

THE HIGH COURT

[2004 No. 19489 P]

BETWEEN

T.K. AND J.B.

PLAINTIFFS

AND

IRELAND AND THE ATTORNEY GENERAL

DEFENDANTS

Judgment of Mr. Justice Hanna delivered on the 15th day of January, 2008

1. This matter involves the determination of certain preliminary issues in a case whose central thrust concerns a challenge to s. 3 of the Proceeds of Crime Act, 1996 as being wanting both in terms of the Constitution and the European Convention on Human Rights. The plaintiffs have previously been engaged in proceedings instituted against them in the High Court pursuant to the said Act and which resulted in the seizure and disposal of certain of their assets.

2. The relevant parts of the statutory framework appear in the schedule to this judgment.

Background Facts

3. It is necessary that I set out material milestones in this somewhat protracted dispute.

- 1st July, 1997: the Criminal Assets Bureau (hereinafter "the C.A.B.") is granted an ex parte freezing order by the High Court in respect of a dwelling house and a motor vehicle apparently jointly owned by the plaintiffs.
- 2nd July, 1997: C.A.B. issue a notice of motion for a freezing order under s. 3 of the Proceeds of Crime Act, 1996 (hereinafter "the Act of 1996") returnable on the 14th July, 1997.
- 15th July, 1997: the plaintiffs enter an appearance requesting delivery of the statement of claim. The plaintiffs claimed that they had difficulty securing legal representation at that time, stating that they were unable to pay the fee required from their preferred solicitor and were told that the Legal Aid Board had a "backlog of work". They did, in fact, retain the services of a solicitor some months later and they have been legally represented since then and have instructed counsel.
- 16th July, 1997: the motion is heard and a freezing order granted under s. 3 of the Act of 1996. The plaintiffs issued a notice of motion seeking a statement of claim and an order discharging the s. 2 order of the Act of 1996 that had been made on the 1st July, 1997.
- 30th November, 2001: C.A.B. seek the appointment of a receiver over the property.
- 7th December, 2001: a receiver is appointed by the High Court with a stay. By order made the 25th January, 2002, the stay is extended until 29th January, 2002.
- 22nd February, 2002: C.A.B. delivers a statement of claim seeking the appointment of a receiver under s. 7 of the Act of 1996.
- 4th March, 2002: the plaintiffs issue a notice of motion seeking the discharge of the s. 3 order and the dismissal of the proceedings for failure to deliver a statement of claim. The main basis of the challenge is that the s. 3 order was incorrectly made on the basis that it was an interlocutory order.
- 19th March, 2002: the motion is refused in the High Court.
- 22nd March, 2002: the High Court appoints a receiver over the property and makes a number of consequential orders.
- 4th June, 2002: the plaintiffs issue a notice of appeal to the Supreme Court.
- 5th July, 2002: the plaintiffs seek an extension of time, from the Supreme Court, to appeal the decision of Moriarty J. granting the s. 3 order.
- 10th July, 2002: the plaintiffs issue a notice under Order 60 of the Rules of the Superior Courts, 1986, seeking to join the Attorney General on the basis that the appeal concerned the constitutionality of the legislation.
- 15th July, 2002: the Supreme Court, in an *ex tempore* judgment, refuses the relief sought by the plaintiffs in both applications.
- 19th July, 2002: the house, the subject of the freezing order, is auctioned on behalf of the C.A.B.
- 21st October, 2002: the High Court approves the sale of the property.
- 22nd November, 2002: the plaintiffs issue a notice of motion asking the High Court for an order under s. 3(3) of the Act of 1996 discharging the s. 3 order on the basis that "the section 3 application was truly interlocutory and not in substance the trial of the action".
- 25th November, 2002: the High Court refuses the relief sought in the notice of motion.
- 26th November, 2004: following the exchange of particulars between the parties, the plaintiffs issue a plenary summons commencing these proceedings.
- 5th July, 2005: an order is made under s. 4 of the Act of 1996 and the proceeds from the sale of the house are transferred to the Minister for Finance.

Issues to be determined

4. The plaintiffs in the statement of claim delivered on the 1st December, 2004, seek a declaration that all or all relevant parts of the Proceeds of Crime Act, 1996 are repugnant to the Constitution. They also seek a declaration that all or several parts of the Proceeds of Crime Act, 1996 are incompatible with the European Convention on Human Rights.

5. A defence to the statement of claim was filed on the 21st February, 2006. That defence was filed without prejudice to certain issues enumerated at paragraphs 1-5 inclusive and these preliminary issues now fall to be determined by this Court pursuant to an order of O'Sullivan J. made on the 13th November, 2006.

6. The issues may be summarised as follows:

- (i) That the pleadings are frivolous or vexatious and/or are bound to fail and represent an abuse of process.
- (ii) That the pleadings represent an improper collateral attack upon the validity of the decision of the Supreme Court in *Murphy v. G.M.* [2001] 4 I.R. 113, which upheld the constitutionality of the Proceeds of Crime Act, 1996.
- (iii) That the statement of claim is an improper collateral attack on the validity of a decision of the Supreme Court made on the 15th July, 2002 (see chronology of events).
- (iv) That the plaintiffs are estopped by omission, by reason of their failure to raise this claim in previous proceedings in which they have been engaged with the Criminal Assets Bureau.
- (v) That, finally, the plaintiffs lack locus standi to challenge any part of the Proceeds of Crime Act, 1996 that is not currently being applied against them.

The previous proceedings entitled *Michael F. Murphy v. T.K. and J.B* (1997 No. 7354P)

7. Although C.A.B. were, obviously, the primary mover in the previous proceedings, if I might so term them, the plaintiffs (then defendants) were far from inactive in taking issue with C.A.B.'s actions and engaged with gusto in the litigation, albeit without professional representation for some months.

8. The material and significant steps in the proceedings were:

- An application by Mr. K. and Ms. B. to the High Court on the 4th March, 2002, seeking: 1) an order discharging the s. 3 order made by the Court on the 16th July, 1997, appointing a receiver over the property; 2) an order dismissing Mr. Murphy's claim for failure to deliver a statement of claim; 3) dismissal of the plaintiff's proceedings for being statute barred; 4) an order staying or vacating the appointment of the receiver in the proceedings.
- An appeal by Mr. K. and Ms. B. against the refusal of that application (by notice of appeal dated the 4th July, 2002) was subsequently dismissed by the Supreme Court.
- An application, made on the 5th July, 2002, for an extension of time to appeal against the decision of Moriarty J. to grant the s. 3 order.
- Service of a notice under Order 60 of the Rules of the Superior Courts joining the Attorney General in the proceedings, on the 10th July, 2002, contending that "under the Constitution and unless the statutory provision is held to be unconstitutional" the courts are obliged to apply the law as set out.
- An application to the High Court, made the 22nd November, 2002, for relief pursuant to s. 3(3) of the Proceeds of Crime Act, 1996. An "inquiry into damages" was also sought at that time.

9. The case advanced by the plaintiffs in the previous proceedings hinged on the argument that the s. 3 order made in relation to the plaintiffs' property by Moriarty J. on the 16th July, 1997, was understood to be an interlocutory order at the time of the making of the order but was subsequently held to be a "final order" by the Supreme Court (in *Murphy v. G.M.*). Further, the said s. 3 order as made was improperly obtained because the plaintiffs did not have legal representation at the time the order was made against them and no trial of the action ever took place and, therefore, no statement of claim was delivered in respect of the s. 3 order made. (A statement of claim was delivered by the C.A.B. but it was claimed that this was insufficient as it was a mere recital of the relevant orders made in the case).

10. It was contended that the s. 3 order was improperly characterised as a 'final order'. Counsel argued that the characterisation of s. 3 orders given in *F. McK. v. A.F.* (Statement of Claim) [2002] 1 I.R. 242 ignored the previous Supreme Court authority on the nature of interlocutory orders in *Minister for Agriculture v. Alte Leipziger A.G.* [2000] 4 I.R. 32. In the Order 60 notice issued, it was submitted that

"...the Oireachtas has made it abundantly clear that the Section 3 stage in the proceedings under this Act is (sic) interlocutory, a command that the Court has no jurisdiction to disregard without finding the direction unconstitutional. That Section 3 provided an interlocutory procedure was not, of itself, unconstitutional."

11. It would be fair to note, in passing, that the plaintiffs disputed the proposition that the property in question constituted the proceeds of crime.

12. In response, C.A.B. disputed all of the plaintiffs' case. It argued that the s. 3 order made by the High Court should be upheld on the basis that the order was correctly made and the deciding judge (Finnegan P.) did not have jurisdiction to interfere with a s. 3 order apart from where there were grounds for interference under section 3(3) of the Act of 1996. Further, the lack of a statement of claim did not prejudice Mr. K. and Ms. B.

13. An issue also arose in relation to an application for leave to extend the time for an appeal, it being argued that the applicants did not satisfy any of the criteria outlined by Lavery J. (Maguire C.J., Murnaghan, O'Byrne and Kingsmill Moore JJ. concurring) in *Eire Continental Trading Company Limited v. Clonmel Foods Limited* [1955] I.R. 170.

The Current Proceedings – Issues and Findings

14. At the start of the preliminary hearing, counsel for Mr. K. and Ms. B., Mr. Forde S.C., objected to preliminary matters being raised before the Court where matters of fact, as he contended, were not agreed between the parties. In the absence of such agreed facts the moving party should accept the version of facts enunciated by the respondent. I rejected Mr. Forde's application. I was of the view that there was no factual dispute of any significance and what was squarely in issue was the purport and effect of what had occurred in the previous proceedings. Further, the order of O'Sullivan J. had been consented to and I felt I could not look behind it in any event. I determined the hearing would continue.

15. It became readily apparent, in my view, that central arguments relied upon by the plaintiffs in these proceedings had been made in the previous proceedings (*Michael F. Murphy v. T.K. & J.B.* (1997 No. 7534P)). The European Convention on Human Rights did not form part of our domestic law at that time and could, in that sense, be identified as a fresh issue.

16. I now turn to the various issues raised in this motion.

i. That the proceedings are a collateral attack on decisions already made by the Supreme Court.

17. A number of decisions of the Supreme Court were identified by Mr. McDermott B.L., on behalf of the defendants as being of determinative force. The law was settled. Not so, contended Mr. Forde. *Murphy v. GM*, as he saw it, was decided against the backdrop of all parties being of the opinion that s. 3 orders were interlocutory in nature. Thus, an analysis of the attributes of such an order did not ensue and the Court was confronted with virgin territory. The issue of constitutionality could be raised afresh.

18. I cannot agree. It seems to me that the constitutionality of the Proceeds of Crime Act, 1996 (obviously encompassing s. 3) has already been established by the Supreme Court in *Murphy v. G.M.* A five judge Supreme Court sitting over four days heard the appeal. This was a fully argued, fought and considered constitutional challenge to the Proceeds of Crime Act, 1996.

19. What, then, of the plaintiffs' argument that the parties in that case were either labouring under a misconception as to the purport of a s. 3 order or were, in fact, correct in their view? Again, I do not accept this assertion. In *F. McK. v. A.F.* (Statement of Claim) it was held that the proceedings under s. 3 of the Proceeds of Crime Act, 1996, were not truly interlocutory but constituted a substantive remedy. Further, the Supreme Court made it clear, in *F. McK. v. A.F.* [2005] 2 I.R. 163 that the finding that a s. 3 order was a final order had been "signposted" in earlier judgments such as *Murphy v. G.M.* (Geoghegan J., at p. 166) and was, therefore, not inconsistent with the finding that the Act of 1996 was constitutional. At p. 166, Geoghegan J. (Murray C.J. and Denham, Hardiman and McCracken J.J. concurring) stated:-

"Unfortunately for quite a period the Act of 1996 was viewed differently in the High Court, partly with the encouragement of the parties and probably because the stage was never reached and, indeed, has not still been reached, for considering all the ramifications and the precise nature of a s. 4 application. However, this need not have happened after the 18th October, 2001, when Keane C.J. delivering the judgment of this court in relation to the constitutionality of the Act of 1996 in *Murphy v. G.M.* [2001] 4 I.R. 113 of the report said the following at p. 154:

'As to the claim that the period of seven years which must elapse before a disposal order is made is unduly oppressive, that rests on the misconception that the application for a disposal order can in some sense be equated to the trial of an action in respect of which the legislation earlier provides for interlocutory orders being made. That is clearly not the nature of the scheme provided for in the Act.'

That passage and another passage from a judgment of Keane C.J. in a different case are cited in my judgment referred to above. In making these references, I am merely pointing out that before ever *F. McK v. A.F.* (Statement of Claim) was decided the scheme of the Act of 1996 and in particular the concept that the s. 4 application was not the trial of an action commenced by a s. 3 application had been already signposted in earlier judgments."

20. Thus has the Supreme Court held.

21. That Court will only depart from its previous decisions in the most exceptional cases: *Attorney General v. Ryan's Car Hire* [1965] I.R. 642 and *Mogul v. Tipperary* [1976] I.R. 260. This principle was upheld by the Supreme Court in *O'Brien v. Mirror Group* [2001] 1 I.R. 1. In that case, arguments were advanced on the part of the defendants which were "virtually identical" to those which had been advanced in a previous case (at p. 12). Keane C.J. noted that the Court would have to hold that the decision of the previous court was "so 'clearly wrong' that there are now 'compelling reasons' why it should be overruled and that, indeed, justice requires that it be overruled" (at p. 16). Denham J. (dissenting on the facts) stated that ".....a previous decision of the Supreme Court may not be followed by the Supreme Court if it is determined that it was erroneous, if there is a compelling reason, or there are compelling reasons, not to follow the earlier decision. Precedent is followed save for exceptional cases." (at p. 27).

22. I cannot see any reason for inviting the Supreme Court to reconsider this matter. I am persuaded that the defendants must succeed on this issue.

ii. The proceedings constitute a collateral attack on the decision of the Supreme Court in *Michael F. Murphy v. T.K. and J.B.* (ex tempore judgment delivered the 15th July, 2002).

23. Mr. Forde S.C. argued that the basis for the Supreme Court's decision in *Michael F. Murphy v. T.K. and J.B.* was not clear from its ruling of the 15th July, 2002. He submitted there cannot be a collateral attack on a decision of the Supreme Court where the plaintiffs do not know the reasons for that decision. He added that the presumption, where reasons are not available, is that the issues were not raised before the Court. Although both parties' legal teams were more than likely present for the Supreme Court hearing and decision, no note appears to have been retained of that decision.

24. It is clear, in my view, that a variety of issues were brought before the Supreme Court in the previous case, including those canvassed herein, and that the Supreme Court upheld the validity of the s. 3 order having considered those arguments made before it. Damages, the remedy sought here by the plaintiffs, were also sought in the original proceedings. The notice of appeal and the written submissions in the case demonstrate that every material issue (bar "Convention Rights") sought to be litigated in these proceedings was raised before the High Court and Supreme Court. In addition, the Attorney General was served with a s. 60 notice.

25. When the matter came on before the Supreme Court, to my mind, it is abundantly clear that the plaintiffs' case, as then advanced, was rejected *in toto*. No note of the proceedings of the judgment has been furnished to me, as I have already observed. I find this a most peculiar state of affairs. However, given the fact that detailed evidence in affidavit form and exhaustive legal

argument touching on all material issues was clearly engaged in (there is no suggestion that things were otherwise) and notwithstanding the peculiar amnesia as to what occurred in court which seems to have affected the parties and not least the plaintiffs who were most intimately concerned with the outcome, in my view I am entitled to assume that what occurred was such a rejection of the then defendants' claim, out of hand. Since I feel I am entitled, in all of the circumstances of this case, to draw such an inference, I am therefore driven to the conclusion that these proceedings constitute an improper collateral attack on the decision of the Supreme Court made on the 15th July, 2002.

iii. That the plaintiffs are estopped from raising arguments not raised in the initial proceedings.

26. It follows from what I have found concerning issues numbered i and ii that this complaint is redundant. The plaintiffs did indeed raise all material arguments with the exception of the European Convention on Human Rights Act, 2003 which issue I will turn to shortly and briefly. For the sake of completeness, I should, in brief, indicate the views I would have expressed on this topic were the plaintiffs to have hitherto secured a positive outcome (from their perspective) on the issues already addressed or lest I am in error in my findings to date.

27. Given the breadth and variety of issues raised in the previous proceedings, before both High and Supreme Courts, including matters relating to the Supreme Court's decision as to the nature of s. 3 orders, I see no reason in the world why the plaintiffs could not have pursued the arguments they make now relating to the constitutionality of sections of the Proceeds of Crime Act, 1996 in those earlier proceedings. Long established authority (*Henderson v. Henderson* (1843) 3 Hare 100) provides as a general rule that parties cannot seek to raise points in subsequent proceedings that they could have raised in the original proceedings. (See also *Cox v. Dublin City Distillery* (No. 2) [1915] 1 I.R. 345). This line of authority the Supreme Court has followed in *Carroll v. Ryan* [2003] 1 I.R. 309 and in *A.A. v. Medical Council* [2003] 4 IR 302 and in *Law Society of Ireland v. Malocco* [2005] IESC 5).

i.v. That the plaintiffs' proceedings are frivolous or vexatious and an abuse of process.

28. This issue is most properly addressed at the end of my deliberations.

v. That the plaintiffs do not have locus standi to challenge the Proceeds of Crime Act, 1996.

29. Mr. McDermott argued that the plaintiffs did not have locus standi to challenge the entirety of the Proceeds of Crime Act, 1996, as they can only challenge those parts of the Act which have been invoked against them. (See *A. v. Governor of Arbour Hill* [2006] 4 I.R. 88). I don't think that Mr. Forde demurred from this proposition. Mr. McDermott also contended that a s. 4 order had already been made in relation to the property (on the 5th July, 2005) and so matters relating to the s. 3 order are *res judicata*. Mr. Forde S.C. submitted that the plaintiffs were not seeking to have the Proceeds of Crime Act, 1996, declared invalid, but were, rather, seeking damages for the property taken away from them on foot of the section of that Act which they claim is unconstitutional. The making of the s. 4 order should not shut them out from this palliative relief. I think this is correct. Had the plaintiffs succeeded thus far in negotiating the disputatious logistical steeplechase presented to them in the issues litigated in this motion, it would have been quite unfair to debar them from seeking a monetary remedy. This, alas, is frugal comfort for them given my decision on other aspects of this application.

The European Convention on Human Rights Act, 2003.

30. The plaintiffs also seek relief under the European Convention on Human Rights Act, 2003. This legislation came into effect on the 31st December, 2003. All of the matters of which the plaintiffs complain occurred before that date.

31. Kearns J., giving the judgment of the Supreme Court in *Dublin City Council v. Fennell* [2005] 1 I.R. 604, determined, inter alia, that the Act could not be seen as having "... retrospective effect or as affecting past events" (at p. 637). In such circumstances, I must follow the explicit view of the Supreme Court and reject the plaintiffs' case, that they might now advance a claim under the European Convention on Human Rights. The Convention did not form part of Irish domestic law at the time material to the plaintiffs' complaints and thus cannot bear upon them.

Conclusion

32. In summary, the defendants must succeed and succeed clearly on all issues bar that of locus standi which, in the circumstances, avails the plaintiffs naught. In all of the circumstances of this case and taking all matters into account, I must also determine that the proceedings amount to a frivolous and vexatious abuse of process.

Schedule

The Statutory Framework

The Proceeds of Crime Act, 1996

1.—(1) In this Act, save where the context otherwise requires—

"interlocutory order" means an order under *section 3*;

2. (1) Where it is shown to the satisfaction of the Court on application to it *ex parte* in that behalf by a member or an authorised officer—

(a) that a person is in possession or control of—

(i) specified property and that the property constitutes, directly or indirectly, proceeds of crime, or

(ii) specified property that was acquired, in whole or in part, with or in connection with property that, directly or indirectly, constitutes proceeds of crime,

and

(b) that the value of the property or, as the case may be, the total value of the property referred to in both *subparagraphs (i) and (ii), of paragraph (a)* is not less than £10,000, the Court may make an order ("an interim order") prohibiting the person or any other specified person or any other person having notice of the order from disposing of or otherwise dealing with the whole or, if appropriate, a specified part of the property or diminishing its value during the period of 21 days from the date of the making of the order.

(2) An interim order—

- (a) may contain such provisions, conditions and restrictions as the Court considers necessary or expedient, and
- (b) shall provide for notice of it to be given to the respondent and any other person who appears to be or is affected by it unless the Court is satisfied that it is not reasonably possible to ascertain his, her or their whereabouts.

(3) Where an interim order is in force, the Court, on application to it in that behalf by the respondent or any other person claiming ownership of any of the property concerned may, if it is shown to the satisfaction of the Court that—

- (a) the property concerned or a part of it is not property to which *subparagraph (i) or (ii) of subsection (1) (a)* applies, or
- (b) the value of the property to which those subparagraphs apply is less than £10,000,

discharge or, as may be appropriate, vary the order.

(4) The Court shall, on application to it in that behalf at any time by the applicant, discharge an interim order.

(5) Subject to *subsections (3) and (4)*, an interim order shall continue in force until the expiration of the period of 21 days from the date of its making and shall then lapse unless an application for the making of an interlocutory order in respect of any of the property concerned is brought during that period and, if such an application is brought, the interim order shall lapse upon—

- (a) the determination of the application,
- (b) the expiration of the ordinary time for bringing an appeal from the determination,
- (c) if such an appeal is brought, the determination or abandonment of it or of any further appeal or the expiration of the ordinary time for bringing any further appeal,

whichever is the latest.

(6) Notice of an application under this section shall be given—

- (a) in case the application is under *subsection (3)* by the respondent or other person, making the application to the applicant,
- (b) in case the application is under *subsection (4)*, by the applicant to the respondent unless the Court is satisfied that it is not reasonably possible to ascertain his or her whereabouts,

and, in either case, to any other person in relation to whom the Court directs that notice of the application be given to him or her.

3.—(1) Where, on application to it in that behalf by the applicant, it appears to the Court, on evidence tendered by the applicant, consisting of or including evidence admissible by virtue of *section 8*—

- (a) that a person is in possession or control of—
 - (i) specified property and that the property constitutes, directly or indirectly, proceeds of crime, or
 - (ii) specified property that was acquired, in whole or in part, with or in connection with property that, directly or indirectly, constitutes proceeds of crime,

and

- (b) that the value of the property or, as the case may be, the total value of the property referred to in both *subparagraphs (i) and (ii) of paragraph (a)* is not less than £10,000,

the Court shall make an order ("an interlocutory order") prohibiting the respondent or any other specified person or any other person having notice of the order from disposing of or otherwise dealing with the whole or, if appropriate, a specified part of the property or diminishing its value, unless, it is shown to the satisfaction of the Court, on evidence tendered by the respondent or any other person—

- (I) that that particular property does not constitute, directly or indirectly, proceeds of crime and was not acquired, in whole or in part, with or in connection with property that, directly or indirectly, constitutes proceeds of crime, or
- (II) that the value of all the property to which the order would relate is less than £10,000:

Provided, however, that the Court shall not make the order if it is satisfied that there would be a serious risk of injustice.

(2) An interlocutory order—

- (a) may contain such provisions, conditions and restrictions as the Court considers necessary or expedient, and
- (b) shall provide for notice of it to be given to the respondent and any other person who appears to be or is affected by it unless the Court is satisfied that it is not reasonably possible to ascertain his, her or their whereabouts.

(3) Where an interlocutory order is in force, the Court, on application to it in that behalf at any time by the respondent or any other person claiming ownership of any of the property concerned, may, if it is shown to the satisfaction of the Court that the property or a specified part of it is property to which *paragraph (1) of subsection (1)* applies, or that the order causes any other injustice, discharge or, as may be appropriate, vary the order.

(4) The Court shall, on application to it in that behalf at any time by the applicant, discharge an interlocutory order.

(5) Subject to *subsections (3) and (4)*, an interlocutory order shall continue in force until—

- (a) the determination of an application for a disposal order in relation to the property concerned,
- (b) the expiration of the ordinary time for bringing an appeal from that determination,
- (c) if such an appeal is brought, it or any further appeal is determined or abandoned or the ordinary time for bringing any further appeal has expired,

whichever is the latest, and shall then lapse.

(6) Notice of an application under this section shall be given—

- (a) in case the application is under *subsection (1) or (4)*, by the applicant to the respondent, unless the Court is satisfied that it is not reasonably possible to ascertain his or her whereabouts,
- (b) in case the application is under *subsection (3)*, by the respondent or other person making the application to the applicant,

and, in either case, to any other person in relation to whom the Court directs that notice of the application be given to him or her.

4. —(1) Subject to *subsection (2)*, where an interlocutory order has been in force for not less than 7 years in relation to specified property, the Court, on application to it in that behalf by the applicant, may make an order ("a disposal order") directing that the whole or, if appropriate, a specified part of the property be transferred, subject to such terms and conditions as the Court may specify, to the Minister or to such other person as the Court may determine.

(2) Subject to *subsections (6) and (8)*, the Court shall make a disposal order in relation to any property the subject of an application under *subsection (1)* unless it is shown to its satisfaction that that particular property does not constitute, directly or indirectly, proceeds of crime and was not acquired, in whole or in part, with or in connection with property that, directly or indirectly, constitutes proceeds of crime.

(3) The applicant shall give notice to the respondent (unless the Court is satisfied that it is not reasonably possible to ascertain his or her whereabouts), and to such other (if any) persons as the Court may direct of an application under this section.

(4) A disposal order shall operate to deprive the respondent of his or her rights (if any) in or to the property to which it relates and, upon the making of the order, the property shall stand transferred to the Minister or other person to whom it relates.

(5) The Minister may sell or otherwise dispose of any property transferred to him or her under this section, and any proceeds of such a disposition and any moneys transferred to him or her under this section shall be paid into or disposed of for the benefit of the Exchequer by the Minister.

(6) In proceedings under *subsection (1)*, before deciding whether to make a disposal order, the Court shall give an opportunity to be heard by the Court and to show cause why the order should not be made to any person claiming ownership of any of the property concerned.

(7) The Court, if it considers it appropriate to do so in the interests of justice, on the application of the respondent or, if the whereabouts of the respondent cannot be ascertained, on its own initiative, may adjourn the hearing of an application under *subsection (1)* for such period not exceeding 2 years as it considers reasonable.

(8) The Court shall not make a disposal order if it is satisfied that there would be a serious risk of injustice.