

**APPROVED****[2021] IEHC 173**

THE HIGH COURT

2020 No. 161 MCA

BETWEEN

PASCAL HOSFORD

APPLICANT

AND

IRELAND AND THE ATTORNEY GENERAL  
MINISTER FOR SOCIAL PROTECTION  
MINISTER FOR PUBLIC EXPENDITURE AND REFORM  
MINISTER FOR BUSINESS ENTERPRISE AND INNOVATION

RESPONDENTS

**JUDGMENT of Mr. Justice Garrett Simons delivered on 22 March 2021****INTRODUCTION**

1. The principal judgment in these proceedings was delivered on 3 March 2021 and bears the neutral citation [2021] IEHC 133. For the reasons set out in detail in the principal judgment, this court concluded that the within proceedings are irregular in form and represent an abuse of process. Accordingly, the proceedings will be dismissed in their entirety. This supplemental judgment addresses the allocation of costs.

**SUBMISSIONS OF THE PARTIES**

2. As indicated in the principal judgment, my *provisional* view had been that an order of costs should be made in favour of the respondents as against the applicant. The judgment

NO REDACTION REQUIRED

went on to invite written submissions from the parties in the event that a different form of costs order was being contended for on behalf of the applicant.

3. The applicant, Mr. Hosford, has since filed two sets of written legal submissions. In brief, the applicant submits that no order for costs should be made at this juncture in circumstances where the within proceedings represented “*an honest false start*” on the part of a lay litigant, and that he had no intention to engage in any abuse of process nor to re-open any closed proceedings. It is further submitted that the making of any costs order should be postponed, pending the outcome of what the applicant describes as “*linked*” proceedings. This is a reference to an appeal brought by the applicant which is pending before the Court of Appeal, and to future proceedings which the applicant apparently intends to issue.
4. These linked proceedings are said to present “*novel and untested*” points of law which are of public interest. These points of law, it is said, will now be properly procedurally addressed. There are special reasons for the court to delay making any costs order; or to put a stay on any costs order, pending the outcome of an appeal.
5. The respondents have filed helpful written submissions setting out the principles governing an application for costs under the recently commenced regime under the Legal Services Regulation Act 2015 and the amended version of Order 99 of the Rules of the Superior Courts.

## **DISCUSSION AND DECISION**

6. Logically, the first matter to be addressed is the applicant’s submission that the making of a costs order in these proceedings should be *deferred* pending the hearing and determination of other proceedings. The applicant submits that the other proceedings in which he is involved raise important issues of substantive law, and that the allocation of

the costs of the application to dismiss the present proceedings on procedural grounds should follow the outcome of those other proceedings.

7. For the reasons which follow, I have concluded that it would not be in the interests of justice to defer making a decision on costs in this case. The Legal Services Regulation Act 2015 and Order 99 of the Rules of the Superior Courts envisage that costs should generally be determined at the conclusion of proceedings, with the costs of interlocutory applications being dealt with at the time where possible. Whereas a court does have discretion to stay any costs order which it may make, pending an appeal, it will typically determine the allocation of costs first and the stay will be confined to the execution of that costs order. It would be most unusual to impose a stay pending the determination of *other* proceedings. (See, generally, *Permanent TSB v. Skoczylas* [2020] IECA 152 (at paragraph 44 of the judgment)). It would be exceptional to defer addressing the issue of costs entirely.
8. This court is already fully apprised of all matters which are relevant to the exercise of its costs jurisdiction. The outcome of the other proceedings brought by the applicant is not a relevant consideration in the allocation of the costs of the present proceedings. This is because the outcome of the present proceedings is not “*linked*” to the outcome of the other proceedings. There is no overlap between the procedural grounds upon which the present proceedings have been dismissed, and the substantive issues of law which the applicant wishes to pursue in the other proceedings.
9. Even if the applicant were to be entirely successful in his other proceedings, this would not affect the finding in the principal judgment that the present proceedings had not been properly constituted. The applicant will still have been wrong to have issued proceedings in the form that he did. The outcome of the other proceedings is irrelevant to the consideration of the conduct of the present proceedings. There is no proper basis for

deferring the making of a costs order. I propose to move on, therefore, to consider the merits of the arguments on costs.

10. The default position under Part 11 of the Legal Services Regulation Act 2015 is that a party who has been “*entirely successful*” in proceedings is *prima facie* entitled to costs against the unsuccessful party. The starting position, therefore, is that the respondents are *prima facie* entitled to an order for costs in their favour in that they have been entirely successful, and the proceedings have been dismissed. The court retains a discretion, however, to make a different form of costs order.
11. Section 169 of the Legal Services Regulation Act 2015 provides that in exercising its discretion, a court should have regard to the particular nature and circumstances of the case and the conduct of the proceedings by the parties. Relevantly, the court should have regard to whether it was reasonable for a party to raise, pursue or contest one or more issues in the proceedings.
12. The applicant has placed much emphasis on the fact that he does not have the benefit of professional legal representation, i.e. he is a litigant in person. Even allowing for this, it should have been obvious to the applicant that he was not entitled to reargue the issues which had been decided against him by the High Court in his earlier proceedings, *Hosford v. Minister for Social Protection* (High Court 2013 No. 805 J.R.). Those judicial review proceedings were heard towards the end of January 2015, and the High Court (Noonan J.) delivered a reserved judgment on 6 February 2015, *Hosford v. Minister for Social Protection* [2015] IEHC 59. The application for judicial review had been dismissed and a costs order made against the applicant on 6 February 2015.
13. Mr. Hosford explained at the hearing before me that an accommodation had subsequently been reached between the parties whereby the respondents agreed not to enforce the costs

order on the understanding that no appeal would be taken by him. The parties duly applied to the High Court on 16 March 2015 to have the costs order vacated.

14. The applicant cannot approbate and reprobate. Having taken the benefit of the agreement on costs, it should have been obvious to the applicant that he was not entitled, some five years later, to launch fresh proceedings which purport to challenge the very findings which he had agreed not to appeal.
15. Even if the applicant had not fully appreciated this at the time he instituted these proceedings, he could have been in no doubt as to the legal position once he had been served with the motion seeking to strike out the proceedings. The motion and grounding affidavit put the applicant on notice of the fact that the respondents were objecting to the form of his proceedings, and, in particular, were objecting to the attempt to reagitate issues which had been determined against him in the earlier judicial review proceedings. It was not reasonable for the applicant to have continued to pursue the present proceedings thereafter. At the very least, he should have abandoned that part of his claim which trespassed on the issues determined against him in the earlier judicial review proceedings. By resisting the application to dismiss, the applicant put the respondents to the cost of having to pursue their motion to hearing. The respondents were entirely successful in their motion and the proceedings have been dismissed in their entirety.
16. The other procedural irregularities identified in the principal judgment are ones which might have been less obvious to a litigant in person. Whereas the fact that a litigant may be unaware of a procedural rule does not “*cure*” the breach, it is a matter which a court can, in principle, take into account in allocating costs.
17. In the exercise of my discretion under section 169 of the LSRA 2015, therefore, I propose to modify the default position (under which the respondents would have been entitled to all their costs). I will instead make a limited order for costs against the applicant. The

costs will be confined to one-half of the costs incurred by the respondents in respect of the motion to strike out the within proceedings. Put shortly, once the overall costs have been agreed or adjudicated, a discount of fifty per cent is to be applied. The rationale for granting the respondents only one-half of their costs is that it represents a fair compromise which reflects the fact that the applicant did not have the benefit of legal representation, while at the same time recognising that, insofar as a significant part of his claim is concerned, it was objectively unreasonable for him to have pursued the proceedings once the motion issued.

### **CONCLUSION AND FORM OF ORDER**

18. A limited order for costs will be made against the applicant. The costs will be confined to one-half of the costs incurred by the respondents in respect of the motion to strike out the proceedings. The costs are to include one-half of all reserved costs and one-half of the costs of the two sets of written legal submissions. The legal costs are to be adjudicated (measured) by the Office of the Legal Costs Adjudicator in default of agreement.
19. As requested by the applicant, the execution of the costs order is to be stayed for twenty-eight days, and, in the event of an appeal, will be further stayed pending the determination of any appeal to the Court of Appeal or an application for leave to appeal to the Supreme Court.

#### *Appearances*

The applicant represented himself as a litigant in person  
Sarah-Jane Hillery for the respondents instructed by the Chief State Solicitor

Approved  
S. J. Hillery