

**THE HIGH COURT**  
**JUDICIAL REVIEW**

**2008 1060 JR**

**BETWEEN**

**JOHN BURKE**

**APPLICANT**

**AND**

**DISTRICT JUDGE TERENCE FINN**

**AND**

**THE DIRECTOR OF PUBLIC PROSECUTIONS**

**RESPONDENTS**

**JUDGMENT of Mr. Justice John Edwards delivered on the 27th day of January, 2009**

**Introduction**

This matter comes before me by way of an application for leave to apply for an order of *certiorari* by way of judicial review to quash an Instalment Order made by the first named respondent against the applicant on the 17th of September 2008. The grounds on which this relief is sought are, in summary, an alleged failure on the part of the first named respondent to deal with the applicant fairly and the existence of bias or perceived bias on the part of the first named respondent.

**Background to the proceedings**

On the 15th day of January 2008 in proceedings commenced in the Circuit Court for the South Eastern Circuit and County of Tipperary, Record No 37/2007, a company known as Clarke Machinery Limited, being the plaintiff in those proceedings, obtained judgment against the applicant, who was the defendant in those proceedings, for the sum of €13,000 and €540 for costs, in default of the entry of an appearance by the defendant to the plaintiff's Civil Bill. That Order was not appealed.

The judgment debtor, namely the applicant herein, failed to pay the amount of the judgment and in consequence of that failure the judgment creditor, namely Clarke Machinery Limited, commenced a process of execution against the applicant pursuant to the Enforcement of Court Orders Acts, 1926 and 1940 and issued him with a summons pursuant to Order 53 of the District Court Rules seeking to have him examined before the District Court as to his means with a view to obtaining an Instalment Order against him.

The matter appears to have come on for hearing before the first named respondent on either the 16th or 17th of September 2008. The applicant's grounding affidavit, sworn on the 19th of September 2008, is ambiguous as to the precise date but it was certainly one or other of the dates mentioned. At any rate, the applicant's said affidavit sets out what occurred on the occasion in question, at least in the applicant's perception, and also what occurred on a subsequent occasion a day or two later when he attempted to mention the matter to the Court again. It is appropriate that I should recite his averments in full:

"(1) I have attended Tipperary District Court on Tuesday 16th of September 2008 in relation to a matter concerning a claim for roughly thirteen thousand euro from Clarke Machinery Co Cavan. They were represented by a Ms. Ryan Solicitor on the day.

(2) On the previous sitting of said Court Judge Finn had given me from the 2nd of September 2008 to the 17th of September 2008 to put in an appeal to the Circuit Court and to have this with me on the 17th of September 2008.

(3) When the case was called he never even asked me whether I had appealed the matter or not and when I reminded him and produced it to him he looked at it but then said that my letter was not an appeal.

(4) He then ordered that I take the stand and said that the statement of means that I had previously given in was no good either. Ms Ryan also claimed that it was not a statement of means either but yet asked all her questions in reference to it.

(5) While on the stand I swore and gave documented evidence that I owed one million euro to the bank and the revenue and said that I owed three hundred thousand more to merchants and co-ops alone. With that I tried to explain that my gross income was thirty euro per week and that I was mainly living with the help of friends and neighbours.

(6) I also explained that I was getting no assistance from the state and that it was because of interference, harassment, seizures of stock, assault, and Judge's decisions that I had arrived at the point of bankruptcy and that in the past four year I had lost between four and five million euro.

(7) Just before he gave his judgment Judge Finn warned me that if I so much as opened my mouth to speak I would be immediately be put behind bars. Then he asked me a question!

(8) Finally he decreed that I pay one hundred euro per week which I have proven and given oath that it is to be taken from a figure of zero per week. This I cannot pay but I had explained to them that when the State would pay me for my losses I would then pay Clarks in full.

(9) I was then left in the position that seeing as I could not speak I could then not ask the Judge as to what amount of

money he would set as recognisance in the event of an appeal to the Circuit Court. I immediately travelled to Clonmel District Court Office and obtained the recognisance papers and the appeal papers. I attended Cashel District Court on the following day the 18th of September 2008. After waiting for a period I eventually stood before Judge Finn and said Excuse Me Judge please. His reply was to order that the Court be cleared."

### **The Applicant**

As appears from his affidavit the applicant, who describes himself as a cattleman and stockowner, is very much down on his luck, although as to whose fault this is the Court cannot say. It is clear that the applicant himself blames a variety of circumstances and agencies for his predicament. This Court, having had previous dealings with the applicant, knows him to be a prodigious litigant before various courts. In the Court's previous dealings with the applicant I have found him to be basically respectful and courteous but with an exasperating tendency to become excitable and argumentative with the Court when he is the subject of a decision or ruling that he does not like. When the present application was opened before me I enquired of the applicant as to whether he had had previous dealings with the first named respondent, apart from his dealings in the present case. He confirmed that he has had very extensive dealings with the first named respondent and he handed in an affidavit sworn by him in connection with an application made by him to another judge of the High Court in October of 2008 for a stay on a range of proceedings then pending before the Tipperary District Court. It is not necessary to go into the details of this affidavit. Suffice it to say that it confirms previous fraught dealings and conflict with the first named respondent, and that in at least one instance the applicant was threatened with jail for contempt of court as a result of becoming argumentative with the judge.

### **The conduct of the instalment order proceedings in the District Court**

The applicant represented himself in the District Court. It is clear that he was given the opportunity to put evidence in his defence before the Court and that, indeed, he gave evidence on his own behalf. It is clear from his affidavit that he also made submissions to the Court from the witness stand. To that extent he was undoubtedly afforded fair procedures and the rules of natural justice were observed.

Just before the Court delivered its judgment the applicant was admonished by the first named respondent that if he so much as opened his mouth to speak he would be immediately put behind bars. This Court, based upon its own previous experience of the applicant's disposition, and also upon the applicant's admitted history of previous dealings with the first named respondent, has no hesitation in drawing the inference that the District Judge gave this admonishment in anticipation that the applicant was likely to become argumentative with the Judge after he had given his ruling.

In this Court's view a District Judge must be afforded considerable latitude as to how he conducts his Court. It is essential for the preservation of confidence in the administration of justice that Judges should be shown appropriate respect; that a Judge's decisions should be respected and that proceedings in court should be conducted with appropriate decorum. It would be absolutely inimical to the proper and effective administration of justice if a dissatisfied party or parties were to be allowed to dispute a judge's ruling after it had been given, to argue against the correctness of the judge's decision before the same Court, to seek to have a matter re-opened, or to abuse the judge because of his decision. Happily, these things happen relatively rarely because in most cases the parties are legally represented and lawyers, whether they are solicitors or barristers, are required to adhere to rules of professional conduct which govern, *inter alia*, how they must behave in Court. However, experience has shown that from time to time a Court does not receive the respect that it deserves and, perhaps unsurprisingly, when this does occur the offender is often a lay litigant. Even in the case of lay litigants they will usually desist from disrespectful conduct if it is pointed out to them from the bench that they are being disrespectful, and most Judges will grant them a certain amount of indulgence and are unlikely to sanction them for a once off occurrence. At the end of the day, however, a Judge is entitled to insist on being shown appropriate respect and can be expected to take a firm line with repeat or persistent offenders. Moreover, if, as is the case with this applicant, a lay litigant has a track record of responding argumentatively to rulings given against him the Judge is entitled to take pro-active steps to ensure that the party in question toes the line. Such pro-active steps may, in an appropriate case, include issuing a threat that an argumentative response to the court's ruling will be treated as contempt in the face of the Court for which conduct the offender may be jailed.

Having said all of that, a Court cannot refuse absolutely to hear a party after it has given its ruling. A Judge must be prepared to hear and deal with an appropriate application from any party in respect of a matter arising, providing that the application is made respectfully, e.g. a legitimate request for clarification of an aspect of the Court's judgment or order, or as to a consequence of the ruling, or a request for a stay, or for leave to appeal. In the instant case the applicant claims to have been inhibited from asking a question concerning a procedural point, namely whether he needed to enter into recognisances for the purpose of appealing the judge's ruling. (In point of fact, he did not need to do so as recognisances are only required to be entered into for the purpose of appealing a criminal conviction). It is regrettable that he felt so inhibited. It should have been made plain to him that he was being admonished only in anticipation of argumentative behaviour but that if he had any legitimate application to make after the ruling that would be entertained. Unfortunately, the judge's admonishment as described by the applicant (and assuming for the moment that it has been accurately described) arguably went too far in that it did not leave open the possibility of the applicant being allowed to enter into a respectful engagement with the Court. Moreover, the refusal of the District Judge to entertain any application from the applicant at all on the 18th of September 2008 was, *prima facie*, unjustifiable.

While I am satisfied that no question of actual bias arises in this case, and while I have considerable empathy with the undoubted exasperation felt by the first named respondent on account of the applicant's tendency to be argumentative, I am nevertheless concerned about a possible perception of bias that might exist in the mind of some disinterested observer who may have observed what went on in the District Court on the two dates in question. Justice must not only be done but be seen to be done and, unfortunately, the peremptory way in which the applicant was seemingly dealt with could arguably give rise to a perception of bias against him on the part of the District Judge.

Accordingly, although this is something of a borderline case, I am disposed in all the circumstances to grant the applicant leave to apply for the relief that he is seeking by way of judicial review as against the first named respondent only. As he has not made out any case whatsoever against the second named respondent leave is refused as against the second named respondent.

Further, I direct that Clarke Machinery Limited be added as a Notice Party to these proceedings and that that party should be served with all papers in the case.

I will reserve the question of costs to the substantive hearing.