

THE HIGH COURT

[2015 No. 6293 P.]

BETWEEN

JOHN ROONEY (No. 2)

PLAINTIFF

AND

IRELAND AND THE ATTORNEY GENERAL

DEFENDANTS

JUDGMENT of Mr. Justice Eagar delivered on the 5th day of May, 2017

1. This is a judgment on a notice of motion on behalf of the defendants seeking:

1. An order pursuant to O. 19, r. 28 of the Rules of the Superior Courts striking out the plaintiff's proceedings on the grounds that they fail to disclose a reasonable cause of action and/or are frivolous and vexatious and/or in the alternative dismissing the proceedings and making such further and other order as the court deems appropriate and costs.
2. An order pursuant to O. 19, r. 27 of the Rules of the Superior Courts striking out the plaintiff's proceedings on the grounds that they constitute unnecessary and scandalous pleadings and in the alternative
3. An order striking out the plaintiff's proceedings on the grounds that they constitute an abuse of process of the Court and in the alternative
4. An order pursuant to the inherent jurisdiction of the Court dismissing the proceedings on the grounds that they disclose no reasonable cause of action, are frivolous and vexatious and constitute an abuse of the process of the Court.
5. An order granting an Isaac Wunder order against the plaintiff restraining the plaintiff from issuing further proceedings without the leave of the Court howsoever relating to or concerning the Bovine Tuberculosis Eradication Scheme (the T.B. Scheme) to include any proceedings in which the plaintiff seeks orders seeking to challenge, impugn or otherwise seek to invalidate the T.B. Scheme.

2. Mr. Rooney who represents himself did not take any part in the hearing of the motion before this Court (it appears for tactical reasons on his behalf) thus did not allow the Court to hear what he would say in response to counsel for the defendants.

3. The notice of motion is grounded on the affidavit of Rachel Ward, Solicitor of the Chief State Solicitor's Office. She states that these present proceedings constitute the fourth set of proceedings issued by the plaintiff in which the plaintiff seeks to challenge and impugn the legality and validity of the T.B. Scheme which was introduced under the provisions of the Diseases of Animals Act, 1966 (The 1966 Act).

4. She states that the defendant's position is that they should not be forced to defend proceedings in respect of a claim which has already been finally and conclusively determined by the courts in previous proceedings. The interests of justice require these proceedings should be dismissed at the earliest opportunity by the Court. Dismissal of the present proceedings at this time is also in the interest of upholding the finality of previous court orders and avoiding an abuse of process, which would otherwise occur if the Court's time was taken up with these proceedings, which are in substance frivolous and vexatious proceedings which are bound to fail and which will only serve to create unnecessary and wasteful expense for the defendants and the preoccupation of the Court's time with an issue which has already been finally and conclusively determined by the courts against the plaintiff.

5. She states that the defendants are also claiming that the present proceedings are frivolous and vexatious and contain pleadings which are prolix, scandalous and embarrassing. The frivolous and vexatious nature of the present proceedings taken in conjunction with the fact that the plaintiff is seeking to really litigate an issue which has already been finally and conclusively determined by the Court casts the present proceedings as an abuse of process of the Court, and for this reason also the defendant seeks to have the proceedings dismissed. Ms. Ward also states that having regard to the foregoing considerations and in circumstances where the plaintiff has demonstrated a persistence in challenging the legality and validity of the T.B. Scheme, the legality and validity of which has already been upheld by this court and the Supreme Court, the defendants are seeking an Isaac Wunder order against the plaintiff restraining the plaintiff in the future unless with the leave of the Court from issuing proceedings to which the plaintiff seeks to challenge or to impugn the validity of the T.B. Scheme, or raise any collateral issues related to or arising from the T.B. Scheme. She states that it is clear from a perusal of the statement of claim and the numerous reliefs sought by the plaintiff in the statement of claim that the proceedings relate to the same issue raised by the plaintiff in the previous proceedings issued in 1987, 1995 and 2012 and all of which involved the plaintiff seeking to impugn the legality and validity of the T.B. Scheme which was introduced under the provisions of the 1966 Act. It is evident from a perusal of the statement of claim that the plaintiff's dissatisfaction with the previous decisions of this court and the Supreme Court in the proceedings issued by him in 1987, 1995 and 2012 provide the basis for the unfounded claims and allegations made by the plaintiff in the statement of claim in which he not only seeks to impugn the legality of the T.B. Scheme but also makes serious allegations of wrongdoing against and impugns the integrity of members of the judiciary identified and referred to in the statement of claim. In reliance on these unfounded claims and allegations contained in the statement of claim, the plaintiff seeks numerous declaratory reliefs to the effect that the plaintiff has been the victim of a miscarriage of justice and that members of the judiciary have failed to discharge their judicial function and have failed to uphold the provisions of the Constitution.

The 1987, 1995 and 2012 proceedings issued by the plaintiff

6. Ms. Ward says that the substantial issue being agitated in the present proceedings is identical to the substantive issue which arose in the previous proceedings issued by the plaintiff in 1987, 1995 and 2012. She refers to the judgment of Feeney J. on 7th July, 2013 (the 2012 proceedings). Feeney J. referred to and considered the previous proceedings issued by the plaintiff in 1987 and 1995 and the judgments delivered by the Supreme Court in those respective proceedings, all of which involved the plaintiff's unsuccessful challenge to the legality and validity for the T.B. Schemes. Feeney J. stated at pp. 34-35 of his judgment of 7th July, 2013:

"Mr. Rooney has sought to question the finality of the Supreme Court's judgments and orders by reference to a suggested conflict with Community law and finality provided for in Article 40.4.6. Mr. Rooney relies on Article 234 of the EC Treaty. That provision only operates where an appropriate question or interpretation is raised before a Court and then if the Court considers that the decision on that question is necessary to enable it to give judgment, the Court can request the ruling from the Court of Justice. In Mr. Rooney's cases there was no such request by the Court and indeed nobody asked the Court in the High Court or in the Supreme Court to make such a request. In this case the decisions of the Supreme Court are final and conclusive. Mr. Rooney has made his claim and that claim has been previously determined. He cannot reinvent his claim in disregard of that fact."

7. Feeney J. further stated:

"It is on that basis that I determine that the claim brought by Mr. Rooney should be dismissed. I can only repeat the prudent words recently made by McMenamin J. in the case of *Collins and McMullin v. Gilles Kennedy and Anor.* in the unreported decision of the Supreme Court of June, 2013 where he was dealing with long running proceedings. McMenamin J. said:

"There must be finality in litigation that, as in all human affairs, there must come a time when no matter how profound a perceived sense of grievance parties must draw a line under the litigation and engage with life outside the courtroom."

8. Ms. Ward states that the present proceedings amount to a direct attack or at best a collateral attack on the final orders previously made by the Supreme Court in proceedings issued by the plaintiff in 1987 and in 1995 and the defendants rely on the following statement of Feeney J. in his judgment previously referred to where he says:

"Article 34.4.6 of the Constitution states:

'The decision of the Supreme Court shall in all cases be final and conclusive.'

The plaintiff's claims herein disregard that provision and it is a provision that I as a High Court judge must apply. These proceedings amount to a direct attack or at best a collateral attack on a final order. The issue of the finality of Supreme Court orders has been raised by Mr. Rooney. In the case of *Bula Limited v. Tara Mines Limited (No. 6)* [2000] 4 I.R. 412 the Supreme Court determined that the Supreme Court could set aside its own decisions in rare and exceptional cases as an exercise of its inherent jurisdiction to protect constitutional justice. I, as a High Court judge, have no jurisdiction to make an order which would have the effect of setting aside or in any way impugning either directly or by a collateral attack a Supreme Court decision."

The Supreme Court has as recently as last month refused to set aside their judgment. That application had the same fundamental basis as Mr. Rooney makes in this case and I, as a High Court Judge, cannot do what the Supreme Court refused to do.

9. She further states that in the present proceedings the plaintiff is again attempting to reinvent his claim and relitigate issues which have unequivocally and conclusively been determined against him by the Supreme Court in the proceedings issued by the plaintiff in 1987 and 1995. Ms. Ward states that the plaintiff is attempting to do in these proceedings what Feeney J. in his judgment in the 2012 proceedings said the plaintiff cannot do. That being the case, the defendant should not be put to expense nor should the Court's time be taken up with the adjudication on issues which have already finally and conclusively been determined by the Supreme Court against the plaintiff.

10. Ms. Ward further avers that it was the defendant's position that the claim, the subject matter of the proceedings and indeed the manner in which the plaintiff has seen fit to plead his claim in the proceedings and to advance allegations that have no basis in fact, clearly demonstrate that the proceedings constitute frivolous and vexatious proceedings. The statement of claim is saturated with embarrassing and scandalising allegations which have no basis in fact and which again serve only to confirm that the present proceedings are frivolous and vexatious and are bound to fail. Her affidavit quotes from the judgment of Feeney J. in the 2012 proceedings as follows:

"The serious accusations of wrongdoing made against members of the High Court and Supreme Court at paras. 30 – 34 of the statement of claim have no factual basis. These allegations were not made prior to the institution of these proceedings and the judgments stand and no order has been made to reopen any of the decisions. The allegations have been pleaded, I am satisfied, for the purposes of embarrassing or scandalising the parties involved an amount to an abuse of process. As I have already identified, the plaintiff alleges that the defendants' lawyers contravene their duty to uphold the Constitution by doing in some instances absolutely nothing, that is by failing to be proactive and insisting that the plaintiffs brought by him incorporated what he now says are the real questions and controversy between the parties. The defendants' lawyers had no duty to intervene before the Court to ensure that the pleadings reflected what the plaintiff for the first time in these proceedings now asserts were the real issues and controversies. Such a claim is without any legal basis."

11. Ms. Ward states that for this reason the present proceedings constitute a clear abuse of the process of the Court and justify the Court in dismissing the proceedings.

The Isaac Wunder order

12. The defendants are seeking the Court to grant an Isaac Wunder order against the plaintiff restraining the plaintiff in future unless with the leave of the Court from issuing any proceedings in which he seeks to challenge or impugn the legality and validity of the T.B. Scheme, whether directly or indirectly, or through raising collateral issues relating to or arising from the scheme. The plaintiff by his conduct to date has clearly demonstrated an unrelenting persistence to challenge the legality and validity of the T.B. Scheme notwithstanding that its legality has been finally and conclusively upheld by the Supreme Court in previous proceedings issued by the plaintiff and the time had now come that no further litigation should be permitted unless with the leave of the Court.

13. Mr. Rooney in an affidavit filed on 16th November, 2015 states that he makes the affidavit to answer the very serious allegations being made by the State defendants. He also seeks compensation from having to pay filing fees in the Central Office of the High Court. He refers to the fact that there was presently before the High Court a motion for judgment in default of appearance against the defendants, he having informed the Chief State Solicitor that he was agreeable to the motion for judgment in default of defence being struck out on condition that an immediate, unambiguous and non-conditional appearance be presented on behalf of Ireland and the Attorney General. He further states that he has endeavoured to encourage the defendants to have the courage to engage in

mediation in the action. He exhibits a letter to the Chief State Solicitor dated 15th October, 2015 in relation to these proceedings. In that letter he says that he has never got a fair hearing of the issue central to the heart of the proceedings, these being: the repugnancy of the non-statutory reactor grant scheme to Article 15.2.1 of Bunreacht na hÉireann; that Council Directives 64/432/EEC and 79/391/EEC and 78/52/EEC had not been complied with, or validly transposed into Irish law; and that he was denied proper access to the courts.

14. An affidavit of Rachel Ward was filed on 17th February, 2016 and referred to the affidavit delivered by the plaintiff on 16th November, 2015. She says as recently as 28th January, 2016 in separate proceedings brought by the plaintiff, the plaintiff also sought to impugn the legality and constitutionality of the T.B. Scheme. The Supreme Court in dismissing the separate appeals brought by the plaintiff in the separate proceedings in question specifically addressed the issue of whether the plaintiff had previously sought to impugn the T.B. Scheme on the basis of relying on Article 15.2.1 of the Constitution. She begs to refer to the Supreme Court judgment of 28th January, 2016. She refers to the judgement of O'Donnell J. (which this Court discussed in detail in another judgment dealing with proceedings brought by Mr. Rooney). On the 7th October, 2016 by way of notice of motion the plaintiff applied to the High Court for an order granting leave to serve on Rachel Ward of the Chief State Solicitor's Office a notice to cross examine her on the contents of her affidavit filed on 11th November, 2015 and the 17th February, 2016. This Court has previously ruled against these proceedings on 16th December, 2016 in the following terms:

"I am satisfied from the circumstances of this case that where the application to cross examine relates to matters which are not disputed matters of fact but rather are issues of law and issues of interpretations of judgments of the Superior Courts that the application to cross examine ... Ms. Ward should be refused by the Court in exercising its discretion. The Court takes note of the circumstances of the proceedings which commenced in 1987 and which have had two outings to date in the Supreme Court and a number of outings in the High Court on the same basis."

15. A replying affidavit from Ms. Rachel Ward was filed on 14th October, 2016 in which she says that it was the defendants' position that the proceedings issued by the plaintiff amount to a direct attack, or at best a collateral attack on judgments previously delivered by the Supreme Court. Most recently, the Supreme Court delivered a judgment on 28th January, 2016. In reviewing the various proceedings issued by the plaintiff to date, with the exception of the present proceedings, the Supreme Court determined the core legal issue raised by the plaintiff against him. The Supreme Court having regard to the application of the principal in *Henderson v. Henderson* [1843] 3 Hare 100 which was subsequently applied in the later cases of *A. v. The Medical Council* [2003] 4 I.R. 302 and *Ryan* [2003] 1 I.R. 209, held that it was no longer open to the plaintiff to challenge the legality and validity of the non-statutory scheme which has been the subject matter of all the proceedings issued by the plaintiff.

16. In a replying affidavit filed on 19th October, 2016 Mr. Rooney states that he is asking the Court to consider the reliefs sought in his motion filed on 7th October, 2016 where he says he is almost:

- (i.) 29 years awaiting justice in respect of the repugnancy of the *ad hoc* scheme to Article 15.2.1 of Bunreacht na hÉireann;
- (ii.) being subjected to unrelenting financial intimidation on the part of the State by way of the pursuit of massive costs orders, an attempt to intimidate him into forsaking the pursuit of justice relating to a just and equitable remedy in respect of the repugnancy of the *ad hoc* scheme to Article 15.2.1 of Bunreacht na hÉireann;
- (iii.) that he would be denied a defence to the herein action (which claims and declarations and other reliefs consequent to the failure of the judicial organ of the State to provide justice over the last 29 years in respect of the domestic law issue and the European Union law issue revolving around and flowing from the *ad hoc* non-statutory scheme) and a plenary hearing of this action.

17. The plenary summons in relation to this matter claims, and the Court quotes verbatim:

- (1) a declaration that no limitation period, rule of law or judicial precedent can operate to deny its citizens a protection of Bunreacht na hÉireann in respect of a remedy pursuant to and in according with Bunreacht na hÉireann arising out of the breakdown of the rule of law;
- (2) An inquiry by the honourable court pursuant to Article 34 of Bunreacht na hÉireann under its Bunreacht na hÉireann mandate to administer and dispense justice into the aforementioned breaches of Bunreacht na hÉireann and the rule of law which as the making of all of the following declarations or orders."
 - (a) The plenary summons seeks that it is startlingly obvious that the TB Scheme is repugnant to the provision of Article 15.2.1 of Bunreacht na hÉireann.
 - (b) A declaration that it is startlingly obvious that Council Directive 64/432/EEC, 77/391/EEC and 78.52.EEC have not been validity transposed into Irish Law.
 - (c) That a declaration that the Executive has concealed (from the 19th of December, 1990) the judgment of Mr. Justice Lardner in *Lucey and Madigan v. The Minister* and declaring reactor movement promises to be *ultra vires* the Minister's powers under the 1966 Act.
 - (d) A declaration that the plaintiff's European Union citizenship right to access (on foot of properly pleaded issues of European law via the amended statement of claim which was before Macken J., Hardiman J., Finnegan J. in Appeal 387/2004) an opinion from the Court of Justice of the European Union was improperly hindered by these judges in plaintiff's High Court proceedings involving the TB Scheme.
 - (e) A declaration that the trial of the special case in the plaintiff's High Court proceedings in 1987/1120 S.P and the resulting judgments thereon of the High Court and Supreme Court have resulted in an extremely serious miscarriage of justice touching some version Bunreacht na hÉireann.
 - (f) A declaration that in respect of plaintiff's right of access to the Superior Courts there has been a breakdown of the rule of law caused by a small number of Superior Courts judiciaries' exercise of judicial functions in this regard for a neglect of Bunreacht na hÉireann in the law, in Superior Court litigation commenced by the plaintiff involving the TB Scheme. Alternatively, a declaration that a small number of judiciary involved in litigation commenced by the

plaintiff involving the TB Scheme knew or ought to have known that they were exercising judicial function in this regard for a neglect of the Bunreacht na hÉireann and the law.

(g) A declaration that Chief Justice Denham has placed on notice by the plaintiff of a small number of Superior Court judiciaries exercise of judicial functions in this regard for a neglect of Bunreacht na hÉireann and the law, in litigation commenced by the plaintiff involving the TB Scheme.

(h) A declaration that Chief Justice appears to be unsure of the powers available pursuant to Bunreacht na hÉireann and in Article 35.4.1 in respect of the plaintiff's notification of the exercise of judicial functions in this regard for a neglect of Bunreacht na hÉireann and the law, by a small number of Superior Court judiciary involved in litigation commenced by the plaintiff involving the TB Scheme.

(i) A declaration that Bunreacht na hÉireann obliges all courts established under Bunreacht na hÉireann and all individual judges to uphold Bunreacht na hÉireann.

(j) A declaration that upholding Bunreacht na hÉireann constitutes an obligation to take positive action to uphold Bunreacht na hÉireann.

(k) A declaration that all citizens including members of the legal profession (offices of the court) are obliged to uphold Bunreacht na hÉireann.

(l) A declaration that the 1966 Act was created and brought into force in compliance with the Bunreacht na hÉireann and in particular the provisions of Articles 20 to 27.

(m) A declaration that there has been a breakdown of the rule of law in the creation and in the operation and in the judicial scrutiny of TB Scheme.

(n) A declaration that the plaintiff had suffered damage, financial loss, distress and suffering and continued loss of livelihood, continuing damage, continuing distress and continuing suffering by reasons of the breakdown of the rule of law in the creation and the operation in the judicial interpretation of the TB Scheme.

(o) A declaration that the plaintiff has suffered loss and damage in the breakdown of the rule of law caused by the disregard for and neglect of Bunreacht na hÉireann and the law in the exercise of judicial functions by a small number of Superior Court judiciary involved in litigation commenced by the plaintiff involving the TB Scheme.

(p) A declaration that the plaintiff's High Court proceedings 1987/1120 S.P. are now (July 2015) almost into their twentieth year awaiting a hearing of quality commenced to that necessitated by Bunreacht na hÉireann.

(q) A declaration that the plaintiff's High Court proceedings 1985/8836 P. are now (July 2015) almost into their twentieth year awaiting a hearing of quality commenced with the requirements of justice and foundation in accordance with Bunreacht na hÉireann.

(r) A declaration that an investigation is warranted by the Houses of the Oireachtas pursuant to Bunreacht na hÉireann and particular Article 35.4.1 of Bunreacht na hÉireann into the conduct of the small number of main members of the judiciary, so as to ascertain whether the named members of the judiciary are persons who the public would have confidence in to entrusting the named members of the judiciary to adjudicate disputes about their lives, liberties and interests.

(s) An order directing that a copy of the transcript of the evidence and of the exist that is in herein proceedings, scheduled the judgment determining herein proceedings be sent to the Chief Clerk of the Houses of the Oireachtas for the purpose of said investigation paid for in para. r immediately above. And

(t) An inquiry by the honourable court for the purpose of quantifying the loss and damage and continuing loss and continuing damage caused by the plaintiff by the matters set out in the statement of claim

(3) Damages pursuant to the said request of inquiry.

Costs

And such order or declaratory relief as is necessary to satisfy Bunreacht na hÉireann."

18. There are two statements of claims, one delivered on the 31st of July, 2015 by Mr. Rooney and an amended statement of claim dated the 22nd of December, 2015.

19. At para. 3.1 of the first statement of claim it is stated that the repugnancy of the first defendant's and/or first defendant's servants or agents Bovine Tuberculosis Eradication Scheme incorporating non-statutory reactor grants to Article 15.2.1 of Bunreacht na hÉireann is startlingly obvious.

20. At para. 3.2 it is stated that the invalid transposition into Irish law of Council Directive 64/42/EEC 77/391/EEC and 78/52/EEC is startlingly obvious.

21. At para. 5.02, it is stated that the trial of the special case and resulting judgments of the High Court 16th of May, 1991, and the Supreme Court 19th December, 1991 have resulted in an extremely serious and gross miscarriage of justice constituting a disregard for and a perversion of Bunreacht na hÉireann. It further states that the circumstances surrounding the directing of the trial of the special case constituting a disregard for and a perversion of the Bunreacht na hÉireann specifically are:-

(a) The Supreme Court (Mr. Justice Griffin, Mr. Justice Hedderman, Mr. Justice O'Flaherty) 12th of October, 1990 directed the trial of the special case and disregarded an order of Mr. Justice Costello of the 30th of July, 1990 whereupon Costello J. (in refusing to order the trial of a special date) wherein the plaintiffs action was totally unsuited to special case procedure would have to take its course to a plenary hearing.

(b) It is established practice that the trial of a special case most definitely should not take place where factual matters necessary to answering questions of law arising in the special case are in dispute. In respect of the plaintiff's High Court proceedings 1987 1120 SP factual matters were in dispute between the parties.

(c) The Supreme Court (Griffin J., Hardiman J., O'Flaherty J.) on the 12th of October, 1990 directed the trial of the special case for a reason contrary to and disregard for Bunreacht na hÉireann and that is to facilitate the Supreme Court in avoiding the immediacy of deliberating upon and deciding an issue fundamental to the proper administration of justice, the issue of the propriety of Barren J.'s conduct of the 19th of February, 1990 in refusing to grant the plaintiff an adjournment of the plaintiff's interlocutory motions which had been served on the plaintiff very recent to the 19th of February, 1990.

(d) By reason of the circumstance of what is pleaded at (b) above the High Court (Lavan J.) did not and indeed could not have determined (judgment delivered the 16th of May, 1991 the key issues in the plaintiff's High Court proceedings in 1987 1120 SP), that is the issue of the repugnancy of the TB Scheme to Article 15.2.1 of Bunreacht na hÉireann and/or of the issue of the invalid transposition into Irish law of Council Directive 64/42, EEC 77/391/EEC and 78/52/EEC.

(e) By reason of the circumstances of what is pleaded at (b) above the Supreme Court (McCarthy J., O'Flaherty J. and Egan J.) did not and indeed could not have determined (O'Flaherty J.'s judgment 19th of December, 1991) the key issues of the plaintiff's High Court proceedings 1987 1120 SP, that is this issue of the repugnancy of the TB Scheme to Article 15.2.1 of Bunreacht na hÉireann and/or the issue of the invalid transposition into Irish law of the Council Directives 64/42, EEC 77/391/EEC and 78/52/EEC.

(f) Subject of circumstances which was as pleaded at (b) above, the Supreme Court (O'Flaherty J.'s judgment of the 19th of December, 1991). In this regard of Bunreacht na hÉireann and of the law made findings of fact and the absence of any evidence necessary to make such findings and/or the Supreme Court knew or ought to have known that there was no evidence before the Supreme Court to make such a finding.

(g) Further to the circumstances of what is pleaded in (f) above there was not any evidence before the Supreme Court (O'Flaherty J. suggested O'Flaherty's judgment of the 19th of December, 1991) entitling the Supreme Court to make a finding that the plaintiff had a reasonable scheme for providing a measure of assistance to herd owners of diseased cattle.

(h) Further to the circumstances of what is pleaded at (b) above the Supreme Court (O'Flaherty J.) knew or ought to have known the Supreme Court was exercising judicial functions contrary to and disregarded Bunreacht na hÉireann and law, in making a finding of fact when the Supreme Court knew or ought to have known that there was no finding or pre-provision of law entitling the Supreme Court to make such a finding.

(i) Further to what is pleaded at (h) above the Supreme Court (McCarthy J., O'Flaherty J. and Egan J.) in disregard of Bunreacht na hÉireann the law made the improper ruling that a member of the Executive is not obliged to operate an act brought into forth being by the Houses of the Oireachtas pursuant to the provisions of Bunreacht na hÉireann and particular Articles 20 to 27).

(j) Subject to what is pleaded in para. (i) above the Supreme Court (McCarthy J., O'Flaherty J. and Egan J.) disregarded Bunreacht na hÉireann the law when the Supreme Court delivered the rule that the Executive does not have to "operate" legislation (in this case the Disease of Animals Act, 1966 brought into being by the legislature pursuant to the provisions of Bunreacht na hÉireann and in particular Articles 20 to 27) and/or the Supreme Court knew or ought to have known that this delivery of said ruling was in disregard of and contrary to Bunreacht na hÉireann and the law.

22. The court does not propose to recite every point in this statement of claim save to note that severe criticisms are directed at many members of the Superior Court judiciary.

23. Paragraph 12.01 details "particulars of the breakdown of the rule of law in the creation of the TB Scheme".

24. In the statement of claim there are criticisms of twenty-five members of the judiciary of the Superior Courts suggesting that the resulting judgments of the High Court and Supreme Court have resulted in an extremely serious and gross miscarriage of justice, made improper rulings, the law was improperly applied, that the Supreme Court acted contrary to the Constitution of Ireland, the rulings assisted the concealment of grounds of appeal advanced by the plaintiff, and that the Superior Court judiciary exercised judicial functions in disregard for neglect of the Constitution.

25. It is noted that in para. 14.02 that the plaintiff's statement of claim states a small number of the judiciary (this Court's emphasis) exercise judicial functions in disregard and in neglect of Bunreacht na hÉireann and the law.

26. In the second "amended statement of claim" dated the 22nd of December, 2015 the plaintiff makes a claim that the trial of the special case and the resulting judgments of the High Court and Supreme Court have resulted in an extremely serious and gross miscarriage of justice constituting a disregard for a perversion of Bunreacht na hÉireann. He then repeats the various criticisms directed at many members of the Superior Court judiciary. 27. This Court must now rule on the motion dated the 11th of November, 2015.

28. The Court has considered in detail the plenary summons and two statements of claim and the reliefs sought by the plaintiff, that the proceedings do relate to the same issue raised by the plaintiff in previous proceedings issued in 1987, 1995 and 2012 and all of which involve the plaintiff seeking to impugn the legality and validity of the TB Scheme which was introduced during the provisions of the 1996 Act. It is clear that the plaintiff's dissatisfaction with the previous decisions of the High Court and Supreme Court in the proceedings issued by 1987, 1995 and 2012 did provide the basis for the unfounded claims and allegations made by the plaintiff in the statement of claim. He not only seeks to impugn the legality of the TB Scheme, but also makes serious allegations of wrong doing against, and impugns the integrity of 25 members of the judiciary identified and referred to in the statement of claim.

29. The plaintiff also seeks numerous declaratory reliefs to the effect that the plaintiff was a victim of a miscarriage of justice committed by the judiciary, and that members of the judiciary had failed to discharge their judicial function. The Court is satisfied that the present proceedings constitute frivolous and vexatious proceedings and constitute also an abuse of process, in regard to the considerable time given to the plaintiff in respect of his previous proceedings.

30. Mr. Rooney seeks to question the finality of the Supreme Court's judgment by reference to a suggested conflict with community

law and the finality provided for in Article 44.6. Mr. Rooney relies on Article 234 of EC Treaty. That provision only operates where an appropriate question is raised before a court. If the court considers that the decision on that question is necessary to enable it to give judgment, the court can request the ruling from the Court of Justice. In Mr. Rooney's cases there was no such request by the court, and indeed nobody asked the court in the High Court or in the Supreme Court to make such a request. In this case, the decisions of the Supreme Court are final and conclusive. Mr. Rooney has made his claim and that claim has been conclusively determined he cannot reinvent his claim in this regard.

31. Present proceedings amount both to a direct and collateral attack on final orders previously made by the Supreme Court in the proceedings issued by the plaintiff in 1987 and in 1995. The Court also believes that the plaintiff is attempting to reinvent his claim and relitigate issues which have equivocally and conclusively been determined against him by the Supreme Court in the proceedings issued by the plaintiff in 1985 and 1995.

32. The Court believes that the manner in which the plaintiff has pleaded his claim in these proceedings is to advance allegations which have no basis in fact. This demonstrates to this Court that the proceedings constitute frivolous and vexatious proceedings and in addition the Court is quite satisfied that the statement of claims are saturated with scandalising allegations which have no basis in fact and only confirm that the present proceedings are frivolous and vexatious and are bound to fail. Feeney J. in *John Rooney v. Ireland & the Attorney General the High Court* [2012] 2844 P states that:

"the serious accusations of wrong doing made against members of the High Court, the Supreme Court at paras. 30 to 34 of the statement of claim (in that case) has no statutory basis. These allegations are now made prior to the institution of these proceedings and the judgment and no order has been made to reopen of the decisions. The allegations have been pleaded and I am satisfied that for the purpose of embarrassing or scandalising the parties involved in amount to an abuse of process (this Court's emphasis)."

33. The serious allegations of wrong doing made against 25 members of the Superior Court judiciary constitute scandalising allegations which have no foundation in fact and the present proceedings constitute a clear abuse of process. In all of the circumstances, the Court is satisfied that the only appropriate order to make is to dismiss the proceedings.

Issac Wunder Orders

34. The defendants in their notice of motion seek an order granting an Issac Wunder order against the plaintiff restraining the plaintiff from issuing further proceedings without the leave of the court however related to or concerning the bovine tuberculosis eradication scheme (the TB Scheme), and including any proceedings in which the plaintiff seeks orders seeking to challenge, impugn or otherwise invalidate the TB Scheme.

35. In *Wunder v. Irish Hospital Trust* (Unreported, Supreme Court, Walsh J. & O'Keefe J.J., 24th January 1967), Mr. Wunder appealed against an order of Henchy J. that his action be dismissed on the grounds that the proceedings were frivolous and vexatious. Mr. Wunder had taken several claims against the defendants claiming prizes in respect of tickets purchased by him in their sweepstakes. At trial and on appeal to the Supreme Court these claims were held to be groundless and the Supreme Court made an order directing that no further proceedings in the action in the High Court be taken without the leave of that court; if no leave was granted, the defendant would not require to appear or take any steps in relation thereto and such proceedings would be treated as void and of no effect.

36. The jurisdiction of the courts to impose Wunder orders implies that the citizen's right of access to the courts, one of the personal rights of the citizen contained in Article 40.3 of the Constitution 1937 is not an absolute right.

37. The question arises as to whether it is constitutionally permissible to restrict that right. In *Murray v. Ireland* [1991] ILRM 465 Costello J. stated that "the power of the State, to delimit the exercise of constitutionally protected rights, is expressly given in some Articles and not referred to at all in others, but this cannot mean that, where absent, the power does not exist". Keane C.J. in *Riordan v. An Taoiseach* [2001] IESC 83 stated that the Superior Courts had

"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. The court is bound to uphold the rights of other citizens, including their right to be protected from unnecessary harassment and expense, rights which are enjoyed by the holders of public offices as well as by private citizens. 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."

38. Orders such as Wunder orders appear to be compatible with Article 6 of the European Convention on Human Rights. In *Tolstoy Miloslavsky v. The United Kingdom* [1995] 20 EHRR 442 (Application no. 18139/91), the European Court of Human Rights said:-

"The Court reiterates that the right of access to the courts secured by Article 6 para. 1 (art. 6-1) may be subject to limitations in the form of regulation by the State. In this respect the State enjoys a certain margin of appreciation. However, the Court must be satisfied, firstly, that the limitations applied do not restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired. Secondly, a restriction must pursue a legitimate aim and there must be a reasonable relationship of proportionality between the means employed and the aim sought to be achieved".

In imposing a Wunder order the court is required to strike a balance between the constitutional right of the individual of access to the courts and the desire of the courts to prevent vexatious litigation and litigation which is an abuse of process. A restriction imposed by a Wunder order is in the public interest.

39. In the High Court in *Riordan v. An Taoiseach* [2001] 4 IR 463 O'Caoimh J. stated:-

"In assessment of the question whether the proceedings are vexatious the court is entitled to look at the whole history of the matter and it is not confined to a consideration as to whether the pleadings discloses a cause of action. The court is entitled in the assessment of whether proceedings are vexatious to consider whether they have been brought without any reasonable ground. The court has to determine whether the proceedings being brought are being brought without any reasonable ground or have been brought habitually and persistently without reasonable ground."

Ó Cuív J. referred to the Canadian case of *Re Lang Michener and Fabian v. the High Court of Ontario* [1987] 37 DLR 685 where the following matters have been indicated as tending to show that a proceeding was vexatious:

(a) The bringing of one or more actions to determine an issue which has already been determined by a court of competence jurisdiction;

(b) Where it is obvious that the action cannot succeed or if the action would lead to no possible court or if no reasonable person can expect to gain relief;

(c) Where the action is brought for an improper purpose including the harassment and oppression of other parties by multifarious proceedings brought for the purposes other than the assertion of legitimate rights;

(d) Where issues tend to be rolled forward into subsequent actions and repeated in supplemented often with actions brought against the lawyers who have acted for or against the litigant in earlier proceedings;

(e) Where the plaintiff instituted the proceedings is feared to pay the costs of the unsuccessful proceedings; and

(f) Where the respondent persistently takes unsuccessful appeals from the judicial decisions.

40. It appears to this Court that Mr. Rooney has brought actions to determine an issue which has already been determined by the Supreme Court. The court is also satisfied that it is obvious that the action cannot succeed. The court is also satisfied that this action is being brought for an improper purpose including the harassment and oppression of other parties and in particular the Court has regard the scandalous and vexatious statements made in the plenary summons and statement of claims against twenty-five members of the Superior Court judiciary.

41. On this basis, the Court considers that the legal proceedings are vexatious. The court proposes to make a Wunder order in the following terms.

42. It is ordered that the plaintiff be restrained from instituting any proceedings whatsoever whether by summons or notice of motion or by application to the court or by appearing/applying in court to apply or otherwise against the defendants in this case, or any other defendants against whom the plaintiff has initiated proceedings including the Minister for Agriculture and Food, the Minister for Finance, An Taoiseach, the Attorney General, the Irish Farmers Association, the Management Board for Disease Eradication, Members of the IFA who are board members of the Management Board for Disease Eradication, the Minister for Public Service and the Ombudsman without the leave of the President of the High Court.

43. The Court also considers this an appropriate case in which to order costs against the plaintiff, the cost of these proceedings to date.

44. The Court however does note that this does not exhaust Mr. Rooney's domestic remedies. Mr. Rooney can appeal this matter to the Court of Appeal.