Neutral Citation [2017] IEHC 26

THE HIGH COURT

JUDICIAL REVIEW

[2015 No. 439 J.R.]

BETWEEN

M.C.

APPLICANT

AND

LEGAL AID BOARD, IRELAND AND THE ATTORNEY GENERAL

RESPONDENTS

JUDGMENT of Mr. Justice Noonan delivered on the 17th day of January, 2017

1. The applicant's claim herein relates to a decision of the first named respondent ("the Legal Aid Board") made on or about the 15th May, 2015, to refuse legal aid to the respondent in respect of certain proceedings arising from an alleged breach of an access order made in the applicant's favour in the District Court on the 5th March, 2015. The applicant seeks an order quashing this decision together with ancillary declaratory reliefs. The applicant also claims damages.

Background Facts

2. The applicant is the father of a minor child born in 2007. He is not married to the child's mother. The applicant is an unemployed labourer whose means are limited. He left school at the age of sixteen years following completion of his Junior Certificate examination. In 2010, the applicant brought proceedings under the Guardianship of Infants Act, 1964 in the District Court. He applied for and was granted legal aid in respect of these proceedings in which he was represented by Dundalk Law Centre. On the 28th October, 2010, the District Court made an order appointing the applicant guardian of his son. Access orders were made by the District Court in 2010 and 2011 in favour of the applicant.

3. In October 2014, the mother made an application for a safety order under the Domestic Violence Act, 1996 against the applicant which was returnable before the District Court on the 27th November, 2014. On the 29th October, 2014, the applicant applied to the Legal Aid Board for a legal aid certificate in respect of representation in these proceedings. On the 30th October, 2014, the applicant was advised by the Legal Aid Board that he was financially eligible for legal aid and he was offered an appointment with a solicitor at the Dundalk Law Centre, Mr. John Cooke, on the 6th November, 2014. On the latter date, the applicant advised Mr. Cooke that he was currently having access with his son each weekend from Friday to Sunday on foot of an existing court order.

4. Mr. Cooke attended before the District Court on behalf of the applicant on the 27th November, 2014, when the matter was adjourned pending an application by the mother for legal aid from the Monaghan Law Centre. The matter was subsequently further adjourned and came on for hearing before the District Court on the 5th March, 2015. In addition to the application for a safety order by the mother, she also sought variation of the access provisions.

5. Following a full hearing by the District Court on the 5th March, 2015, the court made a safety order against the applicant for a period of five years and reduced the applicant's access to Saturday at 6pm until Sunday at 6pm. Following the conclusion of the hearing, Mr. Cooke advised the applicant of his right of appeal to the Circuit Court and the applicant indicated that he did not wish to bring such an appeal.

6. Mr. Cooke formally wrote to the applicant the next day, the 6th March, 2015, informing him of the terms of the order that had been made by the District Court and that any appeal had to be brought within a period of fourteen days from the 5th March, 2015.

7. Thereafter, the applicant alleges that on the 21st March, 2015, the mother failed to provide access to his son as required by the terms of the District Court order. As a result, on the 23rd March, 2015, the applicant telephoned Mr. Cooke indicating that he now wished to appeal the order of the District Court, albeit that the time for doing so had now expired. The applicant also indicated to Mr. Cooke that he wished to prosecute the mother for breach of the access order and Mr. Cooke advised him that legal aid could not be provided for such a prosecution.

8. However, as no information was available as to the reasons why access had not been provided, Mr. Cooke advised the applicant that he would write to the other side to establish why access had not taken place and the applicant agreed to this course. When a response was forthcoming, further consideration could be given to the next step. Subsequent to this telephone conversation, the applicant later the same day attended at the Dundalk Law Centre to complete the forms for an extension of time to appeal to the Circuit Court. Since the applicant's legal aid certificate did not extend to cover this application, he agreed to apply to the District Court office himself for the extension of time.

9. On the 25th March, 2015, Dundalk Law Centre wrote to the mother's solicitor at Monaghan Law Centre seeking an explanation as to why access had not taken place. Before a response to that letter was received, scheduled access was in fact afforded to the applicant on the 28th March, 2015. On the 1st April, 2015, the applicant left a telephone message for Mr. Cooke advising that satisfactory access had in fact taken place on the previous date. On the 8th April, 2015, the mother's solicitor wrote to Mr. Cooke to advise that she had been fifteen minutes late for the access appointment on the 21st March, as she had been collecting the child from a children's party to make him available to the applicant but the applicant had not waited.

10. Thereafter, the applicant alleges that prearranged access was refused by the mother on the 11th April, 2015, although he did not advise Dundalk Law Centre of this fact. On the 15th April, 2015, Mr. Cooke wrote to the applicant sending him a copy of the letter of the 8th April, 2015, from Ms. Stephanie Coggans of the Monaghan Law Centre on behalf of the mother. Mr. Cooke asked the applicant for instructions in relation to the content of this letter and also for a copy of the appeal document so that he could process an application for legal aid on the applicant's behalf for the appeal. The applicant never replied to this letter.

11. Subsequent to this date, the applicant alleges that he was refused access by the mother on the 25th April, 2nd May and 9th May, 2015. Dundalk Law Centre was not advised of these facts. In or about this time, the applicant consulted private solicitors, Mssrs. MacGuill & Company about the matter. They wrote to Mr. Cooke on the 14th May, 2015, expressing the view that the

appropriate course was a further application to the court potentially granting custody to the applicant and reversing the access provisions. They indicated that this was a matter for the Legal Aid Board.

12. This letter was received by Mr. Cooke on the following day, the 15th May, 2015, following which he telephoned the applicant. The applicant advised Mr. Cooke that he wished to prosecute the mother arising out of the breach of the access order and that he wished his file to be transferred to MacGuill & Company. Mr. Cooke requested a written authority from the applicant for this purpose.

13. Following this conversation, Mr. Cooke wrote on the same day to the applicant advising that the next step appeared to be to prosecute the mother for breach of the order but advising that Mr. Cooke could not act in this matter "as there is an element of criminal proceedings in it". He noted the applicant's instructions to forward the file and confirmed that he would do so on receipt of the applicant's written instructions. Mr. Cooke also wrote to MacGuill & Company the same day advising that he could not deal with a breach of access case as such cases are not covered by statute and the party concerned would have to instruct a private solicitor in such circumstances. He again indicated that he would forward the file on receipt of the applicant's written authority.

14. Thereafter, the applicant alleges that on the 20th June, 2015, access was again denied him. On the 25th June, 2015, a summons was issued pursuant to s. 5 of the Courts (No. 2) Act, 1986 naming the applicant as complainant and the mother as defendant alleging that the mother failed to comply with the terms of the order of the District Court of the 5th March, 2015.

15. The summons came on for hearing before the District Court on the 23rd July, 2015, when the applicant was represented by Mr. MacGuill. The mother was present. Ms. Coggans was also at Dundalk District Court that day although not by prior appointment when both Mr. MacGuill and the mother spoke to her. Ms. Coggans appears to have agreed to appear for the mother as she had a pre-existing solicitor client relationship with her although on this occasion, no formal legal aid arrangements had been put in place.

16. It would appear that what transpired in court was that the summons was not proceeded with but instead, the parties consented to a variation of the access arrangements over the school holidays to afford the applicant additional access from 6pm on Tuesday to 6pm on Wednesday until the 1st of September, 2015.

17. The order of the District Court made on the 23rd of July, 2015, recites that it is an interim variation order made pursuant to the provisions of the Guardianship of Children Acts, 1964 to 1997 in which the applicant is described as being the "Applicant" and the mother the respondent. Further to the making of this order, the guardianship proceedings were adjourned by the court until the 24th September, 2015. The summons was also adjourned to the same date although there is no formal order to that effect.

18. It would appear that access proceeded satisfactorily over the summer holidays and when the matter came back before the court on the 24th September, 2015, Mr. MacGuill did not seek to proceed with the summons on behalf of the applicant but rather applied for an adjournment. Ms. Coggans on behalf of the mother objected to this course and applied to have the summons struck out. This application was granted by the District Judge. No appeal was taken from that order nor was any subsequent fresh summons issued by or on behalf of the applicant.

Courts (No. 2) Act, 1986

19. Section 5 of the Act of 1986 provides as follows:

> "5.— (1) In this section "the Act of 1964" means the Guardianship of Infants Act, 1964 , as amended by the Courts Act, 1981, and the Age of Majority Act, 1985.
>
> (2) Without prejudice to the law as to contempt of court, where the District Court has made an order under section 7 or section 11 of the Act of 1964 containing a direction regarding—
>
> (a) the custody of an infant, or
>
> (b) the right of access to an infant,
>
> any, person having the actual custody of the infant who, having been given or shown a copy of the order and—
>
> (i) having been required, by or on behalf of a person to whom the custody of the infant is committed by the direction, to give up the infant to that person, or
>
> (ii) having been required, by or on behalf of a person entitled to access to the infant in accordance with the direction, to allow that person to have such access,
>
> fails or refuses to comply with the requirement shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £200 or, at the discretion of the Court, to imprisonment for a term not exceeding six months or to both such fine and such imprisonment…."

Civil Legal Aid Act, 1995

20. The Act of 1995 was enacted in the wake of the judgment of the European Court of Human Rights in *Airey v. Ireland* (1979-80) 2 EHHR 305. It establishes the Legal Aid Board and defines its functions in s. 5 as follows:

> "5.—(1) The principal function of the Board shall be to provide, within the Board's resources and subject to the other provisions of this Act, legal aid and advice in civil cases to persons who satisfy the requirements of this Act…"

21. The Board's function is thus confined to providing legal aid and advice in civil cases. It performs no role in criminal cases. S. 26 (2) provides, *inter alia*, as follows:

> "Subject to subsection (3), a person shall not qualify for legal advice in respect of –

(a) A criminal law matter …"

22. The expression "legal aid" is defined in subs. 27 in the following terms:

> "27.—(1) In this Act "legal aid" means representation by a solicitor of the Board, or a solicitor or barrister engaged by the Board under section 11, in any civil proceedings to which this section applies and includes all such assistance as is usually given by a solicitor and, where appropriate, barrister in contemplation of, ancillary to or in connection with, such proceedings, whether for the purposes of arriving at or giving effect to any settlement in the proceedings or otherwise.
>
> (2) This section applies to all civil proceedings other than those relating to designated matters in respect of which there is not for the time being an order in force under subsection (10) of section 28 —
>
> (a) conducted in the District Court, the Circuit Court, the High Court or the Supreme Court, or
>
> (b) conducted in any court or before any tribunal for the time being prescribed by the Minister, with the consent of the Minister for Finance, by order under this section,
>
> including proceedings arising out of or connected with such proceedings conducted before an officer of such court or tribunal, by its direction and proceedings under Article 177 of the Treaty establishing the European Economic Community, signed at Rome on the 25th day of March, 1957."

23. S. 28 sets out the criteria for obtaining legal aid including those as to financial eligibility specified in s. 29. The applicant must otherwise establish that he has reasonable grounds for instituting or defending civil proceedings and is reasonably likely to be successful and may be required to satisfy certain other criteria. However under subs. (3), an applicant for legal aid does not have to satisfy the criterion of being reasonably likely to be successful where the proceedings relate to the welfare of a child and this includes custody and access issues.

The Arguments

24. The applicant's fundamental contention is that the only means of enforcing the relevant District Court order in this case was by way of a prosecution under s.5 of the 1986 Act and accordingly, such prosecution must be viewed as being "in contemplation of, ancillary to or in connection with" the earlier civil proceedings. That being so it is said, the expression "legal aid" must be considered to include such a prosecution.

25. The applicant contends that in construing s. 27, the court must apply the normal rules of statutory construction, the first of which is that the words used in the section must be accorded their natural and ordinary meaning. So construed, the plain ordinary meaning of the section is that enforcement proceedings by way of criminal prosecution must be regarded as covered. As an alternative to this contention, the applicant argues that if the court were to conclude that the words of the section on their face do not expressly cover an enforcement prosecution, a purposive interpretation should be adopted to avoid giving rise to an absurdity, such absurdity being that a person who is entitled to legal aid to obtain a court order cannot be afforded legal aid to enforce it.

26. The applicant relied on s. 5 of the Interpretation Act, 2005 and the judgments of the Supreme Court in *D.B. v. the Minister for Health* [2003] 3 I.R. 12 in support of this contention. As a further alternative to that contention, counsel argued that the statute should be liberally interpreted as one appropriately regarded as a remedial social statute and the judgment of O'Malley J. in *G. v. Department of Social Protection* [2015] IEHC 419 was relied upon.

27. In urging that a constitutional interpretation of the Statute required it to be construed in the manner contended for by the applicant, reliance was placed on the judgment of Gannon J. in *M.C. v. Legal Aid Board* [1991] 2 I.R. 43 in which the court considered that the Legal Aid Board were under a duty to implement the scheme fairly and in a manner which fulfilled its declared purpose.

28. This decision was followed by Kelly J. (as he then was) in *O'Donoghue v. Legal Aid Board* [2006] 4 I.R. 204 and also by the Supreme Court in *Magee v. Farrell* [2009] 4 I.R. 703. Such an interpretation was said to be further necessary to render the section compliant with the requirements of the European Convention on Human Rights Act, 2003. Without the benefit of legal aid to bring a prosecution under the 1986 Act, the applicant's access to the court could not be regarded as effective since he was rendered unable to enforce the order.

29. A further argument was advanced by the applicant that if the court concluded that s. 27 did empower the Legal Aid Board to provide legal aid for a prosecution under the 1986 Act, then by adopting the policy it did to the effect that it could not aid proceedings involving a "criminal element" the Board had unlawfully fettered its discretion and a number of well known authorities in that regard were cited. Finally, the applicant submitted that if the court were to conclude that s. 27 did not in fact permit the Legal Aid Board to afford the applicant legal aid in the circumstances arising, this would constitute a breach of the fundamental rights provisions of both the Constitution and the Convention.

30. Counsel for the Legal Aid Board submitted that the jurisdiction to grant legal aid afforded the Board under the Act is explicitly confined to "civil proceedings" and the natural and ordinary meaning of the words of s. 27 was clear that legal aid could not be provided in respect of what was plainly a criminal prosecution. With regard to the applicant's argument that because O. 58 r. 8 of the District Court Rules relating to the bringing of a prosecution under s. 5 of the 1986 Act for non compliance with a custody/access order is contained in Part 3 of the Rules which deal with "civil proceedings", the Legal Aid Board contended that this could not have the effect of transmuting a clearly criminal prosecution into a "civil proceeding".

31. The Rules Committee could not bring about such a result by the mere inclusion of the procedure in the civil section of the Rules. Reliance was placed on the judgment of the Supreme Court in *State (O'Flaherty) v. O'Floinn* [1954] I.R. 295 in that respect. Attention was drawn to the fact that until 2014, an application could be made for attachment and committal in the District Court in respect of non compliance with a District Court order, including an access order but this provision was deleted by the District Court (Civil Procedure) Rules 2014. Subsequent to the events complained of herein, new enforcement mechanisms have been introduced by s. 60 of the Children and Family Law Relationships Act, 2015 which inserts a new s. 18 A – D into the Guardianship of Infants Act, 1964 on foot of which various enforcement measures have now become available.

32. The Legal Aid Board further contended that there was no breach of the ECHR or the Constitution in circumstances where the conviction of a parent for non compliance with an access order and the imposition of a fine or imprisonment could not be regarded as an effective remedy in securing access to a child.

33. Counsel further submitted that in the events that happened subsequent to the grant of leave, this application was now moot and it was no longer either necessary or appropriate for the court to determine it. Reliance was also placed on the provisions of s. 26 of the 1995 Act, subs. 2 above referred to.

34. Counsel for the Attorney General also submitted that the applicant's case was moot. He further contended that the right of effective access to the court contended for by the applicant was available through means other than a criminal prosecution under s. 5 of the 1986 Act. Those means included a right to bring a further civil application for fresh or varied access in respect of which civil legal aid would have been available. It was well settled since *Magee* that the right to legal aid is not absolute and there was nothing to suggest that in reality the applicant was denied his right to effective access to the courts as found in *Airey* by the ECtHR. The applicant had to establish that if he had such a right and it was denied him, he thereby suffered prejudice or damage. Such evidence was lacking here.

Discussion

35. The fundamental issue in this case is one of statutory interpretation. In construing any statutory provision, the statute must be read as a whole. Words should be construed literally, utilising their plain and ordinary meaning unless to do so would fail to give effect to the intention of the legislature or give rise to an obvious absurdity.

36. The long title to the 1995 Act describes it as "an Act to make provision for the grant by the State of legal aid and advice to persons of insufficient means in civil cases." The Act is thus confined to civil cases and s. 5 makes clear that the Board's function is confined to providing legal aid and advice in civil cases. Of course the expression "civil cases" is not defined in the Act and there was debate during the course of the hearing as to what might and what might not comprise such cases. Authorities were referred to which deal with issues concerning whether particular pieces of litigation might be regarded as civil or criminal for various purposes.

37. It seems to me that these authorities are of limited assistance in the context of the present case. In this instance, it appears to me more relevant not to define what is a "civil case", but rather what is not. A prosecution under s. 5 of the 1986 Act cannot in my view be regarded on any analysis as a "civil case". It is a prosecution whose object is to punish the offender. The outcome is a fine or sentence of imprisonment or both, neither of which can directly benefit a private complainant. Any fine imposed is paid to the Exchequer.

38. Indeed it seems to me that it is not even necessary that the complainant be a party to the civil proceedings which give rise to the prosecution. Thus a member of an Garda Síochána could make a complaint. A prosecution under s. 5 is not, strictly speaking an enforcement measure. The bringing of such a criminal prosecution is in respect of an offence that has already been committed, not in respect of the prevention of one that may be committed in the future. The offender may still be subject to the penalties prescribed by the Act despite subsequent compliance with the order, the earlier breach of which gave rise to the complaint. He may still be subject to conviction and penalty irrespective of his subsequent conduct. By the same token, if he is still in breach of the order when the matter comes before the court, he cannot be punished for any breach subsequent to the date of the breach complained of in the summons. Clearly therefore, the bringing of a s. 5 prosecution is significantly different from the forms of enforcement measures that exist in other civil proceedings such as attachment and committal.

39. It seems to me clear that when s. 27 speaks of "civil proceedings" and assistance usually given by a solicitor or barrister in contemplation of, ancillary to or in connection with such proceedings, the section envisages assistance given within the parameters of the civil proceedings themselves. It would seem to me to do violence to the plain language of s. 27 to hold that an entirely separate criminal prosecution, which may be brought by a non party to the litigation, could be regarded as being brought in contemplation of, ancillary to or in connection with civil proceedings.

40. Such a criminal prosecution would be a different form of proceeding which is clearly a criminal proceeding, not a civil proceeding and is in fact an entirely different piece of litigation. It is of course true to say that since the s. 5 prosecution could not be brought without a prior order having been made in civil proceedings, it is to that extent "connected" to those civil proceedings. However, the mere fact of such a connection cannot of itself bring a separate criminal prosecution within the ambit of s. 27.

41. One can envisage examples of the kind instanced by counsel for the Legal Aid Board where subsequent criminal proceedings could be connected to the civil case. For example, a prosecution under the Child Abduction Act, 1991 for failing to return a child to a custodial parent after a period of access is clearly connected with the original proceedings. Similarly a prosecution for interfering with evidence in the civil case or even assaulting a judge during the course of a hearing could be regarded as connected to the civil proceedings. The mere fact of such connection on its own cannot however bring such criminal proceedings within the ambit of s. 27.

42. Nor does it seem to me that such an interpretation of s. 27 gives rise to absurdity. The absurdity complained of by the applicant is that he has been provided with legal aid to obtain an access order but is being denied it to enforce the same order. As I have already explained, a s. 5 prosecution is not an enforcement measure. It is true to say that a temporary lacuna appears to have developed in terms of enforcing access orders between the abolition of the contempt jurisdiction of the District Court in 2014 and the introduction of new enforcement measures by the Children and Family Law Relationships Act 2015. The applicant's case would appear to have fallen into that relatively short lacuna. However, it seems that in reality, complaints about access were dealt with by way of further applications to the court for variation orders as indeed occurred in the present case. Such applications are matters in respect of which legal aid is available.

43. The applicant says that if the court's view is that a s. 5 prosecution is not covered by s. 27 of the 1995 Act, this amounts to a violation of his fundamental rights under both the Constitution and the Convention of effective access to the courts. I do not think this is so. Courts deal on a daily basis with parties who are not legally represented on a myriad of issues of varying legal complexity. One is frequently struck by the ability of persons, even of modest educational backgrounds, to conduct their cases effectively.

44. Judges, while duty bound to remain impartial as between the parties, afford every reasonable assistance to unrepresented parties so as to ensure that justice is done in each case. Of course it is true to say that in cases involving complex legal issues, an unrepresented party may be at a disadvantage. This was recognised by the ECtHR in cases such as *Steele and Morris v. The United Kingdom* (2005) 41 EHRR 22). On the other hand, the court has recognised that a failure to provide legal aid does not automatically mean that injustice follows. In *McVicar v. The United Kingdom* (2002) 35 EHRR 21, the court considered that the applicant "a well educated and experienced journalist who would have been capable of formulating cogent argument" was not prevented form presenting an effective defence by his ineligibility for legal aid.

45. It is said on behalf of the applicant in these proceedings that the non availability of legal aid to bring a criminal prosecution renders the scheme unfit for purpose. I disagree. The procedure of bringing a s. 5 prosecution could not be considered complex. The complainant makes a complaint to the District Court clerk, as in the present case, that there has been non compliance with the

access order. The summons is issued and served. When it comes before the court, the complainant gives evidence that an order for access was made and not complied with. That is all that is required to establish the offence.

46. I do not think that it must necessarily follow that a party in the position of the applicant could not undertake these steps without the benefit of legal aid. The applicant did not encounter particular difficulty in bringing his own application for an extension of time to appeal the original District Court order once his attention had been directed to the relevant form.

47. Of course the fact remains that even in circumstances where the applicant was legally represented in bringing a prosecution under s. 5, having issued the summons and brought it before the court, he chose not to proceed with it. Instead an agreement was negotiated by the lawyers for the parties for increased access rights in favour of the applicant and an order of the court was made to that effect. As I have already pointed out, that outcome was one that could have been achieved with the benefit of legal aid had the applicant chosen to apply for it.

48. The relief which the applicant seeks in these proceedings is directed towards remedying an alleged inability to enforce an order by the bringing of a criminal prosecution. However, having now initiated such a prosecution, the applicant has, since the grant of leave herein, elected not to proceed with it in favour of making an application for which legal aid was at all times available.

49. It therefore seems to me that irrespective of any issues of construction of the statute, the applicant's claim is in reality moot. The question of what constitutes a moot claim was considered by the Supreme Court in *O'Brien v. The Personal Injuries Assessment Board (No. 2)* [2007] 1 I.R. 328 where the court's unanimous judgment was delivered by Murray C.J. He said (at p. 333):

> "[16.] As Hardiman J. observed in *Goold v. Collins* [2004] IESC 38, (Unreported, Supreme Court, 12th July, 2004), 'proceedings may be said to be moot where there is no longer any legal dispute between the parties'. He cited with approval from Tribe's *American Constitutional Law* (3rd ed., New York, 2000):-
>
> > '… Mootness doctrine centres on the succession of events themselves to ensure that a person or a group mounting a constitutional challenge confronts continuing harm or significant prospect of future harm. A case is moot, and hence not justiciable if the passage of time has caused it completely to lose 'its character as a present, live controversy of the kind that must exist if the Court is to avoid advisory opinions on abstract propositions of law' (*Hall v. Beals* (1969) 396 U.S. 45). Thus, the Supreme Court has recognised that mootness can be viewed as 'the doctrine of standing set in a time train: the requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness).'
>
> [17.] Hardiman J. then went on to cite a further passage from a Canadian case of *Borwski v. Canada* (1989) 1 S.C.R. 342 at p. 344 indicating the rationale from modern mootness rules. That passage was at p. 344:-
>
> > 'An appeal is moot when a decision will not have the effect of resolving some controversy affecting or potentially affecting the rights of the parties. Such a live controversy must be present not only when the action or proceeding is commenced but also when the court is called upon to reach a decision. The general policy is enforced in moot cases unless the court exercises its discretion to depart from it.' "

50. Applying those principles to the present case, in my view the relief sought by the applicant in these proceedings, even were it available, would not have the effect of resolving any continuing controversy that affects the rights of the applicant. That controversy ended when the applicant brought a summons before the District Court, decided not to proceed with it and it was struck out. Nor could it be said that any order of the court would be determinative of future rights of the parties in the event of ongoing breach of the order by the mother. That no longer arises by virtue of the introduction of the 2015 Act which provides a suite of enforcement measures clearly sufficient to guarantee effective access to the court and for which legal aid is available

51. For these reasons therefore, I will dismiss this application.