

THE HIGH COURT
JUDICIAL REVIEW

[2016 No. 196 JR]

BETWEEN**DONA SFAR****Applicant****AND****THE MINISTER FOR AGRICULTURE, FOOD AND THE MARINE, THE ATTORNEY GENERAL AND IRELAND****Respondents****JUDGMENT of Mr. Justice Richard Humphreys delivered on the 5th day of April, 2016**

1. On 16th October, 2014, the applicant obtained leave from the High Court (Peart J.) to challenge certain animal welfare measures taken against her by the first named respondent (2014 No. 614 JR). She is now being prosecuted for alleged animal welfare offences, which prosecution is, I am told, due for hearing in the District Court on 7th April, 2016.
2. On 4th November, 2015 she applied to Kearns P. for a stay on the prosecutions. This application was not brought as a stay application in the first judicial review, but rather as a stand-alone second judicial review (2015 No. 608 JR). The application for a stay was refused. She appealed this refusal to the Court of Appeal (2015/570) and that appeal is due for hearing on 13th June, 2016.
3. Her judicial review proceedings are due to be heard in the High Court on 31st May, 2016.
4. Representing herself, she now applies by way of a new, third stand-alone judicial review, for leave to seek a stay on the prosecutions pending the hearing of her first judicial review or the appeal in the second judicial review.
5. She has furnished both a filed and an unfiled version of her statement of grounds, each seeking different reliefs on different grounds. The unfiled version is more extensive, referring to previous animal welfare convictions, which were set aside and her claim that the fact of conviction, even though later quashed, led to her being "*shamed on a number of animal rights web sites*". It appears that in 2010 the applicant was convicted by the District Court of fifteen counts of cruel ill-treatment under the Protection of Animals Act 1911, as well as failing to bury an animal carcass to which a dog had access under the Control of Dogs Act 1986, and this was overturned by the Supreme Court on appeal in 2012 (*Sfar v. Brennan* [2012] IESC 28 (15th May, 2012), *per* Denham C.J. (Hardiman and Clarke JJ. concurring)). Denham C.J. allowed the applicant's appeal in so far as the District Court prohibited the applicant from keeping "animals" for ten years, where it only had jurisdiction to prohibit her from keeping dogs under s. 18(1) of the 1986 Act. The High Court quashed the order but remitted the matter to the District Court, who instead of making a new order, amended the original order, despite the fact that that order was no longer extant. The Supreme Court, in quashing all orders, further stated that the issue of a retrial had not been heard.
6. First of all, the proceedings are misconceived as a separate judicial review application. Leaving aside a case where an appeal is in being (as here), a stay application of this kind in connection with a case where leave has already been granted should be brought as a stay in the first judicial review application, on notice to the respondents, in the non-jury/judicial review list, not through the device of a new judicial review as a basis for seeking such relief *ex parte* even though the respondents are already on notice of the main proceedings.
7. Secondly, the application is in substance the same as that already refused by Kearns P. and under appeal to the Court of Appeal. Again, one might have thought that the applicant could have sought a stay from that court pending the hearing of her appeal. Renewing the application in the High Court without a change of circumstances or different grounds is not the correct procedure.
8. Thirdly, even if the application was procedurally correct, it is made far too late. The first judicial review has been going for 17 months, and she now applies for a stay 3 days before her trial. Eleventh-hour applications of this type cannot be encouraged for a host of reasons, some of which are referred to by Kearns P. in *Coton v. D.P.P.* [2015] IEHC 302 (21st May, 2015).
9. Finally, it does not appear to me that the applicant has shown arguable grounds. The main point made is that her prosecution prior to the judicial review would be an abuse and a breach of her rights. This does not seem to me to be arguable correct.
10. The main legal point in terms of prejudice claimed by the applicant is that if she is convicted, but then subsequently wins her first judicial review and shows that the underlying legislation is unconstitutional, her conviction will still stand. I would not accept this proposition. The applicant is being prosecuted summarily which means that the ultimate decision of the Circuit Court on appeal, if one arises, is amenable to judicial review. At that point, her conviction can be sought to be quashed, on constitutional grounds, if she has any such grounds at that stage.
11. I might observe in passing that this technique is not available for prosecution on indictment (which does not arise here) in the sense that the criminal appeals process takes an applicant outside the realm of judicial review. But justice would require that in that context, a declaratory action could be brought setting aside a conviction where an applicant had commenced a challenge to the legislation prior to the finalisation of the criminal process, and where that legislation has subsequently been found to be unconstitutional (see my judgment in *Casey v. D.P.P.* [2015] IEHC 824 at para. 19 and authorities referred to in that judgment).
12. I have considered all of the other claimed prejudice as well and do not consider that any of this arguably gives rise to an entitlement to stop her trial at this point.

13. Animals are powerless to protect themselves against neglect or cruelty. Upholding their welfare is an urgent matter and must not be put on hold pending judicial review proceedings. The mechanisms to uphold animal welfare include prosecution followed by forfeiture in the event of a conviction. The applicant is of course denying criminal liability but she can make what applications she wishes to the District Court if that court is called upon to exercise any powers in this regard.

14. For these reasons I will refuse this application for leave.