

**THE HIGH COURT  
JUDICIAL REVIEW**

**[2003 No. 744]**

**BETWEEN**

**JOHN FLEURY**

**APPLICANT**

**AND**

**THE MINISTER FOR AGRICULTURE, FOOD AND RURAL DEVELOPMENT**

**RESPONDENT**

**AND**

**DISTRICT JUDGE MARY O'HALLORAN**

**NOTICE PARTY**

Judgment of Mr. Justice Hedigan delivered on 12th day of 2012.

1. This is an application to amend grounds in relation to an application for judicial review in which leave was granted on the 20th October, 2002 with the order amended on the 30th October, 2002 adding a further ground. A statement of grounds of opposition was served herein dated 9th February, 2004. This application therefore is made eight years and nine months later. I understand the substantive judicial review is now ready to proceed and may be heard within a matter of months.

2. The essence of the amended grounds are that because it appears from recent developments that certain gland tests have recently come to light suggesting the respondent knew at all times that the cattle in question had not tested positive for brucellosis, there thus was an element of *mala fides* on the part of the respondent. The principles applicable to an application to amend grounds are set out by Fennelly J. in *Keegan v. Garda Síochána Ombudsman Commission* [2012] IESC 29. They may be summarised as follows:

- (1) The Court should have regard to the interests of justice.
- (2) The arguability of the points sought to be raised should be considered.
- (3) There should be good reason for allowing the late amendment, e.g. circumstances should be exceptional.
- (4) The Court should consider whether the facts are new facts that arose since leave was granted.
- (5) The Court should consider whether the proposed amendment would be a significant enlargement of the proceedings already in being.
- (6) The Court should consider whether the proposed amendment would prejudice the respondent.
- (7) The Court should bear in mind the true nature of judicial review noting that the leave stage of judicial review is a filtering mechanism, the Court should consider the overarching requirement of promptness.
- (8) The relevance of the grounds should be considered.
- (9) Every case depends on its own facts.

3. It seems clear to me from the uncontradicted evidence of Jevon Alcock on behalf of the respondent, the results of these gland tests were handed over to Aisling Meehan, solicitor for the applicant, on the 6th May, 2003. No explanation has been proffered for the delay of almost nine years in raising these tests as fresh grounds. The onus lies upon the applicant to explain the delay. No satisfactory explanation is forthcoming. On that basis the application to amend is hopeless.

4. There are twenty nine summons sought to be challenged in the substantive judicial review proceedings herein. They have been described by the applicant in his written submissions herein at paragraph 2.9 as follows;

- (a) The ten charges referred to at paragraph 10 of the affidavit of Jevon Alcock relates to animals moving into a holding with a pre-movement blood test for brucellosis on the 6th .....(?), 1999. These are movements out of a GVM mart sale under the control of Department of Agriculture officials.
- (b) The three charges at paragraph 11(a) relate to legitimate movement within the same holding.
- (c) The three charges at paragraph 11(b) relate to moving animals out of the GVM mart controlled by Department of Agriculture officials.
- (d) The two charges at paragraph 11(c) relate to charges of possession of passports which were opened in the presence of Departmental officials.
- (e) The two charges at paragraph 11(d) and two charges at paragraph 11(e) relate to charges of possession of passports which were opened in the presence of Department officials.

(f) The single charge at paragraph 11(f), the single charge at paragraph 11(g), the two charges at paragraph (h) and the three charges at paragraph (i) are all charges of failures to make entries in a herd register.

5. Whether the animals in questions were or were not infected with brucellosis is not relevant to any of the charges above which the applicant faces. Only one of the animals is actually involved in a charge brought against the applicant (tag No. VVTJ0043F). But this charge is in respect of a failure to have a thirty day pre-movement test.

6. I fail to see how the interests of justice require these irrelevant matters to be raised. I doubt there could properly have formed admissible grounds in 2003, still less now. Insofar as they could raise any ground of *mala fides*, that can be dealt with by the trial Judge as a matter of weighing the evidence and credibility of the various witnesses. For these reasons also I fail to see how the new issue sought to be raised can rise to the level of an arguable point having regard to the furnishing of the gland tests in 2003 and their irrelevance to the charges faced.

7. It is clear that the introduction of the new claim would greatly enlarge the scope of the judicial review currently ready for full hearing.

8. For all the above reasons I refuse the application to amend the grounds as sought in the notice of motion herein.