Neutral Citation Number: [2009] IEHC 441

THE HIGH COURT

JUDICIAL REVIEW

2009 933 JR

BETWEEN

JOHN BURKE

APPLICANT

AND

JUDGE MARY MARTIN

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENTS

Judgment of Mr. Justice Edwards delivered on the 9th day of October, 2009

Introduction

The applicant in this matter came before the court on Thursday 24th September, 2009 seeking leave to apply for various reliefs by way of judicial review against the respondents. The first named respondent is the District Judge for the District Court area of Tipperary and District No. 21. The second named respondent is the Director of Public Prosecutions. The specific reliefs claimed were *certiorari* and/or *mandamus* but the object of the proceedings seems to have been to prohibit the first named respondent from hearing, and the second named respondent from prosecuting or taking further steps in connection with, the trial of 120 charges relating broadly to issues of animal welfare and the disposal of animal carcasses, and also one charge of criminal damage to a motor car. It is worth pointing out that the second named respondent is only concerned with the prosecution of the criminal damage charge. The prosecutor in the case of the animal cruelty and carcass disposal cases is the Minister for Agriculture and Food, but the applicant has not sought to name him as a party.

The applicant's application for leave to apply for judicial review was moved in the first instance on the usual ex-parte basis, before Mr. Justice MacMenamin, on Tuesday the 15th September, 2009. However, Mr. Justice MacMenamin, having heard an outline of the case, directed that the proposed respondents should be put on notice and he adjourned the matter to my list on the 24th September, 2009. When the matter came before me on the 24th of September, 2009, the prosecutions in question were listed for trial on a specially fixed basis to be heard over three days between Wednesday the 30th of September, 2009 and Friday the 2nd of October, 2009 inclusive.

At all times the applicant has appeared in person and has sought, as is his entitlement, to represent himself. His application was grounded upon an affidavit sworn by him on the 11th of September, 2009 exhibiting a draft Statement of Grounds bearing the same date. When the matter came before me on 24th September, 2009 the respondents were represented by counsel instructed by the Chief Prosecution Solicitor. Counsel sought, and was granted, leave to file an affidavit of Paul Fitzpatrick, the State Solicitor for the County of Tipperary South Riding, sworn on the 21st September, 2009 by way of a reply to Mr. Burke's said affidavit. Mr. Burke, in turn, then sought leave to swear and file a second affidavit in response to Mr. Fitzpatrick's replying affidavit and he tendered to the court, in unsworn form, a draft of his proposed second affidavit. The court also acceded to this request and allowed him to proceed on the basis of the unsworn document, on the understanding that he was undertaking to swear and file it in due course.

Mr. Burke then sought leave to cross-examine Mr. Fitzpatrick as to his affidavit. For the purpose of adjudicating on this application the court considered the affidavits of Mr.Burke and of Mr. Fitzpatrick, respectively. I formed the view that there were indeed significant conflicts between them as to important matters of fact. Accordingly, I agreed in the exercise of my discretion to allow Mr. Burke to cross-examine Mr. Fitzpatrick. However, as Mr. Fitzpatrick could not be present until the following day, the matter was adjourned overnight.

When the hearing resumed on Friday 25th September, 2009, counsel for the respondents sought leave to file a second affidavit in opposition to the applicant's claim. This was an affidavit of Superintendent John Courtney of An Garda Síochána who was present in Tipperary District Court on the crucial date with which the court is concerned, namely the 3rd of June 2009. While Mr. Fitzpatrick was there representing the prosecution in the large number of animal welfare and carcass disposal cases then before the Court, he was not representing the prosecution in respect of the criminal damage matter. Superintendent Courtney was there to represent the prosecutor in the criminal damage matter.

It was clear from the affidavits already filed that there was major conflict of fact as between Mr. Burke and Mr. Fitzpatrick, respectively, concerning what had occurred in court on that date, and in particular as to the nature of certain documents that had been handed in to the first named respondent on that date. Regrettably, neither Mr. Burke nor Mr. Fitzpatrick were in a position to exhibit the documents in question as the originals were retained by the first named respondent. However, Counsel informed the Court that Superintendent Courtney had subsequently been asked by the Judge to make and retain photocopies of the documents in question, and therefore he was in a position to exhibit copies of the documents in question. Accordingly it seemed to this Court that Superintendent Courtney had valuable evidence to add, and in the circumstances I indicated that I was willing to receive his affidavit, which had been sworn earlier that morning, viz on the 25th September, 2009. The Court then sought, and obtained, confirmation from Mr. Burke that he had been furnished with a copy of the Superintendent's affidavit, and further acceded to a request from Mr. Burke for a

twenty minute break to enable him to further consider its contents.

When the hearing resumed the applicant was then afforded the opportunity to cross-examine Mr.. Fitzpatrick. He did so at considerable length. Further, he was also afforded the opportunity to briefly cross-examine Superintendent Courtney. After some four hours of cross-examination, and a total hearing time of approximately five hours, the court, having considered all of the affidavit evidence, the oral evidence elicited in cross-examination, as well as submissions of the applicant that had been interspersed throughout the cross-examination, concluded that he had failed to establish arguable grounds in support of his claim for leave to apply for the various reliefs sought by him by way of judicial review. In the circumstances I indicated that I was dismissing his claim and that I would give my reasons later in a written judgment to be delivered on Friday 9th October, 2009. I now give those reasons.

Background to the proceedings
The general circumstances

The applicant does not testify as his occupation or vocation in the affidavits that he has sworn in the present proceedings. However, he is known to court and has described himself in previous proceedings with which the court has been concerned as a "cattleman and stockowner". From time to time in the past he has kept various kinds of farm animals. He has from time to time come to the attention of officials of the Department of Agriculture and Food as a person suspected of not providing adequately for the welfare of his animals. The charges that he presently faces relate to events that occurred in 2006 and 2007.

Before particularising the categories of charges that he faces and the number of charges in each category it is appropriate to explain the statutory framework within which the charges arise.

Relevant Statutory Provisions

Matters of animal welfare are primarily governed, in so far as farm animals are concerned, by the Protection of Animals kept for Farming Purposes Acts, 1984 - 2000 and by Counsel Directive No. 98/58EC of the 20th July, 1998 as transposed into Irish Law. This transposition was effected in the first instance by the European Communities (Protection of Animals Kept for Farming Purposes) Regulations, 2000 [S.I. No. 127/2000], which have since been substituted by the European Communities (Protection of Animals Kept for Farming Purposes) Regulations, 2006. [S.I. No. 705/2006]. For convenience I will hereinafter refer to these statutory instruments simply as "the Protection of Animals Regulations"

Moreover, where an animal dies other than by being slaughtered for human consumption, the carcass must be disposed of in accordance with European Communities (Transmissible Spongiform Encephalopathies and Animal By-products) Regulations 2006 [S.I. No 612/2006] which transposed into Irish Law Regulation (EC) No. 1774/2002 of the European Parliament and the Council of 3 October 2002 as amended (otherwise known as "the Animal By-products Regulation"). For convenience I will hereinafter refer to this statutory instrument simply as "the By-products Regulations."

In both the Protection of Animals Regulations of 2000 and those of 2006, respectively, there is an obligation on the owner or keeper of animals, imposed by regulation 4(1) in each instance, to take all reasonable steps to ensure the welfare of animals under his or her care and to ensure that such animals are not caused any unnecessary pain, suffering or injury.

There is a further obligation on such a person, imposed by regulation 4(2) in each instance, to ensure that the conditions under which such animals are bred or kept, having regard to their species and their degree of development, adaptation and domestication, and to their physiological and ethological needs in accordance with established experience and scientific knowledge, comply with the provisions set out in the Schedule to the regulations in question.

Failure to comply with either regulation 4(1) or regulation 4(2) of the Protection of Animals Regulations of 2000 is deemed an offence under regulation 12(2) of those regulations attracting the potential penalties provided for in regulation 13 of those regulations. Failure to comply with either regulation 4(1) or regulation 4(2) of the Protection of Animals Regulations of 2006 is deemed an offence under regulation 14(1)(a) of those regulations attracting the potential penalties provided for in regulation 14(1) of those regulations.

The Protection of Animals kept for Farming Purposes Acts, 1984, and regulation 5 of the Protection of Animals Regulations of 2000, provide respectively for the appointment of authorised officers whose function it is to carry out inspections and examinations as required by the said regulations and by Council Directive No. 98/58EC of the 20th July, 1998. Under regulation 6(1) of the Protection of Animals Regulations of 2000 an authorised officer is given the power, subject to the detailed terms of that provision, to enter a premises, land or place in which he has reasonable grounds for believing animals are being kept or bred for farming purposes, for the purposes of carrying out inspections and examinations as required by the said regulations and Council Directive No. 98/58EC of the 20th July, 1998. Regulation 6(2) sets out a detailed list of further powers that an authorised officer may avail of for the purpose of carrying out his functions. It is an offence under regulation 6(5) of the Protection of Animals Regulations of 2000 to obstruct an authorised officer in the due exercise of any of his functions and such an offence attracts the potential penalties provided for in regulation 6(6) of those regulations.

Regulation 5 of the Protection of Animals Regulations of 2006 also provides for the appointment of authorised officers with similar functions to those appointed under earlier instruments, namely the carrying out of inspections and examinations as required by the regulations and Council Directive No. 98/58EC of the 20th July, 1998, but with modified, and in some respects somewhat more restricted, powers the scope of which are specified in regulation 6 with greater precision than had previously been the case. Among the powers provided for is the power, granted by regulation 6(xi), to give such direction to a person regarding an animal, feed, vessel, vehicle, container, premises or other thing as he or she considers necessary. Under regulation 13 (b) of the Protection of Animals Regulations of 2006 it is an offence to fail, without reasonable cause, to comply with a requirement or direction of an authorised officer under regulation 6, and such an offence attracts the potential penalties provided for in regulation 14(1) of those regulations.

Both the current and the previous regulations provide that if:-

> " … an authorised officer is of the opinion that –

(a) an animal is being caused unnecessary pain, suffering or injury, or

(b) there is a serious risk to the welfare of an animal, or

(c) the conditions under which an animal is being bred or kept are in contravention of [the regulations]

he or she may serve or cause to be served on the owner or keeper of the animal a notice stating that opinion and directing that –

(i) an ill or injured animal be cared for in an appropriate manner,

(ii) veterinary advice be obtained in respect of an ill or injured animal that is not responding to appropriate treatment,

(iii) the animal be fed food appropriate to its age and species and in such quantity as will maintain it in good health,

(iv) the animal be access to such supply of suitable water as will enable it to fulfil its fluid intake needs,

(v) the animal be moved to and kept in such place as the officer should specify in the notice,

(vi) the animal be sold, destroyed or otherwise disposed off in such manner and at such place as the officer should specify in the notice,

(vii) such alterations or additions to be made to the premises, land or place at which the animal was kept or to the equipment and facilities down there, as the officer should specify in the notice,

(viii) such alteration be made to the manner in which the animal is kept as the officer should specify in the notice, nine such other measures to be taken as are necessary to ensure that the animal is kept in a manner that complies with these regulations and the Council Directive."

Such a notice is now known as a "welfare notice" and is provided for in regulation 8 of the Protection of Animals Regulations 2006 (i.e. the current regulations), and was similarly provided for in regulation 7 of the Protection of Animals Regulations 2000 .

Regulation 10 of the current regulations (and previously regulation 9 of the 2000 Regulations) provides that a person may appeal, within seven days of the service upon him of a notice under regulation 8 (or regulation 7 of the 2000 Regulations), to a judge of the District Court on the grounds that the notice or any terms thereof are not justified, having regard to the provisions of the regulations. Regulation 14 of the current regulations (and previously regulation 12 of the 2000 Regulations) provides that a failure to comply with a welfare notice constitutes an offence and a person guilty of such non-compliance may be prosecuted at the suit of the Minister for Agriculture and Food. Moreover, a person who has been convicted of an offence under regulation 14 (or regulation 12 in the case of the 2000 Regulations) is liable to the potential penalties provided for under regulation 14(1) (or, in the case of regulation 12 of the 2000 Regulations the potential penalties provided for regulation 13 of those regulations).

Finally, the Animal By Products Regulation lays down, *inter alia*, animal and public health rules for the collection, transport, storage, handling, processing and use or disposal of animal by-products, to prevent these products from presenting a risk to animal or public health. It divides animal by-products into three categories which, very broadly speaking, comprise, in category 1, the by-products of animals that are unsuitable for human consumption by reason of the animal having, or being suspected as having, certain communicable diseases ; in category 2, the by-products (whether or not themselves suitable for human consumption) of animals that are unsuitable for human consumption otherwise than for category 1 reasons, and in category 3, the by-products (whether or not themselves suitable for human consumption) of animals that are suitable for human consumption. Article 5(2) of the Animal By Products Regulation requires Category 2 material to be collected, transported and identified without undue delay, and then stored, handled, processed, used or disposed of in one of the various ways mandated by the detailed provisions of that article so as to prevent such material from presenting a risk to animal or public health.

Regulation 23(1)(a) of the By-Products Regulations 2006 makes it an offence to fail to comply with Article 5(2) of the Animal By Products Regulation, and a person who has been convicted of an offence under regulation 23(1)(a) is liable to the potential penalties provided for under regulation 23(1).

The Charges faced by the Applicant.

The applicant is a poor historian and failed to make clear either in his affidavits or draft statement of grounds the exact nature of the charges faced by him. However, Mr. Fitzpatrick was able to shed some light on the matter both in his affidavit and in the course of his oral testimony. At paragraph 3 of his affidavit he refers to true copies of the relevant summonses or charges "when produced". These documents were not in fact filed with the affidavit but Mr. Fitzpatrick has since produced them to my registrar in response to a request to him to do so. The Court has perused them in detail and the position may be fairly summarized as follows.

The applicant faces 121 charges in total. As previously stated 120 of these are brought at the suit of the Minister for Agriculture and relate broadly to issues of animal welfare and the disposal of animal carcasses. The is also the single charge, brought at the suit of the Director of Public Prosecutions, of causing criminal damage to a motor car.

As regards the Minister's cases these can be further categorised as follows.

- 22 counts of failing to take reasonable care to ensure the welfare of an animal, contrary to regulations 4(1) and 12(2) of the Protection of Animals Regulations 2000;

- 57 counts of failing to take reasonable care to ensure the welfare of an animal, contrary to regulations 4(1) and

14(1)(a) of the Protection of Animals Regulations 2006;

• 8 counts of failing to ensure that the conditions under which animals are bred or kept, having regard to their species and their degree of development, adaptation and domestication, and to their physiological and ethological needs in accordance with established experience and scientific knowledge, comply with the provisions set out in the Schedule to the regulations, contrary to regulations 4(2) and 12(2)of the Protection of Animals Regulations 2000;

• 1 count of failing to ensure that the conditions under which animals are bred or kept, having regard to their species and their degree of development, adaptation and domestication, and to their physiological and ethological needs in accordance with established experience and scientific knowledge, comply with the provisions set out in the Schedule to the regulations, contrary to regulation 4(2) and 14(1)(a)of the Protection of Animals Regulations 2006;

• 3 counts of obstructing an authorized officer in the due execution of his functions, contrary to regulations 6(5) and 6(6) of the Protection of Animals Regulations 2000;

• 18 counts of failing to comply with a direction of an authorised officer under regulation 6 of the Protection of Animals Regulations 2006, contrary to regulations 13(b) and 14(1)(a) of the Protection of Animals Regulations 2006;

• 2 counts of failing to comply with a notice under regulation 7 of the Protection of Animals Regulations 2000, contrary to regulation 12(2) of the Protection of Animals Regulations 2000;

• 9 counts of failing to collect a dead animal without undue delay, contrary to Article 5(2) of the Animals By-Products Regulation and regulation 23(1)(a) of the By-Products Regulations 2006.

This analysis flies in the face of an impression created by the applicant at the hearing before me, perhaps unintentionally, that the overwhelming majority of the charges which he faced, and which were specially fixed for hearing between the 30th September, 2009 and the 2nd October, 2009, were charges under s. 12 of the Protection of Animals Regulations 2000 based upon an alleged failure by the applicant to comply with regulation 7 notices served upon him in respect of animals kept by him. In fact he faces only two such charges.

Other relevant background facts

It is, I believe, also important to record that historically Mr. Burke has at different times been served with a large number of welfare notices relating to both sheep and bovine animals. He has appealed some, or perhaps all, of these to the District Court. His appeals were heard by District Judge Terence Finn. These appeals were unsuccessful and the notices were upheld as being reasonable. When he was unsuccessful in his appeals to the District Court he then sought to quash the notices in question by means of judicial review, and further sought to prohibit a large number of prosecutions based upon the said notices. He made an application to me for leave to apply for judicial review on Monday 24th November, 2008 in proceedings entitled *The High Court, Record Number 2008 No. 966JR, between John Burke, Applicant and The Minister for Agriculture and Food, Respondent; the Minister for Justice Equality and Law Reform and the Director of Public Prosecutions, Notice Parties.* I dismissed that application. Subsequently, the applicant appealed against my refusal to grant him leave to apply for judicial review and that appeal is currently pending before the Supreme Court. However, the applicant also subsequently applied to the Supreme Court for a stay on the relevant proceedings in the District Court pending the hearing of his appeal, but that application was refused.

A further matter that requires to be recorded is that subsequent to the service of the welfare notices that featured in those proceedings (which related predominantly to sheep, plus a small number of bovine animals), a further set of welfare notices were served on the applicant. According to evidence given by Mr. Fitzpatrick in the course of his cross-examination before me these further notices related solely to bovine animals. By this stage the 2006 Regulations were in force and accordingly these were notices served pursuant to regulation 8 of the 2006 Regulations. Once again the applicant appealed the reasonableness of these notices to the District Court and again the appeals were heard by District Judge Terence Finn, who found that these notices were reasonable and upheld them. District Judge Finn's order which was made on the 25th of May, 2007, and perfected on the 5th of November, 2007, was produced before me. It seems that the applicant has attempted to appeal against this order but, although he has lodged a purported Notice of Appeal, the Circuit Court has yet to determine his appeal. The applicant contends that documentation relating to this appeal was included in documentation handed up to the first named respondent on the 3rd of June 2009. However, there is no evidence of any attempt on the applicant's part to appeal against District Judge Finn's earlier order dismissing the applicant's appeals against the other section 7 welfare notices. The Court does not know if the section 7 notices relevant to the two summonses for non compliance presently faced by the applicant were ever appealed. The applicant has produced no evidence to suggest that they were appealed.

The events leading up to the hearing on the 3rd of June, 2009.

In so far as the court can glean it from the documents that have been submitted, the criminal matters in question were listed on various occasions before Tipperary District Court prior to the 6th of May, 2009, and on each such occasion they were adjourned for one reason or another. Then on the 6th of May, 2009, the first named respondent sought to fix trial dates and proposed fixing all of the cases for hearing in the three day period between 30th September, 2009 and 2nd October, 2009. However, the applicant objected to her proposal to specially fix the cases for hearing on those dates. He submitted that the matters could not proceed on those dates because there were on-going judicial review proceedings in the Superior Courts affecting those cases. It seems that on that occasion he was not in a position to produce court orders from either the High Court or the Supreme Court to support what he was saying. In the circumstances, and in order to be completely fair to the applicant, the first named respondent then indicated that she would direct that the cases in question should be listed for trial on the proposed dates on a provisional basis only in the first instance, and that she would put the matters in question in for mention at Tipperary District Court on 3rd June, 2009 to enable Mr. Burke to produce proof on that date that there were in being judicial review proceedings affecting those cases. It was understood that if satisfactory proof of a stay on the proceedings was produced on that date that the provisional listings for trial would not be confirmed and that the trial dates would be vacated.

Proceedings on 3rd June, 2009
When the cases were mentioned on 3rd June, 2009 the applicant tendered a bundle of documentation to the court in

support of his contention that the hearing of the charges could not proceed as fixed on 30th September and 1st and 2nd October, 2009. Further, though nothing much turns on it, I accept the evidence of Mr. Fitzpatrick that in addition to contending that the hearings should not proceed because of pending judicial review proceedings, the applicant further argued that a period of three days would not be sufficient to conclude the cases and that the dates that had been provisionally fixed were also inconvenient for him because they clashed (he believed) with the National Ploughing Championship which he wished to attend. While it is true to say that as a matter of fact the National Ploughing Championship ran from 22nd to 24th September, 2009, and that it was never scheduled to take place between 30th September and 2nd October, 2009, the Court is prepared to accept that Mr. Burke may have been genuinely mistaken and may indeed have believed that the National Ploughing Championship was to be held between the latter dates.

In any event what happened next in Court was that the District Judge retired to read the documentation that had been tendered by the applicant. Having taken some time to do so, she sat again and indicated that there was nothing in the documentation that had been provided to her to confirm the existence of on-going judicial review proceedings affecting the cases listed for trial. Accordingly she refused the applicant's application.

In order to understand the applicant's case it is necessary to quote from his affidavit of the 11th September, 2009 which sets out his perspective on what occurred on this date. He states the following:-

> "1. I did on the 3rd day of June, 2009 attend Tipperary District Court before Presiding Judge Mary Martin.
>
> 2. The matter before the court on that date involving myself concerned the fixing of a date to hear a trial which alleges criminal damage to a car and multiple charges of animal cruelty by the state against me and also to study court orders supplied by me to the court.
>
> 3. There was a number of documents put before the judge by myself for examination by her. She did take time out from court business to deal with these documents handed in by me, and in my opinion enlisted the help of a local solicitor, named Philip English, to do so.
>
> 4. These were mainly court orders from other courts, which in my opinion would have a huge bearing on all aspects of the case including content, context and relevant stays. There were also other matters apart from court orders which I wished to bring to the judge's attention on the day.
>
> 5. Even though I received free legal aid concerning both cases from the State I chose when asked to name a solicitor not to do so and explained to her that I wished to represent myself. She consented to this but after a very short period told me that I had a right to silence in her court and imposed an order binding me to silence. I complied with this order fully.
>
> 6. The judge soon after this put the case for hearing on 30th September, 2009 and the 1st and 2nd day of October, 2009."

For completeness I should also quote from a section of the applicant's draft statement of grounds. At para 4 thereof he states:-

> "There is no question, but that the first named defendant has shown bias towards the applicant by her attitude and actions of ... the 3rd ….day of June, 2009. By ordering and preventing me from speaking in court she has denied the applicant his right to defend himself especially so as the said judge had agreed that the said applicant be allowed to defend himself".

Although they are not referred to in the affidavits of Mr. Burke, I should also recite the contents of para 5 of his draft statement of grounds. He says there:-

> "During the course of the hearing on 3rd day of June 2009, the first named defendant put it to the applicant that he would be better off studying law so as to help people that would really need help in court much as to say that the applicant was only wasting his time and effort in representing himself. Also during the said hearing the said applicant was ordered to look behind him so as to see all the other people in court seeming to make the point that the hearing was using up too much court time. Her solution for this was to order that the applicant be silent. This if not bordering on ridiculous and unprofessional is in fact that".

Both Mr. Fitzpatrick, and Superintendent Courtney who was also present in court, share a completely different perspective concerning what occurred in Tipperary District Court on the 3rd of June, 2009. At paras 16 and 17 of his affidavit, Mr. Fitzpatrick states:-

> "The judge did not make any order binding the applicant to silence. The judge simply asked the applicant not to interrupt her when she was speaking and requested that he accept her determinations and refrain from making further submissions on the matter after she had made her determination. The applicant appeared to be repeating the same submission that had already been ruled upon.
>
> I believe that Judge Martin acted fairly throughout and was most accommodating to the applicant. The judge listed the matter "for mention" on the date requested by him and the judge listened, considered and ruled upon his applications and submissions. I believe that the judge did not say or infer that the applicant was wasting his time defending himself and I reject the assertion that the judge demonstrated bias towards the applicant".

At para 8 of his affidavit, Superintendent Courtney states:-

> "I agree that Mr. Burke was granted legal aid but I disagree with his assertion that he was told by the District Judge that he had "a right to silence" in the District Court and I disagree with the assertion that Judge Martin imposed an

order binding him to silence".

Further, at para 10 of the same affidavit, Superintendent Courtney adds:-

"I reject the assertion that Judge Martin demonstrated bias towards the applicant. She did not deny him the opportunity to speak and did not deny him the opportunity to defend himself. I was present in court throughout and I believe that the judge was patient with and considerate towards the applicant."

Issues arising out of the hearing on the 3rd of June, 2009

1. Alleged failure by the first named respondent to have regard to documents submitted by the applicant.

One of the difficulties that this court has been faced with has been the fact that the applicant has failed to exhibit the documents that he says he submitted to District Judge Martin on the date in question in either of his affidavits. He has deposed to a belief, and continues to maintain, that the documents in question confirmed the existence of on-going judicial review proceedings before the Superior Courts and that all proceedings in the District Court are stayed on account thereof. As previously stated this Court is aware that the applicant has a pending appeal before the Supreme Court. Although those proceedings do not seem to have any ostensible relevance to the present proceedings, the applicant maintains otherwise. However, the court is also aware, and indeed the applicant himself expressly confirmed it when asked to do so, that the Supreme Court has refused him a stay on any relevant District Court proceedings pending the hearing of his appeal. Nevertheless, the applicant is well-known to the Court as a prolific litigant, and the court was therefore conscious of the possibility that he might have other proceedings in being of potential relevance. In the circumstances I considered it essential that I should see the documents in question.

It has been established to my satisfaction that the applicant had only one set of the documents in question with him on 3rd June, 2009. He handed those into the District Judge. It appears that he did not furnish copies to Mr. Fitzpatrick, State Solicitor, who appeared for the prosecution. I am further satisfied that Mr. Fitzpatrick has never in fact inspected the documents in question, nor did he request an opportunity to inspect them. However, it appears from the affidavit of Superintendent Courtney, and fleshed out to a degree by the oral evidence adduced before me, that what happened was this. After the judge had inspected the applicant's documentation and had ruled against him the documentation in question was handed to Superintendent Courtney by the District Judge with a request that he should make and retain copies of it and return the originals to her. At para 7 of his affidavit the Superintendent says the following:-

> "The documentation tendered to the District Judge by Mr. Burke was returned to me by the District Judge in open court. With Mr. Burke's express permission I had the documentation photocopied. Having looked at same I do not see the basis upon which the applicant maintains that documentation had a huge bearing on the hearing going ahead on the dates fixed. I do not see how it has any bearing. I beg to refer to a true copy of the said documentation upon which pinned together and marked with the letters JC 2, I have signed my name prior to the swearing hereof."

This court has now had an opportunity of considering the documentation exhibited marked JC 2 with the affidavit of Superintendent Courtney. It consists of various documents including the Court List before Tipperary District Court on 3rd June, 2009; a draft affidavit and statement of grounds in proposed High Court judicial review proceedings entitled *John Burke v. Garda Robert Lynch and others, Superintendent Tipperary Garda Station and the DPP* ; an Order of Mr. Justice Peart in the same proceedings, bearing record number 2009 No. 478 JR, and dated 18th May, 2009 refusing the applicant leave to apply for judicial review; a Notice of Appeal to the Supreme Court in the same proceedings ; and a letter from the Supreme Court office dated 28th May, 2009 acknowledging the applicant's Notice of Appeal and allocating him an appeal number 206/2009. Further, this letter went on to proffer certain procedural directions to the applicant concerning the prosecution of his appeal before the Supreme Court.

I have considered all of this documentation in detail and I am satisfied that there is nothing in any of it to indicate that the proceedings before the first named respondent that were due to be heard on 30th September, 2009, and 1st and 2nd October, 2009, were the subject of a stay or in any way prohibited or injuncted. Accordingly, I am satisfied that the District Judge had nothing before her to support the applicant's contention that the trials listed for 30th September and 1st and 2nd October, 2009 could not proceed. In particular, there was nothing in the paperwork in question to indicate that Mr. Burke, having been refused leave to apply for judicial review by Mr. Justice Peart in the High Court, and having appealed the said refusal to the Supreme Court, had then applied to the Supreme Court and obtained a stay on the proceedings in the District Court. There was no evidence whatsoever of any stay having been granted. There was also no reference whatsoever to proceedings against him at the suit of the Minister of Agriculture & Food for failure to comply with welfare notices issued under either the 2000 Regulations or the 2006 Regulations. Accordingly, the applicant's complaints under this heading are without foundation.

2. Alleged binding of the applicant to silence

This court has no hesitation in accepting the evidence of Mr. Fitzpatrick and Superintendent Courtney, respectively, concerning what occurred on the 3rd June, 2009. They were extensively and rigorously cross-examined by Mr. Burke and they did not resile in any way from what they had stated in their affidavits. The court is completely satisfied that what in fact occurred was that Mr. Burke became argumentative with the judge after she gave her ruling, as he is wont to do. The court has already criticised the applicant for such behaviour in the case of *John Burke v. District Judge Terence Finn and The Director of Public Prosecutions*, [2006] IEHC 37. I am satisfied that the judge was entirely within her rights to call upon the applicant to desist from arguing with her after she had given her ruling. Such behaviour is entirely disrespectful of the court, as was pointed out to the applicant earlier this year in my aforementioned judgment, which was delivered on 27th January, 2009. I said in that judgment:-

> "In this Court's view a District Judge must be afforded considerable latitude as to how he conducts his court. It is essential for the preservation of confidence in the administration of justice that judges should be shown appropriate respect; that a judge's decisions should be respected and that proceedings in court should be conducted with appropriate decorum. It would be absolutely inimical to the proper and effective administration of justice if a

> dissatisfied party or parties were to be allowed to dispute a judge's ruling after it had been given, to argue against the correctness of the judge's decision before the same court, to seek to have a matter re-opened, or to abuse the judge because of his decision. Happily, these things happen relatively rarely because in most case the parties are legally represented and lawyers, whether they are solicitors or barristers, are required to adhere to rules of professional conduct which govern, *inter alia*, how they must behave in court. However experience has shown that from time to time a court does not receive the respect that it deserves and, perhaps unsurprisingly, when this does occur the offender is often a lay litigant. Even in the case of lay litigants they will usually desist from disrespectful conduct if it is pointed out to them from the bench that they are being disrespectful, and most judges will grant them a certain amount of indulgence and are unlikely to sanction them for a once-off occurrence. At the end of the day, however, a judge is entitled to insist on being shown appropriate respect and can be expected to take a firm line with repeat or persistent offenders. Moreover, if, as is the case with this applicant, a lay litigant has a track record of responding argumentatively to rulings given against him, the judge is entitled to take proactive steps to ensure that the party in question toes the line. Such proactive steps may, in an appropriate case, include issuing a threat that an argumentative response to the court's ruling will be treated as contempt in the face of the court for which conduct the offender may be jailed."

Accordingly, the applicant knew very well that he ought not to argue with the judge after she had given her ruling and he is extremely lucky that she did not sanction him for contempt in the face of the court. In all the circumstances, the court is satisfied that the applicant's complaint under this heading is not made out.

3. Alleged failure by the first named respondent to act independently

Judges are required under the Constitution of Ireland to act independently. Indeed the principle of judicial independence is a fundamental one and the Constitution itself contains several protections aimed specifically at preserving and defending the independence of the judiciary. The applicant's complaint in this regard is that, after the District Judge had retired to consider his documentation, she was visited in chambers by a Mr. Philip English, solicitor. As it happens neither Mr. Fitzpatrick nor Superintendent Courtney recalls Mr. English visiting the judge in chambers. However, the Court does not discount the possibility that Mr. English may have visited the judge. Such a visit would not, of itself, necessarily connote anything sinister or irregular. Mr. English may well have had legitimate business to transact with the judge. Be that as it may, the applicant has further sworn that "in my opinion" the District Judge "enlisted the help" of the said Mr.. English to consider the documents that he had submitted. He contends, in effect, that the judge discussed his documentation with the said Mr. English and sought his counsel. However, the applicant does not provide a scintilla of evidence to support this outrageous allegation. While the court accepts that it is entirely possible that the judge may have been visited in chambers by the solicitor in question to discuss some matter of court business or for some other legitimate purpose, it is an outrageous suggestion, in the absence of any evidence to support it, to suggest that the judge sought counsel from, or in some manner discussed the evidence in the case at hearing before her, with the solicitor in question. As far as the court is concerned, the making of such an allegation without a shred of evidence to support it, is scandalous and is both frivolous and vexatious. The court has no hesitation in rejecting it as being without foundation.

4. The allegation that another judge had seizen of the cases

Although it is not dealt with in either of the applicant's affidavits, there is an allegation in the applicant's statement of grounds that the first named respondent ought not to have dealt in any way with the applicant's cases on 3rd June, 2009 because another judge had seizen of those cases. The manner in which this is pleaded or advanced is set out in paras. 1 and 2 of the applicant's statement of grounds. It is appropriate to quote those paragraphs:-

> "1. The matter as regards that which was before the court on 3rd day of June, 2009, has already been peremptorily set for hearing for the15th day of September, 2009, brought before Judge Kevin Anderson District Court Judge.
>
> 2 The case was opened by him and after evidence on behalf of the State was given under oath by Garda Robert Lynch as regards the matter the case was adjourned by the said Judge Kevin Anderson. It surely stands that the same judge that starts a peremptorily set case is bound to see it through to its entirety."

Superintendent Courtney deals with this allegation in para. 9 of his affidavit of 25th September, 2000, wherein he states:-

> "I disagree with the assertion in the statement of grounds to the effect the case against the applicant was previously fixed on a peremptory basis, either on the 15th September, 2009 or any other day. Whereas Garda Robert Lynch did enter the witness box at Tipperary District Court on 4th February, 2009 in relation to the criminal damage charge and whereas he took the oath and began giving evidence, the case was adjourned when Mr. Burke objected and informed the District Judge that the case was before the High Court. In the circumstances the prosecution was adjourned to 1st April, 2009. It would have been adjourned to 25th March, 2009 but Mr. Burke indicated that he was in the High Court on that date. The criminal damage charge has been before the District Court on eight occasions, 2nd October, 2008, 21st October, 2008, 2nd December, 2008, 4th February, 2009, 1st April, 2009, 22nd April, 2009, 6th May, 2009 and 3rd June, 2009."

I consider that there is no evidence that could support the applicant's suggestion that Judge Anderson had seizen of the "cases" plural. Taking the applicant's objection under this heading at its high water mark, the complaint made is only of potential relevance to the single criminal damage charge faced by the applicant. With regard to that, while it is true to say that District Judge Anderson, having heard some evidence in that matter, would have been entitled if he had wished to do so to retain seizen of the case and to see it to conclusion, I do not consider that he was necessarily obliged to do so. Obviously, the more evidence that he had heard the stronger the argument would be that he should see it to a conclusion. Moreover, the Court faces the difficulty that it is unclear from the evidence in the present application as to exactly how much evidence was given before Judge Anderson. However, if the circumstances were, at the point where the applicant objected and informed the District Judge that the matter was before the High Court, that the Garda had merely gone so far as to identify himself and to say where he was stationed, or perhaps had merely given some other similarly uncontroversial evidence of a preliminary or introductory nature, then the District Judge would be most unlikely to feel constrained to see the case through to a conclusion, particularly if he was only a visiting judge. He would have been perfectly entitled to leave the matter over to be dealt with by his permanently assigned colleague on the basis that it

would start again *de novo* before her at a future date. But in any case, even if so much evidence had been heard as to effectively create an obligation on Judge Anderson to resume the substantive trial at a later date, there was nothing to stop the first named respondent in this matter from dealing with procedural aspects of the case in the meantime, such as the fixing of a date or dates for the resumed trial. In the circumstances I am not satisfied that there is any substance to the applicant's complaints under this heading either.

Issues arising out of the hearing on the 5th of June, 2009
At paragraphs 7 & 8 of his affidavit of the 11th of September, 2009, the applicant deposes that:

> "I travelled to Templemore District Court on Thursday the 5th day of June, 2009, in order to obtain a recognizance figure from her so as I could appeal her decision to the Circuit Court Clonmel Co Tipperary. On this occasion she dismissed me from the Court without letting me say anything other than, I wished to raise the matter as regards recognisance for an appeal to her decision of the 3rd day of June 2009. She absolutely refused to hear me and on the following Friday the 6th of June 2009 I travelled to Clonmel Co Tipperary in order to appeal her decision to the Circuit Court. This I did and I duly served the papers on the relevant parties.
>
> On the 5th of August 2009 the Appeal forms were returned to me … . The letter stated among other matters that the Judge of the Circuit Court had ruled that "the Appeals are not well founded". I do not believe that any Circuit Judge has ruled on the matter and now seek leave to apply for a judicial review as regards the complete matter."

Unfortunately, neither Mr. Fitzpatrick nor Superintendent Courtney were present at Templemore District Court on the 5th of June 2009. Be that as it may I am satisfied that the applicant did not appear there on that occasion for any *bona fide* purpose, because he knew well that he did not require to have a recognizance fixed for the purposes of any intended appeal by him, and I believe that this was a cynical attempt by him to set up a judicial review case against the first named respondent. The applicant knew the position because he had run a similar point, with partial success, in the course of an application to me in January of 2009 for leave to apply for *certiorari* by way of judicial review against a refusal by another District Judge to hear an application from him for the fixing of a recognizance in circumstances bearing some similarities to the present case. In my judgment in that case, viz the case of *John Burke v. District Judge Terence Finn and The Director of Public Prosecutions*, [2006] IEHC 37, delivered on the 27th of January 2009, and to which I have previously referred, I added the following remarks after the passage quoted earlier. I continued:

> "Having said all of that, a Court cannot refuse absolutely to hear a party after it has given its ruling. A Judge must be prepared to hear and deal with an appropriate application from any party in respect of a matter arising, providing that the application is made respectfully, e.g. a legitimate request for clarification of an aspect of the Court's judgment or order, or as to a consequence of the ruling, or a request for a stay, or for leave to appeal. In the instant case the applicant claims to have been inhibited from asking a question concerning a procedural point, namely whether he needed to enter into recognisances for the purpose of appealing the judge's ruling. (In point of fact, he did not need to do so as recognisances are only required to be entered into for the purpose of appealing a criminal conviction). It is regrettable that he felt so inhibited. It should have been made plain to him that he was being admonished only in anticipation of argumentative behaviour but that if he had any legitimate application to make after the ruling that would be entertained. Unfortunately, the judge's admonishment as described by the applicant (and assuming for the moment that it has been accurately described) arguably went too far in that it did not leave open the possibility of the applicant being allowed to enter into a respectful engagement with the Court. Moreover, the refusal of the District Judge to entertain any application from the applicant at all on the 18th of September 2008 was, *prima facie*, unjustifiable."

This Court has had many dealings with this applicant and I am satisfied that he is an intelligent man. At all material times the applicant has had the benefit of my judgment of the 27th of January, 2009, wherein it is expressly stated that "*recognisances are only required to be entered into for the purpose of appealing* ***a criminal conviction***" (my emphasis). In the circumstances I am satisfied that he knew full well that that he did not require to have recognisances fixed for the purposes of any intended appeal by him. He had not been convicted of anything at that point and he has still not been convicted of anything. I am satisfied that the applicant was fully alive to this point. In the circumstances it seems reasonable to infer that the application was not a *bona fide* one.

In any event the point also needs to be made that even if, which the Court does not accept, the applicant's desire to appeal was a genuine one, rather than a cynical and strategic ruse to try to set up a judicial review point with a view to delaying or possibly even derailing the prosecution of the charges preferred against him, any such an appeal would arguably be misconceived. While I do not consider it necessary to rule definitively on the point, having regard to my view that the purported appeal is not a *bona fide* one but rather is, effectively, an attempt to abuse the process, I should nevertheless state that I have considerable doubts as to whether the Circuit Court has jurisdiction to hear an appeal against a purely procedural ruling of a District Judge, namely the confirmation of a set of trial dates previously allocated on a provisional basis. It seems from the terms of the letter referred to by the applicant in para. 8 of his affidavit of the 11th of September, 2009, that the Circuit Court Judge and/or the County Registrar probably share my reservations. Of course, the refusal of an adjournment can be the subject of an appeal but the applicant has never said that he sought and was refused an adjournment. Rather, all he has said is that he opposed confirmation of the trial dates set provisionally on the 6th of May, 2009. That is not the same thing as applying for an adjournment and being refused.

Conclusion
In the circumstances outlined above, the applicant has not made out any arguable grounds that could justify the court in granting him leave to apply for the reliefs that he seeks by way of judicial review. For these reasons I have seen fit to refuse the application herein.