**THE COURT OF APPEAL**

Neutral Citation Number: [2018] IECA 267

**2017/348**

**Hogan J.**
**Whelan J.**
**McGovern J.**

**BETWEEN**

**FINBAR TOLAN**

**APPELLANT**

**AND**

**CONNAUGHT GOLD CO-OPERATIVE SOCIETY LIMITED**

**RESPONDENT**

**JUDGMENT of Ms. Justice Máire Whelan delivered on the 31st day of July 2018**

1. This is an appeal against the judgment and orders of Noonan J. made in the High Court on 31st May 2017. The appellant's motion sought to re-enter concluded proceedings, where final orders had been made in the High Court by former President Kearns on 15th May 2014. Those orders had subsequently been upheld by this Court.

2. The basis for the application included, *inter alia*, that the orders and judgment had been obtained unfairly and by deceit. The motion to re-enter claims that the final orders were obtained in breach of constitutional rights and fair procedures and were tainted by bias. The appellant alleges that since the former President of the High Court who heard the case was a brother in law of a solicitor in the firm of solicitors who represented him in the High Court litigation this gave rise to bias. The appellant is a litigant in person.

**Background**
3. The appellant was a cattle dealer involved in the purchase of cattle at marts owned by the respondent Co-Operative Society. He had a credit facility with the respondent for over twelve years until the relationship between the parties deteriorated in the year 2012. The appellant contended in the original action that the co-operative engaged in unconscionable conduct against him. He alleged breach of contract and that he suffered significant loss, injury, harm and damage.

4. In September 2012 he sought legal advice from Dillon Leetch & Comerford, solicitors (hereinafter "the solicitors") of Ballyhaunis, County Mayo. He attended the home of Mr. Robert Potter Cogan from that firm. He recalls that the solicitor worked from home at that time. They had a number of meetings. In an affidavit sworn by the appellant on 15th November 2016 grounding his motion he deposes that "… after a lot of back and forth Mr. Potter Coogan explained to me that if this matter would not be resolved without going to court, that he may not be able to attend court… But he informed me that if I wanted to take advice from another solicitor I could do so but to keep him updated on the case and to feel free to come back to him at any time in the future if I required any further assistance with relation to the matter…"

5. Thereafter the appellant, without involvement on the part of the said solicitors, caused plenary proceedings to be instituted before the High Court in late November 2012.

6. Subsequently, in 2013, the appellant went back to the said solicitors for advices. It appears that from 2013 the appellant primarily dealt with a Mr. Brady within the firm. The firm of solicitors did not formally come on record in the High Court proceedings until about the 3rd day of February 2014.

7. In arguments and submissions before the High Court and in this Court the appellant raised a series of grievances and issues directed against his former solicitors. However, the said solicitors are not a party to these proceedings. A primary grievance relates to delays in having his action heard.

**Former President of the High Court**
8. It appears that on 20th November 2014 an application came before the former President of the High Court in the non-jury list. The respondent sought to have the case struck out. The appellant had not replied to a notice for particulars and had also failed to make discovery. The President refused to strike out the case and fixed a hearing date. The appellant contends that his instructions to his solicitors on that day were to obtain the earliest possible date wherever it could be secured e.g. "Cork, Galway etc.":

> "I was endeavouring to secure as early a hearing date as possible. However, when the President asked Ms. Denning for a date, he was advised that the next date was circa six months away, May 12th 2015."

It appears that the appellant was not personally present in court on 20th November 2014 and cannot give a first-hand account of what transpired.

9. Subsequently, the appellant engaged directly with the High Court registrar whom, he alleges, confirmed that earlier hearing dates were available if the parties were willing to travel to Cork. He also expressed dissatisfaction directly to his solicitor for failing to secure an earlier date. Following the fixing of the trial date the appellant continued to ventilate disgruntlement that an earlier date had not been secured. There is a letter dated 2nd December 2014 from his solicitor, Mr. John Brady, to the appellant referring to "text messages sent on the 28th November 2014."

10. The letter recounts that the High Court registrar had spoken with the appellant's solicitor on the evening of 1st September 2014:

> "She confirmed to me that you did not tell her that the President of the High Court has retained seisin of your case. You

> will recall that I have previously explained what this means to you. It means that the President of the High Court is going to hear your case and make sure it gets a good and proper hearing."

11. The letter continues:

> "Your instructions to us were to obtain the earliest date. We asked the court for the earliest date. Ms. Denning was the lady who called out the date of the 12th May 2015 as the earliest date possible when we made the application on the 20th November 2014. There was another date before this in May 2015 but that was not suitable due to the fact that the Solicitor for the Defendant was engaged with the High Court in Sligo at the same time."

12. The case came on for hearing before the High Court on 12th May 2015 and was heard by the former President over four days. The appellant was represented at all material times by the firm of solicitors and by senior and junior counsel. At the conclusion of the hearing the President of the High Court found in favour of the respondent.

13. The orders and judgment of the President of the High Court were appealed to this Court. The hearing took place on 19th December 2015 and judgment was delivered on 5th May 2016 dismissing the appeal and awarding costs to the respondent. An application for leave to appeal to the Supreme Court was refused on the 28th day of July 2016. Accordingly, the orders of Kearns P. were not reversed and continue to be in full force and effect.

**Brother in law**
14. The appellant became aware in the month of September 2016 that the trial judge, Kearns P., was related by marriage to Mr. Potter Cogan, the solicitor he had initially dealt with in the firm. Mr. Potter Cogan is a brother in law of the former President. The appellant asserts that by virtue of this fact the President ought to have recused himself from hearing the case and that arising from his failure to do so the hearing was tainted by bias. As such all findings and determinations ought to be set aside and the case heard by a different judge.

**The motion**
15. The within application was brought by a notice of motion dated 14th November 2016 seeking to re-enter the High Court proceedings on the basis, *inter alia*, that the orders were:

> "obtained unfairly and by deceit and by the Court and the Plaintiff having been misled both innocently and deliberately"

16. It is alleged that the findings made by the President were "unsound" and ought to be set aside as being tainted by bias. It was further claimed that the orders were:

> "gravely flawed by reason of a fundamental breach of fair procedures and justice guaranteed by the Constitution."

17. The appellant's grounding affidavit of 15th November 2016 goes into detail on the history of the relationship between him and his former solicitors. He also rehearses various perceived grievances concerning the conduct of that litigation by that firm. The appellant is aggrieved that certain witnesses who, in his view, were important had not been called at the hearing on his behalf or were released early in the course of the hearing. There is no suggestion that the President of the High Court had any input into these decisions.

18. At para. 32 he deposes that:

> "… in September 2016 it came to my attention that the Former President of the High Court, Justice Nicholas Kearns, who heard my case is in fact a Brother-in-Law of Robert Potter-Coogan…"

He deposes that he should have been made aware of this fact by his solicitors:

> "I say with respect that the learned President should have recused himself, such that not alone justice was done but seen to be done by an impartial judge having no contact or relationship with anybody involved in the case. When the President was aware of this relationship and had retained my case and discussed it with my solicitors, he duly knew himself that he should recuse himself."

19. The appellant asserts bias:

> "In general a Judge will recuse himself from any case in which he has a personal connection, [for] example a case that involves relatives or friends or some other circumstances that might create a risk of their impartiality being called into question."

There is no evidence that any party to the case or any witness was a friend or relative of the former President of the High Court.

20. He further appears to take exception to a comment by the President at the conclusion of the case that he had been impressed with the evidence of witnesses called on behalf of the respondent. The appellant had not called a number of his own witnesses. The appellant objects that the President's said comment was made in circumstances where certain of his own witnesses had never been called to testify on his behalf at the hearing.

21. It is by no means clear on what basis the trial judge could conceivably be responsible for tactical decisions made by the appellant's own legal team regarding witnesses. He asserts that by virtue of these matters he did not get a fair trial.

**The judgment on the motion to re-enter**
22. Mr. Justice Noonan noted that once a case has been litigated to a final conclusion by the court delivering judgment it cannot be revisited save in very limited circumstances.

23. The trial judge emphasised the importance of finality in litigation and in that regard cited the decision of the Supreme Court in *Talbot v. McCann FitzGerald* [2009] IESC 25 where an application to set aside a final judgment and order of the Supreme Court on the grounds of reasonable apprehension of objective bias was refused. Denham J. had noted that such an application could only be exercised in extremely rare and exceptional cases. Mr. Justice Noonan noted that the Supreme Court's reasoning was that a fundamental principle is that a final judgment is conclusive of the litigation "because the finality of litigation is an important concept in the administration of justice."

24. The trial judge noted that in substance what the appellant sought was not alone to set aside the orders made by the High Court but also the final judgment of the Court of Appeal which had affirmed the High Court. He also noted at para. 21 of the unusual and quite possibly unique nature of the allegation of bias in the instant case:

> "The plaintiff does not allege, as one might expect in such circumstances, that the trial judge was biased against him because of some connection or link to the defendant. Rather, the plaintiff complains of the trial judge's relationship with the plaintiff's own solicitor."

25. The trial judge further stated:

> "Applying the test in *Bula Limited v. Tara Mines Limited (No. 6)* quite apart from the issue of whether this court could have any jurisdiction to intervene in this matter, I cannot envisage how the mere fact alone that the trial judge is related by marriage to the plaintiff's solicitor could conceivably give rise to an ordinary reasonable member of the public having a reasonable apprehension that the plaintiff would not have a fair hearing from an impartial judge."

26. The trial judge continued:

> "Even if that were to give rise to any legitimate cause for complaint, one would have thought it could only be on the part of the defendant. In that regard, I must of course bear in mind that the defendant is entirely uninvolved in any of the matters of which the plaintiff complains and the prejudice to it must be considered. The legal test of bias already described is predicated on the assumption that a reasonable person might reasonably apprehend bias on the part of a judge in favour of the party with whom the judge has a connection. It would make no sense to suggest that a reasonable person would have a reasonable apprehension that a judge would be biased against the party with whom the judge has such connection. Logically therefore, it is difficult to see how the test could be satisfied in circumstances such as arise here." (para. 22)

27. The trial judge noted that the most serious allegation being made was that the trial judge had discussed the case directly with the plaintiff's solicitor in advance of the hearing:

> "Had such a thing occurred, it would of course have been quite improper but there is in my view no admissible evidence that establishes that fact. What is key however is that even if it had occurred, the plaintiff himself was well aware of it long in advance of the trial of his action and yet took no objection to the President hearing the case. Nor, having lost the case before the President, did he raise it as an issue in the appeal." (para. 23)

28. The trial judge concluded that there was no conceivable basis upon which he would be justified in interfering with the final orders and judgments already pronounced in the proceedings. He also considered it material that the respondent was quite blameless in relation to the matters complained of. He concluded that the jurisdiction contended for did not arise and even if it did the justice of the case required refusal of the application.

**The appeal**

29. The appellant appeals the said judgment of Noonan J. and the orders made dismissing his application. The grounds of appeal include the following:

> (i) The trial judge erred in the manner in which he applied the established principles of objective bias to the facts of the case.
>
> (ii) The trial judge put too much emphasis on the innocence of the respondent in respect of the complaint.
>
> (iii) The trial judge erred in his interpretation of what occurred in the High Court on the "20th November 2014 in respect of obtaining an earlier hearing date for his case than that assigned by the then President of the High Court..."
>
> (iv) The trial judge erred in questioning the appellant's failure to object to the President of the High Court retaining seisin and hearing the case on having discussed it with his solicitors.
>
> (v) The trial judge erred in determining that the trial was not affected by objective bias.
>
> (vi) The judge failed to hear the appellant in accordance with natural and constitutional justice.
>
> (vii) The judge failed to apply the principles of *audi alteram partem*.
>
> (viii) That judge erred in principle and in law "by not giving any regard to the application of article 6 of the European Convention on Human Rights".
>
> (ix) The learned judge erred in law in ignoring the fact that the appellant had a constitutional right to be heard before an impartial judge.
>
> (x) The learned judge failed to address submissions of the appellant that the President had failed to disclose a familial relationship and to recuse himself as was his duty.
>
> (xi) The learned judge failed to consider specific claims and complaints of the appellant which had been clearly set out in his affidavits of 15th November 2016 and 17th January 2017 supporting the application.
>
> (xii) The learned judge failed to consider "unconscionable behaviour" that occurred at the hearing before the former President of the High Court.

**The allegations**

30. It would appear that the key allegations directed against the former President of the High Court are essentially twofold:

> i. That the former President improperly took seisin of the case in November, 2014 following unorthodox contact between

him and the appellant's former solicitors.

ii. The former President being a brother in law of a solicitor in the firm retained by the appellant to represent him, ought to have disclosed that fact to both parties and recused himself from any involvement with the case.

31. The appellant's allegations regarding misconduct on the part of the President of the High Court by directly discussing the case with the appellant's own solicitors to the exclusion of the respondent's solicitors in November 2014 are based entirely on hearsay. As Mr. Justice Noonan noted there was no admissible evidence to support the claim. At para. 22 of his affidavit sworn on the 15th November 2016 and referred to above the appellant states:

> "Mr. Brady replied that the President must not have told Miss Denning that he had discussed the case with our firm and therefore she would not have known he retained seisin of the case."

The affidavit continues:

> "I then asked Mr. Brady if the Defendant was aware of this situation and he advised that they were." (para. 22)

32. It would appear from the documentation and correspondence exhibited that in November 2014 the appellant became preoccupied with securing the earliest possible date for hearing of his case irrespective of all other considerations. It is clear that he was greatly exercised in regard to this issue and engaged in direct, separate communications with the registrar of the High Court in regard to the matter. It does appear that he had health issues at the time and attended hospital on 26th November 2014 having been sent there by his G.P. who was concerned about his cardiac situation.

33. The appellant's highly-charged rendition of events suggesting that he had been told by his solicitor of some private conversation between the solicitor and the President of the High Court pertaining to his case lacks supporting evidence. The claim is put into context when one considers two pieces of evidence from parties who, unlike Mr. Tolan, were present in court on 20th November 2014 when the former President fixed a hearing date for 12th May 2015. Said evidence includes the affidavit sworn on behalf of the respondent on 6th December 2016 by Eamonn M. Gallagher, solicitor for Connaught Gold, and the letter sent to the appellant by his own solicitor Mr. Brady dated 2nd December 2014.

34. At para. 12 of his said affidavit Mr. Gallagher deposed:

> "Insofar as the Plaintiff raises issues at paras. 15 – 24 (inclusive) of his Affidavit in relation to the listing of the case before the High Court, I say and confirm that there were a number of Court applications in circumstances where replies to particulars and discovery remained outstanding on the Plaintiff's side which required a Motion from the Defendant to dismiss the Plaintiff's claim in November 2014. The Plaintiff asserted during the course of one of the Court hearings that he had no documentation in his possession to produce on foot of the Discovery Order obtained by the Defendant and, having considered matters, the President stated that the Plaintiff would have to stand over this position at the hearing. The President retained *seisin* of the of the case and assigned the first available date suitable to the parties, being the 12th day of May 2015."

35. Far from there being any covert engagement between his solicitor and the then President of the High Court, the available evidence suggests that the application occurred in open court. Crucially the respondent's lawyers were present in court. It appears that the appellant's case was in no fit state to be tried as of November 2014 because the appellant himself was in default in two respects. Firstly, he had failed to reply to a notice for particulars and secondly he had failed to make discovery as he was obliged to do to support the claims he was advancing in his pleadings against the respondent.

36. It appears that it was against a backdrop of him asserting that he had no documentation at all in his possession to support a claim, which at the hearing of this appeal was suggested to be for a sum in the region of €6m, that the President of the High Court, as was his entitlement, decided to retain seisin of the case and fixed a date for hearing for over five months later, namely the 12th May 2015.

37. Secondly, there is the contemporaneous letter from his own solicitor. Whilst the letter, dated 2nd December 2014, from Mr. Brady is couched in layman's terms, on any fair reading of same and when its terms are considered in light of the clear statement of facts sworn to by Eamonn M. Gallagher at para. 12 of his affidavit of 6th December 2016, the letter does not support a contention that the appellant's solicitor had any kind of covert engagement with the then President of the High Court of an improper nature or otherwise than in open court in the context of applications being defended in which it was sought to strike out the appellant's claim.

38. The statement in the letter to the effect that "the President of the High Court is going to hear your case and make sure it gets a good and proper hearing" considered in its context, does not suggest that the former President of the High Court would make improper determinations favourable to the appellant irrespective of the evidence and irrespective of the law. Rather, it was offering assurances to a highly exercised and agitated litigant whose proofs were not in order and who at that time was experiencing illness and undergoing medical treatment for cardiac issues according to his own affidavit that the case was proceeding to trial.

39. Both solicitors Mr. Gallagher and Mr. Brady were present in court on 20th November 2014. The appellant was not. It is noteworthy that with regard to the conduct of the former President of the High Court, Mr. Justice Nicholas Kearns, in relation to the hearing of the application to dismiss the appellant's case on 20th November 2014, he found in favour of the appellant and refused the application on terms. The affidavit of Mr. Gallagher, solicitor for the respondent, and the letter from his own solicitor do not support the very serious allegations of impropriety made against the former President of the High Court.

40. It is significant that the appellant, who claims to have been aware of improper contact by the firm with the President of the High Court since November 2014 and who had possession of the letter in question for over five months prior to the trial, raised no issue whatsoever regarding it either at the substantive hearing in May 2015 or before the Court of Appeal in 2015 or 2016. This substantially undermines the insidious gloss which the appellant seeks to project onto events including the correspondence he received from his solicitor.

**The conduct of the original hearing**

41. Apart from the ground that there was bias arising from the relationship of the trial judge with the solicitor in his firm, which will be returned to later, the grievances and complaints set out in great detail in the affidavits sworn by the appellant are directed not to the trial judge but rather to the solicitors retained by him in connection with the carriage of the litigation. That a witness was or was not called, that a witness was released or discharged, that evidence was or was not adduced, these were all decisions made by persons

other than the President of the High Court who was the presiding judge hearing the case.

42. As trial judge he heard the evidence and made his decision in accordance with that evidence. It is entirely baseless to contend that any blame whatsoever is attributable to the President of the High Court with regard to any omissions of any kind as may have occurred in connection with the conduct of the litigation and in particular the conduct of the case at trial, a trial in which the appellant was fully legally represented.

43. It is significant that no criticism is made of the manner in which the President conducted the hearing, dealt with the evidence, considered the submissions of the parties and reached his determinations.

**Objective bias**
44. The former President is a brother in law of a solicitor in the firm and had initially personally provided advices to the appellant. However, it appears that the said solicitor did not attend court and another solicitor in the firm, Mr. Brady, had carriage of the conduct of the litigation.

45. At the hearing of the appeal the appellant contended that in November 2014 his case should have been sent to Cork for an earlier trial date rather than being fixed to be heard by the former President of the High Court. However, there is evidence that at that point the case was not ready to be tried because of failure to comply with a notice for particulars and the issue of discovery was outstanding. The respondent was entitled to that information. An unusual element of the case was the fact that notwithstanding the significant value of the claim the appellant was contending that he had no documentation to support it.

46. The administrative decision by the President of the High Court, based on those facts, to retain seisin of the case is consistent with competent case management rather than any suggestion of objective bias.

**The applicable law**
47. The decision of the Supreme Court in *Good Concrete v. CRH plc & Ors.* [2015] 2 IESC 70 considered the "reasonable person test" relating to the issue of bias and Denham C.J. stated:

> "54. The test to be applied when considering the issue of perceived bias is objective. It is whether a reasonable person, in all the circumstances of the case, would have a reasonable apprehension that there would not be a fair trial from an impartial judge. As it is an objective test, it does not invoke the apprehension of a judge, or any party; it invokes the reasonable apprehension of a reasonable person, who is in possession of all the relevant facts.
>
> 55. The test to be applied when considering issues of perceived bias is important in protecting the administration of justice, and necessary to preserve public confidence in the judiciary. Thus, the issue is not simply a matter as between parties, but it is an issue for consideration in relation to the manifest impartial administration of justice in the State, and the confidence which the people rest in the judiciary."

48. That decision is but a more recent iteration of the fundamental principles set down in *Bula Ltd. v. Tara Mines Ltd. (No. 6)* [2000] 4 I.R. 412 at p. 441 where Denham C.J. stated:

> "…it is well established that the test to be applied is objective, it is whether a reasonable person in the circumstances would have a reasonable apprehension that the applicants would not have a fair hearing from an impartial judge on the issues. The test does not invoke the apprehension of the judge or judges. Nor does it invoke the apprehension of any party. It is an objective test - it invokes the apprehension of the reasonable person."

49. The question arises whether on any fair assessment of the facts as disclosed in the affidavits and the exhibits, the appellant could have had any reasonable apprehension of bias on the part of the President by reason of the fact that there was a nexus of affinity between the President and a solicitor in the firm he had retained to represent him in the litigation at the time of the hearing.

50. The apprehensions of the appellant as such, therefore, are not relevant.

51. It is significant that whilst the appellant seeks to assert some unorthodoxy surrounding events in the High Court in November 2014 he was fully apprised of such events at the time. The appellant had regular direct personal contact with the registrar sitting in that court and indeed he received a letter from Mr. Brady in early December 2014 setting out in detail what had transpired. Nevertheless, he did not make any request that the President of the High Court should recuse himself on any ground. He knew that the judge in question had retained seisin of his case and therefore applications of an interlocutory nature, if any, would have to be brought before him and also that he would be trying the case over 4 days in May 2015. He did not raise any objection to that course of action.

52. When one considers para. 22 of the affidavit of the appellant sworn on 15th November 2016 in the light of the clarification to be found in the replying affidavit of Eamonn Gallagher at para. 12 the insinuations implicit in the statement "Mr. Brady replied that the President must not have told Ms. Denning that he had discussed the case with our firm" lose their footing and fall away. The matter had been frequently in court at that time arising from defaults on the part of the appellant himself regarding replies to particulars and discovery.

53. The stance which has been adopted by the respondent in these proceedings is noteworthy. Their counsel, Mr. Fogarty, SC, indicated that the fact that the trial judge, the former President of the High Court, was a brother in law of a solicitor in the firm retained by the appellant, as distinct from being connected to the appellant or respondent or any witness in the litigation, would not have been a basis for him applying on behalf of Connaught Gold to the President to recuse himself by virtue of that nexus. That position undermines the very stateability of the appellant's contentions.

**Conclusions**
54. I am satisfied that the trial judge correctly identified the established principles and the appropriate approach to be adopted in evaluating an allegation of objective bias and applied those principles correctly to the facts in this case.

55. The appellant's version of what occurred on 20th November 2014 in court appears to be erroneous. The allegation that the judge had improper contact with the firm of solicitors he had retained is not supported by any evidence. A far more credible reason for the President's involvement with the case is to be found in the affidavit of Mr. Gallagher who was present in court on that date and clearly recollects the President retaining seisin of it for the reasons deposed to in his affidavit. There was no legitimate basis accordingly upon which the trial judge could have been called upon to recuse himself in the instant case in May 2015.

56. The principle of *audi alteram partem* was not breached and there is no evidence that the appellant did not have a fair trial. Indeed, the judgment and orders were appealed against and the orders of the President of the High Court were upheld.

57. Whilst the appellant alludes to "unconscionable behaviour" in the course of the original hearing, it is not behaviour that is ascribed to the former President of the High Court. It is clear from the submissions, affidavits and exhibits that the appellant has significant grievances with his legal representatives. He appears to erroneously ascribe blame to the trial judge for such issues. There is no valid basis for this approach and it does not support any ground of appeal raised. The appellant's affidavits simply fail to disclose any stateable basis upon which it could be said that the trial judge was deficient in the administration of justice in the manner in which he conducted the hearing and reached his determinations. The integrity of the process is supported by the very fact that on a full appeal where judgment was reserved the appeal was dismissed. Furthermore, the Supreme Court refused to entertain a further appeal of the matter subsequently.

58. Sight must not be lost of what it is such an "objective reasonable person" embodies in the first place namely, fair-mindedness. The objective reasonable person as a reasonable member of the public is neither complacent nor unduly sensitive or suspicious. There should not be attributed to the "objective reasonable person" so cynical and negative a view of humanity as to make him or her assume that a trial judge whose relative by marriage practices cannot or may not, by reason of that fact alone, make an honest decision based on the evidence when faced with a rational basis for doing so.

59. The gravamen of the appellant's argument is wholly undermined by what actually transpired and renders the appeal unstateable. The former President of the High Court tried the case and based on the evidence presented to him on behalf of the parties found for the respondent. That finding was upheld on appeal by this Court. The Supreme Court after considering the issue found no basis to entertain a further appeal.

60. Whilst it was contended that the High Court judge did not have any regard to the application of Article 6 of the European Convention of Human Rights, it is important to bear in mind that that convention does not have direct effect in this jurisdiction: see, e.g. the decision of the Supreme Court in *McD v. L* [2009] IESC 81. In an application such as this it is important that there is a balancing of rights and the Court is mindful of the fundamental requirement that the right to a fair hearing must be interpreted in the light of the rule of law. The respondent, Connaught Gold, also has rights under the Convention to have finality to the litigation.

61. Parties are entitled to legal certainty and to have a final determination of issues.

62. In the instant case the respondent has successfully defended this claim in the High Court, it has successfully defended an appeal in the Court of Appeal, and has successfully resisted an application to have the matter reopened by way of further appeal in the Supreme Court. Furthermore, in the instant case it has successfully contested the claims of the appellant to have the proceedings re-entered and the orders previously made set aside and the matter re-tried. There is clear jurisprudence emanating from the European Court of Human Rights in Strasbourg for the proposition that where courts have finally determined an issue it should not generally be called into question.

63. Under the objective test, it must be determined whether, quite apart from the personal conduct of the judge, there are ascertainable facts which may raise doubts as to his impartiality. What is at stake is the confidence which the courts in a democratic society must inspire in the public. No evidence of any probative kind was advanced to support the allegation of bias. No legitimate reason was identified by the appellant to support a claim that the former President of the High Court lacked of impartiality towards him in the conduct of any aspect of the case.

64. The appellant has failed to identify any objective justification for his complaints that the former President of the High Court lacked impartiality or conducted the case otherwise than in accordance with his constitutional rights.

65. I am satisfied that Mr. Justice Noonan considered and applied the correct legal principles and was inexorably driven to the correct conclusion namely that there was no legal basis upon which the High Court would be justified in interfering with the final orders and judgments already pronounced in the said proceedings.

66. Accordingly I would dismiss this appeal.