

THE HIGH COURT

JUDICIAL REVIEW

[2016 No. 865 JR]

BETWEEN

STEPHEN MANNING

APPLICANT

AND

JUDGE AENEAS MCCARTHY

RESPONDENT

(No. 1)

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STEPHEN MANNING

APPLICANT

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

EX TEMPORE JUDGMENT of Mr. Justice Richard Humphreys delivered on the 21st day of November, 2016

1. The salient issue here is that the trial being judicially reviewed is currently underway with the prosecution case having opened and run for a number of days but not in fact concluded, pending an interim stay I granted last Monday, 14th November, 2016. I have to say very candidly that I didn't fully appreciate that the trial was underway last Monday when I granted an interim stay but I place no blame on the applicant for any misunderstanding on my part as to the situation.

2. The question then to be decided is, can an order of prohibition be granted midway through a trial? The authority in this case is the Supreme Court decision in *Mellet v. O'Reilly* [2002] IESC 33 (Unreported, Supreme Court, (Hardiman J., Murphy and Geoghegan JJ. concurring), 26th April, 2002) which indicates that in the absence of the sort of truly exceptional circumstances occurring in cases such as *D.P.P. v. Special Criminal Court* [1998] 2 ILRM 493 it's not appropriate to seek prohibition of a trial midway; that has to be done in advance if the relief sought is prohibition or alternatively, if one wants to come back afterwards *via certiorari*.

3. That approach would be entirely without prejudice to the right of the applicant to come back to this court and seek leave for judicial review by way of *certiorari* if he is dissatisfied with whatever decision is ultimately arrived at in the criminal proceedings and, in my view, the applicant is not losing the rights that he currently enjoys by engaging in the criminal trial.

4. However, there is a separate issue of duplication in the sense that the applicant has instituted two judicial review proceedings; 2016 JR No. 865 against Judge McCarthy and 2016 JR No. 866 against the D.P.P. Only the application against the D.P.P. is appropriate and, even if leave was to be given, the proceedings against the learned judge would have been struck out.

5. So having regard to the decision of *Mellet v. O'Reilly* which is binding me, I am obliged to refuse leave. That is entirely without prejudice to the right of the applicant to come back to this court and seek *certiorari* at the end of the criminal process. The stay will be discharged today but I would like to conclude by thanking Dr. Manning for the courteous manner of his presentation and his assistance to the Court.