

J. C. (✓)

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THE HIGH COURT

1985 No. 75IA

APPLICATION OF J. C.

Judgment of Mr. Justice Barrington delivered the 25th day of July, 1985.

The Applicant in the present case claims to be destitute and to be denied access to the Courts and to legal relief by virtue of his poverty.

The present application, which does not conform with any Rule of Court, was presented by the Applicant in person. Originally it was an ex parte application but the Applicant was, apparently, advised to serve notice on the Attorney General and I fixed a return day for the notice for Tuesday, July 9th 1985.

On that date Mr. Lynch of the Attorney General's Office attended out of courtesy to the Court. Beyond saying that the Attorney General had difficulty in making out precisely what the Applicant's practicable grievance was he took no part in the proceedings.

In his Notice of Motion the Applicant sought wide ranging reliefs, including an Order granting him access to the Courts, an Order in his favour waiving all Court fees and stamp duties on legal documents, an Order condemning certain provisions of the Civil Legal Aid Scheme as unconstitutional and an Order condemning certain provisions of the Social Welfare Code and of the procedures of the Department of Social Welfare on the same grounds.

The Applicant's strategy appears to be first to obtain

an Order waiving the payment by him of stamp duties and Court charges; then to mount proceedings in proper form to attack the provisions of the Civil Legal Aid Scheme; and ultimately to obtain legal aid to attack certain provisions of the Social Welfare Code and procedures for hearing appeals in the Department of Social Welfare. The Applicant also stated that, having exhausted the procedures of the domestic Courts, he hoped ultimately to take his case to the European Court of Human Rights.

Despite the unorthodox nature of the proceedings and in view of the Applicant's claim that he was destitute and being denied relief because of this, I considered it proper to hear his application de bene esse.

The Applicant is a lay litigant and allowance must be made for this. Nevertheless, I think it would not be unfair to say of the application that it was strong on principle and short on fact. When, at one stage, I asked the Applicant to tell me what exactly he was looking for he replied "justice".

It did, however, emerge that in the background of the case is or was a matrimonial dispute (J.C. v. J.H.C.) in which Mr. Justice Keane delivered judgment on the 4th of August 1982.

From that Judgment it appears that the present Applicant is English by birth but spent many years in Australia. He was married but his marriage was dissolved by a decree of the Family Court of Australia on the 25th of March 1978.

The Applicant went through a form of marriage with his second wife (who was the Plaintiff in the proceedings before

Mr. Justice Keane) in a Registry Office in England on the 6th of May 1978.

The Applicant maintained, in the course of the application before me, that at the time of his Australian divorce he was domiciled in Ireland and that the Australian divorce was invalid because of this fact and because of the provisions of Article 41 of the Irish Constitution. He therefore maintained that the marriage ceremony in the English Registry Office was invalid; that the Plaintiff in the action before Mr. Justice Keane was not his wife; and that therefore she had no rights as a wife against him.

From Mr. Justice Keane's Judgment it would not appear that the Applicant, in the proceedings before Mr. Justice Keane challenged the validity of the Australian divorce though it does appear that he challenged the validity of the English marriage. The relevant passage in Mr. Justice Keane's unreported Judgment is as follows:-

"It was accepted by both parties that the Australian divorce was granted by a Court of competent jurisdiction and should be recognised by this Court. It was submitted on behalf of the Defendant, however, that the English marriage was invalid and that the parties were therefore not husband and wife. No evidence was adduced in support of this submission, which I have no hesitation in rejecting."

The Applicant appealed against this decision to the Supreme Court which rejected his appeal and he now says that he has a case pending in the European Court of Human Rights concerning the matter.

The significance of the parties in the action before Mr. Justice Keane being husband and wife was that in October 1977 the Applicant bought a house in Killiney for £38,380. The house was purchased entirely out of moneys provided by the Applicant but was placed in the joint names. Mr. Justice Keane held that the presumption of advancement applied and that the wife was accordingly entitled to a half interest in the house. Mr. Justice Keane also ordered the Applicant to pay his wife maintenance at the rate of £82. per week. He added -

"While I accept the Defendant's evidence that his present income is only £97 per week, I am satisfied that a re-arrangement of his assets will enable him to produce sufficient income to support his wife at this rate."

Mr. Justice Keane had then to turn his attention to resolving a dispute between the Applicant and his wife as to the ownership of a pure-bred bull terrier. Mr. Justice Keane resolved the dispute against the Applicant.

The Applicant blames the decision of Mr. Justice Keane, as affirmed by the Supreme Court, for his present unhappy circumstances. He claims that he lost his home in February of this year and that he is presently attempting to survive on unemployment assistance. The full rate of unemployment assistance for a person, like the Applicant, resident outside an urban area, is £29-95 per week. But the Applicant is receiving only £18-48 per week. This is apparently because the Department of Social Welfare took the view that he had capital assets which should be taken into consideration in

assessing the amount of unemployment assistance to which he was entitled.

This is clear from a letter from the Minister for Social Welfare to the Applicant dated 21st of June 1985 and which contains the following paragraphs:-

"I have now had an opportunity of looking into your case (QC No. F24281) regarding your entitlement to unemployment assistance.

I find that following further enquiries, an appeals officer assessed your means at £13-27 a week derived from capital. The yearly value of capital is determined by calculating the first £400 at one-twentieth and any remainder at one-tenth. An appeals officer decision is final in the absence of new facts or fresh evidence.

Subject to the usual conditions for receipt of unemployment assistance the means assessed are deducted from the maximum weekly rate payable in your case leaving you entitled to a payment at the rate of £18-4! a week."

The Applicant claims that, since his means were originally assessed, the assets of £5,000 to £6,000 which he then had have been used up. If this is so this would appear to be "new facts or fresh evidence" within the terms of the Minister's letter.

The Applicant, however believes, that he was discriminated against and has demanded a transcript of the hearing before the deciding officers, a new oral hearing, and the right to

be represented. It does not appear to me that he is entitled to any of these things.

Further, and in the alternative, the Applicant wishes to attack the constitutionality of any regulations which permit him to be treated the way he has been treated.

With a view to litigating these matters the Applicant applied to the Law Centre at Aston House, Dublin, for free legal aid.

On the 5th of June 1985 the Legal Aid Board wrote to him in the following terms:-

"I beg to refer to your application for legal aid which has been refused by the Certifying Committee on the following grounds:-

- (1) That you have not made a case for being granted a certificate which is such as to warrant the conclusion that you would be reasonably likely to be successful in the proceedings.
- (2) That having regard to all the circumstances of the case, including the probable cost of taking the proceedings, measured against the likely benefit to you, it would not be reasonable to grant a certificate.

You are entitled to appeal the decision to an Appeals Committee of the Board and I note, from our telephone conversation on the 4th inst., that you wish me to lodge an appeal on your behalf and I understand that you wish to let me have further information in support of your appeal and I will be obliged therefore to receive it and I will then transmit it to the Board on your behalf

Yours sincerely,"

Meanwhile, however, the Applicant had initiated the present proceedings, and went ahead with them without waiting for the result of the appeal. The Applicant wishes to attack certain provisions of the Civil Legal Aid Scheme which, he suggests, debar him from obtaining relief under that scheme. I doubt if this is correct. The reasons given by the Legal Aid Board in their letter of the 5th of June 1985 are based on certain findings of fact, not on findings of law which preclude the Applicant from obtaining relief.

If the Applicant's financial position is such as he alleges then it is clearly a serious matter. But it appears to me that the wiser, and perhaps the only, course open to him is to satisfy the Social Welfare authorities of the factual position.

Instead he has brought this quite extraordinary application before this Court. His most important claim, so far as this application is concerned, is that he is denied access to the Courts by reason of his poverty.

Clearly there are circumstances where a litigant must be entitled to invoke the jurisdiction of the High Court with the minimum formality. An application for habeas corpus is one example. But habeas corpus is a unique constitutional procedure. Another example may be where impecunious prisoners are excused from stamping Affidavits to be used in other State Side applications.

Assuming, without deciding, that despite our existing system of civil legal aid, a case might arise where the High Court would have jurisdiction to dispense with the payment of stamp duties or court fees by a litigant as the only means of vindicating his rights, I have to ask myself

if this is such a case. In my opinion it is not. It appears to me that the issues raised by the Applicant's case are primarily issues of fact and that machinery exists to resolve these issues of fact. On the basis of the evidence presently before me I do not think it is necessary, in order for the Applicant to obtain justice, that he should have access to the Court to raise the great Constitutional issues which he wishes to raise. Nor do I think, on the basis of the evidence at present before me, that he can obtain any practical relief for himself by raising these issues.

I, accordingly refuse the application.

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