

THE HIGH COURT
JUDICIAL REVIEW

[2016 No. 130 J.R.]

BETWEEN**DENIS FLANAGAN****APPLICANT****AND****THE HONOURABLE MS. JUSTICE MARY ELLEN RING, THE GARDA SÍOCHÁNA OMBUDSMAN COMMISSION AND IRELAND****RESPONDENTS****JUDGMENT of Mr. Justice Richard Humphreys delivered on the 18th day of March, 2016**

1. For the past twenty-five years, the applicant has been engaged in the preparation, conduct and aftermath of litigation (including satellite litigation, of which the present application for leave to seek judicial review is the latest instance) arising from a traffic accident on 10th May, 1991 involving a Dublin Bus vehicle.

2. It appears that he brought a Circuit Court action in negligence in or about 24th February, 1994. He says, although the papers are somewhat unclear on this, that the Circuit Court transferred the action to the High Court in 2008.

3. The following year, Peart J. dismissed the action (*Flanagan v. Dublin Bus* [2009] IEHC 98 (5th March, 2009)). The applicant says he appealed to the Supreme Court but this was struck out "*more than 1 year ago*" although precisely when or why was not clarified. He objects that the Supreme Court refused to accept an affidavit in 2013. Apparently his solicitors applied to come off record and were permitted to do so on 15th February, 2013. His affidavit of 29th February, 2016 includes scandalous matter in relation to that court's dismissal of his appeal (and in relation to much else).

4. The applicant says that on or about 5th May, 2015 he called in person to the Bridewell Gardai Station in Dublin and reported an allegation of perjury which he claimed occurred in the course of his main High Court action. He says that Gardai refused to have his complaint investigated on the ground that it was a civil matter.

5. On 11th May, 2015 he submitted a complaint to the Garda Síochána Ombudsman Commission (GSOC), of which the first named respondent is the chairperson, about what he said was the refusal of the Gardai to investigate his allegation.

6. The commission replied by letter dated 5th June, 2015 declaring his complaint to be inadmissible. This letter is the main subject of his present application for leave to seek judicial review.

7. Separate from these matters, he appears to have had a number of legal proceedings involving three sets of solicitors that acted for him in the personal injury matter, and informed me that he was most recently before Barrett J. on 8th February, 2016 in relation to one of these matters.

Relief sought

8. In the statement grounding the application for judicial review there are three categories of relief sought:

- (i) a challenge to the decision of GSOC of 11th May, 2015;
- (ii) an order that the Government conduct an inquiry into the matter; and
- (iii) an order setting aside the decision of Peart J. of 5th February, 2009.

9. The first relief sought is potentially within the scope of judicial review, subject to the application being made within time and arguable grounds being shown.

10. As regards the second relief, while there are limited circumstances in which the executive has a legally enforceable duty to conduct an investigation, such as where positive steps are necessary to vindicate art. 2 of the ECHR in a context where a person has lost their life due to State action, this is not such a case. There are no arguable grounds for this relief.

11. The third complaint, regarding the decision of Peart J., is not something that can be pursued by way of judicial review.

12. In addition to the application for leave to seek those substantive reliefs, the applicant also opened his submission by pre-emptively seeking his costs and an order for the production of the digital audio recording (DAR) of the hearing before me. A pre-emptive application for costs as such is misconceived in the context of an *ex parte* application. As regards the DAR, the applicant does not need a recording of the proceedings before me in order to take any steps that he is legally entitled to take. However in order to assist him I am giving a written decision on his application.

Time

13. The Grounding Statement was filed on 29th February, 2016. The decision impugned was made on 11th May, 2015. As regards his failure to bring the application within three months of receipt of the decision, the applicant says that: "*[b]ecause I am a 71 year old disabled lay person without legal advice or training and because of the fact that these are serious criminal matters of national importance and the fact that these are serious issues that face and asks (sic) questions of the integrity of the entire justice system as a whole, I ask this Court for an extension of time*".

14. Unfortunately, these are not legal grounds for an extension of time, even if they were otherwise plausible (which, apart from the initial purely personal reference, they are not), and even if the challenge to the GSOC decision was arguable, which I do not accept. The lay status of the applicant may be *relevant* to the question of whether time can be extended (see *Forum Connemara Ltd. v. Galway County Local Community Development Committee* [2016] IECA 59 per Irvine J. (Ryan P. and Hogan J. concurring) at paras. 55 to 57, citing *O'Donnell v. Dun Laoghaire Corporation* [1991] I.L.R.M. 301 (Costello J.)) but it could not, without more, be a basis for an extension of time. An allegation that there is an important illegality involved does not seem, in general and without more, to be such a basis either (see *Forum Connemara*, paras. 50 to 52).

15. He goes on to say that "*the delay in lodging this application is due to the fault of my lack of the required legal knowledge that resulted in unforeseen mistake being made in my attempts at forwarding this application, of (sic) which I attempted to lodge last August*". Even assuming that the applicant attempted to file papers in time, in August, 2015, he has not explained why he was unable to overcome, in a timely manner, whatever procedural hurdle arose when he attempted to do so. Nor has he explained what the procedural hurdle was other than that "*the application was incomplete*". The fact that the application was incomplete is his own difficulty and is not a ground for extension of time.

Arguability

16. Independently of the foregoing, it is not an arguable proposition to suggest that Gardaí are guilty of misconduct in failing to investigate an allegation of perjury made by the losing party to a civil action six years before, based on his own *ipse dixit*. Given the judicial determination of those proceedings, it would not be reasonable to expect Gardaí to interest themselves in such an allegation, either at all or at the very minimum without a great deal more than this applicant was able to present to them.

Order

17. For the foregoing reasons I will order that leave to apply for judicial review (and the pre-emptive application for costs and for the DAR) be refused.