

THE HIGH COURT

[2011 No 587 J.R.]

IN THE MATTER OF THE COURTS (SUPPLEMENTAL PROVISIONS) ACTS 1961 TO 1968 AND IN THE MATTER OF THE COURTS OF JUSTICE ACTS 1924 TO 1959 AND IN THE MATTER OF THE COURTS SERVICES ACT 1998

BETWEEN

RONAN KENNEDY, IAN FLYNN, VINCENT MCCORMACK, PAUL KINGSTON, JOHN G. O'DONNELL AND PHILIP ENGLISH
APPLICANTS

AND

THE COURTS SERVICE

RESPONDENT

JUDGMENT of Mr. Justice Birmingham delivered the 11th day of April 2014

1. In this case the applicants are all solicitors in practice in Tipperary town and members of the Tipperary Bar Association. In these proceedings, the applicants are seeking a declaration that the respondent, the Courts Service, is in breach of its duty to provide, manage and maintain court buildings under s. 5 of the Courts Services act 1991. More particularly a declaration is sought that the respondent is in breach of its statutory obligation to provide an adequate and suitable courthouse in Tipperary towns.

2. I should add that the statement of grounds had indicated that the applicants were seeking an order of mandamus directing the respondent, Courts Services, to provide, manage and maintain an adequate and suitable courthouse. Not surprisingly, the notice of opposition and the written submissions on behalf of the respondent focused to a significant extent on the inappropriateness of mandamus as a remedy. However, counsel for the applicants has made clear that his interest is in obtaining suitable declarations and the application for an order of mandamus has not been pressed.

3. The factual background to the present proceedings is that Tipperary courthouse was constructed in 1841. Cases have been heard there since its construction until November 2010. In recent years, Tipperary courthouse has hosted sittings of both the District Court and the Circuit Court, there were two sittings of the District Court per month as well as special sittings from time to time. While the Circuit Court sat in Tipperary courthouse for three or four weeks per year. The courthouse, it may be noted, is in the ownership of South Tipperary County Council.

4. Notwithstanding that the courthouse is a protected structure it has fallen into a state of disrepair leading to its closure in November 2010. Since then, sittings of the District Court have been held in a local theatre, while Circuit Court matters are now dealt with in Clonmel. Clonmel is approximately 25 miles from Tipperary town.

5. Over many years the developing state of disrepair has been the subject of concern to local members of the legal profession. Representations were made to the respondent and local public representatives were actively involved with the issue, in November 2010, part of the ceiling collapsed, bringing a halt to further court sittings.

6. On the 5th January, 2011, Dr. Martin Manseragh, then Minister of State at the Department of Finance with special responsibility for the Office of Public Works, issued a press release announcing that following his intervention, at the request of the courts service, and with the assistance of the Department of Justice and Law Reform urgent repairs were to be carried out early in the new year to the ceiling a roof of Tipperary courthouse.

7. The press release referred to the fact that the courthouse had been listed for work in 2009, but that the constrained budget of the Courts Service and its other priorities had unfortunately led to the indefinite postponement of the works.

8. Notwithstanding the announcement, no such works have been carried out and the courthouse remains closed. In a letter dated the 14th June, 2011, to the first named applicant, the then Secretary General of the Department of Justice, Equality and Law Reform stated that the Courts Service was not in a position to allocate funding for the extensive remedial works necessary for the courthouse in Tipperary. However, in view of the historic nature of the building, the Department had agreed to fund some limited repair work by the Office of Public Works in order to prevent a deterioration.

9. In a letter to the first applicant of the 14th June, 2011, the Chief Executive Officer of the Courts Service, having referred to the fact that the courthouse was a protected structure, stated that the Courts Service understood that in the light of the historic nature of the courthouse, that the Department of Justice and Equality had agreed to fund some limited repair work by the Office of Public Works in order to prevent further deterioration to the structure of the building. The letter commented that it was accepted that this was not ideal, but that it was the best that could be achieved in the circumstances, given the scale of the budgetary deficit faced by the exchequer, adding that the extent of the limited repair work will not be sufficient to address the overall health and safety issues with the building.

10. The Minister for Justice and Equality in a letter of the 13th June, 2011, also referred to the fact that his Department had agreed in view of the historic nature of the building, to fund some limited repair work by the Office of Public Works in order to prevent further deterioration.

11. On the 21st July, 2011, leave to seek judicial review was obtained. The statement of opposition, amongst other pleas denies that there is a specific statutory duty on the Courts Service to maintain and keep open the Tipperary town courthouse. In an affidavit sworn by John Mahon, head of Estates and Buildings in the Courts Service, he accepts that in light of the very poor condition of the courthouse and the collapse of part of the ceiling that it will not be possible to use the courthouse for court business for the foreseeable future.

12. He refers to the fact that in 2008 the courthouse had been included in the respondent's list for refurbishment, however, due to severe budgetary constraints, it was not in a position to fund the extensive refurbishments which would be necessary to bring it up to modern court standards. He refers to the reduction in both the capital and current budgets of the Courts Service between 2008 and 2011, an 80% reduction in the place of the capital budget and a 39% reduction on the current side. The letter points out that there is a review of secondary court venues underway, which involves reviewing the location, suitability, a number of venues and the merits of amalgamating venues by reference to a number of criteria which he lists. He points out that every county and every district is included in that review. He says that no final decision regarding the future of Tipperary town as a venue for court sittings had been taken, but added that the possible permanent closure of the Tipperary town as a court venue could not be excluded.

The Statutory Provisions

13. The statute in issue here is the Courts Services Act 1991. The long title of the Act was "an Act to establish a service to manage the courts and provide services to and for the judges and to provide other services relating to courts administration, to transfer certain property to the service, to make provision for the staffing of the service and to provide for related matters. Section 5 of the Act, so far as material provides as follows:

"5. The functions of the Service shall be to –

- (a) manage the courts,
- (d) provide, manage and maintain court buildings, and
- (e) provide facilities for users of the courts."

14. "Function" is defined at s. 2 as follows:-

"Function" includes a power and duty."

Section 6(1) is as follows:-

"Subject to this Act but notwithstanding any other enactment, the Service may do anything necessary or expedient for enabling it to perform its functions."

Subsection (2) so far as material is as follows:

"Without prejudice to the generality of subs. (1), the Service may

- (j) designate court venues."

15. The respondent attache's particular significance to the provisions of s. 13(2)(a) which provides: "The Board, in the performance of its functions, shall have regard to (a) the resources of the Service for the purposes of such performance and the need to secure the most beneficial, effective and efficient use of such resources."

16. In the context of the fact that the function of the Courts Service includes providing, managing and maintaining court buildings and providing facilities for users of the courts and that function is defined as both a power and duty, counsel on behalf of the applicant has drawn attention to the provisions of the Education Act 1998 and in particular to ss. 2, 6 and 7 thereof. He does so in a situation where s. 7 sets out the functions of the Minister, functions being defined in s. 2 in terms identical to the definition in s. 2 of the Courts Services Act. Counsel's interest in the Education Act arises from the fact that Hardiman J. in the course of his judgment in *Sinnot v. Minister for Education* commented that the provisions of the Education Act, together with the provisions of the Equal Status Act 2008, and the Education and Welfare Act imposed duties on public authorities. Thus, he argues that it is the duty of the Courts Service to provide, manage and maintain court buildings and to provide facilities for users of the Courts.

17. For my part, I would be prepared to accept that the Courts Service had a duty to provide, manage and maintain court services and to provide facilities for users of the courts. However, what I find difficult to accept is the suggestion that there is a statutory duty to provide particular facilities at particular locations.

18. It seems to me that any suggestion that there is a specific duty in respect of a specific courthouse in a specific location is incompatible with the power of the Courts Service to designate court venues as provided for at s. 6(2)(j) and the power to create, vary or abolish District Court districts or areas as provided for at s. 26 of the Courts of Justice Act 1963.

19. Again, the existence of a specific duty in relation to a specific venue would not sit easily with the obligation imposed on the Courts Service to secure the most beneficial, effective and efficient use of resources.

20. That members of the legal profession in Tipperary would wish to see court sittings continue in that town is entirely understandable. Indeed many would wish to see court sittings continue at a venue of considerable historical significance, but while such a desire is understandable the declarations sought would serve to undermine the review of court venues that is underway. Quite simply it would be impossible to manage the courts Service if applications in respect of individual venues can seek to bring them outside the scope of a national review. The effect of making the declarations sought would be to prioritise Tipperary town and Tipperary courthouse to the disadvantage of other venues in Tipperary and further a field.

21. In the case of *Brady v. Cavan County Council* [1999] 4 I.R. at p. 99, Keane J. as he then was, found himself dealing with a suggestion that a specific section of a single road in Cavan should be prioritised, in a situation where there were 600 strips of roadway needing attention. He quoted, with apparent approval, from the submissions on behalf of the County Council that to select a strip of roadway, from 600 strips acknowledged to be in very poor condition would not ensure the fulfilment of the statutory duty, but would on the contrary, simply mean that the admitted responsibilities of Cavan County Council would be discharged in a haphazard and arbitrary manner by the elevation of this particular strip to an unjustified priority in the road repair programme.

22. No doubt there are courthouses across the country needing maintenance and repair. There may be difficult choices to be made, choices whether particular venues should be maintained or upgraded or in some cases closed. Declarations in relation to a particular venue would serve to prevent these decisions from being taken in an objective and coherent fashion and would mean that the taking of the decisions would be haphazard and arbitrary.

23. In my view, the situation in which the Courts Service finds itself is not comparable to that which prevailed when cases such as *The State (The Prosecution of Keane and Goff) v. Minister for Justice* [1984] I.R. 189, *Keane v. The Minister for Justice* [1994] 3 I.R. 347 and *Hoey v. The Minister for Justice* [1994] 3 I.R. 321, were decided which saw orders made in respect of Wexford (Keane) Drogheda (Hoey) and Carrick on Shannon (Keane). The statutory regime applicable then was quite different.

24. The (Courthouses, Provisions and Maintenance) Act 1935 had set out a clear mandatory duty to provide and maintain courthouse accommodation in particular locations, making specific provisions for pre-existing courthouse accommodation. So despite the superficial similarities I am satisfied that these cases do not in fact assist the applicants. It seems to me that good public administration requires that decisions be taken by the body exercising statutory responsibility and that those decisions should be taken in the context of a coherent national strategy. In summary then I feel I have no option but to decline to grant the declarations sought.