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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

KING'S BENCH DIVISION
(JUDICIAL REVIEW)

IN THE MATTER OF AN APPLICATION BY THOMAS McMANUS
FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

AND IN THE MATTER OF DECISIONS OF
THE ULSTER FARMERS' MART COMPANY LIMITED
AND THE COURT OF JUDICATURE OF NORTHERN IRELAND

The applicant appeared in person
Neither proposed respondent was represented

SCOFFIELD J

Introduction

[1] This application for leave to apply for judicial review was brought by Mr McManus because he feels let down by our justice system and is convinced that an application for judicial review is the only realistic avenue of redress presently open to him. Unfortunately for him, for reasons set out in further detail below, that premise is fundamentally misconceived in the circumstances of this case.

Procedural history of these proceedings

[2] These proceedings were initiated on 11 December 2023. From sections 1 to 3 of the Order 53 statement which Mr McManus has lodged it appears that he seeks to challenge a decision of the Ulster Farmers Mart Company Ltd ("the Mart Company", described by the applicant as a "farming organisation"), made on 18 March 2022, whereby it is said to have failed "in their duty of care to the applicant whilst attending the defendant's premises on 23rd February 2012 at approximately 3.30 pm."

[3] However, considering the remainder of the applicant's Order 53 statement, it is clear that the primary intended target of these proceedings is a decision of McAlinden J, sitting in the King's Bench Division, by which he determined a claim for damages in favour of the applicant (the plaintiff in those proceedings). The applicant brought a claim against the Mart Company but was dissatisfied with the decision of McAlinden J (given on 18 March 2022) in relation to the quantum of the award made to him. He then appealed unsuccessfully to the Court of Appeal. (The applicant is additionally concerned that, his solicitor having been permitted to come off record, he was not in a position to properly present his appeal and was wrongly deprived of the opportunity to adduce fresh evidence.)

[4] Notwithstanding the previous judicial determinations in relation to his claim, the applicant seeks to re-open the issue of quantum of the damages awarded to him by way of these proceedings. He continues to seek "a fair adjudication of general damages" taking into account documentation and evidence presented in the course of his writ action in the High Court.

[5] Mr McManus relies upon a range of grounds of challenge (having used the template Order 53 statement set out in the High Court's Judicial Review Practice Direction and having inserted particulars in respect of most heads of challenge). The grounds appear principally to be directed towards alleged failings in McAlinden J's consideration of the applicant's case, for instance that he "failed to provide an honest and impartial decision on damages" and "completely ignored the evidence presented by the applicant in court." The pleaded grounds include issues such as alleged bias, leaving relevant considerations out of account, procedural unfairness and irrationality.

[6] The applicant also sought interim relief to the effect that "the punitive award of costs against [him] in losing his appeal be set aside" on the grounds that there was no written judgment in the appeal and a lack of adequate explanation given to him in relation to the disposal of the appeal. He also sought expedition on the grounds of his age and general health.

[7] The application for leave does not appear, at least initially, to have been served upon the first proposed respondent (the Mart Company). This might well have been because, in truth, although the applicant is seeking an additional award of damages against the Mart Company, his complaint is really about the judgment and assessment of damages of the High Court and/or the decision of the Court of Appeal.

[8] When the case was first considered on the papers, a Case Management Directions (CMD) Order was issued on 6 February 2024. This identified a number of fundamental issues with the proposed application, which were explained in the following terms:

"a. The Mart Company, although named as a respondent, does not in fact appear to be the true target of the proceedings. Insofar as the Mart Company is the proposed respondent, it does not appear to be a body exercising public law functions which is susceptible to challenge by way of judicial review. It is a private, commercial organisation.

b. Assuming the real respondents to the proposed application are the High Court and/or the Court of Appeal, since it is their orders which the applicant wishes to have reversed or set aside in order to reopen the question of damages due to him from the Mart Company, these superior courts are not subject to the High Court's judicial review jurisdiction. This would act as a bar to the grant of leave to apply for judicial review (see section 18(2)(b) of the Judicature (Northern Ireland) Act 1978 and RCJ Order 53, rule 3(6)).

c. Judicial review may in any event be excluded on the basis that there is a statutory remedy, either by way of an appeal from the High Court to the Court of Appeal and/or to the UK Supreme Court from the Court of Appeal.

d. Notwithstanding the above difficulties, the application also appears to be well outside the three-month time limit contained in RCJ Order 53, rule 4 whether judged from the decision of McAlinden J in March 2022 or the decision of the Court of Appeal in June 2023 (with these proceedings lodged in January 2024)."

[9] As a result of these concerns, a provisional view was expressed on behalf of the court that the applicant had sought to invoke the judicial review procedure in circumstances where it was simply not applicable because of the nature of his complaint and the bodies whose decisions he was seeking to challenge. The applicant was therefore asked to indicate, within 14 days of the date of that Order, whether he wished to proceed with the application for leave to apply for judicial review.

[10] Mr McManus responded by way of correspondence dated 20 February 2024. This made clear that he *did* wish to proceed with his application, notwithstanding the misgivings set out in the court's CMD Order. The case was listed for case management review on Monday 26 February 2024 in order to fix a date for a leave

hearing, if required, particularly in light of the provisions of RCJ Order 53, rule 10 (which provides that "no application for leave shall be refused without first giving the applicant an opportunity of being heard"). At the review hearing, Mr McManus was further advised of the limitations of the judicial review jurisdiction where an applicant is seeking to challenge a decision of the High Court and/or the Court of Appeal. Nonetheless, the applicant remained adamant that he wished to proceed with his application. He explained that he felt that this was the only recourse open to him, particularly in the absence of any written judgment from the Court of Appeal, without which he felt he was not in a position to seek to appeal further.

[11] At the applicant's request, the leave hearing was listed in May and the applicant appeared on 7 May 2024 to present the application for leave. He did so in brief terms and addressed the court politely and succinctly. It is clear that Mr McManus was not happy with a variety of the lawyers who represented him at various points and he expressed a number of complaints about various aspects of the professional service which he felt they had provided to him. He also contended that there was a number of "blatant mistakes" in McAlinden J's assessment of his claim. Mr McManus asked me to consider the papers which he had filed and, in particular, a document which had been compiled by him entitled 'Plaintiff's Clarification: Reasons for Appeal' ("the Reasons for Appeal document"), dated 21 December 2022, which had set out his grounds of appeal against the award made by McAlinden J.

[12] Neither proposed respondent appeared at the leave hearing or was represented, notwithstanding that both had been put on notice of the proceedings after the case management review hearing. Given Mr McManus' previous concerns and complaints about ex tempore rulings which had been given in the civil proceedings brought by him, I reserved judgment on the application and indicated that I would provide him with a reasoned decision in writing in due course.

The jurisdictional issue

[13] The primary difficulty with this application, as explained in the court's initial CMD Order, is that it is simply not possible – whatever the merits of the case might be – for a High Court judge exercising the court's supervisory jurisdiction by way of judicial review to review a decision of the High Court or of the Court of Appeal. No relief is sought directly against the Mart Company and, as noted above, it appears to be a private organisation which exercises no public law functions amenable to judicial review for present purposes. The key issue, therefore, is whether the court can re-open the applicant's damages claim which has been adjudicated upon by the High Court and the Court of Appeal.

[14] Section 18 of the Judicature (Northern Ireland) Act 1978 provides for the procedure known as judicial review, by which an application may be made to the High Court for various relief, including the prerogative remedies of mandamus, certiorari and prohibition. The detail of the procedure is to be set out in rules of court but, pursuant to section 18(2)(b), the rules "shall provide… that [leave to apply

for judicial review] shall not be granted if, having regard to the nature of the persons and bodies against whom relief may be granted by way of an order of mandamus, prohibition or certiorari, the court is satisfied that the case is one in respect of which relief could not be granted by way of any such order." That requirement is faithfully reflected in the terms of RCJ Order 53, rule 3(6), which is in materially identical terms.

[15] Those remedies cannot be granted against the High Court or Court of Appeal. Accordingly, Valentine, in *Civil Proceedings: The Supreme Court* (SLS, 1997), discussing persons and decisions immune from review, states at para 19.11 that:

> "No judicial review lies against the decision of any part of the [Court of Judicature] (including in Northern Ireland, the Crown Court) and any court expressed to be a superior court, nor of any judge, master or officer exercising its jurisdiction…"

[16] Judicial review does, of course, lie against an *inferior* court, including for example a magistrates' court, county court or coroner's court. In many such instances, a right of appeal to a higher court will exist which is likely to afford an adequate alternative remedy rendering an application for judicial review inappropriate. As a matter of principle, however, the High Court cannot judicially review itself; much less a decision of the Court of Appeal. There are very limited exceptions (which are not relevant for present purposes) where a judge of a superior court, exercising some executive or statutory power, may find their decisions amenable to judicial review. But this does not apply where a judge of the High Court or Court of Appeal is exercising their judicial function as such.

[17] Auburn, Moffett and Sharland, in *Judicial Review: Principles and Procedure* (Oxford, 2013), at para 2.61, express the matter thus: "Decisions of the High Court, the Court of Appeal, and the Supreme Court are not amenable to judicial review." Judicial authority for this proposition is found in *Re Racal Communications* [1981] AC 374, at 392, where Lord Scarman said:

> "But the High Court is not an inferior tribunal. It is one of Her Majesty's courts of law. It is a superior court of record. It was not, in the past, subject to control by prerogative writ or order, nor today is it subject to the judicial review which has taken their place. It has inherited the jurisdiction of the superior common law courts of first instance."

[18] The position is pithily expressed in the Administrative Court's Judicial Review Guide (2023 edition) published by the Courts and Tribunals Judiciary in England and Wales. Para 6.3.1 explains that there are situations in which judicial review will not be appropriate or possible; and that this should be considered at the

outset. Para 6.3.6 explains that one such instance is where "the claim challenges a superior court decision that is not subject to judicial review", adding that: "Decisions of the High Court, the Court of Appeal and the Supreme Court cannot be challenged by judicial review."

[19] This court's lack of jurisdiction is a complete answer to the applicant's attempt to use the judicial review procedure to re-open a decision of the High Court awarding damages in a writ action and/or a decision of the Court of Appeal in an appeal against any such award.

Further observations

[20] The jurisdictional issue discussed above, which is determinative of this application for leave to apply for judicial review, was raised with Mr McManus on a number of occasions during the course of the proceedings. His view was that judicial review was the only recourse open to him, particularly in the absence of a written decision from the Court of Appeal in his case. I understand that the written decision of the Court of Appeal (reflecting the ex tempore judgment given by the panel at the conclusion of the appeal) has now been promulgated: see [2023] NICA 92. Nonetheless, as a matter of law the absence of a written judgment from the Court of Appeal was of no relevance to the contention that judicial review was an appropriate remedy.

[21] Mr McManus was concerned that, at first instance, he was not provided with sufficient opportunity to make final submissions to the judge which might have influenced his view on quantum. At that time, however, he was represented by senior counsel, and I have little doubt that senior counsel would have made sure, as was his professional responsibility, that the case was properly advanced on behalf of the plaintiff; and that the judge, albeit after a three day hearing, would have invited submissions on any aspect of the case in respect of which he considered he needed additional assistance.

[22] Mr McManus was further concerned that, having appealed the first instance decision, his instructed solicitor came off record, and was permitted to do so by the court, shortly before the appeal hearing. He described this as having been "abandoned at the last minute." (Correspondence from his solicitors indicates that they came off record on 27 January 2023 and advised Mr McManus of this the same day, with the appeal listed on 31 January 2023. It appears, however, that an adjournment must then have been granted because the appeal itself was only heard on 6 June 2023, over five months after the applicant's solicitors came off record). Mr McManus was able to formulate his complaints and concerns in relation to the hearing below in his 10-page Reasons for Appeal document. That document set out clearly the applicant's complaint that both elements of the general damages award and the special damages award were insufficient to provide him with fair and reasonable compensation for the loss and injury suffered as a result of the negligence of the Mart Company.

[23] In relation to general damages, the Court of Appeal found as follows:

> "We are satisfied having considered all the medical evidence in detail that the total award for general damages of £57,500 was well within the range set out in the Green Book for the types of injuries which the plaintiff suffered. So, we are satisfied in respect of the decision of the judge on general damages that it cannot be said that he acted on a wrong principle, erred in law or fact, made a significant miscalculation or awarded a sum so extremely high or low that it amounts to an erroneous assessment: see *Donoghue v Burke* [1960] IR 314."

[24] In relation to special damages, the applicant's Reasons for Appeal document focused on the loss of earnings caused by additional costs (occasioned by the applicant having to outsource at cost work which he would otherwise have undertaken himself) and the reasons why, in his submission, his accountancy evidence should have been preferred over that of the defendant. It appears that Mr McManus wished to adduce further evidence but was not permitted to so on the basis of the court rules relating to the admission of fresh evidence on appeal (see RCJ Order 59, rule 10(2) requiring "special grounds" to be shown for the admission of fresh evidence where there has been a judgment after trial; and the well-known judicially-developed principles in relation to this set out in *Ladd v Marshall* [1954] 1 WLR 1489 which tend to be rigidly applied).

[25] The Court of Appeal dealt with the special damages aspect of the appeal in the following way:

> "The real issue related to the claim for financial loss. Two different assessments were put forward by the respective accountants. The learned trial judge effectively rejected the opinion of the plaintiff's accountants and preferred the defendant's accountants and gave reasons why he did so. He then awarded £9,790 for financial loss. It seems to us that on the basis of the evidence adduced he was entirely correct to do so. The almost complete absence of records on the part of the plaintiff meant that the award for financial loss was reasonably generous in the circumstances and certainly was not what could be described as an unreasonable assessment. Again, we do not think the judge was wrong in principle, misapprehended the facts, or that his award was wholly erroneous. Indeed, we are of the view that the appellant was perhaps fortunate that the learned trial judge did not see fit to refer the appellant to the Inland Revenue. We do

> not intend to do so either at this stage but see no legal basis whatsoever as to why we should interfere with the learned trial judge's calculations for financial loss."

[26] Subject to any issues as to time limits, the option remains for the applicant to seek to appeal the decision of the Court of Appeal further (although he would need to persuade the Court of Appeal or the UK Supreme Court that his appeal raised a point of law of general public importance, which is perhaps unlikely in the circumstances). Mr McManus also indicated in the course of these proceedings that he was unlikely to wish to pursue an appeal in London. He would prefer his concerns in relation to the outcome of his case to be addressed in Northern Ireland.

[27] The availability of statutory appeal mechanisms is, however, another reason why, even if this court had jurisdiction to consider the applicant's proposed application for judicial review, it would be wrong to do so. The principle of legal certainty requires that there be finality to legal disputes once an issue has been determined and appeal routes exhausted. It is a fact of legal life that litigants are frequently disappointed by what they achieve by means of litigation. Indeed, the nature of the adversarial process is such that, usually, at least one side is especially disappointed with the outcome. Judges hope to avoid a situation where a litigant, although disappointed with a particular result, feel that they have not been given a fair or adequate hearing; and it is always discouraging when, at the end of the litigation process, one or other party complains that their arguments have not been fully heard or considered. Nonetheless, litigants will sometimes feel aggrieved – even where their case has been fully and fairly considered – merely because they have difficulty accepting the rightness of the outcome. The point now being made is that, whether or not an outcome is objectively just or correct, the litigation process cannot continue indefinitely.

[28] In the present case it is clear that McAlinden J considered the competing arguments and gave a reasoned decision as to why he awarded only the damages which he did. In large measure this was as a result of his conclusion that the applicant (as plaintiff) had not discharged the onus on him to prove certain elements of his claim for loss and damage. In turn, this related to a paucity of primary documentation to allow him to be satisfied that particular losses had been made out and fell to be compensated by the defendant. The judge reached this view after having heard a range of oral evidence, including from each party's instructed accountants. The applicant had an opportunity to mount whatever grounds of appeal he wished in relation to that assessment. Although he was constrained to some degree by the nature of the appellate court's function when reviewing a damages award at first instance, he nonetheless failed to persuade the Court of Appeal, consisting of three extremely experienced judges, that the award below should be upset. I am unsighted as to the particular reasons why Mr McManus's solicitor in the appeal applied to come off record; but the court was obviously satisfied that there was a good reason for this application; and that the applicant was able to present his case fairly as a litigant in person. As noted above, it also appears

that Mr McManus would have had sufficient time between his solicitor coming off record and the appeal hearing to have instructed alternative legal representation.

Conclusion

[29] There comes a point where the outcome of litigation simply has to be taken as finally settled. Subject to any outstanding issues which remain to be determined in the appeal proceedings (insofar as they are extant) and the possibility of further appeal (mentioned at para [26] above), that point has now been reached in relation to the applicant's claim for damages against the Mart Company.

[30] If the applicant feels that he has valid grounds for complaint about the conduct of any of those involved in his case, there are other avenues by which such complaints may be pursued, either by way of professional misconduct procedures (although in the case of judicial conduct, it has already been explained to the applicant by the Office of the Lady Chief Justice that the complaints procedure does not deal with complaints about the substance of judicial decisions; those are to be pursued through the appropriate appeal mechanisms) or civil remedies if any relevant duty of care or contractual obligation has been breached causing the applicant loss.

[31] For the reasons given above, however, the application for leave to apply for judicial review is dismissed.

[32] In view of the court's usual practice at the leave stage, and the non-appearance of any proposed respondent, there will be no order for costs against the applicant.