



# THE COURT OF APPEAL

Record Number: 2022/273

Noonan J.

Neutral Citation Number [2023] IECA 149

Haughton J.

Allen J.

**BETWEEN/**

**ERIC JOHN SOMERS**

**PLAINTIFF/APPLICANT**

**-AND-**

**WILLIAM KENNEDY**

**DEFENDANT/RESPONDENT**

## **RULING OF THE COURT delivered on the 14th day of June, 2023**

1. The principal judgment of the Court in this matter was delivered on the 20<sup>th</sup> April, 2023 ([2023] IECA 103). In that judgment, the plaintiff's application for an extension of time within which to appeal the order of the High Court dismissing his claim was refused.
2. The application now before the court is for the audio and typed transcript of the digital audio recording of the hearing of the application before this Court on the 20<sup>th</sup> April, 2023. The plaintiff's motion in this regard came before the Directions Judge on the 9<sup>th</sup> June, 2023 and was referred to the panel for a ruling.

3. Insofar as material for the purposes of this application, O. 123, r. 9 of the RSC provides as follows:

“(4) Subject to *subrule (5)*, the relevant court may, where it considers it necessary in the interests of justice so to do, permit the applicant to have such access to all or such part of the relevant record concerned as is specified in the order made on the application, by such means and at such time or times as may be specified in that order and on such terms and under such conditions (including terms restraining the publication, dissemination or further disclosure of all of any part of the relevant record by the applicant, and the giving of an undertaking to such effect) as the relevant court may direct.”

4. It will be seen from the foregoing that the overriding consideration to which the Court must have regard is that it considers it necessary in the interests of justice to permit the applicant to have access to the relevant DAR record.

5. The grounding affidavit of the applicant sets out the reason for the application at para. 3:

“I say that I am seeking these (DAR) records to further a professional misconduct complaint against the respondent to the Legal Services Regulatory Authority (LSRA).”

6. Beyond that, the applicant offers no explanation of how or in what manner the DAR record is relevant to furthering the complaint to which he refers. In his submissions before the Directions Judge, the applicant indicated that he wished only to access that part of the DAR recording in which a member of the panel made some observations in dialogue with the applicant and counsel for the respondent. However, what those observations were or

how they are relevant to any ongoing complaint before the LSRA has not been explained by the applicant.

**7.** The applicant has the benefit of a written judgment from this Court and in the circumstances, the court is not satisfied that the applicant has established that it is necessary in the interests of justice that he should be granted access to the DAR recording sought.

**8.** Accordingly, the Court refuses this application. As the application was not opposed by the respondent who adopted a neutral stance in relation thereto, the Court proposes to make no order as to the costs of this application.