

**THE HIGH COURT  
JUDICIAL REVIEW**

**[2016 No. 228 JR]**

**BETWEEN**

**JOSEPH LAVERY**

**APPLICANT**

**AND**

**THE DIRECTOR OF PUBLIC PROSECUTIONS**

**RESPONDENT**

**(NO. 5)**

**JUDGMENT of Mr. Justice Richard Humphreys delivered on the 3rd day of March, 2020**

1. The applicant is a serial litigant and a person subject to an *Isaac Wunder* order. On 6th November, 2019 by order in proceedings entitled as above [2016 No. 228 JR], Meenan J. gave him liberty to apply for leave to issue *mandamus* proceedings in two separate proposed proceedings; *Lavery v. McLoughlin, Aylmer, the D.P.P and An Garda Síochána* and *Lavery v. McLoughlin*, such leave to be sought on notice to the proposed respondents. That application was adjourned to 19th November, 2019 then to 10th December, 2019, 28th January, 2020 and finally 19th March, 2020 for hearing before Meenan J. in the judicial review list. On 26th February, 2020 separately and without making any comprehensible reference to these developments, the applicant applied to me *ex parte* for leave pursuant to the *Isaac Wunder* order to issue contempt proceedings against two judges. I refused that application: *Lavery v. D.P.P.* (No. 4) (Unreported, High Court, 26th February, 2020).
2. On 3rd March, 2020 the applicant attempted to apply to Meenan J. in the present proceedings for a stay on his proposed trial in the Circuit Court on a charge of assault of a member of An Garda Síochána, which is due to begin on 4th March, 2020. He only tried to make that application on the afternoon of the day before the trial and even then, only after Meenan J. had risen. Unable to make the application to the judge in charge of the Judicial Review list, he then applied to me for such a stay. A stay in these circumstances is not appropriate for a number of reasons:
  - (i). The applicant has already been directed to make the application in this case on notice; consequently, it could only be in exceptional circumstances that one could consider entertaining any further application *ex parte*.
  - (ii). Procedurally the matter has no connection with the proceedings in which it is made [2016 No. 228 JR] (which proceedings, I might add, are at an end in any event). The applicant should properly have sought a separate IA (Intended Action) record number for each of the proposed judicial reviews and moved on that basis.
  - (iii). Leave to issue the application has not yet been granted, which could affect whether a stay should be granted and certainly does so here (see the first of the *Okunade v. Minister for Justice and Others* [2012] IESC 49, [2012] 3 I.R. 152 principles).

- (iv). No basis has been demonstrated for such a stay in any event. No grounding affidavit for the stay specifically has been sworn and the grounding affidavit for the intended action discloses no arguable grounds, makes a series of ludicrous points including that "*the applicant is immune to all court orders*" and "*the applicant is immune to court summonses*" and complains (without, I might add, demonstrating any legally valid basis for doing so) that the D.P.P. is in contempt of court in totally separate and non-related proceedings in 2016 (in which Mr. Lavery does not appear to have been involved). Even if counter-factually there was any basis shown for some complaint in those other proceedings, that is entirely irrelevant to this applicant and this application in particular. Mr. Lavery also submits that he is not guilty, but that is a point of defence, not one for judicial review or stays.
- (v). Even if there was a basis, counterfactually, for the present application, making it at a late stage (in this case, on the late afternoon of the day before the trial) is disqualifying: see *per* Kearns P. in *Coton v. D.P.P.* [2015] IEHC 302 (Unreported, High Court, 21st May, 2015).

**Order**

3. Accordingly, the application for a stay is refused. If anything, the present application further reinforces the case for my having made the *Isaac Wunder* order originally.