THE HIGH COURT

CIRCUIT APPEALS

[2024] IEHC 291

Record No. 2018/E0013

BETWEEN

JOHN SHANNON

PLAINTIFF/RESONDENT

AND

ELIZABETH SHANNON AND GWENDOLINE SHANNON

DEFENDANTS/APPELLANTS

JUDGMENT OF Mr. Justice Twomey delivered on the 14th day of May, 2024

INTRODUCTION

1. Do judges simply apply the law or is there a responsibility on them to try to improve the system, so that another person, is not subjected to what the plaintiff ("**Mr. Shannon**") had to endure, i.e. 30 years of the worst example of the weaponization of the courts this Court has ever seen?

2. It seems to this Court that the answer to this question is yes, it is the responsibility of judges to try to improve the system. In this regard, the former President of the High Court, Irvine P., saw it as her responsibility as a judge '*to try to make the system better for the litigant*'?[1]. Consistent with this view is the fact that, in the context of High Court costs, the Supreme Court

[1] Interview with Irvine P. - *Irish Times*, 6 August, 2022 Irvine P '*I have always seen it as my responsibility to try to make the system better for the litigant, who must always be kept front and central in the administration of justice.'*.

in *SPV Osus Limited v HSBC Institutional Trusts Services (Ireland) Limited* [2019] 1 I.R. 1 at p 7 per Clarke C.J.), called for the legislature to give *'urgent consideration'* to the '*cost of going to court'*. This is because it is clear that any reduction in legal costs in the High Court would make the system better for the litigant, *albeit* that it might not be regarded as not being in the interests of the legal profession.

3. On the basis therefore that it is the responsibility of the courts to try and improve the system for litigants, this case brings into sharp focus whether it could be in the interest of litigants like Mr. Shannon that:

- there has been a 359% reduction in the proportion of District Courts to High Courts in recent decades.
- there used to be more Circuit Courts than High Courts in Ireland, but now there are fewer Circuit Courts than High Courts. In contrast, in England & Wales, they have 700% more Circuit Courts than High Courts.
- there are now five times more High Court judges, *per* head, in Ireland, than in England & Wales (although, as noted hereunder, it is crucial to note that it is not being suggested that there are too many High Court judges <u>for the amount of litigation heard in the High Court</u>)

If legal costs were the same in all courts, these changes, and any differences with other jurisdictions, would have little impact on litigants like Mr. Shannon. However, this case vividly illustrates why these changes, and the resulting apparent concentration of litigation in the High Court, does not, in this Court's view, *'make the system better for the litigant'*.

4. Despite the fact that these dramatic changes, which have taken place over recent decades, are likely to have had a significant impact on the level of legal costs a litigant has to pay to resolve a dispute, they have received, little or no attention. This may, in part, to be due to the fact that individual litigants like, Mr. Shannon, do not have a lobby group looking out

for their interests, like banks, insurance companies etc. For this reason, it seems to this Court that, for individual litigants like Mr. Shannon, the role of the courts, in trying '*to make the system better for the litigant'*, assumes even more importance.

5. As this case illustrates, relatively minor disputes continue to be heard in the High Court, even though as Kelly P. noted the costs in that court are only affordable to '*millionaire*'[2], which means that costs are, in many cases, out of all proportion to the value of the dispute. Thus, in a dispute over a small family farm in County Sligo, Mr. Shannon's sister, Ms. Elizabeth Shannon ("**Ms. Shannon**") was able for 30 years to pursue a '*vendetta'* against him, not in the District or Circuit Court, but in the High Court, and thereby inflict enormous expense on him in the form of High Court legal costs.

6. While the Supreme Court has called in *SPV Osus* for '*urgent consideration'* to be given to the reform of legal costs, numerous attempts have been made to reform litigation costs going back over half a century,[3] yet costs are still at '*millionaire'* levels in the High Court. Assuming therefore that legal costs in the High Court remain at their current levels, *'consideration'* might be given to an alternative way for the '*system to be made better'* for individual litigants such as Mr. Shannon. In particular, consideration might be given to the reversal of the dramatic reduction in the proportion of District and Circuit Courts to number of High Courts, which has taken place in recent decades, and in this way to increase the chances of litigation costs being proportionate to the value of a dispute.

<u>One of the worst examples ever of the weaponization of the courts</u>

[2] See the comments of Kelly P. in *The Bar Review*, February 2018, Vol 23(1), at p. 11: "*Under the current system, as they say, the only people who can litigate in the High Court are paupers and millionaires*".

[3] To take just some examples - it is 60 years since Charles Haughey as Minister for Justice established a committee aimed at *'reducing the costs of litigation'* – see Haughey, Law Reform in Ireland, *International and Comparative Law Quarterly* (1964) Vol 13 No. 4 at p 1310; it is almost 20 years since the Legal Costs Working Group chaired by Mr. Paul Haran issued its report in 2005 aimed at achieving *a 'reduction of costs associated with civil litigation';* it is four years since the Review of the Administration of Justice chaired by Kelly P. outlined options in 2020 for the '*reduction in the levels of litigation costs'*.

7. The case itself, which has brought this issue into sharp focus, is one in which Ms. Shannon was able to pursue her 30-year *'vendetta'* using a '*litigation stream'* in the High Court against Mr. Shannon and so inflict enormous financial loss on Mr. Shannon. All of this litigation was over an everyday dispute that could happen to any family in Ireland, *i.e*. over a relatively modest inheritance under a parent's will.

8. Crucially however, it seems to this Court that the injustice, which was visited upon Mr. Shannon, was exacerbated by the changes introduced by the *Courts Acts* and other legislation over recent decades, which introduced a dramatic reduction in the proportion of District/Circuit Courts to High Courts. This reduction in the proportion of those courts amounts, in effect, to a reduction in the proportion of 'affordable' courts. This is because the District Court might described as 'affordable' to a person on the average wage.[4] As regards the Circuit Court, it might be said to be *relatively* affordable to a person on the average wage, *relative* that is to the costs in the High Court, which, of the three trial courts (the District, Circuit and High Court), is only affordable' to *'millionaires'*. Thus, one could legitimately ask whether the reduction in the proportion of affordable courts is for the benefit of the litigant?

Ability of the courts to *directly* improve the system is limited

9. While, as noted by Irvine P., it is the responsibility of the courts *'to try to'* make the system better for litigants, it is important to observe that the ability of the courts to *directly* improve the system is limited. This is because it is the Oireachtas which passes laws and so it is the Oireachtas which determines the proportion of affordable courts to unaffordable courts. It is also the Oireachtas which decides in which court cases are heard. Indeed, this dispute vividly illustrates how laws, which were passed by the Oireachtas, permitted Ms. Shannon to take a *'stream'* of cases (detailed at para 43 below), over a relatively minor dispute, against

[4] The stark difference between legal costs in the District Court and the High Court is illustrated (*albeit* in the context of legal costs in criminal cases) by the fact that, while the High Court was described by Kelly P. as a place for 'millionaires', O'Donnell C.J. is quoted as stating that '*he understands the concerns of lawyers as they prepare to strike'* over the low level of fees in the District Court - *Irish Times*, 30th September, 2023.

Mr. Shannon in the High Court, even though the High Court is unaffordable to the average citizen. It is also, of course, the Oireachtas, and not judges or lawyers, which determines the rules for the calculation of legal costs, and it is these rules which mean that legal costs for cases in the High Court are set at *'millionaire'* levels.

10. As a result, all judges, 'trying to' improve the system for litigants, can do is *highlight* that High Court costs are at millionaire levels (as was done by Kelly P.) and call for the legislature to give *'urgent consideration'* to the cost of going to court (as was done by Clarke C.J. in *S.P.V. Osus*)

11. Similarly, in this case, all this Court can do is to *highlight* the very dramatic reduction that has taken place in the proportion of affordable courts in Ireland. In this way, this Court can highlight one way in which the system appears to have been *made worse* for litigants in recent years, and consequently, one way in which it might be improved. This is because, if High Court costs are not to be reformed, an *indirect* way of reducing the costs for litigants of resolving their disputes is to ensure that there are a sufficient number of affordable courts in Ireland so that *relatively* minor disputes (such as Mr. Shannon's) are *not* heard in the High Court, with that court instead being reserved for cases where costs are proportionate to the value/importance of the dispute.

12. This dramatic reduction in recent decades in the proportion of affordable courts can be briefly highlighted as follows:

A 359% reduction in the proportion of District Courts to High Courts

13. As regards the District Court, in 1961 there were 400% more District Courts than High Courts.[5] Since then, various legislative enactments have led to the position today, where there

[5] For ease, reference is made in this judgment to the number of District, Circuit and High Courts, *albeit* that it is more accurate to refer to the maximum number of judges in each jurisdiction. In 1961, under the Courts (Supplemental Provisions) Act, 1961, the maximum number of judges was 7 in the High Court, 10 in the Circuit Court and 35 in the District Court (including the presidents of the courts). Today, under s. 6 of the Courts Act, 2023 the maximum number of ordinary members of the District Court is 71, plus the president (72). Under s. 5 of the Courts Act, 2023 the maximum number of ordinary members of the Circuit Court is 45, plus the president

are only 41% more District Courts than High Courts. Thus, there has been a 359% reduction in the proportion of District Courts to High Courts in that time-frame. In stark contrast, in England & Wales today, they have 400% more District Courts[6] than High Courts, which, by coincidence, is the same proportion as existed in Ireland, before the dramatic reduction in Ireland.

700% more Circuit Courts than High Courts in England, but less Circuit Courts here

14. In relation to Circuit Courts, in 1961 there were 43% *more* Circuit Courts than High Courts in Ireland. The position has been completely reversed since then. This is because today there are in fact *fewer* Circuit Courts than High Courts – 11% fewer. The position in England & Wales could not be more different, as there are currently 700% more Circuit Courts than High Courts.

Five times more High Court judges, *per* head, than in England & Wales

15. As regards High Courts, in Ireland today there are 51 High Court judges for a population of 5 million. In England & Wales, they have *circa* 108 High Court judges for a population of 60 million.[7] It is crucial to point out that it is not being suggested that there are too many[8] High Court judges for the amount of High Court litigation that exists in Ireland. On the contrary, it has been recognised that there is, in fact, a need for more High Court judges in light of the amount of litigation, which is permitted/required to be heard in the High Court.[9]

(46). Under s. 4 of the Courts Act, 2023, the maximum number of ordinary members of High Court is 48, plus the president, plus one other under s. 14 of the Law Reform Commission Act, 1975, plus one other under Schedule 4 of the Garda Siochana Act, 2005 (i.e. a total of 51).

[6] This excludes magistrate courts, since in England & Wales there are approximately 108 High Court judges, 705 Circuit Court judges and over 12,538 Magistrates/District Court judges (of which, 538 are District Court judges) - https://www.judiciary.uk/about-the-judiciary/who-are-the-judiciary/list-of-members-of-the-judiciary.

[7] Ditto.

[8] In fact, the *number* of High Court judges *per se* has no relevance to making the system better for litigants. Rather, the key issue in making the system better for litigants is costs, and costs are unaffordable in the High Court. If costs were at the same level in all courts, then the proportion of District/Circuit Courts to High Courts would be irrelevant to making the system better for litigants.

[9] See the *Report of the Judicial Planning Working Group*, December 2022 at p 11.

16. However, what these figures do *suggest* is that there could be up to five times more litigation, *per* head, *heard in the High Court* in Ireland, than is the case in England & Wales. If this is true, then it raises the question of who benefits from this apparent concentration of ligation in Ireland in the most expensive trial court?

The dismantling of the court pyramid structure in Ireland

17. It is also to be noted that the traditional pyramid court structure for trial courts (with the High Court, at the apex, numerically, of the pyramid),[10] which used to exist in Ireland, and continues to exist in other jurisdictions, has been dismantled. There may be other jurisdictions where the traditional pyramid court structure has been dismantled, but if so, this Court is not aware of them. Despite this, like the reduction in the proportion of affordable courts, the dismantling of the pyramid court structure appears to have received little or no attention, notwithstanding its impact on the costs of resolving a dispute for individual litigants. This means that the Circuit Court is now, numerically, at the top of the pyramid, with the fewest number of trial courts, even though it is more affordable than the High Court.

18. If one assumes that the number of courts in Ireland is representative of the amount of litigation conducted in those courts, then one could conclude from the foregoing that:

- Since 1961, there has been a *dramatic reduction in the proportion of litigation conducted in the most affordable trial courts* (the District Court and the Circuit Court),
- Since 1961, there has also been a *dramatic increase in the proportion of litigation conducted in the most expensive trial court* (the High Court),

[10] A pyramid court structure has at the base of the pyramid a very large number of the most affordable courts (in Ireland, the District Court), followed in the centre of the pyramid with a lesser number of moderately expensive courts (in Ireland, the Circuit Court), with, at the top of the pyramid the least number of the most expensive courts (in Ireland, the High Court). However, in Ireland today, the traditional pyramid structure, which previously existed and which currently exists in England & Wales (and in Northern Ireland), has been dismantled. This is because, in addition to the pyramid being narrowed considerably at the base, with the dramatic reduction in the number of District Courts to High Courts, the pyramid has been partially inverted, since there are in fact *now more* of the unaffordable High Courts, than the relatively affordable Circuit Courts, so that the Circuit Court is now numerically at the top of the pyramid.

- The proportion of litigation conducted in affordable courts in Ireland today is not just out of keeping with previous decades, but it is also *completely out of synch with the position in our neighbouring jurisdiction of England & Wales*.

Who benefits from the reduction in the proportion of affordable courts

19. Who benefits from these dramatic changes? In this Court's view, it cannot be the litigant, who the system is supposed to serve. For example, how could it be in the interests of an individual litigant to have a relatively minor legal issue resolved in the High Court (with an appeal to the Court of Appeal/Supreme Court), for many multiples of what it costs to have the same issue determined in the District Court (with an appeal to the Circuit Court)?

20. After all, in most cases, a litigant, such as Mr. Shannon, is likely to care much more, about the costs he has to incur in getting his sister's case dismissed, than whether it is dismissed in the District, Circuit or High Court. After all, the District Court deals on a daily basis with cases which might be regarded as more serious than a dispute over a small family farm (e.g. the District Court can imprison a person for up to 12 months, remove children from their biological parents into care for up to 18 years, hear prosecutions under environmental protection legislation *etc.*) which cases, if appealed, are, in most instances, subject to a complete rehearing in the Circuit Court.

High Court costs bear no proportion to the value/importance of the dispute?

21. This dramatic reduction in the proportion of affordable courts is of considerable significance to litigants like Mr. Shannon, because litigation costs are calculated very differently from other legal costs that Mr. Shannon might have encountered, such as conveyancing, probate *etc*. Those legal costs are usually a small percentage of the values at stake, and so are generally *proportionate* to the value of the asset. However, for some reason, litigation costs, are different. This is because litigation costs, particularly in the High Court, can be a very large percentage of the value of the dispute. Indeed, it is not uncommon for

litigation costs to sometimes even be a multiple of the value of the dispute,[11] even though this defies all logic. It is the equivalent of a person being asked to pay €150,000 in conveyancing fees for the transfer of a house worth €75,000 or to pay €100,000 in probate fees regarding an estate with a value of €60,000. No one would *willingly* do such a thing.

22. One possible reason for this illogical state of affairs, where a person can pay more than the value of a dispute to have that dispute resolved, is the fact that *litigation is a captive market,* in the sense that it usually involves a defendant who *has not chosen to litigate*. He has been brought to court unwillingly, by a plaintiff, who expects to win and so expects that the defendant will pay these disproportionate legal costs. Yet, because one is dealing with a market, where half of the participants do not willingly choose to be in that market, it is even more important that costs should be proportional to the value of the dispute. However, as Mr. Shannon's case illustrates, this is often not the case in the High Court.

23. The fact that costs in the High Court are out of all proportion to the value of the disputes is best illustrated by the number of litigants who choose to settle, rather than seeking justice from a court. For example, in one area of law, where there are statistics for settlement rates, i.e. personal injury cases, *circa* 99% of those cases settle.[12] On the basis of logic, this should not be a surprise. After all, who logically would litigate in the High Court to resolve a claim for say €60,001 (the minimum amount for a claim to be heard in the High Court), at a cost of say €100,000. This is particularly so, if there is little chance of recovering costs from the losing litigant. A recent example of the disproportionate nature of costs in a family will dispute is provided by the case of *O'Connell v O'Connell* [2023] IEHC 215 where Butler J. noted that

[11] For example, *McAlister v Church Estate Agents Ltd* [2023] IEHC 650 at para 24 is an example of one where Simons J. noted that one side's costs were estimated at €188,493.98, which was '*almost the equivalent to the notional monetary value of the case*.' Thus, in that case, the losing side could be faced with paying costs of almost *double the value of the dispute*.

[12] *Report of the Personal Injuries Guidelines Committee* (published by the Judicial Council in December, 2020) states that only about 0.54% of *all* personal injury claims were actually heard in court (in the period 2017-2019). See also the statement of President of the High Court of 10 July, 2020 which states approximately 97% of personal injury cases settle.

costs were estimated at '*€700,000 or more'* regarding a dispute over a bequest of shares worth *circa* €1 million.[13]

Why litigation appears to be concentrated in the High Court in Ireland

24. It seems to this Court that the reason we have five times more High Court judges, *per head*, than they have in England & Wales is not just the dramatic reduction in the relative number of District and Circuit Courts since 1961, but also the fact that the High Court is '*inundated by the volume of litigation'*, as noted by Murphy J.[14]

25. A very significant amount of this huge volume of litigation is minor in nature, resulting in High Court costs being out of all proportion to the value or importance of the dispute. Indeed, the value of some of the disputes, which are permitted/required to be heard in the High Court, are such that they would fall within the jurisdiction, not of the District Court (up to €15,000), but of the Small Claims Court (up to €2,000).[15] Despite this, such claims are regularly permitted/required to be heard in the High Court at enormous expense to the litigants and often the taxpayer (since in many cases the State is a party).

26. For example, the High Court had to hear a dispute about whether a €500 deposit should be returned to a tenant.[16] Similarly, the High Court had to deal with judicial review proceedings in relation to a dispute over a clamping release fee of €80.[17] It is not surprising therefore that judges regularly point out that certain disputes '*should never have come before the High Court*

[13] The lack of proportionality between costs and the value of a dispute can also sometimes occur in the Circuit Court, e.g. in *Nolan v County Registrar for County Waterford* [2024] IEHC 253, Barr J. described as *'unrealistic'* a proposed bill of €32,986 for legal costs, which were *four times the value of the award* of €8,000 in the Circuit Court.

[14] See the article Murphy '*The Role and Responsibility of the State in Litigation*, Irish Judicial Studies Journal [2020] Vol 4(1) at p 77, where she noted that '*The High Court and the Court of Appeal are inundated by the volume of litigation pending before those courts […;] over 100,000 applications were added to the existing caseload with a period of three years [2016-2018]*'.

[15] This is the name sometimes given to the Small Claims Registrar of the District Court which deals with claims which do not exceed €2,000.

[16] *Abeyneh v Residential Tenancies Board* [2023] IEHC 81

[17] *Irish Times*, 18th October, 2022, in which Meenan J. said that it was not '*proportional'* that the High Court had to hear that case. See also the dispute over the inadvertent failure of the Road Safety Authority to renew a driving licence *Gannon v. Road Safety Authority* [2022/544/JR]. Meenan J. described it as an *'utter waste of time'* for the High Court to have to deal with this matter (*Irish Times*, 30th June, 2022)

at all'.[18] The most vivid example of the dilemma faced by judges in this regard is provided by the case of *O'Keefe v Commissioner of An Garda Siochána* [2023] IECA 332 at para 7. It is clear from that case that the High Court judge unsuccessfully tried to persuade a prisoner, to avoid exercising *his right*, under existing laws, to challenge the seizure of his dog *in the High Court*, but instead remit the matter to the District Court, in light of the costs involved. He declined (as was his right under laws passed by the Oireachtas) and so the State had to incur tens of thousands of euro, if not more, of taxpayers' money, in the High Court and Court of Appeal. This case therefore perfectly illustrates our current laws regarding which courts hear which matters, i.e. while the District Court has the jurisdiction to hear very serious matters affecting liberty and the care of children, at the same time, our laws require the time of the High Court (and Court of Appeal) and taxpayers' funds to be spent on deciding whether a dog should be released from kennels.

Why the proportion of affordable courts matters so much to litigants, like Mr. Shannon

27. Based on the foregoing, it *appears* to be much easier, than it was in previous decades, and much easier than it is in England and Wales, for a relatively minor disputes to end up in the High Court? Apart from the illogicality of paying costs which are disproportionate to the value of the dispute, this is also important because litigation can be used for improper purposes, or by someone who is misguided, like Ms. Shannon.[19] For such a person, because of the reduction in the proportion of affordable courts, it appears to be much easier now, than in previous decades, to weaponize unaffordable High Court legal costs, rather than say District Court costs, against another person.

[18] In *Tennant v. Reidy* [2022] IECA 137 at para 23, Noonan J. noted that a dispute over €20,000 that had been heard in the High Court *'should never have come before the High Court at all',* given the value of the dispute.
[19] Unfortunately, the weaponization of legal costs is a regular occurrence in the High Court. See for example the recent case of *Gaultier v Reilly* [2024] IECA 103, where Meenan J. noted at para 5: "*It will become immediately obvious that the proceedings are without any merit whatsoever and are an abuse of process. Unfortunately, in dealing with these proceedings the respondents have been put to financial expense, a fact which the appellant is all too aware of and only too willing to exploit."*

28. Of course, if legal costs were the same in every court, then it would not matter to Mr. Shannon, where he was sued. However, there is a massive difference between weaponizing High Court costs against someone, rather than weaponizing District Court costs. To fully appreciate the significance of this difference for a litigant, it should be noted that, *in very broad terms*, a hearing in the District Court might cost say, €500 or more. However, in the Circuit Court, it might cost say, €5,000 or more; while in the High Court, it might cost say, €50,000 or many multiples of this amount.[20] For this reason, by far the most significant factor, regarding the level of legal costs *in any case*, is the identity of the trial court in which the case is permitted/required to be heard. Its relevance cannot be overstated to a citizen on the average wage. She could be faced with up *to hundred times the costs* to have a legal issue resolved by a judge, who happens to be sitting in the District Court, versus *the very same legal issue* being resolved by another judge, who happens to be sitting in the High Court. Who benefits from this situation? In this Court's view, it cannot be the litigant.

Policy reasons for a reduction in the proportion of affordable courts?

29. This Court is unaware of whether this dramatic change in the proportion of affordable courts since 1961 is a result of a conscious policy over the decades or whether this has occurred unintentionally and incrementally, without being noticed, and so without being highlighted. Of course, the people most likely to highlight those changes are the people *negatively* affected by the changes. These are individual litigants, like Mr. Shannon who, maybe, once in their life, have a dispute which ends up going to court and for whom there is no lobby group, like there is for banks, insurance companies, businesses, lawyers etc. Accordingly, there is no lobby group highlighting the massive percentage drops (such as the 359% drop in the proportion of District Courts to High Courts) and the massive percentage differences with our neighbouring

[20] A recent example of the level of costs in the High Court is provided by the case of *Sweeney v VHI* [2023] IEHC, where it was estimated that one side's costs would be €1.79 million

jurisdiction (700% more Circuit Courts than High Courts there). This perhaps explains why these changes have received so little attention.

30. It is however important to point out that, while one might expect lobby groups to object if their members were getting paid less (since their job is to represent the interests of their members), no lobby group would be expected to object if their members are likely to get paid more, e.g. because there is a much greater proportion of litigation heard in the most expensive trial court than in previous decades or to object to the passing of an Act[21] which means that their members get paid more because a legal issue has to be resolved in the High Court (with an appeal to the Court of Appeal/Supreme Court) rather than in the District Court (with an appeal to the Circuit Court).

The effect of legal costs on whether 'justice' is actually administered

31. However, this is where the position of the courts is different. This is because, as noted earlier, it is the responsibility of the courts to have the interests of litigants in mind, rather than any other interest group. In this regard, the level of the legal costs which are chargeable in the court in which a case is heard, can be the difference between a litigant getting justice or not getting justice. This is because the proportion between legal costs *and* the value of a dispute impacts significantly on whether (i) a court ever gets to *decide a case* in the first place, and so administer justice (which is, after all, the *raison d'être* of the courts), or (ii) the parties are *forced to settle* because the legal costs are so disproportionate to the value of the dispute.

32. This is an issue for every person in the State, particularly those on average incomes. After all, not many people would be willing to risk financial ruin (in the form of an order for High Court legal costs against them) in order to obtain justice from a court. This is particularly so for litigants who are brought to court against their will, and who will not have their legal

[21] For example, as is clear from *Abeyneh v Residential Tenancies Board* [2023] IEHC 81, s. 123(3) of the Residential Tenancies Act, 2004 provides for an appeal of a determination of the Tenancy Tribunal '*to the High Court'*, and so the challenge to the return of a security deposit of €500 had to be heard in the High Court, rather than the District Court.

costs discharged, even if they win, because the other litigant has insufficient funds. Such persons, who are *forced to settle*, because legal costs bear no proportion to the value of the dispute, understandably end up feeling that they have got '*something less than the administration of justice'*,[22] to quote the Supreme Court.

33. Thus, in light of the dramatic difference in legal costs in the three trial courts, the question of whether *justice is actually administered* is often determined by whether the litigation has to be heard in the District Court, the Circuit Court or the High Court. As a result, it seems to this Court that the dramatic reduction in the proportion of affordable courts in recent decades is likely to have increased the instances where litigants end up getting *'something less than … justice'*.

34. For example, consider how much more likely a litigant would be to actually seek and obtain justice (in the form of a court decision, in say the District Court with an appeal to the Circuit Court), where costs are a relatively modest percentage of the value of the dispute, rather than in the High Court, where they could be a multiple of the value of the dispute. In particular, consider how much more different it would be for a litigant, in everyday cases such as property, defamation, personal injury, family law[23] and will disputes, for a party (faced with hundreds of euro *or* thousands of euro in costs) being able actually to *choose* to seek justice, i.e. to choose to have a judge decide the case, or to *choose to settle*, rather than being *forced to settle* (because of the risk of a loss of tens/hundreds of thousands of euro in costs). Such litigants could then feel they obtained justice, rather than '*something less than… justice*'.

[22] *per* O'Donnell J. in the Supreme Court case of *Quinn Insurance Ltd (Under Administration) v. PricewaterhouseCoopers* [2021] IESC 15 at para. 12) "In such a case, a defendant is entitled to feel that the pressure to compromise because of the risk of expenditure of costs which will be irrecoverable is something less than the administration of justice according to law and instead has uncomfortable echoes of the practice and procedure of the highwayman."

[23] It should be noted that the Family Law Bill, 2022, is an example of legislation which provides for a reversal of the trend to have disputes (in that instance, divorce and separation cases) heard in a more expensive court, since it provides for them to be heard in the District Court.

35. Contrast that with the current situation in the High Court, where a defendant facing damages of only €60,001, in a personal injuries action, or €75,001 in a defamation action, or a dispute with a neighbour over a dispute with a value of €75,001, could be faced with costs of hundreds of thousands of euro in the High Court to get 'justice'. Who logically could afford to seek justice (in the form of a decision of the High Court), if it costs multiples of the value of the dispute, particularly if there is little prospect of recovering those costs from the losing party.

The abusive power of litigation is dependant on the level of legal costs at stake

36. As well as the illogicality of disproportionate costs, it is important to bear in mind that one will never be able to prevent people using litigation for an improper purpose. For this reason, litigation costs will always be open to being weaponised by people like Ms. Shannon. However, consider how much more ineffective Ms. Shannon's vendetta would have been if it cost Mr. Shannon *only* hundreds of euro in the District Court, rather than tens of thousands of euro in the High Court, *every time* Ms. Shannon sued him. Of course, improper or abusive litigation is not restricted to family feuds like Ms. Shannon's. For example, in the context of strategic lawsuits against public participation (or SLAPP), consider how much *more ineffective* these abusive lawsuits would be if the 'threat' being wielded was District Court costs, in the hundreds of euro, rather than High Court costs in the tens/hundreds of thousands of euro. Similarly, in the context of '*blackmail*'[24] litigation (to adopt the term used by the Supreme Court for cases where there is no prospect of the losing litigant paying the winning litigant's costs), consider how much more ineffective it would be, if the sums being used as the 'blackmail', were legal costs in the District Court, in the hundreds of euro, rather than legal costs of tens/hundreds of thousands of euro in the High Court.

The extra weaponization of the courts which was achieved by Ms. Shannon

[24] In *Farrell v. The Governor and Company of the Bank of Ireland* [2013] 2 ILRM 183 at para. 4.12, Clarke J. stated: "*If there were not provision requiring generally for the payment of costs to the successful party then there would be a real risk that the bringing or defending of proceedings could be used as a form of unfair tactic little short, at least in some cases, of blackmail*."

37. In this case, there was no evidence that Mr. Shannon ever recovered any of his legal costs from Ms. Shannon for winning the numerous cases she took against him. However, because Ms. Shannon represented herself in the proceedings before this Court, she was able to weaponize the legal system, even more than other litigants. This is because she was able to force Mr. Shannon to spend tens of thousands of euro in legal costs each time she sued him in the High Court, *but at little or no cost to herself.*

38. Mr. Shannon's case also highlights one other issue regarding costs – it is that Mr. Shannon would have been much better off if this 'vendetta litigation' was taken against him by a corporate plaintiff, rather than by an individual. This anomaly arises because a corporate plaintiff would normally have to provide security for the legal costs of Mr. Shannon in defeating the claims, so that Mr. Shannon would not be out of pocket. However, because this 'vendetta litigation' was pursued by Ms. Shannon, there was no obligation on her to provide any security for costs (not even a modest amount, based on her means, which might act as a disincentive to improper litigation). Thus, Ms. Shannon, as an individual litigant, was able for almost 30 years to take misguided and abusive claims against her brother in the High Court, at little or no cost to her, but at enormous cost to him.

To be 'true' justice, the costs must be proportionate to the value/importance of dispute

39. Finally, in this regard, the reason all of this is relevant, for litigants like Mr. Shannon, is because 'true' justice must take account of whether the costs of obtaining justice, *bear any proportion* to the value (or importance) of the dispute.[25] This is because if legal costs are disproportionate to the value of a dispute (the situation with many High Court claims), it is hard to see how a person can ever obtain true justice, particularly where a winning litigant does

[25] Kelly P, who highlighted the 'millionaire' costs in the High Court, in a speech on the 17th January, 2024 to mark the 20th anniversary of the Commercial Court, chose to highlight the 'limited costs' regime in the Dutch Commercial Court - "*Its caseload appeared to be ever growing and it continues to flourish. One reason for it so doing may well be the limited costs regime which is applicable in that court."*

not recover his legal costs from the losing litigant. It is for this reason that the dramatic reduction in the proportion of affordable courts, relative to previous decades, and relative to our neighbouring jurisdiction, is not just important, because logic dictates that costs should be proportionate to the value of a dispute, but it is also important because if costs are disproportionate, this impacts on whether 'true' justice is administered in our legal system, which, after all, is the *raison d'être* of the courts.

BACKGROUND

40. In this, the latest chapter in the vendetta pursued by Ms. Shannon over nearly 30 years, Mr. Shannon has been forced to seek an order for possession of a farm and a house (the "**Property**") at Folio SL15115 against his two sisters, who refuse to leave the Property. The Property is registered in Mr. Shannon's name in the Land Registry, as it was left to him by his mother. The Court has already handed down its decision to the parties, with a brief summary of the reasons, so that Mr. Shannon could get on with his life, as soon as possible. However, this Court indicated that it would set down the reasons for its decision in writing, which it is now doing.

41. Despite Mr. Shannon owning the Property, Ms. Shannon, who represents herself and her sister, Ms. Gwendoline Shannon (the second-named appellant, together the "**Shannon Sisters**"), are continuing to reside on the Property, without the permission of Mr. Shannon.

42. This is because the Shannon sisters claim to be the owners of the Property, even though during the course of almost 30 years of litigation primarily in the High Court (and on appeal to the Supreme Court), they have not succeeded in ever establishing an ownership right to the Property.

43. The years of litigation were summarised by Birmingham J., as far back as 2012, in the High Court case of *Elizabeth Shannon v. John Shannon* (1996 No. 1258P), in which Ms.

Shannon was the plaintiff. Over the course of 14 separate paragraphs, he described what he called the '*litigation stream'* that had already been initiated by Ms. Elizabeth Shannon at that stage. In order to appreciate the extent to which Ms. Elizabeth Shannon has weaponised the legal system against her brother, it is necessary to set out these paragraphs in full:

> "(a) **Judicial review proceedings were brought by the plaintiff [Ms. Elizabeth Shannon]** and her sister [Gwendoline Shannon] against the Director of Public Prosecutions arising from decisions taken by him in relation to a criminal prosecution which had its origins in the incident, the subject matter of these current civil proceedings. These judicial review proceedings, in which the defendant in these proceedings, Mr. Shannon, was a notice party came before **Kelly J. who refused relief**. **An order for costs was made in favour of the notice party, Mr. John Shannon.**
>
> (b) The plaintiff and her sister commenced proceedings under s. 117 of the Succession Act. These proceedings came on in the Circuit Court before Judge Patrick McCartan **who dismissed the plaintiff's [Ms. Elizabeth Shannon's] claim** although he found in favour of her sister.
>
> (c) An appeal from Judge McCartan was brought and was listed in Sligo on the 26th June, 1997, before Flood J. There was no appearance and the appeal was struck out, though with liberty to apply to reinstate. Subsequently there was an application to reinstate, but the **application was refused. There was an order for costs made in favour of the defendant** [Mr. John Shannon].
>
> (d) On the 25th February, 1998, the plaintiff issued a plenary summons seeking to revoke the Grant of Probate. It has been said, without contradiction, that the issues raised closely mirrored the issues in the s. 117 proceedings. In these circumstances the defendant, **Mr. Shannon, brought a motion to have the proceedings dismissed as**

vexatious. That application came on before Johnson J. who acceded to the application. Costs were awarded to the defendant/moving party. [Mr. John Shannon]

(e) There was no appeal brought initially from the order of Johnson J. but at a later stage the plaintiff, Elizabeth Shannon, sought to extend the time within which to appeal. **The application to extend time was refused by the Supreme Court** on the 19th July, 2002.

(f) The defendant commenced ejectment proceedings seeking to obtain possession of lands that had been left to him by his late mother. The ejectment proceedings were heard by Judge Carrol Moran, who made an order for possession. The plaintiff's, Ms. Elizabeth Shannon's, response was to seek to bring judicial review proceedings. That matter came on before Finnegan J. who on the 17th April, 2001, refused the application for leave. He did however give liberty to serve a notice of motion seeking a stay on the order of Judge Moran and made an order providing for short service in that regard. However, despite the provision for short service, at that stage there was no such application.

(g) However, on the 27th July, 2001, an application, dated the 22nd December, 2000 to extend the time for appealing the order of Judge Moran came on before Murphy J. **He refused the application, confirming this on the 5th November, 2001. Murphy J. awarded costs against the plaintiff.** [Ms. Elizabeth Shannon]

(h) The plaintiff purported to appeal the order of Murphy J. to the Supreme Court, but this exercise was unsuccessful and the purported appeal was stuck out on the 5th December, 2001.

(i) The plaintiff sought to judicially review the decision of Judge McCartan made in the s. 117 proceedings. The application first came on before Finnegan J. who required the

application to be brought on notice. The application on notice came before Kearns J. who on the 12th November, 2001, **refused leave. There was an order for costs against the plaintiff, Ms. [Elizabeth] Shannon**. An appeal was brought from the decision of Kearns J. Judgment was delivered on the 19th June, 2002, the appeal was dismissed and in the course of his judgment, which is now reported at *Shannon v. McCartan* [2002] 2 I.R. 377, **Keane C.J commented that the had not the slightest doubt that the High Court was seriously misled by the plaintiff when the application was made *ex parte* for leave to apply for judicial review.** There followed a further application to the Supreme Court to vary its order, which was refused on the 19th July, 2002. It appears that during the course of this application, **Murphy J. expressed concern at the plethora of litigation.**

(j) There followed an application to the Supreme Court brought by Gwendolyn Shannon, sister of the plaintiff, on the 25th October, 2002, to set aside the order of Johnson J. dated 11th November, 1999, in **which he had dismissed as vexatious** the plenary proceedings which had duplicated the s. 117 proceedings. The motion was struck out by the Supreme Court and the **Chief Justice described the application as an attempt to circumvent the earlier order of the court made in July 2002,** refusing to extend time for appealing the order of Johnson J. **The Chief Justice indicated that if there was a further attempt to litigate matters already decided that the court would look favourably on an application for the making of an *Isaac Wunder* order**.

(k) On the 3rd September, 2002, the applicant sought leave before Ó Caoimh J. to judicially review the order of Judge Moran of the 7th April, 2000, the order for possession. The application for leave was refused, but Ó Caoimh J. declined to make an Isaac Wunder order, although invited to do so.

(l) The decision of Ó Caoimh J. was appealed by the plaintiff, Ms. [Elizabeth] Shannon to the Supreme Court. **On this occasion, on the 9th December, 2004, an Isaac Wunder order was made.** In addition there was an order for costs against the plaintiff, Ms. [Elizabeth] Shannon.

(m) There was a further development in 2003, **which saw the plaintiff issue Circuit Court proceedings which sought to re-litigate the ejectment proceedings which had come on before Judge Moran**. This attempt came before Judge Kennedy, who dismissed the application making an order for costs against the plaintiff, Ms. [Elizabeth] Shannon. This decision of Judge Kennedy was appealed and the matter came before de Valera J. on the 13th June, 2005. **He dismissed the appeal and made an order for costs against the plaintiff, Ms. [Elizabeth] Shannon.**

(n) **Notwithstanding the *Isaac Wunder* order imposed by the Supreme Court, the plaintiff, Ms. [Elizabeth] Shannon, on the 25th August, 2008, initiated proceedings against the defendant [Mr. John Shannon],** his brother, the Sheriffs for Co. Sligo and Co. Leitrim, the Garda Commissioner and Ireland. It seems these proceedings were designed to challenge the order of Judge Moran made in the ejectment proceedings and it seems clear that the proceedings were caught by the terms of the *Isaac Wunder* order of the 9th December, 2004." (Emphasis added)

44. Despite these numerous judgments holding against Ms. Elizabeth Shannon and despite the fact that those judgments criticised her attempts to establish her ownership of the Property, Ms. Elizabeth Shannon at the hearing before this Court continued to maintain that she is entitled to the Property and that all those judgments are wrong. While this Court can do nothing to convince Ms. Shannon of the error of her way, this Court can highlight the ways in which the

system could be improved so that Ms. Shannon cannot weaponise, to such an extent, the legal system against her brother.

The pursuit of a vendetta by Ms. Elizabeth Shannon against Mr. John Shannon

45. Ms. Elizabeth Shannon's unwillingness, to ever accept a court decision that goes against her, is illustrated by the fact that she has been subjected to an *Isaac Wunder* Order in relation to this dispute over the Property with her brother.

46. Indeed, in yet another High Court decision dealing with Ms. Elizabeth Shannon's dispute with her brother (*Elizabeth Shannon and Gwendoline Shannon v John Shannon and Malcolm Shannon* (Rec No. 2012 NO. 59 IA) - a judgment of Peart J. dated 8th August, 2012), he found that Ms Elizabeth Shannon had a '*vendetta*' against her brother (at para. 6).

47. As there is an *Isaac Wunder* Order in existence against Ms. Shannon preventing her instituting proceedings against her brother in relation to the Property, the only reason that the unfounded claims that she has made regarding the Property have been aired before this Court is because Mr. Shannon has been forced to institute these proceedings against her.

48. This is because the Shannon Sisters, after having been removed from the Property in 2006 on the back of a possession order then obtained by Mr. Shannon, immediately returned to occupy the Property. Understandably Mr. Shannon is concerned that his sisters might seek to claim ownership of the Property by adverse possession, simply because he has not sought to remove them once again, or otherwise establish his lawful ownership of the Property.

49. While Mr. Shannon does not propose to seek the execution of any Possession Order that he might obtain from this Court, he is nonetheless seeking such an order. This is because he wants to make it clear that he is not permitting his sisters to acquire title to the Property adverse to his title, by permitting them to occupy the Property. By seeking the possession order he is evidencing that any such occupation by them of the Property does not constitute a

dispossession of him, the true owner, nor is he abandoning or discontinuing possession of the Property (simply because his sisters refuse to leave the Property).

THE APPEAL

50. The possession proceedings were originally brought in the Circuit Court and they come before this Court by way of an appeal, by Ms. Elizabeth Shannon of Fergus J.'s Order in the Circuit Court. Fergus J. granted an order declaring that Mr. Shannon is the owner of the Property, that the Shannon Sisters have no interest in the Property, that they vacate the Property and that they do not re-enter the Property.

51. In this appeal, the sisters, once again, and despite the years of unsuccessful litigation taken by them regarding this issue, claim that they are entitled to ownership of the Property. As well as repeating the various claims which they have lost over the years of litigation (*e.g.* that the will of their mother leaving the Property to Mr. Shannon was procured by undue influence), they also claim, in these proceedings, that they are entitled to the Property '*by virtue of adverse possession'.*

52. However, since 12 years of adverse possession is required to satisfy such a claim, this claim is unsustainable. This is because these proceedings were issued by Mr. Shannon on 31st July, 2018. Furthermore, at para 6 of their Defence in these proceedings, the sisters acknowledge that an '*attempt to evict the [Shannon Sisters] was made on 31 August 2006'*. Thus, it is clear that there is not 12 years between 31 August, 2006 and 31 July, 2018. It follows therefore that there is not a period of 12 years in which the sisters could be said to have occupied the Property without Mr. Shannon, the legal owner, exercising/asserting his title over it, such as to constitute adverse possession.

53. In addition, evidence was given by Mr. Shannon that he walks the Property every few days and evidence was also given by Ms. Elizabeth Shannon that Mr. Shannon has his cattle

on the Property. Thus, the occupation by the sisters of the Property does not amount to the dispossession, discontinuance or abandonment of the Property by the owner, Mr. Shannon, such as to constitute adverse possession.

54. For these reasons, there can be no basis for a claim by the sisters for adverse possession of the Property and this defence to the ejectment proceedings is therefore unsustainable.

55. It is not proposed to go through all the other issues raised by the Shannon Sisters in their defence to the orders sought by Mr. Shannon, as these were rejected in the various other proceedings over the last 30 years of litigation, e.g. the claim that the will of the parties' mother was procured by undue influence was litigated in the proceedings first issued in 1998 entitled *Elizabeth Shannon and Gwendoline Shannon v. John Shannon and Malcolm Shannon* (1998/2542P).

56. In fact, as already noted, all of these other issues were rejected *so extensively and so repeatedly* by the courts, that the manner in which they were consistently and repeatedly raised by the Shannon Sisters led to Ms. Elizabeth Shannon being subjected to an *Isaac Wunder* Order in order to prevent further ventilation of those issues.

CONCLUSION

57. As evidence was provided by Mr. Shannon of his registration as full owner of the Property and as the defences, to the possession and other orders sought by Ms. Shannon, have been held to be without merit, this Court will affirm the order of Fergus J. in the Circuit Court.

58. More generally, it seems that the injustice which Mr. Shannon has had to endure of being sued vexatiously by his sister over a 30-year period has been exacerbated by the fact that she was able to sue him in the High Court, at a cost which can be up to 10-100 times the cost of him being sued in the District Court or the Circuit Court.

59. She was able to bring most of her proceedings in the High Court, despite the fact that the dispute itself was over a small family farm and so High Court costs were out of all proportion to the value of the dispute. It was also despite the fact that the District Court hears, on a daily basis, cases which would be regarded as far more serious in nature than Mr. Shannon's dispute, and which decisions are subject to a full rehearing, on appeal, to the Circuit Court.

60. This Court has highlighted the effect of laws which have been passed in recent decades, which appear to have led to a greater concentration of litigation in the most expensive trial court (the High Court). These laws have led to the dramatic reduction in the proportion of affordable courts (a drop of 359% in the proportion of District Courts). They have also led to the dismantling of the traditional pyramid court structure (as there are now more unaffordable High Courts than relatively affordable Circuits Courts), which is out of keeping with other jurisdictions. Logic suggests that this dramatic reduction in the proportion of affordable courts in recent years has increased the likelihood of people like Mr. Shannon ending up having relatively minor cases heard, not in affordable courts, but in the High Court, at costs which are out of all proportion to the value of the dispute.

61. For Mr. Shannon, it means that his sister, by being able to take her litany of claims in the High Court, was able to inflict a financial pain on him, which is up to one hundred times greater, than if she had to bring those cases in the District Court, and up to ten times greater that if she had to bring them in the Circuit Court. This case therefore vividly highlights the extent of the injustice which can be inflicted, using our existing laws, on any person at any time (in the form of legal costs over a relatively minor issues), *if* that litigation can be pursued in the High Court, rather than a more affordable court.

62. So how can the system be made '*better for the litigant'*? One way would be to ensure that litigation costs, are in proportion to the values at stake, as is usually the case with other

legal costs, such as probate and conveyancing costs. However, litigation costs in Ireland are in many cases, particularly in the High Court, not proportional to the values at stake and so it is not surprising that *'Ireland ranks among the highest-cost jurisdictions internationally for civil litigation'.*[26] *If* the most recent calls for the reform of legal costs are as unsuccessful as previous calls for reform over the past century, then legal costs in the High Court will remain out of proportion to the value of many of the disputes heard in that court. For this reason, there is an alternative option, to which the Oireachtas might give *'consideration'* (to use the Supreme Court's expression in *S.P.V. Osus*), in order to increase the chance of litigation costs being proportional to the value of a dispute. It is to have the same proportion of affordable courts in Ireland, as used to be the case in previous decades (or indeed the same proportion of affordable courts as in England & Wales), and to ensure that only serious disputes, or disputes where the value is proportional to the likely legal costs, are heard in the High Court. However, this is a matter over which the courts have no control and hence this Court's role, like that of Kelly P and Clarke C.J. (in the related area of legal costs), is limited to highlighting the issue regarding the proportion of affordable courts, in the order to '*try to make the system better for the litigant'.*

[26] *Review of the Administration of Civil Justice*, October 2020 at p. 267 (which was chaired by Kelly P.)