Neutral Citation [2013] IEHC 23

THE HIGH COURT

[2007 No. 52CA]

BETWEEN

PATRICK KELLY

APPLICANT

AND

UNIVERSITY COLLEGE DUBLIN

RESPONDENT

Judgment of Mr. Justice Hedigan delivered on 29th day of January 2013.

1. This is an application by the respondent for an order restraining the applicant herein from taking any further steps in the within proceedings in either this Court or the Circuit Court and a further order restraining the applicant from instituting any further proceedings against the respondent herein or against any of its servants or agents whether past or present without having first obtained leave of the High Court.

2. I have directed that this application should be heard on the basis of written submissions alone. I directed both parties to file these and serve them on each other together with any grounding affidavits they wished to swear. The defendant objects that the plaintiff's submissions were not served in accordance with this Court order. They have nonetheless been exchanged as have affidavits and I propose to deal with the application on the basis of these documents.

3. In my second judgment delivered in these proceedings on the 9th May, 2012, I dealt with the basis upon which a court may make a restraining order colloquially known as an Isaac Wunder order. It may be as well if I repeat here what I set out therein at paragraphs 10 to 12:

> "10. The third matter to be dealt with is whether, in the circumstances of this case, there should be a restraining order placed on the applicant. This court may, of its own motion, order that no proceedings, either of a certain type or at all, may be issued by a certain person without leave of the court. Such an order is colloquially described as an *Isaac Wunder* Order. The jurisdiction of the superior courts to impose such orders was addressed in *Riordan v. An Taoiseach* (No.4) [2001] 3 IR 365. Keane C.J. in the Supreme Court stated that:-
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> > It is, however, the case that there is vested in this court, as there is in the High Court, an inherent jurisdiction to restrain the institution of proceedings by named persons in order to ensure that the process of the court is not abused by repeated attempts to reopen litigation or to pursue litigation which is plainly groundless and vexatious . . . This court would be failing in its duty as would the High Court, if it allowed its processes to be repeatedly invoked in order to reopen issues already determined or to pursue groundless and vexatious litigation . . . This court is extremely reluctant, as the High Court has been, to restrain the access of any citizen to the courts. The stage has clearly been reached, however, where the proper administration of justice requires the making of such an order against the appellant. Accordingly . . . the court will, in exercise of its inherent jurisdiction, order that the appellant be restrained from instituting any proceedings, whether by way of appeal or other wise, against any of the parties to these proceedings . . .'.
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> It seems to me that in this case the relevant considerations for the Court in determining whether to impose a *Wunder* Order are as follows:-
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> > (i) The nature of the proceedings brought.
> >
> > (ii) The manner in which the proceedings were conducted.

Nature of the Proceedings

> 11. The plaintiff maintains that he has been the victim of discrimination on grounds of gender and as a result of this discrimination he was not offered a place for a Masters in Social Science (Social Worker) mode A for the academic period 2002-2004. The plaintiff submitted his completed application form to UCD on the 23rd December, 2001. He was interviewed in February, 2002 as part of the selection process; he was informed by letter dated the 15th March, 2002 that he was not being offered a place on the course. The plaintiff was dissatisfied with the decision, he claims that he was more qualified than the least qualified female applicant for the course and the decision not to offer him a place on the course was based on his gender and not the results of the application process. When questioned by this Court about the nature of his complaint, the plaintiff explained that when he was interviewed for a place on the course he was treated rudely. This, together with the decision to refuse him a place, is the discriminatory conduct of which the plaintiff complains. However the plaintiff was subsequently offered a place on the course. In August 2002, UCD wrote to Mr. Kelly stating that they were very pleased to offer him a place on the course. It is quite true that the place on the course was described as provisional. Whilst clearly UCD were reserving the right to apply to Mr. Kelly the same processing that applies to all other applicants, it seems to me that this was a clear offer of a place and any applicant receiving such a letter would reasonably consider it an offer of a place on the course. Mr Kelly, as he was entitled to do, refused the offer. The only area of real dispute therefore is the allegation by Mr. Kelly that he was treated rudely in the interview process, which is denied. This is the nature of the case.

Manner in which the proceedings were conducted

12. These proceedings commenced with a formal complaint in late April, 2002 of gender discrimination to the Director of the Equality Tribunal. The plaintiff based his claim on alleged breaches of s. 3(1)(a) and s.3(2)(a) of the Equal Status Act 2000. Following an oral hearing on the 22nd September, 2006 the Equality Tribunal concluded that the plaintiff had failed to establish prima facie discrimination on gender grounds. Some days after the decision of the Tribunal, the plaintiff appealed the decision to the Circuit Court. A trial date of the 14th June, 2007 was set for this appeal. In the meantime however the plaintiff issued a further motion dated the 4th January, 2007 in which he sought from UCD copies of retained applications and copies of the scoring sheets of the 49 candidates whose application forms had been retained. The matter came before Judge Linnane in the Circuit Court. The plaintiff made an application for the judge to recuse herself. The matter was sent to the President of the Circuit Court who refused the application for copies of the documentation. The plaintiff appealed to the High Court against that order. On the 23rd April, 2007, the plaintiff appeared before the High Court and sought to have three questions (to which a fourth and fifth were added at a subsequent date) referred to the European Court of Justice under Article 234(1) and (3) of the EC Treaty. McKechnie J. referred five questions to the ECJ. The plaintiff made a further application seeking to have Suzanne Quinn, Head of the School of Applied Social Science at UCD attached for perjury. Mr Kechnie J. refused this application. The Article 234 reference was determined by the ECJ. When the matter came back to the High Court the plaintiff made an application that McKechnie J. recuse himself. The matter then came before this Court in March 2012. The plaintiff brought four motions before the Court, the first motion was the plaintiff's application for leave to attach and commit for contempt a number of journalists who had reported on the plaintiff's case. This application was refused. In the second motion the plaintiff sought an order setting aside the judgment delivered by Me Kechnie J. on the 31st July, 2008 in which he decided that the documents sought by the plaintiff in his appeal to the Circuit Court were confidential. It was held there was no basis in fact for this application. The third motion concerned the availability of witnesses in the Circuit Court for the appeal hearing. It was determined that there was no issue in dispute as the witnesses would be made available if necessary. The plaintiff's fourth application was held to be devoid of merit and was refused. When the matter was set down to deal with the substantive matter of applying the Article 234 findings of the ECJ to the facts of the plaintiffs claim the plaintiff brought an application that I recuse myself. This is the manner in which the proceedings have been conducted. The plaintiff has a pattern of continual application to the Courts which has served to prolong his proceedings. Counsel for UCD has indicated that her clients are very concerned about the repeated applications to the Court and that these applications are part of tactics to prolong the proceedings which has put UCD to untold cost. This Court is equally concerned that the processes of the Court are being abused and that valuable Court time is being wasted. I note that on the day when Mr. Kelly's four motions were called on, there were two other actions for hearing in the Non Jury/Judicial Review list which could not be dealt due to the unavailability of any other judge. All parties, their legal representatives and witnesses were present and ready to go on. Both cases had to be adjourned. The motions took two days to hear and much time for the preparation of the various decisions. The limited resources of the judicial system should not be squandered on actions of little merit when so many parties are seeking to have real disputes of great import resolved by these courts. Having spent considerable time hearing this matter and reading the pleadings, it seems to me that the dispute between the parties herein does not rise above the level of hurt feelings. Balancing this against the inordinate time the proceedings have taken and the pattern of continuous applications by the plaintiff, it seems to me that there are grounds upon which the court would be justified in making a restraining order. The plaintiff however has assured the court that he will bring no further applications in this matter save for his right to appeal on a point of law from the Circuit Court decision and matters as to costs. The undertaking offered is in the following terms;

> 'The plaintiff, Patrick Kelly, undertakes to make no further interlocutory applications in these proceedings to the Circuit or High Court against either: –
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> (i) University College Dublin
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> (ii) It employees both present or past
>
> (iii) Mr. Eugune O'Sullivan solicitor for UCD.
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> This undertaking is subject to the plaintiff's right of appeal on a point of law from the decision of the Circuit Court in the event that his appeal from the equality tribunal is unsuccessful and also subject to any application which he will make in relation to any cost order made against him in relation to these proceedings'.

Counsel for UCD has indicated that such an undertaken given under oath will meet the concerns of the University. I have considerable reservations in accepting this undertaking and am strongly inclined, in the interest of preserving the integrity of the court's processes and of the public interest in the proper utilization of the limited resources of the courts, to make a broad restraining order permanently staying these proceedings both in this court and in the Circuit Court (see *Grepe v Loam* I887 37 ch.d 168 at 169). However as the defendants have indicated to the court their willingness to accept the plaintiff's undertaking, I feel somewhat constrained. Although I doubt the wisdom of the defendants in this, I will with considerable reservation accept the undertaking to be given as above. I will direct the parties to make an application within seven days to the President of the Circuit Court for his directions in this matter. The matter of a restraining order may be revisited by motion of the defendants or on the Courts own motion. I will give liberty to the defendants to apply at any time to bring such a motion."

4. Returning to this judgment, I have read carefully the submissions and the affidavits of the plaintiff and the defendant. Although there are many things on which they disagree, the broad description of the proceedings to date are in accord with the description of the proceedings set out above. The affidavit of Seamus Given for the respondent /applicant herein is particularly striking. It recounts a sad and sorry tale of interminable, highly complex applications, most of which were found to be groundless. All of this has stretched over a period of more than ten years. Vast amounts of court time here in Ireland and in Luxembourg have been expended. Immense costs on the part of the defendants have been incurred. As stated in the above judgment, all this effort and time is in respect of what boils down in the end to a case of hurt feelings. It seems to me at this stage that the plaintiff has become obsessed with this futile process. In truth, he is probably the first victim of it. The enormity of the preparation he has put into each and every one of the applications made reveals a kind of sisyphean syndrome in which he is forever doomed to press this futile case onward. Whilst he may not realise it at this point, I think there is a real possibility that an order staying permanently these proceedings and preventing any other relating to the events surrounding his 2001/2002 application to UCD may well bring relief to him from this self imposed burden.

5. Be that as it may, applying the relevant principles as set out above, the grounds upon which this Court may act to impose a restraining order in this case are where it is satisfied that its processes have been repeatedly invoked to pursue groundless litigation incapable of leading to any possible good and that the proper administration of justice requires the making of such an order. I consider these grounds have been met as amply demonstrated in the history of the case as outlined above and in the affidavits and submissions on both sides.

6. I will therefore make an order staying permanently all the proceedings herein. I will further make an order prohibiting the issuing of any further applications or proceedings arising from the plaintiff's application to UCD in 2001 and 2002 or against the defendants or any of its servants or agents or any of the legal advisers of UCD involved herein without the prior consent of the High Court, such consent to be applied for in writing to the principal registrar of the High Court.