

THE SUPREME COURT

Record No. 2017/000078

BETWEEN



ANGELA KERINS

APPELLANT / APPLICANT

AND

**DEPUTY JOHN MCGUINNESS, DEPUTY MARY LOU MCDONALD,
DEPUTY SHANE ROSS, DEPUTY ÁINE COLLINS, DEPUTY PAUL J.
CONNAUGHTON, DEPUTY JOHN DEASY, DEPUTY ROBERT DOWDS,
DEPUTY SEÁN FLEMING, DEPUTY SIMON HARRIS, DEPUTY EOGHAN
MURPHY, DEPUTY GERALD NASH, DEPUTY DEREK NOLAN, DEPUTY
KIERAN O'DONNELL, THE CLERK OF DÁIL ÉIREANN, THE CLERK OF
THE PUBLIC ACCOUNTS COMMITTEE, IRELAND AND THE
ATTORNEY GENERAL**

RESPONDENTS

**Respondent's Notice of the Appellant in respect of the Cross Appeal of the State
Respondents**

Supreme Court record number	2017/000078
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[Title and record number as per the High Court proceedings]

Angela Kerins

Applicant

AND

Deputy John McGuinness, Deputy Mary Lou MacDonald, Deputy Shane Ross, Deputy Aine Collins, Deputy Paul J Connaughton, Deputy John Deasy, Deputy Robert Dowds, Deputy Sean Fleming, Deputy Simon Harris, Deputy Eoghan Murphy, Deputy Gerald Nash, Deputy Derek Nolan, Deputy Kieran O'Donnell, the Clerk of Dail Eireann, the Clerk of the Public Accounts Committee, Ireland and the Attorney General

Respondents

Date of filing	
Name of respondent	Angela Kerins
Respondent's solicitors	Eames Solicitors
Name of appellant	Ireland and the Attorney General
Appellants' solicitors	The Chief State Solicitor

1. Respondent Details

Where there are two or more respondents by or on whose behalf this notice is being filed please also provide relevant details for those respondent(s)

Respondent's full name	Angela Kerins
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The respondent was served with the application for leave to appeal and notice of appeal on date
19 May 2017

The respondent intends :	
<input checked="" type="checkbox"/>	to oppose the application for an extension of time to apply for leave to appeal
<input type="checkbox"/>	not to oppose the application for an extension of time to apply for leave to appeal
<input type="checkbox"/>	to oppose the application for leave to appeal
<input type="checkbox"/>	not to oppose the application for leave to appeal
<input checked="" type="checkbox"/>	to ask the Supreme Court to dismiss the appeal
<input type="checkbox"/>	to ask the Supreme Court to affirm the decision of the Court of Appeal or the High Court on grounds other than those set out in the decision of the Court of Appeal or the High Court
<input type="checkbox"/>	Other (please specify)

If the details of the respondent's representation are correct and complete on the notice of appeal, tick the following box and leave the remainder of this section blank; otherwise complete the remainder of this section if the details are not included in, or are different from those included in, the notice of appeal.

Details of respondent's representation are correct and complete on notice of appeal:	<input checked="" type="checkbox"/>
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Respondent's Representation

Solicitor			
Name of firm			
Email			
Address		Telephone no.	
		Document Exchange no.	
Postcode		Ref.	
How would you prefer us to communicate with you? <input type="checkbox"/> Document Exchange <input type="checkbox"/> E-mail <input type="checkbox"/> Post <input type="checkbox"/> Other (please specify)			

Counsel			
Name			
Email			
Address		Telephone no.	
		Document Exchange no.	
Postcode			

Counsel			
Name			
Email			
Address		Telephone no.	
		Document	
		Exchange no.	
Postcode			

If the Respondent is not legally represented please complete the following

Current postal address
Telephone no.
e-mail address

How would you prefer us to communicate with you?			
<input type="checkbox"/>	Document Exchange	<input type="checkbox"/>	E-mail
<input type="checkbox"/>	Post	<input type="checkbox"/>	Other (please specify)

2. Respondent's reasons for opposing extension of time

If applicable, set out concisely here the respondent's reasons why an extension of time to the applicant/appellant to apply for leave to appeal to the Supreme Court should be refused

1. The State Appellants/Respondents fail to identify any reason other than the fact that it is stated that the Respondent's/Appellant's Notice Seeking Leave to Appeal was received after the time had expired for filing an appeal as a basis for seeking an extension of time within which to appeal the order made by the Divisional Court refusing the Appellant/Respondents their costs. The Respondent's/Appellant's Notice of Appeal was served simultaneously on all Respondents but only the State Appellants/Respondents had a difficulty in filing their appeal in time. This suggests that no intention to appeal was formed within the time limited for the bringing of an appeal.

2. Notwithstanding the novelty and constitutional importance of the issues arising in this case and the special role of the Attorney General under Order 60 of the Rules of the Superior Courts, the State Appellants/Respondents did not participate during Directions Hearings before the President of the High Court in advance of the Divisional Court Module 1 hearing save to advise the Court that they were reserving their position as to whether they would seek to be heard during the Module 1 hearing.

3. Knowing that no orders would be made against them in Module 1, the State Appellants/Respondents elected to be present during the Divisional Court hearing of Module 1 issues but without identifying whether they proposed to have a role in the proceedings.

4. The State Appellants/Respondents did not file written submissions on the issues directed for hearing in Module 1 in advance of the hearing and ultimately relied only on a "speaking note" circulated to the parties contemporaneously with their short oral submission towards the end of the hearing.

5. The State Appellants/Respondents made no new arguments during the Module 1 hearing but repeated arguments already rehearsed by the PAC Respondents and did not by their presence prolong the hearing. Consequently, the Appellant/Respondent did not seek costs as against the State Respondents in light of their particular role in the

proceedings.

6. No issue of general public interest or special importance arises from the decision of the Divisional Court to make no order as to costs in favour of the State Appellants / Respondents and to require them to bear their own costs in the circumstances aforesaid such as might warrant the granting an extension of time to permit the State Respondents to revisit the costs order made as it affects them on the hearing of this appeal.

3. Information about the decision that it is sought to appeal

Set out concisely whether the respondent disputes anything set out in the information provided by the applicant/appellant about the decision that it is sought to appeal (Section 4 of the notice of appeal) and specify the matters in dispute:

No. The State Respondents correctly identify at section 4 of the Notice of Appeal that the Divisional Court made no order as to costs in respect of their costs against the Appellant.

4. Respondent's reasons for opposing leave to appeal

If leave to appeal is being contested, set out concisely here the respondent's reasons why:

N/A Without prejudice to the Respondent's opposition to an extension of time to appeal the Respondent is not contesting the application for leave to appeal to the Supreme Court.

5. Respondent's reasons for opposing appeal if leave to appeal is granted

Please list (as 1, 2, 3 etc in sequence) concisely the Respondent's grounds of opposition to the ground(s) of appeal set out in the Appellant's notice of appeal (Section 6 of the notice of appeal):

1. The State Appellants/Respondents are incorrect in stating that the Respondent/Appellant refused to release them from the proceedings when they wrote requesting same. The Respondent/Appellant replied to the letter referred to state that it was premature at that stage to make a decision on the necessity for the joinder of the parties in circumstances where Opposition papers had not been filed by the PAC Respondents. It was indicated that the question might be revisited once Opposition papers were received but the State Appellant/Respondent never sought to revisit the

question but elected to remain a party in the proceedings, albeit without committing to participate. Irrespective of whether relief was sought against the State Appellants/Respondents, it was of course at all time appropriate to serve them with proceedings and put them on notice of issues in the proceedings having regard to the issues arising in the case, the role of the Attorney General under the Constitution as recognised in Order 60 of the Rules of the Superior Courts.

2. In this way the State Appellants/Respondent did not seek to be heard in respect of the fixing of the issues by the President in advance of the hearing, expressly reserved their position before the Court as to whether they would participate or not in the Module 1 hearings and did not file written submissions in advance. Such oral submissions as they ultimately made were succinct but advanced no new argument above arguments already canvassed on behalf of the PAC Respondents, essentially adopting the same position as the PAC Respondents and did not prolong the case.
3. Accordingly, it is wrong to state that the State Appellants/Respondents were “required” to appear for the hearing or to make submissions and they were present at their election having expressly told the Court that they were reserving their position in respect of their participation during the hearing. The State Appellants/Respondents had every opportunity to canvas their release from the Module 1 hearing either with the parties or before the Court but did not do so. Similarly, the State Appellants/Respondents are on their election in relation to their participation in the appeal against the decision of the Divisional Court and have elected to put in a Respondent’s Notice notwithstanding that no relief is sought against them in the Appellant’s Notice of Appeal.
4. Whilst no relief was sought against the State Appellants/Respondents during the Module 1 hearing and they elected to participate notwithstanding the presence of a publicly funded legal team on behalf of the PAC Respondents, this was a matter for them. It is surmised that their decision to be present and participate was because of the special role of the Attorney General under the Constitution (as recognised in Order 60 of the Rules of the Superior Courts) and the importance of the constitutional issues arising in the case.
5. Accordingly, the Attorney General had an interest in the proceedings and a role in respect of same regardless of whether relief was sought as against the State but this was a public interest role under the Constitution and not one for which the Respondent/Appellant should be liable in costs in all the circumstances of this case.
6. This is not a case in which the normal rule that costs should follow the event should be applied. Without prejudice to the foregoing, the “event” in the Module 1 hearing was the dismissal of the relief sought as against the PAC Respondents. The Divisional Court had regard to the general public and exceptional importance of the issues in the case in ordering that the PAC Respondents be liable for a percentage of the Respondent’s/Appellant’s costs as a departure from the normal rule. The Divisional Court departed from the “normal” rule on a reasoned and principled basis related to the facts and legal issues in the case and the Respondent/Appellant stands on the Divisional Court’s decision in this regard.

Name of counsel or solicitor who settled the grounds of opposition (if the respondent is legally represented), or name of respondent in person:

John Rogers S.C.
Siobhan Phelan S.C.

6. Additional grounds on which decision should be affirmed

Set out here any grounds other than those set out in the decision of the Court of Appeal or the High Court on which the Respondent claims the Supreme Court should affirm the decision of the Court of Appeal or the High Court:

Are you asking the Supreme Court to:

depart from (or distinguish) one of its own decisions?

☐ Yes

☒ No

If Yes, please give details below:

make a reference to the Court of Justice of the European Union?

☐ Yes

☒ No

If Yes, please give details below:

Will you request a priority hearing?

☒ Yes

☐ No

If Yes, please give reasons below:

The Respondent/Appellant has sought priority in her related Notice Seeking Leave to Appeal and to the extent that the admissibility of this appeal falls to be considered in tandem with the processing of the Respondent/Appellant's appeal, it follows that priority should be afforded on the same grounds.

Signed:



**Eames Solicitors
Solicitors for the Respondent
2 Malthouse Square
Smithfield
Dublin 7**

Please submit your completed form to:

**The Office of the Registrar to the Supreme Court
The Four Courts
Inns Quay
Dublin**

This notice is to be lodged and served on the appellant and each other respondent within 14 days after service of the notice of appeal.

THE SUPREME COURT

Record No. 2017/000078

BETWEEN

ANGELA KERINS

APPELLANT / APPLICANT

AND

**DEPUTY JOHN MCGUINNESS, DEPUTY MARY LOU MCDONALD,
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KIERAN O'DONNELL, THE CLERK OF DÁIL ÉIREANN, THE CLERK OF
THE PUBLIC ACCOUNTS COMMITTEE, IRELAND AND THE
ATTORNEY GENERAL**

RESPONDENTS

Respondent's Notice of the Appellant in respect of the Cross Appeal of the State
Respondents

EAMES SOLICITORS
2 MALTHOUSE SQUARE
SMITHFIELD
DUBLIN 7