

**THE HIGH COURT
JUDICIAL REVIEW**

[2006 No.652 J.R.]

BETWEEN**KEVIN TRACEY****APPLICANT**

**AND
DISTRICT JUDGE AENEAS MC CARTHY**

RESPONDENT

**AND
THE DIRECTOR OF PUBLIC PROSECUTIONS**

NOTICE PARTY**Judgment of Mr Justice Brian McGovern delivered the 6th day of March, 2008**

1. By order of the High Court made on the 1st day of June, 2006, the applicant was granted leave to apply by way of Judicial Review for an order of *certiorari* quashing the order made by the first named respondent on the 31st of May, 2006 at Richmond District Court No. 53, committing the applicant to Mountjoy Prison for seven days for contempt of court, arising in the course of a case entitled *Director of Public Prosecutions at the suit of Garda Deirdre Ryan v. Kevin Tracey*. The applicant was granted leave on the grounds set forth at paragraph E. sub-paragraphs 1-3 in the Statement of Grounds. Ground One is that the first named respondent erred in law by denying the applicant a fair hearing or indeed any meaningful opportunity to speak, represent himself or make submissions, both oral and written, in the case before him.

Ground Two is that the first named respondent further erred in law by denying the applicant equal treatment to that accorded to the opposing party in the case before him. Ground Three stated that the first named respondent further erred in law, committed an abuse of process and acted *ultra vires* by first ordering the applicant be removed from the Court, and, while that was being done and the applicant protested about the behaviour of the Gardaí involved in the case and in bringing a malicious prosecution against him, then ordering the applicant to be brought back before him and holding the applicant in contempt of Court without informing applicant of the nature and substance of the accusation, without upholding the applicant's right to have the contempt matter tried by an impartial and independent Court and without upholding the applicant's right to hear the evidence of his accuser regarding the alleged contempt, prepare a defence, call witnesses or have legal representation of his choice in defence of the contempt matter before judgment was given. The applicant contends that this was done by the first named respondent contrary to his duties under the Constitution.

The facts

2. The facts, briefly, are as follows:

The matter before the District Court was a routine Road Traffic prosecution. The applicant was charged with careless driving on the 30th of August, 2004 at Park Lane, Chapelizod, Dublin 20. From the affidavits which have been presented in this case, I am satisfied that the prosecution had great difficulty in serving the applicant. There is evidence on affidavit, which I find convincing, that the applicant was trying to evade service. In any event, he appeared in Court on the 31st of May, 2006. The respondent was told by the prosecutor that on the previous occasion, when the matter was listed, the applicant was not in Court so he was seeking a date for the next appearance, depending on how the applicant pleaded. It seems that the District Judge then asked the applicant whether he was pleading guilty or not guilty and the applicant replied "I am pleading not guilty". There is an unofficial transcript of the hearing which was prepared by a Mr Owen Rice who was acting as a McKenzie friend to the applicant in the application before me. The applicant represented himself at this hearing in the High Court and he referred to his McKenzie friend from time to time. I am happy to accept that the transcript of the hearing before the respondent is reasonably accurate and, broadly speaking, represents what was said. I use the words "broadly speaking" because at certain points in the transcript, it purports to suggest to the reader who the applicant was addressing his remarks to, and what was happening to the applicant. For example, at a crucial part of the transcript, the following appears: -

KEVIN TRACEY [to GDA.D RYAN who is helping propel him to door] . . . "How crooked! And you think you will get away with this? How crooked you are!". This, unfortunately, betrays a rather subjective approach on the part of the note taker and the transcript has to be read with that "health warning".

3. What appears clear is that the applicant turned up in Court on the 31st of May, 2006 with his wife and Mr Owen Rice. The prosecution indicated to the Judge that they wanted an adjournment and when the applicant pleaded not guilty, the respondent intended to fix the date for the hearing. However, the applicant was intent upon making a statement and had indicated to the Court that he had asked for a stenographer to be present. The District Judge indicated that he was not receiving any statement as the matter was being adjourned. The applicant refused to accept the Judge's ruling and became abusive. I do not propose to repeat everything that is in the transcript, but a few matters are relevant.

4. After the Judge told the applicant he would not allow him to make a statement, the applicant went on to say that the issue concerned six years of abuse, orchestrated by a Judge who was his next door neighbour. He referred to false summonses to Court and it appears that he was behaving in a truculent manner. In my view, the respondent was perfectly entitled to have him removed from the Court as he was persistently refusing to comply with the Judge's direction. As he was being removed from the Court, the transcript shows that Garda Ryan and another guard were trying to pacify him. He said to the Judge "You'll certainly hear about this, Judge!". One of the Gardaí said "Come on now". And the applicant repeated, "You'll certainly hear about this!". The unofficial transcript then shows that Garda D Ryan said, "Yes, please [to KEVIN TRACEY], come on, come on, come on now, forget about it, you heard the Judge". That indicates to me that the Garda was trying to get the applicant out of Court before he got himself into further trouble. But the applicant continued to be belligerent, even though Garda Ryan and another Garda said ". . . Come on now, next time". This seems to have been an attempt to persuade the applicant to accept the ruling of the Court and that he could make whatever statement he wished on the next time when the matter was listed for hearing. At this point, the transcript shows that the applicant said ". . . How crooked! And you think you will get away with this? How crooked you are!". The applicant's wife said, "You have another think (sic) coming". In the transcript it is suggested this was said to Garda Ryan. At that point, the District Judge said he wanted the applicant brought back. Garda Ryan swore an affidavit in the related Judicial Review case and although the papers in this case contained an undated Notice of Motion to cross examine, it is significant to note that the applicant never cross-examined her on her affidavit. In her affidavit of the 2nd of October, 2006, she said that the applicant continually insisted he wanted to read out a statement. She says:

"19. ...He continually insisted that he wanted to read out the statement. His wife was encouraging him by saying "you have a right to speak Kevin". The applicant alleged that a colleague of the respondent was orchestrating harassment against him and further alleged in Court that the Gardaí in Ballyfermot are corrupt. He stated that a member of the Judiciary had orchestrated ongoing harassment, resulting in him being brought before the Courts.

20. The respondent warned the applicant to desist in talking in this manner.

21 The respondent then asked the Court Garda to remove the applicant from the Court. The applicant refused to desist from talking, as is clear from paragraph 20 of his own affidavit. He refused to co-operate with the Gardaí who tried to remove him from the Court or to comply with the Judge's order and continued making these allegations.

22 The respondent then directed the Gardaí to bring the applicant up to the front of the Court. He then indicated that he was going to hold him in contempt of Court and asked him whether he had anything to say. The applicant stated 'no' as appears in his affidavit".

In paragraph 20 of his affidavit, sworn on the 31st day of May, 2006, the applicant states "As I was complying with the direction to leave, I continued to explain my position and that the abuse that I am suffering at the hands of the Gardaí is orchestrated, but just about six feet short of the door, the Judge called for me to be brought back".

5. In the hearing before me, the applicant stated that he never made these remarks to the Judge but that they were made to the Gardaí. When I asked him if he informed the Judge of this, he said "no". When I asked him why he did not inform the Judge of this, he stated that he had no need to as he had not said anything to the Judge.

6. What is clear from the affidavits and from the unofficial transcript is that the District Judge saw the applicant refuse to comply with his direction and heard him shout matters which could reasonably be construed as suggesting that the respondent was corrupt. He had already referred to six years of abuse orchestrated by a Judge and had said at one point, "You'll certainly hear about this, Judge!" and later stated, "How crooked! And you think you will get away with this? How crooked you are!". In my view, the respondent was entirely within his rights to call the applicant back and hold him in contempt of Court.

7. It is of significance that the unofficial transcript shows that the respondent said to the applicant, "Now I'm holding you in contempt of Court, and do you have any, do you have anything to say with regard to that?". This was stated before the Judge imposed any sanction for the contempt. Having asked the applicant if he had anything to say, the applicant replied, "No". If, as the applicant contends, he never spoke these words to the Judge but they were directed at the Gardaí, all he had to do was say that to the Judge. But to this day he has not done so. Nor has he apologised for his behaviour in Court in refusing to comply with the directions of the Judge.

8. In circumstances where the respondent offered the applicant an opportunity to address him before he imposed a sanction, I cannot see how the applicant was denied a fair hearing or a "meaningful opportunity to speak, represent himself, or make submissions". When I speak of making submissions, I refer to submissions on the contempt issue because it is clear that the matter was being adjourned for hearing to another date. I therefore refuse the applicant the relief which he seeks on Ground One in the Statement of Grounds.

9. The second ground is that the first named respondent erred in law by denying the applicant equal treatment to that accorded to the opposing party. There is nothing in the evidence before me, or in the unofficial transcript, which goes anywhere near establishing this ground. The matter in the District Court was to be adjourned and no hearing on the merits of the case was taking place. The District Judge was informed that as the applicant had failed to appear on a previous occasion, the prosecution were seeking a new date, depending on how the applicant pleaded. The applicant pleaded not guilty and the only issue which then arose was the fixing of a date for the hearing. That would have been the end of the matter were it not for the conduct of the applicant in trying to make a statement and then refusing to accept the Judge's ruling. From that point on, the exchanges appear to have been between the applicant and the respondent and members of An Garda Síochána. The prosecutor does not appear to have been involved at that stage. Accordingly, I refuse the application based on Ground Two.

10. The final ground upon which the applicant was granted leave to apply for Judicial Review was that the first named respondent erred in law, committed an abuse of process and acted *ultra vires* by ordering that the applicant be removed from the Court and by committing him for contempt at a time when the applicant was protesting about the behaviour of the Gardaí involved and the fact that a malicious prosecution was brought against him. He also complains that the respondent did not inform him of the nature and substance of the accusation and that the matter of contempt should have been dealt with by an impartial and independent Court and that he should have been entitled to hear the evidence of his accuser regarding the alleged contempt and prepare a defence and call witnesses or have legal representation in defending the issue.

11. The applicant was found guilty of contempt in the face of the Court and I am quite satisfied on the evidence that the respondent had ample justification for making such a finding and was acting within his jurisdiction. A Judge of the District Court, or any other Court, is entitled to protect the dignity and integrity of the Court against unlawful conduct. Once the applicant engaged in the outburst in Court, the respondent was entitled to deal with the matter summarily in order to restore order and protect the Court against the scandalous remarks being uttered by the applicant.

12. I simply do not accept that the applicant did not know why he was being found guilty of contempt of Court. This applicant represented himself before this Court and seemed to be very well versed in legal procedures and referred liberally to case law and the Constitution, although, sadly, not to the point on most occasions. The applicant was given an opportunity to defend himself because the respondent did not sentence him for contempt without giving him an opportunity to be heard. The applicant said he had nothing to say and yet he complains to this Court that he was making his remarks to the Gardaí and not the Judge. The time to say that was when he had been asked if he had anything to say, but he chose not to do so. In the circumstances, it is difficult to see how the respondent erred in any way in imposing the sentence for contempt in the face of the Court. The applicant argued before me that he did not say anything because he was confused. I do not accept that. The applicant was liberal in the hurling of insults when he was in the District Court. In this Judicial Review hearing, he made unfounded allegations against Counsel that she was deliberately misleading the Court and he also said that the Gardaí, through their affidavits, were deliberately misleading the Court. I reject both those assertions by the applicant.

I reject the applicant's claim for Judicial Review on this ground also.

13. It is worth noting that the applicant at no time appealed the finding of contempt or the sentence imposed.

14. For the reasons set out above, I hold that the applicant is not entitled to the relief claimed and I dismiss the application for Judicial Review.