THE COURT OF APPEAL

CIVIL

Neutral Citation Number: [2019] IECA 323

Record No. 2019/232

McGovern J.
Donnelly J.
Power J.

BETWEEN/

A.R.

APPELLANT

- AND–

CHILD AND FAMILY AGENCY AND DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENTS

JUDGMENT of Mr. Justice McGovern delivered on the 20th day of December 2019

1. This is an appeal against a judgment of McGrath J., *R v. Child and Family Agency* [2018] IEHC 469, delivered on 31 July 2018 and the order of 2 October 2018 wherein he refused the appellant leave to apply for judicial review. The order of 2 October 2018 stated in error that the trial judge was Haughton J. and this has since been corrected. Although the order was not produced, the judgment records that Haughton J. made an order directing the appellant to put the respondents on notice of the leave application to address the court, *inter alia*, on whether or not an extension of time should be granted to bring the application for judicial review.

2. Throughout this judgment the location of the courts of local jurisdiction have been deleted in order to protect the identity of the minors who are referred to in the proceedings.

3. The appellant sought leave to apply for judicial review seeking the following reliefs:

   (i) an order vacating all District Court emergency care orders, interim care orders and care orders created since 18 November 2016 to 28 November 2017;

   (ii) an order returning her three daughters to her immediately; and

   (iii) an Isaac Wunder order and injunction preventing the respondents' further harassment of her.

4. The grounds upon which the relief was sought were set out as follows in the Statement of Grounds:-

   "(1) all District Court emergency care orders, interim care orders and care orders created between 18 November 2016 and 28 November 2017 are erroneous and based on details known to be inaccurate;

   (2) no due process was followed by respondents or acting judges;

(3) the detention of my three daughters by respondent collusion is unlawful and amounts to abduction and false imprisonment contrary to ss. 15 and 17 Non-Fatal Offences against the Person Act 1997;

(4) sworn affidavits by respondents contain details known to be untrue amounting to perjury that continues to ensure unlawful detention of my three daughters thereby amounting to a significant tort against each of my family members;

(5) it is paramount judicial review be lodged to consider lawfulness of applicant's three daughters' detention and to prevent further miscarriage of justice;

(6) I am fully competent to care for my three daughters;

(7) my three daughters want to return home;

(8) my three daughters are unlawfully detained against their will;

(9) as the mother of my three daughters, I am the most suitable person to look after their welfare and interests;

(10) that the best interests of my three daughters are served by being cared for by their mother;

(11) such other grounds as may be adduced, the exhibits and reasons to be offered and the nature of the case which application will be based upon *inter alia*...

[the grounds do not continue further]"

5. The application was grounded upon an affidavit from the appellant which complained that certain District Court and Circuit Court proceedings were unfair. But the affidavit was largely composed of narrative surrounding certain events involving interaction between the gardaí, the appellant and her children.

6. The affidavit did record that at the hearing of the District Court appeals she asked the Circuit Court judge to recuse himself on the grounds that he was biased against her. It is not entirely clear why she asked him to recuse himself as the nature of the bias is not set out. So far as one can ascertain from the material in the grounding affidavit, it appears to be based on what the appellant regarded as an unfavourable and/or unsatisfactory hearing before the judge on an earlier date, namely 7 March 2017. While this is referred to in para. 15 of her grounding application she does not elaborate She offers some further information in a supplemental affidavit sworn on 14 June 2018 where she says at para. 20:-

"I say acting [Circuit Court judge] did initially treat Katherine Kelleher as Applicant moving party at [a] Circuit Court hearing on 26 September 2017 by continuing to speak only to Katherine Kelleher respondent solicitor regarding appeals, thereby repeating initial events of previous [Circuit Court] hearing on 7 March 2017 when

acting [Circuit Court judge] followed no fair or due process by initially ensuring respondent's lengthy and inaccurate version of events was informed to acting [Circuit Court judge] who appeared to automatically believe every single word respondents claimed, telling [the appellant] to sit down or [the appellant] would go outside the courtroom to ensure they would speak; then allowing [the appellant] an extremely brief opportunity to later reply to respondent's initial inaccurate claims, thus ensuring [the appellant] became respondent in [the appellant's] Child and Family Agency appeal hearing."

Having refused to recuse himself the Circuit Court judge said he wanted an outline of the matter to be presented. At this point the appellant left the court.

Legal principles in leave applications

7. One of the distinguishing features of the judicial review process is the requirement for an applicant to obtain leave of the court in order to proceed with the application. While the threshold for obtaining leave is undoubtedly low, it is nonetheless a real threshold and the process requires that cases which are unstateable at law should not be admitted. Judicial review hearings of their nature take up a great deal of court time and resources and it is important that the courts apply some scrutiny at the leave stage even if the threshold to be met at that stage of the process is low.

8. In *G v. Director of Public Prosecutions* [1994] 1 I.R. 374 the Supreme Court set out the test applicable. At pp. 377 to 378 Finlay C.J. said:-

> "An applicant must satisfy the court in a *prima facie* manner by the facts set out in his affidavit and submissions made in support of his application of the following matters:-
>
> (a) That he has a sufficient interest in the matter to which the application relates to comply with rule 20 (4).
> (b) That the facts averred in the affidavit would be sufficient, if proved, to support a stateable ground for the form of relief sought by way of judicial review.
> (c) That on those facts an arguable case in law can be made that the applicant is entitled to the relief which he seeks.
> (d) That the application has been made promptly and in any event within the three months or six months' time limits provided for in O. 84, r.21(1), or that the Court is satisfied that there is a good reason for extending the time limit. The Court, in my view, in considering this particular aspect of an application for liberty to institute proceedings by way of judicial review should, if possible, on the *ex parte* application, satisfy itself as to whether the requirement of promptness and of the time limit have been complied with, and if they have not been complied with, unless it is satisfied that it should extend the time, should refuse the application. If, however, an order refusing the application would not be appropriate unless the facts relied on to prove compliance with r.21(1) were subsequently not established, the Court should

grant liberty to institute the proceedings if all other conditions are complied with, but should leave as a specific issue to the hearing, upon notice to the respondent, the question of compliance with the requirements of promptness and of the time limits.

(e) That the only effective remedy, on the facts established by the applicant, which the applicant could obtain would be an order by way of judicial review or, if there be an alternative remedy, that the application by way of judicial review is, on all the facts of the case, a more appropriate method of procedure."

9. Although that template was set out by Finlay C.J. twenty-five years ago, it still remains the test in an application seeking leave to apply for judicial review, subject to the revised time limit under Order 84 of the Rules of the Superior Courts ("RSC"), as amended by Rules of the Superior Courts (Judicial Review) 2011 (S.I. No. 691/2011).

10. Some further guidance on the requirements to be met are to be found in *A.P. v. Director of Public Prosecutions* [2011] IESC 2, [2011] 1 IR 729 where Murray C.J. stated:

> "5. In the interests of the good administration of justice it is essential that a party applying for relief by way of judicial review sets out clearly and precisely each and every ground upon which such relief is sought. The same applies to the various reliefs sought.
>
> 6. It is not uncommon in many such applications that some grounds, and in particular the ultimate ground upon which leave is sought are expressed in the most general terms as to the alleged frailties of the decision or other act being impugned, rather in the nature of a rolled up plea, and alluding generally to want of legality, fairness or constitutionality. This can prove to be quite an unsatisfactory basis on which to seek leave or for leave to be granted particularly when such a ground is invariably accompanied by a list of more specific grounds."

11. That test was approved by Cregan J. in *Malone v. Mayo County Council* [2017] IEHC 300.

Judicial bias

12. One of the grounds in the leave application concerned an allegation of bias on the part of the Circuit Court judge and his failure to recuse himself. Before looking at the judgment under consideration in this appeal and the facts put before the High Court judge, it is useful to look at the current jurisprudence on the topic of bias as expressed by the Supreme Court in *Orange Limited v. Director of Telecommunications (No. 2)* [2000] 4 I.R. 159 where the court held that bias cannot be established simply as a result of the decision which was made. In the course of his judgment the High Court judge quoted the following extract from the Orange case , where Keane C.J. stated at p. 186:-

> "While the test for determining whether a decision must be set aside on the ground of objective bias has been stated in different ways from time to time by the courts in the United Kingdom, there is, in the light of the two authorities to which I have referred [i.e*. R v Sussex Justices; Ex. p McCarthy* [1924] 1 K.B. 256., *Radio One*

Limerick Limited v. I.R.T.C. [1997] 2 I.R. 291], no room for doubt as to the applicable test in this country: it is that the decision will be set aside on the ground of objective bias where there is a reasonable apprehension or suspicion that the decision maker might have been biased, i.e. where it is found that, although there was no actual bias, there is an appearance of bias."

13. The High Court judge also quoted from Geoghegan J. at p. 251 where he said:-

"It seems clear from the case law in Ireland and England that an allegation of bias must be made on foot of circumstances outside the actual decisions made in the case itself. I would accept that in a situation where there was an arguable case of bias based on traditional proofs the added factor of cumulative wrong decisions all one way might be tantamount to corroboration of alleged bias and be a relevant factor in that restricted sense in the proving of bias. But of itself and by itself it can never be evidence of bias.

What the authorities seem to have established is that there are in effect three different situations where bias may arise.

(1) The rare case of proved actual bias. For such bias to be established it would be necessary actually to prove that the judge or the tribunal or the adjudicator or whoever the person might be, was deliberately setting out to mark or hold against a particular party irrespective of the evidence.

(2) A situation of apparent bias where the adjudicator has a proprietary or some other definite personal interest in the outcome of the proceeding competition or other matter on which he is adjudicating. In that case there is a presumption of bias without further proof.

(3) Even in cases where there is no evidence of actual bias and no evidence of the adjudicator having any proprietary or other interest in the outcome of the matter, there will still be held to be apparent bias if a reasonable person might have apprehended that there might be bias because of some particular proven circumstance external to the matters to be decided in the case such as for instance a family relationship in circumstances where objection may be taken *O'Reilly v. Cassidy* [1995] 1 I.L.R.M. 306, or the judge having been involved in a different capacity in matters which were contentious in Dublin *Well Woman Centre Limited v. Ireland* [1995] 1 I.L.R.M. 408, or where there was evidence of prejudgment by a person adjudicating *O'Neill v. Beaumont Hospital Board* [1990] I.L.R.M. 419. The law of bias has been usefully reviewed by the English Court of Appeal in *Locabail (U.K.) Ltd. v. Bayfield Properties Ltd.* [2000] 2. W.L.R. 870. The issue of bias was decided in five appeals heard together by a court consisting of Lord Bingham of Cornhill C.J., Lord Woolf M.R. and Sir Richard Scott V-C. In the judgment of the court delivered by Lord Bingham after dealing with the situation of proven actual bias and the cases where the presumption of bias arises by reason of a proprietary or other interest, the judgment goes on to observe at p. 883:-

> ‘In practice, the most effective guarantee of the fundamental right recognised at the outset of this judgment is afforded not (for reasons already given) by the rules which provide for disqualification on the grounds of actual bias, nor by those which provide for automatic disqualification, because automatic disqualification on grounds of personal interest is extremely rare and judges routinely take care to disqualify themselves, in advance of any hearing, in any case where a personal interest could be thought to arise. The most effective protection of the right is in practice afforded by a rule which provides for the disqualification of a judge and the setting aside of a decision, if on examination of all the relevant circumstances the court concludes there was a real danger (or possibility) of bias.’ ”

14. The High Court judge went on to quote further from Geoghegan J. who stated at p. 254:-

> “In every single instance Lord Bingham is talking about some outside fact which could conceivably be seen influencing the judge. There is not the slightest suggestion that bias could ever be established as a consequence simply of the decisions of the judge.”

15. Having set out above the relevant legal principles applicable (a) on the test to be met in an application for leave to apply for judicial review and (b) on the allegation of bias and the failure of the Circuit Court judge to recuse himself in the face of such an allegation, I will now go on to consider the judgment of the High Court and the issues that arise on this appeal insofar as they can be discerned.

Discussion

16. The first issue dealt with by the High Court judge was whether or not the leave application was brought within time and, if not, whether he should exercise his discretion to extend the time as allowed under O.84 r.21(3) RSC.

17. The High Court judge found that the application was not brought within the time limit set forth in O. 84, r.21(1) RSC. The final date for lodging the claim fell during the Christmas vacation. The decision of the Circuit Court judge sought to be impugned was made on 26 September 2017. Order 84, r.21(1) provides that an application for leave to apply for judicial review shall be made within three months from the date when grounds for the application arose.

18. The High Court judge considered the application to extend the time in the context of O. 84, r.21(3). He was satisfied that the appellant swore an affidavit grounding her application for judicial review within the three-month period and that this was evidence of her intention to bring the application within the time allowed. In an affidavit sworn on 11 January 2018 the appellant says that she attempted to lodge the judicial review application after swearing her affidavit on the 21 December 2017 and after discussing the matter with Ms. Angela Denning who then worked in the High Court Central Office. She said that was the first opportunity she had to lodge the papers given what she described as her continued trauma and other issues referred to.

19. While holding that it was questionable as to whether all of the circumstances regarding the timing of the making of the leave application were outside the control of the appellant, he took into account the fact that the Christmas period intervened and, having regard to all the surrounding circumstances, he extended the time within which to bring the application for leave but only in so far as the application concerned a challenge to the orders of the Circuit Court judge made on 26 September 2017. While the High Court judge may have been generous in accepting reasons why her leave application was not made within time, it seems to me that, in extending the time, the judge acted within the reasonable bounds of his discretion having regard to the fact that 21 December 2017 was the last day of the Michaelmas law term and the Christmas vacation intervened. One cannot ignore the fact that she was a litigant in person, although one of considerable experience, and there was no obvious prejudice to the proposed respondents. I would not interfere with the High Court judge's decision to extend the time for bringing the leave application.

20. Dealing with the second named respondent, the High Court judge referred to the fact that this respondent was put on notice of the leave application in accordance with an order of Haughton J. A replying affidavit was not filed but at the hearing of the application counsel for the second named respondent submitted that the DPP had been incorrectly joined and there was no legal basis for her being joined.

21. The High Court judge then went on to deal with the facts alleged by the appellant in the leave application and in paras. 20 to 22 addressed the claim against the second named respondent.

22. The High Court judge concluded that the acts and omissions relied upon by the appellant in support of an application for judicial review against the DPP concerned operational activities of An Garda Síochána including allegations made against individual members of An Garda Síochána. There was nothing in the evidence adduced by the appellant in the High Court to show that the role of the second named respondent was engaged. He held at para. 22:-

> "In my view the actions relied upon as against the DPP to ground the application cannot, on the facts averred to, as a matter of law, be laid against the Director of Public Prosecutions who is not responsible, vicariously or otherwise, for the operational actions of An Garda Síochána in circumstances such as this; and in any event cannot found an application such as this. No authority has been cited to the contrary and no factual basis has been averred to in support of such proposition in this case. If there is a liability for the actions of An Garda Síochána, and the Court expresses no opinion on this, it does not lie against the DPP and in the circumstances I am not satisfied that the applicant had made out a prima facie stateable case or has discharged the burden of proof which is imposed upon her in an application such as this, as against the second respondent."

23. In my view the High Court judge was entirely correct in this conclusion.

24. The application against the first named respondent does not meet the criteria set out by the Supreme Court in *G v. Director of Public Prosecutions or A.P. v. Director of Public Prosecutions*. For the most part the statements of grounds and supporting affidavits sworn by the appellant consist of a long narrative without setting out any legal basis for a challenge to decisions taken by the first named respondent in respect of the appellant's children. When one looks at the statement of grounds which is the basis for the application, it is impossible to discern a challenge to the first named respondent which could give rise to judicial review. It is true that she states that the detention of her three daughters was unlawful and amounted to false imprisonment but she does not say on what basis this was so and in any event if there was any issue of unlawful detention it could be dealt with by other means. Therefore, there was no basis on which she could have been granted leave against the first respondent. It appears that the real focus of her complaint is the Circuit Court judge who heard the appeals, on the basis that he refused to recuse himself when asked to do so by the appellant and then proceeded to affirm a number of District Court orders in the absence of the appellant when she had left the court. Tied up with the recusal issue is a claim by the appellant that the Circuit Court judge was biased. In extending the time for bringing a leave application the High Court judge limited the application to one involving the manner in which the Circuit Court judge dealt with the hearing and made orders on 26 September 2017.

25. In an affidavit grounding her application for leave to apply for judicial review, the appellant stated that the Circuit Court judge did not consider any facts or hear any evidence before affirming the District Court orders and that this amounted to an unfair hearing. She also stated that he refused to recuse himself when requested to do so and she alleges that he "…perverted justice by his failure to ensure attendance of my ten respondent witnesses". Her affidavit then records that she had no option but to abandon the appeal in the Circuit Court in order to attend a District Court hearing in another town in the county on the same day for the purpose of extending interim orders made in respect of her two daughters.

26. The appellant appears to believe that it is sufficient for her to make allegations and that these on their own will be sufficient to entitle her to an order from the court granting leave to apply for judicial review. If that is the case she misunderstands the positon. The procedure of judicial review exists to enable the legality of the decision-making process to be challenged. Its purpose is not to achieve the resolution of disputed issues of fact. In this case the appellant has offered no evidence to the High Court to show that the first named respondent acted *ultra vires*. Her complaint against the first named respondent concerns decisions taken which led to emergency care orders being sought in respect of her daughters. She disputes the evidence on which such orders were sought and raises many other factual issues which are disputed by the first named respondent. But she does not set out any legal basis on which those orders should be quashed. Insofar as the Circuit Court judge is concerned, the High Court judge analysed her claim against him and concluded that there was no basis for granting leave to apply for judicial review because he refused to recuse himself, or on the issue of bias or because he proceeded to affirm

the District Court orders in the absence of the appellant or because he failed to deal with the appellant's request for witnesses to be present.

27. The High Court judge concluded that the orders made by the Circuit Court judge were interim care order extensions and directions orders made pursuant to the Child Care Act 1991, as amended. It appears that the appellant asked the Circuit Court judge to recuse himself because of previous decisions he had made averse to her. When he refused to recuse himself she walked out of court and the judge proceeded to affirm the District Court orders in her absence and dismiss her three appeals.

28. There was evidence before the High Court judge that arrangements had been made to hear certain matters involving the appellant and first named respondent in the District Court after the Circuit Court hearing so as to enable both parties to attend. The High Court judgment records the fact that Ms. Katharine Kelleher, solicitor for the first named respondent, in an affidavit sworn on 18 June 2018 made it clear that she too was in both courts. At para. 26 the High Court judge notes that Ms. Kelleher:-

> "…had made arrangements with both the District and the Circuit Courts that the Circuit Court appeal would proceed first and that the District Court hearing would stand until the hearing of the Circuit Court appeal was completed. She confirmed that she wrote to the [appellant] in this regard. While the [appellant] disputes whether she received this letter in time, the fact of the matter is that arrangements had been made to ensure both Courts would not be sitting and dealing with the [appellant's] case at the same time."

29. It is clear that the appellant decided to leave court when the Circuit Court judge refused to recuse himself. In those circumstances she cannot complain that matters were dealt with by the Circuit Court judge in her absence. While she had indicated to the Circuit Court judge that she wished to have a number of witnesses present in respect of which she had issued subpoenas, the appellant had left the Circuit Court hearing before any ruling was made in respect of the attendance of these witnesses. The Circuit Court judge decided to have the appeals opened to him so that an outline of the case could be given.

30. Dealing with the appellant's complaint that the judge failed to ensure the attendance of witnesses, the High Court judge held that an allegation at para. 13 of her grounding affidavit alleging that the first named respondent had obstructed the attendance of the witnesses, had been made without further detail being provided and this was not a ground specified in the statement of grounds. Having reviewed the statement of grounds it is clear that the High Court judge was correct in this finding and there is no basis for this court overturning it on appeal. Order 84, r.20 RSC sets out in specific terms what level of detail is required in a statement of grounds and it is clear that the appellant did not fulfil the requirements of the Rules, which provide that the court may grant leave on such terms (if any) as it thinks fit and may direct the filing of amended grounds. It is clear that in this case no amended grounds were furnished to include a reference to this matter.

31. Litigants in person should not be treated more favourably than parties who are in a position to and/or have taken the trouble and expense of retaining solicitors and/or counsel. But to ensure fairness to all parties the courts habitually grant some latitude to litigants in person to take into account their lack of knowledge of either the law or procedural rules. It is clear that the High Court judge facilitated the appellant to make her case without closing down her arguments, despite the somewhat confused nature of her complaints. But making all due allowance for the appellant in this matter, I am satisfied that her complaint that the Circuit Court hearing was in some way unfair because the judge did not deal with the attendance of the witnesses she had requested is unfounded. The judge had never got to the point of addressing that issue before the appellant left court. Furthermore, the notice of appeal does not raise this as an issue which arises from the judgment of the High Court judge although she made submissions to this court on the matter. As the High Court judge's findings in this regard have not been appealed and for the reasons which I have outlined above, there is no basis for interfering with these findings made by the High Court judge.

32. I have set out earlier in this judgment the legal principles applicable to the issue of bias. The only basis upon which the appellant alleges bias on the part of the Circuit Court judge is related to previous decisions made by him against her. Having regard to the jurisprudence set out above in *Orange Limited v. Director of Telecommunications (No. 2)* this could not, as a matter of law, support a claim of bias.

33. This allegation was not raised in the statement of grounds although it does appear in the grounding affidavit in the context of the Circuit Court judge refusing to recuse himself at the hearing on 26 September 2017.

34. The notice of appeal does not raise any ground suggesting why the High Court judge was wrong in applying the law in the *Orange* case. At para. 25 of his judgment the High Court judge stated by way of reference to the *Orange* decision:-

> "On the application of these principles, it appears to me, as a matter of law, the fact that the Circuit Court judge made a certain adverse decision or decisions on a previous occasion is not, in and of itself, evidence of bias. As the gravamen of the [appellant's] complaint is one of bias allegedly established by virtue of a previous decision of the judge, in my view, on the basis of the authorities referred to above, such an allegation or complaint cannot and does not establish or evidence bias sufficient to establish a *prima facie* arguable or stateable case."

In my view the High Court judge was correct and the appellant has shown no basis on which that decision should be overturned.

Conclusions

35. The notice of appeal should engage with the High Court judgment in such a way as to enable this court to understand her arguments as to where and in what way she alleges the High Court judge was in error. The grounds of appeal set out a narrative as to certain events which occurred, some of which includes correspondence with persons who are not

parties to the proceedings and some of which relate to findings of the High Court judge with which the appellant takes issue. But the appellant does not in any way assist the court by stating, in the notice of appeal or elsewhere, in what way the High Court judge was in error.

36. The application for leave was not in a proper form and did not meet the test required in *G v. Director of Public Prosecutions* and *A.P. v. Director of Public Prosecutions* and on that basis alone leave could have been refused.

37. The appellant failed to establish, as a matter of law, how the second named respondent could have been amenable to judicial review in the circumstances as outlined by the appellant in her statement of grounds and supporting affidavits. In those circumstances the High Court judge was entirely correct to refuse leave insofar as the second named respondent is concerned.

38. In my view the High Court judge was also correct in refusing leave in respect of the first named respondent whether, as so named, or through the actions of the Circuit Court judge. O. 84 r. 22(2A) RSC precludes the joinder the Circuit Court judge as a party to the proceedings in the absence of an allegation of mala fides or misconduct. See M v. M [2019] IECA 124 per Irvine J. The High Court judge correctly applied the relevant jurisprudence to the issue of bias and recusal and in my view his conclusions on this issue were correct. Insofar as other issues arose, namely attendance of witnesses sought by the appellant, these matters were raised but never argued because the appellant left the court. In circumstances where she did so she cannot complain that matters proceeded in her absence having regard to the background facts which have been outlined earlier in this judgment and bearing in mind that the applications were of a nature that had to be dealt with immediately. In my view the High Court judge was correct in refusing leave against the first named respondent and/or the Circuit Court judge.

39. The High Court judge considered all the relevant jurisprudence and the provisions of O. 84 RSC before coming to the conclusion that the appellant had not established a basis on which leave to apply for judicial review should be granted. I find no error in the findings of the High Court judge.

40. The question as to whether the appeal to this court gives rise to a hearing de novo was not argued. O.58 r.13 RSC formerly provided that:-

> "Where an *ex parte* application has been refused in whole or in part by the High Court an application for a similar purpose may be made to the Supreme Court ex parte within four days from the date of such refusal, or within such enlarged time as the Supreme Court may allow".

That order was amended and no longer contains an equivalent rule for the Court of Appeal or Supreme Court. The old Order 58 may have been the basis on which this court and the Supreme Court heard such appeals as a de novo hearing. In *Egan v Murphy* [2019] IECA 7 Whelan J. stated at para. 5 of the court's judgment: "This appeal involves

a *de novo* consideration of the application for leave to seek judicial review of the Roscommon County Registrar's decision…"

41. As the case before this court is one where the leave application was made on notice to the respondents it is unclear whether the same situation arises. I have already stated that I am satisfied that the approach of the High Court judge was correct. But I also wish to say that if I were to approach the matter as a hearing de novo I would come to the same conclusion on the evidence before the court and the authorities which have been opened. I would do so on the same basis as the High Court judge and for the reasons set out in this judgment which are particular to this case. I would leave to another day a determination of this question as a matter of general application if and when it is argued before the court in a case of this nature.

42. I would dismiss the appeal.