Neutral Citation Number: [2005] IEHC 420

THE HIGH COURT
JUDICIAL REVIEW

[2005 No. 287 J.R.]

BETWEEN

MICHAEL GRIMES

APPLICANT

AND
CORK COUNTY COUNCIL

RESPONDENTS

Judgment delivered by Ms. Justice Dunne on the 25th day of November, 2005

1. The applicant in this case seeks judicial review by way of an order of *certiorari* quashing a decision made by Cork County Council on or about 9th March 2005 to confiscate, acquire or otherwise take ownership or control of and its decision thereafter to cause to be destroyed two motor vehicles, Leyland National NK1, F8 LH 540 (SNG 378) and Aer Lingus vehicle SNG 409, both the property of the applicant herein together with damages and ancillary relief. The grounds relied on are as follows:

> 1. That the said Cork County Council, acted unreasonably, unlawfully, and without any proper authority and contrary to the constitutional rights of Michael Grimes and contrary to law and natural justice in the making of the said orders, the confiscation and destruction of the said vehicles.
>
> 2. That the council was aware they were museum buses and privately owned.
>
> 3. That no authority of the court was obtained for any such action.

2. The applicant swore a grounding affidavit setting out the matters relied on by him in an affidavit sworn on 16th March, 2005.

3. Leave to apply for judicial review was granted by the High Court (Mr. Justice Quirke) on 16th March, 2005, in the terms set out above.

4. The necessary motion seeking judicial review was issued on 6th April, 2005, and a statement of opposition was furnished on 5th May, 2005.

5. The statement of opposition is, to a certain extent, a traverse of the matters referred to in the statement required to ground the application. In the statement of opposition it is asserted that the respondent acted under the authority of the Road Traffic Act, 1968, the Roads Act, 1993, and regulations entitled Road Traffic (Removal, Storage and Disposal of Vehicles) Regulations, 1983. It is also asserted that at the date of grant of leave in these proceedings the respondent had not caused the destruction or disposal of the vehicles.

6. It is further asserted that the respondent became aware in or about September, 2003, that a number of motor vehicles including the two buses, the subject matter of these proceedings, were unlawfully parked and/or abandoned on a public road at Ballinascarthy, Creamery Road, Clonakilty, Co. Cork. Following enquiries made with the Gardaí, the respondent believed that the buses were in the ownership of the applicant herein. Accordingly, it is asserted that notices were served on the applicant by registered post on 26th March, 2004, stating that under the Road Traffic Act, 1968, the Roads Act, 1993, and the Road Traffic Regulations, 1983, the respondent was authorised to remove abandoned/unlawfully parked vehicles left on a public road. The notice indicated a time for the removal of the vehicles and indicated that if they had not been moved, the respondent would arrange to have them removed. The respondent also caused a public notice to be placed on the vehicles to similar effect. During the course of the proceedings there was an issue as to the ownership of four vehicles which had been parked on the public road at Ballinascarthy. It emerged that three out of the four vehicles appear to have belonged to the applicant herein. The fourth vehicle does not appear to have belonged to the applicant. In any event, these proceedings only concern the two buses referred to above.

7. There was no response from the applicant and the buses remained on the public road way. Complaints were received by the respondent from members of the public, community groups and the Gardaí. Accordingly, pursuant to the statutory powers referred to and the regulations made there under, the respondent arranged for the two buses to be removed from the public road by National Recycling Company Limited on 7th March, 2005. The respondent then referred to the regulation which provides that where a vehicle has been removed and stored it shall not be released until the person claiming the vehicle produces satisfactory evidence that he is the owner and that charges due for the removal and storage have been paid. Reference was also made to the power of the respondent as a road authority to dispose of any vehicle which has been removed and stored in any manner it thinks fit where the vehicle has not been claimed or has not paid the charges due. Notice was sent to the applicant by fax dated 16th March, 2005, referring to the respondents' authority to remove the buses. It further provided that if the applicant wished to recover the buses, he was required to show proof of ownership and to pay the costs incurred for their removal and storage.

8. Finally it was asserted on behalf of the respondent in the statement of opposition that the applicant had not demonstrated proof that he is the owner of the two motor vehicles and that he had not demonstrated sufficient *locus standi* or sufficient interest to bring the present proceedings. Reference is made to an averment of the applicant in an affidavit sworn herein on 16th March, 2005, where he states that he owns the Kells Transport Museum; that the museum owns some one hundred and twenty vehicles and that he, the applicant, owns two buses in particular. It is specifically pleaded that the Kells Transport Museum Limited was incorporated as a limited company on 13th December, 1998, and was dissolved on 19th December, 2003. Thus it is contended that the Kells Transport Museum has a distinct legal personality from that of the applicant.

9. Finally the statement of opposition was expressed to be without prejudice to the entitlement of the respondent to bring a motion to set aside the grant of leave on 16th March, 2005. An affidavit deposing to the matters set out in the statement of opposition and other relevant facts were sworn by John Conroy, Senior Executive Engineer of Cork County Council on 5th May, 2005.

10. On 18th October, 2005, the application for judicial review came on for hearing before me. Together with that application a motion was listed for hearing on behalf of the respondent herein which sought an order pursuant to the inherent jurisdiction of the court setting aside the order of Mr. Justice Quirke made on 16th March, 2005, granting the applicant leave to take the within judicial review proceedings and to strike out such proceedings. At the outset of the hearing before me I was asked to deal with the application to set aside the order of 16th March, 2005, granting the applicant leave to bring judicial review proceedings as a preliminary issue. Having heard submissions on this point I agreed to do so but indicated that I would also proceed to hear the full application in the

event that I did not accede to the respondent's application in respect of the preliminary issue.

11. At first glance, it may seem somewhat unusual that an application would be brought to set aside an order of the court granting leave to apply for judicial review, given that an application for leave to bring judicial review proceedings could be described as a filtering process designed to ensure that applications for judicial review are not brought in respect of matters which are unmeritorious or where an applicant has no *locus standi*, to mention just two matters. Nonetheless, in this particular case counsel for the respondent referred to three separate grounds as justifying the setting aside of the grant of leave, namely;

1. Factual inaccuracies and material nondisclosure

2. The lack of merit in the application

3. No *locus standi*

12. Counsel on behalf of the respondent referred to a number of authorities in which the question of the jurisdiction to set aside an order granting leave to apply for judicial review has been considered. He referred to *Goonery v. Meath County Council* [2001] 2 ILRM 401, *Adams v. D.P.P.* [2001] 1 IR 47 and *Adam and Iordache v. The Minister for Justice Equality and Law Reform* [2001] 3 IR 53, a decision of the Supreme Court. In turn, the latter decision cited from the judgment of McCracken J. *in Voluntary Purchasing v. Insurco Limited* [1995] 2 ILRM 145. Reference was also made to the decision of the Supreme Court in the case of *Gordon v. D.P.P. and McGuinness* [2002] 2 IR 369 and finally Ainsworth v. The Minister for Defence (Unreported, High Court, Kearns J., June 4th, 2003). It may be worth quoting briefly from two of the decisions referred to above. In the case of Voluntary Purchasing v. Insurco Limited it was stated by McCracken J. at p. 147:

> "…quite apart from the provisions of any rules or statute, there is an inherent jurisdiction of the courts in the absence of an express statutory provision to the contrary, to set aside an order made ex parte on the application of any party affected by that order. An ex parte order is made by a judge who has only heard one party to the proceedings. He may not have had the full facts before him or he may even have been misled, although I should make it clear that that is not suggested in the present case. However, in the interest of justice it is essential that an *ex parte* order may be reviewed and an opportunity given to the parties affected by it to present their side of the case or to correct errors in the original evidence or submissions before the court. It would be quite unjust that an order could be made against a party in its absence and without notice to it which could not be reviewed on the application of the party affected."

13. In the case of *Adam and Iordache v. The Minister for Justice Equality and Law Reform*, McGuiness J. made the following comment at p. 71:-

> "In my view the learned trial judges in the instant cases, O'Donovan J. and Morris P., were correct in deciding that this court has a jurisdiction to set aside an order granting leave which is made on the basis of an ex parte application. However, I would accept the submission of Mr. Shipsey, with which Mr. O'Donnell agrees that this jurisdiction should only be exercised very sparingly and in a very plain case. The danger outlined by Bingham L.J. in the passage quoted above would be equally applicable in this jurisdiction. One could envisage the growth of a new list of applications to discharge leave to be added to the already lengthy list of applications for leave. Each application would probably require considerable argument – perhaps with further affidavits and/or discovery. Where leave was discharged, an appeal would lie to this court. If that appeal succeeded, the matter would return to the High Court for full hearing followed, in all probability, by a further appeal to this court. Such a procedure would result in a wasteful expenditure of court time and an unnecessary expenditure in legal costs; it could be hardly said to serve the interests of justice. The exercise of the courts inherent jurisdiction to discharge orders giving leave should, therefore, be used only in exceptional cases."

14. Accordingly, it is clear from the authorities referred to that this court has jurisdiction to review the grant of leave in this case. However, I note the strictures placed on the exercise of such jurisdiction, namely that the jurisdiction to set aside should only be exercised very sparingly and in a very plain case.

15. The application to set aside the order of Mr. Justice Quirke granting leave was grounded upon the statement of opposition and grounding affidavit of John Conroy referred to above and upon the affidavit of Hilary Beausang sworn herein on 5th May, 2005. A further affidavit was sworn by Mr. Grimes on 14th June, 2005, by way of reply to the affidavits of John Conroy and Hilary Beausang and there was a further affidavit sworn by John Conroy on 1st September, 2005. Finally, a third affidavit was sworn by Mr. Grimes on 19th October, 2005.

16. In his submissions counsel on behalf of the respondent highlighted a number of matters which he described as factual inaccuracies or nondisclosure namely,

1. That the applicant had wrongly stated that the vehicles were not parked on a public road.

2. That he failed to disclose that they were parked at that location for over a year.

3. That he had failed to disclose that the respondent had issued a notice asking him to remove it and had also placed similar notices on the buses.

4. That the applicant had failed to disclose the making of complaints in relation to the parking of the said vehicles.

5. That the applicant stated that the vehicles had been "put through a machine and sold for scrap".

6. That the applicant stated he was unaware of any law allowing the respondent to take action even though the respondent had sent him an advance warning notice and had attached a notice to the vehicles citing the authority for doing so.

7. Stated that he as applicant was the owner of the vehicles and also that Kells Transport Museum was the owner and failed to disclose that Kells Transport Museum had been dissolved as a company.

17. I propose to deal with these matters seriatim.

1. Public Road

18. At para. 11 of the grounding affidavit of the applicant he stated that the two vehicles were parked "not on the public road or blocking anyone". By way of reply John Conroy in his first affidavit stated that the road in question is a public road and exhibited a copy of the road schedule and map of the road in question. I am satisfied that the road on which the buses were parked is a public road.

2. Situated on public road for over one year
19. Complaint is made on behalf of the respondent that the applicant failed to disclose that the buses had been on the public road for more than a year parked at the location complained of. This was not refuted by the applicant in any of his affidavits and indeed he conceded that that was so in the course of the hearing before me. I will refer further to this matter subsequently.

3. Nondisclosure of notices
20. It is correct to say that the applicant did not disclose in his grounding affidavit that he had been served with a notice dated 26th March, 2004, by the respondent by registered post detailing four vehicles parked at Ballinascarthy and outlining the authority of the respondent to remove abandoned/unlawfully parked vehicles on the public road. In para. 68 of his second affidavit the applicant stated as follows "as for failing to disclose the two notices they were not notices within the acts so had no relevance." In the course of the hearing before me the applicant conceded that he had indeed received the notice sent to him by registered post by the respondent. The notice sent to the applicant by registered post identified the applicant as the owner of a number of vehicles, referred to the Road Traffic Act, 1968, the Roads Act, 1993, and the Road Traffic Regulations, 1983, authorising the respondent to remove abandoned/unlawfully parked vehicles left on the public road. Accordingly, it is contended by counsel on behalf of the respondent that the failure to disclose the existence of such letter together with the notices placed on the vehicles presented a highly misleading picture in relation to the removal of the buses.

4. Public complaints
21. Complaint is also made on behalf of the respondent that the applicant did not refer to public complaints in regard to the parking of the buses. It is argued that as the applicant was aware that the buses had been vandalised on the side of the road that he must be taken to have been aware that the vehicles would have given rise to complaint. So far as this particular issue is concerned, I am not satisfied that the applicant could have been aware of complaints made by members of the public or other organisations to the respondent and thus it is not my view that he could have been under an obligation to disclose details of such complaints.

5. Vehicles not destroyed
22. In the statement of grounds the decision being challenged in the proceedings is a decision, *inter alia*, "to cause to be destroyed two motor vehicles". In his grounding affidavit the applicant refers to the remains of the vehicles and stated that a Mr. Kevin Barry had told him that "he had put a machine through them". Complaint was made as to the impression given that the respondent had done anything other than cause the removal of the motor vehicles from the public road and to place them in storage. Accordingly it is argued that leave was granted on the misapprehension that the vehicles had been destroyed. Reference was made to a fax dated 16th March, 2005, coincidentally the date of the grant of leave, sent by the respondent to the applicant advising the applicant that if he wished to obtain the buses from their place of storage he would have to show proof of ownership and pay the costs incurred to date for the removal of the buses and for their storage. Issue was taken by the respondent at the references in the statement of grounds and in the affidavit of the applicant to the confiscation and destruction of the vehicles and to "theft, pure and simple". It was pointed out on behalf of the respondent that there were no steps taken by the respondent which involved the acquisition of property or the taking of ownership in the buses. Accordingly, it was argued that the suggestion by the applicant that the vehicles had been destroyed was misleading. So far as this particular issue is concerned, I am satisfied on the evidence before me that the applicant in conveying the impression that the buses had been taken and destroyed by the respondent significantly overstated the position.

6. Nondisclosure of law
23. Great issue is taken on behalf of the respondent to the fact that the applicant in the grounding affidavit stated that he was not aware of any law which permitted the respondents to act as they had. In particular reference was made to paras. 31 – 33 of his affidavit. The argument is made that the applicant had clearly been put on notice by the respondent both by the letter sent to him by registered post together with the notice posted on the buses as to the statutory authority relied on by the respondent in relation to the removal of the buses. Undoubtedly there is a duty to inform the court of the appropriate authorities and legal principles applicable in any given case when making an application for leave to apply for judicial review. Based on the statements of the applicant in his affidavit referred to above it is clear that the applicant did not in his documents put forward the relevant legal position to the court. Indeed a statement was made in his affidavit which must have been at odds with the state of his knowledge given his acceptance of the fact that he was served with the letter sent by registered post. Nonetheless I am conscious of the fact that the applicant herein is not a lawyer and was not legally represented in these proceedings. Counsel on behalf of the respondent referred to two English authorities in which the grant of leave was set aside where the appropriate legal principles had not been advanced before the judge granting leave. The cases cited in support of this argument were *R. v. Cornwall County Council, ex parte Huntingdon* [1992] 3 AER 566 and *R. v. Secretary of State for Home Department, ex parte Li Bin Shi* [1995] COD 135. I think it is worth noting in each of those cases the applicants for judicial review were legally represented. Accordingly, I do not think that the strictures placed on legal practitioners in regard to such applications can be visited with the same degree of force as may be applied in the case of lay litigants.

7. Lack of clarity regarding ownership
24. The final complaint made under this heading related to a lack of clarity regarding the ownership of the buses. Reference is made to the fact that the applicant in his grounding affidavit was the owner of the buses and equally that Kells Transport Museum owned the buses. It was pointed out that a company called Kells Transport Museum Limited of which the applicant had been a director had been dissolved. Accordingly, it is argued that the applicant has made contradictory statements in regard to the ownership and therefore has failed to fulfil the obligation of full disclosure in an applicant for judicial review. In his grounding affidavit the applicant had stated that he owns the Kells Transport Museum. He stated that the museum owns some one hundred and twenty vehicles and he went on to say that he owned two buses in particular. He then went on to describe the buses which he claimed to own. The first affidavit of John Conroy deals with this issue and sets out so far as he is able to do so the history of the two vehicles in question. He also referred to the result of a search in the company's office on 29th March, 2005, which revealed that there had been a limited company, namely Kells Transport Museum Limited which was dissolved on 19th December, 2003. The applicant was one of the directors of that company. There is a clear and unambiguous averment in the grounding affidavit of the applicant to the effect that he owns the two buses and that he owns Kells Transport Museum. Having regard to the various submissions made to me by the applicant in this regard I am satisfied that that is indeed the position. Although there may be some confusion as to the entity known as "Kells Transport Museum", I am not of the view that there was any intention to mislead the court on this issue.

25. Relying on the matters referred to in the preceding paragraphs counsel on behalf of the respondent argued that the applicant is under a duty of good faith in relation to an *ex parte* application and thus under a duty to fully disclose the facts and to avoid misleading the court. In support of this proposition a number of cases were cited by counsel. Counsel referred to the decision in

Fitzgerald v. Williams [1996] 2 WLR 447, *Dekra Eireann Teoranta v. The Minister for the Environment* [2003] 2 IR 270, *Shannon v. Judge Patrick McCartan* [2002] 2 IR 377, R v. *Wirral Metropolitan Borough Council, ex parte Belle* [1994] 2 FCR 1113, *Marshall v. Arklow Town Council Unreported*, Peart J. August 19th, 2004, relating to inaccuracies in an affidavit and the decision of the Supreme Court in the case of *Dawson v. Irish Brokers Association* Unreported November 6th, 1998, which dealt with the degree of lenience to be afforded to lay litigants and in a similar vain *Breathnach v. Garda Commissioner* Unreported, Supreme Court, February 22nd, 2001. It is clearly the case that in a number of authorities cited, the view has been expressed that the duty of full disclosure applies to *ex parte* applications for judicial review. One of the cases cited above is illustrative of that. In his judgment in the case of *Shannon v. Judge Patrick McCartan Keane* C.J. noted:-

> "I have not the slightest doubt that the High Court was seriously misled when the application was made ex parte for leave to apply for judicial review and that on that ground alone, the High Court would have been entitled to dismiss that application by way of notice of motion. Any indulgence a court might be disposed to grant to a lay litigant in these circumstances must be tempered by the fact that the applicant is a qualified solicitor and even apart from that consideration, would have been fully aware that her averment on oath that the proceeding, 'took place for the most part in the Judge's private chambers' was to put it, no more strongly, seriously misleading."

26. Relying on the principles in relation to the duty of full disclosure, counsel on behalf of the respondent thus argued that the grant of leave for judicial review can be set aside in cases where there was nondisclosure in the leave application. Reference was made to a number of decisions in this regard. Counsel referred in particular to the decision in *Gordon v. D.P.P.* referred to above, *Cocks v. Thanet District Council* [1983] 2 AC 287, a decision which pointed out the importance not only of making full disclosure arising from the duty of good faith owed to the court but also by way of a safe guard to protect public authorities such as the respondent in this case. He also referred to the decision in the case of R. (*on the application of Tshikangu) v. Newham London Borough* [2001] EWHC admin 92, *R. v. Jockey Club licensing Committee, ex parte Wright* [1991] COD 306, *R. v. Secretary of State for the Home Office, ex parte Ketowoglo*, (Unreported, Queens Bench, 29th November, 1991) and *Crown v. Metropolitan Police Force Disciplinary Tribunal, ex parte Laurence* (Unreported, Queens Bench, 23rd June, 1999). These cases are further authority for the proposition that the court can set aside the grant of leave on grounds of nondisclosure. Thus it is argued that having regard to the matters relied on by the respondent there has been nondisclosure in this particular case and that as such the court should set aside the grant of leave.

27. The next heading dealt with by counsel on behalf of the respondents related to the contention that the application is without merit. In this regard counsel on behalf of the respondent highlights a number of features. The first aspect highlighted relates to the nature of the decision sought to be quashed namely, the decision to "confiscate, acquire or otherwise taken ownership or control" of the vehicles and the decision thereafter "to cause to be destroyed" the two vehicles. The basis for seeking such an order is that the respondent acted "unreasonably, unlawfully and without any proper authority and contrary to the constitutional rights of Michael Grimes and contrary to law and natural justice in the making of the said orders and further that no authority of the court was obtained for any such action". Counsel for the respondent referred to s. 13 of the Roads Act, 1993, which provides that the maintenance and construction of all national and regional roads in an administrative county shall be a function of the council of that county." Reference was also made to the provisions of section 7 of the Litter Pollution Act, 1997 which provides "a local authority shall ensure that each public road in its functional area is so far as practicable, kept free of litter." It is contended that the definition of litter under s. 2 of that Act is such as to include vehicles such as the two buses. Given that the respondent had received a number of complaints or representations in relation to the presence of the two buses on the road expressing concern about illegal parking; the fact that the buses had become an eye sore and a public nuisance; that they had become a focus for delinquent behaviour, littering, vandalism and loitering as pointed out in paras. 12 and 13 of the first affidavit of John Conroy; and that there was a representation from a member of the Gardaí also expressing concern about the buses, it was decided to remove the buses. The basis upon which the respondent moved the buses was pursuant to its powers under the Road Traffic (Removal, Storage and Disposal of Vehicles) Regulations, 1983. It would be helpful to set out the provisions of the relevant regulations relied on by the respondent.

> "Part 2 Removal and storage of abandoned vehicles.
>
> 5(1) A vehicle which has been abandoned on a public road or in a car park may be removed by or on the authority of a road authority.
>
> (2) Where an officer or an inspector of the Garda Síochána requests a road authority to remove an abandoned vehicle, the road authority shall comply with such request.
>
> (3) A road authority may take such steps, including the making of an arrangement with any person, as they think fit, for the removal of an abandoned vehicle in a particular case or generally, and for the storage of a vehicle so removed.
>
> Part 3 Removal and storage of unlawfully parked vehicles.
>
> 6(1) An unlawfully parked vehicle may be removed by or on the authority of:
>
> (a) An officer or a member of the Garda Síochána, or
>
> (b) Where a road authority after consultation with the Commissioner have appointed persons for that purpose, a person so appointed, and for that purpose such officer or member or persons may take such steps, including the making of an arrangement with any other person as he may think fit for the removal of such vehicle, and in the event of storage of a vehicle, for the storage of a vehicle so removed.
>
> (2) Removal of an unlawfully parked vehicle under this Article may be made to any convenient place, including a place of storage, and includes removal first to a place not being a place of storage and thence to a place of storage."

28. Part 4 of the Regulations deal with removal and storage charges and I do not think it is necessary to set those provisions out in detail. Part 5 and in particular regulation 8 and 9 deal with disposal of vehicles. Again I do not think it is necessary to set out those provisions in detail except to say that where a road authority proposes to dispose of a vehicle it shall serve on the owner a notice of intention to dispose of the vehicle or if that is unascertained it is required to publish in a daily newspaper details of the intention to dispose of the vehicle.

29. In the first affidavit of John Conroy, at para. 16, he deposes to the fact that at the point where the two buses were parked there

was a "no parking" sign. Accordingly I am satisfied that the vehicles were not parked lawfully and had been, to all practical appearances, abandoned. This is so notwithstanding any contention to the contrary by the applicant. The applicant has referred to the fact that locals used the place where the buses were parked and was used by locals regularly to park vehicles. Indeed the applicant in his second affidavit said that there were no signs prohibiting parking. Photographs exhibited in the proceedings clearly show such a sign. Thus counsel argued that the removal of the buses was properly carried out under the power vested in the respondent by reference to the Road Traffic (Removal Storage and Disposal of Vehicles) Regulations, 1983. Having regard to the specific provisions it seems to me that the appropriate and relevant provision is that contained in Regulation No. 5 which deals specifically with the removal and storage of abandoned vehicles. Regulation 6 which deals with the removal of unlawfully parked vehicles seems to me to be confined to removal by or on the authority of an officer or member of the Garda Síochána or by a road authority after consultation with the Garda Commissioner as contended by the applicant.. There is no evidence before me that the road authority could have purported to exercise its authority under that regulation.

30. Counsel also referred to a number of statutory provisions which impose a duty on an individual not to abandon vehicles or to prevent the creation of litter on a public road or place. This does not appear to me to be a reason for arguing that there is a lack of merit in the application before the court. Nonetheless the point made on behalf of the respondent is that the applicant, in stating that the respondent acted unreasonably, unlawfully and without any proper authority, flies in the face of the statutory powers of the respondent and further it is contrary to that which had been pointed out to the applicant by the notice sent to him by registered post which he conceded had been received by him. Further insofar as the statement required to ground the application relied on the assertion that no authority of the court was obtained for any such action, it is clear from the 1983 regulations that no such authority is required. It is in this context that the respondent argues that there is no merit to the applicant's case. There is some force in the respondent's argument on this question but I think it is not so clear cut as to warrant an order setting aside the grant of leave. Rather it is an argument that deals with the merits of the application.

31. The final point raised by counsel for the respondent under this heading relates to the alleged decision to destroy the vehicles. This aspect of the applicant's case is based on the averment that the buses were "put through a machine". In this regard there is no doubt that under the 1983 regulations the respondent has the power to dispose of a vehicle which has been removed and stored where the owner has not claimed it or has not paid the charges due. One of the issues that arises in these proceedings is the question of whether or not the buses were damaged during their removal. It is argued that even if the buses were damaged, there was no decision to damage them. In that regard it is clearly the case that no steps have been taken by the respondent under the provisions of regulation 8 or 9 of the 1983 regulations in relation to the disposal of vehicles. In respect of this particular point the applicant in his response referred to an invoice which was exhibited in the first affidavit of John Conroy from National Recycling Company Limited to the respondent dated 3rd March, 2005, and marked for the attention of John Conroy which was an estimate described in the following terms "Quotation for the removal and disposal of two buses from Ballinascarthy". A subsequent invoice dated 23rd March, 2005, from National Recycling Company Limited to Cork County Council was also exhibited by Mr. Conroy in his first affidavit. That is an invoice in relation to the storage of the two buses. I am not satisfied on the evidence before me that any decision was made by the respondent to destroy or dispose of the vehicles. Clearly before any decision can come before a court to be quashed on an application for judicial review there must be evidence that such a decision has been made. The quotation referred to from National Recycling Company Limited is not in my view evidence of a decision on the part of the respondent to dispose of the vehicles.

32. The final point raised by the respondent in relation to its application to set aside is that the applicant has no *locus standi* in relation to this matter. This is based on the contention that the respondent does not own the two vehicles in question. I have already indicated that so far as this argument is concerned I am prepared to accept and am satisfied that the applicant owns the two buses in question. Accordingly so far as that argument is concerned I am not satisfied that the respondent has established that the applicant does not have sufficient interest in the matter to which the application relates.

33. I should add that it is somewhat ironic that the respondent has raised the issue of *locus stand*i in circumstances where the respondent itself wrote to the applicant by registered post stating that it believed that the applicant was the owner of the vehicle in question.

34. A number of points were made by the applicant in reply to the respondent's submission that the grant of leave should be set aside. Some of those have already been dealt with above. It is not necessary to deal with those points further.

35. The applicant referred at length to damage done to the buses and to a number of photographs which were exhibited in the first affidavit of John Conroy. Undoubtedly it is clear from the photographs that one of the buses was considerably damaged subsequent to its removal from the side of the road. Equally it is the case that the buses prior to their removal had been the subject of vandalism to a significant extent whilst parked on the public road at Ballinascarthy. The applicant stated in his submissions that he had been unaware of the vandalism but he accepted that more care should have been taken by him of the buses. Based on the damage done to the buses subsequent to their removal he argued that the buses had in fact been destroyed by the respondent. As I have stated above it is clearly the case that one of the buses was significantly damaged after its removal. I cannot comment on whether the second bus was damaged after its removal. However, as I have already stated there is no evidence before me of any decision by the respondent to dispose of or destroy the buses. There may be an issue to be determined as to how the damage was done, who did the damage and what liability arises in respect of the damage done. Clearly there would also be an issue as to the extent of any damages that might be recoverable in respect of damage done to the buses and an issue as to contributory negligence could arise in relation to the damage alleged to have been done. Before the buses were removed from the road they had already suffered damage. Therefore the extent of any damage done would also be an issue to be determined. These proceedings are not the appropriate form of proceedings to deal with those issues for reasons I will set out hereunder.

36. An issue was raised by the applicant in his second affidavit at paras. 24 and 35. He challenged the claim of the respondent that the vehicles had been abandoned on the basis that he stated he had been asked by the respondent for permission to use the buses for the purpose of some kind of exercise in relation to a crash simulation. He identified the individual concerned as a Patrick Murphy who claimed to work for the respondent. Accordingly, he argued that the respondent could hardly have considered the buses to have been abandoned. This issue was dealt with by John Conroy in his second affidavit. Mr. Conroy stated that he had made inquiries with the only council employee of that name who indicated that he never had any dealing with the applicant. He also indicated that there is a Patrick Murphy who is a party time fireman in Clonakilty. He is not a council employee. I am not satisfied that the applicant has demonstrated on this basis that the vehicles were not abandoned.

37. The applicant then argued that the respondents had no authority to remove the buses. Further he argued that National Recycling Company Limited, with whom the respondents had contracted to remove the buses had no such authority. I have already indicated above that the respondent had set out the authority under which it purported to remove the buses and in that regard I am satisfied that their power in that regard was properly used.

38. The applicant further argued that he had not seen the public notices attached to the vehicles. That may well be the case but there was no obligation on the respondent to place such a notice on the vehicles. Notwithstanding that, the applicant did not deny that he had received the letter of 26th March, 2004 in relation to the vehicles and could give no explanation as to why he did not respond to that correspondence or act upon it.

39. He argued that he was obliged to attack the decision to destroy the buses on the basis that a Mr. Toohig and a Mr. Barry claimed to own the buses. Kevin Barry is the individual in whose yard the buses now are held. Mr. Adrian Toohig is the managing director of National Recycling Company Limited. Although the applicant refers to Mr. Toohig and Mr. Barry in his grounding affidavit in some detail, there is nothing in his affidavit which satisfies me that either Mr. Toohig or Mr. Barry exerted any right or claim to own the buses.

40. The applicant then referred to part 4 of the 1983 regulations and in particular para. 7 which deals with removal and storage charges. He made the point that the respondent cannot give back what they took. He also argued that the charges indicated by the respondent are incorrect. It does not appear that the applicant has in fact sought to recover possession of the buses. Accordingly, this point is irrelevant.

41. I should say that in relation to a number of the factual inaccuracies relied on by the respondent it was the applicant's case that in the course of his application for leave he told Mr. Justice Quirke how long the buses were parked on the road. So far as the allegation of the vehicles being destroyed is concerned, he reiterated that as a machine had been put through one of the buses there had been no misrepresentation in that regard. Finally he submitted that even if he could not challenge the decision of the respondent, there was a claim for damages and that claim should be adjourned to plenary hearing.

42. One other point made by the applicant related to the time of bringing the application to set aside. He suggested that that application if it is to be brought should be brought before the filing of the statement of opposition.

43. In response to his submissions counsel on behalf of the respondent referred to the fact that in all cases in which leave has been set aside, the application for leave to set aside was brought at the time of filing of the statement of opposition. Indeed the statement of opposition in this case was stated to be "without prejudice to the entitlement of the respondent to bring a motion to set aside the grant of leave on 16th March, 2005, in the present proceedings". On this point I am satisfied that the application for leave to set aside the grant of judicial review was brought promptly.

44. Having considered the arguments of both sides in this matter and bearing in mind the limitations on the jurisdiction to set aside referred to above, I have come to the view that notwithstanding the fact that there are some elements of non-disclosure as relied on by the respondent, it would be somewhat harsh to exercise that jurisdiction on the facts of this case. Further, some matters relied on by the respondent in the application to set aside are matters more appropriate to be dealt with on the merits of the application. It is difficult to say that the application was so lacking in merit as to require to be dismissed *ad limine*. Accordingly, I am not of the view that the grant of leave should be set aside. Therefore I propose to deal with the issues raised on this application.

45. As I have already identified above, the key issue in this case was whether or not the respondent had authority to remove the vehicles from the road at Baillinascarthy. I am satisfied that by virtue of the provisions contained in the Road Traffic (Removal, Storage and Disposal of Vehicles) Regulations, 1983, and in particular regulation 5 thereof the respondent was entitled to make a decision to remove the vehicles from the side of the road. I am also satisfied that whatever damage occurred to the vehicle subsequent to their removal, no decision had been made by the respondent to dispose of the vehicles. I am also satisfied that before the removal of the vehicles, the respondents made reasonable efforts to communicate their intention to remove the vehicles by placing notices on the vehicles themselves and by writing to the applicant herein. The applicant in the course of his submissions indicated that he had not seen any notices placed on the vehicles but nonetheless accepts that he received the letter. As already pointed out he has not given any satisfactory explanation as to why he did not act on foot of that letter. Accordingly I am satisfied that the respondent acted reasonably, lawfully and under the authority conferred on it by virtue of the Road Traffic Act, 1968, the Roads Act, 1993, and Road Traffic (Removal, Storage and Disposal of Vehicles) Regulations, 1983. Therefore the applicant is not entitled to Judicial Review of the respondent's decision.

46. The final issue that arises is in respect of the claim to damages. It is clear that an applicant can seek damages in an application for judicial review. (See Order 84, rule 24 of the Rules of the Superior Courts.) The scope of a claim for damages in judicial review proceedings is somewhat less clear. As the matter now stands before me, the state of the pleadings is not such as to enable a claim for damages to be brought as such a claim has not been properly formulated or particularised. As the applicant in this case has been unsuccessful in his application for judicial review by way of certiorari the question might also arise as to whether a claim for damages can arise in favour of an applicant against a respondent in such circumstances. In other words is a claim for damages in judicial review proceedings to be seen as a stand alone substantive relief not in any way ancillary to the substantive relief claimed in the judicial review proceedings or is it dependent on the outcome of the judicial review proceedings. I have not heard any argument or submissions on this particular point. It does not seem to me to be necessary to determine this issue in any event as the claim has not been adequately set out and particularised; any such proceedings would not necessarily be limited to the parties before me, and assuming the applicant was successful in pursuing a claim for damages, I would have some doubt, notwithstanding various averments in the affidavit of the applicant, that any sum awarded would be within the jurisdiction of this court. For these reasons I do not think that it would be appropriate to adjourn the question of damages to plenary hearing as urged by the applicant. In the circumstances the applicant is not entitled to any of the relief claimed herein.