THE HIGH COURT

JUDICIAL REVIEW

JR 2024 No.595

[2024] IEHC 673

BETWEEN

ROBERTO ALAMAZANI

APPLICANT

AND

A JUDGE OF THE DISTRICT COURT

RESPONDENT

Judgment of Ms. Justice Mary Rose Gearty delivered on the 25th of November, 2024

1. Introduction

1.1 The Applicant seeks to quash an order of the District Court that Dublin City Council be granted possession of a property in which he has been a tenant since 2020. He has three main grounds: first, that he has made a complaint about the judge who should, accordingly, have recused herself; second, that he was not permitted to make his case in court; third, the property which is the subject matter of this case was not fit to live in and he should not have been required to pay rent. He claims he is entitled to a refund of rent paid.

1.2 The Applicant did not appeal the decision of the District Judge. The Respondent was present at the leave stage as the Applicant notified the Respondent of his intention to apply for leave, at the direction of the Court made on 1st May. He was granted an adjournment by Bolger J. on 31st July on the basis that he had made an application for legal aid. He was permitted, by Bradley J., to submit further documentation in support of his application as he wanted to seek a stay on execution of the Order. He submitted documents on the 10th and 11th of October, which documents included the original District Court Order.

1.3 When the matter came before this Court, the Respondent applied to strike out the case and the Applicant sought a further adjournment in order to obtain legal advice and to join the City Council as a Respondent. This judgment issues, therefore, at an early stage of the proceedings: at the leave stage, but where the matter has already been listed in July, in October and in November, without any progress being made in the litigation.

1.4 The Applicant has submitted a handwritten letter, dated 18th January 2020, addressed to the City Council, in which he outlines his dissatisfaction with the premises. It begins: *I do not want this flat and I request a full refund of money paid*. Even if taken at its height, and ignoring that it was not on affidavit, this letter does not reveal any argument that could be the basis for a judicial review case against the Judge who heard the evidence that he had stopped paying rent and granted a possession order to the Council.

2. Leave to seek Judicial Review and Alternative Remedies

2.1 Those who seek leave to review judicial decisions must demonstrate arguable grounds for the remedy sought: *G v. DPP* [1994] 1 IR 374. The Respondent argues that there are no arguable grounds for leave in this case.

2.2 On the 15th April 2024, the Respondent Judge made an order for possession of the property in question under section 12 of the Housing (Miscellaneous Provisions) Act of 2014. This order commenced on the 15th of June 2024 and execution of the order of possession must take place on or before the 15th of January, 2025. The Respondent also gave the City Council a decree in the sum of €13,663.85 in respect of arrears of rent due up to 15th April 2024.

2.3 When I asked the Applicant why he had not appealed the District Court order for re-possession, he replied that his only route was judicial review and, later in the same hearing, that he had chosen, instead, to come to the High Court. As with most cases before the District Court, there is a full appeal to the Circuit Court. This option is referred to within section 12 itself, which provides for a hearing of possession cases otherwise than in public in the District Court or, on appeal, in the Circuit Court.

2.4 It is well established that the remedy of judicial review is one that is available only when other remedies have been exhausted. As set out by Murray J. in *Chubb European Group v. HIA* [2020] IECA 91, if there is an alternative remedy, relief should be refused unless that remedy is not

adequate, or it is in the interests of justice to allow leave instead. On this ground alone, the Applicant has chosen the wrong remedy and his application must be struck out unless there is a reason why judicial review is in the interests of justice. Where a lack of fair procedures at the first decision-making stage is so fundamental that the appeal is, in reality, the only fair hearing, then judicial review is appropriate so I will consider the substance of the case made by the Applicant.

3. Bias and Complaints against the Judge

3.1 The Applicant has submitted that the Judge must be biased as he has made a complaint about her. The law on bias is very clear. It has recently been restated (in similar circumstances) in *Smith v Cisco Systems Internetworking (Ireland) Ltd* [2023] IECA 186. There, a litigant in person claimed that two judges should recuse themselves on the basis that he had made complaints about both to the Judicial Council. The appropriate legal test was confirmed: A recusal application on the basis of apprehended bias must demonstrate the reasonable apprehension of bias. Issues of alleged judicial misconduct are decided in a separate process by the Judicial Council.

3.2 While the facts of a complaint may overlap with the facts of a case, it is for the Applicant to put all evidence and facts before the Court if he argues that a reasonable and objective person appraised of all relevant facts would have a reasonable apprehension of lack of impartiality that he will not have a fair

trial. There is, in the words of Whelan J., no blanket apprehension of bias in respect of judges against whom complaint is lodged. The existence of a complaint, without more, does not create a perception of unfairness.

3.3 The only evidence of the basis of his complaint to the Judicial Council was an exhibit, an email, in which the heading "Basis on which the Complaint is made" was followed by this description: "*I am directly affected by the conduct complained of*". When asked, the Applicant told the Court that the complaint was a matter which was between him and the Judicial Council but confirmed that it related to these proceedings. There is no evidential basis, therefore, for an argument that the Judge was biased. If only the fact of a complaint was sufficient to prove bias, any litigant could lodge a complaint in mid-proceedings and ask the judge to recuse herself as a result in order to successfully frustrate the court system and halt an individual case. That would be unfair to other litigants, in particular, the opposing party and would frustrate the court process to the detriment, ultimately, of all citizens.

3.4 There is a further difficulty for the Applicant in this regard: he has not adduced any evidence of an application to the Judge to recuse herself. If he has not made such an application, setting out his grounds for recusal, it is difficult for the High Court, in judicial review proceedings, to find that he has good grounds for such an argument. Again, it shows a failure to use an alternative remedy, namely, that of applying to the Judge to recuse herself.

4. <u>Fair procedures: hearing relevant evidence</u>

4.1 The Applicant also argues that an inspection report submitted by the Council contained false and misleading information and didn't take into account matters he outlined to the engineers who conducted the inspection. He refers to the Council's proceedings as frivolous, vexatious and an abuse of process. He relies on a letter, handed into this Court but not put on affidavit, in which he told the Council that he refused the accommodation offered and requested a full refund.

4.2 It is a matter for the Applicant to make his case. The fundamental claim in this case appears to me to be untenable: the Applicant argues that his unwillingness to accept the tenancy is sufficient grounds to take possession of the property, refuse to pay rent, fail to fully defend the District Court proceedings, complain about the Judge and then apply for judicial review to quash the possession order made. To make matters worse, he does not appear to want possession, but he wants a refund. If he continued to pay rent, he was entitled to possession. Not having paid rent, the landlord was entitled to begin possession proceedings. When the Applicant failed to appear after being notified of the hearing date, once the arrears of rent had been proven, the Judge was entitled to make the order sought.

4.3 The argument that the Respondent did not allow him to adduce an inspector's report in respect of the property is difficult to reconcile with the

known facts of the case. It is set out in the body of the District Court Order, and was not contradicted by the Applicant, that he had been served with notice of the proceedings and that he did not appear on the date that the Order was made. Not only was his failure to appear not contradicted, but he did not offer any reason as to why he had not attended in court that day, 15th April 2024. The Judge heard evidence that the Applicant had not paid weekly rent of €37.00 and that arrears of rent had accumulated and that, as of that court date, he owes the Council a sum of €13,663.85.

4.4 The Applicant submits that the premises was not fit for habitation and that he refused to accept it, hence he should receive a refund in respect of the money he did pay. There was no evidence offered of rent or any deposit paid by him. Nor does he appear to have factored into his calculations the fact that he appears to be living there to the present day but without paying any rent. The Applicant did concede that he had only recently moved back into the premises, a concession that was not in his affidavit, but that was said in open court. There was no evidence in respect of the state of the property and its defects, if any.

4.5 In his affidavit verifying his statement of grounds the Applicant sets out his belief that his fundamental rights under the constitution have been violated and asserts that the District Judge was unqualified to perform her legal duties because of her conflict of interest or lack of impartiality. This relates

entirely to his complaint against her, made in July of 2023, during the course of the same case, which cannot be the sole basis of an argument of bias.

4.6 The Applicant did not appear on the final hearing date of the hearing before the District Court, did not offer a reason for failing to appear and did not appeal that order. In all of these circumstances, the Applicant is not entitled to leave for judicial review.

5. Adjournment Application to Obtain Legal Aid

5.1 I have considered the Applicant's request for an adjournment to allow him to obtain legal advice. The Respondent argued that his application had been made as early as May and, on 31st July, Bolger J. was shown a letter from the legal aid board acknowledging that this applicant had made an application for free legal aid. When asked what progress he had made, the Applicant told me that this was a matter for the Legal Aid Board. He maintained that he had not heard from the Board and (though there was no affidavit evidence of this) that he had called the Board but had no indication when his case might be reached.

5.2 Again, taking this case at its height, the Applicant has sought legal advice but that is not a mechanism whereby all court proceedings must thereby wait until the Legal Aid Board has made a decision on the case. As noted, the District Court order is a time sensitive order which will expire in under two months. The Applicant lodged his leave application within three

months but it has since been adjourned on at least two occasions in this court and yet the proceedings are no further on than they were last July.

5.3 One of the factors the Court must consider in this application is the prospect of the Applicant successfully obtaining legal aid. Section 28 of the Civil Legal Aid Act 1995 prescribes the legislative basis on which legal aid may be granted, and this includes the prospects of success in the action itself.

5.4 Examining the substance of this Applicant's complaint, I cannot see any basis on which the Applicant could succeed in an application for leave to judicially review the District Court order having failed to appear to contest it and then having failed to appeal it. This decision is confirmed when one looks at the grounds for leave. The primary ground is that of bias and the case law is clear in this respect: the mere making of a complaint will not ground a claim of bias. The other ground, insofar as there is any evidence of it, is that the premises was not suitable. This could not form the basis to quash an order for possession on the grounds of non-payment of rent.

5.5 Finally, the substance of the Applicant's claim is contradictory. He seeks to contest a possession order in respect of property he does not want. He seeks ultimately, to obtain a refund of rent but makes no proposal in respect of the arrears of rent that he owes to the City Council. He claims that the Council's case was frivolous and vexatious when all the signs are that his case is an attempt to use the court process as a mechanism to obtain a refund of rent. The proceedings all revolve around an attempt to fight a possession

order in respect of property that he says he does not want and in respect of which he failed to pay over thousands of euro in rent. Judicial review is a discretionary remedy and it is not an appropriate remedy to offer an applicant who uses the court process to obtain a refund. Again, taking this case at its height, the Applicant is preventing the Council from offering the premises to another tenant and has not considered the rent he now owes.

5.6 The Applicant attended in this Court last Friday and again last Monday and Thursday in order to seek a stay of execution in respect of this Order as he had received a letter from the Sheriff's office warning him that execution may take place at any time after midnight on 25th November. The Council, while not a notice party or Respondent in this case, did attend to undertake that no such steps would be taken pending receipt of this judgment. This reassurance was appreciated by the Court.

6. Conclusions and Costs

6.1 I must refuse leave to pursue these judicial review proceedings. The law requires that a successful party is entitled to her costs in a case such as this. This means that the Court must make a costs order against the Applicant unless there are reasons not to do so. I will hear the parties in relation to this issue.

7. Costs and Stay of the Court's Order, Ex tempore ruling on 25th November

7.1 The Applicant asked me to make no order for costs as he intends appealing this case to the Court of Appeal. This is not a basis on which to refuse the Respondent, so I ordered that the Applicant pay the costs of this application.

7.2 The Applicant also sought to make submissions on the procedure required under O.84, arguing that he had not yet made his leave application so it was not procedurally correct that the Respondent should have been heard. I noted that this argument was made for the first time, too late to be considered and that O.84 permits the Court to hear an application for leave to judicially review an order in circumstances where the proposed Respondent is put on notice, which is what occurred in this case.

7.3 The Applicant asked me to stay the District Court Order which I agreed to do but only for a period of 3 days. This is a time-sensitive case in which the Order will expire in mid-January 2025. The case has been delayed for significant periods since the original filing of papers in May 2024 and this was the fault of the Applicant. The Applicant was directed to join the City Council as a Respondent in July but did not do so. I allowed a very short stay of 3 days so that the Applicant would not be ejected from the premises immediately and directed him to make haste with any appeal. It is not fair to the City Council, who can otherwise assign this premises to another party, to grant a longer period. This is particularly so where the Applicant argues that he has never wanted to live at the premises in question.