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*Judgment: approved by the court for handing down (subject to editorial corrections)**	*Delivered:* **ex tempore 12/02/2024**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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DIVISIONAL COURT

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RITA OKOTETE'S APPLICATION

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The Appellant appeared as a Litigant in Person
Mr Kennedy, (instructed by The Departmental Solicitor) for HHJ McGurgan
Mr Henry (instructed by the PPS) for the Crown

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Before: McCloskey LJ and Horner LJ

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Ex Tempore

McCLOSKEY LJ (*delivering the judgment of the court*)

[1] In the circumstances which have evolved this morning the court will now determine the merits of Ms Okotete's application for leave to apply for judicial review. We have received an application to stay these proceedings, already stayed, still further and we have ruled against Ms Okotete on that issue. In so ruling, we have reiterated our anterior ruling in a differently constituted court on 17 October 2023. Ms Okotete has conveyed to the court, in the clearest terms possible, following a recess designed to afford her time to consider, that her considered decision in response to our refusal of further stay ruling is that she will not participate in the proceedings. She has made it abundantly clear to the court that this is her informed choice.

[2] The right which Ms Okotete has, which is unaffected by the court's refusal of further stay ruling, is a right to fair, impartial and independent adjudication of her application for leave to apply for judicial review. That means that everything Ms Okotete has put before this court has been fully considered by the court and that is entirely unaffected by her preference not to participate actively without attempting to define what precisely that concept denotes.

[3] The court has, during the recess, conferred on the issue of the merits of the judicial review challenge. What the applicant, Ms Okotete, is seeking to challenge is a decision of His Honour Judge McGurgan, the county court judge, made on 30 May 2022, whereby it was adjudged that having considered Ms Okotete's application seeking permission to extend time within which to lodge her Notice of Appeal to the County Court pertaining to two elderly convictions, the application was refused. The convictions arose out of certain events in Belfast City Centre on 23 November 2011. On 26 July 2012, Ms Okotete was convicted of the offences of disorderly behaviour and resisting a police officer in the execution of their duty. Some ten years later the impugned decision, that is a decision of HHJ McGurgan, was made.

[4] There is before this court an Amended Order 53 Statement. The court will grant permission to make the amendments and, therefore, we treat this as the current revised formulation of the applicant's challenge.

[5] The judicial review proceedings initiated by the applicant were stayed. The reason for that was that the applicant opted to pursue a different litigious course. She applied to a different constitution of the Northern Ireland Court of Appeal for an order compelling HHJ McGurgan to state a case for the opinion of the Court of Appeal. That application was unsuccessful, the Court of Appeal delivering its judgment on 2 June 2023. The first material development after that was a further case management order of this court, that is the Divisional Court, dated 1 September 2023. By that order, inter alia, the stay of these proceedings was removed.

[6] That brings us to certain more recent events. First, the ruling of this court on 17 October, to which I have already referred, refusing the applicant's stay application. Second, the filing of an application by Ms Okotete for permission from the Court of Appeal to appeal to the Supreme Court challenging the judgment of the Court of Appeal delivered on 2 June 2023 and its consequential order. That application appears to be undetermined as of today. Irrespective of whether that application is undetermined, our ruling has been to refuse a renewed application to stay these proceedings.

[7] That brings us to the Amended Order 53 Statement and all of the evidence which has been assembled in support of the challenge that is set out therein. It is impossible to make any real distinction between the framework of the judicial review challenge before this court and the framework of the unsuccessful application the applicant brought before the Northern Ireland Court of Appeal. In substance, if not technically and formally, the issues in both proceedings are the same. The Northern Ireland Court of Appeal has ruled that there is no merit in those issues.

[8] In judicial review proceedings the court does not apply strictly the doctrine known as estoppel in its various kinds, frequently still described by the Latinism res judicata. Rather, the general principle in judicial review proceedings is that the court examines every challenge on its merits. Thus, this court has considered carefully the

merits of the judicial review challenge. We have had lengthy opportunity to do so, given the elderly nature of these proceedings. We have examined, in particular, what the applicant says about the merits of the appeal she was attempting to pursue belatedly in the county court, all of which has been the subject of adjudication in that forum and in the Court of Appeal and which were adverse to her. This is rehearsed extensively in the judicial review pleading, that is the Amended Order 53 Statement. We have also construed this document as liberally as possible in our quest to determine the grounds of challenge set out in paras 5(i) and (ii).

[9] We have endeavoured to identify the public law misdemeanour or misdemeanours identified. There are two. First, it is said that the impugned decision of HHJ McGurgan is vitiated by a failure to take into account the merits of the out of time appeal which the applicant was attempting to pursue. Precisely the same argument has been advanced before the Northern Ireland Court of Appeal and has been dismissed. This court has considered it afresh, and independently and has formed its own view, which mirrors exactly that of the Court of Appeal. Accordingly, there is no merit or substance in the first ground of appeal.

[10] The second ground of appeal makes the case that the impugned decision of HHJ McGurgan was irrational in the *Wednesbury* sense. This species of challenge invariably erects a self-evidently elevated hurdle. In substance, in order to make good this challenge, the appellant would have to establish to the level of arguability that the only rational course available to the judge was to accede to her application to extend time for leave to appeal against the convictions made by the magistrates' court. We have had the benefit of considering all of the materials bearing on the application and, in particular, the written decision of the County Court judge. This, decision far from demonstrating any element of irrationality, has all the hallmarks of careful and thoughtful preparation on the part of the judge. It is in public law terms the antithesis of the irrational. Accordingly, the second ground of challenge has no merit either.

Conclusion

[11] We are mindful that what is before the court is an application for permission to apply for judicial review. For the reasons apparent in all of the foregoing, our conclusion is that the hurdle for granting permission is not overcome. Accordingly, the order of this court is an order refusing permission to apply for judicial review.