THE HIGH COURT

[RECORD NO. 2016 843 JR]

BETWEEN

DONA SFAR

APPLICANT

AND

JUDGE BRENNAN, THE MINISTER FOR AGRICULTURE, FOOD AND THE MARINE, THE ATTORNEY GENERAL AND IRELAND

RESPONDENTS

JUDGMENT of Mr. Justice Binchy delivered on the 13th day of December, 2018

1. The applicant was convicted by the first named respondent on 7th July, 2016, in respect of offences under the Animal Health and Welfare Act 2013 (the "Act of 2013"), arising out of her neglect of animals in her possession or control. She was convicted of nineteen offences and fined €90 in respect of each offence. She was also ordered to pay costs of €1,500 and expenses of €500. Finally, she was disqualified from keeping animals for a period of five years.

2. These proceedings come before the Court by way of an application for leave for judicial review of the orders of the first named respondent by which she was convicted, fined and disqualified from keeping animals. The proceedings were instituted by way of *ex parte* application which came before Humphreys J. who ordered that the respondents should be put on notice of the application and directed that the application be heard by way of "*telescoped*" hearing.

3. In her statement of grounds, the applicant, who is a lay litigant, seeks orders from the court declaring that orders made by the first named respondent in the District Court on 7th July, 2016, concerning the applicant are "*either nullities and have no legal effect and should be set aside ex debitio justitiae for breach of due process or for any reason that the court decides should be voided as voidable orders*." In the event that the court grants such orders, the applicant also seeks ancillary orders, which it is not necessary to set out at this point. In effect, the applicant is seeking to quash her conviction by the District Court in respect of offences with which she was charged before the court on 7th July, 2016, although she does not use the words normally used in such applications.

Background

4. These proceedings are the culmination of a long history of dealings, including multiple legal proceedings, involving the applicant and the second named respondent. It is unnecessary to summarise here the full history of all proceedings and dealings between the applicant and the second named respondent, but it is desirable to summarise some of that background in order to put in context the charges in respect of which the applicant was convicted. Before doing so I should mention that while the applicant is a lay litigant, she is no ordinary lay litigant. Firstly, she is a gainfully employed civil servant who was, on account of her income, refused legal aid in the defence of the proceedings brought against her. Secondly, the applicant is a law graduate, although she says she is not a qualified barrister or solicitor. Although she says she is not a barrister, however, she also says she is a member of Lincoln's Inn and subject to its code of ethics. Thirdly, the applicant has been involved in no less than 25 judicial review proceedings previously, as recorded in a decision of Twomey J. delivered on 20th June, 2016 (*Sfar v. Minister for Agriculture & ors* [2016] IEHC 348). That decision was concerned with two judicial review actions initiated by the applicant by which she sought, unsuccessfully, to challenge the actions of the second named respondent in carrying out the inspections upon her lands that gave rise to her prosecution in the District Court, as well as the service upon her of a welfare notice by the second named respondent pursuant to the Act of 2013. The applicant also appealed the contents of this notice, unsuccessfully in the District Court in accordance with provisions for appeal as set out in the Act of 2013. The applicant then further appealed that adverse decision to the Circuit Court, also unsuccessfully.

5. It is apparent therefore that the applicant is a person who has significant experience in the conduct of proceedings, and specifically judicial review proceedings, before the Superior Courts, and also has the ability to familiarise herself with the procedures involved in litigation, to conduct litigation on her own behalf and, importantly, to understand the operation of our system of justice. It is also apparent from what the applicant says herself, that she had appeared before the first named respondent previously and on at least one occasion had succeeded in having quashed a conviction imposed upon her by the first named respondent.

6. The proceedings that gave rise to the conviction of the applicant, challenged in these proceedings, were first listed before the District Court in Dundalk on 3rd September, 2015. The matter was adjourned on that date and in the meantime the applicant issued proceedings by way of judicial review, the sole purpose of which was to apply for a stay of the prosecution, pending the determination of another judicial review initiated by the applicant against the second named respondent. That application (which the applicant made *ex parte*) was refused by Kearns P. on 4th November, 2015. The applicant appealed that refusal to the Court of Appeal, unsuccessfully.

7. It appears from a chronology handed into the court that the charges were next listed before the District Court on 3rd March, 2016, and were again adjourned, this time to 7th April, 2016. The applicant again made an application by way of judicial review, ex parte, to stay the hearing of the prosecution pending the determination of her other judicial review proceedings. That application came before Humphreys J. who refused the application on 5th April, 2016.

8. At the hearing of this application, I directed that a transcript of what transpired in court on 7th April, 2016 and on subsequent occasions should be generated through the DAR. These transcripts were made available to the court and the parties subsequent to the initial hearing of this application. The parties were afforded an opportunity to make submissions on the contents of the transcripts. The transcript for 7th April, 2016, records the presiding judge (not the first named respondent, but Judge Hamill) noting that the summonses were for hearing on that occasion. Counsel for the third named respondent informed the court that the State was ready to proceed with summonses. However, the applicant informed the court that she had an application before the Court of Appeal to stay the proceedings. There was then a long discussion about this and while at no point does the transcript record that the applicant specifically applied for an adjournment of the proceedings, it is clear that her whole purpose in raising the issue was to prevent the proceedings being heard on that date. She told the judge that she had judicial review proceedings relating to the legislation pursuant to which she was being prosecuted, and when the judge asked a question as to whether the judicial review proceedings pending were "*to stop these summonses proceeding*" the applicant replied "*there (sic) are, Judge*". The clear inference was that part of the relief that she was claiming in the judicial review proceedings which she informed the court were pending, was a stay on the prosecution of the summonses before the court.

9. In any case the judge then let the matter stand and when the matter was called later on in the day the judge informed the parties that the case was unlikely to be reached. In the course of an exchange, the applicant told the judge that she believed that the case should not be heard until after the Court of Appeal had dealt with her appeal from the decision of Kearns P. on 4th November, 2015. She told the District Judge that the Court of Appeal had seisin of the case. After a further exchange and having heard that the Court of Appeal would be dealing with the applicant's appeal on 13th June, 2016 the judge adjourned the matter to 7th July, noting that it was a two-hour case. There was then a discussion about disclosure of documentation, and counsel informed the court that the State had provided all statements taken in connection with the case. The judge directed the prosecutor to inform the applicant as to the names of any witnesses that would be called in evidence against her. He said that the prosecutor should write to the applicant well in advance to give her plenty of opportunity to prepare her own case and identify the witnesses that she wanted to call in evidence. He adjourned the case to 7th July, at 10.00 a.m., "*for hearing by consent*". The exchange concluded with the judge informing the applicant that "*if you do not want me or the judge who is here on that date to deal with these, you need to get an order of Prohibition or something akin thereto*."

10. On 6th July the first named respondent was sitting in Dundalk District Court. On this date the applicant claims that she attended before the court to apply to adjourn the hearing of the charges against her the following day. The applicant avers in her grounding affidavit in support of this application that she did so because she was suffering from a serious medical condition, and she exhibits to her grounding affidavit a certain amount of medical documentation in support of this claim. She avers that she suffers from an iron deficiency and high blood pressure and had previously suffered a near fatal pulmonary embolism as a result of which she is kept under close constant medical supervision. She avers that she attends a clinic in Northern Ireland for review and that when attending that clinic on 4th July, 2016, irregularities were noted in her blood which were of significant concern. On 4th July, she also drew to the attention of the clinic that she had a lump in her leg which looked infected. She avers that she was prescribed additional medication in respect of this infection, but the doctor in the clinic was concerned about the interaction of medications and instructed her to return the following day, 5th July, 2016, and again on 7th July, 2016, at 2.45 p.m., to have her leg re-examined and to have further blood tests.

11. Because the latter appointment apparently clashed with the hearing scheduled to take place on 7th July, 2016, the applicant claims that she decided to apply for an adjournment the day before, on 6th July, 2016, when the first named respondent was sitting in Dundalk. The applicant claims that she attended at the court at about 1.00 p.m. on that day and applied to adjourn her case the following day, on medical grounds. This is how the applicant describes the exchange in her affidavit (paras. 6 and 7):-

> "6. On 6th July, 2016, I attended the District Court at about 1.00 p.m. to apply for an adjournment of the trial on account of my illness. This was purely out of respect for the court. The court clerk knows me and when she saw me in the District Court she shouted down to me that I was not due to attend until the following day. Judge Brennan was sitting in the court on the bench and said nothing to me. Judge Brennan knows me on sight. The court stopped and all eyes and attention were on me. I addressed the clerk and told her I would not be able to attend the next day, as I had an urgent medical appointment scheduled outside the State on 7th July, 2016. From my observations it is the court clerk that controls the legal diary and advises the judge of possible court dates. I should mention that there were two buses from Dundalk that would get me in time for my appointment for 2.45 p.m. The 12.30 p.m. Bus Eireann from the bus station or the 1.30 p.m. Halfpenny bus. I handed up details of my medical appointment and a phone number to the clerk if it was required to be verified. I showed the court the box containing my medications with my name on it. I have marked a copy of the appointment details as "Exhibit K", upon which I have signed my name prior to the swearing of this affidavit. The clerk told me to hand in these documents the following day to the court and I again stressed to her that I would be outside the State at that time. The clerk suggested I should hire a solicitor especially for the following day. I am sure that I made it clear to the court that I was not fit to stand trial never mind representing myself or instruct a solicitor….. On 6th July, 2016, Judge Brennan watched and listened to these proceedings but made no comments. He was only a few feet away from where I was standing and appeared very interested in the proceedings. I then turned to Garda Inspector Beggy, who could see that I was in pain and that I was in considerable distress and frustrated. My head was light and I felt faint with the pain. I showed him my leg, which Judge Brennan could also see from the bench. Inspector Beggy advised to inform the State Solicitor, Mr. Mullen, that I was ill and unfit to attend the next day and said that the matter rested with him as it was not a garda matter. I looked over at Judge Brennan and he smiled and nodded his head in agreement I believed although he said nothing. I let the matter rest as I believed that Judge Brennan would not now proceed with the case and his silence meant that he had agreed to recuse himself and he did not want to get involved with me. A solicitor wanted to make another application and a garda asked me to give him chance as the court had stopped to hear my application. It was now about 1.10 p.m. and Judge Brennan was rushing for his lunch. In the past Judge Brennan has been most obliging in the granting of adjournments when one State witness against me in another case claimed to be going on a pre-arranged holiday, he never asked them for proof or evidence. All I expected was equal treatment."
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> "7. In the afternoon I informed Mr. Mullen on the phone and in writing at the situation as advised by Inspector Beggy. I also handed in another letter to the court office confirming that I wanted an adjournment. I also spoke to Mr. Mullen on the phone and I discussed the situation. This was after I handed the same copy of the appointment details into his office earlier in the day that I had given to the court clerk. A member of his office staff had seen the leg at lunch-time. Mr. Mullen gave me no indication that the case was going to proceed without me."

12. The DAR transcript of what transpired records the court clerk informing the applicant that the court was not dealing with her case "*today*" i.e. 6th July, 2016. She told the applicant to make the application (presumably for an adjournment) "*tomorrow*". The applicant responded that she would not be in court tomorrow, that she would be in Northern Ireland. She also informed the court clerk that Judge Hamill was already involved in her case. She continued in conversation with the court clerk and said that she had nobody to represent her in court the following day, and that she would not be there herself. The court clerk simply stated "*well I will put it with your application tomorrow*". The applicant responded "*okay*". The court clerk then invited the applicant to leave the court, apparently to deal with an *in camera* matter. The applicant volunteered to show her leg to the court clerk, who responded by informing the applicant that the judge wanted to clear the court. The exchange concludes with the court clerk informing the applicant that "*I will put that with your summons tomorrow*".

13. It is unclear from the exchange what the court clerk was putting with the applicant's summons for the following day, but presumably it was the details of the applicant's medical appointment which she referred to in her grounding affidavit.

14. On the following day, 7th July, the applicant was not present in court when the case against her was called on for hearing. The transcript records that counsel stated at the outset that he thought that the applicant had written to the court to say that she would not be present. He also informed the court that the applicant had written to the solicitors for the prosecutor "*at the eleventh hour*" on 4th July indicating that she would not be in court. The first named respondent stated that "*she was in court yesterday and*

she never said a word to me." There was then an exchange between the judge and the solicitor for the prosecutor who told the court that the applicant had written to his office on 4th July indicating that she would not be in court and that on 6th July the applicant had attended his office and handed a copy of a medical appointment. The solicitor telephoned the applicant that afternoon and explained to her that she would need to provide the court with some form of certification as to her inability to attend, but she replied that she would not have that.

15. Counsel for the prosecutor then informed the court that if there was a genuine medical emergency the prosecutor would not insist on proceeding, but in the view of the prosecutor the applicant was attempting to circumvent the proceedings now that all judicial reviews had been dealt with (unfavourably to the applicant). The case then proceeded. Unsurprisingly, the applicant was convicted and fined and also disqualified from keeping animals for a period of five years.

16. Subsequent to her conviction, the applicant, on 14th July, 2016, issued an application, pursuant to ss. 22(6)(a) and (b) of the Courts Act 1991 (the "Act of 1991"), to have her convictions set aside. This application was heard by the first named respondent on 13th September, 2016.

17. Sections 22(6)(a) and (b) of the Act of 1991 provide:-

> "(6)(a) Where a summons has been issued under section 11 (2) of the Act of 1851 or section 1 of the Act of 1986 and the District Court has proceeded to hear the complaint or accusation to which the summons relates, the person to whom the summons is directed may, if he did not receive notice of the summons or of the hearing to which the summons relates, within 21 days after the said summons or hearing comes to his notice or such further period as the District Court may, having regard to the circumstances, allow, apply to the District Court to have the proceedings set aside.
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> (b) Notice of an application under paragraph (a) of this subsection shall—
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> (i) be lodged with the District Court clerk for the District Court area in which the hearing to which the summons relates has taken place,
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> (ii) be in the form prescribed by rules of court,
>
> (iii) state that the applicant did not receive notice of the summons or of the hearing to which the summons relates until a time specified in the notice of the said application, being a time after the commencement of the hearing to which the summons relates …"

18. It is apparent that it is a prerequisite to an application of this kind that the applicant did not receive either the summons itself, or notice of the hearing of the complaint. In her application to set aside the proceedings, the applicant claimed that she did not receive notice of the hearing to which the summonses related until 8th July, 2016 after the commencement of the hearing. While that is the basis upon which the applicant advanced this application before the first named respondent, it is apparent from the transcript that she moved the application on the basis that (she claims) she understood the first named respondent had agreed on 6th July to adjourn the hearing, and therefore she had no knowledge that the hearing was going to take place on 7th July. The first named respondent did not accept this argument. In the transcript of these proceedings the first named respondent is recorded as saying, repeatedly, that the applicant did not speak to him, nor make any application of any kind to him, and nor was he aware of the content of any conversations that the applicant was having with any other parties. The first named respondent dismissed the application to set aside on 21st September, 2016.

19. In the course of moving the application to set aside her conviction the applicant produced to the District Court a copy of a medical certificate dated 7th September, 2016, which stated as follows: "*This is to confirm the above patient of ours has been attending us for an infected leg ulcer and was unable to attend her course on 7th July 2016*." The reference to "her course " is most probably an error, and presumably it was intended to refer to "Court". The applicant also places some reliance on that certificate in this application, as evidence that she was unfit to attend court on 7th July, 2016.

20. The applicant has also appealed, to the Circuit Court, her convictions, by notice of appeal dated 21st July, 2016. That appeal is still pending, presumably pending the outcome of these proceedings.

21. There is one other feature to the background that is of relevance to the proceedings and that is that the applicant claims that she wrote to the court clerk in Dundalk on 8th March, 2016, in relation to the proceedings, and stating that in the interest of justice, the proceedings should not be tried by the first named respondent. She exhibited a copy of the letter that she said she sent to the court clerk, and to which she received no reply. In any case in the copy letter exhibited, she requests that in view of her previous legal history with the first named respondent, he should not try her case. She also enquired if the first named respondent was scheduled to hear the case, and if he was willing to excuse himself. She then went on to say that she would require another date in front of a different judge after 21st June, 2016, by which time her judicial review proceedings would be concluded. The letter concluded by saying that she would need to have the position verified within three working days, as otherwise she would have to draft an emergency motion before the Supreme Court. The applicant received no reply to this letter, and in this application asserts that the first named respondent should have recused himself from hearing the summonses against her, on the grounds of objective bias.

The Applicant's case

22. In her statement of grounds, the applicant relies upon Articles 38.1, 40(3)(1) of Bunreacht na hÉireann, Article 6 of the European Convention on Human Rights and the European Charter of Fundamental Rights in support of her argument that she was entitled to be heard in her defence of the charges brought against her. In short, she claims that the first named respondent should not have proceeded to hear the charges against her in the absence of the applicant. She claims that the first named respondent had three courses of action open to him:-

> 1. He could have adjourned the case to a later date. If he was not satisfied that the applicant was ill and unable to attend court, he could have requested medical evidence to be produced at that later date;
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> 2. He could have issued a bench warrant for the arrest of the applicant;
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> 3. He could choose, as he did to deal with the charges against the applicant in her absence. This course, she submits, is contrary to the principle of *audi alteram partem* and renders the proceedings and the convictions a nullity.

23. The applicant claims that the first named respondent should have not proceeded with the trial in her absence because:-

1. She had previously applied, in writing, to adjourn the proceedings;

2. she had previously requested, in writing, that the first named respondent should recuse himself on grounds of objective bias;

3. while acknowledging that trials in the absence on an accused person are permissible under certain recognised conditions, or when the accused agrees to such a procedure, she did not so agree.

24. The applicant claims that she is being denied her property through the seizure of her animals, contrary to Article 43 of the Constitution. This point is not relevant to the within proceedings, because the prosecution for offences under the Act of 2013 is an entirely separate matter to the seizure of her animals. Moreover, the applicant contested, *inter alia*, the seizure of her animals in the judicial review proceedings, the subject of the decision of Twomey J.

Statement of opposition of Respondents
25. The respondents deny that the applicant is entitled to any of the reliefs claimed. They deny that any property of the applicant was seized under the order of the first named respondent of 7th July, 2016. It is pleaded that the right of access to the courts and the right to be heard are not absolute rights and, in any event, the applicant was afforded a full right to be heard and a full right of access to the courts such as were sufficient to satisfy her rights.

26. It is pleaded that the first named respondent was entitled to reach the conclusion that he did on 7th July, 2016, based on the facts pertaining at the time. It is denied that the first named respondent was prejudiced in any way against the applicant, and it is pleaded that the applicant failed to provide any particulars in respect of such a claim and accordingly this element of the applicant's claim should be dismissed on this basis.

27. It is denied that the trial was not conducted in accordance with any directions previously given by the District Court and in accordance with the rules of the District Court. It is pleaded that the applicant has failed to provide any particulars in respect of such a claim.

28. It is denied that the applicant is entitled in these proceedings to challenge any decision made to enter upon her property and to seize her animals and it is pleaded that this issue was dealt with in other proceedings taken by the applicant, specifically those dealt with in the decision in Twomey J.

29. It is denied that any of the applicant's animals were seized on foot of any order of the District Court challenged in these proceedings. The animals were seized following service on the applicant of a notice pursuant to the Act of 2013, and the applicant exercised her rights of appeal, firstly to the District Court as provided for in the Act of 2013 and again to the Circuit Court, and in each case her appeals were dismissed.

30. Insofar as the applicant raises claims concerning the conduct of the trial, the respondents plead that at all material times the applicant was afforded an opportunity to put forward a defence. The trial proceeded in the absence of the applicant in circumstances where she failed to apply for an adjournment of the prosecution of 6th July, 2016, and failed to appear on the day of the hearing on 7th July, 2016.

31. It is also pleaded that the applicant has a full right of appeal to the Circuit Court which she has exercised, and she is therefore precluded from seeking any relief by way of judicial review.

32. It is further pleaded that this application for judicial review is being brought out of time and it is denied that there is any good or sufficient reason to extend the time for the issue of the proceedings. It is denied that the application to set aside the orders by the first named respondent extended the time limit pertaining to these proceedings.

33. It is denied that the applicant was under medical treatment such as would have prevented her bringing the within application within the time permitted by the Rules of the Superior Courts. Throughout the relevant period, the applicant attended before this Court in respect of other proceedings.

Discussion and decision

Preliminary issue – application to extend time to bring application for leave
34. Having been convicted by the first named respondent on 7th July, 2016, it was necessary for the applicant to bring forward an application for judicial review in respect of that conviction no later than 7th October, 2016. The applicant argues that she did not do so because she had made application to set aside her conviction. That application was heard by the District Judge on 13th September, 2016, and he delivered his ruling on 21st September, 2016. The applicant argues that the matter was still in the hands of the first named respondent until that date, and therefore that the time for the bringing of judicial review proceedings did not begin to run until that date. The applicant also argues that having appealed the decision of the first named respondent within fourteen days, there was a stay on the operation of the order of the District Court, which should also operate to extend the time for the bringing of an application for leave for judicial review. The applicant also argues that an appeal to the Circuit Court is not an adequate alternative remedy to Judicial Review because she has been denied at first instance an opportunity to be heard in respect of the charges brought against her.

35. In response to this, the respondents argue that there is no basis in fact or in law for the assertion of the applicant that her application to have the conviction set aside extends the normal time limits. She was obliged to operate within the normal time limits and she would have been well aware of the same, given her legal training and extensive litigation experience.

36. Insofar as the applicant has argued that time should be extended because she was under medical supervision and receiving treatment, it is submitted that the applicant was in a position to attend the High Court in relation to other matters, such as the related judicial review proceedings. Accordingly, it is submitted the applicant has not provided good and sufficient reason to extend time for the bringing of this application.

Decision on Preliminary Issue
37. Order 84, rule 21(1) of the Rules of the Superior Courts (as amended) requires an application for judicial review to be brought within three months from the date on which the grounds for the application *first* arose, unless the court is satisfied that there are good reasons for extending that period. The applicant advances two reasons for extending the period in this case. First, she brought an application to set aside a decision of the first named respondent, and the applicant argues that the matter was still before the

first named respondent until he made his decision on that application on 21st September, 2016. However, it is clear that the grounds for the application for leave *first* arose on 7th July, 2016. There is no reason at all why the applicant could not have brought forward the leave application within the period stipulated by O. 84, r. 21(1), notwithstanding her application to set aside the decision by the first named respondent. Indeed, she still had sixteen days within which to do so following the delivery by the first named respondent of his decision on the application to set aside the conviction of the applicant. All of this applies, a *fortiori*, in circumstances where the applicant has at all times acted on her own behalf in these proceedings, and accordingly has incurred no costs in bringing forward these proceedings, save whatever court fees may be involved. That is not to suggest that costs could in and of themselves be a good reason for delaying in bringing forward an application for judicial review, but merely to point out that the applicant in this case was never going to suffer a financial prejudice by making an application for leave.

38. Secondly, the applicant argues that having filed a notice of appeal in the Circuit Court in time, thereby staying the operation of her conviction, that her appeal is also a good reason to extend time to bring an application for judicial review. There is no authority at all for this proposition. The time limit for the bringing of proceedings by way of judicial review is a stand alone time limit, and is not subject to the conclusion of another remedy such as an appeal. If that had been intended, O. 84, r. 21(1) of the Rules of the Superior Courts would surely say so. To accept this argument would be to drive a coach and four through O. 84, r. 21 (1).

39. While it appears that the arguments advanced in these proceedings by the applicant on the grounds of her health relate to her ability to be in court on 7th July, 2016, and not the three months' time limit for the bringing of an application for judicial review, it is nonetheless appropriate to observe that there is nothing in the material placed before the court on this application to suggest that the applicant was inhibited on health grounds from bringing forward an application for judicial review within the prescribed time limit. The medical certificate that she made available to the first named respondent on the application setting aside her conviction simply says that the applicant was receiving treatment for an infected leg ulcer, and was unable to attend court (although the certificate actually says her "*course*") on 7th July, 2016. While there is no reason to doubt that the applicant may well have an underlying significant medical condition as she asserts, there is absolutely nothing to suggest that this inhibited her ability in any way to initiate legal proceedings. On the contrary; she was able to bring forward an application to set aside her conviction and prepare a grounding affidavit in support of that application.

40. There is no doubt at all that the period for bringing forward an application for judicial review in respect of her conviction on 7th July, 2016 expired on 7th October, 2016. The notice of motion seeking leave for judicial review was not issued until 16th November, 2016. Since the applicant has failed to advance any good reason to extend the time for bringing forward an application for leave, the application was clearly out of time and on that ground alone stands to be dismissed. Nonetheless, I will proceed to address the other issues raised by the applicant in these proceedings.

Trial in her absence

41. The applicant claims that, had she realised that this matter was listed for hearing on 7th July, 2016, she would have attended to defend the proceedings. There is of course no doubt at all that the applicant was aware that the matter had been scheduled for hearing on that date. She was present in court on 7th April, 2016, when Judge Hamill adjourned the matter for hearing to that date, specifically at 10.00 a.m. Even on her own case, she attended before the first named respondent on 6th July, 2016, for the purpose of applying to adjourn the proceedings, on medical grounds. However, the manner in which she purported to move an application for an adjournment on 6th July was, to say the least of it unorthodox. Firstly, she did not notify, in advance, the solicitor for the second named respondent of her intention to make the application. That failure might properly be considered a pattern on the part of the applicant, who, when attending previously before Kearns P. and Humphreys J. in moving applications to restrain the progress of the prosecution, also did so on *ex parte* basis.

42. She then purported to move the application for the adjournment to the court clerk, while the judge was engaged in other matters. She claims that she did this because in her observation "*it is the court clerk that controls the legal diary and advises the judge of possible court dates*". Her entire conversation was conducted with the District Court clerk, who informed her that she would have to make an application for an adjournment the following day, when the matter was listed. She contends however that the first named respondent heard all of this and nodded to her as if assenting to an adjournment (to an unspecified date). It is clear from the transcripts of both of the hearing on 7th July, 2016 and of the application to set aside conviction that the first named respondent heard none of this and certainly did not adjourn the proceedings.

43. Again, on her own case, the applicant is a highly experienced litigant who beyond any doubt has acquired great familiarity with court procedures. Her account of what transpired in court on 6th July, 2016 is disingenuous. It is not believable that the applicant could have thought that she had succeeded, on that date in obtaining an adjournment of the charges before the court the following day. At a minimum, she had no good grounds for such a belief. Moreover, Mr. Mullen, the solicitor acting on behalf of the second named respondent in the proceedings, averred that, having received a letter from the applicant in the afternoon of 6th July that she would be unable to attend court the following day for medical reasons, he immediately telephoned her to inform her that she would have to satisfy the court as to her grounds for an application, the following day, by production of an appropriate medical certificate. I have no doubt at all that the applicant knew that the charges against her remained listed for hearing the following day.

44. Not only that, they were listed for hearing at 10.00 a.m. The applicant's appointment was not until 2:45pm the following day, and in her affidavit grounding this application, she says that she could have got a bus at 1:30 p.m. which would have got her to her appointment on time. Not only was there time for her to attend before the court to move an adjournment application on 7th July, there might well have been time for the entire case to be heard that morning, if counsel for the second named respondent was correct when he informed the court on 7th April, 2016 that the case would take two hours. Even if the applicant was not medically fit for a full hearing on 7th July (and she has not placed any evidence before the court demonstrating that this was so - the medical certificate that she subsequently obtained falls far short of establishing that this was the case) there was clearly nothing to prevent her attending court to move an application for an adjournment on medical grounds, and she did not do so, even though she had been informed both by Mr. Mullen, the solicitor for the second named respondent, and by the court clerk, that she should do so. The factual situation therefore is that the applicant freely chose not to attend court on 7th July in the full knowledge that the proceedings against her remained listed for hearing.

45. The applicant claims that in proceeding with the trial in her absence, the first named respondent breached her rights to a fair trial under Article 38 of the Constitution, and Article 6 of the European Convention on Human Rights. Even she acknowledged however that a District Judge does have discretion to adjourn cases or to hear them in the absence of the accused. She expressly acknowledges this in para. 14 of her affidavit of 12th September, 2015, in support of her application to set aside her conviction, as well as in para. E(2) of her statement of grounds. However, she says that that discretion must be exercised judicially, and in this case she argued that the first named respondent should either have adjourned the case or alternatively should have issued a bench warrant for the applicant, before proceeding to trial.

46. The respondents submit that the applicant is not entitled to claim she was denied a right for a fair hearing when this arose entirely through her own fault. The respondents rely upon the decision of Murphy J. in *Lawlor v. District Judge Hogan* [1993] ILRM 606 wherein he stated at p. 610:-

> "If a trial Judge is satisfied that the accused has consciously decided to absent himself from the trial (at a time when his presence is not essential to enable some particular procedure to be complied with) then the trial Judge would be entitled in his discretion to proceed with the trial in the absence of the accused."

47. The respondents also rely upon the case of *O'Brien v. The District Judge John Coughlan* [2016] IESC 4. In that case the defendant failed to attend, and his solicitor, who expressed surprise that his client was absent, applied for an adjournment. However, the District Judge proceeded to hear the case and sentenced the defendant to five months' imprisonment and disqualified him from driving a motor vehicle for 40 years. Charleton J., in the Supreme Court, stated at paras. 8 and 9 of his judgment as follows:-

> "8. Where either prosecution witnesses or an accused fail to attend, the first enquiry by a judge will be as to notice and as to whether there is any evidence that some unavoidable or very serious issue has intervened. Thereafter, acting judicially, a judge has the option, when satisfied as to notice, to proceed with the trial. In the District Court, there may be particular issues to which the accused must consent before a criminal trial may take place within jurisdiction. Usually, such issues as the minor nature of the offence, the consent of the Director of Public Prosecutions to summary disposal and any right there may be in an accused to have a jury trial, if applicable, will have been decided before any trial date is set by earlier decisions in the presence of the accused. Where the presence of the accused is needed for such decisions, but he or she chooses not to attend, the appropriate response is to cause his or her arrest through a bench warrant; *Lawlor v District Judge Hogan* [1993] ILRM 606. Any issue as to when it may be appropriate to continue with, or even commence, a trial on indictment are entirely separate and do not now arise for decision.
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> 9. In this case, there is nothing to demonstrate that that the trial judge exercised his discretion incorrectly in proceeding with the case in the absence of the accused. Jason O'Brien manifestly knew of the date, he had been present when it was set and he was represented by a solicitor …"

48. In the same decision, Charleton J. then went on to consider whether or not it was appropriate in that case that the District Judge proceeded to sentence in the absence of the accused. He observed that sentencing has always been regarded as a separate hearing from the criminal trial process, where same leads to a conviction. He referred to the case of *Brennan v. Judge Desmond Windle* [2003] 2 ILRM 520 in which the Supreme Court held that where an accused is convicted, but was not represented at his trial, consideration of sentence should be adjourned where the judge "*is of the view that a prison sentence may be appropriate, in circumstances where this may not be invariably predicted from conviction for the offence*". He cited a passage from the decision of Geoghegan J. in that case in which he said:-

> "Once the [district judge] would have had in mind to impose a prison sentence and particularly a sentence as long as four months and, particularly also in the circumstances, that the offence in question would not invariably attract a prison sentence, the [district judge] failed in my opinion to afford the applicant due process and/or fair procedures or natural/constitutional justice."

49. I have already found as a fact that the applicant knew that the hearing was scheduled to take place on 7th of July, 2016, and had no grounds for believing that the first named respondent had either adjourned the case, or had agreed to do so. The first named respondent was satisfied, and had ample grounds for being satisfied, that the applicant knew that the case was scheduled for hearing on that date. It is clear from the authorities referred to above that in these circumstances the first named respondent had a discretion as to whether or not to proceed with the case, and he elected to do so. The applicant has not, in my view, established any basis for concluding that the first named respondent erred in exercising his discretion in the manner that he did.

50. As to whether or not the first named respondent should, having found the case against the applicant proven, have adjourned consideration of the penalties to be imposed upon the applicant, this point was neither specifically pleaded nor argued in these proceedings. However, it is clear from the decision of Charleton J. in *O'Brien* that the circumstances in which a District Judge should do so (having convicted an accused person *in abstentia*) would usually arise where a District Judge is considering imposing an unusually harsh penalty, and in particular a prison sentence. Indeed, the authorities go as far as to suggest that the obligation to adjourn the question of penalty, to allow the accused (now convicted) person to be represented, arise where the penalty being contemplated is one which would not "*invariably*" attract a prison sentence. In this case, no sentence of imprisonment was imposed. The fines per offence were modest and at the very lower end of the scale. The maximum fine under the Act of 2013 was €5,000 per offence. The total fine imposed for all nineteen offences was €1,710. The amounts imposed in respect of costs and expenses were also very modest. While I was offered no evidence on the subject, it strikes me that they are so modest as to be less than the real cost of bringing such proceedings through to a conclusion.

51. As to the disqualification from keeping animals, this was an entirely predictable outcome. It is a power conferred upon the court under the legislation, and the applicant's animals had already been seized. It would be surprising if a court did not at least give consideration to the possibility of imposing such an order. For all of these reasons, I am of the view that the first named respondent was entitled to proceed to hear the case in the absence of the applicant, and to impose the penalties that he did, on 7th of July, 2016.

52. The applicant has also argued that the first named respondent should not have heard the case against her because he had previously heard cases involving the applicant, and had previously convicted her of offences. She placed a particular reliance on the fact that she had succeeded in obtaining orders of certiorari by way of judicial review quashing convictions imposed upon her by the first named respondent. She argued therefore, that a reasonable person would conclude that in such circumstances the first named respondent might not be objective in hearing further criminal charges involving the applicant. She relied on the fact that she had raised this issue by letter sent to the District Court clerk on 8th of March, 2016.

53. The applicant referred me to a number of authorities on this point in her submissions. She also referred me to *Judicial Review*, Second Edition by Mark DeBlacam, where he states:-

> "The application of the reasonable suspicion test involves a hypothesis. The courts must consider the effect of the circumstances, as they are proven to be, on the mind, not of the applicant, but of the proverbial 'reasonable man'. The matter must be approached from the point of view of a right minded person and not on the basis of a suspicion which might dwell in the mind of a person who is ill-informed and did not seek to direct his mind to the facts."

54. The difficulty with the arguments of the applicant in relation to all of this is that the applicant has only pleaded and argued the issue in a very general way. In applying to quash a conviction on grounds of objective bias, it is not enough to merely assert the possibility of bias. The person alleging objective bias must place before the court facts which might leave a reasonable person to apprehend the possibility of bias. The applicant has placed no evidence of the limited facts pleaded by her before the court. She has simply averred that she was previously convicted of offences by the first named respondent, and that she succeeded in having such convictions quashed. She did not exhibit any documentation, nor indicate the nature or number of charges involved or the number of judicial review cases she has taken against the first named respondent. But even if she placed all of this information before me, the mere fact of previous convictions or previous successes on the part of the applicant in having such convictions quashed, would be unlikely to be sufficient to establish objective bias. The applicant herself referred me to a decision of Humphreys J. in the matter of *David Walsh v Minister for Justice and Equality and ors* [2016] IEHC 323, in which he made the following remarks at para. 16:-

> "A previous decision on a point of law adverse to an applicant does not constitute bias. In the course of his application for a right of audience, Mr. Beades asked me to recuse myself because I had previously rejected the concept of a right of audience for a 'lay advocate' in *Knowles*. This application was without merit. Merely having made a decision on a point of law adverse to the position that a particular applicant is seeking to make does not constitute bias. 'It must be clearly understood that one adverse ruling, or even a series of adverse rulings, by a court is not, without significantly more, to be regarded as grounds for claiming either subjective or objective bias. *Tracey v. Burton* [2016] IESC 16 (Unreported, Supreme Court, 25th April, 2016) per MacMenamin J. (Denham C.J. and Charleton J. concurring) at para. 45 (for some of the limitations of the doctrine of bias see also the judgment of Irvine J. (Ryan P. and Hogan J. concurring) in *O'Driscoll (a minor) v. Hurley and H.S.E*. [2015] IECA 158 (Unreported, Court of Appeal, 8th July, 2015) at paras. 73 to 86; and *Garda Commissioner v. Penfield Enterprises Ltd*. [2016] IECA 141 (Unreported, Court of Appeal, Irvine J., 11th May, 2016)."

55. While this passage is concerned with decisions of a judge that do not involve the party before the court, it scarcely helps the applicant's case. The applicant has not referred me to any case, and I am not aware of any case, in which that the mere fact that a person has previously been convicted by a District Judge or otherwise found against a person constitutes sufficient grounds to sustain a claim for objective bias. In her submissions the applicant refers to a textbook by Mr. Derek Dunne B.L. published by Roundhall entitled: *Judicial Review of Criminal Proceedings* in which he suggests, at p. 256, that a judge should perhaps not hear cases involving an accused person who has previous convictions, in certain circumstances. It is worth quoting the passage relied on in full:-

> "A judge cannot be required to recuse himself from hearing and determining a criminal case on the ground of objective bias merely on the basis that the accused has appeared before the same judge on a prior occasion, whether in relation to the same matter or in relation to different matters. It follows that the existence of objective bias cannot be inferred merely from the fact that the same accused has appeared before the same judge on prior occasions. However, there may be occasions where it would not be appropriate for a judge to deal with an accused, in circumstances where the accused has appeared before the same judge on previous occasions. For example, in circumstances where an accused is charged with an offence to which the accused pleads not guilty and if the trial judge is aware that the accused has previous convictions for the same or similar offences, it is suggested that it would be prudent for that judge not to deal with the matter. In *R. v. Metropolitan Stipendiary Magistrate, ex parte Gallagher* [1972] 136JP80, Lord Widgery C.J. observed:
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> > "It is a commonplace that in the Magistrates' Courts the court may have some knowledge of the accused's previous record simply by virtue of the fact that the court may have sat to determine previous charges against him. It is no doubt desirable that in many instances that an accused person should come before a Magistrate who does not have an intimate knowledge of his record. But that desirability cannot be elevated to a proposition of law sufficient to deprive the Magistrate of jurisdiction and thus to justify an Order of Prohibition going in a case of this kind. Having said, the court would however stress the desirability that a Magistrate should not try an information where he has an intimate knowledge of an accused's background, and no doubt in this case consideration will be given to the possibility of some other Magistrates dealing with the matters in question."
>
> I would make two observations in relation to this point. Firstly, the applicant has not placed before me the evidence upon which she relies to make this argument *i.e*. she has not provided me with details of previous convictions imposed upon her by the first named respondent, so it is not possible for me to compare those with the offences of which she was convicted on 7th July, 2016. Secondly, I think it is important to say that the proposition of Mr. Dunne to the effect that it would be prudent for a judge not to deal with a matter in circumstances where an accused is pleading not guilty to an offence, and the judge is aware that he has previous convictions for the same or similar offences, is just that *i.e*. a proposition only, and it seems to be somewhat at odds with what he has clearly stated as being the law at the beginning of the passage that I have recited.

56. Lord Widgery C.J. stated that a magistrate should not try an accused where he has an "*intimate knowledge of an accused's background*". The question therefore arises as to what constitutes "*an intimate knowledge of the accused's background*" for the purpose of this argument. In my view it would need to be something more than mere knowledge of the fact that an accused person had convictions for the same or similar offences, and it seems quite clear from the passage quoted that that of itself is not enough to require a judge to recuse himself or to justify an order of prohibition preventing a judge hearing a case.

57. Finally, the applicant also complained that the solicitor for the second named respondent had failed to comply with directions given by Judge Hamill in advance of the trial date. In particular, she says that she was not notified at least one month in advance as to the witnesses that the second named respondent would be calling, as directed by Judge Hamill. This allegation is not refuted, and it appears that the applicant was not in fact written to in this regard until just three days before the trial, on 4th of July, 2016.

58. If the applicant considered that she was prejudiced by reason of the tardiness of this correspondence, because, for example, she anticipated that other witnesses would have been called whom she might wish to cross-examine, this is a point that she could have made to the first named respondent in support of an application for an adjournment, on the trial date. Depending on whether or not she could have established prejudice, she might or might not have succeeded with an application to adjourn in those circumstances. But by failing to attend court on the day, she deprived herself of this opportunity.

59. For all of these reasons, this application must be dismissed.