

THE HIGH COURT
JUDICIAL REVIEW

2010 379 JR

BETWEEN

JOHN BURKE

APPLICANT

AND

DISTRICT JUDGE MARY MARTIN AND
DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENTS

JUDGMENT of Ms. Justice Irvine delivered on the 23rd day of November, 2010

1. This judgment relates to two applications which came before this Court for hearing on 19th October, 2010. The first application is one brought by the second named respondent seeking to set aside an order of the High Court made by Peart J. on 7th May, 2010, whereby he granted leave to the applicant to apply for judicial review in respect of certain orders made by the District Judge ("the District Judge") on 24th March, 2010, when dealing with a significant number of summonses concerning the applicant which had been issued by the Minister for Agriculture, Fisheries and Food. The second application is motion brought by the applicant seeking to commit the State Solicitor for the county of Tipperary, Mr. Paul Fitzpatrick and "the defendants" for alleged contempt of court arising from the issue of the motion to set aside the order of Peart J. of 24th March, 2010.

2. In circumstances where it would be difficult to understand the order made by Peart J. on 7th May, 2010, otherwise than by reference to the background to the aforementioned summonses, I now propose to set out very briefly the historical background to these judicial review proceedings.

Background

3. The applicant describes himself as a cattle man and stock owner and resides at Duncummin House, Emly, Co. Tipperary. By May 2009, approximately 121 summonses issued against the applicant were pending before the District Court in Tipperary. With the exception of one summons relating to a charge of criminal damage to a motor vehicle, the remaining summonses concern issues of animal welfare. On 6th May, 2009, the District Judge provisionally fixed all of these cases for hearing on 30th September, 2009 and the following days. She then adjourned the cases for mention on 3rd June, 2009. This she did to permit the applicant make an argument on that date that the proceedings should not be heard on the dates fixed due to the fact that certain judicial review proceedings were pending in the High Court.

4. On 3rd June 2009, the District Judge, having heard all arguments put before her, resolved that the matters should proceed on the dates allocated.

5. On 11th September, 2009, the applicant sought leave to apply for judicial review to prohibit the summonses being heard commencing on 30th September, 2009. MacMenamin J. directed the applicant to place the respondents on notice of his intended application and the proceedings were then dealt with by Edwards J. on 24th September, 2009. He refused the application for the reasons referred to in a lengthy judgment delivered by him on 9th October, 2009. That decision is presently under appeal to the Supreme Court. It is not disputed by the applicant that he did not apply to the Supreme Court to stay the hearing of the 121 summonses pending the outcome of that appeal. As a result of the applicant's failure to obtain leave to apply for judicial review from Edwards J., a number of the 121 summonses were dealt with by District Judge Hamill commencing 30th September, 2009. He only managed to hear five out of the said summonses over the three days which had been allocated to the cases and a number of these decisions are presently under challenge in other judicial review proceedings. There are accordingly some 116 summonses which remain to be dealt with by the District Court.

The Present Judicial Review Proceedings

6. On 24th March, 2010, the District Judge herein fixed 18th, 19th and 20th May, 2010, as the appropriate dates for the hearing of the remaining summonses. All of the charges which had previously been before the court on 3rd June, 2009 and which had not been disposed of on 30th September or 1st and 2nd October, 2009, were accordingly fixed for hearing. It is the hearing that took place before the District Judge on 24th March 2010 which is the subject matter of the within proceedings and the present application.

7. The applicant applied *ex parte* for leave to maintain the present judicial review proceedings on 7th May, 2010. On that date, Peart J. granted the applicant leave to seek the following reliefs, namely:-

"(a) An order prohibiting the hearing in respect of the summonses issued by the Minister for Agriculture, Fisheries and Food against the applicant herein which came before the District Court at Tipperary on 24th March, 2010, and which is presently pending before the said court on 18th, 19th and 20th May, 2010, unless there is a stenographer provided by the applicant by way of legal aid.

(b) An order of *certiorari* quashing the order of the District Judge made on 24th March, 2010, setting 18th, 19th and 20th May, 2010, as the hearing dates for the said summonses.

(c) An order of prohibition prohibiting the further hearing of matters which were before the said District Court on 24th March, 2010, until such a time as an appeal against a refusal by Edwards J. of leave to seeking judicial review presently awaiting a hearing before the Supreme Court is determined by the Supreme Court."

8. At para. 3 of the court order made on 7th May, 2010, it was further provided that the order would act as a stay on the further hearing of the said matters at Tipperary District Court, pending the final determination of the appeal against the decision of Edwards J. before the Supreme Court, the determination of the within application for judicial review or until further order in the interim.

9. Several grounds for the relief sought are relied upon by the applicant including the following:-

(a) That fair procedures demanded that he be afforded the benefit of a stenographer and that the District Judge unlawfully refused his request in this regard.

(b) That the District Judge had seized of all of the summonses and charges that were initially before the court on 3rd June, 2009 and which remained extant as of 24th March, 2010 and that the District Judge was not entitled to fix these summonses to be heard by any other judge of the District Court.

(c) That the presiding judge by her behaviour, caused the courtroom proceedings to become a mockery such that he did not obtain a fair hearing.

(d) That Mr. Fitzpatrick, the State Solicitor should have been present at the court on 3rd June, 2009, as he had sworn an affidavit producing documents which were considered by the court on that date. These documents concerned the respondent's submission that there were judicial review proceedings in existence which would preclude the District Court from proceeding to hear the summonses.

(e) That there are proceedings pending before the Supreme Court which justify the postponement of the further prosecution of the District Court summonses until their completion.

The Application to Set Aside the Order of Peart J.

10. In his notice of motion dated 16th July, 2010, the second named respondent applies to this Court to exercise its inherent jurisdiction to set aside the order of Peart J. made on 7th May, 2010, on the basis that the proceedings as they currently stand are oppressive, vexatious or amount to an abuse of the process of the courts. Alternatively, the court is urged to set aside the relief granted by reason of the alleged failure on the part of the applicant to make a full and frank disclosure of all of the material facts at the time he moved his application for *ex parte* relief. The application is grounded upon the affidavit of Paul Fitzpatrick of the firm of Fitzpatrick Solicitors, Clonmel, Co. Tipperary, State Solicitor for the County of Tipperary and who in that capacity has been charged with handling the District Court prosecutions the subject matter of the leave application. In response the applicant has issued a motion seeking to hold "the defendants in contempt of court for attempting to overrule the order of Judge Michael Peart".

Submissions of the Parties

11. The second named respondent submits that a party who applies *ex parte* for leave to apply for judicial review must act with the utmost good faith and must make a full and fair disclosure of all relevant facts. Counsel submits that the applicant failed to comply with his duty and in particular, states that the court was not advised that on 16th April, 2010 that Mr. Fitzpatrick wrote to the applicant confirming that a stenographer would be provided for the hearing of the summonses listed to be heard commencing 30th September, 2010, even though the District Judge had indicated in the course of the hearing on 24th March, 2010 that she could not provide a stenographer when requested to do so by the applicant. Accordingly, the leave sought by the applicant to pursue the relief referred to at para. 1(a) of the order of 7th May, 2010 was entirely unnecessary.

12. The second named respondent also complains that the court was not advised of the full facts in relation to two earlier sets of proceedings namely those entitled *Burke v. Minister for Agriculture & Ors* [2008] 966 J.R. and *Burke v. Martin & Director of Public Prosecutions* [2009] 933 J.R., both of which concerned the summonses the subject matter of the present proceedings.

13. In the first of the aforementioned cases, record number [2008] 966 J.R., the applicant was refused leave to apply for judicial review by Edwards J. on 24th November, 2008. That decision was appealed to the Supreme Court. The applicant then applied to the Supreme Court for a stay on the continuance of the District Court proceedings pending the outcome of that appeal but his application was refused.

14. In relation to the second set of the aforementioned proceedings, record number [2009] No. 933 J.R. the second named respondent complains that Peart J. could not have been advised of the decision of Edwards J. delivered on 9th October, 2009 nor of the fact that the applicant did not apply to the Supreme Court for any stay on the District Court proceedings pending his appeal from that refusal.

15. It is submitted on behalf of the respondents that had Peart J. been advised that the Supreme Court had refused a stay on the continuance of the District Court proceedings in the first of the aforementioned decisions and of the fact that the applicant had not applied for a stay in respect of the second set of proceedings that he would not have granted the stay which he did on 7th May, 2010. Counsel submitted that the stay granted by Peart J. when making his order on 7th May, 2010, *de facto* had the effect of overturning the earlier refusal by the Supreme Court to grant such a stay in proceedings bearing record number [2008] No. 966 J.R. and of granting him a stay on the prosecution of the District Court prosecutions pending the outcome of the proceedings bearing record number [2009] No. 933 J.R. when no such stay was sought from the Supreme Court following the refusal by Edwards J. to grant him leave to seek judicial review.

16. In relation to the issue of the stenographer the applicant maintains that he did not receive the letter dated 16th April, 2010, from Mr. Fitzpatrick advising him that a stenographer would be present at the hearing. Notwithstanding the undertaking given by Mr. Fitzpatrick to provide a stenographer for the relevant District Court proceedings the applicant wishes to maintain his challenge to the refusal of the District Judge to direct that a stenographer be provided at the State's expense.

17. The applicant maintains that he made a full and frank disclosure to the court regarding the two sets of judicial review proceedings relied upon by the second named respondent. Even though full details of the nature of those proceedings may not be clear from his grounding affidavit, he asserts that he advised Peart J. in great detail about these proceedings.

The Law

18. Any party who makes an *ex parte* application for leave to apply for judicial review or indeed any other type of *ex parte* application owes certain obligations to the court. The applicant must act with the utmost good faith and must make a full disclosure of all material which might impact upon the judge's consideration of the matter.

19. The duty of an applicant when making an *ex parte* application seeking to apply for judicial review was described in *Adams v. Director of Public Prosecutions* [2000] No. 40 J.R. in the following terms:-

"On any application made *ex parte* the utmost good faith must be observed, and the Applicant is under a duty to make a full and fair disclosure of all of the relevant facts of which he knows, and where the supporting evidence contains material misstatements of fact or the Applicant has failed to make sufficient or candid disclosure, the *ex parte* order may be set aside on that very ground..."

20. The jurisdiction of the court to interfere with an order made *ex parte* is not limited to circumstances where there has been material nondisclosure or cases where it can be established that there has been a material change in the circumstances which led to the making of that order but it may be exercised in any case where the court is satisfied, having heard argument *inter partes*, that the leave is one that plainly ought not to have been granted. It is nonetheless clear that this jurisdiction is to be invoked sparingly and that an orders setting aside leave granted *ex parte* are made only in exceptional circumstances.

21. Not only has the court jurisdiction to set aside an *ex parte* order but it has jurisdiction to vary the order made on the *ex parte* application should the justice of the case require such variation.

22. Apart from the jurisdiction of the court to set aside or vary orders made on an *ex parte* application for leave to apply for judicial review, the court also has an inherent jurisdiction to dismiss an action which is vexatious or an abuse of process. It also enjoys jurisdiction under O. 19, r. 28 to make an order that any pleading be struck out on the ground that it discloses no reasonable cause of action. These separate and distinct powers once again should be cautiously exercised.

The Availability of a Stenographer

23. The parties are agreed that at the time Peart J. made his order on 7th May, 2010, he was not aware of the fact that the State Solicitor had, following the hearing before the District Court judge on 24th March, 2010, given an undertaking to the applicant that a stenographer would be provided for all of the proceedings listed to commence on 30th September, 2010. This undertaking was furnished by letter dated 16th April, 2010, a letter which Mr. Fitzpatrick has sworn was posted to the applicant and which the applicant denies he received. The said undertaking was repeated in the course of the hearing before this Court.

24. I accept that the jurisdiction of the court on an application such as the present one should be cautiously exercised particularly where, as in the present case there is a conflict on the affidavits regarding whether or not the applicant received the letter allegedly sent by Mr. Fitzpatrick on 16th April, 2010. Indeed, if the decision on the present motion were to depend on any issue which is disputed in the affidavits, it would be incumbent upon the court to resolve that dispute by hearing oral evidence. Further it may be appropriate where a litigant is not legally represented to afford them the benefit of the doubt even if the court were to conclude that they had failed, at the time of the *ex parte* application, to disclose relevant facts once satisfied that they had acted bona fide.

25. Thankfully, I do not find it necessary to determine whether or not the nondisclosure of the undertaking of the State Solicitor to provide a stenographer was *bona fide* due to the non receipt by the applicant of the letter of 16th April, 2010. However, I have some reservations as to the reliability of the applicant's assertion that he did not receive the State Solicitor's letter of 16th April, 2010 particularly in circumstances where this claim was made for the first time in the course of the hearing before me notwithstanding the reference by Mr. Fitzpatrick to this letter in his affidavit sworn as long ago as 12th July, 2010. Leaving aside for a moment whether or not the applicant received the said letter, it seems to me that the undertaking of the State Solicitor, even if known to the court as of the date of the *ex parte* application, might not have dissuaded Peart J. from granting some form of relief to the applicant. The undertaking does not obliterate the legal point which the applicant formulated before me which seems to be whether someone in his position, facing summonses of the nature presently pending before the District Court, is entitled as a matter of right to have a stenographer directed by the District Court judge.

26. It is not for this Court to second guess whether the applicant would have convinced Peart J. to grant him leave to apply for an order for *mandamus* had he known that the Chief State Solicitor had undertaken to provide a stenographer. However, it is abundantly clear to me that if the trial judge had been told that a stenographer was to be provided by the State Solicitor that there could have been no basis for him granting a stay on the further hearing of those District Court proceedings pending the outcome of the applicant's claim for an order of *mandamus*. Once a stenographer was to be provided, from whatever source, the applicant could not be prejudiced by the continuance of the District Court proceedings notwithstanding the fact that his judicial review proceedings remained outstanding.

27. The best the applicant could have hoped to achieve on the *ex parte* application, if the undertaking had been made known to Peart J., was an order granting him leave to seek perhaps a declaration that a person in his position, facing summonses of the nature issued against him by the Minister for Agriculture, Fisheries and Food, was entitled as a matter of right to the provision of a stenographer.

28. The applications, the subject matter of the present judgment, were heard by me in a two week period during which I also heard four other applications for judicial review brought by the applicant in relation to proceedings wherein he was involved in both the District and Circuit Courts. In the course of those proceedings, the applicant also maintained that he was not in a position to obtain a hearing which was in accordance with natural justice or fair procedures in the absence of a stenographer provided for him at the State's expense. In particular, in the case of *John Burke v. Judge Ray Fulham and Director of Public Prosecutions* [2009] 791 J.R., I rejected that submission. Proceedings concerning very substantial rights are heard everyday of the week in all courts from the District Court to the Supreme Court in the absence of a stenographer. To submit that the absence of a note taker renders the proceedings themselves unfair to the point to which the decision made is open to be quashed is untenable.

29. Judicial review is a discretionary remedy and any judge entertaining an application such as the present one enjoys a wide discretion to set aside or vary an earlier order of the court made *ex parte*. Indeed, the order of Peart J. dated 7th May, 2010 specifically provides that his court order shall stand until determination of all of the proceedings therein mentioned were completed or further interim order made.

30. Having regard to the undertaking repeated to this Court that a stenographer will be provided by the State Solicitor for the relevant District Court proceedings and to the decision of this Court just referred to in another case concerning the applicant where effectively the same point was litigated, I am satisfied that it would be a manifest abuse of the process of the court to permit any of the relief granted by Peart J. at para. 1(a) of his order to stand. The applicant will have the benefit of a stenographer. As to his alleged legal right to have the court direct a stenographer, that right has now been rejected in other proceedings. Accordingly, I will set aside the order at paragraph 1(a).

Other Judicial Review Proceedings

31. The second named respondent complains that the applicant failed to disclose to the court the existence and true nature of two sets of earlier judicial review proceedings which he maintains were of critical relevance to the decision of Peart J. made on 7th May 2010. Counsel maintains that this failure warrants the court setting aside the said order. The applicant maintains that he did disclose the existence of all other relevant proceedings and relies upon the fact that the order of Peart J. refers to an appeal pending before the Supreme Court. Likewise, he relies upon the reference in his grounding affidavit to the existence of an appeal pending before the Supreme Court.

32. For the purposes of the present proceeding I have available to me the report prepared by Edwards J. for the Supreme Court regarding the application for leave to apply for judicial review which he refused on 24th November, 2008. Having done so, it appears to me that the focus of the attack made by the applicant in those proceedings was on certain Notices served on the applicant pursuant to the European Communities (Protection of Animals kept for Farming Purposes) Regulations 2000, which notices, if not complied with, permit the Minister for Agriculture, Fisheries and Food to prosecute for such non-compliance. The applicant appears to have maintained that he was entitled to have the relevant Notices quashed principally on the basis that the Department of Agriculture officials engaged in acts of trespass and/or assault and/or acted in breach of his constitutional rights to the inviolability of his dwelling. He also sought an order of prohibition preventing the prosecutions going ahead.

33. It is difficult to know what impact knowledge of the outcome of these judicial review proceedings would have had on Peart J. at the time of the *ex parte* application. Part of the difficulty arises from the fact that at para. 1(c) of his order, he prohibits the further hearing of the District Court proceedings "until such a time as an appeal against a refusal by Mr. Justice Edwards of leave to seek judicial review presently awaiting a hearing before the Supreme Court is determined by the Supreme Court". Given that there are two appeals outstanding before the Supreme Court, it is not clear whether it is these proceedings or the proceedings later discussed that were intended to be covered by his order.

34. What is material, however, is the fact that the District Court proceedings were stayed by Peart J. until the outcome of some proceedings before the Supreme Court. Whilst the applicant maintains that he fully explained all of his proceedings to Peart J. I unreservedly reject this contention. If it was these proceedings that Peart J. was referring to in his order, he could not have been properly apprised of the history of the proceedings. Not only was the applicant unsuccessful in convincing Edwards J. that he should be granted leave to seek any relief on his application made on 24th November, 2008 but the Supreme Court was specifically asked to consider whether it would grant a stay on the prosecution of the proceedings in the District Court pending an appeal against the order of Edwards J. and they refused that application. In these circumstances, if the order of Peart J. was intended to stay the District Court proceedings pending the outcome of these proceedings in the Supreme Court his order has the effect of reversing the decision of a superior court on the same issue.

35. The second named respondent also maintains that the applicant failed to advise Peart J. of the full history of proceedings entitled *Burke v. Judge Mary Martin & Director of Public Prosecutions* [2009] 933 J.R.

36. Notwithstanding the protestations of the applicant that he disclosed the existence of all relevant proceedings to the trial judge, I am absolutely certain that the learned trial judge was drawn into error due to the applicant's failure to comply with his duty of disclosure on the hearing of his *ex parte* application. I am satisfied that had a full disclosure been made to the court that Peart J. simply could not and would not have considered granting leave to the applicant to apply for judicial review in the terms in which he did at para. 1(c) of his order and that he would not have granted him the stay which is referred to at para. 3 thereof.

37. I have had the benefit of reading the judgment of Edwards J. who following a lengthy hearing on Thursday, 24th September, 2009, delivered an extensive written judgment on 9th October, 2009.

38. In essence, the applicant in those proceedings sought to restrain the second named respondent from prosecuting or taking any further steps in connection with the 120 charges relating to issues of animal welfare which are the subject matter of the present proceedings and also one charge of criminal damage to a motor vehicle. When the matter came before him for hearing, the prosecutions in question had been listed to commence over three days starting on 30th September, 2009.

39. The proceedings concerned what is alleged to have occurred at the Tipperary District Court on 3rd June, 2009. The summonses had been provisionally listed for hearing commencing 30th September, 2009 but the District Judge had put the summonses in for mention on 3rd June, 2009 with a view to permitting the applicant an opportunity to convince her that the existence of judicial review proceedings in the High Court justified the dates fixed being vacated. The applicant maintained, inter alia, that the District Court judge did not have proper regard to the documents pertaining to his other judicial review proceedings, that he was not given an ample opportunity to make his case for an adjournment and that another District Court judge, because he had embarked upon a hearing of the one charge in relation to criminal damage to a motor vehicle had seized of all of the animal welfare cases such as to preclude her fixing a date for the trial of these proceedings to be heard by any other judge.

40. Edwards J. refused the relief sought. The applicant thereafter filed a notice of appeal but unlike in the earlier case bearing record number 966 J.R. he did not apply to the Supreme Court to stay the further prosecution of the proceedings before the District Court. Hence, if it was these proceedings that Peart J. was referring to in his order of the 7th May as being pending before the Supreme Court, he clearly was misled or misunderstood the nature of those proceedings. The applicant never applied for a stay in the Supreme Court on the continuance of the District Court proceedings pending his appeal. That was the appropriate procedure to adopt if he wished to obtain a stay of that duration. He had no basis to seek to obtain by the back door before Peart J., a relief which he chose not to seek in the appropriate proceedings.

41. I have no doubt that Peart J. was informed of the existence of other judicial review proceedings which were pending before the Supreme Court but regrettably the averments in the applicant's grounding affidavit were worthless in terms of the information that was provided to the court. Whilst the applicant may have discussed the nature of the proceedings pending before the Supreme Court with the trial judge, he clearly failed in his obligation to bring the material facts and the orders made in those proceedings to the attention of the court. The orders made by the respective courts were of significant materiality to his *ex parte* application and I have no difficulty in concluding that had the learned trial judge been aware of the true facts surrounding the aforementioned proceedings and of the orders made by the respective courts that he would not have made the orders which he did at para. 1C and 3 of his order.

42. I find it difficult to accept the applicant's assurances that he acted *bona fide* at all times. In the course of the present proceedings and indeed in the course of a number of other proceedings which arise in relation to related matters, I have found the applicant to be an unreliable historian. He is a prolific litigator whose actions seem to me to be designed to delay or potentially derail the District Court proceedings which are outstanding against him. However, I do not have to make any decision as to the applicant's *bona fides* in the circumstances where it is blatantly clear to me that Peart J. would not have granted him leave to apply for the relief

at para. 1C of his order had he been aware of the true nature of the two sets of judicial review proceedings just referred to. Neither would he have granted stay referred to at para. 3 of the said order.

43. It is clear that the stay granted by Peart J. at para. 1C of his order was provided in support of the applicant's right to seek an order of prohibition in relation to matters complained of by him excluding the order refusing him a stenographer. In this regard, the applicant complained of some frivolity in the course of the proceedings before the District Judge on 24th March, 2010. Even if this is true, it is not alleged by the applicant that he was thereby denied an opportunity to be heard on what was, after all, an opportunity afforded to him to demonstrate why, because of the existence of outstanding judicial review proceedings, the dates earlier fixed on a temporary basis for the District Court proceedings should not be confirmed.

44. The last remaining complaint is one which is made in the affidavit of the applicant rather than in the statement of grounds where it is asserted that the District Judge has seized of all of these cases due to the fact that she considered documentation in relation to them on 3rd June, 2009. He maintains therefore that on 24th March, 2010, she was not entitled to fix the proceedings to be heard by any other judge.

45. In the course of this application, I have had cause to consider the decision of Edwards J. in the proceedings involving the applicant bearing record number [2009] 933 J.R. which judgment I believe was not brought to the attention of Peart J. There are two matters of real significance arising from this judgment. The first is that in those proceedings, the applicant, contrary to what is maintained in these proceedings, asserted that Judge Kevin Anderson of the District Court, because he had embarked upon the District Court proceedings relating to criminal damage, had seized of all of the District Court cases and in particular those proceedings brought in respect of animal welfare issues which are the subject matter of these proceedings. The failure on the part of the applicant to bring this decision to the attention of Peart J. was clearly material in circumstances where Edwards J. determined that not only did Judge Anderson not have seized of the "cases" but also dealt with the nature of the application which was before the District Judge on 3rd June, 2009. He concluded in the course of his judgment that what the District Judge was doing on 3rd June, 2009, was dealing with a procedural aspect of the case. Had this decision been brought to the attention of Peart J. it is simply inconceivable that he could have granted leave to the applicant to argue that the District Judge, by fixing the dates for the hearing of the prosecutions or entertaining an application of the applicant to vacate those dates because of the existence of judicial review proceedings could be deemed to have seized of these cases to the exclusion of any other District Judge.

46. Whilst the jurisdiction of this Court to interfere with an *ex parte* order should only occur in exceptional circumstances, I am satisfied that having regard to all of the matters referred to earlier in this judgment that had the applicant met his obligations to the court in terms of a full and frank disclosure of all material facts that those parts of the order of Peart J. referred to earlier would not have been made by him. Based upon a consideration of all of the facts and with the benefits of the arguments presented to me by both sides, I am satisfied that there is no substance to the applicant's claim and that exceptional circumstances exist justifying this Court in setting aside the order of Peart J. in its entirety.

Contempt Motion

47. Insofar as I have found in favour of the second named respondent on his motion to set aside the order of Peart J. dated 7th May, 2010, it is, perhaps, unnecessary to deal with the applicant's motion to commit "the defendants in contempt of court for attempting to overrule the order of Judge Michael Peart" dated 7th May, 2010. I am, in any event, satisfied for the legal reasons set out earlier in this judgment that the application brought by the second named respondent was brought validly within jurisdiction.

48. The proper course of action for a respondent who objects to the grant of leave to maintain judicial review proceedings is to bring a motion to seek to have that order set aside. The existence of such jurisdiction was recognised by Carswell J. in *Re Savage's Application* [1991] N.I 103. Accordingly, even if the application of the second named respondent had proved unsuccessful such a failure could not have provided a valid or lawful basis for any application to commit the unsuccessful party as being in contempt of court.

49. For the aforementioned reasons, I will set aside all of the order of Peart J. made on 7th May, 2010 and I will strike out the applicant's motion for committal.