NEUTRAL CITATION NUMBER [2012] IEHC 320

THE HIGH COURT

JUDICIAL REVIEW

RECORD NO. 593/2012 JR

BETWEEN

MICHAEL BERRY

APPLICANT

v.

HIS HONOUR JUDGE BARRY HICKSON, THE DIRECTOR OF PUBLIC PROSECUTIONS THE DEPARTMENT OF JUSTICEAND LAW REFORM IRELAND AND THE ATTORNEY GENERAL

RESPONDENTS

Judgment of Mr. Justice Hedigan delivered the 26th day of July 2012

I heard this application on the 2nd of July last and refused the relief sought. I stated that I would give my reasons later. Those reasons are as follows;

1. The applicant seeks the following relief:-

(i) An order of *certiorari* by way of judicial review, quashing the order of the first named respondent made on the 2th June 2012, that the trial of the applicant in respect of bill number WX46/2011 would not proceed on the 29th June 2012.

(ii) An order of prohibition by way of judicial review to prevent the first named respondent proceeding with the trial of the applicant in respect of bill number WX46/2011 until the applicant has had adequate time to prepare his defence.

(iii) An order of prohibition by way of judicial review to prevent the first named respondent proceeding with the trial of the applicant in respect of bill number WX46/2011 until full and proper disclosure has been made by the second named respondent.

(iv) An order of prohibition by way of judicial review to prevent the first named respondent proceeding with the trail of the applicant in respect of bill number WX46/20 I 1 until such time as the third named respondent adequately provides for the cost of the applicant's legal advisors of identifying, copying and considering the disclosure in respect of bill number WX46/201.

(v) A declaration that the ruling of the first named respondent made on the 27th June 2012 that the trial of the applicant in respect of bill number WX46/2011 should proceed on the 29th June 2012 was unreasonable, disproportionate and amounted to a breach of the applicants right to a trial in due course of law, as guaranteed by 38.1 of the Constitution, and Article 6 of the European Convention on Human Rights.

(vi) A declaration that the failure by the third named respondent to adequately provide by way of legal aid for the cost of identifying, copying and considering the disclosure in respect of Bill number WX46/2011 amounts to a breach of the applicants right to trial in due course of law, as guaranteed by 38.1 of the Constitution and Article 6 of the European Convention on Human Rights.

(vii) A declaration that the failure by the second named respondent to furnish the applicant with general disclosure amounted to a breach of his right to a trial in due course of law, as guaranteed by 38.1 of the Constitution, and Article 6 of the European Convention of Human Rights.

(viii) A declaration that the refusal by the second named respondent to furnish the applicant with relevant disclosure on grounds of privilege and of relevance and incorrect considerations amounts to a breach of his right to a trial in due course of law, as guaranteed by 38.1 of the Constitution, and Article 6 of the European Convention of Human Rights.

(ix) A stay on the prosecution of the applicant in respect of Bill number WX46/2011 pending the determination of the proceedings herein.

(x) If necessary, an order for the production of the applicant and an order admitting him to bail pending determination of the proceedings herein.

Background Facts

2. 1 It is alleged that the applicant is part of a criminal gang that carried out a series of ATM thefts in the South-East in 2008 and 2009 using diggers and ram-raid techniques. It is also alleged that this gang carried out aggravated burglaries at a filling-station and at a hotel. The applicant was arrested as part of 'operation slope', the investigation into these ram raid and related offences. There were 57 people arrested in relation to the charges which are the subject matter of the indictment. There have been seven people charged with offences arising from the 'operation slope' investigation and the extradition of two more suspects from the UK is now sought.

2.2 The applicant was charged on the 13th July 2011, and returned for trial to Wexford Circuit Criminal Court in September 2011, in

respect of a large number of charges which are set out on Indictment Bill no. WX46/11. The applicant was refused bail and is in custody. The applicant was assigned legal aid. Ms Lorraine Stephens was the applicant's first solicitor. Ms Stephens was discharged because she was acting for another person accused in relation to the ram raids. A Book of Evidence was served and the applicant was returned for trial to Wexford Circuit Court in September 2011. The legal firm of Morrison Broderick Solicitors came on record for the applicants in October 2011. On the 3rd of January 2012 the state solicitor was advised that the applicant had discharged the firm of Morrison Broderick and that David Tarrant Solicitor had been retained. The applicant then discharged Mr Tarrant and in April 2012 the firm of Donal Quigley and Co Solicitors came on record.

2.3 On the 28th October 2011, prosecuting Counsel spoke to the applicant's then legal team and advised them of the fact that because there was a very significant amount of documentation in this case, documents could be inspected at Enniscorthy Garda Station by arrangement. From that date onwards it has been open to the defence to examine the material. Morrison Broderick Solicitors made an appointment to attend the Garda Station but failed to attend. An application for bail was made and refused in January 2012. On the 17th April 2012, the applicant's case was listed for hearing, the trial was due to commence on the 18th April 2012, the applicant discharged his legal team that morning. On this basis the case did not proceed but was instead adjourned peremptorily against the applicant to the 19th June 2012.

2.4 On the 1st June 2012 the applicant's current solicitor Mr Quigley made a request for additional disclosure. A reply issued on the 13th June 2012. A second letter was sent by Mr Quigley (incorrectly dated 1st June 2012) and a reply issued from the state solicitor on the 18th June 2012. Later on the 18th of June 2012 the state solicitor was advised by Mr Quigley solicitor that he too had been discharged, however it appears the applicant had a change of heart and Mr Quigley attended Court on the 19th of June 2012.

2.5 On Tuesday the 19th of June 2012 the defence sought an adjournment. The prosecution argued that a jury should be empanelled on the basis that the issue of disclosure is one for the Trial Judge. There was legal argument on the issue of disclosure before Judge Hickson the first named respondent. Judge Hickson adopted a consensual approach and it was agreed by the prosecution that further documentation requested would be handed over or would be the subject matter of an application and ruling by the Judge. The Judge said that he would swear in a jury the following day and would deal with any other disclosure issues at that stage. A jury for the case was empanelled on Wednesday the 20th of June 2012. The jury were requested to return to the Court on Tuesday the 26th June 2012. There was further debate before the court about the issue of disclosure. On Tuesday the 26th June 2012 various issues arose in relation to members of the jury and it had to be discharged. A second jury was empanelled on Tuesday the 26th of June 2012. There was further debate before Judge Hickson about disclosure issues. The jury were advised that their attendance would not be required until Friday the 29th of June. A back up trial ran into Friday June 29th and so on the afternoon of Thursday the 28th of June, Judge Hickson suggested that disclosure issues could be canvassed on Friday the 29th of June but that the jury be put of until the following Tuesday the 3rd of June. On Friday June 29th the applicant's legal team made an *ex parte* application to this court seeking leave for judicial review. This Court held that the leave application should be heard *inter partes* and the application was heard on Monday the 2nd of July 2012.

Applicant's Submissions.

3.1 The applicant's main reason for applying for leave for judicial review is the failure of the second named respondent to make disclosure of relevant documentation. The evidence in this case includes 500 statements of witnesses comprising all witnesses in the book of evidence and all unused witnesses. Instead of furnishing typed statements to the applicant's legal team the second named respondents advised them to go to Enniscorthy Garda Station and photocopy the handwritten statements themselves. Mr Kevin Doherty State Solicitor for County Wexford has sworn an affidavit dated the 18th July 2012, stating that the applicant's legal team have access to all the documentation in Enniscorthy. In reality what is available in Enniscorthy Garda Station are un-typed statements many of which are scarcely legible. There is only one photocopier in the disclosure room. It is necessary to remove a large amount of handwritten memos of interviews and original documents from files in order to copy them. This is painstaking and slow work. The applicant argues that the 500 typed statements should have been provided to the defence when the matter was being returned to trial. It has taken until last week (i.e. the week beginning 18th June 2012) for the statements to be furnished. This is an extremely complex case involving multiple crimes and multiple victims and witnesses. It is submitted that the applicant's legal team are in an impossible position as they cannot cross-examine so many witnesses without having time to examine the 500 statements. Every witness is of potential importance as all of the evidence is interlinked.

3.2 Mr Doherty has averred that if the defence had asked for these statements they would have been provided. The applicants submit this is not how disclosure works. Disclosure of evidence should be made without a request if it is relevant. The applicant submits that there has been a clear breach of the DPP's Guidelines for Prosecutors 2007. Chapter nine deals with disclosure, under the section entitled "Obligation by the prosecution to disclose material not intended to be used at the trial". The guidelines state as follows at page 40:-

> "9.10 There may also be other material of an evidentiary nature which the prosecution has decided not to use at trial. Some of this evidence may neither add to nor detract from the case against the accused, in which case it is not relevant and need not be disclosed. Other evidence may undermine some aspect of the prosecution case or in some other way be of assistance to the defence.
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> 9.11 In the ordinary course, disclosure of evidence should be made, without a request, if the evidence is relevant. In this regard relevant evidence includes information which may reasonably be regarded as providing a lead to other information that might assist the accused in either attacking the prosecution case or making a positive case of its own ..."

It is clear therefore that disclosure of evidence should be made without a request if it is relevant. The 500 witness statements were relevant and ought to have been disclosed when the matter was being returned for trial.

3.3 Part of the evidence against the applicant will be the testimony of an informant and alleged accomplice Dessie Kavanagh. The proposed evidence of Mr Kavanagh is that he was present for some of the crimes and that the applicant informed him that he had committed other crimes. In these circumstances the credibility of Mr Kavanagh will be of crucial importance. The defence were entitled to know that Mr Kavanagh was on the witness protection programme. This information was not disclosed until the defence wrote to the prosecution, again this is a breach of the DPP's Guidelines for Prosecutor's 2007. Under the section entitled "Obligation by the prosecution to disclose material not intended to be used at the trial" the guidelines state as follows at page 40:-

> "9.11...
>
> (a)-(f)...
>
> (e) Details of any immunity from prosecution provided to a witness with respect to his or her involvement in criminal

> activities. Where a witness is admitted to a witness protection programme the fact of such an admission should be disclosed;
>
> (f) where the witness participated in the criminal activity the subject of the charges against the defendant, whether the witness has been dealt with in respect of his or her own involvement and, if so, whether the sentence imposed on the witness took into account any co-operation with law enforcement authorities in relation to the current matter;"

The applicant's legal team do not have information on what deal was done with Mr Kavanagh. This information will obviously be of importance in cross-examining Mr Kavanagh as to his credibility. The applicant's legal team do not claim to be entitled to all evidence about the programme however they submit that they are entitled to know the basis elements of the deal reached and what Mr Kavanagh was promised in return for providing evidence. The defence do not have the full original statement of Mr Kavanagh which is the main statement in the book of evidence. The version provided is edited with names redacted. This makes it impossible for the defence to piece together the events. The defence also require Mr Kavanagh's pulse record and the intelligence records which tie Mr Kavanagh to other members of the alleged gang. The defence also require the collator's reports, all the information held by the gardai that links Mr Kavanagh to the so called Corbally gang, CCTV footage of other ram raids in the South East and all notebook entries.

3.4 Before the applicant's solicitor attended Enniscorthy Garda Station for the purpose of identifying potentially relevant material and then copying and reading same, he contacted the criminal legal aid section in the office of the third named respondent seeking sanction for payment of the cost of attendance with Junior Counsel. He was advised that no payment would be forthcoming under the criminal legal aid scheme. The applicant submits that the failure of the third named respondent to facilitate the applicant's legal team through the provisions of the legal aid scheme has led to an utterly onerous and disproportionate arrangement whereby the defence must spend hundreds of hours considering documentary and real evidence without any payment for same. The third named respondents failure to adequately provide by way of legal aid for the costs of identifying, copying and considering the disclosure in respect of bill number WX 46/2011 amounts to a breach of the applicants right to a trial in due course of law. The applicant submits that the manner in which disclosure has occurred is oppressive on the applicant. It is further submitted that the applicant and his legal advisers are being denied the opportunity to have full and proper consideration of relevant matters so that a proper defence to these charges can be made.

Respondents Submissions
4.1 The applicant in these proceedings is Mr Berry. It is his right to disclosure and the facilities made available to him that the court must review. The respondents acknowledge the difficult position the applicant's legal team face. However this difficulty is as a result of the applicant's practice of discharging his legal team each time the matter appears to be coming on for trial. The current legal team are the applicant's fourth legal team. Trial Judges are well accustomed to dealing with this tactic. The applicant recently signalled his intention to discharge this legal team however it seems he changed his mind. There is no guarantee if this matter is stayed that the applicant will not discharge his legal team again. At some point a criminal trial must proceed.

4.2 This application was made at the stage when the trial had commenced. The jury had been sworn in and the applicants, without the courtesy of informing the Judge or the DPP went behind their backs and sought judicial review in the High Court. There is a clear line of authority to the effect that judicial review proceedings should not be brought during the currency of a criminal trial. In *DPP v Special Criminal Court & Paul Ward* [1999] 1 IR 60 Carney J stated at 69-70

> "It is unique in my experience that relief of this nature is being sought during the currency of a trial which remains at hearing. It cannot be emphasised strongly enough that an expedition to the judicial review court is not to be regarded as an option where an adverse ruling is encountered in the course of a criminal trial. I am undertaking this application for judicial review during the currency of a trial because a need has presented itself to urgently balance the hierarchy of constitutional rights including, in particular, the right to life. In the overwhelming majority of cases it would be appropriate that any question of judicial review be left over until the conclusion of the trial. In the instant case, such an approach would have led the Director of Public Prosecutions to abort the trial and the people of Ireland would have been deprived of their right to have a particularly heinous crime prosecuted to a verdict of either conviction or acquittal."

There are sound policy reasons for the general rule that judicial review proceedings should not be brought during the currency of a criminal trial. If this was not the case an accused who was unhappy with a ruling made mid trial could institute judicial review instead of awaiting the outcome of the trial. Our Courts never intended that the unity of a trial be broken up in this manner.

4.3 The respondent submits that the method of disclosure in this case has been appropriate. In any complex case disclosure will inevitably be an issue. This is a case with multiple crimes, witnesses and victims involved and naturally the documentation is extremely extensive. It was legitimate for the respondents to indicate that the witness statements were available to view and copy at Enniscorthy Garda Station. This approach is certainly not unique in complex cases and was also used in the Veronica Guerin case where all relevant material was made available at Lucan Garda Station. This method of disclosure is not inconsistent with the DPP's Guidelines for Prosecutors 2007.

4.4 Disclosure was available since November 2011. This is a period of 8 months. This prompts the question of whose fault is it that the applicant has not taken the opportunity to examine the documents. Were the applicant's last three legal teams negligent in not examining the documents? Is this why the applicant discharged them? The reality of course is that the applicant has discharged his legal teams as a tactic to delay his trial. The pressure on the applicant's legal team is due to the applicant. The applicant's problem is self created.

4.5 In Mr O'Doherty affidavit sworn on the 1st of July 2012 he avers as follows at paragraph 53:-

> "I say that there was no indication given by the defence either to the Trial Judge or to the prosecution that they intended seeking a judicial review to stop the trial; after the jury had already been sworn in. I say that the Trial Judge was managing all aspects of the case including disclosure. I say that the within judicial review proceedings appear to be an attempt to prevent that process from occurring."

The respondents submit that disclosure is a matter for the trial judge. The trial Judge is managing the issue of disclosure and has said that he will continue to police the matter. To intervene this Court must be satisfied that he is falling short in his duties.

4.6 Finally in relation to the issue of legal aid Terry Lonergan an Assistant Principal Officer in the Courts Policy Division of the Department of Justice and Equality has sworn an affidavit dated the 2nd July 2012 dealing with this issue. At paragraph's 5 to 7 of his affidavit Mr Lonergan outlines how the applicant's solicitor made enquiries by telephone as to whether under the Criminal Legal Aid Scheme fees would be paid for reviewing of disclosure. Mr Quigley was informed that such fees are not normally payable. Mr Lonergan

however avers that this is not a strict rule and it depends on the circumstances of a particular case. In any event the Courts Policy Division did not receive any formal written application requesting provision for payment under the Criminal Legal Aid Scheme for review for disclosure from Mr Quigley

Decision of the Court
5.1 It is alleged that the applicant is part of a criminal gang that carried out a series of ATM thefts. The applicant was charged on the 13th July 2011, and returned for trial to Wexford Circuit Criminal Court in September 2011, in respect of a large number of charges which are set out on Indictment Bill no WX46/11. He was assigned legal aid, to date the applicant has discharged his legal team on three occasions. The state solicitor has been advised that new legal teams were acting for the applicant in October 2011, January 2012, and April 2012. In October 2011, the applicant's then legal team were advised that because of the sheer volume of documentation in this it was not practical to post statements to them; instead the statements could be inspected and copied at Enniscorthy Garda Station. On the 18th April 2012, the applicant's trail was due to commence, the applicant discharged his legal team that morning. The case was adjourned peremptorily against the applicant to the 19th June 2012. On the 1st June 2012 the applicant's current solicitor Mr Quigley made a request for additional disclosure. A reply issued on the 13th June 2012. A second letter was sent by Mr Quigley and a reply issued from the state solicitor on the 18th June 2012. On Tuesday the 19th of June there was legal argument on the issue of disclosure before Judge Hickson. The Judge said that he would swear in a jury the following day and would deal with any other disclosure issues at that stage. A jury for the case was empanelled on Wednesday the 20th June 2012. Due to unforeseen circumstances a second jury had to be empanelled on Tuesday the 26th June 2012. On that date the jury were advised that their attendance would not be required until Friday the 29th of June. A back up trial ran into Friday the 30th of June and so on Thursday afternoon Judge Hickson suggested that disclosure issues could be addressed on Friday the 29th of June but that the jury be sent away until the following Tuesday the 3rd of June. On Friday June 29th the applicant's legal team made an *ex parte* application to this Court seeking leave for judicial review. It was held that the leave application should be held *inter parte* and the application was heard on Monday the 2ndof July 2012.

5.2 The applicant herein seeks *inter alia* an order of prohibition by way of judicial review to prevent the first named respondent proceeding with his trial until full and proper disclosure has been made by the second named respondent. Such an order is exceptional in nature. In *D.C. v. D.P.P.* [2005] 4 I.R. 281 at 283 Denham J (as she then was) stated as follows at 283:-

> "Such an application [for the prohibition of a trial] may only succeed in exceptional circumstances. The Constitution and the State, through legislation, have given to the Director of Public Prosecutions an independent role in determining whether or not a prosecution should be brought on behalf of the People of Ireland. The Director having taken such a decision the courts are slow to intervene. Under the Constitution it is for a jury of twelve peers of the applicant to determine whether he is guilty or innocent. However, bearing in mind the duty of the courts to protect the constitutional rights of all persons, in exceptional circumstances the court will intervene and prohibit a trial. In general such a step is not necessary as the trial judge maintains at all times the duty to ensure due process and a fair trial. The basic assumption to apply in relation to all pending trials is that they will be conducted fairly, under the presiding judge. However, in circumstances where there is a real or serious risk of an unfair trial the courts will intervene so that a defendant may not be exposed to the commencement of the process, it being the assumption that should such a trial commence it will be stopped by the direction of the trial judge because of the real or serious risk of an unfair trial.
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> It is this exceptional jurisdiction which the applicant wishes to invoke. Such a jurisdiction to intervene does not apply where the applicant has minutely parsed and analysed the proposed evidence and sought to identify an area merely of difficulty or complexity. The test for this Court is whether there is a real risk that by reason of the particular circumstances that the applicant could not obtain a fair trial."

The Denham CJ then went on describe the onus upon an applicant seeking to stay his trial in the following terms at 499:-

> "... an onus to establish a real risk of an unfair trial ... necessarily and inevitably means an unfair trial which cannot be avoided by appropriate rulings and directions on the part of the trial judge. The risk is a real one but the unfairness of trial must be an unavoidable unfairness of trial."

5.3 The onus is on the applicant to overturn the presumption that he cannot obtain a fair trial. This is a high hurdle to overcome. On the 18th of April 2012, the applicant discharged his third legal team on the morning his trial was due to commence; the case was adjourned peremptorily against the applicant until the 19th June 2012. When the applicants current legal team came on board in April they knew the trial date of the 19th of June 2012 was set peremptorily against the applicant. Clearly time was of the essence, however they did not write to the first respondent until June. Given the history of this matter it is not surprising the Trial Judge is anxious that the case would go on. It seems to me that the trial Judge has been managing carefully the complex issue of disclosure in this case. On the 19th, 20t\ 26th and 28th of June there was legal argument about disclosure, the Judge is aware of the issues in this regard. Rather than return to the Trial Judge on Friday June 29th for any further issues about disclosure to be addressed the defence sought to take away the issue of disclosure from the Trial Judge by seeking leave to apply for judicial review.

5.4 On at least two occasions Judge Hickson said it seemed to him that the State had "bent over backwards" to assist the Defence and he made it clear he would rule on any matters that remained in issue. He also said if there was improper non-disclosure he would stop the trial to prevent an injustice being done to the applicant. In order for this court to intervene in the matter I would have to be satisfied that there is a real risk that by reason of the particular circumstances that the applicant could not obtain a fair trial. In the light of the trial judges's careful consideration of the issue of disclosure to date and his firmly expressed view as to the consequences of improper non disclosure, it seems to me that there is every indication that the applicant will receive a fair trial.

5.5 As this court has repeatedly stated, save for the most exceptional cases, criminal proceedings belong in the criminal courts. Where an accused who is convicted of an offence believes that he has not had a fair trial he can appeal to the Court of Criminal Appeal who will have a transcript of all the evidence and can judge the case for fairness in the light of all the evidence given. The court of judicial review does not have access to all the evidence given and is thus in a weak position to judge the fairness of a trial overall. It is vital for the efficient conduct of criminal matters that criminal trials proceed through the criminal courts and are not dispersed between the court of trial and other courts. In *Corporation of Dublin v Flynn* [1980] IR 357 at 365, Henchy J. stated:-

> "It is the essence of a criminal trial that it be unitary and self contained, to the extent that proof of the ingredients of the offence may not be established as a result of a dispersal of the issues between the Court of trial and another tribunal."

In applications such as the present the Court must bear in mind that a criminal trial will be conducted before a court established by law and presumed capable of providing a trial to an accused person in conformity with all the requirements of natural and constitutional justice.

5.6 The applicant's legal team complain that the third respondents failure to adequately provide by way of legal aid for the costs of identifying, copying and considering the disclosure amounts to a breach of the applicant's right to a trial in due course of law and is oppressive on him. At paragraph 29 of his affidavit of the 2nd July 2012, the applicant's solicitor Mr Quigley states as follows:-

"I say that the Third Named Respondent insists that no payment can be made on legal aid for such burdensome and time consuming disclosure activities as those advocated by the Second Named Respondent. I Say that in the circumstances, the said refusal amounts to a failure to vindicate the applicant's constitutional right to a fair trial and to effective representation."

In reply Terry Lonergan an Assistant Principal Officer in the Courts Policy Division of the Department of Justice and Equality has sworn an affidavit dated the 2nd July 2012, dealing with this issue. At paragraph's 5 to 7 of his affidavit Mr Lonergan avers as follows;-

> "5.... Ms. Lawler explained to said solicitor that there was no payment made for the reviewing of disclosure and in this regard contact had been made with the Office of the Director of Public Prosecutions in relation to this matter generally and it was agreed that a fee for review of disclosure would not normally be paid. The position as regards fees for disclosure is based on that as determined by the Office of the Director of Public Prosecutions.
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> 6. However the above is not to say that in a particular case, depending on the circumstances of that particular case that provision would not be made for payment for review of disclosure. In this regard, from time to time, provision has been made for payment for documentary counsel under the legal aid scheme.
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> 7. The Courts Policy Division is not in receipt of any correspondence from Mr Quigley, solicitor in relation to this case. No written application/ representation has been made by him setting out the individual circumstances of this case and requesting provision for payment under the Criminal Legal Aid Scheme for review for disclosure."

These issues are decided on an ad hoc basis. There may well be an enhanced fee payable in circumstances where onerous legal work is undertaken. No decision was made on the level of legal aid and I am satisfied that Mr Quigley's complaint is both overstated and premature.

5.7 To summarize; in relation to the main issue as to the risk of an unfair trial, I am not satisfied that the applicant has discharged the onus on him to demonstrate that there is a real risk that, by reason of the particular circumstances of the case, he could not obtain a fair trial. It is noteworthy that the applicant himself is responsible for the difficulties his legal team have in preparing for trial in a short space of time. He has dismissed three legal teams in what I think the trial judge might reasonably apprehend is an attempt to prevent his trial taking place. Furthermore the applicant's legal team were aware when they first came to represent the applicant in April 2012 that a trial date had been set peremptorily against the applicant for the 19th of June 2012. I am satisfied that the trial judge has been closely managing the issue of disclosure. There was legal argument and rulings on disclosure on four occasions in the two weeks before this application for leave was taken. The Judge has also said if there was improper non-disclosure he would stop the trial to prevent an injustice being done to the applicant. These are classical grounds for preventing this court intervening. The trial judge is perfectly placed and ready to make all such rulings and direction as may be necessary to ensure a fair trial for the accused. As to the complaint made in relation to the non provision of legal aid for the costs of identifying, copying and considering the disclosure, it has not been sustained by the evidence. No proper application has been lodged and thus no final decision has been made on this issue. It was for all the above mentioned reasons that I refused the relief sought herein.