THE HIGH COURT

[2025] IEHC 143

RECORD NUMBER HP 2024 2749

BETWEEN

TERESA BARRINGTON AND SEAN BARRINGTON

PLAINTIFFS

AND

THE ATTORNEY GENERAL AND TAILTE ÉIREANN AND PROMONTORIA (OYSTER) DAC AND DAVID O'CONNOR AND BDO AND M.R.C.S LTD AND PAUL GARAVAN

DEFENDANTS

JUDGMENT OF Mr. Justice Twomey delivered on the 11th day of March, 2025

INTRODUCTION

1. It seems clear to this Court that it would not be tolerated if 'quack doctors' (i.e. people who were *not* medical practitioners under the Medical Practitioners Act, 2007) were walking around our hospitals giving *pseudo* medical advice to patients in hospitals, when those patients are at their most vulnerable. It seems equally inconceivable that operating theatres would be occupied as a result of unnecessary surgery being performed on the 'medical' advice of these quack doctors causing other patients to have their surgery delayed.

2. Yet the equivalent is happening on a daily basis in our courts. This is because litigants are having their cases delayed as court sittings are being taken up dealing with nonsensical

applications which are being pursued on the *pseudo* legal advice of people who are *not* legal practitioners under the Legal Services Regulation Act, 2015 and so, are 'quack lawyers' or, as Noonan J. described them, *'hob lawyers'*.[1] These unqualified litigation advisers are giving this 'legal advice' on a daily basis in our courts to lay litigants, when they are at their most vulnerable, since they face serious litigation.

3. This issue arose in this case because the plaintiffs (the "**Barringtons**") are being assisted by an unqualified litigation adviser in relation to their dissatisfaction with a High Court decision which rejected their application for an injunction regarding a property in Galway. However, rather than appealing that decision to the Court of Appeal, they brought an application to another High Court judge to reverse the decision of the first High Court judge. Even to people with no legal expertise, this would be a nonsensical application to make, since one High Court judge does not hear, what in effect, is an *appeal* of another High Court judge's decision.

4. As a result of this nonsensical application, a full half day in the High Court, which could have been used to deal with other cases, was wasted dealing with an application which no *legal practitioner* would have brought. For this reason, this case starkly highlights, not just the harme to lay litigants, but also the systemic harm which is being caused to the administration of justice by the significant number of unqualified litigation advisers who are 'practising' in our courts.

A criminal offence for an unqualified person to give litigation advice

5. An important backdrop to this issue is that it is a criminal offence for unqualified people to give litigation advice. This was highlighted in *Start Mortgages Limited v Vincent Kavanagh and Madeleine (Ors Madeline) Kavanagh* [2017] IEHC 433, where Noonan J. referred to the *'disastrous consequences'* which arise when a litigant seeks advice from an unqualified

[1] '*Parties like Mr. Flynn who find themselves in financial distress are making a bad situation considerably worse by consulting hob lawyers and unqualified persons* […]' in *KBC Bank Ireland Ltd v Flynn* [2017] IEHC 79 at para 13.

litigation adviser, but also the criminal offence which is committed. At paragraph 29 he stated that:

> "Quite how anyone would want to pay for bad advice and assistance which inevitably leads to disastrous consequences particularly when excellent professional advice is available at little or no cost, is something of a mystery. It is not without good reason that the legislature has made it **a criminal offence for unqualified persons** to draft documents for use in legal proceedings for reward – see s. 58 of the Solicitors Act, 1954 as amended." (Emphasis added)

Unfortunately, one needs only spend a very short time in the Four Courts and to read any of the numerous High Court and Court of Appeal judgments (some of which are referenced herein) to see how openly and regularly section 58 and section 55(1) (which prohibits an unqualified person acting as a solicitor) of the 1954 Act would appear to be contravened. Despite this, this Court is unaware of any person ever having been prosecuted for a breach of these provisions.

6. In this case, there was uncontroverted sworn evidence, uncontradicted submissions, and an unchallenged statement from Nolan J. (at an earlier hearing in this case) that the Barringtons were being assisted in this litigation by a person with no legal qualifications. (It is imnportant to note that this evidence was provided to the Court in the context of a civil action by the Barringtons and so there is no claim of any offence having been committed by this person contrary to section 55 or 58 in this case).

The courts have been highlighting the problem of unqualified advisers for years

7. For many years the courts have been at pains to highlight the damage being caused to lay litigants *and* to the justice system by these unqualified litigation advisers. For example, in *Bank of Ireland Mortgage Bank v Martin* [2017] IEHC 707 at paragraph 11, Noonan J. stated:

"Without exception in my experience, these groups and individuals cause significant harm to those they purport to assist by giving them **advice which is not just wrong, but entirely detrimental to the litigant's interests**." (Emphasis added)

8. Similarly in *O'Hara v Ireland & Ors* [2023] IEHC 268 at paragraph 2, O'Moore J. went to the trouble of listing some of the many written judgments where the courts had to deal with nonsensical 'legal' arguments provided by these unqualified litigation advisers. He also highlighted the very negative effect these unqualified litigation advisers were having on other litigants wating for their cases to be heard. At paragraph 1 *et seq*, he stated:

"In the last number of years, there has been a rash of cases instigated and prosecuted by persons representing themselves, in which it is claimed that the relevant plaintiff is protected from all court summonses and court orders by reference to provisions of the Constitution and of the Treaty of Europe. […] **the nature of these cases suggests that there are unscrupulous people availing of the credulity of lay litigants and encouraging them to launch claims which, legally at least, make absolutely no sense**. […] Judges consistently refer to the pressures on the court system caused by the fact that a large amount of cases have to be processed by a relatively small amount of judges. **However, the ill – effects of this pressure are felt not predominantly by judges, but rather by litigants.** It is individuals and businesses who have to wait lengthy periods for their cases to get on and often significant periods for judgments to be delivered after the cases have been heard. If courts have to deal with a raft of cases such as these (described by Simons J. in Fennell as raising arguments that are "simply preposterous" and by Roberts J. in Brennan as "simply unstateable") then the ability of the courts to deal in a timely manner with genuine legal disputes would be further hampered. To some extent, it is a matter for the conscience of the individual self – represented plaintiff as to whether or not they can justify bringing proceedings (such as the current claim) which simply make no

sense, occupy a significant amount of court time, and run up costs and expenses both to the plaintiff and for those unfortunate enough to be sued by these individuals. **It is a matter of some regret that the persons who are peddling this form of claim (to litigants who do not have the benefit of professional representation) have not yet themselves been made accountable** for the pointless legal costs and expenses which their activities have generated." (Emphasis added)

Unqualified legal advisers are not held accountable for damage they are causing

9. The lack of accountability, to which O'Moore J. refers, of these unqualified litigation advisers is surprising, since in many other fields (medicine, pharmacy, veterinary *etc*) it is almost inconceivable that unqualified practitioners would be practising so openly. It is also surprising because it is well over 20 years since the problem with these unqualified litigation advisers was highlighted by Smyth J. in *Twomey v Mallow Town Council* (High Court, 16 July 2003) at page 12. In that case, Smyth J. dismissed the plaintiff's proceedings as an abuse of process. However, as those proceedings were clearly instituted with the help of an unqualified litigation adviser, operating under the guise of being a McKenzie Friend, Smyth J. concluded by stating that:

> "I reiterate that these were and are singularly ill advised proceedings. **The courts do not require McKenzie friends**." (Emphasis added)

10. Indeed, since that judgment in 2003, and in particular since the financial crisis of 2008, it seems to this Court that the number of judgments highlighting the problems created by these unqualified litigation advisers has mushroomed. Yet despite all of this, and notwithstanding the misery and loss that they are causing to lay litigants, unqualified litigation advisers continue to practice in 'plain sight' in great numbers.

11. Indeed, it is to be noted that this was also an issue in our neighbouring jurisdiction, since in the English Court of Appeal case of *R v Leicester City Justices, Ex parte Barrow* [1991] 2 QB 260 at page 290, albeit from over 30 years ago, Lord Donaldson stated:

> "**May I end by expressing a fervent hope? It is that we shall hear no more of 'McKenzie friends'** as if they were a form of unqualified legal assistant known to the law. Such terminology obscures the real issue which is fairness or unfairness. Let the 'McKenzie friend' join the 'Piltdown man' in decent obscurity." (Emphasis added)

An unqualified litigation adviser is not a McKenzie Friend

12. It is clear however that Lord Donaldson was hoping to see the end of unqualified litigation advisers (acting under the guise of being a McKenzie Friend), rather than *true* McKenzie Friends. In this regard, it is important not to mix up a true McKenzie Friend with an unqualified litigation adviser.

13. This is because a true McKenzie Friend is usually a pre-existing friend, or a relation, of a lay litigant, who is in court *solely* to take notes or to hand up books or papers to the lay litigant. *He/she does not provide any litigation advice or advice on the drafting of documents for the proceedings*, since, as already noted, this would be a criminal offence. In this way, a true McKenzie Friend is akin to person sitting in with a family member on a hospital visit/procedure, to keep that person company *but not to* provide medical advice.

14. The confusion is understandable, since it is clear from the recent cases in the High Court and Court of Appeal that many of these unqualified litigation advisers, although not pre-existing friends or relations of the lay litigant, act under the guise of being a 'McKenzie Friend', and provide litigation advice or draft litigation documents, even though this is a criminal offence. For this reason, Allen J. in *Cunniffe v Cunniffe and Anor* [2023] IECA 113 at paragraph 5 made clear that the courts have no issue with *true* McKenzie Friends, but they do have an issue with unqualified litigation advisers. He stated:

> "The appellant suggests that the **court took a very negative view of her having a McKenzie friend to assist her. That is incorrect**. Unrepresented litigants are entitled to be accompanied and assisted by a McKenzie friend. My point was that it is **undesirable that persons who are not professionally legally qualified should hold themselves our as litigation or legal consultant**s." (Emphasis added)

Lay litigants suffer huge harm as a result of unqualified litigation advisers

15. One of the reason the courts have highlighted the activities of unqualified litigation advisers is because the provision of litigation advice is a regulated area, yet these *unregulated* advisers are inflicting considerable damage to the lay litigants they 'advise'. This is because those lay litigants inevitably end up losing their case because of the nonsensical arguments they have been advised to pursue. In addition, the lay litigants invariably end up being ordered to pay the legal costs of those failed applications.

16. This plight of the lay litigant, advised by these unqualified litigation advisers, is exacerbated by the fact that, as noted in *Fox v McDonald & Ors* [2017] IECA 189, the lay litigant has no recourse for the damage caused by the nonsensical advice. This is because, as noted by Irvine J. at paragraph 32 of that judgment, those unqualified litigation advisers:

> *'not only have no training but have no professional indemnity insurance and are not accountable for any advice regardless of how reckless or wrong it might be'.*

Unqualified litigation advisers also cause systemic damage to the administration of justice

17. However, there are more fundamental reasons why the courts have expressed concern about the operations of these unqualified litigation advisers. It is because of the systemic damage they are causing to the administration of justice.

18. Firstly, they cause a drain on court resources (as they are usually involved in advising on taking incessant and nonsensical applications to court) and as noted by O'Moore J. in *O'Hara*, it is *other court users* who are suffering, as their cases are delayed.

19. Secondly, they inflict a cost on innocent third party individuals and entities, who are unlucky enough to be involved in litigation with them. Those third parties will have to pay lawyers to deal with those nonsensical applications (and there is no guarantee of their costs being recoverable from the lay litigant, even if they get a costs order in their favour). In contrast, the lay litigants pursuing these nonsensical applications can do so at little or no cost, since they are not engaging lawyers. In this case, for example, five separate private individuals/entities (the third to the seventh defendants) had to incur legal costs in order to defeat the nonsensical claim that, in effect, it is possible to 'appeal' one High Court judge's decision (that of Nolan J.) to another High Court judge (this Court).

20. Thirdly, unqualified litigation advisers inflict unnecessary costs on the taxpayer because the State is invariably a party to these cases and sometimes, as in this case, a State body is accused of being part of a conspiracy against the lay litigant. In fact, in this case, two State entities (the first and second defendant) had to incur completely unnecessary legal costs, because they were served with a motion, which no legal practitioner would have served on them, since, as noted below, no relief is claimed against those two State defendants.

Litigants are invariably better off with no legal adviser than an unqualified legal adviser

21. At an earlier hearing in this litigation, Nolan J. expressed the hope that the hearing before him would highlight for other litigants the problem with using qualified litigation advisers. In his *ex temp* judgment on 18th June, 2024 he stated:

> "If this case does anything, **I hope it highlights to the Barringtons and to other people the danger of listening to malevolent actors** that these third parties [unqualified litigation advisers] are, who I've no doubt are attempting to stir up trouble for their own ends." (Emphasis added)

22. Unfortunately, that does not seem to have worked in this case, since the Barringtons, in the hearing before this Court, continued to receive assistance from their unqualified litigation adviser.

23. However, when it comes to *other lay litigants*, this Court would echo Nolan J.'s hope that this judgment would further highlight why lay litigants are better off appearing in court, without the assistance of unqualified litigation advisers. This is starkly illustrated in this case because, as noted below, two separate High Court judges (Nolan J. and Barniville P.) went out of their way to try to assist the Barringtons to avoid making obvious errors in how they progressed their litigation. However, the Barringtons *inexplicably* decided not to take up those suggestions which were made for their benefit. As a result, they ended up making some fundamental and financially expensive errors. It is difficult for this Court to avoid the conclusion that if lay litigants were *not* getting advice from unqualified litigation advisers, there is a much greater chance that they would take up suggestions made to them by judges, which are in the litigants' interests.

24. In summary therefore, this application, in which the lay litigants were assisted by an unqualified litigation adviser, was one which served only to waste court resources and inflict unnecessary costs on the lay litigants and also unnecessary legal costs on other private citizens and entities (the third to the seventh defendants) as well as on the taxpayer/State (the first and second defendants). As there is no guarantee that these legal costs will be recovered from the Barringtons, this case therefore perfectly illustrates that the presence of unqualified litigation advisers in our courts leads to there being no winners, but only losers. The only party who would appear not to be out of pocket is the unqualified litigation adviser.

BACKGROUND

25. The Barringtons in the application to this Court are seeking to set aside Nolan J.'s order of 18 June 2024 (the "**Order**"), in which he refused their application for an interlocutory injunction. In seeking this injunction, the Barringtons were seeking to prevent the sixth defendant ("**MRCS**") and Mr. Garavan from taking possession of Unit J, Oldenway Business Park, Ballybrit, Galway (the "**Property**"). This property is the business premises of the second named plaintiff, Mr. Sean Barrington, who is a carpenter.

26. Under the terms of the Order, Nolan J. lifted the interim injunction that the Barringtons had obtained against Mr. Garavan and MRCS. The interim injunction had prevented Mr. Garavan/MRCS from seeking to obtain possession of the Property. The original interim injunction had been obtained on 11 June 2024 from Sanfey J., not only without evidence from Mr. Garvan and MRCS (the registered owner of the Property), as it was made after Sanfey J. heard only from the Barringtons (as it was *ex parte*), but also with insufficient evidence from the Barringtons (in their affidavit dated 10 June 2024) to support their claim to an interlocutory injunction. This is clear because as part of the order of 11 June 2024 granting the interim injunction, Sanfey J. made it clear that the Barringtons were required to file a supplemental affidavit *'setting out the facts relevant to any application for an injunction and containing an undertaking as to damages'*.

27. As a result, the Barringtons provided a second affidavit dated 14 June 2024. It is to be noted that this affidavit did not, however, comply with the order of Sanfey J., since it did not contain any undertaking as to damages, even though this was expressly required by the Order of Sanfey J. As noted below, this affidavit also did not contain any facts, as required by Sanfey J.'s order.

28. The interim injunction was granted until the interlocutory injunction application was due to be heard a week later. Nolan J. heard that application and he considered the evidence,

and in particular the evidence that was then before the court that MRCS was the registered owner of the Property. On this basis, he vacated the interim injunction.

The Barringtons' application to set aside the Order

29. In their application to set it aside the Order of Nolan J. (and so to support their claim that they were entitled to an injunction in June, 2024), the Barringtons rely on the fact that they have a copy of the folio for the Property from the Land Registry (Folio GY55371F) and that it states that from 23 September 2003 until 29 December 2022, the Barringtons were the registered owners of the Property. They also rely on a letter dated 16 May 2024 from solicitors for MRCS to the first named plaintiff ("**Mrs. Barrington**") in which MRCS seeks possession of the Property, failing which it is stated that MRCS will take:

> "whatever steps may be available to it to secure vacant possession of the [Property], including (but not limited to) obtaining peaceable possession."

The Barringtons claimed to this Court that they felt that this letter was threatening and they say that this is the reason why they sought the interim injunction on an *ex parte* basis, and so without notice to MRCS/Mr Garavan, in the first place.

30. Because they believe they did not get a 'just' result and so suffered an injustice in their hearing before Nolan J., instead of appealing Nolan J.'s decision, the Barringtons made the almost unprecedented application to *one* High Court judge to set aside the interlocutory order of *another* High Court judge. The initial application was made to the President of the High Court, who assigned this Court to hear the application.

The judgment of Nolan J. which the Barringtons want set aside

31. The following is the relevant part of the *ex temp* judgment of Nolan J., which he delivered on the 18 June 2024:

> "The plaintiffs seemed to think that by calling their application a Constitutional injunction, they can somehow or other avoid the rules of court. She is mistaken. Any

application that comes before the High Court must be supported by an affidavit setting out the facts upon which the party relies fully. In this case there is no supporting affidavit setting out the facts. However, from the documents that I do have before me, it is clear that the **folio records that on the 23rd September 2003, the plaintiffs were the registered owners of the property. However, on the 29th of December 2022, a year and a half ago, the sixth named defendant was registered as full owner.** The law relating to the land registry is clear. **The register is conclusive unless there is proven fraud or proven mistake**. Indeed, even if there is evidence of fraud or mistake, the court would have to be very satisfied that that was the case but **there is nothing before the court to suggest any fraud or mistake** other than an assertion in submission made by the first named plaintiff. **Therefore, since the register is conclusive. The plaintiffs are not the owner of the property. The sixth name defendant is**.

This case is very similar to an increasing number of cases that are coming before the courts. They seem to follow the same template. They are generally brought by personal litigants and the wording about the pleadings and the affidavits are very similar indeed. **They all allege that the State or other bodies are involved in some form of illegal activity in the form of conspiracy or fraud in an attempt to deprive the citizens of their Constitutional rights.** They generally have little or no evidence to support the contention, no matter how serious it may be. Having sat on the Chancery side since I've been appointed, it is clear to me that people who have found themselves in financial difficulties, generally arising out of the crash of 2008, have fallen into the clutches of a group of individuals who are taking advantage of them, misleading them for their own ends and acting as a form of legal adviser, perhaps for reward, when they are nothing of the sort. If this case does anything, I hope it highlights to the Barringtons and to other

people the danger of listening to malevolent actors that these third parties are, who I've no doubt are attempting to stir up trouble for their own ends. In this case, there was no evidence whatsoever before me to make any order of any description. **The plaintiffs were given the opportunity to amend their hand, but they refused to do so**. Further, the plaintiffs find themselves in a breach of a court order of Judge Sanfey, by failing to file an affidavit setting out the facts that they relied upon. In those circumstances, there is no merit whatsoever to this application and for those reasons I shall dismiss the matter in full." (Emphasis added)

32. The legal basis for Nolan J.'s decision is the well-established principle that the Register held by the Land Registry is conclusive evidence of the ownership of registered land. Thus, as there is conclusive evidence that MRCS is the owner of the Property, and in the absence of any compelling evidence of fraud etc, Nolan J. held that there was no basis for injuncting MRCS from taking possession of *its own property*. This is the decision which the Barringtons, with assistance from Mr. Macken, are applying to set aside. The legal basis for an application to set aside a judgment is considered below.

The evidence and submissions regarding the role of the unqualified litigation adviser

33. However, before considering the law regarding setting aside judgments, it is important to note that Nolan J. referred to the dangers of lay litigants seeking advice from people who have no legal qualifications. He made the following comments at the hearing:

"If you're listening to a **McKenzie friend or your other gentleman who is beside you**, they're misleading you […]

I will not have the court's time wasted with a **prewritten mantra** when we need to just simply get the point at issue and that is whether the parties have a right to seek possession of the property […]

> It is clear to me that people who have found themselves in financial difficulties, generally arising out of the crash of 2008, have **fallen into the clutches of a group of individuals who are taking advantage of them, misleading them for their own ends and acting as a form of legal adviser, perhaps for reward,** when they are nothing of the sort. If this case does anything, I hope it highlights to the Barringtons and to other people the **danger of listening to malevolent actors that these third parties are, who I've no doubt are attempting to stir up trouble for their own ends**. (Emphasis added)

It is important to note that the Barringtons, in seeking to set aside Nolan J.'s decision, did not challenge the validity of the foregoing comments by Nolan J.

34. In addition, sworn evidence was provided to this Court by Mr. Garavan to the following effect regarding the role of the person, Mr. Michael Macken ("**Mr. Macken**"), assisting the Barringtons in this litigation:

> "I understand that Mr. Michael Macken has assisted Ms. Barrington during these proceedings although I do not believe that he is qualified to provide legal advice."

It is also relevant to note that the Barringtons did not seek to contradict this sworn evidence.

35. Similarly at the hearing before this Court (during which Mr. Macken was sitting beside the Barringtons), counsel on behalf of Mr. Garavan made uncontroverted submissions, in a clear reference to Mr. Macken, that the Barringtons were being driven by him to make their nonsensical claims. He stated:

> "one can see from [his judgement] that Mr. Justice Nolan was concerned that the Plaintiff was being driven to this excess by some Iago who was encouraging the bringing of this type of claim by incantation – where there is a reference to the Constitution but no reference to the facts which underpinned the case itself.".

Again, these submissions were not contradicted by the Barringtons.

36. In summary therefore, this Court was provided with judicial statements, sworn evidence and submissions, none of which were challenged or contradicted by the Barringtons (or by Mr. Macken who was in court before Nolan J and before this Court), to the effect that Mr. Macken, although not legally qualified, is assisting the Barringtons with this litigation.

37. This is a crucial backdrop to this application for set aside, just as it was to the previous court appearances by the Barringtons.

Many citizens cannot afford legal costs for everyday disputes if heard in the High Court

38. It should of course be acknowledged that many citizens cannot afford legal representation for everyday disputes like this one over the ownership of a small business premises, which are *required* to be heard in the High Court. This is because of the combined effect of

(i) costs being 'prohibitive'[2] in the High Court *and*

(ii) laws which *require* so many everyday disputes to be conducted in the High Court, the most expensive trial court, where costs can be in the hundreds/tens of thousands of euro, rather than in the Circuit Court, where costs can be in the thousands of euros, or the District Court, where the costs can be in the hundreds of euros.[3]

However, one recent exception is the move of one category of everyday dispute (family law cases) from the High Court/Circuit Court to the more affordable District Court. This is because section 74 of the Family Courts Act, 2024 has increased the jurisdiction of that court from €15,000 to €1 million for those disputes (with the Minister for Justice having power to increase the jurisdiction to €2 million '*having regard to the need to minimise the costs of proceedings'*.)

[2] Kearns P. in *Bourbon v Ward* [2012] IEHC 30 at p 40.

[3] See *Shannon v Shannon* [2024] IEHC 291, where it is noted that there are *less* Circuit Courts than High Courts, which is a dramatic reversal of the previous position in Ireland, as well as being completely out of step with the position in other jurisdictions (e.g. in England & Wales there are approximately *700% more* Circuit Courts than High Courts.)

39. However, as regards so many other everyday disputes, until litigation costs are made less prohibitive in the High Court *or* more everyday disputes are conducted in the District Court or the Circuit Court, it seems clear that for many citizens comprehensive legal representation will remain unaffordable. However, as already noted, this does not mean such litigants should resort to unqualified litigation advisers, since they are better off with no legal representation, than advice from unqualified litigation advisers.

ANALYSIS

40. In this case, the Barringtons are asking one High Court judge to set aside the decision of another High Court judge. However, as pointed out by Clarke J. (as he then was) in *McInerney Homes (in examination) & ors & Companies Acts* [2011] IEHC 25 at paragraph 3.1:

> 'the ruling of the court is a final ruling which can only be displaced in **very limited circumstances**, such as where it can be demonstrated that the judgement of the court has been procured by **fraud or the like**.' (Emphasis added)

41. The reason for this approach is obvious, and is clear from the statement of Finaly C.J. in *Bellville Holdings Limited v The Revenue Commissioners* [1994] 1 ILRM 29 at page 17:

> '…only in **special or unusual circumstances** that an amendment of an order passed and perfected, where the orders of a final nature, should be made by the court. **The finality of proceedings** both at the level of trial and, possibly more particularly, at the level of ultimate appeal **is of fundamental importance to the certainty of the administration of law and should not lightly be breached**'. (Emphasis added)

42. Thus, when a court makes an order, it is final (in the absence of an appeal), save for very limited exceptions such as fraud. This is because there would be chaos if, every time an

order was made by a High Court judge, a party who was dissatisfied with that order could seek to have it set aside by *another* High Court judge (and presumably if unsuccessful in that attempt, that party could seek to have it set aside by a *different* High Court judge, and so on). This would be chaotic because litigants would never have finality in their disputes, even though the administration of justice demands finality in court orders for it to operate successfully.

Setting aside an interlocutory order

43. It is important to note that the Order in this case is an interlocutory order. This Court was not told of any occasions where one High Court judge had been asked to set aside an interlocutory order of another sitting High Court judge, such as this one. Thus, the application by the Barringtons appears to be unprecedented.

44. One of the rare cases where a High Court judge was asked to set aside the order of another High Court judge, *albeit* a final order, is the case of *Board of Management of Wilson's Hospital School v Enoch Burke* [2024] IEHC 453. It involved an application by Mr. Burke to Sanfey J. to set aside a decision of Owens J. In that case, in reliance on *McInerny* and on *Belville*, Sanfey J. concluded that in light of the importance of the finality of litigation, the re-opening of a final order is only possible in *'very extreme circumstances'* (at paragraph 48). In that case, he refused to set the order of Owens J., particularly where Mr. Burke had *'chosen not to appeal the impugned decision'* (at paragraph 48).

45. Since the *Burke* case concerned a final order, it is important to note that, when one is dealing with interlocutory orders, there have been occasions when judges have been asked to *revise their own* interlocutory orders, because of changed circumstances. This is not surprising, since by their nature, interlocutory orders, as distinct from final orders, are temporary in nature, as they are given *pending* a trial of the substantive issue, often to preserve the *status quo*. It follows that if there were a change in circumstances, such as an agreement between the parties on one aspect of the dispute, this might lead to a judge revising his/her own interlocutory order.

Thus, unlike a final order, an interlocutory order is capable of being revisited in the event of a change in circumstances pending the trial.

46. However, while Nolan J.'s order in this case is not a final order, but an interlocutory order, it seems to this Court that it should only be set aside in the rarest of circumstances, akin to the test for the setting aside of final order. This is:

- because of the importance of finality in litigation, which applies to interlocutory orders, *albeit* perhaps not quite to the same extent as final orders;
- because the application to set aside in this case was *not* made to the judge who made the interlocutory order but to another judge;
- because, as noted below, the application is *not* being made due to a change of circumstances, but it is a form of 'appeal' of one High Court judge's decision to another High Court judge; and
- because the Barringtons have failed to appeal the Order.

The sense of injustice felt by the Barringtons that led to this application to set aside

47. In considering whether these rare circumstances might exist in this case, it is important to note that the Barringtons come across as a genuine and hard working couple. Indeed, Mrs. Barrington delivered an eloquent and passionate submission to the Court about her views on the Constitution and the protection that she felt it gave her and her husband (*albeit* that Mrs. Barrington was looking at the Constitution solely from the perspective of how it protects *her* property rights, without considering how it might also protect the property rights of others, such as Mr. Garavan and MRCS).

48. For this reason, it was clear to this Court that the Barringtons feel a deep sense of injustice and appear to believe that they are entitled to have the Order of one High Court judge set aside by another High Court judge, because they did not obtain the 'right' or a 'just' decision. While this Court recognises the sense of injustice the Barringtons feel, it is important

to point out that most litigants, who go to court 'seeking justice' but who do not get the result they want, whether about their property, their marriage, their livelihoods, their reputations, their children *etc*, will feel that they have suffered an injustice, sometimes even a deep injustice. Indeed, when one is dealing with such visceral issues as homes, family, money, livelihoods etc, there is nothing unusual about these deep feelings. The Barringtons are therefore in the same position as every other litigant who loses a case. Whether they appreciate it or not, justice has been 'administered', and so they have obtained justice. It just so happens that they, like most losing litigants, are not happy with the result of that administration of justice.

A litigant is not entitled to the 'right' decision?

49. The reason the Barringtons have obtained justice, despite not getting what they believe was the 'right' or a 'just' result, is because, while superficially it may seem surprising to say it, litigants are not in fact entitled to the 'right' or a 'just' decision from a court. This is for the simple reason that there is no such thing as *one* 'right' or *one* 'just' decision. This is because different judges will reach different decisions on the very same facts. This point was put succinctly by the Chief Justice of Northern Ireland, Keegan L.C.J. when she stated that:

> "There's a discipline to providing judgments […] colleagues might disagree with you, other courts might disagree with you. **That doesn't mean you are wrong, necessarily. It means that there are different views.**"[4] (Emphasis added)

50. This statement highlights an important point, namely that just because one judge makes a different decision from another judge does not make one decision right and the other decision wrong; they are just *'different'* decisions from different judges. By highlighting the fact that different judges reach different decisions, Keegan L.C.J.'s statement serves to highlight that litigants what entitled to *a decision*, not the 'right' or a 'just' decision. This decision should be

[4] These comments were *extra-judicial* as they were made in an interview in *The Bar Review*, vol 29, no 5 (December 2024) at p 167.+

reasoned and given to them by an independent judge after a reasonable time and after a fair hearing. If litigants receive this, then justice has been administered and they have got the 'justice' they have sought. This is so, even if they *feel* a sense of injustice because they did not get what *they believe* was the 'right' or a 'just' decision.

51. The fact that different judges reach different decisions, while it might superficially appear to be a negative, is in fact a positive aspect of the administration of justice in Ireland. This is because under Article 35.2 of the Constitution all judges are required to *'be independent in the exercise of their judicial functions'* and it is a clear sign that there is an *independent* judiciary, if judges reach different decisions. This is evidence of the fact that judges are not subject to groupthink, but rather make up their own minds independently (i.e. *independent* not only of the legislature and the executive, but also of other judges).

52. The fact that there is no such thing as one objectively 'right' or 'just' decision is vividly illustrated by the case of *Minister for Justice & Equality v Sciuka* [2021] IESC 80. In that case, the applicant won his case, even though a *majority,* five out of nine, of the judges, who heard his case, found against him (i.e. one in the High Court, three in the Court of Appeal, and one in the Supreme Court). However, since four out of the five judges in the Supreme Court found *in favour* of the applicant, he won. This case therefore starkly highlights not only that different judges reach different decisions, but more importantly that there is no such thing as one objectively 'right' or one objectively 'just' decision to which a litigant is entitled.

53. In this case, the Barringtons got a reasoned decision from Nolan J. on the day of the hearing. If Nolan J. had failed to give any decision, the Barringtons would have cause for complaint, as would Mr. Garavan, as he would have been subject to the interim injunction *until* Nolan J. gave his decision. The fact that the Barringtons believe that they did not get the 'right' or a 'just' decision, and so did not get justice, is not a basis for that decision to be set aside.

54. However, in addition to their claim that the Order should be set aside because they did not get justice, the Barringtons also have more specific reasons why they believe that they are entitled to have the Order set aside, which will be considered next.

Submissions of the Barringtons regarding their entitlement to set aside the Order

55. The Barringtons claim that the there were several irregularities with the Order and that Nolan J. did not comply with the law in reaching his decision. In particular, they claim that Nolan J. did not comply with the Constitution, that he did not comply with caselaw of the High Court, that he did not comply with the caselaw of the Supreme Court, that he did not follow the Rules of the Superior Courts, and that he breached fair procedures.

56. All of these grounds are the typical grounds one sees for the appeal of a decision, yet as already noted, the Barringtons have chosen not to appeal, but instead applied to one High Court judge to set aside the judgment of another High Court judge. However, the most striking thing about this litigation is the number of costly errors made by the Barringtons, while being assisted by an unqualified litigation adviser.

Errors made by the Barringtons in pursuing this litigation

57. In this application, and in the application before Nolan J., the Barringtons made a number of fundamental errors, which anyone with even the most basic legal training would have advised them against making:

(i) Application for injunction served on wrong parties

58. When seeking the interlocutory injunction preventing Mr. Garavan/MRCS from gaining possession of the Property, the Barringtons served the motion, not just on Mr. Garavan/MRCS i.e. the parties they are seeking to injunct, but also on two State defendants (the Attorney General and Tailte Éireann) and a financial institution, a receiver and an accountancy firm (Promontoria (Oyster) DAC, David O'Connor and BDO).

59. However, the order being sought (to prevent Mr. Garavan/MRCS seeking possession of the Property) is not directed against any of these five other parties and no relief is sought against them in relation to this interlocutory application.

60. This meant that *even if* the Barringtons had been successful (at the interlocutory hearing before Nolan J.) in continuing the injunction against Mr Garavan/MRCS, they would almost certainly have had to pay the costs of the Attorney General, Tailte Éireann, Promontoria (Oyster) DAC, David O'Connor and BDO, who were required to attend court for an injunction application that had nothing to do with them. This error therefore is one with significant financial consequences for the Barringons.

61. In addition, of course, by serving the motion on the two State defendants the Barringtons have forced the taxpayer to incur unnecessary legal costs, and this waste of public funds is a matter of concern for the courts, who have a duty *'to bear in mind'* any loss to the taxpayer. This is clear from the Supreme Court decision in *Reardon v Government of Ireland* [2009] 3 IR 745, where Murray C.J. at page 765 states that:

> "It must also be **borne in mind** that all litigation, even groundless litigation, causes expense to the individuals or entities impleaded in it and that this expense will often fall on the taxpayer." (Emphasis added)

(ii) <u>Application for set aside Order served on wrong parties</u>

62. It is clear from the hearing before Nolan J. and his awarding of costs to those five defendants (Attorney General, Tailte Éireann, Promontoria (Oyster) DAC, David O'Connor and BDO), that he was clearly of the view that they should not have been served with the motion seeking the injunction. However, whether on the express advice of Mr. Macken or not, the Barringtons have made the exact same error again, by serving the motion to set aside the Order on all seven defendants, despite the clear terms of Nolan J's judgment in this regard.

63. Accordingly, *even if* the Barringtons were to be successful before this Court in setting aside the Order, there would be a compelling case for costs to be awarded against them and in favour of these five defendants. This error therefore is another one with significant financial consequences for the Barringons.

64. In addition, as two of the defendants are State defendants, there has been a *further* waste of taxpayer's funds by the Barringtons serving the motion on them, and this Court, in light of the Supreme Court decision in *Reardon,* is required to bear this waste of taxpayers' funds in mind.

(iii) No facts provided by the Barringtons to support their application, just law

65. The Barringtons swore two affidavits dated 10 June 2024 and 14 June 2024 in relation to their application for an interlocutory injunction. Whoever advised the Barringtons in relation to the contents of these affidavits, they contain no facts and no evidence, apart perhaps from their names and other minor details. Instead, the two affidavits are full of references to caselaw and legislation. As a result, the affidavits are in essence legal submissions.

66. However, even if these legal submissions were helpful to the legal point that the Barringtons are seeking to make, these legal submissions are completely futile since they are being made in a vacuum, i.e. without any facts or evidence regarding the Barringtons' claim.

67. A judge can only make a decision to grant an interlocutory injunction on the basis of facts and evidence and the Judge in this case had no facts or evidence which would entitle him to grant an interlocutory injunction in their favour. All he had was legal submissions. As noted by Nolan J. at the hearing on 18 June 2024:

> "The way a Court takes evidence are two ways, one, somebody gets into the witness box and swears something, but in cases such as this, it's done on the basis of an affidavit. **So you set out in your affidavit the facts, not the legal submissions**. Nothing to do with the Constitution, nothing to do with any other cases, nothing to do

with – – that isn't contained in the affidavit. And if you're listening to a McKenzie friend or your other gentleman who is beside you, they're misleading you. This is how it is properly done in a court so you set out all the things that you're saying to me and if they're on an affidavit I can take them on board." (Emphasis added).

68. In the hearing before this Court, the Barringtons pointed to the fact that in the papers before Nolan J. was a Land Registry document showing that on the 23 September 2003, they became the registered owners of the Property (and remained so until 29 December 2022). This they claim is a 'fact' which was before Nolan J. However, this fact is of limited benefit, since the fact that someone owned a property in the year 2022, and so prior to the current registered owner, is not cogent evidence in a claim that the current registered owner is not, in 2024, entitled to possession and in particular it is not cogent evidence that the current registered owner should have been injuncted from seeking possession of that land in 2024.

(iv) The Barringtons ignore the helpful suggestion of Nolan J.

69. However, perhaps the biggest mistake made by the Barringtons is that this error regarding the contents of their affidavits was compounded when they *inexplicably* declined Nolan J.'s suggestion that they seek an adjournment of the proceedings to enable them put some facts on affidavit. Nolan J. could not have been clearer, when he said:

"So would you not consider my offer of putting the matter back so you can put it on affidavit? […]

Mrs Barrington, I can do no more than advise you as to what should you do. Maybe I'm going beyond, so if you still want to proceed with the matter, I will hear you […]"

70. The Barringtons' refusal to take up Nolan J.'s suggestion and instead insist on Nolan J. deciding their application, and so without any meaningful evidence or facts, was fatal to the prospect of them obtaining an interlocutory injunction. In simple terms, there was no way Nolan J. could grant an injunction preventing the registered owner of the Property from seeking

possession of that Property without any evidence which would support the granting of such an injunction.

(v) The Barringtons ignore the helpful suggestion of Barniville P.

71. Unfortunately, this was not the only occasion when the Barringtons refused to take up a suggestion made by a judge who was seeking to assist them. This is because uncontroverted submissions were made to this Court that when they appeared before the President of the High Court seeking to set aside the judgement of Nolan J., the President pointed out that they were within time, at that stage, to appeal Nolan J.'s judgement. He pointed out that this was the normal or proper route to take when a litigant is unhappy with a decision, rather than the unprecedented application they were making, for one High Court judge to set aside the interlocutory order of another sitting High Court judge on the basis of alleged errors of law (rather than any change in circumstances).

72. Inexplicably they chose not to take up this suggestion from the President of the High and whether on the advice of Mr. Macken or otherwise, they pursued their application to set aside Nolan J.'s judgement, with the consequence that the time for making an appeal has since expired.

(vi) Some of the grounds for set aside are nonsensical

73. When it came to providing the grounds for the set-aside of the Order, some of the grounds provided by the Barringtons are just nonsensical. This is illustrated by the contents of Mrs. Barrington's affidavit of 10 July 2024, in which she states that:

> "I say that the problem/errors in the High Court, on 18th June 2024 can be recognised for the following reasons including:-
>
> […] **The sitting of the solicitor for the Chief State Solicitors Office as far away from the bench as possible** to be as close to the door as possible." (Emphasis added)

74. This is plainly nonsense. Where a solicitor happens to be sitting in court is not a ground for anything, let alone a ground for one High Court judge to set aside a judgment of another High Court judge.

(vii) The Barringtons misunderstand standard legal language

75. The only other factual evidence that the Barringtons relied upon in their application for an interlocutory injunction before Nolan J. was a letter from Mr. Garavan's solicitor dated 16 May 2024. They rely on the existence of this fact to support their claim that they did not get justice before Nolan J. and so this fact also grounds their application to set aside the Order. This letter states, insofar as relevant, that:

> *"Please note that if you fail to deliver up vacant possession of the Premises within the Specified Timeframe, then our client will, without further notice to you, take whatever steps may be available to it to secure vacant possession of the Premises, including (but not limited to) obtaining peaceable possession of the Premises."*

76. The Barringtons claimed to this Court that they believed that the reference to 'means other than peaceable possession' was a physical threat, thereby justifying their obtaining an interlocutory injunction preventing Mr. Garvan/MRCS taking possession, and now justifying this Court in setting aside the Order vacating the interim injunction.

77. Whether on the advice of Mr. Macken or otherwise, this claim is based on a failure to appreciate that this wording is standard in such letters and it does not constitute a physical threat. It is simply a reference to the fact that if the Barringtons fail to give up the Property *voluntarily* (i.e. peaceably), Mr. Garavan/MRCS will be forced to seek non-voluntary methods, such as a court order to *force* a party to leave a property. It is not a physical threat and therefore is not a basis for the grant of an interlocutory injunction and therefore also not the basis for setting aside Nolan J.'s decision to refuse to grant the interlocutory injunction.

(vii) The Barringtons misunderstand standard court procedures

78. The Barringtons also claim that they did not get a fair hearing because they believe they were treated differently in relation to their affidavit evidence than Mr. Garavan/MRCS.

79. In particular, they complain that Nolan J. accepted into evidence an affidavit on behalf of Mr. Garavan/MRCS, even though it had not been stamped or filed, yet he refused to accept their affidavit evidence. However, whether on the advice of Mr. Macken or otherwise, this complaint is based on a misunderstanding of court procedures and because there are two different issues at play.

80. Firstly, it is standard practice for a court to accept an affidavit into evidence, even if it has not been stamped or filed, where the time for preparing the affidavit was very limited as was the case here. However, such evidence is only accepted on the undertaking from a solicitor that it will be stamped and filed, as was done in this case. There was therefore no preferential treatment given by Nolan J. to Mr. Garavan/MRCS.

81. Secondly, Nolan J. did not refuse to accept the Barringtons' affidavit 'evidence', he simply pointed out that the affidavit contained little or no facts, and so it was in effect legal submissions. However, in their interests, he said that he would treat the contents of the affidavit as legal submissions, even though it was contained in an affidavit. Thus, he did not refuse to accept their affidavits into court for the purpose of the hearing.

82. Finally, the Barringtons also complain that Nolan J. did not let Mrs. Barrington read her affidavit 'into the record' during the hearing. However, it is standard practice for judges to have read affidavits in advance of hearings (or sometimes to complete reading them, while they are partially read out in court), such that it is not necessary for them to be read, at all or in full, in court. The affidavits are still part of the case and so are 'on the record' in this sense. There was therefore nothing unfair or unusual in the approach taken by Nolan J. in this regard and

the approach he took was in the interests of court efficiency and in the interests of other litigants waiting to have their cases heard.

Conclusion regarding the circumstances alleged to justify setting aside the Order

83. From all of the foregoing, it is clear that the Barringtons have made numerous errors, while being given assistance by an unqualified litigation adviser. As a result they have:

- missed the opportunity to adjourn the interlocutory hearing in order to put facts and evidence before Nolan J.,
- missed an opportunity to appeal the judgement with which they were unhappy, as had been suggested by Barniville P.,
- pursued an unprecedented set aside application as a form of appeal to one High Court judge of another High Court judge's decision, which is completely unsustainable,
- based that application for set aside on some nonsensical grounds, such as the position of the seat occupied by a solicitor in court,
- exposed themselves to thousands of euro in legal costs by wrongly serving two separate motions on five parties, and
- forced the taxpayer to incur unnecessary costs by wrongly serving the motions on two State entities.

84. In particular, the Barringtons have not brought any changed circumstances, evidence of fraud, or anything similar (which, in any event, if it existed, could or should have been brought to the attention of Nolan J.) which would have justified Nolan J. in setting aside his own decision.

85. Instead, they have chosen to apply to a different judge to set aside Nolan J.'s order. For this reason, it seems to this Court that the exceptional circumstances, which would be needed to justify this Court in making such an order, are completely absent.

86. More generally, as regards the claim by the Barringtons that Nolan J. had not granted them a fair hearing, it appears to this Court that on the contrary, he went out of his way to suggest that they make an application to adjourn the proceedings to allow them time to mend their hand. This was clearly because they had produced no evidence that would enable him grant the interlocutory injunction they were seeking. Unfortunately, they declined to take up his suggestion.

87. In these circumstances, rather than there being grounds for the Order to be set aside, it seems to this Court that Nolan J.'s decision was *the only one* open to him. Accordingly, this is patently not a case where one High Court judge could exercise the most exceptional jurisdiction of setting aside a decision of another High Court judge.

88. The foregoing facts (as well as the fact that the Barringtons required five defendants to attend court for *two separate* hearings in relation to matters which did not concern them) all establish that, unfortunately, the Barringtons' real problem is their own acts and omissions, all done with the assistance of Mr. Macken, and not anything done by Nolan J. Based on these acts and omissions, this Court must refuse the application to set aside the Order.

CONCLUSION

89. This is a case in which there were judicial statements, uncontroverted evidence and submissions that the Barringtons are being advised by someone who has no legal qualifications. It is inadvisable for litigants to pursue costly High Court litigation based on such advice. In this case, the Barringtons, while being assisted by an unqualified litigation adviser, have made several fundamental errors, in their attempt to the challenge the Order made by Nolan J., such as:

- including legal submissions, and effectively no facts, in their affidavits;

- refusing to take up Nolan J.'s suggestion that they seek an adjournment of the hearing before him (to enable them put some facts, and not just law, before the court);
- refusing to take up Barniville P.'s suggestion to appeal Nolan J.'s decision to an appellate court, rather than, in effect, trying to appeal the decision of one High Court judge to another High Court judge (by making a set-aside application); and
- serving the motion for the interlocutory injunction, and the motion to set aside the Order, on five parties who had nothing to do with that application.

90. These have been costly errors, since firstly, it is too late for the Barringtons to appeal the Order and secondly, this Court's *provisional* view is that not only Mr. Garavan/MRCS, but also the other five defendants are entitled to their costs. This is because firstly Mr. Garavan and MRCS have been entirely successful and secondly because there was no basis for the other five defendants to be served with the motion, which necessitated them incurring costs.

Having had one appeal, should the Barringtons be permitted more court time?

91. All of this raises one final point. This is because in the normal course the Barringtons would be entitled to appeal this Court's decision. However, if they were to do so, they would in effect be having two bites at the cherry at seeking to appeal Nolan J.'s judgment and more to the point, they would be *inflicting two sets of legal costs* on the defendants, as well as using scarce court resources on *two occasions* by having, in effect, two appeals.

92. In considering whether the Barringtons should be entitled to further waste court resources in this manner (to the disadvantage of other litigants waiting for their cases and at the cost of the seven defendants), it is important to remember that the Barringtons have, with the assistance of an unqualified litigation adviser:

- made a completely unsustainable application for one High Court judge to reverse the decision of another High Court judge, rather than appealing the Order, as suggested by Barniville P.,

- served their motion for the interlocutory injunction on three private parties who should not have been served, and thus inflicted unnecessary legal costs on those parties,
- then served the motion to set aside on the *same* three private parties and so inflicted further unnecessary costs on those parties, even though it is clear from Nolan J.'s judgment that they should not have been served,
- served their motion for the interlocutory injunction on two State entities who should not have been served, and thus inflicted unnecessary legal costs on the taxpayer,
- then served the motion to set aside on the *same* two State entities and so inflicted further unnecessary costs on the taxpayer, even though it is clear from Nolan J.'s judgment that they should not have been served, and
- put forward nonsensical arguments as part of that application to set aside.

93. When one considers all of this, it seems to this Court that the Barringtons, while being assisted by an unqualified litigation adviser, have abused court processes.

94. Despite all of this, the Barringtons are, *prima facie*, entitled to appeal this Court's decision. Yet, *if* the Barringtons were to do so, it would mean that the seven parties that they had unsuccessfully sued in, what was, in effect, an 'appeal' of Nolan J.'s order in this Court, would end up having to incur further costs in defending, in effect, a second appeal of that order.

95. In this Court's view, it cannot be just that any litigant could seek to use the very exceptional jurisdiction to set aside a High Court order, followed by an appeal to the Court of Appeal, to have in effect two appeals. It also cannot be just that the parties on the other side of the litigation would be forced to incur a second set of legal costs (which may not be recoverable from the Barringtons) for a second appeal.

96. Indeed, looking at the issue more generally, if other litigants were to take a similar approach (i.e. by applying to set aside a court decision, rather than appealing it, but then to

appeal the rejection of the set aside application), it would mean the addition of a completely new layer (and costs) to every challenge to a court decision.

97. This is because there would effectively be two 'appeals' rather than one, and two hearings rather than one, with the consequent drain on court resources and increase in costs for those on other side of the appeals (with no guarantee that they would be able to recover the two sets of costs). In this Court's view, this would amount to a systemic abuse of court process. Yet, *prima facie*, the Barringtons in this case are entitled to appeal this Court's order and therefore abuse the courts processes in this manner and inflict further financial loss (in the form of legal costs) on innocent third parties and the taxpayer.

98. However, one possible way to discourage parties seeking to have 'two appeals' may be found in the recent case of *Ossory Road Enterprise Park Limited v Rogers & Ors* [2025] IECA 34, *albeit* that that case was not directly concerned with the issue of two appeals, rather the issue of abuse of process more generally. In that case, Meenan J. noted that while access to the courts is a constitutional right, where a litigant has abused court processes (in that case by providing dishonest evidence to the trial court), he/she is *not* entitled to be treated in the same way as a person who has respect for the administration of justice. According to Meenan J., consideration should be given to such litigants, who have abused court processes, having to pay security for costs before they can pursue an appeal. It seems to this Court that the requirement of security for costs to situation such as this one, where there has been abuse of process, has several benefits.

99. Firstly, we are dealing with a situation where litigants have already had in effect 'one appeal', since they have chosen to bring a set aside application, rather than an appeal. The 'first appeal' did not require any security for costs. In the normal course a litigant is only entitled to one appeal and so the requirement of security for costs is only being applied to the exceptional circumstance of litigants seeking to have, in effect, two appeals.

100. Secondly, in relation to the 'second appeal', the litigants are not being deprived of the exercise of their constitutional right of access to the courts – it simply will not be exercised at the financial expense of the parties with whom they are litigating. This is because the litigants pursuing the 'second appeal' will *still* be able to pursue their proceedings, but they will have to provide security for the costs which they are forcing the other parties to the litigation to incur. If those litigants, who have been found to have abused court processes by a trial judge, were to win the appeal, they will be repaid any amounts they have put up as security. Thus, they will not be a loss if they win their 'second appeal'.

101. Thirdly, the other parties to the litigation will not be out of pocket if the litigant, who has abused court process loses the 'second' appeal. This is because the provision of security for costs will mean that the other parties to the litigation, who have to undergo a 'second appeal', at least have a guarantee that they will be paid, if they win the 'second' appeal. Thus, they will not suffer the 'double injustice' of having to pay legal costs for two successful appeals (which costs may not be recoverable, even if they get an order for their costs).

102. Fourthly, the courts should have less time wasted dealing with appeals from persons who were held by the trial court to have abused court processes. This is for the simple reason that while a lay litigant, who is *not* paying for lawyers, might be willing to waste court time and his opponent's legal costs pursing nonsensical arguments, he is very unlikely to do so, if his own money is on the line, which it will be if he has to put up security for costs.

103. Applying therefore the principle in *Ossory* to this case, if the Barringtons were to seek a 'second' appeal, by appealing this Court's decision to the Court of Appeal, it is open to the defendants to ask the Court of Appeal to require the Barringtons to provide security for their costs, before hearing that appeal. Such an approach should mean that there would either be:

- a *prevention of a further abuse of court process* and a waste of court resources (by avoiding having a second appeal), or

- mean that at least that second appeal will not be done at the expense of the innocent parties being sued and so a *prevention of an injustice* being visited upon those parties and the taxpayer.

104. This case will be put in for mention at 10.45 a.m. a week from its delivery to deal with any final orders and the finalisation of the costs, should the parties wish to make any submissions. If it is not necessary to have such a hearing, and in order to save on further costs, the parties have liberty to notify the Registrar if such a listing proves to be unnecessary.