[2020] IEHC 352

THE HIGH COURT

[2019/465 COS]

IN THE MATTER OF KELLY TRUCKS LIMITED (IN VOLUNTARY LIQUIDATION)

BETWEEN

ANNE KELLY

APPLICANT

AND

GERARD MURPHY PURPORTED LIQUIDATOR OF KELLY TRUCKS LIMITED (IN LIQUIDATION)

AND

COSTELLO TRANSPORT LIMITED

RESPONDENTS

(NO. 2 RECUSAL APPLICATION)

JUDGMENT of Mr. Justice Brian O'Moore delivered on the 17th day of July, 2020.

1. On the 25th of February 2020 Ms. Anne Kelly moved an application seeking certain reliefs, including an injunction restraining the presentation of a Petition to wind up Kelly Trucks Strokestown DAC. She also sought orders setting aside Orders of this Court, going back to 2014 and 2015, on the grounds that these Orders had been procured by fraud (including the alleged dishonesty of one of the judges involved). I refused all reliefs sought in this motion in an *ex tempore* judgment delivered at 2 pm on the 27th of February; that judgment has also been delivered electronically.

2. As soon as I had concluded delivering my decision on the injunction application (as I will describe it), Ms. Kelly informed me that she had brought an application that I recuse myself from any further involvement in these proceedings (by which I understood her to mean the proceedings in which the injunction application was brought and the Petition to wind up Kelly Trucks Strokestown Limited). I delivered an *ex tempore* ruling on this application at 5 pm on the same day. I informed the parties that I would produce a written judgment in respect of the injunction application and the recusal application. There was no objection to this being done. What follows is my written judgment on the recusal application. While I have tidied up a certain amount of the text of the decision which I had originally made, this judgment bears a lot of the hallmarks of an *ex tempore* ruling.

3. This is my ruling on the application made that I would recuse myself from the hearing of proceedings on a number of grounds which are set out in an affidavit of Ms. Anne Kelly. I intend to deal with each ground set out in that affidavit. It constitutes the evidence upon which reliance is placed for the purpose of seeking my recusal. I will, before I look at that affidavit, make a couple of general comments about this application.

4. Firstly, the affidavit was sworn, and as I understand it, a motion was filed in the central office and issued and provided with a return date before I delivered my judgment in the injunction application brought by Ms. Kelly (which also involved an application to set aside certain orders of Baker J. and Murphy J.). When I asked Ms. Kelly about the timing of this recusal motion, when this application was made known to me, she refused to answer my questions on a number of occasions which is somewhat surprising. However, the

uncontradicted facts now are that this application was filed and the affidavit sworn objecting to my continued involvement in the proceedings before I had delivered the judgment. As a matter of common sense and basic logic, if it was felt that there was any merit in the application that I recuse myself, it would certainly have been brought to my attention before I had delivered judgment, which is possibly the most important single step that I have to take in the ongoing proceedings involving these parties. That was not done. The reason given by Ms. Kelly as to why it was not done is that she had been chastised in the past for seeking to reopen matters when judgment was about to be delivered or to argue matters when judgment was about to be delivered; I am unclear as to which of those circumstances are said to be relevant here. Ms. Kelly has shown herself a redoubtable advocate and somebody who is able to look after her own interest. If she truly thought that there was merit in the application to recuse me she would have brought it to my attention and ask that I not deliver judgment. I find the reasons she has given for not doing so somewhat underwhelming.

5. In addition to that, it is notable (and this is the second general point I make) that Ms. Kelly does not rely in any way shape or form on any aspect of my judgment to seek my recusal notwithstanding that the judgment was delivered very shortly before she informed me of this application. When I invited her to make the application for recusal she did not seek an adjournment to allow herself to consider the contents of my judgment, she did not ask that the original return date be honoured and instead she was quite prepared without any let or hinderance to move the application. It follows therefore that the following surprising aspects exist in this application.

6. Firstly, that the reason agitated for the application that I recuse myself did not in fact sufficiently persuade Ms. Kelly to actually seek my recusal before I delivered judgment. Secondly, the contents of my judgment have not given rise to any issue as far as Ms. Kelly is concerned, other than she disagrees with them; that in itself is no reason to seek my recusal from ongoing involvement in these proceedings.

7. I now turn to the affidavit sworn by Ms. Kelly and I am going to go through it in some detail. I will shortly come to the law on the matter. No law was opened to me by Ms. Kelly or indeed by Mr. Healy (who appears for the Petitioner) on this topic.

8. The first reason why my recusal is sought is set out at paragraph one of the affidavit. It is five lines from the bottom and it reads as follows:-

> "I do not accept that Mr. Justice O'Moore did not understand and therefore know and see the fraud/illegality which I placed before him."

That again is at odds with an oral submission made by Ms. Kelly that I did not understand the case made by her at the conclusion of the injunction application on Tuesday 25th February. Having had time to reflect on that and having sworn a solemn affidavit she in fact avers to a view that I did understand the case that she was making and the fraud/illegality which she placed before me. She goes on to say at the end of paragraph one of the affidavit:-

> "That she expects me to act on it regardless of the herein as he is legally required to do so and I will rely upon the hearing, inter alia, to revisit Mr. Justice O'Moore's part in this debacle."

When asked about that Ms. Kelly indicated that she intended to appeal the decision of the court, as is her entitlement. However an intention to appeal a decision is no reason to seek the recusal of the judge in terms of an ongoing involvement in a case. Such ongoing involvement happens frequently. It may well be that a judge has dealt with a discovery application in a matter and has then decided against a party who then appeals that decision; that does not in itself justify the recusal of the judge from, for example, conducting the trial in the same set of proceedings.

9. The second reason given by Ms. Kelly is in the second paragraph. She says:-

> "I similarly seek an order whereby Mr. Justice O'Moore will recuse himself from the herein proceedings on the grounds that he has displayed unwarranted and unexplainable and unjust bias and prejudice, and lack of impartiality towards the applicant, and an utter lack of due regard for the proper practices and procedures of the High Court/Superior Courts."

It has to be said, no rule of court is referred to in Ms. Kelly's affidavit as I read it or no oral submission sets out the rules that I am supposed to have disregarded. The claim is made of unjust bias and prejudice, I would have thought that any bias and prejudice would be unjust, but in any event I will treat this in large measure (but not exclusively) as an application for recusal on the grounds a bias and prejudice. There are other elements to it which I will deal with in due course.

10. The reason why that allegation of bias and prejudice is made is set out in the balance of the sentence. It is stated:-

> "[B]y facilitating and permitting the first respondent and his counsel in to introduce and rely upon pleading, *inter alia*, from another case 2020/53 in the herein matter where the respondent has no pleadings or any form of documentation whatsoever and or resisted hearing the substantive matter of 2019/465 COS notwithstanding the fact that the hearing's substantive matter was issued out of the central office in 2019 and served in court in 2019."

That is, if I may say so one of the fundamental building blocks of Ms. Kelly's application for recusal. It is a very strange building block indeed. This is not least because, when one looks at the Notice of Motion seeking injunctive relief, which I heard on the 25th of February and which I determined on the 27th of February, the very first paragraph of that Notice of Motion seeks an order restraining Mr. Murphy from progressing proceedings bearing the record no. 2020/53 COS as a direct consequence of him having obtained previous orders by fraud, it is alleged. The second paragraph of the Notice of Motion sought an injunction/interlocutory order restraining Mr. Murphy from progressing proceedings bearing record no. 2020/53 COS:-

> "[A]s to allow and facilitate further where as a matter of law, [Mr. Murphy] cannot and refuses to demonstrate as a matter of fact and or law that he is in fact lawfully appointed "Liquidator" of Kelly Trucks under section 277 of the Companies Acts 1963 - 2012."

So at its very outset, the application that Mr. Healy was responding to was an application seeking to restrain the ongoing prosecution of this petition, by which I mean the petition bearing the record no. 2020/53 COS.

11. When I asked Ms. Kelly during the course of her submission for my recusal to accept that the first two paragraphs of her Notice of Motion referred to the 2020 proceedings she again refused to answer that question. That is conduct which, had it been adopted by any solicitor or counsel before me is something of which I would have deeply disapproved. As Ms. Kelly is a lay litigant I am prepared to give her the benefit of the doubt. Nonetheless it is striking that she has refused to acknowledge what her own Notice of Motion says on its face.

12. Secondly, in her own affidavit, Ms. Kelly deals with the same proceedings. At paragraph three of her affidavit grounding the interlocutory injunction application she says:-

> "I further say that in order to demonstrate the amount of times I had attempted to have the court deal with and the legal situation and legal facts of the herein most notably the first respondent is NOT legally appointed as liquidator of Kelly Trucks Ltd. (In Liquidation) and enjoys NO legal rights whatsoever to bring and/or maintain any proceedings as liquidator of Kelly Trucks Ltd. (In Liquidation) most notably but Not limited to the latest proceedings being a petition by the first named respondent record number 2020/53COS where the first respondent is attempting to wind up yet another company under colour of law. […]" [Original EMPHASIS]

Not just in the motion but in the affidavit Ms. Kelly makes an issue about the petition in the 2020 proceedings.

13. Again one sees this at paragraph 31, the concluding paragraph of her grounding affidavit for the injunction motion. She again refers on two occasions to the 2020 proceedings. The 2020 proceedings are part of the injunction application; it is wrong therefore and to my mind simply unstateable to suggest that there was anything inappropriate in permitting Mr. Murphy through his counsel to rely upon elements of the 2020 proceedings when they themselves are raised by Ms. Kelly.

14. If one goes further down paragraph two of the affidavit grounding the current application Ms. Kelly says the following:-

> "Wherefore Mr. Justice O'Moore chose to ignore the proper and long established practices and procedures so as to facilitate and progress the herein matter under his and the first respondent's own terms and contrary to the Rules of the Superior Courts."

Again, the objective bystander, the objective person (who is the relevant person for the purpose of the test of prejudgement or bias) would scratch their head at that assertion. There is no long established practice and procedure, no proper practice and procedure, no Rule of the Superior Courts which it is suggested that I have breached. It is an allegation or an assertion that is not specified because there is nothing in it.

15. Then the next assertion, the fourth I think on my count, is the following:-

> "It was and ought to have been extremely clear from the entirety of the file in the herein matter which O'Moore J. ought to have opened before him that there are legal and *bona fides* questions raised on the Companies Acts *inter alia* questioning the legality of the appointment of the first respondent or fraud was/is underlying the orders of the court and the court's own record and that Mr. Justice O'Moore is precluded from dealing with the merits and/or pleadings of another application 2020/53 COS in the herein matter in any context also informed by the defendant […]"

In deciding whether or not to grant an injunction in the context of the Petition Ms. Kelly was seeking to halt, I had to decide not only whether or not she had an arguable case but also whether (given the facts of the 2020 proceedings) an injunction should be granted to restrain the prosecution of the Petition. That is where issues such as any harm caused to Ms. Kelly by the prosecution of those proceedings, any damage caused to her and the adequacy of an award of damages to meet any harm caused to her arises. This featured in the context of the test as enunciated by O'Donnell J. in *Merck Sharp & Dohme Corporation v. Clonmel Healthcare* [2019] IESC 65 but in truth as applied by the courts of this jurisdiction for decades.

16. This objection also proceeds again on a misapprehension, which I pointed out to Ms. Kelly during the course of her recusal application. There is no file that is made available to me or to any other judge. We do not have access to a whole raft of subterranean or other hidden documents. We have what the parties have chosen to put before us. With regard to the 2019 proceedings Ms. Kelly made a very clear decision as to what of those proceedings were to be opened to the court for the purpose of the application for an injunction. If she feels that there are other documents in a file that she should have relied upon, it is her own fault for failing to bring them to my attention – though in fact no such other documents have been specified by Ms. Kelly during the course of her recusal application or indeed during the course of the submissions that she made when seeking an injunction. Again, the objective bystander would understand that there was no file and that this objection is misconceived.

17. The fifth reason for seeking my recusal is further down the same paragraph and it reads as follows. It is a continuation of the previous sentence but I have separated them out in order to be as comprehensive as I can in considering Ms. Kelly's objections. It begins with the word "yet" on the left hand margin of the affidavit, I think about ten lines from the bottom. It reads:-

> "Yet Mr. Justice O'Moore saw fit to disregard these legal requirements of case management/progression and who in the absence of jurisdiction hear, open and include matters from separate proceedings being 2020/53 COS and pertaining to a company which the applicant is not legally or otherwise involved in the running/management thereof seriously prejudicing the applicant in her case and the integrity of the court process, *inter alia*, where the applicant has been denied due process and/or a fair hearing of the facts and associated by unlawful means as acting as a defender of Kelly Trucks Strokestown DAC. Which is not a legal position the applicant wants or wishes to avoid."

A point I have made during the course of this ruling is that the persons who one would expect to be the "defender" of Kelly Trucks Strokestown DAC are the directors of that company, the shareholders of that company or other parties interested in that company, or indeed the company itself. They have not sought to injunct the progress of the petition to wind up that company which is, I think, a significant point to consider in the context of an application for the injunction to restrain the prosecution of that petition. Just as we have seen in the previous elements of this paragraph, there is a reference to my apparent disregard of legal requirements of case management/progression *none* of which are identified, none of which are even hinted at in terms of their substance or indeed their source. I think it is fair to say that the objective bystander, considering all the first five objections I have listed, would be unimpressed by them and would feel that there was no possibility of bias or prejudice.

18. At the bottom of the page is a repeat of the earlier complaint:-

> "Two separate sets of proceedings with separate case numbers were unlawfully mixed and/or joined in absence of any application to join same or lacking consent from the applicant to join same."

I have explained why I think that is a misconceived objection and a profoundly misconceived objection but I would also make the point that despite the fact, contrary to what I understand she now says, Ms. Kelly was given every encouragement to say what she wanted to say during the hearing of the injunction application. At no point in time was there an objection by Ms. Kelly that Mr. Healy was seeking to conflate the two sets of proceedings. Even if there was and even if I am incorrect about that because there is a limit to the amount of information one can digest, the fact is that he was quite entitled to make submissions by reference to the 2020 proceedings as they were proceedings which were expressly sought to be injuncted. Finally on that point, again I asked Ms. Kelly about the nature of the application with regard to the 2020 proceedings. I was informed that she was putting emphasis on the restraining of Mr. Murphy from "progressing" those proceedings as though there is any significance in that. It is plain that had that order been made it would have been impossible for Mr. Murphy to proceed any further with the petition and on that basis the petition could not have been moved.

19. At paragraph three of Ms. Kelly's affidavit there is the seventh complaint about me. It suggests that I have displayed both bias and prejudice, a lack of impartiality and an utter

lack due regard for proper practices and procedures. None of these are defined I should say:-

> "By permitting Mr. Healy, counsel for Mr. Murphy, to raise all manner of issues in these specific proceedings which are not before the court and are not being dealt with and which Mr. Justice O'Moore ought to have recognised and known were not matters which were relevant to the specific application being made under a different case number, in fact Mr. Healy's submissions were proffering were in admissible and offered no form of rebuttal or resistance to the injunction applications and the fraud which had been laid bare before me. Yet Mr. Justice O'Moore failed refused and so far neglected to inform Mr. Healy to stay within the confines of the subject matter and to demonstrate where all of this information was contained within the pleadings as no such pleadings exist in the herein matter."

There are three things about that. Firstly, as I have said, Mr. Healy's submission as I recollect it was dealing with the attempt to injunct the 2020 proceedings and the 2020 petition and I believe that was a quite appropriate matter for me to allow him to address me on. Secondly, the information provided by Mr. Healy turned out to be the extent of Ms. Kelly's involvement in the Strokestown company, confirmed by Ms. Kelly when she then responded to Mr. Healy. Ms. Kelly confirmed that she was, with her husband, the owner of a charge in respect of the Strokestown company and as I said in my ruling earlier on the injunction, seemed somewhat unsure as to the value of the sum secured by that charge. She in fact referred to the charge in the paper she herself had put before me for the purpose of seeking the injunction. Secondly, she gave information to the court about the level of rent paid by the company to her and her husband as landowners renting the premises to the company. Again, that does not seem to me contentious in any way shape or form. To suggest that Mr. Healy's submission to me about the limited and tenuous involvement of Ms. Kelly was in some way inadmissible or inappropriate is quite wrong. But of course without Mr. Healy informing me and Ms. Kelly confirming to me the extent of her involvement in the Strokestown company I would have had to take the view that she had no involvement in that company because she gave no evidence by affidavit about any such involvement. If anything the position of Ms. Kelly was advanced ever so slightly by her being permitted to say that she had an involvement in the company through the co-ownership of a charge and the co-ownership of the land leased to the company. Absent that information I would have had to take the view that Ms. Kelly was even more tenuously connected, if connected at all, with the company the liquidation of which she was seeking to prevent.

20. Thirdly, in terms of the suggestion that I failed to inform Mr. Healy to stay within the confines of the subject matter it cannot be an indication of bias or prejudice to allow counsel to make submissions of tangential relevance. I do not believe Mr. Healy's submissions fall within that category at all. Even if they did there would be a wholesale recusal of judges in this jurisdiction if this were required should they fail to confine persons (such as lay litigants or counsel) strictly to the matters at issue before them. But in any event, as I have said, I do not accept for any number of reasons that there is any

substance in the complaint at paragraph three and I do not think the objective bystander would either.

21. At paragraph four there are the last cluster of assertions made which suggest that I should recuse myself. If one goes to the fifth line of paragraph four it is stated that I have exhibited bias and prejudice, lack of partiality and a lack of due regard for unspecified practices and procedures of the superior courts:-

> "By failing, refusing and/or neglecting to ascertain who was specifically on record at the herein matter, if anyone, for each of the respondents as no appearance has been served on the applicant."

I have to say it is *not* the job of the court to scrutinise the paperwork of parties who appear before them asking for appearances or evidence of appearances to be provided. That has not in my limited experience as a judge and my more extensive experience as a practitioner been a requirement of any court. A failure to seek to have people show their credentials, so to speak, when they stand up to address the court whether they be lay litigant or senior counsel is not and could not be indicative of any bias, prejudice, lack of partiality or lack of regard for the procedures of the superior courts and the objective bystander would know that.

22. Then the next sentence:-

> "No affidavits have been filed or served by the respondent and therefore the matter must be taken to be uncontested."

Not even the most naïve and uninformed individual could believe that in the event that an affidavit is not served in an application that the application goes uncontested or by default. That has never been the procedure of this court or of any other court to my knowledge. To suggest because I did not give Ms. Kelly a walkover on Tuesday as Mr. Healy or his solicitor had not served an affidavit in response to the application for an injunction on them, an application to set aside the impugned orders (as I have referred to them in the substantive judgment) is simply surreal.

23. The next objection is four lines further down where it is stated:-

> "Mr. Justice O'Moore continually conducted conversations with Mr. Healy."

I think I conducted more conversations with Ms. Kelly as it happens but I do not think that the asking of questions of an advocate be they lay or qualified is an indication of partiality. The contents of the conversations conceivably might be but that case is not made and could not be made. Then the next clause:-

> "Where Mr. Justice O'Moore took direction from Mr. Healy."

This, as I have said, seems to be intermingled with the suggestion that I in some way was tolerant of Mr. Healy making submissions that went outside the bounds of what was

relevant. The suggestion that I took direction from Mr. Healy of course is not stood up in any way, shape or form. It is at odds with what actually occurred. I do not think that any impartial observer would come to the view that I took directions from Mr. Healy.

24. The next assertion is a puzzling one, that I heard "lengthy arguments/submissions, eight and a half transcript pages of submissions, in relation to matters which were solely confined to the petition which Mr. Healy was/is eager to move and was not dealt with at the material time of said discussions/submissions". Now, I will just make two observations about this. As I have said, it was entirely appropriate for Mr. Healy or any other lawyer or any other person before me to make submissions about the petition which Ms. Kelly was seeking to injunct. That is not an indication of partiality. In fact it would have been an indication of partially against the interests of Mr. Murphy if I had refused to hear such submissions. Secondly, to describe them as lengthy is to do violence to what actually occurred. Mr. Healy made one of the briefest submissions I have ever heard. Thirdly, there is a reference to eight and a half transcript pages of submissions. I asked Ms. Kelly about this. I asked if she had access to the transcript. I was told she had no access to a transcript and that she was working off her own notes. That may well be true but it is difficult to understand when there was a stenographer present (on Ms. Kelly's retainer, as I understand it) taking down a note of what was said during the injunction application. While her affidavit refers to eight and a half transcript pages that seemingly is Ms. Kelly misspeaking. Ms. Kelly apparently means to say that she was referring to eight and a half pages of her own notes of what happened. I place no huge significance on that point other than to make the observation that it is difficult to square the circle of what Ms. Kelly has said. But even if it is eight and a half pages of Ms. Kelly's own notes (and I take it that that is the case), nonetheless it was not an excessively lengthy argument or submission. It was within the bounds and transparently within the bounds of what I was expected to consider given the nature of the application for an injunction made by Ms. Kelly. It is something that does not give rise to any suggestion of partiality and bias.

25. Then there is the penultimate allegation of a fact that it is said gives rise to an issue of partiality It is as follows:-

> "Mr. Justice O'Moore informed Mr. Healy to be ready to move his petition on Thursday at 2pm which is a clear indicator of intentions and bias and prejudice and lack of regard for due process."

There are two things about that. As I have already said to Ms. Kelly when this was first unexpectedly raised, I wanted Mr. Healy to be ready given that there had been a debate about when this matter would proceed. I was bringing the ruling forward to the 27th of February and I wanted to wrap up everything that day if I could, which is why it was appropriate to tell Mr. Healy to be ready to move his Petition. Secondly, it is significant that at that point in time I had in fact heard all of the submissions which were made to me by both parties and I had had the opportunity to consider the nature of the case being made. But what was said to Mr. Healy for the reason, and the objective bystander would understand it to for the reason, which I have identified. There was not anything malign

and there could be nothing malign, about a court (having already heard an application) directing somebody to be ready to move an adjectival application when the ruling was given.

26. The final complaint, for which there is no basis whatsoever, is three lines down. It says:-

> "As Mr. Justice O'Moore refused to confirm when asked if he understood the entirety of the laws which had been brought forward and as the fraud is as clear as crystal in these proceedings yet the court appears to want to hide behind orders of Ms. Justice Murphy and Ms. Justice Baker under the instruction/tuition of Mr. Healy."

Firstly, I think it is plain from my ruling that I understand entirely the case made by Ms. Kelly. Secondly, it is a world first for a litigant to seek to fashion a recusal application by alleging prejudice against her because it is suggested that the court refused to answer her questions. If Mr. Healy had asked me a question I would (as he I suspect well knows and as Ms. Kelly now well knows) have refused to answer questions put to me from the bar, by which I mean anybody appearing before me. It is not the role of the court to engage in a question and answer session with advocates or lay litigants at least not when the court is the subject of the questioning. Finally, Ms. Kelly has acknowledged in the earlier part of her affidavit that I do understand the nature of the case she was making. She herself has stated that on oath. The final suggestion that the court, by which Ms. Kelly appears to mean me, appears to want to hide behind the orders of other judges under the instruction or tuition of Mr. Healy is completely without foundation and no foundation is put up for it.

27. That concludes my analysis of the reasons given in the application. There are two relevant authorities, the first is the judgment of the Supreme Court of Denham C.J., as she then was, in *Goode Concrete v. CRH Plc. & Ors.* [2015] IESC 70 in which she dealt with a reasonable person test relating to issues of bias. That case was one where the trial judge had had a financial interest in one of the parties and the question was whether a pecuniary interest in one of the parties could give rise to an issue or perception of bias. That is clearly a very different circumstance to what is alleged here. At paragraph 54 of the judgment, Denham C.J. said:-

> "The test to be applied when considering the issue of perceived bias is objective. It is whether a reasonable person, in all the circumstances of the case, would have a reasonable apprehension that there would not be a fair trial from an impartial judge. As it is an objective test, it does not invoke the apprehension of a judge [so it is not my view], or any party [so it is not Mr. Murphy or Ms. Kelly's view]; it invokes the reasonable apprehension of a reasonable person, who is in possession of all the relevant facts."

That would include things like knowing that judges do not have access to mysterious files and would include knowing presumably the way in which litigation generally proceeds. There is a possibly more germane judgment, an earlier judgment of Fennelly J. and the majority of the Supreme Court in *O'Callaghan v. Mahon* [2008] 2 I.R. 514. At paragraph

551 of the report (paragraph 80 of his own judgment) there is a summary of the principles from the previous jurisprudence in the State and, I think, elsewhere. Fennelly J. as I said delivering the majority judgment of the Supreme Court says:-

> "The principles to be applied to the determination of this appeal are thus, well established:
>
> (a) Objective bias is established, if a reasonable and fair-minded objective observer, who is not unduly sensitive [and that is not a formulation one sees in *Goode* but I think it apposite here], but who is in possession of all the relevant facts, reasonably apprehends that there is a risk that the decision-maker will not be fair and impartial;
> (b) The apprehensions of the actual affected party are not relevant;
> (c) Objective bias may not be inferred from legal or other errors made within the decision-making process; it is necessary to show the existence of something external to that process [I would point that nothing external to that process has been identified by Ms. Kelly];
> (d) Objective bias may be established by showing that the decision-maker has made statements which, if applied to the case at issue, would effectively decide it or which show prejudice, hostility or dislike towards one party or his witnesses."

That statement of law has, as recently as last month, been applied by me in *McKillen v. Tynan* [2020] IEHC 189.

28. Those are the legal principles. Taking them into account and for the reasons I have described in going through the complaints of Ms. Kelly as set out exhaustively in her affidavit, I simply do not see that the requirements of the jurisprudence are made out and that I should in these circumstances recuse myself. I am therefore refusing the application.

Coda.

29. The application for my recusal, and the need to adjudicate on it, meant that the Petition for the winding up of Kelly Trucks Strokestown DAC could not proceed on the 27th of February. It had been listed for hearing that day, in the event that Ms. Kelly's injunction application did not succeed. I therefore adjourned the Petition to the following Tuesday (the 3rd of March 2020), for the purpose of enabling Reynolds J. to give any further directions which may seem appropriate to her for the hearing of the Petition. I had explained to the parties that I would be in Waterford for the three weeks beginning on the 2nd of March, and therefore could not take up the hearing of the Petition over that period.

30. Ms. Patricia Kelly, who I understand to be a daughter of Ms. Anne Kelly and who (unlike Ms. Anne Kelly) is a director of Kelly Trucks Strokestown Limited, sought a longer period before the Petition was again before the Court. She argued that she needed that time to instruct solicitors to defend the Petition. Despite the fact that the Petition was listed for

hearing on the 24th of February 2020, the directors of the company had not retained solicitors to resist it on that day.

31. When faced with the listing of the Petition on the 3rd of March, Ms. Patricia Kelly (expressly acting in her capacity as a director of Kelly Trucks Strokestown DAC) asked me whether I could put the Petition "back in front of [me] as [I am] familiar with the case."

32. When Ms. Patricia Kelly was reminded that, throughout the afternoon of the 27th of February, she had been assisting her mother in seeking my recusal from further involvement in proceedings (which included the hearing of the Petition), the response was that she then had been acting as a McKenzie friend, but was now as director of the company asking me to keep to myself the hearing of the Petition. Of course, had I acceded to this request, the Petition could not have been heard before the 23rd of March 2020.

33. The lack of any merit in the application that I recuse myself from further involvement in these proceedings, including from hearing the Petition, is starkly illustrated by the fact that the company itself has now asked that I hear the Petition. It is difficult to identify any good reason why Ms. Patricia Kelly, as a director of the company, did not make the company's position known while the argument about recusal was proceeding; it may well have been because outlining the company's position that I should hear the Petition conflicted with Ms. Patricia Kelly's role as McKenzie friend assisting her mother in seeking that I not hear the Petition. Be that as it may, the decision that I have made to refuse the application to recuse myself is reinforced by the position taken by the company after I delivered my ruling.