

THE HIGH COURT**[2011 No. 6288 P]****BETWEEN****H.A.****PLAINTIFF****AND****C.B.****DEFENDANT****JUDGMENT of Mr. Justice McDermott delivered on 10th March, 2015**

1. By notice of motion dated 21st January, 2014, the defendant seeks an order dismissing the plaintiff's claim on the grounds of inordinate and inexcusable delay. The plaintiff's claim was initiated by plenary summons dated 15th July, 2011, following an authorisation by the Personal Injuries Assessment Board under s. 17 of the Personal Injuries Assessment Board Act 2003, dated 20th June, 2011. The plaintiff's affidavit of verification is dated 6th September, 2011. A memorandum of appearance was entered on 21st July and a statement of claim was delivered on 25th. A notice for particulars was raised by the defendant on 15th November, to which a reply was made on 2nd February, 2012.

2. Judgment in default of defence was sought on 10th May, 2012, following which a defence was delivered on 18th June.

3. The defence claims that the action brought by the plaintiff arose more than six years before the commencement of the action and was statute barred pursuant to the provisions of s. 11(2) of the Statute of Limitations Act 1957, as amended. The defendant also claimed that the plaintiff had been guilty of inordinate and inexcusable delay in the institution of the proceedings, and that as a result the defendant had suffered prejudice in his defence such that the balance of justice required that they should be dismissed. It was also claimed that the maintenance and continuance of the proceedings constituted an infringement of the defendant's rights under the Constitution and his right to a fair and expeditious and/or his right to a fair hearing and trial within a reasonable time under Article 6 of the European Convention on Human Rights Act 2003.

4. A reply was delivered to the defence on 13th August, 2012, and the discovery process commenced in 2012 and continued through 2013 and 2014, up to and during the course of the hearing of this motion.

5. A notice of trial issued on 11th July, 2013, and a certificate of readiness was issued dated 4th June, 2014.

6. The present notice of motion was grounded on the affidavit of the defendant on 13th January, 2014. The court ordered (Birmingham J.) on 12th May, 2014, that the defendant attend court for cross examination on his affidavit on 8th July, 2014. This order was appealed to the Supreme Court which affirmed the order. A further notice of motion seeking the dismissal of the action and the determination of the issue which arises on the defence under the Statute of Limitations issued on 3rd October, 2014. The motion seeking the dismissal of the action for want of prosecution was adjourned to 21st October, 2014, when an order for discovery was made in respect of the plaintiff's medical records.

7. Both motions were adjourned from time to time and the motion to dismiss for want of prosecution was heard on 21st January, 2015, when the plaintiff and defendant were cross examined on their respective affidavits. The motion was resumed on 5th March, when medical evidence was heard and legal submissions were concluded. Judgment was reserved and the motion seeking the determination of the legal issue concerning the statute of limitations was adjourned to the hearing of the action.

Chronology of Events

8. The plaintiff's claim is for "aggravated, punitive or exemplary" damages for assault constituting physical and sexual abuse and resultant psychological damage. It is alleged that the plaintiff was sexually abused by her father and two older brothers. The worst abuse is alleged to have been committed by the defendant continuously until the plaintiff was approximately 15 years old.

9. The particulars of the claim alleged against the defendant state that he first abused her in 1979 when she was approximately five to six years old. She was told to get into bed with him and he touched her inappropriately. The degree and intensity of the sexual abuse escalated in 1980 when the touching became more intimate and involved digital penetration three times per week approximately. There was further escalation of abuse to vaginal and anal intercourse once or twice per week when she reached the age of puberty. When asked to stop, it is alleged that the defendant told the plaintiff that he would tell their mother about other sexual activity between her and her older brother, D.B., and that she would not be believed.

10. It is claimed that the plaintiff disclosed the abuse to a fellow pupil at school when she was thirteen in or about 1986, and on the same day to a nun working at the school. The nun informed the principal of her brother's school who interviewed her about the abuse in or about September/October, 1987 when she was approximately fourteen years old. It is claimed that the defendant apologised to her, having been spoken to by the principal of his school and promised that it would not happen again. However, it is claimed that the defendant continued to abuse her after the principal had spoken to him, but less often.

11. A referral was made to Dr. Imelda Ryan, St. Louise's Unit at Crumlin Hospital, with whom the plaintiff attended when she was about fifteen or sixteen years old. She then attended counselling with Dr. Rosaleen McElvanney weekly for approximately two years. The abuse ceased for a period when the defendant left home for college in 1988, but it is alleged there are a number of occasions when home from college that he abused her between September, 1988 and when he left for France in 1989.

12. The defendant was born on 15th August, 1970 and was aged between eight and nine and eighteen and nineteen at the time of the alleged abuse.

1989 – 2004

13. The plaintiff in her replying affidavit to this motion states that she has no knowledge of her father's whereabouts since her parents' separation in 1989. The defendant left the country when he was nineteen and moved to France. Her other brother, D.B., left home after completing his leaving certificate and attended college, and left the country when he was 22.

14. The plaintiff states that she attended Dr. Imelda Ryan at Our Lady's Hospital for Sick Children between the ages of fourteen and seventeen and thereafter in 1990, she was referred to the Rape Crisis Centre by Dr. Ryan. She complained about the sexual abuse allegedly perpetrated by her father and her two brothers to An Garda Síochána in a series of statements dated 16th September, 4th November, and 7th December, 1992. She claims that her mother put her under severe pressure to withdraw her complaint to the Gardaí, due to the fact that her mother was fearful that her sons' lives would be ruined if the full force of the law were applied to them. She was living with her mother at the time and it was made clear to her that if she did not withdraw her criminal complaint that she would no longer be allowed to reside at the family home. She withdrew the complaint some time in 1993 and states that she did so because she succumbed to pressure from her mother. The statements made to An Garda Síochána were furnished to the defendant as part of the particulars of the plaintiff's claim, and contained detailed allegations. The plaintiff made a further statement to the Gardaí concerning her alleged sexual abuse in or about June, 2013 and the garda investigation was reopened as a result.

15. The plaintiff wrote to the defendant when she was approximately eighteen years old while doing voluntary work with CARI, a voluntary organisation providing child centred therapy and support to children, families and groups affected by child sexual abuse. Though she did not keep a copy of this letter, the defendant wrote a reply which was exhibited in her replying affidavit in which he accepted that he had an unhealthy attachment to or fascination with the plaintiff. It states:-

"As we both grew older I slowly began to realise the unhealthiness and abnormality of what I was doing. Guilt was tearing me to one side whilst a deep desire to be intimate with you (or actually, as I have learned with any female) was driving me to have this "secret attachment" between us. As crazy as it may sound, the very last incidents which occurred were an attempt to gain forgiveness through trying to make you love me. I am, as I was then, so sorry."

She also states that the defendant has always in his dealings with her accepted that he has abused her, and the first time that he denied the abuse was in the defence filed in these proceedings.

16. The plaintiff moved to London in 1994 and after fifteen months moved to Singapore. She lived in Asia between 1995 and 1997 and again between 1999 and 2004. She met her first husband in London and moved to Singapore where she worked during the course of the marriage. He had difficulties and was the subject to criminal investigation. The marriage did not last. She married again and they adopted a girl, but this marriage also failed. She formed a new relationship and a daughter was born to her in 2004.

17. This became relevant because the defendants sought particulars on 15th November, 2011, of all psychiatric or psychological conditions from which the plaintiff suffered from as a result of the abuse. The replies indicated that the plaintiff complained of panic attacks and was treated by a Dr. Sim in 2004. The plaintiff was also asked whether she had been in any incident prior to or subsequent to the matter in issue in the proceedings, and a negative reply was received. Following further discovery in March, 2013 particulars were raised on 24th September, 2013, and in further replies dated 16th April, 2014, the plaintiff indicated that she had been assaulted in the vaginal area by a person attending her in the course of giving birth to her daughter in Singapore. It was claimed that that person, known as a doula, was aware of the plaintiff's history and the plaintiff brought legal proceedings arising from the assault. Further discovery was sought in respect of these matters for the purpose, *inter alia*, of challenging the credibility of the plaintiff having regard to the replies to particulars made. The plaintiff had initiated proceedings in relation to an assault on her by the doula which occurred during the course of her labour with her daughter in Singapore in 2004. A doula is a woman trained to provide support to a pregnant woman during the pregnancy and childbirth and the period of time following the birth. She is not medically trained as a midwife. The birthing process was a particularly sensitive time for the plaintiff who had been a victim of child sexual abuse. The actions of the doula were upsetting and distressing for the plaintiff. The case was ultimately settled out of court in Singapore on the basis of an apology by the doula and a full refund of the fee that had been paid for her services. The defendant relied upon the initiation and conduct of those proceedings and the diagnosis of post traumatic disorder made by a Dr. Teoh at that time as evidence of the fact that in 2004, the plaintiff was well capable of initiating and maintaining these proceedings. In order to do so and in the course of those proceedings, the plaintiff directed her solicitors and invited them to obtain a report from Dr. Rosaleen McElvanney who had counselled her in relation to the child sexual abuse which she had suffered. She sought damages for the post traumatic stress disorder which had allegedly been caused to her by the doula. She had exacerbated the post traumatic stress disorder which the plaintiff had suffered as a result of the child sexual abuse in Ireland. It was submitted that if those steps could be taken and she could bring herself to initiate and maintain proceedings based largely on those historic events which would require her own evidence and that of her counsellor at the trial stage, the delay in initiating proceedings against the defendant until 2011 was inexcusable.

18. In a letter of 25th June, 2012, Dr. McElvanney informed the plaintiff that she had forwarded a letter to the solicitors in Singapore on a date which is unspecified, but in which she confirmed that the plaintiff had attended her for psychotherapy relating to her experiences of childhood sexual abuse. At that time Dr. McElvanney could inform the plaintiff from her records that her first engagement with the plaintiff took place in early 1990 at the Dublin Rape Crisis Centre concerning allegations of sexual abuse by her brothers. The plaintiff attended for a number of sessions at that time. Subsequently, between January and December, 1993 the plaintiff again attended her for psychotherapy sessions concerning this abuse. She understood, at that time, that the plaintiff had made a statement to An Garda Síochána and that a file had been prepared for the Director of Public Prosecutions. In 1993, she stated that the plaintiff was struggling with a decision as to whether to drop the charges. The next contact which she had with the plaintiff was in a letter written from England on 6th April, 1994, concerning her work and informing her mother of her pending marriage. She confirmed that she sent a letter to the plaintiff's solicitors in Singapore about these matters. However, following an application for further discovery in respect of these records, Dr. McElvanney in a letter dated 19th November, 2014 stated that she had disposed of the notes concerning the plaintiff's sessions with her by shredding and burning them on 30th November, 2012, in accordance with the recommended guidelines regarding storage, retention and disposal of such records for a period of seven years, noting that she had last worked with the plaintiff in December, 1993. The defendant contends that the non-availability of these records at the trial of the action is prejudicial to the defence. This correspondence of Dr. McElvanney is no longer available from the solicitors in Singapore.

2004 - 2011

19. Following her return to Ireland in 2004, the plaintiff commenced a psychology degree course which was completed in 2009. She suffered from suicidal ideation in 2009. She sought counselling and psychotherapy from Ms. Jennifer Foran on 3rd November, 2009, and attended her regularly until 28th June, 2011. On 10th February, 2010, she expressed suicidal ideation which was initially treated with anti-depressants, but eventually required hospitalisation between 16th and 25th March, 2010, at St. Edmundsbury Hospital, Lucan, Co. Dublin, under Dr. Kennedy's team. Following discharge she was encouraged to continue with psychotherapy. She returned to Ms. Foran, but again developed suicidal ideation in or about 22nd June, 2011. The plaintiff was assessed on 23rd June, 2011 by Dr.

Pat Gibbons and his team and had previously been seen in Naas Accident and Emergency Department on 10th October, 2009, and referred to a home care team. She was again assessed by Dr. Gibbons team on 23rd June, 2011, and revealed plans to kill herself. She was discharged with advice for further assessment by the home care team. Ms. Foran's notes indicate dissatisfaction on the plaintiff's part with the manner in which Ms. Foran disclosed her suicidal ideation to Dr. Gibbons and his team. There has been extensive discovery of the plaintiff's medical records, notes and correspondence for this period.

20. The notes clearly indicate that the plaintiff contemplated taking legal proceedings against her brothers in respect of alleged childhood sexual abuse.

21. The defendant claims that he first became aware of the plaintiff's intention to initiate legal proceedings against him in 2010. The plaintiff sent him an email on 20th July and informed him that she had been advised to pursue him legally for damages for sexual abuse. At the time she was seeking employment in Malaysia, but in order to move there with the children she needed to be confident that she and the children would be self-sufficient. She, therefore, proposed an agreement pursuant to which she would undertake to waive her right to sue him in any jurisdiction or to name him as a person who had sexually abused her in any publication, journal, newspaper, book or on radio and television if he were to pay her a large sum of money.

More Recent Evidence

22. The defendant also states in his affidavit that over the years they had regularly visited one another and that the plaintiff and her daughters came to stay with him and his wife, suggesting at one stage that his wife and he would become guardians to her children if anything happened to her. He claimed that he did not have any contact since the demand was made of him on 20th July, 2010. He received an initiating solicitor's letter on 11th March, 2011. For her part, the plaintiff states that the suggestion that the defendant and his wife might act as guardians to her children was made by the defendant's wife in the context of her being extremely vulnerable, suicidal and a lone parent. She sent the email in July in order to avoid proceedings.

23. The plaintiff attended Dr. Elizabeth Cryan, Consultant Psychiatrist, for assessment on 30th September and 11th October, 2010. She was also attended for cross examination at the hearing of this motion having sworn an affidavit exhibiting her report. It is clear from Dr. Cryan's and the plaintiff's evidence that following her stay in St. Edmundsbury Hospital, she came to the realisation that her brothers did not care for her and that she would need to make them accountable in some way. She was convinced that they had not accepted the enormity of the effects which the sexual abuse had upon her, and her subsequent life. Dr. Cryan emphasised that disclosure in relation to sexual abuse as a child does not mean that the patient has come to terms with it. She was unable to deal with it to the extent of being able to bring the perpetrators to account until 2010/2011. Dr. Cryan was of the view that the plaintiff only arrived at the point when she could exercise her willpower to bring her brothers to account during the period 2009 to 2010, following her stay in St. Edmundsbury.

24. Dr. Robert Daly, Consultant Psychiatrist, also gave evidence and in his report of 24th July, 2014, following an interview with the plaintiff on 16th July, he wrote:-

"During her pre-teen years, she reports having experienced low mood and the above described emotional response to her abusive experiences. In her adolescent and early adult years, symptoms and features of borderline/emotionally unstable personality became evident. Features of this condition that she developed are as described above and included tendency towards a marked fear of abandonment, chronic feelings of inner emotional emptiness, intense and unstable interpersonal relationships, a tendency to over idealise and then devalue individuals in relationships, recurrent self-harm, marked emotional lability and anger and impulsivity and suicidal and self loathing feelings along with a poor emotional and psychological understanding of her self worth and abilities. In addition, a number of post traumatic symptoms were evident including flashbacks, avoidant behaviours and nervous over arousal. Ms. Larkin has also experienced anxiety symptoms in the form of clinical panic attacks. Furthermore, it would appear that she has experienced depressive episodes in her life and had treatment for these. These above described difficulties... are all recognised sequelae of abusive experiences and in my medical opinion would have developed as a consequence of the abusive experiences she suffered. These symptoms have caused notable difficulties and emotional suffering and problems with inter-personal and occupational functioning and have required recurrent treatment throughout her adult life."

Dr. Daly concluded that these difficulties would have contributed significantly towards influencing her will to pursue legal action regarding her experiences. He concluded that her will was impaired and that these difficulties "would have significantly prevented her from reporting the events during her adult life". He was satisfied that anxiety and depression and post traumatic symptoms also significantly contributed towards impairing her will in reporting these matters. He acknowledged that though the plaintiff demonstrated the ability to pursue wrongdoings committed against her during her life, more specifically following a sexual assault in 1993 and the incident which occurred during the birth of her daughter, nevertheless, he was of the opinion that "it would appear that making decisions in these situations was not subject to the complex factors described above and neither (the plaintiff's) emotionally unstable personality characteristics nor her multiple above described psychiatric conditions would have affected her will in these separate and situationally much different situations". For example, in evidence he pointed to the fact that she was physically well removed from the family and Ireland in respect of the proceedings issued in respect of the doula in Singapore.

The Defendant's Evidence

25. The defendant was made available for cross examination pursuant to the order of the Supreme Court. The purpose was to explore the issue of prejudice which he said arose from the delay which had occurred in this case. The cross examination was conducted against the background of the continuing further investigation of the allegations made against the defendant of child sexual abuse by the plaintiff following her further statement of An Garda Síochána in June, 2013. In the course of his evidence the defendant chose to exercise his privilege against self incrimination in response to each relevant question asked. The only evidence of prejudice is an assertion made in the defendant's affidavit, the evidence of the passage of time and the respective ages of the plaintiff and the defendant at the time the alleged abuse was said to have taken place. The court was invited to place particular reliance upon the frailty of human memory and, in particular, the difficulties in examining and cross examining witnesses who were minors during the course of these alleged events which occurred between 25 and 36 years ago.

The Law

26. The principles applicable to an application to dismiss an action for want of prosecution are set out in a number of Supreme Court decisions, including *Domhnaill v. Merrick* [1984] IR 151: *Toal v. Digan & Ors (No.1)* [1991] ILRM 135 and *Toal v. Digan & Ors (No.2)* [1991] ILRM 140, *Primor v. Stokes Kennedy Crowley & Oliver Freaney & Co* [1996] 2 IR 459, *J.R. v. Minister for Justice, Equality and Law Reform* [2007] IESC 7, *Gilroy v. Flynn* [2005] IESC 98 and *McBrearty v. North Western Health Board & Ors* [2010] IESC 27. The questions to be determined are whether the delay on the part of the person seeking to proceed has been inordinate and if inordinate, whether it has been inexcusable. The onus of establishing that delay has been both inordinate and inexcusable lies upon the party seeking to dismiss the claim. If the court concludes that the delay has been inordinate and inexcusable, the court must then proceed

to exercise judgment on whether in its discretion on the facts of the case, the balance of justice is in favour of or against, allowing the case to proceed. The following statement by Hamilton C.J. in the case of *Primor v. Stokes Kennedy Crowley & Oliver Freaney & Co* [1996] 2 IR 459, at 475-476 is applicable:-

"In considering this latter obligation the court is entitled to take into consideration and have regard to –

- (i) the implied constitutional principles of basic fairness of procedures,
- (ii) whether the delay and consequent prejudice and the special facts of the case are such as to make it unfair to the defendant to allow the action to proceed and to make it just to strike out the plaintiff's action,
- (iii) any delay on the part of the defendant – because litigation is a two party operation, the conduct of both parties shall be looked at,
- (iv) whether any delay or conduct of the defendant amounts to acquiescence on the part of the defendant in the plaintiff's delay,
- (v) the fact that conduct by the defendant which induces the plaintiff to incur further expense in pursuing the action does not, in law, constitute an absolute bar preventing the defendant from obtaining a striking out order but is a relevant factor to be taken into account,
- (vi) whether the delay gives rise to a substantial risk that it is not possible to have a fair trial or is likely to cause or have caused serious prejudice to the defendant,
- (vii) the fact that the prejudice to the defendant referred to in (vi) may arise in many ways and be other than that merely caused by the delay, including damage to a defendant's reputation and business."

27. There is an inherent jurisdiction in the court to dismiss an action by reason of lapse of time even though there has been no culpable delay by the plaintiff. In *Manning v. Benson & Hedges Ltd* [2004] IEHC 316, Finlay Geoghegan J. supplied the questions to be considered in respect of the facts of each case:-

- "1. Is there, by reason of the lapse of time a real and serious risk of an unfair trial;
- 2. Is there by reason of the lapse of time a clear and patent unfairness in asking the defendant to defend the action?"

The learned judge stated that if the defendant establishes on the facts that having regard to the lapse of time for which he is not to blame, there is a real and serious risk of an unfair trial he may be entitled to an order to dismiss the plaintiff's claim in the exercise of the court's inherent jurisdiction based on the guarantee of fair procedures under Articles 34 and 40.3 of the Constitution. The factors to be considered included the nature of the claim, the probable issues to be determined by the court, that oral evidence will be given, the availability of relevant witnesses, the lapse of time and the length of time between the acts and/or omissions in relation to which the court will be asked to make factual determinations and the probable trial date. The court will have to consider any actual prejudice to the defendant in an attempt to defend the proceedings caused by the lapse of time.

28. This Court reviewed many delay cases in which it was sought to dismiss proceedings on the narrower or broader test where damages were claimed in respect of sexual abuse allegedly suffered many years ago, as in *J.C. v. S.D.* [2012] IEHC 383.

Decision

29. The parties are agreed that there has been inordinate delay in this case. The burden is on the defendant to establish that this delay was inexcusable and/or that any prejudice will be suffered by him in the preparation and/or conduct of his defence to the plaintiff's claim. The plaintiff reached the age of majority in 1991, and demonstrated a capacity to make detailed statements concerning the alleged abuse against her brothers and her father to An Garda Síochána in 1992. These were withdrawn under pressure from her mother at a time when the plaintiff was living at home. The plaintiff then moved abroad in 1994 and worked in various occupations. She entered a number of relationships, was married twice, adopted a daughter and gave birth to another in 2004. The plaintiff had made early disclosure of the child sexual abuse and had attended Dr. Ryan and the Rape Crisis Centre during her teenage years before she left Ireland.

30. In the course of proceedings seeking damages for assault against a lady (a doula) who assisted in the birth of her daughter in Singapore, she sought and obtained a letter from Dr. McElvanney outlining the psychotherapy which she had undergone in relation to the child sexual abuse, and it is clear from the documents discovered in relation to those proceedings that she was prepared and indeed insistent upon the fact that the post traumatic stress disorder and/or other symptoms from which she suffered as a result of the child abuse by her brothers and father, should form part of the claim for damages. It was intended to claim that the doula, who had been informed of her sensitivities and difficulties related to these earlier experiences, should not have touched her in her vaginal area during the birth of her child. It was clearly contemplated by the plaintiff at that time and she must have understood that she would have to give evidence in relation to these matters in order to succeed upon her claim. In the event, the claim was settled.

31. The plaintiff then returned to Ireland and commenced a degree in psychology which she completed in 2009. She attended for psychotherapy following a brief hospitalisation in 2009, and treatment continued in 2010 and 2011. It is claimed that after hospitalisation in March, 2010 that she was able to summon the strength and the will to confront her brothers (including the defendant) to make them accountable for the abuse by issuing legal proceedings. Having considered all of the evidence the court is satisfied that the defendant has established that the delay in issuing proceedings in 2011 was both inordinate and inexcusable.

32. There remains the question, whether there are any countervailing circumstances which would justify a disregard of that delay and whether on the facts the balance of justice is in favour of allowing the case to proceed.

33. The parties in the case were very young at the time of the alleged abuse. The question arises whether it is fair to allow the trial to proceed against the defendant based on the testimony of the plaintiff, then a young girl who was five to fifteen years of age, and require him at this remove to defend that case and give evidence (if he chooses) in respect of matters which occurred when he was between the ages of eight to nine years and eighteen or nineteen years. The nature of the allegations are such that the events, if they took place, took place covertly and in the absence of any independent or corroborative testimony from any other witness. There is no scientific evidence to support the occurrence of these events as one might have in the immediate aftermath of their commission if investigated by An Garda Síochána.

34. The passage of time may have a significant effect on the reliability of evidence and the ability to mount an effective cross examination. However, in this case there is no evidence that this is so, and some evidence to suggest that the defendant would not be prejudiced. In particular, elements of the defendant's letter to the plaintiff in August, 1992 might be regarded as an acknowledgment or admission by him of some or all of the allegations made. The onus is on the defendant to establish that the prospective trial is unfair and that he is prejudiced in its conduct by reason of an inability to recall events or establish facts that might have been capable of proof had the proceedings being brought in a more timely manner. No such evidence has been adduced. I am, therefore, satisfied that there is no substantial risk of an unfair trial or a likelihood that the defendant has been or will be caused serious prejudice in the preparation or conduct of his defence by reason of the passage of time. Though some records have been lost relating to the Singapore proceedings and Dr. McElvanney's notes, I am not satisfied having regard to the extensive records of complaint, attendance with Dr. Ryan, the Rape Crisis Centre, various psychotherapists, doctors and consultants over the years, none of which is contradicted, that the defendant has established that any vital evidence is no longer available.

35. The court must bear in mind that the plaintiff will suffer significant prejudice if denied the opportunity to litigate this claim in accordance with her constitutional right of access to the courts and fair procedures. The defendant may only succeed if he demonstrates that his right to a fair trial and fair procedures cannot be vindicated by reason of demonstrably clear and patent unfairness in defending the proceedings. I am not satisfied that the defendant is prejudiced by the delay in initiating these proceedings or the further delay which occurred between their initiation and the trial of this action which is listed for 14th April, 2015. I am also satisfied that should any unfairness, not presently identified, at the hearing of this motion, be identified at the trial of the action arising from this delay, the trial judge has ample powers to deal with the matter in accordance with fair procedures.

36. I am, therefore, satisfied that the relief claimed on this motion must be refused.