

THE HIGH COURT

Record Number: 2012 No. 661 SS

Between:

David Hayes

Applicant

And

Chief Superintendent D.J. Sheahan

Respondent

Judgment by Mr Justice Michael Peart delivered on the 1st day of May 2013:

1. The applicant successfully appealed to the District Court against a refusal by the respondent to grant him a Firearms Certificate pursuant to the provisions of Section 15A of the Firearms Act 1925 – 2009, as inserted by Section 43 of the Criminal Justice Act, 2006.

2. Upon that success the applicant herein sought an order for his costs of the appeal, and an issue arose before the District Court as to whether on an appeal of that kind the District Judge has jurisdiction to make an award of costs in his favour.

3. Section 15A (3) of the Firearms Act provides that on such an appeal the Court may (a) confirm the decision; (b) adjourn the proceedings, and direct the issuing person to reconsider the decision in the light of the appeal proceedings; or (c) allow the appeal. Noteworthy is the fact that the section and indeed the Act is silent as to the question of costs.

4. It is well-established that the District Court does not enjoy an inherent jurisdiction – see most recently *Southern Hotel (Sligo) Ltd v. Iarnrod Eireann* [2007] 3 IR.792. The District Court is a court of local and limited jurisdiction and its powers must emanate from statute, and to an extent from Rules of the District Court.

5. Order 51, rule 1 of the District Court Rules, 1997 ("DCR 1997") provides:

"Save as where otherwise provided by Statute, or by Rules of Court, the granting or withholding of costs of any party to civil proceedings in the court shall be in the discretion of the court" (emphasis added).

6. Order 51 relates to civil proceedings, whereas Order 36, rule 1 DCR 1997 makes provision for the ordering of costs and expenses in certain circumstances in any case of summary jurisdiction, namely criminal proceedings, and is therefore not relevant to the present application.

7. A central question in the present case is whether the appeal by the applicant against the refusal of a firearms certificate is within the definition of "civil proceedings" and therefore within the provisions of Order 51, r.1 DCR 1997.

8. I leave aside for the moment the respondent's argument that Order 51 DCR 1997 does not confer any power in relation to costs, but rather *"governs how that power to award costs is to be exercised"*, to use the words of Hedigan J. in *Southern Hotel (Sligo) Ltd v. Iarnrod Eireann* [supra].

9. DCR 1997 defines "civil proceedings" by stating that *"it includes those suits and actions at law in which jurisdiction is conferred by any enactment upon the District Court in civil cases as described in Section 77A of the Courts Act, 1924 ("the Act of 1924"), and any enactment extending or amending that section either expressly or by implication"* (emphasis added).

10. Section 77A of the Act of 1924 as amended from time to time and finally by Section 4 of the Courts Act, 1991, declares that the District Court *"shall have and exercise all powers, jurisdictions and authorities which immediately before 6th December 1922 were vested by statute or otherwise in Justices, or a Justice of the Peace sitting at Petty Sessions, and also (by way of addition and not substitution) the following jurisdictions: A: Civil Cases; B: Criminal Cases; and C: in granting certificates for spirit and other licences"*

11. Those three alphabetical divisions, A, B and C are important in my view given the above definition of "civil proceedings" and its reference to "civil cases". Order 51 DCR 1997 therefore, in as much as it deals only with "civil proceedings", and therefore only such cases as are set forth in Section 77A as amended of the Act of 1924 under the heading of "Civil Cases" makes provision only in relation to this category and not in relation to either B: Criminal Cases or C: the granting of spirit and other licences.

12. It is worth noting the following also. The District Court Rules, 1926 ("DCR 1926") made under Section 91 of the Act of 1924 was divided into 5 Parts. Part I (rules 3 – 60) contained rules relating to cases of summary jurisdiction and Preliminary Investigation of Indictable Offences i.e. criminal cases. Part II was headed "Civil Proceedings" – that being defined also by reference to Section 77A of the Act of 1924, and rules 61 – 146 related to these types of cases. Part III was headed "Licensing Jurisdiction". Part IV dealt with Appeals to the Circuit Court, and Part V dealt with Cases Stated. The latter two Parts are not relevant for present purposes.

13. While the Licensing rules contained with Part III DCR 1926 clearly relate only to Intoxicating Liquor Licensing, I refer to those rules in order to highlight the clear distinction being made in Section 77A of the Act of 1924 between Criminal Matters, Civil Cases, and the granting of certificates, and the fact that these distinctions were carried through also into DCR 1926.

14. These same divisions are again clearly set forth and evident in the District Court Rules, 1948 ("DCR 1948") where the same definition of civil proceedings is contained, and where rules 112 – 189 appear under the heading of Civil Proceedings, including rule 147 which deals with the costs of civil proceedings.

15. Again, in DCR 1948 licensing matters are dealt with in rules under the heading "Licensing", and again, as before, mainly in relation to Intoxicating Liquor Licences. But at rule 108 it refers also to Public Dance licences. No rule under that section relates to costs.

16. Turning to the current rules DCR 1997, one sees the rules divided into a number of different sections also. Part I – Preliminary and General; Part II – Criminal Proceedings; Part III – Civil Proceedings. Part III includes Order 51 relating to costs. It is true that Part III, albeit at a stage later than Order 51, there are rules which relate to a number of types of cases (albeit not within the definition of civil proceedings) such as Family Law, Licensing (i.e. auctioneers, Betting Acts, Gaming and Lotteries), Intoxicating Liquor licences and a number of miscellaneous matters, appeals and Case Stated.

17. None of the rules just referred to make reference to costs.

18. In so far as the applicant relies upon the judgment of Egan J. in *Inspector of Taxes v. Arida* [1995] IR. 230, I would distinguish that case since the rule under consideration in the within proceedings since the rule under consideration in that case was Order 58, rule 1 of the Circuit Court Rules, 1950 and which was worded differently to that in Order 51 DCR 1997, namely:

"the granting or withholding of the costs of any party to any proceedings in the Court shall be at the discretion of the judge" (emphasis added).

19. In my view the phrase "any proceedings" above is much broader than the more confined definition of civil proceedings in the various District Court Rules referred to, and, I say respectfully, easily explains the decision in *Inspector of Taxes v. Arida*.

20. I appreciate, as has been submitted by the applicant, that the DCR 1997 definition of civil proceedings uses the word "includes". However, I do not consider, given what I have already stated, that it can mean that the definition is all-encompassing, and so wide as to cover the type of appeal under consideration herein.

21. I am therefore satisfied that, absent any statutory power to award costs on an appeal under Section 15A of the Firearms Acts, Order 51 DCR 1997 does not avail the applicant, and does not give the District Judge jurisdiction to award costs to the applicant.

22. In these circumstances I answer the questions posed in the Case States as follows:

Question 1 – No

Question 2 – No

In view of the answers to questions 1 and 2, questions 3 and 4 do not need to be answered.