

THE HIGH COURT

2009 1035 JR

BETWEEN

JOHN G. FLYNN, DECLAN JOYCE, MARTIN G. LAWLOR

AND PAUL A. ROGERS

Applicants

AND

THE COURTS SERVICE AND JUDGE DONNCHADH O BUACHALLA

Respondents

JUDGMENT of Mr. Justice Hedigan delivered on the 2nd day of November 2010.

1. By order of Ryan J. dated the 12th day of October, 2009, the applicant was granted leave to apply for judicial review of a decision allegedly taken by the first named respondent. The applicant subsequently sought and obtained leave to join the second named respondent to the proceedings on the 16th February, 2010. The reliefs sought include the following grounds:-

- i. An order of *certiorari* by way of application for judicial review quashing the decision of the respondent made on or about the 11th day of June 2009 to transfer the sittings of New Ross District Court to the temporary Court House at Ardavan, Wexford.
- ii. A declaration that the purported transfer of the sittings of the New Ross District Court to the temporary Court House at Ardavan, Wexford amounts to a breach of the provisions of section 26 (1) (g) of the Courts of Justice Act 1953.
- iii. An order of mandamus requiring the respondent to acquire a premises within the New Ross District Court area or within one mile of its boundary for sittings of New Ross District Court.

2. Factual Background

2.1 The applicants herein are solicitors practising in the New Ross District Court area. The first named respondent is the independent corporate organisation established by the Courts Service Act 1998 to manage the administration of the court system in Ireland. The second named respondent is the District Court Judge assigned to the Wexford District at the time the subject matter of these proceedings arose. The second named respondent is not participating in these proceedings.

2.2 These proceedings arise out of a challenge to the decision of the second named respondent to transfer the business transacted in the New Ross District Court area from a temporary court house located in that area to another temporary court house on the outskirts of Wexford town in Ardavan (hereinafter referred to as "the temporary Wexford District Court"). The court house in New Ross was built in approximately 1832 and was closed for renovation in 2005. Since its closure, the first named respondent leased the Geraldine O'Hanrahan's G.A.A. Club House for sittings of the New Ross District Court (hereinafter referred to as "the temporary New Ross District Court"). This location provided a temporary venue for the court sittings on foot of the closure of New Ross District Court House. The preliminary issue of delay has been abandoned by the respondent.

2.3 On the 11th June, 2009, the first named respondent advised the Secretary of the County Wexford Solicitors Association that New Ross District Court would sit at the temporary Wexford District Court in Ardavan with effect from the 30th August, 2009. Discussions ensued between the first named respondent and various interested parties, including at least one (if not more) of the applicants, concerning this transfer of business from the temporary New Ross District Court. By letter dated the 8th September, 2009, the first named respondent confirmed the change of venue and the sittings for New Ross District Court were thereafter transferred to the temporary Wexford District Court. The Wexford District comprises four district court areas including both the New Ross and Wexford district court areas.

2.4 In the Statement of Opposition, delivered on the 14th December, 2009, it was alleged that no decision had been taken by the first named respondent to transfer the sittings of the temporary New Ross District Court. The first named respondent asserted that it was not the appropriate respondent to the application for judicial review as the decision had been made by the District Court Judge assigned to the district court area of New Ross pursuant to s. 27 (1) (b) of the Courts of Justice Act 1953. In the light of this assertion in the Statement of Opposition the applicants sought and obtained leave to join the District Court Judge as the second named respondent.

3. The Applicants' Submissions

3.1 The applicants' submissions focussed on two issues; (i) the issue of *locus standi* and (ii) the issue of jurisdiction.

3.2 Locus standi

Counsel for the applicants, Mr. Maher S.C., submitted that the applicants had the requisite sufficient interest in the matter before the court. He argued that the applicants' issued these proceedings (i) in their personal capacity on the basis that they are local solicitors allegedly being threatened with a breach of their constitutional right to earn a livelihood and (ii) from a public interest perspective. Counsel for the applicants posed the question that if it is the case that the Court finds that these solicitors lack *locus standi*, then who would be deemed to have sufficient *locus standi* to have carriage of these proceedings? It was further submitted that the applicants, as officers of the court, had a right to challenge a decision of this nature.

3.3 Counsel emphasised the fact that the first named respondent had involved the applicants in the consultation process concerning the decision to transfer the temporary New Ross District Court to the temporary Wexford District Court. It was argued that it was inconsistent for the first named respondents to contend that the applicants lacked *locus standi* to challenge the decision to transfer the temporary New Ross District Court in the light of their having included the applicants in the consultation process. Counsel relied upon the Supreme Court decision in *Mulcreavy v. Minister for Environment* [2004] 1 I.R. 72 and *Lancefort Limited v. An Bord Pleanála* (No. 2) [1999] 2 I.R. 270.

3.4 Jurisdiction

The kernel of the applicants' submission in relation to the jurisdictional issue is the question as to the correct procedure to be invoked in order to make a valid transfer of the sittings at the temporary New Ross District Court to the temporary Wexford District Court at Ardavan. It was submitted that the decision to transfer the venue was in breach of s. 26 (1) of the Courts of Justice Act 1953 which governs the appointment of places for the conduct of the business of the District Court. Counsel for the applicant contended that the decision to move the sittings to the temporary Wexford District Court at Ardavan was a decision which was within the jurisdiction of the first named respondent and not the second named respondent. Counsel further contended that there was a statutory procedure to be followed and this procedure, in this instance, did not allow for this decision to be within the remit of the second named respondent alone. Counsel for the applicant pointed out that even if the first named respondent made the decision to transfer the sittings of the temporary New Ross District Court, this decision was not, in any case, made in accordance with s. 26 (1) (g) of the Act of 1953 as inserted by s.16 of the Courts Act 1971.

3.5 Reliance was placed upon the Supreme Court decision in *O'Brien v. O'Halloran* [2001] 1 I.R. 556 in allowing counsel for the applicants conclude that s. 26 of the Act of 1953 makes provision for powers, duties and obligations of the first named respondent whereas s. 27 of the Act of 1953 governs the powers of the second named respondent. Section 26 governs the administrative functions and s. 27 governs the judicial functions of the court structure.

3.6 The difference between a District Court district and a District Court area was noted. Within a district there are a number of areas and a District Court judge assigned to a particular district can transfer business from one area to another within his district. Counsel submitted however that the second named respondent did not have the power to transfer all of the sittings from one area to another on the basis that that power vested in the first named respondent alone and it was not within the jurisdiction of the second named respondent. Counsel submitted that the District Court Judge's power to transfer the business before him to another District Court area meant that he could adjourn the remainder of a case to a different venue and that such an action could be construed as the exercise of judicial business and therefore a part of his judicial function.

3.7 In summary, counsel argued that the power of a District Court judge to adjourn or transfer a case extended only to business immediately before the District Court judge. It was counsel's contention that a District Court judge would not have the power to appoint a court house for 'all of the business' and it is only the first respondent, acting in accordance with s. 26(1) of the Act of 1953, who can order such a transfer under the administrative power contained thereunder.

3.8 Counsel further submitted that even if the facilities at the temporary Wexford District Court were superior to the facilities at the temporary New Ross District Court, the second named respondent was nonetheless acting outside of his jurisdiction. Counsel for the applicant concluded that an analysis of s.27 (3) (b), in particular the term "any business", was necessary in order to establish the remit of the powers of the second named respondent.

3.9 Mr. Maher submitted that s.21 (c) of the Courts of Justice Act 1953 provided the correct statutory approach and the first named respondent failed to adhere to the statutory framework already in place. Ultimately, counsel contended, the problem arose in these proceedings because the first named respondent did not make this decision, a function reserved under the provisions of the Act of 1953, but rather the second named respondent effected this transfer of business which was something he had no power to do.

4. Submissions of the first named respondent

From the outset, counsel for the first named respondent, Mr. Doherty, urged the Court to consider the context of these proceedings and queried the practical objective which the applicants sought to achieve. Counsel argued that whilst the first named respondent had been actively considering a transfer of the temporary New Ross District Court to the temporary Wexford District Court, no formal decision was ever concluded. The decision to transfer the sittings of the temporary New Ross District Court was the decision of the second named respondent pursuant to s. 27 (3) (b) of the Courts of Justice Act 1953.

4.1 Locus standi

Mr. Doherty contended that the basis of the applicants' case cannot legitimately be simultaneously rooted in both a public interest and a constitutional right to earn a livelihood and noted that counsel for the applicants failed to open any case which supported the two bases for their alleged *locus standi*. The case of *Mulcreavy v. Minister for Environment* [2004] 1 I.R. 72 was distinguished on the basis that this case was one of a public interest. Furthermore, counsel distinguished the case of *Construction Industry Federation v. Dublin City Council* [2005] 2 I.R. 496 on the basis that in these proceedings the applicants are asserting the rights of others (i.e. a court house for the residents of New Ross) however, the applicants' interest is alleged to impact upon their constitutional right to earn a livelihood as individuals.

4.2 In response to the applicants' argument that their standing arises by virtue of their constitutional right to earn a livelihood, Mr. Doherty noted the decision of the Supreme Court in *Casey v. Minister for Arts* [2004] 1 I.R. 402 and concluded that a close analogy could be drawn between the argument put forward by the applicants in that case and the applicants in these proceedings who submit that they have an entitlement to have a local court so as to earn a livelihood. Reliance was placed upon the judgment of Murray J. in that case which held that the constitutional right to earn a livelihood from any lawful vocation, trade, business or profession was not an absolute right. The right to earn a livelihood, it was held, may be regulated or restricted for reasons of the common good and it did not entitle a citizen to have access to the property of third parties and use it for business purposes.

4.3 The applicants allege a violation of their right to earn a livelihood. Counsel for the first named respondent submitted that this misconceives the remit of the right provided for by the Constitution as that is a right to have one's livelihood protected from unjust attack. Solicitors may organise themselves according to the location of a court house but that does not allow them to assert any right over that and the purpose of the legislation is not directed at providing an income for solicitors.

4.4 Jurisdiction

The first named respondent argues that had it wished to effect a permanent transfer it would have invoked s.26 (1) (c) of the Act of 1953. In fact, it was the second named respondent, the District Court Judge in this matter, who made the decision to transfer the sittings of the temporary New Ross District Court to the temporary Wexford District Court under s.27 (3) (b) and this was a decision within his jurisdiction. It was submitted that s. 27 (3) (b) allows a District Court judge to transfer or adjourn any business to some

other place in his District. The purpose of s. 27 (3) (b) is to deal with the situation where a district court house is not available or not suitable. Counsel contended that the transfer of the temporary New Ross District Court to the temporary Wexford District Court was intended to be of temporary duration. The second named respondent transferred the business of the court under s. 27 (3) (b) and therefore this decision falls within the second named respondent's jurisdiction or possibly under s. 65 of the Court Officers Act 1926. Furthermore, the Courts of Justice Act 1953 deals with administrative matters and not necessarily the convenience of local solicitors or the community.

4.5 Counsel for the first named respondent concluded that the declaratory relief which was sought by the applicants was the only relief pertinent in respect of the decision made under section 27 (3) (b). It was submitted that this Court should refuse the relief sought because there is no purpose in granting the declaratory relief sought absent an order for the other reliefs; *Ryan v. Compensation Tribunal* [1997] 1 I.L.R.M. 194 relied upon.

5. Relevant Law

5.1 Locus standi

Order 84, Rule 20 (4) provides that: - "The Court shall not grant leave unless it considers that the applicant has a sufficient interest in the matter to which the application relates."

5.2 *Lancefort Limited v. An Bord Pleanála (No. 2)* [1999] 2 I.R. 270 expressly approved the application of the principles of *Cahill v. Sutton* [1980] I.R. 269 to questions of *locus standi* in judicial review applications. In the case of *Mulcreavy v. Minister for Environment* [2004] 1 I.R. 72, Keane C.J. stated at p.78 that:-

"It has been made clear in decisions of the High Court and this court in recent times that it is not in the public interest that decisions by statutory bodies which are of at least questionable validity should wholly escape scrutiny because the person who seeks to invoke the jurisdiction of the court by way of judicial review cannot show that he is personally affected, in some sense peculiar to him, by the decision. It is in that sense, I think, that the requirement in O. 84, r. 20(4) of the Rules of the Superior Courts 1986 should be read."

5.3 In the case of *Construction Industry Federation v. Dublin City Council* [2005] 2 I.R. 496 the Supreme Court confirmed that the principles relevant to the test applied to determine standing in constitutional challenges were also relevant to judicial review proceedings. McCracken J. considered the seminal case of *Cahill v. Sutton* [1980] I.R. 269 and cited with approval the observations of Henchy J. in that case concerning the general principles for determining *locus standi*. The Supreme Court in that case held that the general principle, by virtue of which it is not appropriate for any citizen to argue the case of another, did not amount to an absolute rule and that there were circumstances in which it was appropriate for a representative body to be entitled to bring judicial review proceedings. McCracken J. held at p. 527 that:-

"Unlike many of the cases in which parties with no personal or direct interest have been granted *locus standi*, there is no evidence before the court that, in the absence of the purported challenge by the applicant, there would have been no other challenger. Indeed, the evidence appears to be to the contrary."

5.4 Jurisdiction

Section 26 of the Courts of Justice Act 1953 as amended provides the statutory framework for the powers, duties and obligations of the first named respondent.

5.5 Section 26 (1) of the Act of 1953 (as amended by s. 16 of the Courts Act 1971 and s. 29 (1) of the Courts Service Act 1998 transferring the functions of the Minister to the first named respondent) provides that:-

(1) it shall be lawful for the Minister from time to time, as he shall consider expedient, by order to do all or any of the following things:-

- (a) vary or abolish any district court district,
- (b) create any new district court district,
- (c) vary or abolish any district court area,
- (d) create any new district court area,
- (e) vary the class or classes of business for which any district court area is delimited,
- (f) alter the places or vary the days or hours for the time being appointed for holding the District Court in or for any district court area,
- (g) after consultation with the President of the District Court, appoint one or more convenient places in every district court area created or varied under this section or within one mile of the boundary of such area in which, and such and so many convenient days and hours at which, the District Court shall be held for the purpose of transacting for such area the business for which the area is delimited,
- (h) assign a name to or change the name of any district court district or district court area,
- (i) revoke or amend an order under this section."

5.6 Section 27 provides a statutory framework for the powers of the second named respondent. Section 27 provides the following:-

"(1)....

(2) It shall be lawful for a justice when sitting at a place, on a day, and at an hour appointed for the transaction of any particular class of business of the District Court, to transact at such sitting any other class of business of the District Court.

(3) It shall be lawful for a justice to transfer or adjourn the transaction of any business of the District Court in which he has jurisdiction to either –

(a) another occasion at the place in which he was transacting such business at the time of such transfer or adjournment, whether such occasion is or is not a day and hour appointed, or

(b) to another occasion (whether such occasion is or is not a day and hour appointed) at some other place in his district which is a place appointed for the transaction of business of the District Court, whether such business does or does not include the said business so transferred or adjourned.”

5.7 Furthermore, it should be noted that s. 65 (2) of the Court Officers Act 1926 provides that: - “When an officer attached to any court is engaged on duties relating to business of that court which is for the time being required by law to be transacted by or before or under or pursuant to the order of a judge or judges of that court he shall observe and obey all directions given to him by such judge or judges.”

5.8 The decision of the Supreme Court in *O'Brien v. O'Halloran* [2001] 1 I.R. 556 is helpful with respect to the proceedings currently before this Court. In that case the Supreme Court held that provided a District Court judge was exercising his or her jurisdiction within his or her district, the failure to exercise it in a prescribed area was at most an irregularity and not a jurisdictional error. In addition to this, a District Court judge had full powers to waive any irregularity if it appeared reasonable and appropriate to do so. The Supreme Court also concluded, according to the circumstances of that case, that should an alternative venue be used within the district of a particular District Court judge, no jurisdictional irregularity arose. In that case Geoghegan J. stated that at p. 563 that:-

“The first respondent was clearly of the view that as an inherent incident of the exercise of her statutory jurisdiction, she was entitled to make temporary arrangements for the sitting of her court when for one reason or another it was not possible to use the established courthouse. Indeed express statutory support for this view is arguably to be found in section 65(1) of the Court Officers Act, 1926, cited above. However, it is not necessary for the purposes of this appeal, to pronounce on the correctness or otherwise of the first respondent's view of her own powers to make temporary courthouse arrangements. For the reasons indicated, I am satisfied that the first respondent in embarking on a hearing of the complaint was acting within jurisdiction.”

6. Decision of the Court

6.1 This application arises from the decision made by the second named respondent to transfer all business from the temporary New Ross District Court to another temporary court house in Ardavan in Wexford town. This decision arose from the fact that for some time the temporary New Ross District Court had been located in the premises of a G.A.A. clubhouse in New Ross. The original historic court house in New Ross has been closed for renovation for some time. The Ardavan temporary court house apparently has all the facilities of a modern court house having been fitted out for the purpose. Prior to the decision made by the District Judge, the Courts Service had been making arrangements to effect such a move but did not actually order it themselves. The move to Ardavan is not intended as a permanent one. Nonetheless, owing to the present lack of funds to restore the original court house in New Ross, it may safely be assumed it will be in Ardavan for a number of years to come. Objection is taken to this move on the basis that the District Judge who made the decision to transfer all the business had no jurisdiction to do so. This kind of business, it is argued, is of an administrative nature and governed by s. 26 of the Courts of Justice Act 1953 (as amended). The decision was made by the District Judge under s. 27 of the same Act which gives him power to “transfer or adjourn the transaction of any business of the District Court in which he has jurisdiction” to “... some other place in his district”. It is common case that Ardavan is in his district. It is argued by the applicants that the District Judge's powers under s. 27 are limited only to transferring particular business, i.e. individual cases to any other place within his district.

6.2 The respondents' challenge to the *locus standi* of the applicants is the first matter I must address. It seems clear to me that the fact that the first named respondent was in close consultation with at least one (and maybe more) of the applicants concerning the decision to transfer the sittings of the temporary New Ross District Court is strongly suggestive that the first respondent considered the applicants had a clear interest. Moreover, I accept that as solicitors practising in the relevant area they have a strong interest in the decision sought to be quashed both in their own and their clients interest. The question is fairly posed “if they do not have *locus standi* – who does?” The fact their interest coincides with the public interest does not, it seems to me, alter anything. In my view, the applicants have the requisite *locus standi* to challenge the decision made. I will therefore dismiss the objection of the respondents on this ground.

6.3 The second question for the Court is as to whether the District Judge had the power to make the order transferring all the District Court business from New Ross to Ardavan. It seems to me that the applicants contend for a reading of s. 27 that is too narrow. It must be within the power of the District Judge to order all business before the District Court to be transferred where urgent need arises as, for instance, where a courthouse has for whatever reason become unsafe or otherwise unusable. In this case it was the decision of the District Judge to transfer business from a football clubhouse to a custom-built courthouse. The move is a temporary one albeit one likely to last a few years. There seems little difference between a necessary decision required to be made upon urgent grounds and one made after some reflection for good reason. The essential nature of the decision is the same. The level of necessity must clearly be a matter within the discretion of the Judge in question. It seems to me that the wording of s. 27 is sufficiently wide to allow a District Judge to make such an order as herein where he deems it necessary. Even were I wrong in this, in my view, the dictum of Geoghegan J. *O'Brien v. O'Halloran* [2001] 1 I.R. 556 at p. 563 is particularly apt:-

“The first respondent was clearly of the view that as an inherent incident of the exercise of her statutory jurisdiction, she was entitled to make temporary arrangements for the sitting of her court when for one reason or another it was not possible to use the established courthouse. Indeed express statutory support for this view is arguably to be found in section 65(1) of the Court Officers Act, 1926, cited above. However, it is not necessary for the purposes of this appeal, to pronounce on the correctness or otherwise of the first respondent's view of her own powers to make temporary courthouse arrangements. For the reasons indicated, I am satisfied that the first respondent in embarking on a hearing of the complaint was acting within jurisdiction.”

It seems clear from the above that, although it was not central to the decision he needed to make, the learned Judge understood the District Judge to have an inherent jurisdiction to make temporary arrangements for the sitting of the Court. In the same way it seems to me that in making the order transferring the business from New Ross to Ardavan as happened in this case, the District Judge was exercising an inherent jurisdiction to make arrangements for the sitting of his Court in addition to his powers under s.27.

7. Conclusion

In light of the foregoing, the Court is satisfied that the applicants in this matter are not entitled to the reliefs sought.