APPROVED **[2023] IEHC 386**

THE HIGH COURT
JUDICIAL REVIEW

2021 No. 493 JR

BETWEEN

G.

APPLICANT

AND

A JUDGE OF THE DISTRICT COURT
BLANCHARDSTOWN DISTRICT COURT OFFICE

RESPONDENTS

PAUL DOLAN
CRAIG GEOGHEGAN
EOIN KELLY
JOHN PAUL COCHIN

NOTICE PARTIES

JUDGMENT of Mr. Justice Garrett Simons delivered on 10 July 2023

INTRODUCTION

1. The within proceedings take the form of judicial review proceedings pursuant to Order 84 of the Rules of the Superior Courts. Leave to apply for judicial review was granted by reserved judgment dated 27 March 2023, *G. v. Director of Public*

Prosecutions [2023] IEHC 142 ("***the leave judgment***"). This judgment was delivered following an *inter partes* hearing.

2. The matter next appeared before the court on 17 April 2023. On that date, the applicant indicated an intention to apply to have the court revisit the leave judgment in order to address a number of alleged errors and omissions in same. The applicant was directed to file written submissions by 1 May 2023. Regrettably, the applicant failed to meet this deadline and then failed to attend when the matter was listed for mention on 15 May 2023. Time for the filing of written submissions was subsequently extended until 12 June 2023. This deadline was also missed. Thereafter, the applicant was given a final opportunity to file written submissions. The submissions were ultimately filed in the Central Office of the High Court on 20 June 2023.

3. At a directions hearing on 26 June 2023, counsel for the only active participant in the proceedings to date, namely the District Court Office, indicated that his side did not intend to file written submissions in reply but were relying, instead, on the well-established principles governing applications to reopen judgments as recently applied by this court in *G. v. Director of Public Prosecutions* [2023] IEHC 139. The parties agreed that the court should determine the application to reopen the leave judgment "*on the papers*", i.e. by reference to the written submissions filed by the applicant and without the necessity of any further oral hearing. Judgment was reserved until today's date.

EXCEPTIONAL JURISDICTION TO REVISIT WRITTEN JUDGMENT

4. Much of the case law on the jurisdiction to revisit a written judgment is concerned with appellate courts, rather than courts of first instance. (See,

generally, *In the matter of Greendale Developments Ltd (No. 3)* [2000] 2 I.R. 514 and subsequent case law). This is because a party who is dissatisfied with a judgment of first instance will typically have a right of appeal against that decision. This right of appeal will generally provide a party, who is aggrieved by a first instance judgment, with an effective remedy. The grounds upon which a judgment may be appealed are much broader than the grounds upon which a court of first instance can revisit its own judgment.

5. It is only at appellate stage that the jurisdiction to revisit a written judgment assumes an especial significance. This is because an application to revisit the written judgment may be the only avenue open to a party dissatisfied with a decision of an appellate court. In practice, such applications are rare, and even more rarely successful.

6. The Court of Appeal has confirmed, in *Bailey v. Commissioner of An Garda Síochána* [2018] IECA 63, that a court of first instance has jurisdiction, prior to the order envisaged by the judgment having been drawn up and perfected, to revisit an issue decided in a written judgment. The Court of Appeal posited the following test. The High Court, if asked to revisit an issue already decided in a written judgment, must be satisfied that there are "*exceptional circumstances*" or "*strong reasons*" which warrant it doing so. The principle of legal certainty and the public interest in the finality of litigation dictate that such a jurisdiction must be exercised sparingly. The Court of Appeal went on to explain that these considerations apply with even greater force to the decision of an appellate court, which is normally to be regarded as final and conclusive.

7. A very useful summary of the principles is to be found in the judgment of the High Court (McDonald J.) in *HKR Middle East Architects Engineering LL v. English* [2021] IEHC 376.

8. The following considerations appear to me to be relevant to an application to revisit a decision of first instance in respect of which there is an unrestricted right of appeal. The judge who is asked to revisit their own judgment should have regard to the fact that, on most occasions, the appropriate avenue of redress for a person aggrieved by a judgment is to exercise their right of appeal. The parties to litigation are entitled to assume that, absent an appeal, a written judgment, which has been approved by the judge and has been published, is conclusive.

9. A party who is dissatisfied with a written judgment should not normally be entitled to reagitate their proceedings before the court of first instance. Were this to be allowed to happen, it would, in effect, insert an additional layer of judicial decision-making, whereby a party would seek to have the judgment revisited by the trial judge, as a prelude to an appeal if unsuccessful. This would add to delay and involve the parties incurring further costs. The proceedings would, in effect, be subject to three hearings: (i) the initial hearing; (ii) the hearing of the application to the court of first instance to reopen its judgment; and (iii) the hearing of the appeal.

10. There will, however, be limited circumstances in which it may be appropriate to invite a court of first instance to review its own judgment. Perhaps paradoxically, an application to reopen a judgment may be appropriate where the alleged error falls at either end of a spectrum of significance. If the error is minor, and relates to a matter peripheral to the rationale of the judgment—such as, say, a mistake in the narration of events—then this is something which might

legitimately be corrected by way of revision of the judgment. If the error is obvious and is very serious, and would inevitably result in a successful appeal and a remittal to the court of first instance for rehearing, then again there might be something to be said for the judgment being revisited by the court of first instance. The parties might, for example, have failed to bring a crucial statutory provision or precedent to the attention of the judge at the initial hearing, only to do so post-judgment. It might be preferable for the court of first instance to reopen the judgment to ensure that all relevant legal principles have been addressed.

11. Between these two extremes, however, an aggrieved party will normally be expected to avail of their right of appeal rather than seek to have the judgment revisited by the court of first instance.

12. It should be emphasised that the placing of limitations on the jurisdiction of a court of first instance to reopen its own judgment is not informed by a naïve belief that judges do not make mistakes. As explained by O'Donnell J. in *Nash v. Director of Public Prosecutions* [2017] IESC 51 (at paragraphs 6 and 7), errors can and do occur. The limitations on the jurisdiction to reopen a first instance judgment are not designed to deny an aggrieved party a remedy; rather they simply restrict that remedy, in most cases, to a right of appeal. The rationale for so doing is that parties to litigation are entitled to assume that a written judgment, which has been approved by the judge and has been published, is conclusive, subject only to the invocation of a right of appeal within time.

13. The applicant in the present case is critical of the characterisation of the jurisdiction to set aside a judgment as an "*exceptional jurisdiction*". In particular, the applicant objects to *dicta* in the Supreme Court decision in *Nash v.*

Director of Public Prosecutions. The applicant submits that if applications to revisit judgments are rare this is only because of the absence of knowledge of the procedure by unrepresented litigants, members of the Courts Service and members of the legal profession alike, rather than because errors are rarely made by courts.

14. With respect, these criticisms of the formulation of the set aside jurisdiction are unfounded. The Supreme Court in *Nash v. Director of Public Prosecutions* is careful to explain the rationale for characterising the jurisdiction as exceptional: see, in particular, paragraph 7 of the decision as follows:

> "[…] The obligation to do justice fairly, and without fear or favour, which guided the judge to give the original judgment, should extend to a willingness to acknowledge error if justice should require it. History has shown in any event, that courts have entertained applications and exceptionally made orders setting aside judgments already given. Courts are, however, reluctant to entertain such applications for different and good reasons. First, the revisiting of old ground inevitably adds to the costs incurred by and the stress imposed upon all the parties involved. It also requires the allocation of scarce time and resources which are therefore necessarily denied to litigants who have not yet had their case heard or considered on appeal. For example, this application has occupied considerable time both in and outside court. More importantly again, such an application in principle runs directly counter to an important value which the law, and it should be added justice, accords to finality."

15. The decision in *Nash v. Director of Public Prosecutions* goes on to address the particular position of the Supreme Court as a court of final instance.

16. As appears from the discussion which follows hereinafter, the present case illustrates the disruptive effect which an application to reopen a judgment can have on the orderly conduct of litigation. Here, the applicant had been afforded a lengthy hearing of his application for leave to apply for judicial review and then provided with a comprehensive judgment addressing his arguments. This

judgment was delivered on 27 March 2023 and had the proceedings followed their ordinary course, the exchange of pleadings would have been completed by now and the substantive case would have been ready for hearing. Instead, the proceedings have stalled at the leave stage because the applicant has sought to reagitate points which have already been determined in the leave judgment and to raise new arguments. The exceptional jurisdiction to reopen a written judgment does not exist to allow a party to seek to reagitate or to elaborate upon points which were or might have been made at the original hearing.

17. A period of three months has been lost as a result of this misconceived application to reopen the judgment. This delay is attributable, in large part, to the failure of the applicant to comply with the timetable directed for the filing of submissions. This lapse of time is all the more regrettable in circumstances where it has had the effect of further delaying, at least indirectly, the resolution of a criminal prosecution pending before the District Court. This criminal prosecution relates to events from as long ago as August 2019. It would have been preferable for all concerned, but especially the applicant himself, if the judicial review proceedings had been progressed in the interim.

DISCUSSION

18. The applicant has purported to identify a number of errors and omissions in the leave judgment. These are considered, in turn, below.

Blanchardstown District Court Office

19. The first alleged error concerns the refusal of leave in respect of the complaints made against the officials in Blanchardstown District Court Office. This issue is addressed as follows in the leave judgment (at paragraphs 38 to 40):

> "Leave to apply is also refused in respect of the grounds directed against Blanchardstown District Court Office. The allegation made against Blanchardstown District Court Office is that the applicant was refused "*access*" to the District Court on the sole ground that "*only the Director of Public Prosecutions can issue Criminal summons*". It appears to be suggested, at paragraph C (iv) of the statement of grounds, that an assertion by a District Court Office that "*it can only accept prosecution from Gardai and can not accept private prosecution*" represents an attempt to pervert the course of justice or an offence against the administration of justice pursuant to Section 7 of the Criminal Procedure Act 2010.
>
> The statement of grounds fails to disclose an arguable case against either the office as an entity or any individual official within that office. The allegation that the applicant was refused access to the District Court is not borne out by the evidence. The first time that the applicant formally requested that the matter be listed before the District Court was on 5 March 2021. The matter was then given a listing on 10 March 2021. The applicant had not applied to have the matter listed in his emails of 24 February and 25 February 2021; rather, the applicant had unilaterally stated that he would be attending court on 25 February 2021. In the event, it appears that, by the time the applicant arrived, the day's sittings had already concluded. None of this amounts to a refusal of access nor to a perversion of justice. The officials in the District Court Office acted reasonably at all times and scheduled a hearing date promptly once they were formally requested to do so by the applicant.
>
> Any criticism that the District Court Office failed to review the draft summons or to provide advice to the applicant is unfounded. An application pursuant to Section 10 of the Petty Sessions (Ireland) Act 1851 may only be made to a judge. See Order 15 of the District Court Rules. This is in contrast to the position in respect of summonses issued pursuant to the Courts (No. 3) Act 1986. The District Court Office does not have any adjudicative or advisory role in respect of the common informer procedure. It is certainly no part of the function of the officials in the District Court Office to review draft summonses or informations at the request of members of the public."

20. The applicant seeks to reverse these findings by reference to the following argument:

> "With due regard to paragraph 39, I feel obliged to add that: a) the common informer applications are not to be listed by the registrar or the Court Service; b) if a member of An Garda Síochána or a member of the DPP was facing a statute of limitation to issue any summons, would the registrar and / or Court service, not have called for the judge on duty. As a common informer, I should have been given an equal treatment for my intended prosecutions to progress. It is important to recall that those prosecutions were made for the benefit of the State (and its constitutional obligations to vindicate individual rights of the citizens and bring criminals to justice)."

21. The logic of the argument appears to be that the applicant, having arrived at the courthouse on 25 February 2021 after the day's sittings had already concluded, should have been facilitated with a special out-of-hours sitting.

22. With respect, this argument is untenable. No litigant is entitled to such indulgence. The supposed urgency in having the application heard before the District Court on 25 February 2021 derived from the applicant's own tardiness. More specifically, the applicant had a concern that his application to issue summonses pursuant to the common informer procedure was set to be statute barred. Even if this concern were well founded, it did not entitle the applicant to an out-of-hours sitting. Litigants are expected to arrange their affairs in such a way as to allow sufficient lead-time for proceedings to be listed before the court. They cannot delay until the last day of a limitation period and then demand an out-of-hours sitting.

23. It appears from his written submissions that the applicant considers that summary proceedings against members of An Garda Síochána must be instituted within 18 months from the date of the alleged offence. It will be recalled that the incident giving rise to the application to issue summonses is said to have occurred on 25 August 2019. On the applicant's analysis, the 18 month time-limit was set to expire on 25 February 2021. The applicant thus waited until

what was, on his own analysis, the afternoon of the very last day of the limitation period before attending the courthouse. Having regard to this chronology, the blame lies solely with the applicant if the application is ultimately held to be time-barred. There was no obligation on the District Court Office to save the applicant from the consequences of his own tardiness by organising an out-of-hours sitting. As explained in the leave judgment, the District Court Office had not been requested to list the matter before the District Court on 25 February 2021. Again as explained in the leave judgment, the officials in the District Court Office acted reasonably at all times and scheduled a hearing date promptly once they were formally requested to do so by the applicant.

24. The applicant's attempt to rely on a supposed inequality of treatment as between a common informer and a member of An Garda Síochána or an official of the Director of Public Prosecution's office is misplaced. There is no factual basis for suggesting that any litigant, who allowed an 18 month time-limit to run to the last day, would be facilitated with an out-of-hours sitting.

Declaratory reliefs

25. As explained in the leave judgment, leave was refused in respect of a series of declaratory reliefs set out at paragraph 5 C of the statement of grounds. Leave was refused because the statement of grounds fails to disclose an arguable case in respect of any of the declarations sought. The statement of grounds simply recites a series of declarations. There is nothing in the statement of grounds which sets out the legal basis for seeking those declarations. Nor has a factual basis been laid for those declarations.

26. The applicant now seeks to have this finding set aside on two bases as follows. First, it is submitted that the declaratory reliefs "*were so self-explanatory that no*

additional ground should be required for same to be considered and their relevance to the herein proceedings". Secondly, it is submitted, in the alternative, that the applicant, as an unrepresented litigant, should be given an opportunity to amend his statement of grounds. With respect, neither submission is well founded for the following reasons.

27. An applicant for judicial review is required, in his statement of grounds, to state the particular grounds upon which each relief is sought. It is expressly provided under Order 84, rule 20 that it shall not be sufficient for an applicant to give as any of his grounds an assertion in general terms of the ground concerned; rather, an applicant is required to state precisely each such ground, giving particulars where appropriate, and to identify in respect of each ground the facts or matters relied upon as supporting that ground.

28. Even before the amendments introduced to Order 84 by the Rules of the Superior Courts (Judicial Review) 2011 (S.I. No. 691 of 2011), the Supreme Court had emphasised the importance of precision in pleading in judicial review proceeding: *A.P. v. Director of Public Prosecutions* [2011] IESC 2, [2011] 1 I.R. 729.

29. The pleas at paragraph 5 C of the statement of grounds fail to comply with the requirements of Order 84 of the Rules of the Superior Courts. There are no grounds stated in respect of these reliefs. Contrary to what the applicant suggests, the declaratory reliefs are not self-explanatory. In many instances, the declarations sought make no sense and bear no relation to the decision impugned in the proceedings. This point can be illustrated by the following two examples.

30. Declarations are sought in respect of the evidential status of an "*affirmation*". It would appear from the written submissions filed in support of the application to

correct the leave judgment that this is intended as a reference to the fact that the "*informations*", which had been sent by email to the District Court Office in advance of the hearing on 25 February 2021, had not yet been sworn or affirmed. The applicant now objects that he was not permitted to read the content of the "*informations*" aloud nor to sincerely affirm same in open court.

31. None of this discloses grounds for judicial review. The District Court's decision to refuse to issue the summonses was not predicated on the fact that the "*informations*" had not yet been sworn or affirmed. This formed no part of the reasoning. Rather, and as correctly identified by the applicant himself in his grounding affidavit, the application was refused because the District Court judge was satisfied that (i) there was a risk of prejudice; (ii) the applications were premature; and (iii) the applications were an abuse of process.

32. The second example relates to the time-limit governing an application to issue a summons against a member of An Garda Síochána. A declaration is sought to the effect that there is no statute of limitations on the issuance of criminal summonses, by way of private prosecution, against members of An Garda Síochána. Again, this ground does not arise out of the District Court's decision to refuse to issue the summonses. The application was not refused because the District Court considered same was time-barred.

33. Moreover, there is nothing in the statement of grounds which provides a legal basis for such a declaration. In particular, the applicant fails to refer to the principal legislative provision which governs summary proceedings, namely Section 10(4) of the Petty Sessions (Ireland) Act 1851. It is only now, in the context of the application to revisit the leave judgment, that the applicant has

made reference, for the first time, to the 18 month time-limit provided for under Section 104 of the Garda Síochána Act 2005. The section reads as follows:

> "Notwithstanding section 10(4) of the Petty Sessions (Ireland) Act 1851, summary proceedings in respect of a matter relating to an offence reported to the Director of Public Prosecutions under this Act may be instituted within 18 months from the date of the offence."

34. Even if this provision were to apply to the common informer procedure (as opposed to a summons issued on behalf of the Director of Public Prosecutions), it does not support an argument that there is "*no statute of limitations*".

35. Accordingly, there is no reason to set aside the finding in the leave judgment that there is no basis for granting leave in respect of the declaratory reliefs set out at paragraph 5 C of the statement of grounds.

36. For the avoidance of any doubt, it should be emphasised that neither the leave judgment nor the within judgment expresses a concluded view on the question of what time-limit, if any, governs an application to issue summonses against members of An Garda Síochána pursuant to the common informer procedure. This question has not been properly argued before me and does not, in any event, form part of the District Court's reasoning.

37. As flagged earlier, the applicant has submitted, in the alternative, that as an unrepresented litigant, he should be given an opportunity to amend his statement of grounds. This alternative submission is not well founded. The procedural rules under Order 84 apply equally to litigants in person as they do to litigants who have legal representation. While the courts will endeavour to explain relevant procedures to parties who represent themselves, the courts cannot bend the rules in any way that would materially and adversely affect the interests of other parties (*Dowling v. Minister for Finance* [2012] IESC 32).

38. The applicant is not entitled to seek to amend his statement of grounds now, some two years after the proceedings first issued. This is especially so where the proceedings are holding up a criminal prosecution which relates to events which are now almost four years old. The criteria for granting leave to amend, as summarised by the Supreme Court in *Keegan v. An Garda Síochána Ombudsman Commission* [2012] IESC 29, [2012] 2 I.R. 570 are not met. No proper explanation has been provided on affidavit by the applicant for not including the pleas, which he now wishes to advance, in his original statement of grounds. It is not an answer to say that the applicant is an unrepresented litigant.

Refusal of earlier application to amend

39. As explained in the leave judgment, the applicant had, as part of a motion issued on 12 July 2021, sought liberty to amend his statement of grounds by adding the following paragraph:

> "*As mentioned at paragraph 14 of the Grounding affirmation, the first named respondent read his ex tempore decision which he had prepared before the hearing. As such, what ensued was a premeditated unfair hearing, an infringement of the Applicant's constitutional right to a fair hearing and a contempt of the Court (as upheld by the Supreme Court in State (Quinn) v Ryan [1965] 1 IR 70. This purported hearing was all but made in good faith / bona fide, demonstrating mala fide of the first named respondent.*"
>
> *Italics and underlining in original

40. This application for leave to amend was refused for the reasons explained at paragraphs 45 to 49 of the leave judgment. One of the reasons for which leave to amend was refused had been as follows:

> "Even if the applicant had provided an explanation for his delay, leave to amend would still have to be refused because the amended ground fails to meet the threshold of an

> arguable case. There is nothing in the verifying affidavit of 24 May 2021 which alleges that the District Court judge had prepared his decision before the hearing, still less that there had been a '*premeditated unfair hearing*' or '*contempt of the Court*'. To say that the District Court judge read his *ex tempore* decision is, at most, ambiguous. To describe a decision as being *ex tempore* indicates that it has not been prepared in advance. It certainly does not convey the allegations of mala fides contained in the amended ground. Tellingly, in his subsequent affidavit of 11 November 2022, the applicant expressly says that his '*initial application for leave to apply for judicial review was not based on the criteria of fairness or unfairness of the judge*'."

41. As appears, part of the rationale for refusing leave to amend had been that there was no factual basis made out for the very serious allegation belatedly sought to be made, namely that the District Court judge had predetermined the application and had prepared his decision in advance of the hearing.

42. The applicant now seeks to reverse this refusal of leave to amend. In particular, the applicant seeks to rely on the following as "*evidence*" of premeditation on the part of the District Court judge:

> "Unlike what it is said in the judgment, any one standing or sitting in a Court can see if the judge read his/her decision or not, which is entirely different from a judge, while giving an *ex tempore* decision, who reads legal precedents or authorities which is he referring to. Making such observation into an affidavit turns same into evidence, unless contrary evidence is brought to the fore. That is what the test on the balance of evidence would suggest."

43. With respect, this is not an accurate summary of the affidavit evidence. The affidavit evidence goes no further than to say that the District Court judge read his *ex tempore* decision. To describe a decision as being *ex tempore* indicates that it has not been prepared in advance. That is the very definition of an *ex tempore* judgment, i.e. a judgment which is delivered immediately following a hearing; literally, out of the time. This is to be contrasted with a written

judgment which has been prepared some days or weeks after the hearing has concluded.

44. There is nothing in the verifying affidavit of 24 May 2021 which alleges that the District Court judge had prepared his decision before the hearing, still less that there had been a "*premeditated unfair hearing*" or "*contempt of the Court*". To say that the District Court judge read his *ex tempore* decision is, at most, ambiguous. The ordinary and natural meaning of the phrase is that the judge delivered or pronounced his *ex tempore* decision. It certainly does not convey the allegations of mala fides contained in the amended ground.

Refusal of mandatory relief

45. The applicant had sought an order of mandamus directing the District Court judge to issue summonses against the named members of An Garda Síochána. Leave to apply for this mandatory relief was refused for the following reasons (at paragraphs 36 and 37 of the leave judgment):

> "Leave to apply is refused in respect of the mandatory reliefs sought at paragraph 5 B of the statement of grounds. The decision on whether or not to issue a summons pursuant to Section 10 of the Petty Sessions (Ireland) Act 1851 is ultimately a matter for the District Court. Whereas the High Court exercises a supervisory jurisdiction over the District Court by way of judicial review, and can set aside an invalid exercise of that statutory power, it would represent a usurpation for the High Court to make a mandatory order directing that summonses be issued. The High Court cannot simply step into the shoes of the District Court and decide *de novo* whether or not a summons should be issued.
>
> In the event that the applicant were to succeed in his judicial review proceedings, the appropriate relief would be an order setting aside the impugned decision together with an order for remittal, i.e. an order pursuant to Order 84, rule 27 of the Rules of the Superior Courts remitting the matter to the District Court with a direction to reconsider it and reach a decision in accordance with the findings of the High Court."

46. The applicant has sought to query this approach, submitting that the High Court

> "should have an inherent jurisdiction to hear any matter and give any order, to satisfy its constitutional obligation to vindicate the Constitutional Rights of the Parties, the interest of Justice, the limited resources of the Courts and parties and the State's obligation for Justice to be done expeditiously."

47. With respect, the principles stated at paragraphs 36 and 37 of the leave judgment are unexceptionable and reflect the well-established division of function between the High Court and courts of limited and local jurisdiction such as, relevantly, the District Court. See, generally, *Kelly: The Irish Constitution* (Hogan, Whyte, Kenny and Walsh; 5th edition; Bloomsbury Professional) at §6.2.13 to §6.2.24.

Legal test governing grant of leave to apply

48. The applicant submits that the legal test governing the grant of leave to apply for judicial review, as stated in *G. v. Director of Public Prosecutions* [1994] 1 I.R. 374, should be amended. Finlay C.J., delivering the leading judgment, had emphasised that the court enjoys a discretion in the determination of a leave application:

> "These conditions or proofs are not intended to be exclusive and the court has a general discretion, since judicial review in many instances is an entirely discretionary remedy which may well include, amongst other things, consideration of whether the matter concerned is one of importance or of triviality and also as to whether the applicant has shown good faith in the making of an *ex parte* application."

49. The applicant submits that the legal test should be amended by replacing the mention of "*discretionary*" with the phrase "*compulsory unless an alternative effective remedy is available to the applicant*". The applicant further submits that the refusal of leave in the present case has denied him an "*effective remedy*".

50. With respect, these submissions are not well founded. The legal test for the grant of leave is long since settled and has recently been reaffirmed by the Supreme

Court in *O'Doherty v. Minister for Health* [2022] IESC 32, [2022] 1 I.L.R.M. 421. Moreover, and in any event, the applicant was not refused leave to apply for judicial review by reference to any discretionary factor. Rather, leave was refused in respect of those grounds which were either not properly pleaded or not arguable. The applicant has not been denied an "*effective remedy*": the applicant has been granted leave to challenge the validity of the decision to refuse to issue summonses pursuant to the common informer procedure.

51. The reason that the applicant has been refused leave to pursue proceedings against the District Court Office and the District Court judge personally is that he has failed to plead an arguable case against either one. This does not involve the denial of an effective remedy: in truth, there is no legal wrong which requires to be remedied.

52. Finally, the applicant has invited the court to highlight his submission that "*the legislator should issue emergency legislation to establish an Administrative Court or Tribunal with a 6 years statute of limitation or extend the time for complaint to the Office of the Ombudsman*". With respect, it is no part of the judicial function to endorse a litigant's personal views on proposals for law reform.

STATUS OF DIRECTOR OF PUBLIC PROSECUTIONS IN PROCEEDINGS

53. The Director of Public Prosecutions is not formally a party to the proceedings. The Director did, however, maintain a watching brief at the latter stages of the *inter partes* leave application. Following the delivery of the leave judgment, counsel on behalf of the Director applied to participate in the proceedings as an

amicus curiae. Counsel submitted that it may not be appropriate for the Director to participate as a notice party in circumstances where—depending on the outcome of the judicial review proceedings—there may be a potential conflict of interest between the Director and the three members of An Garda Síochána against whom the applicant seeks to have summonses issued.

54. Whereas I can understand the concern expressed on behalf of the Director as to her precise status in the proceedings, I have concluded that it would not be appropriate to characterise her role as that of an *amicus curiae*. The status of an *amicus curiae* is normally reserved to entities who are not affected by the outcome of the proceedings. By contrast, the Director may, potentially, be directly affected by the outcome of the present proceedings. The ambition of the proceedings is to have the District Court issue summonses against members of An Garda Síochána and this will then require the Director to make a decision as to whether to pursue a criminal prosecution against them: see *Kelly v. Ryan* [2015] IESC 69, [2015] 1 I.R. 360. Accordingly, I have concluded that the Director of Public Prosecutions should be afforded the status of a notice party. Given the potential conflict of interest between the Director and the members of An Garda Síochána, it would seem preferable that the latter should have separate legal representation if they are to participate in the proceedings.

CONCLUSION AND FORM OF ORDER

55. The application to reopen the judgment dated 27 March 2023, *G. v. Director of Public Prosecutions* [2023] IEHC 142, is refused. The order granting leave to apply for judicial review, on limited grounds, can be drawn up in accordance with that judgment once the issue of costs has been addressed. Separately, the

Director of Public Prosecutions will be joined to the proceedings as a notice party.

56. These proceedings will be listed before me on Monday 24 July 2023 at 2 pm to address the following outstanding issues. First, the court will hear an application by the first named respondent to be released from the proceedings and will also hear any submissions which the second named respondent wishes to make in respect of its further participation in the proceedings. Secondly, the court will hear any costs applications.

Approved