

Between:

CHINEDU OMEE

APPLICANT

– AND –

THE DIRECTOR OF PUBLIC PROSECUTIONS

JUDGMENT of Mr Justice Max Barrett delivered on 21st March, 2018.

1. These proceedings relate to the prosecution of Mr Omeé in the District Court with an offence contrary to s.6 of the Criminal Justice (Public Order) Act 1994. The learned District Judge, it is clear from the transcript, had not only decided in his mind to convict Mr Omeé (as he was entitled to do) but even thought he had said words to that effect, before asking the prosecuting garda whether Mr Omeé had any previous convictions, of which there were many. After the learned District Judge had asked a few questions concerning Mr Omeé's previous convictions, counsel for the defence rose to ask *"Am I to take it you are finding my client guilty?"* To which the learned District Judge answered *"I did, I said that"*, thus indicating that he had not only decided to convict but thought himself to have said that he was convicting Mr Omeé. Counsel for Mr Omeé then said *"Okay I didn't hear the, unfortunately"*, the absent noun presumably being something like 'conviction' (unless the person who typed up the transcript misheard 'the' for 'that'). The learned District Judge then responded *"Oh sorry, well I asked for previous convictions so I did, yes."*

2. Notably, it remains the case that counsel for Mr Omeé accept that the learned District Judge did not use the previous convictions as a guide to whether he should convict; however, they contend that a reasonable bystander could take the view that the judge was so proceeding. (The court must admit that it rather considers that a reasonable bystander would consider to have occurred what in fact occurred). Nothing further was made of the just-described events at the time. Counsel did not seek that the learned District Judge recuse himself, there was no allegation of impropriety, there was no 'innocent bystander' argument raised, there was not even any complaint made. As to the rationale for the learned District Judge concluding as he did, this is obvious from slightly earlier in the transcript where counsel for Mr Omeé says *"This really is a case of two different varying versions of events"*, the learned District Judge responding *"And he [Mr Omeé] says he doesn't really remember. The Guard seems quite clear on his memory of exactly what happened"*. So there is no doubt which version of events was being taken by the learned District Judge as the more credible.

3. Arising from the just-described facts, Mr Omeé now seeks (1) an order of *certiorari* quashing the order of the trial judge imposing a fine on Mr Omeé, (2) a declaration that the order was made without jurisdiction and/or in excess of the jurisdiction of the District Court, (3) a declaration that the order was in breach of the rules of natural and constitutional justice, and (4) certain ancillary reliefs.

4. In the course of hearing, the court has been referred to a number of cases, including *Lyndon v. Collins* [2007] IEHC 487, *Sisk v. O'Neill* [2010] IEHC 96, and *Kenny v. Coughlan* [2014] IESC 15. However, it seems to the court that a complete answer is given to the case that is now sought to be made by the observation of Charleton J., at para.11 of his judgment in *Lyndon*, where he observes:

"What is essential...is that people know going out of any district criminal court what they have been convicted for and why they have been convicted, and in this instance I think it is clearly implied in what the learned district judge said that she was convicting the accused because of the fact that she completely rejected his testimony and accepted instead the testimony and accepted the testimony of the prosecution."

5. Mr Omeé likewise knew what he had been convicted of, and why (the judge preferred the prosecuting garda's version of events). Were it the case that the allegation was being made that the learned District Judge had used the previous convictions as a guide as to whether he should convict that would be a very different matter. But, as mentioned, counsel for Mr Omeé are not only not making that allegation, they go further and positively accept that the learned District Judge did not use the previous convictions as a guide to whether he should convict. Their objection is that a reasonable bystander could take the view that the judge was so proceeding. They offered the example of this Court hearing a case and, instead of giving a decision on the case, proceeding immediately to enquire as to costs, thinking that the principal judgment had been given. But were such a slip to occur, counsel would immediately ask 'What is your principal ruling, judge?', that would be given, and that would be the end of matters. Our human-administered system of justice necessarily entails a degree of human error which is unobjectionable if lawfully and openly corrected. All that happened here, and all that a reasonable bystander would see to happen here, is that the judge had decided to convict, had offered a rationale for convicting (he preferred the evidence of the prosecuting garda in what was, to use a colloquialism, a 'swearing-match' between the garda and Mr Omeé), he thought that he had said he was convicting, was asked whether he had convicted and indicated that he had. It was a slip of a type that the court struggles to believe has not previously occurred in the rapid-fire environment of the District Court. It was a slip that was quickly and openly corrected. It is accepted that the judge did not use the convictions in an improper manner. And that, the court concludes, is all that a reasonable bystander would have perceived to have occurred.

6. For the various reasons aforesaid, the court respectfully declines to grant any of the reliefs sought.