeks leave to apply for judicial review.
- 36.** The relief which the applicant wishes to seek leave for was designed to ensure that she was provided by the respondent with (i) answers to questions; and (ii) documentation, namely, information concerning the road traffic accident in 2017, its investigation and the criminal proceedings against the other driver. In the manner explained, that has been provided.
- 37.** Although I will come to the definition of 'mootness' from a legal perspective, it is appropriate to touch on it here, given what I have just said. In simple terms, the intended purpose of the

proceedings which the applicant issued is now entirely *spent*. Those proceedings no longer have any *point*. The issues raised in the proceedings are *moot*.

- 38.** The comments I have made so far apply equally to a range of other allegations and criticisms which can be found in the applicant's affidavit of the 14th May - from para. 7 onwards when she, for example, characterises certain documents as "*fraudulent*" or "*non-valid*".
- 39.** Among other things, the applicant criticises the fact certain documents are not signed and she asserts that the contents of certain documents are inaccurate. The form or content of the documents and any criticisms the applicant might have of the documents, as to both form or content, seems to me to be entirely outside of the scope of the case which is articulated in her *ex parte* docket and in the statement of grounds, as drafted.
- 40.** In other words, it allows me to say that criticisms of documents she has received cannot conceivably provide a basis for this Court being satisfied that cross-examination of any party is required.
- 41.** The comments I have made so far apply equally to the assertion which the applicant makes that a member of An Garda Síochána "*did not make lawful demand to produce*" relevant documents on the 13th of November 2017. That forms no part of the case articulated in the statement of grounds.
- 42.** It is clear that, just as she did with Mr. O'Rourke, the applicant takes issue with Superintendent Barry's means of knowledge and with his authority to swear on behalf of the respondent. Again, these are, with respect, issues which are clearly and explicitly covered by the averments made by Superintendent Barry in his affidavits.
- 43.** Superintendent Barry not only swore affidavits on the 17th January and 19th March but, in the wake of the affidavit sworn by the applicant to which I have referred, namely, in May of this year, Superintendent Barry went to the trouble of swearing a third affidavit which was sworn on the 17th June. It sets out in granular terms his role; his source of knowledge; his authority to swear on behalf of the respondent; and the appropriateness of him being the deponent as the supervising superintendent.
- 44.** As Counsel has opened that affidavit extensively, it does not serve any useful purpose to do so again for the purpose of this ruling. But in relation to that last point i.e. the appropriateness of him being a deponent, he makes averments in relation to being the supervising superintendent to the officer which investigated the 2017 road traffic accident; and avers to the effect that, at all material times, the investigation and prosecution relating to same was under his supervision and authority.

- 45.** It is fair to say that the basis upon which the applicant seeks liberty to cross-examine relates to mere or 'bare' assertions concerning the authority and the means of knowledge of those who swore affidavits. But the reality is that both Mr. O'Rourke and Superintendent Barry have clearly addressed those issues and there can be no conflict of fact.
- 46.** An unsupported assertion or a suggestion that there may be wrongdoing or fraud is *not* a fact. Also, in the manner I have explained, the purpose of these proceedings has, since they were commenced, 'fallen away' as a result of the attitude taken by the respondent via the communication sent by the Chief State Solicitor's Office, namely, to provide the information, the answers and the documentation.
- 47.** The following averments made by Superintendent Barry, as of the 11th June 2024, underpin what I have just said and I am now going to quote para. 20 to 22 inclusive and *verbatim*: -
- "20. As deposed to in my previous Affidavits your deponent has reviewed all available files and documentation in the possession of the respondent being in the possession of Coolock and Swords Garda Station relating to the 2017 RTA and the s. 52 prosecution and I am duly authorised to confirm on behalf of the respondent that the information provided in the letter dated 24th November 2023 constitutes all information available relating to the request made by the applicant.
21. In reply to paragraph 6, I say that there is no evidence to support the averment of the applicant that three of the documents provided to her are "invalid" or "contain fraudulent information". The applicant may not be satisfied with the information recorded on the documentation but that does not make the documents invalid or fraudulent. I say and have been so advised that the extent of the applicant's application for leave for judicial review is for leave to compel the respondent to provide certain information. That information has been provided, and whether or not the documentation as provided is a correct record of events as the applicant believes occurred is not a matter for this Honourable Court in the context of these proceedings.
22. I say and have been so advised that there is no conflict of fact arising from either the first and second affidavit that would need to be resolved by this Honourable Court in order to determine the applicants application for leave"
- 48.** I must say that this constitutes a very accurate setting out of the evidential picture in the context of what is a narrow claim articulated by the applicant herself.
- 49.** It is fair to say that the applicant made oral submissions today with great clarity, skill and obvious sincerity that she has been wronged. Her oral submissions reflect the contents of the affidavits which I have summarised. I think a representative example of the submissions made orally today include, for example, the applicant posing rhetorical questions such as "*Who is to say that a signature on a document provided is valid?*" - in other words, to question, but not based on credible evidence, the validity of documents proffered by the respondent.

- 50.** With reference to the 24th November 2023 letter from the CSSO, she submits that "*It could be an error, it could be fraudulent, we don't know*". Again, this is not the tendering of evidence. It is not to set up a conflict of fact. It also goes much further - and completely outside - the case articulated in the statement to grounds and constitutes, with respect, mere assertions of fraudulence of wrongdoing.
- 51.** Regardless of the sincerity with which the applicant believes that there may well be wrongdoing, this Court has to confine itself to the issues before it, namely, (i) whether leave to seek judicial review should be granted in respect of the specific case articulated in the statement of grounds; and (ii) also inextricably related, whether it is appropriate to permit cross-examination. No such permission should be given unless it is appropriate and, central to that, is whether there is a conflict of fact in the context of the articulated claim.
- 52.** A central theme in oral submissions today is the applicant's complaint that she was "*not kept up to date*" during the course of the investigation and prosecution flowing from the 2017 RTA. Again, this is simply no part of the case articulated.
- 53.** She raised questions with reference to documents she had been provided and, speaking to the obvious sincerity with which the applicant contends that she has been wronged, her submissions included to say that "*It is unbelievable and wrong what has been thrown at*" her. She made the suggestion that "*Attempts have been made to destroy an innocent person*", namely, herself.
- 54.** During the course of her submissions, it was suggested that wrongdoing had been carried out by a range of parties including, but not limited to, (i) An Garda Síochána; (ii) the Department of Transport; (iii) the National Ambulance Service and, indeed, criticisms were made of the care she received in respect of injuries she referred to.
- 55.** The applicant contended that she has "*encountered lie after lie*". She asserted that the Department of Transport contains "*false information*" regarding her vehicle, post 'write-off'. She suggested that a certain insurance company committed a criminal act. She alleged that a fraudulent transfer of an ownership document was filed, and suggested that who did so "*has to be established*". Again, all of these concerns are entirely outside the case articulated in the statement of grounds.
- 56.** With reference to the copy Garda statement provided to her, the applicant alleged that this "*could be fraudulent*" or "*contain errors*" and, again, this is, with respect, (i) the making of assertions not underpinned by credible evidence and (ii) falling entirely outside the scope of the case in respect of which she seeks leave.
- 57.** During the course of her submissions, she referred to the specifics of the accident in 2017 including its location. She described the conduct of both herself and the other driver. She

referred to injuries and, as I touched on briefly a moment ago, it was clear that the applicant had major complaints with the medical care she received in this country, saying that she had to go aboard for "*proper treatment*". Once again, none of this forms part of the case articulated by her.

- 58.** She submitted, among other things, that no Garda report exists to her knowledge and "*if it existed, it was buried*". She made numerous criticisms in relation to the investigation and criminal prosecution and, among her submissions, was to say that certain phone calls were made between 6p.m. and 8p.m. on the 13th November 2017 on foot of which services including An Garda Siochána attended. She made clear in her submission that she did not make any phone calls. Nevertheless, an element of an application made on her feet is that the court should order what she refers to as "*these records*" to be persevered and furnished to her.
- 59.** That request was made even though, firstly, the applicant confirms that she had already been informed that no such records are available. Secondly, the court has before its Superintendent Barry's averments which confirm that following his enquiries, there is no further documentation available to be produced. Thirdly, I asked the applicant when she sought these records and she indicated that this was something she did "*recently*". I make the point that these are records said to relate to 2017 and this speaks to the question of time and delay and that's a feature of the test for leave in respect of judicial review.
- 60.** The applicant requested that this court "*strike out the affidavits of Mr. O'Rourke and Superintendent Barry*" and the reason she proffered was the contention that "*these people have no standing to produce evidence*". With respect, that submission is simply unmoored from fact. There is ample evidence before the court, sworn evidence, of the authority and means of knowledge of both individuals.
- 61.** It is fair to say that a central complaint made by the applicant relates to the *contents* of the documentation which she has been given and her unhappiness with the way in which she believes she was treated from 2017 onwards during the course of six or perhaps seven years - her unhappiness with the investigation, her unhappiness with the prosecution - but all of the foregoing fall outside the claim as articulated in the statement of grounds. It is that claim which is of relevance to this Court, because it is that claim for which leave to seek judicial review is applied for.
- 62.** Among the submissions made by the applicant was to contend that there is a flaw in the affidavits before the court because there was not an explicit averment that each of Mr. Rourke and Superintendent Barry were aware that it is a criminal act to provide incorrect information in an affidavit. In a submission - again, with respect, as very serious as it is devoid of any credible basis - the applicant submitted "*there is an attempt being made to circumvent responsibility for perjury*".

- 63.** With respect, the latitude which this Court can show a 'litigant in person', someone who is not legally qualified, is not without limit. I have to say that this is one of several allegations and assertions which simply should *not* have been made. Words matter and to make such serious assertions, which obviously speak to the reputation of others, and to do so without an evidential foundation is simply inappropriate. It is doubly inappropriate when they have nothing to do with the 'index' case - in other words, with the case which the applicant seeks leave for.
- 64.** More than once - and again not a criticism but an insight into the true complaint of the applicant - she submitted that her "*rights as a victim of crime have been violated for seven years*" and she submitted that "*this is the reason*" she commenced the judicial review proceeding. But the reality - which I hope the applicant can understand from this ruling - is that the proceedings she commenced do *not* make the case that she has been a victim of crime or that she has been wronged in any way.
- 65.** The case articulated relates to information and documentation. All questions have been answered. All available documentation has been provided, according to the evidence before the court.
- 66.** I am fortified in that view - as to what the real complaint which provides the underpinning to today is - by the various submissions made by the applicant, namely, that she had a "*right to be present at the court hearings*" in relation to the criminal prosecution; and that she had the "*right to be kept fully informed*" throughout the investigation and prosecution process. Again, these are simply not elements in the case for which she seeks leave to apply for judicial review.
- 67.** It also seems to me that the applicant is labouring under a misapprehension as follows. Rather than [having] been given the documents in the manner she has - that is by way of sworn affidavit by the responsible superintendent - the applicant appears to believe and contend that she has some right to receive each document from each author; and the entitlement to require changes to be made to documents with which she disagrees; and to dictate the form which information or documentation takes. In all of this she is, with respect, simply wrong.
- 68.** What I have said so far seems to me to constitute an adequate summary of the evidence before the court and the submissions made and I have also taken full account of the submissions made with skill by counsel on behalf of the respondent for which I am grateful.
- 69.** I will presently refer to certain authorities which counsel very helpfully ensured that I had. I am aware that they were also provided to the applicant and, let me make clear, I took the opportunity last night to read all 4 authorities in the booklet.

70. Dealing with those now, they concern the proper approach by the court to an application for leave to cross-examine. It is sufficient to say that I have carefully considered the decision of Mr. Justice Allen in *Carlow Foods Limited v The Minister for Agriculture & Another* [2024] IECA 233. I should pause, at this juncture, to note that, during the course of her submissions in reply, the applicant suggested that Mr. Justice Allen's judgment on behalf of the Court of Appeal does not represent binding precedent. Again, this seems to me to be a submission borne out of the fact that - and it is not a criticism but it is a fact that - the applicant is not a qualified barrister or solicitor. But there can be doubt about the reality that this Court *is* obliged to follow the guidance contained in that decision and in all relevant decisions of the Court of Appeal.

71. Indeed unless distinguished on *Worldport* principles, this Court has to have regard to previous decisions of this Court and, in that regard, I have also considered the judgment of my colleague Mr. Justice Humphreys in *Jiku Bank and Another v The Minister of Justice and Equality* [2019] IEHC 785 as well as the decision of the same judge more recently in *Smith v The Governor of Midlands Prison & Ors* [2020] IEHC 242.

72. In addition, I have had the benefit of the helpful extract from Delaney and McGrath on Civil Procedures, the 5th Edition, pgs. 946 – 952 and what the learned authors have had to say in relation to the appropriate approach by the court to the cross-examination question.

73. It is sufficient to say that, although there are certainly *allegations* made by the applicant - including of invalidity concerning documents that she has received; fraudulent activity; and wrongdoing by a range of parties - all of these allegations go no further than unsupported or mere assertions. [They] do not provide any basis for this Court to hold that there is a conflict of fact relating to the underlying claim which would necessitate cross-examination.

74. Turning to the question of mootness, the Supreme Court, in a decision called *Goold v Collins & Ors* [2004] IESC 38 looked at the issue of mootness. This was a decision of the late and lamented Mr. Justice Hardiman, in which he said the following: -

"The rationale for modern mootness rules was I believe well expressed in the leading Canadian case Borowski v Canada [1989] 1 SCR 342."

He then proceeded to summarise the backdrop to that case [and] went on to state the Supreme Court of Canada held that:-

"An appeal is moot when a decision will not have the effect of resolving some controversy affecting or potentially affecting the rights of the parties. Such a live controversy must be present not only when the action or proceedings is commenced but also when the court is called upon to reach a decision. The general policy is enforced in moot cases unless the court exercises its discretion to depart from it."

More recently in a decision in *Lofinmakin v The Minister for Justice* [2013] IESC 49, at para. 51, McKechnie J. stated-

"A case, or an issue within a case can be described as moot when a decision thereon can have no practical impact or effect on the resolution of some live controversy between parties and such controversy arises out of or is part of some tangible and concrete dispute then existing"

- 75.** Guided by those authorities, and having carefully considered the evidence, I am satisfied there is no longer any legal dispute between the parties. If there was a real dispute at the time when the applicant commenced proceedings, subsequent events have entirely altered that.
- 76.** This is because the very *substance* of the claim for which the applicant seeks leave was to obtain answers to questions, information and documentation. She has been provided with all of that, in the manner I have explained with reference to the sworn evidence. That was done on a 'without prejudice' basis in what it seems uncontroversial to say was a pragmatic response and a prompt one by the respondent to the requests for information and documentation.
- 77.** The grant of leave to seek judicial review is at the discretion of this Court. When considering an application to grant, or not, leave to seek judicial review this Court has to be satisfied on the facts deposed that an arguable case in law can be made that the applicant is *entitled* to the relief they wish to seek. It seems to me that this requirement simply cannot be satisfied in circumstances where the relief has, in reality, already been obtained by the applicant.
- 78.** Similarly, I am not satisfied that judicial review would be either an *effective* or an *appropriate* remedy were it to be granted. I take this view, again, because the evidence before the court is that the respondent has already been provided with what these proceedings seek.
- 79.** In other words, I am satisfied that the proper exercise of this Courts *discretion* must be to refuse leave.
- 80.** There is also the additional element of *time* and although what I have already said is sufficient, by way of comment only the question of time also seems to be a significant one here. I say that because, from the submissions made today by the applicant she would appear to have complaints which she had as much as three years ago, if not longer. For example, she would appear to continue to have a complaint in relation to the email sent to her on the 28th July 2021 which I quoted earlier. It seems to me [unnecessary] to decide the delay issue. I have already made my decision for the reasons given.
- 81.** Having refused leave to seek judicial review, it necessarily means the application to cross-examine witnesses in the context of proceedings which are not going ahead necessarily falls away.

- 82.** However - and I did this deliberately - I have already attempted to explain the reasons why that [cross-examination] application fails on its own terms and on its merits.
- 83.** It seems to me that this is sufficient to deal with the reasons for both of the decisions I am making, namely, (i) to refuse leave to seek judicial review; and (ii) refuse the application to cross examine.
- 84.** By way of a final comment, and bearing in mind that the applicant represents herself, I do not want anything I have said today to be taken as a suggestion that it is not open to the applicant to take legal advice and to bring such further or additional proceedings of a different nature as she is advised or believes she should bring.
- 85.** As I did at the outset, I emphasised what is, and is not, before the court, so that's really a matter for the applicant herself. She is not 'shut out' by any means from bringing proceedings of a type not articulated in the narrow claim made but of course that is subject to being satisfied that there is a basis of those proceedings. I would again respectfully - and it is entirely for herself - suggest that she might try to avail of legal representation if that is a route she is going to go. That is entirely for herself, of course.
- 86.** That is the decision in relation to today's application, noting as a result of the exchanges at the outset that it was the strong preference of the applicant to have *both* the cross-examination and leave application dealt with today, and noting the willingness of the respondent to engage on that basis.

[NOTE – This is a written version of the ruling delivered, *ex tempore*, on Friday 11th October. In circumstances where, immediately after hearing the ruling, the Applicant voiced her intention to appeal, I agreed that final orders would not be drawn up until this written ruling appeared on the Courts Service Website.

The delivery of the *ex tempore* ruling was followed by an oral hearing in relation to costs, which resulted in orders being made for the reasons given. Whilst not intended as a substitute for the reasons, the following is a brief summary.

The applicant was (i) entirely unsuccessful in both applications; and (ii) at no times had legal representation. Her application for legal costs against the Respondent was refused.

The Respondent was granted their costs but limited to the period commencing from 31st January 2024. By this date, the applicant had not only received the 24th November 2023 letter which provided her with the information and documentation requested *and* which put her on notice that the claim for which she sought leave was moot, she had also received a sworn affidavit to that effect (sworn by Superintendent Barry on behalf of the respondent on 17th January) and had had time to consider it.]

