

THE HIGH COURT

[2022] IEHC 28
[Record No. 2016/9512 P]

BETWEEN

PATRICK KEARY

PLAINTIFF

AND

THE PROPERTY REGISTRATION AUTHORITY OF IRELAND

DEFENDANT

THE HIGH COURT

[Record No. 2019/0578 P]

BETWEEN

PATRICK KEARY

PLAINTIFF

AND

THE MINISTER FOR JUSTICE AND EQUALITY, IRELAND AND THE ATTORNEY GENERAL

DEFENDANTS

THE HIGH COURT

[Record No. 2019/8124 P]

BETWEEN

PATRICK KEARY

PLAINTIFF

AND

**THE MINISTER FOR JUSTICE AND EQUALITY, THE GARDA COMMISSIONER, THE
COURTS SERVICE, IRELAND AND THE ATTORNEY GENERAL**

DEFENDANTS

JUDGMENT of Ms. Justice Butler delivered on the day 24th of January, 2022

Introduction

1. This judgment deals with applications made by the defendants in three different cases brought by the plaintiff against various public sector entities including the State. The defendants seek to have the plaintiff's proceedings struck out either under O.19, r.28 as failing to disclose a reasonable cause of action or pursuant to the court's inherent jurisdiction on the basis that the proceedings are bound to fail. In addition, the defendants complain, centrally as regards one of the cases and peripherally in another, that the proceedings have been issued in breach of an Isaac Wunder Order made against the plaintiff by Stewart J on 18th October, 2016. That order restrained the plaintiff from instituting any further legal proceedings in respect of certain lands without prior leave of the High Court. The plaintiff did not seek nor obtain such leave before instituting the proceedings in question.
2. The plaintiff is a litigant-in-person who is acting on his own behalf, although it appears from his submissions that some of the arguments he makes are also being made by litigants in other cases with whom the plaintiff may be in contact. In this regard the plaintiff referred to a meeting due to be held the week after the hearing in this case and the intention of these litigants (presumably including the plaintiff) to "go to Europe" *en bloc*. The plaintiff also appears to be assisted by his daughter although she was not present in court.

Plaintiff's central argument

3. All of these cases arise against a background of previous litigation in which the plaintiff was involved, usually as a defendant, and in which orders were made against him in favour of various other parties. Although I will outline the circumstances of each case individually, the plaintiff's belief that he is "*immune*" from court orders is central to his claims both in the substantive litigation and in his response to these applications. The court has had some difficulty in understanding the basis of this claim. It appears to derive from the plaintiff's interpretation of the significance of orders made in unrelated proceedings in which the plaintiff was not involved. These proceedings are cited in the plaintiff's pleadings by reference to their case numbers being High Court No. 2006/1114P and Supreme Court No. 334/2007 being an appeal in that High Court case. These numbers refer to proceedings entitled *Eugene Cafferky v. Director of Public Prosecutions*. In his pleadings the plaintiff claims that the Supreme Court decision in that case "*validated*" a contempt of court by the DPP in respect of an order made by the High Court earlier in the same case. Consequently, the plaintiff argues that as Article 40.1 of the Constitution contains a guarantee of equality, citizens, including himself, are also immune from court orders and that the "*victims*" of such orders can sue the State for damages, as he purports to do in the proceedings he describes as his constitutional case. Needless to say, there have been a significant number of court orders made against the plaintiff prior to the institution of these proceedings. Insofar as it is possible to deduce from the pleadings in this case, those orders have for the most part arisen in debt collection proceedings against the plaintiff.
4. When asked by the court for some more information as to the nature of the *Cafferky* case and of the order of which the plaintiff alleges the DPP to have been in contempt, the plaintiff was unable to provide the court with any additional information. He does however complain that the Supreme Court decision in case 334/2007 is not on the Courts Service website as a result of which he has been unable to access it. This would seem to be because no written judgment was issued in the case, the Supreme Court having dismissed Mr. Cafferky's appeal on an *ex tempore* basis and without reserving judgment. In circumstances where the plaintiff was unable to provide the court with any assistance as regard the authority which is central to his contentions, I asked the solicitor acting on behalf of the defendants to see if she could procure copies of all relevant judgments and orders over the lunch break. On the resumption of the hearing at 2pm a bundle comprising copies of five orders was handed into court. The Supreme Court order made on 28th October, 2011 records the dismissal of Mr. Cafferky's appeal against an order of the High Court (Lavan J) dated 13th November, 2007 which in turn dismissed his claim on the grounds that it disclosed no reasonable cause of action. The High Court order of 13th November, 2007 simply records the dismissal of the claim on those grounds.
5. There are then three additional interlocutory orders made by the High Court. One of these was made by the Master of the High Court on 5th October, 2006 and refused Mr. Cafferky leave to join additional parties to his proceedings, leave to make a consequential amendment to his statement of claim and discovery. It seems that the plaintiff's arguments are based on one or both of the other two orders. The earlier of these (McKechnie J. 22nd May, 2006) gives the defendant, the DPP, an extension of two weeks

to file an appearance in response to a motion for judgment in default of appearance. The second (made by Gilligan J. on 14th May, 2007) gives the DPP a further extension of one week to file an appearance. Obviously, an inference can be drawn that the DPP did not file an appearance within the two-week period allowed by McKechnie J in May 2006. The May 2007 order does not record the nature of the motion brought by Mr. Cafferky on that occasion and, in particular, whether it was a further motion for judgment in default or, alternatively, a motion for contempt on the basis of the DPP's non-compliance with the order of May 2006. It may even be that the contempt of which the plaintiff now complains was a further delay in complying with the order of 14th May, 2007. As the plaintiff was completely unable to explain the basis for his assertion that the DPP was in contempt of a High Court order the court is left to speculate as to what his rationale might be.

6. It is certainly unusual for there to be a delay of a year in filing an appearance subsequent to a motion having been brought seeking judgment in default of appearance. However, it is not entirely unheard of and the dates of the various orders suggest that the DPP issued the motion seeking to strike out the proceedings either with or very shortly after filing an appearance. The Supreme Court order refers only to Mr. Cafferky's appeal from the order made on 13th November, 2007 dismissing his claim. Therefore, it does not seem that Mr. Cafferky took an appeal from either of the orders which allowed the DPP extensions of time for the filing of an appearance. He may have relied on the failure to file an appearance within the time prescribed by the rules or as allowed by the order of 22nd May, 2006 as part of his defence to the application to strike out his claim but the plaintiff was unable to shed any light on the extent to which this remained an issue after the appeal was filed. In my view the Supreme Court's dismissal of Mr. Cafferky's appeal cannot be regarded as validating a contempt of court which does not appear to have been in issue before the Supreme Court on the appeal.
7. Either way it does not really benefit this plaintiff. The Rules of the Superior Courts prescribe many time limits for the taking of various steps in proceedings, especially as regard the filing of pleadings at an early stage in the process. The rules do not impose any automatic consequence for non-compliance with these time limits. Instead, where a party is in default the other party may seek to have the proceedings, or the defence as the case may be, struck out as a result of that default. Such applications are routinely brought but rarely result in proceedings being struck out. Rather their purpose is to prompt the party in default to take the requisite steps so that the proceedings can progress. In practice such applications are usually resolved either prior to the issuing of or prior to the hearing of the motion by the moving party pragmatically agreeing an extension of time for the taking of the step with the defaulting party. The penalty, if any, lies in the defaulting party being made liable for the costs incurred by the moving party in bringing the motion.
8. Where the motion proceeds to hearing the court has a discretionary jurisdiction under O.122, r.7 to enlarge or abridge the time "*appointed by these rules, or fixed by any order enlarging time, for doing any act...*". Extensions of time are routinely granted by courts in ease of all types of litigants, including private litigants, and do not benefit exclusively

either defendants or public sector defendants. Most cases in which an order is made dismissing proceedings (or the defence to proceedings) on the grounds of default of pleading usually involve an extensive delay for which no excuse is offered, repeated delays or repeated failures to comply with extended time limits. Obviously, the reason advanced for any delay by the defaulting party is likely to have a significant bearing on the exercise of the court's discretion. Equally, the exchanges of correspondence between parties prior to the issuing of the motion and the extent to which the moving party has already afforded the defaulting party opportunities to comply will also be relevant. Unfortunately, in cases where litigants are acting in person, the usual correspondence between solicitors in which a default is identified and an opportunity afforded to take the requisite step, is frequently absent.

9. Order 122, r.7 also expressly provides that an enlargement may be ordered even where *"the application for same is not made until after the expiration of the time appointed or allowed"*. Thus, the discretion afforded to the court by the rule is large and the fact that an application can be made after the time previously allowed by a court order has elapsed reflects a pragmatic approach towards achieving the necessary compliance. This is not to say that time limits are not important; clearly, they are. The efficient progress of litigation is best served by parties taking the steps required of them within the time envisaged by the rules or at very least within any enlarged period agreed by the other side or allowed by a court. However, failure to take the step within that time is not fatal and orders providing for an extension of time are usually drawn up in permissive rather than mandatory terms. To treat such orders as imposing a mandatory requirement to take a step within the extended period or to face either the automatic loss of any entitlement to proceed with or defend the action or the possibility of being held in contempt of court would be completely disproportionate to the purpose such time limits are intended to serve.
10. Finally, although this judgment is not the appropriate place for an analysis of the nature of contempt of court, apart from circumstances which amount to contempt in the face of the court, a party who has disobeyed a court order must be found to be in contempt of that order by a court following a hearing on foot of an application properly brought for that purpose. The procedural requirements include the service of a copy of the order containing a penal endorsement on the party alleged to be in contempt. A party is not necessarily in contempt of court simply because a court order has not been complied with particularly where the order in question is permissive rather than mandatory in nature. Most importantly, only a court can hold a person to be in contempt of court. The party to the litigation for whose benefit the order was made will of course have a valid interest in ensuring compliance with that order and may bring an application for contempt in the event of the other party's default. However, I know of no basis upon which persons who are not parties to proceedings can contend that either of the parties are in contempt of court much less assert definitely that a party is in contempt of court when no application has been brought nor finding made in that regard. The plaintiff's inability to give the court in this case any information as to the circumstances of the alleged contempt, even

information as basic as identifying the order of which it is alleged the DPP was in contempt, illustrate why no heed should be paid to such assertions.

11. In an event even if it were established through a finding properly made by the High Court that the DPP had been in contempt of court, there is no legal basis for the consequential assertion made by the plaintiff that the constitutional guarantee of equality must mean that all citizens are to be regarded as "*immune*" from court orders. The illogicality of the proposition is so obvious that it makes the task of rejecting it simultaneously both easy and complex. Whilst courts will invariably take a dim view of a party who has been found to be in contempt of court (which I reiterate was not the case in *Cafferky v. DPP*), it does not follow that where a party is held to be in contempt of an interlocutory order that that party will necessarily lose the substantive proceedings. The purpose of a contempt application is to secure compliance with the order and, once compliance is achieved, the defaulter is no longer in contempt. The substantive proceedings must then be judged according to their merits. The behaviour of the party previously in contempt may influence the subsequent exercise of discretion by the court in those proceedings, but it cannot alter the legal merits of the case. Therefore, even if the DPP had been found to be in contempt of an order extending time to file an appearance, once an appearance had been filed that finding would not have impacted on the separate question of whether Mr. Cafferky's proceedings disclosed reasonable cause of action. That was the issue determined by Judge Lavan in November 2007 whose decision was upheld by the Supreme Court in October 2011.
12. The notion that the plaintiff must be regarded as being immune from court orders because a party in other proceedings whom the plaintiff asserts was in contempt of a court order nonetheless succeeded in overall terms in those proceedings is fundamentally misconceived. The Constitution has entrusted the exercise of judicial power to the courts. Citizens have a right of access to the courts because the courts provide the constitutionally sanctioned mechanism through which disputes between citizens or commercial entities and disputes between citizens and public authorities can be resolved. It is inherent in the exercise of judicial power and indeed an indicator that the power being exercised is judicial in nature, that the decision made by the courts is both binding and enforceable. The contention that all citizens are immune from court orders is incompatible with the essential nature of the judicial power itself. Contrary to the plaintiff's view, this does not give rise to a constitutional crisis, it simply means that the plaintiff's argument is devoid of any legal merit whatsoever.
13. The plaintiff's claim is based on a right to equality under Article 40.1 of the Constitution. Obviously, Article 40.1 does guarantee citizens (interpreted in certain contexts as including non-legal persons and persons who are not citizens) a right to equality before the law. The plaintiff's emphasis on this right being "*untouchable*" is, in my view, misplaced. As a matter of basic principle personal rights guaranteed by the Constitution are generally not absolute but may be proportionately restricted if necessary to serve another, legitimate, purpose. Even in its terms the guarantee of equality under Article 40.1 allows for differentiation, albeit by the State in its enactments, on the basis of

physical and moral capacity and of social function. The reliance placed by the plaintiff on the right to equality to surmise that because another party in other proceedings may have been in contempt of court, court orders have no application to him is completely misconceived. There is simply no connection between the right to equality before the law, the proceedings the plaintiff seeks to bring and the details of orders that may or may not have been complied with in other unrelated proceedings between other unrelated parties.

14. As will be apparent from this analysis, the core argument made by the plaintiff is one which is entirely without merit and thus cannot provide a sound legal basis upon which the plaintiff can maintain and the defendants should be required to defend legal proceedings. Although this argument is central to each of the plaintiff's three cases other issues are also raised. Therefore, I propose to look at each of the three cases before considering whether the applications made by the defendants should be allowed in all or any of them.

Proceedings against Property Registration Authority of Ireland (2016/9512 P)

15. The earliest of the three sets of proceedings instituted by the plaintiff features the Property Registration Authority of Ireland ('the Authority') as the sole defendant. In order to understand these proceedings, it is necessary to be aware of a series of earlier proceedings involving the plaintiff and a financial institution, namely Secured Property Loans Limited ('Secured Property'). In November 1985 the plaintiff was registered as the owner of approximately eight hectares at Killaclogher in County Galway comprised within folio 42156. Over the course of the following decades a number of judgment mortgages were registered on this folio on foot of judgments obtained by various financial institutions and others against the plaintiff. In October and November 2007 charges were registered in favour of Secured Property in respect of "*present and future advances repayable with interest*". These charges were also registered as item number six on a separate folio, GY74S, which had been opened on 13th April, 2011 to reflect various charges over various properties held by Secured Property and Ronald Weisz (whom I understand to be the principal of Secured Property) in County Galway.
16. On 1st March, 2010 the High Court (McGovern J) granted an order for possession of the lands comprised in folio 42156 to Secured Property and an order of possession was subsequently issued on 29th August, 2011. These orders were not appealed by the plaintiff but in 2014 and 2015 the plaintiff issued two sets of proceedings (2014/5560P and 2015/2308P) in which he sought to set aside the order for possession which had been made by McGovern J. The plaintiff also registered two *lis pendens* in respect of these proceedings on folio 42156 in June 2014 and March 2015 respectively. Secured Property and Mr. Weisz (who was a co-defendant to the proceedings brought by the plaintiff) brought applications to vacate the *lis pendens* under s.123 of the Land and Conveyancing Law Reform Act 2009 and sought various other orders restraining the plaintiff and his family from interfering with Secured Property and/or Mr. Weisz as mortgagees in possession of the property. They also sought an Isaac Wunder Order against the plaintiff in respect of the property. At the same time the plaintiff sought injunctive relief directed

to the Authority to ensure that the lands contained in folio 42156 remained registered in the name of the plaintiff pending the determination of his proceedings.

17. Prior to these motions coming on for hearing Ronald Weisz was registered as full owner of folio 42156 on 28th April, 2015. The various motions then came on for hearing before Stewart J on 18th October, 2016. Stewart J consolidated the two sets of proceedings which had been instituted by the plaintiff, vacated the *lis pendens* which the plaintiff had registered on the property, granted the restraining orders requested by Secured Property and made an Isaac Wunder Order against the plaintiff restraining him from instituting any further proceedings in respect of the lands comprised in folio 42156. All of the reliefs which had been sought by the plaintiff in his various motions were refused. No stay was placed on the order of the High Court. The plaintiff appealed to the Court of Appeal and sought a stay on the order of Stewart J. That stay was refused on 21st July, 2017 and the appeal itself was refused on 5th October, 2018.
18. The proceedings now before the court were instituted by the plaintiff on 25th October, 2016, merely days after Stewart J had made her orders. Those proceedings seek a declaration that the plaintiff is the beneficial owner of the lands comprised in folio 42156 and has a beneficial interest in folio GY74S. The plaintiff also sought various orders preventing the Authority from completing certain dealings in respect of folio 42156 and folio GY74S pending the decision of the Court of Appeal in the appeal taken from Stewart J's orders and also pending the full plenary hearing of the underlying proceedings which he had instituted in 2014 and 2015. Although the orders made by Stewart J vacating the *lis pendens* had the practical effect of removing all impediments to further dealings affecting the title to folio 42156, that order did not of itself dispose of the plaintiff's underlying proceedings notwithstanding that significant proportions of those proceedings must have become moot in consequence of those orders. The plaintiff also claims slander of title against the Authority in respect of his claimed legal and beneficial ownership of folio 42156 and the charge reflected on folio GY74S.
19. An appearance was entered on behalf of the Authority in November 2016. No further step was taken in those proceedings by the plaintiff. On 30th July, 2020 the solicitors acting on behalf of the Authority wrote to the plaintiff inviting him to discontinue the proceedings on the basis that they were now moot as a result of the re-registration of folio 42156 or, alternatively, inviting him to deliver a statement of claim. As the plaintiff did neither of these things, on 30th July, 2020 the Authority issued a notice of intention to proceed and on 1st February, 2021 brought the motion currently before the court seeking to have the proceedings struck out either under O.19, r.28 or on foot of the court's inherent jurisdiction. In addition to contending that the pleadings do not disclose a reasonable cause of action and that the proceedings are bound to fail, the Authority also complains that the proceedings have been issued in breach of the Isaac Wunder Order made by Stewart J on 18th October, 2016. It seems likely that because the proceedings were issued so soon after the making of that order, the order had not been drawn up nor communicated to the Central Office before the plaintiff had issued these proceedings.

20. In the affidavit sworn to ground the application now made by the Authority it is pointed out that the purpose of the proceedings appears to have been to preserve the status quo pending the determination of the plaintiff's appeal from Stewart J's order even though by the time the proceedings were instituted Mr. Weisz had already been registered as full owner on the folio. In any event, it is pointed out that all of the relief sought in the proceedings is now moot save possibly the claim for damages for slander of title. However, the Authority asserts that there is no independent ground advanced in support of this claim for damages and, thus, that the pleadings do not disclose a reasonable cause of action in respect of damages.

Constitutional action (2019/0578P)

21. The second set of proceedings instituted by the plaintiff contain what he refers to as his constitutional claim and were issued in January 2019 against Ireland, the Attorney General and the Minister for Justice. The main argument advanced in these proceedings has already been set out and considered above. However, the plaintiff also makes a separate complaint in respect of a public house continuing to trade notwithstanding the quashing of a liquor licence by the High Court on 3rd November, 2008. From the pleadings it appears that this public house is in County Roscommon and it does not appear that the plaintiff has any particular connection to the public house in question nor that he had any involvement with the judicial review proceedings referred to in which the licence may have been quashed. Consequently, its relevance and the plaintiff's *locus standi* to raise it are not readily understandable and, again, the plaintiff was not in a position to assist the court.
22. The statement of claim rehearses the same themes and also makes references to a number of other sets of proceedings. One of these (2018/9410P) are proceedings to which the plaintiff was not a party but in respect of which he now contends that the State defendants failed to enter an appearance. The other cases referred to appear to be proceedings in which the plaintiff was involved although this is by no means clear. It seems that the plaintiff is contending that the ACC procured judgment against him by fraud in proceedings ultimately bearing Supreme Court reference number 2013/211. He also refers to what he contends was an invalid District Court order made in Loughrea in debt collection proceedings taken by Corrib Oil on foot of which the plaintiff contended he stood to be imprisoned. The relevance of all of this is unclear save insofar as the plaintiff fundamentally contends that he is not bound by any orders made against him in previous proceedings for reasons which have already been discussed.
23. In a defence filed on behalf of the defendants in November 2019 it is expressly pleaded that the proceedings fail to disclose a reasonable cause of action and, insofar as they relate to the property previously owned by the plaintiff in folio 42156, the proceedings have been instituted in breach of an Isaac Wunder Order. The defendants expressly reserve the right to make an interlocutory application to have the proceedings struck out. The balance of the defence is a full defence to the plaintiff's claim denying the invalidity of any of the orders referred to and disputing the plaintiff's entitlement to relief. The plaintiff appears to have responded to this defence by way of an affidavit sworn on 18th

November, 2019 in which he asserts that the defendants have failed to address his equality argument and he argues that the Isaac Wunder Order is of no application since the plaintiff contends he is immune from court orders.

24. The plaintiff served a notice of trial on 8th January, 2020 and followed this up by issuing a motion in February 2020 seeking to join additional parties including Mr. Weisz, Corrib Oil (being the plaintiff in District Court proceedings to which the plaintiff is a defendant), a named District Judge on the basis that the judge failed to comply with the High Court order - the order itself, the proceedings in which it was made and the relevance to the plaintiff's action being entirely unidentified and unexplained - and the Garda Síochána Ombudsman Commission on the basis of its alleged failure to comply with the High Court order, again the order, the proceedings in which it was made and the purported relevance to these proceedings being entirely unexplained. Finally, the plaintiff seeks to join certain of the parties in the proceedings mentioned in his pleadings as notice parties to his case.
25. The defendants brought a motion to strike out the plaintiff's proceedings on 24th January, 2020. In an affidavit sworn to ground that application the defendant's solicitor summarises the basis for the application as being that the proceedings cited did not involve the plaintiff personally or, alternatively, that the plaintiff makes complaints about lawful and subsisting court orders which have never been pronounced unlawful or erroneous by any superior court. There is no evidence that any of these orders were set aside on appeal or that the plaintiff suffered any loss or damage because of them pending a successful appeal. There is no factual basis pleaded as to why any of the orders referred to are defective and, if they were, the remedy would lie by way of appeal rather than the issuing of a separate set of proceedings.
26. Finally, the plaintiff filed an additional, undated affidavit in these proceedings which, in the course of the hearing, he was anxious to read into the record in respect of all of his cases. That affidavit contends that the only issue to be determined concerns the plaintiff's constitutional rights and what is described as "Article 2 of the Treaty of Europe". It is noted that the defendants have not disputed that the plaintiff has constitutional rights and, thus, it is asserted that there can be no possible defence to the proceedings. The plaintiff says that there are multiple related constitutional cases (presumably all claiming that citizens are immune from court orders). Finally, reference is made to various criminal investigations which the plaintiff asserts are underway in response to complaints made against the government and, it appears, against various judges. The plaintiff requests that the proceedings be adjourned until the criminal investigations have concluded or, alternatively, requests the court to make a reference to the European Court of Human Rights and that all EU Member States be notified and made parties to that reference. It is evident from this affidavit, and indeed central to the plaintiff's final set of proceedings, that the plaintiff believes that once a complaint has been made to the gardaí about a matter this somehow prevents the courts from determining any litigation to which it is asserted that complaint is relevant. Great emphasis is placed on garda reference numbers provided to the complainants by An Garda Síochána on foot of their complaints. However, it does not follow from the fact that a complaint has been made to the gardaí that the

complaint is of any substance or that an investigation will take place or, if it does, that it will yield any result. Further, the plaintiff is clearly confused as between the jurisdiction of the Court of Justice of the European Union to which a court such as the High Court may make a reference and that of the European Court of Human Rights to which parties must bring their claims directly having exhausted all domestic remedies.

Proceedings concerning District Court proceedings (2019/8124P)

27. The final set of proceedings were issued by the plaintiff on 21st October, 2019 and, in addition to the State, name the Minister for Justice, the Garda Commissioner and the Courts Service as defendants. These proceedings are very much intertwined with the plaintiff's constitutional case in that the plaintiff appears to contend that an arrest warrant issued by a District Judge was invalid due to the plaintiff's pending constitutional case, of which the District Judge was aware. Again, in order to understand the claim made in these proceedings it is necessary to be aware of an entirely separate set of proceedings concerning the plaintiff which had been before the District Court in Loughrea for many years.
28. The saga starts with a decree for summary judgment against the plaintiff made by Judge Mangan in the District Court on 27th January, 2009. The judgment was for a sum of €4,239.00 plus costs. As the plaintiff did not pay the sum due on foot of this judgment an instalment order was made pursuant to the Enforcement of Court Orders Acts, 1926 and 1940, also by Judge Mangan, on 13th April, 2010. This required the plaintiff to pay monthly instalments of €200 to Corrib Oil. That order was varied on 19th March, 2015 with the monthly amount being reduced from €200 to €120. As that debt was not discharged, summonses were issued requiring the plaintiff to appear in court and, on the plaintiff's non-appearance, warrants for his arrest were issued in November 2015 and July 2016. It appears that both of these warrants were executed and the plaintiff was duly brought to court. A further order varying the instalment order by reducing the monthly payments to €100 per month was made on 19th January, 2017. The plaintiff ceased repayments after a number of months and on the application of the creditor the proceedings were re-entered in January 2018 and adjourned on a number of occasions to 17th January, 2019. On that occasion the plaintiff did not appear and a warrant for his arrest was issued by the presiding judge. That warrant was executed on 12th June, 2019 when the plaintiff was brought before the court and the matter was adjourned on a number of further occasions to 18th July, 2019 when again the plaintiff failed to appear and a further warrant was issued for his arrest.
29. The plaintiff's proceedings complain of an invalid arrest warrant issued by Judge Faughnan on 12th June, 2019. As it happens, it does not appear that Judge Faughnan issued an arrest warrant on that date. Instead, that was the date on which the plaintiff was brought before the District Court on foot of the warrant which had been issued in January 2019 by Judge Keane. On the subsequent occasion when the plaintiff failed to appear a further arrest warrant was issued by Judge Gearty. Although Judge Faughnan had issued an arrest warrant in the proceedings in 2015, that warrant had been executed and was spent by 2019. It would seem that Judge Faughnan's involvement in the case on

12th June, 2019 was limited to the giving of directions and the further adjournment of the matter. However, the plaintiff has issued separate defamation proceedings against Judge Faughnan and makes complaints in these proceedings against the staff of the Galway Circuit Court office as regards their handling of those proceedings. Whilst the plaintiff is clearly very exercised about these matters it is difficult if not impossible to work out from his pleadings what his actual complaint is, let alone whether it has any merit, and the complaint he appears to make is not consistent with the documentary records relating to the case which have been exhibited by the defendants. The plaintiff does not deal with these inconsistencies in his reply but instead reverts to asserting that he has a constitutional right to be regarded as immune from "invalid" court orders.

The Hearing of the Application

30. There was some delay in having this matter listed for hearing due to restrictions on in-person court hearings imposed on public health grounds as a result of the covid-19 pandemic. The plaintiff objected to a remote hearing on the basis that he did not have the facility to connect remotely and also that he had a constitutional entitlement to have his case heard in open court. The matter was ultimately listed for a physical hearing before the High Court for two days commencing on 10th November, 2021. The defendant's solicitor wrote to the plaintiff on 29th October, 2021 advising that the case was included in a call over of cases listed for hearing in the week beginning Monday 8th November which call over was due to take place on Thursday 4th November. In response the plaintiff sent an email to the defendant's solicitor stating that he would not be attending the call over as his case was listed for hearing on 10th and 11th November and that he would be in attendance on those dates to have his constitutional case heard. The case was duly called on and on the morning of 10th November the plaintiff attended court in person and did not indicate that there was any difficulty with the case proceeding nor make any application for an adjournment.
31. Counsel for the defendants stated that he intended opening each of the three cases in succession and the court indicated that the plaintiff would be given an opportunity to respond to each of the three cases individually. Counsel for the defendants opened the first of the three cases and, when afforded an opportunity to reply, the plaintiff read his replying affidavit into the record. The court raised a number of questions with the plaintiff about the proceedings referred to in his pleadings. For the most part the plaintiff was either unable or unwilling to provide the court with any information about these cases. At this point he indicated that he thought the case was going to be adjourned because the State was under investigation. This appears to refer to the complaints made by the plaintiff - or perhaps by persons with whom he is associated - to the gardaí. These include complaints of treason against various District Judges who have made orders against the plaintiff. However, no application for an adjournment was made by the plaintiff.
32. When the matter resumed after lunch the plaintiff was invited to address the defendants' argument in more detail but stated that he had nothing to add to the submission that he had made before lunch. He stated that he had been unable to get in touch with his daughter and that he wanted to go home. At this point he indicated that he had recently

recovered from covid and that his daughter wanted him to get home and that he was leaving to catch a train. There had been no indication given prior to that point that the plaintiff was or had recently been unwell. No medical evidence was provided by the plaintiff supporting his assertion that he was unwell. No explanation was offered by the plaintiff as to why, if he was unwell, he had travelled to Dublin to attend court that morning (apparently by train) notwithstanding the potentially serious public health implications that such action might have had. It was indicated to the plaintiff that, as the judge presiding over the case, I would prefer that he remained present in court so as to address the arguments that the defendants proposed making in the remaining two sets of proceedings. The plaintiff indicated that it didn't matter if the case went on without him as he had nothing to add to the affidavit which had already been read into the record. Counsel for the defendants also indicated that the defendants would prefer for the plaintiff to be present to respond to their applications. The plaintiff then left the courtroom. Counsel for the defendants proceeded to open the two remaining cases and the written legal submissions which had been prepared in advance on behalf of the defendants.

33. Obviously, it is strongly preferably that all parties are present or represented in court when any application is made in legal proceedings to which they are a party. However, once a person has been properly notified of an intended hearing in litigation to which they are a party, there is no impediment to the hearing proceeding in their absence if they choose not to attend court. Given the constraints which necessarily arise due to limited court resources and the time and effort which will be wasted in preparation for the hearing of cases and applications which do not proceed, cases which are listed for hearing should only be adjourned for very serious reasons. If a litigant falls ill, particularly a litigant-in-person who is presenting their own case, it may well be necessary to adjourn a hearing notwithstanding the fact that there is a judge available to hear it and that the other side will have prepared for the hearing. In such cases an application for an adjournment has to be made by the party that is seeking for the case not to proceed. Where an application for an adjournment is made on medical grounds it will usually be a requirement that a medical certificate certifying the seriousness of the medical issue (and perhaps that it was unforeseen) will be presented to court.
34. In this case no application was made by the plaintiff to adjourn these matters on the grounds of his ostensible ill-health or for any other reason. Rather, he assumed that the matters would not be going ahead for reasons for which an adjournment would have been unlikely to have been granted namely that complaints had been made to the gardaí. The plaintiff did not indicate either prior to or on the morning of the hearing that he was or had been suffering from any ill-health which would prevent him from taking a full part in the scheduled hearing of the applications. He did not mention his ill-health during the course of the morning either at the outset when one might have expected an application for an adjournment on those grounds to be made nor at the point where he was afforded an opportunity to and did address the court in response to the defendant's submissions on the first of the three cases. The first intimation that the plaintiff was claiming to be unwell came after lunch when he indicated that he was going to leave the courtroom. He did not at that stage formally ask for an adjournment nor did he provide any evidence to

support the contention that he was or had been suffering from covid-19. If he had been suffering from covid-19 it would have been contrary to public health guidance that he should have left his home in County Galway and travelled to Dublin, apparently by train, for the purposes of a court hearing before he had fully recovered. However, in circumstances where there was simply no evidence to support the plaintiff's claim of ill-health and where no formal application for an adjournment was made, I decided that the matter should proceed notwithstanding the plaintiff's departure.

Striking out of Proceedings - General

35. The law relating to the striking out of proceedings whether under O.19, r.28 or the court's inherent jurisdiction is well established and has been discussed in a number of judgments, including some which I have recently delivered. Essentially pleadings can be struck out under O.19, r.28 where they fail to disclose a reasonable cause of action or where they are frivolous or vexatious. The striking out of pleadings, particularly a plaintiff's statement of claim can have the effect of disposing of the entire action. In this case if I accede to the defendants' applications to strike out the plaintiff's pleadings it will inevitably follow that his entire action will be dismissed. In considering an application under O.19, r.28 in principle the court is confined to looking at the pleadings and must assume that the pleaded facts will be established in evidence by the party against whom the application is brought. Thus, the question is a legal one, namely whether, accepting the facts as asserted, the case as pleaded gives rise to a cause of action that is legally capable of succeeding. The issue is not whether it will or will not succeed but whether it is legally capable of doing so. I have deliberately refrained from using the phrase a "*recognised cause of action*" as in certain areas of law, particularly those affecting the citizen's fundamental rights, actions may be pleaded in a novel but nonetheless legally sound manner. Further, although the jurisprudence suggests on the one hand that regard should not be had to anything but the pleadings themselves, it also makes it clear that pleadings should not be struck out if they are capable of being amended so as to disclose a reasonable cause of action. In looking at this specific issue, regard may be had to the other pleadings in the case and to the affidavits in the motion to see whether these disclose as-yet-unpleaded grounds on which a valid cause of action might be based. This is particularly pertinent in the case of litigants-in-person who will frequently lack the legal skill necessary to plead a case well. The court must be careful to differentiate between a bad case *simpliciter* and a case that is merely badly pleaded.
36. The court's inherent jurisdiction to strike out proceedings as an abuse of process is somewhat broader as the court is not confined to an examination of the pleadings but can consider whether an ostensibly reasonable cause of action arising on the pleaded facts is nonetheless one which is bound to fail (see Clarke J in *Lopes v Minister for Justice* [2014] IESC 21). This examination can take into account a range of other matters including the availability of evidence to support the pleaded case and the extent to which the issues raised in the proceedings have already been determined. Where there is a conflict of evidence the court should not attempt to determine that conflict on a preliminary application of this nature; the matter should be allowed to proceed to trial. However, where there is no dispute as to the evidence or lack of evidence, or, for example, where

the pleaded case is inconsistent with the available documentary evidence then there maybe strong grounds for concluding that the case is bound to fail.

37. It is well established that the jurisdiction to strike out proceedings, whether under O.19, r.28 or pursuant to the court's inherent jurisdiction, is one to be exercised sparingly. This is because the effect of making such an order will be to deprive the intending litigant of what would otherwise be their right of access to the courts, a right protected under our constitution and under the European Convention on Human Rights. However, as was observed by MacMenamin J in *Ewing v Ireland* [2013] IESC 44 the courts have a public duty to ensure that court time, which is a scarce resource, is used appropriately and consequently there is no duty to allow unstateable cases to proceed to full hearing simply because the litigant wishes to pursue the case. Thus, in considering an application of this nature, the court must balance the citizen's *prima facie* right of access to the courts to pursue his litigation against the public interest in ensuring that court time is not unnecessarily wasted in the pursuit of obviously unmeritorious litigation and also in ensuring that the opposing party is not caused to expend time and incur expense in defending litigation which never had any prospect of succeeding. In such circumstances the litigation can be characterised as oppressive or abusive.
38. That said, as the jurisdiction is one to be exercised sparingly, the onus is on the moving party to establish that the pleadings do not give rise to a reasonable cause of action or that the case is bound to fail and the threshold to be met is a high one. Where the application is brought on an interlocutory basis, the court must be satisfied that the plaintiff's case would not be improved in a material respect through the utilization of pre-trial procedures such as discovery or by the evidence that might be led at trial were the matter to proceed to trial. Any substantive response from the plaintiff suggesting a credible basis on which the proceedings might succeed will be sufficient to defeat the application. In this case by leaving the court room the plaintiff ensured that he did not offer any, let alone a substantive, response to two of the three applications made by the defendants. In the first case he did not address the grounds advanced by the defendants, he merely re-iterated the central themes of his own case namely his asserted immunity from court orders, the invalidity of the orders made against him and the fact that complaints had been made by himself and others to the gardaí.
39. Whilst applications of this nature can be made against both represented and unrepresented litigants, increasingly frequently they are brought in circumstances where the moving party in the litigation is a litigant-in-person. There are many reasons why a litigant might not have legal representation, including, unfortunately, the cost of securing the services of lawyers and the lack of a comprehensive legal aid scheme to assist litigants who cannot afford to pay for legal services. In other instances, a person may choose to act on their own behalf and whilst judges and lawyers might question the wisdom of such a choice, it is a choice the litigant is entitled to make. A court must be careful not to assume that the personal litigant's case is unmeritorious simply because it is being presented without legal assistance. That said, the skills a legal practitioner brings to bear on litigation are not confined to the drafting of pleadings and the

presentation of legal argument. A key part of the legal practitioner's function is to assess the merits of a situation and to advise their client as to whether a stateable cause of action arises, whether the pursuit of that cause of action is legally and economically justified and whether it is likely to produce a result of benefit to the client. A litigant-in-person, lacking the benefit of such an objective assessment, is far more likely to institute proceedings without there being a stateable cause of action, the pursuit of which is unjustified and which is unlikely to produce any real benefit.

40. There is one final observation to be made generally as regards this type of application. In *Ewing v Ireland* [2013] IESC 44 the Supreme Court approved the judgment of the High Court in *Riordan v An Taoiseach* [2001] 4 IR 436 which in turn adopted a passage from a Canadian judgment, *Dykun v Odishaw* (Unreported Alberta Court of Queen's Bench, Judicial District of Edmonton, 3rd August 2000) identifying a number of factors the presence of which is indicative of a likelihood that proceedings are abusive or vexatious. These factors include the bringing of one or more actions to determine an issue which has already been determined by a court of competent jurisdiction and the rolling forward of issues into subsequent actions in which they are repeated and supplemented. Whilst the presence or absence of any of these factors is not of itself determinative, it is in my view significant that the issues raised in all three sets of proceedings brought by the plaintiff depend in large part on his assertion that he is not bound by the orders made against him in other sets of proceedings. In other words, the plaintiff's dissatisfaction with the outcome of the earlier proceedings is rolled forward into the complaints he now makes in these proceedings.
41. Moving then to look at the applications made by the defendants as regards each set of proceedings, the starting point must be that I have found the plaintiff's central and overarching contention in each of the three cases to be unstateable. That is the proposition that somehow the constitutional guarantee of equality means that the plaintiff (and indeed all citizens) are "*immune*" from court orders. That proposition is based on an assertion, which is fundamentally misconceived, that in unrelated proceedings to which the plaintiff was not a party, the Supreme Court sanctioned a contempt of court by the DPP. Even if this assertion were to be treated as a factual one which had to be accepted for the purpose of the court's analysis under O.19, r.28 (and I do not think that such characterisation is warranted – it is a legal conclusion which the plaintiff seeks to draw from facts which do not support such a conclusion), the proposition itself is wholly without legal merit and does not constitute a reasonable cause of action. Thus, all proceedings based on this proposition can and should be struck out under O.19, r.28.
42. They can also be struck out under the court's inherent jurisdiction as the plaintiff cannot make out the evidential case necessary to support the proposition which he seeks to advance. The assertion that the DPP was in contempt of court is not supported by any evidence. It does not appear that any application for contempt of court was brought nor that any finding was made by the High Court or by the Supreme Court on appeal that the DPP was in contempt. The plaintiff himself did not even seek to explain to the court the

basis for his assertion, I have had to do the best I could to extract the likely hypothesis from the court records.

43. The proceedings against the Property Registration Authority of Ireland (2016/9512P) can also be struck out under both headings. The plaintiff's claim is predicated on his being the beneficial owner of the lands comprised in folio 42156 of County Galway. That claim is unstateable in circumstances where the High Court had previously made orders in favour of the plaintiff's mortgagee for possession of those lands, which order was never appealed. Further the relief sought is moot and was moot at the time the proceedings were instituted as Mr Weisz had already been registered as full owner of the lands. Insofar as relief was sought pending the outcome of an appeal which at the time the proceedings were instituted the plaintiff intended to bring from the orders made by Stewart J, that appeal has been taken and determined against the plaintiff by the Court of Appeal and the proceedings are now moot for that reason also.
44. The claims as regards folio GY74S are fundamentally misconceived as that folio does not comprise any specific parcel of land, much less a parcel of land over which the plaintiff ever had any claim or title, but is a folio created to reflect a multitude of charges held by Secured Property and Mr Weisz over various folios in county Galway, only one of which was the plaintiff's. There is simply no stateable basis on which the plaintiff could have a beneficial interest in this folio and, in any event, the folio has been closed as the charges registered in it have all been discharged.
45. Insofar as the plaintiff claims damages for slander of title against the Authority, no basis for this other than the plaintiff's claim to be entitled to the beneficial interests referred to in the preceding two paragraphs is identified in the pleadings. The defendants make two additional points, both of which are valid. Firstly, the plaintiff has lost all interest in and title to the lands in folio 42156 and therefore has no title which the Authority could have slandered. Secondly, in re-registering title the Authority was exercising a statutory function in favour of a party who had the benefit of court orders entitling him to apply for such registration. The plaintiff has not advanced any legal basis upon which it could be plausibly suggested that the actions of the Authority in such circumstances could be legally capable of amounting to a slander of title. Although slander of title is a recognised and legally stateable cause of action, there is no reasonable factual basis on which the plaintiff can pursue this claim and therefore I will strike out this element of his claim pursuant to the court's inherent jurisdiction.
46. The issues raised in the plaintiff's constitutional action (2019/0578P) are substantially disposed of by virtue of my decision as regards the plaintiff's over-arching claim to be immune from court orders. Insofar as the claims made concern decisions made by the District Court or warrants issued by that Court in proceedings taken by Corrib Oil or a decision of the Supreme Court in proceedings taken by the ACC Bank against the plaintiff, then these proceedings are manifestly an attempt to re-litigate issues which have already been determined against the plaintiff in earlier proceedings. This is classically a basis for concluding that proceedings are an abuse of the court's processes and I so conclude. The

proceedings are unstateable and are bound to fail and I will make orders dismissing them under both heads of jurisdiction available to the court.

47. Finally, the proceedings concerning the District Court proceedings (2019/8124P) suffer from many of the same infirmities as the constitutional action. The plaintiff is attempting to re-litigate the District Court proceedings, albeit apparently on the sole basis that he should not be made the subject of any court orders or warrants, a proposition which I have found to be manifestly unstateable. Lest there be any doubt about it, in the absence of an express order staying proceedings, the existence of a Supreme Court appeal (in apparently unrelated proceedings), of a High Court constitutional action or of complaints made to the gardaí do not of themselves serve to preclude the District Court hearing and making orders in any proceedings of which it is properly seised. The plaintiff's belief that they do – or that they should – is irrelevant to the actual legal position. These proceedings are also both unstateable and bound to fail and I will strike them out accordingly.

Isaac Wunder Order

48. There is one final issue in the case, the outcome of which may not have any practical consequences in circumstances where I have already indicated that I will make orders striking out all three sets of proceedings. This is the plaintiff's breach of the Isaac Wunder order made by Stewart J on 18th October 2016 by the issuing of proceedings against the Property Registration Authority of Ireland on 25th October 2016. The Isaac Wunder order specifically precluded the plaintiff from issuing any further proceedings concerning the lands in folio 42156 without leave of the High Court. I have assumed, perhaps speculatively, that the plaintiff was able to issue proceedings in breach of this order because the order had not been drawn up nor communicated to the Central Office before the 2016 proceedings were issued. This begs the question of the extent to which an Isaac Wunder order is binding before it is formally perfected. There is also an issue as to the consequences of breach of such an order when the proceedings in question come before a court.
49. In my view the latter issue is the easier to dispose of. An Isaac Wunder order requires the party to whom it is addressed to seek and obtain the leave of the High Court before issuing proceedings of the type covered by the order. The restriction imposed by the order may relate to the issuing of proceedings against a specific person or, as here, in connection with a particular subject matter. There is no doubt but that the 2016 proceedings are covered by the terms of the restriction imposed by Stewart J, namely proceedings relating to the lands specifically identified in the order. In my view, proceedings issued in breach of an Isaac Wunder order should generally be struck out pursuant to the court's inherent jurisdiction for that reason alone. Although there may in theory be exceptional circumstances which could justify the issuing of proceedings in breach of such an order, it is very difficult to image what type of circumstances those might be. An Isaac Wunder order does not absolutely preclude the issuing of proceedings, rather it makes their issue subject to a precondition that leave of the High Court be obtained. An application by the subject of such an order to issue proceedings can be

made *ex parte* and, although the court may choose to put the intended defendant on notice, it is not of itself either procedurally difficult or likely to cause significant delay. Consequently, where a litigant disregards the existence of such an order, the courts should not show any particular leniency nor treat the other party's objection to what has occurred as an opportunity to retrospectively grant the leave which the litigant did not apply for prior to the institution of the proceedings. As it happens, the plaintiff in this case simply did not address the Authority's complaints as regards the breach of the Isaac Wunder order and did not seek to have the proceedings retrospectively validated. Had he done so I would not have been inclined to accede to such an application.

50. The timing of the drawing up of the order is a procedurally more complex issue. I have indicated that the inevitable time lag between the making and the perfection of an order might explain how the plaintiff managed to issue the proceedings without the Central Office being aware of the restrictions under which he should have been operating. Given the increasing frequency with which such orders are applied for and granted and the extent to which they are made against litigants-in-person, it may now be difficult for them to be policed by an office providing services to the public, albeit largely to the legal public. In circumstances where the litigant against whom such an order is made is present in court on the making of such order, in my view they are bound by the order from the point at which the order is pronounced by the judge. However, as I am striking out all of the proceedings including those issued in breach of the Isaac Wunder order on other grounds I do not propose to definitively determine this issue.