



AN CHÚIRT UACHTARACH

THE SUPREME COURT

JUDICIAL REVIEW

S: AP: IE: 2020:000111

Clarke C.J.

O'Donnell J.

Dunne J.

Charleton J.

O'Malley J.

Between/

The Director of Public Prosecutions

Applicant/Appellant

-and-

District Justice Elizabeth McGrath

Respondent

-and-

John Matthews

First Notice Part/Respondent to the Appeal

-and-

Gerard Gearty

Second Notice Party

Ruling of the Court, delivered on the 4th day of October, 2021.

1. Judgment in the above appeal was delivered electronically on 21st September, 2021 ([2021] IESC 66, Unreported, Supreme Court, O'Donnell J., 21st September, 2021). The proceedings concerned an application by the Director of Public Prosecutions (“the Director”) which sought to quash an order made by the respondent District Judge ordering that the costs of a prosecution, which had not proceeded in the District Court, be borne by the Director. The Director succeeded in the High Court, but the Court of Appeal overturned the decision ([2019] IECA 320, Unreported, Court of Appeal, Edwards J., 20th December, 2019), and that decision was in turn upheld by this Court, albeit on somewhat different grounds.
2. The parties have now addressed the question of costs. The notice party contends that having succeeded in the proceedings he is entitled to recover all the costs. The Director, for her part, argues that the notice party should only be granted an order for 50% of the costs in the proceedings before the Supreme Court, and the Court should vary the order of the Court of Appeal so that there would be no order as to costs in respect of the High Court and Court of Appeal hearings. The notice party argues that, having succeeded on the appeal, he is entitled to recover all the costs and indeed seeks interest upon that award.
3. The Director argues for a limited award of costs on the basis that the notice party succeeded on a point not argued in the High Court or Court of Appeal. The Director accepts that the issue should be considered by reference to ss. 168 and 169 of the Legal Services Regulation Act 2015 (“the 2015 Act”), and O. 99, rr. 2 and 3 of the Rules of the Superior Courts, which took effect from 3rd December, 2019. It is argued that it cannot be said that the notice party was “entirely successful” in the proceedings, and accordingly he cannot be said to be “entitled” to an award of costs even on a *prima facie* basis, pursuant to s. 169(1) of the 2015 Act.

4. These proceedings, commenced by the DPP, sought an order of *certiorari* quashing an order of costs made by the respondent District Justice on the basis that the relevant provisions of the District Court Rules precluded an order for costs against the Director. The notice party did not dispute the fact that the provisions of the Rules so provide, but contended that those rules were invalid principally, though not exclusively, on the grounds that they amounted to an impermissible amendment of the provisions of s. 59 of the Dublin Metropolitan Police Act of 1842 (“the 1842 Act”). That argument succeeded in the Court of Appeal. While it cannot be said to have succeeded in this Court, it cannot truly be said to have failed — O’Donnell J., who delivered a judgment with which all other members of the Court agreed, considered that he could not conclude with certainty what the position was in Ireland prior to 1922, and therefore could not conclude whether or not the provisions of the Rules of the District Court adopted in 1926 and repeated thereafter, constituted a permissible adaptation of the 1842 Act. Accordingly, O’Donnell J. decided the case on the basis of the alternative argument advanced by the notice party, namely that the provisions of the rules were *ultra vires* the powers of the District Court Rules Committee.
5. The outcome of the case therefore was that the DPP failed to obtain the order of *certiorari* she sought, and the notice party secured a finding of invalidity of the rules which he had sought. Furthermore, while there were aspects of the notice party’s legal arguments which were not accepted by this Court, the issue was one entirely of legal argument, and it cannot be said that there were separate issues which could be isolated, and the costs relevant to each measured.
6. It is perhaps unnecessary to decide whether the notice party was entirely successful, and thus entitled to an award of costs under s. 169(1) of the 2015 Act unless the Court otherwise ordered, or while not entirely successful on all points, the notice party should be considered entitled to recover the costs of the proceedings. The Court considers that there is no basis

for depriving the appellant of all costs in the High Court and the Court of Appeal, and considers that the appropriate order is to direct that the notice party recover the costs of the proceedings in the High Court, Court of Appeal and this Court respectively. It is not clear, however, what jurisdiction the Court has to make any order sought by the notice party in respect of interest on costs. In any event, the Court will not make any such order.