



THE SUPREME COURT

[Appeal No: 2016/135]

**Clarke C.J.
O'Donnell J.
MacMenamin J.**

Between/

Kevin Tracey

Applicant/Appellant

and

District Judge Aeneas McCarthy

Respondent

and

The Director of Public Prosecutions

Notice Party

and

The Irish Human Rights and Equality Commission

Amicus Curiae

**Ruling of the Court delivered by Mr. Justice Clarke, Chief Justice,
on June 25, 2021.**

1. For the reasons set out in a judgment (see, *Tracey v. McCarthy* [2019] IESC 14), this Court allowed Mr. Tracey's appeal against an order committing him to prison for contempt. The issues which now arises concerns the costs of the proceedings.
2. Counsel for the notice party ("the D.P.P."), conceded that an order should be made in favour of Mr. Tracey in respect of expenses and outlay and, in that regard, adopted the argument made by counsel for the State respondents in the case of *Tracey v. McDowell* which had been argued earlier on the same morning (Monday June 21). As in *Tracey v. McDowell*, Mr. Tracey argued that he was entitled to payment in respect of his time and effort. It should be noted that the Amicus Curiae had been joined on the basis that costs would not be awarded either to or against it
3. The Court rules today in *Tracey v. McDowell* to the effect that Mr. Tracey is only entitled to expenses and outlay and not any sum to cover his time and effort. The Court does not see any reason to differentiate between the position in these two proceedings and will make the same order as to outlay and expenses as against the D.P.P. in these proceedings as was made against the State respondents in *Tracey v. McDowell*, save that there is no estimate of the appropriate amount in this case. In that context, in the absence of agreement, the amounts to which Mr. Tracey will be entitled will require to be adjudicated.
4. There is, however, one further point on which the Court would wish to comment in the context of this appeal. Some years ago an *ad hoc* arrangement was entered in to between the former Chief Justice (Denham C.J.) and the Law Society of Ireland together with the Bar Council of Ireland, to the effect that a panel of solicitors and barristers would be put in place who were willing, in cases where unrepresented

persons obtained leave to appeal to this Court, to offer their services free of charge on the understanding that they would be entitled to apply for costs should such an application be appropriate in all the circumstances of the case. The attention of Mr. Tracey was drawn to that scheme and it was intimated to him that the relevant nomination of solicitor and counsel could be made should he wish. Mr. Tracey declined that offer.

5. It follows that, in the context of this case, Mr. Tracey would have been able to avail of experienced lawyers to present his case on appeal at no cost to himself. Having chosen to represent himself, it can be said that much of the work, at least insofar as the appeal to this Court is concerned, was work which he voluntarily decided to do when it could have been done, without cost, by lawyers. It was, of course, Mr. Tracey's right to decline participation in the scheme and to represent himself. However, that fact is an additional factor to be taken into account. It should, in passing, also be mentioned that a number of unrepresented parties have, to date, availed of that scheme and have done so in circumstances where their appeals have been successfully prosecuted.

6. In summary, there will, therefore, be an order in favour of Mr. Tracey as against the D.P.P., which will be confined to outlay and expenses with the amount to be adjudicated in default of agreement.