

## THE HIGH COURT

## JUDICIAL REVIEW

[2014 No. 185JR]

**BETWEEN:****DONA SFAR****APPLICANT****-AND-****THE MINISTER FOR AGRICULTURE, THE ATTORNEY GENERAL AND IRELAND (No. 2)****RESPONDENTS****JUDICIAL REVIEW**

[2014 No. 614JR]

**BETWEEN:****DONA SFAR****APPLICANT****-AND-****THE MINISTER FOR AGRICULTURE, THE ATTORNEY GENERAL AND IRELAND****RESPONDENTS****-AND-****HUMAN RIGHTS COMMISSIONER (No. 2)****NOTICE PARTY****JUDGMENT of Mr. Justice Twomey delivered on 30th day of May, 2017.**

1. This case is a post-judgment hearing regarding the orders to be made by this Court consequent on the judgment handed down by this Court on the 20th June, 2016 (*Sfar v. Minister for Agriculture & ors* [2016] IEHC 348). That judgment related to two joined judicial review applications by Ms. Dona Sfar, a lay litigant, against the Minister for Agriculture, Food and the Marine, the Attorney General and Ireland (2014 No. 185 JR) and against the Minister for Agriculture, Food and the Marine, the Attorney General and Ireland and the Human Rights Commissioner (2014 No. 614 JR). That judicial review hearing took four days before this Court and both judicial review applications amounted to a challenge to the seizure at the instigation of the Department of Agriculture of animals belonging to Ms. Sfar. During the course of the hearing, this Court was provided with evidence of grave suffering to animals on Ms. Sfar's property which justified the seizure of those animals and this Court found that Ms. Sfar had no grounds for challenging the seizure of her animals

2. The present hearing, which took two days before this Court, relates to the costs of those unsuccessful judicial review applications, as well as an application by the Minister for Agriculture, the Attorney General and Ireland to have Ms. Sfar subject to an Isaac Wunder order (an order restraining her from instituting proceedings in any jurisdiction against The Minister, the Attorney General and Ireland, except with the prior leave of the President of the High Court, such leave to be sought by application in writing to the Chief Registrar of the High Court).

**Isaac Wunder Order**

3. As is clear from paragraphs 48 to 60 of this Court's judgment ([2016] IEHC 348), this Court is of the view that Ms. Sfar's issue of the proceedings in this case and her conduct of them verged on an abuse of process by her. It is not proposed to set out in this judgment the criticisms which were made of Ms. Sfar in that judgment. In light of the terms of that judgment, an application has now been brought by the respondents to obtain an Isaac Wunder order against Ms. Sfar.

**Events since the hearing of the judicial review on the 3rd June, 2016**

4. In the present hearing, the Court was apprised of what has occurred between Ms. Sfar and the respondents since the judgment of this Court on the 3rd June, 2016.

*Conviction in District Court and further judicial review*

5. First, it is relevant to note that while the judgment of the 3rd June, 2016, was concerned with an attempt by Ms. Sfar to challenge the seizure of her animals, it was also the case that at that time she was charged with certain animal welfare offences and she was awaiting trial in the District Court for those alleged offences. Accordingly, in this Court's judgment of 3rd June, 2016, reference was made to the fact that Ms. Sfar had also sought leave from Kearns P. to issue judicial review proceedings to stop the District Court prosecution against Ms. Sfar in respect of those animal welfare offences. Reference was also made to the fact that Kearns P. had refused that application (2015 No. 608JR). This Court's judgment also noted that this refusal by Kearns P. had been appealed to the Court of Appeal (2015/570) and that notwithstanding this appeal, Ms. Sfar had made an almost identical application before Humphreys J. who rejected that application, as it had already been dealt with by Kearns P. (see Humphreys J.'s judgment of [2016] IEHC 165). A development since the date of this Court's judgment is the fact that the Court of Appeal, on the 13th June, 2016, rejected the appeal by Ms. Sfar of the decision by Kearns P. to refuse her application for leave for judicial review.

6. The next development of significance since this Court's judgment on the 3rd June, 2016, is that on the 7th July, 2016, Ms. Sfar was convicted in the District Court on 19 counts in respect of offences contrary to the Animal Health and Welfare Act, 2013. The District Court also made an order, pursuant to s. 58 of that Act barring Ms. Sfar from keeping pigs and sheep. Ms. Sfar claims that she was sick and therefore could not attend that District Court hearing. Mr. Moloney, a civil servant in the Department of Agriculture, Food and the Marine, avers in his affidavit that Ms. Sfar had contacted Mr. Fergus Mullen, the Louth State Solicitor, on the 6th July, 2016, to indicate that she was unable to attend Court on the following day on medical grounds. Mr. Moloney avers in his affidavit that

Ms. Sfar was informed that she would be required to provide a formal medical certificate. Ms. Sfar indicated that she was not in a position to provide a formal medical certificate. Ms. Sfar made no formal application for an adjournment and did not attend court on the 7th July, 2016. Subsequently, Ms. Sfar applied to the District Court to set aside her convictions on 13th September, 2016, and on the 21st September, 2016, the District Court refused to set aside her conviction. Ms. Sfar also filed a Notice of Appeal. Ms Sfar has also brought judicial review proceedings to challenge those convictions (2016/843JR) which Humphreys J. indicated that he intends to deal with on a telescoped basis and it is listed for hearing on the 18th July, 2017.

#### *Emails from Ms. Sfar since the judgment of this Court*

7. It is also relevant to briefly refer to several emails, all of them sent by Ms. Sfar following the judgment of this Court on the 3rd June, 2016, that the seizure of her animals was lawful, and some of them sent following her conviction in the District Court on the 7th July, 2016, of numerous animal welfare offences:-

- By email of the 2nd July, 2016, to Mr. John Boyle, solicitor, Chief State Solicitor's Office, Ms. Sfar raised a number of issues. In relation to the animals which had been seized Ms. Sfar stated that she would "*fight to the death for their return*" and in relation to those people who had sworn affidavits in cases involving her she said:-

"several people who swore lies against me in the past were struck down with cancer and one ended up in a wheel chair".

Ms. Sfar also stated that the animals which had been seized from her are "*sacred*" and in reference to the vet who works for the Department of Agriculture (Mr. O'Brien Lynch) she stated that:-

"My religious advisers have told me to start new proceedings concerning the breach by the State of my religious rights under the Constitution. Jacob sheep are sacred sheep. I have already warned Mr O'Brien Lynch as they belonged originally to Jacob and the first one was discovered by Abraham just before he sacrificed Ishmael, his first son and the fall of the Arabs according to the Koran or Isaac the father of the Hebrews according to the Jewish Torah/Bible. These sheep are held sacred by all these groups and a 7 day Eventer blessed the very sheep that Mr O'Brien murdered. Isaac Wunder may have been a Jew. I also want a reasonable offer in connection with fraud uncovered in Donna Sfar v Judge Brennan, which is now considered a leading Irish case. Otherwise I will commence proceedings that I was not able to recover my reasonable legal costs. The figure offered was joke and I may also go back to the Supreme Court. "

- By email of the 5th July, 2016, to Mr. Boyle, Ms. Sfar made reference to the return of the seized animals. She stated to him that she would be willing to "*deal*" if "*the release of the hostages* are on the table".

- By email of the 7th July, 2016, to Mr. Boyle, Ms. Sfar stated that:-

"If all my pets are returned and I am compensated for my losses and pros dropped I would be prepared to stay out of the Departments way and concentrate on my legal studies....My holding is only a mile from South Armagh and the local hate all Government officials, especially Customs Officers, Gardai and Departmental Officials".

- By email of the 11th July, 2016, to Mr. Boyle, Ms. Sfar referred to her absence at the District Court on the 7th July, 2016, in the following terms:-

"If by change [*sic*] a judgment has been made in my absence I will file a motion in the Supreme Court and re-enter the Supreme Court settlement case."

- By email of the 16th July, 2016, to Mr. Boyle, she stated in apparent reference to the failure to hand back her pets, that:-

"I would also advise you to remind the Department that my pets are still my property and will be commencing a civil action if these animals are not handed back to my keeper within 7 days. The Human Rights Commission are now fully aware of the situation. as there had been a serious breach of the European Convention of Human Right and Irish Constitutional Caw. There is also the issue of a possible breach of the Supreme Court settling that I reached with the Minister [...]."

- By email of the 13th September, 2016, to Mr. Boyle, Ms. Sfar again raised the issue of the return of the seized animals and expressed disappointment that the Department had not engaged with her on the matter and stated that "*I will not surrender.*"

- By email of the 26th September, 2016, to Mr. Mullen, Ms. Sfar stated that in relation to the convictions in the District Court:-

"I am still awaiting the return of my pets. I have been informed that the orders of Judge Brennan dated 7th July are nullities and lack legal effect."

8. A number of issues arise from the foregoing. Ms. Sfar has clearly demonstrated her desire, no matter what, to pursue her claims. Indeed this unwillingness to accept the decisions of a number of courts is evidenced by her continued reference to the return of the seized animals to her by the Department of Agriculture, even after this Court refused to grant her the reliefs she had sought and the District Court had found her guilty of a number of animal welfare offences and had given orders that she be barred from keeping sheep and pigs. In these emails, Ms. Sfar introduced a new element to this matter by suggesting that the seized animals have religious significance and that her Constitutional rights to practice her religion had been breached by their seizure as well as making gratuitously offensive comments regarding Department officials.

#### **Ms. Sfar's submissions before this hearing** *Court work is Ms Sfar's 'vocation'*

9. Although not a solicitor or barrister, Ms Sfar has advised this Court that she has a law degree and is a student member of Lincoln's Inn in London. She has stated before this Court that court is her '*vocation*'. She feels that she contributes to public law by her litigation. She has issued over 24 separate judicial review proceedings in the High Court since 1999 and she submitted to this Court that she prefers to seek declarations in many of her judicial review applications, rather than *certiorari*, since she is of the view that *certiorari* simply invalidates a particular decision of direct relevance to the applicant, while declarations have the potential to be of benefit to society as a whole.

#### *Religious significance of the sheep to Ms. Sfar*

10. As regards the animals, it is clear from her oral submissions to this Court that her sheep have a religious significance and she feels bound to do everything possible to get her animals back for religious reasons.

#### **Summary of the proceedings since the seizure of her animals**

11. Before summarising the proceedings in which Ms. Sfar has been involved regarding the seizure of her animals, it is important to note that the animals seized were suffering severe maltreatment, such that one of them had to be put down. In total Ms. Sfar has had seven hearings arising from this mistreatment of her animals. First, she appealed the original Welfare Notice to the District Court. Her appeal was rejected and she appealed that decision to the Circuit Court and this appeal was dismissed. She instituted four sets of judicial review proceedings in the High Court (two of them heard by this Court, one by Kearns P. and one by Humphreys J), and she brought an appeal to the Court of Appeal.

12. Against the backdrop of this number of hearings, it is not surprising that Mr. Moloney of the Department of Agriculture would aver that all of this litigation, which relates to essentially the same set of facts, is imposing a severe workload on the Department.

#### **Conclusion regarding Isaac Wunder Order**

13. It seems clear to this Court that regardless of what this, or any other, court finds, Ms. Sfar is fully convinced that she is right and anyone who disagrees with her about the welfare of her animals is wrong. It is apparent Ms. Sfar will take whatever court proceedings are necessary to seek to thwart the actions of any State body or State employee that disagrees with her. Defending these High Court judicial review actions being taken by Ms. Sfar is putting the State to enormous expense.

14. This Court is of the view that Ms. Sfar's actions in the proceedings heard by this Court and her actions since this Court's judgment are sufficiently vexatious to justify an Isaac Wunder Order to prevent the further waste of court resources and taxpayers' money in defending future proceedings. Accordingly, this Court will grant the Order sought and Ms. Sfar will be restrained from any proceedings in any jurisdiction, against the Minister for Agriculture, Food and the Marine, the Attorney General and Ireland except with the prior leave of the President of the High Court or any judge nominated by him, such leave to be sought by application in writing addressed to the Chief Registrar of the High Court.

15. In addition and because Ms. Sfar has previously issued proceedings against judges and other holders of public office, and in line with the Isaac Wunder order granted in *Burke v. Fulham and DPP* [2010] IEHC 448, this Court will also grant an Order restraining Ms. Sfar from issuing any proceedings in any jurisdiction, against any person holding the office of Judge of the Supreme Court, Court of Appeal, High Court, Circuit Court or District Court or against the Director of the Public Prosecutions or government minister, except with the prior leave of the President of the High Court or any judge nominated by him, such leave to be sought by application in writing addressed to the Chief Registrar of the High Court.

16. It is important to note that Ms. Sfar is perfectly entitled to continue her animal welfare activities if she so wishes and for this purpose to exercise her constitutional right of access to the Courts. However before she can require the aforementioned State bodies to spend enormous amounts of taxpayers' money defending those claims, she will require the prior leave of the President of the High Court. This should ensure that her proceedings are not vexatious, frivolous, an abuse of process or otherwise a waste of valuable court resources. In this way, the Isaac Wunder order operates simply as a filter to her constitutional right of access to the Courts and it should not prevent Ms. Sfar taking proceedings against any of these bodies where she has a claim that has some prospect of success.

17. It is also important to note that this Order applies only to new proceedings issued by Ms. Sfar after today's date. In addition, Ms. Sfar is of course entitled to appeal the judgment in this case, should she so wish, without seeking the consent of the President of the High Court.

#### **Costs**

18. As can be seen from the judgment of 20th June, 2016, Ms. Sfar not only lost her judicial review applications on all grounds, but this Court also took the view that her proceedings verged on an abuse of process. In these circumstances, this Court can see no reason for not following the normal rule that costs should follow the event. Accordingly, the costs of both judicial review applications will be awarded against Ms. Sfar.

19. It remains to be observed that if this Court did not oblige Ms. Sfar to pay the State's legal costs, it is this Court's view that it would send out a message to other lay litigants that there are little or no financial consequences for losing litigation against State bodies (since lay litigants by their very nature do not have their own lawyers to pay). However there are very significant financial consequences for the State in defending such litigation, as it does not have an endless supply of funds to pay lawyers to defend baseless legal claims against it. Yet, since lay litigants do not have to incur the expense of engaging lawyers, the decision by lay litigants to institute proceedings can be a decision with little or no financial consequence for them. However this belies the fact that their decision to litigate an unfounded claim against a State body, particularly in the High Court as happened in this case, will oblige government departments and State bodies to spend very significant amounts of taxpayers' money. In the words of Mr. John Moloney, who swore an affidavit on behalf of the Department of Agriculture, the use of funds to defend the multiple actions taken by Ms. Sfar has "resulted in the diversion of resources from other areas". Accordingly, this Court has little hesitation in awarding costs against Ms. Sfar.