



THE SUPREME COURT

S:AP:IE:2018:000059

**O'Donnell J.
McKechnie J.
Charleton J.
O'Malley J.
Baker J.**

Between/

BRENDAN KILTY

Appellant

-And-

JUDGE CORMAC DUNNE

Respondent

-And-

CAMPION PROPERTY CONSULTANTS LIMITED

Notice Party

Ruling of the Court delivered on the 5th day of February 2021.

Introduction

1. The substantive judgment in this matter was delivered on the 20th October, 2020 (see [2020] IESC 65). The appellant and respondent have now communicated their

respective positions in relation to the question of costs. Neither has requested an oral hearing.

2. Without setting out the entire history of the litigation again, the following events and dates are relevant:
 - (i) The appellant's judicial review proceedings, in which he sought to quash orders made by the respondent, were heard by the High Court (Hedigan J.) on the 13th October, 2011. The Court granted the relief sought and then, despite the fact that an order had earlier been made directing that the matter should proceed without the participation of the respondent, awarded costs against him.
 - (ii) The respondent subsequently appealed the order of costs to this Court. In a judgment delivered on the 7th December, 2015, the appeal was allowed on the basis that it had been made in the absence of fair procedures. The question of the High Court costs was remitted to the High Court, and the Court made no order in respect of the costs of the appeal.
 - (iii) The matter came before Hedigan J. again on the 25th July, 2016. He reached a mistaken conclusion that this Court had in effect directed him to make no order, and that was what he did.
 - (iv) The appellant appealed this decision to the Court of Appeal. In a judgment delivered on the 17th October, 2017, that Court agreed that Hedigan J. had erred, and the matter of costs was again remitted to the High Court. That order was not appealed by either party.
 - (v) The Court of Appeal then dealt separately with the costs of the appeal before it. It determined, for the reasons set out in a judgment delivered on the 22nd March, 2018, that the principles of judicial immunity applied in the circumstances of the case and accordingly it made no order in relation to costs. That was the order that was appealed to this Court.
 - (vi) In the substantive judgment on the 20th October, 2020, this Court held that the Court of Appeal had erred in its application of the relevant jurisprudence. The costs of the appeal to the Court of Appeal were therefore awarded to the appellant.

Remaining issue

3. It is now agreed between the parties that the appellant is entitled to the costs of both the appeal to the Court of Appeal and the appeal to this Court. However, the appellant also seeks his costs in respect of the hearing in the High Court on the 25th July, 2016, which resulted in the decision of Hedigan J. to make no order in relation to costs.
4. The appellant says that, having won this appeal, he is entitled to his costs in this Court and below. He submits that the order of remittal made by the Court of Appeal concerns only the costs of the 2011 hearing, and that the High Court will not, when dealing with that, have jurisdiction to make any order regarding the July 2016 hearing.
5. The respondent says that no order should be made in respect of that occasion, noting that this Court had made no order in respect of costs when he succeeded in his appeal against the original order made against him.

Decision

6. The Court considers that the parties, perhaps because of the tortuous procedural route this case has travelled, are mistaken in their understanding of what is, and is not, before this Court.
7. The substantive dispute before the Court of Appeal concerned the view of the trial judge that he was bound to make no order in respect of the High Court judicial review hearing. That issue was, by consent, dealt with on foot of a motion brought by the appellant, seeking to have it determined as a preliminary issue and, in the event of his success in that regard, to have the matter remitted to the High Court. That is what occurred, and the appellant did not seek to disturb that aspect of the Court of Appeal order.
8. The leave to appeal to this Court was granted on foot of the appellant's application, which expressly sought leave only in respect of that part of the order of the Court of Appeal which declined to award to the appellant his costs *of that appeal*. The application for leave, and the determination granting leave, were not concerned with

any aspect of the order made on the 25th July, 2016. The appellant is incorrect, therefore, in employing the “above and below” terminology – this Court was not dealing with the High Court order.

9. The current position is that the High Court must now reach a decision as to how the costs incurred by the parties in the High Court are to be dealt with in light of the two substantive judgments of this Court. One element of those costs, if claimed, may relate to the day on which the High Court sought to finalise the issue of costs, but did so on an incorrect legal basis. This Court sees no reason to suppose that the High Court does not have jurisdiction to deal with this on foot of the remittal order.
10. In so far as this Court is concerned, therefore, the appellant will be awarded his costs in this Court and in the Court of Appeal.