

**THE HIGH COURT**

**[2004 No. 668 JR]**

**BETWEEN**

**DERMOT SPARROW**

**APPLICANT**

**AND**

**JUDGE MURROUGH CONNELLAN**

**FIRST NAMED RESPONDENT**

**AND**

**THE MINISTER FOR AGRICULTURE AND FOOD (PROSECUTOR)**

**SECOND NAMED RESPONDENT**

**Judgment of Mr. Justice de Valera delivered on the 22nd day of June, 2006**

1. On the 8th April, 2003, the second named respondent initiated proceedings against the applicant in respect of offences alleged to have been committed on the 9th April, 2001.
2. The offences with which the applicant was charged were:
  1. That he did grant or issue an instrument to wit a Foot and Mouth Disease five form so issued on the 9th April, 2001, at Jigginstown, Naas, Co. Kildare in contravention of s. 49(1)(h) of the Diseases of Animals Act, 1966 to 2001 (as amended by s. 35 of the National Beef Assurance Act, 2000) and,
  2. That the applicant did offer an instrument so issued on the 9th April, 2001, at Jigginstown, Naas, Co. Kildare in contravention of s. 49(1)(i) of the Disease of Animals Act 1966 to 2001 (as amended by s. 35 of the National Beef Assurance Act, 2000).
3. The summons are required to be served within two years of the date of the alleged offence pursuant to s. 26 of the National Beef Assurance Scheme, 2000 and were in fact served on the 8th April, 2003, one day within the allowed time.
4. The return date for the summons was 27th May, 2003, and on this date the matter was adjourned.
5. The matter was then adjourned on ten further occasions until the 15th July, 2004, on which date, having heard various arguments, the first named respondent indicated that he would proceed to hear the charges on the 3rd and 4th August, 2004.
6. On the 26th July, 2004, O'Neill J. granted the applicants leave to seek orders of *certiorari* and prohibition against the respondents and stay the proceedings which had been initiated by way of the summons referred to above.
7. The applicant seeks orders of *certiorari* and prohibition on the grounds of:
  - (A) Delay in prosecution, and
  - (B) Perceived bias.
8. The question of delay can be considered under two headings:
  1. The delay from the date of the alleged offence to the date of service of the summons, that is, the 9th April, 2001, to the 8th April, 2003.
  2. The delay from the return date for the summons to the date (subsequently stayed) of the now judicially reviewed hearing that is from the 27th May, 2003, to the 3rd August, 2004.

**The First Delay Period**

9. The first 729 day delay is on its face considerable. It is within the period prescribed by statute and is otherwise unexplained. This period is, however, prior to the actual laying of charges and in *O'Flynn v. Clifford* [1988] I.R. 740 and *Blood v. Director of Public Prosecutions* (Unreported, Supreme Court, 2nd March, 2005) it has been held that:

"It is no part of the function of the court to participate either in the investigation of criminal offences or the supervisory direction of those engaged in that work."

And:

"It was a matter for the Director to decide upon what evidence he would prosecute any particular charge, and it was not the function of the court to substitute its view for that of the Director who was charged at law with the decision who, when, with what charge and on what evidence to prosecute in any case."

10. As with the Director of Public Prosecutions so with the Minister for Agriculture and Food in this matter.

11. I accept these decisions as stating the law on this aspect of the matter at this time.

12. In addition I accept the respondents submission that the time limit for the applicant to seek to judicially review this aspect of these proceedings was within three months of the 8th April, 2003, (Order 84, rule 21 of the Rules of the Superior Courts) in respect of prohibition and six months in respect of *certiorari* and there is no good reason why this should be extended.

**Second Period of Delay**

13. The delay between the 27th May, 2003, and the 3rd August, 2004, of approximately 14 months, was caused largely by applications on behalf of the applicant and where the adjournment applications were by the respondents they were, apparently, not

objected to by the applicant.

14. It is well settled law that an accused person is entitled to a speedy or expeditious trial once charges have been made. In *O'Connell v. Fawsitt* [1986] I.R. 362, Finlay C.J. states:

"I am satisfied that if a person's trial has been excessively delayed so as to prejudice his chance of obtaining a fair trial then, the appropriate remedy ... is by an order of prohibition."

15. In the circumstances of this case a delay of 14 months cannot be regarded as excessive especially when, as I have described above, the delay was at the instigation of or agreed to by the applicant and no prejudice either specific or implied can be imputed.

16. I am therefore not satisfied that the applicant is entitled to the orders sought on grounds of delay.

#### **Bias**

17. It is well settled law that in proceedings of this kind not only should justice be done but:

"Should manifestly and undoubtedly be seen to be done".

18. In the *Dublin Well Woman Centre v. Ireland and Others* [1995] 1 I.L.R.M. 408 the test, when considering bias is or apparent bias would a reasonable person believe that because of previous statements and actions of the trial judge a fair and independent hearing could not occur. In this matter I am satisfied that there is no evidence whatsoever of actual bias on behalf of the first respondent but that an independent "reasonable person" might, legitimately, conclude from the statements and actions of the first respondent that "a fair and independent" hearing could not take place and I am therefore satisfied that I should grant an order for prohibition against the first respondent in the terms of paragraph 4(b) of the statement of grounds in the notice dated the 21st July, 2004.

19. In reaching this decision I have considered the arguments concerning the venue for the proposed hearing and the applicant's stated medical condition both of which matters, among others, are matters for the judge eventually assigned to hear this matter.