



**THE COURT OF APPEAL**

**Neutral Citation Number: [2018] IECA 363**

**Record Number 2017 610**

**McGovern J.  
McCarthy J.  
Kennedy J.**

**BETWEEN/**

**A.R.**

**APPELLANT**

**- AND -**

**Child & Family Agency.**

**RESPONDENT**

**JUDGMENT of the Court (*ex tempore*) delivered on the 5th day of November 2018 by Ms. Justice Kennedy**

1. The applicant, AR, appeals from the order of the High Court and that order is dated the 11th December 2017; the order of Keane J. refusing an extension of time within which to bring an application for leave to apply for orders of judicial review.
2. Briefly, the background to this appeal concerns various orders made by the District Court regarding the care of the applicant's three children. These orders were then appealed by the applicant to the Circuit Court and the orders of the District Court were therein affirmed. Those orders are dated the 8th February 2017 and the 7th February 2017. Then, by way of notice of motion dated the 4th July 2017 and grounded on the affidavit of the applicant, the applicant sought an order from the High Court to extend the time within which to bring judicial review proceedings in respect of the Circuit Court orders. This motion was refused by the High Court and is the subject of this appeal.
3. We have carefully considered the application and we have had particular regard to the affidavit sworn by the applicant. The applicant sets out a number of grounds of appeal in her grounds of appeal specifically delay regarding two Circuit Court appeal hearings, delay regarding the High Court hearing of the applicant's notice of motion, unfair District and Circuit court hearings, unfair hearing on the 11th December 2017 due to the respondent's failure to ensure service of the respondent's affidavit in a timely manner and the fifth ground is cited as erroneous reasons for the respondent to contest the extension of time for judicial review.
4. Order 84, r. 21 of the Superior Court Rules provides that an application for leave to apply for judicial review shall be made within three months from the date when the grounds for the application first arose but, A COURT? may extend the period within which an application for leave to apply for judicial review may be made where a court is satisfied that there is good and sufficient reason for doing so and the circumstances which resulted in the failure to make the application for leave within the requisite period were outside the applicant's control or could not reasonably have been anticipated by the applicant. It is the position that Ord. 84 mandates that an application for leave to seek judicial review must be made before a court and such application is ordinarily moved *ex parte* on foot of a statement of grounds and verifying affidavit setting out the relief sought and the grounds for the relief.
5. This court notes that the applicant did not bring any application for leave to apply for judicial review before the High Court upon which time could be extended. Consequently, the nature of the relief to be sought by the applicant was unknown to the High Court Judge. We have considered the submissions filed on behalf of the applicant and the respondent and we accept the respondent's submission that a court cannot extend the time in a vacuum, it logically follows that a court cannot consider if an applicant meets the requirements of Ord.84 regarding an extension of time, in the absence of an application for Judicial review setting out the relief sought and the grounds for such relief.
6. Furthermore, grounds 1-4 of the grounds of appeal advanced before this court do not relate to the application to extend time within which to seek leave to apply for judicial review. These grounds as I've already stated, allege issues of delay in the District, Circuit and High court and unfair procedures. At ground 5, the applicant simply asserts 'erroneous reason for respondent to contest extension of time for judicial review' and we have, as we have stated considered the submissions filed by both parties in this regard.
7. Having considered the entirety of the matter, we are satisfied that there was no judicial review proceedings before the High Court such as to enable the learned judge to conclude that there was good and sufficient reason to grant an extension of time and that the circumstances resulting in the failure to make the application for leave within the requisite period were outside the applicant's control or could not reasonably have been anticipated by her for such extension in terms of Ord.84 and consequently we dismiss the appeal.